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## The Federal-Tribal Dance

ALTHOUGH IT WAS ENTIRELY within their beliefs and worldview for the Cherokees of that time to take responsibility for their own devastation, their experience with colonial powers in the 1700s reflects patterns that were repeated many times, with many indigenous groups, and in many parts of the world. Deliberately creating and fostering political divisions within another society, employing economically exploitive schemes, even using disease as a weapon are all characteristics of the process of "colonization"—the attempt by a more powerful group to occupy and subjugate a less powerful people. But the Cherokees in the late 1700s did not have the benefit of hindsight. Their world was in shambles and their beliefs led them to look for the ways that they had contributed to their own devastation. Had they not led balanced lives, had they not maintained their ceremonies properly, had they failed in their responsibilities to their clan relatives? What had *they* done to cause their circumstances?

Many of the more conservative Cherokees suspected that the adoption of European and American technologies was to blame for their apparent ruination. By the first decades of the 1800s, prophetic movements rose among the Cherokees, exemplified best by the vision of an old seer called Tsali (Charlie). Reports of his unsettling vision spread rapidly among the Cherokees and led to vigorous cultural debates about its meaning. Tsali had seen himself dressed as the "conjurers" of previous generations would have been—in skins and hide, laden with nose rings and earrings, tattooed, and wearing a scalp lock. In itself, this was a potent image, but the most powerful aspect of it was not the conjurer, but rather the two snarling black wolves at each side, which he held by the scruffs of their necks. In the vision, the Creator, through Tsali, also snarled at the Cherokee people, commanding them to give up their European-style clothes and houses, cast off all of the foreign goods they had acquired, and kill the cats and other

strange animals that had been given to them. He ordered those who would survive to follow him to the highest mountaintop, predicting a great storm that would destroy the world, sparing only those who would return to the purity of an older time and older ways. But when such a storm failed to materialize, the errant vision of the old conjurer only contributed to the loss of confidence in their medicine people that many Cherokees were feeling. Given the devastation they had experienced as a result of the Revolutionary War, as well as the deaths due to smallpox, the cultural confusion was widespread over many aspects of Cherokee society.

As a new government, the United States of America, came into existence, federal policies promoted further aspects of colonization. While American frontiersmen and settlers continued their encroachment into Indian lands, the United States developed corresponding legal mechanisms by which to take additional territory from the tribes. Gained through legislation and treaties that were primarily designed as real estate transactions, the federal occupation of additional Indian landholdings represented the strong expansionist tendencies of the early nation. As stated by historian Colin Calloway, "Like Europeans before them, Americans not only acquired the land but also established the legal framework by which they, and not the Indians, would own it" (2011, 220).

Colonization of native cultures became vital as well, as other agents of the first federal policy toward Indians, known as "civilization" policy, undertook to consciously encroach into tribal society with the goal of remaking Indians into peoples who would more resemble the new Americans in their values, language, religious practices, and economic activities. Federal officials, called "Indian agents," and missionaries became the vanguard of the new policy, as they attempted to coerce Indian men into farming and raising stock animals, to develop Indian women into housewives and textile producers, and to spread Christian doctrine among the tribes. More deeply, civilization policy insisted that Indians "had to sever their communal connections with the land, adopt the practice of owning private property, and assume Western European gender roles" (Johnston 2003, 39). If Indians could be made into people who resembled Americans and who held more Americanized values, what would be the problem of living alongside them and of Indians living among the larger American population?

Cherokee responses to these colonizing overtures were varied and complex. At a time when the visions of an older generation were in question, coupled with the Cherokees' noted tendency to be curious about and adaptive of new ideas and technologies, the tenets of the civilization policy may have seemed to some to be an opportunity to rebuild after the devastation

of the Revolutionary War, a hand extended by the United States. But while the agents of colonization and the civilization policy measured their successes by the superficial appearances of Cherokee assimilation to American norms and values, later proclaiming the Cherokees a "civilized" tribe, Cherokee acceptance of the policy was probably understood quite differently within their society. They did not desire to be like Americans, but rather to be better Cherokees by melding the new ideas and technologies to their own society. They sought to reinforce and reaffirm their original rights in ways that the newcomers would understand and respect. They strove to maintain their social values even as their social customs changed. And thus the intricate, centuries-long interplay between federal goals and Cherokee aspirations began.

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When the Cherokees quit the Revolutionary War in 1783, it had been marked by a Cherokee land cession to an American colonial government in Georgia. In the same year, the Cherokees' ally, Great Britain, finally decided that its former colonial holdings in North America were not worth further expense and trouble. It is unlikely the Cherokees understood Great Britain as the global superpower of its era and therefore unlikely to "lose" the war to a ragtag bunch of revolutionaries. Instead, the Cherokees viewed the conflict as an intrafamily dispute. For decades, they had known these new "Americans" as British people too, although sometimes the more badly behaved members of that family who had been the most egregious trespassers into Indian lands on their frontiers. But with the American victory, the Cherokees realized the apparent permanence on the continent of the newly declared United States of America, and they struggled to maintain their own standing in light of this new development.

For the United States, its efforts to define its relationship with the tribes within its borders also encompassed an internal struggle between the newly established federal level of government and the individual 13 colonies, now becoming states within its overall system. Coupled with its desire to continue to colonize Indian landholdings, the U.S. Congress made early attempts to assert its dominance in relation to the states. As the preferred legal mechanism by which Indian lands could be transferred to the United States, the first treaties between the federal government and the tribes were significant documents by which it not only acquired Indian lands, but also denied the states the ability to exercise oversight of the tribes within their state borders. They indicate some of the first tensions

between federalist and anti-federalist, or what would later be known as "states' rights," positions within the new nation.

The Treaty of Hopewell between the Cherokees and the United States was ratified in 1785, two years after the conclusion of the Revolutionary War. The treaty clarified the boundaries of remaining Cherokee land, but also reaffirmed that lands in Kentucky that had previously been taken, perhaps illegally, by the consortium led by Richard Henderson, would now revert to U.S. ownership. In short, the land would not be returned to the Cherokees, and all Cherokee areas that had been aggressively colonized by Americans would remain outside the jurisdiction of the tribe. Although the United States did not take additional land from the Cherokees by this treaty, the commissioners moved to solidify the goal of asserting federal preeminence over the state level of regulatory authority. Article IX is the most significant article of the Treaty of Hopewell, stating

For the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians; the United States in Congress assembled shall have the sole and exclusive right of regulating the trade with the Indians and of managing all their affairs in such manners as they think proper.<sup>1</sup>

Although the article reads poorly, as though the Cherokees would be managed by the U.S. Congress, Congress initially interpreted this article as reserving the right to regulate by legislation the trading *relationship* between the United States and the tribes, not that it would regulate the tribes themselves. Although this treaty predates the ratification of the U.S. Constitution, this same language appears in the Commerce Clause of the Constitution, thus extending this federal regulatory authority over its relationships with all the tribes within the United States. This authority to Congress, called "plenary rights," has emerged as one of the foundational aspects of the existence of tribes within the federal framework, and "most litigation dealing with Indian matters revolves around the interpretation of this clause" (Deloria, Jr. and Wilkins 1999, 25). In this fashion, the federal Congress, in the original governing document of the United States, denied the ability of individual states to regulate commercial and other relationships with tribes within their state boundaries.

The Cherokees also sought to define aspects of their own legal and cultural existence through the treaty. Article III of the treaty establishes the Cherokees as a protectorate of the United States, desirable on the part of both the United States and the Cherokees as each sought to diminish

violence on the frontiers since Cherokee warriors and Tennessee frontiersmen continued to skirmish after the war. The United States hoped to bring Cherokee warriors into alliance, and the Cherokees hoped the United States would assert greater control over frontiersmen in its role as Cherokee protector. Both were disappointed in their hopes.

The Cherokees established relatively favorable jurisdictional terms in the treaty, which acknowledged their authority over all persons within their territory, except in the instance of a capital crime in which one party was a Cherokee and the other was an American citizen (Articles V-VII). It also allowed a "deputy" or delegate to be seated in Congress to represent the Cherokee Nation (Article XII). But the trade-off was a significant concession. In Article VIII of the treaty, the Cherokees agreed to cease the practice of blood law—their manner of restoring balance in the case of a taking of a life, which outsiders consistently misinterpreted as "revenge." From the American perspective, while many aspects of Cherokee social beliefs and customs could be "civilized" more gradually, they insisted the practice of killing apparently "innocent" people must stop, especially since it sometimes impacted Americans. In the treaty, the Cherokees agreed to halt their practice of blood law, but in actuality, the practice continued for several more decades. Cherokee concepts of what constituted the foundations of law did not change as quickly as Americans might have liked.

Just as the colonizing relationship between the United States and the Cherokees was being established by treaties, the civilization policy was also implemented as part of the treaty relationship. By 1791, in the Treaty of Holston between the Cherokees and the United States, American commissioners were advancing the tenets of that policy as part of the occupation of Cherokee lands by frontierspeople that both resulted from and contributed to ongoing skirmish. Known as "Tennesseans," one of whose leaders was John Sevier, later the first governor of that state, these frontiersmen were constantly challenged by a recalcitrant group of Cherokee warriors known as "Chickamaugans," led by an effective Cherokee strategist named Dragging Canoe. As the skirmish had continued throughout the late 1780s and into the 1790s, Cherokee towns in east Tennessee had been abandoned, including their religious and political center of Chota. Settlers continued to move into those areas and others, despite the fact that the Cherokees had not ceded those lands.

While the boundary line established in the Treaty of Hopewell was intended to contain all whites outside the Indian territories, ethnologist Charles Royce asserts that "the boundary line . . . had been unsatisfactory to both the Cherokees and the whites. On the part of the former,

the chief cause of complaint was the . . . [settlers'] evident disposition to encroach . . . at every opportunity. The whites were discontented because further curtailment of the Cherokee territory had not been compelled by commissioners" (1883, reprinted 2006, 32). Tensions were rising and fear of Cherokee reprisal stimulated negotiations. The Treaty of Holston was intended to alleviate the friction by forcing a Cherokee cession of land that was already occupied by whites and penalizing whites for further encroachment. Instead, "rewarding the squatters by purchasing from the Cherokees the land they had occupied illegally set a pernicious precedent. Intruders learned that they could get away with violating the boundaries that supposedly protected Indian lands" (Perdue and Green 2007, 28).

But as new Cherokee towns were being established in other regions within the remaining Cherokee territory, U.S. commissioners may have seen the perfect opportunity to insert principles and practices of "civilization" into Cherokee rebuilding efforts. In Article XIV of the Treaty of Holston, negotiated and signed mainly by warriors on the Cherokee side, Indian agents were established for the first time to spread "civilization" among the Cherokees:

That the Cherokee nation may be led to a greater degree of civilization, and to become herdsmen and cultivators, instead of remaining in a state of hunters, . . . the United States will send . . . so many persons to reside in said nation . . . not exceeding four in number. . . . These persons shall have land assigned to them by the Cherokees for cultivation for themselves and their successors in office; but they shall be precluded exercising any kind of traffic.<sup>2</sup>

Although the Cherokees had long been primarily "cultivators," instead of primarily hunters, at least for the purposes of their own subsistence, the American ideal was that men should farm, rather than women. Many Americans regarded the hunting activities of Indian men as merely "sport," especially in relation to the hard work done in the fields by women. They felt it was time for Indian men to forego such "laziness" and get to work. Article XIV intended that the United States would establish the first Indian agents to the Cherokees, who would provide the agents with a bit of land they could use to instruct the Cherokees in a more Euroamerican style of farming in which fields were plowed in straight furrows, crops were separated from each other, and, most importantly, men controlled this crucial economic domain.

Traditionally, agricultural fields had belonged to clans, rather than individuals or families. The displacements of Cherokee population resulting from disease, frontier skirmishes, and outright warfare had already weakened the practice of living in extensive households that were built around networks of related clanswomen and their fields. Civilization policy represented a critical blow to the extended family, clan-based Cherokee household. The goal of turning men into farmers also had significant impacts on the residence pattern of Cherokees, as fields worked by clans began to transition to fields maintained by more “nuclear family” households—households formed, at least to outward appearances, around a married couple and their children, the Euroamerican norm.

Animal husbandry—raising stock animals—was another aspect of the civilization policy. While wealthier Cherokees had been acquiring domesticated animals for several decades, federal agents desired that subsistence farmers also have access to cattle and pigs. Cherokee men were more comfortable with this tenet of the policy. They accepted the stock animals, but they rejected the American notion that pastures should be fenced off and stock penned up. Instead, they allowed the cattle and pigs to range freely in the woods, often leading to the reversion of the pigs to a feral state. However, feral pigs and free-range cattle could be “hunted” as game. Both “white backcountry farmers as well as the garrison at Fort Loudon complained constantly about the loss of livestock to hunting parties. Because livestock usually foraged in the forest until late fall, the Native assumption that these animals were game was not implausible” (Perdue 1998, 120). Thus, “animal husbandry” as practiced by the Cherokees resulted in the reinforcement of old values. First, the refusal to fence lands reflected old Cherokee values of shared tribal resources, and second, the treatment of “stock” animals as “game” allowed the traditional male gender identity as “hunter” to remain viable among Cherokee men.

Civilization policy also decreed that once women were separated from their traditional agricultural work, they could be enticed into what Americans viewed as more appropriate occupations—becoming housewives and engaging in textile production for the household and the marketplace. Cotton cards, spinning wheels, and looms were provided to many women, and agents and missionaries stood ready to teach Cherokee women the domestic arts—the production of many of the items one might typically find in the Euroamerican frontier household.

Cherokee men and women had different reactions to these civilizing overtures. Generally, men were more reluctant to engage in the occupations

coercively suggested to them, which they regarded as feminine occupations. But for women, the civilization program tended to reinforce the importance of their roles in society, as it focused on agriculture and domestic production. For them, the technologies and skills proposed to them opened new vistas. While Cherokee men may have initially felt excluded from the benefits of the civilization policy, in their usual fashion, they adapted new occupations derived from the skills learned by the women, particularly as merchants to the outside world of the products women were creating in increasing quantity. Since it had long been the role of men to interact with the larger world as both negotiators and defenders, "a new symbiotic relationship between men and women, reminiscent of traditional roles" thus emerged (Perdue 1995, 109). In Cherokee terms, it seemed natural to males to become the middlemen between the women who were the producers within their society and the consumers in the outside world.

But both genders were in opposition to the idea that Cherokee men should become farmers. Men saw it as women's work—not demeaning work, but work that so strongly defined the feminine gender that they could not conceptually become comfortable with it. Women also recognized that if they were no longer in charge of the production and distribution of the bulk of the people's food supply, their status and influence in Cherokee society would be reduced. In the balanced world of the Cherokees, agricultural production was the weightiest item on the women's side of the social scale. As both agriculture and marketing came increasingly under the purview of Cherokee men, women's influence in the society was diminished from what it had previously been, and the balance of the world was disrupted further.

While Cherokees were attracted to certain aspects of the civilization policy, they initially exhibited almost total disinterest in one particular component of it. Christianizing Indians was viewed by some Americans as a central necessity, while others viewed it as marginal to the policy's primarily economic goals. But Cherokees regarded it as entirely irrelevant to their own aspirations. While there had been some isolated conversions of Cherokees to Christianity throughout the 1700s, the ceremonial practices had retained preeminence, although they had become more localized in individual towns, particularly after Chota was abandoned. Few Cherokees saw any superiority of Christian beliefs over their own centuries-old practices, which had sustained their society in a worldview that they found both ethical and supportive. While some missionary groups sought entrance to Cherokee society, civilization policy did not provide any federal resources toward those efforts, as would later be the case under subsequent federal



assimilation policies of the late 1800s. The Cherokees were initially uninterested in allowing the establishment of Christian missions within their territory, and the federal government did not mandate it.

However, among a new generation of Cherokees, the adult children of some of the first intermarriages between Cherokees and British colonists that had occurred throughout the 1700s, especially in the middle decades, some ideas emerged that radically reshaped their society. Although raised in Cherokee homes and towns, and entirely Cherokee in their allegiances and socialization, they had exposure through their European parents' (usually their father's) culture to a second language and the literacy that was associated with it. They also displayed the typical Cherokee interest in adapting these new possibilities to create better Cherokees. Seeing, as many Cherokees did, the apparent respect the United States gave to written documents such as treaties, constitutions, and statutes, many Cherokees began to believe that the development of a generation of Cherokees who could read, write, and speak English would provide them with another manner of defending their territory and their culture.

Cherokee leadership began seeking the education of their children in the English language. There were few possibilities for acquiring this type of education, but with the desire of Christian missionaries to gain entrance to Cherokee society in order to proselytize, the Cherokees brokered a deal. The Cherokees would allow the establishment of missions so long as there was a school attached to the mission that would provide education in and through the English language for the Cherokee children who attended.

The first missionaries to the Cherokees were Moravians, a Germanic denomination from Salem, North Carolina. In 1801, they established the first mission to the Cherokees at Spring Place, Georgia, on property that was utilized by James Vann—the wealthiest Cherokee of his time, a member of the Cherokee Council, and a plantation operator and slave owner. Other denominations followed, including the Methodists, Congregationalists, Presbyterians, and Baptists. Although the primary interest of the Cherokees was in education, rather than Christianity, the mission schools instructed the Cherokee children who attended using biblical scriptures to teach the English language. But not only was the English language transmitted, the stories and lessons of the Bible were also transmitted to the children, and as stories have always comprised an important part of Cherokee teaching techniques, the stories were repeated at home by the children to their families. The parents of the children attending mission schools realized that there were honorable values contained in this book and began to demonstrate an interest as well. In the first decades of the 1800s, the children

who predominantly attended the mission schools were those of Cherokee political and economic leadership, and thus the first exposure to Christianity was among that segment of the tribe.

In typical Indian fashion, however, Cherokees did not seek to replace their own spiritual beliefs with Christianity, but merely to supplement them, as Christian teachings were often adapted to and meshed with long-standing Cherokee beliefs in a process known as "syncretism." And almost immediately, Cherokees experienced a disjuncture between what was taught in the Bible and the actions employed against them by a Christian nation. As one Cherokee, Yonaguska, stated, "It seems to be a good book; strange that the white people are not better after having had it so long" (McLoughlin 1994, 12). Although a central component of the civilization policy, Christianity was not aggressively promoted by federal agents and developed slowly among the Cherokees. It was decades later, after the American Civil War, before Christianity became the religious belief and practice of the majority of the Cherokee people.

The influence of the descendants of the first intermarriages between Cherokees and Europeans was felt in another important way as well. As it had been demonstrated to the Cherokees throughout the Revolutionary War and afterward that military engagement with Americans was probably no longer feasible, Cherokees looked for other methods to defend their territory and their right to manage themselves and their communities as they wished. Some Cherokees, again as a result of their exposure to ideas from their European parents' culture, began to conceive of a more unified political body, a legal and governmental apparatus that could defend their sovereignty and right of self-determination in ways the Americans would understand and respect. With the evidence of exactly such new political body emerging before them, the United States of America, the Cherokees questioned, why could not they do the same? Could they not also declare their own separate nationality with the same confidence exhibited by the United States in doing so?

The Treaty of Holston of 1791 declared Cherokee nationality for the first time. In its preamble, the treaty stated

A Treaty of Peace and Friendship made and concluded between the President of the United States of America, on the Part and Behalf of the said States, and the undersigned Chiefs and Warriors, *of the Cherokee Nation* [emphasis added] of Indians, on the part and Behalf of the said *Nation* [emphasis added].<sup>3</sup>

Statements of Cherokee nationality were repeated throughout the remainder of the preamble and Article I of the treaty, and were consistently employed ever after by both the Cherokees and the United States. Representing their response to territorial colonization, these rising assertions of political nationality emerged among the Cherokees in the 1790s, at a time when population was shifting south and west from the areas of eastern Tennessee that had been ceded by the treaty, including the region of the former Overhill settlements such as Chota—the Cherokees' spiritual and political center since the mid-1700s. By the early 1790s, new towns had formed and towns from ceded areas had relocated into areas of northern Georgia and northeastern Alabama, regions where Cherokees had never had permanent settlements before, giving way to more regional designations—Lower and Upper Towns. New governmental meeting places had been chosen—Willstown in northeastern Alabama (generally identified with communities known as the Lower Towns) and Ustenali (or Oostanaula, generally identified with communities known as the Upper Towns), named for the river in northwestern Georgia near which it was located. The latter emerged in the second decade of the 1800s as the single capital of the Cherokee Nation.

In the early 1800s, the Cherokees established a body referred to as a "National" Council as part of their rising indigenous nationalist movement. Younger leadership insisted that the Cherokees must unify their consortium of self-governing, autonomous communities into one body, one voice, and one policy—a national government—if they were to have any hope of retaining their sovereign rights in the face of American expansionism. Although probably first conceptualized by the adult children of European and Cherokee intermarriages and parents, some Cherokees raised in entirely Cherokee households and worldview also joined the new effort. The critiques of the past and efforts for governmental restructuring were probably generational in their origins rather than based in racial or cultural characteristics. The new generation sought the way to be more politically effective Cherokees in the new federal situation, and in these years, "the Cherokees took a major step from being an ethnic nation to being a nation-state" (McLoughlin 1986, 109).

The process of nation-building did not occur rapidly or without internal conflict among the Cherokees. As always, the dilemma involved retaining Cherokee social values while melding them onto new structures. Throughout the first two decades of the 1800s, the Cherokees redesigned their government in ways that more closely resembled those of the United States, but still with an eye to incorporating tribal principles. The Cherokees certainly

examined the structure of the Americans' tripartite system, with executive, legislative, and judicial branches, but the system perhaps did not seem terribly foreign to them since they had already centralized somewhat in the mid-1700s, creating what were the foundations for executive and legislative bodies. Although "the outward appearance and functioning of the political organization had changed greatly, it was still based on long-established patterns that were familiar to the average Cherokee" (Persico 1979, 92).

For instance, in the first decades of the 1800s, the Cherokees adapted their grand councils to better serve their needs. While the development of the Cherokee legislative branch has often been described as a "bicameral" system and also attributed to the United States' model, Cherokee conceptions of the adaptation were different. For centuries, the Cherokee towns had had a duality in their councils, mirroring old beliefs and respect for opposites, as peacetime and wartime governments had coexisted within the body. This system was institutionalized into the National Council of the Cherokee Nation in 1811 by the creation of a body within the Council, called the National Committee, emerging as a parallel to the old red or warrior governments of the 1700s. The Committee was not, strictly speaking, another side to the council, but rather a "cabinet" within the Council. The National Committee was initially comprised of nine individuals chosen from the councilors who would act in specific roles, such as the National Treasurer and the National Clerk. The men selected for the National Committee displayed interesting characteristics. Although not specifically mandated, most members of the National Committee spoke, read, and wrote English (although many who were chosen in this era were bilingual Cherokee speakers as well) and they tended to be those who had more acculturated attributes—American-style educations and experience in business and finance, for instance.

It may seem perplexing that the National Committee was the evolution of the "red," or warrior, side of the old town councils. The members of the National Committee, being the English-speaking members of the Council, tended to be those who traveled to Washington to negotiate with federal officials. They provided the legal language for the written Cherokee statutes, and they were those who developed the outline of the first Cherokee Constitution of 1827. How are men such as this derived from a warrior government? But by the first decade of the 1800s, Cherokees recognized that the "battle" had shifted. No longer was their fight a military engagement. Henceforth, their fight to maintain sovereignty and territory was a legal and political fight. And the men of the National Committee were the "warriors" on the front lines of that battle.

While the names of the men of the National Committee are often the most prominent in the historic record, they never acted without overall sanction from the majority of the National Council. The "symbiotic" relationship between men from very different segments of Cherokee society represented a "clear effort by strong . . . leaders to adjust tradition to current circumstances. It was no easy matter to convince a Council that had a majority . . . who spoke no English to graft all of these innovations onto traditional practices" (McLoughlin 1986, 284). But it may not have seemed that unusual to the Cherokees. In that body, which was dominated by more culturally traditional, monolingual Cherokee speakers, the selection of such individuals to serve on the Committee was a strategic balancing of opposites by the Council—an old Cherokee practice.

In the mid-1700s, the Cherokee grand council had declared that it had the power to issue edicts that were to be obeyed by all the Cherokee towns, but this avowal of centralized authority had been asserted primarily in relation to trade and foreign affairs. As the council continued to proclaim its presumed authority throughout the last decades of the century, increasing numbers of Cherokees began to accept it as an overarching lawmaking body, even as it began to dominate over internal affairs as well. In the first decade of the 1800s, the National Council began to codify its issuances. Although still relatively rare, the orders of the Council began to be written as statutes beginning in 1808. Written in English, a language the majority of Cherokees neither spoke nor understood, the written statutes were as much a signal to the United States of Cherokee governmental sovereignty as they were laws for the Cherokee people to live by. The most significant impetus for developing written statutes was "the identification and establishment of a new legal system with the goal of preservation of tribal lands. Even the religious, traditionally conservative fullbloods came to believe in the necessity of convincing white society of tribal progress in adopting new laws as *the* means to prevent removal from the native lands" (Strickland 1975, 162). The first written statute regulated law enforcement that had been established in the Cherokee Nation a few years earlier, a mounted police unit called the Cherokee Lighthorse. If there were going to be laws, there needed to be a system to enact them. The Cherokee councils of the past 50 years had recognized the dilemma.

The second statute passed by the Cherokee Council in 1810 was significant. It referenced an agreement that year by representatives of the seven clans of the Cherokees to abolish blood law within the Cherokee Nation. Although the United States had attempted for 25 years to coerce the Cherokees away from this system of law, they had never succeeded

in dislodging this practice that was so deeply based in Cherokee worldview. But by 1810, the need to defend sovereignty and their land base had become paramount for the Cherokees, and if shifting their worldview was required in order to achieve those goals, then the Cherokees would shift. The 1810 law acknowledged several components of blood law that were adapted to more readily resemble American notions of law. First, the Cherokee clans accepted that outstanding imbalances were to be nullified, in other words, any killing that had not been handled to date by the practices of blood law would be addressed instead by statutory law of the National Council. Second, the Cherokee clans acknowledged that sometimes there were justifiable reasons for a killing (self-defense, for instance) and that these circumstances would now be taken into account. And third, the clan leadership agreed that "murder" could occur within a clan itself. Blood law had been based in the corporate nature of clans, rather than individuals, and if a clansman killed another within their own clan, there was no perceived imbalance, and thus no response, as clans were considered to be a self-regulating unit. By acknowledging that murder could occur within a clan, the law shifted the focus and responsibility to the individual, rather than the corporate clan unit. As the economic activities of the Cherokees and the need to defend culture, land, and sovereignty from American encroachment escalated in the early 1800s, the Cherokees elaborated a national government to counter such attempts. Although their governing structures had always been complex, the increasing complexity of the new system was more recognizable to the United States. But there was still much about it that remained thoroughly Cherokee in its values.

The United States remained focused on land acquisition. In the 1790s, there had been a need to acquire Indian lands as a way to pay Revolutionary War veterans who still had not been compensated by the United States for their service. Rather than monetary payments, which the United States had no ability to offer, it was thought that land could be taken from tribes and transferred to veterans as a way to give them a start in the new nation. In 1790, the United States passed complex legislation, the Trade and Intercourse Acts, which regulated a variety of commercial situations—regulations that were amended a number of times between 1790 and 1834—and which elevated and firmly established federal authority. Certain sections of the legislation and its amendments specifically addressed Indian lands. Section 12 of the 1802 Act, the first that did not have an expiration date, states

That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty of convention entered into pursuant to the constitution.<sup>4</sup>

Reinforcing Congress's plenary power established in the constitution, this section of the Trade and Intercourse Acts decreed that if Indian lands are to be transferred by the tribe to another entity, the only entity that can be on the receiving end of the transfer was the United States. Therefore, a tribe could not legally transfer its land to an individual or a state. In this, the United States emulated laws passed by Great Britain in an earlier era—laws that had apparently been violated by Richard Henderson and his trading consortium in 1775. In other amendments, the act discouraged trespass onto Indian lands by establishing stiff monetary penalties for anyone who did. In anticipation that it would take Indian lands and then allocate them to veterans in payment, the United States had earlier been attempting to keep Indian lands unencumbered by previous claims. In continuing the restriction, the United States was anticipating westward expansion and settlement of its growing population.

Freed from the exploitive trading policies employed by Great Britain previous to the Revolutionary War, the rapid and massive cessions of Cherokee land stopped for the time being. During the 1790s, the Cherokees ceded only small acreages in Tennessee and North Carolina in 1798. But the United States was pressuring other sovereigns for land as well, and those sovereigns, the southern states, had motives of their own in relation to the Indian tribes remaining within their borders. In 1802, the two interests converged in federal legislation entitled the "Articles of Agreement and Cession between the United States and the State of Georgia." It is more commonly known as the Georgia Compact.

In 1730, Great Britain had included lands to the west—the present states of Alabama and Mississippi—in its charter to the colony of Georgia, and as late as 1802, Georgia was still holding those lands. The United States wanted to acquire those territories and begin the process of developing additional states, but Georgia had attempted to cede the lands to a land speculation company. Georgia agreed to turn over all of the land to the federal government if the United States would compensate the speculation company, but the state also extracted a promise from the United States that the federal government would extinguish Indian titles to lands that lay

within Georgia's own state boundaries, thus giving Georgia legal jurisdiction over the individual Indians within its state.

Georgia required this guarantee from the United States since, under the terms of the Trade and Intercourse Acts, Georgia could not take direct ownership of Indian lands, which could only be transferred to the United States. In the Georgia Compact, the United States essentially agreed to act as Georgia's agent in the deal. The compact includes a preemption right—a first right of ownership of those Indian lands—to Georgia, once the United States has extinguished Indian title through treaties. While the Creek Confederacy had historically been more prominent in Georgia, by the time the compact was made, Cherokees were also beginning to establish settlements in Georgia, including their council meeting place in Ustenali. Ultimately, Cherokees claimed the northern third of the state of Georgia as part of their territory.

The lands that became the states of Alabama and Mississippi transferred from Georgia to the United States after the passage of the Georgia Compact. But the compact could not legally force treaties upon the tribes within Georgia, so the United States sought their voluntary compliance to land cessions. Although the United States was aggressive in its efforts, neither the Creeks nor the Cherokees were inclined to comply, and thus the United States' fulfillment of their side of the agreement with Georgia languished for years, much to Georgia's dismay.

The year after the compact was passed, a momentous event occurred in the United States. Although France had lost all of its territories on the North American continent in the French and Indian Wars of the 1750s and 1760s, it had reacquired vast territory in North America in 1800 as a result of its dominance over Spain in the era of Napoleon Bonaparte. France had forced cessions of Spanish territory in North America. However, in 1803, France sold the area to the United States, more than doubling the size of U.S. territory. The Louisiana Purchase gave impetus to a shift in federal policy toward Indians. While President Thomas Jefferson sent the famous expedition of Lewis and Clark to explore the new lands and make account of the tribes they encountered, tribes to the east of the Mississippi River—in lands already long occupied by Britain and the United States—faced increasing encroachment by Americans into their lands.

In these circumstances, a new theory emerged that drove Indian policy for the next decades. While civilization policy was not discarded, the Indians' lack of interest in many of its tenets coupled with the acquisition of the new lands led to a proposition on the part of policymakers that the removal of Indians from their eastern lands—where they were being encroached on



by white settlers—to the new lands west of the Mississippi River would either (a) allow those tribes to continue in a preferred tribal way of life or alternately (b) would allow them the additional time it seemed they would need to develop the practices of “civilization” without also being subjected to the hostility of encroaching whites. The apparent incongruity of these two goals did not seem to trouble the minds of reformers who promoted Indian removal as a solution for both Americans and eastern tribes. Either proposition provided theoretical support for the true goal of acquiring additional Indian lands, and “three factors—the depletion of the game, the gradual transformation of the tribes, and the possibility of removal—formed a vague fusion in the white man’s mind” (Sheehan 1973, 247).

Although not broadly enacted until later decades, the policy of Indian Removal was formulated under the administration of President Thomas Jefferson after the acquisition of the Louisiana Purchase. Within 10 years, removal was being quietly but coercively employed against tribes in the Ohio Valley and Great Lakes regions. Although the Americans living in those areas were certainly cognizant of the removals, the larger American public does not seem to have known or shown much concern that such practices were occurring. Removals of the southern tribes did not commence until more than a decade later, but the threat of the policy being implemented against them increasingly permeated Cherokee sensibilities as the years passed.

For almost the first 40 years of the 1800s, the Cherokees made rapid adaptations of their culture, society, and government as part of the continuing process of melding new ways with old values. Cherokees acquired new skills and became blacksmiths, gunsmiths, silversmiths, millers and miners, ferrymen, hostelry, and tavern operators. Some developing occupations led to great wealth in some families as Cherokees established entrepreneurial types of businesses and entered into contracts for goods with outside commercial enterprises, as well as bartered with other Cherokee producers. A few emulated white southern planters and developed plantations employing an African slave labor force to produce crops for the market. Most Cherokees remained subsistence farmers, producing their own crops, hunting and gathering for supplemental foods, producing their own textiles and clothing, and constructing their own dwellings and almost all of their household items. By the 1820s, Cherokee dependence lessened as the Cherokees became once again a relatively, economically stable and prosperous people.

The most important adaptations, however, occurred in the social realm. The initial Cherokee desire for education in the English language had

compounded to a desire for education for its own sake. Soon after mission schools were established and Cherokees began to grasp the way that the strange markings on paper conveyed language, several Cherokees undertook finding the way to create a literate version of their own language. The breakthrough was achieved by a Cherokee named Sequoyah, who devised an 86-character written Cherokee language based in the combinations of sounds in the Cherokee language that comprised syllables, called a syllabary. The value of Sequoyah's invention was not immediately understood by all Cherokees. Intuitively, many realized that the syllabary stood "in a pivotal position—between the reinforcement of a hierarchy and its dismantling; between self-definition and external categorization; between independence and nationalism on the one hand and assimilation on the other" (Bender 2002, 25). In short, the syllabary perhaps presented the finest line yet for the Cherokees to attempt to walk between being better Cherokees and no longer being Cherokees at all.

But ultimately, after use of the syllabary was demonstrated to the National Council by Sequoyah and his young daughter in 1821, almost all Cherokees came to realize that the amazing feat opened up new possibilities for education and communication, particularly as they entered into an era of increasing federal pressure to remove from their southeastern homelands to lands west of the Mississippi River. The Cherokees first began to develop schools throughout the decade, thus taking control of their educational process. A native speaker of Cherokee could acquire use of the syllabary in about two weeks, thus becoming almost instantly literate—a process that made the adaptation of new ideas and philosophies more accessible to the everyday person. Although missionaries still worked among them, the burgeoning Cherokee school system proved to be the primary source of high educational attainment among the Cherokees throughout the remainder of the 1800s.

But even more importantly in the pre-Removal era was their establishment of the first newspaper ever printed by an Indian nation, the *Cherokee Phoenix*—named after the mythical Greek bird that rose from the ashes of destruction. As a metaphor, the Cherokees could not have found a better image to describe their own existence. The newspaper was developed as a bilingual edition, in order that it could be employed as a bilateral tool. Not only could they insure that their own people were well-informed about the actions of their leadership in relation to the removal issue, but in subsequent years, they used the English-language articles and editorials of the *Phoenix* as a potent force to sway public opinion and politicians in America. The newspaper became the most tangible symbol to Cherokees



Statue of Sequoyah by Daniel Horsechief (Cherokee) in front of the former Cherokee National Female Seminary, presently Seminary Hall, Northeastern State University, Tahlequah, Oklahoma. (Photo by Andrew Sikora)

and Americans alike of the “advancement” of the Cherokees. Sequoyah’s invention had helped his people to “build their self-esteem and pride. Rather than believing that writing was an art or magic resting in the hands of colonists and their armies, Sequoyah understood that it was a relatively simple instrument that could help the members of his tribe communicate with each other” (Cushman 2011, 36).

As many Americans became cognizant of the “civilized” characteristics of Cherokee society, it appeared that the Cherokees had become the model of the policy. Soon, not only the Cherokees, but the others of the five large

southeastern tribes—the Creeks, the Choctaws, the Chickasaws, and the Seminoles—were being referred to as the “Five Civilized Tribes.” While the surface appearances of assimilation were obvious to Americans, more recently “an alternative narrative [that] forces reconsideration of Cherokee culture change, even in a period when it seemed so dramatic,” has been developed (Perdue 1998, 113). Americans did not readily perceive the motivations for the adaptations of culture, society, and government in which the Cherokees had engaged, and they did not realize that under the surface, much about Cherokee life continued as it always had. But the Cherokees were learning what they needed to of Euroamerican society in order to convince Americans that they, too, were a sovereign people who held their own territory and could manage their own affairs, just as Americans did. The Cherokees employed the civilization policy as a way of resisting the removal policy.

### Notes

1. See Primary Documents, Treaty of Hopewell.
2. See Primary Documents, Treaty of Holston.
3. See Primary Documents, The Treaty of Holston.
4. See Primary Documents, Trade and Intercourse Acts.

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