

AN EXAMINATION OF CHEROKEE MARRIAGE FOLLOWING THE
ESTABLISHMENT OF THE FIRST CHEROKEE WRITTEN LAWS, 1808

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ABSTRACT

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In this work I challenge the view held by some scholars that the written laws published by the Cherokee Nation on September 11, 1808 attempted to undermine matrilineal clan management of marriage practices. I describe how Cherokee leaders, both women and men, adopted aspects of the legal template from the United States juridical system and designed laws to accommodate existing marital practices, reflecting the goal to protect, defend, and ensure the political, economic, and social rights of women. Although there was now to be written law consistent with legal systems in Europe and the United States, there was already extensive Cherokee “law” (albeit unwritten) that regulated choice of spouse, defined the legality of the marriage, designated membership, and directed inheritance through the woman. The matrilineal kinship structure effectively resisted the persistent pressures exerted upon it by the government of the United States to capitulate to a patriarchal legal system that privileged men over women as heads of household,

property owners, and guardians of children. The process of developing written laws that accurately reflected Cherokee values and beliefs involved the complementary governance defined by the authority and power exercised by both women and men. My interpretation of the events recorded by Euro-American and American men of the colonial period, including often quite biased accounts and misinterpretations of Cherokee life, ultimately provided the evidence that matrilineal clan management of marriage and inheritance was not evanescent.

[Keywords: matrilineal, kinship, marriage]

INTRODUCTION

In this thesis, I examine how Cherokee matrilineal clan marriage and inheritance practices of the seventeenth and eighteenth centuries aligned with the development of the first written laws created during the emergence of the more centralized Cherokee government. I refute the notion that the authority exercised by Cherokee women elders to manage marriage practices was undermined by the written laws produced by the Nation on September 11, 1808. Although laws are often regarded as a type of control over a particular segment of society in an effort to achieve “social order and individual protection, freedom and justice,” they also represent a blending of enduring norms¹ and customs within a legal system (Moore 1978:2, 244; Moore 1973:719; Moore 1986). Hoebel notes that one function of law is “selecting norms for legal support that accord with the basic postulates of the culture” that reflect the dominant values of a group (Hoebel 2006[1954]:16). Rather than reproduce the depiction of conflict between women and men often seen in professional literature, I demonstrate the degree of continuity in the reciprocal relationships established largely through matrilineal clans. Further, this thesis illuminates the public discourse of Euro-American men that belied women’s authority and power in multiple social realms and multiple contexts. Authority and power used here separately are meant to be understood as “authority, which may ordain,

¹ Hoebel (2006[1954]:14) defines norm as a “mere statistical expression of behavior.” Bohannan (1965:34) states a “norm” means rule and expresses an “ought” to do something.

and power, which can effect” and will be defined in greater detail elsewhere in this thesis (Williamson 2003:13).

Focus of the Study

On September 11, 1808 the Cherokee National Council of Chiefs and Warriors signed the first set of laws that ultimately led to a more centralized government for the Cherokee Nation. These written laws were necessary to firmly establish their Nation’s sovereignty, gain international recognition of their status as an independent nation, and protect their territory from impending imperialist interests of the United States. Prior to these written laws, the matrilineal kinship system determined a person’s relationship with kin and non-kin, membership in the clan, ownership of property and ceremonial knowledge, mourning observations, marriage, and inheritance. For example, a woman had the right to choose her husband as long as she followed clan norms of selecting her spouse from her mother’s father’s clan or her father’s father’s clan (Gearing 2007 [1962]:21; Gilbert 1943:238). That the Cherokee people of the seventeenth and eighteenth centuries were a matrilineal kinship group is not unique, as anthropologists have studied matrilineal societies found around the world (Haines 2005; Fox 2003 [1967]; Schneider 1974[1961]). What distinguished the Cherokee from other matrilineal groups, however, can be seen in their implementation of written laws that continued to support the rights of both women and men, especially in marriage law.

Data Sources

The resource material upon which I have made my interpretations includes anthropological articles, essays, and books as well as historical documents, maps,

artifacts, images, and chronicled events of the seventeenth, eighteenth, and nineteenth centuries. *The Compiled Laws of the Cherokee Nation Passed by the National Committee and Council 1808-1825*, printed in 1826, provided the basis for inquiry as to the law that specifically addressed marriage and inheritance.² This document is the original English version of the first written Cherokee laws approved by the Cherokee National Council beginning September 11, 1808. The laws were indeed originally written in English by Cherokee leaders, some of whom were educated at Christian mission schools, because at that time there was no written Cherokee language. Almost twenty years after the first law was published, a Cherokee man named Sequoya,³ who did not speak, write, or read English, created a syllabary that was used to translate the laws from English to the Cherokee language.

There is evidence of a temporal lag, however, between when the regulations were signed into law by the Chiefs and Warriors in the National Council and when the judges were appointed to administer justice. That is not to say anarchy ruled but rather only to note that the very first law in 1808 was the establishment of a paid police force (called the Light Horsemen) compared to the appointment of district judges, marshals, and circuit judges in 1820 (Cherokee Nation, &C 1826:12). This demonstrates the dynamic evolution of laws and illustrates that the local communities shared enforcement responsibilities with the nation's Light Horsemen—thus representing examples of two semiautonomous social fields interacting within the larger nation.

² The laws were ratified in 1808 and printed in 1826.

³ “Sequoya” (*Sikwá'yí*) used by Mooney (1975:99) will be used in this thesis (other spellings: “Sequoyah” (Perdue 1995; Kilpatrick 1996; and Fenton 1961) and “Sequoia” (Moulton 1985).

Newspapers provided an additional source of insight into Cherokee culture. In particular, the *Cherokee Phoenix*, the national newspaper published between 1828 and 1832, provided evidence of the developing sense of nationalism in the Cherokee Nation, as it printed laws, local, national, and international news, and editorial comments against the removal policy formulated by American Presidents. Miscellaneous articles printed on a regular basis, and at times authored by anonymous persons, attempted to advise the population on the comportment of women in dress and behavior as well as whom women should marry. For example, Socrates, a pseudonym used in the *Phoenix*, recommended that Cherokee women surrender their personal interests and “give way to the interests and existence of a nation”; and then specifically recommended the Nation make an effort to establish an office that would control marriages (Socrates 1828). The *Cherokee Phoenix* represented a type of social compass responsible for educating the women of the Nation on the qualities of the ideal woman—qualities that closely echoed European rather than Cherokee standards.

Annual Reports produced by the Bureau of American Ethnology to the Secretary of the Smithsonian Institution provided accounts of Cherokee culture by early ethnographers such as James Mooney, who reported on history and mythology from information provided to him by a Cherokee man. In the true spirit of the ethnographer, Mooney lived with the Cherokee and learned the language. Though Mooney is widely referred to as being an anthropologist, he was self-trained—although apparently a gifted natural held in high regard by the Cherokee (Mooney 1975:xiii, 237). His research expands from the traditional period that described Cherokee settlement in the

southeastern portion of the North American continent to the early twentieth century long after the majority of the Cherokee were forcefully expelled from their homes by the government of the United States.⁴ Mooney's *Myths of the Cherokee* is of particular interest to this research because these myths and stories represent the printed versions of oral traditions shared by a community that reflected the "history of their wanderings from the time when they had been first placed upon the earth by some superior power from above" (Mooney 1995 [1900]:229). Moreover, these myths provide one form of native voice regarding the "sacred myths, animal stories, local legends, and historical traditions" narrated by the storyteller with a means of helping a child or reminding adults of their social relationships and position in the natural world (Mooney 1995 [1900]:229).

Another Bureau of American Ethnology document, Gilbert's ethnography, *The Eastern Cherokees*, provided a more in-depth presentation of the kinship system and how it regulated social interactions using: kinship terminology; joking or avoidance relationships; child rearing practices; ascending and descending kinship distinctions; and the significance of ceremonies in connection with marriage norms; and inheritance rights. Gilbert's research involved participant-observation, interviews, and participation in "the daily round of activities" which, when examined in light of Mooney's research, provided a more holistic approach to understanding Cherokee thought and action (Gilbert 1943:175).

Eyewitness accounts made by members of the colonial army, missionaries, traders, and others provide another perspective on the Cherokee people. One British

⁴ The forced march, across the greater part of the continent, was infamously known as the Trail of Tears or as Mankiller (1993:4) writes "the trail where they cried."

military observer, Lieutenant Timberlake, published a diary (1756-1765) that described such cultural characteristics as burial of the dead, settlement patterns, agricultural pursuits, and social structure (Timberlake 2007 [1765]). A trader, Alexander Longe, interviewed an Indian priest, obtaining insight into indigenous philosophy on life and death (1969[1725]).

Other documents that have been translated into English have been valuable, but also reflect the limitations of the translator's knowledge and understanding of the intent of the original author given the use of symbols, metaphors, innuendo, or social relationship to the Cherokee. For example, diary entries written by Moravian missionaries, who established schools in the Nation, were written in German and only recently translated. The Moravian missionaries were the first missionaries allowed to establish schools in the Cherokee Nation only after receiving permission from the Council (Mooney 1975:74; McClinton 2007: xiii). These diary entries reflected the goals of the missionaries to proselytize the "heathen," and "evangelize 'forgotten peoples'" as they considered the Cherokee to be (McClinton 2007:xx,6). Heathen, in this instance, meant people who were culturally different from the Moravian missionaries—not a racial category of inferiority (McClinton 2007:xx). These diarists acted as ethnographers of sorts because their observations, though biased, offer a fresh perspective on relationships between Cherokee and Euro-Americans, family interactions, and an emerging sense of nativism against acculturation. These data sources reveal the dynamic cultural changes occurring in the Cherokee social structure in the seventeenth and eighteenth centuries following European immigration.

Key Concepts

There are three key concepts woven throughout this thesis that require clarification at the outset: authority, power, and law. The first two, authority and power, are often conflated or used in texts interchangeably.⁵ In this thesis I defer to Williamson's definition of authority as having "the right to say what shall be done but cannot do it" because individually and collectively, clan women and men of the seventeenth and eighteenth centuries had the opportunity to direct a specific action (approve a marriage, go to war, move the settlement, etc.) but had no ability to make that determination a reality (2003:14). An individual or a group acquired the authority to say what shall be done only after a consensus of the community that acknowledged the worthiness of that person or group to lead. European colonists incorrectly believed Cherokee leaders (referred to as "kings" in some documents) exercised a form of command and control over their villages in a manner similar to the Kings on the continent. However, according to Colonel Chicken's Cherokee journal, 1726, public opinion determined the direction of an action:

I must inform your Honour that the people in these lower parts have so little regard for their King that they do not in the least hearken to him and the reason [sic] of it is because he is a Man they can't rely on for truth and in my Opinion is more under the Comands [sic] of his Subjects then they are under him, which makes him very Undeserving of the Station he is in, and I am of Opinion that an old Indian called (breakerface) is the properest [sic] person for a King for these parts, he being a Man of resolution and was always known to be a good man to the English and I beleive [sic] will keep the Young men under a better Governmt [sic] then now they are.
[Mereness 2007[1916]:136]

⁵ Fogelson (1990:165), for example, comments "it suggests that women possessed unusual authority and power in eighteenth-century Cherokee society" referring to Adair's notation on Cherokee adultery.

Cherokee leaders have been known to make demands along the lines of command and control such as in the case of *Oconostota*, who demanded that Cherokee women stop providing food to their Euro-American husbands who were defending Fort Loudoun during a siege led by *Oconostota* (Kelly 1978).⁶ Those same women, however, “laugh[ed] at his threats, boldly told him, they would succor [sic] their husbands every day” and refused to recognize his authority (Timberlake 2007[1765]:35). Colonel Chicken’s journal entry and Lieutenant Timberlake’s memoir illustrate how the Cherokee did not share the Euro-American belief in command by one leader and control of the population.

In comparison to authority, power as used in this thesis refers to “the ability, but no independent right, to act and executes what is authorized” and was exhibited in various contexts by both men and women (Williamson 2003:14).⁷ Personal power, for example, occurred in every person according to his or her own efforts to acquire the energies derived from ancestors, the natural environment, and spirits (Fogelson 1977). This acquired power was ephemeral, however, and depended on a positive relationship established with other humans (the community), other life forms (plants, animals), and other sources of energy (moving water or rocks); to perform otherwise invited maleficent power (Fogelson 1977:186). For example, men and women conjurers⁸ demonstrated one form of power during curing ceremonies that incorporated the use of herbal remedies,

⁶ The events of Fort Loudoun are explained in greater detail in chapter four.

⁷ Clastres (2007[1974]:22) carefully explains that power exists separate from violence and apart from hierarchy; and power “manifests itself in two primary modes: coercive power, and non-coercive,” meaning coercive power “is not the *only* model of true power, but simply a *particular case*.”

⁸ Fogelson (1961:218) writes a conjurer “relies on a combination of simples [herbal remedies] and ceremony [recitation] in his curing procedures.”

particular colored stones, and a song or recitation of specific words with the intent to bring about a favorable change to a person with poor health (Mooney 2008[1891]:86). Power in this case refers to the ability of the conjurer to act as a conduit between the authority of the natural energy provided by specific herbs and the person with a health problem.⁹ The literature suggests that powerful conjurers influenced rather than coerced, and were only able to act when they responded to the spiritual authority guiding their actions (Longe 1969[1725]; Fogelson 1971:331).¹⁰ In the case of marriages, elders (especially women elders) had the authority to determine if a marriage were suitable; however, the elders had no power to coerce the couple to marry (or not marry). Women and men experienced authority and power in specific contexts with power supporting authority, though usually did not exhibit both at the same time.

The third key concept used in this thesis—law—deserves particular attention because most Euro-American colonists believed the Cherokee had no laws. Euro-Americans saw no law because they depended on written law that followed the command and control form of governance similar to a monarchy. The Cherokee, however, had no form of written law, nor did they have a single person or group of persons regulating the entire tribe. Yet, law did exist. The term “law” has sometimes been described as a means of controlling people and those who would not be controlled were referred to, by

⁹ Mooney (1995[1900]:250-252) notes that plants offer some type of medicine to counter the diseases introduced by the animals and stated that they would “appear to help Man when he calls upon [them] in his need”; Fogelson (1977:186) writes “public display, boasting, and external symbols denoting possession of power are deemphasized or sharply circumscribed in traditional Cherokee culture.”

¹⁰ Kupferer (1966:267) states some Cherokee recognized that “some native doctors had ‘spoiled themselves’ by not observing prescribed rituals after the death of a patient.”

Europeans, as barbarians (Elliott 1970:49).¹¹ A more contemporary definition found in a handbook for law students describes law as representing an attempt to “achieve both social order and individual protection, freedom and justice” (Moore 1978:2). For the purpose of this thesis, however, I depend on Pospisil’s (1967) four juridical qualities that make law because these qualities are found at the kinship subgroup level in Cherokee society: authority, universal application, sanction, and *obligatio*.¹² As the written laws were formulated, the Cherokee borrowed the American legal template and specialized language. As Watson has explained, societies borrow laws from other societies; however, the borrowed laws operate differently from the way they were originally intended (Watson 1993). This appears to be the case for the Cherokee because although they did borrow the template, the laws produced by the Cherokee in 1808 mirrored existing kinship law rather than mirroring the republic as Young (1981) has suggested. This achievement required cultural fortitude given the American pressures on the Cherokee to capitulate to the cultural standards of the United States.

Chapter one provides general background on how the Cherokee and the Europeans differed in their ideas of “law,” leadership qualities, power, and politics, and how that difference led to misunderstandings and confusion on the part of the Europeans. Chapter two provides a brief examination of the decentralized Cherokee governance that included semiautonomous subgroups managed by both women and men. This decentralized form of governance contrasted with, and was misunderstood by, Europeans

¹¹ Elliott (1970:44-49) writes Europeans of the sixteenth century and later projected a sense of superiority that was reflected in their use of the term “barbarian” to describe people who had no law, spoke a different language, had different customs and religious practices, and had no writing system.

¹² These qualities are explained in greater detail in a later section on “Differing Notions of Law.”

who variously described the Cherokee as a monarchy, a tribe, a nation, or lacking in any form of governance at all. Rather than understanding Cherokee governance on its own terms, the Europeans attempted to impose European concepts of command by a king and obedience by his subjects that conflicted with a Cherokee form of government that permitted all people, both men and women, the acquisition of different forms of personal power and a complementary participation in governance. Chapter three addresses the problem of defining marriage; the European understanding of what determined a legal marriage that influenced intermarriages; and a special case of an Indian woman and an English gentleman. Further, I offer a new model of historical Cherokee marriage based on my interpretation of historical documents. Chapter four challenges the notion that the early marriage law of the Cherokee Nation attempted to control women. Though the new laws utilized aspects of the legal template of the United States, the new marriage law reinforced matrilineal rights. Finally, chapter five emphasizes the perpetuation of matrilineal marriage practices and offers the case of James Vann's death and how his Will has been incorrectly interpreted as a move to patrilineal inheritance practices. Instead, his will provides a fitting conclusion to this analysis of both change and durability demonstrating innovative courses of action in response to the social challenges facing the nation.

CHAPTER ONE THE WRITTEN WORD

On August 29, 1796, the President of the United States addressed the Beloved Men of the Cherokee Nation. In the address, President Washington advised the Cherokee to follow a path that would enable them to “enjoy in abundance all the good things which make life comfortable and happy” (1796). In addition to the recommendations to grow wheat¹ and become agriculturalists, Washington strongly urged the Beloved Men to follow the example of the white people² by creating laws that would preserve the peace, protect the land, safeguard the people, improve living conditions, and promote the general welfare. This address represented a veiled attempt to influence the Cherokee towards a more patriarchal society practiced by Americans. Specifically, Washington, as well as other leading politicians,³ emphasized the creation of written laws that would regulate the population. The belief was if the Cherokee changed their lifestyle, they would be more amenable to ceding land to the United States (Calloway 2008:79).

Ultimately, Cherokee people created written laws, including laws regarding marriage and

¹ Crosby (2003:106) writes “in the Americas the Europeans’ demand for their own kinds of food was strengthened by social and racial prejudice.” He explains wheat was an Old World grain preferred by Euro-American immigrants over native corn. Farming was considered the proper occupation for Euro-American men though for Cherokee, agricultural pursuits were normally the domain of the Cherokee woman.

² The term “white” was used by Euro-Americans and Cherokee [and this thesis] to refer to Euro-Americans.

³ Calloway (2008:79) writes President Jefferson developed policies that led to the expulsion of the Indians westward; and that Jefferson believed “giving Indians ‘civilization’ in return for land allowed the United States to expand with honor.”

inheritance. These written laws became a marker for some Cherokee who believed they were necessary for maintaining sovereignty. Some scholars write that Cherokee women experienced a significant change to the traditional marriage practices due to the introduction of the first Cherokee law that dealt with the marriage of a Cherokee woman to a white man (Anderson 1996:403; Perdue 2001:82). As will be seen, however, Cherokee women who managed marriage practices under kinship law continued to do so under written laws published by the Nation on September 11, 1808, resisting the pressures exerted upon the Cherokee by the government of the United States to capitulate to a patriarchal legal system.

Civilizing Indians

As the President, Washington formally presented in his speech the official position of the United States that the Cherokee had no laws. Compared to the prolific laws established by European monarchies for their subjects, some of which were borrowed by the nascent United States, Cherokee law appeared to some as incomprehensibly non-existent.⁴ Euro-Americans, who believed their Indian neighbors were incapable of having laws, reflected the prevalent attitude that originated in Europe during the Age of Enlightenment (seventeenth and eighteenth centuries).⁵ Politicians of the eighteenth century were influenced by the concept of stages of human development

⁴ Timberlake (2007 [1765]:36) notes “their government, if I may call it government, which has neither laws or [sic] power to support it, is a mixed aristocracy and democracy”; Adair (1930 [1775]:153) remarks that there were no laws against adultery “while under petticoat-government,” meaning the matrilineal clan; Hawkins (2003:57) adds “for except as to the government of the women, there is no law.”

⁵ Cherokee were indigenous to North America at the time of Western contact but to avoid confusion I only refer to them in this paper as Cherokee or Indian rather than American. I define Euro-Americans as European settlers (prior to 1776) and other settlers generally referred to as being of a Western culture and will also use the term “American” (after 1776). African slaves were not citizens of the United States.

that designated the indigenous populations as “savage” compared to the enlightened populations who were considered “civilized” (Cairns 2009 [1935]:28; Calloway 2008:78). The belief that civilizations moved through stages depicted as savage, barbaric, and civilized, however, is at least as old as classical Greece though, as Hodgen has pointed out, “it has become a convention in dealing with the historical careers of the social studies to fix their birth dates somewhere in the nineteenth century, when the academic departmentalization of the study of man had its inception” (1964:7).⁶ European attitudes reflected an application of science to gauge human social progress that stood in contrast with the earlier European belief in divine direction. Calloway describes the prevailing mid-eighteenth century British attitude—“wild Indians, like wild Scots and wild Irish, could be induced to adopt English standards of civility and thereby make up for their delayed development, just as the Romans had tamed the ancient Britons” (2008:67).

Following the Revolutionary War, as the United States attempted to coalesce and define itself as a nation, its intense civilization program focused on the indigenous populations living along the southeastern portion of the continent, especially the Cherokee. Perdue explains that “civilization” meant indigenous people were expected to become Christian, live like Americans, plow the earth and grow wheat not corn, learn to

⁶ Hodgen (1964) writes early ethnographers included: Herodotus, fifth century; Pliny the Elder, five hundred years later; de Montaigne, sixteenth century; and Varenus, seventeenth century. All were interested in describing cultures including: descent; language; religion; dress; diet; dwellings; etc. The barbarians, according to Hodgen (1964:308), were “the new culture that had no history that the Europeans could discern, appeared to be similar to a stage lived by ancient civilizations like the Greeks or Romans. Therefore, the Europeans declared the new culture as being savage or barbarian”; Elliott (1970:15) notes “here, surely, is revealed that innate sense of superiority which has always been the worst enemy of understanding.”

read and write English, conform to the American patriarchal model, and replace indigenous clothes with clothes worn by Americans (2001:78). The proponents of the civilization process, especially government officials, were unfamiliar with (or unwilling to interact with) tribal governments whose dispersed, decentralized nature complicated international political interactions. Most politicians failed to recognize or understand the differences between American and Cherokee notions of power in governance; rejected the possibility that Cherokee had laws; and failed to understand that men and women could fill complementary political positions. In particular, the Euro-American form of centralized government conflicted with the Cherokee decentralized clan system described by Calloway (2008) and Gearing (2007[1962]).

Clans

The British were not unfamiliar with the clan system given their proximity to Scotland and its clan government. Highlanders and Indians were considered equally inferior by the English as demonstrated by General Oglethorpe's reference to the composition of his soldiers as "white people Indians and highlanders" (Calloway 2008:xi).⁷ Calloway and Gearing offer similar imagery of clans, though Calloway describes the patrilineal Scottish Highlanders and Gearing describes the matrilineal Cherokee. Clan characteristics shared by Highlanders and Cherokee included clustered settlements, land held in common, descent from a common ancestor, incorporation of outsiders (prisoners for example), leadership by consensus, restorative justice, and independence. Gearing further describes Cherokee as having several nuclear families

⁷ Calloway (2008:xi) states General Oglethorpe of the Georgia colony recruited Highlanders as well as the Creek, Yuchee, and Chickasaw Indians to fight alongside English colonists.

forming households; with multiple households uniting to establish settlements scattered along rivers in the territory (2007[1962]:1-2). A group of settlements, according to Gearing, then formed villages that would have ranged in size from 350 to 600 people.⁸ Anderson explains that clan governance revolved around the elders describing the council composed of “men and women [who] were equal participants in town council meetings” (1996:399). Though councils were composed of elders representing clans, they should not be considered as corporate bodies according to contemporary definition—“a body that is granted a charter legally recognizing it as a separate legal entity having its own rights, privileges, and liabilities distinct from those of its members” (American Heritage 1997:311). The council members did not inherit their positions; there was no charter recognizing a separate legal entity, and there was no distinction between the council and the other members of the Nation.⁹

Leaders

Cherokee leaders, both male and female, earned their positions in the tribe, and then in the Nation, based on their wisdom and knowledge, competence as orators, bravery at war, or other special skills that benefitted the community (Fogelson 1977). Ultimately, the community enabled or obstructed the ascendancy of a leader. The people exhibited a tendency to restrict personal ascendancy through leveling mechanisms such as public opinion, criticism and ridicule, disobeying orders, or extreme sanction (assassination)

⁸ Gearing (2007[1962]:113) explains that he primarily relied on the Payne-Buttrick manuscripts, stating “all the other sources of 18th century Cherokee ethnography would, taken together, yield a very incomplete picture of the four structures of the Cherokee village.”

⁹ Gearing (2007[1962]:13) refers to the individual “structural poses” taken by men of the tribe to be “corporate” groups, though he does not define “corporate.” His usage may be based on Maine’s assertion that the “family was a corporation” (Maine 2007[1878]:180); they both seem to be using the term somewhat loosely.

(Boehm 1993:230). For example, one chief named Old Hop recommended to British officers that they consider *Oconostota* his successor in the event of his death. However, according to Kelly, Old Hop's intent was to thwart the ascendancy of another warrior named *Attakullakulla* through intentional leveling.¹⁰ To non-Cherokee, the clan system gave the impression of being disorganized and lacking in political consensus. As a result, indigenous leaders encountered by Europeans were strongly encouraged to develop a centralized political system that would produce laws more in line with standards established by the United States (Anderson 1996:410).

Differing Notions of Power

Some Europeans saw power as a right based on material wealth or manifest destiny,¹¹ with political power dependent on the command-obedience relationship found, for example, in the monarch-subject relationship of England during the period.¹² Most would have been incapable of understanding Fogelson's Cherokee contact who defined power as an energy derived from "animals, ghosts, personified deities, other human beings, and from certain plants and material objects" (1977:186). For the Cherokee, power could occur individually, in both men and women, based on each person's accumulated knowledge, attention to ritual detail, and moral relationships (Fogelson 1977:187; Fogelson 1990:170). Power as described here should not be interpreted

¹⁰ Kelly (1978:223) suggests *Attakullakulla* was a skilled orator and peacemaker while *Oconostota* was a skilled leader of military expeditions—and both were considered warriors.

¹¹ French (2003:81) explains: "social position is determined by one's occupational status and material wealth," and further that "enfranchised members of society, mainly adult free white males, were responsible for their actions and, consequently, their successes and failures," meaning "wealth was a clear indication of one's superiority and evidence that one was predestined by God for this success."

¹² Clastres (2007 [1974]:15) writes "political power as coercion (or as the relation of command-obedience) is not *the* model of true power, but simply a *particular case*, a concrete realization of political power in some cultures, Western culture for instance (but of course the latter is not the only instance)."

hierarchically with some people positioned in a superior rank to others or people who have power over others (Dumont 1970:20). As Williamson (2003) explains, power in native North America is neither coercive nor a limited resource. For example, women and men conjurers¹³ depended on their knowledge of the healing quality of plants and their expertise in reciting the sacred formulas necessary to restore someone to better health (Fogelson 1961:218).¹⁴ Compared to herbalists, who also had a working knowledge of plant remedies, the conjurer depended on a sacred formula that, if not recited correctly in conjunction with the herbal treatment, would be “ineffective” (Fogelson 1961:217; Mooney 2008[1891]:56). Furthermore, a good elder, according to Gearing, “and especially a priest—was the highest possible achievement in the Cherokee community and could only be derived from a lifetime of “moral virtuosity in human relations” (2007[1962]:45, 44).

Gearing does not use the terms conjurer or medicine man in his description of the “structural poses” occupied by men (2007[1962]:15). Instead, Gearing describes leaders he refers to as priests—people who structured ceremonies intended to restore harmony in the village, directed households in collective work such as agricultural projects, performed “esoteric magic” for hunters or ritual control of the weather, and influenced policy made in the council (2007[1962]:4, 28, 81).¹⁵ We learn more about the qualities of

¹³ Mooney (2008[1891]) refers to medico-religious persons as shamans, medicine men, and priests interchangeably; Fogelson (1990:164) reports that Cherokee women “were repositories of magico-religious power.”

¹⁴ Mooney (1995[1900]:250) recorded the myth of how the animals, birds, and insects invented diseases to afflict man; and plants provided the cure. He also (2008[1891]:31) wrote “disease and death are not natural, but are due to the evil influence of animal spirits, ghosts, or witches.”

¹⁵ Guénon (2004 [1929]:18) uses the term “Priest” to refer to “one of knowledge and teaching... its proper attribute is wisdom.”

priests from Longe, who described the person he interviewed as “one of the most sensible Indians and most wise and most knowing that Ever [sic] I saw in all my life” (1969[1725]:9).¹⁶ Based on Longe’s conversations with the priest, the people depended upon him to act as mediator between their spiritual and temporal existence. For example, the priest counseled the people on the immortality of the soul that could pass into the place of “feasting to all aternities [sic]” or the place where “creatures torments them to all eternitie [sic] and never has noe Rest nott for a moment” (Longe 1969[1725]:11). The common thread among the accounts made by Fogelson, Mooney, and Gearing regarding the priest is that he is the embodiment of spiritual knowledge and practice acquired throughout a lifetime. Longe’s priest explains that priests “is known to be good and onest men and nott Given to laying [lying] nor women nor anger nor toe aney ill vice whatsoever” (1969[1725]:19). The ability of the priest to influence the population, the weather, the hunting, and the harvest provides an example of an accumulation of a type of power not understood by Euro-Americans. Failure on the part of the Euro-Americans to recognize Cherokee forms of power (organic, inorganic, and spiritual), failure to acknowledge power was accumulated by women as well as men, and failure to accept power exhibited in a non-hierarchical manner, contributed to the misunderstanding that the Cherokee had no laws.

Euro-American comprehension of what Cherokee law entailed was further complicated by translation difficulties as Cherokee had limited capacity to express beliefs in terms understood by Europeans. Likewise, Europeans who depended on translators

¹⁶ Longe lived with the Cherokee and spoke the language.

risked being misunderstood. For example, Washington's talk, given originally in Philadelphia, was reproduced, signed, and delivered to all Cherokee towns to be interpreted and read to the Cherokee so that there would be no doubt as to its content and meaning. Interpreters were necessary for two reasons. First, the "talk" was delivered in written form in a language foreign to the great majority of the Cherokee people. And second, the Cherokee had no written language until Sequoya,¹⁷ a Cherokee man, introduced the syllabary in 1821, making it impossible to print Washington's speech in the indigenous language before that time.¹⁸

The use of interpreters, however, is not without its problems as the Cherokee language, a member of the Iroquois linguistic group, has multiple dialects (Mooney 1995[1900]:16; Reid 2006 [1970]:9; Sattler 1995:221). Historical documents thus far reviewed acknowledge the use of interpreters in formal relations between Americans and Cherokee, though they do not address issues of reliability or the potential for miscommunications. If Washington's speech was reliably interpreted and delivered by someone intimately familiar with both English and the Cherokee dialect of the community receiving the speech, then perhaps people understood the message. However, some Cherokee communities were geographically and linguistically isolated, making it unlikely that Washington's speech was accurately translated. Graham (2002) has noted the complexities of language use and the implications of language choice in

¹⁷ White (2002:128) states Sequoya (aka George Gist or George Guist) was a Cherokee, who could neither speak, nor read, nor write English yet invented a Cherokee syllabary in 1821. The document, *Laws of the Cherokee Nation*, October 15, 1825, spells his name "Guist."

¹⁸ McDowell (1955) writes trade in the colonies was expansive. The journal frequently notes the use of many interpreters necessary to conduct trade with various Indian groups; Meigs (1993:4) used interpreters, and sent a letter to the Secretary of War introducing Charles Hicks as an interpreter. Later, the Cherokee Council also appointed Charles Hicks as the official interpreter with a salary of \$200.00 per year.

transcultural encounters in her research on Amazonian Indians. Though she specifically addresses the language use of Amazonian Indians in representing themselves to the international community, her research emphasizes the difficulty of delivering and receiving information between two communities speaking different languages.

Given that the Cherokee had no written language, it is doubtful historians will find any record of their response to Washington's address. That is not to say they had no opinion or that they did not discuss the points of the talk. We know from historical literature that each Cherokee town had a council house where members of the community—men, women, and children—met on a regular basis throughout the year.¹⁹ The forum for solving community problems was a seven-sided building located in the center of the village or town where occurred “all Publick and Private Business, relating to the Affairs of the Government, as the Audience of Foreign Ambassadors from other *Indian* Rulers, Consultation of waging and making War, Proposals of their Trade with neighbouring *Indians*, or the *English*, who happen to come amongst them” (Lawson 1967 [1709]:42).²⁰ Families representing the seven clans occupying the territory in and around the village or town seated themselves in the council house that may, like modern replicas in North Carolina, even have been marked with graphic symbolic images such as a

¹⁹ Moravian (McClinton 2007:224) diary entry of October 24, 1807 reports “the chiefs there would hold talks . . . there are supposed to be between four and five hundred old and young men, women, and children . . . as far as the eye could see into the woods, everything was full of ancient people . . . but there was such quiet and order that it amazed us! . . . Chiefs *Chuleoa* and *The Flea* spoke alternately, and the gathering listened reverently”; Timberlake (2007 [1765]:17) described the town-house “in which are transacted all public business and diversions”; Hatley (1993:8) wrote women joined men in the council house; Calloway (2008:55) states young warriors took the initiative and led the Cherokee into war.

²⁰ Adair (1930 [1775]:238) reported there were 64 towns and villages; Timberlake (2007 [1765]:21) wrote “I arose and went to the town-house, where I found the letter for them to the Governor of South Carolina.”

carved wooden mask representing each clan attending: Wolf, Deer, Bird, Paint, Long Hair, Wild Potato, and Blue.²¹ Reid represented the council as democratic in that “everyone was permitted to speak, and custom required that everyone be heard”; further, weapons were not allowed into the council house (2006 [1970]:30).²² Traveler and explorer John Lawson recorded in his journal that “whenever an Aged Man is speaking, none ever interrupts him, (the contrary Practice the *English*, and other *Europeans*, too much use) the Company yielding a great deal of Attention to his Tale, with a continued Silence” (1967 [1709]:43).

Differing Notions of Governance

The Cherokee may well have understood and looked forward to enjoying “all the good things which make life comfortable and happy”²³ according to Washington’s address; but undoubtedly the “talk” was received with skepticism given earlier conflicts with English, French, and Spanish governments, treaty failures, and the uncontrolled encroachment of illegal immigrant settlers on the Cherokee lands. Further, while Cherokee did not have a form of law based on Roman Civil Law or English Common Law recognized by President Washington and others, they might have been surprised to learn they were thought to have no laws whatsoever. The belief on the part of the

²¹ Reed (1993:5) explains that some clans were known by other names: Blue clan was also known as Panther; Long Hair clan was also known as Twister, Hair Hanging Down, and Wind; Wild Potato clan was also known as Bear, Raccoon, and Blind Savannah; Gallay (2009) fieldnotes report the Cherokee interpretive village presented a seven-sided council house displayed human, face-sized, wooden masks representing each the seven clans fixed to the support beams separating the seating area of each of the seven clans.

²² Timberlake (2007 [1765]:17) observed the town-house was a place “in which are transacted all public business and diversions.”

²³ Undoubtedly, Cherokee good life would have included harmony in the community and with the natural environment; or as Guénon (2004[1929]:10) writes “a reflection or image of true unity.”

colonists that Indians had no law occurred for at least two reasons. First, the decentralized clan government practiced by the Cherokee prior to the early nineteenth century stood in contrast to the model of state government followed by the United States. The second explanation for the belief by the colonists that the Cherokee had no law is that the colonists did not acknowledge women as having the ability to fulfill a leadership role in governance. These points merit extended explanation because they represent a major obstacle to the mutual understanding between political entities.

Regarding the first point, clan versus state, the model of state government meant a centrality of laws created for the entire society. In contrast, the decentralized clan system meant laws were created by individual clans prioritizing clan needs ahead of the needs of the greater Cherokee society. State government implied that all citizens were part of a single society and therefore served by one legal system. However, the Cherokee had no single legal system until after the first written laws in 1808 attempted to achieve that end. Therefore, to define them as a single state would be erroneous. Additionally, the American government subscribed to the philosophy of Manifest Destiny rather than the indigenous harmony ethos, thereby situating the “ideals of justice” within a social hierarchy that placed indigenous people at the lowest status (French 2003:8).

Differing notions of law and governance were further complicated by the multiple legal systems found, in what Pospisil calls “subgroups,” that can be located in any society (1967).²⁴ He explains there is no solitary legal system in any one society (Pospisil

²⁴ Pospisil (1967:8) defines “subgroup” used in this context as a “configuration of semiautonomous or autonomous groups possessing leaders with different personalities, abilities, education, and experience.”

1967). Moore expands Pospisil's claim that multiple legal systems are possible by explaining legal systems "can never become fully coherent, consistent wholes which successfully regulate all of social life" due to the competing demands of the semiautonomous fields (1978:3).²⁵ She defines semiautonomous fields along the lines of Pospisil's subgroup—as small groups that create their own enforceable rules that potentially compete with the rules of other smaller groups or the larger group within which they exist (1978:55-56). These smaller groups attempt to outline the expected behavior of their membership in order to achieve mutually defined goals. In turn, these mutually defined goals have the potential to compete with the goals of the larger society. The seven matrilineal clan subgroups situated within the greater Cherokee tribe illustrate this principle of multiple legal systems existing within a larger society.

Though the difference between clan and state is important, Malinowski has pointed out there are qualities of law and legal force that lie outside the parameters of "a definite machinery of enactment, administration, and enforcement of law" (1985 [1926]:14). According to Malinowski, one must look for law by identifying established rules, determining what forces framed the rules, asking how they are developed into binding obligations, and classifying them "according to the manner in which they are made valid" (1985 [1926]:14-15).²⁶ Rather than looking for Cherokee law by examination of established rules and asking how these rules became binding, the Euro-Americans looked for law according to their knowledge and experience based on a

²⁵ Moore (1978:3) writes "such rule-systems invariably include ambiguities, inconsistencies, gaps, conflicts and the like," which inspires those who would choose to disregard them. See Mueller (1957:545-578) regarding migratory divorce, self-divorce, and wife sales that worked as extra-legal processes.

²⁶ Llewellyn (1941:20-21) lists ideology, practice, and how disputes were handled.

monarchy. Indeed, examples of Cherokee subgroups included the war, peace, and kinship groups, that can be defined as legal systems based on Pospisil's criteria described in greater detail below.

Another criterion for making a determination of what makes law, according to Hoebel, is to remember to “neither blindly nor willfully force upon primitive data that are only relatively comparable the specific content of meaning associated with our terminology” (2006[1954]:20). Euro-Americans, for example, considered adultery a punishable offense and had the expectation that Cherokee would possess a similar concept. Adair determined the Cherokee had no laws regarding adultery and because of this declared the “Cheerake are an exception to all civilized or savage nations” (1930[1775]:154). What he failed to recognize was the possibility that his observation of “adulterous” behavior may instead have represented a form of hospitality provided by the village chief or headman.²⁷

Pospisil provides a clear definition of law that can be fittingly applied to Cherokee law of the seventeenth and eighteenth centuries. Whether for single or multiple legal systems, Pospisil suggests “law” has four common juridical qualities (1967:9). The first is authority, by which he means that decisions are made by leaders who are regarded as jural authorities by the followers, and the followers abide by the decisions of the leaders. Second is universal application, by which he means that decisions are applied to future cases with similar circumstances. Sanction is the third quality, that decisions are

²⁷ Lawson (1967[1709]:190) explains some women were known as “trading girls.” These women, according to Lawson, were “hired” by a stranger (only after the parents were consulted) with the proceeds going to the town headman. It is understandable that a European man might have misunderstood this process as a “marriage” and becoming confused when the “wife” committed adultery with another man.

supported by physical or psychological pressure. The fourth quality is *obligatio*, meaning decisions that entitle one party to a certain behavior from another party also obligate the second party to the same behavior. Cherokee law, following these juridical qualities, therefore contrasted with colonial law based on the monarchy.

The second point, that colonists did not acknowledge women as having the ability to fulfill a leadership role in governance, reflected the belief expressed by President Washington and other Euro-American men that women belonged in the home (Washington 1796; Brown 1995:28-29). Cherokee, however, demonstrated the cultural standard of permitting all adults to speak and participate in making decisions. Leaders in the town council were persuasive men and women who influenced the development of the legal system by responding to the dynamic needs of their neighbors and relatives. Hawkins recognized there were “great men who have been war leaders, and who although of various ranks, have become estimable in a long course of public service” (2003, 70S-71S).²⁸ Additionally, “being a good elder—and especially a priest²⁹—was the highest possible achievement” in the Cherokee community, according to Gearing, and could only be derived from a lifetime of “moral virtuosity in human relations” (Gearing 2007 [1962]:43-44).³⁰

²⁸ Hawkins (2003:70S-71S) spent most of his time with the Creek Indians, however, this description of a Beloved Man parallels that of the Cherokee. It is not surprising to see parallels in Cherokee and Creek given their close physical proximity as well as interactions both at war and at peace. Leadership qualities can be found in other areas of the world, for example, see Leenhardt (1979 [1947]:109).

²⁹ Gearing (2007[1962]) explains a Priest was a wise and knowledgeable person.

³⁰ Sattler (1995:222) stated “relative age carried greater weight than did sex in determining moral character among the Cherokee.”

Though Hawkins and Gearing emphasized activities of men, leadership status was not restricted to men. Women were also known to have demonstrated acts of bravery during war or oratory skills at town meetings.³¹ Timberlake expressed his astonishment at the unexpected actions of women when he commented that “the reader will not be a little surprised to find the story of Amazons not so great a fable as we imagined, many of the Indian women being as famous in war, as powerful in the council” (2007 [1765]:36). Timberlake’s choice of the word Amazon to describe Cherokee women at war or in council suggests these women possessed military prowess or leadership qualities normally considered by Euro-Americans to be the domain of men, in addition to their gender specific responsibilities as fecund culture bearers. We do not know if Timberlake was making reference specifically to the women warriors mentioned in the *Iliad*. He might have been referring to the qualities of the Amazons who were known to “fight men in battle” and were considered “men’s equals” (Lattimore 1967:158, 105).³²

Boundaries and National Headman

Clan government was not unknown to Euro-American (and then American) politicians and government leaders given the historical relationship between the Highlanders from the north of Scotland and the English monarchy. The Highlanders had a clan-based social structure similar to the Cherokee although patrilineal not matrilineal (Calloway 2008:7). According to Calloway, land in the highlands was owned, leased, and sub-leased with kinship groups holding the land in common and working it

³¹ Hill (1997:87) remarks Nancy Ward spoke during treaty negotiations in 1781 at Long Island; and the war woman of Chota (unnamed) spoke at the treaty negotiations at Hopewell in 1785.

³² Lattimore (1967) defines Amazons as a race of warrior women. Homer’s Amazons were also reputed to have been matriarchal, horticulturalists, and capable of infanticide (of the male children anyway), qualities also exhibited by Cherokee women.

collectively according to clan obligations that regulated social life with “the clan chief and tacksmen [who] oversaw the working of the system” (2008:6-7). Though Cherokee shared some qualities of the Highland form of clan society, they differed in their regard for land. Cherokee believed the land could not be owned by an individual because the “air, water and Land is the free gift of the Creator to all men, and when Land is traded it is always understood that only the right to use it is meant” (Kilpatrick 1966:194).³³

Prior to treaties with the United States, for example, the Cherokee people had no surveyed boundaries or land titles established by courts of law that outlined ownership of their territory. Bounded clan areas were defined by language and dialects, by names applied to particular places used by particular people, by hunting practices agreed upon (or contested) with neighboring tribes, by geographical landscape such as mountains and rivers, and by hand-made maps showing trade or war routes that Waselkov calls “graphic depictions of the balance of power among the southeastern Indians” because the maps used colors and geometric shapes to differentiate between Indian and European settlements (2006:445).³⁴ Spatial boundaries were further defined by ideologies grounded in the cultural understanding of the relationship with the environment that placed the Cherokee in an ambiguous status outside the American legal system. Cherokee did, however, own “improvements” (a term borrowed from Euro-Americans

³³ Moravian (McClinton 2007:251) diary entry dated March 1808 states an Indian friend, The Flea, remarked “it [the land] is basically not *our* earth, it is God’s earth. He gave it to us to live on it.”

³⁴ Hoebel (2006[1954]:6-7) lists qualities of a society that form a type of boundary: a pattern of interrelationships that separate one group from another making it a discrete entity, a group rooted territorially, and a specific culture (learned behavior); Cronon (2003:65-66) explains area place names “turn the landscape into a map which, if studied carefully, literally gave a village's inhabitants the information they needed to sustain themselves (for example: *Pokanoket* means “at or near the cleared lands”).

denoting property) made upon the topography that included cultivated fields, crops, pastures, orchards, granaries, ferries, fences, barns, houses, mills, livestock, etc. (Sweet 2002:125).

Maps discovered by archeologists suggest the Indians did have very definite ideas of bounded space separating themselves from other groups (Waselkov 2006). However, compared to the few inscribed deerskin maps depicting bounded territory, Euro-Americans produced written documents issued by government authorities that partitioned land according to lines of latitude and longitude (Cronon 2003:71). Other documents included colonial charters or land grants signed by the English Crown (Garrison 2009:180; Gordon 1733:2).³⁵ The colonists further marked out property boundaries according to land use, with agricultural parcels surrounded by fences or other structures. Boundaries for the Euro-Americans meant a control of the land and the products it produced.

This lack of clear boundary lines and territorial ownership influenced the Euro-American notion that the Cherokee had no law or formal government. But the worst problem they had in visualizing any Cherokee law was that the eighteenth century Cherokee clan-based system of government had no appointed or elected president or other leader authorized to make and enforce law for the entire tribe. Euro-American expectations that all indigenous people would have had one primary authority might well have been established by colonists of the sixteenth and seventeenth centuries who encountered the Powhatan Indians in the eastern part of what is now Virginia.

³⁵ For example the Massachusetts Bay Colony and the Georgia colony were charters.

Williamson reports the polity was “an association of small, semiautonomous political groups, each with its chief and his immediate subordinate chiefs, all more or less united under the leadership of one man known as Powhatan” (2003:47).³⁶ Each tribe stood independent of the other tribes; they were administered by a “*Wiroans* or chiefe Lorde” who may have inherited that position or been awarded the title based on “outstanding (military) accomplishments” by the *Mamanatowick* (known as Powhatan) and yet also remained under the command and control of the Powhatan “king.”³⁷ The laws enforced by the Powhatan were acknowledged (if not always understood) by representatives of foreign governments and entrepreneurial corporate bodies. Comparatively speaking, the laws of the variously sized clan-based Cherokee tribe were more fluid and dynamic due to geographically diverse locations and changes in population size that affected their intra- and intertribal relationships. Given that there were seven clans represented in every Cherokee town at any one time, the laws produced by those towns were complex and regarded by foreigners as obstacles to efficient negotiation of trade terms, land purchases, and economic exchanges.

An account of the difficulties of international negotiations with dispersed town groups is provided in Reid’s example of a meeting between some Cherokee and the new governor of South Carolina James Glen, in 1744. Governor Glen, who when learning 300 to 500 “savages” were descending on Charles Town to meet with him, ordered that only “the King or the Chief of the Nation with Six of His assistants [would] be allowed to

³⁶ Williamson (2003:47) states the Powhatan principal leader was called the *Mamanatowick*, who inherited some groups while conquering others.

³⁷ Williamson (2003:49, 68, 51, 68, and 137) explains a “Wiroans” (Werowance) may have been Powhatan’s brother-in-law, son, or grandson; or, “an outstanding military leader who had thereby achieved considerable political influence and the income that goes with it.”

come and one man from Each town” (Reid 2006 [1970]:58-59). Glen’s initial concerns were not necessarily for the safety of the citizens of Charles Town, though most likely a consideration; rather he was concerned with the expense of hosting such a large contingent of foreign guests during the duration of their meeting with him. If Glen had ignored the advice he received to allow every man, woman, and child to attend, be greeted by him, and be treated with equal respect, the history of this historic meeting might read more tragically.

Reid proposes that as early as 1725 there was a position he referred to as “national headman.” Reid describes him as someone involved in the international affairs of the aggregate communities and whose responsibilities closely resembled those of the town headman, though the town headman’s focus was on domestic affairs.³⁸ This national headman, unlike the town headman, was required to limit his duties to spokesperson or messenger, someone who represented the judgments and decisions of the national council to foreigners or non-Cherokee neighbors. Under no circumstances was he permitted to speak for the Cherokee other than repeat those policies already determined by the council. Reid appears convinced a headman at the national level existed as he states “the national speakership appears clearly in extant records but the town speakership must be implied largely from the existence of the national speaker” (2006[1970]:59). This statement is problematic. By his own account, Reid states the Cherokee used the term “headman” until they adopted the term “chief,” in the nineteenth century, a term they

³⁸ Reid (2006 [1970]:53, 57) states the Cherokee used the term “headman” until the nineteenth century when the Cherokee began to use the word “chief” which the Cherokee equated with warrior (“chief” adopted from the Euro-Americans).

equated with “warrior.”³⁹ He does not propose the Cherokee actually used the term “national” headman. It does not appear the Cherokee considered the aggregate towns and villages as composing a nation until after the written laws and constitution. At this point, although it is conceivable they could have been united according to their ethnicity as Reid has suggested, their separate ideologies created a barrier to political unity. Early observers such as Adair reported that every Cherokee town was independent of the other Cherokee towns and explained a warrior was capable of committing acts of hostility or making peace for his own town “contrary to the good liking of the rest of the nation.”⁴⁰

Possibly the national spokesmen to whom Reid referred might have included Euro-American appointments of Cherokee village chiefs or warriors to the position of national headman to accelerate or simplify dynamic international relations. Perdue points out that in the 1720s Major John Herbert, South Carolina’s Indian Commissioner, awarded a commission to a warrior of Keowee making him responsible for representing the Cherokee tribe in political affairs with South Carolina (1998:95).⁴¹ The French, likewise, attempted to “weld the whole Cherokee Nation into a political unit” sometime around 1736. Once their plan was discovered by the English their representative,

³⁹ Reid (2006[1970]:52), “We have no other term for this official except ‘headman,’ the word the Cherokees used. In the nineteenth century, they would adopt the American title ‘chief,’ which they thought was equivalent to eighteenth century ‘warrior,’ an appellation with few political connotations.”

⁴⁰ Adair (1930 [1775]:460) reported “but a few individuals are very cautious of commencing war on small occasions, without the general consent of the head men: for should it prove unsuccessful, the greater part would be apt to punish them as enemies.”

⁴¹ Gearing (2007 [1962]:85-86) notes that in 1730 Sir Alexander Cuming prodded the larger villages to appoint an Emperor of the tribe but “this action, however, seems not to have been accepted by many villages.”

Christian Priber, was arrested (Mooney 1975:3).⁴² It is possible Sam Houston might even have served as a national headman at some point. Houston was adopted by the Cherokee Chief *Ooleteka* when he was a teenager and reportedly served as Cherokee ambassador in an 1829 meeting with politicians in Washington, wearing Indian regalia (Nash 1999:10).

Reid does offer three examples of what he refers to as national headmen: Head Warrior of Tennessee (no name provided), 1725, met with Colonel George Chicken from South Carolina at Ellijay, a Cherokee town; *Skiagunsta*, 1751, met with South Carolina Governor Glen at Lower Cherokee (no specific town named); and Little Carpenter,⁴³ 1755, met with South Carolina Governor Glen at Saluda, a Cherokee town (Reid 2006 [1970]). Based on the geographic locations of the three areas mentioned, Ellijay, “Lower Cherokee,” and Saluda, Colonel Chicken and Governor Glen were meeting Cherokee who were from the Lower Settlement, the southernmost group physically closest to South Carolina. In that regard, it is entirely possible there was a “national” headman if the South Carolina government considered the Lower Settlement autonomous from the other three settlements: Overhill, Middle, and Valley. The officials from South Carolina were particularly interested in having the Indians of the Cherokee Lower Settlement on friendly terms given the trade interests of both parties. Moreover, the peaceful Lower Settlement served as a geographical buffer zone between the other settlements such as the

⁴² Mooney (1975:3) refers to a “French agent, Priber” as the person attempting to weld the Cherokee nation; Adair (1930 [1775]:252) provides a more in depth description of Priber, aka Christian Gottlieb Piber; Kelly (1978:235, n 6) describes Priber as a utopian socialist who was imprisoned by the British “on the erroneous suspicion that he was a French agent.”

⁴³ Timberlake (2007[1765]:37) observed the English gave Indians anglicized names, for example *Attakullakulla* was referred to by the English as “Little Carpenter” because he excelled at building houses.

Chickamaugans, considered a lawless group by some Cherokee, and by South Carolinians (Adair 1930 [1775]:272; Strickland 1975:48).

In spite of the Euro-American attempt to streamline political and economic affairs by the appointment of national headmen, more dispersed political relationships sometimes better met the needs of the colonial government. Gearing describes a conflict of interest between Sir Alexander Cuming and the South Carolina officials, the details of which are important in illuminating the conflicts within the Carolina government. Cuming appointed The Moytoy an “Emperor” in 1730 to act as the main political representative of the Cherokee. The test of this appointment occurred when South Carolina interrupted the flow of trade goods into Cherokee territory in retaliation for an attack on, and theft of, goods of a South Carolina trader. Though the intent of appointing an “Emperor” was to streamline negotiations, the South Carolinians found it more profitable to force a land purchase with an unnamed Cherokee delegation to settle the alleged theft of the trader’s property (Gearing 2007 [1962]:86). Cherokee village autonomy, in this case, proved to be a benefit for South Carolina trade practices, planned territorial expansion, and political dialogue.

The Harmony Ethos symbolized ideal behavior, but in some cases intratribal relationships became strained as these subgroups proceeded at cross-purposes, the Chickamauga, for example, composed of five Cherokee towns located along the Tennessee River and headed by Chief John Watts, declared war on the United States in 1792. By 1793 this declaration of war conflicted with expressions of peace offered by Chief Hanging Maw, who represented another group within the remainder of the

Cherokee tribe (Mooney 1975:62). Certainly the European colonial and military officials were interested in following some type of formal rules or international laws promoting their own economic or political advantages including binding contracts with an authorized representative of the Cherokee tribe. However, it remains doubtful that these national headmen spoke for the entire Cherokee Nation that included all four settlements.

Clearly laws became a significant marker of civilization from the perspectives of both Americans and Cherokee, but for different reasons. The Americans believed written laws indicated social supremacy over those people who had no laws and no writing system. The Cherokee created written laws to respond in-kind to the Americans that they were already civilized, they were merely misunderstood. Cherokee and European differences regarding law, leadership, power, politics, and governance generated problems addressed by both groups, though not necessarily with the goal toward mutual cooperation. Americans emphasized to the Cherokee the importance of developing a government similar to the republic; while the Cherokee continued to follow a dispersed, de-centralized form of governance. It became necessary for the Cherokee, therefore, to develop a unified front by transforming the unwritten laws of the tribe into published laws of a nation recognized by the international community that included the United States, while preserving the tenets of their culture. This effort, however, was not without difficulties as the Americans failed to acknowledge that the Cherokee people had laws.

CHAPTER TWO MONARCHY, TRIBE, OR NATION?

South Carolina Governor Glen was concerned with making a positive first impression when meeting the large Cherokee contingent in Charles Town, but seemed uncertain whether to consider the Cherokee leadership along the lines of a monarchy or tribe or nation. This hesitancy can be found in historical documents of the period including the Constitution of the United States, which considered indigenous populations tribes.¹ Adair compared the Cherokee to the Israelites who “were divided into Tribes, and had chiefs over them” (Adair 1930 [1775]:16). Haywood, relying on his material from the research of “the ‘company of gentlemen’ who constituted the Antiquarian Society,” described a people who have a “supreme head, whom they call king” and a great council made up of either hereditary or esteemed men called “chiefs” (1959 [1823]: xviii).² Lawson referred to a nation being ruled by a king who together with his War Captain and counselors decided the affairs of the people (1967 [1709]: 204). Based on seventeenth and eighteenth century observers, however, Lawson and Haywood’s reference to a “king” suggests a village chief while Haywood’s “chiefs” suggest clan elders who were members of the council. Representatives from each of the seven clans

¹ United States Constitution, art. 1, sec. 8. (Foreign trade) reads: “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

² The members of the Antiquarian Society were leading citizens, doctors, lawyers, ministers, an artist, and two future governors of Tennessee. These men agreed to collect historical information “from the most authentic acceptable sources” that pertained to the section of the state assigned to them.

formed the group of elders in the town council who worked in concert with the chief and priests guiding the tribe according to agreements determined by a consensus during council meetings (White 2002:119; Perdue 1996:4).

This chapter provides a brief depiction of Cherokee governance prior to and following European contact. During the pre-contact period, the Cherokee exhibited a decentralized form of tribal government European nations considered incomprehensible and inadequate for the conduct of foreign relations. Indeed, another common misconception was that the Cherokee had no laws or leaders. Post-contact, dynamic international events influenced the Cherokee toward a more centralized form of governance that incorporated European legal concepts with traditional ideologies.

A Monarchy?

Compared to Governor Glen's doubt about whether or not the Cherokee were part of a monarchy or nation, Reid confidently considers the seven-clan system of government as representing a "nation" based on their organization as an ethnic rather than a political entity "bound by ties of consanguinity" and according to their culture that stressed "mutual defense, discouraged intratribal strife, and was underscored by a common tradition of unwritten laws" (Reid 2006 [1970]:36).³ Reid thus regards the Cherokee as a nation according to ethnicity and ties of blood. The term "blood" should not be taken literally in the sense that everyone could trace their genetic material to an ancestor for, as he explains, it was the feeling of blood relationship created by kinship rules and terms. In this case, kinship established a "legal cohesiveness provided by the mutual rights and

³ Reid (2006[1970]:36) views the legal system as the common denominator in the Cherokee society.

duties existing between clan members” (Reid 2006 [1970]:36). The foundation of this ethnic entity was the kinship system that formulated and enforced laws at the town level when there was no national government, no principal chief, and no king. Kinship relationships provided the basic structure that bound individuals to the whole creating the “feeling of blood relationship and solidarity” extending beyond the town level (Reid 2006 [1970]:48).⁴

While Reid’s argument that the Cherokee were a nation based on ethnicity has merit, the Cherokee did not declare themselves a nation until 1827 and not until after the introduction of their laws, their Constitution, and their appointment of a Principal Chief. Prior to this, leaders of the town council meetings had variously been described by those who met them as kings, supreme headmen, or chieftains—a hierarchy of authority along the lines of a monarchy.⁵ Nevertheless, they should not be considered a monarchy based on their social organization represented by: discrete town councils of various sizes with each having leadership positions recognized by its town population; their independent foreign policies; and lack of requirement to answer to a higher authority. Therefore, for the historical period prior to 1827, I refer to the Cherokee as a tribe. After 1827, however, the Cherokee’s own designation as a nation is crucial. Changing the classification from tribe to nation also reflected changes in the legal system. To understand these changes, however, it is necessary to understand the underlying tribal

⁴ Reid (2006[1970]) does not see the seven clans as dividing the nation but rather that they provided a structural unit.

⁵ Timberlake (2007[1765]:36) referred to them as chief or headmen; Adair (1930 [1775]:459) reports “their highest title, either in military or civil life, signifies only a Chieftain”; Lawson (1967 [1709]:42) called them king; Haywood (1959 [1823]:255) writes “they have a supreme head, whom they call king; but his power is rather recommendatory than coercive.” However, Haywood then goes on to write “in every village there is a chief, or head, whose authority extends to his own tribe or family.”

structure. To colonial eyes, it lacked laws and leaders; but it nevertheless had a well developed political and legal system.

A Tribe?

Parallels can be drawn between Evans-Pritchard's criteria for a tribe and how the Cherokee regarded themselves prior to the nineteenth century, although with some exceptions. The anthropological definition Evans-Pritchard offers as to what constitutes a tribe includes the following nine qualities: common name; common sentiment; common territory, moral obligation to unite in war, moral obligation to settle disputes by arbitration, segmented structure having opposition between segments, each tribe having a dominant clan (whose linear structure and territorial system is important), each tribe is a unit in a system of tribes, and age-sets are organized tribally (1969[1940]:122). As Evans-Pritchard explains, there was no overall court system or law that addressed claims or solved disputes of the Nuer people; and there were no central authorities "with power to adjudicate on such matters or to enforce a verdict" (1969 [1940]:162). Conflicts were resolved through the kinship system or using a leopard-skin chief as mediator.

The Cherokee shared some of the nine qualities noted by Evans-Pritchard. For example, they had a common name. The common name the Cherokee referred to themselves as was the *Yûñ'wiyă*, meaning "Principal People," with the name "Cherokee" having "no meaning in their own language, and seems to be of foreign origin"—"Chalaque" in DeSoto's narrative 1557; "Cheraqui" in French documents 1699; and

“Cherokee” in English from 1708 (Mooney 1975:3).⁶ The Principal People also shared a common sentiment, the harmony ethos. Furthermore, they shared a defined territory. Their home, prior to European exploration and immigration, was the territory on the southeastern portion of North America that stretched across areas now included in North Carolina, South Carolina, Georgia, Tennessee, Alabama, Kentucky, and Virginia. Maps produced by Indians of the eighteenth century marked physical boundaries such as rivers and mountains; but also marked ethnic boundaries that separated themselves from the Europeans (Waselkov 2006).⁷ Treaties between the Cherokee and the United States government that documented the boundaries of Cherokee territory according to surveys deemed legal by the United States, also served to erode those boundaries with each land cession attached to each treaty. By 1839, much of the territory had been ceded according to treaties and then absorbed by neighboring states with the majority of the Cherokee population ultimately forced west on the march that became known infamously as the Trail of Tears.

On the other hand, the Cherokee lacked some of Evans-Pritchard’s nine characteristics. One trait that the Nuer had—a moral obligation to unite in war—did not apply to the Cherokee (Evans-Pritchard 1969 [1940]:122). Should one Cherokee town have decided to go to war with the settlers in Tennessee, for example, the remaining towns in the Cherokee territory were under no obligation to follow and had the option to stand down with impunity. Historical records provide examples of the division of the

⁶ Perdue (1998:41) writes the Cherokee refer to themselves as *Ani-Un Wiya*, the Real People; Kupferer (1966:223) states the Cherokee used the phrase *Ani-yun-wiya*, the principal people.”

⁷ Waselkov (2006) states some painted deerskin maps depicted social and political relationships with friends (in black) and foes (in red); locations of towns with Indians marked by circles and Europeans marked as squares; war path as a broken line; and solid lines as paths of peace.

Cherokee leaders prior to and after the American Revolution with some Cherokee preferring to support the British in hopes of preventing the expansion of colonists into Cherokee country. Other Cherokee preferred to support the French.⁸ Timberlake corroborates this as he observed the Cherokee preferred the politeness and generosity of the French who seemed to more closely identify with the Cherokee as a people than the English, who exhibited a more superior attitude. Timberlake reported “it was not only their general opinion, [preference for the French] but the policy of most of their headmen; except *Attakullakulla*, who conserves his attachment inviolably to the English” (2007 [1765]:37). However, even *Attakullakulla* must have had reservations about supporting the English because Mooney writes after the Cherokee chief agreed to gather warriors and assist the British in the construction of a fort, he (or his council) stopped the work and turned the approaching garrison away because “they did not want so many white people among them” (1975:30). Perhaps this was a negotiation strategy of *Attakullakulla* because after additional negotiations, the Chief agreed to resume building the fort and continued to assemble Cherokee warriors for the English. In any case, there was no requirement for joint military action of all Cherokee warriors.

A second Nuer trait—to settle disputes by arbitration through a person such as the leopard-skin chief—was not followed by the Cherokee people. There was no one person in the aggregate tribe, for example, who weighed the evidence and arbitrarily decided the disposition of miscreants from disbursed towns or villages. Members of the matrilineal clan, rather than one appointed representative of the tribe, considered infractions and

⁸ Mooney (1975:29) writes during the French and Indian War (1754) the English attempted to get the Cherokee to ally against the French; however, some Cherokee preferred the French over the British.

made decisions following breaches to the laws. Women as well as men made informed decisions based on complex information that considered the individual involved in the event, the circumstances of the situation, and existing tribal and kinship laws.

These points deserve some extended consideration due to the importance of demonstrating how multiple semiautonomous social fields existed within the greater tribe and were actively involved in creating, following, and enforcing law. The following examples, demonstrating life and death events such as homicide, abortion, and infanticide, provide evidence of existing laws at the subgroup level.

Homicide, for example, was considered to fall under the purview of the matrilineal⁹ clan. In the event a person died as a result of aggressive or accidental involvement of another person outside the membership of the clan of the deceased, the death was avenged. For example, if a warrior died while at war any captives taken would be offered to the deceased's family, the matrilineal clan, as an exchange that "helped restore order to the cosmic balance that was disrupted when someone was killed" (Calloway 2008:66).¹⁰ A woman of the clan had the authority to decide whether or not to spare the life of the captive. It was within her prerogative to adopt the captive to replace her loss, to accept the captive as property along the lines of a servant, which she had the

⁹ Matrilineal is a form of descent with children belonging to the mother's clan and not the father's clan. The Cherokee were generally matrilineal with the groom moving to the home of the bride.

¹⁰ Gilbert (1943:207) explains "it is the idea of the blood connection of the clan which allies with the blood revenge principle"; Gearing (2007 [1962]:21) notes "all clansmen were guilty if a clansman had killed, and all male clansmen were responsible for revenge if a clansman had been killed."

option to adopt later, or, she could have condemned the captive to death.¹¹ However, not all captives were held in the community or killed outright. One example provided by the Journals of the Commissioners of the Indian Trade of South Carolina, September 20, 1710-August 29, 1718, deserves special attention because it illustrates how Cherokee women were interpreting their right to determine a captive's fate. According to the journal, a Cherokee woman named Peggy exchanged a French war captive given to her by her brother, for "eight Yards of Strouds" and a gun (McDowell 1955:131). The journal entry refers to the French man as "belonging to her," and requiring a "payment" (McDowell 1955:126). Peggy also received a gift of clothes for herself and clothes and a hat for her son though this presentation was not part of the payment due as Perdue describes, but rather an encouragement to continue "the Services and Friendship of Peggy (the Charikee Indian Woman) to the English" (McDowell 1955:128; Perdue 1998:69). Perdue further states "she [Peggy] clearly was a courier for her brother, and the original exchange had been strictly a male transaction," as Peggy's brother "had purchased the man from the warrior who had captured him" (1998:69). Perdue, more than likely, considered the original exchange as being strictly a male transaction as warriors typically returned from war with prisoners. The official journal, however, does not indicate the brother made the exchange with a warrior. We only learn from Peggy's account that the Frenchman was exchanged between Peggy's brother and an unnamed person for a "Gun, a white Duffield Match Coat, two broad Cloth Match Coats, a Cutlash, and some Powder

¹¹ Timberlake (2007 [1765]:37) observed "they [Beloved Women], by the wave of a swan's wing, deliver a wretch condemned by the council, and already tied to the stake"; Hatley (1993:57) writes a population crisis necessitated the practice of accepting other Indian groups and adopting war captives to replace lost adults.

and Paint” (McDowell 1955:27).¹² However, war captives, as stated above, were turned over to women of the clan for disposition, and in this case, Peggy’s decision to trade the captive for European goods followed traditional matrilineal practices, though with an innovative means of disposal of the captive. While the women of the clan had the right to pass judgment of life or death on a captive during the council meetings, it was the deceased’s older brother (or if there were no older brother, a male elder of the deceased’s clan) who had the power to implement that decision.¹³

It is unclear in the literature how the matrilineal clan would have addressed the death of one person at the hands of another person with both being members of the same clan. One special case may provide the answer as to how the clan would respond to such an instance. Reid writes about the death of a Blind Savannah by the actions of another Blind Savannah. The story begins with the brawl between an elder and prominent member of the Blind Savannah clan by the anglicized-name of Sour Mush and an unnamed member of the Paint clan (Reid 2006[1970]:76). Sour Mush was, according to Reid, beaten up. His anger apparently was redirected from the Paint man who beat him to the young men of the Blind Savannah clan for not retaliating for this mistreatment. Ultimately some men of the Blind Savannah clan did exact revenge on the Paint man responsible for beating Sour Mush; however, the Paint man died from his injuries.

¹² This recorded case of a Cherokee woman trading with the commissioners of South Carolina also provides evidence that in addition to local trade, the Cherokee women participated in long distance trading. Though the hunting economy of men was significant as Perdue states (1998:76), women were not necessarily relegated to an agricultural economy.

¹³ Gilbert (1943:219) explains the word “brother” included biological brother; male parallel-cousins; her mother’s mother’s brother; her father’s mother’s brother’s son. This kinship structure includes males in the same generation as the female Ego and two ascending generations (her parent’s generation and her grandparent’s generation).

Because the young men of the Blind Savannah were directly involved in killing a member of the Paint clan, the entire Blind Savannah clan was held responsible and “liable to the Paint clan for one life” (Reid 2006[1970]:77).¹⁴ However, because any clansman’s death was acceptable as an exchange, one of the young men responsible for the Paint clansman’s death suggested the Paint clan kill James Vann, who was equally responsible because he too was a Blind Savannah (though Reid states it is unclear if Vann was actually part of the group responsible for the death of the Paint clansman).

According to Reid, Vann was at a gathering in the company of his uterine uncle (Vann’s mother’s brother, also a Blind Savannah) when members of the Paint clan intending to exact their revenge approached. Presumably to save his own life, Vann shot and killed his mother’s brother in front of the Paint clansmen, settling the account between the Paint and Blind Savannah clans—a life for a life. It appears James Vann was not immediately punished by the Blind Savannahs for taking the life of another Blind Savannah as he lived long enough to establish great wealth in the Cherokee Nation.

Of course other options for settling a death debt were available including some type of reimbursement or payment, shaming, or a purification ceremony presided over by a town priest during the Green Corn Ceremony that marked the beginning of a new year and a fresh start (Anderson 1996:400; Kilpatrick1966:184).¹⁵ However, if the person were accidentally or deliberately mortally wounded by his or her father, the death was

¹⁴ Recall Gearing (2007 [1962]:21) wrote “all clansmen were guilty if a clansman had killed, and all male clansmen were responsible for revenge if a clansman had been killed.”

¹⁵ Anderson (1996:400) states murder was not forgiven; however, it seems likely this was a guideline with the clan making the decision based on all the facts; Kilpatrick (1966:184) also writes if the slayer stayed in the town of safety until after the Green Corn Dance, all transgressions were forgiven.

considered a homicide (French 2003:990; Reid 2006 [1970]:40).¹⁶ Because the membership of the clan was determined by consanguineal and unilineal descent through the mother, children automatically inherited membership in their mother's clan at birth or adoption, which included all the protection by that clan (Haines 2005:122-123; Williams 1972:134; Anderson 1996:398).¹⁷ The child's father, on the other hand, whether determined to be *de facto* genitor or *de jure* genitor,¹⁸ remained external to his wife's clan according to kinship law that determined exogamous marriage. While the married couple shared a matrilineal residence, the husband's marginalized social position outside the wife's clan limited his influence and status placing him subordinate to the men of his wife's clan (Anderson 1996:398; Gilbert 1943:199). More importantly, because he was not considered a member of the clan he married into, he was regarded as a social outsider. Under kinship law, if the father was determined to have been responsible for the death of the child, the wife's clan was within their right to exact blood revenge without suffering a revenge attack by the kinship clan of the father.

Though a father would be blamed for the death of any child belonging to a clan different from his own, women of the clan had the option to practice abortion or infanticide without clan punishment and without consulting their husbands (Olbrechts 1931:17-33; French 2003:90; Johnston 2003:55). It is worth expanding on the topic of

¹⁶ Reid (2006[1970]:40) states a child was a member of his or her mother's clan and the father was a member of a clan different from his wife and child.

¹⁷ Consanguineal defined as "kin linked by a common biological substance; that is, they are kin by birth"; and unilineal defined as "descent through a single parental line," by adoption, for example (Barfield 2003:84, 112).

¹⁸ Scheffler (2001:18) defines *de facto* genitor as the man who impregnates a woman producing a child; but the *de facto* genitor has no legal rights in relationship to that child. *De jure* genitor represents the man who is the father of the child according to law and by legal right.

the right of a woman to practice abortion or infanticide because this right provides information as to how Cherokee defined membership in the tribe. According to Olbrechts and Gilbert, infants were not named until the fourth or seventh day of their lives. Until then, the infant was not considered quite human in terms of having a soul and therefore could not be a member of the matrilineal clan (Olbrechts 1931:29; Gilbert 1943).¹⁹ When the family waited four or seven days to name the child, this short period represented a liminal stage as the soul passed from one stage of existence to another. The priest chief interviewed by Longe stated the soul of the deceased leaves the body after four days (1969[1725]). Olbrechts and Gilbert tell us infants were named after four or seven days. In birth as in death, the soul apparently spends at least four days leaving one realm and entering another. What happens to the soul during this four-day interval is unclear. This transitional stage when the soul is departing or arriving in relation to the corporeal body represents a segment of time considered very dangerous for the individual involved as well as the people associated with that individual. In the case of the fetus or infant, the period of time in which the soul is settling places the infant outside the clan in the marginal position similar to that of the father—social outsider. Undoubtedly, during her pregnancy, the mother existed in a physical and social liminal status as did her unborn or newborn child with the exception that the mother had clan membership while the unborn or newborn did not. The significance is that the mother had rights to her body and what the body produced (blood, flesh, and bone—not a human with a soul) while the

¹⁹ Gilbert (1943:252, 398, 254) explains “later on in life new names may be acquired by the child, descriptive of its character or achievements”; Perdue (1996:5) also states in addition to receiving names from relatives, some Cherokee chose or received Christian names when baptized; Johnston (2003:49) writes Christians from the northern states sponsored (Johnston writes “adopted”) Indian children and gave the children Christian names “as a symbol of religious and cultural conversion.”

unborn or newborn had no rights. However, once the infant received a name he or she was considered part of the mother's lineage with all the rights to clan protection and status.

These examples of laws created and enforced by the matrilineal clan regarding homicide, infanticide, and abortion provide evidence that Cherokee had laws though they existed at the subgroup level within the greater social structure of the tribe according to Pospisil's guidelines for the discovery of kinship law at the subgroup level. The following section emphasises this interpretation by following Pospisil's criteria for law: an identified authority, application, sanction, and obligation.

Tribal Subgroups

The clusters of towns scattered throughout the southeast portion of the continent that made up the Cherokee tribe, bound by ethnicity and ties of consanguinity as Reid has described, did not have a centralized government or sense of national identity until the first decade of the nineteenth century. The development of independent legal systems in each town occurred as the need to interact independently with colonial immigrants, traders, and international political units such as European governments or other non-Cherokee groups increased. Kinship relationships greatly influenced town efficacy, allegiances, and prosperity (both material and social). Cherokee practiced exogamous marriage, meaning women married men from a clan different from either their mother's or their father's clan. Typically, the clans were matrilineal and directly influenced the composition of towns. For example, allegiances between towns during periodic wars with non-Cherokee populations were determined not by the coercion of a central political

office but determined by the clan elders, both men and women, born into or married into clans. One clan likely enjoyed peace and prosperity with their non-Cherokee neighbors on their western border, for example, while those same neighbors might have been considered enemies to the Cherokee clan located on their eastern border (Gearing 2007[1962]:4). Most traders, military personnel, missionaries, and federal government agents failed to comprehend the existence of Cherokee law because their frame of reference narrowed their expectations of government according to the more familiar monarchy or state systems and failed to consider possible alternatives.

Although laws are often regarded as a type of control over a particular segment of society in an effort to achieve “social order and individual protection, freedom and justice,” they also represent a blending of enduring norms and customs within a legal system (Moore 1978:2; Pospisil 1967:3).²⁰ Each town depended on the full cooperation of its priests, warriors, and residential subgroups, often an aggregate of two or more generations of adults related by marriage or blood. The kinship subgroup situated within the greater tribe that made up the towns provided the foundation for the relationships and connections between the “bodies of binding obligations” found in “all the phases of tribal life” described by Malinowski (1985[1926]:58).²¹

The more complex forces surrounding the construction of laws emerged from the kinship foundation expanding outward into intratribal relationships. The kinship

²⁰ Moore (1978:2) comments that although law seeks to achieve this goal, Kinyon’s use of the word “attempt” as in “society’s attempt, through government, to control human behavior” emphasizes the potential conflict between those who write the laws and those whose behavior the law is directed.

²¹ Malinowski (1985[1926]:58) interprets civil law as “the positive law governing all the phases of tribal life, consists then of a body of binding obligations, regarded as a right by one party and acknowledged as a duty by the other, kept in force by a specific mechanism of reciprocity and publicity inherent in the structure of their society.”

subgroups that made up the towns provided the source for the germination, production, and enforcement of unwritten laws that ultimately influenced the foundation for the first written laws of 1808. Pospisil's guidelines provide the basic design for discovery of kinship in law at the subgroup level: the identification of the source of authority, the determination of universal application, the recognition of sanctions, and the verification of obligations. These qualities correspond with the authority exhibited by women elders of the clan, the application of rules to all members, and methods of sanction.

The creation and enforcement of laws was a dynamic process determined by and dependent on the collective experiences of both men and women. The general opinion found in some documents, however, suggests women occupied a subordinate social position to men (Anderson 1996:409; Johnston 2003:52; Perdue 1998; Yarbrough 2004). This belief in a social hierarchy occurs, no doubt, due to the prominent position of chiefs and warriors, predominantly men, who served as the public face of the tribe found at war, at peace negotiations, and at trade with foreigners. The public discourse and action of men during these transactions, and the interest of foreigners to deal exclusively with Indian men, gave the mistaken appearance that women did not participate in activities outside their homes and gardens.

However, as Rogers (1975) has demonstrated in her research of a peasant community in France, the view that women are necessarily bound to be in the subordinate position to men may be due to a focus on the formal levels of politics, which tend to underrepresent the activities of women in the informal or household sector. The informal sector mentioned here provides an example of what Pospisil and Moore refer to as a

semiautonomous field that is situated within the larger social organization. Rogers's reference to the formal levels of politics meant activities outside the household sphere that brought public recognition and prestige to the village men from outside their communities (1975:742). In this case, Rogers asserts men and women "actively engaged in maintaining the illusion that males are, in fact, dominant," which tends to perpetuate the myth of female subordination (1975:729).²² While she does not attempt to explain the purpose of this mutual deception she does believe it is useful to begin looking at different forms of power found in female roles rather than regarding male roles and forms of power as the only ones. Formal levels of politics found in accounts of Cherokee history, for example, do not typically include rhetorical contributions by women.²³ Based on the historical evidence that men and women had equal opportunity to speak at town councils and that personal power could be accumulated by anyone, it is unlikely women regarded themselves either fully dominant or fully subordinate in social positions.

Perdue states Cherokee men and women shared the responsibility for maintaining harmony and balance in the community following the example of the original husband and wife, *Kana'ti* (meaning The Lucky Hunter) and *Selu* (meaning Corn), respectively (1998:13). The names of the first couple suggest the cultural establishment of the division of labor assigned to Cherokee men and women. However, these roles were known to be bridged when the situation required, with women going to war, acting as

²² Rogers (1975:729) defines "myth" as those truths that do not equate to the everyday world in which they exist.

²³ Dunaway (1997:11) remarks one notable exception was Beloved Woman Nancy Ward who spoke against ceding more land to the Americans; Hill (1997:87) also makes reference to Nancy Ward who spoke to young warriors advising them to cease fighting.

interpreters, or speaking publicly.²⁴ For example, in the 1700s women produced baskets and pottery and left their towns and farms to sell these products, often traveling long distances (Hill 1997:98; McClinton 2007). It was not the production of the baskets or pottery but the marketing and transportation of those products that propelled women into the public domain. The records of the Commissioners of the Indian Trade in South Carolina provide another example of Peggy, who travelled from the Upper Cherokee territory to Charles Town to sell her prisoner (McDowell 1955:82, 125). The Moravian diaries are replete with examples of women anonymously referred to as “an Indian woman” or “a couple of Indian women” trading sugar or huckleberries for sewing needles or cloth (McClinton, 2007:56, 120). Hawkins recounts in his travel journal entry dated November 26, 1796 that he passed “two Indian women on horseback, driving ten very fat cattle to the station for a market” (2003:18).

Historians and anthropologists often attribute a decline in power and status of women to the deerskin and fur trade because guns and horses enabled men to become proficient hunters (Anderson 1996:403; Hatley 1995:10).²⁵ However, from the eyewitness accounts just mentioned, women actively participated in trading practices that required them to enter the public domain. Women rode horses to herd their stock across the territory, potentially carried guns for protection or hunting, and negotiated trade or sales of that stock or prisoners within a particular market.

²⁴ Hawkins (2003:21) wrote a “halfbreed wife of Col. Waters” served as his interpreter; McDowell (1955) provides multiple examples of the use of interpreters needed to make successful trade partners with various Indian groups.

²⁵ Hatley (1995:10) reports “for Cherokee men, trade was the moral equivalent of war.”

The symbolism offered by *Kana'ti* and *Selu*, therefore, also invokes the complementary relationship of women and men in managing the affairs of the towns. As cultural standards, *Kana'ti* and *Selu* worked together to provide a harmonious existence for the family that included setting and enforcing boundaries. This symbolic duality found in multiple social realms in the Cherokee tribe follows Needham's analysis of symbolic classification by partition. According to Needham, a common form of classification is found "in the symbolic linking of categories by pairs" with the pair representing "individual categories of things by opposition according to context" (Needham 1979:8). In the context of law of the seventeenth and eighteenth centuries regarding marriage, for example, the women elders of the clan had the authority to determine if a marriage was appropriate, and if so, the preparations for that marriage. The men of that same clan reinforced the decisions made by their kinswomen by participation in the production of the ceremony. This should not be interpreted as a hierarchical relationship with women over men; instead, it is an illustration of authority directing power in a complementary way and in a specific context.

Euro-Americans failed to recognize the possibility of the existence of laws at the subgroup level, especially those laws managed and enforced by women because women were often regarded as incapable or incompetent (Perdue 1998; Yarbrough 2004; Gearing 2007[1962]). Outsiders underestimated such subgroups and the importance of women in them. Cherokee women were often depicted as uncivilized because they did not measure up to the Euro-American standards of womanhood; and, ethnographers who depended on early American documents for a glimpse into Cherokee life often repeated these

sentiments. For example, though Gearing's focus was on the structural poses of men in the political organizations, his brief reference to women's work as drudgery, because it tended to be filled with "incessant and various demands of daily household work," diminished the significance of contributions women made to the survival of Cherokee society outside the domestic domain (2007[1962]:2).²⁶ Hatley identified the underlying issue of what made a woman civilized as the significant difference between Western and Cherokee notions of womanhood: the divergent ideas of sexual freedom; patterns of authority; places of power; and gender roles (1995:xiii).

The town elders, both women and men from multiple clans, shared authority and power roles (depending on context of situation) in the council house based on their wisdom earned through experience and age. Policy decisions made during council sessions relied on the input from all members though the opinions of respected elders undoubtedly reflected their wealth of experience and personal power achieved over a lifetime and held more weight. Elders, for example, contributed to the discussions and made recommendations as to the potential success or failure of going to war though any final decision was based on consensus.²⁷ In addition to the elders, the Beloved Men and Beloved Women, those prominent men and women who had distinguished themselves in some way, provided their recommendations (McClinton 2007:195; Reid 2006[1970]:69; Timberlake 2007[1765]:37).

²⁶ Gearing (2007[1962]:23) makes reference to "the universe of persons for the women was analogous" to the "structural poses" of men though he fails to elaborate; Shoemaker (1995:3) writes "historical accounts of Indian women usually depict them as 'squaw drudges,' beasts of burden bowed down with overwork and spousal oppression."

²⁷ Kelly (1978) notes the younger generation of warriors exerted their own influence on the council with some successes that led to war contrary to the recommendations of the sagest advisors.

One group prominent in the Cherokee population was comprised of female elders referred to as Beloved Women. Some Beloved Women, in addition to being respected elders who had demonstrated a lifetime of moral virtue, occupied a cultural category not understood by Euro-American men. These women shared a gendered²⁸ phenomenon not generally addressed by most historians and anthropologists except in the briefest of comments (Gilbert 1943:350; Hatley 1995:8). The title, “Beloved Woman,”²⁹ designated respected female elders of the clan who were at a physical stage of life that rendered them incapable of fulfilling the quintessential role of the ideal woman—reproducing children. Fogelson captures this concept when he describes a mother as someone who is “regarded as a bond of living, procreative substance, not a metaphoric figure of speech” (1990:174). And Johnston writes children learned the “nature of womanhood” through the stories of *Selu* that equates motherhood with “fertility, nurture, and the earth” (2003:24). These usually post-menopausal women entered a new social category that made them eligible for participation in events requiring ritual purity because they were no longer shedding blood during menses or during war.³⁰ Ritual purity was necessary for any man or woman to participate in events that enabled the flow of spiritual power to temporal entities.

²⁸ Williamson (n.p., Forthcoming) explains the difference between gender and sex is that “sex refers to the biologically-given reproductive attributes of the person, while gender refers to a culturally constructed category of person that may or may not include the genitalia as a criterion.”

²⁹ McClinton (2007:195) shows a diary entry dated July 5, 1807, that recounts a visit from a very old and respected woman named *Chiconehla*, who had been in a war and wounded numerous times; Reed (1993:21) refers to them as “War Women”; Haywood (1959 [1823]:260) referred to them as “Pretty Woman”; Timberlake (2007[1765]:37) refers to them both as “War Women” and “Beloved Women”; Halliburton (1977:11) referred to them as “Beloved Women.”

³⁰ Fogelson (1990:173) explains “menstrual blood was regarded as a potent force possessing rare destructive capacity”; Perdue (1998:36) notes “menstruation and childbirth, hunting and warfare deeply embedded a person in a category”; Altman (2006:70) writes menstruating women and wounded warriors were excluded from interacting with each other.

Active blood loss by wounded warriors or women in menses represented an uncleanness that precluded them from participation in ritual events.³¹

Beloved Women continued to perform women's activities such as making pottery or cooking meals, though the context of these activities expanded from the common to the spiritual and from domestic to public. Unlike the Nuer woman, who because she was unable to conceive a child was considered a man, the Cherokee Beloved Woman was not considered a man. For example, Beloved Women prepared the ritual drink at annual ceremonies; made the pottery vessels designed to contain and protect sacred fires or store sacred brews; or participated in the healing and purification rites of returning warriors injured in battle.³² The participation of women in more sacred ceremonies requiring ritual purity represents evidence that women and men shared power in spiritual contexts, in the public domain, and without prejudice.

Cherokee considered the natural cycle of menses a period of danger to the rest of the community, which would exempt women from active participation in ceremonies that required ritual purity.³³ Ethnographers use the term pollution to describe the reason for this prohibition and separation; however, it seems more likely the real danger was that women had the potential to condemn the community to hardship in their disregard of

³¹ McClinton (2007:27) reports "elderly women took care of warriors' wounds" because "they lacked the powers to harm or cause death" (injured and weak people were susceptible to malevolent forces); Fogelson (1990:174) refers to Molly Sequoyah's interpretation of blood in relation to crops, that growing maize was a sacred activity "and that the presence of 'bloody young men' in the cornfields could endanger the growing crops."

³² Adair (1930 [1775]:169) mentions an ark that contained "several consecrated vessels, made by beloved superannuated women"; Timberlake (2007 [1765]:39) refers to a Beloved Woman who prepared a "medicine" in a twenty-gallon vessel holding river water intended for consumption by the community.

³³ Douglas (2004[1966]) provides a more in-depth discussion of pollution and taboo.

community law.³⁴ The law in this case required the woman to separate herself from the community for a specific amount of time and submit to the purification process prior to reentering the group. It is not that the person developed supernatural powers to destroy the crops, poison the fishing weir, or frighten the wildlife though breaches of clan law had consequences. Uncontrollable events (e.g. menses, war injuries, death) created social disorder that ruptured community harmony; purification rituals restored community harmony (Douglas 2004[1966]).³⁵

A woman's separation from the clan during these physical changes assigned her to a liminal social status during which time she changed temporarily from insider to outsider. Warriors wounded in battle occupied a similar liminal stage, healing in areas away from the community. The common theme of a person shedding blood, whether during menses or war injury, is that Cherokee equated strength with crimson-colored blood and weakness with dull, brownish blood (Fogelson 1990:73; Gilbert 1943:355).³⁶ "Weak blood" meant a vulnerability to the depredations of witches who caused disease and death and whose actions were to be avoided at all costs (Mooney 2008 [1891]:32; Kilpatrick 1966:193).³⁷ Scratching, or the shallow cutting of skin in particular patterns and amounts using snake teeth or thistle, drew crimson-colored blood that was believed to make the recipient stronger (Fogelson 1990:173). Strength in this case meant physical. For example, a person about to play in the traditional ball game needed physical strength

³⁴ Fogelson (1990:173) refers to pollution as "constituted conceptions of negative or dangerous power"; Gilbert (1943:207) notes that if a woman prepared food for her husband during her menstrual cycle, he would get sick.

³⁵ Douglas (2004 [1966]:117) writes disorder "sybolises both danger and power."

³⁶ Gilbert (1943:355) notes the wounded stayed in the council house until healed.

³⁷ Kilpatrick (1966:193) writes the scratching drew crimson colored blood and was equated with strength if the blood flowed rather than quickly clotting.

to trounce the opponent (Fogelson 1971). Scratching, however, was also used as a form of public punishment, undoubtedly to inspire the miscreant to higher moral standards and greater strength of character.³⁸

Tribe to Nation

On September 11, 1808 the Cherokee National Council of Chiefs and Warriors signed the first set of laws that led to a more centralized government in the form of the Cherokee Nation. Cherokee notions of power derived from the physical environment and spiritual energies, then, stood in opposition to the power of the written word that happened to be English, a dominant foreign language for almost all of the Cherokee population.³⁹ The written word for some Cherokee people became an important marker of civilization that represented power achieved through laws created by man rather than energy sources generated by the natural world. The laws agreed upon by the National Council also represented a binding commitment among all the citizens of the Nation to honor those decisions made by their leaders (Reid 2006 [1970]:62). In addition to providing tangible evidence that supported Cherokee political rhetoric, these laws served to publically redefine the tribe as a nation bringing it more in line with American ideals and standards of civilization and modernity. Cultural constructions of meaning seen in

³⁸ Hatley (1993:49) explains “most drunken infractions of village rules were punished by ‘scratching.’”

³⁹ The non-literate Cherokee depended on literate Euro-Americans and Indians. See McClinton (2007:247) for the diary entry that reports “Brother Gambold has had a lot to write for the chiefs at Mr. Vann’s.”

the Cherokee written word reflected the developing notion of how some Cherokee began to redefine, but not replace, their values.⁴⁰

Men and women leaders who lived a lifetime of moral virtuosity began to share leadership positions with men educated by missionaries or private schools. This legislating body believed these laws would be necessary to firmly establish the nation's sovereignty, to gain international recognition of their status as an independent nation, and to protect their territory from further impending imperialist interests of the United States (Strickland 1975; Gearing 2007 [1962]). The governments of England, France, and Spain, that earlier competed for the opportunity to claim the New World, now represented an opportunity for political alliance and economic markets for the Cherokee resources (Calloway 2008; Vaughan 1982; Strickland 1975). Just as Americans enjoyed the “best of both worlds: an *economic* connection with Britain . . . and a *political* stance that immunized it against the kind of coercion or persuasion too often visited upon the fledgling or even established country,” the Cherokee likewise attempted to cultivate international acceptance (Rossiter 1971:105).

The new laws also represented the formation of a blended political ideology that generated a sense of nativism—the perpetuation of culture against American acculturation. The temporal lag between when the laws were enacted by the National Council in 1808 and when the judges were appointed in 1820 thus posed no immediate problems for the Nation, with individual towns continuing to maintain autonomy within

⁴⁰ Haines (2005:187) explains there are four themes regarding the construction of meaning: meaning is open to new values; meaning is context-driven, how people understand their world; meaning is order-seeking; and meaning uses marking as in the written laws and the constitution.

the emerging government. Prior to and following these written laws, the matrilineal kinship group continued to determine a person's relationship with kin and non-kin, membership in the tribe, in the division of labor, raid or war duties, mourning observations, marriage, and inheritance rights.

For example, a woman had the right to choose her husband as long as she followed clan norms of selecting her mate from her mother's father's clan or her father's father's clan (Gilbert 1943:238; Kilpatrick 1966:185). Then, two events occurred that changed how women chose their husbands. First, conflicts with other groups and Western diseases decreased the number of available men in the exogamous marriage process (Sattler 1995:214). "Available" here refers to men who were unmarried or married because Cherokee practiced both polygyny (including sororate) and monogamous marriage (McClinton 2007:54, 124, 126; Gilbert 1943:252; Perdue 1998:44).⁴¹ Second, the European traders, entrepreneurs, and African freedmen seeking their fortunes in Cherokee territory became an alternative source of potential husbands. While women continued to select their spouses from the mother's father's or father's father's clans, new clan-approved options expanded their choices to non-Cherokee men across ethnic and territorial boundaries.

The non-Indian alternative to the customary marriage choice for some women was acceptable and desirable though at least one contemporary historian has interpreted Cherokee law regarding marriage as an attempt by the Cherokee legislature to "control the marital behavior of Cherokee women because they had the ability to create new,

⁴¹ McClinton (2007:54, 124, 126) shows diary entries that reveal Mr. Parris and Mr. McDonald married sisters.

legitimate members of Cherokee society through reproduction and marriage” (Yarbrough 2004:386). However, the law made no attempt to control women; rather, the law addressed the increasing number of single immigrant men arriving as blacksmiths, coopers, soldiers, freedmen, or ministers with the decree that “any white man who shall hereafter take a Cherokee woman to wife be required to marry her legally by a minister of the gospel or other authorized person after procuring license from the national clerk for that purpose” (The Cherokee Nation, &C 1826:10).

There are several features of this law that provide answers to questions regarding the intent and purpose of Cherokee legislators who wrote the law and who the law protected. First, this law appears to displace the traditional marriage process by determining a marriage could only be considered legal if the couple were married by a minister or other authorized person. Undoubtedly, this regulation of marriage was meant to impress upon the United States government and its citizens the validity of the Cherokee marriage vis-à-vis law because Christian Americans recognized Christian marriage as a legal contract. It becomes problematical to interpret any law written so long ago from a twenty-first century standpoint, but using a presentist historical perspective, the authorized person could be considered one of the resident clan elders—a type of loophole in the law that allowed an engaged couple to follow clan marriage practices. Those Cherokee men and women who were educated by missionaries or other private schools in America had the option to marry according to traditional practices or marry by a minister of the gospel according to their preferences. Judges were not appointed until 1820 so the possibility of having some kind of Cherokee Justice of the Peace or lawyer

available for civil marriage ceremonies, in addition to those conducted by ministers, was improbable.⁴²

A more plausible explanation for the phrase “authorized person” would be that the law was written by Cherokee legislators to permit the option of including the town Priest in the marriage ceremony. Prior to the written laws, as Gearing explains, “legitimate marriages were ceremonially recognized by the topmost village official” (2007[1962]:21). The Priest-Chief, as the “foremost village official,” was involved in the ritual recognition of marriages and “act[ed] as if clanless and on behalf of the total village” (Gearing 2007[1962]:22). Village Priest-Chiefs in this instance occupied a type of legal office, agreed upon by the people, which gave him the authority to officially recognize the marriage event. With the local authorized person officiating, women continued to exercise their clan right to a traditional marriage without contesting the written law of the Nation.

Second, the law makes specific reference to a white man (as opposed to non-Cherokee, or “any” man). This law protected the women from their European and American spouses in the event the couple permanently separated (the Western term would be divorce) because according to divorce laws in Europe, the husband controlled the children and the property, which stood in opposition to the clan marriage rights to children and property (Mueller 1957). Under the auspices of the new law, the Cherokee women would continue to receive protection from her clan and the Nation while the man would be required to pay a sum determined by the Nation for “breach of marriage” and

⁴² Meigs (1993:86) diary entry reports William Lewis Lovely marrying Persis Goodrich by Jn^o McEwen esq^f indicating the couple was not married by a minister of the gospel.

would lose his Cherokee citizenship thus assigning him to a different social category—illegal resident (Cherokee Nation, &C 1826:11). Perdue further suggests an individual with no kin ties, such as a divorced white man, would be considered “something less than a person” meaning the person had no reciprocal relationships that would provide clan protection or benefits (1998:49).

Third, the law was written in a deliberately ambiguous manner to allow a continuance of traditionally directed marriage practices that would not conflict with the written law. In spite of the professional literature that judges the laws as impinging on women’s rights, the laws protected women’s rights (Dunaway 1997:10; Hill 1997:96).

It is not possible to know with certainty who wrote the laws. They were probably written by respected elders, Beloved men and Beloved women, graduates of the missionary and public schools, honored warriors, and town chiefs.⁴³ This legislating body, in cooperation with the town councils, assembled to write the marriage law as a kinship group would be expected to, that is, protecting the rights of mothers, sisters, or daughters. The women continued to choose their husbands according to tradition; the husband joined her in her natal residence yet he remained outside the clan; children of the union became permanent matrilineal clan members; and permanent separation of the married couple required the man to leave the family residence without a division of property. In other words, the law restated matrilineal clan rights in legal terms understood by the American government.

⁴³ Though the laws were signed by a few men, historical literature demonstrates that both men and women determined policy.

The following chapters will provide a more in-depth account of the application of written laws to the dynamic cultural experiences of Cherokee women. Specifically, chapter three addresses the nature and definition of marriage according to the Euro-American understanding of what determined “marriage” that contrasted with the Cherokee marriage model. Chapter four deals with the blending of Euro-American and Cherokee laws, how this blending protected the rights of Cherokee women, and outlined the disposition of property should the intermarriage end. Clan marriage practices and inheritance procedures continued, following matrilineal rather than patrilineal patterns, as will be examined in the concluding chapter five.

CHAPTER THREE MARRIAGE

Anthropologists have struggled in their attempt to classify marriage along the lines of cohabitation, sexual rights of the man and the woman, legitimizing children, and property distribution (Bohannan 1968; Gough 1968:50; Leach 2004[1961]). The difficulty lies not in defining marriage per se but in defining marriage so that it describes all possible human marital unions worldwide. This varied list of marital qualities poses problems in how to understand how marriages are created, sustained, and operate to extend the kinship relationships that underlie the construction of Cherokee law. This chapter will nevertheless attempt to capture the meaning of marriage by providing a model for the Cherokee marriage process that begins with a simple exchange and continues until the parties involved separate either through death or permanent separation. Only through such an understanding is it possible to then consider the way new Cherokee written law both reflected traditional Cherokee marriage and also changed it.

The Marriage Bond

The word “marriage” is a Western¹ term defined as a legal union of a man and a woman as husband and wife. As such, it can serve as only one example of the creative

¹ American Heritage College Dictionary, 3d ed., s.v., etymology: Middle English and Old French.

cultural determinations of what constitutes a marriage bond. For example, this limited definition negates the possibility of other constructions of matrimonial unions such as the Kwakiutl marriage of a son-in-law to “the left foot” of his father-in-law or to his “right arm” or some other part of his body in order to acquire titles to property, valuable prerogatives, and return payments of brideprice (Benedict 1989[1934]:207). Similarly, Nuer marriage of woman-to-woman, ghost marriage, or marriage to an infant-bride would also be excluded from the common Western notion of marriage between a man and a woman (Evans-Pritchard 2003[1951]:108-117; Evans-Pritchard 1970:115).

In addition to marriage being defined in Western terms as a union of a man and a woman as husband and wife, Western marriage must also be declared legal, meaning recognized by the state. This too poses problems for understanding Cherokee marriage. One law professor, John Reid, for example, doubts the validity of calling Cherokee nineteenth century marriage “legal” on the grounds that “there was no enforceability [sic], no elements of *causa*², and no consideration”³ in Cherokee society (2006[1970]:114). He dismisses the possibility that a betrothal created through the exchange of gifts could serve as a type of contract, though he remarks “the Cherokees could have had rules of their own” (Reid 2006[1970]:114). He bases his opinion that a Cherokee marriage should not be considered a legal contract on the premise that a wife did not become a member of her husband’s clan, her husband did not gain rights to her property, and her husband’s clan

² *Causa*: “a comprehensive term for any proceeding in a court of law whereby an individual seeks a legal remedy” as in “the family brought suit against the landlord,” <http://wordnetweb.princeton.edu/>.

³ *The American Heritage College Dictionary*, 3d ed., s.v., Consideration, defined as “something promised, given, or done that has the effect of making an agreement a legally enforceable contract.”

had no interest in her children.⁴ Such conditions reflect the patriarchal bias found in Western cultures that certainly should not be applied as a blanket approach to all marriages.

Reid further overlooks the possibility of the existence of a “legal” contract at the level of a semiautonomous social group rather than at a state level, as with women in a clan context having the authority to regulate marriages and their brothers⁵ having the power to enforce those decisions. Though Cherokee of the seventeenth and eighteenth centuries did not have a form of law similar to Roman Civil Law or English Common Law, there was a kind of kinship “law” at the subgroup level, situated within the larger social system. Kinship relationships within the matrilineal group formed the framework for marriage regulations, with members of the kin group obliged to abide by those regulations. The law applied to all members; non-compliance with the law was sanctioned by the use of physical and psychological methods (Gearing 2007[1962]);⁶ and all parties were expected to abide by those decisions.⁷

Malinowski reminds us to look for qualities that make up law and legal forces outside the usual parameters of “a definite machinery of enactment,” and to find law in a society by asking who framed the rules, and how were these rules developed into binding obligations (1985[1926]:15). Evans-Pritchard illustrates the concept of finding law and

⁴ “Interest in her children” meaning rights acquired through the matriline.

⁵ Gilbert (1943:219) explains according to Cherokee kinship terminology, the word “brother” included biological brother; male parallel-cousins; her mother’s mother’s brother; her father’s mother’s brother’s son. This kinship structure includes males in the same generation as the female Ego and two ascending generations (her parent’s generation and her grandparent’s generation).

⁶ Gearing (2007[1962]:21) writes “women publicly fell upon the wrong-doers and whipped them.” Other forms of sanctions included ridicule, teasing, joking, or ignoring the errant person.

⁷ These qualities follow Pospisil’s (1967:8-9) four common qualities that make up law.

legal forces outside the normal definite machinery of enactment in his account of Nuer woman-to-woman marriage. Nuer marriage provides a good general comparison to the Cherokee despite the former being patrilineal and the latter being matrilineal. The strict requirements and adherence to Nuer marriage law were typically followed by a man and woman of the tribe through courtship, consultation with the family elders of both parties, the payment of bridewealth, observance of ritual ceremonies, and then, only after the birth of the first child, was the marriage legally recognized. One exception to this practice was the model of a woman who took another woman as her “wife” rather than taking a man as her husband. Evans-Pritchard explained the woman who initiated the marriage was more often than not barren and “for this reason count[ed] in some respects as a man,” a gendered quality that situated her in the same social position as any Nuer man considering marriage according to bridewealth negotiations or inheritance transactions (Evans-Pritchard 2003[1951]:108).⁸ The woman-groom might also have practiced magic or divination, two areas of expertise that linked her to the spirits and positioned her as socially marginal to what were considered the expectations of a typical Nuer woman—wife and mother. Once a woman-groom married according to the requirements of the tribe, her woman-bride would have been expected to become pregnant according to the traditional marriage precept that regarded the birth of a child as the final step in the marriage process, making the union a contract accepted by the couple and by their respective families. Strict adherence to the ceremonial rites necessary to

⁸ Evans-Pritchard (2003[1951]) explains that “when the marriage rites have been completed the husband [the barren woman who acts as husband] gets a male kinsman or friend or neighbour, sometimes a poor Dinka, to beget children by her wife and to assist, regularly or when assistance is particularly required, in those tasks of the home for the carrying out of which a man is necessary.”

contract a marriage provided legal protection to the woman-husband de jure genitor from any potential claims attempted by the de facto genitor against a daughter's future bridewealth payments of cattle and spears. A Nuer man would never have considered marriage to another Nuer man because as Evans-Pritchard clearly explained, without male and female children there can be no continuation of the agnatic lineage so important to their political, economic, and social existence.

If a woman were to marry and not bear children, her husband's family had the option to demand a return of the bridewealth from the woman's family and send the bride home to her parents. Since the marriage was determined to have been legally binding only after the birth of the first child, a wife incapable of bearing children could not contribute to the agnatic lineage of her husband nor could she provide her natal family with the opportunity for bridewealth necessary for her brothers to negotiate for their future wives. This marriage thus follows Mauss' argument that marriage is a legal bond between two people "with a view to founding a family, *de facto* or *de jure*—in principle a family in the legal sense" (2007[1967]:133).

Leach also has maintained there can be no definition of marriage that applies to all cultures; however, he does list "classes of rights" that can be used to help characterize the marriage tie (1955:183). Briefly, these classes of rights involved the determination of the child's legal parents, the sexual rights of the married couple, domestic and labor responsibilities, property rights, and the "relationship of affinity" between a husband and his wife's brother. His particular interest in providing subtypes of this marital institution was in response to the limited definition of marriage according to the *Notes and Queries*

(1951) that stated “Marriage is a union between a man and a woman such that children born to the woman are recognized legitimate offspring of both partners” (Leach 1955:182). Leach provides ten useful standards for understanding marriage; however even these standards do not attempt to accommodate the change in social values experienced by evolving communities.

Longe’s account of the ways and manners of the Indians called Charikees [sic] offers a description of a marriage process that shares some classes of rights described by Leach, though not all (Longe 1969[1725]). Longe’s brief description understates the complexity of Cherokee marriage process, but it remains the most complete version so far discovered in the historical literature and thus deserves some extended consideration, along with that of Reid.⁹

The Cherokee Marriage Model

Longe lived with the Cherokee for a number of years, learned their language, and informally interviewed at least one of the Indian priests,¹⁰ ultimately sending his recollections to England’s Society for the Propagation of the Gospel in Foreign Parts (1969[1725]). Briefly, he offered a chain of events that began with the promises made by the young man and the young woman to each other that they intended to marry. Once their intentions had been spoken, their first action was to acquaint “the ould people with itt . . . the father and mother of the young man sends for the the [sic] perents of the young

⁹ Lawson (1967[1709]:302) provides an account of a Cherokee marriage that follows Longe’s except he states “the Man pays so much for his Wife; and the handsomer she is, the greater Price she bears”; though Lawson may be confusing the payment with gift exchange.

¹⁰ Williamson (2003:173) explains the terms “priest” (and conjurer) were used by the English and applied to the Powhatan. This appears to have continued in general use by European traders, military personnel, and other immigrants when referring to other Indian groups such as the Cherokee.

woman and Consults about the mater” (Longe 1969[1725]:30). If all the parties agreed on the engagement, the young man cut wood and placed it at the door of the young woman’s home. If the young woman used the wood to cook a meal and the young man was invited to eat the food she had cooked, the bride’s parents, assisted by the groom’s family, hosted a feast for the bride and bridegroom’s relations (Longe 1969[1725]:8, 30).

Reid provides three additional accounts of the Cherokee wedding as told by travelers who, he remarks, “assumed that matrimony among the Cherokees resembled the European marriage” (2006[1970]:113). The first account has the groom sending a portion of venison to the bride with the bride returning an ear of corn. The second version involved an exchange of clothes and goods between the groom and the bride’s brother. If the bride’s brother wore the clothes, the bride and groom were considered married. Reid discounts the possibility these stories represented actual ceremonies because they appear at face value to be widely dissimilar. Indeed, he comments that if the “early informants on Cherokee law looked hard enough, they could find what was not there [a wedding ceremony]. Better had they not made the effort” (Reid 2006[1970]:114).

Regardless of Reid’s narrow legal focus, these brief accounts reveal common characteristics found in the representations of marriage offered by historical literature on the Cherokee (Lawson 1967[1709]:192; Reid 2006[1970]:113; Longe 1969[1725]:30). However, for several reasons, it should not be assumed that these accounts represented how every Cherokee marriage took place. First, the towns and villages were separated by geographically diverse regions with dispersed groups whose population sizes fluctuated

due to war and disease (Gearing 2007[1962]; McDowell 1955).¹¹ Second, the introduction of new social models from around the southeastern portion of country provided ample inspiration for innovation in the marriage ceremony. Cherokee were known to have adopted war prisoners from Creek, Catawba, Choctaw, and other indigenous tribes with some war prisoners becoming fictive kin and marrying into their adopted tribe (Perdue 1998:54; Anderson 1996:412). Third, accounts of Cherokee marriages varied due to the predominantly male, Euro-American, Christian, and patriarchal perspective that often neglected crucial details about marriage, misrepresented their observations, or embedded personal motives in the construction of the ethnographic knowledge.

Timberlake, for example, was a young British soldier who spent three months among the Cherokee in the eastern part of the area now known as Tennessee. Lieutenant Timberlake combined his military duty as a cartographer with his assignment as diplomat to the Cherokee people by mapping the navigable waters of the territory as he attempted to reassure the Cherokee that the British were interested in peace. He believed mapping the waterways would provide an “infinite service [to the British military], should these people ever give us the trouble of making another campaign against them” (Timberlake 2007[1765]:xxv). Timberlake’s personal motive for producing a memoir of his experiences in the wilderness involved debtor’s prison and an eager audience of English men and women with a limited and romantic knowledge of North America. He observed

¹¹ Gearing (2007[1962]:80) notes that the Cherokee were “surrounded by tribes with whom there were frequent hostilities; at other times relations of trade and more casual contacts existed”; McDowell (1955: x, 14) journal records that during Indian wars, captured Indians were sold as slaves at public auction in Charles Town.

that Cherokee had “no kind of rites or ceremonies at marriage, courtship and all being, as I have already observed, concluded in half an hour, without any other celebration, and it is a little binding as ceremonious; for though many last till death, especially when there are children, it is common for a person to change three or four times a-year” (Timberlake 2007[1765]:35).

Notwithstanding these source differences, marriage in the Cherokee tribe had a definite cultural pattern with at least three themes presented in the versions described above. The first is the exchange of gifts. The second is the involvement of the members of the clan found in the two ascending generations to Ego¹² as well as Ego’s generation. Third is the public recognition of the marriage. Exchange, assembly of the elders, and public gatherings taken together formed the marriage process that bound a couple in a legal contract—a formal agreement enforced by kinship law. Each of these themes is presented in more detail below.

Gift Exchange

Gift exchange between the man and the woman in this clan-based society illustrated the importance of establishing reciprocal dependence through the exchange of inalienable objects. Such reciprocal dependence involved a change of social status as the couple moved from discrete to combined, or, single to married. Weiner defines inalienable as “possessions that are imbued with the intrinsic and ineffable identities of their owners which are not easy to give away” (1992:6). Individual and family

¹² Dictionary of Anthropology, 6th ed., s.v. Ego, “Used in the anthropological charting of kinship to represent the arbitrarily designated individual who stands at the center of the system.”

possessions included as inalienable are intangibles such as ancestors, extended kinship relationships, knowledge, and personal power.¹³

Historical and anthropological material tends to equate the man with hunting prowess and the woman with agriculture or household and child rearing responsibilities, although these activities were not exclusive to either gender since men were known to work in the fields and women were known to hunt, go to war, and participate in sacred rites (Gaul 2005:5; Anderson 1996:397; Fogelson 1971:329). Women who went to war were not considered men; and men who worked in the fields were not considered women in the same way the barren Nuer woman became a man.¹⁴ More importantly, gift exchange between two people considering marriage did not indicate an economic transaction, but instead signaled a gendered behavior that symbolized the person (Strathern 1988; Leenhardt 1979[1947]:129).¹⁵ Needham presents this more eloquently as he states “symbolism is doubly necessary: to mark what is socially important, and to induce men [by which I am confident he meant to include women] to conform in recognizing the values by which they should live” (1979:5).

Gregory writes gift exchange creates a personal relationship between the donor and recipient compared to a commodity exchange that establishes a relationship between the objects exchanged. A gift must be repaid and “what a gift transaction desires is the personal relationships that the gift creates, and not the things themselves” (Gregory 1982:19). Sahlins presents a similar description of exchange based on the relationship

¹³ Mauss (2000[1967]) includes total services and counter-services, contractual gifts, and not commerce.

¹⁴ Recall from chapter three, Marriage Bond, regarding Evans-Pritchard.

¹⁵ Leenhardt (1979[1947]:129) poetically refers to a gift as “the body of the message: the object and meaning of the message.”

between the exchanging parties, but also the “material unbalance and the leeway of delay” (Sahlins 1972:193). He refers to marriage gifts, for example, as often unequal in terms of quality or value.¹⁶ Inequality, in this case, is beneficial because as Sahlins explains, “the relationship is maintained by virtue of ‘the shadow of indebtedness,’ and there will have to be further occasions of association, perhaps as occasions of further payment” (1972:222). Whether a young man presented his intended bride with a leg of venison, a cord of chopped wood, or a verbal pledge, his prestation represented a form of communication as well as a transfer of objects. In the case of the groom exchanging clothes with the bride’s brother, the acceptance of the clothes represented a symbolic expression of kinship: the “other” becomes a “brother.” It was not that the brother needed clothes, nor did the young woman need to be provided with venison or piles of wood for her fire. This simple exchange represented the foundation upon which a more complex system of symbolic classifications was created between the groom, the bride, and their respective clans (Strathern 1988:xi).¹⁷

Marital gift exchange also represented the social status of the giver. For example, a man offering a woman a particular type of gift in the context of proposing marriage demonstrated his status in the tribe as an adult, his access to high ranked goods acquired by personal skill and effort, and his level of personal power acquired from the natural spirits and ancestors imbued in his clan name. Prior to any exchange of gifts between a

¹⁶ Sahlins provides an example of an asymmetrical exchange: fish against pigs. He goes on to write that even if similar items are exchanged, one exchange partner may appear to receive more than the other exchange partner, “at least for the time being” (1972:222). As will be seen in chapter five, this delayed reciprocity had a bearing on the legitimacy of the Cherokee marriage.

¹⁷ Strathern (1988:xi) explains “the action is the gendered activity.”

betrothed pair, the people involved would have had to meet the social criteria of eligibility.

A boy who had not achieved social puberty would not have been in the position of offering a leg of venison as a betrothal gift because he would not have been considered a man and therefore not eligible to become a husband or father according to traditional criteria. To be considered a man, the adolescent would have had to know the sacred prayers or rituals necessary for being granted pardon for killing the deer enabling him to hunt successfully (Mooney 1995[1900]:251). While the boy more than likely observed the men of the clan working and using the tools and materials necessary for a successful hunt, and though he heard the sacred prayers, his equal participation in these activities would have been limited due to his age and social status (Strathern 1988; Olbrechts 1931; French 2003).¹⁸ The critical under-pinning to his education was his kinship relationship with his mother's brother; or, a classificatory uncle in his mother's clan and mother's generation (Anderson 1996:398; Reid 2006[1970]:40). That is not to say he was estranged from his pater or genitor; but that the matrilineal kinship structure placed more emphasis on the mother's brothers as members of the same matrilineal group. Fathers no doubt took an interest in their children; however, they were regarded as having a greater interest in their clan—their mother's lineage—and the children of that clan.

The rite of passage that marked the movement from adolescence to adulthood for the Cherokee boy more than likely varied from clan to clan but involved his separation

¹⁸ Strathern (1988:ix) explains the categories of “persons, artifacts, events, sequences, and so on which draw upon sexual imagery—upon the ways in which the distinctiveness of male and female characteristics make concrete people's ideas about the nature of social relationships.”

from the women's domain and introduction into the men's domain. Gearing introduces the concept of "structural poses" that characterizes how the Cherokee society saw "itself to be appropriately organized at a particular moment for a particular purpose" (2007[1962]:15; Gearing 1958). Structural poses do not provide evidence of a ritual marking the social movement from boy to man for the Cherokee; however, the poses describe how a man interacted with another man or other men during tasks such as hunting, defense, council, or agricultural activities. Specifically, the men were interacting according to expected patterns of behavior that excluded children (Gearing 2007[1962]:19). Following Van Gennep's definitions of social and physical puberty, it might well have been that a boy's status was determined by the elders of the clan based on his physical maturity, skills necessary for the chase, contributions to the community, and ritual knowledge. These would have enabled him to live as a man—a rite of "separation from the asexual world" followed by a rite of incorporation "into the world of sexuality" (Van Gennep 1960 [1908]:67). The Cherokee indicated a change of social status from boy to marriageable youth, for example, by awarding the boy with a new name based on his participation at war (Reid 2006[1970]:43).¹⁹ Additionally, changes to a young man's external appearance, such as personal decorations, clothing style, or a particular tonsure, would have symbolically marked a particular social status.²⁰

¹⁹ Reid (2006[1970]:43) provides the example of how a name change reflected the status change of boy to warrior: the name "Catawba Killer" indicated the youth had been to war, a man's domain.

²⁰ Lawson (1967 [1709]:190) reports the trading girls "are discernable, by the Cut of their Hair; their Tonsure differing from all others"; Williamson (1979:395) notes "virtually every society attaches significance to head hair at least, and often to hair elsewhere on the body as well"; Leach (1958:153) writes "every major change in the individual's social status requires signification; change in hairdressing is employed for this purpose simply because it is obvious and easy, not because it is specifically a 'sexual' symbol."

Just as a young man moved from adolescence to adulthood, a young woman was considered eligible for marriage following the purification ritual subsequent to her first menses, usually between the ages of twelve and fourteen years (Lawson 1967[1709]:35). Adair referred to the use of “lunar retreats” when a woman confined herself during menses, and only after a cleansing in deep water, could she return to her family and her community (1930[1775]:129-130). Rituals included separation of people from their communities and the use of water to purify, to conjure away disease or evil influences, or to wash away the relationships between the deceased and the living (Olbrechts 1931:18; Fogelson 1977:187). The phrase “going to water” literally and figuratively illustrates the power of water to perform according to the desired need—cleansing, healing, or renewing strength.²¹

Regardless of how the ritual was enacted, whether it occurred during a new moon, daybreak, or midday, it appeared to prepare the individual for the future by washing away some part of the past in preparation for the future. A young woman’s future as a bride and mother required a change in her social status from child to adult that was symbolically demonstrated by the separation and the bathing. Van Gennep offers an explanation that passing from one social sphere to another is usually marked by public ritual that changed the social status of the individual (1960[1908]:3). The act of “going to water,” in this case, can be seen as a public ritual that marked a change of social status because for the Cherokee, water was believed to be a source of energy that enhanced

²¹ Mooney (2008[1891]:56) mentions the players of the Ball Game (the genesis for modern lacrosse) collectively dipped their playing sticks into running water as a ritual ceremony; Hill (1997:3) writes *Amo-hi atsv-ski* was “an activity and ritual that preceded or followed every important event”; Altman, (2006:20) describes how Cherokee used the healing powers of rivers in religious rituals.

one's personal power in preparation for the new social status (Fogelson 1977:186). The newly transformed girl became eligible to participate in the marriage process although, as will be explained later, her participation was not without the influence of the women of her clan.

Her acceptance of the venison gift from the intended groom (or any other type of gift particular to regional customs) and her return gift set into motion three events marking the exclusivity of the relationship.²² First, she indicated to the young man that she had agreed to enter into a social relationship with him, and, by entering into that relationship with him she precluded the advances of other potential suitors for marriage. Social relationship in this case did not necessarily include an exclusive sexual relationship. Lawson reported that prior to marriage the young women were at liberty to develop multiple sexual partners with the "Multiplicity of Gallants never being a Stain to a Female's Reputation, or the least Hindrance of her Advancement, but the more *Whorish*, the more *Honourable*" (1967[1709]:40). Lawson leaves it to the reader's imagination to assess the reputation of the "*Whorish*" young men who consorted with the young women prior to marriage. It appears likely that any assessment of the Cherokee woman's reputation as promiscuous reported in the historic literature was based on the Euro-American sexual standard and not the Cherokee insouciance about the *Flos Virginis*.²³

²² Reid (2006[1970]:113) lists examples of items exchanged as venison or clothes; Longe (1969[1725]) writes the man cut wood.

²³ Lawson (1967[1709]:41) uses the phrase "*Flos Virginis*" which is the Latin term for virginity; Adair (1930[1775]:133) implies a promiscuous woman when he refers to Dark Lanthorn as "no stranger in the English settlements." I interpret this European focus on a woman's virginity as indicating how the Europeans regarded themselves as morally superior compared to the Cherokee, who they believed, were in need of moral guidance. Ortner (1981:16) recommends examining prestige systems that "directly affects cultural notions of gender and sexuality."

The event following the exchange of gifts that marked the exclusivity of the relationship involved the connection between the young woman and her descent group, those persons related to her “through females only” (Fox 2003[1967]:43).²⁴ Though the extended families on both her father’s and mother’s side undoubtedly participated in some capacity, her mother, her mother’s sisters, her mother’s mother, and her mother’s mother’s sisters would have been held accountable for her knowledge and proficiency in the management of home and garden.²⁵ A proper marriage depended upon the ability of the woman to cook, as reflected in the expression used by a Cherokee husband: “*akstayu uski*, she’s my cooker” (Gilbert 1943:226). In this regard, the young woman offers the young man an inalienable gift—her social identity as a person linked through her descent group. As the young woman was growing up, she might have heard the Cherokee myth about the “Ignorant Housekeeper” recorded by Mooney that served as a warning to all girls interested in getting married and to all young men who wanted a “cooker.”²⁶

As the story begins, an old man whose wife has died tells his unmarried son he must find a bride. The bride in question is responsible for cooking food for her husband and father-in-law. Her first attempt at preparing a meal is walnut hominy, which, upon closer inspection, included the shells. Disgusted, the father-in-law exclaims “you think

²⁴ Fox (2003[1967]:43) writes the group “will restrict the inheritance of its territorial rights, property, title or whatever, to the children of its female members.”

²⁵ Gilbert (1943:216-221, 227) lists classificatory kinship terms that situates the women of the father’s clan outside the membership of the child’s clan and distinguishes “certain relatives toward whom specific behavior is due.” The father’s sister, for example, does not appear to participate in the education or rearing of their brother’s children.

²⁶ Myths recorded by Mooney should not be understood as realistic events occurring in the past, nor should they be regarded as superstitious, meaningless, or disorderly. Myth, according to Leenhardt (1979[1947]:193) “is a mode of affective knowledge paralleling our mode of objective knowledge which develops methodically.” Lévi-Strauss (1995[1978]:41) writes the basic character of the myths is that “each type of story belongs to a given group, a given family, a given lineage, or to a given clan.”

about marrying and you don't know how to cook," whereupon he sends her away (Mooney 2008[1891]:397). This myth is not about the old man or his son needing a replacement for the deceased wife and mother. This myth concerns the inability of the young bride to fulfill a fundamental duty for her new family. Her incomplete knowledge regarding the proper preparations for cooking walnut hominy reveals her youth and social status as one who is clearly not eligible for marriage. She apparently knew that walnuts could be made into hominy and collected walnuts with her mother sometime in the past; but, she did not know how to accomplish the task of cooking them properly.

The significance of the gift exchange between a young man and a young woman in contemplation of marriage, therefore, becomes obvious taken in the context of what the gift exchange represented. If the young man offered her a cord of wood, as Longe has described, the quality of her response to this gift indicated how successful her woman relatives were in teaching her the skills necessary to becoming a good wife; however, the burden of responsibility fell directly on the bride. The "Ignorant Housekeeper" has a living message for any young woman considering marriage prior to completing her education under her mother's care—that she would suffer the consequences of her lack of ability, but her lack of ability would also reflect poorly on her mother (Olbrechts 1931:31; Fogelson 1971:329). Moreover, the gift exchange under these circumstances indicated an immediate rather than a delayed form of reciprocity that established the balanced transfer of goods between equals.

Involvement of Clan Elders

The next event following the gift exchange and determination of suitability was the deliberation and approval of the union by the elders, especially the women of the ascending generations. Longe's brief comment that the parents of both parties were consulted in the marriage process does not indicate whether or not he understood how many people the term "parents" included. For example, according to Gilbert, the term "mother" (*GiDzi*) was a classificatory kin term that designated lineal and collateral kin. Therefore, "mother" in the Cherokee kinship terminology applied to the biological mother, mother's sisters, and mother's mother's sister's daughters, as well as mother's father's brother's daughter, and father's brother's wife (Gilbert 1943:218).²⁷ Without the proper considerations by the relatives of the bride, as well as the relatives of the groom, the marriage might have been considered what Lawson called a "Winchester Wedding," suggesting a forced marriage (1967[1709]:47).²⁸ It seems unlikely the Cherokee parents would have forced their daughters into any marriage given the authority of the women in the clan as "rul[ing] the roost and wear[ing] the breeches" (Longe 1969[1725]:30),²⁹ the reputation women had in their "wanton female government" (Adair 1930[1775]:133), and the well know fact that their fathers had little influence in their marriage because they belonged to a clan different from their daughters. Cherokee clan elders had no power to coerce the bride or groom to abide by their decision to not marry though such disregard

²⁷ Gilbert (1943:218) states the designation "mother" does not include the mother's brother's wife (*Gilana*) nor does it include the father's sister (*Giloki*), which indicates different clan membership from Ego.

²⁸ The editor (Lawson 1967[1709]:47) suspects this expression meant a "shotgun marriage" but seems the girl in question was a Trading Girl and had no intentions of marriage at all.

²⁹ Lawson (1967[1709]:193) states "these Savages never give their Children in Marriage, without their own Consent." Women had autonomy in choosing to marry someone.

for clan law would likely have had consequences along the lines of negative public opinion, public criticism or ridicule, or community shunning (Boehm 1993:230).

Longe's report on the involvement of the "ould people" in his account of the marriage process among the Cherokee indicates the concern of the elders for producing a legal marriage according to matrilineal law.³⁰ Hawkins noted that a man who wanted a wife did not approach her directly but sent a sister, his mother, or some other female relation to the women relatives of the intended spouse (2003:73S). That the young man communicated his formal declaration of interest to the women relatives of the bride by sending his female relatives, rather than presenting himself to the young woman's parents, suggests the importance and influence of the women in managing marriages of both men and women. The women of the potential bride's family, in turn, discussed the marriage proposal with the bride's brothers and the bride's mother's brothers. Hawkins writes that the father of the potential bride may have been consulted as a courtesy, but the father's opinion was not as valuable as the opinion of the mother or her female relations; he was, after all, a member of a different clan (2003:73S). Though the women conferred with the men of their clan, Hawkins does not suggest the women were obliged to follow their recommendations. We know from the historical literature regarding town councils that problem solving involved discussion of the key points with everyone voicing an opinion; in the case of marriage, family decisions were likewise formed with the same careful discussion weighing the advantages and disadvantages of the marital union. Foremost among the items discussed would have been whether or not the bride and

³⁰ Legal, according to Pospisil's four criteria mentioned in chapter one.

groom were related, lest the union be considered inappropriate.³¹ A man cannot marry into his own clan and must consider women from his father's father's clan or his mother's father's clan—his “grandmothers” (a woman would marry her “grandfather”) (Gilbert 1943:238). The kinship terms “grandmother” or “grandfather” appear to be an unreasonable option from which to consider a spouse. However, according to kinship terminology provided by Gilbert's ethnography, they are self-reciprocal terms used by two relatives who, in this case, belong to Ego's generation and his parent's parent's generation.³² Ego, therefore, would be marrying someone from his own generation though not from his clan. Kinship terminology designated whom the man could not marry as well as whom he could marry insofar as the seven clans within the tribe were concerned. When Longe inquired as to whom it was a man could marry, the priest replied “our wives is [sic] nothing to us but mere strangers” indicating women who were not members of his clan (1969[1725]:32).

Strangers in this case also included women outside the tribe. Cherokee warriors skirmished, raided, and warred in defense of territorial boundaries with the Powhatan, Monacan, Tuscaroras, Catawbas, Chickasaws, and the Creeks (perhaps others as well) prior to European immigration.³³ Tribal disputes expanded across the Allegany, Blue

³¹ Hill (1997:30) refers to Cherokee marriage restrictions as prohibiting incest; Reid (2006[1970]:39) refers to it as the “Cherokee law of incest.” However, they are confusing incest with exogamy—sexual relations with conjugal relations; see Fox (2003[1967]:54-76).

³² Grandparent calls grandchild “grandfather/mother” conversely, grandchild calls grandparent “grandfather/mother”; Lévi-Strauss (1965:14) describes a kinship system as an attempt to “generate marriage possibilities or impossibilities” guided by the use of terms directed to one another or oneself.

³³ Mooney (1975[1900]:19) reports the “English first came into contact with the Cherokee, called in the records of the period Rechaecrians, a corruption of Rickahockan, apparently the name by which they were known to the Powhatan tribes”; Mooney (1907:131) also states the “Richahecian, or Rickahockan, who came down from the mountains in 1656 and made bloody invasion of the lowlands, appear to be identical with the Cherokee.”

Ridge, and Cumberland Ranges in the areas today known as Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, and Alabama. Women and girls, as well as men and boys, taken captive during these conflicts potentially had the opportunity to be adopted into the tribe and become eligible for marriage to Cherokee men and women.³⁴

Once the bride's adult female relatives decided to allow the engagement to proceed, the response to the young man was returned in the reverse order from whence it came—through the women of his clan to him. This participation on the part of clan women on both sides provides evidence of the importance and authority of the matriline in the regulation of marriage. Given this method of negotiation, there are three possible explanations for Timberlake's belief "there [were] no kind of rites or ceremonies at marriage" (2007[1765]:35). First, he misconstrued the gift exchanges as commodity exchanges, which according to Gregory, placed the participants in a state of reciprocal independence meaning the transactors are strangers and exchanging objects (1982:42).³⁵ Second, Timberlake was excluded from the negotiations that took place between mothers, sisters, and other adult female relatives due to his status as clan outsider ("other") and a non-kin male. Third, Timberlake focused on the shock value of his memoirs and did not

³⁴ French (2003:93) states "women and children captives were often adopted into their captor's clan"; Hatley (1993:57) writes the "Cherokees also accepted fugitive groups in the early eighteenth century such as groups of Natchez and, perhaps, Creek peoples such as the Taskagis, and in this way further augmented their own strength."

³⁵ Gregory (1982:4) explains "people in a clan-based economy are in a state of reciprocal dependence."

represent the potential symbolic significance of mundane activities such as hunting, wood cutting, or cooking.³⁶

Public Recognition of the Marriage

Seasonal festivals celebrating the beginning of a new year, a renewal of relationships, or a bountiful harvest drew attendance from the kith and kin of the seven clans to a central public venue. These feasts provided an opportunity for residents of the Cherokee towns and villages to participate in the reinforcement and renewal of group beliefs, a time for recounting the myths, forgiving insults, and reestablishing harmony in the community (Haywood 1959[1823]:243; Reed 1993:28). The Moravians, Pietist German-speaking missionaries, recorded multiple accounts of mothers, sisters, or grandmothers regularly picking up and later returning some of their Cherokee students boarding at their mission school after a short period of about ten days (McClinton 2007).³⁷ While the missionary diary entries generally did not specifically reveal the destinations of all these children, the evidence strongly suggests the children were picked up by their parents or other elders for the purpose of participating in the seasonal feasts with the intent being to strengthen their social ties with relatives or reinforce their cultural knowledge. For example, the missionaries recorded three such occasions when a boy named *Iskittihi* was picked up by his adult relatives (parents, mother, or grandmother) around the time of three separate seasonal feasts: First New Moon of Spring (April 3-12, 1805), the New Green Corn Ceremony (August 8-19, 1805), and the Ripe Corn

³⁶ The editor reports Timberlake's (2007[1765]:xiii) published his memoirs "as an anticipated reprieve of his staggering debts."

³⁷ McClinton (2007) diary entries showed it was generally women relatives of the students who picked children up in months that coincided with important celebrations: April (First New Moon of Spring), August (New Green Corn Ceremony), and September (Great New Moon Ceremony).

Ceremony (September 4-13, 1805).³⁸ Another entry from the Moravian diary dated August 1808 provides an account of a boy who was picked up by his mother and father in order to take him to “the Green Corn Dance, an annual communal celebration in this nation” (McClinton 2007:279).³⁹ Cherokee elders and women in particular chose to accept some aspects of the Euro-American education for their children but not at the expense of cultural solidarity.⁴⁰

Family feasts hosted by the parents of a bridal couple were similar to the seasonal festivals in that they were an opportunity for continuing cultural solidarity in the presentation of a marriage rite. Longe reports the man’s parents notified “all their family far and near” and then shared in the responsibilities of preparing a celebratory feast with the bride’s parents (1969[1725]:30). This feast from outward appearances might well have resembled a great party with ample food, dancing, and laughter though its ultimate purpose served to acquaint or reacquaint members of the merging clans and formally introduce the bridal couple to their new families. The groom, a clan outsider, acquired a new kinship term to accommodate his new social status—*Agi Nudji*, daughter’s husband;

³⁸ Reed (1993:28) states there are seven significant festivals celebrated by the Cherokee; McClinton (2007) diary entries show a boy *Iskittihi* was picked up sometime in October and returned by his grandmother on December 1, 1805, which suggests he was home around the time of the Great New Moon Ceremony (September/October) and Reconciliation and Friends-Made Ceremony (October/November).

³⁹ Anderson (1996:400) notes the Green Corn “celebrated a fresh beginning. Old wrongs (except murder) were forgiven, bad marriages were dissolved, stored food was discarded, and harmony and order were restored”; Kilpatrick (1966:184), by exception, states if the slayer stayed in the town of safety until after the Green Corn Dance, all transgressions were forgiven.

⁴⁰ Hatley (1993:58) remarks “authority and dependency, in contexts ranging from child-raising to warfare, were to become the points of reference against which Cherokee society would measure its own distinctiveness from, and ultimately its opposition to, colonial society.”

after the birth of a child, he became *GiDaDa*, father (Gilbert 1943).⁴¹ Along with his newly acquired kinship terms that placed him in an expanded reciprocal relationship with his wife's family, he acquired the public recognition as her spouse. The implication is that he would benefit from relationships that would provide protection and hospitality.

An example of the significance of this official recognition can be seen in Lawson's narrative of his travels through the Carolinas that brought him close to several cabins owned by Indians.⁴² One of his traveling companions stated his father-in-law owned one of the cabins and proceeded to enter the unoccupied home in search of provisions. Lawson states that this young Englishman called the Indian "father-in-law" because "the old Man had given him a young *Indian* Girl, that was his Daughter, to lie with him, make Bread, and to be necessary in what she was capable to assist him in" 1967[1709]:29-31). More importantly, the old Indian had publically recognized the Englishman as his son-in-law, which gave the young man permission to enter the unoccupied home and search for food without being shot as a trespasser.

In contrast to the Cherokee understanding of marriage as described above with its clear structure of gift exchange, clan elder involvement, and public recognition, Euro-Americans often saw no meaningful marriage at all. Adair's discussion of the case of Dark Lanthorn's marriage to an unnamed English gentleman provides an example of Euro-American evaluation of Cherokee women as potential wives, the validity of

⁴¹ Gilbert (1943:224) also states the bride acquired kinship terms specific to her position in the new family: *AgiDzo i* (son's wife), *Agila Na* (uncle's wife), *Akstayu uski* (she's my cooker), *Astadali i* (father's brother's son's wife), *Agwati Na i* (step-parent).

⁴² It is not unusual for an Englishman to be unaware of marriage arrangements involving the bride's relatives (both men and women), as his status as social outsider limited his contact to the men of the group. This father-in-law was Santee, not Cherokee; however, this event demonstrates the hospitality extended to kin and public recognition of a kinship status.

marriage by a Christian minister, and the distinctiveness of the Cherokee and Euro-American marriage ceremonies. Additionally, this marriage case demonstrates the expectations English men, as described by Adair, had about the ideal woman—one who was modest, a good housekeeper, Christian, and decent.⁴³

A Marriage Case

The colonial American convention of validating a marriage only after the pronouncement by a Christian minister stands in contrast to the Cherokee notion of what constituted a marriage as illustrated in the case of Dark Lanthorn and an English gentleman. Dark Lanthorn, a Cherokee woman, was married twice to the same man.⁴⁴ Though Adair failed to represent the first ceremony that united Dark Lanthorn and her unnamed English gentleman according to Cherokee custom, he provided an account of her Christian baptism and participation in the second marriage to the same man performed in compliance with English law (1930[1775]:133-136).⁴⁵

The story of Dark Lanthorn was introduced in Adair's chapter titled "Argument XI" regarding the laws of uncleanness, personal pollution, running body sores, and the taboo on touching the dead. This argument was one of twenty-three arguments offered as an attempt to provide evidence for his theory that the Indians were "lineally descended

⁴³ Brown (1995:26-48) interprets the relationship between Euro-American men and Powhatan women of the seventeenth-century taking into account the Euro-Americans concern with disorderly women, desire for modest demeanor, punishment of publically sexually aggressive women, and standard of wifely submission.

⁴⁴ It appears Dark Lanthorn was accommodating her husband's desire to marry according to Christian practices as he appears to have accommodated her desire to marry according to Cherokee practices.

⁴⁵ Adair (1930[1775]:133-136) published in 1775, at least thirty years prior to the first written Cherokee laws that prescribed "any white man who shall hereafter take a Cherokee woman to wife be required to marry her legally by a minister of the gospel or other authorized person."

from the Israelites” based on similar rites, ceremonies, customs, and language (Adair 1930[1775]:14-15). He wrote that Cherokee strictly observed the law of purity and feared touching the body of a deceased person to the point that the twin brother of “an Indian Christian lady well known by the name of the *Dark-lanthorn*” abandoned her unburied body along the road (Adair 1930[1775]:133). Her brother failed to bury her ostensibly due to his fear of touching her corpse, not being able to bury her closer to home, and not being able to purify himself according to the Cherokee burial customs. Mooney offers an explanation for the brother’s actions as he explains Cherokee believed death was due to “the evil influence of animal spirits, ghosts, or witches” necessitating the involvement of the town or village priest who would know the appropriate prayers and rituals to properly bury the dead (2008[1891]:31). After this introduction of Dark Lanthorn by way of her death, Adair elaborates on her conversion and marriages.

According to Adair, the English “gentleman” was disturbed by the reputation Cherokee women had for promiscuity and short-lived marriages “in that petticoat government” so he attempted to buttress his chances for an enduring and monogamous marriage by first having his Cherokee wife⁴⁶ baptized as a Christian and given the name Dark Lanthorn (1930[1775]:152). With the English bridegroom acting as interpreter for his bride and for the minister, the couple followed the English version of the marriage ceremony making the event legal according to colonial secular and religious precepts,

⁴⁶ She was a Cherokee wife because they had already been joined by the Cherokee ceremony, though Adair fails to describe any Cherokee marriage in his book.

specifically to the English Marriage Act, which considered a church wedding the sole proof of marriage.⁴⁷

As a Christian convert, Dark Lanthorn was expected to remain decent and modest in her marriage, to become a proper housewife, and a faithful convert to Christianity, suggesting that as a Cherokee wife she was not decent, modest, Christian, nor a proper housewife (Adair 1930[1775]:133-135). North American indigenous women were frequently referred to in the professional and historical literature as: promiscuous and responsible for spreading venereal diseases; taking advantage of European men; and being culturally inferior to European standards of behavior (Shoemaker 1995:3; Godbeer 1999:91). The eighteenth-century Cherokee women characteristically directed marriage, inheritance, and membership; while European men of the period considering marriage to a Cherokee woman expected to follow patriarchal customs of Christian marriage rites, directed inheritance procedures, and maintenance of the family name.

Adair's description of the marriage between Dark Lanthorn and an English gentleman appears embroidered with selective and embellished material and at times gives the impression of being satirical and incomplete.⁴⁸ While Adair provides detailed information of the marriage event including a transcription of the dialogue between the bride, groom, and the minister, he tends to focus on the reputation of the bride. The bride, Dark Lanthorn, closely resembles a composite sketch of those qualities most frequently expressed by Euro-American colonists represented in the historical literature and personal

⁴⁷ Calloway (2008:149) writes "in England, the Marriage Act of 1753 made a regularly conducted church wedding the sole proof of marriage; in Scotland, marriage was more often a civil contract entered into by mutual consent rather than a sacrament."

⁴⁸ The editor (Adair (1930[1775])) writes Adair used satire to embarrass the governor of South Carolina, who was involved in a controversy with Adair and his trading partners.

accounts by people such as Adair. Specifically, Indian women were motivated by potential sexual encounters with Euro-American men, the women were sexually promiscuous, and married women were adulterous and divorced easily (Hatley 1995:53; Johnston 2003:11; Perdue 2001:79).

Though Adair expressed his intentions to obtain the truth and then write about the Indians,⁴⁹ he admitted he “may have drawn some conclusions exceeding the given evidence” though he does not explain which of his conclusions may have been embellished (1930[1775]:xxxiii). His description of Dark Lanthorn and her marriage ceremony appears to fall into this category as his later description of the courtship and matrimonial events of other groups fails to include the Cherokee specifically.⁵⁰

There are several points in this story that provide evidence of Adair’s use of metaphor and his cultural bias that represents all Cherokee women as unsuitable for marriage unless they converted to Christianity. First, we do not learn the name of the bridegroom in an otherwise very detailed story though we are to understand his superiority through his designation as an “English gentleman,” which establishes him as someone competent to civilize an indigenous woman. Second, Adair names the bride Dark Lanthorn, referring to a particular type of ancient lantern capable of being closed up to block the light without extinguishing the flame and perhaps a metaphor for her cultural and spiritual inferiority prior to her conversion. Adair portrays her as a woman whose

⁴⁹ Adair (1930[1775]:xxii) wrote about the “Indians on the Continent of North America, particularly of the several Nations of Tribes of the Catawbans, Cherokees, Creeks, Chickesaws [sic], and Choctaws, inhabiting the Western Parts of the Colonies of Virginia, North and South Carolina, and Georgia.”

⁵⁰ Adair (1930[1775]) describes rites of ancient Hebrews, West-Floridans [sic], Muskóhge [sic], and Indians in general.

“light within” was blocked by her adulterous ways, her inadequate knowledge of the Christian faith, and her “wild savage” state (1930[1775]:133). Only through her conversion would her “light within” be released. Indeed, Adair writes that the minister entered her name into his church book of converts and then referred to how her conversion “changed an Indian *Dark-lanthorn* into a lamp of christian [sic] light” (Adair 1930[1775]:135).⁵¹ Third, from the perspective of the English gentleman, the Cherokee marriage ceremony did not qualify as a legal rite and could only be recognized as legal if the gentleman married according to English law. The groom, according to Adair, was concerned about the short duration of marriages. The groom might have been more concerned about his legal rights should Dark Lanthorn commit adultery. Adultery was not approved of by Cherokee society; however, adulterers were not punished as they were in other Indian and English societies but adultery was considered grounds for separation (Sattler 1995:222).

Godbeer suggests redundant ceremonies occurred because the male colonists may have been concerned with the biblical injunctions against intermarriage with non-Christian women as well as holding a disdain for the Indians’ “barbaric way of life” (1999:92). In order to follow their beliefs and the laws of their country of origin, then, some immigrant men married according to the customs of their indigenous brides but

⁵¹ A “lanthorn” is a lantern and the woman was “dark” lanthorn because she did not have the Christian enlightenment. Further, the name “Dark Lanthorn” does not follow the examples found in documents, as it is not a “Christian” name. Dunaway (1997:12) writes after baptism the students and members of the church “were expected to take white names.” One example is Buck Watie’s choice of the name Elias Boudinot (the founder of the American Bible Society). Johnston (2003:49) writes “Northern sponsors would often ‘adopt’ a child and give it an English name as a symbol of religious and cultural conversion”; Nash (1999:10) recalls Pocahontas married John Rolfe, was baptized a Christian, and took the name Rebecca.

reinforced the experience by repeating the ceremony according to the customs learned in their natal countries and brought with them as immigrants. This practice was not shared by all Euro-Americans, as some traders married according to Indian customs without benefit of Christian ministers.⁵²

Legal Marriages: Formal and Common Law

Regardless of how Adair chose to represent intermarriage, his account of Dark Lanthorn's marriage provides evidence of a cultural transformation occurring during the eighteenth century. Dark Lanthorn's Christian marriage stood in addition to the Cherokee marriage pattern with several points regarding the marriage accounts by Longe and Adair that illuminate how the cultural transformation was taking place.⁵³ The Cherokee woman in Longe's account married a Cherokee man.⁵⁴ In Adair's account, however, a Cherokee woman married an Englishman in two ceremonies, one according to the laws of her group and then again according to the laws of his group.⁵⁵ The dual ceremonies found in Dark Lanthorn's story reveal the veiled issue of which ceremony was considered more legally binding in the eighteenth century due to the different perspectives of the bride and the groom.

A Cherokee marriage according to Longe's account had specific requirements fulfilled by the participants in order to be considered legal according to Cherokee law. Adair's account of Dark Lanthorn's marriage, however, did not meet the three main

⁵² Gilbert (1943:194) refers to English and German poor white class and Scot-Irish traders.

⁵³ Longe's account was written in 1725 and Adair's account in 1775.

⁵⁴ Information about intermarriages between Cherokee men and Euro-American women is scarce. Some Christian converts and mission-educated Cherokee children socialized with Euro-American children, as in the case of Elias Boudinot, and married Euro-American women.

⁵⁵ Wars and diseases significantly reduced the number of available marriageable men.

criteria found in Longe's account: the exchange of gifts, the involvement of the members of the clan found in the two ascending generations to Ego as well as Ego's generation, and public recognition of the marriage. There was no evidence provided of an exchange of gifts between the groom and the bride, though Adair does note repeatedly her impatience in acquiring the "many fine things" the gentleman had to offer at the conclusion of the ceremony (1930[1775]:133). There was no mention of her parents or other kin being involved in the determination of whether or not the marriage was appropriate, especially in view of the fact her choice of a spouse was not only outside her clan but also outside her tribe. And there was no public celebration that brought together the families of the bride and groom in recognition of the union. From the perspective of the Cherokee elders, Dark Lanthorn's second marriage would not have been considered a marriage because it did not meet the qualifications of the group according to established marriage rites. Conversely, the Cherokee requirements did not satisfy the requirements of English Law and therefore were not considered legal by English standards.

Cross-culturally, there have been examples of the ambiguity couples experience with regard to marriages outside their community. For example, Gough provides a case study of the Nayar people of India that offers a useful comparison for the conflicting perspectives of the Cherokee women and Euro-American men about the legality of marriage (1968). The Nambudiri Brahman men considered Nambudiri woman as legal marriage partners but *sambandham* unions with Nayar women as concubinage. Conversely, the Nayar people regarded the *sambandham* unions with Brahman men as legal because they fulfilled the conditions of Nayar marriage ceremony (Gough 1968:61).

Similarly, Cherokee women believed they were legally married based on the groom's fulfillment of the conditions required by Cherokee marriage law. Some immigrant men, such as Adair's English gentleman, chose to follow English law (that included common law) or the religious commandments of their particular faith⁵⁶ because they did not recognize the Indian ceremony as legal.

Cherokee and Euro-American marriage laws shared a vital aspect that reinforced the legitimacy of the contract regardless of the ethnicity of the participants—the recitation of a vow. Reid reasons the Cherokee nineteenth century marriage should not be considered legal based on the lack of “consideration” defined as “the thing promised, given, or done that has the effect of making an agreement a legally enforceable contract.”⁵⁷ However, Longe's report on the marriage process contradicts Reid's assessment. Longe describes the Cherokee couple as visiting each other and then making “promises [sic] to Each other that if they like⁵⁸ and then acquaints the ould people with itt”—an action that set into motion the marriage process (1969[1725]:31). The Cherokee “consideration” in this case is identical to the common law process followed by English immigrant men with an “exchang[e of] words in the present tense that they were husband and wife” (Foster 1975:85). The verb tense indicated the deed as words exchanged in the future tense signified a betrothal rather than a marriage. These overlapping conceptions of marriage, however, presented problems that were ultimately addressed in the first

⁵⁶ For example: Catholic, Moravian, Evangelical Protestant, and Anglican.

⁵⁷ American Heritage College Dictionary, consideration, defined as “something promised, given, or done that has the effect of making an agreement a legally enforceable contract.

⁵⁸ I interpret the phrase “that if they like” to mean both parties are in agreement.

written Cherokee marriage law in an effort to reconcile the subtle shift of foreign cultural influences with the Cherokee ideology.

Watson explains a people's law can be a sign of their identity or "spirit of a people" (Watson 1993:22). Yet systems of law have moved from one country to another or one people to another, since earliest recorded history. Law or legal systems travel as people move to a new territory and take their laws with them. If the receiving territory possesses established laws, and the Cherokee people certainly did, the receiving people had the option to choose to adopt parts of the system of another people. For example, indigenous leaders along the eastern seaboard of North America were strongly encouraged to develop a centralized political system that would produce laws more in line with the American standards that were believed to be superior to those of the Indians (Anderson 1996:410). Influences on the Cherokee by the politicians of the United States included making changes to the marriage laws, bringing them more in line with the marriage laws Euro-Americans honored. One legal form practiced by the English was common law marriage, legal in England, at least until 1753, when the introduction of Lord Hardwicke's Act required published marriage banns and "that the ceremony be performed by a parish priest, except for Quakers and Jews" (Foster 1961:46).

Foster presents two theories regarding the development of common law marriage in the United States. First, common law marriage was based on the cohabitation and reputation as man and wife; second, evidence was required to authenticate the exchange of vows that created the relationship. The new state of Massachusetts, however, regarded common law marriage as illegal and instead required a public ceremony performed by an

ordained minister or justice of the peace (Foster 1961:48).⁵⁹ It is not inconceivable that colonial American men considered Indian marriages as taking the form of a common law marriage. Pioneers, traders, soldiers, and adventurers interested in marrying indigenous women did not necessarily honor any British marriage laws, religious or civil, due to the extreme isolation and lack of police enforcement in the hinterlands. Not following state laws did not create problems for the men, however, due to the extra-legal practice of marriage based on cohabitation and reputation as man and wife already being practiced in England. Cherokee marriage customs mirrored English common law marriage practices in at least three ways, which provided Euro-American men an opportunity to marry according to familiar custom. First, the young man and young woman exchanged words indicating a commitment; second, it was contracted without benefit of clergy; and third, the public recognized the marriage because the couple behaved as husband and wife (Foster 1961:46-47).

Indeed, Euro-Americans such as Lawson, believed the “ordinary People, and those of a lower Rank” should be encouraged to marry indigenous people and receive land or public money as some type of reward for their effort (1967[1709]:244). Lawson believed intermarriage would provide opportunities to convert Indians to Christianity after learning English, gain important information on “the Lords Dominions,” and assist in the “civiliz[ation of] a great many other Nations of the Savages, and daily add to our Strength in Trade, and Interest; so that we might be sufficiently enabled to conquer or maintain our Ground, against all the Enemies to the Crown of *England in America*, both

⁵⁹ Foster (1961:48) reports that as of 1960 the following states continued to recognize common law marriages: AL, CO, D.C., FL, RI, SC, and TX.

Christian and Savage” (1967[1709]:245). Intermarriage with indigenous people would offer an alternative to warfare, would provide an opportunity for population blending making one America, and would accelerate acculturation of indigenous populations.⁶⁰

Lawson’s estimation that England’s expansion depended on the absorption of indigenous populations and their traditional lands through marriage, however, proved problematical for the Cherokee.

The Move to Written Law

As the pressures to consolidate their clan-based government increased, the Chiefs and Warriors who formed the National Council focused on producing marriage law that would protect their citizens as well as promote the national image of social progress. It was imperative that the newly forming Cherokee government protect their sense of nativism—the perpetuation of culture against acculturation—while advancing their decentralized clan system into a more centralized nation. Although laws are often regarded as a type of control over a particular segment of society in an effort to achieve “social order and individual protection, freedom and justice,” they also represent a blending of enduring norms and customs within a legal system (Moore 1973:719; Moore 1978:2). The architects of the written Cherokee marriage law, however, did not succumb to the political pressures of the United States to replace existing laws. The National Council deliberated, discussed, and determined the direction of the written marriage laws and continued in the same way Cherokee leadership of the past achieved consensus

⁶⁰ Nash (1999:10-11) states Patrick Henry proposed offering bounties for white-Indian marriages and “free public education for the interracial children”; William Byrd approved of intermarriage practiced by the French that created alliances, not war; Thomas Jefferson advocated intermarriage.

during town and village councils. Each contributor, whether man or woman, was allowed to present an opinion and each decision was settled according to a consensus. When a decision was agreed upon, it was the community voice.

CHAPTER FOUR CHANGE AND CONTINUITY

A great deal of information about the Cherokee people is provided by the records created by Euro-American men intent on producing a particular message. George Washington's message was that the Indians living on the eastern seaboard of the North American continent had no laws and were in great need of laws to bring happiness to their communities. Thomas Jefferson believed Indians were in need of civilizing so they would see the benefit of parting with expanded hunting territories. But what was the message the Cherokee Indians had in response to the federal government, given there has been no written record provided until the first laws were published on September 11, 1808?

This chapter reexamines and reinterprets the generally held opinions that Cherokee written laws regarding marriage were created with the intent to control marriage and therefore control women (Yarbrough 2004; Yarbrough 2008; Johnston 2003; Perdue 1998:146). Though laws of the Nation were designed along the lines of those of the federal government of the United States, their ultimate achievement was the production of a blended legal system that incorporated legal strategies used to reengineer aspects of clan law that continued to protect the interests of Cherokee women—not produce a mirrored image of another government. An examination of the marriage law

and consideration of eyewitness accounts of the seventeenth and eighteenth century Cherokee provide evidence that the Cherokee did have a message.

Setting the Record Straight

Historical representations of eighteenth century Cherokee life typically focused on the interactions and achievements of men believed to occupy positions of political power,¹ usually chiefs and warriors. Other than the few signatures² on the official documents that recorded the presence of the Principal Chief, Secretary to the Council, and Speaker of Council, who signed the laws into action, the details surrounding the deliberations were unrecorded. It is thus understandable how women as participants in the genesis and production of law were underrepresented in historical documents, given their marginalized status in the view of Euro-American men. Yarbrough, for example, asserts some of the new laws attempted to regulate sex and marriage to “control the marital behavior of Cherokee women,” and closely resembled the laws of the United States in form and function (2004:385).³ This interpretation is, however, problematical for three distinct reasons.

First, the argument presupposes women had no participation or influence on community decisions with regard to legislation of marriage practices. The historical and professional literatures provide examples to the contrary. Cherokee women directly participated in public affairs of the tribe such as recommending for or against beginning

¹ “Political power” as generally used by historical documents assumes Indian chiefs and warriors exerted some kind of control over the people who followed them. However, as Williamson (2003:13) writes, “he [the chief] is not followed because he is powerful; he is powerful because he is followed. We say that he is powerful because we see that he is effective.”

² Members who did not write English marked the document with an “X,” with the other participants acting as witnesses.

³ Young (1981) also provides an in-depth examination of Cherokee government of the 1830s.

or ending warfare, determining the fate of prisoners, or taking part in treaty negotiations.⁴ Moreover, some women were warriors⁵ and some served on tribal councils.⁶ Gearing, for example, mentions each village had one female official, the “Pretty Woman,” who had “an important voice in deciding the fate of prisoners brought in by a war party” (2007[1962]:4). Considering there were as many as thirty or forty villages, there would have been thirty or forty Pretty Woman officials. Not only did women actively participate in community decisions, the men born into a clan provided the power supporting the authority of their female kin in certain contexts. That is not to say the Cherokee were matriarchal,⁷ with men subordinate to women. Rather, the cultural and social relationship between women and men was balanced and endured through the social transformations occurring throughout the eighteenth and nineteenth centuries. This balance was achieved not through a command and obedience relationship normally associated with political power (e.g. monarch and subjects); but according to a model described by Clastres as non-coercive (2007[1974]:22).⁸

⁴ Sattler (1995:222) refers to the Beloved Women influencing decisions; Haywood (1959[1823]:260) notes a Pretty Woman would determine the type of punishment; Reid (2006[1970]:69) notes a Cherokee woman named Nancy Ward spoke in national councils and negotiated peace with an invading American army; Hill (1997:88) writes an unnamed Beloved Woman at 1789 conference on the French Broad River “invoked maternal authority to call for peace from her ‘sons and warriors.’”

⁵ Mankiller (1993:20) states women of the eighteenth and nineteenth centuries filled multiple social roles determined by seasonal events such as planting or harvesting crops, or emergency events such as war; Reid (2006[1970]:69) notes the most famous War Woman was Nancy Ward who when her husband was killed on the battlefield picked up his weapon and rallied the other warriors to battle.

⁶ Hill (1997:87) refers to the “war woman of Chota announced that she was ‘fond of hearing that there is a peace.’” To signify amity, she offered a pipe and tobacco to the treaty commissioners “to smoke in friendship”; Mankiller (1993:19) writes women “shared in the responsibilities and rights of tribal organization”; Fogelson (1990:172) remarks the “office of war woman and other titles encountered in the literature, such as beloved woman or pretty woman, hint at the existence of a formal authority system partly replicating male political organization.”

⁷ Barfield (2003:312) defines matriarchal as “the dominance of women as a class over men and a system by which rights and duties to persons and things descended through the mother’s line.”

⁸ Clastres (2007[1974]:23) writes “the political can be conceived apart from violence.”

Perdue notes that men and women shared responsibility for maintaining harmony and balance in the community following the example of the first man and woman, *Kana'ti* (meaning The Lucky Hunter) and *Selu* (meaning Corn), respectively (1998).⁹ Their names suggest the cultural establishment of the division of labor; however, this couple also represented a combined form of spiritual power that influenced rather than forced a particular social behavior.¹⁰ The original Cherokee couple presented in the story exemplified the existence of a state of perfect harmony, which follows Guénon's explanation of spiritual power—"a reflection or image of true unity" (2004[1929]:10).¹¹ Men and women following the example set by the spiritual couple could therefore acquire personal power based on each person's accumulated knowledge, attention to ritual detail, and moral relationships with the goal to achieve true unity (Fogelson 1990:170; Fogelson 1977:187). Compared to personal power that was used to influence social behavior, European law took the form of command and obedience in governance.¹² The Cherokee preference for influencing behavior was to joke with, to ignore, to ridicule, or to persuade the offender away from the aberrant activities.¹³ It became necessary, however, for the Cherokee to address the disorderly behavior committed by foreign

⁹ Mooney (1995[1900]:242) recorded this myth that depicts the origin of game and corn through *Kana'ti* and *Selu*.

¹⁰ Guénon (2004[1929]:3) states spiritual in this sense does not mean religious and explains, "we must make the point without further delay that for us spiritual authority does not necessarily have a religious form, contrary to what is commonly imagined in the West."

¹¹ Guénon (2004[1929]:7) writes that true unity originally existed as a spiritual power until humanity reached a certain phase "quite distant from the pure primordial spirituality" resulting in a spiritual and temporal opposition. In the mythology, the relationship between the children (the arrogant and non-spiritual) and the elders (*Kana'ti* and *Selu* the wise and knowledgeable) appear to represent such a phase.

¹² Although the first written Cherokee law was produced in 1808, judges were not appointed until 1820 and there were no prisons. The police force (Light Horsemen) was directed to suppress theft (horse and other forms of property) that occurred in their district; however, this police force shared responsibility with the clan.

¹³ Boehm (1993:230) lists extreme sanction (assassination) as his last form of intentional leveling.

immigrants living in the Nation such as unscrupulous traders, itinerant laborers, and vagabonds.¹⁴ Foreign immigrants posed a particular problem because unless they married into a clan they were not considered citizens of the Nation and therefore did not fall under the authority of town councils or Cherokee clan laws. It became necessary for the legislators to create laws that not only protected the Nation's citizens but controlled foreigners and non-citizens in a manner understood by Westerners—with the force of written law that compelled obedience. The law provided the authority while the establishment of the police force provided the power to enforce those new laws.

One law clearly addressed the actions of any white man who married a Cherokee woman and then dissolved the marriage at some later point. This law illustrates the power of the Nation's law to control the actions of a white man yet not the Cherokee woman, he being the foreigner and she being the citizen. The lack of coercive power on the Nation's citizens can be seen in the second portion of the marriage law regarding the dissolution of a marriage between a man and a Cherokee woman that reads:

Resolved, That any white man who shall marry a Cherokee woman, the property of the woman so married, shall not be subject to the disposal of her husband, contrary to her consent, and any white man so married and parting from his wife without just provocation, shall forfeit and pay to his wife such sum or sums, as may be adjudged to her by the National Committee and Council for said breach of marriage, and be deprived of citizenship. [Cherokee Nation, &C 1826]

Prior to the written laws, if a Cherokee man and woman decided to permanently separate, the man collected his property and departed for his clan's territory without involvement by other members of the tribe. Neither the man nor the woman experienced

¹⁴ McClinton (2007:633, n. 31) quotes the Moravian missionaries considered some white people to be "far more frightening than the dear Indians."

a change in social status regarding their membership in the tribe and each continued to enjoy the protection of their respective clans. After the law was written, if a white husband decided to part from his wife without just provocation he lost his membership in the Nation. That placed him in a different social category—illegal resident—and without rights (Cherokee Nation, &C 1826:11).¹⁵ Without protection provided by a clan through affiliation by birth, adoption, or marriage, the now illegal resident was subject to the coercive power of the law to force him from the Nation. Force here meant the control over the white man who, after the separation, was not considered a citizen and had no rights. In this case the law as written did not usurp the right of the woman to end a marriage nor did the law exert coercive power over her as a citizen. Action in the form of the law was taken to preserve her rights to the children, a product of her body, and rights to the property, a product of her labors.

Second, though the laws have been interpreted as intruding into a woman's right to choose her spouse and the authority of the matrilineal clan to manage marriage, this interpretation is misleading if not erroneous. Not only did women continue to choose their spouses, Cherokee, non-Cherokee Indians, or white, in accordance with the clan marriage practices, their autonomy in this regard continued through the nineteenth century.¹⁶ The evidence provided by Gilbert's ethnography of the Eastern Cherokee dated 1943, one hundred thirty-five years after the 1808 laws, corroborates the

¹⁵ Meigs (1993[1807]:23) diary entries reveal the Cherokee began to tighten immigration along the United States border. The United States was already directing that any Indian traveling "through the United States to the seat of Government" be required to have a passport. Meigs does not describe the passport other than to write the Agent would furnish Cherokee with "the necessary passports" to help the Cherokee on their journey.

¹⁶ Research and interpretation of ethnographic information regarding Cherokee marriage practices beyond the nineteenth century is not within the purview of this paper.

continuation of this form of marriage practice. Gilbert thoroughly describes the kinship system and states “the preponderance of the evidence collected has tended to substantiate this statement [that Cherokee marry their “grandmothers”] of a basic preferential mating principle” (1943:238).¹⁷ The spouse selection occurred from the clan of the father’s father or from the clan of the mother’s father.

It appears Gilbert misused the term “preferential” in his determination of this type of marriage because one cannot follow preferential marriage practices if the choice of marriage spouse is restricted as he described. Needham clarifies the difference between preferential and prescriptive marriage by equating preferential “with choice” and prescriptive “without choice” (1983[1962]:8). Preferential marriages allow a choice between a number of people both genealogically or categorically; while prescriptive marriages designate the “category or type of person to be married” and the marriage as “obligatory” (Needham 1983[1962]:9). If a person of a certain designation is excluded as a marriage prospect, for example Ego’s mother’s sister’s daughter (parallel cousin also regarded as Ego’s “sister”), the marriage practice becomes prescriptive. Gilbert appears to have focused on the action of choosing a spouse as the form of preferential marriage without considering the restrictive nature of choosing from a particular clan outside one’s own. Nevertheless, Gilbert provides evidence that matrilineal clan management of marriage was not evanescent.

¹⁷ The expression refers to “the matrilineal lineage of the father’s father and the mother’s father. . . contain only grandfathers (*GiDuDu*) and grandmothers (*Gilisi*)” and are regarded as options (in Ego’s generation) for marriage partners (Ego as either male or female).

Yarbrough (2004) refers to the law as attempting to control the woman by controlling her choice of spouse and form of marriage. However, upon closer reading of the law, it becomes more apparent the law was attempting to regulate white men specifically—not Cherokee women, not Cherokee men, and not men from other non-Cherokee Indian groups. The white man was required to be married by a minister or other authorized person after obtaining a license from the Nation. It is understood that the Cherokee woman was the partner in this marriage ceremony; however, the law did not require *her* to follow this law. If the white man chose not to follow this directive he was still able to marry a Cherokee woman according to clan ceremonies with the marriage recognized by the clan but not by the Nation. However, because the marriage was not recognized by the Nation, the man occupied a social liminal status—neither fully a clan member¹⁸ nor citizen—that placed him in a precarious state. Further, if he decided to end his marriage, whatever form it followed, his social liminal status changed to illegal resident with the possibility for expulsion from the Nation.

Third, Yarbrough correctly assesses that the “legal institutions of the nineteenth century Cherokee Nation resembled those of the United States”; however, this should not be understood to mean a total replacement of existing practices (2004:385). Beginning with George Washington, government leaders in the United States were indefatigable in their efforts to effect social change on the Cherokee population through the creation of laws. They did not recognize the indigenous laws that had been directing the lives of the

¹⁸ Spouses do not become members of a wife’s clan, though the children of this union do become members of their mother’s clan.

Cherokee for centuries prior to the European arrival.¹⁹ Laws, for the United States, implied a form of centralized government that would elevate the indigenous “savage” populations to a more enlightened and civilized level. This persistent effort by the federal government to revolutionize the existing legal system of the Indians was not without cooperation by some Cherokee who believed the future of the tribe as a sovereign nation depended on an internationally recognized status that, in turn, required the development of written laws and a centralized form of government (Johnston 2003:54). In order to work toward this goal, some Cherokee leaders were willing to borrow the American legal template, including its legal jargon, but without supplanting traditional unwritten laws.

Watson presents compelling evidence that laws develop by way of “legal transplants—the moving of a rule or system of law from one country to another, or from one people to another—and have been common since the earliest recorded history” (1993:21). Ancient Roman lawmakers, according to Watson, borrowed Greek words and formulations of codes. Similarly, in the early colonial period, the United States derived part of its legal system from English Common Law. Likewise, the first printed Cherokee marriage law introduced requirements readily understood by Americans, but without altering traditional marriage practices lived and managed by women elders who, in turn, may have adopted marriage practices from their close neighbors the Creek, Catawba, or Choctaw tribes.

¹⁹ Mooney (1975:13) states the earliest record (1540) is provided by the Spanish. This date however should not be considered the date the Cherokee began to exist as a people.

Certainly Cherokee experiences with foreign legal systems prior to the development of their laws, and then their Constitution, provided multiple options for consideration. Negotiations of trade agreements, cession of lands, prisoner exchanges, immigration policies, and peace talks occupied a great part of the historical exchanges between Cherokee and non-Indian populations. The *Historical Sketch*, for example, presents information that a 1684 treaty between the British colonial government of South Carolina and Cherokee representatives of the lower towns was “signed with the hieroglyphics of eight chiefs” (Mooney 1975:21). These chiefs, other tribal officials, and women and men of the tribe participated in negotiating the points of this treaty during council meetings according to the cultural standards of the community. Once this governing body finalized a decision, the appointed representative—the chief—acted as the voice of the community, not as the sole determinant of policy (Gearing 1958:1152; Haywood 1959[1823]:255). During these negotiations Cherokee women and men became more sophisticated and skilled in international collaboration.

Men and women also became knowledgeable about foreign laws and practices through personal experiences outside the town councils and the home. In January of 1797, Hawkins²⁰ wrote that he offered employment to an Indian woman, inviting her to act as interpreter between himself and other Indian women. In exchange, she would receive clothes for herself and her two children “at the expense of the United States, annually and to furnish her with the means of living comfortably” (Hawkins 2003:65).

²⁰ Hawkins (2003:65) states President George Washington appointed him Principal Temporary Agent for Indian Affairs South of the Ohio River in 1796.

Another requirement for employment was that she arrange for her daughter to learn how to spin.²¹

Considering their access to foreign men who were spouses, missionaries, military, or political leaders, Cherokee women had particularly ample opportunity to acquire a working knowledge of the American legal system. A case presented to the United States 4th Congress, Committee of Claims on January 17, 1797, involved the petition of the widow of Chief Hanging Maw (United States (2002[1797])). Her claim was that John Beard and several other men attacked, burned, and looted her home, wounded her and killed her husband. Her request for a pension from the United States government as a form of reimbursement for her losses, including the loss of her spouse, indicates a working knowledge of a foreign court system. The request for compensation for the death of a family member also closely followed Cherokee law of blood revenge but, instead of killing Beard (or some other American) as a form of compensation for the death of her spouse, the widow was amenable to a monetary compensation in the form of a pension from the United States government. A pension was not unreasonable in Cherokee terms, since as Gilbert explains, injuries that were normally settled by blood revenge could be avoided by requiring the injuring party to settle with the family by “payment of goods or other compensation” (1943:324). The widow asked for payment from the United States because she believed the United States did not control its citizen, Mr. Beard, according to its laws and therefore was responsible for his actions.²² The

²¹ Twisting fibers into thread or yarn.

²² The Committee of Claims recommended to the House that the widow take her case to the Executive Department and further recommended “that the prayer of her petition ought not to be granted.”

model follows that of a clan being responsible for the actions of its members, and the court case represents a translation of that “traditional” claim into more formal Euro-American law.

Women also became familiar with international laws during the course of their economic pursuits in trading the fruits of their labor, whether vegetables, pottery, or baskets. Handmade baskets were especially prized for their beauty but also for their utility as holding fresh fish, packing clothes, storing dried food, carrying earth to a grave, collecting wild foods, or use in annual ceremonies.²³ According to Hill, women who produced reed baskets and other handmade products as trade and sale items encountered opposition from South Carolinian officials who attempted to regulate trade practices (1997:56).²⁴ Following a treaty between the Carolina officials and some Cherokee in 1716, Mereness writes “it was agreed that both parties should carry their goods for trade to Fort Moore” (2007[1916]:95).²⁵ Three government trade centers were established by the South Carolina House of Commons—the Congarees, Winyah Bay, and Savannah Town—with the express purpose of developing a monopoly on local and international trade (McDowell 1955:ix). The colonial government built roads and the Cherokee participating in trade with South Carolina followed those roads to the markets. Sixty years later, in addition to the Carolinian attempt to control commercial trade, the Constitution of the United States, Article I, Section 8, established policy regarding

²³ McClinton (2007) diary entries recorded common occurrences of trade between the missionaries, who had manufactured goods (such as sewing needles), and itinerant women, who had handmade goods (such as baskets).

²⁴ Hill (1997:56) states “Indians also initiated their own exchange systems coming steadily to English, French, German, and Spanish households or communities for vermilion, ‘duffeld’ blankets in red, white, or ‘blew,’ strouds, guns, ammunition, salt, metal tools, and rum.”

²⁵ McDowell (1955) journal provides information on the South Carolinian trade monopoly.

commerce “with foreign Nations, and among the several States, and with the Indian Tribes,” including licensing approved traders in the Cherokee territory. One such license was issued to Alexander Campbell in 1797 authorizing him to legally trade with Cherokee Indians “under condition that Campbell observe[d] laws and regulations of the United States government” (U.S. Department of War 1797).

Those enterprising Cherokee tradeswomen not interested in participating in the trade monopoly established by the General Assembly of South Carolina or the federal government circumvented those requirements by continuing to use existing networks and travel routes to other markets rather than the routes established by the Carolinians.²⁶ They journeyed long distances to establish client bases with plantation owners, missionaries, travelers, and soldiers scattered around the territory.²⁷ Virginia traders, unlicensed by South Carolina, also provided competitive exchange rates that attracted Cherokee men and women as well as the ire of the Board of Commissioners of South Carolina. At one meeting of the Board dated August 3, 1711, as Mr. John Wright was being advised of his duties under his contract as a licensed trader, the Board stressed that “if att any Place you shoold mete with any Virginia Traders you are to make them sencible that their late Pretentions are groundless whilst they trade without a Licence from this Government which if they doe not observe, you are to put the Act in force of the 25th June, 1711 by seizing their Goods” (McDowell 1955:14). Virginia traders

²⁶ Waselkov (2006) describes the archeological discovery of maps drawn by Indians that illustrated existing “river courses, networks of paths, locations of mountains ranges, and placement of villages” that portrayed “social and political relationships.”

²⁷ Kelly (1978:221) explains the trade relationship between Cherokee and the Virginians prospered because *Oconostota* and other chiefs wanted to break the monopoly established by the South Carolinian colony.

offered cut-price goods and packhorse delivery, which directly competed with the Carolinian-Cherokee trade practices. Some Cherokee women did trade with the South Carolina colony, such as Peggy, mentioned in chapter two. Peggy traded a French prisoner for “eight Yards of Strouds” and a gun traveling from the vicinity of the “Upper Charikees” to the coast (McDowell 1955:82, 131). Her loyalty to the trading company was also rewarded with clothes for herself and her son above and beyond the exchange of the prisoner for cloth and a gun.

In these instances, knowledge of the legal system of a foreign government enabled these Cherokee women small business owners to take extra-legal steps to prevent the establishment of foreign trade regulations on their domestic products. Exposure to the legal systems of European and early American governments provided the knowledge and experience from which the Cherokee were able to draw in the construction of written laws without jettisoning their principle ideologies. Trade practices, success or failure in the American court systems, and gains and losses at the treaty table undoubtedly promoted innovative legal strategies developed to achieve a balance between existing and new laws.

A Synthesis of Laws

The “new” Cherokee written marriage law incorporated and continued existing Cherokee practices but also acknowledged Euro-American models. Through using the Euro-American model, they aimed to appeal to a Euro-American audience. Although laws are often regarded as a type of control over a particular segment of society in an effort to achieve “social order and individual protection, freedom and justice,” they also

represent a blending of enduring norms and customs within a legal system (Moore 1978:2, 244; Moore 1973:719; Cairns 2009[1935]:149). Certainly in this case, the law represents a blending rather than an attempt to overhaul or replace the established marriage law. This is perhaps especially so in the case of marriage law regarding the union of a Cherokee woman and a white man. The first marriage law came nearly a decade after the first laws of 1808. The law read as follows:

November 2, 1819²⁸

New Town, Cherokee Nation

Resolved by the National Committee and Council, That any white man who shall hereafter take a Cherokee woman to wife be required to marry her legally by a minister of the gospel or other authorized person after procuring license from the national clerk for that purpose, before he shall be entitled and admitted to the privilege of citizenship, and in order to avoid imposition of the part of any white man,

Resolved, That any white man who shall marry a Cherokee woman, the property of the woman so married, shall not be subject to the disposal of her husband, contrary to her consent, and any white man so married and parting from his wife without just provocation, shall forfeit and pay to his wife such sum or sums, as may be adjudged to her by the National Committee and Council for said breach of marriage, and be deprived of citizenship, and it is also resolved, that it shall not be lawful for any white man to have more than one wife, and it is also recommended that all others should also have but one wife hereafter. By order of the National Committee.

JNO. ROSS, Pres't. N. Com.

his

Approved.—PATH "X" KILLER,

mark

CH. R. HICKS

A. Mc'COY, Clerk [Cherokee Nation, &C 1826]

²⁸ The Cherokee Nation, &C (1826:10) reveals the initial concerns of the National Council to focus on establishing a police force (Light Horse Company), abolishing blood revenge, establishing the Standing Committee to attend to the affairs of the Nation, regulating activities of immigrants (tradesmen principally), and efforts to avert further loss of Cherokee common territory through illicit treaties, sales, or inheritance.

Several strategies can be seen in the first law dealing with marriage such as language choice, reference to Christian canon law, and an allusion to American patriarchal influence over marriage practices. There are three points regarding this marriage law that deserve special consideration. First, the laws were written in English by Cherokee lawmakers because at that time there was no written Cherokee language. Sequoya's syllabary followed almost twenty years after the first law was published, making it possible for more Cherokee people to read the laws regardless of their dialect (Mooney 1975:99; White 2002:128). Once the non-literate citizens learned the syllabary and followed the national newspaper that was printed in both English and Cherokee syllabary, the laws became more accessible.²⁹ It is unclear how the laws were introduced to the non-English speaking population prior to the availability of the syllabary though given the nature of the oral tradition for disseminating information, representatives of each of the villages who participated in the construction of the laws probably kept the people informed during Council meetings, in private residences, and between individuals.³⁰

The missionary or English educated Cherokee citizens, predominantly men, who signed the laws have been accused of disenfranchising women in the process of developing a sense of nativism.³¹ However, upon closer inspection, it becomes obvious this minority group of men provided the vehicle for not only the production of all laws

²⁹ National newspaper was the *Cherokee Phoenix*, printed from 1828 to 1832.

³⁰ Anderson (1996:399) writes "men and women were equal participants in town council meetings"; Hawkins (2003:136), in a letter dated May 4, 1797, recounts a visit to a council meeting where the Cherokee were deliberating and making decisions.

³¹ Dunaway (1997:15) writes women were "disenfranchised by the male-dominated mestizo National Council." By nativism, I mean "the reestablishment or perpetuation of native cultural traits, esp. in opposition to acculturation" *The American Heritage* College dictionary.

but also the gravitas and authority necessary for the acceptance of these laws by the international community. These Cherokee demonstrated legal competency and credibility by producing a marriage law comparable to that of the United States, in a language understood by all Americans, while continuing to protect traditional marriage practices. Using English to produce Cherokee laws served a dual purpose. First, Americans could not criticize the Cherokee effort to pursue President Washington’s advice to the Beloved Men that urged them to follow the example of the white people by creating laws that would preserve the peace, protect the land, safeguard the people, improve living conditions, and promote the general welfare (Washington 1796). Furthermore, using English demonstrated the power of the written word along the American model that valued written laws whether by the state or the church (Young 1981:504).

Second, the marriage law included phrases found in the Holy Bible. Christian Americans regarded a marriage performed by a minister as a contract recognized by the highest authority—God—and therefore the new Cherokee marriage law was regarded as being soundly based in civil and religious law. One expression, “take a woman to wife,” used in the Cherokee law—“any white man who shall hereafter *take a Cherokee woman to wife* be required to marry her legally by a minister of the gospel” [emphasis mine]—can be found in the King James Bible, Old Testament.³² Foster notes how, in English history, custom and religious law mutated and changed “an informal and at-will marital relationship to marriage as an institution subject to strict regulation by ecclesiastical

³² “You shall not take a wife for my son from the daughters of the Canaanites.”

authority, within the framework of a feudal order” (1975:85). Great Britain struggled with its own marriage laws and attempted to establish order upon the different socioeconomic classes as early as the sixteenth century with Catholic marriages being “required to be celebrated in the presence of a priest” (Foster 1975:85). Perhaps the British settling in the “New World” believed the Indian method of marriage closely resembled the twelfth century Anglo-Saxon conception of a man and woman living together “in a conjugal relationship” as a form of marriage that was in need of ecclesiastical administration. The Cherokee couple followed a marriage rite—exchanging words, involvement of the clan elders, with public celebration—that closely resembled common law marriages disparaged and discouraged by clergy of the Old World.

For the Cherokee, the new written law that required couples to be married by a minister provided such “ecclesiastical administration.” The terms minister or authorized person serving as an officiant of the marriage also permitted a continuance of existing marital practices with the town priest acting in the capacity of officiant. Americans reading the Cherokee law would find similarities as some couples too distant from a minister were legally married by a lawyer fulfilling the civil duty as a Justice of the Peace. For example, Meigs’s diary entry dated February 1807 recorded the marriage of William Lewis Lovely and Persis Goodrich by “Jn^o McEwen esq^r” (1993:86). McEwen might well have been a lawyer as designated by the title “esq^r,” (or Esquire).³³ Since the Cherokee had no lawyers or judges, a more plausible explanation for the phrase

³³ *The American Heritage* College dictionary, 3d ed., s.v. “esquire”; defined as “an honorific usu. in its abbreviated form, esp. after the name of an attorney or a consular officer: *Jane Doe, Esq.*”

“authorized person” might be that the law was written in a deliberately ambiguous manner to allow a continuance of matrilineal kinship management of marriage that would not conflict with the written law. After all, as Gearing explains, “legitimate marriages were ceremonially recognized by the topmost village official” in the eighteenth century (2007[1962]:21). The Priest-Chief, as the “foremost village official,” was involved in the marriage exchange and “act[ed] as if clanless and on behalf of the total village” (Gearing 2007[1962]:22). Village Priest-Chiefs in this instance occupied a type of legal office, which gave them the authority to preside over the marriage event. With the local authorized person officiating, women continued to exercise their clan right to a traditional marriage without contesting the written law of the Nation.

Marriages performed by a minister also helped dispel the other belief held by some Americans that the Cherokee participated in an “uncivilized” behavior of group marriage and general promiscuity (McLennan 1970[1865]; McLennan 1888). This notion of Cherokee group marriage more than likely occurred from a misinterpretation of classificatory kinship terms such as “father” that designated, at a minimum, Ego’s biological father and his father’s brothers.³⁴ *GiDaDa*, the Cherokee term for father, also extended to Ego’s father’s mother’s brother, so that when used by a child in the company of a foreigner, gave the mistaken impression that the child did not know his or her biological father. English expectations of a particular type of social behavior determined by the term “father” clearly did not correspond to the interpretations by Cherokee.

³⁴ Barfield (2003:350) defines classificatory kinship terms “in which lineal and collateral kin are grouped under common terms” such as father and father’s brothers are called by a common term—father.

The third point regarding the law concerns the expression “to take a woman to wife,” which implies a patriarchy with the “dominance of men as a class over women and a system by which rights and duties to persons and things descended through the father's line” (Barfield 2003:350). The idea of “taking” a wife is explained by McLennan’s theory that societies were originally considered matrilineal due to the physical connection between a mother and her child; however, as “primitive” societies began to practice exogamy, a term coined by McLennan, the matrilineal was replaced by the patrilineal with the man “capturing” his bride and taking her to his kinship community (1970[1865], 12-19).³⁵ Though the Cherokee lawmakers used the phrase “to take a wife,” found in the new marriage law, this use does not indicate the Cherokee people adopted the patrilineal form of descent similarly found in the United States. However, it is more likely the phrase was borrowed from the Old Testament for the same purpose legal jargon was borrowed—to produce a likeness understood by the American population.

As intermarriage between Euro-American men and Cherokee women increased, there was a corresponding increase in the need to legally define property rights in order to protect existing Cherokee inheritance practices. Defining property rights became a critical concern for the tribe as it established and maintained itself as a nation. As the Cherokee Nation suffered from the erosion of its territory through legal and illegal peace treaties and land cession, it became clear communal land could not be further lost to Euro-Americans through dissolution of intermarriages. Divorce as practiced by most

³⁵ McLennan (1970[1865]) states capture did not necessarily mean coercion as marriages performed between friendly communities included a symbolic form of capture following the formal contract or performance of the marriage ceremony.

Euro-Americans was based on the idea that the man owned the property, including custody of the children.³⁶ Such an approach ran in direct opposition to Cherokee matrilineity.

A definition of property provided by Thomas Jefferson in a letter to James Jay listed livestock and farmland as being important to any civilized person (Jefferson 1809). The term property seen in American texts referred to the rights to land determined by a court of law, improvements on the land such as “cleared fields or meadows, orchards, granaries, barns, fences, houses, mills, and so on” with the land itself holding the most essential status as property (Sweet 2002:125). In contrast, Cherokee believed the land could not be owned by an individual because the “air, water and Land is the free gift of the Creator to all men, and when Land is traded it is always understood that only the right to use it is meant” (Kilpatrick 1966:194). One Cherokee elder, The Flea, explained to the students at the Moravian missionary school that “it [land] is basically not *our* earth, it is God’s earth. He gave it to us to live on it. He makes grass and corn grown. Otherwise we would not have anything on which to live” (McClinton 2007:251). In the seventeenth and eighteenth centuries, prior to the expulsion of the Nation from the southeastern portion of the continent, the Cherokee people, as usufructuaries,³⁷ contracted for the use of land with a higher spiritual power equated with and referred to by Westerners as God. The Cherokee who planted on communal and family lands possessed, not the land, but

³⁶ Gordon (1733:16) journal entry illustrates the patrilineal inheritance practice followed by England as Gordon attempted to dissuade the Trustees of a Royal Charter from excluding “Daughters, Brothers and all other Relations” from acquiring land if the original grantee died.

³⁷ *The American Heritage* College dictionary, 3d ed., s.v. “usufructuaries,” used here to mean “one that holds property by usufruct”; or, “the right to use and enjoy the profits and advantages of something belonging to another as long as the property is not damaged or altered in any way.”

the domesticated products of their labors such as corn, peaches, or cotton. Likewise, those who fished or hunted possessed the game, fowl, or aquatic creatures rather than the land, air, or waterways.

Women were predominantly agriculturalists who shared access to the land held in common by the Nation and owned the harvest and goods produced by their labors. By 1801, the Cherokee women were also making “a great deal of Cloth,” selling turnips, trading huckleberries, constructing and trading baskets (Meigs 1993:6, 33).³⁸ Products acquired from the land through cultivation or by the collection of wild resources, such as river cane used for basketry, represented a tangible measure of property (Hill 1997:35; Altman 2006).

In addition to farming and the harvest it produced, women owned other forms of “property” including spiritual knowledge such as formulas for charms, ancestral songs, or ceremonies during childbirth (Dunaway 1997:15). Women herbalists who treated people’s health problems “prescribed, dispensed, or administer[ed] simples [sic]” according to the knowledge they accrued through the years and was regarded as a form of property (Fenton 1961:218). The contrast between Cherokee knowledge and personal effort—considered property—stood in stark contrast to the Euro-American emphasis on owning land as defined by European law and improvements upon the land as property defined by the state. As a result, the Cherokee marriage law had an especially difficult

³⁸ McClinton (2007:56, 120, 140) diary entries mention “a couple of Indian women . . . had huckleberries to trade”; an “Indian woman . . . came and wanted to trade baskets for linen to make shirts”; and “No Fire’s mother and her daughter also came again, and they were very friendly. The mother asked for a water pail; she promised to make us two baskets for it. We accepted this.”

challenge in addressing the disposition of property between a Cherokee woman and her Euro-American spouse following the dissolution of a marriage.

Should the Cherokee woman separate from her Cherokee spouse, property would have been split with the woman taking the children and keeping the property she produced by her own efforts; and the man taking his property produced by his own efforts. Hawkins describes this separation as being the decision of either the man or the woman with the “no right to the husband over the property of his wife; and when they part she keeps the children and property belonging to them” (2003:74S). While Hawkins does not elaborate on the term “property,” his journal makes reference to the man who has assisted the woman “to plant her crop”; or the man moving to “the house of his bride” (2003:73S, 74S). Some property, such as cooking instruments or water jars, were gendered items no man would consider claiming as his property.³⁹ Likewise, the weapons men used to hunt or go to war were not considered items owned by women.⁴⁰ Another aspect to the marriage law included making a determination on how children figured in the distribution of property both as owners (or future owners through inheritance) of property. Prior to and following the laws introduced in 1808, the matriline directed the mother’s property to her children regardless of the status of the father as de facto genitor or de jure genitor. Following matrilineal practices, Cherokee men belonged to their mother’s clan; their property was transferred to their closest female relatives even if they had fathered children of their own.

³⁹ Timberlake (2007[1765]:36) comments “the wives generally have separate property, that no inconveniency may arise from death or separation.”

⁴⁰ Timberlake (2007[1765]:35) lists items buried with a dead man as being “guns, tommahawkes [sic], powder, lead, silver ware, wampum, and a little tobacco.”

Authority and Power

What we know about Cherokee women of the seventeenth and eighteenth centuries is presented in historical documents written by Euro-American men whose preconceived ideas of how a society should operate conflicted with Cherokee reality. Eyewitness accounts that accentuated and embellished specific elements of information, however, also provided details to a more complex level of society. Even biased representation has its value in anthropological research. First, the raw material presented in eyewitness accounts of the Cherokee people, and women in particular, provide evidence of norms found in marriage laws that existed prior to and following the first written laws of 1808. The raw material also provides examples of the influence of the matriline on political, jural, and economic events. Overall, the material suggests then that marriage between Cherokee couples continued to follow the traditional model under the new law; while the new laws directed marriages between Cherokee women and Euro-American men in a form understood by Euro-Americans.

The evidence supporting this argument is implicit, however, in that the written law did not directly address or modify the traditional model. Adair referred to a “petticoat government” suggesting a hierarchy with women over men; missionaries wrote about the mothers’ control over their children to the exclusion of the father; and Hawkins notes the independence women experienced in manufacturing and trade practices (Adair 1930[1775]:152-153; Dunaway 1997:17; Hill 1997; Hawkins 2003). Information supporting the authority of women in their control of marriage is not, however, limited to historical eyewitness accounts by Euro-American men. There are two other sources often

overlooked: the Cherokee newspaper (the written word) and Cherokee mythologies (the spoken word).

Newspapers provide one perspective into the struggles of the nascent Cherokee Nation. In particular, the *Cherokee Phoenix*, the national newspaper published between 1828 and 1832, provides evidence of the developing sense of nationalism as written about in local, national, and international news, as well as editorial comments against the removal policy formulated by American Presidents. Among the topics presented by the newspaper, as the Nation moved into a more international position, were the “Miscellaneous” articles that attempted to influence and then gauged the social progress of women based on appearances. One article recommended a particular comportment for women in dress and behavior while another article focused on the “dignity, and elegance, and ease, in the manners of English ladies accustomed to the society of London” (English Ladies 1828). The image of the English woman, described above, attempts to provide a social standard to which the author believed Cherokee women needed to aspire.⁴¹ A different article, however, condemned the use of corset stays remarking that stays caused “muscles to dwindle from inaction” (Stays 1828). Apparently not all contributors to the newspaper believed the European body type represented an alternative to traditional clothing.

The *Cherokee Phoenix* represented the self-appointed moral compass responsible for educating the female citizens of the Nation on the qualities of the ideal woman—at

⁴¹ The author of these anonymous newspaper articles appears to share the Euro-American attitude about Cherokee women needing refinement and better manners that also closely follows Adair’s evaluation of the Cherokee woman, Dark Lanthorn (described in chapter three): modest, good housekeeper, Christian, and decent.

least qualities defined by the editor of the newspaper. One anonymous author encouraged women to be like a “vine, which has long twined its graceful foliage around the oak” as she “who is the mere dependent ornament of man in his happier hours, should be his stay and solace, winding herself into the rugged recesses of his nature, tenderly supporting the drooping head, and binding up the broken heart” (Woman 1828). These colorful articles illustrate methods Cherokee men such as Elias Boudinot,⁴² the founding editor of the paper, used to influence the opinion of women by men and by women, though not always successfully.

One author using the pseudonym “Socrates,” recommended Cherokee women surrender their personal interests and “give way to the interests and existence of a nation” (Socrates 1828). He was referring to the intermarriages between Cherokee women and “the thief, the robber, the vagabond, and the tippler, and the adulterer”—no doubt implying the white man (Socrates 1828). Though this author appears to present his opinion from a humble and self-deprecating position, he advocates for a law that would require the “thieves” and “vagabonds” to produce a written letter of good character, to provide bond and security countersigned by a citizen of the Nation, and to pay the national treasury one hundred or more dollars before becoming eligible for marriage to a Cherokee woman.⁴³ In the event the applicant lied on his application, “his marriage

⁴² Perdue (1996) explains Elias Boudinot, née *Gallegina* or Buck Watie, was educated by the Moravian Springplace Mission school located in the Cherokee Nation and then the Foreign Missions School in Cornwall, Connecticut. Perdue further notes Boudinot acquired his name “following the ancient Cherokee custom of changing names and the more recent practice of adopting the names of prominent whites and benefactors, Buck chose to take the old man's name.”

⁴³ Cherokee men would not be required to submit forms and pay fees because they were already citizens of the Nation by birth. Presumably the Cherokee were using U.S. dollars because their treasury was not printing money at this time.

should then become null and he expelled from the nation” (Socrates1828). Socrates was promoting a change to the marriage law produced by the Nation nine years earlier; and, advocating the Nation become responsible for making the formal determination whether or not a marriage was legal.

These recommended changes were not implemented. Primarily, these changes were inimical to women; and, Socrates did not follow the appropriate course of action of presenting his business before the town or national council, permitting discussions, and then honoring decisions agreed upon by the consensus. By not following the accepted cultural standard that permitted every voice to be heard equally, his presumptive authority to advise the Nation was met with silence and inaction. Boehm describes this response by the Cherokee as a form of “intentional leveling,” or the power of the people, and especially the respected woman elders, to control individuals in an effort to maintain the desired social order (1993:228).⁴⁴ Boehm describes this as “a strong tendency of followers to restrict the development of personal ascendancy among adult males, including leaders” (1993:228). Both men and women exerted leveling mechanisms “guided by an ethos that disapproves of hierarchical behavior in general and of bossiness in leaders in particular” (Boehm 1993:227).

Socrates appears to represent a person attempting to command or exert a type of rhetorical superiority within the Nation without benefit of the qualities Cherokee valued in a leader: a long course of public service; a lifetime of moral virtuosity in human

⁴⁴ Intentional leveling: criticism, ridicule, rejection, and extreme sanctions (assassination).

relations; or acts of bravery during war or oratory skills at town meetings (Fogelson 1977; Gearing 2007[1962]).

The author Socrates may well have been a pseudonym used by Elias Boudinot, the founding editor of the *Cherokee Phoenix* newspaper, based on his relative youth and Euro-American lifestyle that separated him ideologically from the majority of the non-literate citizens. His efforts to influence a Nation merit further consideration because his actions as a Cherokee did not match the prevailing Cherokee philosophy. Elias Boudinot was born 1804, educated by Christian missionaries, advocated acculturation, and “maintained that the preservation of his people depended solely upon abandonment of their own traditions, culture, and history” (Perdue 1996:3). Further, Perdue writes Boudinot was the founder and secretary for the Moral and Literary Society of the Cherokee Nation, whose members pledged “suppression of vice, the encouragement of morality, and the general improvement of this Nation” (1996:12). Regardless of the identity of Socrates, the message printed in the *Cherokee Phoenix* did not represent the majority of the Cherokee people. Graham explains the dilemma that develops as a nation considered by Western standards to be uncivilized or primitive chooses a spokesperson that uses the dominant Western language to represent its citizens to international audiences (2002). Specifically, she explores how language choice influences self-representation to outsiders yet raises “questions about legitimacy and authorship” (Graham 2002:183).

While Boudinot was not a chief or headman, he was appointed by the Cherokee Council as a paid agent to solicit donations from American supporters to be used in

establishing and supporting a national academy and a printing press (Perdue 1996:67).⁴⁵ This appointment also provided him the opportunity to express his personal sentiments regarding the path the Nation should follow—a path not agreed upon by the entire population. A question remains as to whether these potential donors saw Boudinot as an Indian pretending to be a white man, or an Indian needing further nurturance and financial assistance to become a white man based on: his appearance; language use; and plea for funds. More importantly, did the Cherokee citizens see Boudinot as a Cherokee accurately representing their beliefs and aspirations in a foreign language to outsiders, or, did they see him as illegitimate or worse—treasonous?

The unity exhibited by men and women in resisting the unwelcome advice recommended by Socrates is also illustrated and perpetuated in the telling of a Cherokee myth recorded by Mooney from an interview with an elder, John Ax, regarding the first man and woman supernaturals (1995[1900]:242). The couple known as *Kana'ti* and *Selu* worked together to provide a harmonious existence for their family. This myth described the expected behavior of men, women, and children in their daily lives that included the mundane events of hunting and gathering with consequences of not fulfilling the requirements of expected moral behavior. In addition to providing the generally held belief that this myth of the first couple represented a division of labor from which women were expected to follow—cooks, mothers, or wives—this myth also offers a model for a complementary form of governance found in Cherokee life that provided the strength to resist the pressures of acculturation from within the Nation as well as from without. That

⁴⁵ Perdue (1996:67) writes Boudinot was also charged with procuring printing press types.

is not to say women and men cooperated completely in all circumstances, at all times. Some social situations required a reversal in the responsibilities with men exhibiting authority and women supporting (or choosing not to support) those decisions.

One case recorded by Timberlake of women deciding to reject the authority of men deserves special attention because it reveals the give-and-take manner in which authority and power are negotiated.⁴⁶ The event occurred at the end of the French and Indian War against the British at Fort Loudoun, a British diplomatic and trading center that doubled as a fort protecting Indian families of warriors fighting with the British (Kelly 1978:223). Though the Cherokee and British in the South Carolina and Virginia colonies were on friendly terms at the time, the deaths of some warriors at the hands of Virginia settlers launched a retaliatory attack by some Cherokee on Carolinian settlers.⁴⁷ The conflict escalated to the point where Fort Loudoun was surrounded by Cherokees intending to starve the British soldiers and the Great Warrior (*Oconostota*) forbidding Cherokee women from trading there or feeding their soldier husbands. Timberlake reports that Cherokee wives of soldiers assigned to Fort Loudoun continued to supply their spouses with food during the siege. When the women were threatened with death for helping the British, the women laughed at Great Warrior's military authority and "boldly told him, they would succor their husbands every day, and were sure, that, if he killed them, their relations would make his death atone for theirs" (Timberlake 2007[1765]:35). This example of the authority of the Cherokee war organization that

⁴⁶ Timberlake (2007[1765]:35) was not making an eyewitness account as it took place in Cherokee territory while Timberlake was spending fall and winter at home in Virginia in 1760.

⁴⁷ Kelly (1978:223) states the returning warriors stole some horses from Virginia settlers; and the Virginia settlers killed them. In retaliation, Cherokee warriors killed some Carolinian settlers (same ethnicity as the Virginians and apparently served as surrogate revenge victims).

attempted to direct Cherokee women also demonstrated the wives' defiance against the military authority by invoking clan retaliation.⁴⁸ This brave attempt to protect their husbands, however, was short lived as the surviving garrison eventually left the protection of the fort and was destroyed in their retreat to the Carolinas (Kelly 1978:225).

Authority, Power, Property, and Ritual

This balance of authority and power, as represented by the women and the men of the matriline, continued to exert influence in multiple domains: guiding marriage choices; determination of post-marital residence; and citizenship in the Nation. The matriline also provided for the management of some kinds of property through descent and inheritance determined by “rules of behavior defining the relations between individuals and groups” (Malinowski 1942:2). As Hallowell explains, property is a social institution because it “implies a system of relations between individuals” rather than a relationship between a person and a thing (1943:119).

One prominent example of this concept is provided by Malinowski's examination of Trobriander ownership of a canoe that draws in the responsibilities of many people: the *Toli-Waga* who brings the magical powers to the construction process ensuring a fast boat; the helpers who are drawn from kinship relations or friendship; and the experts in the techniques of sailing (1984[1922]:120). These social relationships can also be found in the Cherokee management of property in the form of land. While the community as a whole worked together on agricultural projects, the women determined the conditions of land use with the older women guarding the plots against foraging wildlife, children

⁴⁸ Gearing (2007[1962]:15) identifies four “structural poses” occupied by men according to “a particular moment for a particular purpose” including the revenge killing.

assisting their mothers in collecting wild or domesticated food, and “the women alone do[ing] all the laborious tasks of agriculture” (Timberlake 2007[1765]:22). Longe gives an account of the Feasts of the First Fruits⁴⁹ celebrated by the entire community when the corn became edible.⁵⁰ The Indian Priest cautioned his people to wait until he had offered the edible corn to “the most high god and Return him thanks for giving itt,” lest they suffer the consequences (Longe 1969[1725]:15). Women were advised to restrain the children; adults were advised to restrain themselves; young men were forewarned to fast and purge themselves of evil ways; the elders fasted in order to “purge out the ould Coren before that they Eate the new” (Longe 1969[1725]:17).

This seasonal ritual ceremony emphasized the communal aspects of working the land and sharing its bounty produced by the efforts of the matrilineal group that Euro-Americans chose to regard as uncivilized and in need of laws defining terrestrial boundaries. This concept of land use conflicted with the Euro-American notions of what constituted property and ownership as well as rights and obligations to that property.⁵¹ It became particularly crucial to Cherokee lawmakers to define these concepts in a manner recognized by American lawmakers without intruding on the Cherokee rights.

⁴⁹ Longe’s use of the expression “First Fruits” may have been in reference to the “First fruits” taken from “Deuteronomy 26:I-II, signifying the offering of the first produce of the fields and orchards and the firstborn son (McClinton 2007:634, endnote 53).

⁵⁰ Longe describes this as “from the time that the corn is in the ear”; Reed (1993:28) writes when the corn was fit to eat but not ripened until September.

⁵¹ Nadasdy (2002) writes the Kluane in the 1970s believed they were “enmeshed in a complex web of reciprocal relations and obligations with the land and the animals upon it” demonstrating a similar concept of property.

CHAPTER FIVE DURABILITY AND FLEXIBILITY IN CHEROKEE LAW

The concern for the preservation of Cherokee sovereignty impelled leaders in the Cherokee communities to develop laws that defined boundaries and to establish rules for citizens, licensed foreign workers, and immigrants, particularly as intermarriages between Cherokee women and Euro-American men became more common. Further, the establishment of a council of chiefs and warriors served to concentrate Cherokee governance, which had been decentralized and to some Europeans, non-existent. With the appointment of a Principal Chief and a Council, political and economic affairs with the international community became more streamlined. Traditional clan governance was neither abolished nor significantly diminished, since the new laws produced by the Council either continued existing practices or had limited immediate influence.

One explanation for the lack of much change from the new laws is offered by Moore, who states “legal rule-systems include general principles of application and interpretation which can themselves be interpreted in a variety of ways” (1978:3). The Cherokee law dated November 2, 1819, provides an example of how a law was written in an ambiguous manner so that it had the potential for flexible application. The law refers to the marriage of a Cherokee woman and a white man stating the “any white man who shall hereafter take a Cherokee woman to wife be required to marry her legally by a minister of the gospel or other authorized person” (Cherokee Nation, &C 1826).

Traditional Cherokee marriages that were not conducted by a minister of the gospel, nevertheless, did qualify as legal marriages according to the Nation's law because they were conducted by an authorized person. In this case, the authorized person was the village priest (Gearing 2007[1962]:21). Ambiguous language thus provided opportunities for flexible application. Even the Euro-American men could follow their own interpretations of what entailed a legal marriage based on their own European common law or Christian marriage practices.

Another example of flexible application can be seen in the Last Will and Testament of James Vann as it was executed by both Cherokee clan and National Council members. Briefly, Vann bequeathed his property to a son from a previous marriage (he had no children with his last wife, the widow) and household furniture to his widow. That appeared to follow the Cherokee law that stipulated the regulating parties (the police force) will "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" (Cherokee Nation & C 1826). This Will appears to circumvent the traditional distribution of property to Vann's clan in favor of a patrilineal system that directed property to a male heir. Yet the ultimate result was a flexible amalgam of matrilineal and patrilineal elements.

In addressing the durability and flexibility of Cherokee "law," this final chapter provides a detailed analysis of these two crucial issues of Cherokee and non-Cherokee marriage and the nature of inheritance in one such Cherokee and non-Cherokee marriage—that of James Vann. In the discussion of these two issues, it may be helpful to reiterate the basic point that the Cherokee followed matrilineal rather than patrilineal

patterns, though with some patrilineal characteristics. The importance of a matrilineal clan system during the seventeenth and eighteenth centuries was that the clan determined membership and inheritance through women.¹ Membership in a particular clan meant a person could expect certain behavior from other clan members that he or she could not expect from a non-clan member. For example, the Cherokee father was not regarded as the primary social influence over his biological children. It was the mother's brother who was regarded as guardian of a child's future.

This matrilineality should not be confused with matriarchy, which has to do with "the dominance of women as a class over men and a system by which rights and duties to persons and things descend through the mother's line" (Barfield 2003:312).

Matrilineality is simply a form of descent tracing the family line through the mother; however, it does not necessarily rule out other mechanisms for tracing blood relations. Additionally, the Cherokee were generally matrilineal, meaning the men marrying into the clan moved to the home of the women. Cherokee women also managed the marriage process, influenced the direction of inheritance, and considered all children born to kinswomen automatic members of the clan regardless of pater or genitor. Though women were key persons in these events, Cherokee men participated as fathers, uncles, brothers, or sons.²

¹ McLennan (1970[1865]:91) argued that the first system of kinship was "that which recognised blood-ties through mothers only." This argument challenged Sir Henry Maine's (2007[1878]) patriarchal theory--that society began with the family governed by the father as the elementary social unit

² According to McClinton (2007:36), one father, The Rattling Gourd, failed in his attempt to enroll his daughter in the Moravian school. The Rattling Gourd placed his daughter in the school but his wife and her sister (same clan as the daughter) removed the child against his wishes. The missionaries supported the father as they believed a man should head the household.

Even as intermarriages increased between Cherokee women and Euro-American men, the matriline continued to influence practices, contrary to European expectations. British laws influenced by a patrilineal society that attempted to regulate marriage, divorce, and inheritance then stood in opposition to Cherokee laws influenced by a matrilineal society. One Englishman, John Lawson, strongly urged the unions between Indians and Christian men in the colonies including the recommendation that financial incentives be provided from public coffers to “the ordinary People, and those of a lower Rank, that they might marry with these *Indians*” (1967[1709]:244). His belief was that the Indians would become Christians, would have their children trained as apprentices, would share their knowledge of medicine and surgery, would assist in the exploitation of natural resources, and would help defend British interests in the colonies against “all the Enemies to the Crown of *England* in *America*, both Christian and Savage” (Lawson 1967[1709]:245). Lawson’s recommendation for subsidizing intermarriages was not necessary, however, because intermarriages in the colonies were considerably more inexpensive for the common man as there were no licensing fees, declaration of banns, or dowers necessary.³ Those intermarriages would, however, be cast in a distinctively Cherokee manner.

Marriage: Church or Common Law?

As European trappers and traders began to establish themselves in the Cherokee territory in the quest of fortune, they brought with them the standards of doctrinal law and

³ Foster (1961) describes a dowry as a gift made in trust on the morning of a wedding offered by the groom usually providing property to the bride in the event the husband died. A woman brought property to the marriage in the form of a dowry.

the common law of marriage and divorce established in their European communities. Whether these men followed the doctrinal law or the common law of their home country was determined, in part, by the existence and success of sanctions exerted on them by the church and state. For example, in England, marriage was regarded as a sacrament with Catholic and Anglican marriages requiring a priest as officiant and imposing penance for any violation of the ecclesiastical law (Foster 1961:45).⁴ Following the decree of Lord Hardwicke's Act of 1753, a license, marriage banns, and a ceremony conducted by a parish priest were required with the only exceptions to the rule being Quakers, Jews, and the royal family (Foster 1975:85; Foster 1961:47 n. 12). Penalties for circumventing this Act included the marriage being declared invalid or null. Further, the wife was denied proof of "right to dower" in the event the husband died sometime after the marriage.⁵ These laws, however, created problems for the poorer people who could not afford the expense of paying for priests, marriage banns, or public ceremonies. As a result, common law marriages outside the landed class were widespread in the seventeenth and eighteenth centuries in England.

Marriages performed by the church had certain advantages among the wealthy class (e.g. "upper classes") because they were validated by the king, the church, and the society, and could only be terminated by death, annulment, or an act of Parliament. Such formal marriages and divorces recognized by the church, the king, and Parliament, however, were reserved for the privileged class and benefited the wealthy who could

⁴ Foster (1961:45) refers to the Council of Trent, mid-sixteenth century.

⁵ Foster (1961:46) interprets the lack of formality as a disadvantage because there was no legal proof a deceased husband allotted a dower to his widow.

afford to pay legal fees, follow procedural processes, and produce the evidence (authentic or forged) required to divorce a wife. In contrast, the poorer classes in England depended upon the informal and inexpensive common law marriages, regarded as a private contract between a couple who exchanged words “in the present tense that they were husband and wife” (Foster 1975:85).⁶

In the colonies, opportunities for common law marriages, informal and unlicensed, were abundant given the lack of established churches or civil laws directing marriage practices on the frontier. The lower classes of immigrant men skilled in the trades such as blacksmith, cooper, trapper, or the indentured servant, and soldier—men referred to as “the thief, the robber, the vagabond, and the tippler, and the adulterer” by one author in the *Cherokee Phoenix*—continued British common law marriage traditions in the colonies (Socrates 1828).⁷ Common law marriage for the poorer, single male immigrant (or married man representing himself as single) became even more acceptable due to the cultural familiarity of the Indian ceremonies that closely resembled the common law marriages in England. Moreover, Cherokee practiced polygamy⁸ permitting married immigrant men who had left wives and children in England to marry again with impunity, a bad conscience, or feelings of abandonment, though their wives in England may have had a different point of view.

⁶ Foster (1975:85) referred to this as the *sponsalia per verba de praesenti*; Mueller (1957:551) writes Parliamentary divorce was expensive, £600-1000.

⁷ Godbeer (1999:100-101) writes some traders were referred to as vagrants, lewd, and immoral.

⁸ Polygamy is a term referring to a husband with two or more wives. Sororal polygyny refers to marriage to sisters, or marriage to a mother and daughter; McClinton (2007:121) one diary entry refers to a man and his two wives, a mother and daughter, visiting the Moravians.

Longe describes the essential elements of the Cherokee marriage process: a promise between the couple, consultation with the respective families, gift exchanges, and a public celebration. His observation of Cherokee marriage practices is colored with contempt, however, as he remarked “yet for all these serremonis that they use I have seen Them leave one the other in 8 or 10 dayes with as litell Consearen as if they never had known one the other” (Longe 1969[1725]:31). Adair as well commented on the marriages that were “ill observed, and of a short continuance; like the Amazons, they divorce their fighting bed-fellows at their pleasure, and fail not to execute their authority, when their fancy directs them to a more agreeable choice” (1930[1775]:153). Reid claims that this ability to separate at any time indicates “that marriage was not a binding contract” and suggests the term “abandonment” rather than divorce to describe the permanent separation of a Cherokee married couple (2006[1970]:117).

Yet European common law divorces closely resembled the Cherokee method of divorce or abandonment disparaged by Reid in that marriages were dissolved by a spouse in an effort to “seek a way out of holy deadlock” (Foster 1961:49). The commoner in England practiced self-help divorce by desertion, an agreement of divorce by the consent of the couple, selling a wife at a county fair, or extra-legal divorce “by ministers of dissenting sects” in pursuit of ending an undesirable marriage (Foster 1961:44).⁹ In the colonies, the common man married to an Indian woman walked away from a marriage following the Cherokee custom of separating at will. Similarly, Cherokee couples parted with the woman keeping the children and the man returning to his clan. Foster makes the

⁹ Mueller (1957:562) writes dissenters were non-conformist ministers such as Puritans and Independents.

point that most cultures approve of some form of “escape from an impossible marriage” with the “patriarchal” societies demonstrating the will of the husband over the wife; and the “matriarchal” societies demonstrating the will of the wife over the husband (1961:64).

These historical comments on Cherokee marriages overlook the possibility that when a married Cherokee couple or a Cherokee-European couple separated even soon after the marriage ceremony, they were operating within the law (as they understood it) rather than outside it. It was not just loose morals or promiscuous behavior on the part of the Cherokee woman.¹⁰ Most travelers, soldiers, and traders writing of their observations of Indian marriage predictably focused on those qualities most familiar from European ceremonies, whereby a couple was considered in an exclusive relationship if they cohabitated after the ceremony. While European observers recognized similarities between Cherokee marriages and European common law marriages, they were still appalled by the frequency and quickness of separations. They thus attributed the short-lived marriages of Cherokee women to their ill tempers, promiscuous attitude, and the weak-willed men who “allow their women full liberty to plant their brows with horns as oft as they please, without fear of punishment” (Adair 1930[1775]:153). The reasons for separation, however, were actually much more complex, much more formalized, and much more reflective of a matrilineal society.

¹⁰ Timberlake (2007[1765]:35), in referring to marriages, states “it is common for a person to change three or four times a-year”; Longe (1969[1725]:30) asserts a “couple may split up after as little as 8 days.”

A Cherokee marriage contract,¹¹ for example, had certain requirements imposed on both the bride and the groom that, if not met, cancelled the contract. This notion of cancelling a marital contract was not unknown to the Europeans. British marriages were dissolved by declarations of nullity and annulments under certain circumstances such as *causa frigidity* (“the party hath perpetuam impotentiam”), idiocy, consanguinity, or lunacy (Mueller 1957:555). Mueller writes that courts required evidence and procedural processes to support claims for annulments but were also willing to hear arguments after many years given the example of *Duins v. Donovan*, a marriage declared void after seventeen years, and *Wright v. Elwood*, a marriage declared void after twenty years (1957:556). Longe reported four basic requirements in the marriage based on his discussions and personal observations. However, he would not have seen nor would he have known to ask about a transition period between the public ceremony and the official recognition of the marriage because his cultural orientation led him to believe that the marriage was legal and valid at the end of the ceremony.

The confusion over the duration of marriages suggests the Cherokee had unobserved and unrecorded requirements that extended past the ceremony that ultimately determined the validity of the union. Just as the Nuer marriage ceremony, mentioned in an earlier chapter, required the birth of a child to legally recognize the marriage, the Cherokee marriage may have had specific requirements determining its validity.¹² The

¹¹ Reid (2006[1970]:114) dismisses the possibility that Cherokee had marriage contracts as he states “all notions of betrothal and contract in the Cherokee law of marriage must also be dismissed.”

¹² Recall from earlier chapter that the Nuer (Evans-Pritchard (1969[1940]) couple followed strict requirements that progressed through courtship, consultation with all family elders, the payment of bridewealth, observance of ritual ceremonies, and then, only after the birth of the first child, was the marriage legally recognized.

historical records do not include any information about an extended period of requirement for the Cherokee but there is evidence provided by Hawkins that the Creek Indians, close neighbors and occasionally a source of exogamous partners, shared some cultural traits and did have such an extended requirement (2003:73S).¹³

The Creek and Cherokee Indians both followed a very similar marriage betrothal and ceremony with the man expressing interest in the woman; his sister appealing to the bride's female relatives on his behalf; and an exchange of gifts. If the match was approved—and this is the critical point—the groom moved to the bride's house “as soon as he chooses” (Hawkins 2003:73S). At this point, the historical authors considered the couple legally married. Hawkins, however, goes on to write that after the Creek man built a house, made a crop, harvested that crop, hunted and put “all this in the possession of his wife, the ceremony ends, and they are married; or as they express it, the woman is bound” (2003:73S). Just as the Nuer marriage was not complete until a child was born, the Creek marriage was not complete until the groom performed certain duties over a period of time following the marriage ceremony. This period of time was required to demonstrate the husband's abilities or sincerity and involved multiple seasons since hunting was generally in the summer while land clearing, planting, and harvesting occurred in the early spring through fall. Failure of the spouse to achieve hunting and harvest goals provided the wife grounds, with the support of her family, to declare her marriage contract null and void and to evict the husband from her home. Creek Indian

¹³ Hawkins (2003:73S) described shared cultural traits between Cherokee and Creeks: celebrate a feast (Busk or Green Corn); use of lunar huts; sexual freedom of women prior to marriage; and men and women sharing agricultural duties; Gilbert (1943:194) writes Creek and Shawnee blood “is still traceable in some families of the Eastern Cherokee.” Campbell (1930) describes Creek culture similar to Cherokee.

cultural traits do not provide empirical evidence of Cherokee cultural traits; however, their close proximity and intermarriages suggest the possibility that the Cherokee had similar requirements imposed upon a groom in fulfillment of a marriage contract. If the contract was not successfully carried out, the marriage could be summarily dissolved.

Mooney recorded a Cherokee myth “The Bride from the South” that corroborates the marriage rights and duties of the woman and the man in the period immediately following the marriage ceremony but prior to the validation of the marriage (1995:322). “The North” fell in love and wanted to marry “The Daughter of the South.” The parents of the girl were concerned that if they married and he remained in their community they would all freeze to death because as soon as he arrived, the weather turned bitterly cold. After promising to take his beloved to his homeland, they were allowed to marry. When the couple moved to his homeland, the reverse problem occurred. When the sun rose, the ice houses in his community began to melt. His community spoke to him and told him he must send his wife home or their settlement would be melted. In the end, he sent his wife home to her parents.

This myth is a metaphor for the compatibility of a couple considering marriage and the fulfillment of their responsibilities in their communities. Though the pair loved each other and they were willing to sacrifice their own comfort to accommodate each other, their marriage directly affected their communities and eventually caused their separation. The community and the couple came to the decision that the marriage should be effectively annulled and they separated permanently based on their incompatibility as a married couple. If The North had been successful in preparing a home and providing

for his bride, the marriage contract would have been legal and valid and supported by their respective communities. If Longe and Adair had been familiar with the myth of “The Bride from the South” they might have been more aware of a marriage ceremony that fully concluded only after the man and woman demonstrated compatibility in their communities. Marriages between Cherokee women and European men that ended shortly after the ceremony thus indicated an unsuccessful union requiring a termination very similar to the common law divorce found in England. Once the Cherokee marriage terminated, Cherokee custom dictated that the man took his property and left the wife’s home—she kept the children. After all, they were the “property” of the matrilineage. To European eyes these might be fragile liaisons, but the frequency of “divorce” and the resolution of marital property instead show the durability—and flexibility—of Cherokee institutions.

Inheritance

Of course, most marriages endured well past the original ceremony. Timberlake, for example, observed “the Indian women gave lately a proof of fidelity, not to be equalled [sic] by politer ladies, bound by all the sacred ties of marriage” (2007[1765]:35). This statement follows closely on his observation that “there is no kind of rites or ceremonies at marriage, courtship and all being, as I have already observed, concluded in half an hour, without any other celebration, and it is as little binding as ceremonious” (Timberlake 2007[1765]:35). His statements appear contradictory; however, his writing style suggests he tended to use extremes in his observations and opinions. Nevertheless, intermarriages that endured ultimately encountered the question

of inheritance distribution. That said, one might ask how property, and what kind of property, transferred after the separation or death of a spouse. That issue of property provides a final opportunity to assess durability in Cherokee matrilineal kinship.

In the early eighteenth century, and presumably even before, Cherokee interment practices included burying personal or sacred objects with the deceased, such as stone and shells, copper beads, necklaces, and pendants (Bushnell 1920:93; Coe 1961; Longe 1969[1725]).¹⁴ Prominent men were buried with *ulasu'ti* talisman crystal; the horn, tooth, or scale of a *iktena*, a horned serpent with magic powers; a feather from the right wing of the *su'nawa*, mythic hawk and (ancestor of the present pigeon hawk); similar feather of golden eagle; beads of seven colors: red, blue, black, white, yellow, purple, and gray-blue (Mooney 1889:168). Lieutenant Timberlake expressed a contrary opinion regarding burial goods by claiming the Cherokee seldom buried their dead, preferring to throw the body into the river (2007[1765]:35). Haywood lists clothing, fans, mats, deer skins, and basket coffins for a man and a woman found in a cave in western Tennessee (1959[1823]:152).

In later centuries, burial practices changed, and grave goods also changed as property and its value were redefined for some Cherokee.¹⁵ The bow and arrow became less valuable than a manufactured firearm; United States dollars more valuable than bead wampum.¹⁶ Livestock and raw materials for manufactured goods such as cotton, linen,

¹⁴ Longe (1969[1725]) explains the “goods that is burid with these corps is given part to them to serve them in their voiges [voyages], and part To present thire friends and Relations in the other world.”

¹⁵ Bushnell (1920:93) describes burial goods as including stones and shells with European manufactured goods conspicuously missing.

¹⁶ The Cherokee did not print money at this time. One source of money was provided by the annuities paid to the Cherokee by the United States according to amounts determined by treaty agreements.

wool, saltpeter, and minerals represented objects that were intended for sale or trade and were seldom destroyed as grave goods. Other objects associated with the deceased, such as household utensils, continued in use as families shared residences. Some things, however, were passed on.

Inheritance, for the Cherokee, involved passing tangible and intangible possessions to the descending generation generally following matrilineal descent—mother to children because children were members of the mother’s clan. Lack of written documentation did not impede this transference of property as multiple generations were linked together by their duties, rights, responsibilities and this transfer of the property (Strickland 1975:143).¹⁷ Sources indicate inheritance of various kinds did take place. Longe recorded some examples: a newborn child receiving “aney name of honor”¹⁸ from the family; an Old Priest describing how he was “alearning them [his nearest boy relatives] all sort of doctoring for when I day [die] thile be in my place”; and the newly deceased individuals, who once arrived at the “good place,” spoke to their ancestors advising them “to give such and such things [grave goods] to such and such Relations” (1969[1725]:32, 10, 8, 11).

These Cherokee transfers of intangible or tangible property became more complicated as children of intermarriages began to receive property from their European father as well as their Cherokee mother. European patrilineal influences on Cherokee inheritance practices increased as American men married Cherokee women. In response,

¹⁷ Strickland (1975:143) writes there is a strong “implication” the Cherokee had a system of inheritance, though it was not inevitable.

¹⁸ Weiner (1992:6) refers to inalienable possessions kept within a family that pass from one generation to the next.

the Nation developed inheritance laws that attempted to preserve the integrity of the territory as well as matrilineal practices regarding inheritance.

The Case of James Vann

One partially documented case deserves special attention because it involved the son of intermarriage between a Scotsman and a Cherokee woman. The son of this intermarriage was James Vann. This case provides evidence that the clan practice of managing inheritance blended with the new laws of the Nation, though as will be seen, this blending was tumultuous. Ultimately, James Vann's clan, the Blind Savannah, exercised their right to manage the distribution of his wealth, though the National Council participated in this distribution according to the new written law published six months earlier. The details follow.

A Moravian diary entry of February 21, 1809 reported James Vann had been murdered¹⁹ at midnight and, at some later time, buried "in the woods close to the road," perhaps still dressed in the clothes he had been wearing when he was shot and without any other worldly possessions (McClinton 2007:302-303).²⁰ James Vann died at the age of forty-one. His wealth included two plantations in what is now northern Georgia, a tavern, gristmill, and store near his plantations, a trading post in what is now Alabama, a

¹⁹ There were multiple theories on who killed James Vann given his wealth and influence in the Nation, his propensity for aggressive behavior, and his family history. James Vann was a member of the Cherokee Light Horse Company (Cherokee police force) and known to inflict harsh punishments. He also punished thieves accused of stealing \$3,500 and other personal property from him by torturing or killing those persons he determined to have been guilty. Vann also fought a pistol duel with his sister's husband (a Cherokee), killing him. Vann also participated in the blood revenge on Doublehead for selling Cherokee land for a personal profit. These events or others provided multiple suspects responsible for his murder; see McClinton (2007:102, 302); Reid (2006[1970]:38, 76).

²⁰ McClinton (2007) diary reports Vann's other clothes, money, and other valuables were stolen.

ferry on the Chattahoochee River, and slaves and livestock. He was considered one of the Nation's more affluent residents (Strickland 1975:97; McClinton 2007; Perdue 1990).

Vann's Last Will and Testament, written merely eight months prior to his death, directed most of his wealth to his son Joseph from his previous marriage to Ann Brown, a small part to his widow, Margaret Ann ("Peggy") Vann, and nothing to his children from other prior marriages.²¹ The Will read as follows:²²

May 8, 1808

"1st. I hereby give & bequeath unto my beloved wife, Peggy . . . all my household furniture.

2nd. All the rest residue of my property which I shall or may die possessed of by that whatsoever it may or wheresoever it may I give and bequeath to my natural son, Joseph to have and hold forever.

In the name of God amen.

Witness: s/James Vann

s/John Ross

s/A. McCoy [Strickland 1975:98]

There are three points regarding James Vann's family that require clarification prior to discussion of the inheritance itself. First, although James Vann's father was a Euro-American trader and his mother was Cherokee,²³ he was Cherokee. He was thus fully Cherokee in a legal sense because during this time period, any child born to a Cherokee woman, regardless of the ethnicity of the pater or genitor, was considered Cherokee (Timberlake 2007[1765]:35; Willis 1963:250; Dunaway 1997:17). Second,

²¹ McClinton (2007) diary entries mention five other wives and five children though one other source (Wikipedia) states James Vann had "at least nine wives or consorts" and "thirty-plus children."

²² Strickland (1975:98) writes "the Cherokee council met and considered the will under the first written law of 1808, which authorized regulating companies 'to give protection to children as heirs to their father's property.'"

²³ James Vann's mother's maiden name was Vann; she married James' father (Joseph Vann); and then, after Joseph's death, married Clement Vann. Another point, James Vann's daughter, Delilah, married Captain David McNair, one of the executors (see Appendix).

James Vann's widow, Margaret Ann "Peggy" Scott Vann,²⁴ was not the biological mother of the primary heir, Joseph. Joseph's biological mother was Ann Brown Vann,²⁵ James Vann's ex-wife. Third, patrnomial Euro-American surnames (Vann, Brown, Scott, etc.) did not represent a replacement of matrilineal practices in favor of patrilineal practices, as will be seen in the administration of James Vann's Last Will. The use of Euro-American surnames, though, does suggest Christian influence. As people were baptized they were given Anglicized names by the church. These new names were used in addition to Cherokee names depending on the context. For example, the Moravians baptized Wah-Li Vann, James Vann's mother, and gave her the Christian name Mary Christiana (McClinton 2007:xxi).²⁶

Events that took place following Vann's death suggest a struggle occurred between the widow's family and Vann's closest relatives that reflected a social change occurring in the tribe with regard to inheritance practices. Approximately two weeks after Vann's death, Vann's mother left her own home²⁷ and moved into Vann's plantation house then occupied by Vann's widow, Peggy Scott Vann, and Vann's children from the previous marriage to Ann Brown. This action indicates an effort by Vann's mother to reaffirm established matrilineal rights to the property of a clan member. When the missionaries attempted to pay their respects to the family, Vann's mother protectively

²⁴ Peggy Scott's father was Walter Scott, a British agent during the Revolutionary War and her mother was Sarah Hicks, part-Cherokee.

²⁵ Ann Brown was the daughter of a Euro-American man, Robert Brown, and a part-Cherokee woman, Sarah Hicks Scott Brown. Ann's brother, James Brown, married James Vann's sister, Jenny Vann.

²⁶ Timberlake 2007[1765]:37 observed Indians receive many names during their lifetime with the "English generally increase, by giving an English one, from some circumstance in their lives."

²⁷ McClinton (2007:57, 100) diary entry recorded James Vann's mother lived close by with her husband Clement Vann (James Vann's step-father).

accused the missionaries of attempting to “get part of her son’s fortune” (McClinton 2007:23, 304).²⁸ Then, on March 18th, Vann’s mother’s sister arrived. In addition to the female relatives of the deceased, all of them members of the Blind Savannah clan, Vann’s widow, several of her sisters, and her mother began to share the plantation house by March 31st. At some point prior to the final settlement of the will, Vann’s widow asked the executors of the estate for permission to move to the site of the original plantation closer to the missionaries “despite the intentions of her husband’s relatives to procure for her a more productive plantation” (McClinton 2007:342). Vann’s clan relatives appear to have exerted enough pressure on the widow to inspire her to choose to live elsewhere.²⁹

Another event that occurred entailed the involvement of men who filled the positions of “mother’s brother” with the traditional responsibilities to assist their sisters. The missionary diaries reported Joseph’s mother’s brother, Mr. James Brown,³⁰ removed Joseph from the plantation taking him to the Brown homestead to prepare him as administrator of the deceased’s estate (McClinton 2007:318). This removal of the boy Joseph follows traditional matrilineal practice of social guidance, instruction, and discipline by the mother’s brother (Reid 2006[1970]:39; Hill 1997:30). In the past the mother’s brother might have taught the boy hunting skills or tracking methods; however, in the early nineteenth century, Joseph was receiving an education from his mother’s

²⁸ McClinton (2007:23, 304) diary entry states the accusation might have been related to the Moravian agreement with James Vann to pay for the improvements on Vann’s land that they never used. The Moravians protested this point with the administrators of the estate.

²⁹ McClinton (2007:354) diary entry reveals Peggy Vann was subjected to “all sorts of bitter, insulting language from some of her husband’s relatives.”

³⁰ James Brown was Joseph’s “uterine uncle.” Joseph’s mother was Ann Brown Vann (the daughter of a Euro-American man and Cherokee woman), not the widow Peggy Scott Vann. James Brown, Ann Brown’s brother, married James Vann’s sister Jenny (a Blind Savannah). James Brown was one of the second set of executors of James Vann’s Will.

brother that would prepare him to succeed in managing his father's assets, both financial and material.

A second mother's brother appeared though this mother's brother was kin to the deceased's mother, Mrs. Clement Vann (James Vann's mother, *Wah-Li* Vann).³¹ According to Moravian missionaries, John Vann, Jr. "demanded that his portion of the estate be divided between his two stepdaughters (names unknown), Mother Vann [*Wah-Li* Vann], and her sisters," following Cherokee matrilineal descent (McClinton 2007:629, n. 9).³² John Vann, Jr., a member of the same Blind Savannah clan as James Vann attempted to insure the direction of inheritance flowed according to matrilineal practices.³³ A later diary entry described a visit from another of James Vann's mother's brothers, Mr. Richard Roe,³⁴ who was, along with a man named Mr. Parris, appointed executor of the estate.³⁵ That James Vann appointed a uterine uncle to execute the Will follows inheritance practices of involving the mother's clan in family business.

Under traditional matrilineal clan management of inheritance, Vann's property would automatically have transferred to his clan, the Blind Savannahs; however, his Will directed the bulk of his property to a son, leaving the household furniture to his widow,

³¹ James Vann's mother's maiden name was Vann (she was the daughter of John Vann and an unnamed Cherokee woman). Her first husband, James's father, was Joseph Vann. Her second husband, James's step-father, was Clement Vann (see Appendix).

³² John Vann, Jr. was James Vann's "uterine uncle" meaning John and *Wah-Li* had the same mother. The property has been referred to as belonging to James Vann up until his death. It becomes more apparent his clan members considered it a family property after his death.

³³ Patrilineal inheritance practices were not in effect in this case as John Vann, Jr., had a son, George, yet John Vann, Jr. did not include George in this demand.

³⁴ Richard Roe and *Wah-Li* Vann had the same mother (name unknown) but different fathers making them both part of the Blind Savannah clan.

³⁵ For unknown reasons, the executors were replaced by Council appointees Mr. James Brown [James Vann's sister Jenny's husband] and Mr. McNair [James Vann's daughter's husband]. Though these men were not members of the Blind Savannah clan, their wives were and no doubt had some influence on the proceedings.

two events that have been interpreted as following patrilineal inheritance practices (Perdue 1990:51). Joseph was, according to the Moravian diary, the son of James Vann and Ann Brown, and had brothers and one sister from that union (McClinton 2007:318). Several entries of the Moravian diary prior to James Vann's death suggest Joseph was being introduced to his father's business contacts or was at least being instructed in the family business practices.³⁶

If indeed James Vann, the deceased, was interested in furthering his son's education in public affairs of business and trade ostensibly to assume management of the plantations, ferry, stores, and tavern, this action would not necessarily indicate a change from matrilineal to patrilineal system as authors suggest (Willis 1963:261; Perdue 2000:564). This action only indicated the deceased's preference for this child. Joseph was referred to in the diaries as a "child" so that after the death of his father, he would not necessarily have assumed control of the estate given his age and limited knowledge base. Moreover, it was not inappropriate, therefore, for Joseph's mother's brother to tutor Joseph for his future role as businessman.³⁷

It is understandable some authors perceived James Vann's actions as representing an erosion of clan involvement in the distribution of inheritance and a change in the direction of patrilineal practices; however, evidence clearly demonstrates that matrilineal clan involvement persisted. James Vann did express a preference for his son Joseph

³⁶ McClinton (2007:146, 266, 294, 301, and 302) diary entries reveal James Vann led the Light Horse Company and his son Joseph "on a journey to go through the country to punish thieves." Vann would also send Joseph out of town during school to visit the Creek Indians for unknown purposes. Joseph Vann was asleep in the house when his father was shot.

³⁷ McClinton (2007) diary entry referred to Joseph as a child; see chapter three above regarding the rite of passage from child to adult.

outlined in the Will but this does not convincingly determine a patrilineal institution evolving. Patrilineal institutions are agnatic, meaning membership through a father to other members, or tracing kinship through males only, which did not occur in this instance (Fox 2003[1967]:45). James Vann's mother and her brothers, the primary heir and his mother's brother, along with the closest female relatives of both families, actively participated in the settlement of the Will. Moreover, James Vann appointed his own mother's brother, Mr. Richard Roe, as executor of his will suggesting compliance with existing inheritance practices. However, the difficulties of settling the estate, given the competing demands, were apparently too challenging for the original executors, Mr. Parris and Mr. Richard Rowe, as they both relinquished their commissions to the National Council to settle the estate (McClinton 2007:317). The Council then appointed Mr. James Brown (the deceased's sister's spouse³⁸) and Mr. McNair (the deceased's daughter's husband) to settle the estate guided by the new written law while honoring the traditional practice of clan management of inheritance. It is significant that the deceased's sister's and daughter's spouses were appointed by the Council because it suggests Vann's clan was still involved in the administration of the Will.

The timing of this case is important, since it was within one year following the promulgation of the first written Cherokee law regarding inheritance. Could James Vann have been inspired to write his Will knowing the changes occurring in the Nation and

³⁸ McClinton (2007:317) states James Vann's sister, Jenny, married James Brown; Fogelson (1977:192) states women influenced brothers and sons but he might also have included their influence on husbands.

knowing the importance of preserving traditions? His Will was written shortly before the Nation's introduction of the law that would direct the regulating parties³⁹ to:

give their protection to children as heirs to their fathers property, and to the widows 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 [sic] disinterested witnesses. [Cherokee Nation, &C 1826]

His Will was written in May, 1808 with knowledge and understanding of the law that would be signed into practice on September 11, 1808 that directed inheritance to children and the widow. Vann, as well as John Ross,⁴⁰ a witness to the Will, were involved in the development of the new laws.⁴¹ The Will thus demonstrates Vann's desire to acknowledge and accept the requirements of the written law regarding inheritance while continuing to follow clan practices. This dual goal to follow the doctrinal law while practicing the living law also provides evidence of the influence exerted by the residential family (a semiautonomous social field) on events that directly competed with the authority of the Nation.⁴²

This case does suggest change. By authority of the Nation, Vann's widow did receive a portion of the estate according to the decree that read "and to the widows [sic] share whom he may have had children by or cohabited with [suggests common law wife],

³⁹ Here referring to the police force known as the Light Horse Company.

⁴⁰ John Ross, of Scottish Cherokee descent, was President of the National Committee and ultimately Principal Chief of the Nation.

⁴¹ Strickland (1975:98) writes the council concluded "that all the children are of one father who ought to receive some share of the property & also the widow ought to share alike with the other children & to remain in the House as long as she pleases." The executor was ordered to "allow the greatest share to Joseph Vann & after which you are to allow to the other children & widow such share of the property as you judge right."

⁴² See Pospisil (1967) and Moore (1978) in chapter one regarding semiautonomous social fields.

as his wife, at the time of his decease” (Cherokee Nation, &C 1826).⁴³ This part of the law provided for a wife who was not of the same clan as the deceased, which was generally the case, and therefore not entitled to property according to traditional matrilineal practices. Such a wife might also have been non-Cherokee or non-Indian reflecting intermarriages with other Indians or with Europeans. Vann bequeathed property to his wife; however, it was not as valuable or useful in terms of producing future profits to sustain her lifestyle as compared to the property he left to his son.

Furthermore, James Vann’s desire to leave his property to his son Joseph, whose mother was not the widow, followed the Nation’s future law that read:

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 [sic] disinterested witnesses.
[Cherokee Nation, &C 1826]

Under earlier clan inheritance practices, the property would have transferred to the deceased’s clan, which does not appear to be the case with Joseph as primary heir because Joseph was a member of his birth mother’s clan. However, upon closer inspection of the distribution, the bulk of the property did initially transfer to Vann’s clan as the deceased’s mother’s brother and then the deceased’s sister’s husband were involved because Joseph was considered a child. Strickland reports the Will was reorganized by the Cherokee National Council to include Vann’s children from other marriages and liaisons, though Joseph continued to receive the majority of the inheritance (1975:98).

⁴³A “portion” of the estate does not read “equal portion.”

Hypothetically, if the deceased had living Scottish relatives (his father's side) who were accustomed to a patrilineal system of inheritance practices, they might have attempted to press for equal access to Vann's wealth. If the hypothetical Scottish relatives succeeded in acquiring any property through foreign courts, the possibility exists that they might have sold it to foreigners—an action that would have further eroded the Cherokee territory. Clan inheritance practices and written laws produced by the Nation, therefore, shared a common purpose in limiting land use to citizens of the Nation and defended against further loss of Cherokee wealth in the form of land transfers to foreigners. They did so by continuing to invoke the clans in the management of inheritance and in providing considerable flexibility in the application of the new laws. The discretionary transfer of some property along non-matrilineal lines does not necessarily challenge the overall structure of matrilineality.

These points regarding Vann's estate suggest a defining moment in Cherokee history as cultural changes occurred in the Nation, specifically pertaining to marriage, death of a spouse, and inheritance. These changes demonstrate a blending rather than an expunging of clan law at the subgroup level.⁴⁴ Strickland suggests the introduction of this new method of inheritance as supplanting the matrilineal social structure because it emphasized the rights of the nuclear family rather than the clan (1975:97). While it became necessary for the National Council to define and address the inheritance rights of the nuclear family in legal terms due to the increasing number of intermarriages, national law did not prevent the traditional transference of property from a Cherokee woman or

⁴⁴ By "law" I mean according to Pospisil's definition found earlier in this thesis.

man to their clan relations if they so chose because some people followed the “living law” rather than the “doctrinal law.”⁴⁵ Inheritance practices were not necessarily an either patrilineal or matrilineal choice. Instead Euro-American fathers might choose to bequeath property to their Cherokee children along with inheritance provided by a Cherokee mother.⁴⁶

Conclusion

The case of James Vann provides a fitting conclusion to this examination of how the marriage and inheritance models directed by the Cherokee matrilineal kinship groups of the seventeenth and eighteenth century endured into the nineteenth century, even though the first written laws were designed along the lines of the legal system of the United States. The response to the inception of the new marriage law did not produce the negative impact sometimes suggested by scholars. Moreover, the laws regarding marriage and inheritance produced on September 11, 1808 did not abolish traditional matrilineal institutions nor did they reorganize a matrilineal into a patrilineal kinship structure. Rather, the new law, produced in cooperation with the women and men of the tribe, reflected traditional Cherokee patterns and innovative strategies that addressed the challenges faced by the Nation.

Examples of the continuance of matrilineal management practices following the written laws reveal the balance of authority and power of women and men in the semiautonomous social fields within the greater Nation. It is understandable Euro-

⁴⁵ Foster (1975:99, n. 7) refers to Ehrlich (1936) contrasting “living law” with “official law on the books.”

⁴⁶ Later laws reflected citizenship, marriage, and inheritance practices of Cherokee men who married Euro-American women but will not be addressed in this paper.

Americans overlooked the existence of these social fields as it demonstrates their bias in favor of the Western cultural standards they understood and preferred.

Often the women were underrepresented as contributors to the formation of the Nation; however, their participation has been considerable in at least three ways. First, their authority to direct marriages remained unchallenged as the law requiring a white man be married by a minister did not apply to women directly. Women were permitted to continue marrying according to Cherokee practices; however, should the white man not follow the intent of the law, his legal status in the Nation was jeopardized. Second, the Cherokee woman's property, which included improvements on the land and products from her personal labors, remained protected from the white spouse in the event they separated permanently. Third, inheritance distribution according to clan law persisted, as was demonstrated in the case of James Vann whose uterine uncle assumed managerial control of the wealth. The case also shows how important men are to the success of the matriline. As men born into a clan support their mothers, sisters, and other female relatives, the integration of men and women in support of the matrilineal clan system is maintained.

As their participation in the international community increased, the Cherokee people became more focused in preserving a sense of their nativism while also developing a sense of nationhood. Key to this preservation was the strength of the matrilineal kinship group characterized by clan name, clan membership, descent, and residence through the Cherokee woman. The Cherokee marriage model, in particular, formed one of the basic institutions for a unique Cherokee government system that

included a sharing notion of authority and power that was not recognized or understood by foreign governments. Dynamic semiautonomous social fields that exist within nations may compete with the goals of that nation, but may also provide the structure from which the nation is built. That has been the case for the Cherokee.

Reorganizing the tribe toward a more centralized nation, which included written laws and a constitution, substantiated the sovereignty of the Nation and established it as an active participant in international affairs. This new status further provided the gravitas necessary for developing a stronger relationship with the American legislators who made the distinction that Cherokee were not a foreign nation, nor were they a state as outlined in the Constitution. The written laws introduced some changes that helped project the Cherokee as a nation in American eyes, such as: presenting tangible evidence (written word) of a government in a form familiar to foreign nations; eliminating the practice of foreign nations appointing national headmen; developing an immigration policy; establishing a “legal” boundary; and eliminating some cultural practices that weakened the structure of the new nation—blood revenge for example. Written laws further provided Cherokee women an opportunity to address legal difficulties in Cherokee and international courtrooms that arose following intermarriages with immigrant Euro-American men who conformed to patrilineal practices regarding marriage, divorce, and inheritance. This projection of Cherokee sovereignty, however, was achieved without great loss to existing Cherokee practices.

Findings from this historical Cherokee model offer practical application in today’s global community. For example, foreign nations interested in assisting in the

modernization of a developing nation would be wise to consider and respect the contributions of both men and women in the production of national laws. Further, the importance of dynamic kinship relationships must not be undervalued as that would pose an obstruction to understanding the foundation provided by mutual rights and duties existing between kin groups, upon which a complex legal system often develops.

Appendix

JAMES VANN'S FAMILY (incomplete)			
John Vann (Euro-American) married <i>Cherokee woman (name unknown)</i>	<i>Cherokee woman (name unknown)</i> married Bernard Hughes (Euro-American)	<i>Cherokee woman (name unknown)</i> married Mr. Roe	
<i>Children:</i>	<i>Children:</i>	<i>Children:</i>	
<i>John Vann, Jr. and Wah-Li</i>	<i>Sarah, Charles, and James</i>	<i>David and Richard*</i>	
<i>Wah-Li</i> married Joseph Vann			<i>John Vann, Jr. married Polly</i>
<i>Children</i>			<i>Child:</i>
<i>James Vann</i>	<i>Jenny Vann</i>	<i>Nancy Vann</i>	George
<i>James Vann</i> married Margaret Ann "Peggy" Scott, his last wife Children: None Other wives (not in chronological order): Nancy "Ann" Brown Children: Joseph Vann** and Mary Vann Elizabeth "Betsy" Scott Child: Delilah Amelia Vann [who married David McNair*] Jennie Foster Child: Sara Vann	<i>Jenny Vann</i> married James Brown* [brother of Nancy "Nannie" Ann Brown Vann]. Any children would have been part of the Blind Savannah Clan.	<i>Nancy Vann</i> married John Falling. Any children would have been part of the Blind Savannah Clan.	

*Involved in management of James Vann's Last Will and Testament. **The heir, Joseph Vann. *Italics* indicate members of Blind Savannah Clan. Non-italicized indicates the clan name is unknown or the person is Euro-American. This list of spouses and children is incomplete. Peggy, Ann, and Betsy were step-sisters making them members of the same clan (unknown name).

BIBLIOGRAPHY

BIBLIOGRAPHY

Adair, James

1930 [1775] *Adair's History of the American Indians*. Samuel Cole Williams, ed. New York: Promontory Press.

Altman, Heidi M.

2006 *Eastern Cherokee Fishing*. Tuscaloosa: The University of Alabama Press.

Anderson, William L.

1996 Cherokee: The European Impact on the Cherokee Culture. *In* *Research Frontiers in Anthropology*. Carol R. Ember, Melvin Ember, and Peter N. Peregrine, eds. Pp. 394-420. New Jersey: Prentice Hall.

Barfield, Thomas

2003 *Dictionary of Anthropology*. Malden, Mass: Blackwell Publishing Ltd.

Benedict, Ruth

1989 [1934] *Patterns of Culture*. Boston: Houghton Mifflin Company.

Boehm, Christopher

1993 Egalitarian Behavior and Reverse Dominance Hierarchy. *Current Anthropology* 34(3):227-254. Electronic document, <http://www.jstor.org>, accessed November 16, 2009.

Bohannan, Paul

1965 The Differing Realms of the Law. *American Anthropologist* 67(6):33-42. Electronic document, <http://www.jstor.org>, accessed November 16, 2008.

1989 *Justice and Judgment among the Tiv*. Prospect Heights, Ill.: Waveland Press, Inc.

Bohannan, Paul, and John Middleton, eds.

1968 *Marriage, Family and Residence*. New York: The Natural History Press.

- Brown, Kathleen M.
1995 The Anglo-Algonquian Gender Frontier. *In* Negotiators of Change: Historical Perspectives on Native American Women. Nancy Shoemaker, ed. Pp. 26-48. New York: Routledge.
- Bushnell, David I., Jr.
1920 Native Cemeteries and Forms of Burial East of the Mississippi. Smithsonian Institution Bureau of American Ethnology Bulletin 71:90-93. Washington D.C.: U.S. Government Printing Office.
- Cairns, Huntington
2009 [1935] Law and the Social Sciences. Whitefish, Mont: Kessinger Publishing LLC.
- Calloway, Colin G.
2008 White People, Indians, and Highlanders, Tribal Peoples and Colonial Encounters in Scotland and America. New York: Oxford University Press.
- Campbell, Thomas
1930 An Account of the Creek Indian Nation, 1764. The Quarterly Periodical of the Florida Historical Society 8(3):156-163. Electronic document, <http://www.jstor.org>, accessed March 31, 2010.
- Cherokee Nation, &C
1826 Laws of the Cherokee Nation Adopted by the Council at Various Periods, Printed for The Benefit of the Nation. Knoxville, Tenn.: Heiskell & Brown. Electronic document, <http://jacob.nlc.gwu.edu>, accessed March 11, 2009.
- Clastres, Pierre
2007 [1974] Society against the State, the Leader as Servant and the Humane Uses of Power among the Indians of the Americas. Robert Hurley, trans. New York: Urizen Books.
- Coe, Joffre L.
1961 Cherokee Archeology. Smithsonian Institution, Bureau of American Ethnology, Bulletin 180, Symposium on Cherokee and Iroquois Culture, Number 7:51-60. Washington D.C.: U.S. Government Printing Office.
- Cronon, William
2003 Changes in the Land, Indians, Colonists and the Ecology of New England. New York: Hill and Wang.

- Crosby, Alfred W. Jr.
2003 *The Columbian Exchange; Biological and Cultural Consequences of 1492*. Westport: Praeger.
- Douglas, Mary
2004 [1966] *Purity and Danger, an Analysis of Concept of Pollution and Taboo*. New York: Routledge Classics.
- Dumont, Louis
1970 *Homo Hierarchicus, an Essay on the Caste System*. Mark Sainsbury, trans. Chicago: University of Chicago Press.
- Dunaway, Wilma
1997 *Rethinking Cherokee Acculturation: Agrarian Capitalism and Women's Resistance to the Cult of Domesticity, 1800-1838*. *American Indian Culture and Research Journal*, 21(1):155-193. Electronic document, <http://www.law-lib.utoronto.ca/Diana/fulltext/duna.htm>, accessed January 22, 2009.
- Elliott, J. H.
1970 *The Old World and the New, 1492-1650*. London: Cambridge University Press.
- English Ladies
1828 *Cherokee Phoenix*, March 20: col A. Electronic document, <http://infotrac.galegroup.com.proxygw.wrlc.org>, accessed February 21, 2009.
- Evans-Pritchard, E. E.
2003 [1951] *Kinship and Marriage among the Nuer*. Oxford: Oxford University Press, 2003.
- .
1969 [1940] *The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic People*. New York: Oxford University Press.
- .
1970 *Zande Bridewealth*. *Africa: Journal of the International African Institute* 40(2):115-124. Electronic document, <http://www.jstor.org>, accessed November 6, 2009.
- Fenton, William N., and John Gulick, eds.
1961 *Symposium on Cherokee and Iroquois Culture*. Smithsonian Institution, Bureau of American Ethnology, Bulletin 180. Washington D.C.: U.S. Government Printing Office.

Fogelson, Raymond D.

1961 Change, Persistence, and Accommodation in Cherokee Medico-Magical Beliefs. Symposium on Cherokee and Iroquois Culture. Smithsonian Institution, Bureau of American Ethnology, Bulletin 180: 213-225. Washington D.C.: U.S. Government Printing Office.

1971 The Cherokee Ballgame Cycle: An Ethnographer's View. *Ethnomusicology* 15(3):327-338. Electronic document, <http://www.jstor.org>, accessed January 28, 2009.

1977 Cherokee Notions of Power. *In The Anthropology of Power: Ethnographic Studies from Asia, Oceania, and the New World*. Raymond Fogelson and Richard N. Adams, eds. Pp. 185-194. New York: Academic Press.

Fogelson, Raymond D.

1990 On the 'Petticoat Government' of the Eighteenth-Century Cherokee. *In Personality and the Cultural Construction of Society*. David K. Jordan and Marc J. Swartz, eds. Pp. 161-181. Tuscaloosa: University of Alabama Press.

Foster, Henry H.

1961 Common Law Divorce. *Minnesota Law Review* 46(43):43-68. Electronic document, <http://heinonline.org>, accessed July 30, 2009.

1975 Indian and Common Law Marriages. *American Indian Law Review* 3(1): 83-102. Electronic document, <http://www.jstor.org>, accessed July 10, 2009.

Fox, Robin

2003 [1967] *Kinship & Marriage: An Anthropological Perspective*. Cambridge: Cambridge University Press.

French, Laurence Armand

2003 *Native American Justice*. Chicago: Burnham Inc.

Gallay, Janet

2009 Fieldnotes, August 2009, Cherokee, North Carolina.

Garrison, Tim Alan

2009 *Legal Ideology of Removal, the Southern Judiciary and the Sovereignty of Native American Nations*. Athens: The University of Georgia Press.

Gaul, Theresa Strouth, ed.

2005 *To Marry an Indian, the Marriage of Harriett Gold and Elias Boudinot in Letters, 1823-1839*. Chapel Hill: University of North Carolina Press.

Gearing, Fred

1958 The Structural Poses of 18th Century Cherokee Villages. *American Anthropologist* 60(6):1148-1157. Electronic document, <http://www.jstor.org>, accessed January 16, 2009.

2007 [1962] *Priests and Warriors: Social Structures for Cherokee Politics in the 18th Century*. Whitefish, Mont.: Kessinger Publishing LLC.

Gilbert, William Harlen, Jr.

1943 The Eastern Cherokees, *Anthropological Papers*, Nos. 19-23. Smithsonian Institution, Bureau of American Ethnology Bulletin 133:169-413. Washington D.C.: U.S. Government Printing Office.

Godbeer, Richard

1999 *Eroticizing the Middle Ground: Anglo-Indian Sexual Relations along the Eighteenth-Century Frontier*. In *Sex, Love, Race: Crossing Boundaries in North American History*. Martha Hodes, ed. Pp. 91-111. New York: New York University Press.

Gordon, Peter

1733 *Journal*. Hargrett Rare Book and Manuscript Library. Keith Read Collection. The University of Georgia Libraries. Electronic document, <http://neptune3.galib.uga.edu>, accessed February 25, 2010.

Gough, E. Kathleen

1968 *The Nayars and the Definition of Marriage*. In *Marriage, Family, and Residence*. Paul Bohannan and John Middleton, eds. Pp. 49-71. New York: The Natural History Press.

Graham, Laura R.

2002 *How Should an Indian Speak? In Indigenous Movements, Self-Representation, and the State in Latin America*. Kay B. Warren & Jean E. Jackson, eds. Pp. 181-228. Austin: University of Texas Press.

Gregory, Christopher A.

1982 *Gifts and Commodities*. New York: Academic Press.

1997 *Savage Money, the Anthropology and Politics of Commodity Exchange*.
Amsterdam, The Netherlands: Harwood Academic.

Guénon, René

2004 [1929] *Spiritual Authority and Temporal Power*. Samuel D. Fohr, ed. Henry D. Fohr, trans. Hillsdale: Sophia Perennis.

Haines, David W.

2005 *Cultural Anthropology: Adaptations, Structures, Meanings*. New Jersey: Pearson Prentice Hall.

Halliburton, R., Jr.

1977 *Red over Black: Black Slavery among the Cherokee Indians*. Westport, Conn.: Greenwood Press.

Hallowell, A. Irving

1943 *The Nature and Function of Property as a Social Institution*. *Journal of Legal and Political Sociology* 1(3-4):115-138. Electronic document, <http://firstsearch.oclc.org>, GMU Interlibrary Loan, February 18, 2010.

Hatley, Tom

1995 *The Dividing Paths, Cherokees and South Carolinians through the Era of Revolution*. New York: Oxford University Press.

Hawkins, Benjamin

2003 *The Collected Works of Benjamin Hawkins, 1796-1810*. Thomas Foster, ed. Tuscaloosa: The University of Alabama Press.

Haywood, John

1959 [1823] *The Natural and Aboriginal History of Tennessee Up to the First Settlements Therein by the White People in the Year 1768*. Mary U. Rothrock, ed. Jackson, Tenn.: McCowat-Mercer Press, Inc.

Hill, Sarah H.

1997 *Weaving New Worlds, Southeastern Cherokee Women and Their Basketry*. Chapel Hill: University of North Carolina Press.

Hodes, Martha, ed.

1999 *Sex, Love, Race: Crossing Boundaries in North American History*. New York: New York University Press.

- Hodgen, Margaret T.
1964 *Early Anthropology in the Sixteenth and Seventeenth Centuries*. Philadelphia: University of Pennsylvania Press.
- Hoebel, E. Adamson
2006 [1954] *The Law of Primitive Man: A Study in Comparative Legal Dynamics*. Cambridge: Harvard University Press.
- Jefferson, Thomas
1809 *The Thomas Jefferson Papers, Letter to John Jay dated April 7, 1808*. Electronic document, http://memory.loc.gov/ammem/collections/jefferson_papers/, accessed April 15, 2009.
- Johnston, Carolyn Ross
2003 *Cherokee Women in Crisis*. Tuscaloosa: University of Alabama Press.
- Kelly, James C.
1978 *Oconostota*. *Journal of Cherokee Studies* 3(4):221-238. Electronic document, <http://firstsearch.oclc.org>, GMU Interlibrary Loan, August 20, 2010.
- Kilpatrick, Jack Frederick, ed.
1966 *The Wahnenuhi Manuscript: Historical Sketches of the Cherokees Together with Some of Their Customs, Traditions, and Superstitions*. *Anthropological Papers, No. 77*. Smithsonian Institution Bureau of American Ethnology, *Bulletin* 196:175-213. Washington D.C.: U.S. Government Printing Office.
- Kupferer, Harriet Jane
1966 *The Principal People, 1960: A Study of Cultural and Social Groups of the Eastern Cherokee*. *Anthropological Papers, Nos. 75-80*. Smithsonian Institution Bureau of American Ethnology, *Bulletin* 196:215-325. Washington D.C.: U.S. Government Printing Office.
- Lattimore, Richmond, trans.
1967 *The Iliad of Homer*. Chicago: University of Chicago Press.
- Lawson, John
1967 [1709] *A New Voyage to Carolina*. Hugh Talmage Lefler, ed. Chapel Hill: University of North Carolina Press.
- Leach, Edmund R.
1955 *Polyandry, Inheritance and the Definition of Marriage*. *Man* 55:182-186. Electronic document, <http://www.jstor.org>, accessed October 26, 2009.

1958 Magical Hair. *The Journal of the Royal Anthropological Institute of Great Britain and Ireland* 88(2):147-164. Electronic document, <http://www.jstor.org>, accessed February 2, 2010.

2004 [1961] *Rethinking Anthropology*. Oxford: Berg.

Leenhardt, Maurice

1979 [1947] *Do Kamo, Person and Myth in the Melanesian World*. Basia Miller Gulati, trans. Chicago: University of Chicago Press.

Lévi-Strauss, Claude

1965 The Future of Kinship Studies. *Proceedings of the Royal Anthropological Institute of Great Britain and Ireland* 1965:13-22. Electronic document, <http://www.jstor.org>, accessed December 30, 2009.

1995 [1978] *Myth and Meaning: Cracking the Code of Culture*. New York: Pantheon Books.

Llewellyn, K.N., and E. Adamson Hoebel

1941 *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*. Norman: University of Oklahoma Press.

Longe, Alexander

1969 [1725] A Small Postscript of the Ways and Maners of the Indians Called Charikees. *Southern Indian Studies* 21. David H. Corkran, ed. Electronic document, http://www.rla.unc.edu/Publicatins/NCARCH/SIS_21.pdf, accessed October 10, 2009.

Maine, Henry Sumner

2007 [1878] *Ancient Law, Its Connection with the Early History Society, and Its Relation to Modern Ideas*. New York: Henry Holt and Company, Cornell University Library: Digitized by Microsoft.

Malinowski, Bronislaw

1942 *Review of The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*. *In Lawyers Guild Review* 2(1-12). Electronic document, <http://heinonline.org.mutex.gmu.edu>, accessed October 10, 2009.

-
- 1984 [1922] *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea*. Long Grove, Ill.: Waveland Press, Inc.
-
- 1985 [1926] *Crime and Custom in Savage Society*. New Jersey: Rowman & Allanheld.
- Mankiller, Wilma, and Michael Wallis
1993 *Mankiller, a Chief and Her People*. New York: St. Martin's Griffin.
- Mauss, Marcel
2000 [1950] *The Gift, the Form and Reason for Exchange in Archaic Societies*. W. D. Halls, trans. New York: W.W. Norton.
-
- 2007 [1967] *Manual of Ethnography*. Dominique Lussier, trans. New York: Durkheim Press.
- McClinton, Rowena, ed.
2007 *Moravian Springplace Mission to the Cherokees, Volume 1 1805-1813*. Lincoln: University of Nebraska Press.
- McDowell, W. L., ed.
1955 *Colonial Records of South Carolina: Journals of the Commissioners of the Indian Trade, September 20, 1710-August 29, 1718*. Columbia: State Commercial Printing Company.
- McLennan, John F.
1970 [1865] *Primitive Marriage, an Inquiry into the Origin of the Form of Capture in Marriage Ceremonies*. Chicago: The University of Chicago Press.
- McLennan, John F., and D. McLennan
1888 *The Origin of Exogamy*. *The English Historical Review* 3(9): 94-104. Electronic document, <http://www.jstor.org>, accessed December 30, 2009.
- Meigs, Return Jonathan
1993 *Diary. Day Book #2 - Kept by Col. Return Jonathan Meigs, 1801-1807*. James L. Douthat, ed. Signal Mountain, Tenn.: Mountain Press.
- Mereness, Newton, ed.
2007 [1916] *Mereness's Travels in the American Colonies*. Carlisle, Mass.: Applewood Books.

Mooney, James

1889 Cherokee Mound-Building. *American Anthropologist* 2(2):167-171. Electronic document, <http://www.jstor.org>, accessed February 20, 2009.

1907 The Powhatan Confederacy, Past and Present. *American Anthropologist* 9(1):129-152. Electronic document, <http://www.jstor.org>, accessed September 3, 2009.

1975 Historical Sketch of the Cherokee. Chicago: Aldine Publishing Company.

1995 [1900] Myths of the Cherokee. New York: Dover Publications, Inc.

2008 [1891] Sacred Formulas of the Cherokees. Charleston: Forgotten Books.

Moore, Sally Falk

1973 Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study. *Law & Society Review* 7(4):719-746. Electronic document, <http://www.jstor.org>, accessed August 10, 2008.

1978 Law as Process: An Anthropological Approach. London: Routledge and Kegan Paul.

1986 Social Facts and Fabrications: 'Customary' Law on Kilimanjaro, 1880-1980. Cambridge: Cambridge University Press.

Moulton, Gary E., ed.

1985 The Papers of Chief John Ross, Volume I, 1807-1939. Norman: University of Oklahoma Press.

Mueller, Gerhard O.W.

1957 Inquiry into the State of a Divorceless Society: Domestic Relations Law and Morals in England from 1660-1857. *University of Pittsburgh Law Review* 18(3):545-578. Electronic document, <http://heinonline.org.mutex.gmu.edu>, accessed August 19, 2009.

Nadasdy, Paul

2002 'Property' and Aboriginal Land Claims in the Canadian Subarctic: Some Theoretical Considerations. *American Anthropologist*, New Series 104(1):247-261. Electronic document, <http://www.jstor.org>, accessed February 19, 2010.

Nash, Gary B.

1999 The Hidden History of Mestizo America. In *Sex, Love, Race: Crossing Boundaries in North American History*. Martha Hodes, ed. Pp. 10-32. New York: New York University Press.

Needham, Rodney, ed.

1971 *Rethinking Kinship and Marriage*. New York: Tavistock Publications.

Needham, Rodney

1979 *Symbolic Classification*. Santa Monica, Calif.: Goodyear Publishing Company, Inc.

1983 [1962] *Structure and Sentiment, a Test Case in Social Anthropology*. Chicago: The University of Chicago Press.

Olbrechts, Frans M.

1931 Cherokee Belief and Practice with Regard to Childbirth. *Anthropos*. bd. XXVI:17-33. St. Gabriel-Mödling. Electronic document, <http://firstsearch.oclc.org>, GMU Interlibrary Loan, February 18, 2010.

Ortner, Sherry B., and Harriet Whitehead, eds.

1981 *Sexual Meanings: The Cultural Construction of Gender and Sexuality*. New York: Cambridge University Press.

1998 *Cherokee Women: Gender and Culture Change, 1700-1835*. Lincoln: University of Nebraska Press.

2000 *Clan and Court: Another Look at the Early Cherokee Republic*. *American Indian Quarterly* 24(4): 562-569. Electronic document, <http://www.jstor.org>, accessed April 9, 2009.

2001 Catharine Brown: Cherokee Convert to Christianity. In *Sifters: Native American Women's Lives*. Theda Perdue, ed. Pp. 77-91. New York: Oxford University Press.

- Perdue, Theda, and Michael D. Green
1995 *The Cherokee Removal: A Brief History with Documents*. Boston: Bedford St. Martin's.
- Perdue, Theda, ed.
1996 *Cherokee Editor, the Writings of Elias Boudinot*. Athens: University of Georgia Press.
- Pospisil, Leopold
1967 Legal Levels and Multiplicity of Legal Systems in Human Societies. *The Journal of Conflict Resolution* 11(1):2-26. Electronic document, <http://www.jstor.org>, accessed September 3, 2009.
- Reed, Marcelina
1993 *Seven Clans of the Cherokee Society*. Cherokee, North Carolina: Cherokee Publications.
- Reid, John Phillip
2006 [1970] *A Law of Blood: The Primitive Law of the Cherokee Nation*. DeKalb: Northern Illinois University Press.
- Rogers, Susan Carol
1975 Female Forms of Power and the Myth of Male Dominance: A Model of Female/Male Interaction in Peasant Society. *American Ethnologist* 2(4):727-756. Electronic document, <http://www.jstor.org>, accessed January 25, 2009.
- Rossiter, Clinton
1971 *The American Quest 1790-1860: An Emerging Nation in Search of Identity, Unity, and Modernity*. New York: Harcourt Brace Jovanovich, Inc.
- Sahlins, Marshall
1972 *Stone Age Economics*. New York: Aldine de Gruyter.
- Sattler, Richard A.
1995 The Southeast, Women's Status among the Muskogee and Cherokee. *In Women and Power in Native North America*. Laura F. Klein and Lillian A. Ackerman, eds. Pp. 214-229. Norman: University of Oklahoma Press.
- Scheffler, Harold W.
2001 *Filiation and Affiliation*. Boulder, Westview Press.
- Schneider, David M., and Kathleen Gough, eds.
1974 [1961] *Matrilineal Kinship*. Berkeley: University of California Press.

Shoemaker, Nancy, ed.

1995 *Negotiators of Change: Historical Perspectives on Native American Women*. New York: Routledge.

Socrates [pseudo.]

1828 Intermarriages, *Cherokee Phoenix*, March 27, Issue unk., col D. Electronic document, <http://infotrac.galegroup.com.proxygw.wrlc.org>, accessed January 13, 2009.

Stays

1828 *Cherokee Phoenix*, April 24, Issue 10, col. E. Electronic document, <http://infotrac.galegroup.com.proxygw.wrlc.org>, accessed January 13, 2009.

Strathern, Marilyn

1988 *The Gender of the Gift: Problems with Women and Problems with Society in Melanesia*. Berkeley: University of California Press.

Strickland, Rennard

1975 *Fire and the Spirits: Cherokee Law from Clan to Court*. Norman: University of Oklahoma Press.

Sweet, Timothy

2002 *American Georgics: Economy and Environment in Early American Literature*. Philadelphia: University of Pennsylvania Press.

Timberlake, Henry

2007 [1765] *The Memoirs of Lt. Henry Timberlake: The Story of a Soldier, Adventurer, and Emissary to the Cherokees, 1756-1765*. Duane H. King, ed. Cherokee, North Carolina: Museum of the Cherokee Indian Press.

Turner, Victor

1970 [1967] *The Forest of Symbols: Aspects of Ndembu Ritual*. Ithaca: Cornell University Press.

United States

2002 [1797] *Congress (4th, 2nd session 1796-1797). House. Committee on Claims. Report of the Committee of Claims, on the Petition of the Widow of the Late Scolacuttaw, or Hanging Maw, one of the Chiefs of the Cherokee Nation of Indians, 17th January 1797, referred to the committee of the whole House, to whom is committed the report of the Committee of Claims on the petition of James Ore. Published by order of the House of Representatives. American Antiquarian Society and NewsBank, Inc. Electronic document, <http://infoweb.newsbank.com.mutex.gmu.edu>, accessed January 26, 2010.*

- United States in Congress Assembled, a Proclamation. November 28, 1785. Electronic document, <http://wardepartmentpapers.org>, accessed March 7, 2010.
- United States Constitution, art. 1, sec. 8. (Foreign trade). Electronic document, http://www.archives.gov/national-archives-experience/charters/constitution_transcript.html, accessed Apr 24, 2006.
- United States Department of War. License for Alexander Campbell to Trade with Cherokee Nation, May 16, 1797, signed by David Henley. Papers of the War Department. Electronic document, <http://wardepartmentpapers.org/docimage.php?id=21536&docColID>, accessed April 10, 2010.
- Van Gennep, Arnold
1960 [1908] *The Rites of Passage*. Monika B. Vizedom and Gabrielle L. Caffee, trans. Chicago: University of Chicago Press.
- Vaughan, Alden T.
1982 From White Man to Redskin: Changing Anglo-American Perceptions of the American Indian. *The American Historical Review* 87:917-953. Electronic document, <http://www.jstor.org/stable/1857900>, accessed August 29, 2008.
- Waselkov, Gregory A.
2006 Indian Maps of the Colonial Southeast. *In Powhatan's Mantle: Indians in the Colonial Southeast*. Gregory A. Waselkov, Peter H. Wood, and Tom Hatley, eds. Pp. 435-502. Lincoln: University of Nebraska Press.
- Washington, George
1796 Talk of the President of the United States to His Beloved Men of the Cherokee Nation. *Cherokee Phoenix*, March 20, 1828. Electronic document, <http://opacnewsband.com/select/evans/47983>, accessed April 17, 2009.
- Watson, Alan
1993 *Legal Transplants: An Approach to Comparative Law*. Athens: The University of Georgia Press.
- Weiner, Annette B.
1992 *Inalienable Possessions: The Paradox of Keeping-While-Giving*. Berkeley: University of California Press.
- White, Max E.
2002 *The Archaeology and History of the Native Georgia Tribes*. Gainesville: University Press of Florida.

Williams, Thomas Rhys

1972 *Introduction to Socialization: Human Culture Transmitted*. Saint Louis: C.V. Mosby Company.

Williamson, Margaret Holmes

1979 Powhatan Hair. *Man* 14(3):392-413. Electronic document, <http://www.jstor.org>, accessed February 2, 2010.

2003 *Powhatan Lords of Life and Death: Command and Consent in Seventeenth-Century Virginia*. Lincoln: University of Nebraska Press.

N.d. *Sex and Gender in Five Southeastern Cultures*. Forthcoming.

Willis, William S., Jr.

1963 Patrilineal Institutions in Southeastern North America. *Ethnohistory* 10(3):250-269. Electronic document, <http://www.jstor.org>, accessed October 23, 2008.

Woman

1828 *Cherokee Phoenix*, February 28, Issue 2, col. A. Electronic document, <http://infotrac.galegroup.com.proxygw.wrlc.org>, accessed February 21, 2009.

Yarbrough, Fay

2004 Legislating Women's Sexuality: Cherokee Marriage Laws in the Nineteenth Century. *Journal of Social History* 38(2):385-406. Electronic document, <http://web.ebscohost.com.mutex.gmu.edu>, accessed January 14, 2009.

2008 *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century*. Philadelphia: University Pennsylvania Press.

Young, Mary

1981 The Cherokee Nation: Mirror of the Republic. Special Issue, "American Culture and the American Frontier," *American Quarterly* 33(5):502-524. Electronic document, <http://www.jstor.org>, accessed September 22, 2008.

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