



Meskwaki Anthology

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Emergence of a Distinct Legal Identity From the Forces of Assimilation: The Mesquakie Indians and the Fight for Citizenship, 1842-1912

“The purpose of this Association is to take such steps as are necessary to determine and fix, as far as possible, the legal status of the Indians and to promote education and civilization among them.”

– Horace M. Rebok, U.S. Indian Agent to the Mesquakie of Iowa and organizer of the Indian Rights Association of Iowa, 1895

“My friend, the Mesquakies have always been friends to the white people, but they will not accept your school. You may come and kill us, but we will not give you our children. I will say no more.”

– Chief Push-E-Toneke-Qua, Head Chief of the Mesquakie, 1896

Citizenship and attaining formal legal identity have been time-honored topics within historical scholarship.^[1] Citizenship as a concept is critical because it reflects “a distinctive form of social classification that colors personal standing in any community.”^[2] To be a “citizen” of a state or nation implies that one fully enjoys the rights and privileges afforded to recognized members of the state or national communities. In the American context, these rights have traditionally included voting, property ownership, the right to avail oneself of legal processes, and the right to make autonomous decisions about one’s welfare. Many legal historians have examined issues of citizenship through legislative enactments and judicial pronouncements. These sources offer clear dates and specific words to locate the conferral of citizenship on a segment of the population. Therefore, according to many historical texts “all persons born or naturalized in the United States, and subject to the jurisdiction thereof” were full citizens of both their respective state and the United States in 1868.^[3] In the same vein, the point at which many Native Americans received the status of “full citizen” is commonly viewed as 1887 with the passage of the Dawes Severalty Act. This Act accorded citizen status to all Native Americans

who were given allotments from reservation land.^[4] This intense focus on statutes and specific dates fails to take into account the complex negotiations and arduous efforts inherent in the fight for citizenship rights on a practical, local level.

An examination of the Mesquakie Indians and their fight to be accorded legal autonomy during the 19th century reveals the power of individual legal claims over abstract legal principles, the inadvertent effects of assimilationist efforts, and ultimately the complexity of realizing the fruits of citizenship on a practical level. This study diverges from other historical examinations which focus on either citizenship or Native Americans. Instead of scrutinizing legal pronouncements which supposedly “dictate” who should enjoy the status of citizen, the present examination focuses on the actual lived experiences of those referenced within these enactments. An in-depth investigation of the Mesquakie indicates that legal pronouncements alone do not provide an accurate historical portrayal of when and how the status of “citizen” is conferred and is practically fulfilled. Another departure that this study takes from many others is its focus on Federal efforts at Native American education and assimilation. In general, historical studies of forced Native American education during the 19th century have focused on how Indian students dealt with psychological pressures and physical abuse from white teachers and administrators and the non-legal social implications of this education.^[5] Although the present analysis focuses on the Indian Industrial School for Mesquakie Children, it uses the school as a site for examining issues of citizenship and legal autonomy. By using Indian schools in this non-traditional way, this study reveals a unique and complex route to Mesquakie citizenship; a degree of legal autonomy is achieved by the Mesquakie through the public presentation of individual situations of abuse originally intended to assimilate the Mesquakie into white culture.

The Mesquakie Indians^[6] have maintained an autonomous and distinct tribal identity for hundreds of years. The earliest American Fur Company ledgers still existent, circa 1650, indicate that the Mesquakie people considered themselves to be an independent entity. Credit accounts and trade dispersal records from this time period indicate that “the people of Meskwakia” were active in both commercial activity and in identifying themselves as part of a distinct group. This clear self-identification of the Mesquakie continued to be recorded in commercial records and ledgers as the Mesquakie moved from the lower Michigan peninsula to the Wolf River region in Wisconsin during the 1650's and 1660's and eventually settled in present day Iowa along the Mississippi River around 1783.^[7]

Despite this continual assertion of self-identity, throughout the 19th century the United States continued to view the Mesquakie as non-citizens until the Mesquakie successfully pursued education litigation. During the 1800's, the Mesquakie entered into contracts and purchased land; actions that characterize legally recognized citizens. Despite these autonomous acts, the United States did not formally recognize the Mesquakie as autonomous citizens. Instead, the United States haphazardly grouped the Mesquakie Nation under the unrelated tribes of the Sac and Fox, and refused to acknowledge Mesquakie held land titles. Although the Mesquakie tribe could not gain formal recognition of their legal status through use of contracts or land ownership, an unexpected route to citizenship emerged with litigation concerning assimilationist education efforts.

In order to fully recognize and understand this intricate and complex display of forces which led to formal recognition of Mesquakie legal identity three distinct struggles for legal identity and citizenship must be explored: the struggle for tribal recognition pursuant to the Treaty of 1842 and the fight to be accorded legal title to land via the Land Purchase of 1854 as background to the successful effort to realize legal autonomy in education despite the assimilationist efforts of the Indian Training School between 1894 and 1912.

Tribal Identity and the Treaty of 1842

The Treaty of 1842 proved to be a site for Mesquakie demands for legal autonomy. By 1842, the Mesquakie Indians were feeling the pressure of white settlers' desire for the land the Mesquakie resided on along the Iowa River in the Iowa Territory. The Sac and Fox Indian tribes, located just to the North of the Mesquakies, also experienced these same demands from white inhabitants. Government agents entered Iowa territory to attempt to negotiate a treaty with the Mesquakie and the Sac and Foxes in early 1842. The treaty was to ensure that the Indians would leave Iowa territory in return for a monetary settlement. After months of negotiation, the Treaty of 1842 was executed on October 11, 1842 and was assented to by the United States government, the Mesquakie, and the Sac and Foxes.^[8] Chief Poweshiek signed the agreement as a representative of the Mesquakie.^[9]

The body of the treaty possessed one glaring inconsistency; the Mesquakie were never identified or named. By the terms of the 1842 treaty, those tribes whose representatives had signed the treaty were to cede all land that they possessed in Iowa to the federal government. Further, these Indian groups were to move across the Missouri River into Kansas where they would reside on a government reservation. In return, \$800,000.00 was to be held in the Federal treasury for the benefit of the tribes.^[10] The semi-annual interest from this sum of money was to be paid to each individual Indian on a semi-annual basis. This interest payment became known as

the “annuity payment”.^[11] The federal representatives spent much attention to the provisions regarding the relocation of the Indian signees and the method of annuity payments. What these federal agents did not spend time addressing was who the specific parties to this contract were. Instead of recognizing the Mesquakie as a legally distinct group, the federal drafters haphazardly included the Mesquakie under the general heading of “the Sac and Fox of Iowa”.^[12] Despite this significant oversight, the Mesquakie complied with the terms of the contract that their representatives had signed. However, the Mesquakie soon discovered that this irregularity in nomenclature was not a minor technicality.

Upon arriving at the Kansas reservation, the Mesquakie soon learned that because their group was not officially recognized by name within the 1842 Treaty, no Mesquakie would be paid the annuity payment promised, and no Mesquakie would be counted in the federal census. The Iowa State Attorney General succinctly summed up the situation of the Mesquakie during this time by stating, “From 1846 to 1856 the Musquakies lived with no recognition by the United States or the State of Iowa.”^[13] As annuity payments were disbursed on the Kansas Reservation, only those Native Americans that could prove themselves to be a Sac or Fox were paid; the Mesquakie were ignored. Further, the 1853 census did not include a count of the Mesquakie people because according to Indian Agent B.A. James, “they do not exist according to the Treaty.”^[14]

The Mesquakie fought for legal recognition of their identity within the Treaty of 1842, although this contract and the federal agents who executed the agreement acted as though the Mesquakie were non-existent. Historical records vaguely reference unsuccessful attempts by the Mesquakie to establish a unique, individual identity as a party to the Treaty of 1842. Mesquakie leaders attempted to convince federal representatives that they should be recognized within the Treaty and therefore be granted the benefits of semi-annual payments.^[15] Despite these pleas, federal agents insisted that the Mesquakie be identified as “Sac and Fox”; the “only Indian group that had resided in the Iowa territory”.^[16] The Mesquakie attempted to convince the federal government that as a group, they should be uniquely identified and be accorded legal autonomy in a contractual context. Government officials, viewing all Native Americans from Iowa as one indistinct group, “the Sac and Foxes”, ignored these attempts.

Land Ownership and the Land Purchase of 1856

Despite the failure of the Mesquakie to achieve legal identity in contractual relations, the Land Purchase of 1856 generated claims to legal autonomy based on land ownership. Many Mesquakie became disillusioned with life in Kansas and began to re-settle themselves in Iowa, along the Iowa River in Tama County. In 1856,

about 80 Mesquakie journeyed from Kansas to settle in a temporary village variously known as Indian Village township and/or Butlerville, Iowa.^[17] Historical documents indicate that in the spring of 1857, an attempt was made by the Mesquakie to make their living situation more permanent. During this time, a Mesquakie Indian met with Isaac Butler, a local farmer, to discuss the purchase of a portion of Butler's land. After approximately three meetings, Butler and the Mesquakie representative came to an agreement. Butler was to sell 80 acres of land to the Mesquakie for \$1,000.00 in cash.^[18] Butler's sons, Philip and David traveled to Toledo to execute the official land deed on July 13, 1857. The Mesquakie, in return, brought \$1,000.00 in the form of gold to be delivered to Butler.^[19]

This may appear to be an ordinary land sale between two citizens of the state of Iowa. However, the failure of legal authorities to recognize Mesquakie legal identity actually made this transaction a sale between a citizen of Iowa and a ward of the state. Despite the fact that the Mesquakie were capable of striking a deal with Isaac Butler and had the wherewithal to produce \$1,000.00 in gold to complete the exchange, the government continued to view the Mesquakie people as "children" with the government as "parent". When state authorities discovered the bargain made between the Mesquakie and Butler, Governor James W. Grimes decided that as Governor, he should hold official title to the 80 acres. As an official of the state of Iowa, Grimes stated that he would hold this land in trust for the Mesquakie, to avoid any mismanagement or unwise disposition of the land.^[20] Although the Mesquakie were not completely ignored as in the Treaty of 1842, they were not given autonomous legal identity in the realm of property ownership. Instead, the Mesquakie were treated as children in need of the supervision of a paternal government.

This attitude of paternalism is reflected in the fluctuation of terms used to refer to the Mesquakie land: reservation and settlement. The Mesquakie have always insisted that the land that they purchased with their own resources was a settlement. The term "settlement" represented Mesquakie land ownership and autonomy.^[21] Legal authorities would refer to the Mesquakie land haphazardly as both a reservation and a settlement. Official correspondence written between Indian agents and the Department of Interior contain continual references to the Mesquakie territory as a "reservation" or as "reservation land".^[22] The use of "reservation" in this context inferred governmental control over the Mesquakie and their land. The government's fluctuating use of "reservation" and "settlement" to refer to Mesquakie land signifies an ambivalence toward Mesquakie autonomy. Although the technical requirements of a land purchase were fulfilled by the Mesquakie (negotiation

of contract, offer, acceptance, and consideration), legal authorities denied formal recognition of Mesquakie autonomy to complete these tasks.

The Mesquakie sought to remedy this variant use of terms by protesting to the state government of Iowa. Various references occur in manuscripts and correspondence indicating that the Mesquakie personally visited state officials in Iowa City and drafted correspondence to the Governor and his representatives.^[23] Despite their protracted efforts, there is no indication that Mesquakie efforts to be recognized as full land owners was met with any type of official response. The refusal of the legal authorities to acknowledge the land rights of the Mesquakie, not only resulted in lack of a legal identity for land ownership, but also contributed to a feeling of insecurity among the Mesquakie people.^[24] If the land that the Mesquakie had purchased on their own was not in their name, then what would prevent the government from forcing the Mesquakie to remove themselves to a distant reservation? An unidentified Mesquakie sums up this frustration by reportedly stating to an Iowa City legal official, “When a white man wants to buy land, you don’t ask him why, you just take his money. We have money.”^[25]

Educational Autonomy and the Indian Training School in Toledo, Iowa, 1894-1912

The Mesquakie were denied legal recognition in the areas of naming within a contract and being named as sole owners of property. Governmental refusal to recognize the Mesquakie as a distinct group and as a body that could enjoy the full rights of property ownership was met with Mesquakie protest; to no avail. However, there was one area in which the Mesquakie were granted legal autonomy: education.

Education Efforts Among the Mesquakie Prior to 1894

Almost from the moment that the Mesquakie re-settled themselves in Tama County, missionaries and government representatives attempted to establish schools among the Mesquakie. It was the attitude of the government that if the Mesquakie were allowed to remain as they were, “they would prefer to continue as slovenly, lazy, and bestial” and “the one great obstacle to their improvement morally, and intellectually is in their persistent refusal to school themselves, or permit their children to attend school.”^[26] With this attitude, a group of Quakers attempted to establish an Indian school in 1856 with limited success. The Mesquakie refused to send their children to the Quaker school and as a result, the Quakers left the Mesquakie settlement in early 1857.^[27] The Quakers were followed by a Presbyterian missionary couple; Minister Duvall and his wife. Although the Mesquakie were said to have had “patient tolerance” for the Presbyterian mission and school, few students attended the school. It was reported that Mrs. Duvall rang the school bell every morning for a month before she

saw any sign of Mesquakie life.^[28] In 1872, a president of a Lutheran college from Ohio sent a delegation to “improve” the Mesquakie people. The Lutheran missionaries constructed a small house on the settlement to serve as a tool shop and office. The Indian agent at this time, Reverend A. R. Howbert made attempts to hold Sunday religious services for the Mesquakie. However all of Howbert’s attempts failed.^[29]

Just as Reverend Howbert’s missionary zeal was waning, the U.S. Government’s interest in educating and assimilating the Mesquakie increased. In 1875, Thomas S. Free was appointed Mesquakie Indian agent and supervised the construction of a two-story government school. Mr. A.B. Somers was employed as instructor of the school and lived on the second floor of the government building. The Mesquakie treated the school with disdain, just as they had rejected previous education attempts from religious groups. The Mesquakie believed that the school was a threat to their way of life and reportedly refused to send their children to the school. Mesquakie elders refused to even walk past the school building. Somers grew weary of his responsibilities as instructor with no pupils. Miss Allie B. Busby and Miss Anna Skea replaced Somers in 1883, however the two women met with the same lack of success as their predecessor. Although there was no regular attendance at the school it continued to be officially open until 1890.^[30]

Establishment of The Indian Training School in Toledo, Iowa

With the appointment of W. R. Lesser as Mesquakie Indian Agent in 1890 came a renewed sense of the importance of assimilating the Mesquakie through education. Lesser believed that to truly advocate education and civilization among the Mesquakie, attendance at government schools must be forced; not voluntary.^[31] Because the Mesquakie were always given the option of not sending their children to school, they were allowed to “maintain their savage and lazy character”.^[32] The Mesquakie were not compelled to attend religious and/or federal governmental schools in the past due to the fact that the land these schools were on was owned by the Mesquakie in the trust of the State of Iowa. Lesser and other prominent individuals in the Tama area began to consider lobbying the Federal Government to take control of a portion of this land. If the federal authorities had jurisdiction over land which contained an Indian School, then these authorities could also legally use coercive force on this land to ensure the attendance and compliance of Mesquakie children. Because efforts at Indian education were rooted in the Federal Government through its representatives of the Indian Agent and School Superintendent, leading advocates of Indian education believed that federal jurisdiction over a portion of land in or contiguous to the Mesquakie settlement was imperative.^[33]

In 1894, those who believed in forced Indian assimilation and the need to create direct federal jurisdiction over a Mesquakie school created a formal lobbying organization, The Indian Rights Association of Iowa. According to the papers of organization, the Indian Rights Association of Iowa was organized to “take such steps as are necessary to determine and fix, as far as possible, the legal status of the Indians and to promote education and civilization among them.”^[34] The first step to this assimilation goal was to obtain sole federal jurisdiction over an Indian school for the Mesquakie. In 1896, these lobbying efforts paid off when Mesquakie land was transferred from the Governor of Iowa to the Secretary of the Interior by Congressional enactment.^[35]

As the Indian Rights Association of Iowa sent delegates to Washington to lobby for direct federal jurisdiction, the group also put forth great effort to secure an appropriation from Congress for the establishment of a boarding school. Dr. Fellows of Fayette, Iowa and Judge Caldwell of Toledo, Iowa met with Senator Allison at his home in Dubuque in the fall of 1895. Senator Allison proved to be enthusiastic about the Indian school plans. As a result, Allison sponsored the activities of a delegation from the Indian Rights Association of Iowa in Washington D. C. With Allison’s support the Rights Association received a Congressional appropriation of \$35,000.00 to construct and administer a Mesquakie Indian School. Plans were immediately made for the school with a view for

“providing a home for the farmer and family, teacher and family, and other employees, besides giving ample room for school industrial purposes. I think it very desirable that a home be established on the Indian land so that it will be a practical illustration every day to the Indians. The school will be sufficiently large for all the children of school age that would be liable to attend at one time. It could be utilized as a small boarding school.”^[36]

These plans for constructing an Industrial School were implemented in 1897, and culminated with the completion of the Dormitory building on December 31, 1897. The United States awarded the contract to build the Industrial School to the firm of Banzhof & Reimer of Marshalltown, Iowa for \$19,130.00.^[37] The school was to be located “^[38]on a tract of land comprising 70 acres, lying immediately west of and adjoining the corporation of the city of Toledo, in Tama County, Iowa.” The main building, the Dormitory, was comprised of a basement and two stories.^[39] The basement housed a boiler room, a coal room, a cellar, and two playrooms measuring 28 feet by 37 feet. The first floor served as the primary location for daily classes and instruction. In addition to two school rooms devoted to instruction, the first floor also contained separate boys and girls’ sitting rooms, boys and girls’ bathrooms, six employee rooms, a kitchen, and the dining room. The primary function of the second floor was to provide students with dorm accommodations. There were two dormitory rooms, each measuring 28 feet by 55 feet, which housed the female and male students separately.^[40] Superintendent George

Nellis felt confident that this Dormitory building could comfortably house approximately 110 students. Nellis also reasoned that given the modern architecture and prominent stature of the Dormitory building, the Mesquakie would be so impressed that they would wholeheartedly send their children to the school and the maximum number of students would soon be reached.^[41]

Superintendent Nellis and Indian Agent Horace Rebok oversaw the construction of three additional buildings which were in close proximity to the Dormitory building which were completed on September 15, 1898. A barn, a laundry, and a shop/warehouse building were erected to emphasize and accommodate the industrial education the Mesquakie children were expected to learn. Each of these buildings were two stories in height and each was segregated by gender. The barn and the shop/warehouse building were to be solely for male pupils.^[42] Assisting in the management of cultivation, learning the skills of a carpenter, and understanding how to fix shoes were viewed as critical skills needed for male Mesquakie to survive in a white world.^[43] The laundry building was to be the sole domain of female students.^[44] Here, Mesquakie girls would wash and iron clothing on the first floor, and then be promoted to the second floor to learn the art of sewing. Nellis and Rebok made further requests for a hog building, a poultry barn, and an ice house which were never completed. However, the incorporation of the three buildings discussed above not only served as a crucial source of practical education for Mesquakie children, but also served as sites of crucial labor which would enable the Industrial School to run at minimal cost.^[45] With the construction of the dormitory, the barn, the laundry, and the shop/warehouse building completed, the date was set for the opening of the Industrial School: September 1, 1898.

Reaction to the Industrial School

Despite their elaborate plans and the expensive construction which took place over a two year period, The Indian Rights Association of Iowa, the School Superintendent, and the Indian Agent, Horace Rebok were forced to confront the fact that the Mesquakie did not want the school and had no intention of attending the school. In a Department of Interior letter dated January 3, 1895, the ordered reaction to Mesquakie resistance was made clear:

“This Office has now under preparation plans for a day school building at your agency. It now appears from your letter that the Indians object to this school building. The Indians have nothing to say in the matter. You will therefore make the situation known to the Indians and report at once to this Office.”^[46]

To combat Mesquaki resistance, Indian Agent Horace M. Rebok first solicited the services of a “fellow” Native American to talk to the Mesquakie about the benefits of a white education. Rebok addressed a letter to Dr. A.L. Riggs principal of the Santee Training School in Nebraska asking for the

“services of an Indian to come to Toledo to deliver a public address. What we need at this place is a stirring up of local sentiment in favor of the Indian, and I know of no better means than to bring an Indian here who is able to tell our people what education and civilization can do for the Indian. Have you any one at your agency whom you could send? What would be the cost of securing him, and when could he come?”^[47]

A.L. Riggs, Superintendent of the Santee Training School responded by suggesting that Rebok contact Dr. Charles A. Eastman and request that Eastman travel to Toledo, Iowa to talk to both the surrounding white community and the Mesquakie about the benefits of white education. Eastman was a former student of Santee who, according to Riggs, exemplified the benefits of white education. Eastman “went through college at Dartmouth and studied medicine at Boston.”^[48] Rebok quickly wrote to Eastman in Minnesota and arranged for Eastman to speak on Saturday, June 1, 1895 to the communities of Tama, Toledo and Montour and also to the Mesquakie for a fee of fifty dollars.^[49] Eastman faithfully performed his duties at the lecturn, but to Agent Rebok’s dismay, the Mesquakie did not appear to be affected by Eastman’s rousing speech on the benefits of “civilization”. In fact, “only a handful” of Mesquakie appeared at the designated time to hear a “fellow Indian” speak about the advantages of the Industrial School.^[50]

Agent Horace Rebok was not one to be discouraged and decided that if Eastman’s persuasion would not convince the Mesquakies, then direct psychological and physical coercion may prove more effective. Immediately after the departure of Dr. Eastman, Agent Rebok and the Industrial School Superintendent George Nellis continued to make daily and almost nightly visits to Mesquakie homes. Accompanied by three police officers, Rebok and Nellis forced Mesquakie families to listen to his arguments about the benefits of white education. Rebok emphasized to the Mesquakie that should parents refuse to send their children to the school, they would cause irreparable damage to their children’s futures. Although, Rebok and Nellis were persistent in these forced visits, there was no significant change in Mesquakie attitude. The Mesquakie attitudes to these visits reportedly ranged from cold politeness to visible anger.^[51]

After examining these two failed attempts at converting the Mesquakie into willing participants in “civilizations”, Rebok concluded that the problem with these prior actions had been a focus on the Mesquakie generally. Rebok, upon reflection, assumed that “all Mesquakie follow the orders of their chief”, and therefore sought to apply psychological pressure on the Mesquakie Chief and his Interpreter.^[52] Agent Rebok first

arranged to have a closed council meeting with Superintendent Nellis, Chief Push-E-To-Neke-Qua (political head of the Mesquakie), Chief Push-E-To-Neke-Qua's Interpreter, and three policemen.^[53] According to Nellis, "no other Indians had been invited for the reason that it was thought the key to the situation lay mainly in the attitude of the chief, and that he might be more easily influenced if unaccompanied by others."^[54] Agent Rebok stood and spoke directly to Chief Push-E-To-Neke-Qua. Rebok emphasized the "deplorable conditions" within the Mesquakie community, especially among the children and pointed out "the benefits derived from attendance at the school."^[55] Rebok ended his speech by stating that Chief Push-E-To-Neke-Qua held great responsibility for Mesquakie welfare and as a result that "it was his duty to have the children of the tribe put into the school, and that to do otherwise would be a crime against his people."^[56] According to Nellis, Chief Push-E-To-Neke-Qua listened in silence until Rebok concluded, then "quickly rising and advancing into the center of the room, his eyes flashing and his voice trembling with emotion"^[57] said:

"My friend, the Musquakies have always been friends to the white people, but they will not accept your school. You may come and kill us, but we will not give you our children. I will say no more."^[58]

Rebok refused to end his pursuit of Chief Push-E-To-Neke-Qua and his Interpreter with this failed council. Rebok was soon rewarded for his persistence. The morning after the disappointing council meeting, Agent Rebok met with the Interpreter and "informed him that if he wished to retain his official position he must not only cease all opposition to the school, but work earnestly in its favor."^[59] Reportedly, the Interpreter "from that day on has been a loyal and efficient helper."^[60] Although these are the only words/actions of Rebok that are recorded within existent records, Superintendent Nellis mentions that the Interpreter was held at the Agent's residence "nearly all day".^[61] What happened during these lengthy hours is not known. Despite this, one can conclude that if this Interpreter was not persuaded to support the school through forced day and night visits and through veiled threats at the failed council meeting, something other than Rebok's recorded verbal persuasion may have taken place. With the capitulation of the Interpreter, Rebok saw an opportunity to encourage Chief Push-E-To-Neke-Qua to follow suit. Unlike the Interpreter, Rebok was not able to convince the Chief of the value of "civilization" in one day. After three to four months of "constant work" however, Rebok was pleased to announce in a letter that:

"on the 14th of December, the chief in open council accepted the school and granted permission to the people to send their children, and the same day sent his own boy. He some time later sent a daughter and four grandchildren."^[62]

Unfortunately, historical records do not indicate what actions constituted the “constant work” of Rebok. Recorded reactions from other Mesquakie indicate that many felt as though Chief Push- E-To-Neke-Qua was a “money chief and thought that he had been paid off”.^[63] Regardless of the Chief’s motivations to change his position on the Industrial School, Agent Rebok achieved his goal of “convincing” two leaders of the Mesquakie that the Industrial School was beneficial and should be attended by the Mesquakie children. Rebok now felt confident that “the rest of the Mesquakie will follow in short order.”^[64]

The vast majority of the Mesquakie did not follow Rebok’s plan. Although the Industrial school slowly obtained students and reached a high attendance level of 50 pupils in 1899, historical documents indicate that generally the Mesquakie remained strongly opposed to the Industrial School. Superintendent George Nellis even admits at the end of his 1899 Report to the Indian Rights Association of Iowa that even though “parents and friends of the approximately 50 students make frequent visits to the school and on closing day over one hundred of them took dinner with the children in the grove, the great majority of these people however are bitterly opposed to education, and it will be some time before the school can be filled by voluntary attendance.”^[65] Nellis, within this same report, also describes an incident which more clearly illustrates Mesquakie distrust and distaste for the Industrial School. According to Nellis, “two girls, one a daughter of the head chief, became very unruly and were causing their parents a great deal of annoyance.”^[66] As a result, the head chief reported the matter to Agent Rebok and asked that the girls be apprehended by the police and punished. In response, Rebok took custody of the two girls and enrolled them as students in the Industrial School. The retention of the girls at the school caused a great uproar among the Mesquakie and the head chief and his wife demanded their immediate release. According to Nellis, the head chief and his wife indicated that “they were perfectly willing that the girls be put into jail for any time he (Agent Rebok) might deem best, but that under no circumstances would they consent to their remaining in the school.”^[67] Despite the parents’ pleas, Rebok refused to release the girls. Shortly thereafter, the girls ran away from the school and failed to be apprehended.^[68] This vignette, which describes parents’ pleas to place their daughter into jail for an indeterminate amount of time as a viable alternative to placing their child as a student at the Industrial School, conveys the ill-will the Mesquakie people held for the Industrial School. Fortunately, the letters, correspondence, and reports generated by Superintendent Nellis and Agent Rebok are not the only sources which record the actions taken by the administrators of the Industrial School and the actions of the Mesquakie.

A series of legal cases filed by individual Mesquakie between 1899 and 1901 reveal circumstances at the Industrial School that Nellis and Rebok fail to mention within their accounts.

Education Litigation and the Attainment of Citizenship

Given the past history of failed Mesquakie attempts to attain legal autonomy in the traditional legal realms of treaty identity and land title, it would be easy to assume that success in this area would definitely not occur in a forced education context; especially given the protracted efforts of men like Nellis and Rebok. As counter-intuitive as it may appear however, the harsh assimilationist efforts of Nellis and Rebok created individual situations which encouraged the Federal District Court for the Northern District of Iowa to announce that the Mesquakie people possessed legal autonomy and citizenship rights over education decisions. The Mesquakie legal presentation of concrete factual situations and faces of individuals who were directly affected by those situations proved to be far superior to past claims of abstract tribal legal rights to contractual identity and land title. The Mesquakie won the fight for citizenship in the realm of education for all Mesquakie people by arguing not on behalf of the Mesquakie as a whole (as with the Treaty of 1842 and the Land Purchase of 1856), but as discrete individuals. This interesting route to citizenship recognition bears further analysis.^[69] Three distinct cases filed by the Mesquakie will be examined in depth. Each of these cases involves a Mesquakie who was injured in some way by the assimilationist policies of the administrators of the Industrial School. Each of these cases also includes legal recognition of Mesquakie autonomy in the realm of educational choice. Two of these cases involve attempts to quiet Mesquakie leaders who voiced opposition to the Industrial School. The remaining case involves actual students and the rights of their Mesquakie parents. Examined together, these three cases mark the first enunciation of Mesquakie citizenship on a local, practical level. These cases also demonstrate the unique way the Mesquakie reached this acknowledgement.

Silencing Prominent Mesquakie Members' Opposition to the Industrial School

Agent Rebok thought that he would silence Ma-Ka-Ta-Wah-Qua-Twa by causing his arrest on manufactured charges of fraud. What Rebok did not count on was Ma-Ka-Ta-Wah-Qua-Twa obtaining legal representation and suing Rebok for his malicious prosecution. As the Industrial School was being constructed and Dr. Charles Eastman was talking to the Mesquakie about the advantages of “white civilization”, Ma-Ka-Ta-Wah-Qua-Twa was one of the most vocal opponents of the Industrial School. Ma-Ka-Ta-Wah-Qua-Twa was a prominent member of the Mesquakie tribe and is recorded as a prominent member of Mesquakie tribal council meetings.^[70] Ma-Ka-Ta-Wah-Qua-Twa was so influential in Mesquakie policy that a photograph of his winter

home was included within Superintendent Nellis' yearly report for 1898.^[71] The only other photograph that Nellis included in his yearly reports was a depiction of Head Chief Push-E- To-Neke-Qua. Agent Rebok mentions Mak-Ka-Ta-Wah-Qua-Twa in his correspondence as "one whom I would like to impress strongly with the value of civilization".^[72] Ma-Ka-Ta-Wah-Qua- Twa would feel the Rebok's "impression" in the fall of 1897.

As the opening of the school on September 1, 1897 neared, Ma-Ka-Ta-Wah-Qua-Twa remained a strong vocal opponent of Agent Rebok's education policies. Ma-Ka-Ta-Wah-Qua- Twa was concerned not only for the well-being of the Mesquakie tribe, but also for his son who could potentially be sent to the School.^[73] Agent Rebok decided to cease any attempt to persuade Ma-Ka-Ta-Wah-Qua-Twa through verbal persuasion and instead effected his arrest and imprisonment. Shortly after September 1, 1897, Agent Rebok called on local authorities to arrest Ma-Ka-Ta-Wah-Qua-Twa for allegedly taking twice the annuity amount he was owed which "constituted fraud on the United States".^[74] Ma-Ka-Ta-Wah-Qua-Twa was immediately arrested was indicted by the grand jury of the Federal District Court at Fort Dodge, Iowa. During Ma-Ka- Ta-Wah-Qua-Twa's trial, he was greatly prejudiced because he could not read or speak English, and Agent Rebok was accepted by the court as an official Mesquakie translator. Ma-Ka-Ta- Wah-Qua-Twa alleged in 1901 that unbeknownst to him, Rebok had instructed the Court that Ma-Ka-Ta-Wah-Qua-Twa did not wish to be represented by legal counsel; that Ma-Ka-Ta-Wah- Qua-Twa desired to represent himself. Further, Agent Rebok informed the Court that Ma-Ka-Ta-Wah-Qua-Twa wished to plead guilty to all charges of fraud; despite Ma-Ka-Ta-Wah-Qua-Twa's ignorance of this. As a result of Agent Rebok's misrepresentations, Ma-Ka-Ta-Wah-Qua-Twa was found guilty and was sentenced "by the Court to imprisonment in the penitentiary at Anamosa for the period of two years."^[75]

When Ma-Ka-Ta-Wah-Qua-Twa was released from prison in 1899, he quickly retained J.W. Lamb and William G. Clark as legal counsel and sued Agent Rebok for "malicious prosecution".^[76] Although the case did not end favorably for Ma-Ka-Ta-Wah-Qua-Twa, the Court's dicta did state that the Mesquakie did have legal autonomy to voice dissent concerning federal education policies. Through legal counsel, Ma-Ka-Ta-Wah-Qua-Twa presented his version of the fraud trial. Not only did Ma-Ka-Ta-Wah-Qua-Twa present oral evidence through his attorney, but he also presented documents which clearly demonstrated that he did not take more than his rightful share of the prescribed annuity payment.^[77] In response to this evidence, Agent Rebok's counsel did not offer any competing factual evidence. Instead, Rebok claimed that the case should be immediately dismissed because it violated the applicable statute of limitations, by one week.^[78] District Judge Shiras, speaking for the Federal District Court for the Northern District of Iowa, stated within his decision that "Agent

Rebok did violate the law”.^[79] Shiras also stated that “as a Mesquakie, Ma-Ka-Ta-Wah-Qua-Twa does have the autonomy to speak out against federal policy”.^[80] However, Shiras dismissed the case due to the fact that

“the petition in this case clearly shows that the arrest of the plaintiff and all acts done by the defendant therewith took place more than two years before the present action was begun, and therefore the bar of the statute is complete. Upon this ground, therefore,...the suit is dismissed.”^[81]

The significance of Ma-Ka-Ta-Wah-Qua-Twa v. Rebok is not in its final decision in favor of Rebok. Instead it should be focused on because it is one of the first cases where a federal judge states that the Mesquakie have autonomy to voice divergent opinions in the realm of education. Judge Shiras’ dicta concerning Mesquakie autonomy is solidified and broadened in other cases.

Rebok found himself in court again in 1900. The primary issue in this case not only involved opposition to the Industrial School by a prominent Mesquakie, but also centered around the issue of whether the Mesquakie possessed the autonomy to practice traditional medical beliefs. The individual suing Rebok was a Mesquakie medicine man named Y-Ta-Tah-Wah who alleged that Rebok falsely arrested and imprisoned him for “practicing medicine without a license”.^[82] Y-Ta-Tah-Wah claimed that the real reason Rebok arrested him was due to Y-Ta-Tah-Wah’s open opposition to the methods of the Industrial School doctor, Dr. Samuel Thompson of Toledo, Iowa.^[83] Y-Ta-Tah-Wah’s legal counsel claimed that Agent Rebok was not interested in upholding the state of Iowa’s professional standards, but instead used medical licensing laws as a cover to quieting Y-Ta-Tah-Wah’s opposition to the Industrial School and to erode the “savage” medical practices of the Mesquakie.^[84]

The genesis of this lawsuit began in 1898 when there was heated debate between the Mesquakie and Agent Rebok over how to properly treat those infected with smallpox. Y-Ta-Tah-Wah, as a leading Mesquakie medicine man, strongly advocated that traditional tribal methods be used to alleviate the suffering of smallpox victims and prevent further infection. Y-Ta-Tah-Wah encouraged the isolation of those afflicted with smallpox and found herbal remedies and incantations to be highly beneficial to ease suffering.^[85] Traditionally, those Mesquakie who fell ill with disease generally separated themselves from the rest of the community to heal. Another significant element in the Mesquakie understanding of health was the use of sacred objects to alleviate suffering. Although no replicas or drawings exist to provide a visual depiction of these objects, written accounts indicated that these special tokens took the form of vast bowls and vase-like, cylindrical structures.^[86] These sacred items were housed in the Head Chief’s residence and were deemed to be directly connected with the

Great Spirit.^[87] The concepts of separation of the sick, use of herbal remedies, and incorporation of sacred objects had traditionally characterized Mesquakie medical practice.

The Industrial School doctor, Samuel Thompson, advocated a more “civilized” protocol to curb small pox infection; a position that Agent Rebok strongly supported and sought to enforce upon the Mesquakie. Thompson’s “civilized” methodology included gathering all of the sick into one place and utilizing fumigants and acid to rid both human bodies and homes of the small pox contamination. Clearly, the concept of placing all of those infected with disease in one location was at odds with traditional Mesquakie practice. Despite this difference, Thompson and Rebok sought Mesquakie consent to construct a small hospital as a central receptacle for those who were ill. Despite several attempts by Thompson and Rebok to “rationalize about the benefits of a sick house” with the Mesquakie, Mesquakie opposition to plans for a hospital remained strong.^[88] Rebok, never one to give up on assimilationist policies, then sought to place physical constraints on the Mesquakie to secure their consent. During the winter of 1899, Rebok established a strict quarantine of the Settlement. According to an observer, “the roads were patrolled by whitemen and any Mesquaki trying to get out was stopped.”^[89] Rebok believed that if he could prevent the Mesquakie from traveling to their traditional winter camps, the Settlement community would re-think its opposition to a hospital. Despite the road blocks and armed police officers, the Mesquakie refused to assent to a “sick building”. A building was erected under protest in late 1899. However, “only a few Mesquakie were persuaded to even go into the building.”^[90] Thompson and Rebok’s plans for a central hospital failed due to Mesquakie resistance.

The other component of Thompson’s health care plan, fumigation and acid treatment, was implemented; albeit with force. The Mesquakie Settlement experienced a smallpox scare in 1899 and as a result, Thompson sought to fumigate all Mesquakie residences and submerge all Mesquakie residents into a solution of corrosive sublimate acid to eliminate the small pox contagion. Recognizing from past experience that Mesquakie resistance would probably not be overcome by a few choice words, Rebok utilized “an army unit to force the Mesquakie to submit to disinfection.”^[91] Unnamed governmental officials proceeded to disinfect the Settlement through fumigation. As the fumigation process occurred, traditional sacred medicinal objects were destroyed and obliterated. Those objects that remained were destroyed by the Mesquakie due to the harmful effects that the gas was said to have on the spiritual character of these vessels.^[92] Inanimate spiritual items were not the only focus of the Rebok’s disinfection. The Mesquakie people and their dogs were forcibly submerged in a solution of corrosive sublimate acid for disinfection. The process began with the Mesquakie being led into tents

to be washed in the acid. Several Mesquakie attempted to escape the submerging process. Tribal historian, Jonathan Lantz Buffalo states that,

“one Mesquakie, Black Sunfish, ran away and had to be caught by the Indian police. One medicine man did not want to be submerged and claimed that he did not have smallpox. After walking away, an Indian officer was sent after him.”^[93]

Mesquakie dogs were also rounded up and “thoroughly submerged in a solution of corrosive sublimate, almost strong enough to take their hair off”.^[94]

During this period of conflict between white and Mesquakie medicinal practices, Y-Ta-Tah-Wah became the most vocal opponent of Dr. Thompson and Agent Rebok. Agent Rebok sought to quiet Y-Ta-Tah-Wah just as he had silenced Ma-Ka-Ta-Wah-Qua-Twa, through arrest and imprisonment. According to Y-Ta-Tah-Wah’s legal petition, Agent Rebok instituted charges of “practicing medicine without having obtained a license”^[95]. These charges quickly led to a brief trial, the result of which placed Y-Ta-Tah-Wah in prison for an undisclosed amount of time.^[96] While incarcerated, Y-Ta-Tah-Wah retained legal counsel and filed a lawsuit against Rebok for false arrest and imprisonment. Y-Ta-Tah-Wah argued that his role and duty of “medicine man” within the Mesquakie tribe should not be subjected to laws governing medical practice outside of the Mesquakie community. The basis of Y-Ta-Tah-Wah’s claim was that as a Mesquakie, he had the autonomy and right to practice Mesquakie culture; including traditional medicinal practices. Rebok’s defense to this claim was based on the assertion that “tribal Indians are not deemed to be citizens in such sense as to enable them to bring suit in federal court.”^[97] Rebok’s defense also claimed that the Mesquakie had no autonomy to practice traditional medicine. Instead, the Mesquakie must be governed by Iowa State statutes which mandate requirements for “civilized medicine”.^[98] Upon considering these arguments, District Judge Shiras found for the plaintiff, Y-Ta-Tah-Wah, on all counts. Specifically, Shiras affirmed the status of the Mesquakie as citizens by stating that, “the tribal Indian has always been recognized as a proper suitor before the federal tribunals.”^[99] Shiras then asserted that Rebok, by “undertaking to subject the Indians to the provisions of the state laws regulating the practice of medicine therein, committed a trespass on his person (Y-Ta-Tah-Wah).”^[100] Shiras ultimately held that to police the traditional practice of Mesquaki medicine by laws intended to regulate white medicine was a trespass not only on the actions of specific medicine men, but also an illegal intrusion into Mesquakie autonomy.^[101] This legal recognition of tribal autonomy in the realm of medicine required that the Northern District Court accede that the Mesquakie possessed citizenship rights.

Deciding Who is the Proper Guardian for Mesquakie Children

The final case involve disputes between Indian Agents and the parents of Mesquakie children forced to attend the Industrial School. Whereas the cases of Ma-Ka-Ta-Wah-Qua-Twa and Y-Ta-Tah-Wah focused on the right to voice opposition to school authorities and the viability of Mesquakie autonomy in the realm of traditional medicine, the case of James Peters provides judicial recognition of Mesquakie autonomy in the realm of parenthood and domestic decision-making. The final result of these remaining cases not only signaled a victory for legal recognition of Mesquakie citizenship, but also sounded a death knell for the Industrial School.

In the spring of 1901, William G. Malin replaced Horace M. Rebok as Indian Agent for the Mesquakie Settlement. Although the name and person of the agent may have changed, the tactics used to enforce assimilationist policies and quell dissent persisted. One of Malin's first official acts as Indian agent was to obtain guardianship rights over 15 to 20 Mesquakie children who were attending the Industrial School. Malin expressed a desire to maintain attendance through replacing Mesquakie parental rights and authority with his own. By obtaining legal guardianship of approximately 20 Mesquakie children, Malin possessed the legal right to decide whether or not the children should be retained at the school. The District Court of Tama County, Iowa granted Malin's guardianship position and appointed him legal guardian over approximately 20 Mesquakie children; thereby nullifying any legal rights the natural parents possessed concerning their children's welfare.^[102]

Although the Tama Court granted Malin the legal authority to retain these Mesquakie children at the School, this authority did not prevent two of these children from running away to their natural families. One night in the late spring of 1901, two Mesquakie children "ran away from the school, going to their homes"^[103] within the Settlement. The natural mother of one of the children reportedly feared that her child would be "recaptured and forcibly returned to the school."^[104] To prevent this from occurring, the mother was determined to take her daughter, Ma-sqa-see, away from the Settlement and from Agent Malin. In order to effect her daughter's escape, the unnamed Mesquakie mother made plans with a fellow Mesquakie, James Peters. Peters was to drive a wagon which would hide the Mesquakie mother and her daughter. Peters was also to serve as an interpreter for the parent and child.^[105] The trio was successful in transporting Ma-sqa-see to Poweshiek county in western Iowa. Word spread rapidly throughout the Mesquakie Settlement about the sudden departure of Peters, the mother, and Ma-sqa-see. One pair of ears that was listening to this news belonged to William Malin. Upon Peters return to the Mesquakie Settlement, he was immediately arrested by Malin and "charged with the crime of enticing away a child under 15 years from the Indian reservation and keeping her in hiding."^[106] Peters was ultimately found to be not guilty of Malin's charges; however Peters had charges of his

own to pursue. Peters was imprisoned within the Tama county jail for nine days to assure his presence at trial. When Peters stood trial for “enticing”, the presiding judge immediately dismissed all charges against Peters as “unfounded”.^[107] Peters then filed charges against Agent Malin for false imprisonment. These charges and their factual grounding would be the basis for the District Court to recognize Mesquakie parental autonomy and citizenship rights.

The Peters case, similar to the Y-Ta-Tah-Wah case, centered on the issue of autonomy and citizenship. Peters claimed that his arrest at the hands of Malin was unjustified and illegal. Specifically, Peters claimed that despite the Tama Court’s pronouncement of Malin’s guardianship rights, Malin could not and did not have parental rights over Ma-sqa-see. Only her blood mother possessed these parental, guardianship rights. Therefore, Peters was merely acting in accordance with Ma-sqa-see’s true guardian, her mother.^[108] Malin countered Peters argument by stating that he “acted in harmony with the desire and authority of the government” in obtaining legal guardianship of Ma-sqa-see. Further, Malin insisted that all of his actions in this case were “in the best interests of said child, as guardian of her person, and as the agent of the tribe, representing the United States government.”^[109] The District Court was forced to decide whether the welfare Mesquakie children should be subject to the autonomous decisions of their natural parents or placed in control of a federal Indian agent. The Court decided in favor of autonomy and citizenship. The Court announced that the Mesquakie Indians “are within the plane of the ordinary laws of the state regulating the domestic affairs of its citizens.”^[110] Because the Mesquakie were held to possess the same citizenship rights within the domestic realm as other Iowa citizens, guardianship of Ma-sqa-see rightfully belonged to her mother. The Court went on to state that if Malin’s position was upheld,

“inextricable confusion would result in the administration of the domestic affairs of the Indians. It is apparent then that their tribal condition will be speedily broken up, not in pursuance of the acts of the national government. Thus, removing the children from the immediate control of their parents and relatives, and removing them from the reservation where their families resided, was an act without law to support it, and conferred upon the defendant (Malin) no authority whatever over the persons of the Indian children.”^[111]

Through these brief pronouncements, the District Court announced that the Mesquakie enjoyed citizenship rights in the realm of parenting and child welfare.

Conclusion

Despite Mesquakie continual assertion of self-identity, throughout the 19th century the United States continued to view the Mesquakie as an undifferentiated grouping of Indians who required special supervision as

wards of the state. During the 1800's, the Mesquakies entered into contracts and purchased land; actions that characterize legally recognized citizens. Despite these autonomous acts, the United States did not formally recognize the Mesquakie as an independent body. Instead, the United States haphazardly grouped the Mesquakie Nation under the unrelated tribes of the Sac and Fox, and refused to acknowledge Mesquakie- held land titles. Although the Mesquakie tribe could not gain formal recognition of their legal status through use of contracts or land ownership, an unexpected route to this recognition emerged in the 1890's. In 1894, The Indian Rights Association of Iowa was formed based on the common belief of its members that drastic assimilation of the Mesquakie could be achieved through education. As a result, The Indian Training School of Toledo, Iowa was established in 1896. The harsh policies employed by the Training School set into motion a series of lawsuits. These legal actions were initiated by individual Mesquakies against the local Indian Agent and white Superintendent of the School. Unlike prior group efforts of self-identification in the areas of contract law and property titles, individual Mesquakies were successful in defending their group autonomy and independent legal status in the realm of education. The United States continued to view the Mesquakie as sources of “parental concern” when agreements or land ownership was at issue. However, after the Training School litigation the Mesquakie were viewed as authoritative “parents” when domestic issues such as education arose. In the area of schooling, the United States recognized the Mesquakie as possessors of an independent and autonomous legal identity and power which could not be circumvented by outsiders.

This examination is significant because it outlines the abstract and complex forces which produced an autonomous legal identity for a marginalized ethnic/racial group. While specific constitutional amendments or legislative pronouncements may generally address broad concepts of citizenship and legal authority, they do not reveal the actual route followed by disadvantaged groups to achieve the promise of this authority.^[112] An example of a broad enunciation of citizenship can be found within the Fourteenth Amendment to the United States Constitution. This amendment states, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside.” Although this pronouncement appears quite clear, its passage in 1868 did not instantaneously change the local recognition of certain groups as citizens/non-citizens. Although this amendment technically applies to the Mesquakie, the Mesquakie tribe was not recognized as a distinct group and was prohibited from purchasing land after 1868; evidence that a legislative pronouncement does not necessarily lead to tangible modifications of status on a local level. Another legislative enactment which technically accorded certain Native Americans citizenship status was the General Allotment Act of 1887, otherwise known as the Dawes Severalty Act.^[113] The purpose of this

Act was to allot portions of reservation land to individual Indians in order to promote the “virtues” of private land ownership.^[114] Titles to the allotted land were to remain under the trust of the United States for twenty-five years. After this time, the land title would be conveyed to the Indian allottee in fee simple; free of all encumbrances. A further provision of the Act announced that upon receiving allotments, the Indian allottees became United States citizens.^[115] The language of the Dawes Severalty Act clearly enunciates a policy of private land ownership and citizenship. However, this legislative promise was not realized by Native Americans. The original amounts of land to be parceled out to residents of reservations were cut in half by a subsequent legislative act.^[116] Further, because the title of the allotted land was held by the United States in trust for the Indian allottees, the United States had the power to lease the allotted land or dictate its sale to others. The United States did utilize this power which caused a dramatic decrease in the amount of Native American held land; from 138 million acres in 1887 to 48 million acres by 1934.^[117] Finally, the Dawes Act contained no specific criteria as to what quality of land the allottees should receive. As a result, approximately 20 million acres of arid land was distributed for Indians to cultivate.^[118] Although the Mesquakie were not directly affected by the Dawes Act due to their purchase of the land they resided on^[119], this 1887 enactment further illustrates the need to examine the workings of citizenship beyond the confines of legislative and other legal pronouncements.

The forces which actually contributed to the formal acknowledgment of Mesquakie legal autonomy are not straight forward or obvious. The very forces which were intended to effect complete assimilation, actually presented an opportunity for the Mesquakie to realize formal acknowledgment of their identity. The sheer power of assimilationist efforts to eradicate unique Mesquakie identity actually provided the factual scenarios that individual Mesquakies could utilize to fight for realization of an autonomous legal identity.

Another point of significance is the fact that Mesquakie legal recognition was achieved via individual Mesquakie legal action and not the Mesquakie Nation acting as a unit. When the Mesquakies protested the lack of legal recognition they, as a group, received in treaties and land agreements, the formal legal authorities wholly ignored these protests. The Mesquakies were haphazardly combined with other Indian groups and were viewed as inferior “wards of the state”. However, when individual Mesquakies brought claims of kidnapping and false imprisonment to the attention of legal authorities, these individual claims were taken quite seriously. These individual instances of abuse led to a formal recognition of Mesquakie autonomy. It appears that the route to successfully escaping broad legal marginalization, at least in this instance, is not to utilize broad groups and abstract legal principles as a battleground. Instead, a “David vs. Goliath” approach proved to be much more

effective. By presenting a single instance of kidnaping or false imprisonment to the legal authorities, the Mesquakie effectively presented very concrete, human suffering which the court found difficult to ignore; unlike arguments based on intangible legal principles. As a result, the legal authorities not only made pronouncements specifically tailored to the abuse presented before them, but also set the groundwork for the acknowledgment of general legal recognition of the Mesquakie.^[120]

Finally, this study is critical because it is the first to examine the recognition of Native American legal identity through the lens of education. The historical scholarship which has addressed Indian education during the late 19th century and early 20th century, has largely focused on the psychological pressures of Indian students and non-legal social implications of this education.^[121] These studies are imperative in that they provide an account of the actual experiences of students and instructors within the confines of Indian schools. Many of these studies also highlight possible origins for current problems faced today in Native American education programs. Although Indian schools should be studied in their own right, they can also be used as a historical site or locus for examining other issues affecting Native Americans. By using Indian schools in this way, unusual and rare insight can be gained into areas unexpectedly affected by education. If a historian only focused on the Mesquakie Indian Training School or solely emphasized group legal identity through the usual routes of treaties and land agreements, the effect that Mesquakie education had on emerging Mesquakie legal identity would be ignored. However, by using the Training School as a lens through which to view other issues, such as legal autonomy, a richer, more complex, and more realistic picture of Mesquakie identity comes to light. This unique perspective allows one to see the irony and truth in the following organizing purpose of the Indian Rights Association of Iowa:

“The purpose of this Association is to take such steps as are necessary to determine and fix, as far as possible, the legal status of the Indians and to promote education and civilization among them.”

– Horace M. Rebok, U.S. Indian Agent to the Mesquakie of Iowa and organizer of the Indian Rights Association of Iowa, 1895

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- 25 U.S.C.A. section 331 (1887), Dawes Severalty Act

- [1] Examples of historical studies focused on citizenship include Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830-1934" in The American Historical Review, Volume 103, Issue 5 (December, 1998), 1440-1474, Linda K. Kerber, No Constitutional Right To Be Ladies: Women and the Obligations of Citizenship (New York: Hill and Wang, 1998), and David M. Potter, History and American Society: Essays of David M. Potter (New York: Oxford University Press, 1973).
- [2] Nancy F. Cott, "Marriage and Women's Citizenship in the United States, 1830-1934" in The American Historical Review, Volume 103, Issue 5 (December, 1998), 1440-1474, 1440.
- [3] Two examples of this scholarship include, Eric Foner, A Short History of Reconstruction, 1863-1877 (New York: Harper & Row Publishers, 1990) (emphasizes the significance of 1868 as the point of citizenship for African-Americans) and Mary Beth Norton, David M. Katzman, and Paul D. Escott, et al., A People & A Nation: A History of the United States, Volume II: Since 1865, Third Edition (Boston: Houghton Mifflin Company, 1990) (emphasizes 1868 as the year of nearly universal citizenship within an undergraduate textbook).
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- [6] The particular group of Native Americans focused on within this paper have been referred to by various names. The most prevalent usages are "Mesquaki", "Mesquakie", and "Meskwaki". The spelling of "Mesquakie" will be utilized in this paper due to its frequent usage by this group during the time period under examination.
- [7] Royce Delbert Kurtz, "Economic and Political History of the Sauk and Mesquakie: 1780's-1845" (Ph.D. diss., University of Iowa, 1986), 17-29, 314-324.
- [8] George Young Bear, "History of the Sac and Fox Tribes, Tama, Iowa", Mesquakie Collection, Box BL65, Folder 11, State Historical Society of Iowa., Iowa City, Iowa.
- [9] See Appendix A for a depiction of Chief Poweshiek. This illustration is located in, Horace A. Rebok, "A History of the Indian Training School, Toledo, Iowa", Iowa Room, Grinnell College Archives, Grinnell, Iowa.
- [10] "Legal Status of Musquakies: From the Attorney General's Report to Governor Cummins", 1905, Mesquakie Collection, Box BL21, Folder 19, State Historical Society of Iowa, Iowa City, Iowa.
- [11] George Young Bear, "History of the Sac and Fox Tribes, Tama, Iowa", Mesquakie Collection, Box BL65, Folder 11, State Historical Society of Iowa, Iowa City, Iowa.
- [12] Johnathan Buffalo, Miscellaneous/Manuscript, Mesquakie Collection, Box MSS, Folder: Manuscript, State Historical Society of Iowa, Iowa City, Iowa.
- [13] "Legal Status of Musquakies: From the Attorney General's Report to Governor Cummins, 1905", Mesquakie Collection, Box BL 21, Folder 19, State Historical Society of Iowa, Iowa City, Iowa.
- [14] Johnathan Buffalo, Manuscript, Mesquakie Collection, Box Miscellaneous, Folder Manuscript, State Historical Society of Iowa, Iowa City, Iowa.
- [15] Johnathan Buffalo, Manuscript, Mesquakie Collection, Box Miscellaneous, Folder Manuscript, State Historical Society of Iowa, Iowa City, Iowa.
- [16] Johnathan Buffalo, Manuscript, Mesquakie Collection, Box Miscellaneous, Folder Manuscript, State Historical Society of Iowa, Iowa City, Iowa.
- [17] David Butler, Letter entitled "Old Indian Town" dated August 18, 1905, Mesquakie Collection, Box BL 21, Folder 19, State Historical Society of Iowa, Iowa City, Iowa.
- [18] See Appendix B which provides a chronological map of land purchases completed by the Mesquakie from 1857 to 1899. This depiction is reproduced, courtesy of the Iowa State Historical Society, Manuscript Division.
- [19] David Butler, Letter entitled "Old Indian Town" dated August 18, 1905, Mesquakie Collection, Box BL 21, Folder 19, State Historical Society of Iowa, Iowa City, Iowa.

- [20] “Legal Status of Musquakies: From the Attorney General’s Report to Governor Cummins, 1905”, Mesquakie Collection, Box BL 21, Folder 19, State Historical Society of Iowa, Iowa City, Iowa.
- [21] Johnathan Lantz Buffalo, “Mesquaki Oral History” dated April 10, 1977, Mesquakie Collection, Box BL21, Folder 3, State Historical Society of Iowa, Iowa City, Iowa.
- [22] Correspondence from Agents Street, Peters, and Malin to Department of Interior, Mesquakie Collection, Box BL 26, Folder 6, State Historical Society of Iowa, Iowa City, Iowa.
- [23] Johnathan Buffalo, “Manuscript”, Mesquakie Collection, Box Mss., Folder Manuscript, State Historical Society of Iowa, Iowa City, Iowa.
- [24] Jean Kaufmann, “History of the Mesquakie Indians, also known as the Sac and Fox of Iowa written by George Young Bear, As Told to Men”, Mesquakie Collection, Box BL 65, Folder 19, State Historical Society of Iowa, Iowa City, Iowa.
- [25] See Appendix C for a more current depiction of the Mesquakie Settlement circa 1977. You will notice that the map includes an index, indicated the names of all residents of the Settlement. The map and index are reproduced, courtesy of the State Historical Society of Iowa, Iowa City Iowa.
- [26] J.H. Hollen, Manuscript dated 1886, Mesquakie Collection, Box BL 21, Folder 10, State Historical Society of Iowa, Iowa City, Iowa.
- [27] Johnathan Buffalo, Manuscript, Mesquakie Collection, Box Mss., Folder Miscellaneous, State Historical Society of Iowa, Iowa City, Iowa.
- [28] Johnathan Buffalo, Manuscript, Mesquakie Collection, Box Mss., Folder Miscellaneous, State Historical Society of Iowa, Iowa City, Iowa.
- [29] Johnathan Buffalo, Manuscript, Mesquakie Collection, Box Mss., Folder Miscellaneous, State Historical Society of Iowa, Iowa City, Iowa.
- [30] Johnathan Buffalo, Manuscript, Mesquakie Collection, Box Mss., Folder Miscellaneous, State Historical Society of Iowa, Iowa City, Iowa.
- [31] Johnathan Buffalo, Manuscript, Mesquakie Collection, Box Mss., Folder Miscellaneous, State Historical Society of Iowa, Iowa City, Iowa.
- [32] See Appendix D which depicts “A Typical Group of Musquakies” and provides an image of the “savagery” in need of civilization through education. This photograph was taken sometime during 1894/1895. It was located within the Mesquakie Collection at Grinnell College and is reproduced with the courtesy of Grinnell College.
- [33] Johnathan Buffalo, Manuscript, Mesquakie Collection, Box Mss., Folder Manuscript, State Historical Society of Iowa, Iowa City, Iowa.
- [34] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.
- [35] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa. (According to Indian Agent Horace M. Rebok, prior to this legislation, Federal Indian Agents could exercise little or no authority over the Mesquakie. Rebok also mentions that the Mesquakie Indians were well aware of this fact and often took advantage of it.)
- [36] Horace M. Rebok, “A History of the Indian Training School, Tama, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.
- [37] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.
- [38] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.
- [39] See Appendix E which contains a contemporary photograph of the Dormitory as it looked upon its completion. This photograph was located within materials housed in the Iowa Room at Grinnell College in Grinnell, Iowa and is reproduced with courtesy given from Grinnell College.
- [40] All of the information about the Dormitory Building was located within Superintendent George Nellis’ Report to the Indian Rights Association of Iowa, dated 1898 and is located in the Iowa Room of Grinnell College in Grinnell, Iowa.
- [41] Superintendent’s Report written by Superintendent George Nellis, 1898. Located in the Iowa Room at Grinnell College in Grinnell, Iowa.

[42] See Appendix F for a photograph of male students enrolled at the Industrial School. This photograph was taken sometime during the school year 1899. It is significant because it is one of the only photographs I have found of Industrial School students. According to tribal historian Johnathan Lantz Buffalo, the Mesquakie did not wish to remember the Industrial School and destroyed any photographs of the school and its students. “Mesquaki Family” in Box BL 65, Folder 15, Mesquakie Collection, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa. This photograph was obtained within the Mesquakie Collection at the Grinnell College Archives, Grinnell, Iowa and is reproduced with the courtesy of that institution.

[43] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell Iowa.

[44] See Appendix G for a photograph of female students enrolled at the Industrial School. This photograph was taken sometime during the school year 1899. Just as the photograph of male students, this photograph is one of the only photographs I could locate which depict actual students of the Industrial School. This photograph was obtained within the Mesquakie Collection at the Grinnell College Archives, Grinnell, Iowa and is reproduced with courtesy from this institution.

[45] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[46] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[47] Horace M. Rebok, “History of Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[48] Mesquakie Letters located in Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[49] Mesquakie Letters located in Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[50] Mesquakie Letters located in Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[51] Johnathan Lantz Buffalo, “Mesquaki Family” in Box BL 65, Folder 15 located in the Mesquakie Collection, State Historical Society of Iowa, Iowa City, Iowa.

[52] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[53] See Appendix H to view a photograph of Head Chief Push-E-To-Neke-Qua, taken sometime during the 1890s. This photograph is reproduced by courtesy of the Grinnell Archives located in Grinnell College, Grinnell, Iowa.

[54] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[55] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[56] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[57] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[58] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[59] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[60] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[61] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[62] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

[63] Johnathan Lantz Buffalo, “Mesquaki Family” in Box BL 65, Folder 15, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.

[64] Horace M. Rebok, “A History of the Indian Training School, Toledo, Iowa”, Iowa Room, Grinnell College Archives, Grinnell, Iowa.

- [65] Superintendent's Report, 1899, Mesquakie Collection, Iowa Room, Grinnell College Archives, Grinnell, Iowa.
- [66] Superintendent's Report, 1899, Mesquakie Collection, Iowa Room, Grinnell College Archives, Grinnell, Iowa.
- [67] Superintendent's Report, 1899, Mesquakie Collection, Iowa Room, Grinnell College Archives, Grinnell, Iowa.
- [68] Superintendent's Report, 1899, Mesquakie Collection, Iowa Room, Grinnell College Archives, Grinnell, Iowa.
- [69] Examination of the route to Mesquakie citizenship rights within the realm of education is not only useful when examining Mesquakie history, but may also prove useful to those looking for successful strategies for citizenship recognition for various segments of the population in other areas.
- [70] Johnathan Lantz Buffalo, "Mesquaki Family", Box BL 65, Folder 15, Mesquakie Collection, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.
- [71] See Appendix I for a reproduction of the photograph of Ma-Ka-Ta-Wah-Qua-Twa's Winter Home. I have utilized the spelling incorporated within the case materials filed by Ma-Ka-Ta-Wah-Qua-Twa's attorney and not the spelling utilized by Superintendent Nellis. This photograph was obtained in the Mesquakie Collection located within the Grinnell College Archives in Grinnell, Iowa and is reproduced with the courtesy of this institution.
- [72] Horace M. Rebok, "A History of the Indian Training School, Toledo, Iowa" Iowa Room, Grinnell College Archives, Grinnell, Iowa.
- [73] Ma-Ka-Ta-Wah-Qua-Twa v. Rebok, 111 F. 12 (N.D. Iowa, October 24, 1901). The legal references to case law follow The Bluebook: A Uniform System of Citation, Fifteenth Edition.
- [74] Ma-Ka-Ta-Wah-Qua-Twa v. Rebok at 12.
- [75] Ma-Ka-Ta-Wah-Qua-Twa v. Rebok at 14.
- [76] Ma-Ka-Ta-Wah-Qua-Twa v. Rebok at 16.
- [77] Ma-Ka-Ta-Wah-Qua-Twa v. Rebok at 16.
- [78] Ma-Ka-Ta-Wah-Qua-Twa v. Rebok at 18. The applicable statute of limitations for this kind of fraud was two years.
- [79] Ma-Ka-Ta-Wah-Qua-Twa v. Rebok at 18.
- [80] Ma-Ka-Ta-Wah-Qua-Twa v. Rebok at 18.
- [81] Ma-Ka-Ta-Wah-Qua-Twa v. Rebok at 19.
- [82] Y-Ta-Tah-Wah v. Rebock, 105 F. 257 (N.D. Iowa, December 1, 1900).
- [83] Y-Ta-Tah-Wah v. Rebock at 258.
- [84] Y-Ta-Tah-Wah v. Rebock at 258.
- [85] Johnathan Lantz Buffalo, "Mesquaki Family" in Box labeled "Manuscript", pages 188- 189, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.
- [86] Johnathan Lantz Buffalo, "Mesquaki Family" in Box labeled "Manuscript", pages 188- 189, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.
- [87] Johnathan Lantz Buffalo, "Mesquaki Family" in Box labeled "Manuscript", pages 188- 189, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.
- [88] Johnathan Lantz Buffalo, "Mesquaki Family" in Box BL 65, Folder 12, in Mesquakie Collection, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.
- [89] Johnathan Lantz Buffalo, "Mesquaki Family" in Box BL 65, Folder 12, in Mesquakie Collection, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.
- [90] Johnathan Lantz Buffalo, "Mesquaki Family" in Box BL 65, Folder 12, in Mesquakie Collection, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.
- [91] Johnathan Lantz Buffalo, "Mesquaki Family" in Box labeled "Manuscript", page 190, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.
- [92] Johnathan Lantz Buffalo, "Mesquaki Family" in Box labeled "Manuscript", page 190, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.
- [93] Johnathan Lantz Buffalo, "Mesquaki Family" in Box labeled "Manuscript", unnumbered page, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.

[94] Johnathan Lantz Buffalo, “Mesquaki Family” in Box labeled “Manuscript”, unnumbered page, Manuscript Room, State Historical Society of Iowa, Iowa City, Iowa.

[95] Y-Ta-Tah-Wah v. Rebock, 105 F. 257 (N. D. Iowa, December 1, 1900).

[96] Y-Ta-Tah-Wah v. Rebock at 106.

[97] Y-Ta-Tah-Wah v. Rebock at 108.

[98] Y-Ta-Tah-Wah v. Rebock at 108.

[99] Y-Ta-Tah-Wah v. Rebock at 109.

[100] Y-Ta-Tah-Wah v. Rebock at 109.

[101] Y-Ta-Tah-Wah v. Rebock at 109.

[102] Peters v. Malin, 111 F. 244 (N. D. Iowa, October 21, 1901).

[103] Peters v. Malin, 245.

[104] Peters v. Malin at 245.

[105] Peters v. Malin at 245.

[106] Peters v. Malin at 246.

[107] Peters v. Malin at 246.

[108] Peters v. Malin at 246.

[109] Peters v. Malin at 246.

[110] Peters v. Malin at 247.

[111] Peters v. Malin at 248.

[112] This is an area of inquiry that is largely neglected in the field of legal history. One of the primary purposes of the current investigation is to uncover practical versus legislative routes to the duties and privileges of United States citizenship.

[113] 24 Stat. 338

[114] David H. Geches and Charles F. Wilkinson, Cases and Materials on Federal Indian Law, Second Edition (St. Paul, Minnesota: West Publishing Co., 1986), 112-115.

[115] Geches, 113. The Dawes Act also states that other Indians living apart from tribes and “adopting the habits of civilized life” should be considered citizens.

[116] The Dawes Severalty Act originally stated that 160 acres of land was to be given to each head of family and 80 acres of land was to be given to all others. These amounts were cut in half by a subsequent bill passed in 1885, 25 U.S. C. A. section 331.

[117] Getches, 114.

[118] William T. Hagan, “Private Property, the Indian’s Door to Civilization” in Ethnohistory, Volume 3, Issue 2 (Spring, 1956), 126-137.

[119] The Mesquakie tribe purchased the land that they reside on in Tama County, Iowa with their own funds. Therefore, this land is technically a “settlement” and not a “reservation”. Despite this legality, federal officials used the terms “settlement” and “reservation” haphazardly when discussing Mesquakie land.

[120] This strategy was intentionally used by Thurgood Marshall when litigating cases on behalf of the NAACP to fight for legal recognition of African-Americans. Marshall believed that to change an entire system of legal racial marginalization, cases involving individuals must be successfully tried first vs. cases based on far-reaching abstract principles. Although there are similarities between Marshall’s strategy and the Training School litigation, it appears from the records that the School litigation was not planned out; nor were its long ranging effects specifically predicted.

[121]. Examples of this current literature include: John Bloom, To Show What an Indian Can Do: Sports at Native American Boarding Schools (Minneapolis: University of Minnesota Press, 2000) (focuses on internal struggles among Indian students and administrators over sports participation), Brenda J. Child, Boarding School Seasons: American Indian Families, 1900-1940 (Lincoln: University of Nebraska Press, 1998) (focuses on lives of Indian students and harsh conditions these students faced), Coleman, Michael C., American Indian Children at School, 1850-1930 (Jackson, Miss.: University Press of Mississippi, 1993) (focuses on agency of Indian students), Agnes Grant, No End of Grief: Indian Residential Schools in Canada (Toronto: Pemmican Publications, Inc., 1996) (focuses on abuse of Indian students), Devon A. Mihesuah, Cultivating the Rosebuds: The Education of Women at the Cherokee Female Seminary, 1851- 1909 (Urbana and Chicago: University of Illinois Press, 1993) (focuses on relationship between Indian students and white teachers), J.R. Miller,

Shingwauk's Vision: A History of Native Residential Schools (Toronto: University of Toronto Press, 1996) (addresses wider societal implications for race relations in the present day), Riney, Scott, The Rapid City Indian School, 1898-1933 (Norman, Oklahoma: University of Oklahoma Press, 1999) (examines everyday life at an Indian school), and Robert A. Trennert, Jr., The Phoenix Indian School: Forced Assimilation in Arizona, 1891-1935 (Norman, Oklahoma: University of Oklahoma Press, 1988) (addresses internal life within an Indian school.)

