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# FROM BLOOD REVENGE TO THE LIGHTHORSEMEN: EVOLUTION OF LAW ENFORCEMENT INSTITUTIONS AMONG THE FIVE CIVILIZED TRIBES TO 1861

*Bob L. Blackburn\**

Before 1800 law enforcement among the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles consisted simply of the “law of revenge,” an informal institution relying on each individual’s ability to enforce accepted norms of behavior. As long as Indian society consisted of a simple hunting/agricultural economy and a decentralized social structure removed from Anglo-American culture, this ancient law enforcement system maintained internal peace.

From the beginning of the nineteenth century to 1861, however, the Five Civilized Tribes experienced the revolutionary effects of encroaching white settlement, growing mixed-blood population, accumulation of property, and the influx of white missionaries. These external and internal pressures radically altered the social, economic, and environmental world in which the Indians lived, forcing the tribes to adopt new institutions such as constitutional government, school systems, and formalized law enforcement. By 1861 all of the Five Civilized Tribes, except the Seminoles, would replace the primitive “law of revenge” with formal institutions of law enforcement utilizing lighthorsemen, marshals, sheriffs, and constables.

Concepts of public law enforcement were introduced to the Five Civilized Tribes by white traders during colonial times, when the Indians welcomed whites who furnished desirable trade goods. By the end of the eighteenth century large numbers of these traders had settled among the tribes, establishing prosperous trading posts, rich plantations, and mixed-blood families. As early as 1796, a traveler among the Cherokees noted that he found mixed-bloods in every town, many of whom were the most prosperous and energetic community leaders. Several prominent families had settled among the Cherokees, the most prolific being the Doughertys, Galpins, and Adairs from Ireland and the Rosses, Vanns, and McIntoshes from Scotland. Most of these pioneers took Indian wives and accepted parts of the Indian

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culture, yet retained basic cultural ideas of their Anglo-American heritage.<sup>1</sup>

It was the mixed-blood second and third generations of these families that dominated Cherokee affairs by the end of the eighteenth century. Cherokee leaders such as Stand Watie, Elias Boudinot, John Ridge, Sequoyah, and John Ross were mixed-blood sons of white immigrants. These men, most of whom were educated in white schools, had wrested control of Cherokee affairs from the full bloods by the early 1800s. This influence was typified by the career of John Ross.

Born in 1790, Ross was the grandson of John McDonald, a Tory who had settled among the Cherokees during the Revolutionary War. McDonald's quarter-blood daughter, Molly, married Daniel Ross, a native of Scotland. Daniel and Molly raised their young son, John, among his Cherokee kin, but at an early age he was sent to school in Kingsport, Tennessee, where he was exposed to Anglo-American institutions.

As a young man steeped in Cherokee heritage and educated in the white man's world, John became an indispensable conduit between complacent full bloods, who wanted to retain their homeland, and land-hungry whites who demanded Indian removal or extinction. Serving as adjutant on many missions to Washington, D.C., Ross learned political strategy. Later he served as president of the Cherokee National Council, as president of the Cherokee Constitutional Convention in 1827, and, finally, as principal chief of the Cherokees from 1828 until his death in 1866.<sup>2</sup>

Mixed-blood leaders such as Ross transformed Cherokee institutions of government and law enforcement. Part of their reasoning was derived from exposure to American tradition, for many of the new leaders had seen white sheriffs and marshals and knew their effectiveness. Also, many mixed-blood leaders believed that the isolated world of the Cherokee people soon would end; if the tribe were to survive, they had to conform to American culture.

The third, and perhaps the most important factor, was economic necessity. Some of the richest men in the Cherokee community were mixed-bloods. With their accumulations of property came the desire for protection of their property. For ex-

1. G. WOODWARD, *THE CHEROKEES* 120 (19—).

2. G. MOULTON, *JOHN ROSS, CHEROKEE CHIEF* (1978), throughout.

ternal threats, the army or militia were furnished by the United States, but for internal threats to their property, no effective institution existed that could serve them adequately. To rich mixed-blood Cherokees, written laws and professional law enforcement officers offered the only protections.

Thomas Nuttall, during his travels to the Cherokees in 1819, remarked that many Indians had acquired "habits of industry, . . . superior intelligence, conveniences and luxuries of civilization," but "have also acquired that selfish attachment to property, that love of riches, which, though not really intrinsic, have still the power to purchase sinister interest, and separate the condition of men, and hence arises that accumulation of laws and punishments."<sup>3</sup> Edwin James, traveling with Stephen A. Long, addressed the same subject, noting how maldistribution of wealth threatened the security of the rich. In his opinion, new officers of law enforcement were for the sole purpose of protecting property.<sup>4</sup>

The influence of mixed-bloods also had affected the Choctaws by 1800. Three predominant families, the LeFlores, Pitchlyns, and Folsoms, had settled among the Choctaws. The best example of their influence was the Pitchlynn family. Isaac Pitchlynn, a British trader, established contact with the Choctaws in the 1750s and 1760s. His son, John, who had been reared among white men as a child, was adopted by the tribe. In his early twenties John married Sophia Folsom, one of the mixed-blood Folsom children. In this favored position between two cultures, John built a trading post and gradually accumulated a fortune in cattle, land, and slaves, while raising a large family.

John Pitchlynn promoted white institutions among the Choctaws such as schools, churches, and law enforcement. During this period of tribal transition, his son Peter was born in 1806. One-quarter Choctaw, Peter identified with the Indians, but, like John Ross, he was sent to white schools where he studied American history, learned the English language, and accepted many Anglo-American institutions. After returning home, young Pitchlynn worked for institutional changes among the Choctaws. In 1822, when the Choctaws established their first constitutional govern-

3. T. Nuttall, *A Journal of Travels into the Arkansas Territory During the Year 1819*, in THWAITES, ed., 13 EARLY WESTERN TRAVELS, 1798-1846, at 184.

4. E. James, *Account of an Expedition from Pittsburgh to the Rocky Mountains in the Years 1819, 1820*, in THWAITES, ed., 17 EARLY WESTERN TRAVELS, 1798-1846, at 22-23.

ment, Pitchlynn became a leader in the law enforcement system and organizer of the first lighthorse brigade.<sup>5</sup>

The Chickasaws, too, were influenced by a powerful mixed-blood population within the tribe. The most significant of these were the descendants of James Logan Colbert, a Scotsman who had settled among the Chickasaws in 1729. During forty years of residence Colbert married three Indian wives, sired more than a dozen children, and accumulated wealth in trade, land, and slaves. By 1800 his descendants controlled Chickasaw tribal affairs, led by capable mixed-bloods such as Levi Colbert. In 1829 one report on the Chickasaws noted that Levi Colbert was the real power in the tribal government, while the full-blood chiefs were merely his puppets. While controlling the governmental apparatus, the mixed-bloods used their influence to create institutions of law enforcement.<sup>6</sup>

The effects of the mixed-bloods' influence gradually surfaced, increasing only as fast as economic development. A more abrupt influence on Indian law-ways was the impact of missionaries. As early as 1799, missionaries visited the Chickasaws and Choctaws, but not until the 1820s were permanent missions established with schools. The greater missionary influence was among the Cherokees, led by a young Presbyterian minister from Tennessee, Gideon Blackburn, who established a mission and school in the rugged Overhills District of the Cherokee lands in Georgia.

Invited by Cherokee chiefs and headmen who foresaw the importance of learning the ways of white people, Blackburn chose the tribe's children as his first objective. Within a year Blackburn taught twenty-one Cherokee youngsters to read, write, and count, an accomplishment that impressed their elders. Winning their confidence, the young minister by 1805 was a trusted advisor to the tribal leaders, especially with respect to their governmental organization. Blackburn and perceptive Cherokee leaders believed that if the Indians were to repel American expansion, they had to have a strong government to negotiate and enforce agreements. Responding to his advice, the Cherokee Tribal Council in 1808 established a written constitution with legislative and judicial provisions and a code of written laws. In a published letter describing the new government, Blackburn boasted, "All criminal accusations must be established by testimony; and no

5. W. BAIRD, *PETER PITCHLYNN: CHIEF OF THE CHOCTAWS* 5-10 (1972).

6. A. GIBSON, *THE CHICKASAWS* 66, 134, 137 (1971).

more executions must be made by the avenger of blood; the infliction of punishment is made a governmental transaction.”<sup>7</sup>

“Infliction of punishment” became the duty of a corps of officers, popularly called the lighthorse. Created by one of the first resolutions of the new constitution, lighthorsemen were to be distributed throughout the nation, one company of six men to each district. Each company had a captain, a lieutenant, and four privates. Serving one-year appointments, the lighthorseman’s stated duty was to “suppress horse stealing and robbery of other property within their respective bounds.”<sup>8</sup> The law specified a simple code of punishment. For horse theft, lighthorsemen were to administer “one-hundred stripes on the bare back,” the number of lashes decreasing with the relative value of the goods stolen.

The lighthorse corps, under the leadership of mixed-blood leader George Lowery, served with extensive powers, fulfilling the combined roles of sheriff, judge, jury, and executioner. The number of laws they enforced increased yearly as mixed-blood leaders and missionary advisors moved the tribal government closer to Anglo-American institutions. Most of the laws dealt with protection of property, such as the one invoking a penalty of fifty lashes for cattle theft. Such laws also became more refined, the penalty for horse theft being amended to 100 lashes for the first offense, 200 for the second, and death for the third. Because there were no jails among the Indians, corporal punishment was invoked for all crimes, but with variations. For rape a first offender received fifty lashes on the back and had his left ear chopped off close to the head. If the rapist committed a second crime, the lighthorsemen administered 100 lashes and cut off the other ear. For the third offense, death was the punishment.<sup>9</sup>

As indicated in their criminal code, lighthorsemen used violence as an essential tool of law enforcement. While Stephen H. Long was among the Cherokees, he witnessed a band of light-

7. G. WOODWARD, *THE CHEROKEES* 123-16 (19—).

8. Cherokee Nation, *Laws of the Cherokee Nation: Adopted by the Council at Various Periods*, in 5 *THE CONSTITUTIONS AND LAWS OF THE AMERICAN INDIAN TRIBES* 3-4 (1973) [hereinafter cited as Cherokee Nation Laws].

9. C. Foreman, *The Lighthorse in the Indian Territory*, 34 *CHRONICLES OF OKLAHOMA* 17 (No. 1, Spring, 1956); James, *Account of an Expedition from Pittsburgh to the Rocky Mountains in the Years 1819, 1820*, in THWAITES, ed., 17 *EARLY WESTERN TRAVELS, 1798-1846*, at 22-23; T. Nuttall, *A Journal of Travels into Arkansas Territory During the Year 1819*, in THWAITES, ed., 13 *EARLY WESTERN TRAVELS, 1798-1846*, at 190; Cherokee Nation Laws, *supra* note 8, at 53-54.

horsemen overtake a suspected horse thief. When the suspect did not answer the captain's questions, a private gave the lad 100 lashes to loosen his tongue. The criminal then confessed to his crime. Another traveler cited the example of a lighthorseman who cut out the eyes of a relative who persisted in theft, declaring to his suffering kin that "as long as you can see you will steal, I will therefore prevent your thefts by the destruction of your sight."<sup>10</sup>

Lighthorsemen also used violence when suspects attempted escape. In one instance a prisoner who reached for a captain's gun was shot four times. There was no investigation of the incident. Such violence apparently was foreseen and expected, for the law of 1808 creating the lighthouse corps exempted officers for retaliation when they were forced to kill suspected criminals.<sup>11</sup>

Every lighthorseman was expected to serve as executioner when needed. Condemned criminals had their choice of how they were to be killed, which oftentimes led to gruesome executions. One condemned man, who had killed a friend with a Bowie knife, wished to die by the same weapon; the lighthorsemen granted his request by stabbing him to death. Most Cherokees requested death by rifle, while hanging was shunned for fear that the rope would damage the spirit.<sup>12</sup>

For the violence involved and the tasks required, lighthorsemen had to be rugged individuals. John Payne, an Englishman visiting the Cherokees, described a company of lighthorsemen as a band of "armed and wild looking horsemen," with a leader who was a "tall and reckless looking man, with red leggings, and shabby green blanket coat." The formidable warriors on horseback had recently proven the truth of their impression, for they had just captured Archilla Smith, a dangerous man who had sworn never to be taken alive.<sup>13</sup>

Lighthorsemen served a multiple role in Cherokee society, functioning on every level of the judicial system. As the number of laws increased, however, and as citizens demanded more rigid

10. James, *Account of an Expedition from Pittsburgh to the Rocky Mountains in the Years 1819, 1820*, in THWAITES, ed., 17 EARLY WESTERN TRAVELS, 1798-1846, at 23; Nuttall, *A Journal of Travels into Arkansas Territory During the Year 1819*, in THWAITES, ed., 13 EARLY WESTERN TRAVELS, 1798-1846, at 191.

11. C. Foreman, *The Lighthorse in the Indian Territory*, 34 CHRONICLES OF OKLAHOMA, *supra* note 9, at 23; Cherokee Nation Laws, *supra* note 8, at 4.

12. C. Foreman, *The Lighthorse in the Indian Territory*, 34 CHRONICLES OF OKLAHOMA, *supra* note 9, at 18.

13. John Payne to John Watterston, Dec. 2, 1840, in G. FOREMAN, *ADVANCING THE FRONTIER, 1830-1860*, at 326 (1933).

law enforcement, lighthorsemen alone proved to be inadequate. From 1817 to 1825, the Cherokees experimented with several supplemental systems of law enforcement, searching for the most effective one. In 1817 the Cherokee National Council organized the nation into districts, each with a judge, sheriff, and constable. This judicial system was further refined in 1820, dividing the nation into eight districts, each with a judge and marshal. There were to be four district judges, moreover, with each covering two districts. These officers enforced national laws, with judges holding court and rendering decisions and marshals carrying out the decisions. Each district also retained a corps of lighthorsemen. Marshals were court officials, while lighthorsemen retained most of the general law enforcement duties of arrest and execution.<sup>14</sup>

In 1824, again seeking a more effective system of law enforcement, the Cherokee National Council reduced the number of lighthorsemen in each company from six to four, and raised salaries to \$65 for captains, \$55 for lieutenants, and \$45 for privates. Despite this reduction in number, lighthorsemen still served a multitude of duties for the young and inexperienced Cherokee government, fulfilling the requisites of justice until more sophisticated provisions could be enacted. In 1825 this role came to an abrupt end when the Cherokee National Council established a hierarchy of law enforcement officials to attend a new judicial system. Replacing the lighthorsemen were marshals, sheriffs, and constables, who were better able to adapt to judicial needs at the various levels.<sup>15</sup>

The 1825 law provided for eight marshals, whose jurisdiction was national and who were appointed by the Cherokee National Council. Their primary duties were enforcing national laws, especially liquor prohibition and implementation of decisions reached by the national government. Below them in the enforcement hierarchy were sheriffs, elected by citizens of the respective districts to two-year terms. With the power to hire deputies, sheriffs were charged with general maintenance of law and order in their districts and execution of decisions by district judges. At the local level were two constables, also elected by people of the

14. G. FOREMAN, *THE FIVE CIVILIZED TRIBES* 355 (1934) [hereinafter cited as FOREMAN]; T. Ballenger, "The Development of Law and Legal Institutions Among the Cherokee" (unpub. Ph.D. dissertation, University of Oklahoma, Norman, 1938), at 29-30.

15. Cherokee Nation Laws, *supra* note 8, at 40.



districts. They were assigned to less dangerous duties such as debt collections, simple arrests, and holding prisoners for trial. Approximately thirty-two marshals, sheriffs, and constables enforced law in the Cherokee Nation from 1825 to the time of removal to Indian Territory. In that interval the thoughts and energies of tribal leaders were occupied with the removal controversy, a far more pressing issue to the Cherokees than new systems of law enforcement.<sup>16</sup>

Although the changes of 1825 disbanded the lighthorsemen, it affected only the Cherokees in the east, excluding the Western Cherokees. The Western Cherokees had migrated to the Arkansas River Valley in several waves between 1794 and 1808. Because of their isolation from white settlements, they did not accept Anglo-American civilization as early as their fellow tribesmen in Georgia and Tennessee. By 1819, however, travelers among the Arkansas Cherokees noted large plantations, fine houses, and numerous slaves, the trappings of Americanized mixed-bloods. The next year the Western Cherokees established a constitutional government, whose first enactment provided for a corps of lighthorsemen.<sup>17</sup>

Divided into three companies of well-armed and mounted warriors, the lighthorsemen in Arkansas were general officers of the tribal government who suppressed violence, theft, and destruction of property, collected debts owed the government, and executed decisions of the three district courts. Unlike the Eastern Cherokees, the Arkansas band retained their lighthorsemen until the 1830s, when they removed to Indian Territory.<sup>18</sup>

Removal of the Eastern Cherokees to Indian Territory in the 1830s and the attending political upheaval, widespread bloodshed, and frontier hardships threatened institutions of enforcement that had developed during times of political and social stability. The first trouble surfaced when the Treaty Party of the Cherokee Nation, which had defied Principal Chief John Ross and removed to Indian Territory in 1839, refused to merge politically with the Eastern Cherokees, who later had been forced westward over the Trail of Tears.

Polarizing into two camps, each faction established governments with law and officers for law enforcement. In July of 1839

16. *Id.* at 51-52.

17. M. WARDELL, A POLITICAL HISTORY OF THE CHEROKEE NATION 6-8 (1938) [hereinafter cited as WARDELL].

18. Cherokee Nation Laws, *supra* note 8, at 160, 178-79.

at the Illinois Camp Ground, John Ross established his government, complete with judges, sheriffs, and eight auxiliary companies of lighthorsemen "to suppress disturbances, to remove public nuisances, and to preserve good order and tranquility."<sup>19</sup> In reality the lighthorsemen were to stabilize the authority of the Ross government. Commanded by Jesse Bushyhead and Looney Price, two allies of Ross, the twenty-five positions in each company soon were filled by adventurous Ross supporters. Although the Ross government had not employed lighthorsemen for fourteen years, the prospective threat to law and order dictated their reinstatement.<sup>20</sup>

Anticipating similar problems, the Treaty Party strengthened its own lighthorsemen. Organized and commanded by Stand Watie, a political foe of Ross, Watie's lighthorsemen made their headquarters on Beattie's Prairie in the far northeastern corner of the Cherokee Nation. For the next seven years the lighthorsemen of the Treaty Party faction controlled this region. The forces of Watie, reinforced by the quasi-legal depredations of Tom Starr and his brothers, waged a slow war against the supporters of Ross, whom they considered to be political usurpers.<sup>21</sup>

From 1839 to 1846 violence and bloodshed reigned in the new Cherokee homeland. During this period of crisis, lighthorsemen and sheriffs were called upon to fight the political battles of their leaders. These officers endured a dangerous life, for many anti-Ross sympathizers murdered lighthorsemen. In the winter of 1846, Jim and Tom Starr murdered two of Ross's lighthorsemen named Baldrige and Sikes. In revenge a company of lighthorsemen pursued the murderers, killing Billy Ryder, one of the Starrs' allies. Two months later, the captain of Ross's lighthouse corps was murdered. In less than one year the agent to the Cherokees reported thirty-three murders, all but a few political in nature.<sup>22</sup>

To combat such violence, Chief Ross and his fellow leaders activated the lighthouse as needed for the next few years. In October of 1843, the Cherokee National Council enacted legislation creating eight companies of twenty-five men each. Companies were organized in the field, their terms of appointment being twelve months and their pay one dollar a day. The companies

19. U.S. DEP'T OF INTERIOR, REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR 1839, at 391-92 (1839).

20. WARDELL, *supra* note 17, at 52.

21. *Id.* at 53-54.

22. FOREMAN, *supra* note 14, at 346-47

were flexible; a captain could concentrate his men in one troublesome region or disburse them for general law enforcement. Once a month the captain reported on the conditions and locations of his men to the Cherokee National Council, providing a high degree of control by Chief Ross.<sup>23</sup>

Reinforcing the lighthorsemen were district sheriffs, who, in addition to regular duties, often aided national officers. During the summer of 1846, the sheriff of Delaware District raised a force of 100 men for the pursuit of Tom Starr. This support among the district sheriffs was widespread, as four-fifths of all Cherokees supported the government of Ross. Elected by these citizens, sheriffs therefore fulfilled the desires of their constituents. Directing the national lighthouse corps and having the support of most district sheriffs, Ross's government slowly established order by neutralizing the militant supporters of the Treaty Party faction. On August 14, 1846, Watie and Ross signed a treaty ending all hostilities between the two factions. The peace treaty granted amnesty to all declared outlaws, welcomed any Cherokees wishing to return to the nation, and abolished all armed police, military organizations, and lighthouse companies. Thereafter with only rare exceptions, Cherokee law enforcement was the duty of district sheriffs and constables.<sup>24</sup>

From 1846 to 1861, law enforcement in the Cherokee Nation centered on nonpolitical crimes. During that period one of the most time-consuming duties was suppressing and controlling the expanding slave population. In 1842 the most serious outbreak occurred when a band of slaves in the Canadian District overpowered their masters and fled toward the border. The Cherokee National Council responded quickly, commissioning John Drew to organize a band of men to suppress the uprising and prevent escape. Drew and 100 officers patrolled the countryside for more than two months, tracking and returning runaway slaves. Again, lawmen were protecting property as well as maintaining law and order.<sup>25</sup>

Another duty for officers was the suppression of the illegal liquor trade. As early as 1841 the Cherokee National Council

23. Cherokee Nation Laws, *supra* note 8, at 78-79; WARDELL, *supra* note 17, at 63.

24. J.B. Lynch to Stand Watie, Aug. 1, 1846, in E.E. Dale & G. Litton, comps. and eds., *CHEROKEE CAVALIERS: FORTY YEARS OF CHEROKEE HISTORY AS TOLD IN THE CORRESPONDENCE OF THE RIDGE-WATIE-BOUDINOT FAMILY* 48 (1939); WARDELL, *supra* note 17, at 73-74.

25. Rucker, *The Story of Slave Uprisings in Oklahoma*, *Daily Oklahoman*, Oct. 30, 1932, at 2-5.

enacted rigid legislation prohibiting importation or possession of liquor. Although the liquor trade did not reach large proportions before the Civil War, sheriffs regularly discovered and confiscated shipments of liquor. Searching boats ascending the Arkansas River, the sheriff of the Illinois District in 1847 discovered twelve barrels of whisky, which he dumped into the river. Two years later the sheriff of the Canadian District received more attention when he confiscated and destroyed forty-eight barrels of whisky from one shipment. Liquor, slaves, and contests over property consumed most of the Cherokee sheriffs' time before 1861.<sup>26</sup>

While the development of Cherokee law enforcement was complicated by tribal and political divisions, Choctaw law enforcement evolved in a more orderly progression. From 1803 to 1820 the Choctaw Tribe changed under the influences of mixed-blood leaders and white missionaries. The mixed-bloods introduced principles of property ownership, which required means for protection of property, while missionaries taught the Indians the ways of the white man's world. In 1820 these influences resulted in the Treaty of Doak's Stand, which among other provisions, established a corps of thirty lighthorsemen, paid for by an annuity from the federal government. By 1822 provisions for Anglo-American institutions of law enforcement had been initiated by Chief Aboha Kullo Humma, who boasted that his "company of faithful Warriors take every man who steals and tie him to a tree and give him thirty-nine lashes."<sup>27</sup> He also mentioned a new criminal code with laws against the importation of liquor, theft, adultery, and murder.

The earliest organizers of the Choctaw lighthouse were prominent mixed-bloods. Greenwood LeFlore was captain in the Northwest District, while Peter Pitchlynn and David Folsum raised companies in their districts. All three men had been educated in white schools and were well aware of American law enforcement institutions. Although mixed-bloods controlled the early organization, the lighthorsemen were not immune to traditional Choctaw institutions, for in 1826 the companies were placed under the command of district chiefs. Their general duty was riding throughout the countryside, settling disputes among in-

26. Cherokee Nation Laws, *supra* note 8, at 87-88; FOREMAN, *supra* note 14, at 379, 394, 404.

27. C. KAPPLER, ed. and comp., 2 INDIAN AFFAIRS, LAWS, AND TREATIES 87-88 (1904-1941); H. CUSHMAN, HISTORY OF THE CHOCTAW, CHICKASAW, AND NATCHEZ INDIANS 87-88.

dividuals, while arresting, judging, and executing punishment against violators of the law. The most common crime during these early years involved liquor violations. Prohibited by the Choctaw National Council in 1826, the importation of liquor was punished by 100 lashes on the back, administered by lighthorsemen. Their vigilant enforcement successfully limited the amount of liquor entering the Choctaw Nation by 1853, drawing a commendation from the Commissioner of Indian Affairs.<sup>28</sup>

From 1834 to 1861 lighthorse companies were the only law enforcement officials in the Choctaw Nation, with their longevity due to minor organizational alterations. The Choctaw Constitution of 1834, the first written in Oklahoma, reduced the number of lighthorsemen to eighteen, six for each of the three districts. The lawmen were elected by voters in each district. In 1838 the Choctaw National Council created a judicial system, relieving the lighthorsemen of their trial duty, thus leaving them more time to enforce the increasing number of criminal laws. Still, the officers served as juries until 1850 when the duties of the lighthorsemen were reduced to arrest and execution only. With more limited duties and a sound judicial system, lighthorsemen proved capable as law enforcement officers in a changing society. Indeed, the lighthorsemen rigidly and consistently enforced the law, preserving peace and prosperity until the Civil War.<sup>29</sup>

The Chickasaws, tribal brothers of the Choctaws, encountered troubles with their institutions of law enforcement after a promising beginning. In 1829 mixed-bloods led by Levi Colbert enacted a written law code to preserve law and order and to protect property. To enforce the laws, the Chickasaw National Council organized a mounted lighthorse corps of 100 men, twenty-five from each of the four districts. Like the other tribes, the Chickasaws gave the officers broad powers of arrest, trial, and execution. An agent, reporting to Washington, D.C., in 1830, wrote, "Their laws are few, easily understood, and rigidly enforced, and are highly calculated to promote peace."<sup>30</sup>

28. Gregg, *Commerce of the Prairies, 1831-1839*, in THWAITES, ed., 10 EARLY WESTERN TRAVELS, 1789-1846, at 313; A. DEBO, THE RISE AND FALL OF THE CHOCTAW REPUBLIC 45, 48, 65 (1934); N. Shackelford, "The LeFlore Family and the Choctaws" (unpub. M.S. thesis, Oklahoma State Univ. 1967), at 45.

29. Cherokee Nation Laws, *supra* note 8, at 165. A. DEBO, THE RISE AND FALL OF THE CHOCTAW REPUBLIC 76 (1934).

30. A. GIBSON, THE CHICKASAWS 137-38 (1971).

In 1836 the Chickasaws were removed to Indian Territory, an event that adversely affected their attempts at law enforcement. The United States government further destroyed earlier gains by not assigning a separate reservation to the Chickasaws; instead, they were huddled onto the lands of the Choctaws. In this situation, the tribal council did not control law enforcement, for tribal affairs were absorbed by the Choctaw government. Moreover, many mixed-blood leaders, who originally instigated the new institutions of law enforcement, either died or lost their property during removal. With the loss of mixed-blood leaders and the damage to tribal sovereignty, the Chickasaws entered a period of decline, despondency, and dependence. In 1853 the Chickasaws began recovering, again building plantations, purchasing slaves, and accumulating property. Economic recovery, coupled with a new wave of nationalism and a new generation of mixed-bloods, prompted renewed attempts to organize a sovereign Chickasaw Nation with separate agents of law enforcement.<sup>31</sup>

In 1855 the Chickasaws organized their own government, and within a year they wrote a constitution providing for the offices of marshal, sheriff, and constable. The marshal's office was filled by executive appointment, while sheriffs and constables were elected by the voters in each district. The efficiency of these officials, as well as law enforcement in general, deeply concerned most Chickasaws. For example, the first official act of Governor Cyrus Harris was to commission Achuntubby as marshal, while six of his first eight official acts dealt with either law enforcement commissions or special instructions for officers. In addition to his daily involvement with law enforcement, the governor possessed the authority to create special law enforcement officers. In October of 1856, Governor Harris commissioned Thomas Anderson and his family to serve as special policemen during a session of the legislature, with the express duty of destroying all liquor in Tishomingo, the Chickasaw national capital. With extraordinary lawmen, a structured judicial system, and corps of marshals, sheriffs, and constables, the Chickasaws enjoyed relative peace and order until the turmoil of the Civil War.<sup>32</sup>

The Creeks and Seminoles did not develop Anglo-American institutions as quickly as the Choctaws, Cherokees, or Chickasaws. The Creeks, who were far behind the Cherokees in

31. *Id.* at 184-93.

32. *Id.* at 222-24.

political and social development, did not even organize a republican form of government until 1867. Neither did they have a judicial system. When the tribe arrived in Indian Territory, they still retained their primitive customs of individual law enforcement, with laws condemning such crimes as rape, murder, and adultery.

During the Creeks' forced removal to Indian Territory in the severe winter of 1836-1837, approximately 40 percent of the population died, a setback from which the Indians were slow to recover. Once settled in their new home, they organized a general tribal council in 1840, which prepared a brief written legal code and established a company of lighthorse for its enforcement. The laws were few, but the lighthorsemen proved to be effective stabilizers of society in a period of distress and upheaval. By 1860 the Creek lighthorsemen were an indispensable governmental agency, fulfilling most of the duties of tribal government and protecting tribesmen from the illegal liquor traffic.<sup>33</sup>

The Seminoles at the time of removal were even farther removed from a developed system of law enforcement. Before the 1830s the Seminoles had little contact with American institutions, retarding the development of a tribal government needed to initiate written laws and forms of law enforcement. Then the removal of the Seminoles practically destroyed the tribe and its people. Ill-treatment by the United States government and the hardships of removal combined to dishearten the spirits of the once-proud warriors. Deprived of their homelands and thrust into an alien climate, many Seminoles led shiftless lives until the Civil War, depending on the United States Army and neighboring Indian tribes for protection. Not until 1859 was a general council organized, and even then it accomplished little.<sup>34</sup>

The Seminoles were the exception among the Five Civilized Tribes from 1803 to 1861. The other four tribes, especially the Cherokees and Choctaws, made dramatic strides in law enforcement. At the beginning of the nineteenth century the universal law enforcement code was the individual law of revenge; by 1861 and the Civil War those tribes had developed structured judicial systems, sheriffs and constables for local duty, and marshals and lighthorsemen for general enforcement.

33. A. DEBO, *THE ROAD TO DISAPPEARANCE* 127-28 (1941); U.S. DEP'T INTERIOR, *REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FROM 1860*, at 348 (1861).

34. FOREMAN, *supra* note 14, at 227.

The course of this development was basically the same in each tribe. The law of revenge collapsed under the combined pressures of increasing mixed-blood population, the influence of missionaries, and the widespread accumulation of property. The first institution devised to take its place was the lighthorse corps, a group of lawmen with broad authority encompassing powers of arrest, trial, and execution. Then, as each tribe adopted new, more democratic governments, law enforcement establishments became more refined and sophisticated. The Five Civilized Tribes, progressing through this transition at varying speeds, would need these advances during the coming decades when white expansion again would threaten their tribal existence.



