INFORMATION TO USERS

This was produced from a copy of a document sent to us for microfilming. While the most advanced technological means to photograph and reproduce this document have been used, the quality is heavily dependent upon the quality of the material submitted.

The following explanation of techniques is provided to help you understand markings or notations which may appear on this reproduction.

1. The sign or “target” for pages apparently lacking from the document photographed is “Missing Page(s)”. If it was possible to obtain the missing page(s) or section, they are spliced into the film along with adjacent pages. This may have necessitated cutting through an image and duplicating adjacent pages to assure you of complete continuity.

2. When an image on the film is obliterated with a round black mark it is an indication that the film inspector noticed either blurred copy because of movement during exposure, or duplicate copy. Unless we meant to delete copyrighted materials that should not have been filmed, you will find a good image of the page in the adjacent frame. If copyrighted materials were deleted you will find a target note listing the pages in the adjacent frame.

3. When a map, drawing or chart, etc., is part of the material being photographed the photographer has followed a definite method in “sectioning” the material. It is customary to begin filming at the upper left hand corner of a large sheet and to continue from left to right in equal sections with small overlaps. If necessary, sectioning is continued again—beginning below the first row and continuing on until complete.

4. For any illustrations that cannot be reproduced satisfactorily by xerography, photographic prints can be purchased at additional cost and tipped into your xerographic copy. Requests can be made to our Dissertations Customer Services Department.

5. Some pages in any document may have indistinct print. In all cases we have filmed the best available copy.
Peltier, Charlotte Hyams

THE EVOLUTION OF THE CRIMINAL JUSTICE SYSTEM OF THE EASTERN CHEROKEES 1580-1838

Rice University

University Microfilms International 300 N. Zeeb Road, Ann Arbor, MI 48106

Copyright 1982 by Peltier, Charlotte Hyams

All Rights Reserved
PLEASE NOTE:

In all cases this material has been filmed in the best possible way from the available copy. Problems encountered with this document have been identified here with a check mark √.

1. Glossy photographs or pages ______
2. Colored illustrations, paper or print ______
3. Photographs with dark background ______
4. Illustrations are poor copy ______
5. Pages with black marks, not original copy ______
6. Print shows through as there is text on both sides of page ______
7. Indistinct, broken or small print on several pages ______
8. Print exceeds margin requirements ______
9. Tightly bound copy with print lost in spine ______
10. Computer printout pages with indistinct print ______
11. Page(s) _______ lacking when material received, and not available from school or author.
12. Page(s) _______ seem to be missing in numbering only as text follows.
13. Two pages numbered ________. Text follows.
14. Curling and wrinkled pages ______
15. Other ____________________________________________
RICE UNIVERSITY

THE EVOLUTION OF THE CRIMINAL JUSTICE SYSTEM OF THE EASTERN CHEROKEES
1580-1838

by

CHARLOTTE HYAMS PELTIER

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE

DOCTOR OF PHILOSOPHY

APPROVED, THESIS COMMITTEE:

[Signatures and names]

HOUSTON, TEXAS
MAY, 1982
Abstract

THE EVOLUTION OF THE CRIMINAL JUSTICE
SYSTEM OF THE EASTERN CHEROKEES
1580-1838

CHARLOTTE HYAMS PELTIER

Before contact, the Cherokees strove to maintain individual liberty and natural harmony throughout their autonomous villages by using positive sanctions of religious purification and kinship control and negative sanctions of deference and withdrawal. In the eighteenth century, disease and a shifting economic base weakened the prestige of the priests and undermined tribal purification rites. Maintenance of trade and avoidance of conflict with the Europeans unified the autonomous villages. Cooperation among influential village headmen created a tribal-wide council; experienced diplomats emerged who, in order to maintain peace and trade, exercised coercion over individual Cherokees.

By the 1790's, horse theft was the most common crime on the frontier and frequently led to widespread retaliation by both Cherokees and whites in violation of treaty provisions. The Cherokees in council passed a law in 1797 which defined the act of murder and which created the light-horse or regulating party to prevent horse theft.
Institutional coercion, the regulating party, brought into council from the warrior political structure and directed by tribal chiefs, overrode kinship connections which formerly protected a horsestealer or murderer. The regulating party operated over defined territory: political contraction and centralization yielded the institutions for the making of a state.

In the early 1800's, the federal agent exercised legislative, executive, and judicial functions over both Indians and whites in the Indian country. The tribe overcame political factions to protect their ancestral homeland from being sold off by individual members. The tribal council passed laws establishing a more organized permanent, paid regulating party and abolished the practice of clan revenge. The main incentive to establishing more formal institutional mechanisms over individuals was the protection of property.

By 1827, the Cherokees had ratified a written constitution patterned after the federal constitution. After the discovery of gold in Cherokee territory and the presidential election of Jackson, Georgia and other states retaliated against the Cherokee assertion of sovereignty by extending state civil and criminal jurisdiction over the Cherokees. The Cherokee criminal justice system of promoting national harmony through restraint of individual liberty met with the Jacksonian ideals of individual liberty and "the union."
ACKNOWLEDGMENTS

I wish to thank Professors Ira Gruber and George Marcus for taking time from their own research to read the dissertation and serve as members of my committee. To neighbors, friends, and relatives—both in Galveston and in Houston—I owe thanks for assistance in the care of and transportation for my daughters, Lisa and Kelly, throughout the years and for moments of personal inspiration. Without the original education my mother and father provided me and the early years of their sparking and feeding my intellectual curiosity, I doubt that I would have ever had the desire to attain this degree. To Lisa and Kelly, who never have really understood what Mom was doing all these years but knew it meant a great deal to me personally, I owe love. To Pete who watched me struggle with balancing the responsibilities of wife, mother, full-time teacher or legal assistant, and graduate student and yet continued to encourage me to finish, I offer love and thanks. To Professor Harold Hyman, who in the early years taught me how to think critically and quickly and required an enormous amount of written material and in the later years demanded a degree of perfection, I offer thanks for having had the opportunities to work with him and to learn from him.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td><strong>I.</strong> INDIVIDUAL LIBERTY AND NATURAL BALANCE</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td><strong>II.</strong> POLITICAL CONTRACTION AND CENTRALIZATION</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td><strong>III.</strong> A REGULATING PARTY</td>
<td>77</td>
</tr>
<tr>
<td></td>
<td><strong>IV.</strong> THE MAKING OF A STATE</td>
<td>116</td>
</tr>
<tr>
<td></td>
<td>CONCLUSION</td>
<td>186</td>
</tr>
<tr>
<td></td>
<td>APPENDIX</td>
<td>192</td>
</tr>
<tr>
<td></td>
<td>BIBLIOGRAPHY</td>
<td>201</td>
</tr>
</tbody>
</table>
We should not rebuke savages because that "by so doing we asperse our own progenitors; for they were savages also. Who can swear that among the naked British barbarians sent to Rome to be stared at more than 1500 years ago, the ancestor of Bacon might not have been found? Why, among the very Thugs of India, or the bloody Dyaks of Borneo, exists the germ of all that is intellectually elevated and grand. We are all of us--Anglo-Saxons, Dyaks, and Indians--sprung from one head, and made in one image. And if we regret this brotherhood now, we shall be forced to join hands hereafter. A misfortune is not a fault; and good luck is not meritorious. The savage is born a savage; and the civilized being but inherits his civilization, nothing more."

--by Herman Melville in an anonymous review of Francis Parkman's The California and Oregon Trail in the Literary World, IV, March 31, 1849, 291.
INTRODUCTION

The focus of this study was originally on the Eastern Cherokee criminal from the time of discovery until removal. In locating and reading the available sources, I found that I encountered some difficulty in defining crime as the Cherokee society changed dramatically over three centuries with the impact of Europeans and blacks. Few sources from any given area and time contained enough material to describe adequately the Cherokee criminal perse. What I did find from both anthropological and historical primary and secondary sources were tribal mechanisms dealing with publicly recognized abnormal behavior. This study examines the tribal mechanisms as they existed before contact with the Europeans, the changes in the mechanisms and the tribal unit as a result of contact, and the emergence of a state which could exercise regular, organized coercion over individuals in a predictable manner in order to establish national harmony.

Chapter One sketches the tribal mechanisms of control which existed before contact with the Europeans. Religion and kinship connections provided positive sanctions over individuals while deference and withdrawal yielded negative sanctions. The most useful sources for this period were the traveler accounts of John Lawson, James Adair,
William Bartram, and Lieutenant Henry Timberlake. Additional helpful information came from the more contemporary observations of James Mooney and John R. Swanton. William Harlen Gilbert's *The Eastern Cherokees* and Frederick O. Gearing's *Priests and Warriors, Social Structures for Cherokee Politics in the Eighteenth Century* formed the basis of my interpretation of Cherokee culture before the impact of the Europeans. Gearing's analysis of Cherokee culture offers the idea that in addition to kinship control of individual behavior, the Cherokee used the negative sanctions of deference and withdrawal to maintain the goal of natural harmony. Gearing's theory is particularly helpful in explaining the absence of coercion in Cherokee society. I believe, however, the sources show that religion and kinship connections were the primary means of controlling abnormal behavior, while deference and withdrawal operated among those who were not directly related and encouraged village consensus.

Two other works, Rennard Strickland's *Fire and the Spirits* and J. P. Reid's *A Law of Blood* focus on the Cherokee legal system. While Strickland offers a summary account of the evolution of the Cherokee legal system from clan to court, Reid breaks down the legal system into discussions of various areas of law, i.e., law of property, law of marriage, law of nations, in the manner of a legal hornbook. Strickland provides a rough outline for an
understanding of the dynamic changes in Cherokee law. Reid analyzes the legal system from a static point of view as the system existed sometime in the early years of contact with the Europeans. This work attempts to "fill in the gaps" in these studies and others and focuses more narrowly and intensely on the criminal justice aspect of the legal system. It analyzes factors both external and internal to the tribe which produced changes in the tribal unit and in the mechanisms of enforcement, and examines the threads of tribal law-ways which, though altered as a result of European contact, remained a vital part of the Cherokee legal system.

Chapter Two analyzes the breakdown of the highly integrated Cherokee society as a result of European contact. Chapter Three focuses on the changes in the tribal mechanisms for control over individuals and the shifts in definitions of individual liberty and natural balance—the fundamental principles of Cherokee society. Chapter Four describes the emergence of a sovereign Cherokee state which exercised regular, organized, predictable coercion over individuals within a defined territory. It examines both Cherokee and white efforts to restrain Indian-white hostilities and analyzes the impact of the conflict in Cherokee, federal, and state criminal jurisdiction over Cherokee citizens. It also utilizes new sources found in the Cherokee Agency records of the National Archives.
Chapter One

INDIVIDUAL LIBERTY AND NATURAL BALANCE

Nestled in one of the naturally richest game regions in eastern America, the core area of the Cherokee range stretched from the headwaters of the Savannah across the Appalachians to the valley of the Tennessee. Hunting and warfare forays frequently occurred in what is presently known as northwest Alabama, western Tennessee, the entire state of Kentucky, southwest Virginia, the western portions of the Carolinas, and a part of central Georgia. Primarily a mountain people living in clustered settlements in the ridges and valleys of the Blue Ridge zone and the Unaka-Smoky Mountain chain, the Cherokee exercised cultural influence over a land area of some 40,000 square miles. ¹

Although seventeenth century Cherokee culture clearly reflected the divisive influence of the rugged and varied terrain in its settlement patterns and linguistic diversity, a highly integrated and complex set of spiritual, kinship, and ethical influences provided political stability, community harmony, and a thread of tribal unity. Within these intricate webs of beliefs, relationships, and expectations, members of the Cherokee communities established and enforced certain behavioral norms in order to
maintain their dual ideals of individual liberty and natural balance. An examination of the spiritual, kinship, and ethical features of seventeenth century Cherokee society within the corporate structure of the various settlements reveals the mechanisms for modification and control of individual Cherokee behavior in the period before European contact.

Topography clearly influenced the traditional settlement patterns of the Cherokee. Elevation, availability of water, and level, fertile land yielded four basic clusters of towns: Overhill, Valley, Middle, and Lower settlements.

The Overhills occupied the eastern Tennessee valley and Unaka mountains and gave rise to such major towns as Itsa'ti (Great Echota), Tanaski' (Tennessee), and Takikwa' (Great Tellico). This area constituted the northernmost boundary of the Cherokee settlements and served as the first line of defense from belligerent Indian tribes to the north (frequently the Iroquois), and, in the eighteenth century, from French intrusions from the north and west.

Major towns found in the Great Smokies and Nantahala mountain valleys included Ayuhwa'si (Little Hiwasee), Setsi, and Tama'li (Tomatley). The Valley towns developed along the headwaters of the Hiwasee and its tributary, the Valley River. Those towns on the Hiwasee represented the westernmost occupancy of the Cherokee.
The Middle settlements enjoyed a natural protective barrier of mountain ridges. The great towns of Kawi'yi (Cowee), Nikwasi (Nequasse), Kitu'hwa, and Stika'yı (Stecoe) dominated this area. Below the middle area lay the Lower towns representing the eastern and southern reaches of the Cherokee complex and the area most vulnerable to early colonial contact. Estatoec, Dugihu'yı (Tugaloo), Kuwa'hi (Keowee), and Kanuga (Canuga) became influential centers of trade in this area.  

Different linguistic dialects and geographical terrain encouraged the growth of localism in the four separate regions, but the Cherokee shared a complex common belief system and faithfully celebrated elaborate ceremonies. Their classifications and explanations represented the world as they believed it existed--both in the natural and supernatural realms and in the normal and abnormal daily occurrences. Like other preliterate societies, Cherokee religious beliefs were highly systematized and interrelated. In accordance with their beliefs, the Cherokee strove to maintain an orderly and naturally balanced life. They frequently resorted to prescribed purification rituals to rid their categories, individuals, the clan, or the community of pollution or impurity. They also attributed special meanings to "any anomalies or abominations" which occurred "along the margins and in the interstices of their classification system." In the closed, corporate, highly
integrated Cherokee communities, belief system and ritual played a unifying role and served as the ideological background for social structure, common ethics, and customary law.6

Cherokee cosmology consisted originally of two worlds, the Upper World (Galun'lati) representing order and regularity, and the Under World, signifying disorder and change. This World, where the Cherokee lived, was created later and was perceived as a great, flat island floating in a sea of water and precariously suspended from the sky vault by four cords, one in each of the cardinal directions. (Appendix A) The Cherokee tried to strike a balance in This World between the unattainable perfect order of the Upper World and disastrous chaos of the Under World.7

In the Upper World lived important deities such as the Sun, the Moon,8 Thunder (Ani'-Hyun'tikwalaski), and large special beings who, though similar to their corresponding relatives in This World, performed remarkable feats (like transforming themselves into other shapes).9 In contrast, ghosts, monsters, man-killer witches, cannibals, and a variety of thunder-spirits inhabited the Under World and emerged periodically from rivers, lakes, waterfalls, and caves to thwart the existence of the Cherokee. This World was composed of inferior images left behind by dissatisfied Upper World creatures who returned to their
original haven when This World became overcrowded. Men, animals, and plants comprised the basic categories of non-spiritual beings in This World. Although Upper World creatures had set man in constant opposition to animals, they also befriended man by giving him plants to ward off disease created by animal spirits.10

The Cherokee believed the Sun to be one of the more important gods of the Upper World. The earthly symbol and ally of the Sun was sacred fire, the primary symbol of purity. Anyone doing wrong in the presence of sacred fire was sure to be punished in some unforeseen way. Cherokee families honored the "old woman" Sun by feeding her a portion of each meal. To show respect and appreciation, successful hunters threw a piece of meat from game they had killed into the sacred fire.

The Cherokee also believed that the ancient sacred fire, representing Sun and the Upper World, should never be extinguished. River and spring water symbolized the Under World, and man was forever obliged to keep these opposing substances, fire and water, apart. Spitting, throwing anything that had saliva on it, or urinating into the fire was strictly forbidden. The Cherokee knew that river water originated in the Under World because the water temperature always varied from This World's temperature. Seasons in the Under World were just the opposite of seasons in This World.11 The Cherokee referred to the
river as the Long Man, "... a giant with his head in the lowland, pressing always, resistless and without stop, to a certain goal, and speaking in murmurs which only the priest may interpret."\textsuperscript{12}

In This World, animals were grouped into three major categories: four-footed animals; birds, who because of their flight were associated with the Upper World; and vermin, such as snakes, lizards, frogs, fish, and possibly insects, who were thought to come from the Under World. The most important or representative animal of each group was the deer, the bald eagle, and the snake. Many legends exist which tell of the struggle between these opposing groups of animals.\textsuperscript{13}

The most important recurring theme throughout all these beliefs is that of the effort of the Cherokee to promote natural balance between opposing cosmic and earthly forces. This religious belief carried over directly to their understanding of man and nature. While the Cherokee recognized that man had to exploit nature to live, he believed that nature "was not infinitely forgiving" and could retaliate if abused. Spirits were frequently called upon to combat the doings of other deities. Elaborate prescribed rituals purified the community, the clan, the family, and the individual of any polluting activities. If these rituals were ignored or rules of propriety broken, supernatural justice would be appropriately meted out to
the responsible individuals, clan, or community in the form of tragic misfortune or the contraction of disease.\textsuperscript{14}

Because of the understanding of natural balance, the Cherokee believed animals could not be slaughtered indiscriminately. They had souls which had to be treated carefully. When a Cherokee killed a four-footed animal, a bird, a fish, an insect, or a snake, he had to ask pardon of the animal's spirit for the offense and perform the traditional purification ceremony.\textsuperscript{15} The animal's spirit would then be reincarnated in order to restore the previous loss. If, however, the hunter did not follow the precautions, the ghost of the slain animal infected the man with the appropriate disease—rheumatism, dysentery, swollen joints, violent headaches, or in the case of insects, ulcers, blisters, or swellings.\textsuperscript{16} Thus man's hunting abilities would be temporarily or even permanently impaired to offset the unpardoned loss of the slain animal and to restore the balance between the opposing forces of man and animal.

Similarly, the Cherokee believed that each human had a soul which lived on after death as a ghost. These spirits could materialize so that some individuals could see them while others could not. After a person's death, villagers shouted and made noise in order to frighten the ghost away to the western sky, "the Nightland." Without this ritual the ghost could linger on and cause illness or
death among the relatives of the deceased. The most influential belief dealing with human spirits was associated with the practice of blood revenge. The ghost of a man whose murder had not been avenged was thought to haunt his house until equal blood had been shed by his murderer or his murderer's relatives. 17

While justice was administered according to these cosmic categories and beliefs, occasionally disasters or personal misfortunes occurred which could not be explained in the traditional way. Sometimes "good" men who abided by the various rituals suffered calamities, while "evil" men who flaunted disregard for ceremonial practices prospered. These "wild" or unjustified events were believed to be caused by conjury and witchcraft.

Charles Hudson in his recent study, The Southeastern Indians, defines conjury as "the use of oral formulas and ritual acts to affect spiritual beings, including those that governed the weather, game animals, cultivated plants, and most especially the health and well-being of people." 18 Conjury was probably used by all Cherokees in their daily affairs to help them with their respective tasks. A woman might use a special formula to quicken the cooking of food; a man might ask for special protection on a hunt. 19 Usage of formulas to avoid evil, bring good luck, or cure an illness was generally accepted.
Witchcraft, however, "was the intrinsically evil action of mystical means to cause human suffering and death." Acts of will (omnipotence of thought and clairvoyance) and metamorphosis (the changing of physical form to contact victims) were the primary means of achieving wicked ends. The Cherokee believed that witches were heartless monsters who only appeared to be human. Their true existence actually fell outside the realm of humanity. Witches increased their physical earthly lifetime by adding the unexpired normal life expectancies of their victims to their own. Because of this belief, older people were suspected frequently of practicing witchcraft, even though members of this age group usually received the respect of the Cherokees.

In the small-scale, well-integrated societies of the Cherokee a single troubled relationship affected many areas of a person's life. Intensive associations could lead to ambiguity and doubt about the intentions of others. Witchcraft, therefore, was also an outgrowth of jealousy, resentment, or even ambiguous or eccentric behavior.

Although most Cherokee routinely practiced elementary forms of conjury, and some allegedly dealt in witchcraft, occasionally ritual specialists had to be consulted in order to discover the causes of personal misfortune and to rid the person of the infectious disease, thereby restoring the natural balance. In traditional Cherokee
societies these specialists or priests (James Adair's "Archi-magi") exercised considerable political and social influence. They were carefully selected and underwent a lengthy, elaborate period of instruction and training. In addition to their ancient and secret knowledge of sacred formulas used to cure individual illnesses, the priests served the community in a corporate capacity with their celebration of seasonal ceremonies and festivals.

In traditional Cherokee societies one of the most important ceremonies was the Cementation or Reconciliation Festival. This occurred shortly after the rise of the new moon in October. The central idea of this celebration was the removal of all uncleanness (therefore the removal of disease) and the restoration of balance and harmony. In order to accomplish this state of purification, a number of rituals were performed. Seven appointed Cherokee cleaned all the houses of the town, including the council house. Seven articles, symbolic of all household belongings, were purified. All old clothes were thrown away and new ones donned; each person bathed seven times, alternately facing east and west. With the swearing of vows of eternal friendship and solidarity and the exchanging of garments, all differences between people were forgotten. Finally, the making of new fire "signified the beginning of a new life in the community free from all of the impurities of the old life." This annual rite lasting approximately
ten days solidified the corporate unity of the village and provided for a restoration of purity and natural balance by a communal forgiving of all previous offenses committed by individuals.

Just as all Cherokees shared a common belief system and celebrated the same rituals in their autonomous villages, they also organized their societies into seven matrilineal, exogamous clans—the Ani'-Waya (Wolf), Ani'Kawi (Deer), Ani'-Tsi'skwa (Bird), Ani'Wa'di (Paint), Ani'Sahani, Ani'Ga'tage we and Ani'Gila hi. The last three have been translated as Long Hair, Blind Savannah, and Holly, or Blue, Wild Potato, and Twisters. The clan was the most important structural unit in Cherokee society. It provided the framework for the education of children, regulation of marriage, the maintenance of order, imposition of sanctions, and a basis for corporate policymaking. In the words of the Cherokee, the clan was "the grand work by which marriages were regulated and murder punished."

Constitutionally, there were no Cherokee citizens in the seventeenth century, only members of clans in the separate villages. All rights, duties, and privileges originated within the clan unit. Descent was traced matrilineally with the children belonging to the mother's clan. The closest ties existed between mother-child, brother-brother, brother-sister, sister-sister, and
maternal uncle-nephew/niece. Avuncular authority was the keystone of Cherokee clan operations. The young male Cherokee was instructed and disciplined by his mother's brother. The Cherokee father, belonging to his own mother's clan, exercised little or no authority over his own son, but assumed legal responsibility for the welfare of his sister's children. If the father harmed his son in any serious manner, he could be held accountable by his wife's clan, particularly by his son's uncle (his wife's eldest brother). If a Cherokee were slain, his life would have to be avenged by a member of his own clan, with the proximate responsibility falling to the eldest maternal uncle. Only through this practice of lex talionis, could the dead man's spirit be released and natural balance be restored to the respective clans. The commission of homicide was a clan function.

But the Cherokee neither thought nor acted upon such distinctions as murder and homicide. The important point was that an act of death had been caused "collectively" by a certain clan. Liability had been created; the loss must be offset by compensation with a life from the responsible clan. Theoretically, "neither intent, malice, negligence, accident, omission, nor excuse" entered into the process. Self-defense neither negated the victim's clan's right to vengeance nor removed the liability of each individual.
member of the murderer's clan. By making each person responsible for deaths caused by fellow clansmen, lex talionis used the clan as the enforcing agent, the police power, of Cherokee society. Knowing that they would become the object of vengeance, the relatives of the manslayer might generally be the first to apprehend him. Since the nearest relative would be punished if the culprit could not be found, brothers of the manslayer would sometimes execute him. 30

In practice, however, the law of blood revenge was modified and liability mitigated. Substitutions occurred as brothers or uncles, perhaps of lesser stature, offered themselves in place of their condemned relatives. 31 Accident, absence of intent or malice, good character, and self-defense could prompt acts of forgiveness or acceptance of compensation (in the form of goods or tokens of peace, prisoner or enemy scalps) by the avenging clan. 32 Unrelated killings in opposing clans could be used to "set-off" vengeance rights and restore balance. 33 A Cherokee manslayer might also flee to Chota, a principal village of the Overhills, where he would temporarily find asylum and perhaps secure enough time so that some form of compensation might be accepted by the avenging clan. 34 Finally, the Cherokee practiced a form of outlawry which allowed a clan to announce that it would no longer extend its protection to a member who continued to involve the clan in
controversy. This meant that the clan could not avenge the "outlaw's" blood if he were killed. The clan member essentially became disowned.

All of these rules and practices governed interclan slayings, but little evidence exists on violent intraclan deaths. Generally, the brother-brother kinship ties were so strongly reinforced that such inordinate acts of aggression rarely occurred. If fratricide happened, more than likely some sort of forgiveness was offered. Maternal infanticide was not considered an offense, but paternal infanticide would fall under the rules of clan revenge unless mitigated. Suicide posed a particularly fearful situation for the clan, for the decedent's ghost could not be set free. Other intraclan offenses punished by the clan included intermarriage within the clan and incest. Neither of these occurred frequently, apparently, because prevailing cultural practices forbade marriage within one's own clan or one's father's clan.

The clans served as the basic constitutional units for the regulation of such violent acts as homicide; they also shaped the contours of society and provided both the framework and the mechanisms for controlling deviant individual behavior. The clans divided into identified groups of brothers, sisters, uncles, fathers, father's sisters, grandfathers, and grandmothers. With members of each of these groups, the Cherokee held a special
relationship of either privileged familiarity or formal respect.

The individual always looked upon members of his father's matrilineal lineage and clan as persons he formally respected but could never marry. All the males of this group were called father, the females, father's sister (even those we would refer to as grandparents in another generation). Although the father aided and assisted his son in pursuing a certain skill, he always maintained a reserved and distant aloofness. The son always upheld the father in arguments with others, never derogated or belittled his father, and never joked about his father's clan. A similar formalized relationship existed between mother and daughter, father and daughter, and mother and son. Indirect joking about a third party occurred between father and son and mother and son.  

With his mother's matrilineal lineage and clan, a Cherokee maintained an attitude of familiarity with the men (except his mother's brother) but a certain reserve toward the women. His "blood" ties were within this clan, and the strongest of all clan relationships existed between brother and brother, brother-sister, and sister-sister. A great amount of familiarity and privileged joking occurred between brothers. The older brother had the expressed functions of protecting the younger brother
and sister and avenging any wrongs done to them. If a Cherokee's sister became pregnant and was not married, the brother initiated the accusation against the responsible "invisible man" and, if supported by public opinion, engineered some sort of settlement. Brothers acted as the moral censor of each other's behavior; teasing and practical or obscene jokes about a brother embarrassed and humiliated him and usually led to a change in his behavior.

Another respected relationship existed between the Cherokee and his maternal uncle. The uncle had the primary responsibility for disciplining his sister's son or daughter and the prerogative of scolding. He saw that his nephew learned the necessary religious formulas and the skills of hunting. Like the boy's father, he could joke indirectly about a third party.

The most familiar relationship existed between husband and wife and grandparents and grandchildren. The Cherokee could joke with, confide in, and marry into his father's father's clan or his mother's father's clan. The males (even those we would refer to as first cousins) were called grandfather, the females, grandmother. With these individuals, the Cherokee could be on more familiar terms than with the members of any of the other three related clans. Socialization was frequent, relaxed, and highly informal.
The relationships of respect and familiarity provided both the framework and the mechanisms for modification of Cherokee behavior. Satirical and ethical sanctions by the proper relative offered the primary means of maintaining harmony and social order. To suffer ridicule and be made the brunt of a joke ("being despised") was the height of disgrace and humiliation for a Cherokee, what we would define as punishment. In traditional Cherokee society, corporal punishment was rarely used. Dryscratching, pouring water over a person, or threatening with a "physic" were acceptable means of bodily punishment for the more serious offenses, and these could be performed only by the proper clan relative. Whipping rarely occurred and was considered a breach of good conduct.

To be publicly ridiculed and receive the disapproval of the members of one's closed, corporate community was an awful experience for the Cherokee. As Robert H. Lowie has noted, "... to have derisive songs sung in mockery of one's transgressions; to be publicly twitted with disgraceful conduct by joking relatives" represented an effective sanction in a tightly integrated society. It negated the need for any centralized coercive authority or penal institution. Law was enforced by the weight of public opinion backed by fear of shame and disgrace.

Yet there were additional communal mechanisms which controlled Cherokee behavior and induced social harmony.
Natural balance between opposing forces was both a religious and a social ideal. Conflict led to disorder and chaos and signified the life of the Under World. Yet the Cherokee clearly understood that they could never attain the perfect order, regularity, and predictability of the Upper World. Conflict existed and had to be controlled or avoided in order to maintain a semblance of social balance and stability. When the clans enforced the sanctions of blood revenge, they represented the most coercive authority in Cherokee society. Public ridicule and mockery, although frequently done in an indirect or satirical manner, also represented a positive, active social sanction to control unacceptable behavior. But another mechanism existed which sought to avoid conflict altogether. This sanction required no positive action at all. It was the process of social withdrawal from a person who openly clashed with his fellow Cherokees and who caused the society to be thrown out of balance.

Patterned deference to others on the basis of age, sex, or kinship relation characterized normal Cherokee social behavior. Personal aggression, therefore, was that kind of action which made it impossible for one Cherokee to defer voluntarily to another. While deference allowed mutual and extensive access to others, personal acceptance and approval, aggression precipitated social withdrawal and ostracism. The Cherokee word today for
such disallowed behavior translates "he-comes-up-in-your-face."  

Avoiding conflict, thereby insuring social harmony (natural balance), came to be the overriding measure of a good man. It has been suggested that the Cherokee of the 1700's employed three methods to avoid conflict: first, by asserting rights or interests cautiously and respectfully; second, by turning away from impending conflict; and third, by withdrawing from men who openly or aggressively intimidated or threatened others.  

The Cherokee ethos disallowed disharmony. Shared ethical values predisposed the Cherokee to turn away from an unpleasant situation, to be free of bad thoughts, even to be treated for bad thoughts as if he were physically ill.  

Fred H. Gearing asserts that withdrawal was the sanction most used to redirect the behavior of fellow villagers. But as Gearing acknowledges, this claim is difficult, if not impossible, to support with existing evidence. In an effort to establish his theory of withdrawal, he underestimates the effectiveness of clan sarcasm, ridicule, and mockery in the controlling of behavior. Clan ties could expand to cover only a certain number of relatives within the larger corporate community. The withdrawal analysis, therefore, is most helpful in understanding those patterns which avoided conflict between and controlled the behavior of unrelated Cherokees. Taunts,
ridicule, or threatening behavior between Cherokee who were not bound by kinship ties would clearly be viewed as uncalled-for aggression. Turning away or withdrawal would be the appropriate response to avoid conflict. Ultimately if enough Cherokees reacted similarly, the offender would be ostracized.

The withdrawal theory also enhances our understanding of corporate structure and functioning of the autonomous Cherokee villages. In the seventeenth century, the Cherokee performed a variety of tasks through the organized units of the household and the clan. Members of the community, however, came together in a corporate capacity for religious ceremonies, war (an expanded form of blood revenge), and decisions which could only be made through village consensus. Town meetings were held in a centrally located council house, and members were seated by clans. A group of "beloved men," those Cherokee especially respected because of their age and ideal behavior, and an inner council of clansmen (seven spokesmen for the seven separate clans) served as the political structures through which corporate agreement was reached. A spokesman or headman who, at any given time, most adequately reflected the general views of the community served as the leading political structure through which corporate agreement was reached. A spokesman or headman who, at any given time, most adequately reflected the general views of the community
served as the leading political figure. But this person had no power, no authority to enforce obedience to council decisions. In the village's war organization, after the general council had decided for war, young men united with respected warriors to avenge the deaths of their fellow Cherokee and free the community of haunting spirits. Those warriors who either had considerable fighting experience or knowledge of sacred formulas were assigned special responsibilities in conducting war.

While these corporate structural units per se did not affect behavior, Gearing suggests that these "poses" tell us something about the framework for reaching village consensus and maintaining social order. Within each clan section, kinship roles and the ultimate threat of withdrawal forced younger members to yield to the opinion of older clansmen, thereby allowing the seven clans to develop corporate sentiments. Then the beloved men reconciled clan opinions so that the village could arrive at consensus. Those elders who were particularly adept at mediating competing interests and promoting unified agreement were honored and respected by other beloved men and the rest of the community. These special individuals became the models of moral behavior and were recognized for their lifelong maintenance of circumspect, harmonious conduct. Social harmony served as the corporate moral ideal, but individual moral excellence could be attained only in one's later years.
after a lifetime of balanced behavior and promotion of corporate unity. 57

The Cherokee war organization, however, was "incompletely and imperfectly institutionalized." 58 Traditional moral expectations, kinship influences, and methods for avoiding conflict (asserting interests, turning away from conflict, withdrawal) did not operate during war. Wars were spontaneous, crisis-oriented, and originally not purposefully designed to maximize and hold territory. Warriors, frequently the younger men of the community, had considerable freedom. 59

Aggressive energies, particularly among the young, which could not be released within the expected deferential patterns of behavior in the village were channeled into war forays in the winter months and into organized ball games in the summer months. The ballplay of the Cherokee was a violent activity in which players, organized into structures similar to those of war, performed spectacular individual feats of stamina, skill, and aggressive competition. Players often became injured and deaths sometimes occurred. 60 But as in war, there was no elaborate team strategy or cooperation; achievement was a matter of individual assertiveness and competition.

When war parties returned and ball games ended, the participants went through an elaborate set of rituals which purified them of any remaining, harmful polluting spirits. 61
Ideally, this purification rite symbolized the transition from a period of individual voluntarism, aggressive competition, and license to a state of deference, corporate concern, and social restraint.

At the end of the seventeenth century, the Cherokee living in the Appalachians were an identifiable ethnic group. While rugged terrain and language divided them into relatively autonomous villages, religious beliefs and ceremonies, kinship structure, and ethical expectations integrated them into socially similar, though politically decentralized units. The common religious, social, and moral features of the communities also provided the framework and mechanisms for controlling individual Cherokee behavior.

Yet a theme of dualism pervaded these ethnic characteristics. In religion, the Cherokee viewed themselves as struggling to maintain in This World a natural balance between the opposing chaotic disorders of the Under World and the unattainable perfect regularities of the Upper World. Disease and tragedies were signs of pollution which had to be removed through the proper purification rites. Justice was administered according to whether one was "pure" or "polluted."

With the functioning of lex talionis, spirits were avenged, liabilities erased, losses recovered, and social balance restored. Clans also provided structural mechanisms
of familiarity and respect through which clansmen formally disciplined or informally reproached their appropriate relatives.

These sanctions were positive, active means of modifying social behavior. Through use of the Cherokee's other mechanism—avoiding direct conflict by turning away or withdrawing, removing oneself from an opposing force—natural harmony could be restored. This negative, passive sanction operated primarily between those Cherokee who were not directly related, those whose behavior could not be modified through the ordinary "familiarity or respect" relationships. The withdrawal mechanism also encouraged village consensus and solidified corporate opinion.

The individual Cherokee clearly felt bound by the positive and negative sanctions. He frequently deferred to an extensive number of clan relatives in a number of ways—religiously, socially, economically, morally, and politically. But in war, hunting, and ball games, individual competition and aggression replaced corporate ideals, cooperation, and deference. Only after the Cherokee warrior, hunter, or ballplayer had been properly purified could he then be fully accepted back into the community.

These sanctions functioned effectively enough in the seventeenth century to provide social order and stability. Natural balance had been maintained; opposing forces
controlled. By the 1690's, however, forces were at work which would ultimately blur the distinctive dualisms of Cherokee society and weaken its religious, social, and ethical sanctions.
Chapter 1 -- Footnotes


2 Individual liberty and natural balance might well be interpreted as the organizing constitutional ideals of the early Cherokee society. Fred Gearing in his dissertation, "Cherokee Political Organizations, 1730-1775" (University of Chicago, 1956), and later in *Priests and Warriors, Social Structures for Cherokee Politics in the Eighteenth Century*, Memoir 93, American Anthropological Association, LXIV (October, 1962) established that societal antipathy to aggression led to avoidance of face-to-face conflict. Lacking direct, centralized coercive structure to maintain order, the Cherokees achieved social harmony primarily through the processes of deference and withdrawal. (See below, pp. 14-15) J. P. Reid, agreeing with Gearing about the Cherokee standard of social harmony, has explored the Cherokee love of individual liberty in *A Law of Blood* (New York, 1970), 63-64. While both Gearing and Reid believe that the ideal of social harmony stemmed from an ethical standard (what the "good" Cherokee would be expected to do), neither firmly relate the ethical standard to a spiritual basis. Gearing focuses on political structure in the eighteenth century and traces the gradual structural fusion of the respected non-coercive peace councils led by priests with the more coercive war organization led by warriors. But there is little detail of the actual spiritual beliefs of the Cherokee. In contrast, Reid doubts that the Cherokee had any organized theology whatsoever. He believes the Cherokee "may have been superstitious" and "even may have been religious." Disdaining the idea of any organized dogmatic structure, Reid classifies "what religion they had" as zoetheistic and highly individualistic in philosophy. Cherokee religion according to Reid was not a function of state, was not "well enough organized to guarantee priests the leadership of government." The priests had achieved their positions of political influence not because of "inherited priesthood of theocratic privilege" but because of their "mastery of Cherokee politics." (pp. 21-24) But see D. H. Corkran's analysis of the Cherokee god in "The Nature of the Cherokee Supreme Being," *Southern Indian Studies* (VIII, 1956). Rennard Strickland in *Fire and the Spirits, Cherokee Law from Clan*
to Court (Norman, 1975) acknowledges the importance of the native tribal religion to the concept of law. He mentions the role of the priest in reciting the law at the annual propitiation festival, the significance of the sacred fire, the invocation of spirits by the community and the sacred use of tobacco. (pp. 11-12, 22-25, 31, 183-185) But there is no extensive attempt to show how the basic themes of Cherokee spiritual beliefs and practices serve also as the philosophical foundation for Cherokee law. This chapter will show how spiritual beliefs pervaded many aspects of Cherokee society and, when linked with kinship and town structure, provided the "cultural glue" for social control.

3Gary C. Goodwin, Cherokees in Transition: A Study of Changing Culture and Environment Prior to 1775 (Chicago, 1977), 38. Goodwin explains that historically both native Cherokees and visitors have divided the Cherokee complex into units based on linguistic diversity and regional identification and awareness.

4Ibid., 39-40.

5Charles Hudson, The Southeastern Indians (University of Tennessee, 1976), 121.

6Ibid., 120. Hudson's chapters on the spiritual beliefs and ceremony of the southeastern Indians focus primarily on Cherokee principles and rituals because of the sources. Much of his information is taken from the travel accounts of John Lawson, James Adair, and William Bartram and ethnological observations of the anthropologists, James Mooney and John R. Swanton, sources which span a time frame of nearly 250 years. In addition to this body of material, I have relied on William Harlen Gilbert, Jr.'s study of The Eastern Cherokees which is based on field research in 1932 and the John Howard Payne Manuscripts at the Newberry Library, and articles by Raymond Fogelson and Charles Hudson on magical and religious beliefs of the Cherokee. (cited below)

7Ibid., 122-128.

8Mooney gives the names of Sun and Moon as Su'talidihi' and Ge'yagu'ga when addressed by priests and "Nunda of the day" and "Nunda of the night" for the common people. Myths, 257.
The Nunne'hi would be an example of the special beings. They were able to live anywhere but especially could be found in or above the bald mountains. They were invisible except when they wanted to be seen.

Ibid., 330-331.

Ibid., 252.

Hudson, Southeastern Indians, 126-128.

Quoted from James Mooney, "The Cherokee River Cult," The Journal of American Folklore, XIII (1900), in ibid., 128.

One of the oldest and most celebrated conflicts was that between Tlanuwa, a great hawk of the Upper World, and Uktena, an Under World monster which had the scaly, spotty body of a large serpent, deer horns on its head, wings like a bird, and a bright diamond-shaped crest that gave off blinding flashes of light. Long ago the Uktena had eaten young babies of the Tlanuwa; from that time on, these two creatures were mortal enemies. The Uktena represented the most abominable creature of all to the Cherokee because it failed to fit precisely into any one of their animal categories. The Cherokee also believed that the Uktena had originally been a man who, when transformed into a snake, unsuccessfully tried to kill the Sun for sending down a plague on man. The Uktena failed and became highly jealous and resentful of the common man. From then on, the Cherokee believed that Uktenas lived in deep water, high mountain passes, and at the edges of the Cherokee world and attacked people whenever they could. To see an Uktena brought misfortune; to smell its breath brought death. It could, however, be repelled by fire, a representative of the Upper World. The capture of an Ulunsuti, the blazing diamond atop Uktena's head, brought success in hunting, love, rainmaking, and other activities to the brave Cherokee. But the ulunsuti (actually a type of quartz) was primarily used during ceremonies by priests for prophecies. See Mooney, Myths, 297-298, 315-316 for the legends.

Hudson, Southeastern Indians, 159, 173.

Mooney, Myths, 250-252. The exception to this rule is the killing of bear which were thought to have originally been people. Ibid., 325-329.

17 James Adair and Samuel Cole Williams (ed.), *History of the American Indians* (Johnson City, Tennessee, 1930), 158; James Mooney, *Myths*, note 19, 26-27; William Harlen Gilbert, *The Eastern Cherokees*, Bureau of American Ethnology, *Bulletin* 133, No. 23, Smithsonian Institution (Washington, 1943), 207-208, 284-285, 294-295, 304; Hudson, *Southeastern Indians*, 172. Both Gilbert and Hudson recognize the importance of spiritual beliefs to the social solidarity of Cherokee society. Gilbert repeatedly sees myths in the Eastern Cherokee as a necessary explanatory function of social relationships and social mechanisms (p. 304) and as an important unifying feature of the tribe. He maintains that the prominence of ceremonials in Cherokee society had declined over the centuries and that the ceremonies and beliefs had changed as a result of acculturation. Hudson also sees the close integration between the belief system and social structure (p. 184) but views the belief system as an explanatory effort to understand why things happened in the manner that they did (p. 173). J. P. Reid, in *A Law of Blood*, on the other hand, dismisses altogether the view that religion served an explanatory function in the law of vengeance. He summarily divorces the belief system from the legal duties and social obligations of the clan. "If religion entered into the matter at all," argues Reid, "it was to avoid vengeance, not to explain it. Legal duty, not religion, explained why vengeance had to be taken and why it was a right." (p. 75) Anthropological conclusions (Mooney, Swanton, and Gilbert) and travel accounts (Lawson, Adair, and Timberlake) support the contention that the spiritual realm was highly interrelated and integrated with social structure and functioning. To claim that religion would encourage the "avoidance of vengeance," reveals a misunderstanding of the basic nature of Cherokee society. Such a statement fails to appreciate the highly integrated, complex nature of Cherokee culture. It presumes a separation between clearly religious or superstitious beliefs and legal duties. Reid agrees with Gearing that the basic ideal of Cherokee society was to maintain order and social harmony by avoiding aggression, but both fail to link this ethical or moral basis to the related spiritual beliefs. The Cherokee believed that animal and human spirits or ghosts caused disease in man. Precisely because clansmen feared retaliation in the form of disease or death by unavenged spirits of relatives did they in turn wreak vengeance on the
murderer or his clan. If Reid is correct in his theory of religion leading to an "avoidance of vengeance," then murder of another Cherokee could have been satisfied by an individual avoidance prayer. But this practice did not exist. Instead, traditional law-ways were intricately imbedded in and related to spiritual beliefs and ceremonies. Rennard Strickland's chapter entitled "Traditional Law Ways and the Spirit World" explores the outlines of this relationship. See also Raymond D. Fogelson's excellent article, "An Analysis of Cherokee Sorcery and Witchcraft," in Charles M. Hudson (ed.), Four Centuries of Southern Indians (Athens, 1975), 113-128.

18 Hudson, Southeastern Indians, 351.


20 Hudson, Southeastern Indians, 351.

21 Fogelson, "Sorcery and Witchcraft," 119-120.

22 Hudson, Southeastern Indians, 175.


24 Gilbert, Eastern Cherokees, 331-334. Gilbert uses material from the Payne manuscripts to describe the elaborate procedures of the seasonal ceremonies. John Haywood in The Natural and Aboriginal History of Tennessee (Nashville, 1823), 243, also describes the importance of the role of the priests in the giving or delivery of the laws at the annual busk or first-fruit celebration. By the time of Haywood's writing in the nineteenth century, the propitiatory festival had probably been combined with the Great Green Corn Festival. After reciting "particular and positive injunctions, and negative precepts" of the ancient law, the high priest would then enumerate all crimes
committed and bid the people to look at the holy fire, which had forgiven them.

25Mooney, Myths, 212, note 29.

26Reid, A Law of Blood, 37.

27Cherokee Phoenix, February 18, 1829, p. 2, col. 5.


29Reid, A Law of Blood, 76.

30Ibid., 79-80; Gilbert, Eastern Cherokees, 324-325.

31Reid, A Law of Blood, 80.

32James Mooney, Myths, 261; Gilbert, Eastern Cherokees, 324; Reid, A Law of Blood, 94-95, 98, 99, 102.

33Reid, A Law of Blood, 108.

34See Reid's thorough analysis of the evidence on the towns of refuge, ibid., 109-112.

35Ibid., 83-84.

36Ibid., 87-88.

37Strickland, Fire and the Spirits, Table 3; Gilbert, Eastern Cherokees, 324; Reid, A Law of Blood, 87-88.

38Strickland, ibid., 29.

39Gilbert, Eastern Cherokees, 340; Gearing, Priests
and Warriors, 114 note 8. But Gilbert observed that preferential mating within the father's father's clan and the mother's father's clan still existed among the Eastern Cherokees in the 1930's. Eastern Cherokees, 239.

40 All of the following explanations of kinship relations come from Gilbert's study of kinship structure of the Eastern Cherokees, 245-253.


42 Ibid., 242; Hudson, Southeastern Indians, 324. Dry-scratching was the practice of being scratched with a piece of wood to which several slivers of bone or garfish teeth were attached. The real "punishment" derived from the humiliation that all would see the scratches rather than from the pain in receiving the scratches. This method of punishment was used by maternal uncles on particularly unruly nephews and on adults who refused to properly purify themselves with a bath in the morning. Scratching with rattlesnake teeth was also used by conjurers to cure certain diseases and with turkey bones (kanuga) by priests to prepare a ball player for a game. See Mooney, Sacred Formulas, 69-71, 203, 207, 212. Pouring water over a person and using a physic (the Black Drink used as an emetic) were also methods employed by conjurers to cure diseases. Money, Sacred Formulas, 57, 23.


44 Quoting Lowie, Primitive Society, 397, in Reid, A Law of Blood, 243. James Adair aptly described this form of public embarrassment.

They commend the criminal before a large audience, for practising the virtue, opposite to the crime, that he is known to be guilty of. If it is for theft, they praise his honest principles; and they commend a warrior for having behaved valiantly against the enemy, when he acted cowardly; they introduce the minutest circumstances of the affair, with severe sarcasms which wound deeply. I have known them to strike their delinquents with those sweetened darts, so good naturally and skillfully, that they would sooner die by torture, than renew their shame by repeating the actions."
45 Reid, *ibid.*, 244.

46 Gearing, "Political Organization," 21-34. The following theory comes exclusively from Gearing. It has been received favorably as an explanation of the absence of coercion in Cherokee society. Reid adopts Gearing's theory of withdrawal and maintains that it was "the chief prop of the Cherokee legal system." Reid, *A Law of Blood*, 245.

47 Gearing, *ibid.*, 25. Gearing's theory seems to be supported by another line of thought by Dr. Kimball Romney. (From Gearing, 27.)

he world over, he has suggested, punishment by male parental figures tends to be physically coercive and punishment by females tends to depend on withdrawing affection. Where punishment by males does not occur, the child tends to come psychologically vulnerable to the threatened withdrawal of his mother's affection and, by extension as he matures, to similar threats by all members of his face-to-face community. In societies where males are absent from the household during large portions of the year for the hunt, socialization of the child falls almost exclusively to females. Cherokee males were absent from the village almost half of every year. The question remains whether special features of Cherokee village life counteracted the expectable psychological effects on the growing child. If adult Cherokee were, through that socialization, vulnerable to the withdrawal of affection, then withdrawal would be an adequate sanction. And if withdrawal were shown to be adequate, that would support the thin direct evidence that withdrawal was the major sanction.


53 Gearing claims the village peace structure also operated for agricultural purposes and when a death occurred. "Political Organization," 45-46.


55 Virtually all observers of Cherokee life recognize this fact, even though some mistakenly refer to the headman as "chief." See Gearing, ibid., for summary, 38-39.

56 Ibid., 26. Gearing refers to the organization of the village to perform specified functions as "structural poses." Utilizing evidence primarily from the Payne-Buttrick manuscripts, Reid in A Law of Blood denies the existence of an inner council of clansmen and separate so-called "peace and war structures."

57 Gearing, Priests and Warriors, 28, 45-46.

58 Ibid., 52

59 Ibid., 53-54.

60 Gilbert, Eastern Cherokees, 337-338; Hudson, Southeastern Indians, 409-410, 420.

Chapter Two

POLITICAL CONTRACTION AND CENTRALIZATION

The years 1690 to 1760 represented a period of considerable religious, economic, social, and political change for the Cherokees. Religious, social, and ethical sanctions, both positive and negative, became partially supplanted by newer values and mechanisms for control over the individual Cherokee. The highly integrated and interrelated forces which maintained harmony in independent, corporate seventeenth century Cherokee villages no longer functioned effectively in the eighteenth century world of trade, competition, intercolonial, international, and intertribal rivalries, and war and disease. Although the twin ideals of individual liberty and natural balance remained the goals for Cherokee society, the Cherokee redefined these principles and the means to attain them by the 1760's.

Political, military, and economic factors divide the ninety years from 1670 to 1760 into two basic periods. From 1670 to 1730, the Cherokees were confronted with the first continuous contact with Europeans. Trade, slavery, and intertribal, intercolonial, and international political rivalry, in some cases leading to war, affected the economic
and political structures of the Cherokees. These changes altered the mechanisms for control over the individual Cherokee. The period of 1730 to 1760, characterized by commercial expansion, need for land and the French and Indian Wars, led to a centralization and consolidation of the political structure of the Cherokee, a weakening of religious influence and changing economic values. In turn, the Cherokee altered mechanisms for control over individual behavior and created new ones.

The Cherokees experienced little direct or frequent contact with Europeans before the 1690's. In 1540, De Soto traveled throughout the Southeast, and some writers believe his encounter with a group of Indians at Guaxule (Guasili) may have been with Cherokees.¹ In 1577, the Spaniard Juan Pardo established forts in present-day South Carolina, but his contacts were primarily with the Creek. By the 1670's, however, traders from Virginia and Charles Town, Carolina began to reach Cherokee communities and became the source of continuous contact between the English and the Cherokee. While earlier Spanish contact may have resulted in slight changes in material culture, prolonged trading between the English and the Cherokees led to informal and formal rules for governing trade and ultimately to an alteration in the patterns of culture of the Cherokees.²

The earliest recorded instance of a resolution of
conflict between the English and the Cherokees occurred in the 1670's as a result of an incident involving a Virginia trader named James Needham and his indentured servant Arthur. While Arthur remained in a Tomahitan village, James Needham and Indian John, an Ocaneechi guide for the trading party, returned to Virginia. Indian John shot Needham, stole his goods and pack-horses and sent messengers back to the Tomahitan village to have Arthur killed. As some villagers were preparing to burn Arthur at the stake, a "king" intervened, shot an alien Indian who defied him, persuaded the others to concede to his demand, and Arthur's life was spared. 3 Arthur subsequently remained with the Tomahitans, whom historians have identified as Cherokees, and accompanied them on raids against the Spanish in Florida and neighboring Indian tribes for about a year and then was returned to Virginia.

The incident reveals a number of principles of Cherokee law. First, since Indian Joan was Ocaneechi, the Tomahitans had no direct authority over his actions against the Englishman. Second, because the Tomahitans feared that they might be held responsible by the English for Needham's death since Needham was in the company of other Tomahitans and Arthur remained at their village, the headman, fearing English reprisal, influenced his fellow villagers to refrain from harming Arthur. From Indian John's point of view, his actions may have resulted from a
realization that the Virginia traders were trying to establish a direct trading relationship with the Tomahitans, thereby bypassing the Occaneechis and threatening Indian John's profitable middle man position. This development could be thwarted if the Tomahitans killed Arthur and the English retaliated. Third, the headman who saved Arthur's life by killing the alien Waxhaw apparently believed that it would be better to risk a war with the Waxhaws than with the English. The theory of corporate responsibility permeated the headman's choice of action to save Arthur's life. In international homicide, Southern Indian intertribal law held the manslayer's nation collectively liable, and vengeance (translated war) was a personal decision.  

Though this first recorded encounter occurred between Virginia traders and the Cherokees, after the founding of Charles Town in 1670, Carolinian traders dominated the relationship with the Cherokees. While a number of traders such as James Moore in 1690 continued to be interested in exploring for mineral riches, traders generally realized that quick profits could be turned from the sale of thick, heavy deerskins. The Cherokees valued guns, ammunition, metal tools, cloth, rum, livestock, glass beads and other decorative trinkets. Of all of these items, however, the gun was the most highly prized possession. It not only permitted the Cherokee hunter to kill more deer which, in turn, enhanced his trading position, but it also allowed
the Cherokees to defend themselves more effectively from neighboring Indian tribes, many of which had been dislocated as a result of English and Spanish settlement. By the second decade of the eighteenth century the gun had also become something of a symbol of prestige among the warriors. 7

As early as 1693 a group of about twenty Lower Cherokee traveled to Charles Town to ask Governor Thomas Smith about two problems which greatly affected the trading habits of the Cherokees—the availability of guns and the problem of the slave trade. With guns obtained from Carolina traders and neighboring Indian groups, the Savannah Shawnees helped by Catawba and Congarees or Esaws and Congarees, routinely raided the Cherokees in order to capture prisoners to be sold as slaves in the West Indies. 8 To protect themselves from the slaveraiding tribes, the Cherokees requested that the colonial government furnish them with firearms. Although the proprietors of the colony sought to forbid the slave trade with an Order in Council, the practice became licensed by colonial officials and quickly became the most profitable aspect of the southern Indian trade. 9

In addition, the colonial government of Carolina actively encouraged the enslavement of Indians by offering bounties for captives. During the Stono War in 1674, the Carolina governor promised a reward for every Indian brought to Charleston. The government later sold the
captives to slave traders to raise defense money for the colony. In 1702, the assembly established a committee to purchase captives for sale to meet the cost of expeditions against the Spanish. The government also encouraged the slave trade by allowing enlisted militiamen to sell whatever prisoners they might capture during war. This practice induced traders to incite intertribal warfare. By the second decade of the eighteenth century, however, the assembly considered no Indian a slave unless he had been taken in war.

The Carolina assembly extended its authority over the Cherokee territory in order to prevent abuses as a result of trade. One of the earliest incidents recorded involved Colonel James Moore who in 1690 led a small party into the Cherokee country to look for gold. The proprietors received reports that Moore had led an attack on the Cherokees and "without any war first proclaimed" had "fallen upon the Cherokee Indians in a hostile manner and murdered several of them." This incident prompted the first formal hearing involving the Cherokees. The assembly gave deputies the power to summon all persons who had information of the "hostility against the Cherokees and other Indians," take depositions under oath, and submit the entire matter to the proprietors—even though the crimes were committed beyond the territorial jurisdiction of the organized colony and within an area occupied by Indians with whom the Crown had
no treaty. Officials in Charles Town were told neither to try nor to punish. Information would be sent to London for a decision. It is likely that Moore never faced punitive action. He later became colonial governor of South Carolina.

While the proprietors and colonial government of Carolina first informally and then formally issued orders and passed laws regulating the slave trade and requested information for a hearing, until 1707 there was no systematic policy regarding Indian trade. Until that time, trading had been conducted largely through private initiative. Such abuses as that involving Governor Moore of Carolina in which he was accused of granting commissions to a number of persons "to set upon, assault, kill, destroy, and take captive as many Indians as they possible [sic] could," led to a reevaluation of Indian policy.

The assembly passed a law in 1707 which created Commissioners of Indian Trade to supervise Indian commerce. Under this law, a trader had to purchase a license and give bond to assure his compliance with prohibitions against the enslavement and sale of free Indians, the use of extortion to obtain furs, and the sale of ammunition to enemy Indians. Under the act, an appointed Indian agent of the colony had the authority to obtain warrants of arrest for criminal offenders. The agent was the prime focus of enforcement of the trade regulations since he spent ten months out of
twelve in Indian towns. Traders refused to take out licenses, Indians suffered abuse, and debts mounted.

Failure of enforcement of the regulation led to the Yamasssee War of 1715–1716. Although the Cherokees did not have the same grievances as those of the coastal tribes, they complained that their own trade prices had not been lowered as had been promised earlier when the Cherokees aided the English in the Tuscarora Wars. Only after a series of overtures to the Lower Cherokees in 1715 to persuade them to ally with the English against the Creek and after a series of internal Cherokee political struggles did the Middle and Upper Towns agree to accept two hundred guns, ammunition, and a detachment of white soldiers to assist them in fighting the Indians still at war against the English. This agreement initiated the beginning of a long-standing though frequently-interrupted alliance between the Cherokees and the English.

To cement the association and to systematize the Indian trade, the Carolina assembly passed a second trade act in 1716 which created a government monopoly. The colony fixed the prices and quality of goods, stipulated the extent to which credit could be extended to Indians, and built trading factories at the key villages of Tugaloo, Keowee, Tunesee, Savannah Town, Quanasse, Cowee, Tellico, and the Congarees.

While problems dealing with slavery, Indian trade,
and the supply of guns and ammunitions led to the first 
bonding of interests between the colonists and the 
Cherokees, intercolonial and international rivalries led 
to more formal ties in the form of treaties. In 1721, in 
an attempt to thwart French territorial encroachment and 
to reenforce the Cherokee alliance, Governor Nicholson of 
South Carolina invited a number of Cherokee chiefs to a 
conference in Charlestown. Thirty-seven towns were repre-
sented. Nicholson commissioned a "chief" as supreme head 
of the nation, provided an outline for the regulation of 
trade, abolished the public monopoly, proposed a boundary 
between Indian and English settlements and appointed an 
agent to supervise Indian affairs. In addition, Nicholson 
directed the appointed "chief" to punish all offenses, in-
cluding murder, and to represent all Cherokee claims to the 
colonial government. 19 That year, the Cherokees made their 
first land cession of an area between the Santee, Saluda, 
and Edisto River. 20 Each of these steps represented an 
effort by South Carolina to establish firmly the Cherokee 
trade with itself rather than with Virginia and to secure 
the defensive barrier which the Cherokees provided the 
colony against the French and unfriendly Indian tribes. 21 
The 1721 treaty also indicated that Nicholson wanted to en-
courage the Cherokees to exert coercive authority over their 
own members. The treaty gave the Indian agent charged with 
enforcing the trade regulations the power to issue summons
to traders who disobeyed the regulations and to arrest those who refused to abide by the summons. The attempt by Nicholson to centralize Cherokee political power failed because of the diffuse and disparate political makeup of the Cherokee communities. Indian trade commissioners like George Chicken represented the first effective colonial coercion within Cherokee territory. His commission was of a personal jurisdiction over South Carolina traders instead of over individual Cherokees.

While the problems of trade, slavery, availability of weapons, and international rivalry resulted in an indirect extension of colonial authority over the Cherokees and the formation of the 1721 treaty, perhaps the most dramatic attempt to secure Cherokee friendship for military protection and commercial reasons occurred in 1730 with the expedition of Sir Alexander Cuming. In this one event the factors can be found at work which affected the economic and political structure of the Cherokee during the first sixty years of contact, that is, trade, slavery, and intercolonial and international rivalry.

News had reached England in mid-March, 1729, that as a result of an army of Carolinians (one hundred whites, one hundred Indians) killing thirty-two Yamassee Indians and a friar, and ravaging an Indian town, the Creek and Cherokee had formed an alliance. English traders were fearful of resuming trade. Meanwhile the Lower Creeks
had joined the Upper Creeks and had made peace with the English. The Overhill and Lower Cherokee towns had repeated visits from French-allied Indians or French agents.  

While the original purpose of Cuming's visit to the Cherokee remains unclear, the English were very pleased with the results of his mission. By visiting and speaking "in council" at prominent Cherokee villages, Cuming promoted a Cherokee-English alliance and set the stage for a treaty dealing with such basic questions as sovereignty.

Cuming's routine for establishing acknowledgment of British authority in the Cherokee villages was fairly constant. In townhouse meetings with prominent warriors of the village, Cuming demanded that the assembly drink a toast to the British sovereign; in some villages the toast was made on bended knee. Possibly Cuming's brashness, charisma, and weapons enabled him to trigger the deference mechanism which naturally operated among the headmen of the village when meeting in council for discussion of village affairs.

Cuming also had a fine understanding of the Cherokee appreciation of ceremony and ritual. After gathering support as a result of visits to various Lower, Valley, and Overhill towns, he dispatched messengers to all the settlements summoning a general congress of all the "chiefs" at Nequasee, a Middle Cherokee town, on April 3, 1730. In
Cuming's words,

This was a Day of Solemnity the greatest that ever was seen in the Country; there was Singing, Dancing, Feasting, making of Speeches, the Creation of Moytoy Emperor, with the unanimous consent of all the headmen assembled from the different towns in the Nation, a Declaration of their resigning their Crown, Eagles, Tails, Scalps of their Enemies, as an Emblem of their all owning his Majesty King George's Sovereignty over them, at the Desire of Sir Alexander Cuming, in whom an absolute unlimited Power was placed.29

Cuming reportedly told the Cherokee at Nequasee that the great King George wished that they acknowledge themselves as obedient, loyal subjects. In return, the King would protect them from all harm. Falling on their knees, the headmen solemnly promised fidelity and obedience. Cuming then, "by their unanimous consent," appointed Moytoy as "commander in chief of the Cherokee nation," to whom they were to be accountable for their conduct. Moytoy answered to Sir Alexander for his behavior toward them. As a sign of securing the agreement, Cuming and the Cherokee exchanged presents, and the Cherokee presented Cuming with a "crown" of five eagle tails and four enemy scalps—a symbol of high honor and respect.

Cuming then asked that several of the Cherokee accompany him to England. Seven Cherokee, only two of whom were "chiefs" and none of whom had authority as representatives of the entire tribe, went to England, had an audience with the king and were lavishly entertained.30 The Board of
Trade realized the importance of a firm Anglo-Cherokee alliance to curbing French ambitions in the South and instructed Sir William Keith, former deputy-governor of Pennsylvania, to draw up an agreement. 31

On September 7, members of the Board of Trade read the treaty and displayed samples of the intended presents. The treaty stipulated that a "chain of friendship" had been created between the King and the Cherokees as a result of the six "chiefs" who, "with the consent of the whole nation of Cherokees," were "deputed by Moytoy" to lay "down the crown of their nation, with the scalps of their enemies and feathers of glory at his majesty's feet, as a pledge of their loyalty." Whereas the King had "fastened one end [of the chain] to his breast," he desired that the Cherokee "carry the other end of the chain and fasten it to the breast of Moytoy of Telliquo, and to the breasts of all their old wise men, their captains and people, never more to be made loose or broken." The treaty also stated that the Cherokee would trade only with the English and keep the "trading path clean" and encouraged the Carolinians "to make haste to build houses and plant corn from Charles Town towards the towns of the Cherokees behind the great mountains." The crucial question of sovereignty appeared in the form of the statement that "[a]s the King has given his Land on both Sides of the Great Mountains to his own Children the English, so he now gives to the Cherokee
Indians the privilege of living where they please."
Another article provided that the Cherokee should not allow non-English whites to settle or build forts in the Cherokee country, should always be "ready to fight against any nation, whether white men or Indians, who shall dare molest or hurt the English," and should apprehend and return any runaway negro slaves (for which the Cherokee would receive a gun and a watch-coat). The treaty also detailed a procedure for dealing with the murder of an Indian by an Englishman and the murder of an Englishman by an Indian:

... [A]nd if by any accident, it shall happen that an Englishman shall kill a Cherokee, the king or chief of the nation shall first complain to the English Governor, and the man who did the harm shall be punished by the English laws as if he had killed an Englishman; and in like manner if any Indian happens to kill an Englishman, the Indian shall be delivered up to the Governor, to be punished by the same English laws as if he were an Englishman. 32

After the Board of Trade read the treaty provisions, the ceremony concluded with a speech in which the Cherokees were told "that these were the words of the great King whom they had seen; and as a token that his heart was open and true to his children the Cherokees, and to all their people, a belt was given the warriors, which, they were told, the King desired them to keep and show to all their people, to their children, and children's children, to confirm what was now spoken, and to bind this agreement of peace and friendship between the English and Cherokees as long as the
rivers shall run, the mountains last, or the sun shall shine." 33

In response before members of the Board of Trade at Whitehall on September 9, Ketagustah, the spokesman for the group, acknowledged some of the terms of the treaty but ignored others. While Ketagustah pointed out that the crowns of the two nations were "different," the Chain of Friendship would still be carried to his People. He viewed the relationship between the King and the Cherokee as that of the Sun, "our Father," to his children. He agreed that he would defend the English against their enemies, that slaves would be bound and delivered up for "no pay," and that whites could safely build houses near the Cherokees and not worry about the safety of their property, "for we are the children of one Father, the Great King, and shall live and Dye together." Maintenance of the existing trade relationship was as important to the Cherokee as it was to the English, for according to Ketagustah, "we that have nothing must love you," and can never break the Chain of Friendship which is between us." Ketagustah and the other Cherokees omitted any reference to an exclusive claim of British sovereignty over their lands, to an agreement to prevent other whites from settling, building forts, or trading in their country, and to the criminal justive pro-

vision. Ketagustah ended his talk with the presentation of a bundle of feathers to the officials, adding, "This is our
way of talking, which is the same thing to us as your letters in the book are to you, and to you, beloved men, we deliver these feathers in confirmation of all we have said."^34

The Treaty of Dover of 1730 represented an attempt by the Board of Trade to resolve Anglo-Indian problems in the areas of trade, slavery, military defense, colonial settlement, criminal justice, and sovereignty. It premised the validity of the treaty on the assumption that Moytoy, as the chosen "chief" of the Cherokee nation, had delegated authority to the Cherokees to sign in consent for the entire Cherokee society. But there was no Cherokee nation and no lasting means of delegation of authority by a representative body to an individual spokesperson. Ketagustah spoke only for the seven Cherokee present in London and not for Moytoy or the remainder of the society. He agreed orally to the military and trade alliance, to allowing colonists to live on Cherokee lands, and to the return of fugitive slaves to their masters or to colonial authorities. He carefully avoided the questions of the prohibition of trade with other nations, prevention of settlers of other nations from living in the Cherokee society, deliverance of a Cherokee accused of murder of an Englishman to colonial authorities, and the issue of sovereignty over Cherokee land.
Trade, slavery, and intercolonial and international rivalries from 1670 to 1730 had begun to alter the political and economic structure of the traditional Cherokee society. By 1730, some of the Cherokees, particularly those in Lower Towns close to the Carolina settlements, found themselves growing more and more economically dependent on provisions obtained through trade with the English. The gun had altered hunting patterns. Whereas group hunting had been common during the precontact period and occurred primarily during certain times of the year, the eighteenth century hunting process evolved after the Yamasee War into smaller year-round hunting parties and ultimately into efforts of individual hunters seeking to profit from the rewards of the commercial fur trade. The gun itself became something of a sign of prestige for a warrior. Cherokee towns vied for better trading positions and the location of trading posts. Intertribal warfare increased as a result of the availability and effectiveness of weapons and, before 1730, as a result of the demand for Indian slaves. Slaves who had been inessential to the Cherokee economy now became financial assets as a result of the development of a market for the war captives. Because of the need of colonial governments to deal with the Cherokee collectively in economic, military, and political affairs rather than with independent Cherokee villages, commercial negotiations and military defense arrangements
increasingly began to be funneled through key warriors in prominent villages. Even Sir Alexander Cuming realized the necessity of trying to centralize and consolidate Cherokee affairs with his encouragement of Moytoy of Tellico as "chief" of the Cherokees.

Warriors with whom the English continuously consulted in trade and diplomatic matters began to play a new role in Cherokee society. While the Cherokees continued to defer through consensus to the individual who most closely voiced and represented the interests of the general community, frequently these individuals were warriors who had some sort of diplomatic experience with the English. Warriors who received presents as a result of successfully conducting foreign affairs began to obtain wealth for their clans.

As of 1730, the clans continued to operate as the basic unit through which kin exerted positive control over individual Cherokee behavior. The techniques of deference and withdrawal still functioned as negative sanctions. The principles of individual liberty and natural balance remained. But trade, slavery, and the introduction of the gun had altered hunting patterns and traditions, had increased intertribal warfare, and heightened the economic status of the successful warrior in Cherokee society.

Diplomatic negotiating experience ranging from an informal resolution of conflict between a hunter and a
trader on the trading path to a formal congress of headmen from thirty-seven towns and a treaty between a group of Cherokees and the King of England expanded the role of the warrior within the Cherokee political structure. Accumulation of deerskins improved the trading position and the status of the hunter; accumulation of presents and commissions from colonial and royal officials augmented the influence and status of the warrior. Both practices stimulated the acquisitive instinct for property and the spirit of individualism. The twin principles of Cherokee society, individual liberty and natural balance, were undergoing a redefinition as the economic base of the society shifted slightly.

The integrating feature of Cherokee society, the "cultural glue," that is, the religious philosophy of the Cherokee remained fairly well intact. The political influence by certain villages over others in each of the Lower, Valley, Middle, or Overhill areas denoted the extent of tribal consolidation. An informal, sporadic acquiescence in the personal leadership of Moytoy of Tellico indicated the degree of political centralization. Yet each of these elements, religious unity, tribal consolidation, and political centralization underwent considerable transformation from the 1730's to the 1760's. As these structural changes occurred, so did the mechanisms for controlling individual Cherokee behavior.
The smallpox epidemic of 1698 resulted in a decline in population and made the Cherokee more vulnerable to the Iroquois. This epidemic occurred during a time when the Cherokees had only infrequent contacts with the English, none with the French, and trade and the gun had not yet made their impact. By contrast, the epidemic of 1738 to 1739 happened when the Cherokees strove to maintain their existence against French encroachment from the southwest and north, against English expansion from the east and southeast, and against the hostile pro-French Iroquois, Choctaw, and Creeks.

Although estimates of population decline vary, at least a thousand warriors alone died as a result of the disease and the manner in which the Cherokee treated it. With no ready remedy for the strange disease, the archi-magi (priests) prescribed the appropriate treatment for "strong" sickness of any kind, that is, cold plunge baths in running streams; this sacred purifying ritual aggravated the disease and increased the mortality rate.

As medico-rituals failed and the disease spread from village to village, the Cherokee began to question why they had been visited with such a pestilence. In traditional Cherokee theology the violation of a taboo or the ignorance of proper purification rites led to a "weakened constitutional condition" and the pollution of the body by unfriendly agents. The natural balance between cosmic and
earthly forces had been disturbed; only by following prescribed rituals and treatment by the priests could the avenging spirits be satisfied, pollution removed, and natural balance restored.

In the epidemic of 1738 to 1739, priests perceived the disease as a penalty for widespread violation of a number of ancient ordinances, a sign of divine anger over man’s disruption of natural balance. Violation of proper purification rites by hunters may have been interpreted by the priests as one of the causes of the pollution.

The Cherokees recognized that nature had to be exploited in order for man to live; but they also believed that man should do so carefully and should use only what was needed for subsistence. If man were reckless or careless with nature and avoided the proper purification rites, nature could strike back to restore the natural balance. The need for trade and the impact of the gun encouraged widespread slaughter of the deer beyond the acceptable subsistence levels. Killing for need evolved into killing for profit. From 1699 to 1715, Carolina exported an average of 54,000 deerskins a year. The greatest number exported in any one year was 121,355 in 1707; but the heaviest slaughter occurred between 1730 and 1750.

As the priests became aware of their unsuccessful attempts to cure the people, the Cherokees lost faith in the priests' powers. With their influence diminished, the
priests discarded "their sacred paraphernalia as things had lost their protecting power."\textsuperscript{45} Despair spread throughout the society, and hundreds of warriors committed suicide upon observing their smallpox scars. Adair wrote that "[s]ome shot themselves, others cut their throats, some stabbed themselves with knives and others with sharp-pointed canes; many threw themselves with sullen madness into the fire and there slowly expired, as if they had been utterly divested of the native power of feeling pain."\textsuperscript{46} Suicide by fire could have been the supreme effort by a "polluted" individual to assuage the spirits and restore natural balance, since fire, like water, was a purifier, a sacred symbol of the Cherokee which represented divinity.\textsuperscript{47}

As the priests' political stature waned after 1739, the warriors' political prestige grew. The essential political problem facing the society from the 1730's to the 1760's was prevention of unauthorized individual violence. The elements of trade had united the Cherokee society in a way that no other factor previously had.\textsuperscript{48} Economic diplomacy, that is, the manner of maintaining an advantageous trading position with the English, or on occasion with the French, became a way of judging a warrior's expertise in foreign affairs. As the Cherokee grew more economically dependent on the English, the Cherokees could not afford to have its trade cut off or dislocated. As an example, in 1739 after the smallpox epidemic had
substantially reduced the number of hunters capable of producing deerskins for trade, Georgia sent 1,500 bushels of corn to help avert famine.  

On at least six occasions between 1734 and 1760, the Cherokee were faced with the loss of trade or war. On each of these occasions, the crisis began with a conflict over trade or loss of Cherokee or English lives. In the early eighteenth century virtually no control existed over the decision by certain individuals to take vengeance outside the society or, in other words, to "make war." War was a matter of individual choice. A Cherokee headman told Commissioner George Chicken in 1725 that "the people would work as they pleased and go to Warr when they pleased, notwithstanding his saying all he could to them . . . ." The typical reaction to confrontation with the English was to overlook, forgive, shift responsibility to a third party, or to withdraw. All of which efforts were proper, passive, non-aggressive methods to promote harmony and maintain natural balance. Some mechanism for control over the individual Cherokee had yet to be developed. Resolution of the six separate crises provided enough experience for a positive mechanism to evolve.

In 1734 a handful of Cherokees seized the goods of a South Carolina trader. South Carolina demanded payment, the Cherokees refused, and South Carolina retaliated by cutting off the Cherokee trade. Virginia tried to send in
trade goods but was prevented from doing so by South Carolina. A delegation of seventy headmen of the Lower Cherokee towns traveled to Charles Town to resolve the differences. South Carolina used the incident to strengthen the alliance with the Cherokees by purchasing land from them for a fortified trading post.\textsuperscript{53}

In 1746 a Cherokee warrior killed a South Carolina trader. The governor of South Carolina halted the trade and demanded that the killer be turned over; the killer's village refused. The loss of the supply of guns and ammunition came at a time when the Cherokees were particularly vulnerable to raids by French-allied tribes. In a conference called to solve the problem, the headmen "resolved to reduce the town to ashes and massacre its people, if they did not yield up the murderer, or put him to death themselves. They consented [and shot him].\textsuperscript{54}

In 1751, in retaliation for three hundred deerskins stolen by Carolina thieves for a Toogaloo hunting party, several young Cherokees "trampled settlers' crops, killed hogs, maimed cattle, threatened isolated farmers," later killed two whites and a Chickasaw, and carried a Chickasaw prisoner back to Keowee.\textsuperscript{55} Rumors of armed reprisals swept throughout the Cherokee villages and trading posts raided. Georgia and South Carolina cut off trade. Individually organized Cherokee war parties marched against the settlers. Governor James Glen demanded the surrender of those guilty
of the murders. In an attempt to thwart chief Little Carpenter's efforts to promote the Overhill towns' alliance with Virginia, Glen called a conference in Charles Town on November 13, 1751. One hundred and sixty Cherokee attended, representing all the villages of the Cherokee except Chota, the principal Overhill town. After seven days of hearing why the attending towns should not be held responsible for deeds which had been committed by a mixed blood who no longer resided in the village or for accidental or uncontrollable killings, the Governor became convinced upon several headmens' requests that to prevent Virginia intrusions on the Overhill trade and raids by the Senecas on the traders, a fort must be built in the Overhill country. Instead of pressing for the deliverance of these Cherokee responsible for the murders, Glen acquiesced in allowing "that every murderer should be sent out in quest of a French scalp or prisoner for every white man they had killed." 56 Although the Carolina assembly later hesitated to authorize the promised fort, it promulgated new trade regulations to implement the 1751 agreement. Georgia and Virginia traders continued to trade in the Cherokee country without regard to the Carolina laws. 57 Peace had been maintained.

In 1753, a Cherokee from Kituhwa killed an English trader. A number of councils followed among tribal and village officials and head warriors and South Carolina
officials. A group of warriors from the killer's village and neighboring villages finally searched out the killer and shot him. Although it is unclear from the records whether this group was directly authorized by these councils to kill the Cherokee, evidently a strong enough consensus existed to support the action, since no further intratribal revenge resulted from the incident.

The Carolinians and the Lower Town Cherokee realized the need for firm support from each other with the outbreak of hostilities between the French and English in 1754. One year earlier, Outacite, head man of the Lower Towns, and the Raven of Toxoway had ceded to Governor James Glen a tract of land for $500.00 for the building of Fort Prince George. But the Overhill town of Chota led by Little Carpenter wanted a better trading relationship with Virginia, military protection from Virginia, and neutrality with the French. Glen hoped to halt Little Carpenter's overtures to Virginia and at the same time gather warriors to help General Edward Braddock's campaign against the French. At the Saluda conference on July 2, 1755, in exchange for favorable trade prices, an increased number of traders, the prohibition of the sale of rum by the traders, arms and ammunition, and the promise of a fort among the Overhills, Little Carpenter pledged the Cherokees' allegiance to King George, offered their military support, and yielded their lands in something in the form of a
protectorate to the King. In a moving speech Little Carpenter declared that "[w]e are now brothers with the people of Carolina, one house covers us all. We, our wives, and all our children are the children of the Great King George. He is our King, our head, our father, and we will obey him as such."\textsuperscript{60} Taking a small leather pouch full of earth from his garments, Little Carpenter placed it at the Governor's feet saying he placed it there "as a testimony that they not only delivered their lands but that all that belonged to them to be the king's property." Most significantly, after presenting Glen with a string of white wampum in token of his sincerity, he turned to those present and asked if he had spoken their will. "Unanimously and with one voice" they assented in a loud "Yo·ñah."\textsuperscript{61} By 1755 a kind of society-wide negotiating council had emerged with a position of a speaker who had the authority to relay the consensus of the council.\textsuperscript{62}

Again in 1758 as a result of a quarrel with Virginians over ranging horses in which seventeen to eighteen Cherokee were killed and an unguarded Indian village was attacked by lawless officers, the frontier flared with Indian and white reprisals. Invoking the terms of the 1730 treaty, Governor Lyttleton demanded the execution or deliverance of every Indian who had killed a white man in the skirmishes. Peace delegates who had come to Charlestown to negotiate differences were held hostage
and then taken to and incarcerated in Fort Prince George, an action which embarrassed the Cherokee who believed this kind of restraint of liberty the ultimate disgrace. Fourteen hundred troops moved toward the Cherokee country.

At a conference at Fort Prince George, Lyttleton again demanded fulfillment of the terms of the 1730 treaty and pressed for Cherokee deliverance of twenty-four of their warriors who had killed whites in North and South Carolina. Delivery of the Cherokee proved difficult for Little Carpenter, since these individuals had taken white lives as appropriate Cherokee vengeance for earlier atrocities committed by whites. Nevertheless, two Cherokee murderers were delivered by Little Carpenter to Lyttleton, who refused to release the hostages until all the murderers had been handed over. After Little Carpenter surrendered to Lyttleton's terms, two Cherokee headmen were released. Smallpox broke out and forced withdrawal of Lyttleton and his troops, though a contingency force remained at the fort with the twenty-two Cherokee hostages.

Upon hearing of Lyttleton's demands, Cherokees rebelled throughout the nation. Although Little Carpenter tried to restrain the warring sentiments, he failed. In an ambush arranged by Oconostota on February 16, 1760, the commander of the fort was wounded and later died. In revenge, the soldiers turned on the hostages and butchered them. Wholesale war broke out in June, 1760. By mid-1761 each of
the Lower and Middle Towns had been destroyed. Those Cherokees who survived moved to the Valley and Overhill towns. Five thousand warriors had been reduced to twenty-three hundred. The frontier boundary between English and Cherokee settlements had been pushed back some seventy miles. 66

Among other terms, the peace treaty of 1761 allowed exchange of prisoners held by both sides, designated a boundary line beyond which the Cherokees could neither hunt nor travel and the English could not hunt, forbade any association with the French, and renewed trade. Two articles dealt with the administration of justice between whites and Indians. No longer would Carolina demand deliverance of an Indian deemed responsible for the death of a white. Article Four declared that "[a]ny Indian, who murders any of his majesty's subjects, shall be immediately put to death by the Cherokees, as soon as the murder and murderer are known in the Cherokee nation, and that the head or scalp of the murderer be brought to the commander of the next English fort." 67 If an Englishman murdered a Cherokee, Article Eleven provided that the Cherokee deliver the murderer to the commander at the fort. There he would be detained and sent to Charles Town, tried according to English law, and if found guilty, executed in the presence of Cherokees if they desired to be present. Furthermore, when the Cherokees believed that they were injured by
Englishmen in their society, they should not take revenge. They should complain to the commander of the nearest English fort who would in turn transmit the message to the governor; the governor would take appropriate action according to English law. In addition, the Cherokee should "right the injured" upon receiving any complaint that they had injured an Englishman.  

Article Four of the treaty of 1761 demonstrated that the English recognized that sufficient coercive authority now existed among the Cherokee to make amends for the death of a white caused by a Cherokee. The treaty also established the first definite boundary between English and Indian settlements. The English also acknowledged that the society was not a totally unified tribe by specifying that representatives of the various regional divisions should come to Charlestown to ratify the treaty and further discuss the terms of trade. But it also asserted the importance of Attakullakulla (Little Carpenter) as the diplomatic leader and representative of the society by referring to him as the means through which the rest of the society should be "made acquainted" with the terms of the treaty so that it could be ratified.

As a result of the years of diplomatic and negotiating experiences in resolving conflicts between the English and the Cherokees, key Cherokees, whether peace chiefs or
warriors, now served an additional function other than solely promoting war or preserving peace. The personalities of the leaders involved in developing this "key leader" role, Moytoy, Amo-sgante, Oconostota, Old Hop, Little Carpenter, and Standing Turkey shaped the kind and extent of influence which could be exercised. By the 1760's, there was little doubt that a key leader could urge coercion in the form of physical punishment or death or use his influence to deliver up to the English an alleged Cherokee murderer. In 1759, one of the headmen of the Overhill settlements caused two of his villagers to be dryscratched from head to foot when he discovered that they had participated in unauthorized raids on the whites.70

Restraint of unauthorized violence had been the central political problem since the 1730's. The Cherokee, now clearly economically dependent, could not afford to be cut off from the sources of their necessities. War had to be avoided. As Round O of Stecoe bluntly pointed out in 1759 to the Keowees after several of their fellow villagers had committed reprisals, "Had they found a mountain of powder? Had their women learned to make clothes and their men to make knives? Hatchets? . . . where was their store?"71 Oconostota, the Great Warrior, realized the need for observing the terms of the 1761 peace treaty and warned that any Cherokee who should act contrary to any of these articles, must expect a punishment equal to his offence."72
Standing Turkey, an Overhill headman, and perhaps the key leader in 1761, wrote that "[w]e are now Building a Strong House, and the very first of our People, that does any dammage to the English, shall be put in there, until the English fetch them . . . ."73

Other mechanisms existed for control over individual Cherokee behavior. Positive sanctions such as kinship connections and humiliation and clan revenge, and the negative sanctions of deference and withdrawal, continued to function and serve the needs of the society. Religious ceremonies such as the annual conciliation ceremony continued to be celebrated. But religious belief and the prestige of the priests had been seriously shaken as a result of the smallpox epidemic of 1738 to 1739. Moreover, as the economic base of the Cherokees shifted from subsistence and reciprocity to profit-making and economic dependence, hunting and fishing rites faded.74

Cherokee theology continued to influence Cherokee lives, but the political support of the priests diminished while the prestige of the warriors increased. Religion permeated all levels of society in the seventeenth century and served as the prime reservoir for the definition of the basic principles of Cherokee society, individual liberty and natural balance became less of an integrating feature in the eighteenth century world of trade and need for land. The need to maintain trade and avoid conflicts with the
English and the French unified the disparate villages and created a need for experienced diplomats. Though regionalism still existed in the 1760's, extensive cooperation among the villages established lasting bonds, formed a tribal-wide council through which village consensus could be transformed into society opinion, and yielded the creation of a recognizable speaker for the entire society.

Political contraction and centralization had begun—a state was in the making. In the process, the constitutional principles of Cherokee society began to be recast in the economic terms of trade and acquisitive individualism. The individual liberty of the seventeenth century, the right to be bound only by personal consent, could not function effectively in the eighteenth century where unauthorized violence by a few prompted the slaughter of hundreds through the use of advanced weaponry. The natural balance of the seventeenth century, that is, the promotion of harmony in nature, by taking only what was needed, and in society, by deferring or withdrawing to others to avoid conflict, had been upset in the eighteenth century by the need to exploit nature for trade and the effort to resolve intersocial conflicts through coercion, if necessary. But by the 1760's these changes were only patterns of development. They occurred out of sporadic economic necessity and as a result of influential personalities. They had yet to be institutionalized.
Chapter 2--Footnotes


4 Reid, "A Perilous Rule," 43.


6 Manuel Serrano y Sanz, Espana y Los Indios Cherokis y Choctas en la Segunda Mitad del Siglo XVIII (Seville, 1916), 7; Mooney, Historical Sketch, 21; John P. Reid, A Better Kind of Hatchet: Law, Trade, and Diplomacy in the Cherokee Nation during the Early Years of European Contact (Pennsylvania State University, 1976); Gary C. Goodwin, Cherokees in Transition: Study of Changing Culture and Environment Prior to 1775 (Chicago, 1977), 95.


8 Mooney, Myths, 31-32.

9 Reid, Hatchet, 27.

10 Theda Perdue, Slavery and the Evolution of Cherokee Society (1540-1866) (Knoxville, 1979), 25.
11 Crane, *Southern Frontier*, 140.


14 Mooney, *Myths*, 31. Although there is some reference to a South Carolina treaty signed in 1684 with Cherokee representatives from the Lower Towns of Toxaway and Keowee, there is no clear understanding of what the treaty contained.


16 Reid, *Hatchet*, 55.


18 Journal of the Commissioner of Indian Affairs, July 4, 1716-August 29, 1718, Colonial Records of South Carolina, 1-7, 24-29.


20 Royce, *ibid.*, 130.

21 Since 1699 the French had embarked on an expansionist policy, and this effort was clearly defined with Iberville's "encircling policy" by 1702. Although South Carolina continued to dominate the trade with the Cherokees, there had been real fears of Virginia's interception of the trade since 1711. See Crane, *Southern Frontier*, 70-73.


24 Samuel G. Drake, *Early History of Georgia embracing the Embassy of Sir Alexander Cuming to the Country of the Cherokees, In the Year 1730* (Boston, 1872); Crane, *Southern Frontier*, 276.

26 Ibid.

27 Those who argue that Cuming was an official representative of England appointed to secure an Anglo-American Cherokee alliance include David Ramsay, *Ramsay's History of South Carolina* (Charleston, 1858) 55-56; Mooney, *Myths*, 35; and Drake, *Embassy of Cuming*, 6-7. Exploration of minerals to ease his financial plight, scientific interest, and fulfillment of his wife's dream that he visit the Cherokee country have also been offered as explanations. See Randolph, *British Travelers*, 117-118 and Crane, *Southern Frontier*, 277. For an embellished historical account, see William O. Steele's *The Cherokee Crown of Tannassy* (Charlotte, 1977).

28 Chapter 1, supra.


30 A graphic description of the Cherokees visit to London is in Carolyn Thomas Foreman, *Indians Abroad*.

31 Cuming's hope to become Overlord of the Cherokees quickly vanished when the Board of Trade received word via a newspaper report that Cuming had defrauded Carolina citizens of some 1500 sterling through a promissory note scheme. Crane, *Southern Frontiers*, 298.

32 Ramsay, *History*, 57.

33 Ibid., 57-58.

34 Ibid., 58. At first only six of the seven Cherokees initialed the agreement; the seventh refused to sign because he did not consider he had power from Moytoy to agree to the treaty. Later, according to Cuming, allegedly in the presence of the Governor of Carolina and the Secretary of the Board at Cuming's lodgings, the six Cherokee gave their full consent and "in Token of their Satisfaction, sung and danced after a Warlike Manner, in their Way, all the evening." Quoted in Crane, *Southern Frontiers*, 301; Steele, *Cherokee Crown*, 127.


39 Ibid., 34.

40 Ibid.

41 A source quoted by Mooney indicates a thousand warriors died as a result of smallpox and rum. Mooney, *Myths*, 36. John Adair states that the number of warriors after the disease was 2590, half that recorded before. Samuel Cole Williams (ed.), *Adair's History of the American Indians* (Johnson City, Tennessee, 1930), 244.


43 Mooney, *Myths*, 36. The Cherokee priests' interpretation of the reason for the plague highly resembled that propounded by a number of New England ministers during the smallpox epidemic in Boston in 1720-1721.


46 Quoted in ibid., 36.


49 Gearing, *Priests and Warriors*, 86.

50 Reid, "A Perilous Rule," 43.
51 Journal of the Commissioner of Indian Affairs on his Journey to the Cherokees and his proceedings there, Public Record Office, Colonial Offices, Vol. 12, 52.

52 Reid, A Law of Blood, 262-263.

53 Gearing, Priests and Warriors, 86.

54 Quoted in ibid., 87.

55 This account is most fully described in David H. Corkran's The Cherokee Frontier, Conflict and Survival, 1740-62 (Norman, 1962), 25-37.

56 Quoted in ibid., 178-179.

57 Ibid., 34.

58 Gearing, Priests and Warriors, 97.

59 Corkran, Cherokee Frontier, 48.

60 Ibid., 60.

61 Ibid.

62 Gearing, Priests and Warriors, 96.

63 See Corkran, Cherokee Frontier for a detailed account of the events leading to the war of 1760-61, 142-206. See also Ramsay's account in his History of South Carolina, 95-109.

64 Ibid., 188.

65 Ibid., 195; Ramsay, History, 99.


67 Annual Register, 1761, State Papers (London, 1786), 296.
68 _Ibid._, 296-297.

69 The English had previously demanded that the Cherokee designate Little Carpenter as their Emperor in an earlier round of negotiations (Article Nine). Corkran, _Cherokee Frontier_, 259.

70 _Ibid._, 174.

71 _Ibid._


73 Gearing, _Priests and Warriors_, 99-100.

74 Goodwin, _Cherokees in Transition_, 143.

75 Reid, _A Law of Blood_, 63.

76 Hudson, _Southeastern Indians_, 159.

77 Gearing, _Priests and Warriors_, 96.
Chapter Three

A REGULATING PARTY

Events in the last half of the eighteenth century produced significant economic, political, social and religious change in the Cherokee culture. The rudiments of a "state" which barely existed by mid-century became fashioned into more formal institutional mechanisms by the end of the century. While the more traditional means of social control—kinship influence, blood revenge, deference, and withdrawal—continued to exist throughout the Cherokee villages, structural changes in the tribal council had begun which yielded mechanisms to handle problems of a tribal nature. With these changes came also a shift in the definitions of individual liberty and natural balance—the fundamental principles of Cherokee society. These changes came about as a result of attempts to resolve problems between the Cherokee and their white neighbors.

Preservation of Indian land from white encroachment, regulation of trade, establishment of procedures to deal with hostilities between whites and Indians, and political coordination of Indian affairs and policy making among the various kinds, levels, and departments of government were issues which dominated Indian-white relations in the last
half of the eighteenth century. Statutes, treaties, and administrative records provide the best written indication of how the British central and colonial governments and American central and state governments handled these problems.

The Crown tried to preserve Indian land from white encroachment with the Proclamation of 1763. By establishing a status quo in the area west of the Appalachians, the Proclamation attempted to quiet Indian affairs and to lessen the need for a large interior military force. The order created a boundary line between lands of the Indians and those of the whites and forbade future purchases of Indian lands except by express provision of the Crown. All persons who already resided in the Indian country were to leave at once. Although trade within the Indian territory was to be free to all British subjects, a license from the governor or commander in chief of the area was required, as well as security to obey all future trade regulations. The governors or military commanders could revoke the license of a trader upon his disobedience or neglect of the regulations. The Proclamation required all crown officers, including military and civil agents, to return fugitives from justice to the colony where the felony or misdemeanor had been committed. The Proclamation made no provision for crimes committed by whites in the Indian country, but the Mutiny Act of 1765 authorized all persons to arrest
criminals and empowered military officers to send them to
the nearest province for trial.²

The Cherokees complained about encroachment on their
lands when they met with John Stuart, Superintendent of
Indian Affairs in the South, and with colonial governors at
Augusta in November, 1763. Stuart explained French and
Spanish withdrawal beyond the Mississippi and promised a
prosperous trade and redress of grievances. Attakullakulla,
speaker for the tribe, first expressed dissatisfaction with
encroachments on Indian lands by Virginians and South
Carolinians. He then agreed that those settlers already
present could remain but only with the provisions that
whites make no future settlements and no disturbances of
the tribal hunting grounds on the south bank of the upper
Holston River. The Cherokees criticized the way public
trade had been handled by South Carolina officials. Stuart
responded that this matter would be referred to the king.
In addition to these and other agreements, the treaty
signed at the end of negotiations provided for the
execution in the presence of two whites of an Indian
murderer of a white man and for the execution in the
presence of the victim's relatives, after trial and con-
demnation, of a white murderer of an Indian.³ The latter
provision recognized the importance of the clan's duty to
avenge a relative's death but sought to prevent further
clan retaliation by satisfying the clan members that their
duty had been discharged.

The congresses with other Southern Indian tribes revealed the necessity of establishing more uniform trade regulations. The Board of Trade's Plan of 1764 sought to centralize political and economic Indian affairs under crown officers who would be independent of both the military and colonial governments. The Plan provided for the repeal of all colonial laws regulating Indian affairs; forbade military commanders from interfering in Indian affairs; provided for the appointment of an agent or superintendent of the district and deputies to execute trade regulations. The governor or commander in chief of the area could issue annual licenses.  

Political and economic concern over the Stamp Act crisis in 1765 prevented the plan of 1764 from being adopted by Parliament. But the plan continued to serve as a guide to more centralized, coordinated policy for the Indian agents in the field from 1765 to 1768 when colonial governments resumed regulation of the Indian trade.  

Despite the crown's intention to forestall future settlements west of the Appalachians thereby avoiding Indian-white conflicts, settlers, land speculators, adventurers, and traders exploded beyond the 1763 boundary after the French and Spanish threat diminished. Colonists from Virginia and the Carolinas poured into the Kanawha and Holston River area. A succession of Cherokee treaties
negotiated in 1768, 1770, 1772, and 1773 ceded land to
correct previously unclear boundaries, to legalize existing
white settlements, to pay off Indian debts owed to traders,
or to grant land to speculating companies—even though some
grants expressly violated the Proclamation and colonial
statutes. 6

The most controversial illegal settlement and subse-
quently land cession began in 1772 with a group of in-
dividuals securing a ten year lease from the Cherokees for
territory which the settlers already occupied. Richard
Henderson, Daniel Boone, and other stockholders gathered
with prominent Cherokee chiefs on the Watauga River.
Henderson proposed to purchase for $10,000 ($2,000 in
cash, $8,000 in guns and other merchandise) the whole
Cumberland Valley and the southern half of the Kentucky
Valley. The ammunition and guns were particularly pleasing
to the Cherokees since they had been short of such material
after the 1769 Chickasaw war. 7 Some Cherokee opposed the
agreement. Dragging Canoe, son of Little Carpenter and a
representative of a younger element of the tribe, warned
of the tribe's ultimate extinction. He recalled how other
nations had yielded to white demands for land and how those
tribes had "melted away like balls of snow before the sun."
This acquisition, he argued, would not be "enough for Long
Knives"; they would "press for more" and even demand the
homes of the Indians. The elder chiefs accepted the
proposal and also agreed to a deed providing a free corridor to the Cumberland Gap. The cession of twenty million acres, the largest private or corporate real estate transaction in American history, released some of the most favored hunting grounds of the Cherokees and resulted in a tribal schism. Dragging Canoe remarked that a black cloud hung over the land and its settlement would be dark and bloody.8 North Carolina later declared the purchase void.9

Armed by Loyalists, Dragging Canoe and young warriors from all parts of the nation attacked the frontier in June, 1776. A force composed of militia from Virginia and Carolina fought the Cherokees and destroyed virtually all of the Valley and Middle Towns and burned the Overhill villages. By January 1777, Dragging Canoe and his followers had withdrawn to an area near Chickamauga Creek and established a new group of settlements which came to be called the Chickamaugans.10

The elder chiefs continued their efforts to stop the frontier war. The separation of the younger warriors from the older ex-warriors and members of council divided the tribe into age-status factions. Clans broke apart as the older retired war leaders and council members and their families stayed in the home villages, while the younger warriors with their wives and children settled near Lookout Mountain.11
The removal of Dragging Canoe's faction to the south allowed the conservative elements to make peace with South Carolina, Georgia, Virginia, and North Carolina. The Lower Cherokees signed a treaty with South Carolina and Georgia on May 20, 1777 at De Witt's Corner and with Virginia and North Carolina at the Long Island of Holston on July 20, 1777. An examination of the talks leading to the signing of the treaties shows a number of concerns of the Cherokee about their tribal needs and efforts to control Indian-white hostilities.

At the beginning of negotiations at Long Island between the Cherokee and Virginia commissioners, the commissioners apologized for a recent murder of a Cherokee. A Cherokee chief, Oconostota, stated that he believed the murder was an "accident," that it had been done "by a very bad man who ha[d] no way of living," and although that was the second "accident" that had happened, he would not "think the least hard of it." The commissioners replied that the "horrid Action was done by some Devilish evil minded person who want[ed] to destroy the good talks . . . ." The Virginians pointed out that they had "lost people in your [the Cherokee] nation by bad men, and we forgave it as we knew the good men and warriors were not concerned"; for the same reason they expected the Cherokees to "pass over" this accident, as the great Being knew the Virginians were "innocent of it . . . ." The commissioners promised that
they would have the murderer taken and punished according to their laws. 12 The following day the commissioners examined a number of persons under oath. They found the owner of the gun used to kill the Indian, but he introduced several witnesses who claimed he was in another place at that time. That afternoon the commissioners posted a reward of $600 for any person who would "discover the murderer of the said Indian called the Big Bullet..." The poster indicated that the Indian was attending a treaty of peace and that the law of nations entitled him to all the protection of a foreign ambassador. The government would pay the reward on conviction of the offender. 13

Several days passed. The commissioners found no murderer. Two Cherokees appointed by the chief and the commissioners held a conference. It is very likely that these two Cherokees were clansmen of Big Bullet and had a duty to avenge his death, for the commissioners stressed in their apology that they had taken "the Ball out of his Body and bur[ied] it deep in the ground" so that no uneasiness or remembrance ... "[could] remain in their minds, and that their hearts could be at rest while they sat at the Council Fire." Placing three match coats and three shirts over the grave, the commissioners hoped that "these places may never more be known or remembered by his friends and relatives, and that their Tears may be wiped away, and that no drops of his Blood may fall into our Council Fire,
or on the chain of friendship that links us together, but that all may be washed off, and that we shall not drop our enquiry after the murderer as we abhor both him and the crime he has done."

The treaty negotiations at Long Island continued. There is no record of the finding of the murderer, but both the treaty at Long Island and the one at De Witt's Corner contained provisions for setting up judicial procedures for dealing with Indian-white conflicts. The Virginia and North Carolina treaties required any whites passing through or residing in the Overhill Towns to have a certificate signed by three magistrates of Washington County, Virginia or three of Watauga County, North Carolina. Whites showed these certificates to the Indian agent and had them approved by him. The Cherokees apprehended any person failing to comply, delivered him to the agent, and then conducted him to the commanding officer at Fort Henry, Virginia or to the nearest justice of the peace in North Carolina. The Cherokees then appropriated any goods to their own use which the person had in his possession at the time of capture. Any whites properly certified or authorized to be in the Overhill country, however, were to "be protected in their persons and property, and to be at Liberty to remove in safety when they desire[d] it." If a white murdered an Indian, he was to be delivered up to a magistrate in Washington County, Virginia or in the nearest county in
North Carolina. The provision made no distinction as to the location of the crime. It allowed the Cherokees to execute one of their own in their own country or in the nearest county if the Indian had killed a white.¹⁵

The treaty with South Carolina and Georgia also limited access to the Overhills by requiring that an individual had the proper pass or license before traveling through the Indian country. But the provision dealing with Indian-white murders differed significantly from the ones in the Virginia and North Carolina treaties. An Indian murdering a white in the Cherokee Nation or settlements was apprehended and conveyed to Fort Rutledge by the Cherokees who, in the presence of the commanding officer of the post, would put the murderer to death. If any white or other person murdered a Cherokee Indian in South Carolina or Georgia, then such person, duly convicted, would be put to death in the presence of the Cherokee Indians, if any attended the execution. The provision required notification of the Cherokees of the intended execution in order that they might be present if they wished.¹⁶

The South Carolina and Georgia provisions allowed the Cherokees to execute an Indian who had murdered a white in the Cherokee nation, but the execution had to take place at Fort Rutledge in the presence of the commanding officer. If the murder had occurred in the settlements, the provision required that the Cherokees execute the Indian at
Fort Rutledge. The article regarding a white's murder of an Indian carefully distinguished between state citizens and non-state citizens and the jurisdiction of the crime— even though the time and place of the execution was to be arranged according to law. This appears to be the first time a Cherokee treaty distinction was made concerning the location of a crime committed by whites or Indians—whether, that is, it was committed inside "Indian country" or in the settlements. 17

Other provisions of the treaties are equally important in understanding the nature of complaints between Cherokees and settlers. The cessions recognized that the land had been conquered and held by whites, and they established a boundary line beyond which both Cherokees and whites could not proceed without permission. But the Cherokees were allowed beyond the boundary to gather the corn for the first harvest after the signing of the treaties. The state governments agreed to resume and regulate trade. Any white person remaining in the Cherokee Nation who instigated, encouraged, or aided the hostilities was to be apprehended and delivered to the commanding officer at Fort Rutledge. The Cherokees received 500 worth of dressed leather or goods for each person delivered; they could also confiscate for their own use all goods of the person apprehended. All prisoners of war were supposed to be returned. All Negroes, horses, and other property taken from South Carolina,
Georgia, North Carolina, or Virginia were delivered up to the commanding officer at Fort Rutledge or the resident Indian agent. For runaway Negroes delivered up at the fort or to the agent, the Cherokees received 100 in leather or in value or whatever the agent judged reasonable.18

The fact that separate treaties had to be negotiated among separate regions of the Cherokees (De Witt's Corner was with the Lower Cherokees; the Treaty of Long Island with the Overhills) and with various independent state governments indicates the complexity of Indian affairs during the Revolution. Just as the authority to deal with Indians had been fragmented among the Board of Trade and their administrative officers, military officers, crown-appointed Indian agents, and colonial governments (governors, councils, and assemblies) before the Revolutions, so, too, was effective power diffused among the central confederation government, state governments, military officers, and Indian agents during the Revolution. The various levels and departments of government possessed separated and un-clearly defined powers. Rebel frontier communities were frequently in a state of flux, isolation, and in some cases, actually at odds with the state governments back east. Administrative uniformity was rare. Loyalist agents and traders who continued to supply Dragging Canoe's Chickamaugans with ammunition and guns to encourage attacks on rebel frontier communities provoked, in turn, mistaken
frontier attacks on unsuspecting friendly Cherokees.19

John Stuart's remark in 1766 about his ineffective persuasion of the Cherokees to hand over individuals who had been responsible for the murder of a Virginia government representative and two attendants still contained some truth ten years later. Realizing that the Cherokees had attacked the Virginians in revenge for nine Cherokees murdered previously by other Virginians, Stuart wrote to the Lords Commissioners of Trade and Plantations that

... little can be said to them [the Cherokees] on this Subject with propriety; for, if such a province as Virginia cannot bring people to Justice for murdering nine Indians in cool Blood, in the middle of a populous and well settled Country, it is not to be imagined, that Savages, possessed of no coercive Authority, will bring their Countrymen to Justice for revenging the Death of their Relations in their own way, deemed by them most laudable and honorable. 20

While clan revenge still occurred in the 1770s, the tribes had other coercive means which frequently worked, i.e., the negotiated blood price paid to family members of Big Bullett who had been killed during the proceedings of the Treaty of Long Island.

Diplomatic efforts to preserve or to create peace by avoiding hostilities continued to occupy the attentions of the "beloved headmen" throughout the remainder of the century. Peace and stability of trade became more economically imperative as Indians competed with whites for existing game, wildlife diminished as the Cherokees sold
off hunting grounds to encroaching settlers, and as the Revolution disrupted trade channels.\textsuperscript{21} Essentially, by the 1780s, the Cherokees were in a state of economic depression.

Chiefs restrained clansmen from avenging deaths for fear of trade embargoes.\textsuperscript{22} After the virtual demise of the peltry trade during the 1780s, the Cherokees and whites shifted to the use of different articles of exchange.\textsuperscript{23} The 1777 treaty provisions indicated that black slaves and horses were important trade commodities.\textsuperscript{24} New channels of trade sprang up as a result of frontier hostilities and the Revolution. The most reliable connections varied, but ready markets for stolen horses existed in Spanish Florida through trade with the Chickamaugas or Creeks\textsuperscript{25} or by the 1790s in Swannano, North Carolina, in settlements near the Oconee mountain, South Carolina, and in Tugelo, Georgia.\textsuperscript{26} The Cherokees demanded horses both for their own use and for trade to traders. Some traders actively encouraged the Indians to enter frontier communities in search of horses, to kill in defense if pursued, to sell the stolen horses to the traders, and to allow the horses to be carried out of the nation into other markets.\textsuperscript{27}

Black slaves were also a tradeable commodity. By the Revolution some Cherokees traded almost exclusively in black slaves because of a high yield.\textsuperscript{28} Like the illegal horse trade, settlers stole black slaves from one area of
the frontier and sold them to planters living in another area. 29

The influence of whites and mixed breeds over the Cherokee economy can hardly be underestimated. Early white government officials such as Alexander Cameron and John McDonald provided examples of how one could live within Cherokee society, deal effectively with whites, and accumulate goods. 30 The traders and their businesses also served as examples—both bad and good—of individual acquisition of material goods. The Indians realized that the white traders possessed a great deal of "yellow and white stone, of black people, horses, cows, hogs, and everything else our hearts delight in." Traders constructed houses and buildings "like towers in cities beyond the common size of those of the Indians." 31 But only in the last two decades of the eighteenth century was there a sufficient number of half-breeds to permit them to begin to acquire political power. 32

The mixed breeds' lifestyles facilitated the shift in the Cherokee economy from one of wide-ranging hunting and gathering and subsistence agriculture to a more sedentary hunting and agrarian society. As game diminished and hunting grounds were sold off, the Cherokees resorted to utilizing what land they retained to yield more food. Widespread use of metal plows in the Cherokee nation did not exist until early in the nineteenth century, 33 but government records indicate that by the 1780s the Cherokees
relied heavily on the more traditional crops such as corn, squash, beans, and sunflowers and achieved greater yields of these crops than the amount harvested several decades earlier when the tribe could fall back on available and plentiful game. In one instance, the Cherokees provided corn to their starving white neighbors. In a "search and destroy" mission against the Chickamaugans, Colonel Evan Shelby and his six hundred volunteers carried off 20,000 bushels of corn. Furthermore, land cessions in the 1770s and 1780s pushed the Cherokees further south into areas which were more suitable for raising crops.

Besides integrating the horse into their hunting and agrarian culture, the Cherokees began to accept and utilize other kinds of livestock. In exchange for land ceded to Virginia in 1777, the Cherokees received two hundred cows and one hundred sheep. The Cherokee slowly accepted hogs and cows because of the cultural fear that the individual would "take on" characteristics of the animal he ate. The Cherokees regarded both animals as slovenly in appearance and preferred to eat venison for "he who feeds on venison is, according to their physical system, swifter and more sagacious than the man who lives on the flesh of the clumsy bear, or helpless dunghill fowls, the slow-footed tame cattle, or the heavy wallowing swine."

Hogs, sheep, and cattle also required more intensive care and attention such as fenced pens and protective covering
from bitter cold winters. But by the 1790s all forms of livestock husbandry became more acceptable culturally and more necessary economically than before. 41

These social and economic changes affected religious beliefs and practices. Ceremonial dances had always played an important role in Cherokee culture in purification of tribal members and reconciliation of individual differences, i.e., restoration of natural balance. But as society changed, the kinds of and importance of the social and ceremonial dances changed. The Ant Dance, Ball Dance, Bear Dance, Beaver Dance, Buffalo Dance, Chicken Dance, Friendship Dances, Medicine Dances, Quail Dance, Pheasant Dance, Pigeon Dance, Raccoon Dance, Round Dance, and War Dance are some of the dances recorded by earlier observers. 42 The most important dances throughout time, however, seem to have been those of considerable religious and cultural significance. The eagle, who was of "this world" but came into contact with the "Upper World" was highly honored by the Cherokees. Eagle feathers symbolized "the honesty of a man's word" and were used in treaty negotiations. 43 The Cherokees also viewed them as signs of respect and honor. 44 The Eagle Tail Dance was an important one, and only after elaborate purification rites could a selected warrior hunt and kill an eagle. 45

As hunting diminished and crop raising increased in economic importance, the Green Corn Dance, part of the
Green Corn Festival celebrating the corn harvest in late August and early September became the most important dance. The Green Corn Festival evolved into the most important festival and took over some of the functions performed in later festivals—such as those in the Cementation Festival, which previously had been the most important annual festival. The Holy Fire ceremony which had formerly been a part of the separate conciliation or communal forgiving celebration in which all crimes were forgiven and bad thoughts wiped away and which had been held after the Green Corn Festival now became regulated by the season of the harvest.

Overall, the religious influence weakened and became more secularized as the role of the priests declined as a result of another smallpox epidemic in 1783, as purification rites and fasts became shorter, as the village council house came to be used more for political meetings than religious ceremonies, and as ceremonies were no longer determined by a calendar under the direction of the priests. Moreover, remaining religious leaders took on more of a secularized role as "medicine men" as missionaries infiltrated the society, intermarried with Cherokees, and tried to convert their relations. Missionaries viewed the medicine men, their rites, and ceremonies as rivals and a tool of the devil to be destroyed.
The weakened religious element in turn, offered less resistance to social changes created by rapid shifts in the economy. Keeping something which belonged to the dead had previously been one of the "worst crimes" committed. The Cherokees buried most personal items of the deceased such as guns, tomahawks, powder, lead, silverware, wampum, and tobacco and shot all the livestock after the corpse was buried. Through the persuasion of the traders, who responded to an awakening of their own individual acquisitive instincts, and because of economic pressures, the Cherokees no longer buried items and stock which could be useful to the living. The "nearest of blood" inherited them, and by the end of the century, in the case of a dying father these items may very well have gone to his own son rather than to his nephew. The examples set by mixed breeds who utilized their white father's inheritance to ensure their own status in the tribe further encouraged a patrilineal system among the Cherokees. Training in diplomacy and political succession may also have begun to be handed down patrilineally. The gradual shift to a more sedentary agrarian society and the reduction in hunting grounds encouraged more active male participation in the heavier tasks relating to agriculture—clearing the land, turning the soil, helping with heavy harvests in a communal fashion. All of these changes, economic, social, and religious, coming at a time when the tribe was already
politically split and decimated by disease and warfare, clearly weakened the older traditional tribal structures. Most contemporary observers agree that a break with the "old ways" came in the 1780s or certainly by the time the Chickamaugans made peace in 1792.57

One way in which the Cherokees reacted to rapid cultural changes caused by intruding whites was to act out their anxieties in a ceremonial dance called the Booger Dance. Although this dance existed earlier in the century, it endured at the time of the Revolution. It was contrived to ward off or defeat the contamination of spirits in nature by the whites. The Indians could easily deal with the threats when they were transformed into mythical animals in a familiar ritual context.58 They found much more difficult the tasks of dealing with frontier settlers who refused to recognize state authority; of cooperating with states which were reluctant to relinquish claimed lands and power to a central government; and of negotiating with a central government which professed to speak for the people but could not enforce the treaties it made.

Through the years of the Revolution, the southern states set aside great stretches of their western lands as payment for troops and as security for paper currency. These actions promoted rapid western settlement and led to further violations of the treaty lines of 1777. Military expeditions led by Evan Shelby and John Sevier against the
Cherokees and Chickamaugans further weakened the tribe. While the eastern government tried to secure the frontier by ordering border squatters off Indian land, the western frontier counties continued to become more populated without adequate protection in the form of local superior courts or its own military district. When in April 1784, North Carolina ceded its lands west of the Alleghenies in response to the request of the Continental Congress, individuals in that area declared themselves independent of the state of North Carolina, drafted a constitution, and petitioned Congress for recognition. Although North Carolina rescinded its cession and created a new judicial district and a military district, the new governor of the State of Franklin proceeded to negotiate two treaties with the Indians. Settlers again flooded into the Cherokee lands and into the sacred town of Chota itself.

Meanwhile, amid continuing protests from the commissioners of North Carolina and Georgia, the United States proceeded to negotiate the Treaty of Hopewell with the Cherokees in 1785. Both North Carolina and Georgia felt their legislative rights to deal with Indians within their own chartered limits had been infringed. North Carolina objected because the grant of hunting grounds to the Cherokee violated lands already allotted by the state to individuals. North Carolina later declared the Treaty of Hopewell void. Once again the contention between the
Indians and the states and the states and Congress was the boundary line. The treaty required some 5000 settlers above and below the French Broad River to withdraw. But the settlers remained, in violation of the treaty and of the Governor's orders to move. 61

Other provisions of the treaty included an acknowledgement by the Cherokees that they were under the protection of the United States and of "no other sovereign whosoever," that retaliation by either side should not be practiced, that Congress should have the sole and exclusive right of regulating the trade and managing all the affairs of the Indians, and that they should have the right to send a deputy of their choice to Congress. 62 The provision regarding commissions of crimes—robbery, murder, or other capital crimes—by an Indian against a white differed from earlier British, colonial, and state treaties in that the nation was bound to deliver up the criminal Indian or person residing among the tribe to be punished according to the ordinances of the United States. Punishment was not to be greater than that for a capital crime committed by one United States citizen against another.

The tribe now had a duty to deliver up non-Indian persons who had committed a capital crime. The punishment was compared to that ordinarily intended for United States citizens. If a United States citizen committed a capital crime against an Indian, the offender was punished in the
same manner as if the crime had been committed against a citizen of the United States. The provision allowed punishment to occur in the Cherokees' presence, if after being properly notified, they attended.\(^{63}\)

The remaining years of the 1780s contained many attempts by the United States government to locate precisely the agreed boundary line, to promote pacification of the frontier, and to settle differences among the states in the administration of Indian affairs. Congress reasserted its sole and exclusive right to regulate Indian affairs. An Ordinance of 1786 created northern and southern departments of Indian affairs and offices of the superintendents, who would report to the Secretary of War and have authority over licensing and trade regulations and enforcement of the law over whites and Indians.\(^{64}\) As a result of additional complaints by Secretary of War Henry Knox that the provision of the Treaty of Hopewell regarding the settlement of whites on the Broad and Holston Rivers had been violated, Congress authorized the Secretary to have troops ready to disperse the settlers.\(^{65}\)

The settlers remained. President Washington feared provoking further western hostility and alienating North Carolina just as the new national government was created, as the State of Franklin collapsed, and as North Carolina finally agreed to join the Union and cede her western lands. But he continued to try to pacify the frontier by creating
a boundary which would reflect the realities of existing white settlements. He asked Congress to pass regulations which would eliminate the inequities and injustices of the trading system and which would define Indian-white crimes and procedures so that they could be dealt with more effectively. He also requested that Congress issue adequate regulations for the use of regular troops and state militia for protection of the frontiers and enforcement of the treaties.

The Treaty of Holston of 1791 represented another attempt by the President to establish a satisfactory boundary between the Cherokees and whites. Negotiated by William Blount, governor of the Territory south of the Ohio River and Ex-Officio superintendent of Indian affairs, the treaty ceded the lands in controversy for certain valuable goods and a $1000 annuity; forbade the Cherokees from negotiating with any State or individuals; and withdrew the protection of the United States to non-Indian United States citizens settling on Indian lands and allowed them to be punished as the Indians saw fit. Cherokees committing crimes against citizens were delivered up and punished by United States laws. Inhabitants of the United States committing crimes or trespass against the Cherokees were tried and punished under United States laws. 66

By the 1790s, other than preservation of agreed-upon boundary lines, the most common causes of friction between
the Cherokees and their frontier neighbors were horse-
stealing and unauthorized acts of violence. State and
federal records contain numerous references to horse-
stealing by both Cherokees and whites. Some of the
Cherokee chiefs acknowledged in 1792 that three small
parties were out to steal horses and that they might "steal
lives." The chiefs claimed that the thieves were dis-
orderly fellows, that the chiefs could not restrain them,
and that they would be pleased if the white people killed
the villains. These Cherokee thieves appear to have
earned the status "outlaws" who would no longer enjoy
tribal protection.

As mentioned earlier, by the 1790s the horse served
an important function in the Cherokee economy by being
both an item which could be integrated into the culture and
one which could be used for trade. To remedy the friction
created by horse-stealing, Governor Blount of the Territory
South of the Ohio issued a proclamation forbidding citizens
from purchasing horses from Indians. Further to restrain
Indians from horse-stealing, the Treaty of 1794 stipulated
that for every horse stolen by the Cherokees from white in-
habitants and not returned within three months, fifty
dollars would be deducted from the annuity of $5,000.

Another cause of conflict on the frontier was that of
unauthorized violence. In some cases, the murders could
be attributed to unauthorized campaigns of the state
militia. One incident shows how the two most frequent causes of conflict were linked. In 1792, Captain Biard had been dispatched by Governor Blount to follow to the Tennessee River some Indians who had allegedly killed a white man and a boy and carried off twenty horses. When he reached the Tennessee he left ten of his men with the horses, crossed the river, attacked friendly Hanging Maw's Town and killed twelve Indians. Several noted warriors and Hanging Maw's wife died. Hanging Maw was wounded. In retaliation, some fifty Indians gathered and pursued Baird and his men.\textsuperscript{71} This incident sparked another series of hostilities. In a report to the Senate on the incident, Secretary of War Knox noted that though a court martial had occurred, the difficulty in punishing violators of a military order came from general frontier prejudice against the Indians; "it is but too probable that the perpetrators of these violences will escape unpunished," wrote Knox.\textsuperscript{72} "[N]o Indian peace will be permanent," he continued, "unless an effectual mode can be devised to punish the violators of it on both sides. It will be with an ill grace that the United States demand the punishment of banditti Indians, when, at the same time, the guilty whites escape with impunity."\textsuperscript{73}

At this point, federal authorities could indirectly control individual Indian behavior only by stressing the need for tribal restraint of its own members and by applying
economic sanctions in the form of reducing the annuity for horses stolen. But the federal government could regulate and try to restrain its own citizens from unauthorized violence. A series of trade and intercourse acts passed in the 1790s tried to do just that. Patterned after the proposed Plan of 1764, other colonial and state regulations and the Ordinance of 1786, the law of 1790 provided for the licensing of traders and established penalties for trading without a license. The 1790 law declared purchases of lands from the Indians invalid unless made by a public treaty with the United States. It provided that any United States citizen or inhabitant committing a crime or trespass against an Indian or his property in the Indian country would be subject to the same state or territorial procedures and punishments as if the crime had been committed against another citizen within the state or territorial jurisdiction to which the offender belonged. Procedures for apprehending, imprisoning, and bailing followed those in the Judiciary Act of 1789.74

Some difficulties arose in implementing the provision regarding the commission of criminal acts against the Indians. Governor Blount, in an effort to restrain a group of several hundred individuals from violating the Treaty of Holston by entering the Cherokee nation, destroying the towns, and killing the inhabitants, issued a proclamation in January 1783 to the individuals to desist from planning
such an invasion, to disperse from their gatherings, and to return to their homes within one hour after the proclamation was promulgated. In a communique to the Secretary of War, Blount enclosed a copy of the proclamation and reported that he had also ordered infantry and rangers out to prevent the group from crossing into the Cherokee nation. Writing that this was the second attempt to violate the treaty, he noted that these efforts "seem in strong terms to point out the propriety and necessity of some tribunal being established in this country for the trial of offenders against treaties. The judges of this territory," he continued, "have informed me they have no authority to try offenders of that description."75

Congress responded to President Washington's recommendations for increasing the effectiveness of the 1790 act, which was temporary and due to expire in 1793, by passing a more specific trade and intercourse act that year. The 1793 act provided a maximum fine of $1,000 and imprisonment of twelve months for anyone who purchased, settled, or surveyed to settle on Indian lands without permission and authorized the President to remove illegal settlers. Recognizing the importance that horse-stealing played in provoking Indian-white hostilities, Congress added an elaborate provision to restrain whites from buying horses without following the prescribed procedures. To
meet complaints such as those of Blount, territorial jurisdictional and procedural matters were outlined for capital and non-capital crimes committed by whites against Indians in the Indian country. In addition, the 1793 act provided for the support of resident Indian agents who enforced the trade and intercourse acts. As the regulations became more specific, the responsibility of the agents increased and became more clearly defined.\textsuperscript{76}

Private retaliation continued and violators remained unpunished. Washington recommended that Congress adopt additional provisions for "[i]t is demonstrated," he wrote, that these violences can now be perpetrated with impunity, and it can need no argument to prove that unless the murdering of Indians can be restrained by bringing the murderers to condign punishment, all the exertions of the Government to prevent destructive retaliations by the Indians will prove fruitless and all our present agreeable prospects illusory.\textsuperscript{77}

Congress responded by passing the Trade and Intercourse Act of 1796.

Congress provided the death penalty for anyone convicted of murdering an Indian in Indian territory. The commission of non-capital crimes by whites in Indian country subjected the person to a maximum fine of $100 and punishment of twelve months in prison. An offender was to pay an Indian double the value of any property taken or destroyed; the United States guaranteed to pay at least the value of the property if the offender could not pay. None
of these provisions would apply, however, if the offended Indian and his tribe sought private satisfaction.\textsuperscript{78}

By the Act of 1796, whites in the settlements were to report to the superintendent or agent any injuries committed by Indians. The superintendent or agent would apply to the tribe for satisfaction. The President could take further action if the tribe did not respond within eighteen months. If property had been stolen and was not returned, the President could deduct the value of the goods from the annuity due the tribe. But these provisions had no effect if the whites sought private satisfaction.\textsuperscript{79}

Even with these provisions white and Indian regulations continued. There were no convictions under the horse-stealing licensing and forfeiture provisions. But retaliation over horse-stealing declined somewhat because of a 1798 treaty provision by which the United States paid an Indian sixty dollars if a white man stole a horse from an Indian, and paid a white sixty dollars from the tribal annuity if an Indian stole a horse from a white.\textsuperscript{80}

While the federal government passed legislation to restrain whites from committing acts against Indian persons and their property, in April 1797, the Cherokees in council in the presence of Benjamin Hawkins, United States Indian agent for the Southern Tribes, pronounced that "any person who should kill another accidentally should not suffer for it, but be acquitted; that to constitute a crime, there
should be malice and an intention to kill." At the same meeting, the headmen "gave up" the names of the "great rogues of the nation" and in their "neighborhood" and "appointed some warriors expressly to assist the chiefs in preventing horse stealing, and in carrying their stipulations with us [the United States] into effect." 82

The creation of the lighthorse or regulating party to enforce "stipulations" of the chiefs within the tribe indicates that considerable political structural and functional changes in the council had occurred. Previously, the national council met to negotiate treaties or declare war. 83 By 1797, they met to define more clearly the act of murder and to establish a police force to prevent horse-stealing and enforce other stipulations. Before in order to prevent future retaliations against the rest of the tribe, a particularly influential headman enforced a treaty provision which required turning over to white authorities a Cherokee guilty of murder. By the end of the eighteenth century, in order to prevent further hostilities against tribal members and to reduce tribal annuity deductions for horse-stealing, the council, not individual personalities, created a coercive force which would assist the chiefs in enforcing treaty provisions and tribal-wide laws. A coercive link had been forged between a government body which agreed by consensus to create a rule and the governed individual for whom the rule had been created and who was
expected to obey the rule. This positive, coercive measure appears to have come from within the warrior political structure which functioned according to positive, chain-of-command orders and allowed aggressive individual actions. Institutional coercive means now brought into the council and directed by tribal chiefs could override kinship connections which formerly might have protected a horse-stealer. Intertribal murder which could have been excused as an "accident" as a result of an understanding by the clans involved on a case-by-case basis, now was defined more clearly on a tribal-wide basis and established as law. After the older Cherokee leaders died off and the Chickamaugans made peace with the United States and the rest of the tribe, the remaining Cherokees struggled to preserve their hunting grounds, fields of crops, and villages by enforcing treaty provisions and avoiding unauthorized violence.

The tribe became more united through defense and trade. Rapid economic, social, and religious changes produced political change as well. The territory of the Cherokees contracted; the tribe consolidated; individual restraint became more necessary politically and economically. Still striving for natural balance in "this world" with their "elder brothers" (the whites), the Cherokees resorted to coercion to restrain unauthorized individual hostile acts. Deference and withdrawal and a personal liberty bound only
by consent still functioned. But institutional mechanisms had been created to protect its persons, property, and territory from the "elder brothers" who might wish to upset the natural balance from without and from their fellow brothers who might unwittingly destroy it from within.
Chapter 3--Footnotes


2Francis Paul Prucha, American Indian Policy in the Formative Years (Cambridge, 1962), 21.


4Prucha, American Indian Policy, 21-23; Walter H. Mohr, Federal Indian Relations, 1774-1788 (Philadelphia, 1933), 7.

5Alden, John Stuart, 140, 210; 259-260; Prucha, American Indian Policy, 23.

6Alden, John Stuart, 262, 278-279, 286-287, 290; Mohr, Federal Indian Relations, 10-15.


8Ibid.

9Charles H. Fairbanks, "Ethnographic Report on the Royce Area 79; Chickasaw, Cherokee, Creek," Cherokee and Creek Indians (New York, 1974), 87; Alden, John Stuart, 290-293.


11Gearing, ibid.

13 Ibid., 63-64.
14 Ibid., 69.
15 Ibid., 103-104, 107-108.
16 Ibid., 76-78.
17 Later this distinction becomes an important one in determining jurisdiction of the crime and which law, tribal, state, or federal, should apply.
21 Gary C. Goodwin, Cherokees in Transition (Chicago, 1977), 137, 141.
22 J. Leitch Wright, Jr., The Only Land They Knew, The Tragic Story of the American Indians in the Old South (New York, 1981), 171.
26 Letter from Governor Blount to the Secretary of War, November 10, 1794, American State Papers, Indian Affairs, I, 535-536.
27 Letter from Governor Blount to the Secretary of War, November 8, 1792, ibid., 325; Information by James Carey to
Governor Blount, ibid., 438.


29 Ibid.


33 Goodwin, *Cherokees in Transition*, 129.

34 Ibid., 137-138.

35 Calendar of Virginia State Papers, III, 601-602.


40 Quoted in ibid., 135.

41 Ibid., 135-137. Treaty provisions in the last quarter of the century and Indian agent reports in the 1790s indicate that cattle raising may have been more common than Goodwin believed. See Malone, "Social History of the Cherokee Indians," 111.


Ibid.

Hudson, Southeastern Indians, 122-132.

Gearing, Priests and Warriors, 103-104; Gilbert, Eastern Cherokees, 330-331.

See Willis, "Colonial Conflict," 214.

Ibid., 21.

Wright, The Only Land They Knew, 50.

John Lois Dickson, "The Judicial History of the Cherokee Nation from 1721 to 1835" (University of Oklahoma, 1964), 149.


Ibid.


Perdue, Slavery, 51.

Willis, "Patrilineal Institutions," 254-255; Dickson, "Judicial History," 103-104.


Gearing, Priests and Warriors, 103; Gilbert, "The Gadugi," 98.

Goodwin, Cherokees in Transition, 143.
The following narrative is taken from Max Dixon's account of *The Wataugans* (Nashville, 1976), 63-65.

See Merritt B. Pound's excellent treatment of this subject in *Benjamin Hawkins--Indian Agent* (Athens, 1951), 47-50.


Letter from Arthur Campbell to the Governor, *Calendar of Virginia State Papers*, V, 578.


75 *Letters with enclosures from Governor Blount to the Secretary of War, January 14, 1793*, *American State Papers, Indian Affairs*, I, 4434-435.


77 James D. Richardson, *Messages and Papers of the President*, I, 185.


81 Quoted in Strickland, *Fire and the Spirits*, 57.


83 *Ibid.*., 56.

Chapter Four

THE MAKING OF A STATE

With the creation of the regulating party or light-horse in 1797, the Cherokee national council of chiefs extended its functions and authority beyond negotiating treaties and declaring war. In an effort to enforce treaty provisions, particularly those regarding horse-stealing, and to promote peace with their white neighbors, the Council turned its attention inward to the behavior of the tribe's individual members. But the regulating party, primarily composed of the warrior element of the tribe, remained subject to political factions in council and during this early development lacked the capacity to ensure regular, organized, predictable coercion. Still, the regulating party was a step towards creating a force sanctioned by tribal-wide authority and operating outside of the ordinary clan network of control.

As the Cherokee national council strove to establish a way of discouraging its citizens from violating treaty provisions, Congress passed another Trade and Intercourse Act in 1802 which provided a permanent means of regulating white-Indian hostilities. This act defined a boundary line between the United States and the various Indian tribes. Like the earlier trade and intercourse laws, the
1802 statute regulated white access through and to "Indian country." It also punished commission of crimes by whites against the person or property of an Indian in Indian country," forbade unauthorized settlement or survey of Indian lands, and regulated trading of goods and horses between whites and Indians and the exchange and sale of Indian land to whites. Like the act of 1796, the 1802 statute provided no public financial reimbursement, out of either the United States Treasury or tribal annuity, for goods stolen by either whites or Indians if either sought private revenge or satisfaction. The provision regarding murder of Indians in Indian country by whites decreed the death penalty upon conviction. If an Indian crossed the boundary into a state or territory and committed murder or an act of violence against a citizen or inhabitant of a state or territory, that person or his agent complained to the Indian agent. The agent, with proper proof and direction by the President, would then request satisfaction from the appropriate Indian tribe. If the tribe neglected or refused to make satisfaction within twelve months, then the agent forwarded proofs and documents to the President for further inquiry and settlement.

The early trade and intercourse laws contained no provisions regarding Indians who injured whites within the Indian country itself.² Nor did Cherokee treaties with the federal government cover specifically the injury of whites
by Cherokees within the Cherokee nation though the Treaties at Hopewell and Holston generally bound the tribe to deliver up to the United States Cherokees or other persons who had harmed whites. This loophole, state-federal jurisdictional questions, and procedural issues raised by the agent's implementation of treaties and trade and intercourse laws, created situations in which legal authority for resolving Indian-white hostilities was non-existent, confusing, or conflicting. The federal Indian agent assigned to a specific Indian tribe could exercise considerable extra legal authority. He could do so according to his personality, goals, and diplomatic clout with factions in the Indian tribe, with War Department supervisors and military commanders, and with state and territorial executive officers and judges.

Administering the regulations of the trade and intercourse laws and treaty provisions, the agent exercised legislative, executive, and judicial functions over both Indians and whites in the Indian country. As the diplomatic representative for the United States, the Indian agent officiated at conferences and tried to settle disputes between the Indians and states. He issued passes to travelers and licenses to traders; distributed goods and annuities to the Indians; apprehended and returned runaway slaves; returned stolen slaves, cattle and horses; adjudicated disputes of ownership between Indians, between
Indians and whites, and between whites living in Indian country; demanded, and secured punishment for criminal offenses; and directed posses and military expeditions. Because of his depth of understanding of Cherokee law-ways and extensive length of service as the Cherokee agent, Colonel Return J. Meigs created a number of extralegal structures and procedures to implement United States—Cherokee treaties and the trade and intercourse laws.

As the Cherokee ceded away hunting grounds and relied more heavily on agricultural and livestock products for food and trade, the role of the agent as administrator of the government's "civilizing program" increased. In 1801, Benjamin Hawkins, agent to the Creeks and Superintendent for tribes south of the Ohio River, wrote Colonel Meigs of the progress the Cherokee Indians had made. The Indians were "settling out" from old towns and fencing their farms. In two years, wrote Hawkins, nearly 150 farms had been fenced. All farmers had cattle or hogs while some raised cotton and some had begun spinning. Since 1792, the government had distributed ploughs, axes, hoes, looms, spinning wheels, and other implements of husbandry and domestic manufactures. Gristmills, sawmills, cotton gins, and the services of white blacksmiths and various craftsmen were also provided in accord with provisions in the Treaty of Holston of 1791 and as part of the annuity in goods guaranteed the Cherokee in exchange for lands as a result
of the Treaty of 1794. In instructions to William L. Lovely, appointed as a subagent in charge of administering the "civilizing program" for the Cherokees, Meigs urged Lovely to encourage agriculture and manufacturing of products among the Cherokee and to "cherish in their minds favorable Ideas of our government whose only object is to ameliorate their condition by erasing their savage habits." In administering the program, Meigs instructed Lovely to use the Intercourse Law as a guide. To resolve Indian-white conflicts over property, Meigs advised that

> Whenever any complaints are made respecting Stolen Horses, or other Injuries by either party, I wish you to be very particular in Stating all material circumstances that may lead to a just and fair determination, either for or against offenders.

Adjustment of claims by whites and Indians for stolen or destroyed property constituted one of the most demanding and difficult responsibilities of the agent. Of all the property claims made by whites and Indians, horse-stealing was the most common. The prevention of horse-stealing and accompanying acts of violence had been a primary factor in establishing the first coercive tribal-wide force in 1797. Horse-stealing had inspired the inclusion in treaties with the Cherokees in 1794 and 1798 of monetary deductions from tribal annuities or the federal treasury for horses stolen by Indians or whites. This offense had resulted in the form of including a compensatory provision in the
intercourse acts of 1796 and 1802. Administrative efforts to prevent horse-stealing and to reconcile horse theft claims produced structural and functional changes in the Cherokee National Council and regulating party, and enlarged the duties of the agent and role of the federal government in managing Indian affairs.

In one of his earliest reports in his first year as agent, Meigs noted that he had assigned a board to examine the claims for property stolen by both Indians and whites and to give an opinion as to whether the individuals should be reimbursed according to law. That same year Meigs described the type of evidence collected and weighed in adjusting the claims. Whites claiming stolen or destroyed property submitted before a magistrate an affidavit describing the property, when and where the property was taken or destroyed, and material circumstances attending the case. In considering the claims,

strong presumptive proof such as is sufficient to convince the mind from the corroborating circumstances, must be admitted in some instances, where from the nature of the claims and the situation of the parties no other can be had.

Later, in 1805, Meigs explained more fully his mode of adjusting claims at the First Annual Settlement in October, 1801. The time the Cherokees chose to settle claims with the whites was significant. It coincided with the annual gathering of the tribes for the Green Corn festival and the
meeting of the National Council. Meigs' description is instructive of the process the Cherokees used:

The individual claims are entered in a Book in the form of a Docket; and numbered to correspond with the documents that are brought forward in support of the claims, which last are filed in the order of the numbers; each case is taken up, the verbal or written testimony adduced is considered, an opinion given, and entered on the papers and so on the Book. At every Settlement I have had one or more principal chiefs present, that they might see and be satisfied with the justice of the proceeding in which their people are interested, but have no voice.

In requesting gentlemen to lend their assistance on these occasions, there has been no pretence, of giving, or receiving any authority. Their opinions only has been asked, and has been found useful. Some of these cases are intricate, particularly with the Indian claims and it is difficult on account of their language and of the prejudices of the parties to come at the truth; as the Indians cannot be admitted to make oath. Yet having rights their testimony must be attended to and I believe in general it is as good as is offered on the other side. 10

Meigs' explanation illustrates the difficulty in ascertaining the truth of both Indian and white claims. As different individuals held the office of Secretary of War, Meigs wrote the newly-appointed executive officers and informed them of the procedure which he and previous Secretaries had devised and which the Cherokees had come to accept. Meigs wrote Secretary of War Eustis in 1811 informing him that he had taken the Indians' claims to Attorney General Rodney in 1808, and that Rodney had said that if he decided the claims he would have to rule against the Indian claimants. In order to avoid reprisals and bloodshed, Meigs and Secretary
of War Dearborn adjusted the claims in the same extra-judicial way which had been in use for ten years. When William H. Crawford became Secretary of War, Meigs again explained the reasons for the formation of a Board of one or two judicious men and the agent to hear the complaints. Taking each case separately, the Board examined witnesses, heard testimony in the form of a narrative from the Indians, and gave an opinion. The agent then transmitted the case with the documents to Washington for the ultimate decision. The Secretary would return the recommendation to the agent, who would then pay the successful claimant.

Meigs informed the Secretary of War in 1817 of the sixteen year old practice, but the War Department, not satisfied with the informal process, issued in 1818 a special circular to the Indian superintendents and agents which outlined a different procedure:

In case of injury to our citizens, after making the demand for a redress of the injury, as pointed out by the act, you will, if it is not redressed in the time specified, forward the claim properly testified, stating the time, place, and circumstance of the injury complained of, to the 5th Auditor of the Treasury for his examination. Your opinion on the truth of the claim, and the amount of damage, will accompany your report.

In case of injury done to the Indians you will make a similar report, accompanied with your opinion, to this Department and the District Attorney where the person who has done the injury resides; so that proper legal steps may be taken against the wrong doer, in order to make the reparation at his expense and not at the expense of the public, which should if
possible, be avoided. No payment, except thro' the order of this department, will be allowed.

I observe that, in most of the applications made for reparation of injury, no care is taken to comply with the requisitions of the act; but it is hoped that, in future they will be made more regular as none will be admitted but such as the law or treaties provide for, and in which the provisions of the act have been complied with. 14

Shortly after this circular, the Secretary of War resumed checking the claims, and in 1824 with the establishment of the Bureau of Indian Affairs, the commissioner tried with little success to process the claims according to Sections 4 and 14 of the Intercourse Law. 15

The recurring theme in correspondence between the Indian agent and Washington, however, is that the informal process provided a mechanism which responded to the claimants and thwarted private reprisals by either whites or Indians. Any attempt to obtain private satisfaction by violent measures deprived the claimants of recovery of damages. 16 Horse theft was particularly difficult to prevent because whites and Indians cooperated in stealing the horses from the white frontier settlements, took them into Indian territory, and then sold them in other frontier areas. "The Number of horses carried into this country from Georgia, Carolinas, and Kentucky is incredible," wrote Meigs.

A very considerable part of the land purchased in this country is paid for in horses, they
serve as a kind of currency for this purpose all over this western Country and hence arises the facility with which they are Stolen by Indians and by others.¹⁷

Commenting on the deduction made from the tribal annuity used for Indian theft of white-owned horses, Meigs wrote,

It is no kindness to the Indians to let them escape payment, they are abundantly able and they have never objected to it and it is the only corrective in our power to make them feel the effect of the conduct of their bad, idle people and cause them to endeavor to remedy it. They punish some with great severity, but their police is so unsteady and so weak that they had rather pay them than punish, except in extraordinary cases.²⁸

Although the National Council had created the light-horse or regulating party in 1797 to assist the chiefs in enforcing treaty provisions, particularly those regarding horse theft, the force had not operated on a regular, consistent basis and remained subject to factional power struggles among the chiefs in council. Partly supported by the federal government from 1797 to 1801, and reinstituted by the Upper Town area in 1804,¹⁹ the police force was subject to scrutiny by council members. In a letter to Black Fox, Principal Chief of the Cherokees, in April 1808, Meigs reviewed a case in which John Rogers, a white man who married into the Cherokee Nation, had pursued and beaten a Cherokee horse thief.²⁰ Meigs noted that Rogers was one of the regulating parties who by the Cherokee laws had a right to punish the man by beating him. The thief had escaped to a canoe, had tried to right it, and then had drowned. Six
other men who witnessed the incident claimed the man was not "that hurt"; one said he could paddle the canoe him-
self. Meigs advised no punishment for Rogers—probably be-
cause at that time Rogers was one of those Meigs counted on for influencing other tribal chiefs. Meigs reminded
Black Fox that the president advised

that in any difficult cases, your wisest men
should examine coolly into matters of weight
and give a righteous judgment and in examining
into this case it ought to be well considered
what the effect will be on the Horse thieves.
If you allow that Mr. Rogers be liable to
punishments, the horse thieves will probably
be worse than ever they have been. I advise
that you weigh well all the circumstances of
this case,

he continued,

and give your opinion in writing and the
relations of the man who was drowned, will
be satisfied when they see that you make a
proper inquiry into this case and they will
be quiet and abide by your wise determination.

At BroomsTown on September 11, 1808, the National
Council met and passed the first Cherokee written law.

**Resolved by the Chiefs and Warriors in a National Council assembled, That it shall be, and is hereby authorized, for the regulating parties to be organized to consist of six men in each company; one Captain, one Lieutenant and four privates, to continue in service for the term of one year, whose duties it shall be to suppress horse stealing and robbery of other property within their respective bounds, who shall be paid out of the National annuity, at the rates of fifty dollars to each Captain, forty to the Lieutenant, and thirty dollars to each of the privates; and to give their protection to children as heirs to their father's property, and to the widow's share whom he may have had children by or cohabited with, as his
wife, at the time of his decease, and in case a father shall leave or will any property to a child at the time of his decease, which he may have had by another woman, then, his present wife shall be entitled to receive any such property as may be left by him or them, when substantiated by two or one disinterested witnesses.

Be it resolved by the Council aforesaid, When any person or persons which may or shall be charged with stealing a horse, and upon conviction by one or two witnesses, he, she, or they, shall be punished with one hundred stripes on the bare back, and the punishment to be in proportion for stealing property of less value; and should the accused person or persons raise up with arms in his or their hands, as guns, axes, spears and knives, in opposition to the regulating company, or should they kill him, or them, the blood of him or them shall not be required of any of the persons belonging to the regulators from the clan the person so killed belong to.

Accepted. -- BLACK FOX, Principal Chief,
PATH KILLER, Sec'd.
TOOCHALAR

CHAS. HICKS, Sec'y. to Council
Brooms Town, 11th Sept. 1808

The passage of the law reveals that by 1808 severe changes of attitude had occurred among the members of Council. First, the Cherokees had become fully aware of the importance of written laws in governing their internal affairs. In the late eighteenth century, a number of principal chiefs had begun to maintain copies of treaties negotiated with the whites and had kept a collection of their own records. Second, the explicit organizational structure of the regulating party resembled that of the earlier tribal warrior structure—thus giving further
support to the theory that the idea of the regulating party was acceptable to older, full blood members of the tribe because it allowed an existing structure, the warriors, to be merged with a new function, enforcement of treaty provisions over individual tribal members. In addition, the law provided that the force would be permanent, and that the officers would be paid from national funds. The recognition of the importance of personal property—whether horses or an inheritance—had reached a point where the chiefs in council felt a need to establish a permanent force possessed of coercive authority to protect property. The law demonstrated that some friction had occurred between patrilineal and matrilineal descent of property, and it guaranteed protection to that part of the estate inherited by immediate children, by a widow, or, upon substantiation, by a current wife's entitlement to property previously bestowed on a child by another wife. The Council also detailed a procedure for charging, investigating, locating, trying, convicting, and punishing individuals for stealing horses or lesser property. But most significantly, the provision immunized the regulators from any demand for clan revenge by relatives if a person was killed by regulators in the performance of their duties.

Jurisdiction was one of the most difficult and complex issues faced by both Indians and whites in preventing horse thefts and theft of other property. Despite the fact that a
permanent regulating party or police force had been created in 1808 to regulate internal affairs, and the trade and intercourse laws covered crimes committed by Indians against whites within a state or territory and crimes committed by whites against Indians in Indian country, jurisdictional gaps remained. Richard Brown, a Cherokee chief, indicated the Indians' difficulty to Meigs:

> We and the white people live in sight of each other almost together. Of each party there are some rogues who will steal horses from each and sell to whites and Indians respectively. We want some way devised that we can reclaim our property when found in the hands of white men as well as for white men to reclaim their property in the hands of Indians. We have found a horse belonging to an Indian near Dittoes landing or near Huntsville [?]. We cannot recover him without aid. The oath of Indians is not known by your laws, [and so] devise some way to give us our right. 25

Often the Indians could not recover property which had strayed into a state or territory or which had been stolen and taken there; the trade and intercourse laws did not allow compensation for lost property. In 1801, Meigs appointed an attorney in Tennessee to claim and recover certain horses which had been stolen from Cherokees near the Tellico Blockhouse in the Indian Country. 26 Some years later, the Secretary of War directed agent Hugh Montgomery to assist the owners in recovering such property and prosecute for its restitution or payment and if you fail to recover it, forward the case and adequate evidence onto the Department. 27
The Cherokees utilized the lighthorse in locating and apprehending whites who were accused of robbing other whites. Pathkiller and several other chiefs wrote Meigs upon the apprehension and delivery of John Crossland, accused of robbing William Crockett, that

... [t]his sir we hope will be a convincing proof to you of our disposition to suppress villainy in Our Country. We have no disposition to protect any white person of bad habits that may seek for refuge in our Country.\textsuperscript{28}

The agent continued to play an important role as an advisor in resolving conflicts beyond his formal jurisdiction and authority. In an incident involving horses stolen in Cherokee territory by a mixed breed named Miles Eastridge from a Cherokee, Meigs advised that those who owned the horses should take and hold Eastridge's property as security. "You are sensible," Meigs explained,

that there is nothing in the Law that binds the United States to make good damages which Indians or Indian countrymen may do to each other. In this, we can do no more than give advice when asked, this was the case at the Green Corn dance.\textsuperscript{29}

Eastridge was considered to be an Indian countryman; the United States' laws had no jurisdiction since he was not a citizen.\textsuperscript{30} The trade and intercourse laws covered no acts committed by Indians against Indians in Indian territory, or Indian theft of white property within the Indian country.\textsuperscript{31}

One of the best examples of the importance of Meigs' role in resolving Indian-white conflicts and jurisdictional
questions involved a Cherokee named Stone. Accused of stealing a horse from a citizen of Cumberland, Tennessee, Stone was taken from the camp at Caney Fork and jailed in Nashville in December, 1801. Shortly after Stone's arrest, James Vann, an influential mixed breed chief, wrote Meigs of the incident and explained that a Creek Indian had "deceived and imposed on" the Cherokee to sell the horse in order to screen himself; the Creek Indian disappeared when the white men arrived to claim the horse. Meigs wrote Judge John McNary, a magistrate in Tennessee, of the incident, expressed his belief that Stone was innocent, and suggested to Judge McNary that if it was "possible to get over this affair without great rigour" he would be glad. "The Indians," he claimed,

are very apt to charge us with partiality in matters relating breaches of law where they are concerned. They are still complaining of the murder of the Indian woman, and for want of knowledge of the value of our Laws, are apt to consider our present proceedings as a dereliction of Justice. 32

Peace between the whites and the Cherokee remained uneasy after an Indian woman was killed in August, 1801, and the Cherokees had received no satisfaction.

McNary wrote Meigs that he had taken some steps to have Stone transferred to federal court. If Stone was indicted, McNary suggested that Meigs take affidavits and send them to the United States attorney for the District of West Tennessee where a plea of nolle prosequi might be entered.
If this was not done, wrote McNary, it might be necessary for Stone's witnesses to appear at the next session of the circuit court. If all efforts failed to acquit Stone, McNary thought that the President might pardon Stone if proper application were made. 33 Meigs sent Vann a form of the deposition to be used. He directed Vann to have two depositions of the Indian witnesses written before a magistrate, but if that was not possible, to have Vann take the depositions himself before two white witnesses. The Indians' marks and Vann's signature as a Cherokee chief should appear at the bottom of each of the depositions. If Vann could not get the depositions, he was to ensure that the Indians attended the circuit court trial. 34

Vann wrote Meigs, perhaps before he received Meigs' letter about the depositions, that the headmen from three towns had conferred and had agreed that Stone should be sent to Meigs. Further, some of the headmen from the towns would go to West Point and if the Indian had "done anything amiss," he [might] have a trial at West Point and receive punishment according to the laws of the Cherokees. 35 Subsequently, Meigs informed Colonel John Overton that white men had seized Stone and his property and had forcibly taken him across the boundary line into state territory. There Stone was taken by a writ under state authority. Meigs pointed out that the private seizure violated the provisions of the trade and intercourse law, and that the injured party should receive
no compensation. He objected that the seizure had been an invasion of right and questioned whether the violation of the supreme will of the law could be justified in one instance, "in order to punish in another instance its infraction and in this way justify violence and low cunning." Meigs stressed the unequal treatment of Indians before the law.

We make the laws, construe and execute them, even to the taking away [of] life, and they have no voice. We say that the United States are magnanimous and will not be rigorous towards the Indians. We allow them counsel. But what can counsel do. They cannot avail themselves of Indian Evidence, they can only address themselves to the [best (?)] feelings of the Heart of the Jury--and this I know you will do. I am confident that it will give you pleasure to plead the course of the helpless.36

Overton obtained a state writ of habeas corpus because there was only one state judge, and Stone could not be tried soon. But before the writ was returned, a federal grand jury found a true bill against Stone, and the jailer received a federal warrant for Stone's arrest. The jailer held Stone on the state charge and the federal charge. Overton, seeing that Stone already had running sores in the "gland of his armpits," doubted whether the Indian could last another six months in the heat of summer until his trial. General James Winchester and Colonel Overton made $250 bail for Stone, who was bound to appear at the next term of the federal court. Overton hoped that Meigs would
use his influence in getting Stone, his interpreter, and the testifying Indians to attend the next court session. He believed that Stone would be cleared at the trial and wrote that "[i]t will tend to give confidence to the Indians in the agents of the Government and in our Courts of Justice." 37

When Stone was discharged, the jailer was directed to furnish him with meat and bread and a shirt, since Stone had only a blanket. The jailer told Stone to sleep in the tavern adjoining the jail and gave him the meat and bread, but directed him to wait until morning to have the shirt made. Stone left during the night without taking the meat or the bread and with only a blanket for clothing. He took Winchester's and Overton's certificate addressed to the Chiefs of the Cherokee Nation and the citizens of the State of Tennessee which explained Stone's indictment, bail, and his return to the Cherokee Nation. In the certificate, Overton and Winchester expressed their hope that their fellow citizens would treat Stone with humanity in his return to the Cherokees. They requested the Chiefs to send Stone, his witnesses, and an interpreter to the next court. 38

In closing his letter to Meigs explaining Stone's plight, Overton expressed compassion

... for an unhappy creature who, could not understand a word that was said during the whole transaction. It is supposed [that] he received a few Ideas by signs but apprehending
that he might be taken up and committed again if he took the provisions [the fruit and meat] with him—I imagine was the reason he did not take them. 39

The jurisdictional and procedural questions remained complex and confusing for those offenses committed by whites or Indians which did not clearly fall under the Trade or Intercourse regulations, treaty provisions, or Cherokee tribal law. In 1812, Meigs wrote Governor Blount of Tennessee that the extent of the agent's authority over white fugitives who had fled to Indian country to avoid prosecution of state or territorial law amounted to a mere reporting of the offending circumstances to the Governor of the state and the nearest commander of United States troops. The commanding officer then confined or removed the aggressor. Only in cases of treason or incitement to war could Meigs secure an offender and take him to the nearest post. Meigs wrote that the enforcement of the trade and intercourse laws contemplated the use of regular troops. A question remained whether a district judge of a federal court could issue troops, a marshal, or a deputy to apprehend persons in criminal cases where the offender made an asylum of the Indian country. At present, Meigs noted, there was no law making civil process within the limits of the Indian boundary; there were no regular troops to take out a citizen making the Indian country his refuge. 40

Fugitives from bad debts, horse thieves, and murderers
frequently fled to the Indian country and committed additional crimes there. The Cherokee found it difficult to enforce their own tribal laws over their own members because of interference and hostilities created by white intruders and fugitives. In 1810, twenty chiefs from the Eustinola Council petitioned Meigs that they wished to establish order in their country from those whites who took refuge and fled there after breaking laws in the white man's country. They requested that Meigs appoint Benjamin Robbins, a white man they trusted and respected, to prevent intruders from coming in. They pledged to give him "whatever assistance or aid he might need in exercising his authority to preserve peace and order and promote the welfare of the country."  

In a similar instance, Turtle at Home, John Lowery, and John Boggs wrote Meigs for assistance in dealing with whites who had committed several offenses against their fellow tribal members.

Dear Friend and Brother. I [want now?] have to right [sic] to you to let you know the white people have stolen five head of horses from us and five negroes and caild [sic] indian man the other Day and we want you to Com and Dont Dalay we shal waite until you com for we wish to Do nothing but wat is Rite and Just when our pople Dos Commit merdier we give up agible to the pece that was mad. Com to the Turtle at hom or to my house John Loweers. this from your friend and brother.

Turtle at home
John Lowery
John bags [Boggs]  

41
42
This letter is important in understanding the Cherokees' efforts to restrain their tribal members from disturbing the peace through private satisfaction—and their efforts to abide by their treaty provisions. It also illustrates their reliance on Meigs as the agent for the United States to implement and enforce the federal obligation to uphold former treaty provisions.

Horse theft thus appears to have been the most common crime in the first quarter of the nineteenth century and the most difficult to restrain among the Cherokees and whites. The creation in 1808 of a more organized, permanent institution of Cherokee regulators or lighthorsemen who were appointed by National Council members, paid by funds from tribal annuities and authorized to investigate, adjudicate, and prosecute tribal law with immunity from clan revenge, indicates that the National Council had grafted onto the older warrior structural organization a permanent coercive force with specified national functions. The need to settle Indian-white claims for stolen property, particularly horses, also gave rise to an informal, extra-judicial system of adjustment established by Meigs and a board of influential Cherokee headmen. Meigs exercised considerable influence beyond his official responsibilities as agent when the offense committed by the individual Cherokee or whites did not fall neatly within treaty provisions or trade and intercourse regulations. But the
crime of interracial murder tended to provoke even more hostile reactions by loyal Cherokee clan members or by angry frontier relatives. Throughout the first quarter of a century, efforts to maintain harmony or "natural balance" among the Cherokees as well as with their elder white brothers led to more clearly defined restraints of individual Cherokee behavior.

Early federal administrative efforts to enforce United States-Cherokee treaty provisions concerning interracial murder consisted primarily of offering rewards for the capture of whites suspected of murder. The tribe abided by treaty provisions by preventing private retaliation after a Cherokee Indian woman had been killed during treaty negotiations in 1801. The tribe complained of a lack of redress of grievances by the United States. Meigs informed the Secretary of War that a man named Wheeler suspected of murdering the woman had been apprehended and examined at Nashville, but because of lack of evidence he was dismissed. Meigs complained that

[they have no proper idea of the nature of evidence--circumstances to them are as strong as holy writ, to convict, to condemn and on circumstances only they would punish even with Death.]

Although Charles Hicks reported for the Cherokees that the Indians would wait eighteen months according to the language of the fourteenth section of the intercourse law before obtaining satisfaction, he also said that if
retaliation was attempted, it would be by some of their rash young men. 44 In a letter accompanying a presidential proclamation, in which the president called on all United States citizens and required federal officers to use every effort to apprehend the persons responsible for the murders, and offered a reward for apprehension of the person responsible for murdering the Cherokee Indian woman, Henry Dearborn, Secretary of War, directed Meigs to have the proclamation published in the Tennessee papers, copies of it displayed in public places, and its contents explained to the chiefs of the Cherokee Nation. 45 Meigs responded later that he had explained it to some of the chiefs, and they said that it was good, and that he believed it would "have a good effect on the Indians." 46 (See pp. 140 and 141.)

The goal for both whites and Indians remained that of following the treaty provisions and abiding by the trade and intercourse regulations by keeping the peace and avoiding violent retaliation by Cherokee clan members or white kin relatives. But occasional acts of private revenge continued to occur. In 1806, Nicholas Byers advised agent Meigs of the necessity of Meigs' immediate arrival at Tellico where a Cherokee had been murdered by a man named John Ferguson. Byers persuaded the Cherokees' relatives and friends to avoid seeking revenge and await Meigs' arrival. 48 In another case at the Caney Fork of the Cumberland, outside Indian Territory, a white man named
By the President of the United States of America.

A Proclamation.

Whereas information has been received that an armed party was on the 28th of August last, composed of several Indian braves of the Cherokee tribe, with authority and appointment of the United States, in the bounds of the State of Georgia, appointed also by the President, and was committed at a point on the 30th of August last, a friendly visit and was about to be followed by hostilities of the said Indians with the citizens of the said State of Georgia, on the purpose of making a retreat, arrangements favorable to the tranquility and security of the inhabitants of the State and their neighboring counties or townships, and to prevent the same from being carried out, the President has been induced to issue this proclamation, for the purpose of making a proclamation, and arrangements favorable to the tranquility and security of the inhabitants of the said State and their neighboring counties or townships, and to prevent the same from being carried out.

And whereas the President of the United States of America, by and with the advice and consent of the Senate, do ordain and establish the following terms of peace and friendship, for the purpose of making a peace and friendship, and arrangements favorable to the tranquility and security of the inhabitants of the said State and their neighboring counties or townships, and to prevent the same from being carried out:

First. All persons of the said tribe who shall be apprehended and brought to justice.

Second. The President of the United States of America, by and with the advice and consent of the Senate, do ordain and establish the following terms of peace and friendship, for the purpose of making a peace and friendship, and arrangements favorable to the tranquility and security of the inhabitants of the said State and their neighboring counties or townships, and to prevent the same from being carried out:

First. All persons of the said tribe who shall be apprehended and brought to justice.
Wright shot at an Indian who thereafter disappeared. Meigs deplored the conduct and stressed that if it should go unnoticed it might lead to an Indian war. He pointed out that it was the local magistrate's duty to inquire into the matter. "Everything of this kind out to be corrected with decision and spirit," Meigs advised,

no individual has a right to commit acts of hostility on the Indians[;] we are at peace with them, and bound by treaties to protect them, which treaties are the Supreme laws, and expressions of the public will. The United States are fully competent to vindicate their rights, and to avenge their wrongs and are the only Judges whom and where to make use of force. I hope that you and every man in authority; and every other good man will exert yourselves to discourage the licentious Disposition which some people hold towards the Indians. 49

While Meigs continued to play an active role in resolving interracial hostilities according to treaty provisions and the intercourse laws, each group, Cherokees and whites, continued to rely on the more traditional informal mechanisms to reconcile hostilities. As in the mid-eighteenth century, the Cherokees tried to avoid white retaliation by distinguishing deplorable acts of an individual Indian from those of the nation as a whole, so too in 1802 James Vann claimed that the violent actions of a drunken Indian in the Georgia settlements were those of a crazed individual not those of the Cherokee nation. The drunk Cherokee happened onto a plantation where in a rage he threw a child into a fire, killed a woman by shooting
her in the forehead, and hassled another woman. The man of
the household came upon the Indian, loaded his gun with
nails because he had no bullets, and shot the Indian dead.
Vann, a mixed breed chief, told Meigs that he hoped the
circumstance would not breed further troubles for the
"Indian certainly got what he deserved for his horrid
Deed . . . ."\textsuperscript{50} The Cherokee nation had no right to re-
taliation, Vann continued, and he hoped the government would
not look upon it as "the Act and Deed of the Nation, as it
certainly was done without the Concurrence, nay even without
the Knowledge of the Nation . . . ."\textsuperscript{51} Meigs responded that
the white people had

\begin{quote}
no right to consider this murder done by a
drunken Indian as an act of hostility of the
Cherokee Nation. On the other hand, the
Killing of the Indian by the white man under
the circumstances which he found his family,
ought not to be considered by the Cherokee
nation as an act of hostility of the white
people. But as the result of a moment of
rage occasioned by what had preceeded.\textsuperscript{52}
\end{quote}

These murders appear to have been "set off" or cancelled
out by both the Cherokees and the whites. In 1812, Meigs
wrote of the Cherokees wanting to "set off" the death of a
white man for the death of a Cherokee in 1811. The
Cherokee's argument was that eight deaths had not been
satisfied.\textsuperscript{53}

The Cherokees and whites also continued to use other
means such as the "blood price" to assuage the feelings of
injured relatives and avoid massive retaliation by either
side. In 1802, the Grand Council of the Cherokees chose to waive the offer by the United States of a payment to families of Cherokee individuals who had been murdered the year earlier. But in 1805, one of the Cherokee chiefs requested some clothing for children of the Cherokee victim of 1801. Meigs gave him clothing and $60. The Cherokees accepted it and declared the family would no longer hold the United States responsible for the deed. In 1810, Meigs reported that a soldier who had killed an Indian in self-defense had been tried and acquitted of the murder and recommitted to jail to be returned to his company. He broke jail and escaped. The Cherokee's relatives threatened to seek satisfaction. Meigs persuaded the family to accept a present as testimony of regret on the part of the white people. In another episode, Meigs accepted five vouchers for merchandise given to Long Beard as peace offerings for the life of one of his sons killed by a deserter in 1809. Meigs deplored the price of $160 for the life of a human being. He explained that it was received as a testimony of regret on the side of the United States and on the side of the Indians as a testimony of reconciliation and as a sign that the Cherokees would not seek revenge.

The Cherokee practice of accepting white peace offerings for unsatisfied murders of their fellow Indians was also used by the Indians as peace offerings to whites for misdeeds committed by Indians. In 1813, a party of whites
came to Cherokee country to claim satisfaction for the assault of a white man John Tully. The whites later requested the deliverance of William Brown, the person who had allegedly beat John Tully. The Cherokee National Council assembled and examined the circumstances. The Council found that William Brown was drunk and incapable of "acting otherwise," and that James Owen was the individual who had beat and abused Tully. The councillors expressed abhorrence and detestation of Owen's acts; they knew there could be no "pecuniary means" to indemnify Tully for his sufferings but offered Tully $50 as a peace offering. They hoped he would receive it in the same spirit of conciliation they felt in promoting it. The Council claimed it would punish Owen if it could, but he had fled the country. 57

In 1819, Secretary of War John C. Calhoun reexamined the policy of paying money or merchandise as the price for an unsatisfied death of an Indian or white. Upon receipt of Meigs' letter submitting a claim for monetary compensation for headmen or Indians killed by Americans, Calhoun remarked that Meigs extended the practice of making monetary compensation, begun on advice of Secretary of War Dearborn, to other cases. While Calhoun agreed that $150 should be paid to the widow of the deceased in the case before him, he ordered Meigs to inform the chief that the practice would not continue in the future, as it was "repugnant to those
principles by which we govern ourselves in such cases." Later that year, reporting another request of the United States government by Principal Chief Pathkiller of the Cherokee National Committee for $167 to be paid to the Indian nephew of a deceased Cherokee murdered by a United States soldier, Meigs suggested paying an amount to cover the debts of the deceased or otherwise the Committee would press for the murderers' trial. Meigs explained that he had followed Secretary Dearborn's instructions and had made "presents to the relatives of those killed on their solemnly promising to cease all thoughts of taking satisfaction (as they term it) on the vile principle of retaliation." He claimed that the presents had the desired effects by silencing all after complaints. Meigs explained to Calhoun that he never gave presents in the full amount authorized, and that he graduated the "peace offerings" according to his opinion of "their atrociousness after due consideration of all the attending circumstances."

In many instances frontiersmen protected alleged white murderers of Indians and prevented their apprehension or capture and prosecution. In 1804, James Wood had murdered a Cherokee and had been committed to jail in South Carolina. Wood was bailed out by his friends, the Welshes; he returned to Pidgeon Settlement where the murder had been committed. There the Welshes told their friends that "if Woods was charged or shot for them to move in for the[y] are under
oath to kill sum of the Cherikkees." Others in the community feared that these people might carry out their threat against the Indians and wrote to Meigs for advice, saying that "this is the voice of the well wishers in General to the Laws of our Country." In 1802, Meigs demanded from the Cherokees the delivery of murderers responsible for the death of a man named Runion. A council of forty chiefs agreed to give up the perpetrators of the murder but were not willing to have them confined in the jails of the state. The Cherokees felt, as always, that incarceration was a humiliating and disgraceful practice which could not receive the full support of the tribe. Meigs reported later that year the tribe's reluctance to deliver up the murderers because of the "number of their people that have been killed by the whites and for which no punishment has ever taken place."

The fact that the Cherokees received no satisfaction either through monetary compensation or the apprehension, trial, and prosecution of whites accused of murdering Cherokees remained a frequent source of friction throughout the early 1800's. Particularly in the years 1803 through 1804, the Cherokees linked satisfaction for murders to their political agreement to the building of a United States road through the Cherokee nation to Georgia. The Glass, a Cherokee Chief, and Dick Justice wrote Governor Sevier of North Carolina and Meigs that they were happy to hear that
you intend to exert yourself to apprehend
the murderer [of an Indian and a boy in
Brincomb County, North Carolina] and hope
your exertions will not prove abortive.
It is surprising to us that when anything
is stole from you or even murder amongst
yourselves you can find them out but when
it falls upon us they never can be found.

The murderer must be found, they argued, before work could
begin on the road. 67 Meigs complained to Governor Sevier
that

it is really too much to be regretted that
not in one Single Instance can we yet
punish a white man for committing murder
on the Cherokees. Could there be one
Instance of punishment for these murders,
it would have a good effect and would
remove their objections to any requests
that are made to them.68

When the nephew of the Principal Chief Pathkiller was
murdered in 1821, Pathkiller reiterated the fact that equal
justice had seldom ever been extended towards the Indian.
He wrote Meigs that the latter had suggested the efforts
to pursue and apprehend the murderer but what good did it
do to pursue a white man in the settlements?69 Pathkiller
asked Meigs what had happened to Morris, the murderer of his
nephew, after he was bound over for trial. "It is truly
grievous to me," he wrote,

to see so much indifference or relaxation
on the part of the agents of the United
States in considering ample justice to the
Cherokees for the profusion of blood which
have been spilled by the hands of the white
people.70

"The whites have so frequently spilled the blood of the red
men with impunity and in defiance of justice, that some of them do boast, that they can kill an Indian without hazarding their own lives for having done so." Pathkiller expressed his belief that the agents were going through requests for prosecution of white murderers of Indians as a matter of form. "I cannot believe," he wrote, "that the Government of the United States are disposed to administer two sorts of justice, one for the benefit of her own citizens and the other for the destruction of the red people. . . ." 

In both 1812 and 1816, Meigs informed the Secretaries of War of murders of Cherokees committed by whites. On one side of the chart Meigs listed the deaths of the Cherokees and on the other, the legal action taken, or the retribution made in the form of "setting off" the death of a Cherokee for the death of a white or a Negro. In cases in which the white murderer was apprehended and tried before juries, juries acquitted ten individuals. The balance as of April 1812, was that the United States "owed" the Cherokees the public execution of five lives.

Meigs noted on the 1812 chart that the Cherokees could not obtain adequate justice in the whites' courts of law. "The judges," explained Meigs,

are just and liberal in their sentiments and look on the human race with equal eye as far as relates to distributing justice and would deal out rewards or punishments to all even
without being influenced by the accidental differences of the colour of the skin but a jury impaneled on the frontier counties dare not bring in a verdict to take the life of a citizen for Killing an Indian. The Indians are in a deplorable state in this respect. [T]hey are accused, tried, and condemned and executed on the testimony of any white citizen of common character and understanding: When at the same time a white man can kill an Indian in the presence of 100 Indians and the testimony of these hundred Indians to the fact amounts to nothing and the man will be acquitted.\textsuperscript{74}

The 1812 and 1816 charts show clearly that the forms of satisfaction consisted of monetary compensation to the injured parties, "setting-off" of deaths of one race for those of another, and the dismissal or acquittal of whites apprehended and tried for murdering Cherokees.\textsuperscript{75}

While efforts to reconcile conflicts over Cherokee and white murders commonly resulted in monetary compensation, "setting off" of deaths, and acquittals of whites apprehended for murders of the Cherokees, the Cherokees strove to rise above political and geographic factionalism to protect property, to restrain the practice of clan revenge, and to exert more direct control over the behavior of individual tribal members. The written law passed at the Broomstown National Council meeting in 1808 defined the organization, offices, and duties of the regulating party and set forth the procedure for conviction of and punishment of public crimes.\textsuperscript{76} More significantly, the seven clans agreed two years later to pass an act of oblivion for all lives which
the clans owed to each other and mutually agreed that the act establishing the regulating party as the coercive force of the nation became binding on every clan. Furthermore, in the future if any life was lost "without malice intended," the "innocent aggressor" would not be accounted guilty. Anger or intent became necessary elements for the crime of murder committed by the individual Cherokee, and no satisfaction could be demanded by members of the clan to which the victim belonged.  

The act passed in 1810 abrogating the practice of clan revenge came about primarily as a result of Doublehead's death in 1807 and James Vann's death in 1809. Their deaths represented the result of a long struggle among various tribal factions over control of the National Council; over representation of the nation in treaty negotiations regarding land cessions; over distribution of government aids and supplies such as spinning wheels, looms, plows, axes, hoes; over special privileges and leases for land; and over the delivery and distribution of annuities. The primary regional areas which contended for national control generally fell along old geographic divisions of the tribe. Doublehead, a fullblood though never a "beloved man," led the Lower Town region and became a "progressive" Cherokee by trading supplies, speculating in land, farming crops for market, and owning slaves. The government rewarded his support for requests for land and road cessions by
delivering government supplies and annuities to him and his people. Black Fox, Principal Chief of all the Cherokees from 1802 to 1808 and 1810 to 1811, was supported by Doublehead and generally aligned himself with the Lower Towns. 79 The Upper Towns, especially those of the Valley or Hill area in the more isolated regions of the Smoky Mountains, contained the more conservative, traditional Cherokees who firmly held to their fullblood beliefs. Yet the son of a Scotch trader and a Cherokee woman, James Vann, the richest man in the Cherokee nation, influenced the votes of the Upper Town chiefs until about 1808.

Charles Hicks, another mixed blood, promoter of national unity and opposer of removal, by 1806 represented a coalition of Upper Town and Lower Town nationalists and emerged after Vann's fall from favor as the coalition leader opposing Doublehead. Pathkiller, Principal Chief of the Cherokees from 1808 to 1810 and 1811 to 1827, relied on Charles Hicks to represent the fullbloods' nationalistic views in negotiations with whites.

Jealousy over government favors and rewards contributed to the decline of Doublehead's leadership and formation of the national unity coalition. A secret agreement alienating land led to Doublehead's death. Attached to an 1805 treaty, the agreement allowed one square mile of land to revere to Doublehead and two other tracts of land to be relinquished to John D. Chisholm and John Riley, after the United States
no longer "needed the land for a garrison and a factory." 80 A group of Upper Town chiefs agreed that Doublehead had committed the most "heinous" of all public crimes, betrayal of the nation through alienation of land, in a sense, treason, and took the appropriate action—retaliation for Doublehead's taking of land from the entire nation by the taking of Doublehead's life through assassination. 81

The makeup of the political factions fluctuated, according to personal resentment over the 1805 and 1806 secret clauses, with the loss of Doublehead and James Vann as leaders, and in response to the Jeffersonian proposal to move the tribe west. 82 The Upper Towns, whose fullblood members nurtured and promoted attachment to the ancestral homeland and whose more progressive members wished to maintain their economic, political, and social statuses, expressed their wish to divide the land of the nation between the upper and lower Cherokees by a fixed line so that the upper Cherokees would be placed under the government and laws of the United States and become citizens. 83 These individuals, intruded on by frontiersmen, hoped to obtain better protection through federal citizenship. Jefferson wondered if the group realized the full effect of the decision and questioned if the Indians had reached a stage of acculturation to compete with whites. He wanted also to ensure their decision was agreeable to the rest of the nation, that is, the Lower Towns. He would agree to
nothing until "the principal part of your people determine to adopt this alteration." According to Meigs, the Lower Towns were to exchange their lands for lands west of the Mississippi and release their Cherokee lands in the proportion of those Cherokees who migrated west of those of the whole nation. After a series of council meetings in the Cherokee nation and in Washington with various representatives of the two factions and a message by Jefferson to the Cherokees reiterating that the agreement should be by joint consent, the Cherokees overcame their internal divisions and rejected the proposal for division into Upper and Lower Towns and the proposal to become fee simple farmer-citizens. The effort to remove the Cherokees west or extinguish their title to lands in the east failed. The proposals consolidated the Cherokee more firmly than ever and prompted the development of a thirteen-member permanent standing committee which would function as the government of the Cherokees between Council meetings. The letter to Meigs from the National Council at Willstown on September 27, 1809 points out that the Cherokees had become united in their stand against removal.

Friends and Brothers, it has now been a long time that we have been much confused and divided in our opinions but now we have settled our affairs to the satisfaction of both parties and become as one--

You will hear from us not from the lower Town nor the Upper Towns but from the whole Cherokee nation.
Concerning the people that want to move over to Mississippi we have read and understood the late president's speech and we understand by it That nothing could be done without a national council and by the majority of the nation and also we have read the copy of the letter you sent to the Secretary of War[.]. You ought not to have wrote so soon on that subject for it never was brought before a national council. We have this day in council appointed 13 men to manage our national affairs for we found it to be very troublesome to bring anything to bear where there were as many as we formerly had in our council.

The crisis from 1806 to 1809 yielded a strong commitment among the various political factions of the tribe to remain and defend their ancestral territory which would be commonly owned and caused the establishment of a permanent management committee to handle business between National councils. To sell any more land without permission of the Council meant treason and death—as leaders of the Upper towns had demonstrated.

Traditional religious fullbloods joined with mixed blood progressives to develop a legal system to preserve tribal lands. Further reforms and innovations followed quickly after the 1809 unification and creation of the standing committee. One Upper Town district wrote to Meigs informing him of its boundaries in which the regulators would operate and the passage of laws for more exact punishments for stealing property. Pathkiller, Principal Chief, wrote Meigs of the establishment of a better system of runners throughout the nation to expedite sending
information on "national matters" from the agency. 89

Between 1808 and 1810, the Cherokees had passed the first written laws providing for the organization and full time responsibilities for regulating parties and abrogating the law of clan revenge. The permanent standing committee represented an attempt to establish a full time governing body to decide issues of national importance on a continuing basis. Just as the crises of 1806 to 1809 promoted nationalism and produced reforms and innovations in the Cherokee legal system, controversy over the 1817 treaty produced major changes in the governmental structure.

Faced with federal pressure to sell tribal lands in the East and migrate West, a group of Cherokees signed a treaty in July, 1817 agreeing to cede two tracts of land in the east for land on the Arkansas and White Rivers. 90 Fifty-four towns and villages convened in May, 1817 and passed a law providing for the composition and responsibilities of a thirteen member Standing Committee. While the Standing Committee had the responsibility to decide affairs of state, it could not render a final decision on matters regarding land without the consent of the full council. The Committee had the responsibility for settling with the agency over the tribal annuity. It governed "according to the articles" which could be amended only at election time. 91

The Standing Committee operated as an executive, legislative, and judicial body of the government from 1817
to 1820 when in 1820, the national committee and council created through resolution a judicial branch for the purpose of "holding councils to administer justice in all cases and complaints that [might] be brought forward for trial." The act established eight district courts and four circuit courts. In addition to providing for judges, the act created marshals, light-horsemen, and rangers. The marshals executed judicial decisions, the light-horsemen executed punishment as the judges decided by law, and the rangers supervised stray horses. In 1823, Council and Committee created a superior court to hear cases on appeal and serve as a supreme court. By 1825 "disinterested persons" replaced light-horsemen as jurors.92

Yet the full Committee and Council continued to hear cases of national importance, particularly those involving land.93 The National Council passed a decree in June, 1823 creating the penalty of death for anyone who proposed to sell lands on any terms.94 And one of the most important provisions in the Cherokee Constitution of 1827 was the stipulation that lands of the nation were common to all, but that improvements on the lands were the exclusive and indefeasible property of the respective citizens. Neither the lands nor the improvements could be disposed of in any manner to the United States or individual states, or their individual citizens.95
The Constitution explained the responsibilities of the officers of the executive, legislative, and judicial branches and their manner of appointment, election, tenure of office and removal. It guaranteed in all criminal prosecutions the right of being heard, of demanding the nature and cause of the accusation against him [the charged person], of meeting the witnesses face to face, of having compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; ..

No person could be compelled to give evidence against himself. 96 Patterned after the federal Constitution, Article V Section 15 of the Cherokee Constitution guaranteed security of "persons, houses, papers and possessions from unreasonable seizures and searches." No warrants to search any place or to seize any person or things could be issued without describing them [the articles] as nearly as may be, nor without good cause, supported by oath or affirmation. The same section provided that prisoners should be "bailable by sufficient security unless for capital offenses, where the proof is evident, or presumption great." The Constitution provided for the election, by qualified electors, of District sheriffs who would serve for two years and the appointment of a marshal for four years by a joint vote of the General Council. 97 Article VI, Section 8 stipulated that no person should be twice put in jeopardy of life or
limb for the same offense; nor should any person's property be taken or applied to public use without his consent. The same section provided that every person should have "remedy by due course of law for an injury done to him, his property, or reputation." Section 9 of the same article stipulated that the right of trial by jury should remain inviolate.

Having clearly foreseen the absolute necessity of protecting their ancestral homeland from further cessions, the Cherokees met in July, 1827 and adopted the proposed constitution. The ratification of the constitution establishing a sovereign and independent government with jurisdiction over its tribal lands provoked the passage of resolutions by the Georgia legislature on December 27, 1827. These resolves condemned the federal government for not having extinguished the Cherokee title according to the 1802 compact in which Georgia ceded its western lands. Georgia asserted that the lands within the limits of the state belonged to the state absolutely and the Indians were merely tenants at will; Georgia could end the Indians "occupancy" status at any time. The conflict of jurisdictional authority over Georgia's western lands stemmed from the Revolution and was settled temporarily with the 1802 agreement. But Georgia continued to demand full title to the lands occupied by the Indians.
In the early 1820's, Georgia pushed for removal of both the Cherokee and the Creek from its western frontier and insisted that the state could extend its authority and laws over the whole territory and exact through force obedience to them. After the creation of a Cherokee Supreme Court in 1822, the legislature urged the federal government to abide by its 1802 agreement with Georgia to extinguish the Cherokee title to their ancestral lands. The Cherokee National Legislature composed of the Council and Committee learned through reports in a newspaper of Georgia's efforts to press for federal negotiations to extinguish the Cherokee title. Instructions for the United States commissioners from Georgia included a proposed sum of $30,000 for expenses of negotiating and the ultimate conveyance of Cherokee lands to the state of Georgia at a price of $2 per acre plus improvements. After consulting with citizens in each of the Cherokee districts about the land negotiations, the judges of the Districts reported to the head chiefs. On the basis of the reports, the Council and Committee declared unanimously with one voice a determination to hold no treaties with any commissioners of the United States to make any cession of lands, being resolved not to dispose of even one foot of Ground.

Agent Meigs considered the Cherokee refusal to negotiate "little short of a declaration of independence."

"Such a declaration I consider as disrespectful to the
United States commissioners and to the Government, and inconsistent with their standing and dependent circumstances," wrote Meigs to Secretary of War John C. Calhoun. The Georgia commissioners wrote the Cherokees protesting the Cherokee legislature's decision to reject the commissioners' proposal. Significantly, by authority of the Georgia legislature, the commissioners demanded the immediate restoration of all negroes and their increase which had run away or had been taken away from citizens of Georgia anytime previous to June 26, 1794. The commissioners also demanded immediate payment of all debts due citizens of the state of Georgia prior to 1794 and demanded the equivalent in money of all property taken or destroyed by citizens of the Cherokee Nation from the citizens of Georgia.

The fact that the Georgians responded to the Cherokee refusal to negotiate a land cession with a demand for all fugitive or stolen slaves and their children indicates the importance the Georgians placed on the problem of fugitive or stolen slaves in the Cherokee territory. There had been a number of unresolved procedural questions regarding retrieval of slaves who had fled to or had been taken into Cherokee lands. A letter from Arthur L. Campbell to Agent Meigs raised the question of the legal propriety of going into the Cherokee nation and retrieving property conveyed there. Later correspondence indicates that a white slave owner made application to the Indian agent for Negroes who
had been run into the Cherokee nation. Other correspondence shows that a board composed of principal chiefs was convened to take testimony and make a decision regarding a Negro who had been taken from a white man by a Cherokee officer.

Jurisdictional issues regarding the authority of the state to retrieve fugitive or stolen slaves or alleged fugitive criminals within Cherokee territory became more threatening to neighboring states after the creation of the Cherokee Supreme Court and the adoption of a constitution which declared the Cherokee to be a sovereign, independent government with jurisdiction over its own lands. The issue became even more complex as states, such as Georgia, pressed for extinguishing Indian title to land and removal of the Indians and questioned the "sole and exclusive" authority of the federal government to "manage Indian affairs."

The jurisdictional question received considerable attention in late 1827 when Hugh Montgomery, Agent to the Cherokees, requested the government of the Cherokees to hand over a Cherokee named Old Man who had been charged with murder of a white citizen of Georgia named Dennis May within Carroll County, Georgia, territory ceded to the federal government under the 1802 agreement. The governor of Georgia, George M. Troup, had written Montgomery and demanded that Old Man be apprehended and delivered to the
state for the murder of Dennis May. Montgomery requested
the Cherokee to deliver up Old Man according to provisions
of the sixth article of the Treaty of Hopewell and the
tenth article of the Treaty of Holston. 

William Hicks, Principal Chief of the Cherokees,
answered Montgomery's request by saying that the Cherokees
would take whatever steps necessary to apprehend Old Man if
he was to be found and when apprehended, delivered up to
Montgomery in order that he could be tried in federal court
for the crime for which he was charged. The Cherokees
wanted Old Man tried in federal court rather than in state
court. John Forsyth, U.S. congressman from Georgia, wrote
Montgomery that all information and correspondence between
Hicks and Montgomery had been received. If Old Man was not
delivered, wrote Forsyth, the Secretary of War would take
such measures as would "compell [sic] a delivery of the
accused to the civil authority, to be tried for the offence
charged against him. The place where and the court by
whom he will be tried are matters to be settled here,"
Forsyth wrote. "In settling these questions," he continued,

we shall not consult Mr. Hicks or pay any
respect either to his wishes or opinions.
You will no doubt conceive it your duty,
however, to instruct the Cherokees that
Justice will be done and a fair trial had,
whether the state Judges or the United States
judges preside at it."

The Indian removal issue and the corresponding
jurisdictional questions became a crisis with the election of Andrew Jackson in 1828 and the discovery of gold on Cherokee land in the summer of 1829. In his first annual message to Congress in December, 1829, President Jackson spoke of his intent to encourage passage of a bill providing for the removal of southeastern Indian tribes to lands west of the Mississippi. Georgia followed this speech eleven days later on December 19, 1829 with a series of laws which added Cherokee land to Georgia territory. The laws passed in 1829 provided for annexation of Cherokee land to Hall, Habersham, Gwinnett, Carroll, and DeKalb counties in Georgia; nullification of Cherokee laws within the confiscated area; prohibition of further meetings of the Cherokee council and all other assemblies within the limits of Georgia; and arrest and imprisonment of Cherokees who influenced fellow tribesmen to reject removal west. The civil and criminal laws which were effective June 1, 1830 over the annexed area also nullified contracts between Indians and whites unless the contract had been witnessed by two whites; made testimony against a white man in Georgia courts by an Indian or his descendant illegal; and forbade Cherokees from digging for gold in the Cherokees' newly discovered gold fields near Dahlonega and Dalton, Georgia.

In the summer of 1830, an officer of the state of Georgia arrested George Tassels, sometimes called Corn Tassel, for the murder of a fellow Cherokee within the
territorial limits claimed by the Cherokee nation and within the newly annexed limits of Hall County, Georgia. Tassels had already been tried and sentenced according to Cherokee law for the murder, when he was arrested and jailed in Hall County to await his trial for violating the criminal laws of the state of Georgia as extended by the December, 1829 act. After some months of George Tassels' confinement, Judge A. S. Clayton reserved the question for the opinion of a Convention of all the judges of the different circuits of the state. The opinion, allegedly written by circuit judge William H. Crawford, ruled that Indians were wards of the state, not "constitutional objects of the treaty-making power of the national government," and therefore subject and liable to the operation of all state laws.

Tassels' lawyer protested the entire proceedings and questioned Georgia's extension of criminal jurisdiction over the Cherokee Nation. He contended that the 1829 act was unconstitutional. He argued that the Cherokee Indians by various treaties negotiated with the national government, beginning with the treaty of Hopewell, had been considered an independent sovereign state. Therefore, Indians committing crimes within Cherokee territory could not be subjected to the criminal laws of the state of Georgia because the Constitution declared all treaties made, or to be made, the supreme law of the land. Furthermore, the
treaty of Hopewell, although being of an anterior date to the Constitution, was clearly recognized and valid according to the Constitution. Cherokee sovereignty was also explicitly and undeniably recognized by that portion of the Hopewell treaty which acknowledged the right of the Cherokee Nation to declare war against the United States. ¹¹⁷

In its arguments before the court, the state relied primarily on the 1802 articles of cession and agreement between Georgia and the United States. In exchange for the relinquishment of Georgia's claim to her western lands, the United States agreed to release to Georgia all land lying eastward of the ceded tract. The state denied the Treaty of Hopewell and all other treaties, because the national government had no authority to negotiate with Indians in the state of Georgia except on the single constitutionally authorized subject of commerce.

The court decided that whatever right Great Britain had possessed over the Indian tribes also became vested in the state of Georgia after the revolution. Citing Johnson v McIntosh and Fletcher v Peck, the court wrote that the state was "seized in fee" of lands within its chartered limits, even though Indians may occupy the land. Furthermore, other states had extended their jurisdiction over Indian offenses committed within reservations. It would be quite a legal anomaly, the court pointed out, if the state were seized in fee of the Cherokee territory yet had no
right to exercise jurisdiction over the persons residing in that territory. The court declared the 1829 act constitutional and approved the legislature's extension of its criminal law over the territory.¹¹⁸

Tassels' case was appealed to the Supreme Court on a writ of error. The Supreme Court ordered the state of Georgia to appear before the Court on the second Monday in January, 1831 to show cause why the writ of error should not issue. On receipt of the summons, the governor of Georgia forwarded the communication onto the legislature for consideration. The legislature responded with a series of resolves which denounced the interference of the Supreme Court in the administration of the criminal laws of the state, requested the governor of the state to disregard any process served on him, authorized the governor to use force "to resist and repel any and every invasion" upon the administration of the criminal laws of the State and to ensure the full execution of the laws in the case of George Tassels, convicted of murder in Hall County.¹¹⁹ The Georgia assembly viewed Chief Justice Marshall's order to appear as a flagrant violation of states rights, a test of the sovereignty of the state to enforce its criminal laws according to the Constitution.

Tassels was executed as ordered on December 24, 1830. The Richmond Enquirer carried a report that even the
Indians did not object to the justice of the sentence but to the jurisdiction under which it was passed. On the day of the execution, several Indians arrived to take Tassels into their nation for execution if he happened to be pardoned or otherwise set at liberty. \(^{120}\)

Georgia failed to appear before the Supreme Court in January. With Tassels' case moot, counsel for the tribe moved the Court for a general injunction against Georgia. \(^{121}\) The Cherokee nation realized that an appeal to the Supreme Court was their last hope for retaining control over internal affairs since Congress had passed the Removal Act in May, 1830 and President Jackson had ordered federal troops stationed within the disputed annexed areas withdrawn on request of Georgia governor George R. Gilmer. \(^{122}\)

In December, 1830, the Georgia legislature passed a law establishing a guard of sixty men to prevent entry to the gold mines. Other laws forbade the assembly of any Cherokee council or legislative body except for the purpose of ceding land; authorized imprisonment for any Cherokee official who presumed to hold court; and required licenses from the governor of Georgia or his agent for all whites residing in Cherokee territory after March 1, 1831. The licenses would be issued to those who took an oath to support and defend the constitution and laws of Georgia. \(^{123}\)

In *Cherokee Nation v Georgia*, the Cherokees sought to enjoin the state of Georgia from enforcing the 1828 and
1829 state laws within the territory reserved for the tribe. Arguing that the Cherokee Nation was a "foreign state, not owing allegiance to the United States, nor to any state of this Union, nor to any prince, potentate or State, other than their own," the Cherokees claimed the Court must hear their case under the constitutional clauses giving it jurisdiction "between a State, or the citizens thereof, and foreign States, citizens or subjects," and original jurisdiction over cases "in which a state shall be a party . . . ."\textsuperscript{124} The Cherokees pointed out that execution of Georgian laws over Cherokee territory would annihilate the Cherokees as a political society and would seize Cherokee lands which had been assured to the Cherokees by the United States in solemn treaties. The Cherokees argued that the state had violated the Constitution by passing laws which impaired the obligation of contracts (the contracts being treaties considered the supreme law of the land) and had interfered with exclusive congressional power to regulate commerce with the Indian tribes by disregarding the boundaries of Indian country consecrated by the Trade and Intercourse Acts.\textsuperscript{125} Georgia failed to appear before the Court.

While Chief Justice John Marshall remained convinced of the tribal right of internal self-government, he had great difficulty separating the consideration of sovereignty from discovery and ownership. To avoid a constitutional
crisis, the Court disposed of the case on purely jurisdictional grounds and declared in separate but concurring opinions that the Cherokee Nation was neither a state of the Union nor a "foreign state" under the constitution and could not apply to the Court for relief. Marshall strove to describe the Cherokee Nation as a "domestic dependent state" which was foreign in the sense of being immune from the internal sovereignty of a state, but domestic enough to be limited by the internal sovereignty of the United States. The dissenters Justice Smith Thompson and Justice Joseph Story argued that the Cherokees composed a foreign state and had a right to sue Georgia, that Georgia had violated federal laws and treaties, and that an injunction should be issued to prevent further execution of Georgia laws.

In *Cherokee Nation*, Georgia asserted authority and jurisdiction over the territory and members of the Cherokee Nation. In *Worcester v Georgia*, the authority of the federal government allowing Worcester, a white missionary of the American Board of Commissioners for Foreign Missions, to instruct the Cherokee Indians in Cherokee territory was pitched against the state prohibition against whites residing, without a license from the governor of Georgia, in Cherokee country annexed by Georgia. Worcester had been arrested, indicted, and convicted by the Superior Court for Gwinnett County and sentenced to four years in the state
prison. On a writ of error to the Supreme Court, counsel for Worcester pled that Worcester had received presidential authority to preach in the Cherokee Nation, that the Georgia laws were unconstitutional because they violated treaties which were the supreme law of the land, because they impaired the obligation of various contracts between the Cherokees and the United States, because they interfered with exclusive congressional power to regulate intercourse with the Cherokee nation, and because they violated the 1802 Trade and Intercourse Act. \footnote{129}

In separate but concurring opinions, the Court ruled that the Cherokee nation was

\begin{quote}
a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no right to enter, but with the assent of the Cherokees themselves, or in conformity with the treaties, and with the acts of Congress; the whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States. \footnote{130}
\end{quote}

The Court declared void the act requiring a license of whites residing in Cherokee territory. In \textit{Worcester}, Marshall sought to clarify the "dependent domestic nation" status he had applied to the Cherokees in \textit{Cherokee Nation} by comparing their relationship to the federal government to that "of a nation claiming and receiving the protection of one more powerful; not that of individuals abandoning their national character, and submitting as subjects to the
laws of a master." But there was no doubt in the Court's opinion that the Cherokees had been guaranteed the right of self-government over their own separate property in the treaties of Hopewell and Holston, guaranteed protection by the United States in treaties and federal trade and intercourse laws from encroachments by United States citizens on Cherokee country and punishment by the United States of such intruders. The state of Georgia, argued the majority, concurred in the 1802 contract of cession that the Indian nations possessed a full right to the lands they occupied, until that right should be extinguished by the United States, with their consent; that their territory was separated from that of any state within whose chartered limits they might reside, by a boundary line, established by treaties; that within their boundary, they possessed rights with which no state could interfere; and that the whole power of regulating the intercourse with them was vested in the United States.

In a separate but concurring opinion, Justice John McLean noted that "[a]t no time has the sovereignty of the country been recognized as existing in the Indians, but they have been always admitted to possess many of the attributes of sovereignty." And that "[n]o one has ever supposed, that the Indians could commit treason against the United States," though they could be punished for treaty violations. Justice Henry Baldwin, a Jackson appointee, dissented, stating the writ of error should have been returned by the state court, not the clerk of the court, and
expressed that his opinion remained the same as that he wrote in the *Cherokee Nation* case.  

135 While the Court decided that the state's forcible seizure and abduction of Worcester was in error, legal technicalities, partisan politics, and a growing constitutional crisis made the decision impossible to execute. Chief Justice Marshall ordered the Georgia Superior Court to reverse its decision. 136 Georgia had no intention of obeying the order and had boycotted the judicial proceedings but had issued no written refusal. The Supreme Court could not order compliance until it reconvened in January, 1833. Until the Court summoned state officials before it for contempt or issued a writ of habeas corpus for the release of the missionaries, nothing further could be done. The President was not obligated to act. Since the habeas corpus act did not apply because the state government rather than the federal government detained the missionaries, doubt existed as to whether the Court itself could act.  

Anti-Jacksonian publicity given in the summer of 1832 to the President's alleged refusal to enforce the Supreme Court decision encouraged the nullification movement in South Carolina. While Georgia refused to obey a federal court order, South Carolina resisted federal authority altogether. The resistance to federal authority by one state encouraged that of another. In light of southern reaction to Nat Turner's rebellion in 1831 and southern
fears of northern abolitionist crusades, the ruling by the federal Supreme Court which required a state to release a person who, from Georgia's point of view, had been convicted of a state crime in state territory frightened a number of Georgians. In a letter to the Georgia Journal George M. Troup, United States Senator from Georgia, decried Marshall's decision as a flagrant violation of the state's sovereign rights. "The jurisdiction claimed over one portion of our population," argued Troup, "may very soon be asserted over another; and in both cases they will be sustained by the fanatics of the north." 137

President John Q. Adams had refused to comply with Georgia's demands for immediate removal of the Indians in the 1820's. He recognized Georgia's fear of not being able to prevent the flight of slaves into Cherokee territory over which they had little control. For some southerners, the fear of the federal government's defense of Indian "nations" within the states was linked to a fear of federal interference in internal affairs in slave states and the emancipation of the slaves. 138

President Jackson realized that the Georgia issue, the tariff question, and fear of the abolitionists threatened the unity of the nation. In the winter of 1832 to 1833, Congress reached a compromise over the tariff issue and eliminated the secession threat. Meanwhile, Jacksonians worked for the pardoning and release of the two missionaries
still held by the Georgia authorities. Thus the threat of secession and disunion was averted, but the Cherokee's sovereignty and maintenance of tribal control had yet to be tested. Ironically, with the signing of the New Echota treaty which provided for removal of the Cherokees, Georgia eventually submitted to the very federal treaty process which it had so vehemently denied earlier. Those Cherokees who remained in Georgia became subject to Georgia state law. But those who removed to the west continued to consolidate and develop their own national judicial system with light-horsemen as well as marshals, sheriffs, and courts of law to meet their needs in the new environment. While clan revenge continued to break out in periods of disorder among the Cherokees after their removal westward, the combination of the warrior-light-horsemen with the more Anglo system of courts of law continued to form the basis of the Cherokee criminal justice system in the west.
Chapter Four--Footnotes


3 See Merrit B. Pound's summary of Benjamin Hawkins' activities in Benjamin Hawkins--Indian Agent (Athens, 1951), 155.

4 Benjamin Hawkins to Colonel Return J. Meigs, October 26, 1801, Cherokee Agency (M-208), Roll 1, Records of the Bureau of Indian Affairs, Record Group 75, National Archives.

5 Charles C. Royce, Cherokee Nation of Indians (Chicago, 1975), 31, 43.

6 Meigs to Lovely, December, 1801, Cherokee Agency (M-208), Roll 1.

7 Ibid.

8 Report, October 27, 1801, Cherokee Agency (M-208), Roll 1.

9 General Principles of Adjusting Claims--Tellico, October 24, 1801, ibid.

10 Meigs to Secretary of War, January 18, 1805, ibid., Roll 3.

11 Meigs to Secretary of War Eustis, December 12, 1811, ibid., Roll 5. See Prucha, American Indian Policy, 208-209.

Meigs to Secretary of War, December, 1817, *ibid.*, Roll 7.


Meigs to Secretary of War, December 19, 1807, *ibid.*, Roll 3.

*ibid.*


See McLoughlin, "Cherokee Nationalism," 559.

Meigs to Black Fox, April 9, 1808, *ibid.*, Roll 4.

*ibid.*

*ibid.*

The Laws of the Cherokee Nation, printed in *Starr's History of the Cherokee Indians*, 41.

See John Richard Alden's article, "The Eighteenth Century Cherokee Archives," *American Archivist* (October, 1942), V.
Richard Brown to Meigs, June 21, 1811 (M-208), Roll 5.


Pathkiller and others to Meigs, June 11, 1812, *ibid.*, Roll 5.

Meigs to Major Lovely, July 19, 1802, *ibid.*, Roll 1.

*ibid.*


Meigs to Judge John McNary, January 1, 1802, Cherokee Agency (M-208), Roll 1.

McNary to Meigs, January 17, 1802, *ibid*.

Meigs to James Vann, January 28, 1802, *ibid*.

Vann to Meigs, February 5, 1802, *ibid*.

Meigs to Colonel John Overton, April 2, 1802, *ibid*.

Colonel Overton to Meigs, May 5, 1802, *ibid*.; Passport from General Winchester to Colonel Overton to Stone, April 23, 1802, *ibid*.

*Ibid*.

*Ibid*.

Meigs to Governor Blount, January 24, 1812, *ibid.*, Roll 5.
41 Letter and Petition from Twenty Chiefs at Eustinola Council to Meigs, February 4, 1810, ibid.

42 Turtle at Home to Meigs, July 6, 1811, ibid.

43 Letter from Meigs to Secretary of War, November 13, 1801, ibid., Roll 1.

44 Charles Hicks to Richard Fields, October 7, 1801, ibid., Roll 1.

45 Henry Dearborn to Meigs, December 2, 1801, ibid.

46 Meigs to Secretary of War, December 25, 1801, ibid.

47 Proclamation by President Thomas Jefferson, November 30, 1801, ibid.

48 Nicholas Byers to Meigs, May 13, 1806, ibid., Roll 3.

49 Meigs to Lancaster, June 19, 1802, ibid., Roll 1.

50 James Vann to Meigs, May 9, 1802, ibid.

51 Ibid.

52 Meigs to Vann, June 17, 1802, ibid.

53 Meigs to Secretary of War Eustis, March 9, 1812, ibid., Roll 5.

54 Meigs to Secretary of War, April 22, 1805, ibid., Roll 3.

55 Meigs to Secretary of War, January 14, 1810, ibid., Roll 5.

56 Meigs to Peter Hagner, October 30, 1810, ibid., Roll 5.

57 Meigs to John Tully, March 15, 1813, ibid., Roll 6.
John C. Calhoun to Meigs, January 6, 1819, ibid., Roll 8.

Pathkiller to Meigs, November 2, 1819, ibid.

These appear to be in a letter from Secretary Dearborn to Meigs dated May 30, 1803, ibid., Roll 2.

Meigs to Secretary of War, John C. Calhoun, November 14, 1819, ibid., Roll 8.

Ibid.

Andrew Bryson to Meigs, August 25, 1804, ibid., Roll 2.

Ibid.

Meigs to Secretary of War, November 16, 1802, ibid., Roll 1.

Meigs to Colonel Hawkins, December 28, 1802, ibid.

Glass and Dick Justice to Governor Sevier and Colonel Meigs, February 19, 1804, ibid., Roll 2.

Meigs to Governor Sevier, February 23, 1804, ibid., Roll 2. The lack of satisfaction for previous murders was an important point in negotiations for the building of the road through the Cherokee nation. See Negotiations between the Cherokee and the United States, begun April 20, 1803, ibid.; Meigs to Secretary of War, October 25, 1803, ibid.

Pathkiller to Meigs, November 13, 1821, ibid., Roll 9.

Pathkiller to Meigs, November 25, 1822, ibid., Roll 9.

Ibid.

Ibid.
See Summaries of deaths, April 6, 1812, ibid., Roll 5; Retribution, 1816, December 9, 1816, ibid., Roll 7. Appendix B.

Summaries of Deaths, April 6, 1812, ibid., Roll 5. See also letter of Silas Dinmoor to Meigs, July 26, 1803, ibid., Roll 2 regarding admission of Indian testimony into courts of law.

Ibid., and Retribution, 1816, December 9, 1816, ibid., Roll 7.


Ibid.

See Chapter 9, "Civilization and Removal" in Francis Paul Prucha's American Indian Policy in the Formative Years (Cambridge, 1962).

William G. McLoughlin's article, "Thomas Jefferson and the Beginning of Cherokee Nationalism, 1806 to 1809, is excellent in describing the political factions and maneuverings which occurred in the Cherokee nation during this time period. The following description of the factions and leaders of the Cherokees is taken from McLoughlin's article.

Royce, Cherokee Nation of Indians, 63; McLoughlin, "Beginning of Cherokee Nationalism," 556.

See the following letters and statements on Roll 3 of M-208 collection: Joseph Phillip's statement, August 15, 1807, L. G. Hall's letter to Captain Armstead at Hiwassee Garrison, August 12, 1807; Capt. A. B. Armstead to Meigs, August, 1807; Secretary of War Dearborn's letter to Meigs, March 2, 1807; Meigs to Secretary of War, February 12, 1807; Doublehead to Meigs, January 14, 1807; Doublehead to Meigs, October 3, 1806; Address from Upper Towns, Willistown Council, September 19, 1806; Letter from Charles Hicks to Meigs, August 1, 1806; Representatives of Upper Towns to President of the United States, April 24, 1806; Council address to Meigs, April 28, 1806.

83 Secretary of War Henry Dearborn to Meigs, May 5, 1808, M-208, Roll 4; McLoughlin, "Beginning of Cherokee Nationalism," 560-561.

84 McLoughlin, 560.

85 Meigs to John D. Chisholm, March 28, 1809, M-208, Roll 4.

86 Letter from National Council at Willistown, September 27, 1809, ibid., Roll 4.

87 See also Letter to Secretary of War from Meigs, May 4, 1803, ibid., Roll 2.

88 Council to Meigs, February 18, 1811, ibid., Roll 5.

89 Pathkiller to Meigs, March 17, 1813, ibid., Roll 6.

90 Royce, Cherokee Nation of Indians, 88.

91 Starr's History of the Cherokee Indians, 42-43.

92 Strickland, Fire and the Spirits, 62-64; Starr's History, 44-46.

93 See Letter from National Council to Meigs, March 21, 1821, ibid., Roll 9 and the account reported in Strickland, Fire and the Spirits, 64-65.

94 Letter from McMinn to Secretary of War, June 24, 1823 ibid., Roll 9.

95 Article I, Section 2, Constitution of the Cherokee Nation, July, 1827, Starr's History, 55-56.

96 Article V, Section 14, ibid.

97 Article VI, Sections 6 and 7, ibid.
98 Acts of the General Assembly of the State of Georgia, 1827 (Milledgeville, 1827), 249-250 as in Prucha, American Indian Policy, 232.


100 Instructions for the U.S. Commissioners from Georgia, June 15, 1822, M-208, Roll 9.

101 Resolutions of the Cherokee National Legislature, October 23, 1822, ibid.

102 Letter from Meigs to John C. Calhoun, November 22, 1822, ibid.

103 Letter from Georgia commissioners to the Cherokees, October 27, 1823, ibid.


106 Meigs to Robert Grierson, March 9, 1814, ibid., Roll 6.

107 Hugh Montgomery to President of National Committee if in Session, if not to William Hicks, Head Chief of the Cherokee Nation, November 3, 1827, ibid., Roll 10.


109 Hugh Montgomery to the Cherokees, November 3, 1827, ibid., Roll 10.

110 William Hicks to Hugh Montgomery, November 9, 1827, ibid., Roll 10.

111 John Forsyth to Hugh Montgomery, December 12, 1827, ibid. It is unclear from the sources examined whether Old Man was ever delivered over to state or federal authorities for trial.


"Memorial of a Delegation from the Cherokee Indians, presented to Congress, January 18, 1831."

State v Tassels, Dud. (Georgia) 229 (1830); Richmond *Enquirer*, December 9, 1830, p. 4, Columns 1–4.

Richmond *Enquirer*, December 9, 1830, p. 4, col. 1.

State v Tassels, Dud. (Ga.) 229, 234–238 (1830).

Richmond *Enquirer*, January 4, 1831.

*ibid.*, January 8, 1831.

Cherokee Nation v Georgia, 5 Peters 1 (1831).


Cherokee Nation v Georgia, 5 Peters 3–6 (1831).

*ibid.*

*ibid.*, 5 Peters 1.

Russel Lawrence Barsh and James Youngblood Henderson, *The Road: Indian Tribes and Political Liberty* (University of California, 1980), 54.
128 Cherokee Nation v Georgia, 31 US 527-530 (1832).


130 Ibid., 31 US 520 (1832).

131 Ibid., 31 US 554 (1832).

132 Ibid., 31 US 517-518 (1832).

133 Ibid., 31 US 518 (1832).

134 Ibid., 31 US 583 (1832).

135 Ibid., 31 US 595 (1832).


137 Niles Register, XLII (March 31, 1832), 78.

138 See James W. Silver's discussion of this in his biography Edmund Pendleton Gaines: Frontier General (Baton Rouge, 1949), 129; and Niles Register 29 (September 10, 1825), 17-18.


CONCLUSION

In the seventeenth century, the Cherokees were an identifiable ethnic group who strove to maintain the principles of individual liberty and natural balance or harmony within their society. To accomplish these ideals, the tribe used positive sanctions of religious purification and kinship control and negative sanctions of deference and withdrawal. These mechanisms operated throughout the relatively autonomous Cherokee villages and cut across geographic and linguistic divisions of the tribe.

In the eighteenth century, trade, war, disease, and intercolonial, intertribal, and international rivalries created significant changes in the ethnically integrated but decentralized Cherokee society. While religious sanctions, clan revenge, and deference and withdrawal continued to serve as controls over individual Cherokees, disease and a shifting economic base weakened the prestige of the priests and undermined hunting and fishing rites. Maintenance of trade and avoidance of conflict with the technologically superior Europeans created a need for experienced diplomats and unified the autonomous villages. Cooperation among influential headmen from the villages yielded a tribal-wide council and influential personalities.
who, in order to maintain peace and trade, exercised coercion over individual Cherokee members.

The cession of favored hunting grounds by a group of Cherokee elders to a group of whites who had illegally settled within Cherokee country alienated a group of young warriors and caused tribal schism and frontier warfare. The separation of the young warriors allowed the elder conservatives to make peace with frontier governments, to restore trade which had been interrupted by the Revolution, and to establish treaty provisions which dealt with individual Indian-white hostilities.

By the 1790's, horse theft was the most common crime on the frontier and frequently led to widespread retaliation by both Cherokees and whites in violation of treaty provisions. The federal government tried to eliminate the causes of Indian-white hostilities by passing a series of trade and intercourse laws which restrained United States citizens from unauthorized violence or trespass in Indian country. The Cherokees in council, concerned about protecting their own property from theft and reducing Indian-white conflicts, passed a law in 1797 which defined the act of murder and which created the lighthorse or regulating party. This group prevented horsestealing and enforced other stipulations of the council. Institutional coercion, that is, the regulating party, brought into council from the warrior political structure and directed by tribal chiefs,
overrode kinship connections which formerly protected a horsestealer or murderer. In addition, the regulating party operated over defined territory: political contraction and centralization yielded the institutions for the making of a state.

Administering the regulations of the trade and intercourse laws and treaty provisions, the federal agent to the Cherokees exercised legislative, executive, and judicial functions over both Indians and whites in the Indian country. Adjustment of claims for stolen property constituted one of the most demanding and difficult responsibilities of the agent. During Return J. Meigs' tenure as agent, a board composed of principal chiefs heard testimony from both Indians and whites about their claims, evaluated the testimony, and ruled on the case. This mechanism operated outside of treaty provisions and federal trade and intercourse laws, but it provided a means to respond to claimants and thwarted private reprisals by whites and Indians.

Between 1806 and 1810, political factions within the tribe united to protect their most important piece of property—their ancestral homeland. Individual liberty became more restrained in an effort to promote national harmony. In 1808, the Cherokees passed their first written law which created a more organized permanent regulating party whose members were paid from the tribal annuity. More regular, predictable enforcement of tribal laws
followed. Two years later, the seven clans agreed to abrogate the practice of clan revenge and to respect the regulating party as the national coercive force. Faced with the Jeffersonian proposal to move west, the Upper and Lower towns united to take a firm stand against removal and appointed a permanent standing committee of thirteen members which functioned as the government of the Cherokees between council meetings. To sell any more land without council permission meant treason and death. A state had been created.

Further reforms and innovations in the criminal justice system followed: by 1827 the Cherokees had ratified a written constitution which was patterned after the federal constitution. This assertion of sovereignty and independence provoked retaliation by neighboring states who extended state civil and criminal jurisdiction over Cherokee territory. The discovery of gold on Cherokee territory, the election of Andrew Jackson who promised to remove the Indians, the continuing problem of slaves escaping or being taken into Cherokee territory over which the states had no control, and the tariff issue produced a political crisis which turned into a constitutional one. The Cherokees, relying on federal treaties and federal legislation, turned to the Supreme Court for protection of their ancestral homelands from state encroachment. No longer did Cherokee citizens or state citizens accept the earlier practice of
"setting off" interracial murders. Each state relied on its own criminal justice system to ensure sovereignty and independence and control over its individual members. In addition, some southern slaveholders reasoned that if the federal government could interfere to protect Indian nations "within" the states, it could interfere in internal affairs in slave states.

The Cherokee criminal justice system of promoting national harmony through restraint of individual liberty to sell its lands met with the Jacksonian ideals of individual liberty and "the union." While the union was saved, the liberties of the Cherokees were sacrificed. The Cherokees moved west, adapted their criminal justice system to the new environment, and continued to promote individual liberty and national harmony through prohibition against selling land and through the coercive forces of the light-horsemen and courts of law.

But the informal practice of revenge continued to operate in the Indian Territory through the use of light-horsemen supporting a particular party's government. John Ross established a government of judges, sheriffs, and eight auxiliary companies of light-horsemen "to suppress disturbances, to remove public nuisances, and to preserve good order and tranquility." The Ross light-horsemen stabilized that authority while the Treaty Party strengthened its own light-horsemen. From 1839 to 1846, violence and bloodshed
spread throughout the Cherokee homeland. Light-horsemen and sheriffs fought the political battles of their leaders. Gradually, the Ross government neutralized the militant supporters of the Treaty Party faction and in 1846, Stand Watie of the Treaty Party and John Ross signed a treaty ending all hostilities between the two factions. The treaty abolished all armed police, military organizations, and light-horse companies. After 1846, the Cherokees enforced their laws primarily through district sheriffs and constables.
APPENDIX A*

IV--THE MYTHS

Cosmogonic Myths

1. How the World Was Made

The earth is a great island floating in a sea of water, and suspended at each of the four cardinal points by a cord hanging down from the sky vault, which is of solid rock. When the world grows old and worn out, the people will die and the cords will break and let the earth sink down into the ocean, and all will be water again. The Indians are afraid of this.

When all was water, the animals were above in Galun'lati, beyond the arch; but it was very much crowded, and they were wanting more room. They wondered what was below the water, and at last Dayuni'si, "Beaver's Grand-child," the little Water-beetle, offered to go and see if it could learn. It darted in every direction over the surface of the water, but could find no firm place to rest. Then it dived to the bottom and came up with some soft mud, which began to grow and spread on every side until it became the island which we call the earth. It was afterward fastened to the sky with four cords, but no one remembers
who did this.

At first the earth was flat and very soft and wet. The animals were anxious to get down, and sent out different birds to see if it was yet dry, but they found no place to alight and came back again to Galun'lati. At last it seemed to be time, and they sent out the Buzzard and told him to go and make ready for them. This was the Great Buzzard, the father of all the buzzards we see now. He flew all over the earth, low down near the ground, and it was still soft. When he reached the Cherokee country, he was very tired, and his wings began to flap and strike the ground, and wherever they struck the earth there was a valley, and where they turned up again there was a mountain. When the animals above saw this, they were afraid that the whole world would be mountains, so they called him back, but the Cherokee country remains full of mountains to this day.

When the earth was dry and the animals came down, it was still dark, so they got the sun and set it in a track to go every day across the island from east to west, just overhead. It was too hot this way, and Tsiska'gili, the Red Crawfish, had his shell scorched a bright red, so that his meat was spoiled; and the Cherokee do not eat it. The conjurers put the sun another hand-breadth higher in the air, but it was still too hot. They raised it another time, and another, until it was seven handbreadths high and
just under the sky arch. Then it was right, and they left it so. This is why the conjurers call the highest place Gulkwa'gine Di'galun'latiyan, "the seventh height" because it is seven hand-breadths above the earth. Every day the sun goes along under this arch, and returns at night on the upper side to the starting point.

There is another world under this, and it is like ours in everything—animals, plants, and people—save that the seasons are different. The streams that come down from the mountains are the trails by which we reach this underworld, and the springs at their heads are the doorways by which we enter it, but to do this one must fast and go to water and have one of the underground people for a guide. We know that the seasons in the underworld are different from ours, because the water in the springs is always warmer in winter and cooler in summer than the outer air.

When the animals and plants were first made—we do not know by whom—they were told to watch and keep awake for seven nights, just as young men now fast and keep awake when they pray to their medicine. They tried to do this, and nearly all were awake through the first night, but the next night several dropped off to sleep, and the third night others were asleep, and then others, until, on the seventh night, of all the animals only the owl, the panther, and one or two more were still awake. To these were given the power to see and to go about in the dark, and to make prey of the
birds and animals which must sleep at night. Of the trees only the cedar, the pine, the spruce, the holly, and the laurel were awake to the end, and to them it was given to be always green and to be greatest for medicine, but to the others it was said: "Because you have not endured to the end, you shall lose your hair every winter."

Men came after the animals and plants. At first there were only a brother and sister until he struck her with a fish and told her to multiply, and so it was. In seven days a child was born to her, and thereafter every seven days another, and they increased very fast until there was danger that the world could not keep them. Then it was made that a woman should have only one child in a year, and it has been so ever since.

Summaries of Deaths (continued), April 6, 1812
(M-208) Roll 5

1. Murderer was executed at home and the screams were heard by the neighbors of the place. The body was recovered.

2. Victim was of unknown identity, found near a body of water, identified by the body's clothing and the fact that it was a foreigner.

The murderer, who is known to the police, was reported to have been present at the scene.

The cause of death is suspected to be violence.

The victim was a foreigner, presumed to be a sailor, found near the water.

The incident is under investigation by the police.
APPENDIX B

Retribution, 1816, December 9, 1816 -- Cherokee Agency (M-208), Roll 7, Records of the Bureau of Indian Affairs, Record Group 75, National Archives.
Retribution, 1816 (continued)  
(M-208), Roll 7
United States in 5 cases; and 2. To the Nation for acts of treachery by the Indians respecting

which no evidence adduced by the defendant was received.

The case continued.

By the head of the man who killed the Cherokee woman.

By killing a young man in the Cherokee Nation.

By the head of the man who killed the Cherokee woman.

By the head of the man who killed the Cherokee woman.

By the head of the man who killed the Cherokee woman.

By the head of the man who killed the Cherokee woman.

By the head of the man who killed the Cherokee woman.

By the head of the man who killed the Cherokee woman.

By the head of the man who killed the Cherokee woman.

By the head of the man who killed the Cherokee woman.

By the head of the man who killed the Cherokee woman.
BIBLIOGRAPHY
BIBLIOGRAPHY

Primary Sources

Manuscript Collections

Norman, Oklahoma. University of Oklahoma. Western History Collection
Cherokee Nation Papers
Frank Phillips Collection

Oklahoma City, Oklahoma. Oklahoma Historical Society
Foreman, Grant, comp. "Copies of Letters . . . and Miscellaneous Documents Relative to the Cherokee and Creek Indians, 1836-1933." Indian Archives Division. Journal of the Commissioner of Indian Affairs on Journey to the Cherokees and His Proceedings There, 1725.
Cherokee File
Cherokee Papers, 1815-1874

Washington, D.C. National Archives of the United States
Records of the Cherokee Indian Agency in Tennessee, 1801-35.
Record Group 75. Records of the Bureau of Indian Affairs.

Government Documents and Publications

Federal


United States Senate

United States Supreme Court
Fletcher v Peck 10 US 87 (1810)
Johnson and Graham's Lessee v William McIntosh 21 US 543 (1823)
Cherokee Nation v Georgia 30 US 1 (1831)
Worcester v Georgia 31 US 515 (1832)
State


The State Records of South Carolina
Journals of the Privy Council, 1783-1789. Columbia, South Carolina.

Newspapers

Cherokee Phoenix, 1828-34.
Niles Register, selected articles on the Cherokee, 1829-1832.
Richmond Enquirer, December, 1830; January, 1831;
February 5, 1831.

Secondary Sources

Bibliographies on Indian Law


Books and Monographs

Alden, John R. *John Stuart and the Southern Colonial Frontier*. Ann Arbor, 1944.


Carter, Samuel, III. *Cherokee Sunset, A Nation Betrayed*. Garden City, New York,


Crane, Verner M. *The Southern Frontier, 1670-1732*. Ann Arbor, 1929.


Drake, Samuel G. *Early History of Georgia Embracing the Embassy of Sir Alexander Cuming to the Country of the Cherokees, In the Year, 1730*. Boston, 1872.

Foreman, Grant. *Indian Removal.* Norman, 1932.

__________. *The Five Civilized Tribes.* Norman, 1934.


Milling, Chapman J. Red Carolinians. Chapel Hill, 1940.


Pound, Merritt B. *Benjamin Hawkins, Indian Agent.* Athens, 1951.


Ramsay, David. *Ramsay's History of South Carolina.* Newberry, South Carolina, 1858.


**Periodical Articles**


Cotterill, Robert S. "Federal Indian Management in the South, 1789-1825." Mississippi Valley Historical Review, XX (December, 1933), 333-352.


Pound, Merritt B. "Colonel Benjamin Hawkins." North Carolina Historical Review, XIX, Nos. 1 and 2 (January, April, 1942).


Spoehr, Alexander. "Changing Kinship Systems: A Study in the Acculturation of the Creeks, Cherokee, and
