

THE CHOCTAW 'NET PROCEEDS' DELEGATION AND THE TREATY OF 1855

KIRK SCOTT

A period of intense three-way negotiation between the United States Government, the Choctaw Nation, and the Chickasaw Nation began April 10, 1855. The issues under consideration were the Choctaw's desire for the "net proceeds" from the sale of lands in Mississippi ceded to the United States in the Treaty of Dancing Rabbit Creek (1830), the political autonomy desired by the Chickasaws residing in the Choctaw Nation, and the lease of land in the western portion of the Choctaw Nation to the United States for "the permanent settlement of the Wichita and such other tribes or bands of Indians as the government may desire to locate therein."¹ The purpose of this paper is to explore the interconnected nature of these three issues and their historical context, the relative weakness of the Choctaw's negotiating position vis-a-vis the United States and the Chickasaw delegation, and the culmination of these negotiations in the Treaty of 1855. As an example of the treaty-making process, the negotiations of 1855 reveal the legalistic fiction that was at the heart of the process; a process ultimately ended by Congress in 1871.

The first issue, the net proceeds from Mississippi land sales, arose from a claim by the Choctaws that the United States had failed to pay adequate compensation for livestock and improvements on former Choctaw lands in Mississippi. The Choctaws claimed further that the government had realized substantial profits from the sale of these lands to white settlers. In 1853, the Choctaw Nation had authorized a delegation led by Chief Peter P. Pitchlynn (including Israel Fulsom, Samuel Garland and Dixon W. Lewis) to go to Washington D.C. to settle the "net proceeds" issue.²

The second issue, that of the Chickasaw desire for political autonomy, resulted from the removal of the Chickasaws from Mississippi by the Treaty of 1832 and their settlement in Choctaw territory by the Treaty of 1837.³ The Chickasaws, because of their linguistic and ethnological similarity to the Choctaws, were resettled in the Choctaw lands of Indian Territory, paying the Choctaws five hundred and thirty thousand dollars for the area known as the "Chickasaw District of the Choctaw Nation." Under the Treaty of 1837 the Choctaws and Chickasaws were to be joined politically. The Chickasaw felt that they were underrepresented in legislative matters, however, and over the years, sentiment in favor of

¹ A. R. Durant, ed., *Constitution and Laws of The Choctaw Nation Together with the Treaties of 1837, 1855, 1865 and 1866* (Wilmington: Scholarly Resources, 1973), 42.

² Angie Debo, *The Rise and Fall of the Choctaw Republic* (Norman: University of Oklahoma Press, 1964), 73.

³ *Chickasaw Legislature, Constitution, Treaties and Laws of the Chickasaw Nation* (Wilmington: Scholarly Resources, 1975), 286.

separation from the Choctaws increased among the Chickasaw.⁴ Letters from the Chickasaw delegation to Washington requesting autonomy are included in the Choctaw agency's files for the period of negotiation leading to the Treaty of 1855.

The third issue included in the negotiations of the spring of 1855, the lease of Choctaw lands for the settlement of the Wichita, arose from the tension between the Wichita and frontier settlers in Texas. According to historian John Paige "poor relations between Texas and the Indians [Wichita] had been constant throughout the years," and "Texans charged the reservation Indians of their state with crimes that were never committed."⁵ Indeed in September 1852, the *New York Daily Times* published a report from a Mr. Stein, special Indian agent for Texas, intended to dispel rumors of atrocities by the Comanches and horse theft by the Wichita. According to the report, rumors of atrocities had "no foundation in fact, and reports of theft were minor."⁶ A letter from G. H. Hill, Special Indian Agent for Texas, to Supervising Agent R. S. Neighbors, however, stated that "the Wichita . . . may be considered in a state of open hostility" and that "they commit depredations by stealing horses from time to time." Hill believed that there was "no well founded claim for the settlement of these people in Texas, nor do they desire it . . . they claim a home north of the Red River." Hill then expressed his desire for "stipulations whereby the intercourse between them and the United States may be fixed on a more permanent basis"⁷ The tension between Texas and the Wichita, in any case, remained high, as did the pressure to resettle the Wichita. According to the Treaty of 1837, however, the right to dispose of Choctaw land was held in common by the Choctaws and Chickasaws.⁸ This fact set the stage for the interwoven complexity of the negotiations of 1855.

Drought and famine in the Indian Territory further complicated the position of the Choctaw delegation. A drought that began in 1855 continued through 1860.⁹ On February 22, 1855 the Agent for the Choctaws, Douglas H. Cooper, received a letter from a representative of the Choctaw nation (signature illegible) describing the situation thus; "Many person [sic] are digging wild potatoes -- Starvation continues unless relief is

⁴ Muriel H. Wright, "Brief Outline of the Choctaw Nation in Indian Territory," *Chronicles of Oklahoma*, Volume 7 (4), (December, 1929): 404.

⁵ John C. Paige, "Wichita Indian Agents, 1857-1869," *Journal of the West*, Volume 12 (3), (1973): 405.

⁶ *New York Times*, September 17, 1852.

⁷ Letter, G. H. Hill to R. S. Neighbors, September 30, 1854, United States Commission of Indian Affairs Annual Reports, 1824-19, Microfiche 872, Roll 4158, Card 2, Southwest Agency 1854, National Archives.

⁸ Chickasaw Legislature, Constitution, 286.

⁹ Paul Bonnifield, "Choctaw Nation on the Eve of the Civil War," *Journal of the West*, Volume 12 (3), (1973): 387.

obtained."¹⁰ Cooper forwarded the letter to Commissioner of Indian Affairs George W. Manypenny on March 24, 1855. The cover letter explained that "it appears the people are on the verge of starvation," and that "under the pressure of hunger & want they are continuing depredations upon the property of one another and also that of white citizens of the United States, residing among them."¹¹ Cooper then expressed his "hope that the appropriation recently made by Congress . . . may be disbursed to the benefit of the Choctaw Nation." The appropriation referred to was approved by the United States Senate in 1853 and appropriated by the House of Representative on March 3, 1855. This appropriation in the amount of \$92,258.50 was part of the settlement for arrearages requested by the Choctaw delegation.¹² The delegation was further instructed by the General Council of the Choctaws on November 10, 1854, to "remain at Washington City and continue to press to a final settlement all claims and unsettled business of the Choctaw with the Government of the United States."¹³ Manypenny was aware, through his contact with Cooper, of the pressure to settle brought to bear on the Choctaw Delegation by drought and starvation.

The negotiation of the Treaty of 1855 began in earnest on April 9 with a letter of instruction from Commissioner Manypenny to Agent Cooper requesting that the Choctaw settle the Chickasaw dispute and agree to lease western lands to the United States. Cooper replied to Manypenny on April 10, enclosing the Choctaw response to Manypenny's initiative and requesting further instruction.¹⁴ In the matter of the Chickasaw dispute, the Choctaw Delegation responded in the April 10 communication that "relations between the Choctaw and the Chickasaws are fixed and defined by the convention of 1837, to which the government is a party."¹⁵ The Choctaw Delegation stated further that, given the fact that disputes over boundaries and obligations for government expenses have been recently settled, the delegation is "not aware of anything now existing which can be considered a matter of difference between [the Choctaw and Chickasaw]." The settlement of boundary and government expense refers to the 1854 Treaty of Doaksville in which a dispute over the eastern boundary of the Chickasaw District was settled.¹⁶

¹⁰ Letter, (illegible) to D. H. Cooper, Feb. 22, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

¹¹ Letter, D. H. Cooper to G.W. Manypenny, March 24, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

¹² U.S., Congress, Senate, Report of the Bureau of Indian Affairs, Appendix to the Congressional Globe, 33 Congress, 2nd session, 1854-55.

¹³ Letter, D. H. Cooper to G.W. Manypenny, May 12, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

¹⁴ Letter, D. H. Cooper to G.W. Manypenny, April 10, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

¹⁵ Letter, Choctaw Delegation to D. H. Cooper, April 10, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

The Choctaws appeared to be unaware, at this point in the negotiations, of the Chickasaw demand for autonomy. But in fact the Choctaw Delegation was aware of the unsettled matter of Chickasaw autonomy. Agent Cooper reported to the Ft. Smith superintendent of Indian Affairs in September, 1854, that Chickasaw autonomy had been discussed for many years and that "commissioners from both tribes have been appointed to correspond on the subject of separate and distinct jurisdiction over the Chickasaw district."

¹⁷ The Choctaw Delegation was apparently affecting a position of ignorance at this point in the 1855 negotiations, placing the Chickasaw autonomy issue outside the realm of legitimate consideration and thereby attempting to place themselves in a stronger bargaining position.

The delegation then reiterated its position on the net proceeds issue, stating that "our opinions and convictions in regard to the just and equitable rights of the Choctaws, having undergone no change, we are not in a situation to suggest any arrangement inconsistent therewith."¹⁸ Referring to the "Witchitaw [sic] and other bands of Indians," the Choctaw Delegation considered them a "nuisance, and we had far rather be rid of them altogether." And although such an arrangement [permanent settlement of the Wichita] would be greatly repugnant to our inclinations . . . we would consent to it on fair and reasonable terms, if it can be made a part of a just and equitable adjustment of all the issues . . . between the Choctaws and the government. Otherwise we could not take the serious responsibility of encountering the prejudices and opposition of our people to the measure.¹⁹

The correspondence of April 9 and 10, 1855, set the terms of negotiation: The United States wanted land for the resettlement of the Wichita; the Choctaw would agree if the matter was tied to settlement of the "net proceeds" issue. The tone of the Choctaw letter implied that the delegation believed itself to be at an advantage by reluctantly considering the lease of land in return for arrearages. Implicit in the letter, however, was the heretofore-mentioned matter of Chickasaw demands. Pitchlynn and the Choctaw delegates were apparently unaware at this point that the use of the lease as bargaining leverage could founder on the unwillingness of the Chickasaw delegates to comply.

In a memorandum of talks held between Cooper and the Choctaw delegates dated April 14, and forwarded to Manypenny on April 16, the Choctaws stated that they "consider the great object of their mission here, is to effect a settlement of their own affairs," but if the government considered there to be differences between the Choctaw and "Chickasaws that require adjustment, and will state what they are, and its wishes upon the subject, the

¹⁶ Wright, "Brief Outline," 404.

¹⁷ Letter, D. H. Cooper to T.S. Drew, September 20, 1854, United States Commission of Indian Affairs Annual Reports, 1824-19, Microfiche 872, Roll 4158, Card 2, Southwest Agency 1854, National Archives.

¹⁸ Letter, Choctaw Delegation to D. H. Cooper, April 10, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

¹⁹ Ibid.

Delegation will take them into consideration in any negotiations . . . on the settlement of their own affairs."²⁰

In a separate memorandum, also dated April 14, of a meeting between Cooper and the Chickasaw Delegation, the Chickasaws explicitly stated their desire for "an arrangement to be entered into, whereby the jurisdiction of the Chickasaw Tribe over their district may be acknowledged, and, their independence as a Nation, secured." The Chickasaws further "earnestly invoke the Paternal interposition of the Government of the United States, for the purpose for bringing about a . . . solution of the difficulties . . . existing between the two Tribes." The Chickasaw Delegation then stated its willingness to "enter into an arrangement . . . for the permanent settlement of the Wichita [sic]."²¹

The Chickasaw demand for autonomy was thus stated explicitly and in a manner that tied the demand to the issue of the lease for land for resettlement. A letter from the Choctaw Delegation to Cooper dated April 20, forwarded to Manypenny on April 21, was a response to a request by the interior secretary for their terms of settlement. The Choctaw responded that they have already stated their desires, and have reiterated their position in the letter dated April 10, 1855. It was the United States government that rejected their claims only to re-open the matter "voluntarily," apparently out of a desire to negotiate the lease of lands for the Wichita resettlement:

Thus, as we are unwilling . . . to place ourselves in an inconsistent position -- to depreciate and undervalue our rights by making any proposition at variance with [our position] . . . it seems to us only reasonable that it [the United States government] should now say to us what it is willing to do to place the business in some train of negotiation."²²

On April 24 the Choctaw delegation sent a rather lengthy memorandum to Agent Cooper. This memorandum responded to the interior secretary's assertion that the Choctaws had made "settlement of the issues between the Choctaws and the Chickasaws" the precondition to "a settlement of their demands against the United States." The Choctaws still insist that "since the recent settlement of certain questions between them [the 1854 Treaty of Doaksville] we were 'not aware of any thing now existing which can be considered a matter of difference between [the two tribes] consistently [sic] with the provisions of said conventions' -- that of 1837 . . ."²³

²⁰ Letter, Choctaw Delegation to D. H. Cooper, April 14, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

²¹ Letter, Chickasaw Delegation to D. H. Cooper, April 14, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

²² Letter, Choctaw Delegation to D. H. Cooper, April 20, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

The Choctaw Delegation was now, however, fully aware of the specific demands of the Chickasaws through the memorandum of April 14. They either refused to acknowledge them as legitimate under the terms of the 1837 treaty, or remained intractable on the issue in order to affect a stronger bargaining position. In either case, the delegation stated explicitly that they could not "consent to the sale or alienation, beyond our own ultimate control, of one foot of our country . . . nor could we agree to a separate and independent government over so large a portion of our country as that embraced in 'the Chickasaw District of the Choctaw Nation.'"²⁴

The Choctaw Delegation did make one positive proposition in the April 24 memorandum. After stating in previous letters that their position was "just and fair" and therefore not in need of amendment, the Choctaws apparently bowed to pressure. Citing historical precedent -- President Jackson's handling of a dispute over the Cherokee Treaty of 1835; President Polk's decision in an 1846 dispute with the Cherokee; President Pierce's decision in a dispute with the Menomones -- the Choctaw Delegation recommended that the net proceeds issue be decided by the United States Senate, "the coordinate branch of the treaty making power." The Senate would "decide whether the Choctaws are, in justice and equity, entitled to nett [sic] proceeds of the lands ceded . . . or whether they shall be allowed a round sum in further satisfaction of national and individual claims . . . and if so how much." The Senate decision would be "final and binding." The delegation further asserted that under the 19th article of that treaty (Dancing Rabbit Creek, 1830) there is "due upon one class of individual claims alone some \$300,000 as shown by a report . . . by a former superintendent of Indian Affairs."

If the net proceeds matter was placed before the United State Senate the Choctaw agreed to give the government "permanent use of the western part of our country for the accommodation of the Wichita [sic] and other bands of Indians for a fair and just consideration." The delegation would not agree to lease land east of the 99th degree of west longitude, "but for the lease of that west of that degree [the 99th] we will consent . . . to take . . . four hundred thousand dollars."

The April 24 memorandum is of primary importance. The memorandum contains the first explicit statement of terms by the Choctaw Delegation in this round of the "net proceeds" negotiation. The delegation named a lease price for the western areas and explicitly tied this lease agreement to their desire to have the United States Senate adjudicate the net proceeds issue. The Choctaws flatly refused to entertain the inclusion of Chickasaw autonomy in the negotiation. Settlement of the issue of Chickasaw autonomy was, however, necessary (as we have seen under the Treaty of 1837) to the government's receipt of its desired lease. It is still unclear whether the Choctaw delegation recognized this fact at this point in the negotiations.

In a letter addressed to Commissioner Manypenny, dated May 12, 1855, Agent Cooper responded to a request for his opinion on the Choctaw Delegation's competency to decide on

²³ Letter, Choctaw Delegation to D .H. Cooper, April 24, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

²⁴ *Ibid.*

the Chickasaw issue. Douglas noted that the Choctaw delegates were instructed by the General Council of the Choctaw to "press to a final settlement of all claims and unsettled business for the Choctaw with the Government," and have "full power to take all measures . . . which . . . are or may become necessary and proper."²⁵ Douglas concluded that as the delegates were to settle "all unsettled business" and as they had the power to do what is "necessary and proper" to affect this settlement, the government should make the Chickasaw autonomy issue an explicit condition to the "net proceeds" settlement. Douglas stated that, "the government has but to determine that the agreement with the Chickasaw is necessary—and as a condition, precedent, of the settlement of their claims, and *ipso facto*, the authority of the Delegates to make the agreement is clearly established."²⁶ Douglas went on to state explicitly for the first time the potential interconnection of the issues. According to Douglas, the government had to take this position with the Choctaw because "the Choctaw cannot lease the territory desired by [the United States government] for the settlement of the Wichita [sic] and other bands of Indians . . . without the consent of the Chickasaw [who] will not consent to the lease, unless the Choctaw will first come to a satisfactory agreement with them."²⁷ The Choctaws felt that the Treaty of 1837 had foisted the Chickasaws upon them. For the sake receiving moneys due them, the Choctaws were now forced not only to lease their western lands for the settlement of the Wichita, but also to grant autonomy to the Chickasaw over the central portion of the Choctaw Nation.

In the period between the April 24 Choctaw memorandum and Cooper's aforementioned May 12 opinion, Secretary of State George McClelland informed Commissioner Manypenny that he had "no objection" to the proposal to place the net proceeds issue before the United States Senate. He did, however, place an additional issue into the train of negotiation. McClelland asserted that, as the Choctaws'"claim to an extent of country west of the 100th meridian of west latitude is regarded by the Department as without any foundation in law or parity, it might prevent further trouble in regard to it to insert an article . . . requiring the Choctaws to relinquish and abandon all rights or claim to the same."²⁸ The United States government claimed that this land -- part of present day Texas south of the Oklahoma panhandle -- belonged to Mexico at the time of the original Treaty of 1820 and hence was not a possession of the United States to grant to the Choctaw to begin with.²⁹

²⁵ Letter, D. H. Cooper to G.W. Manypenny, May 12 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Letter, Interior Secretary McClelland to G. W. Manypenny, April 27, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

²⁹ United States v. Choctaw Nation, 179 U.S. 494 (1900).

A June 7 letter from Manypenny to Acting Interior Secretary George C. Whiting indicated that the Choctaw delegation agreed to not only the cession of land west of the 100th degree, but also to the lease of land west of the 98th degree west longitude. The Choctaw would "take the sum of \$800,000," double that of the original \$400,000 for the lease of the lands west of 99th degree, and the cession of lands west of the 100th degree. The Choctaws were demanding limitations on which tribes or bands the government could settle within the leased lands. Manypenny informed Whiting that "with such limitations the lease would be of little value, and I have therefore declined."³⁰

The substance of the Choctaws' desired limitations were stated in a letter dated June 11. According to the Choctaw delegation, the language of the United States government's proposals had changed substantially on this matter and on other matters as well. The Choctaw took exception to the proposed exclusion of Indian bands whose "permanent settlements are east of the Arkansas [River] and north of the Canadian [River], or whose permanent ranges are north of the Arkansas." The Choctaws pointed out, quoting from an earlier government proposal, that the initial language read "Indian bands or tribes whose present ranges or permanent residences are north of the Canadian." The change of language could technically allow unlimited settlement of unsettled bands of Plains Indians. The delegation continued, "[T]o this we could not consent . . . for any price," referring to "so large a horde of wild and lawless Indians."³¹

The other change of language had to do with the Choctaw proposal to allow the United States Senate to settle the net proceeds issue. The government's counter proposal included a provision for "the Choctaws, unconditionally, to assume the liability and payment of the claims of the individual Choctaws . . . whatever gross sum . . . allowed by the Senate, in lieu of the nett [sic] proceeds of the lands ceded by the Choctaw" in the Treaty of 1830. The Choctaws said that they would "gladly assume" the liabilities, "in case a sufficient amount is allowed to enable them to do so fairly and justly." The Choctaws were obviously, and with good reason, unwilling to assume the liability of individual claims without first knowing the amount of the lump sum payment. They demanded that the liabilities "language of the gross sum proposal be modified." The Choctaws, however, were willing (in direct contradiction to their "not for any price" assertion) to allow the "other wild tribes and bands of Indians" to be settled in their country for an additional \$600,000.³²

The response to this letter, dated June 12, 1855, was not sent through Agent Cooper; rather it came directly from Commissioner for Indian Affairs George W. Manypenny. Manypenny, wasting no time deliberating on the Choctaw counter proposal, wrote that he was "unable to concur with you in the form of submission to the Senate of certain questions

³⁰ Letter, G. W. Manypenny to G. C. Whiting, June 7, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

³¹ Letter, Choctaw Delegation to G. W. Manypenny, June 11, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

³² Ibid.

proposed by you, nor can I consent to the limitations you wish to incorporate into the article proposing to lease . . . that possession of the Choctaw Country west of the 98th degree west longitude."³³ According to Manypenny, the proposal to submit "certain questions to the Senate was one voluntarily made by yourselves," and "the decision of that body should be final and binding on the parties, and that no doubtful language should be used in the article of reference." Manypenny stated further that the "terms of the lease should leave the government unencumbered in relation to the Indians to be permanently located subject only to the proviso suggested by me."

The language of negotiation, language still assumed to be relevant to the Choctaw to be relevant in the June 11 memorandum, had obviously ceased to be relevant on the part of the government by June 12. The message from Manypenny was essentially "Take it or leave it." Manypenny ended the letter of June 12 by stating that "in my opinion it will be a fruitless waste of time if the Choctaw Delegation insists on the terms proposed in your letter of yesterday."³⁴ Manypenny, in apparent response to continued Choctaw demands, wrote on June 18, that if the Choctaws "persist in the position you have assumed on the points of difference . . . you shall defeat the negotiations but shall at the same time [illegible] in my own mind that I have asked nothing but what justice and good faith require."³⁵

Negotiations thus came to an end. The Agency files contain no further communication between June 18, 1855 and June 22, 1855 -- the date of the signing of the treaty. The final treaty contained the "liability" language pertaining to a gross sum settlement; language that the Choctaw Delegation had so strenuously objected to.³⁶ Article IX made exception to the settlement of Indians "whose permanent locations are north of the Canadian River" -- again, the exception so strenuously objected to by the Choctaws in the June 11 memorandum.

An interesting letter from Captain R. B. Marcy to government printer A.O.P. Nicholson dated May 21, 1855, made its way into the Choctaw Agency files. Marcy had been ordered on March 5, 1852, to begin the exploration of the Red River. He reported on his expedition to the New York Geographical Society in March 1853.³⁷ Captain Marcy traveled up the North Fork of the Red River during this exploration -- the heart of what was to be the leased section of the Choctaw Nation. In his letter to Nicholson, Marcy described the topography of the area and speculated on its value per acre relative to similar lands south of the Red River in the state of Texas. Marcy was responding to a request from Nicholson for this information. He was quite specific in describing the boundaries as "embraced within the

³³ Letter, G. W. Manypenny to Choctaw Delegation, June 12, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

³⁴ *Ibid.*

³⁵ Letter, G. W. Manypenny to Choctaw Delegation, June 18, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

³⁶ Durant, *Constitution and Laws*, 42.

³⁷ *New York Times*, March 24, 1853.

98th and the 100th meridians of west longitude . . . bounded upon the north by the Canadian River, and on the south by the Red River" -- the exact description of the land eventually leased by the Choctaw to the United States.³⁸ Marcy stated that "close proximity to the boundary of Texas where lands can be had for fifty cents per acre will also have a bearing on its relative value." Marcy concluded that the land could bring between twenty-five and fifty-cents per acre on the open market.

It is not clear whether the government was interested in the land's value for purposes of negotiation -- Manypenny made his "final offer" of \$800,000 in May of 1855 -- or whether, at this early date, the government was already planning to sell the leased land eventually. However, on June 19, after negotiations over the terms of the lease were completed, Agent Cooper forwarded the Marcy letter to Interior Secretary McClelland in response to the secretary's request for information on the market value of the leased land.³⁹ The passage of the Kansas-Nebraska Act in 1854 is likely the explanation for the federal government's insistence on the freedom to settle plains tribes in the leased territory, as well as the Choctaw's resistance to that possibility. According to one historian, the belief of the government was that "the Kansas-Nebraska Act closed still more of the frontier to the Indians, and once again Indian Territory would have to absorb additional tribes."⁴⁰ And according to a report that year from Cooper, "the Indian mind has been greatly excited by the progress of events in Kansas and Nebraska. [The Choctaw believe that] no parchment barriers . . . can withstand the irresistible [sic] force of the teeming millions who inhabit the United States."⁴¹

The Treaty of 1855 was ratified by the Chickasaw in October, by the Choctaw in November, and by the United States Senate on February 21, 1856.⁴² The Senate made a gross sum award of \$2,981,247.30 in 1859 for the net proceeds claim.⁴³ Congress made the first payment of \$250,000 cash to the Choctaw in March 1861. Much of it was used by the

³⁸ Letter, R. B. Marcy to A. O. P. Nicholson, May 21, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives.

³⁹ Letter, D. H. Cooper to Interior Secretary McClelland, June 19, 1855, Letters Received by the Office of Indian Affairs, Microfilm 234, Roll 174, Choctaw Agency 1855-56, National Archives. In either case, the Choctaws ceded the leased land to the United States in the Treaty of 1866. The land was eventually parceled out to individual members of the Wichita and the surplus sold on the open market in 1895. In 1900 the United States Supreme Court in *United States v. Choctaw Nation* (179 U. S. 494) declared that the Choctaw had no claim to the profits obtained by the sale of the former leased district as they had ceded absolutely -- for the sum of \$300,000 -- all claims to the former leased district.

⁴⁰ Henry M. Winsor, "Chickasaw-Choctaw Financial Relations with the United States, 1830-1880," *Journal of the West*, 12 (3), (1973): 366.

⁴¹ Letter, D. H. Cooper to T. S. Drew 1854, United States Commission of Indian Affairs Annual Report, 1824-1949, Microfiche 872, Roll 4158, Card 2, Southwest Agency 1854, National Archives.

⁴² Wright, "Brief Outline," 411.

⁴³ Debo, *Rise and Fall*, 73.

Choctaw General Council for payments to relieve the suffering that resulted from the drought. Under the terms of the treaty, the Choctaw tribe was liable for individual settlements. Payments stopped when the Choctaw nation joined the Confederacy during the Civil War.⁴⁴ Payments were not resumed until the Supreme Court ordered payment in 1886, reversing an earlier Court of Claims decision that rejected the 1854 Senate award as "having no effect in law."⁴⁵ The Choctaw Delegation had overvalued the strength of its position *vis-a-vis* the government's desire for the lease. Under pressure to settle the net proceeds claim, the Choctaw gave up control of the Chickasaw District, leased land west of the 98th degree west longitude, and ceded absolutely its claim to land west of the 100th degree west longitude. The Cooper letter of May 12 made it explicitly clear that the net proceeds settlement was to be made conditional to the land settlements. The language of the negotiation reveals, in the end, which party was in the stronger position to get what it wanted.

Use of the treaty making process appears to have been mere stagecraft on the part of the government. The Choctaws relinquished much in return for the receipt of what was, as the Senate would later determine, already theirs. Despite the elaborate process of negotiation, a process that included the playing of Chickasaw interests against those of the Choctaw, the outcome appears to have been a foregone conclusion. Manypenny's letter of June 12 to the Choctaw Agency made it clear that *bona fide* negotiation had ended, indeed that it was never really relevant to the process in the first place.

The status of the tribes under the Constitution of the United States rendered the treaty process ambiguous at best. Chief Justice John Marshall's opinion, rendered at the beginning of the 'Civilized Tribes' sojourn from the old Southwest to the Indian Territory, declared the tribes to be "domestic dependent nations" rather than "foreign nations." This unique and ambiguous status left the tribes outside the original jurisdiction of the Supreme Court in cases involving state government. In the course of his opinion, Marshall declared that the tribes "occupy a territory to which we assert a title independent of their will."⁴⁶ The governor of Georgia, referring to the matter in words that more directly prefigured the doctrine of 'manifest destiny', wrote that "treaties were expedients by which ignorant, intractable, savage people were induced without bloodshed to yield up what civilized people had the right to possess by virtue of that command of the creator delivered to man upon his formation - be fruitful, multiply and replenish the earth, and subdue it."⁴⁷

Congress, by ending the practice of treaty making in 1871, undermined tribal authority and ended the need for the legally ambiguous and problematic term "nation" as applied to

⁴⁴ Ibid., 74.

⁴⁵ Choctaw Nation v. United States, 30 Lawyers Edition 306 (1886).

⁴⁶ Cherokee Nation v. Georgia, 5 Peters 1.

⁴⁷ Quoted in Alan Trachtenberg, *The Incorporation of America; Culture and Society in the Gilded Age* (New York: Hill and Wang, 1982), 29.

the tribes.⁴⁸ Falling during the period between the Marshall decision and this congressional action, the Treaty of 1855 offers insight into the workings of negotiations between a party bargaining in good faith and a party that had already declared itself to hold title “independent of their will.”

⁴⁸Trachtenberg, *Incorporation*, 31.