

AN ANALYSIS OF THE CONFEDERATE TREATIES WITH THE FIVE CIVILIZED TRIBES

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Riding across the rolling hills of Indian Territory in May, 1861, Confederate Commissioner Albert Pike and Brigadier General Ben McCulloch discussed what was perhaps the most important mission of their lives. The Civil War had begun, and the western flank of the Confederacy was dangerously exposed to a Federal invasion launched from Kansas. To protect Arkansas and Texas, the South had decided to rely on an alliance with the Five Civilized Tribes—the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws. The Confederacy hoped to persuade these Indians to cast their lot with the South, and thus protect the important Texas gulf ports and the agricultural areas of Arkansas and Louisiana. It was the purpose of these two men to secure the necessary treaties. However, Pike assumed full responsibility for the effort, as McCulloch was soon to relinquish his duties and return to Fort Smith, Arkansas.

Pike's efforts were made easier by the Southern background of the Five Civilized Tribes. Slavery was well established among the Indians, and in the Choctaw and Chickasaw territory, along the Red River, a flourishing cotton culture had developed. The Indians were also surrounded by states which favored secession. On the east were Arkansas and Missouri, and southward were Texas and Louisiana. Their sole contact with the Northern states was Kansas, which was divided over the question of slavery. These conditions made it practically impossible for the Indians to remain loyal to the North.¹

On March 4, 1861, the Southern Congress authorized President Jefferson Davis to appoint an agent to carry on negotiations for forming an alliance with the Indians. David Hubbard, the newly appointed Commissioner of Indian Affairs, was instructed on March 16 to seek an alliance with the

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¹Othland Merton, "Confederate Government Relations with the Five Civilized Tribes, Part 1," *The Chronicles of Oklahoma*, Vol. XXX, No. 2 (Summer, 1953), p. 199; Morton, "Confederate Government Relations with the Five Civilized Tribes, Part 2," *The Chronicles of Oklahoma*, Vol. XXXI, No. 3 (Autumn, 1953), p. 399.

Indian tribes which would "protect them and defend them against the rapacious and avaricious designs of their common enemy whose real intention was to emancipate their slaves and rob them of their lands."²

Hubbard became ill, which prevented him from fulfilling his duties, and in March, 1861, President Davis appointed Albert Pike of Little Rock, Arkansas, special Indian Commissioner to the Five Civilized Tribes. Commissioner Pike and Brigadier General Ben McCulloch, the Southern military commander of the area, met at Fort Smith in early May of 1861. They agreed to proceed on their diplomatic mission to the Five Civilized Tribes together; however, McCulloch soon relinquished his duties to Pike.³

After meeting initial failure in his efforts with the Cherokees, Pike succeeded in uniting the Confederacy and the Creeks in an alliance on July 10, 1861. The Choctaws and Chickasaws offered no real obstacle to a Southern treaty, and they signed the pact on July 12, 1861. On August 1, 1861, Pike persuaded the Seminoles that their future lay with the Confederacy, and under the leadership of John Jumper they joined the growing alliance. This left only the Cherokees outside the Southern fold. However, there was a strong pro-Southern faction within the tribe, and with the threat of a withdrawal of an offer to purchase 800,000 acres of their land, and the knowledge of Confederate victories at the battles of Bull Run and Wilson Creek, they too submitted to Southern pressure on October 7, 1861. Pike had completed his mission by securing a grand alliance between the Five Civilized Tribes and the Confederacy.⁴

These treaty alliances with the Five Civilized Tribes concluded Pike's diplomatic efforts in Indian Territory. After their signing the treaties were forwarded, along with a report of his negotiations, to President Davis. Davis in turn transmitted the treaties to the Provisional Congress of the Confederacy on December 12, 1861, along with his suggestions for changes. The debate on the treaties lasted until December 31, 1861, when they were ratified by the Confederate Congress, including the suggestions of Davis.

² *Journal of the Provisional Congress of the Confederate States of America* (7 vols., *United States Senate Documents*, No. 254, 58th Cong., 2nd Sess., Washington: Government Printing Office, 1904), Vol. I, p. 205; Walker to Hubbard, May 14, 1861, *United States Department of War, The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* (4 series, 70 volumes, 128 books, Washington: Government Printing Office, 1880-1901), Ser. iv, Vol. I, pp. 322-323 (hereafter cited as *Official Records*).

³ Morison, "Confederate Government Relations with the Five Civilized Tribes, Part 2," *The Chronicles of Oklahoma*, Vol. XXXI, pp. 301-303.

⁴ *Ibid.*, p. 303; Angie Debo, *The Road to Disappearance* (Norman, Oklahoma: University of Oklahoma Press, 1941), p. 143; *Official Records*, Ser. iv, Vol. I, pp. 445, 513; Edwin C. McReynolds, *The Seminoles* (Norman, Oklahoma: University of Oklahoma Press, 1957), p. 292; Grace Stock Woodward, *The Cherokees* (Norman, Oklahoma: University of Oklahoma Press, 1963), pp. 264-268.

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The final treaties were similar in content and varied only where provisional interests were concerned.⁶

The signatories of the Choctaw treaty were Robert M. Jones, Sampson Folsom, Forbis LeFlore, George W. Harkins, Jr., Allen Wright, Alfred Wade, Coleman Cole, James Riley, Rufus Folsom, William B. Pitchlynn, McGee King, John P. Turnbull, and William Bryant. They were joined by the Chickasaw delegation, which consisted of Edmund Pickens, Holmes Colbert, James Gamble, Joel Kemp, William Kemp, Winchester Colbert, Henry C. Colbert, James N. McLish, Martin W. Allen, John M. Johnson, Samuel Colbert, Archibald Alexander, Wilson Frazier, Christopher Columbus, A-sha-lah Tubbe, and John E. Anderson. All of these men were ardent secessionists and avidly supported the Southern cause. In the case of the Creek treaty, the negotiations took place with the headmen, warriors, and chiefs of the nation in general council. Those members of the Seminole Nation who joined John Jumper in his alliance with Pike were Pas-co-fa, George Cloud, Fos-hut-ehi Ha-cho-ehi, Co-cho-co-ni, Sa-to-a Hacho, Cho-fo-top Hacho, Su-nuk Micco, Ta-co-sa Fic-si-co, Hal-pa-ta, I-ma-thla, and Fos-hut-ehi Tus-ti-nuk-ki. Cherokee appointees to the negotiations with Pike were Joseph Verner, James Brown, John Drew, and William P. Ross. The names on the treaties are, however deceptive. In most cases, other than the Choctaws and Chickasaws, the documents were obtained either by usurping the power of the legitimate tribal leaders, through forgery, or by means of coercion. Though the treaties were often signed by prominent tribal leaders, such action frequently did not represent their true feelings, but was agreed to because of pressure exerted by the Confederacy.⁶

All of the treaties were careful to designate the boundaries of the territory occupied by the Indians. The Creek Nation was encompassed by a line beginning at the North Fork of the Canadian River. From this point it ran four miles north, and then in a straight line to the east bank of the juncture of the Arkansas and Grand rivers. From here the line extended south forty-four degrees, then west for one mile, and continued in this direction to the Arkansas River. At this point the boundary turned up the river to the Verdigris River, where it intersected the old territorial line, and followed it for twenty-five miles. It then ran along the southern line of the Cherokee Nation to the North Fork of the Canadian River, and to the border of the Seminole territory.⁷

⁶ Kenneth McNeil, "Confederate Treaties with the Tribes of Indian Territory," *The Chronicles of Oklahoma*, Vol. XLII, No. 4 (Winter, 1964-65), p. 415.

⁶ *Official Records*, Ser. IV, Vol. I, pp. 465, 513, 526, 669.

⁷ *Ibid.*, p. 427.

The Choctaw border began one hundred paces east of old Fort Smith, where the western boundary of Arkansas crosses the Arkansas River. From here it ran south along the Arkansas state line to the Red River, where it turned west and followed the river to the 100th Meridian. The line then followed the Meridian north to the Canadian River and along its bank to its junction with the Arkansas River, which it followed to the initial point near Fort Smith. Within this area was the land occupied by members of the Chickasaw Nation. Their territory under agreement with the Choctaws was enclosed by a line beginning where the Island Bayou flowed into the Red River, about twenty-six miles below the mouth of the False Washita River. The boundary then turned northwest along the bayou's main channel to a point where all the channels join, near the dividing ridge of the Washita and Low Blue rivers. It followed the eastern branch of the bayou to its source, and then north to the Canadian River. It followed this river to the 98th Degree of Longitude, and then southward to the Red River, which it followed to the original point. There was a stipulation in the agreement which provided for the inclusion of Allen's Academy in the Chickasaw lands. If the academy's location fell outside of the Chickasaw territory, an offset was to be made which would place it at least two miles within their boundaries.⁸

The Seminoles who were associated with the Creeks received a portion of land on the southwestern border of the Creek Nation. Their territory began on the Canadian River west of the 97th Degree of Longitude, where Pond Creek flowed into the river. From there it followed the North Fork of the Canadian to the southern boundary of the Cherokees and then west to the 100th Degree of Longitude. Then the boundary turned southward to the Canadian River and continued along it to the point of beginning.⁹

The Cherokees were assigned 13,574,135.14 acres contained in an area bounded by a line beginning twenty-five miles north of the Arkansas River, and running southward to the Verdigris River. It followed the Verdigris River until it emptied into the Arkansas River, and then along the southern bank for 40 degrees and 13 minutes of Latitude to the junction of the Arkansas and Neosho (or Grand) rivers. Here the line turned southward to where the North Fork and the Canadian rivers flowed together, down the Canadian River to the Arkansas River, and then along it to the state line of Arkansas. The boundary followed the Arkansas border northward to Missouri, and then west along the southern limit of the Osage lands in Kansas to the Texas border. It followed the Texas state line south for sixty miles,

⁸ *Ibid.*, pp. 446-447.

⁹ *Ibid.*, p. 514.

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and then east along the northern edge of the Creek Nation to the original point.¹⁰

Except for the minor change along the border between the Choctaws and Chickasaws and the state of Arkansas, the area allotted to these tribes was virtually the same as that given them by the United States. The land was promised to the Choctaws and Chickasaws for "as long as grass shall grow and water run." The partition and disposition of the divided land among the tribal members were left to the Indian tribal legislatures, and the Confederacy guaranteed them complete control over their internal affairs.¹¹

The treaties promised the territorial and political integrity of the Indian nations. However, the sale or granting of any portion of their territory to any foreign nation, state, or any government whatever, without the consent of the Confederate government, was prohibited. Should any sale occur without the South's consent, the land would revert to the Confederacy. The Indians were protected from the encroachment of the surrounding states and the white man's law by the guarantee that Indian Territory would never be subject to the laws of any state or territory. The treaties also promised that no portion of Indian Territory would ever be included within or annexed to any territory or province of the Confederacy, nor would any attempt be made to establish among the Indians any state or territorial government or to include them within the boundary of any previously created state without the consent of the Indian nations.¹²

The Indians were also granted unrestricted self-government, and full jurisdiction over the persons and property within their territory. The exceptions to their self-rule were the regulation of trade and intercourse, which was reserved by the Confederate states. The laws of the Indians were, however, to be compatible with the Constitution of the Confederate States of America, and all white men who were not tribal members were exempt from Indian justice. These exceptions did not apply when an offense was committed inside Indian Territory by an Indian, Negro, mulatto, or white who was a tribal member against any other Indian, Negro, mulatto, or white tribal member. In such cases the tribal laws would apply, and the Indians had the right to try and punish the accused according to their laws.¹³

¹⁰ *Ibid.*, pp. 670-672.

¹¹ *Ibid.*, pp. 428, 447, 514, 672.

¹² *Ibid.*, pp. 428, 447-448, 514-515, 672-673; Morris, "Confederate Government Relations with the Five Civilized Tribes, Part 2," *The Chronicles of Oklahoma*, Vol. XXXI, pp. 304-305; McNeil, "Confederate Treaties with the Tribes of Indian Territory," *The Chronicles of Oklahoma*, Vol. XLII, p. 418.

¹³ *Official Records*, Ser. iv, Vol. I, pp. 428-429, 449, 515, 673.

The question of tribal citizenship was answered in every treaty between the Indians and the Confederacy. In the case of white men who had married tribal members, or those who had not intermarried but had established permanent residence within Indian Territory with the consent of tribal authorities and voted at elections, they were declared citizens of the tribe on whose land they resided. These articles were included in the agreements to help clarify the older method of determining citizenship by birth or adoption.¹⁴

In the case of Indians of different tribes who might be allowed to settle within Indian Territory on portions of land occupied by the Five Civilized Tribes, each nation alone reserved the power to determine those who were to be granted citizenship or allowed to become tribal by blood. The tribes were also to decide who was to be allowed to vote at elections and share as tribal members in the tribal annuities. However, the treaties required that once either a white person or an Indian of a different tribe had been accepted as a citizen, he could not be subjected to any restrictions or in any way disfranchised by legislative actions that did not apply equally to all tribal members.¹⁵

No other Indians were to be allowed to settle upon the lands of the Five Civilized Tribes without the permission of the tribal legislative authority. However, by legal acts the nations could permit Indians of various tribes to settle upon their national lands. In return for the granting of this permission, the Five Civilized Tribes were permitted to either sell or lease to these other Indians any amount of land for the length of time and the price that they themselves set. By these treaty articles the Indians gained control over membership of their tribes and the settlement of outsiders upon their land.¹⁶

The question of statehood within the Confederacy was taken up only by the Choctaw-Chickasaw treaty. In reward for their uniform loyalty and good faith, these two tribes were provided with a method for securing statehood status within the Confederate States of America. Subject to their ability to establish and maintain a regularly organized republican form of government, which included the forms and safeguards that the citizens of the Confederacy were entitled to, the Choctaws and Chickasaws were to be permitted to apply for statehood. When such a level of government was reached, the tribes were to elect at a regular election, which was to be held after due and ample notice, a convention of delegates. These delegates,

¹⁴ *Ibid.*; Mowbr, "Confederate Government Relations with the Five Civilized Tribes, Part 2," *The Chronicle of Oklahoma*, Vol. XXXI, p. 305.

¹⁵ *Official Records*, Ser. IV, Vol. I, pp. 431, 453, 518, 673.

¹⁶ *Ibid.*, pp. 431-432, 453-454, 517-518, 673.

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following the passage of an act of the Indian legislatures, were to declare their desire to become a state within the Confederacy. When these requirements were met, the Choctaw and Chickasaw country was to be admitted into the Confederacy as a state with all the rights and privileges of the original Confederate states. When this action was accepted by the Confederate Congress, all tribal members would become citizens of the Confederate States of America; this did not include those persons who were settled in the leased district. The only condition attached to their admission to the Confederacy was that they must submit to a survey of their lands, and set aside one section in every thirty-six for the purpose of education. The money from the sale of this land was to be invested in such ways as the Indians through their tribal legislatures should prescribe, and the money would become the property of the tribe to be used solely for educational purposes.

It is odd that this provision for statehood was included only within the Choctaw-Chickasaw treaty. The article, nevertheless, provided for the admission of the other Indian nations, although the treaties declared there was to be only one state formed from Indian Territory. Whenever the Creeks, Seminoles, and Cherokees were able to reach the same level of self-government and pass the prescribed formalities, they could, either by themselves or jointly, become a part of the same state. These other nations were guaranteed the same rights of citizenship and proceeds from their lands as the Choctaws and Chickasaws.¹⁷

For diplomatic relations between the Confederacy and the Five Civilized Tribes, the treaties called for an agent of the Confederate States and an interpreter to be appointed to carry on the communications. Both the agent and the interpreter were to reside at the agency, and in the case of a vacancy in either position the authorities of both nations were to be consulted on the appointment of a replacement. No person was to be appointed to whom the Indians objected, and the agent was subject to removal following a petition of formal charges, showing sufficient cause, submitted by the Indian authorities.¹⁸

The Indians were required to furnish the South with a tract of two sections of land, chosen by the President of the Confederacy, for the site of the agency. In the case of the Creeks and Seminoles, the site selected was to be the location of their existing agency; and with the Cherokees, Choctaws, and Chickasaws, the locations were to be selected by the authorities of the Indian nations and the Confederacy. Both the land and the public build-

¹⁷ *Ibid.*, p. 453; McNeill, "Confederate Treaties with the Tribes of Indian Territory," *The Chronicles of Oklahoma*, Vol. XLII, p. 217.

¹⁸ *Ibid.*, p. 419; *Official Records*, Ser. IV, Vol. 1, pp. 431, 451, 517, 674-675.

ings of the agencies were to come under the sole jurisdiction of the Confederate States. The only exceptions to the jurisdiction were members of the Indian tribes in whose cases the offenses would be punished by the laws and courts of the Indian nations. Whenever the South ceased to maintain its agencies, the sites, including the land and buildings, were to revert to the Indians. In the Cherokee, Choctaw, and Chickasaw treaties, the Indians also would regain title to the land if the agency was moved to a different location. The Choctaw and Chickasaw treaty provided that if any person employed by the agency violated the laws of the nations or became unfit to continue to live in their country, he would be removed by the Indian Superintendent upon the request of the executives of these nations. Also, no person was to be allowed to settle, farm or raise stock within the limits of the agencies unless he was an employee of the Confederate States of America.¹⁹

The treaties between the Confederacy and the Indians promised perpetual peace and friendship between the two nations, and joined them together in offensive and defensive alliances. The Indians were to acknowledge themselves as under the protection of the Confederacy, and they were restricted from entering into alliances with any other foreign power or individual state. However, they were permitted to reach agreements with neighboring Indians for the purpose of improving their mutual welfare. The Five Civilized Tribes were to become wards of the Confederacy and be placed under the South's protection, with their lands being annexed to the Confederacy. The South solemnly promised never to abandon the Indians or to allow the Northern States or any other enemy to separate them from the Confederacy.²⁰

All persons who were not defined as tribal members were declared intruders and were to be removed from Indian Territory. In order to secure their expulsion, the South promised military aid. Exceptions were made for employees of the Confederate government and for persons who were peacefully traveling or engaged in trading, provided they secured the necessary license. The Indians were also allowed to permit selected individuals, with the consent of the Indian agents, to reside within their country. The South was to protect the Indians from domestic strife, hostile invasion, and other aggressions committed by other Indians or whites. Any tribal member who might suffer from the inability of the South to main-

¹⁹ *Ibid.*, pp. 429-430, 451, 454, 516, 674; *Annie Abol, The American Indian as a Slaveholder and Secessionist* (Cleveland: Arthur H. Clark Co., 1915), p. 169.

²⁰ *Official Records*, Ser. IV, Vol. 1, pp. 426-432, 445-446, 513, 620; Morton, "Confederate Government Relations with the Five Civilized Tribes, Part 2," *The Chronicles of Oklahoma*, Vol. XXXI, p. 304.

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tain this promise was entitled to compensation, which was to be paid from the Confederate Treasury.²¹

Any person who settled upon the Indian lands without the permission of the required authorities automatically forfeited the protection of the Confederacy and became subject to the laws of the Indian nations. The grazing of stock on the Indian lands by persons other than tribal members was prohibited. Tribal authorities were allowed to collect a penalty of one dollar per head levied against violators. Exceptions were granted for stock being driven to market, and reasonable delays were allowed for necessary halts along the route. Likewise, the Indians were guaranteed the privilege of transporting stock and of traveling peacefully through any of the Confederate states.²²

In the case of the Creeks, Seminoles, Choctaws, and Chickasaws, they were considered as branches of the same nations. Because of this reasoning, the citizens of the Creek and Seminole nations and the Choctaw and Chickasaw nations were guaranteed to have, at all times, the right of safe passage through the lands of the other. Also, the tribal members of both groups were to be permitted to settle freely, without having to seek permission, on the lands of the other. Likewise, the Creeks and Seminoles who might settle in each other's territory, and the Choctaws and Chickasaws who might migrate to the other nations, were to be granted the same rights and privileges of all other members of the nation. These included the right to vote and hold office, and the only exceptions were that members of one nation might not share in the tribal monies of the other nation. However, they were granted the right of court suits to protect their interest.²³

The rights of the Indians to purchase and hold title to property was greatly expanded. Indians were recognized as competent to own and buy in any of the Confederate states. The Indians were also given the right to sell or trade with any person all articles and personal property without restriction.²⁴

Recognizing that slavery had existed since time immemorial, the treaties declared that as an institution it was to be recognized as legal within Indian Territory. Slaves were defined as personal property, and the various Indian nations were entitled to determine by their own laws and customs the individual titles of slaves. Upon the death of their owners, slaves were to be distributed according to tribal customs, which were considered binding.

²¹ *Official Records*, Ser. iv, Vol. 1, pp. 429-430, 515-517.

²² *Ibid.*, pp. 432, 454, 516, 577.

²³ *Ibid.*, pp. 432, 454, 518.

²⁴ *Ibid.*, pp. 438, 452, 519; Abel, *The American Indian as a Slaveholder and Secessionist*, pp. 171-172.

The enforcement of the fugitive slave laws was also guaranteed. All acts of the Confederate Congress and all provisions of the Constitution of the Confederate States of America which governed the return of fugitive slaves were to apply to the Indian nations. The fugitive slave laws were to be enforced not only on slaves who might flee to Indian Territory, but also on slaves who might escape to other Indian nations or to other Confederate states.²⁵

In the matter of judicial obligations and legal representation, the Indians were granted far-reaching rights and responsibilities. All individuals who had been duly charged with criminal offense in any of the Indian nations and who had fled to another nation were subject to arrest by the authorities of that nation. They were to be promptly surrendered to the authorities of the nation in which the crime was committed. The same was true of those guilty of offenses committed in violation of the laws of the Confederacy or of any state within the Confederacy. Individuals were also subject to extradition if they were fugitives from Indian justice in the Southern states.²⁶

The Confederacy reserved for itself the right to punish persons guilty of counterfeiting coins or securities of the Confederacy, violators of the neutrality laws, and those resisting the acts of the Confederate Congress, which provided for the common defense and welfare. The South was also given the duty of enforcing the laws regulating trade and intercourse among the Indian nations and insuring the general peace of Indian Territory. The Confederacy was also bound to enforce the provision of the various Indian treaties.²⁷

The legal rights of the Indians were greatly increased. The treaties guaranteed that should an Indian be indicted in either a Confederate or state court, he was entitled to the right of subpoena and the compulsory process for any witnesses in his behalf necessary for his defense. The cost of the process, fees, service, and mileage of such witnesses was to be borne by the Confederate Treasury. In the courts the Indians were recognized as competent witnesses in all cases criminal or civil. All discrimination based on Indian blood was ended, and the Indians were given the same rights to sue in any state court as the citizens of the same state.²⁸

²⁵ *Ibid.*, p. 166; *Official Records*, Ser. iv, Vol. I, pp. 433-434, 456-457, 520, 610; McNeil, "Confederate Treaties with the Tribes of Indian Territory," *The Chronicles of Oklahoma*, Vol. XLII, p. 218.

²⁶ *Official Records*, Ser. iv, Vol. I, pp. 432, 454, 518, 577-678.

²⁷ *Ibid.*, pp. 433, 455, 518-519, 576.

²⁸ *Ibid.*, pp. 433, 456, 519, 678; McNeil, "Confederate Treaties with the Tribes of Indian Territory," *The Chronicles of Oklahoma*, Vol. XLII, p. 218; Abel, *The American Indian as a Slaveholder and Servant*, pp. 172-173.

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All official acts and legal proceedings of the judiciary of Indian Territory were given full faith and credit in all other courts within the Confederacy. The Indians were prohibited from enacting any *ex post facto* law or laws which would impair the obligation of contracts affecting any person other than members of their own tribes. No person, either a member of an Indian nation or a Confederate citizen, could be deprived of property or of his liberty except by the law of the land and according to due process of law. Any infringement of the rights of citizens guaranteed by the Constitution of the Confederate States was also prohibited.²⁹

In order to insure the enforcement of the laws of the Confederate States and to prevent the Indians from future harassment by foreign courts, two district courts were established inside Indian Territory. The Tush-ca-homa district court was located at Boggy Depot, and the Chalahki district court was located at Tahlequah. These courts were to have the powers of a circuit court in carrying out the provisions of the treaties. They were to have jurisdiction over all persons residing within their boundaries, and in all civil suits between citizens of territories or states of the Confederacy, aliens, and residents of Indian Territory when the amount exceeded \$500. The officers, clerks, and marshals of the courts were required to be citizens of the districts, and they were restricted in that they had no jurisdiction to try or punish any person for an offense committed prior to the signing of the treaty.³⁰

Each of the Indian nations were to grant to the Confederate government one square mile of land to be used for the construction of military establishments as the President of the Confederacy might deem necessary. The South also reserved the right to construct military roads throughout the territory. As long as the forts were occupied the land was to be under the exclusive jurisdiction of the Confederacy, except as to offenses committed by one Indian against another. The South was restricted in the amount of timber to be used in their construction, and only the necessary materials were to be used. Adequate compensation was to be paid to the Indians for any material other than land, timber, stone, and earth which might be used in the building of the military establishments.³¹

The Confederacy pledged to establish and maintain post offices, which

²⁹ *Ibid.*, p. 379; McNeil, "Confederate Treaties with the Tribes of Indian Territory," *The Chronicles of Oklahoma*, Vol. XLII, p. 418; *Official Records*, Ser. iv, Vol. I, pp. 433-434, 456, 519-520, 678-679.

³⁰ *Ibid.*, pp. 454-455, 476; McNeil, "Confederate Treaties with the Tribes of Indian Territory," *The Chronicles of Oklahoma*, Vol. XLII, pp. 417-418.

³¹ *Ibid.*, p. 419; Norton, "Confederate Government Relations with the Five Civilized Tribes, Part 2," *The Chronicles of Oklahoma*, Vol. XXXI, p. 305; *Official Records*, Ser. iv, Vol. I, pp. 429-430, 450, 516, 674.

were to be located at the more important settlements throughout Indian Territory. The mail was to be carried regularly, at reasonable intervals, and at the same rates of postage as in the other Confederate States. In the case of the Cherokee, it was also required that the postmasters be appointed from among the tribal members.³²

The South reserved for itself, or any company which might be incorporated under its laws, the privilege of right-of-way for both railroads or telegraph lines through Indian Territory. If the installations were constructed by private companies the Indians were entitled to a cash payment, which was to be agreed upon by both the companies and the Indian governments. All damages or injuries incurred during the construction of the facilities were to be reimbursed either to individual parties or the various nations by the companies in such a manner as the President of the Confederacy directed. The right-of-ways were to be perpetual, and upon abandonment the land was to revert to tribal control.³³

In the consideration of the common defense of Indian Territory and the Confederacy, the Indian nations were required to furnish troops for the military forces of the South. The Creeks agreed to furnish in conjunction with the Seminoles, a regiment of ten companies of mounted men to be enlisted for a term of twelve months. The same was true with the Choctaw and Chickasaw nations, who pledged a regiment of ten companies to serve for twelve months. The Cherokees were not only to raise ten companies for a regiment, but were also to recruit two reserve companies of mounted men. The company officers of the Indian troops were to be elected by the members of the companies, the field officers were to be selected by all the members of the regiment, and the colonel was to be either elected or appointed by the President of the Confederacy. The troops were to be armed by the South, and were to receive the same pay and allowances as all other mounted troops serving with the Confederate Army. The treaties prohibited the use of Indian troops outside the boundaries of Indian Territory. The Indians also agreed to raise at a future date such a number of troops as necessary for the defense of their homes. This requirement was subject to the demand of the Confederate President. Such troops were to be in fair proportion to the number of tribal members, and were to serve terms of duty as directed by Confederate officials.

The treaties stipulated that the Indians would in no way ever be required

³² *Ibid.*, pp. 434-457, 520, 679; Morton, "Confederate Government Relations with the Five Civilized Tribes, Part 2," *The Chronicles of Oklahoma*, Vol. XXXI, p. 305; McNeil, "Confederate Treaties with the Tribes of Indian Territory," *The Chronicles of Oklahoma*, Vol. XLII, p. 419.

³³ *Official Records*, Ser. iv, Vol. I, pp. 430, 450, 516.

to pay, in land or otherwise, any portion of the cost of the present war or of any future war in which the Confederacy engaged. The Indians agreed that after the restoration of peace, they would furnish enough native troops to aid the South in the protection of Indian Territory. These forces, which were to hold the posts and forts inside Indian Territory, were to be placed under the command of Confederate officers. This military force, consisting mainly of Indians, was to be used in preference to white troops in matters concerning Indian Territory.⁵⁴

In order to enable the Indians to secure their rights without the intervention of their agents, the treaties provided for Indian representatives to the Confederate Congress. The Creek and Seminole nations were to have one representative, who was to be chosen jointly. The Choctaws and Chickasaws also were entitled to one delegate, and they were to select the representative alternately from each tribe. The Cherokees were allowed one representative, thus making the total of Indian representatives to the Southern Congress three. These delegates were to serve a term of two years, had to be over twenty-one years of age, and a member of the tribe they represented. They were to be entitled to the same rights and privileges as all other delegates from Confederate territories, and their pay and mileage was to be fixed by the Confederate Congress. The representatives could not be under any legal difficulties, and their election was to be held at the time and place and conducted in a manner prescribed by the Indian agents. The candidate receiving the greatest number of votes was to be declared the winner. After the first election, all future elections were to be held under the regular laws of the Confederate States.⁵⁵

The treaties also provided that the Confederacy assume the annuity payments of the United States for the Five Civilized Tribes. These monies and the interest on the state bonds held by the South were to be applied for the good of the tribe. The funds accumulated in this manner were to be used for education, public works, the care of orphans, and for public education.⁵⁶

The Indians were thus provided with a method of improving the welfare and happiness of their people. The Confederacy also guaranteed that all claims and demands against the government of the United States that had not been satisfied or relinquished under the former treaties would be

⁵⁴ *Ibid.*, pp. 434, 457, 520, 679; McNeil, "Confederate Treaties with the Tribes of Indian Territory," *The Chronicles of Oklahoma*, Vol. XLII, p. 416-417.

⁵⁵ *Ibid.*, p. 417; *Official Records*, Ser. iv, Vol. I, pp. 435, 454, 520, 679-680.

⁵⁶ *Ibid.*, pp. 435, 457, 460, 521, 680; Abel, *The American Indian as a Slaveholder and Slaveowner*, pp. 163-164; Merion, "Confederate Government Relations with the Five Civilized Tribes, Part 2," *The Chronicles of Oklahoma*, Vol. XXXI, p. 305; McNeil, "Confederate Treaties with the Tribes of Indian Territory," *The Chronicles of Oklahoma*, Vol. XLII p. 416.

investigated by Southern officials. Upon the restoration of peace, these claims would be assumed by the South. The Confederacy was also to assume the duty of collecting the payments due the Indians, and to insure the lawful distribution of these funds to them.⁸⁷

All of the treaties provided for some special provision for each tribe. The Creeks, Choctaws, and Chickasaws were to receive payments for the expenses of their representatives to the treaty proceedings. The Creeks were to receive \$750, which was to be paid to the principal chief, Morey Canard, and the Choctaws and Chickasaws got \$2,000 to be paid to Robert M. Jones. This money was to be distributed equally among the members of the treaty delegations. The Choctaws were to receive \$50,000 and the Chickasaws \$2,000 to purchase arms and ammunition for the defense of their homeland. A Cherokee youth could be educated at any military school established by the Confederacy, provided he received his appointment from the Cherokee delegate to the Confederate Congress. The same privilege was eventually granted to the other Indian representatives to the Confederate Congress.⁸⁸

The Seminole treaty included even more specific conditions. Tribal members were to be reimbursed for all slaves who were alleged to have been illegally seized during their removal from the South. The Confederacy was to investigate their claims and determine a just and equitable settlement, which was to be paid to either their owners or the heirs of the owners. The Indians were also to be paid for the loss of services of the slaves for the periods they had been illegally detained by the Federal government. The Confederacy agreed to pay Sally Factor for the services of her two slaves, named July and Murray, who were used as interpreters for removal by the United States Army during the Seminole War. Both slaves were kept in the service for four years and both had died during the course of that war. For the loss she incurred, Factor's heirs were to receive the sum of \$5,000. Those Seminoles who accompanied the Superintendent of Indian Affairs to Florida in 1857 to secure the removal of the remaining Seminoles were to receive \$200 each for the services they rendered. Finally, as more of a bribe than anything else, the leader of the Southern faction, John Jumper, was to receive \$500 for his loyalty to the Confederacy, and \$1,250 to be equally divided among five of the other Southern supporters. The Confederacy also pledged \$100 to each of the thirty-four Seminole treaty delegates in view of their present faith and loyalty to the Southern cause.⁸⁹

⁸⁷ *Official Records*, Ser. iv, Vol. 1, pp. 435-438, 457-463, 521-522, 680-685.

⁸⁸ *Ibid.*, pp. 438, 464, 685.

⁸⁹ *Ibid.*, pp. 523-524; Abel, *The American Indian as a Slaveholder and Secessionist*, pp. 154-156.

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The treaties were thus submitted to the Confederate Congress for ratification. Several changes were made in all of the treaties before they were ratified, and these changes were eventually accepted by the Indians. The Creek treaty was amended concerning the Indians' rights in courts, but more important their representative to the Confederate Congress was limited in regard to his participation in debates. He could only take part in the deliberations if the question was one in which either nation was particularly interested. The Choctaw and Chickasaw delegate was likewise restricted, and their admission as a state was referred to the Confederate Congress by whose acts alone new states could be admitted. The amount of revenue from the sales of their land was also reduced, and their rights in courts were amended somewhat. The Seminole ratification was essentially the same in regard to the changes in courts and representation in Congress, but no change was made in the payments due them. Little change was made in the Cherokee treaty.⁴⁰

Many of the promises made in the treaties were never placed in effect or were only partially fulfilled. This was because the Confederacy was incapable in many cases of carrying out its commitments. Even so, this unfortunate situation did not decrease the loyalty of the Indians toward the South. In August, 1862, President Davis reported that the Indians had remained loyal to the South in spite of allegations by Federal agents. Perhaps this was due to the liberal nature of the treaties, which gave the Southern Indians many more benefits than had ever been promised by the United States, and they reasoned that the shortcomings of the Confederacy were due to the conditions created by the war. They could be told that once the South had successfully concluded the war, the treaty conditions would be wholeheartedly fulfilled. Regardless of whether or not the majority of the members of the Five Civilized Tribes believed that the South's shortcomings were the result of the war conditions, this optimistic argument could be used by their pro-Southern leaders to mask the intertwining political struggles within the tribes, and obscure any jealousy of their new-found political power.

Nevertheless, promised more advantages than ever before by the Confederacy, the Indians had much to gain by continuing the war and relying on some military miracle to defeat the Federals in the East. Such a victory by the South would have secured for the Indians more benefits than they had dared imagine. With an enforcement of the Southern treaties following a negotiated peace settlement, the Indians would have enjoyed virtual political autonomy and been able to utilize methods of securing the rights

⁴⁰ *Official Records*, Ser. iv, Vol. I, pp. 443, 463-466, 526-527, 686-687.

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and privileges which had for so long been reserved for the white man under the United States government. These treaties would have prevented a repetition of the events which had led to the expulsion of the Indians from their homes some years previously. Thus, the Southern Indians were willing to undergo the horrors of war on the chance that a Confederate victory would bring them the generous benefits promised by the treaties; the bountiful promises offered by the South were hard for the Indians to resist. The Confederate Indians steadfastly maintained their guarantees in the treaties and remained loyal to the Confederacy to the end, hoping that victory would bring fulfillment of the treaty promises.