

THREE

Building the Nation

IN AUGUST 1807, a stickball tournament was held at Hiwassee, a Cherokee town in the Valley region of far southeastern Tennessee. This "game," which the Cherokees had "played" for many generations, had been widely employed among southeastern tribes as a manner of conflict resolution. Stickball was a rough and vigorous exercise in which dozens, sometimes hundreds, of men participated on each team. Often lasting for days, players were frequently wounded by blows from the sturdy webbed sticks wielded with ferocity not only to catch and toss the small, hard ball, but also to inflict hits on opposing players. Called "the little brother of war" by the Cherokees, stickball was employed to resolve disputes in instances when large-scale warfare was inadvisable. Cherokees and Creeks, for instance, might field teams and play to reconcile a lesser infraction that did not warrant going into battle. Or rather than go to war against each other, Cherokee towns might play to settle an argument. The actual merits of the dispute were not significant. Recognizing that arguments might go on indefinitely on the basis of differing perceptions that would never find agreement, the southeastern tribes had a more direct way of deciding an issue: whoever won the game won the argument.

Under these conditions, it was sometimes imperative in the view of the citizens of a town that they win the game. In these instances, medicine people worked feverishly on the sidelines, devising the incantations and treatments that would insure success. In these instances, a man might even be willing to give his life toward that end. It was not unknown for players to die in the course of the game. Still, the game continued until one side or the other was spent and the dispute was thus ended.

By 1807, it had been demonstrated to the Cherokees that warfare against European and American colonizers was no longer feasible. Cherokee military confederations and the warrior sides of town governments had

dwindled. Southeastern tribes rarely warred against each other, having determined there was a greater common adversary, the United States. And internal disputes were increasingly being settled by other means, verbal and soon-to-be written edicts issued from the body lately referred to as the National Council. But stickball remained important to the Cherokees as a display of masculine prowess, tribal tradition, and cultural continuity. By this time, the tournament at Hiwassee and all such displays were no longer about conflict resolution, yet the games were still enjoyed by thousands of Cherokees as they had been throughout the generations. Tribal citizens traveled from across the Cherokee Nation to wager on the outcomes, feast, and socialize throughout the days the games went on.

One of the members of the National Council who came to Hiwassee for the festivities was a long-standing leader named Doublehead. Thirty years earlier, Doublehead had been among the Chickamaugans—the warrior confederation emerging out of the Revolutionary War. He and his compatriots on the warrior sides of the town councils had protested fiercely the sale of tribal hunting grounds in 1775 in the exchange known as Henderson's Purchase. The warriors had defied the peacetime governments of the Cherokee towns and had continued to skirmish with Tennessee frontiersmen in the late 1780s and early 1790s. But Doublehead had been among those who had given up the continuous warfare, signing the Treaty of Holston. A violent man who had disgusted even other Cherokees by his murdering of white children during the earlier periods of conflict, Doublehead was nevertheless a powerful leader among the Lower Towns—those towns that had relocated to northeastern Alabama and extreme northwestern Georgia after the land cessions of the late 1700s.

As a spectator at the tournament, Doublehead had been involved in yet another altercation. In a drunken argument, he had killed a Cherokee named Bone Polisher. Seemingly unperturbed by the act, Doublehead sat down for supper that evening at a tavern operated by local Cherokees. As he took the first bites of his meal, shots were fired in his direction. One of the blasts hit Doublehead in the lower jaw, shattering it. Thinking they had killed him, the would-be assassins fled the scene. Later that evening, after learning that they had not accomplished their mission, they tracked Doublehead to a nearby farmhouse to which he had fled. Several hours before daybreak, they burst in on him again and another scuffle took place. Although shots were fired, none hit, and the attackers could not reload in the dark. Finally, one of the attackers, Alexander Sanders, wielded his hatchet and laid it squarely into Doublehead's forehead and skull, killing him at last.

Of the three attackers, Sanders, The Ridge, and either John Rogers or James Vann (the historical record is unclear on the identity of the third attacker), most were prominent members of the Cherokee National Council (Rogers was an intermarried white trader). They had not killed Doublehead to balance his earlier killing of Bone Polisher. Instead, they considered that Doublehead had committed an even more heinous act. In two treaties in 1805 and 1806, Doublehead had been the apparent ringleader of a minority of councilors who had ceded almost 15,000 square miles of Cherokee land without permission of the entire National Council. For this action, the National Council had assigned these three members to make an example of Doublehead. On this night, they were successful in carrying out the order.

Adapting the Cherokee governmental system and society did not occur without debate and internal conflicts, even violence. The story of Doublehead is perhaps the most dramatic demonstration of the tensions between the older way of governing and the new, younger proponents of national restructuring. Many Peoples around the world, both historically and in the present day, have reacted to colonization by the creation of strong nationalist movements—the devotion to their own national interests, unity, and independence—and in this sense, the Cherokees responded as many others have. But the need to mesh their burgeoning sense of nation with older social principles and values that were decidedly different, even oppositional to those espoused by the United States in its own emerging nationality, resulted in a unique blend of cultural and political traits that often confounded outsiders to the society. The simple directness of stickball, the clear rules of blood law, the networks of obligation and opposites that bound Cherokee society together were increasingly challenged and complicated by the need to defend their very right to continue to exist in their own homelands. Doublehead had just encountered firsthand the passion of the debate.

Although federal Indian agents to the tribes were established as part of the new policy, the actual implementation of “civilization” in the early 1800s was often secondary to other agendas—placating and subduing warriors and devising ways to coerce additional land cessions from the tribes. Agents soon became active participants in the federal-tribal intrigue. By the first decade of the 1800s, agents were elaborating the long-standing practice of exchanging goods for land by also offering “reserves” to chiefs

who would cooperate with the cessions. If regional chiefs would agree to treaties of cession, federal Indian agents promised that 100-square-mile tracts would be carved out of that territory and deeded to individual chiefs. The chief would then move his town onto the reserve and the people would be given all the implements of the civilization project in order to develop little "model villages" on land that would be owned as real estate by a single chief.

While this manner of coercion was offered by agents from the Ohio Valley and Great Lakes areas and throughout the southeastern regions, most Indians realized that this was fundamentally no more than the old barter of land in exchange for goods, and rejected the overtures. But among the Cherokees, some chiefs, including Doublehead, had long-standing relationships with their agent, Return Jonathan Meigs, and indicated their interest in the idea.

A treaty conference was held at Tellico in eastern Tennessee in October 1805 after Doublehead had assured Agent Meigs that he had the votes to approve a cession of a significant portion of the remaining hunting grounds in central and southern Tennessee. Chiefs from the Lower Towns—those towns located in northeastern Alabama and far northwestern Georgia—presented a proposal to the entire council that the additional cessions be made to the United States in exchange for cash, goods, and reserves for Lower Town chiefs. Led by Doublehead, other chiefs who backed the plan included Black Fox (who was the principal chief at the time), Pathkiller, Tahlonteskee, and Duwvli (also known as John Bowles), among others. All were former Chickamaugan warriors.

But Upper Town chiefs—who represented towns in north central and northeastern Georgia, southeastern Tennessee, and western North Carolina, and who comprised about two-thirds of the Council—soundly rejected the idea and declared that there would be no more cessions of Cherokee land. It became apparent that Doublehead did not have a consensus of the Council behind him. Nevertheless, 33 Lower Town chiefs, who comprised only one-third of the body's members, afterward placed their signatures on a treaty that ceded the land anyway, despite the objections of the majority of the council. Four months later, in January 1806, they completed the deal with Agent Meigs by signing a second treaty. In the two treaties combined, over 15,000 square miles in central Tennessee and northern Alabama were ceded. Withheld was an area around present-day Muscle Shoals, Alabama, which became known as "Doublehead's Reserve"—the region where the 100-square-mile tracts were granted to the collaborative chiefs. However, the civilization program was never implemented in this

area as "Doublehead found it more remunerative to lease the land to whites rather than to make it a model Cherokee village" (McLoughlin 1986, 105).

In response, the Cherokee National Council issued an edict that anyone participating in such sessions without permission of the entire body would henceforth suffer death. Some of the Lower Town chiefs, including Pathkiller (who later became principal chief in 1817), switched sides and joined the new nationalists promoting a more unified, centralized approach to such dilemmas. But by 1807, with Doublehead clearly identified as the leader of the initiative, the Upper Town chiefs of the Council, lacking any other institution to enact its orders, gave instructions in a secret meeting to three of its members to implement the death penalty on Doublehead.

Doublehead and his associates among the Lower Town chiefs likely believed that they had the right to make the cession of land, since they had merely acted in the manner Cherokee chiefs of towns had always acted—as representatives of independent, autonomous governments. Throughout the 1700s, it had been commonplace for consortiums of regional chiefs to make cessions of land. It had been done in 1775 when Doublehead himself had protested Henderson's Purchase, but nothing had transpired afterward to lessen the status or influence among the Cherokees of any of the chiefs involved, and certainly none had faced a death sentence. It was true that in the 1805–1806 sessions a significant amount of money had been given to the Lower Town chiefs by Agent Meigs, and that the United States probably regarded it as a bribe, but it was less clear that the Lower Town chiefs viewed it as such. After all, hadn't exchanges of land for goods always taken place? How was an exchange of land for money any different?

By insisting that the entire body had to consent to land cessions, the majority comprised of the Upper Town chiefs on the Cherokee Council was seen by some as undermining the authority and autonomy of individual chiefs in favor of the greater body. But the apparent willingness of the nationalist chiefs to do so, by force if necessary, was impressive, and many Lower Town chiefs soon demonstrated a desire to leave the nation, rather than possibly experience acts of violence against them as well. The National Council had "broken" (deposed) Black Fox as principal chief as a result of these events, and after Doublehead's execution, and even though he had later been reinstated as principal chief, Black Fox and others appealed to the United States to relocate them to the Arkansas territory rather than remain with their countrymen in the southeast.

In 1809, about 1,000 Cherokees, primarily from the Lower Towns represented by the offending chiefs and with the support of the United States, emigrated from the Cherokee Nation and were resettled in north central and northwestern Arkansas. Led by Tahlonteskee, they thereafter appealed to the United States to provide them with a legally bounded and protected piece of land, a reservation. The United States was agreeable, but insisted that the Cherokee Nation had to make additional cessions of land in exchange for any that might be granted to Cherokees in Arkansas. The Cherokee Nation refused, but federal pressures to coerce them into doing so were now bolstered by the demands of those Cherokees in Arkansas Territory.

The critical decade of the 1810s was, therefore, marked by escalating federal insistence on taking more Cherokee land. As usual, the pressure was applied to individual chiefs in the hopes of eroding their resolve or enticing their cooperation through bribes. The Cherokees looked for ways to strategically counter those pressures, and in 1814, an opportunity presented itself. As part of the American war that had broken out a couple of years earlier, the War of 1812, some tribes had allied with Great Britain as the enemy of the United States and Canada in this warfare. They had seen it as a way to reclaim their own independence from the colonizing Americans, and some were following a prophetic vision of a Shawnee leader, Tenskwatawa, which had been promoted across the region by his brother Tecumseh. The vision promised salvation from the Americans if only tribes would unite militarily. The War of 1812 was seen by some as the opening by which to do so.

Although the vision had been presented among the southern tribes as well, all had rejected it as unrealistic. But within the Creek Confederacy, which was an association of numerous tribal and cultural groups, the prophetic idea appealed to some within its confederation, even as the majority of the Creeks rebuffed military action against the Americans. Some of the most culturally conservative among the Creeks, known as "Red Sticks," responded to the vision, and in August 1813, they acted by attacking American settlements in Alabama. In their raids, approximately 600 Americans were killed, including women and children, as well as some Creeks attached to the fort. The majority among the Creeks asked for assistance from the United States, and the Cherokees were asked for their assistance as well. Those who volunteered were assigned to the command of three generals from Tennessee, one of whom was a theretofore unremarkable fellow named Andrew Jackson.

The Cherokees were allied with the United States by treaty and likely felt it their duty to respond when asked. In addition, they probably did not have any sense that they were opposing the Creek Confederacy. After all, although the Confederacy was divided, its official stance was a rejection of Tecumseh's vision and a continuing acceptance of federal civilization initiatives. But most of all, the Cherokees had a self-serving reason for accompanying Jackson on the campaign. If they could involve themselves in battle and comport themselves with distinction, it would create an obligation to them on the part of the United States and, they hoped, would alleviate the pressure for additional land cessions that was being applied to them by the federal government. In their view, such a serious indebtedness to them would surely bring the United States into the networks of obligations and responsibilities that the Cherokees lived by.

In several battles throughout the fall of 1813 and the spring of 1814, Cherokees, warriors once again, carried out their strategy. In the most famous, the Battle of Horseshoe Bend fought on the Tullapoosa River in Alabama in March 1814, Cherokee warriors salvaged the American victory, which resulted in the deaths of hundreds of Red Stick warriors. "The power of the Creeks was broken," and "[f]rom that day on, [Jackson's] fame began to grow, the ground swell of popularity that would eventually sweep him into the White House. And in his first great military success, as he himself acknowledged, the Cherokees played a decisive role as Jackson would prefer later to forget" (Wilkins 1986, 79).

But the Cherokees' expectation of American gratitude for their service was misplaced. As Cherokees returned home from their service, they discovered that as Jackson's armies had passed through Cherokee territory, they had wreaked destruction to fields and homes on their way. "Indeed, the Cherokees found their homes and families had suffered more at the hands of their white allies than from their enemies, the Creeks" (Wilkins 1986, 80). But upon protest by the Cherokees to the United States, Jackson denied his army's actions. The United States also denied the equal pay and pensions to wounded veterans that had been promised to the Cherokees. But the final and greatest duplicity occurred as the United States punished the Creeks for their "betrayal," despite the fact that only a dissident band among the Confederacy had opposed Americans. As part of the land cession that was demanded of the Creeks, Cherokee lands in northern Alabama were included in the proposed treaty. Only under protest from the Cherokees and the Chickasaws, who also felt they had rights to it, were the lands they claimed removed from the cession forced of the Creeks in 1814.

It was clear thereafter to the Cherokees that neither the United States nor Jackson felt any sense of obligation to them for their contributions as part of Jackson's military campaigns. There would be no reduction of pressure for land cessions on the part of the United States, and instead, those pressures escalated. Although the Cherokees had been successful in having the northern Alabama lands removed from the 1814 Creek cession, within two years, the United States had applied enough pressure to individual chiefs once again to force another major land cession in 1816. And the following year, in 1817, a series of smaller tracts around the periphery of the remaining territory were ceded, again on the signatures of a minority of chiefs of the National Council. The old British and American tactic of advancing a treaty after coercing only a minority to sign on the Cherokee side continued to be effective. From the Cherokee perspective, this continued to be so since the tension between the older governing style, including the autonomy of individual chiefs, as opposed to the new insistence on unified national action was still unresolved.

But the Cherokees also understood that it was not solely their own unresolved nationalism that led to the land cessions of 1816 and 1817. There was another issue as well, a betrayal. Andrew Jackson, the relatively unimportant military man who had asked them to participate in his campaign and whose career the Cherokees had likely saved, was the lead negotiator for the Americans on both of the treaties that took additional Cherokee lands. By the end of the decade, Cherokees had developed a scathing opinion of Jackson.

The cessions of 1817 spurred a major restructuring of Cherokee national government. Throughout the 1810s, the mounting federal pressures had only served to solidify and expand the growing sense of nationalism among Cherokee councilors and the general population. The Council had been formulating written statutes since 1808, and in 1817, an act that dramatically reformed the Cherokee government was passed. As with all the laws, it was written in English, a language the majority of the people neither read nor understood, but that could be held up to federal officials as evidence of the Cherokees' ability to self-govern. The Act of Reform has sometimes been called "the first Cherokee constitution." Although technically not of that stature, the act nevertheless established a government that later solidified in just such a document. It signaled that "they were ready now to institutionalize their sense of nationhood" (McLoughlin 1986, 226).

In 1820, additional legislation was passed by the National Council that eliminated the selection of headmen by "towns," a system that had become archaic by that time, in favor of election by popular vote of members

of the National Council. The nation's territory was divided into 8 electoral districts, with 4 representatives to be selected from each of the districts, for a total of 32. In addition, a body known as the National Committee, which had been established in 1809 "to act as an administrative aid to the principal chief," was codified in 1817 and expanded to 13 members who "administered the day-to-day activities of Cherokee government between annual sessions of the national council," thus functioning more as a cabinet than a second legislative house as it has sometimes been described (Champagne 1983, 91). The 1820 legislation also established, for the first time in Cherokee history, judicial districts from the eight electoral districts. The Cherokees finally had a replacement for their system of blood law, which they had given up in 1810 by statute and an agreement among the clans. Within only a few years, the court system had been elaborated to a three-tiered system comprised of district courts, circuit courts, and a Supreme Court.

The dramatic governmental restructuring had, in fact, been underway for years, and by the time it was legislated in 1817-1820, it was already becoming familiar to most Cherokee citizens. There was little or no protest about the codification of the system. The electoral process was perhaps the newest element to the Cherokees, and in their usual fashion, they adapted it to their own understandings of principles for selecting leadership. Although under the law only men could vote, the initial elections consisted of men of the household who attended large meetings at which hands were publicly raised in favor of particular candidates. This probably did not seem unfamiliar to either Cherokee men or women. After all, Cherokee men had long acted as the public interface between the families and clans at home and the larger world. Women understood this as an appropriate role for men, rather than that women were disallowed from voting. When Cherokee men cast a vote, they were almost certainly voting the consensus of their household, a consensus that had been arrived at after discussions with the women of that household and that strongly reflected the women's wishes as well. Americans, on the other hand, seeing only the superficial appearance of exclusively men who voted, also approved the new Cherokee practices as they seemed to support American notions of "civilization" as a system where women remained at home, neither seen nor heard in the political realm.

Cherokees hoped that the governmental restructuring would end the practice of minorities of chiefs signing treaties of land cession. But amendments in 1819 to the previous treaty ceded still more small tracts on the periphery of the nation's territory. Between the two years of cessions,

particularly those of 1817, several thousand Cherokees were suddenly displaced from their homes that were situated on ceded lands. With their only choices being to move within the remaining boundaries of the Cherokee Nation or to remove to the Arkansas reserve, about 3,000 elected to leave the majority of their people and immigrate to Arkansas to join those who were already there. Their main impetus being to get away from the Americans encroaching onto their lands and pressuring them to change their way of life, this group became known as the "Old Settlers" among the Cherokees. Although the 3,000 Cherokees who left in 1817-1819 inspired the designation, in later years, "Old Settler" was used to refer to the steady trickle of Cherokees who moved west throughout the 1820s and the early 1830s. In exchange for the coerced cessions of eastern land between 1816 and 1819, the United States created a legally bounded "reservation" for the Cherokees in Arkansas. The diamond-shaped tract of land was in northwestern and north central Arkansas, bounded on two sides by the White River and the Arkansas River. Although occupied by those who became known as "western" Cherokees—former Chickamaugans and the 1809 emigrants, as well as Old Settlers—the government that received the cession of land was named in the treaty as "the Cherokee Nation," the government that was still located in the southeast.

Also as a result of the 1819 cessions, towns in western North Carolina that had been known in the 1700s as the Middle Towns were suddenly outside the remaining boundaries of the Cherokee Nation. This area was still relatively heavily populated by Cherokees, and they tended to be among the most conservative in the nation. The 1817-1819 treaty gave Cherokees on ceded lands a choice to remain and accept a 640-acre reserve as well as U.S. citizenship. While many Cherokees opted to leave instead, in the region of western North Carolina, at least 49 families accepted the tracts of land and chose to remain in their ancient communities. In a region of the Smoky Mountains that many Cherokees regarded as the nucleus of Cherokee existence, these families coalesced around beliefs, practices, and sites that were critical to the Cherokee patrimony. Although they lost much of the land anyway and were trapped in a tenuous legal position for over a century, the Cherokees of western North Carolina ultimately found the way to remain in the homelands. And "since the boundary of the diminished tribal domain was nearby, they could enjoy frequent contact with their relatives who were still part of the Cherokee Nation" (Finger 1984, 10).

But provisions of the Act of Reform of 1817 also established a residency requirement as part of the criteria for Cherokee Nation citizenship. A Cherokee had to reside within the boundaries of the nation in order to

retain that citizenship. Therefore, by the Cherokees' own law, those who immigrated to Arkansas lost their citizenship in the Cherokee government as a result, and those Cherokees who accepted reserves and remained on ceded land also relinquished their citizenship by that action. For those in western North Carolina who were thereafter called the Oconoluftee Cherokees (named after a local river), the 1800s was a long century of evading removal, protecting ancient lands and sites, and ultimately emerging as a separate government from the Cherokee Nation that today is known as the Eastern Band of Cherokee Indians.

By the late 1810s, the dispersion of Cherokees was becoming alarming. For those who continued to reside and fight for the remaining territory in the southeast, the dawn of the 1820s was grim. Fortunately, the Cherokees had strategic leadership that was preparing for the struggle ahead. Among those nationalist chiefs was a rather unusual individual called The Ridge. He was typical of the majority of Cherokees in that he spoke only Cherokee and had been raised deeply in the hunter-warrior traditions of the 1700s. But unlike many Cherokees of his background, The Ridge had joined from the start in the cause of developing a more unified, centralized national government. He had been among those who had been revolted by Doublehead's murdering of children and had opposed Doublehead and the Lower Town chiefs in the land cessions of 1805 and 1806. The Council had sent him as one of the executioners of Doublehead, and in those years, he had gained his name as he proclaimed to the Council that the Americans would return again and again for further cessions of land. His colleagues later stated that he had seen the future as if standing on a high ridge, and thus he became "The Ridge." He had fought at Horseshoe Bend with the Cherokees who had been with Andrew Jackson and had gained the rank of major as a result. He afterward used the title as a first name, and Cherokees knew him ever after as "Major Ridge." As his career progressed, "the impact of The Ridge's example upon his tribesmen would be hard to overrate" (Wilkins 1986, 6).

Also at Horseshoe Bend was a younger aide whom Major Ridge had treated as a protégé. Born into very different circumstances, John Ross was the descendant of Scotsmen who had married into the Cherokees in the early and middle 1700s. Subsequent generations of the Shorey, McDonald, and Ross families from which he was descended had continued to marry and remain among the Cherokees, although also entirely acculturated to Euroamerican ways. They spoke English, had American-style educations, and were occupied in business and agricultural professions. In many respects, Ridge and Ross could not have been more different, but just as



Major Ridge, color lithograph by I.T. Bowen.
(Courtesy of the Research Division, Oklahoma
Historical Society)

Ridge had come from a traditional background yet found value in acculturation, Ross had come from an acculturated background and found value in Cherokee tradition, and "as a youth Ross favored the ancient dress and customs of his people" (Moulton 1978, 6). Still, it seemed an unlikely alliance, and might have been if not for the times and the vision of nation that the two shared. Together, they inspired and allied the older traditionalist and younger nationalist generations on the Council throughout the dangerous years of the 1820s.

That decade saw the rapid development of many social and economic institutions among the Cherokees. But "Cherokee support for these progressive governmental developments was not unanimous" (Malone 1956, 87). From 1824 to 1827, a traditionalist movement demonstrated strong resistance to another proposal emerging from the National Council—a Cherokee constitution. While most members of the Council were debating the establishment of a document of overarching governing principles that would politically unify the communities of their nation permanently, a

few were suspicious of what they perceived as further emulation of American governing systems that often seemed so unfamiliar to many Cherokee people, and sometimes at odds with tribal values, despite efforts to reconcile the two ways. This sentiment was most strongly represented on the Council by an elder named White Path. Deposed from the Council by other councilors in 1826 due to his continuing objections to constitutional government, White Path consolidated his influence among conservative Cherokee people by fomenting what became known as "White Path's Rebellion." Its targets were primarily the missionaries and their activities, as they were probably the most accessible representatives of acculturation, and it was their services, missions, and revivals that were disrupted by resistant Cherokees.

But White Path's movement was not a prophetic desire to return to old ways. It differed from earlier movements that had emerged in critical times in that it was focused entirely on immediate, contemporary issues, particularly the development of a constitution. It did not seek to eradicate the governmental changes made in the 1817 Act of Reform. It did not seek to roll back statutory law in favor of a return to blood law. It did not challenge the authority of Cherokee courts or law enforcement. Its primary message to its governmental leaders seems to have been to slow down. "At its base, the rebellion was a reaction against the pace and pervasiveness of acculturation rather than against acculturation itself" (McLoughlin 1986, 366). In these years, when Cherokee leadership was making swift and strategic moves to counter strong federal coercion to cede lands and remove, many Cherokee people were having a difficult time grasping the changes or comprehending the reasons for them. The movement implored for more time for Cherokee citizens to become accustomed to the existing changes before still others were made. The movement "seemed to threaten opposition, but when the situation was explained, White Path's fears were allayed and the trouble subsided" (Wilkins 1986, 203).

In 1827, there was a momentous occurrence in the Cherokee Nation. After decades of struggle and debate, the Cherokee Nation was solidified as a national government when its legislative body, the National Council, ratified its first constitution. This represented the pinnacle of the nationalist movement's efforts that had begun 36 years earlier with the declarations of nationhood framed in the 1791 Treaty of Holston. There had been crises, violence, and continuing losses of land as the tension between the old ways and the new vision had erupted. But the passage of the 1827 Cherokee Constitution was discussed and debated in passionate, yet civil missives

and oratory. In the end, the efforts of the conservative Cherokees involved in White Path's Rebellion had been successful. Although the Council had wanted to make still more significant changes, the constitution primarily mirrored the governmental changes made between 1817 and 1820—changes the Cherokee people had been living under for 10 years already and with which they were becoming quite accustomed.

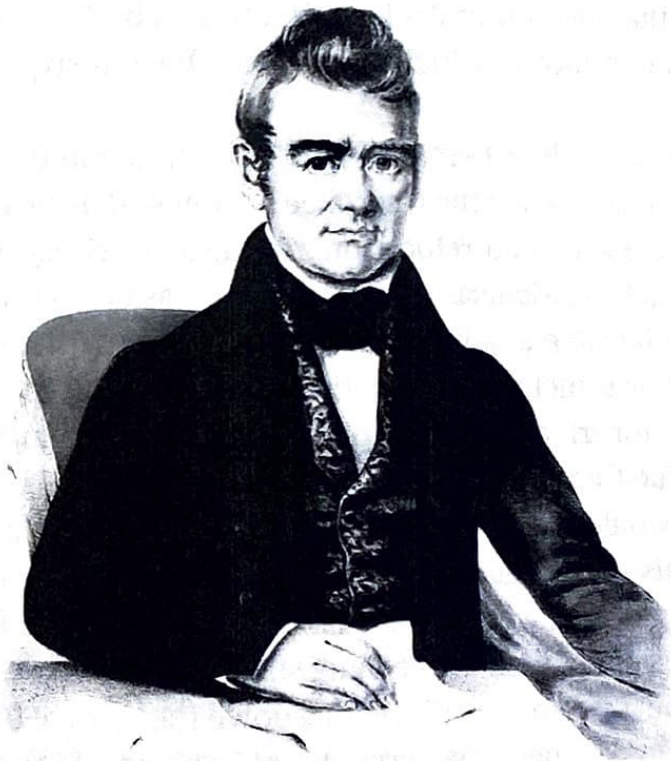
There was at least one major change, however. Although Cherokees had been electing their legislators since 1817, the principal chief had still been selected by the National Council from one of their own and he had generally served from the time of his selection until his death. The new constitution provided that the principal chief would thereafter be elected by the General Council (the combination of the National Council and Committee) to serve a term or terms of four years each with no term limits. The first election was slated for 1828. But in 1827, before the constitutional structure was in place, the Principal Chief Pathkiller passed away. He was succeeded by the second chief, Charles Hicks, but two weeks later, Hicks also passed away. Because the election would not take place until the following year, the Council continued for the time being with the tradition of selecting someone from within their ranks to be the principal chief.

Major Ridge was the obvious choice. He was the most senior member of the Council and an individual who straddled both the world of the traditionalists within which he had been raised and which had formed his worldview, and the world of the more acculturated Cherokees with which he had also become comfortable as he became more economically and politically prominent within the nation. He was the logical selection, but instead, feeling that the Cherokee Nation needed a different kind of leader in the critical times it was facing, Ridge "seems not even to have made himself available" (Wilkins 1986, 204) for the office. He encouraged the selection of a younger chief, educated and English-speaking, as he felt would best serve the nation's interests at this point. "I have no fears respecting the conduct of you young men," he stated. "I know you are decided friends of this our native country" (quoted in Wilkins 1986, 204). Two of the younger chiefs, William Hicks and John Ross, stood for the office, and Hicks was elected, which may have represented a last acquiescence to tradition by the Council, as he was the brother and therefore clan relative of the last and late principal chief, Charles Hicks.

But the following year, in 1828, and under the terms of the recently implemented constitution, another election by the General Council was slated, and at that time, Ridge's acolyte, John Ross, was elected overwhelmingly

by the body. Ross was 38 years old, barely old enough under the new document to hold the office, when he assumed the helm of the nation, and it was the beginning of 38 years as principal chief. He held a title that had been established by the 1827 Constitution as a far more powerful position than it had previously been. No longer simply a representative spokesperson of the consensus of the Council, the principal chief became an office with a great deal of power in its own right—the executive branch of the Cherokee national government.

The development of the Cherokee constitution spurred consternation within the state of Georgia, in particular. Since the 1802 Georgia Compact, the state and its citizens had existed under the expectation that at some point, the United States would fulfill its end of the bargain by extinguishing Indian titles within the state's limits and removing Indians from the state boundaries. Having exercised patience for 25 years as the United States



Principal Chief John Ross lithograph. (Courtesy of the Research Division, Oklahoma Historical Society)

failed to achieve the objective, Georgia was particularly alarmed by the declaration on the part of an Indian nation within its boundaries of its own national sovereignty and territory. The Cherokee constitution signaled its territorial permanence to the southern states within which the Cherokee Nation remained—Georgia, Tennessee, Alabama, and North Carolina—and for Georgia, within which about half the Cherokee territory was located, this was a particular affront as the United States had made specific promises otherwise to the state.

With the election of Andrew Jackson as president of the United States in 1828, Georgia had reason to hope that the guarantees made in the 1802 Georgia Compact might finally be realized. Jackson had campaigned on promises that Indian Removal would at last be implemented in the south as it had been in the northern areas in the 1810s and 1820s, and he had demonstrated his ability to be forceful with the tribes in his treaty dealings with the Creeks and Cherokees throughout those same decades. He was a southerner from Tennessee, a frontiersman like many, but who also had a personal interest in the removal of the Cherokees as he speculated in land within the state limits. But for the Cherokees and other tribes in the south, the election of Jackson led to foreboding as the pressures for cessions and removal, which had already been heavy, were certain to escalate.

In the same year, the Cherokees who had immigrated to Arkansas and had lost their citizenship in the Cherokee Nation under the Cherokees' own laws were facing a second relocation. Arkansas territory, which included the present states of Arkansas and Oklahoma, was being divided, as Arkansas desired to become a state within the union. Only the eastern portion of the territory was included within the state, and the western portion was to be reserved for tribes to be removed from the south and other parts of the country. The Cherokee reserve in northern Arkansas reminded Arkansans of what would be a fractured state sovereignty in the same way the Cherokee lands in Georgia reminded that state of the same. The clamor for Cherokee removal was thus occurring in two locations as Arkansans wanted Indians out of their burgeoning state as well.

In 1828, again by a process of wearing down the resolve of western Cherokee leadership as federal "government officials cajoled, whiskeyed, and bribed them into signing an agreement" (Hoig 1998, 139), the Cherokees in Arkansas traded their reserve for 15 million square acres of land slightly to the west, in an area that was emerging as "Indian Territory"—later to become the state of Oklahoma. These events were watched closely by the Cherokee Nation's leadership in the east as well. Once more, although the eastern leadership was not a part of negotiating the exchange of Arkansas

lands for those in the Indian Territory, the government the land was ceded to by the United States was nevertheless the Cherokee Nation. The location of their own proposed removal was now well defined. About 4,500 Cherokees from Arkansas moved into the new area and began to establish their farms and plantations. But those in the east remained entrenched there as the fight to save their southeastern homelands escalated.

As Georgia began to formulate its next moves, it was spurred by yet another significant event. In 1828 or 1829, gold was discovered near present-day Dahlonega (meaning "yellow" in Cherokee), Georgia. According to historian David Williams, although many anecdotal accounts exist suggesting an earlier date of discovery, "there is no documentary evidence of the discovery of gold in Georgia until August 1, 1829" (1993, 24) when a notice appeared in a Milledgeville (then the capital of Georgia) newspaper. Although it is probable the Cherokees had known of the existence of gold in their territory for many centuries (there are stories of a Cherokee taking gold with him when visiting London in the 1700s), the "discovery" of this precious metal by whites in the area was the impetus for a gold rush into the region. The discovery only hastened action Georgia had been contemplating since the development of the 1827 Cherokee Constitution. In 1829, Georgia passed the first of two laws that denied Cherokee claims of territorial and governmental jurisdiction within its northern lands of the state, and began to assert Georgia's claims of dominance over the Cherokees.

The first law ignored all Cherokee claims to territorial possession within the state, declaring that Cherokee lands were now divided into five counties of the state of Georgia—Carroll, DeKalb, Gwinnett, Hall, and Habersham. It further asserted that Georgia law was now extended over the Cherokees and Cherokee law was nullified in the same area, thus asserting state jurisdiction over the Indian nation within its boundary. In sections clearly aimed at Cherokees, it established harsh penalties—four years at hard labor—for anyone discouraging Indians from meeting with federal officials for the purpose of treaty making or for anyone discouraging Cherokees from enrolling to emigrate west. Branch by branch, executive, legislative, and judicial, it outlawed the functions of Cherokee government within the limits of Georgia. In a particularly interesting section, it declared that "no Indian or descendant of any Indian residing within the Creek or Cherokee nations of Indians, shall be deemed a competent witness in any court of this state to which a white person may be a party."¹ This prevented Cherokees from testifying against not only those who were in the process of stealing their resources, but also those who would soon be paid by the state to harass and terrorize them from their own homes. These laws,



Recreation of the Cherokee National Council meeting house, New Echota Historic Site, Calhoun, Georgia. (Courtesy of the Georgia Department of Natural Resources—State Parks and Historic Sites Division)

including the section deeming the testimony of Indians as “incompetent” when presented against whites, were on the books in the state of Georgia until the late 20th century!

While the 1829 law focused on Georgia’s priority in asserting state jurisdiction over the tribes within its borders, the law passed the following year focused on internal matters within Cherokee society. The 1830 law concentrated on the Cherokee courts, elaborating the previous law by prohibiting Cherokee court orders that might be issued in any of the other states from being enacted within Georgia. It also criminalized anyone attending or participating in a Cherokee court proceeding. It asserted Georgia’s jurisdiction over labor within the Cherokee Nation by declaring that all white persons who were not citizens of that nation had first to apply to Georgia for a license and swear an oath of allegiance to Georgia before taking employment in the Cherokee Nation. Although the law impacted mechanics, businessmen, and teachers who worked in the Cherokee Nation, its primary targets were missionaries, whom Georgia feared would foment resistance among the Cherokees.

Of most immediate importance to the everyday Cherokee, the law established a state militia called the “Georgia Guard.” Raised “for the protection of the mines,” the sections also allowed the Guard to “[enforce]

the laws of force within the Cherokee nation, . . . to be employed on foot, or mounted, as the occasion may require, which shall not consist of more than sixty persons."² Subsequent sections elaborated the pay these 60 individuals would receive to act as a state-supported vigilante force against the Cherokees.

Together, the two laws, commonly called the Georgia Harassment Laws, signaled to both the United States and the Cherokee Nation that Georgia's patience had run out. If the United States, in almost 30 years, would not or could not persuade the Cherokees to cede their land by treaty in legal fashion according to the requirements of the U.S. Constitution and federal laws, then Georgia would take matters into its own hands.

The Georgia Harassment Laws cast federal lawmakers into a quandary. While they may have understood Georgia's frustration with the situation that had lingered since 1802, Georgia nevertheless appeared to be rejecting the exclusive privilege of the United States to make treaties with tribes. For federal lawmakers who may have agreed with the overall policy, Georgia's actions nevertheless violated the supremacy of federal levels of jurisdiction they also understood had been created in the Commerce Clause of the Constitution, which stated that only Congress could pass regulatory laws pertaining to the tribes within the country. The tension between federalist and states' rights positions in the American political arena was beginning to heat up in several ways, and the issue of Indian removal became an indicator of the fissure that would later fracture the country in the American Civil War.

Cherokees also realized the import of Georgia's actions. But while leadership searched for ways to test the validity of Georgia's actions, they were also faced with the persistent threats that Georgia's vigilante force was posing to everyday Cherokee citizens. As the Georgia Guard roamed the Cherokee countryside looting, beating, and terrorizing residents, sometimes evicting them forcibly from their homes, the natural human inclination was to strike back. But as the violence escalated, Principal Chief Ross and his political lieutenants urged all Cherokees to keep strong check on their impulses in order not to give the state or the federal government justification to further occupy the Cherokee Nation. "Ross never deviated from his strategy of peaceable, passive resistance. That it proved insufficient should not detract from the imaginative, daring, and increasingly desperate path down which he led his people" (Perdue and Green 2007, 70). Remarkably, the Cherokees on the whole endured the harassment, giving their leadership time to seek a measured, strategic path through the crisis.

But in 1830, the federal government found its own way out of the quandary. With the passage in that year of the Indian Removal Act, the federal Congress now mandated by law the removals of the southeastern tribes as well, aligning it with Georgia's overall objective. As yet another new decade dawned, the Cherokees wondered, would the stunning achievements they had made during the 1820s—the development of the syllabary, their newspaper, the schools, the increasing complexity of their economy, the nationalist centralization of their government, and their statutory laws and constitution—be strong enough to hold off the rising political tide that had now turned sharply against them?

Notes

1. See Primary Documents, The Georgia Harassment Laws.
2. See Primary Documents, The Georgia Harassment Laws.

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