

A Nation's Charge: Cherokee Social Services, 1835-1907

Julie L. Reed

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Approved by:

Theda Perdue

Michael D. Green

Valerie Lambert

Kathleen Duval

Clara Sue Kidwell

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## Abstract

Julie L. Reed: *A Nation's Charge: Cherokee Social Services, 1835-1907*  
(under the direction Theda Perdue and Michael D. Green)

This dissertation explores the development of social services within the Cherokee Nation between removal and allotment. The specific services included in this work are poor relief, care of orphans and the disabled, and the imprisonment of criminals. The introduction of state-mediated guardianship marked a shift from traditional practices in which matrilineal clans cared for their members. Culture change plus the upheavals of removal and the Civil War required the Cherokee government to begin providing social services for its citizens. Using the methodology of ethnohistory, this study moves beyond the interactions between federal and Cherokee Nation officials to examine the ways in which broad cross sections of Cherokee people understood the profound social changes taking place. It also explores the degree to which Cherokee people integrated these new institutions into a society that traditionally relied on family and community to provide material, medical, and familial protection to one another. The dissertation addresses the role of social services in defining citizenship, since these programs were available only to citizens. Finally, this project examines the role of these institutions as an expression of tribal sovereignty and the effect of their dissolution in 1907 on Cherokee national identity.

Dedication

To Lilith Selu

## Acknowledgements

A dissertation requires solitary work, but it is not a solitary process, nor is it chronologically bound by the years spent in graduate school. I owe thanks to the many educational institutions that have built me up over the years. Within institutions I have also had the opportunity to educate and be educated by students who often taught me more than I could have offered them. To the students and colleagues whose lives have touched mine at Hillsborough High School, Memorial Middle School, East Bay High School, and the University of North Carolina at Chapel Hill know that this dissertation is as much a product of your lives as it is of mine. Throughout my life I have been blessed with friendships and colleagues that have shaped my personal and educational path for the better. Each of these individuals deserves their name on this page as much as mine: Stewart Slayton, Lynn Burke-Bogner, Bethany VanDyke-McCormack, Tara Kiene, Valerie Lopez-Stern, Michele Alvarez-Hardin, Deb Langshaw, Crystal Feimster, Malinda Maynor-Lowery, Katy Smith, Rose Stremlau, Karla Martin, Mikaela Adams, Courtney Lewis, Jean Dennison, Christy Mobley, Waitman Beorn, Christina Snyder, Kristina Jacobsen, Tol Foster, Brandi Brooks, and Miguel & Jill LaSerna.

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Heritage Center and Don Franklin at Sequoyah Schools. Thank you to Tom Belt and Hartwell Francis at Western Carolina for our many discussions of Cherokee language and culture.

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To my committee, I thank each of you for your individual strengths and your collective strength as a group. I am a better scholar as a result of having all of you around the table with me. A special thanks to my advisors, Mike and Theda—thank you for demanding that I become something better. As a result, I am.

## Preface

“A Nation’s Charge” takes a historical approach to topics I feel passionate about because they form the backdrop to the people, places, and experiences that have most shaped my life. My father spent his career in the military, my mother in the public school system and the church. I thrived in public school and attended a Methodist seminary after my undergraduate education. I graduated from seminary, where I came to appreciate fully the incredible power the church wields as an institution in this country. I am married to a high school science teacher and I am the mother of a child about to enter school. I spent six years as a public school teacher to a variety of underserved populations, inner-city students, non-English speaking students, undocumented students, drop-out prevention students, and rural poor students, who often have difficult relationships to institutions, yet often become the recipients of the social services that institutions offer. And now here I am about to embark on a career in the academy, another institution. What I know is that I love institutions and I hate them. They have the power to build us up or to tear us apart and they may do both simultaneously. And within those institutions, despite their missions and intents, we have the ability to resist, conform, or skillfully combine the two. It is this complex negotiation that makes the historical study of institutions and their services so rich. It

exposes the power of institutions and the limits of that power. It highlights the interdependency between institutions and the people they seek to serve.

It is through institutions this dissertation received its greatest financial support. During my time at UNC, I have received tremendous financial support from the Graduate School including the Ethics in Society Fellowship, the Interdisciplinary Research Fellowship, and most recently the Royster Society of Fellows' Sequoyah Dissertation Writing Fellowship. From the Department of History, I received the Mowry Dissertation Fellowship and my annual Teaching Assistantship. For the past three years, the Cherokee Nation Education Corporation awarded me the Nell D. Brown Memorial Award. The bulk of my summer research funds came from two awards, the Frances C. Allen Fellowship from the Newberry Library and the Phillips Fund for Native American Research from the American Philosophical Society. The Western History Association also awarded me the Indian Student Conference Scholarship to present my work at its 2010 Annual Meeting. To all of these organizations I offer my immense gratitude; thank you for supporting my work.



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## **Introduction**

Before removal in 1838-39, the Cherokee Nation played little role in caring for the helpless. Missionaries provided some services, but primarily Cherokees depended on family to care for them, educate them, and redress wrongs against them. The Cherokee National Council focused its efforts on legal codes to protect the nation's communal land holdings and articulate laws that protected the economic interests of an elite class of Cherokee people. The written constitution of 1827 and the political institutions it created reaffirmed these priorities and ignored questions related to establishing social services. The removal treaty of 1835 laid the groundwork for national social services and usurped a key role played by the missionaries by providing a fund for education, poor relief, and orphan care. In the post-removal Cherokee Nation, the funds existed to nationalize institutions previously controlled by non-Cherokees. Removal forced the nation to re-evaluate its obligations for the economic and social stresses placed on society as a whole.

The Cherokee Nation's efforts at social services came in the midst of enormous political and social turmoil. The executions of treaty signers John Ridge, Elias Boundinot, and Major Ridge in 1839 sparked a series of back and forth reprisals reminiscent of the blood vengeance lawful under traditional clan practices, yet also justified by council legislation that made the sale or exchange of Cherokee lands without its authorization a crime punishable by death. These reprisals also reflected the extreme tension among the Old Settlers, the signers of the Treaty of 1835, and the Ross Party that comprised of the bulk of the Cherokee people

who removed.<sup>1</sup> The United States government viewed these killings as an indication of the inability of the Cherokee people to manage their affairs. However, even in the midst of this internal discord, the Cherokee Nation began to build its economic and social structures, including the establishment of the town of Tahlequah, its capital.<sup>2</sup> In 1841, the council passed the Public School Act that legislated the financial support of national schools. If a community located a structure for use as a school, the nation paid teachers' salaries and provided materials to that school. The Public School Act faced revision several times, but the number of common schools increased from 1841 to the outbreak of the Civil War. In pursuit of its goal to educate its young people, the nation authorized seminaries to provide high school education and university preparation. In 1850, the nation completed the Female Seminary, and in 1851 the Male Seminary opened. The seminaries trained Cherokee teachers for the nation's public schools.<sup>3</sup>

The outbreak of the Civil War agitated old animosities stemming from removal. Although Principal Chief John Ross attempted to maintain neutrality, Confederate sympathizers and Ross detractors advocated alignment with the Confederacy. Ross, unsure of the ability of the Union to live up to its financial obligations to the nation and wishing to maintain a unified Cherokee Nation, concluded a treaty with the Confederacy in 1861. Ross repudiated the treaty the next year, and Cherokee people fought on both sides. The war produced economic, social, and political chaos for the second time in thirty years. Cattle

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<sup>1</sup>Morris L Wardell, *The Political History of the Cherokee Nation, 1838-1907* (Norman: University of Oklahoma Press, 1938).

<sup>2</sup> William G McLoughlin, *After the Trail of Tears: The Cherokees Struggle for Sovereignty, 1839-1880* (Chapel Hill: University of North Carolina Press, 1993).

<sup>3</sup> Devon Mihesuah, *Cultivating the Rosebuds: The Education of Women at the Cherokee Female Seminary, 1851-1909* (Urbana: University of Illinois Press, 1993).

thieves depleted herds; guerilla tactics destroyed the infrastructure; women, children, and the elderly proved unable to sustain crops during wartime. Thousands of Cherokees sought refuge behind Union and Confederate lines. With war settled in a treaty between the Cherokee Nation and the United States in 1866, the National Council turned to rebuilding the nation and its institutions. The nation became the protector of its citizens by granting support for the poor and pressing for pensions from the federal government. The council also moved toward a system of public health by regulating the practice of medicine and initiating vaccination campaigns. Addressing the needs of its most disadvantaged citizens, the council opened the Cherokee Orphan Asylum in 1872 and the Asylum for the Deaf, Dumb, Blind, and Insane in 1874, the same year as the National Penitentiary. These institutions employed and served Cherokee populations. They provided housing, subsistence, and education for people unable to care for themselves.

Access to these institutions was a right of citizenship and, consequently, an indication of who Cherokees considered citizens. The Treaty of 1866 extended citizenship rights to Shawnee and the Delaware people residing in the Cherokee Nation and the former slaves of Cherokees. Many Cherokees resented the federal interference with their sovereignty, and in succeeding years the council took measures to undercut the citizenship privileges of non-Cherokees. Studying the social service agencies of the Cherokee Nation after the Civil War sheds important new light on the contentious issue of citizenship, especially as it applied to the Freedmen.<sup>4</sup>

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<sup>4</sup> McLoughlin, *After the Trail of Tears*, 340-341; Daniel F. Littlefield, Jr., *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport: Greenwood Press, 1978), 55-56.

In addition to the threats to sovereignty that federally imposed citizenship requirements presented, the Cherokee Nation faced other challenges. Railroad corporations, eager to open Indian Territory for right of way purposes, joined forces with reformers and politicians who favored individual land allotments for Indian peoples.<sup>5</sup> Resisting allotment preoccupied the nation for the final two decades of the century. The goal of allotment was to do away with tribalism by obliterating tribal social and political institutions and by distributing tribal lands to individual Indian owners. The 1887 Dawes General Allotment Act made this program official government policy, but because the Cherokee Nation and the others of the Five Tribes in Indian Territory held their lands in fee simple title, the law exempted them. To force the Five Tribes into conformity with federal allotment policy, in 1893 Congress created a commission to negotiate voluntary allotment agreements with their governments. Frustrated by the refusal of the tribes to negotiate allotment agreements, in 1898 Congress enacted the Curtis Act, which forced them to do so. Allotment led to increased white settlement, the dissolution of tribal government, United States control over Indian Territory, and the admission of Oklahoma to the Union. Among the casualties of allotment was the Cherokee Nation's social service system that then transferred to the state.

Social services remain a debated and yet essential part of modern society; the Cherokee Nation's introduction of these services signified the modern state, but the services also provided stability to a nation ravaged by removal, the Civil War, and political factionalism. Although orphan care and funds for post-removal poor relief finds their roots

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<sup>5</sup> Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture, 1830-1900*. (Lincoln: University of Nebraska Press, 2004), 202-208; H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907* (Columbia: University of Missouri Press, 1976), xii.

in the Treaty of 1835, the penitentiary and a home for the disabled did not.<sup>6</sup> What then are the historical underpinnings of these social services and how did they develop? Within this central question a variety of more specific cultural questions emerge. Although the institutions originated in political decision-making, the populations they served were a cross-section of Cherokee people. How widespread were the problems of orphans, poverty, crime, and insanity throughout the period from removal to Oklahoma statehood? What effect did the understandings of gender, race, class, and citizenship play in the delivery of these services? What consideration, if any, was given the institutions on allotment or statehood?

Social services legislated, funded, and administered by the Cherokee Nation exemplify the political autonomy exercised by the sovereign Cherokee Nation in the period after the Civil War. Yet, they also represent a clear break with traditional clan practices that included children's care and education and the responsibility of clan members to provide for the social, physical, and material well-being of all members. The establishment and evolution of Cherokee institutions are the subjects of my dissertation. In addition to the political machinations of the Cherokee Nation, I contend that social services can offer important understandings of how the Cherokee Nation articulated its political autonomy and its role as a sovereign governing body in the nineteenth century. The institutions also provide an opportunity to evaluate how Cherokee people understood the nation and their rights within it.

Ethnohistory provides the most appropriate methodological approach for this project. Ethnohistory uses historical documents to better understand and record culture change from

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<sup>6</sup> Treaty with the Cherokee, 1835, Article 10, Article 12, Charles J Kappler ed., *Indian Affairs: Laws and Treaties* (Washington: Government Printing Office, 1904), <http://digital.library.okstate.edu/kappler/intro.html>, 443.

the perspective of American Indian communities. Ethnohistory combines the written record used by historians with the anthropologist's emphasis on culture and society to strengthen historical analysis and reinvigorate the use of familiar documents for unfamiliar purposes. Ethnohistorians, in more than an attempt to understand change over time, want to interpret how Indians resisted, participated in, or modified the outcomes of their experiences.

Ethnohistorians examine changes over time, but they also ask questions that establish cultural continuities. They study the social organization of the community and how the community governed itself and they establish the fundamental values and beliefs of the community and how that community defined itself. These inquiries begin in the historical past and move forward through time to allow the ethnohistorian to look at older patterns of behavior and determine how those patterns changed, what the causes of change were, and what elements of the culture continued.<sup>7</sup> Historians of American Indians employ ethnohistory because it respects the primacy of the American Indian community in the narrative and allows documents, often produced by non-Indians with cultural biases, to be read against the culture itself. The outcome is a history that captures the actions and words of Indian peoples that, at first glance, appear absent from the written record.

This work builds on previous scholarship. Early twentieth-century historians explored the political negotiations between the Cherokee Nation and the United States government in the period after removal, but scholars privileged the actions and decisions of the United States and failed to offer insight into Cherokee decision-making beyond a few key political leaders. Morris L. Wardell recounted a history of acculturated Cherokee political leaders undermined by deteriorating political conditions in the Nation and the need for federal

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<sup>7</sup> William N. Fenton, "Ethnohistory and its Problems," *Ethnohistory* 9 (1962): 1-23.



intervention.<sup>8</sup> Grant Foreman also provided a history of negotiations between internal factions and the United States government. Foreman viewed most Anglo officials as destructive and praised the intelligence of many Cherokee officials, but he argued that white intervention, especially by missionaries, was the key ingredient in the ability of the Cherokee people to rebuild their lives after removal.<sup>9</sup> My work departs from studies that emphasize political questions and key political leaders by taking a social history approach to political issues and seeking to understand how the nation coped with human, economic, and geographic problems.

I draw upon a range of Cherokee scholarship including studies that address legal history. John Phillip Reid and Rennard Strickland both examined the legal foundations of Cherokee society. Reid's work still stands as the definitive text to understand matrilineal descent and the role of Cherokee clans in maintaining societal order in the eighteenth century.<sup>10</sup> Strickland rejected Reid's secular view of clan structure and argued that spiritual connections continued to be integrated into the clan system through the adoption of written laws.<sup>11</sup> Unlike Wardell and Foreman, whose histories privileged the role of non-Indians, Reid and Strickland delved into the political and spiritual world views that formed the legal backdrop to Cherokee society. Reid and Strickland paved a new way.

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<sup>8</sup> Wardell, *A Political History of the Cherokee Nation*.

<sup>9</sup> Grant Foreman, *The Five Civilized Tribes* (1934; Oklahoma: University of Oklahoma Press, 1972).

<sup>10</sup> Reid, *Law of Blood: The Primitive Law of the Cherokee Nation* (New York: New York University Press, 1970).

<sup>11</sup> Rennard Strickland, *Fire and Spirits: Cherokee Law from Clan to Court* (Norman: University of Oklahoma Press, 1975).

More recent scholars have returned to the nature of the relationship between the Cherokee Nation and the United States government and scrutinized Cherokee actions to better understand the period. In *Demanding the Cherokee Nation*, Andrew Denson examined the discourse used by Cherokee Nation officials to articulate sovereignty to outsiders and to promote a sovereign national identity, but he did not ask how those messages were received or interpreted by the communities they represented.<sup>12</sup> Similarly, *After the Trail of Tears* by William G. McLoughlin argued that the major theme throughout the post-removal era was the reconciliation of political hostilities that existed between removal treaty signers and the National Party that opposed removal.<sup>13</sup> McLoughlin examined the interaction of Christian missionaries and the Cherokee people in both *Cherokees and Missionaries* and *Champions of the Cherokees*.<sup>14</sup> The former work studied the relative successes and failures of various denominations within the Cherokee Nation prior to removal. Through exploration of factionalism within the tribe, *Champions of the Cherokees* built upon his former work and emphasized the efforts of the two most successful missionaries, Baptist father and son, Evan and John B. Jones. In both works, the Cherokee people chose to accept, reject, or adapt the religious and political tools offered by the missionaries. This work reconsiders some of the same questions McLoughlin and Denson posed but seeks evidence of unity and nation-building in social services rather than political rhetoric, factionalism, or religion. How did the Nation overcome internal political turmoil in the wake of major challenges that included

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<sup>12</sup> Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture, 1830-1900*.

<sup>13</sup> McLoughlin, *After the Trail of Tears*.

<sup>14</sup> McLoughlin, *Cherokees and Missionaries*, (New Haven Yale University Press, 1984); *Champions of the Cherokees*, (Princeton: Princeton University Press, 1990).

removal, civil war, and threats of United States territorialization? What role did social services play?

Fay Yarborough, author of *Race and the Cherokee Nation*, argued that nineteenth-century Cherokee sovereignty can best be understood through its construction of racial hierarchies. For Yarborough, late nineteenth-century Cherokee constructions of citizenship based on racial ideology superseded traditional understandings of blood, descent, and clan membership.<sup>15</sup> Tiya Miles's *Ties That Bind* also placed racial ideology at the center of her narrative by tracing the lives of Shoe Boots and his slave/wife Doll and their family. Miles argued that in the period of Shoe Boots lifetime racial ideology in the Cherokee Nation hardened and provided fewer opportunities for the off-spring of Cherokees and African-Americans to be acknowledged and protected in Cherokee society.<sup>16</sup> Did racial ideology supersede traditional understandings of Cherokee identity rooted in culture? What can social services tell us?

Denson, Yarborough, and McLoughlin agree that Cherokee national sovereignty and its defense were crucial to the decision-making processes of late nineteenth-century Cherokee officials. All rely on the words and actions of legislative bodies and political leaders to express Cherokee sovereignty, but all fail to consider how a wider variety of citizens interpreted and participated in the Cherokee Nation. In *Cultivating the Rosebuds*, Devon Mihesuah examined the experiences of three thousand nineteenth-century Cherokee women who attended the Cherokee Female Seminary over the course of its fifty-eight years

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<sup>15</sup> Yarborough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008).

<sup>16</sup> Miles, *Ties that Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Berkeley: University of California Press, 2005).

of operation.<sup>17</sup> She argued the “rifts” in Cherokee society based on race, language, and socioeconomics became more apparent because of the seminary’s adoption of values and goals based on Eastern educational practices. In her epilogue, Mihesuah invited other scholars to determine how these “progressive seminarians” interacted with other groups of people.<sup>18</sup> “A Nation’s Charge,” in part, will answer this call. Like Mihesuah, this work uses Cherokee institutions to better understand changes in Cherokee society. Rather than focus on an institution of higher learning that catered to elites, however, it explores institutions aimed at indigent people or those excluded from mainstream society.

The Cherokee Nation’s social services offer an additional means for social historians, political scientists, social theorists, and philosophers to understand the rise of institutions in the United States. British social historian Roy Porter, author of *Madness: A Brief History*, read the rise of nineteenth-century institutions as the means by which nation-states sought to answer the dilemmas posed by demographic change, urbanization, and industrialization.<sup>19</sup> Philosopher Michel Foucault wrote extensively on the rise of institutions as a means for the state to control the masses and to exercise power over individuals’ freedom and their claims to knowledge. American social historian David Rothman interpreted the 1820s and 1830s as a time when Americans in the early Republic feared social disorder and devised moral therapies as solutions to the problems of social deviance.<sup>20</sup> If, as Rothman contends, the

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<sup>17</sup> Mihesuah, *Cultivating the Rosebuds*, 2.

<sup>18</sup> *Ibid.*, 113-115.

<sup>19</sup> Roy Porter, *Madness: A Brief History* (New York: Oxford University Press, 2002), 112-122.

<sup>20</sup> David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (1971: New York: Aldine de Gruyter, 2002), xii-xiii.

asylum was an “imagined” institution turned into “reality,” then it is possible the Cherokee Nation imagined its institutions differently.<sup>21</sup> The Cherokee Nation’s adoption of these institutions in the 1870s tests the validity of the essential features of United States’ institutions. This work asks why the Cherokee Nation adopted institutions for criminals, the disabled, and orphaned children. How did the Cherokee Nation construct these categories? How did it treat the people confined to its institutions? What role did these categories and institutions play in the development of a national identity? In order fully to understand the rise of institutions in American history, the Cherokee Nation’s use of institutions must be included.

The first chapter focuses on poor relief. In the period before removal, the Cherokee national government made very few concessions to the poor. In some instances, impoverished Cherokees sought aid from the missionaries, but mostly Cherokee people continued to rely on kin to support one another when needs arose. Removal challenged the ability of kin networks to provide support, and many missionaries fell under suspicion and withdrew from the nation. Between removal and the Civil War, the Cherokee Nation legislated annual payment for Cherokees unable to earn a living either because of disability or lack of family resources. These annual payments offer the initial evidence of the nation’s acknowledgement of the unmet needs of citizens from informal networks. Following the Civil War, the nation expanded its use of pensions for disabled people and expected the federal government to deliver pensions due to Cherokee Union veterans and their families.

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<sup>21</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977); *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Random House Inc., 1965); *The Birth of the Clinic* (New York: Random House Inc., 1973).

The Orphan Asylum, the subject of the second chapter, provided institutionalized care and education to its orphaned and half-orphaned children in the post-Civil War years. The asylum employed a large and diverse staff and served a population of children who ranged widely in their cultural orientation. The nation and its representatives heralded the asylum as a shining example of a modern nation-state. Though the asylum seemed superficially at odds with the key features of traditional notions of child-rearing and the responsibilities that belonged to adult kin, it became a site for cultural transmission that included language, kinship obligations, and a strong community identity at the same time that it helped the Cherokee Nation lay claim to modernity.

The third chapter examines crime and punishment. Railroads, traders, and white settlers created numerous jurisdictional challenges in Indian Territory that served the interests of federal, state, and corporate officials who desired control over Indian Territory and territorialization. In an effort to assert its sovereign authority over its criminal proceedings and to counteract the images portrayed to outsiders, the Cherokee Nation established the position of high sheriff and constructed a prison. The prison both housed Indian criminals and taught them vocational skills. It also served as a challenge to those who claimed the nation was unable to manage its own affairs.

The fourth chapter concerns the Cherokee Nation's efforts in public health. The council acted to license physicians, respond to epidemics, and care for those with disabilities. By establishing the Asylum for the Insane, Deaf, Dumb, and Blind, the Cherokee Nation not only provided health care but also made an important statement about its ability to care for its most vulnerable citizens.

Allotment did away with these social service institutions and ended the efforts in state-building of the Cherokee Nation. Nevertheless, the Cherokee Nation's delivery of social services to its citizens made an important statement about culture and nationhood. In the post-Civil War era, the Cherokee Nation had reconstituted itself on the basis of Cherokee national sovereignty, and it did so through the adoption of institutions common to modern nation-states. These institutions had their origins in Cherokee kinship, but the Cherokee Nation had adapted traditional kin responsibilities to national social services in order to transmit Cherokee culture and identity and to reaffirm and strengthen tribal sovereignty.

## Chapter 1

### Poor Relief

In 1829, nine years before the Cherokee Nation's removal to Indian Territory, the National Council granted a \$1 monthly payment to Kahateehee "to take good care of an old blind man, named Big Bear." This payment, two years after the Cherokee Nation's adoption of its constitution, marked the first documented time the nation assumed fiscal responsibility for one of its citizens. In exchange for the financial support, Kahateehee consented to "supply [Big Bear] with food, wash his person and clothes, and keep him in a decent condition at his house."<sup>1</sup> Within the Cherokee Nation, this payment signaled a changing Cherokee society. In a relatively short period of time, the Cherokee people had centralized their government, adopted written laws, established a judicial system, developed a written language, and published a bilingual newspaper to defend their sovereignty and their rights to historic homelands. This payment to Kahateehee on behalf of Big Bear indicated a shift in the understanding of communal responsibility and kinship obligations on the part of Cherokee people. Although this payment was exceptional, the council established a precedent for one form of poor relief for Cherokee people before the challenges wrought by

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<sup>1</sup> "Resolved by the National Council," 9 November 1829, *Laws of the Cherokee Nation: Adopted by the Council at Various Periods* (1852; Wilmington: Scholarly Resources, Inc., 1973), 64-65.



removal, political violence, and the Civil War. The Cherokee Nation would expand its poor relief in a number of ways in the late nineteenth century.

Until the nineteenth century, Cherokee society's system of communal land holdings and its adherence to kinship obligations protected Cherokee people from individual poverty. Communal land holdings gave all Cherokee people access to hunting grounds and fields. This system enabled matrilineal kin to establish households and share agricultural responsibilities. The rules of kinship obligated Cherokee people to provide for kin, and a hospitality ethic extended that obligation to neighbors if crops failed or towns suffered pestilence or drought. Towns pooled their collective resources when necessary and redistributed food appropriately. If town resources proved inadequate, clan kin turned to kin in other towns for support. Even as towns became less densely populated in the late eighteenth century, Cherokee people continued to band together in times of need. This ethic prevented individual poverty and insured that families, neighbors, and communities suffered or prospered together. Kahateehee's request for financial assistance from the National Council to aid Big Bear acknowledged the inability of the kinship system, communal land holding, and redistribution to provide for all Cherokee people by the 1820s. The adoption of patriarchal family systems by some Cherokees and the continuation of matrilineal systems by others muddled kinship obligations, and the dispersal of the population onto individual homesteads weakened a sense of communal responsibility. As Big Bear's case illustrates, individual poverty became a real possibility.

The Cherokee Nation recognized that the decision of Cherokees to enroll for emigration to the West threatened common title to land, which had served as a bulwark against poverty. As removal loomed, the Cherokee Nation passed legislation to protect

communal landholdings from loss when individual Cherokees chose to emigrate west. To discourage emigration, in 1821 the nation imposed fines on any emigrant selling his improvements.<sup>2</sup> Instead, those improvements reverted to the nation. Four years later the council forbade any sale of improvements to citizens of the United States and made clear that “the legislative council of the Nation shall alone possess the legal power to manage and dispose of...the public property of the Nation.”<sup>3</sup> Those who chose to emigrate or move beyond the boundaries of the Cherokee Nation, the council decreed in 1828, “forfeit[ed] all right, title, claim and interest that he, she, or they may have or be entitled to as citizens of this Nation.”<sup>4</sup> These laws discouraged removal through financial penalties, but they also reiterated the importance of common landholdings to the larger body of Cherokee people.

Efforts to avoid removal failed, and the Cherokees suffered terribly from confinement in stockades while they awaited deportation and on the way west. The loss of the land, which had been able to support the people, and the disruption of families, who had taken care of one another, meant that the prospect of poverty haunted Cherokees. Even the United States recognized the danger. The Treaty of New Echota, under which the Cherokees removed, provided \$100,000 “for the benefit of the poorer class of Cherokees” and offered protection to the federal pensions of Cherokee soldiers who had fought in the Creek War. The treaty

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<sup>2</sup> “Resolved by the National Committee and Council,” 27 October 1821, *LCN* (1852)19.

<sup>3</sup> “For the better security of the common property of the Cherokee Nation,” 15 June 1825, *LCN* (1852), 46.

<sup>4</sup> “Resolved by the Committee and Council, in General Council Convened” 17 November 1828, *LCN* (1852), 113.

obligated the federal government to provide a year's worth of rations to Cherokee people giving them time to re-establish their farms and yield crops.<sup>5</sup>

Removal reunited Old Settlers, those Cherokees who had emigrated earlier, with the Cherokee Nation and forced a legal reconciliation "essential to the general welfare." Despite clear understandings that each group could continue to negotiate "all unsettled business" with the federal government based on their respective treaties, the 1839 Act of Union reiterated that the "title to public Cherokee lands shall henceforward vest entire and unimpaired in the Cherokee Nation."<sup>6</sup> To avoid any ambiguity about ownership of their territory, Article I, Section 2 of the constitution that reunited them confirmed that "the lands of the Cherokee Nation shall remain common property."<sup>7</sup>

Despite measures intended to ease the suffering of removal and the reestablishment of Cherokees in their new homes, Cherokee people found themselves in a dire situation once they arrived in Indian Territory. Unscrupulous federal agents and contractors short measured promised corn, delivered flour ruined by water, and charged excessive prices for meat. Distributions occurred once a month, a schedule that required food storage facilities Cherokee families did not have. On some occasions, the rations were not available at all and agents issued credits in hopes those denied would not return to claim their rations.<sup>8</sup> These

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<sup>5</sup> "Treaty With the Cherokee, 1835," Charles J. Kappler, ed., *Indian Affairs Laws and Treaties* (2 v.; Washington: Government Printing Office, 1904), 2: 445.

<sup>6</sup> "Act of Union Between the Eastern and Western Cherokees," 12 July 1839, *LCN* (1852), 3-4.

<sup>7</sup> "Constitution of the Cherokee Nation," 6 September 1839, *LCN* (1852), 5.

<sup>8</sup> "Right of the President to Withhold Papers—Frauds on Indians. Message from President of the United States, Transmitting Report of Lieutenant Colonel Hitchcock, Respecting the Affairs of the Cherokee Indians, &c.," H. doc. 219, 27<sup>th</sup> Cong., 3<sup>rd</sup> sess. (1843), Serial 425, 13-26, 126-129.

frauds made the difficult first years in the west unnecessarily severe, particularly for the poorest Cherokee citizens.

As a result of the political fall-out of removal, particularly the executions of treaty signers and the violent repercussions that followed, the federal government froze the Cherokee treasury. This act forced the nation to operate on credit that required the payment of interest from the depleted national treasury and deprived Cherokee citizens of payments for property lost in the east that were crucial to their re-establishing themselves. Nevertheless, the Cherokee Nation supported the most vulnerable people by subsidizing families who housed orphans so that they could attend public schools and issuing per capita payments to blind and crippled citizens.<sup>9</sup>

Despite the impoverished conditions created by removal, communal land ownership coupled with traditional ethics sustained families during the challenging post removal years. The average Cherokee cultivated a combination of corn, wheat, and hay on approximately 8-10 acres using a single horse, mule, or ox. Families constructed double-log cabins and women cooked over an outdoor hearth. They slaughtered animals in the winter for meat, and women maintained small vegetable gardens that included potatoes, peas, pumpkins, and melons. Some planted peach or apple trees for fruit. Communal land ownership offered the flexibility necessary for Cherokee families to relocate if a tract of land failed to produce. These conditions allowed Cherokee people to thrive in good years, but left them vulnerable when harvests failed. In 1845, the Nation experienced widespread crop failure. In response,

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<sup>9</sup> An Act for the Benefit of Ke-ti-kes-ki,” 7 December 1843, *LCN* (1852), 99; “An Act for the Benefit of Big Dollar,” 5 November 1849, *LCN* (1852), 198.

the Cherokee national government distributed corn to the most destitute.<sup>10</sup> The following year the Cherokees concluded the Treaty of 1846, which halted the political violence, integrated the three political factions, settled the matter of removal finances, and freed the funds to pay spoliation claims from the east. When a drought occurred in 1852, the nation was able to distribute funds received under the removal treaty and stave off more serious deprivation.

The outbreak of Civil War erased the short-term peace and prosperity achieved by the Treaty of 1846. Although Principal Chief John Ross hoped to avoid participation in the Civil War, pressure from Indian Territory neighbors, the inability of the federal government to guarantee security, and the prospect of political division persuaded Ross to conclude an alliance with the Confederacy in 1861. One of the first actions of the Cherokee soldiers was to pursue Creek leader Opothle Yahola's group of loyal families making their way to Kansas. Cherokees had agreed to fight Union soldiers threatening the Cherokee Nation, but they did not anticipate attacking their Indian neighbors. Consequently, many Cherokee soldiers switched sides, which plunged the Cherokee Nation into its own civil war.<sup>11</sup> Ross repudiated the Confederate treaty in 1862.

Neither the Union nor the Confederacy provided Indian Territory soldiers with adequate supplies, which forced soldiers to pillage and steal food, equipment, and supplies. Civilians who remained faced the depredations of the soldiers. Although soldiers directed physical violence toward men, they stole food and clothing from women and children, rustled

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<sup>10</sup> William McLoughlin, *After the Trail the Tears: The Cherokees' Struggle for Sovereignty, 1839-1880*, (Chapel Hill: University of North Carolina Press, 1993), 69-71.

<sup>11</sup> Clarissa Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press, 2007), 42-52, 58-75.

livestock, laid waste to farms, and burned houses. Food was soon in short supply, and people turned to seed corn for food, a decision that left women without seed to plant for the next year. During the war, women who adhered to subsistence-based farming and more traditional understandings of gender probably felt less disruption to their daily lives than women whose husbands adopted agricultural pursuits.<sup>12</sup> However, all women feared for the lives of their male relatives and struggled to provide adequate food, shelter, and warmth to the family members who depended on them. These anxieties cut across class and political boundaries.

In the period immediately following the Civil War, the Cherokee Nation launched its first large-scale form of poor relief to adults. In 1866, the Cherokee Nation began distributing twenty-dollar annual pensions to those in need. On November 21, 1866, for example, the National Council authorized an annual pension to Jackin, “whose feet are partly off, having been frost-bitten while on a journey on foot to Tahlequah for official business.”<sup>13</sup> Unlike Jackin’s pension that stemmed from service to the Nation, most pensions derived from need. From 1866 to 1876, the Nation regularly awarded pensions to crippled, blind, elderly, and infirm persons.<sup>14</sup> The council also authorized at least one payment to a widow, but the vast majority of recipients suffered from some form of disability that limited their

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<sup>12</sup> Ibid., 113-115.

<sup>13</sup> “An Act Allowing a Pension to Jackin,” 21 November 1866, *Laws of the Cherokee Nation Passed During the Years 1839-1867* (1868; Wilmington: Scholarly Resources Inc., 1973), 108.

<sup>14</sup> “An Act for the Relief of Big Ellis, a Cripple, of Sequoyah District,” 10 December 1867, “An Act for the Benefit of Goo-di-ee, a Cripple, Granting a Pension,” 19 October 1866, “An Act Allowing Annual Pension to Charlotte,” 18 November 1867, “An Act for the Relief of Cha car lac tah, A Blind Man of the Flint District,” 22 November 1867, “Act for the Benefit of Thomas Burtholph, A Blind Person,” 10 December 1867, *LCN 1839-1867*, 123, 146, 148, 172, 173.

ability to work.<sup>15</sup> These payments imply the absence of family members to underwrite their care. In two instances, the Nation even paid for funeral expenses. One of these funerals was for “Wah la ne da, a stranger, who was temporarily in Tahlequah...and there is no person...present to take charge of the corpse.”<sup>16</sup> Family was unable to assume responsibility for burial, so the nation stepped in.

The Civil War left many families unable or unwilling to provide for relatives. This reality forced the Cherokee national government to take action in a way that forty years earlier was uncharacteristic. Not only did the nation offer support, but Cherokee people also solicited help from the National Council. This change may have been because Cherokee citizens learned that those who had joined the Union army in the Civil War were eligible for pensions from the federal government. Both veterans and widows petitioned the federal government for pensions. The U.S. Indian agent compiled lists of applicants which he submitted to the Interior Department for forwarding to the War Department. He also acted as a liaison for Cherokee people in their applications for pensions.<sup>17</sup>

The nature of Cherokee service in the war plus features of Cherokee culture complicated the application process for federal pensions. Indians who had served in the Indian Home Guard not only received inferior supplies, substandard, if any, weaponry, and

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<sup>15</sup> “An Act for the Benefit of Persons Herein Named,” 25 November 1872, *Laws and Joint Resolutions of the National Council Passed and Adopted at the Regular and Extra Sessions of 1870-72* (1871, Wilmington: Scholarly Resources Inc., 1975), 26.

<sup>16</sup> “Resolution of Respect to Daniel Backbone,” 26 November 1867, *LCN 1839-1867*, 151; “An Act to Defray the Funeral Expenses of Wah la ne da,” 8 December 1870, *LJR 1870-72*, 28.

<sup>17</sup> *Cherokee Advocate*, 14 January 1871; “Alleged Frauds Against Certain Indian Soldiers,” 8 June 1872, Committee on Indian Affairs, H. Report 96, 42<sup>nd</sup> Cong., 2<sup>nd</sup> Sess. (1871-1872), Serial 1543. Hereinafter H.R. 96

inadequate rations, many in the cavalry companies also had to supply their own horses. This deprived families with few horses the means of transportation and the aid of the animals in farming. Personal illness and family obligations forced many soldiers to return home to be cared for by or take care of family. These absences, misinterpreted by white officers as desertion followed by inadequate record keeping upon their return, compromised Cherokee Union soldiers' access to pensions in the postwar period.<sup>18</sup>

Pension laws lacked any inherently discriminatory stipulations, but Cherokee soldiers faced a pension process that limited their ability to receive pensions. Widows had to prove the legality of their marriages and children had to prove they were legitimate heirs.<sup>19</sup> Despite an 1855 law that required Cherokee couples to marry and divorce before a recognized authority that could document the actions, Cherokee people continued to make and break unions without government sanction. Cherokee married couples commonly had different surnames or no surnames at all, a situation that complicated applications. Despite the difficulties of securing petitions under these circumstances, an 1866 list of eligible pensioners submitted to the Department of the Interior included, Akego, widow of Swimmer, Betsey Glass, widow of Henry Morgan, Ca her kah, minor of Middlestriker, and Grass, an invalid.<sup>20</sup> The Cherokee national press assumed responsibility for disseminating important information regarding pensions. In January of 1871, the *Cherokee Advocate* printed a comprehensive list of the names of pensioners on whose behalf a payment was made in order

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<sup>18</sup> Confer, 99-102.

<sup>19</sup> For the impact of these rules on African-Americans see Donald R. Shaffer, " 'I Do Not Suppose That Uncle Sam Looks at the Skin:' African-Americans and the Civil War Pension System, 1865-1934," *Civil War History* 46 (2000): 132-147.

<sup>20</sup> H.R. 96, 12-16.



to determine whether payments went “to the rightful claimants or not.” A secondary list of claimants whose applications had been filed in the Washington, D.C. pension office but not yet evaluated also appeared.<sup>21</sup>

Petitioners for pensions in the Cherokee Nation often relied on assistance from other Cherokee Nation citizens to assist them in the process. Betsey Still, widow of Cook Still, sought the aid of Spencer Stephens, a graduate of the male seminary and a public school teacher to “make out the necessary papers.”<sup>22</sup> She later called upon “Allen Ross and Hendrix” to act as witnesses on her behalf.<sup>23</sup> James Hendrix, a Cherokee judge, kept records of Cherokee pensioners and copies of federal pension laws in his files.<sup>24</sup>

The expenses related to pension applications proved prohibitive to many Cherokees. Betsey Still made five separate trips to Ft. Gibson, a distance of fifty miles from her home, to attend to her application. She also presumably had to bear the cost of witnesses who appeared on a claimant’s behalf. When, on one trip to Ft. Gibson, Mrs. Still presented herself to collect the money she was due, the attorney handling the claim asked her “to go and get two loyal men” to verify her husband’s enlistment. She secured witnesses, but instead of asking them any questions, the attorney informed Mrs. Still that her husband was a deserter and she was not entitled to payment.<sup>25</sup> Like many Cherokees he had probably

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<sup>21</sup> *Cherokee Advocate*, 14 January 1871.

<sup>22</sup> H.R. 96, 33.

<sup>23</sup> *Ibid.*

<sup>24</sup> “Pension claims, including correspondence, affidavits, and legal forms regarding the collection of pensions for veterans, 1878-1894,” James R. Hendrix Collection, Box H 31 Folder 16, Western History Collection, University of Oklahoma, Norman. Hereinafter Hendrix Collection.

<sup>25</sup> *Ibid.* 33

returned home to help with his family without a formal discharge. Another challenge to many petitioners was access to a board of physicians to validate injuries related to service.<sup>26</sup> In 1873, to aid Cherokees in gaining access to the “Examining Surgeon for Pensions,” the *Advocate* published the name and location to “all concerned” of the newly appointed physician.<sup>27</sup>

The daunting pension process led many people to rely on the services of attorneys, notaries, and claim agents who filled out the paperwork and forwarded it to Washington, D.C. to be processed.<sup>28</sup> Claim agents and attorneys proved to be problematic. In 1872, for example, the federal government launched an investigation into the activities of attorney John W. Wright. In 1865, Wright had presented himself to the Office of Indian Affairs on behalf of the Cherokee Nation and Cherokee Nation citizens to collect bounties, back pay, and pensions due them. He posted bond in the amount of \$100,000. Seven years later, federal authorities suspected Wright of fraud in excess of \$150,000. Such claims agents often preyed upon legitimate claimants. Even more scrupulous men sought to increase payments to claimants and therefore their share, which was a percentage of the lump sum.<sup>29</sup>

Fraud exasperated an already challenging pension process given the failure of pension laws to match the realities of Cherokee society. Principal Chief William P. Ross, in an 1874 petition to Congress, challenged the large numbers of Indian soldiers marked as deserters and denied pensions as a result. Ross pointed out that many soldiers possessed “a very imperfect

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<sup>26</sup> Larry M. Hogue and Peter Blanck, “‘Benefit of the Doubt’: African-American Civil War Veterans and Pensions,” *Journal of Interdisciplinary History* 38 (2008): 377-399.

<sup>27</sup> *Cherokee Advocate*, 13 September 1873.

<sup>28</sup> Shaffer, 138.

<sup>29</sup> *Ibid.*, 139-141.

knowledge of the English language” and when they requested short-term leave to care for family or be treated for illness, white officers marked them as deserters. Furthermore, Cherokees did not normally receive medical treatment from military hospitals, so there was no documentary record of their illnesses as there would be for white soldiers.<sup>30</sup> The investigation into Wright’s activities acknowledged that the “peculiar habits of the Indians, the character of their marriage laws, and the difficulty of settling questions involving the legitimacy of their children” prevented many Indians and their families from receiving the pensions to which they were entitled.<sup>31</sup> Cherokee soldiers represented a broad cross-section of Cherokee society and no one group was spared the difficulties of receiving their pensions. As late as 1882, then deceased Principal Chief Lewis Downing’s war records and pay remained contested.<sup>32</sup>

Pension laws ultimately adapted to realities. The pension modifications, approved in June 1874, included several sections aimed at non-white pensioners, and two of the provisions applied specifically to Indians. The first one, which concerned “widows of colored and Indian soldiers,” accommodated undocumented marriages of couples who “were joined in marriage by some ceremony deemed by them obligatory, or habitually recognized each other as man or wife, and were so recognized by their neighbors.” Another section, “Indian claims,” extended the application period for two years and validated documentation

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<sup>30</sup> “Indian Home-Guard Regiments, Petition for the Relief of Certain Soldiers of the Indian Home-Guard Regiments,” 14 May 1874, H. misdoc. 276, 43<sup>rd</sup> Cong, 1<sup>st</sup> sess. (1873-1874), Serial 1621, 1-2.

<sup>31</sup> H.R. 96, 3-4.

<sup>32</sup> “Bills and joint resolutions introduced in the United States Senate, first and second sessions, Forty-seventh Congress,” 26 July 1882, S. misdoc.48, 47<sup>th</sup> Congress, 2<sup>nd</sup> sess. (1882-1883), Serial 2083, 101.

by Indian agents or an “officer of any tribe, competent according to the rules of said tribe to administer oaths.”<sup>33</sup>

The Cherokee Nation had a vested interest in securing pensions and preventing fraud. The Treaty of 1866, which officially renewed the relationship between the Cherokee Nation and the United States, allocated the pensions of deceased soldiers without heirs to a fund for orphans. The nation needed this money for the construction of an orphanage. The nation also had an interest in individual Cherokee citizens who needed to re-establish their homes, farms, and businesses following the devastation of the Civil War. Pensions, therefore, were both an individual and a national economic issue. If the Cherokee Nation hoped to rebuild, individual families needed aid.

The Cherokee Nation needed to rebuild its economy so that it could take care of Cherokee citizens. Two key provisions in the Treaty of 1866 had important implications for the economy, one obvious and one less so. The Treaty provided rights-of-way for North-South and East-West railroads. Railroads held the promise of economic development, but they also carried the risk of intruders streaming into the nation. The second and more foreboding provision left open the possibility of the Cherokee Nation uniting with other Indian nations to become a formal United States territory. Such a move threatened the sovereignty of the Cherokee Nation and its commonly held land, which served to protect Cherokee citizens from poverty.

The land belonged to all Cherokees, and citizenship assured them of the right to derive a living from it. The assumption was, however, that citizens would work the land for

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<sup>33</sup> “Pension claims, including correspondence, affidavits, and legal forms regarding the collection of pensions for veterans, 1878-1894,” Hendrix Collection.

themselves. Individual Cherokees were free to employ non-citizens if they wished, but Council policy required that such employers post a bond for each employee. During the 1870s, the National Council increased the cost of bonds in order to deter citizens from employing large numbers of non-citizens. This measure angered many Cherokees who sought to rent their lands to non-citizen tenant farmers and live off the income. The requirements favored wealthy men and widened the gap between rich and poor in the Cherokee Nation.<sup>34</sup> In 1877, a widow petitioned the national council for permission to hire laborers, “not citizens, to make an improvement for her upon the common domain.” The council assured her that allowances could be made to waive bonds but, without the ability to remove intruders, advised that a concession of this type was unwise.<sup>35</sup> The woman’s request ignited a public debate about the nature of common land-holdings. The *Cherokee Advocate* insisted that any “declaration that the land belongs to the men only and not the women and the children, would be denied and resented as untrue.” Instead, the newspaper asserted, “It belongs to them as much as it does to any other class of citizens of the Nation.” The land “is claimed for them, held for them and tenaciously defended for them, in the common right and title of all.” Even though some Cherokees were rich and some poor, the land available to each was “amply sufficient, if properly managed, to support each one in comfort.” No Cherokee citizen lived in “dependency and pauperism”<sup>36</sup> Cherokees defended women’s right to property, but this article also invoked the claims of United States reformers that women, “must have aid from some quarter” as a dependent class. Therefore, the nation had a duty to

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<sup>34</sup> Khaled J. Bloom, “An American Tragedy of the Commons: Land and Labor in the Cherokee Nation, 1870-1900,” *Agricultural History* 76 (2002): 497-523.

<sup>35</sup> *Cherokee Advocate*, 18 April 1877.

<sup>36</sup> *Cherokee Advocate*, 4 April 1877.

protect women's "right to the public domain." If the benefits of common landholding could not be accessed by all of the nations' citizens, then common land holdings ceased to operate as the superior system that the nation argued it was.

Most Cherokees supported laws that limited access to the nation by non-citizens and the practice of holding land in common with each citizen possessing the right to use what he or she wished, as long as no one infringed on the rights of others or resources reserved for the benefit of all. Allotment threatened to dismantle this system.

Cherokees opposed allotment for many reasons, one of which was because they recognized the connection between holding land in common and the absence of poverty, a relationship that was not apparent to critics because money was scarce and consumerism low. A lack of money and store-bought goods, however, did not necessarily mean a person was poor. Catcher Rock, who was born in the Saline District of the Cherokee Nation in March of 1877 at the peak of the Cherokee institution building, later recalled a life of plenty despite his apparent poverty. Despite the presence of twenty-four stores throughout the Cherokee Nation, including at least six in nearby Tahlequah, Catcher Rock "seldom went to these places because they did not have any money to spend."<sup>37</sup> Catcher Rock's lack of money did not constitute an impoverished condition. Instead it highlighted basic features of late-nineteenth century agrarian living. People worked hard, produced what they consumed, and used their marketable skills to earn a few dollars for the few items (coffee, sugar, and nails) a store might provide. Catcher Rock's daily diet consisted of "bean-bread, dried pumpkin,

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<sup>37</sup> "Interview with Catcher Rock," 77: 293-301, Indian Pioneer Papers Collection, Western History Collection, University of Oklahoma Library, University of Oklahoma, Norman, OK. Hereinafter IPP.

hominy, sweet potatoes, and wild meats.”<sup>38</sup> Catcher Rock did not describe a life of poverty; he described a life that resembled the lives of the majority of nineteenth-century Americans.

The overt poverty that existed in the United States, however, was largely absent in the Cherokee Nation. In 1892, Walter Adair Duncan, first superintendent of the Cherokee Orphan Asylum, explained why in the *Cherokee Advocate*: “[t]he title in common to our lands is the strongest guarantee against the homelessness of many of our people.” Duncan opposed allotment, not because he feared that backwards or uncivilized Indians could not manage their affairs, but because he knew that “owning land in severalty has the effect to exclude so many people among the whites from the enjoyment of a home.” The poverty white men, women, and children endured was not, in Duncan’s opinion, something Cherokee people should risk by embracing private land ownership.<sup>39</sup> When one considered poverty in relative terms, the Cherokee Nation was far from impoverished.

Despite the efforts of men like Duncan to look comparatively at poverty, the United States pressed ahead with the plan to allot Cherokee land. The Curtis Act of 1898 seized the treasury of the Cherokee Nation, forcing Cherokee officials to petition the Secretary of the Interior to approve expenditures and release funds. This act not only compromised social service institutions, it left the nation unable to provide the necessary relief when natural disasters arose. In 1901, in the midst of efforts to stall incorporation of the Cherokee Nation into the state of Oklahoma, the nation faced an “almost unprecedented drought” leaving the “class of [Cherokee] people who have always relied upon corn crops for sustenance” face-to-

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<sup>38</sup> “Catcher Rock,” IPP.

<sup>39</sup> *Cherokee Advocate*, 5 October 1892.

face with the possibility of starvation.<sup>40</sup> In an attempt to fulfill the nation's responsibility to its citizens, Principal Chief Thomas Buffington traveled to Washington to "secure aid" for the "Cherokee fullbloods many of whom are in want."<sup>41</sup> Chief Buffington discovered "that nothing could be done as the governmental red tape could only be unwound by having a request for help come from the Cherokee council."<sup>42</sup> From April 15, 1902 to June 8, 1902, the U.S. agent to the Cherokees traveled to eighteen communities in the Cherokee Nation to distribute funds to heads of household. A total of 4,189 people received money. Although federal oversight of those funds weakened its exercise of sovereignty, the money distributed came from the Cherokee Nation's coffers. One of the final expenditures before the nation's legal dissolution was poor relief.

In the wake of removal and civil war, the Cherokee Nation had sought ways to relieve the poverty of individual citizens. A disparity between rich and poor existed in the Cherokee Nation, but abject poverty was unknown. Common landholding and a redistributive economy had provided a safety-net before removal and these continued afterwards. When circumstances rendered families unable to care for impoverished kin, the Cherokee Nation stepped in and furnished direct aid. The nation also defended its practice of holding land in common against critics who promoted private ownership. Therefore, poor relief was an exercise of tribal sovereignty rooted in traditional culture but with the tools of modern states, such as pensions. The Treaty of 1866 afforded some financial means to rebuild the Cherokee

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<sup>40</sup> *Tahlequah Arrow*, 9 November 1901.

<sup>41</sup> *The Vinita Leader*, 13 November 1902.

<sup>42</sup> "Editorial on T.M. Buffington," *The Vinita Republican*, 21 February 1902.



Nation, but the treaty also contained provisions that jeopardized the nation's ability to provide for its citizens. As intruders flooded the nation, cries for the allotment of land to individuals and dissolution of tribal government reached a crescendo. When congress heeded these cries, the tribal sovereignty that had enabled the Cherokee Nation to provide poor relief was a casualty.

## Chapter 2

### Orphan Asylum

On November 17, 1903, fifteen miles from the nearest railway station and fifty miles northwest of the capital of the Cherokee Nation in Tahlequah, a fire engulfed the Cherokee Orphan Asylum. The inferno threatened the lives of the 149 resident orphans, many of whom were feverish and bed-ridden from measles. Despite the dire possibilities, every person in the building survived. The stately three story structure built on the banks of the Grand River in Salina had housed Cherokee orphans for thirty-one years. After the fire the Cherokee Nation relocated the homeless children to the Nation's Insane Asylum in Tahlequah where Sequoyah School stands today.<sup>1</sup> The fire occurred as allotment threatened Cherokee sovereignty, tribal land-holdings, and Cherokee-controlled political, legal, and social institutions, including the Orphan Asylum. The assumption of orphan care by the nation coincided with the development of political and social institutions in the years after Cherokee removal from the Southeast just as the destruction of the orphanage paralleled the demise of the late nineteenth-century Cherokee Nation. The Orphan Asylum demonstrated the nation's ability to transform ancient familial responsibilities into modern social institutions in a way that adhered to Cherokee cultural values while meeting the needs of the modern world.

Superficially, the Cherokee Orphan Asylum fits a pattern of orphan care that emerged in non-Indian communities. The first North American orphan asylum opened in New Orleans

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<sup>1</sup> N. B. Johnson, "The Cherokee Orphan Asylum," *Annals of the Cherokee Nation* 44 (1966-67): 275-280.

*Annals of Oklahoma* 44 (1966-67):

in 1739, but the growth of orphan asylums exploded in the period after the Civil War.<sup>2</sup> Civil War deaths, particularly of soldiers, forced states, communities, and organizations to rethink their responsibilities to orphans and half-orphans, children with only one living parent. Mothers faced a precarious employment situation, and domestic service, one of few opportunities for poor women, often required live-in arrangements which kept mothers away from their children.<sup>3</sup> Soldiers' Orphans' Homes emerged to aid the large number of children left half-orphaned by war. Industrialization, urbanization, and immigration exacerbated the problem of even two parent families, many of whom became incapable of providing for their children as a result of dislocation and poverty. From the 1830s to the 1880s, orphan asylums constituted the most popular means to care for children whose parents could not raise them, whether as a result of death or circumstance.<sup>4</sup> Trustees, reformers, and social workers aimed to create "homelike" institutions based on the middle class "cult of domesticity." The cult of domesticity privileged the importance of the domestic sphere and the role of mothers in establishing a proper environment in which children could develop into productive citizens.<sup>5</sup> Because most orphanages were private and responded to specific needs of religious and ethnic groups, no two asylums were alike in form or practice.<sup>6</sup> The Cherokee Orphan

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<sup>2</sup> Nurith Zmora, *Orphanages Reconsidered: Child Care Institutions in the Progressive Era* (Philadelphia: Temple University Press, 1994), 9, 15; Timothy A. Hasci, *Second Home: Orphan Asylums and Poor Families in America* (Cambridge: Harvard University Press, 1997), 27.

<sup>3</sup> Judith A. Dulberger, *"Mother Donit for the Best": Correspondence of a Nineteenth Century Orphan Asylum* (Syracuse: Syracuse University Press, 1996), 3-4.

<sup>4</sup> Hasci, *Second Home*, 4.

<sup>5</sup> Ibid., 65-66; Dulberger, *"Mother Donit for the Best,"* 17, 23.

<sup>6</sup> Zmora, *Orphanages Reconsidered*, 20, 26, 32. Zmora includes three Baltimore case studies including the Hebrew Orphan Asylum established in 1872, the Samuel Ready School, a

Asylum, established by the Cherokee Nation in 1872, came out of similar historical circumstances, but the cultural and political base from which it emerged was uniquely Cherokee.

Before removal in the 1830s, Cherokees lived in the valleys of the southern Appalachian Mountains where they constructed towns and organized themselves socially by a clan system. Clans were large extended families that traced their kinship to an ancient ancestor. Towns had members from all clans, and clans provided the mechanism for town government and ceremonial life since clan members participated in both as distinct entities. Clans were matrilineal; that is, they traced their kinship through women. The permanent residents of a household were women of the same clan. Unmarried brothers and sons lived with their mothers and sisters and, when married, they moved into their wives' houses but maintained their mother's clan, irrespective of their wife's clan. A woman's brother, or maternal uncle if she had no brothers, held the most important male role in children's lives, the equivalent of fathers in Euro-American society. Uncles were clan kin; fathers were n

Clans organized virtually every aspect of Cherokee life—where one lived, who one married, where one sat in ceremonies, the prayers one said, and the relationship one had with all other people. Cherokees depended on clans to protect them, exact retribution for wrongs done them, and avenge their deaths so that their souls could go to the darkening land.

Membership in a Cherokee clan made a person a Cherokee, so clan identity provided a national identity. Clans also ensured that no child became an orphan in Cherokee society.

Maternal aunts acted as mothers, providing a home, food, and education and linking

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Protestant-run facility opened in 1887, and the Catholic Dolan's Aid Society founded in 1874. Dulberger, "*Mother Donit for the Best*," 1-23. Dulberger traces trends in New York's State Board of Charities developed in the 1860s.

motherless children to their clan network. Any woman of a child's clan had maternal responsibilities for that child just as any male member of the clan offered protection and assumed other masculine roles in the family. Even if a child were a stranger to these clan relatives, the mutual obligations defined by clan and kin insured familiarity and security. These rules of kinship, rooted in the clans, rendered the order and harmony that defined Cherokee society.<sup>7</sup>

Historian William G. McLoughlin's *Cherokee Renaissance* details the early nineteenth century as the Cherokees faced increased pressure from white settlers and United States' "civilization" programs, a centralized republican government gradually replaced the political role of clans, and the nation began maintaining internal order, offering protection from enemies, and providing national identity. Social organization also changed. Contact and intermarriage with non-Indians led to new kinds of families that were male-headed and nuclear. The traditional connection between kinship and politics shifted as Cherokees moved from a government in which matrilineal clans played a significant role in shaping a consensus to an elected National Council endowed with delegated political power. Articles of government in 1819 provided for electoral districts with lines drawn irrespective of town and clan. Each district selected its representatives to represent its interests in council. Rather than government that emanated from the Cherokees' social organization and decisions made by consensus, the new Cherokee Council reflected a move of power away from towns, a reduction of the role of clans, and the emergence of new political forms. In 1827, the

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<sup>7</sup> John Phillip Reid, *Law of Blood* (New York: New York University Press, 1970); Theda Perdue, *Cherokee Women* (Lincoln: University of Nebraska Press, 1998), 41-59.

Cherokees adopted a constitution and a republican form of government for the nation that made no provision for the kin-based social organization that had structured Cherokee life.<sup>8</sup>

Despite political changes, family issues remained a central concern for the nation, and the emerging national government did not ignore the kinship obligations that lay at the heart of eighteenth-century Cherokee political organization. The earliest written laws enacted by the National Council defined responsibilities to children under the new family structure. The first written law, enacted in 1808, gave men the right to pass property to their orphan children and to their widows in the event of their deaths.<sup>9</sup> This law expanded definitions of children's kin to include fathers who, under traditional rules of kinship, were not clan kin of their children and had no obligation to provide support or security for them; that had been the responsibility of their mothers' brothers, who were their clan relations.

This law, however, did not dismantle matrilineal practices. In 1819 a law recognized "[t]he improvements and labors of our people by the mother's side [as] inviolate during the time of their occupancy," a confirmation of matrilineal descent<sup>10</sup> These laws continued to support the matrilineal definitions of kin while simultaneously expanding the role fathers might play in the lives of children. Cherokee law also weakened the link between clan and citizenship so that children of non-Cherokee mothers could be citizens of the nation. In 1826 the council also acknowledged the citizenship of the children of the highly respected warrior

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<sup>8</sup> William G McLoughlin, *Cherokee Renaissance in the New Republic*, (Princeton: Princeton University Press, 1986).

<sup>9</sup> "Whereas, fifty-four towns and villages have convened," 26 October 1819, *Laws of the Cherokee Nation: Adopted by the Council at Various Periods* (1852; Delaware: Scholarly Resources Inc., 1973), 5. Hereinafter *LCN* (1852).

<sup>10</sup> "Resolved by the National Committee and Council," 10 November 1825, *LCN* (1852), 10.

Shoe Boots by his African American slave.<sup>11</sup> The next year, the council enacted a law that “the children of Cherokee men and white women, living in the Cherokee Nation as man and wife, be...hereby acknowledged, to be equally entitled to all the immunities and privileges enjoyed by citizens descending from the Cherokee race, by the mother’s side.”<sup>12</sup>

Missionaries, who first entered the Cherokee Nation in the 1760s, encouraged the reconfiguring of Cherokee families. They sought nuclear, male-headed families that forced men to become primarily responsible for their children, but the Christian family also limited the number of adults responsible for children and made “orphans” more likely. By the time of removal, Moravians, Baptists, the American Board of Commission for Foreign Missions, and Methodists supported missions in the Cherokee Nation.<sup>13</sup> All except the Methodists operated residential schools, but these Protestant denominations did not care for most parentless children. Rather, kin continued to provide for them. The children who did attend the mission schools tended to be those of well-to-do and politically prominent Cherokees rather than impoverished orphans. The children of chiefs Charles Hicks and John Ross, for example, attended mission schools for the advantages an English language education conveyed rather than out of necessity.

Few parents needed to surrender children, but if they did, they turned them over to missionaries reluctantly. A poor Cherokee widow took her eight-year-old daughter to the

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<sup>11</sup> Tiya Miles, *Ties That Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Berkeley: University of California Press, 2005), 125-128. Miles pointed out that this extension of citizenship to Shoe Boots’s children was due, in part, to the goodwill the Council felt toward Shoe Boots and because of legal loopholes, which the Council addressed just two weeks after ruling on Shoe Boots petition.

<sup>12</sup> “Resolved by the National Committee and Council,” 10 November 1825, *LCN* (1852), 57.

<sup>13</sup> William McLoughlin, *Cherokees and Missionaries, 1789-1839* (New Haven: Yale University Press, 1984), 239-266.

Brainerd Mission in Tennessee to acquire the food, clothing, and education that Brainerd offered. Despite assurances from the mother that she would not remove the child from the mission, eight days later she returned and did exactly that.<sup>14</sup> Missions, therefore, might serve as an occasional safety net for children, but they were not orphanages.

Removal in 1838-1839 disrupted mission schools and jeopardized the stability of the Cherokee Nation, yet the removal treaty strengthened the Cherokee government's ability and commitment to provide for orphans. The Treaty of New Echota, in addition to mandating removal, included a provision for an increase in the school fund investment from the fifty thousand provided by earlier treaties to two hundred thousand dollars. The nation planned to use the annual interest on these investments to establish a common school system and a "literary institution of a higher order." Of the two hundred thousand dollar school investment, fifty thousand dollars "constitute[ed] an orphan fund" for the "support and education of orphan children as are destitute of the means of subsistence."<sup>15</sup> The treaty placed fiscal control of education and orphan projects with the Cherokee Nation, not with the missionaries, who until that time provided the only academic education available to Cherokee children.<sup>16</sup>

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<sup>14</sup> Entry of 14 November 1818, Joyce B. Phillips and Paul Gary Phillips, eds., *The Brainerd Journal: A Mission to the Cherokees, 1817-1823* (Lincoln: University of Nebraska Press, 1998), 92.

<sup>15</sup> Treaty with the Cherokee, 1835, Article 10, Charles J Kappler ed., *Indian Affairs: Laws and Treaties*, 2: (Washington: Government Printing Office, 1904), 443, <http://digital.library.okstate.edu/kappler/intro.html>.

<sup>16</sup> Entry of 11 April 1815, Rowena McClinton, ed., *The Moravian Springplace Mission To the Cherokees, Volume 2* (Lincoln: University of Nebraska Press, 2007), 66. In rare cases, Cherokee elites secured private tutors for their children instead of sending them to the missions.



Cherokee attitudes toward missionaries shifted in the wake of removal. In 1839 the nation passed legislation that prohibited missionaries from entering the nation without first obtaining a license.<sup>17</sup> This act reflected dismay at the close relationship between members of the treaty party and some missionaries, particularly the Moravians, who were close to the pro-treaty Ridge family. After removal, the nation thwarted attempts by the Moravians to establish a mission school by opening a public institution “at [their] door.”<sup>18</sup>

Anti-mission sentiments, however, only partly explain the shift to public education. Growing Cherokee nationalism encouraged the nation to assume primary responsibility for education, even when it cooperated with missionaries. In 1842, the Cherokee Nation considered a partnership with the Methodist Episcopal Church, South, to establish a Manual Labor School for the “exclusive” use of orphans. Although a committee comprised of both Cherokees and Methodists drafted a plan for the Orphan Institute, in 1849 the Cherokee National Council rescinded their collaboration until a more suitable plan could be developed.<sup>19</sup> Missions cared for orphans only by individual arrangement.<sup>20</sup> For example, from 1852 to 1861, Missionary Jerusha Swain housed a succession of four young women in her home, including ten-year-old orphan Nancy Watts whose uncle arranged for her care.<sup>21</sup>

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<sup>17</sup> “An act relative to schools,” 26 September 1839, *LCN* (1852), 30-31.

<sup>18</sup> H.D. Reese to Colonel George Butler, 4 September 1853, *Annual Report of the Commissioner of Indian Affairs*, H. Doc. 1, 33<sup>rd</sup> Cong., 2<sup>nd</sup> Sess., (Washington: A.O.P. Nicholson, 1854-55), 330, Hereinafter *ARCIA* (1854-1855).

<sup>19</sup> Sidney Henry Babcock and John Y. Bryce, *The History of Methodism in Oklahoma: Story of the Indian Mission Annual Conference of the Methodist Episcopal Church, South* (Oklahoma City, 1937), 99-100.

<sup>20</sup> “A bill on the subject of an Orphan School,” 19 December 1842, *LCN* (1852), 75.

<sup>21</sup> Meg Devlin O’Sullivan, “Missionary and Mother: Jerusha Swain's Transformation in the Cherokee Nation, 1852–1861,” *Chronicles of Oklahoma* 83 (Winter 2005–06): 452–65.

Furthermore, fellow missionary Elizur Butler housed “one orphan Cherokee girl, who ha[d] learned to read and write.”<sup>22</sup> Entrusting orphans to missionaries, however, was not national policy.

In the aftermath of the dislocation and destruction caused by removal, Cherokees preferred that Indian families care for orphans, and the nation financially supported these efforts. In December 1841, Principal Chief John Ross approved the Public School Act that established a national school system and placed orphan children in each school district in a “good steady family convenient to the school.”<sup>23</sup> The public school system administered this program. Initially, every common school received a two-hundred dollar allocation for its orphans. In 1842, the total amount was \$2200 for the eleven schools in operation.<sup>24</sup> As the number of schools expanded, so did the budget. By 1847, the annual appropriation for orphan care had reached \$3600.<sup>25</sup>

Ideally, the Superintendent of Schools distributed orphans equally over the common schools, but in actuality, the number of orphans assigned to each school varied. Occasionally, school district budgets failed to meet the needs of orphans. In 1843, for example, two families that boarded orphans attending the Skin Bayou School, taught by Robert Benge,

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<sup>22</sup> Elizur Butler to P.M. Butler, 19 June 1843, Cherokee Agency, 1836-1880, Letters Received by the Office of Indian Affairs, 1824-1880, Record Group 75: Records of the Bureau of Indian Affairs, National Archives and Record Services, Washington, D.C., M234; reel 87, frame 81-82. Hereinafter M234.

<sup>23</sup> “An act relative to Public Schools,” 16 December 1841, *LCN* (1852), 59-61.

<sup>24</sup> “An act for Public School Appropriation,” 23 December 1842, *LCN* (1852), 76-77; P.M. Butler to T. Hartley Crawford, Commissioner of Indian Affairs, 30 September 1843, M234, reel 87, frame 49-72.

<sup>25</sup> “Enacted by the National Council,” 22 November 1847, *LCN* (1852), 165; “An act making appropriation for the support of Public Schools for the year 1849 and for other purposes,” 10 November 1848, *LCN* (1852), 186.

requested additional funds from the National Council. The households of John Benge, who boarded two orphans, and Michael Waters, who kept one, needed additional support in order to care for these children, and the council authorized twenty-four dollars and twelve dollars for the men.<sup>26</sup> The council also moved to make those caring for orphans more fiscally accountable to the nation and specified that the cost to board an orphan could not exceed \$4 per month.<sup>27</sup> This amendment to the Public School Act required the Superintendent to include the “[n]ames and condition of the orphan children” in the annual reports.<sup>28</sup> The Superintendent, a paid employee of the Cherokee Nation, became a quasi-social worker whose responsibilities now included monitoring the orphans funded by the nation.

Throughout the 1840s, the nation continued to expand its involvement in and commitment to its children. Traditional Cherokee family practices required extended matrilineal kin to care for children in the event of the mother’s death, but the council deviated from this practice when it made either surviving parent the guardian of the children in the event of the other parent’s death. In the eyes of the law, a father’s responsibilities to his motherless children replaced those of matrilineal kin. The council further specified that if a parent “shall be incompetent to discharge the duties devolving upon them as guardian, then the children shall be dealt with as the law directs.”<sup>29</sup> The council asserted a right to intervene

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<sup>26</sup> “An act for the benefit of John Benge—for \$24.00,” 19 December 1843, *LCN* (1852), 101; “An act for the benefit of Michael Waters,” 8 January 1844, *LCN* (1852), 105.

<sup>27</sup> “An act further to amend an Act relative to Public Schools,” 23 December 1843, *LCN* (1852), 101-102.

<sup>28</sup> *Ibid.*

<sup>29</sup> “An act relative to guardians,” 18 November 1847, *LCN* (1852), 164-165.

in matters of guardianship and assumed the responsibilities of parents by assigning children without competent parents to families who “regularly sent [them] to school.”<sup>30</sup>

In the 1850s, as part of a larger financial crisis, the Cherokee Nation began to cut back on services to children. The Cherokee Nation had experienced remarkable growth in the years immediately after removal. In addition to the development of its common school system and its orphan services, which received dividends from investments of the School Fund and Orphan Fund, the nation built a courthouse, re-established a national newspaper, opened male and female seminaries, and developed three bustling towns. The expansion of government services, coupled with the financial losses resulting from removal, taxed the nation’s resources. The nation relied on credit secured by the anticipated payment of funds owed under the removal treaty, but the United States government refused to make payments until the Old Settlers, the Treaty Party, the North Carolina Cherokees, and the Removal Party settled their disputes. Resolution was slow in coming, and the various fiscal demands on the nation collided in the 1850s.<sup>31</sup> Although the nation attempted to sell the Cherokee Outlet to stave off financial ruin, negotiations broke down repeatedly, first among Cherokee officials then between Cherokee delegates and Congress. Financial ruin threatened.

In 1856, the Cherokees closed their seminaries in order to protect funding for their common schools. The same year, the National Council required parents or guardians to pay the cost of food for students in the public schools, but it did not ignore the nation’s responsibility for orphans. Accepting its obligation to the most vulnerable, the council emphasized the “duty” of the Board of Directors for each school district to request funds

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<sup>30</sup> H.D. Reese to Colonel George Butler, 4 September 1853, *ARCIA*, (1854-55), 330.

<sup>31</sup> William G. McLoughlin, *After the Trail of Tears: The Cherokees Struggle for Sovereignty, 1839-1880* (Chapel Hill: University of North Carolina Press, 1993), 59-67.

from the council for the costs of food for “orphans or of children or youth whose parents are very poor.” Nevertheless, the council mandated that Superintendent of Schools Walter Adair Duncan reduce the number of orphans to eighty-three and allocate them equitably among all the public schools.<sup>32</sup> Throughout the 1850s the number of orphans served under the law fluctuated between 110 and 120, but this mandate reduced services to thirty-four. The council did not advise Duncan how to make these reductions. The next year Duncan reported a decline in services to orphans, but he explained that at “some of the schools the people agree among themselves to put in more orphans than are required by law, and for four of them to be reported and paid for as the law provides, and the money to be divided pro rata among all the orphans at the school.”<sup>33</sup> Children denied services or relocated for the purpose of equalization almost certainly faced disruption of their daily lives, but there was little the Cherokee government could do under the circumstances. Despite the council’s attempts to operate a family-based system of care administered by public officials, budgetary constraints hindered its ability to act as surrogate kin.

With the seminaries closed, debts unpaid, and orphan care reduced, the Cherokee Nation faced another crisis. The United States Civil War reopened old wounds and an internal war devastated the Nation. As early as 1862, Superintendent for Indian Affairs for the Southern Superintendency W.G. Coffin reported that two thousand men, women, and children were “entirely barefooted, and more than their number have not rags to hide their

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<sup>32</sup> “An act to reduce the numbers of Orphans attending Public Schools,” 23 October 1856, 1830, CNP-6, frames 623-624, Cherokee Nation Papers, Western History Collections, University of Oklahoma Libraries, University of Oklahoma, Norman, Oklahoma.

<sup>33</sup> Walter Adair Duncan to George Butler, 18 September 1857, *ARCIA*, (1857-1858), 505.

nakedness.”<sup>34</sup> The war left the seminaries in disrepair, the school houses burned, and the people destitute.<sup>35</sup>

Unlike removal, when disease disproportionately claimed the lives of the old and the young, the Civil War ravaged all age groups, particularly Cherokee men, who served on both sides in the conflict as well as in irregular units at home. “Marauding parties,” Colonel George Harlan reported, “murdered all the old men and boys large enough to aid their wives and mothers in raising a crop whom they could catch, and threatened the women with a like fate if they did not abandon their crops.”<sup>36</sup> As Harlan suggests, soldiers were not the only casualties; famine and disease as well as violence took a heavy toll on noncombatants. The war left twelve-hundred children orphaned, ten times that served annually in the common schools between removal and the war.<sup>37</sup>

The Treaty of 1866 between the United States and the Cherokee Nation designated fifteen percent of the annual income from the Cherokee Nation’s investments for the Cherokee Orphan Fund, and the council resumed orphan care in families. As the pre-war experience reflected, however, foster families did not provide the most cost effective system of care. The number of orphans and the destitution of the nation at the end of the war rendered such a system even more unsatisfactory, but a solution remained several years away.<sup>38</sup>

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<sup>34</sup> W.G. Coffin to W.P. Dole, 13 February 1862, *ARCIA*, (1862-63), 289-291.

<sup>35</sup> J. Harlan to E. Sells, 1 October 1865, *ARCIA*, (1866), 468-470.

<sup>36</sup> *Ibid.*

<sup>37</sup> McLoughlin, *After the Trail of Tears*, 241.

<sup>38</sup> Treaty with the Cherokee, 1866, Article 23, Kappler, *Indian Affairs*, 2: 949.

In the meantime, the Cherokee Nation struggled to care for orphans in the pre-war fashion. In 1866, the council appointed a committee to “arrange and negotiate” with churches to establish an orphanage, but such an institution never materialized. In 1867, in an effort to evaluate the specific conditions of orphan children, the National Council authorized a census to determine the number of orphans between the ages of five and fifteen for the purpose of establishing an asylum.<sup>39</sup> The time consuming nature of a census prevented any immediate action, but it secured the necessary information for the development of an orphanage. The council continued to appropriate funds for clothing and boarding orphans through the common schools even as it moved forward with its plans for an asylum.<sup>40</sup> In 1871, the Superintendent of the Common Schools reported that “[t]here are now 236 orphans provided for in private families by means of the orphan fund.”<sup>41</sup> Responding at last to the enormous need, the council appropriated twenty thousand dollars for the construction of a new facility or the purchase of an existing building large enough to accommodate two hundred children.<sup>42</sup>

The orphans could wait no longer. Finally, in March 1872, the Orphan Asylum opened with fifty-four students in the Cherokee Male Seminary. This provided a temporary

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<sup>39</sup> “An Act Authorizing the Principal Chief to appoint agents to take the Census of the Orphans,” 10 December 1867, *Laws of the Cherokee Nation Passed During the Years 1839-1867* (1868; Wilmington: Scholarly Resources Inc., 1973), 183. Hereinafter *LCN 1839-1867*.

<sup>40</sup> “Making an appropriation for the Support of the Public Schools for the year 1868,” 14 December 1867 *LCN 1839-1867*, 186.

<sup>41</sup> John B. Jones to F.A. Walker, 1 September 1871, *ARCIA*, (1871-72), 616-621.

<sup>42</sup> *Cherokee Advocate* (Tahlequah, Cherokee Nation), 18 April 1874.

site until a permanent facility could be located.<sup>43</sup> The institution's population increased rapidly. In 1873, the asylum served ninety students, forty-three boys and forty-seven girls. Ultimately, the council chose the Lewis Ross plantation located along the Grand River as the site of an orphanage. Lewis Ross, one of the wealthiest men in the Nation, had died in 1860 leaving behind a three story brick house and a collection of farm buildings and slave cabins. The twenty-eight thousand dollar asking price exceeded the appropriation. Adding to concern over the purchase, Principal Chief William P. Ross, as the executor of the Lewis Ross estate, stood to profit from the sale of the property. The price and the political controversy delayed acquisition of the property, but in 1875, the Orphan Asylum Board of Directors finalized arrangements for the purchase of the Lewis Ross estate and an adjoining tract.

The property totaled 340 acres, a sufficient acreage for a manual labor school. Nevertheless, the structures on the Ross plantation required modification. The red brick house underwent renovations that added east and west wings. The west wing addition alone cost approximately eight-thousand dollars.<sup>44</sup> Construction included accommodations for staff: the matrons' quarters ranged from "small but comfortable" to "large" and "fine."<sup>45</sup> The impressive façade conveyed a sense of permanence and attested to the high priority the nation assigned to the care of its orphans. Pillars framed the front of the house and a granite porch lined the exterior. Workers converted the former slave quarters into a blacksmith's

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<sup>43</sup> "An act authorizing orphan institutes," 23 October 1866, *LCN 1839-1867*, 65; John B. Jones to F.A. Walker, 1 September 1871, *ARCIA*, (1871-72), 616-621.

<sup>44</sup> 13 October 1877, Office of the Asylum Board of Trustees to Honorable Charles Thompson, Cherokee Nation Papers, reel 6, frame 684.

<sup>45</sup> "In the fall of 1885," MS 120, Emma Fleming Papers, Cherokee Heritage Center Archives, Tahlequah, Oklahoma. Hereinafter Emma Fleming Papers.



shop.<sup>46</sup> A granite spring house, the only trace of the facilities that exists today, provided water to the asylum. In 1877, the asylum installed a pump with the ability to supply water directly to the main building. The amenities the asylum offered far exceeded those of most Cherokee families, but the model for the asylum remained the family.



**Figure 1. Cherokee Orphan Asylum at Salina, Cherokee Nation.  
Courtesy of the Cherokee Heritage Center, Tahlequah, Oklahoma.**

Cherokee life centered on the household, and this tradition continued in the nineteenth century. The home was a physical dwelling, but it was also the primary unit of production. Because the Cherokee Nation held land in common, families could establish homesteads with extended family and farm communally. Families subsisted on farms that ranged in size from five to several hundred acres and produced the staples of corn, beans,

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<sup>46</sup> Mary Riley Roberts, "Cherokee Orphan Asylum Was Established in Year 1873," *The American Indian*, November 1929, 12.

oats, peas, pumpkins, and squash. Many families owned pigs, horses, and cattle.<sup>47</sup> The entire family participated in planting and harvesting, but the daily maintenance continued to be a pursuit of mothers, children, and any elderly family members living with them. Some men wholly adopted agricultural pursuits as a legitimate means of supporting their families, but others hired laborers or rented their lands. Hunting and fishing, certainly not the mainstay they had been in the seventeenth and eighteenth centuries, still contributed to the subsistence of families.

All family members had to work together to support themselves, an economic reality that formal education often jeopardized. School separated children from their families if they did not live close by and placed an economic burden on families. Even parents living within the vicinity of a school often sent their children sporadically because they needed their labor. The educational effects of child labor had long been a concern of both missionaries and common school officials, but both acknowledged the economic need.<sup>48</sup> They also understood that children's lives remained rooted in the home, and the needs of the household came first. For the asylum to resonate with Cherokees, it needed to replicate the activities and relationships of home as well as the value placed on the community rather than the individual.

The council selected Walter Adair Duncan to serve as the first superintendent of the Orphan Asylum, and Duncan recognized that the asylum would need to "supply the place of home and parent to the orphan." Duncan's philosophy reflected the importance that both he

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<sup>47</sup> V.A. Travis, "Life in the Cherokee Nation A Decade After the Civil War," *Chronicles of Oklahoma* 4 (1926): 16-30.

<sup>48</sup> "Whereas much inconvenience and expense," 26 October 1820, *LCN* (1852), 2-3.

and the Cherokee Nation placed on families as more than simply close biological kin.<sup>49</sup>

Duncan had arrived in Indian Territory as a boy on the Trail of Tears. Like many citizens of the Cherokee Nation, including Principal Chief John Ross, Duncan was associated with the Methodist Episcopal Church. Duncan served the Indian Conference as an itinerate parson throughout the Cherokee Nation and Indian Territory and knew well the educational projects of the Methodists in the region, which included several manual labor boarding schools. In addition to his service to the church and to the nation, Duncan served a one- year appointment to the Methodist's Honey Hill School. From 1873 until 1882, the Methodist Episcopal Church, South, made Duncan parson for the Orphan Asylum.<sup>50</sup>

In his philosophy of education, Duncan linked agricultural labor, academic endeavors, and nationalism, but these pursuits rested on the family. "In the order of nature, home precedes the school," Duncan wrote. "Society has always adjusted itself in accordance with those conditions, and by consequence, as a general rule, the sphere of the school works entirely outside the circle of home." But Duncan saw no reason why this should be the case. Duncan envisioned the asylum as a place where orphans found a home, parents, and the affection that emanated from the family as well as the responsibilities that family entailed. The asylum would be a home that included labor, a common dwelling, and shared meals as well as a school where children received an academic education.

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<sup>49</sup> "History of an Old School now extinct From Facts Gathered by James R. Carselowey," 102, 416-422, Indian Pioneer Papers, Western History Collections, University of Oklahoma Library, <http://digital.libraries.ou.edu/whc/pioneer>, Hereinafter IPP.

<sup>50</sup> Babcock, *The History of Methodism in Oklahoma*, 86, 341-368, 390-402. Walter Adair Duncan and Joseph F. Thompson received appointments by the Methodist Episcopal Church, South as parsons to the Asylum for twenty-one of its thirty years of operation at the Salina location.

These features mirrored other manual labor schools in both Indian Territory and the United States, but of critical importance was the asylum's place in the Cherokee Nation. Not only did the asylum's buildings reside within the Cherokee Nation's borders, but the Cherokee National Council and its appointed officials managed the asylum's operation. As a superintendent employed by the nation, Duncan controlled the asylum's day-to-day operations. With the input of the asylum Board of Directors, Duncan assessed the expenditures and sought budgetary approval from the council. Negotiations over curriculum, finances, and authority took place within the nation, not between the nation, mission boards, and Indian agents. The Cherokee Orphan asylum was truly a public institution and an expression of Cherokee nationalism.

The children's education at the asylum offered curricular features similar to the Cherokee common schools and the seminaries. The common schools served younger children and were the modern equivalent of an elementary school; seminaries provided a high school curriculum and preparation for professional work or university training. In 1878, Duncan placed an order for arithmetic, grammar, and geography books as well as for slates, crayons, and pencils.<sup>51</sup> Students studied English grammar, geography, arithmetic, algebra, history, and physiology, and a few students completed Robinson's geometry.<sup>52</sup> In the mid-1880s, the Orphan Asylum employed a music teacher.<sup>53</sup> Like the common schools, the asylum hired qualified teachers who passed the necessary examinations administered by the Teacher's Institute held annually at one of the Cherokee Nation's common schools. The

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<sup>51</sup> Book Order from Robert D. Patterson & Co., 6 March 1878, CNP, reel 7, frame 713.

<sup>52</sup> *Cherokee Advocate*, 6 July 1878.

<sup>53</sup> J.T. Adair to Emma Dunbar, 9 October 1885, Emma Fleming Papers.

three-day Teacher's Institute featured lectures and discussions from members of the Board of Education and school personnel. Asylum superintendents participated in the institutes. In 1872, Duncan contributed to the discussions of grammar education.

Many of the teachers in the nation's schools were non-Indian. The seminaries, in particular, often selected teachers recruited from the eastern schools. The asylum also hired staff and teachers from the east, but eventually employed more graduates from its own seminaries than from eastern colleges. In its first year of operation, the asylum employed three teachers, two of whom were Cherokee, and one matron, who was a widow from Delaware.<sup>54</sup> By 1876, teachers and matrons totaled seven, the majority of whom were Cherokee.<sup>55</sup> During the 1880s, John Henry Covell taught at the Orphan Asylum before serving as the interpreter for Principal Chief Joel B. Mayes.<sup>56</sup> Other staff, who included cooks, farmers, and washerwomen, was Cherokee. Most of the employees lived on-site. As compensation, Secretary of the Board of Education J.T. Adair offered Iowa teacher Emma Dunbar "fifty Dollars per month, board, lodging, washing, and room furnished free."<sup>57</sup> While employed as a teacher, Covell's wife, Elizabeth Mayes Covell, gave birth to their first child Ella Mae at the asylum. As was the case with the orphans, the asylum provided its employees and their children with a home, employment, and a community.

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<sup>54</sup> John B. Jones to F.A. Walker, 1 September 1871, *ARCIA*, (1871-72), 616-621.

<sup>55</sup> "Payments totaling" 19 December 1876, CNP, reel 6, frame 658.

<sup>56</sup> "Early Cherokee Nation Receives Cultural Help from Covell Family" *Pictorial Press* 23 October 1975; "Tahlequah's Woman City Clerk to Quit After 30 Years Service," Cherokee Orphan Asylum, Vertical Files, Special Collections, Northeastern State University, Tahlequah, OK.

<sup>57</sup> J.T. Adair to Emma Dunbar, 9 October 1885, Emma Fleming Papers.

Language presented a problem in all Cherokee educational settings. Enrollment of children from Cherokee-speaking families required the use of some Cherokee in the classrooms, a great difficulty for the schools that employed teachers who spoke only English.<sup>58</sup> A student's ability to read, write, and speak English made common school education much more accessible to them. Those termed "full-bloods," usually as a result of command of the Cherokee language, often felt discriminated against in the public schools and even more so in the seminaries, which made few concessions for students who spoke Cherokee as a first language.<sup>59</sup> As late as 1900, a little over 17% of those designated "full-bloods" in the Cherokee Nation remained monolingual in Cherokee. The asylum, because of its bilingual staff and its large number of Cherokee-speaking children, employed the Cherokee language with fewer obstacles and less resistance than either the common schools or the seminaries. Many students spoke only Cherokee when they entered the asylum, so it seems unlikely all students progressed at the same rate. Rather than deny children their language, teachers employed Cherokee to communicate with them, and students used Cherokee freely in the classrooms.

Language barriers, however, did exist. Emma Dunbar, recounting her first experience in an asylum classroom, remembered one Cherokee-speaking child who "stamp[ed] her foot and exclaim[ed]—"I-tee-see-col-ee" meaning I can't understand you."<sup>60</sup> Despite Dunbar's lack of understanding of Cherokee, someone translated the phrase for her. Even Cherokee faculty and staff did not necessarily speak their tribal language. In an article

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<sup>58</sup> W.A. Duncan to George Butler, 25 September 1856, *ARCIA*, (1856-57), 690-694.

<sup>59</sup> Devon A. Mihesuah, *Cultivating the Rosebuds: The Education of Women at the Cherokee Female Seminary, 1851-1909* (Urbana: University of Illinois Press, 1993), 80-84.

<sup>60</sup> "The Cherokee At School," Emma Fleming Papers.

for the *Cherokee Advocate*, Duncan lamented, “I do so much wish that I could speak the Cherokee well enough to converse in it; I could explain many things pertaining to the nature of our public institutions.”<sup>61</sup> His statement suggests his conversational skills were limited, but not his understanding or basic vocabulary. In contrast to the students who attended the seminaries, “full-blood” children comprised the majority of the students at the asylum.<sup>62</sup> Duncan’s public statements and Dunbar’s private observations indicate that the asylum managed to maintain key aspects of Cherokee culture while melding them with an English language formal education.

The asylum gave children an opportunity to acquire skills and to express themselves. In 1881, Duncan acquired a printing press by collecting subscription payments from Cherokee Nation citizens and Orphan Asylum employees.<sup>63</sup> The children learned how to set type. Under Duncan’s direction, the students began to publish *The Children’s Playground*, a supplement to Duncan’s *Orphan Asylum Press*, which printed Cherokee Nation political news as well as news from the states and from abroad.<sup>64</sup> *The Children’s Playground*, which resembled publications of the Male and Female Seminaries, featured students’ short poems and compositions and charted their academic progress, thus offering a glimpse into the children’s world during this period. In its first publication, the editors Lizzie Stinson and William Cobb appealed to the National Council to erect a monument to Sequoyah, who had

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<sup>61</sup> *Cherokee Advocate*, 12 August 1876.

<sup>62</sup> Mihesuah, *Cultivating the Rosebuds*, Appendix A, 117; *Cherokee Advocate*, 6 July 1878.

<sup>63</sup> “Letter to Grant Foreman Adds to Oklahoma History,” *Tulsa World*, 16 December 1934.

<sup>64</sup> The *Children’s Playground* later changed its name to the *Orphan’s News* and it continued publication under Joseph F. Thompson until at least 1891. “Rare Four Page Leaflet Once Popular in Indian Territory,” *Tulsa Daily World*, 18 November 1934.

invented a system for writing Cherokee, as a measure of their love and admiration for both the Nation and its institutions. Another article heralded the asylum as an “institution...founded upon a proper basis. It is as truly a part of the design to teach suitable branches of industry as it is to impart a knowledge of the ordinary academic course. Manual skill is to be made as creditable as it is often more useful than the ability to conjugate a verb or read a line in Greek.”<sup>65</sup>

Some elements of the paper mimicked Duncan’s own attitudes about the asylum; other sections focused on youthful concerns. The asylum students exchanged papers with other institutions, including the Circular of Information of the Bureau of Education, the Indian School at Carlisle Barracks, the Vacation Colonies for Sickly Children, and Progress of Western Education in China and Siam.<sup>66</sup> The publications circulated widely throughout Indian Territory.<sup>67</sup>

Each issue included “Guess My Subject” or “Guess Who It Is,” descriptions of students written by classmates. Sallie Walker asked, “Who wears ribbons round her neck and a bow on her hair, and is good-looking. She wears her ear-rings every day and I think they look well on her. She has black eyes, black hair and dark skin. Her ruffle is lace; her bask is white; her dress-skirt is black. I love to see her with a white bask and a black dress-skirt. Her sleeve ruffles are wide.” Even more descriptively, Mary Riley wrote, “She is a little girl about 12 or 13 years old. She is good and kind to all of the girls and we love her very much. Her complexion is dark. She has black hair and eyes and is about as tall as Ida

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<sup>65</sup> *The Asylum Press*, 7 October 1880, CNP, reel 7, frame 744.

<sup>66</sup> *Ibid.*

<sup>67</sup> “Rare Four Page Leaflet Once Popular in Indian Territory,” *Tulsa Daily World*, 18 November 1934.



Langley...She knows a great deal about work to be so small. She has a very sweet voice and sings nicely. She seldom gets scoldings like some of the girls, for she always attends to her own work. She is never idle; she is either reading or employed in something else equally as useful.” This celebration of dark-skinned classmates contrasts with attitudes documented among female seminary students during the same period who demonstrated a preference for “white ancestry.”<sup>68</sup> Instead, asylum residents remarked on appearance without attaching racial meaning and defined beauty in terms of many other attributes--singing voice, treatment of others, good behavior, and industriousness. Furthermore the guessing games, amusing perhaps to outsiders, could only be played by asylum residents since they alone would be able to solve the puzzles. The games contributed to a common sense of identity for the participants as both Cherokee children and asylum residents.

The paper featured a wide variety of student authors. Some articles took a moralistic tone. Lizzie Stinson contributed a Composition entitled “If We Could Mind Our Own Business.” In it she rebuked gossip and reminded classmates, “We should all get along much better if we would mind our own business, and escape much trouble and hard feeling. We would make more friends and fewer enemies.” She also warned that examinations would expose those who had heeded her advice and those who had not.<sup>69</sup> In 1891, an article warned of the dangers of smoking “the devil’s kindling wood.”<sup>70</sup> Many of the articles offer brief descriptions of various objects, perhaps composed as part of a longer writing assignment, but

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<sup>68</sup> Mihesuah, *Cultivating the Rosebuds*, 80-83.

<sup>69</sup> *The Children’s Playground*, 9 June 1881, Special Collections, Northeastern State University, Tahlequah, Oklahoma, 1-3.

<sup>70</sup> “Rare Four Page Leaflet Once Popular in Indian Territory,” *Tulsa Daily World*, 18 November 1934.

in these the children revealed their individual views of events, both exceptional and mundane, and of asylum life. Jennie Duncan mourned the loss of a tree to a storm: “All of the other trees look like they are crying about it. Every body seemed to like to sit under it. I miss the tree very much.”<sup>71</sup> Annie Mills wrote “Little girls like to play under the trees. The boys like to climb trees. I like to play under trees in summer.”<sup>72</sup> M.E. Pitcher, in an article entitled “Country Life,” not only revealed his own love for that lifestyle, but also that “Lizzie Stinson and I are going to live in the country, when we leave the Asylum.” Perhaps Lizzie would have preferred that he mind his own business.

Because of articles coming from and related to the asylum, the orphanage became a regular part of public discourse. Duncan submitted a series of articles to the *Cherokee Advocate* that celebrated the Orphan Asylum as a mark of advancement of the nation.<sup>73</sup> Duncan wanted the Cherokee people to look upon the asylum with affection and “build it up.”<sup>74</sup> In an article on the “Nature of the Cherokee Orphan Asylum,” Duncan rhetorically asked “what is the real basis of a public enterprise? It should be founded in the affection and confidence of the people. The people are the ultimate sovereigns.” Duncan reassured families skeptical of the value of education that the asylum provided the most important aspects of home as well. One Cherokee who visited the asylum reportedly commented that

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<sup>71</sup> *The Children's Playground*, 9 June 1881, Special Collections, Northeastern State University, Tahlequah, Oklahoma, 1-3.

<sup>72</sup> *The Children's Play Ground*, 5 May 1881, MS 154, folder 15, Duncan Collection, Cherokee Heritage Center Archives, Tahlequah, Oklahoma, 1-3.

<sup>73</sup> *Cherokee Advocate*, 11 March 1876.

<sup>74</sup> *Ibid.*, 24 August 1872.

the conditions of the asylum were so prosperous that his own children would be better off if he were dead.<sup>75</sup>

The asylum contributed to its public presence through the events that welcomed visitors. Church services opened the institution's doors to non-resident Methodist congregants, and the asylum advertised examinations and invited the public. The most important events at the asylum were the opening and closing ceremonies, which resonated with Cherokee traditions and promoted Cherokee nationalism.<sup>76</sup> In traditional Cherokee society, summer ushered in a series of key rituals that led to the Green Corn Ceremony. The Green Corn Ceremony celebrated the arrival of the new corn and required a thanksgiving feast, ritual cleansing, and important cosmological and social lessons. For Green Corn, men and women worked to refurbish and purify public spaces, and people erected temporary structures to accommodate kin who traveled to attend the ceremonies, play ball, and dance. The Green Corn Ceremony reconciled and revitalized the community.<sup>77</sup> These rituals brought the community together and reminded kin of their obligations to maintain harmony and right relationships with each other. Framing the summer, the chief ceremonies of the asylum occurred in September and May respectively. Although such events were common in non-Indian schools, their timing and their observance introduced an element of familiarity and made Cherokees, especially more culturally conservative Cherokees, feel comfortable in what could have been an alien environment.

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<sup>75</sup> Ibid., 14 February 1874.

<sup>76</sup> Ibid., 23 June 1877; 27 April 1878.

<sup>77</sup> Charles Hudson, *The Southeastern Indians* (1976; Knoxville: University of Tennessee Press, 2007) 365-375.

The festivities' duration encouraged a thorough examination of the asylum by Cherokees and non-Cherokees alike. More times than not, "the exercises on the occasion of the opening of the Orphan asylum occup[ied] the greater part of the day..." refreshments were kept on hand, and a basket dinner provided. By the 1880s, the "annual commencement at the Cherokee school was an occasion of absorbing interest. Preparations for the event went on for weeks. From cellar to garret the house was scoured. People came in crowds and stayed for days, many bringing their tents and camping on the grounds. Then there were great barbecues in order to provide sufficient meat for the guests and other provisions in proportion were prepared. It was a time of great merriment."<sup>78</sup> Closing ceremonies included the erection of a May Pole, for many Cherokees analogous perhaps to the ball pole located on Cherokee ceremonial grounds. The children dressed up in their finest clothes, and students received recognition. The principal chief, council members, the United States agent to the Cherokees, writers for local papers, teachers from the east, ministers, and Cherokee citizens attended the events, gave speeches, and reported on the festivities.<sup>79</sup> Students graduated, some returned to surviving families, and others continued living at the asylum until they were ready to leave.

The annual ceremonies celebrated academic accomplishments, but manual labor formed an important part of day-to-day life. Although he served one year as the Superintendent of Public Schools, Duncan's credentials for overseeing manual labor equaled those for implementing an academic curriculum. Duncan's early life included pursuits "divided mainly between filial service on the farm and solitary effort in pursuit of mental

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<sup>78</sup> "Two Years With the Cherokees," Emma Fleming Papers.

<sup>79</sup> *Cherokee Advocate*, 22 July 1877; 6 July 1878.

culture.”<sup>80</sup> This was the sort of experience he sought for children at the asylum, and he continued to labor as well as to teach. When the hired farmer left, Duncan assumed his duties, and the Council later approved his permanent role as both superintendent and farmer.<sup>81</sup> Duncan maintained membership in the Indian International Agricultural Society and supported the nation’s participation in the International Fair, an annual event held in Muskogee, Creek Nation, to highlight the “civilization” of the Five Tribes.<sup>82</sup> As early as 1856, Duncan advocated the manual labor model for orphans and argued “[a]ll cannot live here without manual labor. Each cannot be a professor, lawyer, doctor, preacher, school-master. The means, opportunities, and occasions are wanting.”<sup>83</sup> Therefore, he determined to prepare students to be farmers and skilled workers.

Duncan’s previous experience prepared him for this task. The Methodist Episcopal Church through work in Indian Territory operated a wide range of seminaries, manual labor schools, and academies. The curriculum in many of the schools included a combination of industrial training, Christian instruction, and English education, all elements of the federal government’s “civilization” policies for Indians. Within the Methodist Episcopal Church Indian Conference, Duncan and his successor Joseph Franklin Thompson served, respectively, as superintendents for the Honey Hill School and the Asbury Manual Labor School. As ordained elders, both understood the financial strains faced by church schools,

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<sup>80</sup> *History of Rev. W. A. Duncan*, MS 154, folder 16, Duncan Collection, Cherokee Heritage Center Archives, Tahlequah, Oklahoma. Hereinafter *History of Rev. W. A. Duncan*.

<sup>81</sup> Annual Board of Education Report 1878, 11 January 1878, CNP, reel 7, frame 715.

<sup>82</sup> *Cherokee Advocate*, 1 March 1876; For a complete description and explanation of the International Fair see Andrew Denson, *Demanding the Cherokee Nation: Indian Autonomy and American Culture, 1830-1900* (Lincoln: University of Nebraska Press, 2004), 149-171.

<sup>83</sup> W.A. Duncan to George Butler, 25 September 1856, *ARCIA*, (1856-57), 692.

management challenges within national schools, and the responsibilities heaped on superintendents in their roles as “farmers, contractors, government agents, sawmill builders and operators, log cutters and haulers, blacksmiths, carpenters and general mediators between the Indians, their chiefs, and the United States authorities, both civil and military.”<sup>84</sup> As Cherokee citizens and officials, they also understood the educational needs and challenges faced by the nation.

The asylum, like many of the Methodist schools, combined academic education with manual labor. Duncan and the hired hands used the acreage for orchards, grazing, and crops. The asylum, like Cherokee farms, cultivated corn as a staple. The fifteen-acre garden also produced “an abundant supply of vegetables, lettuce, mustards, peas, beans, cabbage, parsnips, onions, tomatoes, pumpkins, squash, cucumbers, melons, and turnips.”<sup>85</sup> Fruit trees, including the 800 ordered in 1880, supplied food as well as writing topics for the children.<sup>86</sup> Despite efforts to grow apples, the asylum supplemented the crop with purchased fruit, but Duncan rarely bought vegetables or milk, presumably because the asylum provided these. The cultivation of ninety acres of corn, wheat, oats, and garden crops probably explains their absence, since these crops would have fed both animals and people.<sup>87</sup>

The children worked in the fields, but they were not responsible for the cattle. Cherokees, in general, had not adopted commercial cattle herding, but the asylum kept a few

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<sup>84</sup> Babcock, *History of Methodism*, 93.

<sup>85</sup> Board of Trustees to Honorable Charles Thompson, 13 October 1877, CNP reel 6, frame 684.

<sup>86</sup> Office of the Board of Education to the Honorable D.W. Bushyhead, 6 April 1880, CNP, reel 7, frame 742.

<sup>87</sup> Board of Trustees to Honorable Charles Thompson, 13 October 1877, CNP reel 6, frame 684.

animals for which they hired a herder. Cattle, unless fenced, threatened acreage under cultivation, so perhaps administrators feared entrusting the task of keeping cows out of fields to children. The asylum reaped sustained benefits from the cultivated acreage; the fluctuating number of cattle produced a less reliable yield. The cows sometimes supplied dairy products, but the nine kept during the winter of 1885-1886 failed to produce any milk at all. The asylum never slaughtered its cattle, and so Duncan ordered beef at regular intervals.<sup>88</sup>

Staff members theoretically provided role models, and they tried to teach gender appropriate behavior. As part of their manual labor instruction, boys learned to farm and cut wood, and the matrons taught the girls to sew using the fabrics, needles, buttons, and pins purchased by the asylum.<sup>89</sup> Christmas presents for the girls included wax-faced dolls, bought “in vain” since a number of the girls inexplicably chewed their faces off.<sup>90</sup> But eastern urban gender norms did not always serve the needs of largely rural Cherokees, so there was considerable fluidity. Both male and female students participated in “almost daily hunting exhibitions” for small game. Even white teacher Emma Dunbar acquired a six-shooter and participated in the hunts.<sup>91</sup> In addition to the women killing game, the men at the asylum nurtured crops. Even Duncan seemed to assume an almost maternal role in his daughter Jennie’s description of his efforts to replace a large tree: “There are plenty of little maple trees coming up. Papa is trying to take care of them. In a few years they will be big and

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<sup>88</sup> Supply Expenses 120 days at Orphan Asylum, 31 January 1879, CNP, reel 6, frame 704.

<sup>89</sup> Estimates of expenditures, 30 September 1878, CNP, reel 6, frame 702.

<sup>90</sup> “The Cherokee At School,” Emma Fleming Papers.

<sup>91</sup> “Two Years With the Cherokees,” Emma Fleming Papers.

beautiful.”<sup>92</sup> Unlike the seminaries, which separated male and female students and staff, the asylum provided a co-educational institution with less rigid boundaries dictating gendered behavior.



**Figure 2. Kindergarten Class at the Cherokee Orphan Asylum, Salina, C.N. 1886-1887, Courtesy Cherokee Heritage Center, Tahlequah, Oklahoma.**

Asylum staff and students formed social and familial relationships. The families of employees usually lived with them at the school and set the tone for interactions. Because Superintendent Duncan’s own children attended the asylum school, he was, in fact, a “papa,” a role he extended to the orphans. In a history of Duncan’s life, the anonymous author

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<sup>92</sup> *The Children's Play Ground: Orphan Asylum Newsletter*, 5 May 1881, MS 154, folder 15, Duncan Collection, Cherokee Heritage Center, Tahlequah, OK.



described how the superintendent “sheltered [the orphans] under the care of a father.”<sup>93</sup>

Green Brier Joe, who knew Duncan when “[their] locks were burnished,” commended Duncan in a letter for “hug[ging] the Asylum to his bosom as a mother her young and tender infant.”<sup>94</sup> Perhaps because the niece of Reverend and Mrs. Joseph F. Thompson was enrolled as a resident, the children referred to them when Franklin replaced Duncan as “Uncle Joe” and “Aunt Ellen.” Matrons and washerwomen often received the title “aunt” and, with the exception of the teachers, the title of “aunt” or “uncle” applied to nearly all the men and women who worked with the children on a daily basis.<sup>95</sup>

The children adopted familial terminology to interact with the people who shared their “home.” Occasionally, even teachers became fictive kin. The widow, Katherine Caleb, who came from Delaware, brought her daughter Florence with her. Florence attended the asylum as a pupil and Caleb became a mother to other students as well. The *Orphans’ News* included an announcement of baby Ella Mae Covel’s first teeth. Ella Mae, whose father was a teacher, became a point of pride for all residents at the asylum.<sup>96</sup> In one situation, an orphan left at the door of the asylum grew fond of Emma Dunbar. The child christened herself Agnes Dunbar, but Reverend Thompson renamed the child Agnes Thompson.<sup>97</sup> Whether this was an exercise of patriarchal authority or simply a desire on Thompson’s part

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<sup>93</sup> *History of Rev. WA Duncan.*

<sup>94</sup> *The Children's Play Ground*, 5 May 1881, MS 154, folder 15, Duncan Collection.

<sup>95</sup> Kathleen Garrett, *The Cherokee Orphan Asylum* (Stillwater: Oklahoma Agricultural & Mechanical College, 1953), 30-31.

<sup>96</sup> “Only Baby Born in Old Cherokee Orphanage Still Lives in State,” Cherokee Orphan Asylum, Vertical Files, Special Collections, Northeastern State University, Tahlequah, OK.

<sup>97</sup> “Two Years With the Cherokees,” Emma Fleming Papers.

to maintain the child's Cherokee identity is unclear. The incident suggests some antagonism between asylum officials and teachers from outside the community and an effort to delineate between Cherokee family and non-Indian teachers.

Students developed a variety of relationships with the adults in their lives at the asylum. The superintendent and teachers exercised authority over the children in ways that cooks and washerwomen did not. Staff occasionally subverted that authority. Jim Stearns, a cook known for his generosity to both staff and students, packed a sack of food for a child who ran away.<sup>98</sup> On the other hand, attempts by teachers to discipline children sometimes resulted in hard feelings. Children often preferred the outdoors to the classroom, as was the case with Jack Young Wolf, whom the Principal teacher caught "going out the window."<sup>99</sup> The asylum's regimen, which emphasized academics and agriculture for the boys, deviated from traditional expectations of Cherokee men. Traditionally, women controlled the agriculture and only young children assisted. Some youths no doubt had difficulty adapting. When boys became "obstreperous" and refused "to respect the authority of their teachers," asylum officials re-established "quiet and control" through the expulsion of the "turbulent and disorderly spirits." One woman suggested to the *Advocate* that the boys' behavior served to undermine the reputation of the institution among the public, so such harsh treatment might have been necessary.<sup>100</sup>

These incidents and others like them suggest the Orphan Asylum served the interests of female students better than their male counterparts. Girls "profit[ed]" from their education

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<sup>98</sup> Garrett, *Cherokee Orphan Asylum*, 27.

<sup>99</sup> "The Cherokee At School," Emma Fleming Papers.

<sup>100</sup> *Cherokee Advocate*, 20 December 1873; 14 February 1874.

and became “educators either in the home or school.” The asylum’s benefits for boys were less clear: “Some of them engage in active business life, others follow the example of their forefathers, lounge, hunt, and fish.”<sup>101</sup> In the 1880s, national leaders questioned the merits of academics alone for its male seminary students, articulating the views Duncan had expressed in the 1850s: “Our education is useful, but it does not go far enough. The pursuit of agricultural or other industries and the occupations of domestic life will be the lot of nearly all who are here and to send them forth ignorant of their duties and, many of them, to places not supplied with the abundance, the comforts, and the guardian care thrown around about them, without means and ability to acquire a livelihood, will be an experiment full of trial and danger, to both themselves and their people.”<sup>102</sup> Dissonance existed between imparting an academic education in the nation’s young men and meeting the need for farming, industrial, and subsistence skills essential to life in the Cherokee Nation. The vast majority of Cherokees found work as farmers and mechanics.<sup>103</sup> One asylum resident remarked, “I think a life in the country is the pleasantest life there is. We can raise such fine crops; and have good gardens, such as we have at the asylum; which is in the country, but there are so many children and officers, that it seems more like a town.”<sup>104</sup> Unlike the boys at the seminary, groomed for a life of “abundance,” the boys at the asylum received an education complete with agricultural skills.

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<sup>101</sup> “The Cherokee At School,” Emma Fleming Papers.

<sup>102</sup> William P. Ross Collection, box 2, fol. 9, Phillips Collection, Cherokee Documents, Western History Collections, University of Oklahoma, Norman, Oklahoma.

<sup>103</sup> Summary of the Cherokee Census, 1880, Table C, *Report of the Committee on Indian Affairs, United States Senate, on the condition of the Indians in the Indian Territory*, S. Rpt. 1278, 49<sup>th</sup> Cong., 1<sup>st</sup> Sess., 46. Hereinafter *RCIA*.

<sup>104</sup> *The Children’s Playground*, 9 June 1881, Special Collections, NSU.

Like any community, the asylum had its share of romantic entanglements. The superintendents, teachers, and matrons socialized with each other, and love sometimes blossomed. Most of the teachers and matrons were unmarried, and the confined nature of institutional living limited their opportunities for relationships outside the asylum. After the death of his second wife, Walter Adair Duncan courted and married the widowed teacher, Katherine Caleb, at the Orphan Asylum in 1878. Reverend Joseph Thompson, after the death of his wife Ellen, married the widow of the asylum's physician, Doctor Walter Thompson Adair. Teacher and superintendent E.C. Alberty also married at the asylum. Male Seminary graduate and asylum teacher Bruce Garrett married fellow teacher Cherrie Edmonson. As students came of age they, too, pursued relationships with each other. Taylor Eaton, a former student whom the asylum employed after graduation, married Ida Cornstalk while she was still a student. Reverend Joseph Thompson performed the ceremony and provided provisions for the young family. James Duncan, a teacher, married Lucinda Buffington, a student.<sup>105</sup>

Friendships as well as marriages stood the test of time. In 1934, Emma Dunbar, who served briefly as a kindergarten teacher, maintained friendships and correspondence with fellow teachers Cora and Ada Archer as well as Annie Elliot. Blueie Adair, a teacher, continued to correspond with Emma Dunbar as well. Blueie Adair and Fannie Parks, another former teacher, belonged to the Tulsa Daughters of the Confederacy and reported to Dunbar on former student Mary Riley, also a member of the Tulsa group.<sup>106</sup>

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<sup>105</sup> Garrett, *The Cherokee Orphan Asylum*, 34-35.

<sup>106</sup> Cora Archer to A.E. Baldrige, 5 July 1937, Ella May Covell to Emma Fleming, 23 September 1934, Blueie Adair Lawrence to Emma Fleming, 3 July 1934, Emma Fleming Papers.

Death was also a part of life at the Orphan Asylum. Throughout his tenure as superintendent, Duncan's annual expenses included the purchase of coffins. The children acknowledged the deaths of the students and staff at other institutions. In the wake of James Vann's death, the "meeting of the officers and pupils" published condolences to the "bereaved relatives and to the teachers and pupils of the Male Seminary" in the *Cherokee Advocate*.<sup>107</sup> The asylum also faced near constant threat of disease. In 1874, the *Advocate* reported, "All [orphans] doing well so far," during a measles outbreak.<sup>108</sup> Disease forced quarantines when the community at large or the asylum experienced an outbreak. No one at the asylum was immune: Duncan suffered the loss of his eldest son and his second wife while he was superintendent.<sup>109</sup> The summer of 1877 proved especially deadly. In May, Lewey Downing, son of the former principal chief and asylum pupil, died at the home of his brother.<sup>110</sup> Two weeks later, fourteen year old Mary Watts died.<sup>111</sup> In September, an accidental shooting claimed the life of one brother at the hands of the other.<sup>112</sup> A year later, Duncan reported "two deaths of inmates."<sup>113</sup>

Death revealed the extent to which the orphanage had assumed the traditional responsibilities of kin since obituaries listed survivors. Lewey Downing had lost his parents

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<sup>107</sup> *Cherokee Advocate*, 1 February 1879.

<sup>108</sup> *Ibid.*, 19 September 1874.

<sup>109</sup> *Ibid.*, 18 November 1876.

<sup>110</sup> *Ibid.*, 13 June 1877.

<sup>111</sup> *Ibid.*, 27 June 1877.

<sup>112</sup> *Ibid.*, 19 September 1877.

<sup>113</sup> *Ibid.*, 6 April 1878.

before he died, but other relatives, including a brother, survived him. Nevertheless, the nation, through the asylum, cared for him. The Orphan Asylum Committee shared their loss of Mary Watts with her “relatives at home.”<sup>114</sup> Some students even had a living parent. The death of a classmate prompted one student to write, “My Dear Mother, I take my pen in my hand to tell you how I am getting along one of our school mates died here a while ago they will beary him to maraw...Mother ples excuse my bad writeing I feale very sad today about the boy that dide.”<sup>115</sup>

In 1883, the *Advocate* reported the death, not of a pupil, but of matron Lizzie Meigs Ross. Ross had followed in the footsteps of her mother, who had served as matron at the asylum earlier in her life. Ross took the position as a means to support herself and her two children after the death of her husband in 1877.<sup>116</sup> Women like Ross and her mother also found refuge at the asylum when they became widows. Children not only received safety and care from the asylum, but women whose economic livelihoods were threatened by the loss of a husband, found employment.

Although the Cherokee Nation assumed familial obligations for some citizens, it did not do so for all.<sup>117</sup> The Treaty of 1866, which extended citizenship to Cherokee Freedmen, did not make Freedmen kin. In 1873, Cherokee Freedmen complained to missionaries that

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<sup>114</sup> Ibid., 27 June 1877.

<sup>115</sup> My Dearest Mother, 26 March 1878, Don Franklin Papers, privately owned document, Tahlequah, Oklahoma.

<sup>116</sup> *Cherokee Advocate*, 30 November 1883.

<sup>117</sup> Rose Stremmlau, “In Defense of ‘This Great Family Government and Estate’: Cherokee Masculinity and the Opposition to Allotment” in Craig T. Friend ed., *Perspectives on Manhood in the South since Reconstruction* (Athens: University of Georgia Press, 2009), 65-82.

the Orphan Asylum failed to serve their children. A year later they petitioned the council “to provide support and education of our Orphan Children.”<sup>118</sup> The Cherokee Nation pointed out that so many children had needs that the asylum could not possibly serve them all, but the council did make plans for a separate building for the children of Freedmen at the asylum’s permanent location in Salina.<sup>119</sup> The effort stalled when the council and the Board of Education deadlocked over who bore responsibility for the orphans of Freedmen.<sup>120</sup> Many Cherokee citizens either ignored or feigned ignorance of the need for orphan care for Freedmen children. Hearings conducted in 1885 by the federal government to evaluate the Cherokee Nation’s fulfillment of its treaty obligations asked pointed questions about orphan care: “Q: Is there an asylum in the Cherokee Nation for colored people? A: I do not think there is. Q: Are there colored people in your asylums? A: I do not think there are. Q: They do not have any orphans, do they? A: I do not know. Q: What becomes of their orphans? A: I cannot say.”<sup>121</sup>

The Freedmen presented a unique challenge to the Cherokee people’s understandings of citizenship versus kinship; they were willing to admit Freedmen to citizenship but not acknowledge kinship, although some were biological kin. Cherokees tried to reconcile the two by meeting minimal needs of Freedmen. In the 1880s, the Freedmen obtained a Colored High School within the Cherokee Nation, and a number of colored common schools existed.

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<sup>118</sup> “To the Honorable Senate and Council in General Council Convened,” 31 October 1874, CNP, reel 6, frame 635.

<sup>119</sup> McLoughlin, *After the Trail of Tears*, 340-341.

<sup>120</sup> Daniel F. Littlefield, Jr. *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport: Greenwood Press, 1978), 55-56.

<sup>121</sup> Investigation of condition of Indians in Indian Territory, RCIA, 38-39.

In 1895, the Colored High School, underfunded compared to the Cherokee schools, established a residential primary department to provide a home and education to its orphaned and indigent children.<sup>122</sup>

Despite segregated schools, teachers, irrespective of color, attended the Teacher's Institute, but their presence did not mean that Cherokees acknowledged their equality. Before beginning her position at the asylum in 1885, Emma Dunbar attended the Cherokee Teacher's Institute. She observed that "the Indian considers the negro far beneath him. And when a well educated colored teacher rises to make a few remarks, a large majority of the Cherokee teachers leave the building."<sup>123</sup> The role of the Freedmen in the Cherokee Nation continued to be a controversial issue, and the nation only grudgingly accepted any responsibility for them.<sup>124</sup> The nation conceptualized itself as family, and it excluded those with whom it refused to recognize kin ties, even though biological and political bonds remained.

Eventually, children left the Orphan Asylum. In his 1877 annual report, Duncan inquired at what age orphans "should be received into the asylum, how long they should remain within its walls, and at what age this connection with the asylum should cease." Age of admission varied from year to year. Some years, the asylum received students as young as five, and other years, they were as old as seven. Although residence usually ended at

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<sup>122</sup> Littlefield, *Cherokee Freedmen*, 57-58.

<sup>123</sup> "In the Year 1885," Emma Fleming Papers.

<sup>124</sup> Tim Gammon, "Black Freedmen and the Cherokee Nation," *Journal of American Studies* 2 (1977): 357-364. For a more thorough discussion of the controversies and inequities surrounding education, citizenship, and per capita payments see Katja May, *African Americans and Native Americans in the Creek and Cherokee Nations, 1830s to 1920s* (New York: Garland Publishing, 1996); Celia E. Naylor, *African Cherokees in Indian Territory: From Chattel to Citizens* (Chapel Hill: University of North Carolina Press, 2008).



eighteen, on rare occasions, students remained until nineteen or twenty.<sup>125</sup> Some graduates married and established their own households; others went to live with relatives. At least one, Taylor Eaton, found employment at the asylum. Reverend Thompson gave Eaton and his wife Ida Cornstalk, both graduates of the asylum, a wheelbarrow filled with provisions, and he continued to provision them in their first year of marriage.<sup>126</sup> The asylum did not simply release children into the world without resources. During the 1876 school year, the “orphans discharged” totaled twelve, and each received a payment of ten dollars.<sup>127</sup>

Many former students maintained a close relationship with the asylum. Eaton and Cornstalk hosted their teachers in their home after they married.<sup>128</sup> Based on the correspondence of former teacher Emma Dunbar and others, many of the residents maintained contact with each other and their teachers well beyond the years they spent in Salina.<sup>129</sup> The asylum remained a fond memory for many graduates. Mary Riley, who contributed her article “Trees” to *The Children’s Playground* in 1881, published an article, “Cherokee Orphan Asylum Was Established in Year 1873” in the *American Indian* in 1929. The article recounted a brief history of the Cherokee Orphan Asylum from its opening at the Salina location until it burned down in 1903.<sup>130</sup> Her first experiences with a printing press

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<sup>125</sup> 13 October 1877, Board of Trustees to Hon. Charles Thompson, CNP, reel 6, frame 684.

<sup>126</sup> Garrett, *Cherokee Orphan Asylum*, 34-35.

<sup>127</sup> *Cherokee Advocate*, 15 July 1876.

<sup>128</sup> Garrett, *Cherokee Orphan Asylum*, 35.

<sup>129</sup> Cora Archer to A.E. Baldrige, 5 July 1937, Ella May Covell to Emma Fleming, 23 September 1934, Bluiie Adair Lawrence to Emma Fleming, 3 July 1934, Emma Fleming Papers.

<sup>130</sup> Roberts, “Cherokee Orphan Asylum Was Established in Year 1873,” 12.

and journalism almost certainly occurred at the Orphan Asylum, and they provided skills that served her beyond her years there.

For the teachers, especially, the Orphan Asylum provided advancement to other positions. E.C. Alberty, graduate of the Male Seminary, taught at the asylum; he then served as superintendent from 1902 to 1903, the year it burned down.<sup>131</sup> Reverend Walter Adair Duncan, after his years of service at the asylum, became a vocal opponent of the allotment policy and testified before Congress on several occasions.<sup>132</sup> A.H. Norwood, teacher at the asylum, became an attorney. Cora Archer, a graduate of the Female Seminary and teacher at the asylum, married Ross Shackelford who later served as a local judge.<sup>133</sup> Stephen Parks, another Male Seminary graduate, taught at the asylum and served as principal teacher. He went on to receive his law degree from Cumberland University in Lebanon, Tennessee and became Cherokee Nation Attorney.<sup>134</sup>

Despite its many successes, the asylum fell prey to the same pressures that threatened the sovereignty of the Nation in the post-Civil War years. At the end of the Civil War, the Orphan Fund derived its income from investments made in railroads, a circumstance that joined the economic well-being of the Orphan Asylum to that of the railroads.<sup>135</sup> The Treaty of 1866 granted rights-of-way to railroads through the Cherokee Nation, and in 1870 the first

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<sup>131</sup> Garrett, *Cherokee Orphan Asylum*, 35.

<sup>132</sup> To the Honorable Cherokee Commission, 10 August 1897, *ARCIA*, (1897), 143-145.

<sup>133</sup> Ella May Covel to Emma Fleming, 23 September 1934, Bluie Adair Lawrence to Emma Fleming, 3 July 1934, Emma Fleming Papers.

<sup>134</sup> "Historical Statement by Mrs. R.L. Fite," 103; 118-124, IPP.

<sup>135</sup> H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907* (Columbia: University of Missouri Press, 1976), 97-117.

rail line entered the nation. Congress had promised the railroads land grants, but the land was not Congress's to give. It still belonged to the Cherokee Nation. The promise of land motivated railroads to press for the dissolution of the Cherokee Nation and other Indian tribes. The railroads brought with them another problem—white intruders, who were not subject to Cherokee law. Federal officials did little to deter them from entering Indian Territory. The jurisdictional nightmare they presented led residents of neighboring Kansas, Arkansas, Texas, and the Oklahoma territory to clamor for the opening of Indian Territory to white settlement, the allotment of tribal land to individual Indians, and the dissolution of tribal governments.<sup>136</sup>

As the Nation resisted allotment, Cherokee officials defied efforts by the federal government to limit their educational endeavors. In 1899, the Annual Report from the Board of Education to the federal government highlighted the higher than usual expenses at the Asylum “on account of the United States authorities withholding our funds for some time, which were appropriated for their support.”<sup>137</sup> Under the 1898 Curtis Act, the control of funds shifted from the Cherokee Nation to the Secretary of the Interior. Instead of disbursing these funds as Cherokee council acts required, the Department of the Interior withheld the funds which forced the schools to operate on credit. A debate ensued between Principal Chief Mayes, the School Supervisor, and the Department of the Interior. Chief Mayes argued that the “Secretary [of the Interior] has no more authority over funds than the Cherokee treasurer formerly had...the Secretary is the Nation's banker and must disburse the Nation's money in

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<sup>136</sup> Ibid., McLoughlin, *After the Trail*, 367-380; Angie Debo, *And Still the Waters Run* (Norman: University of Oklahoma Press, 1989), 17-30.

<sup>137</sup> *Annual Report of the National Board of Education Cherokee Nation*, 13 October 1899, Box 97.53, T. L. Ballenger Collection, Oklahoma History Center, Tulsa, Oklahoma.

accordance with tribal law.”<sup>138</sup> The 1903 fire forced the nation to relocate the Orphan Asylum to Tahlequah. Because the building was underinsured, the building’s destruction added further financial strain to its operation. Despite Chief Mayes written and verbal “deliberation[s]” of the Curtis Act with federal officials as it related to educational projects, federal officials manipulated the Curtis Act to further undermine the Nation’s legal and educational rights.<sup>139</sup> Although federal authorities did take total control of the facility in 1914, the Cherokee Orphan Asylum never ceased to exist.



**Figure 3. Cherokee Orphan Asylum, Park Hill, Oklahoma, circa 1920-21.  
Courtesy of Oklahoma Historical Society, Oklahoma City, Oklahoma.**

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<sup>138</sup> From Principal Chief S.H. Mayes to Hon. B.S. Coppock, School Supervisor, 22 June 1899, Box 83-17, folder 1, John D. Benedict Papers, Oklahoma History Center, Tulsa, Oklahoma.

<sup>139</sup> Ibid.

When teachers and students served the nation, they fulfilled the reciprocal obligations that family members had for each other. By assuming responsibility for orphans, the nation had become family. In 1876, Duncan wrote, “This Nation reached [advancement], we think, when the proposal takes its indigent orphan children and become indeed a mother to them, was practicably adopted, in the shape of an Orphan Asylum with its four square miles of grounds attached.”<sup>140</sup> The nation’s acceptance of its familial role marked a departure from traditional culture in which clans took care of their own, but the government grounded this new role in ancient values of kinship and collective responsibility. Cherokees did not prosper as a result of individual initiative; they succeeded because they helped each other. When clans could no longer provide support for orphans, the nation stepped in and embraced them. The orphans, like all Cherokee children, were the nation’s future, and the familial fold of the asylum linked them to the past and to a nation that had become their family. In 1907 when Oklahoma entered the Union, the future of the Orphan Asylum, like that of the Cherokee Nation, was uncertain. The nation ultimately emerged from the ashes of allotment; the Orphan Asylum survived transformed. The nation sold the facility to the United States Department of Interior, which changed its name in 1925 to the Sequoyah Orphan Training School in honor of the inventor of the Cherokee syllabary. With other minor name changes, it operated as an Indian boarding school under the B.I.A. until 1985, when the Cherokee Nation once again assumed control. Today the school serves as a “mother” to American Indian students from across the United States, a fitting legacy of the Cherokee Orphan Asylum.

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<sup>140</sup> *Cherokee Advocate*, 11 March 1876.



## Chapter 3

### Crime & Punishment

In his 1857 annual address, Principal Chief John Ross described what he understood to be the purpose and responsibility of the Cherokee Nation's government. For Ross, a government functioned properly by providing "protection to life and property." In order for the government to do this, the courts and officials who "dispense justice" must do so with "ability, integrity, and patriotism."<sup>1</sup> According to Chief Ross, the Cherokee national government, not clans or kin, assumed responsibility for the protection of its citizens and the punishment of those who committed crimes. Ross's understanding of the purpose of government and its laws reflected the changes Cherokee government had undergone since the late eighteenth century. The Cherokee Nation had centralized its government in order to prevent local chiefs from signing treaties that ceded lands and thereby minimized the entire nation's land base and compromised its economic power. In 1807, local chief Doublehead came face-to-face with these new concepts when the Cherokee council sanctioned his execution for a land cession he had agreed to.<sup>2</sup> However, what began as a strategy to protect

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<sup>1</sup> "Message of the Principal Chief of the Cherokee Nation to the National Committee and Council," 5 October 1857, Annual Report of the Commissioner of Indian Affairs, 1857, 35<sup>th</sup> Cong., 1<sup>st</sup> sess. Office of Indian Affairs, Department of the Interior (Washington, D.C.: Government Printing Office, 1857), 506-511.

<sup>2</sup> William G. McLoughlin, *Cherokee Renaissance in the New Republic* (Princeton: Princeton University Press, 1986), 92-93, 120-121.

the Cherokee people from external threats also transformed the relationships and responsibilities Cherokee people had to one another.

The execution of Doublehead marks an important turning point in the legal history of the Cherokee Nation. A sophisticated legal system existed in the Cherokee Nation, but the administration of the law fell to local communities and, more specifically, to clans.

Community councils or clans imposed penalties when individuals committed crimes against the spiritual world, the community, or another clan. Rather than meting out “justice,” penalties restored temporal and cosmic order to the community or clan. The imposition of a death penalty on an individual who sold communal lands easily fit into Cherokee legal theory because Cherokees understood that individual actions could devastate the larger community.

In these situations, it became imperative that penalties restored order and balance. The execution of Doublehead marked an important turning point in Cherokee legal processes.

Doublehead’s execution fell under new legal provisions that forbid local chiefs from making land cessions, but his execution also fulfilled ancient clan obligations. Doublehead, whose wife was the sister of James Vann’s wife, beat his wife to death while she was pregnant. In response, Vann’s wife called for the death of Doublehead. Vann and his wife accompanied the party, but because Vann became ill neither he nor his wife participated in the execution.

Doublehead’s execution merged traditional understandings of clan vengeance with contemporary legal precedents. No matter what the reason for Doublehead’s execution, Doublehead’s family failed to seek clan vengeance.<sup>3</sup> By outlawing clan vengeance when

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<sup>3</sup> Doublehead’s family did not seek clan vengeance. McLoughlin interprets this as Doublehead’s clan’s acceptance of the act as a “semiofficial political act taken by responsible chiefs for the good of the tribe and therefore outside the area of clan revenge.” Theda Perdue suggests that the family failed to seek vengeance because Doublehead’s death fulfilled clan vengeance of Vann’s wife’s family. In either scenario, the family understood that



individuals were enforcing national laws, the first written Cherokee law, passed in 1808, began the shift from retribution to punishment and from clan to national authority.<sup>4</sup>

The 1808 law also reflected the economic concerns of Cherokee men, many of whom were English speaking and participated in the market economy. In addition to the clause that outlawed clan vengeance against government agents, the law contained provisions that re-established a national police force, imposed a penalty for horse theft, and protected the estates of men who wished to leave property to their children and wives contrary to matrilineal inheritance rules that property be buried with the dead or remain within the matrilineal household.<sup>5</sup>

The legislative emphasis over the next twenty years focused on laws that protected property or promoted economic development. Legislation often related to permits to establish toll roads, stores, taverns, and ferries. The Cherokee Nation offered loans to its citizens who desired to establish businesses. It fostered the business interests of Cherokees and established rules and fees that hindered non-Cherokees from entering the Nation. As some elite Cherokee men adopted plantation slavery, the council established laws that protected the economic interests of plantation owners over their human property.<sup>6</sup>

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Doublehead's death fulfilled a higher purpose either as a means to protect common property or to fulfill a clan's legal obligation. McLoughlin, *Renascence*, 121; Theda Perdue, *Cherokee Women: Gender and Culture Change, 1700-1835* (Lincoln: University of Nebraska Press, 1998), 49-51.

<sup>4</sup> "Resolved by the Chiefs and Warriors in a National Council assembled," 11 September 1808, *Laws of the Cherokee Nation* (1852; Wilmington: Scholarly Resources, Inc., 1972) 3-4.

<sup>5</sup> Ibid.

<sup>6</sup> "Unanimously agreed, that Schoolmasters, blacksmiths, millers . . .," 26 October 1819, "This day decreed by the National Committee and Council," 28 October 1819, "Resolved by the National Committee and Council," 25 October 1820, *LCN* (1852), 6-7, 10.

The number of criminal laws adopted in the first third of the nineteenth century paled in comparison to the number of civil laws, yet criminal law, as Doublehead's 1807 execution suggests, entered Cherokee legal thinking. In 1810, the Cherokee Nation universally outlawed clan vengeance and acknowledged instances of justifiable homicide.<sup>7</sup> The law also held a brother responsible for his sibling's murder, a crime previously left up to their clan.<sup>8</sup> Both new civil and criminal laws affected relationships between individuals, clans, and community and with the emerging national government.

Cherokee legal theory had made clear who had the responsibility to carry out legal penalties; now the new legal framework had to establish a process. Traditionally, the responsibility for seeking vengeance fell to the injured party's nearest relative, usually the maternal uncle.<sup>9</sup> The council intended the "regulating parties," or light horse, first created in the 1790s but subsequently neglected, "to suppress horse stealing and robbery of other property."<sup>10</sup> The light horse addressed legislated crimes; communities and clans continued to handle all other matters under traditional legal theory. The light horse became the Cherokee

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<sup>7</sup> Until this time, Cherokee legal theory made official distinction between degrees of homicide, motives, or intent. Rennard Strickland, *Fire and the Spirits: Cherokee Law from Clan to Court* (Norman: University of Oklahoma Press, 1975), 27-28.

<sup>8</sup> "Be it known, that this day," 10 April 1810, *LCN* (1852), 4.

<sup>9</sup> John Phillip Reid, *Law of Blood: The Primitive Law of the Cherokee Nation* (New York: New York University Press, 1970), 90-91.

<sup>10</sup> The Cherokees established a light horse in 1797 to preserve peace on the national borders. Major Ridge proposed the use of the light horse to police the law that forbid sale of lands by local chiefs. McLoughlin, *Renascence*, 44-46.

Nation's police force until the council established district courts in 1820 and then positions of marshal, district sheriffs, and constables.<sup>11</sup>

The district court model remained the skeleton of the Cherokee national courts until the dissolution of tribal government in the early twentieth century. The legislation divided the Nation into eight districts and proscribed five days in both May and September for each district to hear its cases. The National Council often relegated matters of stolen property to the courts. In 1822, the National Council established a superior court to handle appeals from the district courts.<sup>12</sup> Council actions reflected the nebulous relations the courts, light horse, and national council had to one another in the first third of the nineteenth century. In November of 1824, the council required light horse to serve as jurors in the respective districts. By October of the next year, the Council rescinded that act and instead required the district courts to secure "five disinterested men" to serve as jurors. At the same national committee meeting, legislation established the courts as a separate and independent branch of government.<sup>13</sup> Throughout the pre-removal period, the national committee passed legislation to streamline the courts and develop a system that could manage the cases presented. The 1827 constitution re-affirmed the judicial branch and specified the selection of judges, clerks, justices of the peace; the rights of the accused; and the responsibilities and make-up of the district, appeals, and supreme courts.

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<sup>11</sup> "Resolved by the National Committee and Council," 2 November 1820, 15-19, 11 November 1824, *LCN* (1852), 15-19, 37.

<sup>12</sup> "Resolved by the National Committee and Council, That the Circuit Judges..." 12 November 1822, *LCN* (1852), 28.

<sup>13</sup> "Resolved by the National Committee and Council, That the law requiring the several Light Horse,," "For the better security of the common property," 14 October 1825, *LCN* (1852), 44-46.

Most of the court's activity reflected the nation's relatively new preoccupation with private property. Increasingly citizens filed complaints against Cherokee neighbors on matters of property theft. Horse theft presented the greatest problem due, in part, to the rise of organized syndicates outside of the Cherokee Nation targeting livestock.<sup>14</sup> The court system replaced clans as arbiters of property disputes. Previously, the wronged clan had the right to demand restitution for property theft or damage but that now passed to the courts.

In 1828, the council turned its attention to murder and mandated the death penalty on anyone found guilty of "willful murder." The law provided a five-day respite to the convicted before the nation carried out the sentence. During that time the sheriff kept watch over the individual. Recognizing the temptation for escape, the legislation included penalties for anyone who attempted to aid the convicted and set the penalty for such crime at 100 lashes and a \$200 fine. The legislation also made criminal distinctions between types of homicide and exempted those who killed another in self-defense "or by accident." Assaults committed in the progress of another crime resulted in a fine of up to fifty dollars and fifty stripes or less, at the discretion of the jury.<sup>15</sup>

Despite the massive growth of prisons in the North and the presence of local and regional jails in the South in the pre-removal period, the Cherokee Nation failed to adopt incarceration as a punishment for wrongdoers. The Cherokees were not ignorant of prison practices; indeed, they were quite familiar with Georgia's use of prisons. In 1828, Georgia passed legislation, effective June 1, 1830, that subjected Cherokees and Creeks to the laws of

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<sup>14</sup> J. Matthew Martin, "The Nature and Extent of the Exercise of Criminal Jurisdiction by the Cherokee Nation Supreme Court: 1828-1835," *North Carolina Central Law Review* 32 (2009): 27-63.

<sup>15</sup> "Resolved by the National Committee and Council" 10 November 1828, *LCN* (1852), 104.

the state; legislation followed that prevented Indian peoples from testifying before the state courts. In 1830, the same year Georgia built a 150-cell penitentiary near the state capital at Milledgeville, at least four citizens of the Cherokee Nation found themselves incarcerated in Georgia jails.<sup>16</sup> The Milledgeville penitentiary's early residents included Elizur Butler and Samuel Worcester, missionaries to the Cherokees, whom the state imprisoned for their failure to abide to by Georgia law requiring that they swear an oath of allegiance to the state. Despite the adoption of some features of southern society, the Cherokee Nation rejected imprisonment and continued to use sheriffs to detain those charged with or found guilty of crimes. If adjudication required additional personnel, the Nation paid Cherokee citizens by the day to act as temporary guards.<sup>17</sup>

The individual experiences of confinement within Georgia's jails served as a precursor to the mass incarceration felt by the whole of the Cherokee Nation during removal. In preparation for removing the Cherokees from their homelands, General Winfield Scott constructed thirty-one forts to confine Cherokees until their transportation to the West began. The forts were cramped and offered little privacy; people slept on the ground exposed to the elements.<sup>18</sup> Whiskey peddlers abounded, which led to instances of violence especially against women.

In the midst of post-removal factionalism, one of the few issues on which the nation reached legislative consensus was the need to regulate alcohol. Pre-removal alcohol laws

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<sup>16</sup> Martin, "The Nature and Extent of the Exercise of Criminal Jurisdiction," 27-63.

<sup>17</sup> "Resolved by the Committee and Council, in General Council Convened," 14 November 1828, *LCN* (1852), 111-112.

<sup>18</sup> Theda Perdue and Michael D. Green, *The Cherokee Nation and the Trail of Tears* (New York: Penguin Group, 2007), 123, 124.

targeted the actions of non-Cherokees, but post-removal laws focused on the actions of Cherokee Nation citizens.<sup>19</sup> The National Council outlawed drinking in public places, imposed fines on those found guilty, and authorized public agents to destroy confiscated whiskey.<sup>20</sup> The conditions became so severe that, in 1841, the nation imposed complete prohibition.<sup>21</sup> Violence, sparked by removal and fanned by alcohol, challenged the Cherokee Nation's efforts to rebuild in the West.

From 1839 to 1846, the Cherokee Nation endured a civil war. John Ross's supporters planned coordinated executions of removal treaty signers Elias Boudinot, John Ridge, and Major Ridge in 1839. Although a unified government had not been established in the West and legal procedures did not exist, the executioners saw themselves as enforcers of the national law that barred individual Cherokees from ceding land. The meeting that led to the executions, however, also hearkened back to more traditional Cherokee legal practices when individual Cherokees, not national officers, enforced the law. The absence of a legal consensus and a national government acceptable to all led to rampant violence motivated by political loyalties, personal grievances, and the absence of moral or legal restraint. Discerning between criminal activity and political violence became difficult. Because of the violence, the council re-established the light horse, which many saw less as a police force and more as an arm of the executive branch to put down political detractors. The Treaty of 1846 brought a temporary end to the violence that stemmed from removal by granting

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<sup>19</sup> Izumi Ishii, *Bad Fruits of the Civilized Tree: Alcohol and Sovereignty in the Cherokee Nation* (Lincoln: University of Nebraska Press, 2008), 96-97.

<sup>20</sup> "An Act to Prevent the Introduction and Vending of Ardent Spirits," 28 September 1839, *LCN* (1852), 32.

<sup>21</sup> "An Act Prohibiting the Introduction of Spirituous Liquors," 25 October 1841, *LCN* (1852), 57-58.

general amnesty, which provided a blank slate for the criminal justice system and invited a judicial reform effort previously impossible.

In the period immediately after removal, most pre-removal criminal procedures had remained intact. The nation continued to use guards to maintain custody of offenders, but the council began to tighten rules governing this practice. In 1843, the National Council passed an act that made it illegal to board prisoners or guards at the public houses during the session of the National Council.<sup>22</sup> Previously guards had chosen where to board prisoners, and many of them took their charges along to Tahlequah when the council was in annual session. Since citizens from throughout the Cherokee Nation poured into the capital when the council was in session, accommodations in Tahlequah were at a premium. For guards not resident in Tahlequah, boarding them and their prisoners was an unwarranted expense.<sup>23</sup> Guards who lived in Tahlequah profited from the law since they could board prisoners who needed to be in the capital in their homes during council sessions and increase their income, which led many to object the construction of a national prison.<sup>24</sup>

After removal, the Cherokee Nation relied far more heavily on corporal punishment and executions than it had in the East. Local sheriffs carried out corporeal punishments immediately after the sentencing and the guilty then returned home. For capital offenses,

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<sup>22</sup> “An Act prohibiting the Sheriff from boarding Prisoners or Guards at the Public Houses during the session of the National Council,” 25 December 1843, *LCN* (1852), 103.

<sup>23</sup> In 1879, Mrs. Jennie Sixkiller boarded guards during the Annual Session. “An Act Making an Appropriation for the Benefit of Mrs. Jennie Sixkiller,” 17 December 1881, *Laws and Joint Resolutions of the Cherokee Nation Enacted During the Regular and Special Sessions of the Years 1881-2-3*, (1884, Wilmington: Scholarly Resources, Inc., 1975), 33.

<sup>24</sup> Morris L. Wardell, *A Political History of the Cherokee Nation, 1838-1907* (1938; Norman: University of Oklahoma Press, 1977), 95.

each of the nine districts established an area for hangings in their courthouse yard.<sup>25</sup> These practices raised a number of issues. Cherokee officials questioned the use of force by local sheriffs administering corporeal punishment. Cherokee officials and citizens, like United States reformers, also challenged the use of corporeal punishment as an effective means to deter crime. Some Cherokees expressed the view that “the present system of corporeal punishment is contrary to the spirit of civilization; has not diminished crime in our country; is degrading to the spirit of freemen; and has been long since tried and abolished by the most civilized nations in the world.”<sup>26</sup> This sentiment reflected a spirit of reform beyond the Cherokee Nation at the moment when post-removal Cherokee factionalism had reached a temporary resolution.

In 1851, the council allocated \$1879.00 for the construction of a national prison. The proposal highlighted the arguments for its construction: “the system of imprisonment renders the escape of offenders against the law less liable to take place; will have a great tendency to deter from crime, and will afford a means to enable us to discriminate by law between the different degrees of man-slaughter, and better to proportion the punishment in all cases to the degree of the offence.”<sup>27</sup> Unable to construct the prison in 1851 due to financial difficulties, six years later Principal Chief John Ross called for renewed efforts to construct a prison on the grounds that “[homicide]...violent assaults, have been committed with impunity for the want of some measure of punishment that does not exist, and which cannot be had without a

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<sup>25</sup> “Interview with Mrs. John E. Duncan,” 26: 217-227, Indian Pioneer Papers, Western History Collections, University of Oklahoma Library, Norman, Ok. Hereafter IPP.

<sup>26</sup> “Proposal for a Jail,” 20 October 1851, *LCN* (1852), 221-222.

<sup>27</sup> *Ibid.*



prison.”<sup>28</sup> The construction of a prison fulfilled of the responsibility of government to protect its citizens.

Despite Ross’s vision for the Cherokee Nation, the United States Civil War reopened the wounds of removal and the political violence that had followed. By 1862, Cherokee families yet again faced the harsh realities of a divided nation. Hannah Hicks, daughter of Missionary Samuel Worcester, and wife of Abijah Hicks, a Cherokee man, described the suffering of those who remained in the war torn Cherokee Nation. In 1862, Union sympathizers murdered her “beloved husband.” Then Confederate soldiers arrested her brother and left her with “[her] house...burnt down, [her] horses, taken,” and the youngest of her five children desperately ill. Her suffering was not unique. “William Spears was killed some weeks ago,” she wrote in her journal. “His wife has been searching, until yesterday she succeeded in finding part of the bones and the remnants of his clothing.” Fear of robbery was constant. After Union soldiers robbed Hicks, she lamented, “I begin to think we have no true friends at all. The Federals come and give us good words, then pass right on & leave us to a far worse fate than would have been ours if they had not come.” Hicks also feared an escalation of violence as rumors spread that the Confederates “have begun to kill women and children.” As the war ground to an end in the Cherokee Nation, she bemoaned conditions in the nation: “It is pitiful, pitiful to see the desolation and distress in this Nation. Poor ruined Cherokees.”<sup>29</sup>

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<sup>28</sup> “Message of the Principal Chief,” Annual Report of the Commissioner of Indian Affairs, 1857, 506-511.

<sup>29</sup> Mary Elizabeth Good, ed., “The Diary of Hannah Hicks,” *American Scene* 13 (1972), 11, 13, 14.

The Treaty of 1866 that re-established a government-to-government relationship with the United States placed the Cherokee Nation in the position of a defeated enemy. This status ignored Principal Chief Ross's attempts to maintain neutrality even when federal troops who were obligated to offer protection under the removal treaty withdrew and left the Cherokee Nation defenseless. In spite of the alliance with the Confederacy, a great proportion of Cherokees deserted the Confederacy in favor of the Union at their first opportunity. When federal troops returned to the Cherokee Nation, they escorted Principal Chief Ross out of the nation. He traveled to Washington D.C. and Philadelphia where he remained until the war's end. He met with President Lincoln, repudiated the original treaty, regained access to the Cherokee treasury that had been frozen by federal authorities, and organized funding for the Cherokee Home Guard to work on behalf of the Union.<sup>30</sup>

The Treaty of 1866 imposed stipulations that forced the Cherokee Nation to grant Cherokee freedmen and small numbers of Delaware and Shawnee "all the rights of native Cherokees."<sup>31</sup> For freedmen, the treaty extended citizenship to those who previously had been slaves of Cherokee citizens and who were living in the Nation at the outbreak of the Civil War. If they had left the nation, as many whose masters fled to Texas had, they had to return within six months of the war's end to establish their citizenship. They then became subject to the laws of the Cherokee Nation like other Cherokee citizens. However, the Cherokee Nation and the federal government disagreed over who would decide issues of

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<sup>30</sup> William McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839-1880* (Chapel Hill: University of North Carolina Press, 1993), 206-221; Clarissa Confer, *The Cherokee Nation in the Civil War* (Norman: University of Oklahoma Press, 2007), 79-82, 109.

<sup>31</sup> "Treaty with the Cherokee, 1866," Article 9, in Charles J. Kappler, ed., *Indian Affairs Laws and Treaties*, (Washington: GPO, 1904), 944.

citizenship. The Cherokee Nation ultimately established citizenship committees to determine which freedmen were, in fact, entitled to the rights of citizenship and subject to the criminal jurisdiction of the Cherokee Nation. Freedmen residing in the Cherokee Nation who did not qualify for Cherokee citizenship became subject to federal law.<sup>32</sup>

The question of jurisdiction needed to be established in order for Article thirteen of the Treaty of 1866 to be effective. The Cherokee Nation retained “exclusive jurisdiction in all civil and criminal cases” that only involved Cherokee citizens. Article thirteen established a federal district court in Indian Territory to manage cases involving non-Indians, a provision the Cherokee Nation favored. This support stemmed from the Cherokees’ belief that it obligated the federal government to protect the Cherokee Nation from “foreign enemies” and “against interruption and intrusion from citizens of the United States, who may attempt to settle in the country without their consent.” The United States had the responsibility to remove “all such persons...by order of the President.”<sup>33</sup> The federal government first located the federal court at Van Buren, Arkansas, miles from the Nation’s eastern boundary, which limited its responsiveness and led to complaints that the United States was not living up to its commitment. In 1871, the federal court relocated to Fort Smith, Arkansas, which was on the boundary line, but the federal government’s attention to intruders still fell short of expectations. Almost from its inception, the court at Fort Smith and the actions of the federal marshals assigned to it created more hostility between the two bodies.

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<sup>32</sup> McLoughlin, *After the Trail*, 251-254.

<sup>33</sup> “Cherokee Treaty of 1835, Article 6,” Kappler, ed., *Indian Affairs Laws and Treaties 2*: 442.

In April of 1872, federal marshals arrived at the Going Snake courthouse to take custody of Cherokee citizen, Zeke Proctor, accused of killing an adopted Cherokee citizen, a case over which Cherokee courts insisted they had jurisdiction. Two marshals accompanied by family members of the victim interrupted the proceedings of the court, and a shoot-out ensued that resulted in the deaths of the defense attorney and a deputy marshal as well as seven others.<sup>34</sup> This incident highlighted jurisdictional conflicts and exposed the over-reaching actions of federal agents within the Cherokee Nation. From the Cherokee Nation's perspective, "US Marshalls should have respected the legal proceedings of the Cherokee Nation." Sovereignty demanded jurisdiction over a nation's citizens and required that such cases be handled bureaucratically rather than by a "Marshall's *posse*."<sup>35</sup> This incident pointed to both physical and legal intrusions into the Cherokee Nation that frustrated Cherokees and had deadly consequences.

The Going Snake tragedy, however, served as an impetus for elected officials to fund the construction of the national prison. In December of 1871, five months before Going Snake, the Cherokee Senate failed to pass a Jail Bill that would have begun construction on the jail proposed two decades earlier. The main objection was the expense. Within a year of the incident at Going Snake, the council not only passed an act to build a jail but also allocated \$4000 more than the amount proposed in the 1850s<sup>36</sup>

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<sup>34</sup> Daniel F. Littlefield and Lonnie E. Underhill, "The Trial of Ezekiel Proctor and the Problem of Judicial Jurisdiction," *Chronicles of Oklahoma* 48 (1970): 307-322.

<sup>35</sup> *Cherokee Advocate*, 4 May 1872.

<sup>36</sup> "An Act to Build a Jail," 23 November 1873, *Constitution and Laws of the Cherokee Nation* (1875; Wilmington: Scholarly Resources, Inc., 1973), 279. Hereafter *Constitution and Laws of the Cherokee Nation* (1875). 270.

Built as part of the Cherokee Nation's post-removal "endeavor to preserve and maintain the peace of the country," the penitentiary answered the cries for sentences that differentiated between the severity of crimes and reduced the use of corporeal punishment.<sup>37</sup> The penitentiary also allowed Cherokee officials to maintain control of their own citizens who committed crimes and prevent them from escaping Cherokee jurisdiction to Arkansas, Texas, or elsewhere. Incarcerating prisoners forced the federal court to adopt procedures to gain access to Cherokee prisoners. Establishing a penitentiary indicated that the Cherokee Nation was able at last to provide protection and security to Cherokee people. The prison's erection served as physical testament to the Cherokee Nation's intention to deliver justice within its borders and redirected the hostility of Cherokee people toward the United States district court into a pride in its own institutions.

The Cherokee Nation located its prison a block from the epicenter of the Cherokee National government in Tahlequah, the Cherokee Supreme Court building, and the Cherokee capital building. In February 1874, the *Cherokee Advocate* published a call to contractors for bids to construct the prison. By July, four months before the nation needed the penitentiary for use, "[t]he foundation of the National Prison [had] been dug out" by local citizens hired by the contractor, including African-Cherokee Harry Starr.<sup>38</sup> With the basement complete, "the laying of the stone" for the exterior walls began. Once completed in 1875, the sandstone national penitentiary stood three stories tall including its basement. The nation added a ten-

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<sup>37</sup> "Cherokee Treaty of 1835," Article 6, in Kappler, ed., *Indian Affairs Laws and Treaties* 2: 442.

<sup>38</sup> "An Act to Build a Jail," 23 November 1873, *Constitution and Laws of the Cherokee Nation* (1875), 270; *Cherokee Advocate*, 4 July 1874; "Interview with Harry Starr (Colored)" 87: 114-115, IPP.

foot fence for security two years later and a gallows where all executions in the nation subsequently took place.<sup>39</sup> The simple stone penitentiary contrasted with the ornate red brick architecture of other institutions, including the capital building and the orphan and insane asylums.



**Figure 4. Cherokee National Penitentiary, corner of Choctaw and Waters Streets, Tahlequah, Cherokee Nation, circa 1900. Courtesy of Cherokee Heritage Center, Tahlequah, Oklahoma.**

The architectural differences reflected the desire of reformers for institutional design to convey the goals of the institutions themselves. The Auburn Model, popularized in the second decade of the nineteenth century, included a system of tiered cells that opened into the center of the facility. The model required prisoners to remain silent even when they engaged in work projects outside their cells and to be separated in individual cells at night.<sup>40</sup>

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<sup>39</sup> “Annual Report of the Commissioner of Indian Affairs” 14 September 1894 Office of Indian Affairs, Department of Interior 53<sup>rd</sup> Cong., 3<sup>rd</sup> Sess., (Washington: GPO, 1894), 331.

<sup>40</sup> Orlando Lewis, *The Development of American Prisons and Prison Customs, 1776-1845* (Montclair, N.J.: Patterson Smith, 1967), 77-106, 118-119.

Reformers wanted the architecture to contribute to the reformation of its inmates and the building's design to serve as a deterrent.

On December 4, 1875, Samuel Sixkiller posted his bond with the Cherokee Nation to serve as the first high sheriff of the newly erected Cherokee National Prison.<sup>41</sup> A three member Board of Trustees, chosen by the Principal Chief, had nominated him, and they, too, had posted bonds to indemnify the nation in case of malfeasance. Although he only served three years, Sixkiller set the precedent for the obligations and responsibilities of the high sheriff. In addition to his primary task as the warden to the inmates, Sixkiller served as an accountant, a construction supervisor, a bookkeeper, and a citizen. The *Cherokee Advocate* chose to emphasize Sixkiller's skills as "a natural and cultivated Mechanic," as opposed to his skills as a lawman.<sup>42</sup> The high sheriff also served as the "guardian" of the public grounds that included the capital building, the Supreme Court building, and the square. This responsibility required not only his oversight of the construction of a prison wall, but also the removal of "stumps and undergrowth" from the capital square and the addition of shade trees.<sup>43</sup> In 1877, the council passed legislation that aimed to make the prison self-sufficient. It not only required the addition of mechanic's shops on the prison grounds, it also required every prisoner to learn a trade.<sup>44</sup> This drew on Sixkiller's skills as a mechanic since he had to oversee farm production and the implementation of the manual labor training.

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<sup>41</sup> Bond for Samuel Sixkiller, 4 December 1875, Microfilm Roll 31 f 2889, Cherokee National Records, Indian Archives Division, Oklahoma Historical Society, Oklahoma City, OK.

<sup>42</sup> *Cherokee Advocate*, 22 August 1877.

<sup>43</sup> *Cherokee Advocate*, 11 April 1877.

<sup>44</sup> "An Act making an appropriation to enable the Prison to become self-supporting," 7 December 1877, *Laws and Joint Resolutions of the National Council Passed and Adopted at*

The Cherokee Nation required the high sheriff to submit an annual report that detailed the prison's finances to the Cherokee National Council. In his first report in 1876, Sixkiller included the itemized purchases for the prison and costs of construction carried out at the capital building. He listed both employee salaries and payments to individuals who performed specific services. Each sheriff's report varied slightly, but a common element was the anticipated expenses for the upcoming year. Only half of the annual reports included information about each prisoner. In omitting details on prisoners, the report conformed to those from the asylums for orphans and the disabled, which discussed "the overall good health" of residents but provided little other information.

Like other institutions, the prison created a demand for goods and services from a wide range of Cherokee citizens. All inmates at the prison had to receive food, bedding, and clothing. The prison also provided coffee and sugar to prisoners engaged in labor, but specifically withheld tea, tobacco, and other "indulgences" from prisoners unless a physician required its use.<sup>45</sup> Inmates serving more than five years received a new suit of clothes and a five-dollar cash payment upon release. Stapler & Son, a Cherokee-owned sundry store near the prison in downtown Tahlequah, filled the bulk of the orders for materials and supplies, including fabric, material for the prisoners' uniforms, shoes, calico, shovels, spades, axes, and ax handles. Stapler & Son also served as a bonding agent, and several high sheriffs, including Charles Starr and Robert M. French, paid their surety bonds to the national treasury

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*the Regular Sessions 1876, 1877, and the Extra Session 1878*, (Wilmington: Scholarly Resources, Inc., 1973), 31-32.

<sup>45</sup> "An Act Relating to the National Prison," 19 October 1873, *Constitution and Laws of the Cherokee Nation* 7 (1875; Scholarly Resources Inc., 1973), 149-159.



with the aid of Stapler & Son.<sup>46</sup> Because of the proximity of the prison and the store and the economic and social relationships that developed, the high sheriff often called on Johnson Thompson, who worked at Stapler & Son, to serve as a temporary guard and witness the signing of warrants.<sup>47</sup>

In addition to Stapler & Son, hundreds of individual Cherokees sold fresh produce or provided skills to the prison. At the close of fiscal year 1886, the high sheriff made 123 cash payments to individuals for goods and services. Although a few individuals received multiple payments, most were one-time payments.<sup>48</sup> Many of these payments benefitted women, who were the prison's only seamstresses and made the prisoners' uniforms, mended their clothes, and sewed suits for each man's release.<sup>49</sup> The ability to sew, which the federal government's civilization policy intended for domestic use, inadvertently provided women with a marketable skill. Culinary skills also opened economic opportunity for women at the prison, but because the high sheriff appointed the prison cook, the job often fell to his wife

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<sup>46</sup> Robert M. French Bond for High Sheriff, n.d., Microfilm Roll 31 f 2903, Bond for Charles Starr, n.d., Roll 31 f 2911, Cherokee Nation Papers, University of Oklahoma Library, Norman.

<sup>47</sup> \$34 for Guard Services of Blue Duck for J. Thompson, 3 March 1881, \$74.50 for Guard Services of Sar Sar for J. Thompson, 14 March 1881, Senate Bill No. 8, 30 September 1882, Microfilm Roll 95, Cherokee National Records, Oklahoma History Center, Oklahoma City, OK. Hereafter CHN 95.

<sup>48</sup> Third Annual Report of Honorable Charles Starr From High Sheriff Charles Starr to the National Council, 30 September 1886, f 272-282, CHN 95.

<sup>49</sup> Reports of 10 February 1881, 28 February 1881, Flora Hawkins Sewing, 23 April 1887, CHN 95.

and further compensated his family.<sup>50</sup> Most payments made to women, however, were not for sewing and cooking but for produce and livestock.

The inmates arrived at the prison after having been accused or convicted of violating one of the provisions in the New Code, an overhaul of the Cherokee Nation's legal code that accompanied the construction of the prison. As part of the New Code, officials provided specific definitions of crimes, distinguished between felonies and misdemeanors, and provided sentencing guidelines to the courts. The New Code provided specific criteria for capital offenses and established prison terms for lesser offenses.<sup>51</sup> Treason, first degree murder, rape of a child under the age of twelve, and arson resulting in death were the only capital offenses, although some repeat offenders of lesser crimes could be subjected to the death penalty.<sup>52</sup> Second-degree murder and first-degree manslaughter both carried sentences between five and twenty years. The Code distinguished between burglary, robbery, and larceny and penalties relative to seriousness of the offence ranged from a single month to fifteen years and required fines to be paid double the amount of the damages.<sup>53</sup> The Supreme Court acquired the power to determine the legality of lower court decisions and to require them to follow precedents.

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<sup>50</sup> The law reads: "He may appoint such cooks, police force, and other assistants as shall be required from time to time." "An Act Relating to the National Prison," Chapter VI Art. 1 Sec. 7, *Compiled Laws of the Cherokee Nation* (1881, Wilmington: Scholarly Resources, Inc., 1973), 182. Hereafter *Compiled Laws of the Cherokee Nation* (1881).

<sup>51</sup> "An Act Adopting the New Code of Laws," 19 November 1873, *Constitution and Laws of the Cherokee Nation* (1875), 29-250.

<sup>52</sup> "An Act Adopting the New Code of Laws," *Constitution and Laws of the Cherokee Nation* (1875), 119, 120-121, 128.

<sup>53</sup> *Ibid.*, 124-125.

Because a fire delayed publication of the New Code, the date the laws went into effect became contested. Supreme Court judges imposed the New Code, despite the principal chief's insistence that the laws could not take effect until they had circulated publicly. The controversy pushed the Code's implementation back a year and limited the number of individuals sentenced to the prison. In October 1876 Charles Clark, sentenced to five years for resisting an officer, was the prison's lone resident.<sup>54</sup> Six months later, the prison housed six prisoners serving sentences that ranged from four to fourteen years.<sup>55</sup>

Because circumstances of arrest and prison sentences varied widely, various categories of prisoners arose. The presence of the prison in Tahlequah allowed the sheriff to take someone into custody immediately for a crime committed. Therefore, the institution served as both a jail for temporary incarceration following arrest and a prison for the convicted serving sentences. In 1877, "a disorderly negro called Willis fired his pistol off in town...close to the jail, and in the course of a few minutes took up his lodging there for the night." Although the charges ultimately brought against him included disturbing a public meeting and insulting a preacher, the presence of the prison permitted an immediate response from local law enforcement.<sup>56</sup> The prison, therefore, became a short-term holding facility for those arrested, especially for disturbing the peace and public drunkenness, in Tahlequah and awaiting criminal proceedings there.

Other districts held those arrested under local guard and sent individuals found guilty of murder, larceny, theft, robbery, and attempted murder to the prison. In 1884, for example,

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<sup>54</sup> *Cherokee Advocate*, 28 October 1876.

<sup>55</sup> *Cherokee Advocate*, 8 April 1877.

<sup>56</sup> *Ibid.*

the Illinois District court sentenced “two prisoners—Henson by name”—to serve sentences for horse theft.<sup>57</sup> Nine months later, Wilson Rider joined the Henson brothers for a two-year term at the national prison after being convicted of larceny.<sup>58</sup>

Theft led to most incarcerations. Cherokees tended to regard horse theft as “a means for physically able bodied men to earn a living”<sup>59</sup> Before removal, horse stealing was a common activity for young men because it offered them a substitute for war.<sup>60</sup> However, after 1875, horse theft landed one in the national prison. Men also stole whiskey, hogs, and money, crimes that differed little from those involving non-Indians tried at federal court in Fort Smith. When Cherokee Judge James Hendricks attended court at Fort Smith in May of 1881, 1017 cases were pending; most involved murder, larceny, and intent to kill.<sup>61</sup>

Sentencing flexibility allowed districts to preserve elements of traditional Cherokee jurisprudence. Through the beginning of the nineteenth century, Cherokee towns were autonomous units linked together through clans and kin. Even as clan responsibility for redressing wrongs diminished, towns maintained some of their legislative authority. As the Cherokees centralized their governing processes, towns chose representatives to serve on the council. The district model used by the courts offered the continuation of the town autonomy

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<sup>57</sup> *Cherokee Advocate*, 17 October 1884.

<sup>58</sup> *Cherokee Advocate*, 10 July 1885.

<sup>59</sup> *Cherokee Advocate*, 31 August 1872.

<sup>60</sup> William G. McLoughlin, “Cherokee Anomie, 1794-1810: New Roles for Red Men, Red Women, and Black Slaves,” *American Encounters: Natives and Newcomers From European Contact to Indian Removal, 1500-1850*, ed. Peter C. Mancall and James H. Merrell, (New York: Routledge, 2000), 470-471; Perdue, *Cherokee Women*, 122-124.

<sup>61</sup> Correspondence, General, 1866-1906, BH30 F 7, JR Hendricks Papers, Western History Collections, University of Oklahoma Library, Norman. Hereafter WHC.

that had long existed in Cherokee society. As a result, court districts imposed sentences that best represented their communities' understanding of legal processes. The Saline District repeatedly sentenced criminals to "hard labor," a distinction hardly ever made by the other districts. In 1878, Naw—hoo—lee arrived from the Saline District to serve "one year at hard labor." Six years later, Saline District Judge C.D. Markham sentenced Fox Ground Squirrel to two years "hard labor" for hog theft.<sup>62</sup> Prison sentences normally ranged from a month to twenty years. Willis Petit, the African-Cherokee convicted of the misdemeanor crime of disturbing a religious meeting while intoxicated, served a one-year sentence in the national prison.<sup>63</sup> One year was a common sentence for misdemeanor offenses, whereas felony convictions usually resulted in sentences of five or more years or, in some cases, the death penalty.

For those receiving the death penalty, the Cherokee Nation mandated hanging, which took place at the prison gallows. Although this centralized location was new, execution procedures had changed little since before removal. The nation continued to offer prisoners freedom to get their affairs in order although the time allowed had been lengthened. Principal Chief Bunch, for example, issued Stover a thirty-day respite before his execution in 1885.<sup>64</sup> In 1828, John Huss translated the final words of a Cherokee man executed for murder near the Chickamauga Court House in the old Cherokee Nation in the East. The man addressed his "uncles," encouraging them to abandon alcohol and "follow that which is good."<sup>65</sup> Sixty-

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<sup>62</sup> *Cherokee Advocate*, 5 January 1878, 19 September 1884.

<sup>63</sup> *Cherokee Advocate*, 29 August 1877.

<sup>64</sup> *Cherokee Advocate*, 16 October 1885.

<sup>65</sup> Martin, "The Nature and Extent of the Exercise of Criminal," 54.

five years later and 1000 miles west, a “crowd had assembled to witness the execution of Sam Mayes. With Henry Dick as interpreter, he confessed to having committed the crime, though it was not premeditated murder. He gave advice to young boys not to carry pistols, get drunk and be tough and to obey their parents.”<sup>66</sup> Furloughs and executions provided prisoners the chance to fulfill their obligations to families and depart from them in the manner they chose. On the morning of Dirt Seller’s execution, his wife and three children visited him. On the scaffold, “he called for his three children, the oldest seven or eight, with whom he affectionately parted by shaking hands with them.”<sup>67</sup> He informed the minister he was ready to die, “shook hands all around,” “prayed for about a half a minute to himself,” and in ten minutes “Dirt Seller was pronounced dead.”<sup>68</sup>

Responsibility for carrying out the death penalty rested with the high sheriff, although the guards often actually performed the execution. John Duncan, who served as the last high sheriff, never “sprang the trigger on a single man.” Instead he assigned the job to guard Cale Starr, who had served as high sheriff before him.<sup>69</sup> Often one official tied the rope and another pulled the trigger.

Cherokee law required that “all convicts sentenced to hard labor [should be] employed as constantly as may be, for the benefit of the Cherokee Nation.”<sup>70</sup> Consequently, the high sheriff used convict labor for public works. Samuel Sixkiller set the precedent by

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<sup>66</sup> *Cherokee Advocate*, 7 October 1893.

<sup>67</sup> *Cherokee Advocate*, 17 October 1877.

<sup>68</sup> *Ibid.*

<sup>69</sup> “Interview with Mrs. John E. Duncan,” 26: 217-227, IPP.

<sup>70</sup> “An Act Relating to the National Prison,” *Constitution and Laws of the Cherokee Nation*, (1875), 150-155.

using prison labor to remove stumps and do weeding at the capitol building in addition to maintaining the grounds of the prison.<sup>71</sup> Inmates also kept up the roads in Tahlequah and those that led to the male and female seminaries and the insane asylum. They provided firewood to these institutions as well as to the capitol building, a task that remained constant throughout the prison's twenty-six years of operation, and they replaced the roof and windows at the capitol.<sup>72</sup> They also kept up the outhouses for public buildings.<sup>73</sup>

The Cherokee Nation experimented with a variation of the convict lease system, but the nation never turned its prisoners over to private contractors without the presence of prison officials. The high sheriff, however, did rent prisoners supervised by guards to individuals who needed labor. Cherokee citizen, John Wolfe, "made a crop" with prison labor in its second year of operation.<sup>74</sup> The convict lease system represented a means of generating income for the prison while occupying prisoners in hard labor. Due to the failure of lessees to pay their fees in a reasonable amount of time, the high sheriff published the new rules of the prison in the *Cherokee Advocate*. Rule number four established that if "anyone hires jail labor, it must be settled at once, as soon as the work is done."<sup>75</sup> The use of prison labor for non-governmental services fell out of favor and by late 1880s, the high sheriffs reported few additional projects by lessees.

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<sup>71</sup> *Cherokee Advocate*, 24 June 1876.

<sup>72</sup> "October 1882 Purchases," CHN 95, Oklahoma History Center, Oklahoma City. Hereafter CHN 095,.

<sup>73</sup> "An Act Relating to the National Prison," *Compiled Laws of the Cherokee Nation* (1881), 180-192.

<sup>74</sup> *Cherokee Advocate*, 18 April 1877.

<sup>75</sup> *Cherokee Advocate*, 26 September 1888.

The Cherokee Nation, despite the widespread practice in the south, never used chain gangs to terrorize blacks and enforce a racial hierarchy. Cherokee freedmen were not immune to racial prejudice but, as a result of the Treaty of 1866, certain judicial protections were in place. The nation impaneled exclusively African-Cherokee juries to handle cases involving Freedmen. In 1876, a “colored jury was impaneled in the case of Cherokee Nation vs. Chas Buffington, charged with robbery.”<sup>76</sup> In this case, the jury found Buffington not guilty. When juries of African-Cherokees delivered guilty verdicts in murder cases and sentenced the convicted person to hanging, Indians took little notice. The press noted the execution of an African-Cherokee in 1876, but “no reporter being present we shall not vouch for what he said.”<sup>77</sup> African-Cherokees, like other Cherokees, participated in nearly all facets of the judicial system. They could file complaints, but they relied on Indian juries to adjudicate these writs.<sup>78</sup> The nation incarcerated them in the prison as it did Indians. After being convicted of larceny, for example, African-Cherokee Jeff Marshall served time in the national prison.<sup>79</sup> Concerns existed, however, that African Cherokees faced more severe penalties than Indians.<sup>80</sup> Given that the Cherokees had been slaveholders and admitted freedmen to citizenship under pressure from the United States, those concerns were probably not unfounded, but Cherokees held a range of attitudes toward black people. The illegal presence of African Americans who were not citizens of the Cherokee Nation contributed to

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<sup>76</sup> *Cherokee Advocate*, 8 July 1876.

<sup>77</sup> *Cherokee Advocate*, 28 October 1876.

<sup>78</sup> *Cherokee Advocate*, 12 October 1887.

<sup>79</sup> *Cherokee Advocate*, 26 February 1879.

<sup>80</sup> Daniel F. Littlefield, *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport: Greenwood Press, 1978), 65.



racism. When Judge J.B. Mayes filed rape charges against a “darkey,” for example, the man claimed the court had no standing because he was not a citizen of the Cherokee Nation. He proved he was not, and the court dismissed the case. An outraged Cherokee citizen, appalled that the accused man continued to “sojourn in our midst,” claimed that had the crime occurred elsewhere in the west, “there would have been a ‘necktie festival.’”<sup>81</sup> The man’s status as an intruder, exempt from Cherokee law, rather than his race was primarily responsible for this outburst.

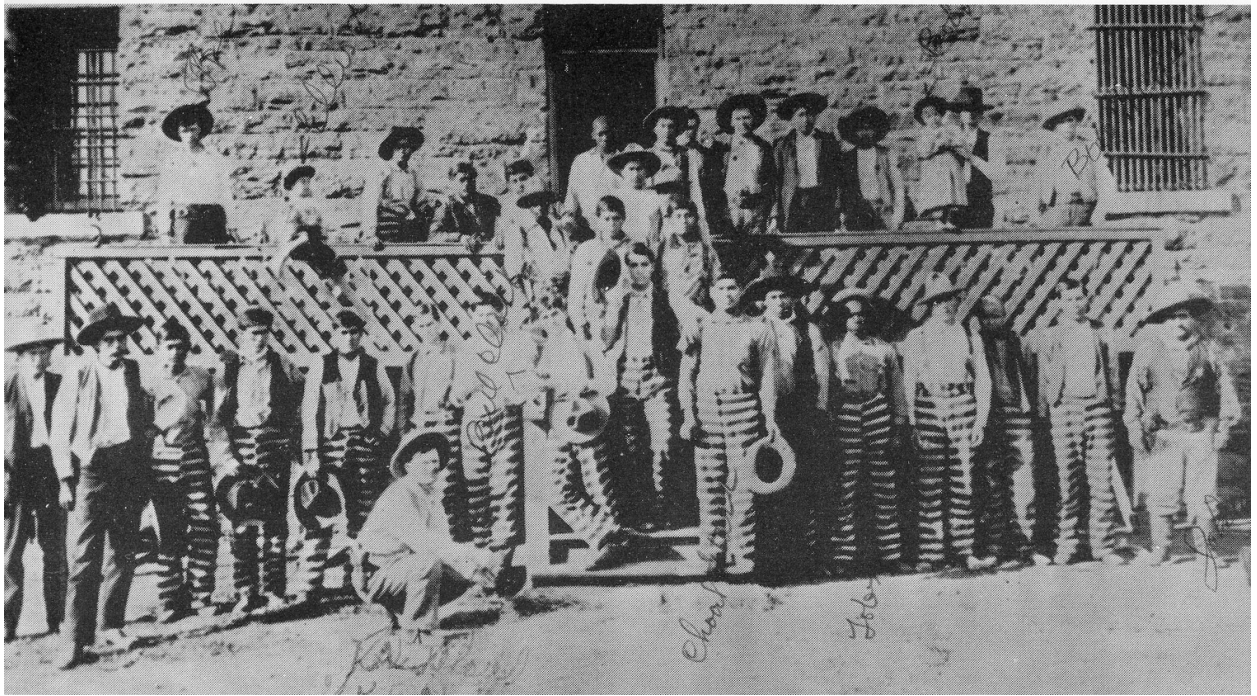
The Cherokee Nation normally defended the citizenship rights of its freedmen and their descendents in the nineteenth century, even if that defense benefited neither the individual nor the nation. In 1880, officials of the U. S. District Court at Fort Smith wrote Principal Chief Dennis Bushyhead seeking a pardon for Jeff Marshall, “a negro” convicted of larceny, so that he could testify in a federal case against “a gang of thieves” accused of robbing railroad company trains.<sup>82</sup> Without Marshall, the court had not been able to “procure sufficient proof to convict them.” Superficially a negotiation between two sovereign powers, the United States and the Cherokee Nation, the appeal for a pardon revealed the complex relationship between the Cherokee Nation and its citizens. Marshall fully understood the importance of his testimony and leveraged the U. S. court against the Cherokee Nation. Marshall not only refused to testify without the pardon, but his family, who also were witnesses, agreed to testify only if Marshall was released. Becoming desperate, the U. S. district court offered to exchange “twelve Creek negroes” accused of robberies in the

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<sup>81</sup> *Cherokee Advocate*, 26 September 1877.

<sup>82</sup> To Hon. D. W. Bushyhead, 23 January 1880, Cherokee Nation Records, CHN 090, Oklahoma History Center, Oklahoma City. Hereafter CHN 090.

Cherokee Nation and held at Fort Smith in exchange for Marshall's testimony.<sup>83</sup> The Cherokee Nation refused the swap. The Cherokee prison was for Cherokees, even black Cherokees, and turning a citizen over to the United States court would have undermined the nation's sovereignty.



**Figure 5. Inmates. Cherokee National Prison, Tahlequah, Cherokee Nation, circa 1900.**  
Courtesy Oklahoma Historical Society.

Officials and private citizens believed the prison played a role in helping inmates develop a “good, civil, and sensible disposition.” They assumed that prisoners were salvageable rather than permanently flawed. To become productive citizens, prisoners needed to develop job skills. The National Council allocated funds to build shops and to

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<sup>83</sup> Ibid. This exchange was possible as a result of the compact negotiated between the Creek, Osage, and Cherokee in 1843 that subjected Creek and Osage citizens “to the same treatment as if they were a citizen of [the Cherokee] Nation” if they committed serious crimes within the Cherokee Nation. “Compact Between the Several Tribes of Indians,” 2 November 1843, LCN (1852), 87-89.

instruct prisoners in a host of “mechanical arts” including blacksmithing, farming, wagon making, and shoe making.<sup>84</sup> Six months after the act passed, the prison was “rapidly training boarders” and the high sheriff planned to have shops erected “shortly.”<sup>85</sup> The prison sold any goods not needed domestically to pay instructors, purchase additional supplies, and enhance the prison coffers. Training inmates in skilled trades moved the prison toward self-sufficiency, but blacksmithing continued to be an annual expense for the national prison.<sup>86</sup>

The National Council adopted manual labor training as one means to convert felons into productive citizens, but this was not the only method of reform. In 1878, the *Cherokee Advocate* proposed that churches and benevolent societies should not only play a role in the reform of prisoners while incarcerated, but that they also should aid prisoners’ transitions back into society. In the writer’s opinion, all the convicts discharged “should be attached to some church” where Christians offered “sympathy and encouragement.” Churches offered former felons “a welcome among the ranks of worthy people...protected from the danger of relapse to evil ways.”<sup>87</sup> The writer also proposed that the council employ chaplains so that prisoners could “realize the benefits of religious instruction.” Although the nation never employed a chaplain, the council authorized the purchase of Bibles for prisoners’ use and required the high sheriff to grant ministers access to the prisoners at “seasonable and proper times.”<sup>88</sup>

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<sup>84</sup> *Cherokee Advocate*, 5 January 1878.

<sup>85</sup> *Cherokee Advocate*, 15 June 1878.

<sup>86</sup> October 1882 Purchases, CHN 95.

<sup>87</sup> *Cherokee Advocate*, 19 January 1878.

<sup>88</sup> “An Act Relating to the National Prison,” *Constitution and Laws of the Cherokee Nation* (1875), 220.

Perhaps because they believed in the possibility of social rather than spiritual redemption, Cherokee people relied heavily on a pardon process that restored convicted felons to their communities. Cherokee clans traditionally pardoned members who had killed kinsmen: local chiefs announced pardons at council meetings and the individuals resumed their place in their clans.<sup>89</sup> Such pardons for perpetrator and victim of different clans did not exist. When the Cherokee national government pardoned Noochorwee of Aquochee in 1829, the council stipulated that “any person or persons who shall contrary to this act, mal-treat his body, or take away his life, shall abide and experience the consequences of the law.”<sup>90</sup> As the Cherokee Nation became a more violent place following removal, sentiment for pardons grew. The amnesty written into the Treaty of 1846 made many Cherokee men recipients of a pardon and the practice of granting pardons more acceptable.<sup>91</sup>

Petitions came from a variety of people, but followed three basic formulas. Most petitions for pardon came from men in the community who sought to correct some legal error. The second most common appeal came from attorneys on behalf of women who sought pardons for family members. The third most common form came from other courts, particularly U. S. district court, which sought a Cherokee convict to prosecute or use, like Jeff Marshal, as a material witness in a case pending before the court. But clemency requests primarily indicate the desire of Cherokee people to see individuals restored to their community.

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<sup>89</sup> Reid, *Law of Blood*, 86.

<sup>90</sup> 19 October 1829, *LCN* (1852), 133.

<sup>91</sup> The Treaty reads, “All offenses and crimes committed by a citizen or citizens of the Cherokee Nation against the nation, or against an individual or individuals, are hereby pardoned.” “Treaty with the Cherokee, 1846,” Kappler, ed., *Indian Affairs Laws and Treaties* 2: 561.

In their appeals for pardons, men tended to challenge the legality of trials, points of law, and unethical or problematic actions of jurors. The people who presented such appeals often included the signatures of hundreds of men from the appellants' community to support their claims. It was not uncommon for sheriffs, judges, solicitors, and clerks to attach their names to these appeals. Petitions from leading men did not guarantee one's release. In October of 1893, for example, the *Advocate* reported that "a strong petition was presented to the Chief for commutation of the sentence of Sam Mayes who was hung yesterday."<sup>92</sup> But such petitions often succeeded. In April of 1878, for example, Chief Clerk of the Senate L.B. Bell visited Principal Chief Oochoolata with a petition for executive clemency on behalf of John Still.<sup>93</sup> The courts had convicted Still of the murder of Edwin Downing and sentenced him to seven years of hard labor. The petition carried by Bell claimed that juror Moses Fields was "not of lawful age." Therefore, the court convicted Still based on an illegal trial. Jennie Stinson, an adoptive mother who "raised the said Moses Fields from infancy," testified that he was between the age of nineteen and twenty at the date of the trial rather than twenty-one, the age required of jurors.<sup>94</sup> Based on her affidavit and a petition from "a large number of responsible citizens," the Executive Council "unanimously advised the unconditional pardon of the said John Still." On the May 28, 1878, less than eight weeks after his conviction, the principal chief set John Still free.<sup>95</sup>

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<sup>92</sup> *Cherokee Advocate*, 7 October 1893.

<sup>93</sup> *Cherokee Advocate*, 6 April 1878; Pardon of John Still, Oochalata Charles Thompson Papers, Box 021 f.9, WHC.

<sup>94</sup> "An Act Relating to the Judiciary," *Compiled Laws of the Cherokee Nation* (1881), 96.

<sup>95</sup> Pardon of John Still, Oochalata Charles Thompson Papers, Box 021 f.9, WHC.

Women normally did not submit or sign these legalistic corporate petitions for clemency, evidence perhaps of their secondary status in the legal system of men. They could not vote, hold office, or serve on juries. Despite their exclusion, women invoked their traditional matrilineal rights by calling on legal authorities to help kin. Women generally employed counsel on behalf of their sons, brothers, or husbands and through them submitted petitions for pardons. Attorney Charles Pierce, for example, appealed to Principal Chief Harris on behalf of William Grapes' mother, "a poor widow with very little property who seems strongly attached to her son." The attorney added that he "could not refuse her any longer and [was] not charging anything for [his] services on her son's behalf."<sup>96</sup> He asked the chief to grant clemency. Women sometimes pursued cases beyond the Cherokee Nation. In 1882, the wife of Sam Beaver appealed to Attorney W.C. Jackson to help her obtain a letter from Principal Chief Dennis Bushyhead to the President of the United States for the pardon of her husband. The federal court at Little Rock had convicted him of assault with intent to kill and sentenced him to one year in prison.<sup>97</sup> Similarly, Sarah Dowell contacted the law offices of Graven, Jamison, & Cravens on behalf of her brother, Martin Miller, incarcerated at Fort Smith, Arkansas. The attorney requested a letter recommending the pardon from Chief Harris, who promised to provide it, before appealing to the district court.<sup>98</sup> Women understood that men dominated the legal system, yet they managed to navigate it.

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<sup>96</sup> To Hon C.J. Harris Petition for the pardon of William Grapes From Charles Pierce, CHN 090.

<sup>97</sup> Office of Boudinot, Jackson, and Morgan Aug 5, 1882 to Hon. D. W. Bushyhead, Ibid.

<sup>98</sup> July 27, 1894 To Hon C. J. Harris From Graven, Jamison, & Cravens Attorneys at Law, Ibid.

Women invoked appeals to forms of justice that existed before written laws, modern courts, and the use of a prison. The wife of Sam Beaver told Chief Bushyhead that her husband was crippled and could “only be a burden on the prison keepers.” For Beaver, imprisonment did not provide justice. To achieve justice, traditional Cherokee people sought a restoration of balance. The jailors, in a sense, were being punished for Beaver’s crime. William Grapes’ mother also invoked an older interpretation of Cherokee legal thinking. She based her son’s grounds for pardon on the fact that during his arrest he was “shot several times and crippled for life.” For his mother, this was “punishment enough” and “such a severe lesson that he would be a reformed man if given another chance.” Traditionally, Cherokee people did not seek punishments; they sought a restoration of both temporal and cosmic order. The injuries of these men balanced their crime; the addition of prison terms amounted to overkill.

Despite the existence of a comprehensive court system and legal code, there is evidence that traditional systems continued to operate in local communities. In 1895, Cherokee courts convicted James Peacock “of one of the most treacherous and atrocious crimes ever committed in the Cherokee Nation by a human by attempting to steal the lives of a man and wife while peacefully sleeping in their own house, by chopping them with an axe and then leaving them for dead.”<sup>99</sup> The circumstances of the case differed from other cases, which usually involved whiskey and/or money. In this particular case, competing appeals arrived at the executive branch. The first petition sought “to secure an unconditional pardon for one James Peacock” and invoked arguments that favored newer configurations of patriarchal families by arguing that Peacock needed to care for his blind wife and child and

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<sup>99</sup> To Hon Samuel Mayes, 21 November 1895, CHN 090.

attend to his farm.<sup>100</sup> He headed his family, his wife and children were dependent on him, and he was solely responsible for their livelihood. A second group of citizens filed a competing petition that “respectfully asked that no clemency be shown to James Peacock a convict in the National Prison.” Petitioners who objected to his pardon invoked older systems of community responsibilities that favored the wronged party above the wrongdoer and provided protection to its members. They asked “in justice to our laws, and to his victims” that Peacock be denied a pardon. Peacock’s conviction served the objectives of an older legal system, and if that system failed, they feared “neighborhood trouble” could arise in the form of blood vengeance. Petitioners opposing Peacock’s pardon said that Peacock’s wife had always called on her “friends for protection” and suggested that her husband was actually a threat to her. They insisted that the woman would need even more assistance if he received clemency. Her community, not her husband, provided her care and protection. Within one community, older notions of order based upon a community’s responsibility to protect its members competed with more western understandings of the importance of a husband and father within a nuclear family.

A complicated mix of responsibilities shaped the interaction of Cherokee officials, prisoners, and families. Blossom, convicted of murder and sentenced to death, received a commutation of his sentence to nine years. Perhaps disappointed that he had not obtained a full pardon, Blossom walked away from his guards while out chopping wood. Rather than remain at large, Blossom surrendered to prison officials two weeks later.<sup>101</sup> Blossom combined legal and extralegal means to negotiate his time at the prison. He took advantage

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<sup>100</sup> To Hon CJ Harris Petition for Pardon of James Peacock confined in the National Prison, 6 March 1895, CHN 090.

<sup>101</sup> *Cherokee Advocate*, 22 February 1884.



of legal methods of appeal, engaged in labor projects beyond the prison walls, escaped, and then returned.

Most escapees did not return willingly. The *New York Times* reported the “daring and successful” escape of Thomas Rose and Cornelia Hendricks from the Cherokee penitentiary. Rose left a stuffed dummy in his cell. Hendricks feigned illness, which granted her more freedom of movement.<sup>102</sup> They scaled the prison fence and, much to the chagrin of High Sheriff Charles Starr, stole “two fine horses” from the prison stables.<sup>103</sup> To encourage district sheriffs to aid in the apprehension of escaped prisoners, High Sheriff William McCracken sent the local sheriffs a list of escaped prisoners broken down by district. The sheriff made sure to note rather smugly, “in justice to [himself], all escaped before [he] became High Sheriff.”<sup>104</sup> Two weeks later, three prisoners escaped on McCracken’s watch.<sup>105</sup>

To prevent escapes officials modified the facility and enacted new rules for visitors and prison guards. Two years after the prison’s opening officials added the fence around the perimeter to discourage escape.<sup>106</sup> The fence provided both an additional barrier and a new

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<sup>102</sup> The incarceration of women was rare. In 1878, the Saline District sentenced a woman to a year in prison for the crime of larceny. The *Advocate* commented, “It looks bad to see a woman go to jail, but the law knows no distinction.” *Cherokee Advocate*, 16 March 1878. Legislation later made distinctions, specifying that the prison provide separate cells for men and women. “Act Relating to the National Prison,” *Constitutions and Laws of the Cherokee Nation: Published by an Act of the National Council* (1892; Wilmington: Scholarly Resources, Inc., 1973), 220.

<sup>103</sup> “Escaped from the Cherokee Jail,” *New York Times*, 8 March 1886, ProQuest Historical Newspapers.

<sup>104</sup> “To all Sheriffs of the Cherokee Nation,” *Cherokee Advocate*, 16 January 1888.

<sup>105</sup> *Cherokee Advocate*, 8 January 1888.

<sup>106</sup> *Cherokee Advocate*, 11 April 1877.

expense of \$150 annually to keep it in good repair.<sup>107</sup> The fence probably did more to prevent theft from the prison grounds than it did to deter escapes. As for guards, in 1879, the council established intoxication at work as grounds for immediate dismissal. The same act authorized high sheriffs to keep guards available for emergencies and required guards on the outside and inside each cell “in order to prevent [prisoners] from plotting escape or other mischief.” The 1879 act also limited visits to people approved by the executive branch, set visiting hours from 9 to 11 in the morning and 2 to 4 in the afternoon, and prohibited “private intercourse.”<sup>108</sup> In 1888, High Sheriff Jesse Mayes issued new rules for the national prison. He reaffirmed the need for visitors to have “an order from the Executive Department” and prohibited anyone from playing cards or drinking. Anyone who escaped had his sentence doubled, and, if the escape resulted from a guard’s dereliction of duty, the guard lost his job. Finally, anyone hiring prisoners had to pay as they completed their labor.<sup>109</sup> McCracken described in detail the prison conditions that made escape possible: “The Jail as it now stands is in a terribly dilapidated state. The floors in the same being rotten—especially from one room to another—where a prisoner only has to dig under the partitions in order to get out into the hallways of the same.”<sup>110</sup> Budget constraints made upkeep difficult, even when the result of neglect was prison breaks.

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<sup>107</sup> Estimate of Supplies for the use of the national Prison for the fiscal year ending 30<sup>th</sup> September 1883, CHN 095.

<sup>108</sup> On motion of Jesse R. Birds, 4 February 1879, Reel 31, f2895, Cherokee Nation Papers, University of Oklahoma Library, Norman.

<sup>109</sup> *Cherokee Advocate*, 26 September 1888.

<sup>110</sup> *Cherokee Advocate*, 8 April 1893.

Bounties encouraged citizens to help authorities capture escapees. The council offered ten dollars for the return of an inmate to the prison.<sup>111</sup> High Sheriff McCracken, embarrassed by the escapes on his watch, offered fifty dollars for the return of two escapees, more than double the normal rate.<sup>112</sup> Guards took advantage of these opportunities and supplemented their prison salaries by apprehending escaped inmates. In June of 1882, the national treasurer paid Cull Thorne, a guard who later became high sheriff, ten dollars for hunting escaped convicts.<sup>113</sup> Private citizens, like Nelson Hicks and D.H. Williams, also captured and returned escapees for compensation.<sup>114</sup>

Escaped prisoners contributed to an image of the Cherokee Nation and the rest of Indian Territory as a lawless place, but the major source of criminality was not citizens of the Indian nations. Tribal laws and courts held no sway over citizens of the United States, who answered to the U.S. law and the federal district court in Fort Smith. The problem was too few U.S. marshals to police Indian Territory and too little public will in the United States to change the situation. The impression that anarchy reigned in Indian Territory bolstered the argument that the Indian nations were incapable of governing themselves and that they should be dissolved. Members of the commission sent to Indian Territory in 1893 to negotiate allotment agreements with the Five Tribes spread widely these charges that the governments of the Cherokee Nation and the other tribes were dysfunctional and should be dissolved. Their reports influenced Congress and contributed to the passage of the Curtis Act

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<sup>111</sup> Ibid.

<sup>112</sup> *Cherokee Advocate*, 4 April 1888.

<sup>113</sup> For Hunting Escaped Convicts, 15 June 1882, CHN 95.

<sup>114</sup> D.H. Williams \$10 for Returning Escaped Convict, 6 June 1882, John Hawkins HS to Johnson Thompson, 13 July 1887, CHN 95.

in 1898, which did indeed dissolve the governments of the tribes. The dissolution of the courts did not mean the closure of the prison, however, because it still had inmates whose sentences remained uncompleted. As a result, the prison continued to operate much as it did before. Guards remained employed, and the high sheriff continued to supervise the facilities, order supplies, and hire local citizens to provide various services. The Cherokee treasury continued to fund the prison but with the budgetary oversight of the federal government.

By 1900, the Cherokee Nation and the federal government had reached an impasse over what to do about the prison. The federal government broadly criticized the prison's operations—from its architecture to its budget—but offered no concrete solution to these problems. Despite the President's disapproval on January 18, 1900, the Principal Chief used his executive authority to pardon all eighteen of the prisoners.<sup>115</sup> In a final act of sovereign authority, Principal Chief Samuel Mayes granted an “absolute and unconditional pardon to all persons who have been heretofore convicted in the courts of the Cherokee Nation of a violation of Cherokee law.” The pardon extended to “all other persons...convicted or indicted by the courts of the Cherokee Nation” and the restoration of their “full rights of citizenship.”<sup>116</sup> The prisoners, as Principal Chief Chad Smith pointed out 110 years later, “were our people,” redeemed through Cherokee actions, not the federal government's.

With the prisoners restored to society, the building stood empty. The physical structure, located a block from the capitol in the governmental heart of the Cherokee Nation, remained a point of contention between Cherokee and United States officials. The Cherokee Nation and the federal government agreed to rent the structure to private individuals but

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<sup>115</sup> J. George Wright to Honorable TM Buffington, 27 January 1900, f 2965, CHN 95.

<sup>116</sup> From the Executive Office of the Cherokee Nation, [January 1900 ?], f 2967, CHN 95.

finding a responsible tenant was not easy: too many people were like Jake Parris, for whom, the chief learned, “there is no use depending on for rent in the future.”<sup>117</sup> In his 1903 annual message, Principal Chief William C. Rogers posed the “paramount” question of what should be done with surplus lands, if any remained from allotment, and “with our public buildings.”<sup>118</sup>

Although the Curtis Act had severely curtailed the authority of the Cherokee national government, officials continued to look after the welfare of its citizens. The prisoners had been pardoned, but the orphans and disabled remained the nation’s moral charge even as legal responsibility shifted to the United States. Following the 1903 fire at the Orphan Asylum, Cherokee officials decided to move residents of the Insane Asylum to the prison so that the children could move into their structure. In November of 1903, the national council appropriated funds to make the building habitable for the patients.<sup>119</sup> It lacked the funds necessary to make adequate repairs to the facility, but it enabled the nation to continue to fulfill its obligations to its citizens even as the United States sought to dissolve it.

On May 6, 2010, the Cherokee Nation began restoration of the National Prison, which is listed on the National Register of Historic Places. The prison will be the second Cherokee Nation owned and operated museum. After the Cherokee Nation’s dissolution in 1906, the state of Oklahoma used the prison as a local jail.<sup>120</sup> Despite the loss of this building

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<sup>117</sup> J.T. Parks to T.M. Buffington, 9 January 1902, f 1210-1211, CHN 95.

<sup>118</sup> First Annual Message of Hon. William C. Rogers, Principal Chief of the Cherokee Nation Tahlequah IT, November 6, 1903, R34 f 29, W. C. Rogers Collection, Western History Collections, University of Oklahoma Library, Norman.

<sup>119</sup> An Act making an appropriation for the repair of the National Jail building for use and an Asylum for the Insane, 30 November 1903, Senate Bill n. 13, f 1217, CHN 95.

<sup>120</sup> *Cherokee Phoenix*, 7 May 2010.

as a result of the Curtis Act, the contemporary Cherokee Nation recognizes the prison's historical significance. As a Cherokee owned museum, the building not only provides a glimpse of late-nineteenth century Cherokee life, it is also a testament to the vibrancy of the Cherokee Nation today. One hundred and thirty-six years later, it is again the Cherokee Nation that is refurbishing the building, conducting the research, and providing the intellectual and material resources to reestablish the prison, this time as a site for public history. This building, coupled with the 1844 Supreme Court building that opened as a museum in 2010, stand as physical and public testaments to the continued exercise of sovereignty by the Cherokee Nation.

## Chapter 4

### Public Health

In 1826, the Cherokee National Council passed legislation that protected “lunatic[s]” or a “person insane without lucid intervals” from prosecution or a guilty verdict for a crime committed “in the condition of such lunacy or insanity.”<sup>1</sup> On the one hand, this law reflected larger reform efforts occurring throughout the United States aimed at aiding poor, disabled, and mentally ill people; on the other hand, within Cherokee society the law represented codified legal protection for people traditionally cared for by kin. This legal modification challenged Cherokee ideas about the insane and reflected the desire on the part of Cherokee officials to protect individual citizens from inappropriate judgment under the law. However, this desire to protect citizens was a work in progress. The law, even without any additional protocols or institutions to manage the mentally ill, moved the nation toward national public health policies and gave some legal authority to the courts to deal with the criminally insane, yet it also maintained traditional systems where kin managed mentally ill citizens.

By 1826, a growing number of reformers in the United States questioned the use of prisons and poor houses to attend to the needs of various classes of people, including the elderly, deaf, blind, and insane, in essentially the same way. Counties established poor farms to serve the impoverished, and cities and states assumed more control of institutions to deal

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<sup>1</sup> “Resolved by the National Committee and Council,” 14 October 1826, *Laws of the Cherokee Nation: Adopted by the Council at Various Periods* (1852; Wilmington: Scholarly Resources, Inc., 1973), 78.

with the growing number of displaced workers and immigrants who needed temporary relief. Localities in the United States embraced reform for reasons related to economic disparity, emigration, and population density, but these reasons fail to explain fully why the Cherokee Nation turned its legislative energy to mentally ill and disabled people.

Traditional Cherokees assigned human beings responsibility for disease. According to oral tradition, disease entered the world because Cherokee people failed to adhere to ceremonies and prayers that maintained a delicate balance between humans and the cosmos. In response to over hunting caused by population increases and the failure of Cherokees to offer prayers and thanks to the game they killed, the animals held a council and determined that each animal would create a disease to afflict the people.<sup>2</sup> In this instance, the entire community suffered because of their collective actions, but failure to adhere to the rules of kinship that maintained balanced relationships also brought disease and illness to the clan or to the individual.

In addition to stemming from failure to maintain cosmological order through group or individual ceremonies, illness emanated from ghosts, spirits, or witches. Witches presented a particularly troubling situation because they preyed upon vulnerable populations, in particular, the sick, infants, and women in labor.<sup>3</sup> Besides inflicting illness and death, a witch could produce insanity in enemies through incantations that invoked the name of the individual and clan.<sup>4</sup> Witchcraft presented a serious disruption to Cherokee society. Instead

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<sup>2</sup> James Mooney, *Myths and Sacred Formulas of the Cherokees* (Asheville: Bright Mountain Books, 1992) 250-252, 319-324.

<sup>3</sup> Charles M. Hudson, *The Southeastern Indians* (Knoxville: University of Tennessee Press, 1976), 179.

<sup>4</sup> Jack F. Kilpatrick and Anna G. Kilpatrick, *Run Toward the Nightland: Magic of the Oklahoma Cherokees* (Dallas: Southern Methodist University Press, 1967), 127.



of restoring balance, witchcraft disrupted society by causing those who committed egregious acts to prosper and those who followed established rules to suffer.<sup>5</sup> Witchcraft was a capital offense. For traditional Cherokees, disability, insanity, and disease originated in their failure to perform appropriate ceremonies to maintain cosmological order or the practice of witchcraft. The treatment addressed the spiritual causes as well as the physical symptoms, and medical practice centered on healing herbs and sacred incantations.

Missionaries introduced western medicine to Cherokee people, and offered alternative ideas about illness and treatment. Open to new concepts but reluctant to abandon their own, Cherokee people continued to apply traditional remedies while seeking additional sources of healing power. In 1810, the paternal uncle of Tlaneneh, a student at the Moravian Springplace Mission, asked the missionaries for medicine for Tlaneneh's father Suakee. Despite their reluctance to provide medicine when they were unable to examine the patient "because he seemed already to be in the hands of an Indian doctor," the missionaries decided that they "could not refuse since he was our friend." Three days later, the missionaries reported that Suakee was on his way to recovery.<sup>6</sup> In 1814, Dawzizi, another pupil at the Springplace Mission, returned to school after an absence due to illness. Dawzizi reported to his teachers that "an old Indian doctor had scratched his whole body [with a saw-shaped lower jaw of a fish] and rubbed it with the juice of certain herbs...The doctor extracted a little horn of blood from his forehead and back of his head, which provided him with the desired

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<sup>5</sup> Hudson, *The Southeastern Indians*, 174.

<sup>6</sup> Rowena McClinton, ed., *The Moravian Springplace Mission to the Cherokees, Vol. 1, 1805-1813* (Lincoln: University of Nebraska Press, 2007), 354.

proof against headaches.”<sup>7</sup> Most missionaries had little formal training as physicians but their position required them to fill many roles. Perhaps the first recognized physician to live in the Cherokee Nation was Congregationalist missionary Elizur Butler, who had studied medicine, anatomy, diseases, and surgery under another physician, not unlike the training of Cherokee medicine men.<sup>8</sup> Between the medical services offered by missionaries and the continued access to traditional healers, most Cherokee people neither desired nor required national officials to handle individual and family health matters.

The presence of missionaries and English-educated Cherokee men, however, brought reformist ideas sweeping the United States into the Cherokee Nation, and these ideas challenged traditional beliefs and practices. In 1826, the Cherokee Nation, in the midst of political restructuring, was receptive to social reform as well. For the previous forty years, the council had sought ways to centralize its authority to meet pressure from the surrounding populations of white settlers, the neighboring states’ assertions of sovereignty, and the federal government’s efforts to remove them west of the Mississippi. Although they failed to prevent removal to the West, Cherokee leaders had moved their people toward the creation of a nation state.

The process of removal presented the first substantial challenge to traditional medical practices. Forced to leave their homes often without adequate clothes or provisions and

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<sup>7</sup> Rowena McClinton, ed., *The Moravian Springplace Mission to the Cherokees, Volume 2, 1814-1821*, (Lincoln: University of Nebraska Press, 2007), 56. Often healers used bones or teeth to cause an individual to bleed and then searched for the cause of the illness in the blood. Healers also scratched a person’s skin before he went to water, or bathed, as part of a purification ritual. This may have been the ritual performed on Dawzizi. Mooney, *Myths*, 230, 334.

<sup>8</sup> Joyce B. Phillips and Paul Gary Phillips, eds., *The Brainerd Journal: Mission to the Cherokees, 1817-1823* (Lincoln: University of Nebraska Press, 1998), 503 n. 1.

interned in stockades for months to await removal, Cherokees suffered disease and death indiscriminately. The conditions at the camps caused or contributed to dysentery, fevers, whooping cough, and measles. Then they traveled west, many on foot, in winter. The food the army and then their own agents supplied was unfamiliar to most Cherokees and contributed to their illness. The food rations provided by the federal government after removal proved to be substandard, and privation compounded the mental anguish removal caused. Physicians accompanied each detachment, but when Cherokees sought treatment from medical officers, they often faced language barriers. Cherokees preferred their own medical practitioners, who relied on the use of plants, common to their ancestral home, to concoct medicines. Internment, followed by a 1000-mile journey to an unfamiliar geography, compromised traditional healers' abilities to gather the necessary medicines to administer to the sick. Removal not only separated Cherokee people from their land, it also denied them their pharmacopeia.<sup>9</sup>

In the aftermath of removal, the Cherokee Nation focused its energy on the most vulnerable citizens. In 1841, the council formally acknowledged the presence of the disabled when it passed legislation to provide twenty dollar annual pensions to "all blind persons...those who may be maimed, crippled, or disabled...destitute of the means of subsistence" or without relatives "materially" able to care for them. Though requests were not frequent, the council followed through, approving, for example, a twenty-dollar annual payment in 1849 for Big Dollar, a cripple.<sup>10</sup> If necessary, the council assigned guardians to

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<sup>9</sup> Theda Perdue and Michael D. Green, *The Cherokee Nation and the Trail of Tears* (New York: Viking, 2007), 126.

<sup>10</sup> "An Act for the Benefit of Big Dollar" 5 November 1849, *Laws of the Cherokee Nation, 1839-1867* (1852: Wilmington: Scholarly Resources Inc., 1973), 198.

individuals who could not care for themselves. As a protection to disabled persons the council mandated appraisals of their property to be performed by two “disinterested” parties and required guardians to account for the all “moneys, property, and other effects” belonging to them. Guardians posted bonds, double the value of the property, with the district judge.<sup>11</sup>

Guardianships, in addition to displaying the Cherokee legislative interest in property rights, also reflected widespread debates on the responsibility of a nation to its citizens. In 1828, educational reformer and Massachusetts’ legislator, Horace Mann, had described the relationship of the insane to the government as “wards of the state.”<sup>12</sup> Ironically, in his 1831 decision in *Cherokee Nation v. Georgia*, U.S. Supreme Court Chief Justice John Marshall invoked similar language when he described the relationship of the Cherokee Nation to the United States as one that resembled “that of a ward to his guardian.”<sup>13</sup> Questions of federal and state responsibility for citizens and wards remained a hallmark of nineteenth century reform.<sup>14</sup> Within the Cherokee Nation, the expanded roles and responsibilities of guardians acknowledged a transformed Cherokee society. The need for guardians for the disabled to

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<sup>11</sup> “An Act Authorizing the Appointment of Guardians for Insane Persons and Orphan Children” 12 October 1841, *Laws of the Cherokee Nation, 1839-1867*, 46-47.

<sup>12</sup> Albert Deutsch, *The Mentally Ill in America: A History of their Care and Treatment From Colonial Times*, (New York: Columbia University Press, 1949), 137.

<sup>13</sup> *Cherokee Nation v Georgia*, 30 U.S. 1 (1831).

<sup>14</sup> During the 1840s, Dorothea Dix launched an assault on treatment of the insane in the United States and allied with Mann and Dr. Samuel G. Howe, best known for his work with the blind. In 1848, she proposed legislation to Congress to set aside She proposed that the government sell five million acres of federal land, the proceeds of which would be used for indigent care of the mentally ill. In her memorial, she took Mann’s 1828 quote one-step further, referring to the insane as “wards of the nation.” Despite skepticism and legislative failure, Dix increased the land grant to ten million acres and requested an additional 2.25 million acres for deaf mutes. In 1854, both houses of Congress passed the bill, but it was ultimately vetoed by the President. Deutsch, 167-180.

fill voids created by the loss of kin marked a shift from the pre-removal era when clan kin performed these duties.

Despite the loss of kin, medical knowledge, and healers, Cherokee people did not immediately turn to western medicine for care. Many preferred traditional healers or hedged their bets by seeking treatment from both kinds of practitioners. Furthermore, services of western trained doctors remained limited and often unavailable in rural areas of the Cherokee Nation. Nevertheless, physicians began to make inroads, often by connecting themselves to Cherokees or long-term residents. Dr. R. S .C. Noel , for example, established his practice in the home of Cherokee teacher H. D. Reese, and Dr. Dwight. D. Hitchcock operated out of Reverend Samuel Worcester's house in Park Hill.<sup>15</sup> Dr. W. J. Grant, a dentist, provided his professional services at the Taylor hotel in Tahlequah.<sup>16</sup> Cherokee citizens began to attend medical schools in the states, return to the nation, and establish practices. Cherokee Joseph L. Thompson, for example, graduated from medical school in Philadelphia.<sup>17</sup> The growing number of articles about and advertisements for medical services in the *Cherokee Advocate* indicate the presence of both Cherokee and white doctors and signaled a growing interest by Cherokee people in western medicine.

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<sup>15</sup> *Cherokee Advocate*, 5 August 1851; 3 November 1852; Cullen Joe Holland, "The Cherokee Indian Newspapers, 1828-1906: The Tribal Voice of a People in Transition," (Ph.D. diss., University of Minnesota, 1956),322.

<sup>16</sup> *Cherokee Advocate*, 23 December 1847; Holland, 368.

<sup>17</sup> Holland, 368.

The Civil War, like removal, cost the Cherokee Nation lives. Population losses within the nation during this period ranged from twenty-five to fifty percent.<sup>18</sup> Unlike removal, the Civil War ravaged the adult male population disproportionately and left their wives and children destitute. Pin Cherokees, those aligned with the Union, for example, mistakenly killed Hannah Hicks's first husband, Unionist Abijah Hicks, leaving her a widow at the age of twenty-eight with five children. Southern forces shot Cherokee soldiers found guilty of desertion, and other Cherokee men were wounded or killed in battle. The war made many Cherokee families acutely aware of the lack of medical services in the Nation. After losing her husband, Hannah Hicks's infant grew ill. Hicks's lamented the lack of physicians "to tell [her] what to do to relieve [him]."<sup>19</sup> The end of the war brought further health crises for Hicks and the nation. She remarried the assistant post surgeon at Ft. Gibson and, along with other Cherokee refugees, she and her children took shelter there. In 1867, cholera broke out, and, despite having given his wife instructions for his care, Hitchcock died.<sup>20</sup> A public health crisis emerged at Ft. Gibson and demanded governmental intervention. Soldiers encouraged young Cherokees at the fort to move to Tahlequah. African Americans took refuge at Four Mile Creek where the federal government delivered rations to them.<sup>21</sup>

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<sup>18</sup> Gerard Reed, "Postremoval Factionalism in the Cherokee Nation" in Duane H. King, ed., *The Cherokee Indian Nation: A Troubled History* (Knoxville: University of Tennessee Press, 1979), 161.

<sup>19</sup> Mary Elizabeth Good, ed., "The Diary of Hannah Hicks," *American Scene* 13, (1972): 7-8.

<sup>20</sup> *Ibid.*, 22.

<sup>21</sup> "Interview with Mary Nevins" 66: 352-353, Indian Pioneer Papers, Western History Collection, University of Oklahoma Library, University of Oklahoma, Norman, OK. Hereinafter IPP; "Research of Elizabeth Ross," 108: 333-336, IPP.

The expectation of governmental aid in this crisis suggests that Cherokee ideas about responsibility for health care were changing. When clan kin could not provide, they expected their broader family—the Cherokee Nation—to step in. The number of requests to the council for national pensions increased significantly after the war. In October 1866, for example, the National Council granted an annual pension to the crippled Big Ellis, an action repeated the next year for Goo di ee, also a cripple.<sup>22</sup> In a three-week period from November to December 1867, the National Council granted three pensions to blind citizens.<sup>23</sup> In response to the increased requests, the council reiterated the appropriate criteria for disabled pensioners and required the auditor to produce an annual pension list with names, amounts of entitlement, and the annual appropriation necessary to support people with disabilities.<sup>24</sup>

The same year as the cholera outbreak, in an effort to determine the gravity of the post-war situation for the nation's youth, the National Council ordered a "Children's Census" be taken. The census was intended to provide data on the numbers of orphans and children attending the public schools, yet some districts included "unfortunates" residing within their limits. The Illinois District reported one blind, one "dumb alone," and two people who were both hearing impaired and unable to speak living in the district. The Third Educational

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<sup>22</sup> "An Act for the Relief of Big Ellis, a Cripple, of Sequoyah District" 19 October 1866, "An Act for the Benefit of Goo-di-ee, a Cripple, Granting a Pension," 10 December 1867, *Laws of the Cherokee Nation, 1839-1867*, 173, 184.

<sup>23</sup> "An Act Allowing Annual Pension to Charlotte" 18 November 1867, "146; An Act for the Relief of Cha car lac tah, A Blind Man of the Flint District" 22 November 1867, 148; "Act for the Benefit of Thomas Burtholph, A Blind Person," 10 December 1867, *Laws of the Cherokee Nation, 1839-1867*, 172.

<sup>24</sup> "An Act to Regulate the Issue of Pensions" 16 December 1867, *Laws of the Cherokee Nation, 1839-1867*, 183.

District counted two blind, two hearing and speech impaired, and one unable to speak.<sup>25</sup>

Many districts failed to report any “unfortunates,” but if the two districts are representative and the average was 4.5 per district, the total number of “unfortunates” in the nine districts totaled slightly over forty. If these numbers only accounted for school-age children, and did not include adult populations, something that is unclear in the census description, the numbers would have been higher. This census data and an accounting of national pensioners probably led to the National Council’s plans for an Asylum for the Deaf, Dumb, Blind, and Insane.

Rather than establish a soldier’s home for the families of people directly impacted by service in the war, as many states did, the Cherokee Nation established an Asylum for the Deaf, Dumb, Blind, and Insane.<sup>26</sup> This comprehensive institution allowed the nation to serve a variety of people with a wide range of disabilities. Providing institutional facilities to each specific disabled group would have been an economic impossibility. An institution that could serve multiple categories of residents was not only reasonable, but given the number of pensioners, presented the possibility of an economic savings. In October of 1873, the Cherokee Nation set aside \$25,000 dollars to establish the asylum.<sup>27</sup> The same year, the

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<sup>25</sup> *Cherokee Advocate*, 18 November 1876.

<sup>26</sup> By 1866, public officials, women’s auxiliaries, and military personnel worked together to establish soldiers’ homes to care for disabled veterans. By 1867, three regional branches had been established, the Eastern Branch at Augusta, Maine, the Central Branch at Dayton, Ohio and the Northwestern Branch at Milwaukee, Wisconsin. “The National Asylum for Disabled Volunteer Soldiers. Report of the President of the Board of Managers of the National Asylum for Disabled Volunteer Soldiers, for the year ending December 31, 1867,” H. mis. doc. 86, 40<sup>th</sup> Cong., 2nd sess. (1867-1868), Serial 1350, 1-9.

<sup>27</sup> *Cherokee Advocate*, 19 August 1876.



Cherokee National Council paid \$1200 for the improvement of Lewis Ross, on which to locate the asylum six miles from Tahlequah near Park Hill.<sup>28</sup>

The design of the facility was important because it was an essential component in nineteenth-century treatment of the mentally ill. The Quakers pioneered facilities that replicated a home or family environment in order to support moral therapies and treat patients as guests rather than inmates.<sup>29</sup> After Thomas S. Kirkbride published his work *On the Construction and Organization of Hospitals for the Insane* in 1854, his architectural model, replicated thirty times during this period, became the most common plan used until 1880.<sup>30</sup> Kirkbride's plan called for asylums to be located in the country with adequate acreage for farms and gardens and constructed with windows and sunlight in all patient rooms. The Cherokee Asylum met many of these criteria. Because the building was a former home, it already had a home-like quality. The upper floors, where residents lived, contained numerous windows. It had broad porches and adequate grounds for a garden and farm.<sup>31</sup>

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<sup>28</sup> *Cherokee Advocate*, 20 December 1873.

<sup>29</sup> Deutsch, 92-95.

<sup>30</sup> *Ibid.*, 208-210.

<sup>31</sup> *Cherokee Advocate*, 20 December 1873.



**Figure 6. Asylum for the Deaf, Dumb, Blind, and Insane, circa 1921.  
In 1921, the Bureau of Indian Affairs used the building as a boarding school,  
but this is the original structure used for the Asylum.  
Courtesy of the Oklahoma Historical Society.**

In the United States, institutions that provided social services increasingly established boards of directors to “secure the greatest degree of usefulness at the least expense.”<sup>32</sup>

Initially, the national council appointed the six members of the Orphan Asylum board of trustees to make preparations for the facility. These included the principal chief, assistant principal chief, the Cherokee national treasurer, and three other members. Walter Adair Duncan served in a dual capacity since he managed the orphan asylum and served on the new asylum’s board. His experience with contractors for orphan asylum projects, his knowledge

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<sup>32</sup> Deutsch, 248.

of what a facility like the new asylum required, and his understanding of record-keeping made him the perfect member for a board intended to provide institutional oversight.<sup>33</sup>

Standardization of institutions and professionalization was a trend in the period following the Civil War, one that brought major changes throughout the United States in public health policy and professional medical communities. In 1871, the American Public Health Association organized, and by 1872 three states and the District of Columbia had established boards of health.<sup>34</sup> In 1875 the American Neurological Society formed.<sup>35</sup> These new organizations established standards, regulated practitioners, and disseminated public health and medical information to practitioners; they also addressed areas of concern not only for northern cities, but also for the south and Indian country.

During this same period, the Cherokee Nation began systemizing its own rules for physicians practicing in the nation. In 1873, the council established a medical board to examine applicants and issue medical certificates to those who wished to practice medicine in the Cherokee Nation. The bill dealt specifically with non-citizen applicants. In 1878, for example, the executive council granted a permit to Dr. D. A. Corner, a United States citizen, after Drs. W. T. Adair and L. M. Cravens certified his credentials.<sup>36</sup> The next year the principal chief issued a public notice to all physicians, “not citizens of the Cherokee Nation,

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<sup>33</sup> “Duncan on behalf of the Orphan Asylum Board of Directors,” 22 October 1875, Cherokee Nation Papers, Reel 6 F638, Western History Collections, University of Oklahoma, Norman, OK.

<sup>34</sup> These states included Massachusetts, 1869, California and Virginia, 1872, and the District of Columbia, 1870. Deutsch, 14.

<sup>35</sup> Deutsch, 277.

<sup>36</sup> Richard E. Martin and R. Palmer Howard, M.D., “Medical Organization in the Cherokee Nation, 1870-1900,” *Bulletin of the Southern Medical Association* 57 (1969): 58-62.

desiring to practice the profession of medicine,” to appear before the board “without delay.” If they failed to report, they would be classified as intruders and the nation would take measures to expel them.<sup>37</sup> By 1880, the census noted the presence of eight doctors and physicians, including Doctors Cravens and Adair. Of the eight, seven were adopted whites who had been accredited; W. T. Adair was the only Cherokee physician.<sup>38</sup>

With an increase in the number of physicians in the Cherokee Nation, national officials clarified the certification process further. The National Council expanded the number of medical examining boards to three, one in each court district.<sup>39</sup> Later legislation more clearly laid out the bureaucratic steps to medical licensure. The nation required applicants to submit a written application to the medical examining board, provide character references from the previous community where they resided, and offer endorsements by four or more Cherokee citizens where the individual planned to practice medicine. The board issued successful applicants a certificate that they had to present to the Indian Agent or the Principal Chief in order to receive a one-year permit to practice medicine in the nation. Unsuccessful applicants could reapply to a local examining board after a three-month period or appeal their cases to a medical appeals board.<sup>40</sup>

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<sup>37</sup> “Notice of D. W. Bushyhead,” 29 Oct. 1879, Papers of D. W. Bushyhead, B53 F11, Western History Collections, University of Oklahoma, Norman.

<sup>38</sup> Barabara, L. Benge, transcriber, *The 1880 Cherokee Nation Census Indian Territory Oklahoma* (Bowie: Heritage Books, Inc., 2000).

<sup>39</sup> “Relating to Physicians” *Constitution and Laws of the Cherokee Nation, 1892* (Kansas: Foley R’Y Printing Company, 1893), 366.

<sup>40</sup> Ibid.; “Relating to Physicians” *Compiled Laws of the Cherokee Nation*, (1881; Scholarly Resources, Inc., 1973), 305-306.

The Cherokee Nation's move to professionalize the services of medical doctors coincided with steps to criminalize the unethical actions of those who called themselves doctors and that, as a result, placed the public at risk. In the New Codes passed in 1873, the council approved a provision that criminalized the actions of anyone knowingly selling or distributing food, beverage, or medicine for consumption that were "injurious to health." The codes also required labels on arsenic, strychnine, or other poisons; failure of distributors to do so was a misdemeanor criminal offense. Both crimes carried fines ranging from \$100 to \$500 and imprisonment from six months to a year or a combination of the two.<sup>41</sup>

In addition to the efforts of Cherokee Nation officials to systematize licensure and hold "quack" doctors accountable, medical doctors, primarily those serving the Cherokee Nation, organized the Indian Territory Medical Association in 1881. The organization modeled its code of ethics after the American Medical Association's.

As good citizens, it is the duty of physicians to be ever vigilant for the welfare of the community, **and** to bear their part in sustaining its institutions and burdens; they should also be ever ready to give counsel to the public **in** relation to matters especially pertaining to their profession, as on subjects of medical police, public hygiene and legal medicine. It **is** their province to enlighten the public in regard to quarantine regulations, the location, arrangement and dietaries of hospitals, asylums, schools...and in regard to measures for prevention of epidemic and contagious diseases, and when pestilence prevails.<sup>42</sup>

The code reveals that public health was a major concern of the new association.

The Cherokee Nation soon put to use the public health services of its medical boards and the Indian Territory Medical Association. In 1882, the Cherokee Nation enlisted the aid

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<sup>41</sup> "Offenses Against Health," *Compiled Laws of the Cherokee Nation* (1881), 137-138.

<sup>42</sup> Fred. S. Clinton, "The Indian Territory Medical Association," *Chronicles of Oklahoma* 26 (1948): 23-55.

of association members to assist in combating a smallpox outbreak in the nation.<sup>43</sup> Through this public health collaboration, the Cherokee Nation began its first national vaccination campaign.<sup>44</sup> The nation established health committees comprised of one physician and two citizens and “empowered them to establish and enforce quarantine regulations,” destroy infected bedding and clothing by fire, and provide compensation to families whose property had to be destroyed.<sup>45</sup> The next year another outbreak happened and Dr. A. J. Lane and Dr. J. A. Thompson, both members of the ITMA, worked to “curb the epidemic.”<sup>46</sup> By 1886 when another outbreak occurred, the ITMA had fallen into disarray after key leaders of the organization left the Territory, but the Cherokee Nation waged another vaccination campaign, and those who refused to receive vaccinations “were cajoled by physicians, threatened, or forced to submit by police force.”<sup>47</sup> Even without the ITMA in place, the Cherokee Nation possessed the public health infrastructure and personnel to respond to small pox epidemics.

These centralizing processes, legislative changes, and public health responses bolstered the nation’s larger efforts to provide quality health services to the wards of the nation’s institutions. One of the early duties of the board of trustees at the Asylum for the Deaf, Dumb, Blind, and Insane was to appoint a medical superintendent for the facility. By

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<sup>43</sup> Martin and Howard, “Medical Organization in the Cherokee Nation, 1870-1900,” 58-62.

<sup>44</sup> Holland, *The Cherokee Indian Newspapers*, 569; *Cherokee Advocate*, 12 February 1886.

<sup>45</sup> “An Act for the Relief of Sufferers from small pox, etc” 29 November 1882, *Laws and Joint Resolutions of the Cherokee Nation Enacted During the Regular and Special Sessions of the Years 1881-2-3* (Wilmington: Scholarly Resources, Inc., 1975 ), 79-82.

<sup>46</sup> Clinton, “The Indian Territory Medical Association,” 38-39; Holland, *The Cherokee Indian Newspapers*, 570.

<sup>47</sup> *Cherokee Advocate*, 12 February 1886.

1880, the National Council had established the official position of medical superintendent to serve the male and female seminaries, the insane asylum, and the prison. The council funded the position from the school fund, the asylum fund, and the general fund. The council set the salary at \$1500 annually, but the act required that the superintendent purchase his own medicines and “medical apparatus.” The board of trustees no longer selected the medical superintendent independently but through a joint ballot with the National Council.<sup>48</sup>

The medical superintendent shared responsibility with other institutional officials to provide care to residents at the asylum. The earliest rules assigned most medical care to the steward rather than to the superintendent. The steward administered the treatments “under the direction” of and “prescribed” by the physician. In addition to his responsibilities for treating the sick, the steward maintained the grounds and farm; kept an accounting of payments, purchases, and inventories; maintained records with each resident’s name, age, sex, district, date of arrival and departure, death date, and any known cause of death; and temporarily admitted potential residents until the board evaluated their applications for admission.<sup>49</sup> The board of trustees eventually added staff and changed policies to enable the steward to meet his daily obligations to residents better. The board employed a matron, often the wife of the steward, to assist with care of residents. Through the years, the asylum also employed farm hands, cooks, teamsters, laundresses, and sick nurses. In addition to the

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<sup>48</sup> “An Act Providing for a Medical Superintendent for the Male and Female Seminaries, Insane Asylum, and National Prison,” *Compiled Laws of the Cherokee Nation* (1881), 326.

<sup>49</sup> “An Act in Relation to the Asylum for the Blind, Insane, and Others,” *Constitution and Laws of the Cherokee Nation*, (1875; Wilmington: Scholarly Resources Inc., 1973), 197-199.

fulltime employees, the asylum often paid for the services and commodities from individuals who provided periodic labor, eggs, meat, and seamstress work.<sup>50</sup>

Nurses were a late addition, both to the Cherokee asylum and at institutions in the states. It was not until 1882 that any permanent institution in the United States existed to train nurses.<sup>51</sup> During the 1870s, the Cherokee Asylum did not employ any nurses. During 1885, however, the asylum employed five nurses, none of which were women. Although institutions in the states strictly separated women and men residents, the care-giving staff tended to be male. Not until 1879 did Pennsylvania require the hiring of a female attendant at any institution that served male and female residents.<sup>52</sup> Only in 1891 did the Medical Superintendent recommend that the National Council allocate funds for the addition of “a good and efficient female nurse.”<sup>53</sup>

Unlike the orphan asylum where institutional leaders remained in place for long periods of time during its early years and it became more fluid as its financial future became uncertain, staff turnover at the insane asylum was high throughout its entire existence.

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<sup>50</sup> “An Act Making an Appropriation to defray current and contingent expenses of the Asylum for Insane Blind and Others from 30 September 1888-30 September 1889,” CHN 0067, Tahlequah Records, Insane Asylum Records, Cherokee Nation Records, Muskogee Public Library, Muskogee, Oklahoma (hereafter CHN 0067).

<sup>51</sup> Ibid.

<sup>52</sup> Deutsch, 281.

<sup>53</sup> “1890 Trustees Report” CHN 0067.



Steward	Service Dates	Reason for Departure
John Foreman	Through 10/77	Entered merchandising in Vinita
Levi Keys	1878	
B. W. Alberty	1880	
William Hendricks	1882	Appointed to go to Washington
Robert Wofford	1885-1886	
S. D. Clark	Through 8/93	Wife in ill health
John R. Meigs	Began 8/93	
Jeff T. Parks	1893	
Samuel Manus	1895-1896	
Thomas Wagner	12/99-	
T. F. Wagner	1900	
Henry Houseburg	11/01-4/02	“health has continually failed” since working at the asylum
E. Alberty	1903	
Matt Sanders	1903	
E.R. Alberty	1905	

**Figure 7. List of Superintendents for the Asylum for the Deaf, Dumb, Blind and Insane and Years of Service.**

A bureaucratic hierarchy structured the institution. The council required the board of trustees to visit the facility at least once a month, to hold quarterly meetings at the facility, and to keep a “fair and full record” of the business of the asylum.<sup>54</sup> In general, the board answered to the council; the steward and the medical superintendent governed the institution based on the by-laws determined by the board. The board, the steward, and the medical superintendent all submitted annual reports to the National Council.

The nation expected all those employed to provide an established standard of care to the individuals housed at the asylum. Despite their governing function, the board had the responsibility to furnish bedding and clothing, secure food, and purchase “medical supplies

<sup>54</sup> “An Act in Relation to the Asylum for the Blind, Insane, and Others,” *Constitution and Laws of the Cherokee Nation*, (1875), 196.

as may, from time to time, be required for use of the asylum.”<sup>55</sup> The “general superintendence” of the grounds and facilities fell to the steward. Legislation mandated that residents should be bathed regularly, provided clean clothes as needed but minimally once a week, and furnished “wholesome food, warm clothing, and bedding.”<sup>56</sup> As for the facilities, the law required the steward under the direction of the medical superintendent “once a week [to] have scoured and cleaned up the building, and have it kept in a healthful condition.”<sup>57</sup>

When unexpected events occurred, the board of trustees secured from the council the necessary monies and provisions for the successful management of the asylum. In 1879, for example, a tornado struck the facility, tore off the roof, demolished the third floor, and destroyed the southeast corner of the “fine building.” Principal Chief Dennis Bushyhead, in his capacity as president ex officio of the asylum, relayed damage reports from the medical superintendent and the steward to the National Council so that the council could appropriate funds for repairs.<sup>58</sup>

The nation established two paths for resident admission. The first was need. In order to be admitted “a person must have cause, be destitute, and [have] no relatives able or willing, to be burdened with his support.”<sup>59</sup> Such probably was the case when H. T. Landrum sought care for a boy who had “unfortunately become insane” as a result of a head

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<sup>55</sup> Ibid.

<sup>56</sup> “Senate Bill No. 15,” CHN 0067.

<sup>57</sup> Ibid.

<sup>58</sup> “To the Honorable Senate and Council,” 10 November 1879, D.W. Bushyhead Papers, B53 F1, Western History Collections, University of Oklahoma, Norman; *Cherokee Advocate*, 12 November 1879.

<sup>59</sup> “An Act in Relation to the Asylum for the Blind, Insane, and Others” Art. IV, Sec. 569, *Compiled Laws of the Cherokee Nation* (1881), 287.

injury suffered when he was thrown from a horse.<sup>60</sup> Simply the need for medical care did not make a person eligible for services: the failure on the part of kin to provide care made one eligible. Embedded in the admissions policy was an acknowledgement of the inability of families to meet the basic needs of disabled Cherokee people.

The second admissions procedure applied solely to people who were mentally ill. “If friends or relations of any lunatic” neglected or refused to put their relatives in the asylum, a sheriff armed with the “petition of a citizen” could place an individual there. The asylum board then evaluated the individual and made a final determination of the appropriateness of institutionalization.<sup>61</sup> The presence of the asylum and the alternative admissions procedures for the insane signified far more developed public health procedures than those established by the 1826 law that provided for an insanity defense in criminal proceedings. With a national asylum, the responsibility to manage the troublesome insane shifted from the local community to the Cherokee Nation. Agents of the state or neighborhood citizens trumped a family’s authority if mentally ill kin presented a threat to the safety and well being of the community. Insanity had become a public health issue.

Recipients of national pensions became the most likely candidates for asylum residency. The need for financial assistance from the nation was evidence that families were unable to provide for individuals, the primary criterion for admissions. From the nation’s perspective, the asylum was a more efficient means of distributing aid than cash payments. When the asylum opened its doors for residents in 1875, the nation suspended all pension

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<sup>60</sup> “From HT Landrum to CJ Harris” 1 August 1893, Echo, IT, CHN 0067.

<sup>61</sup> “Admission of Persons” Art. 4, *Compiled Laws of the Cherokee Nation* (1881), 287-288.

payments and repealed its pension laws.<sup>62</sup> Henceforth, if former pensioners needed support, they became residents of the asylum. Despite the suspension of pension payments, pensioners did not flock to the institution for services. Dr. E. Poe Harris, the second physician assigned to the institution, reported the presence of six residents, four blind, one rheumatic, and one paralytic.<sup>63</sup> The numbers peaked in 1890-91 at thirty-two total patients but by 1894 had dropped to seventeen.<sup>64</sup>

The blind represented the largest number of patients in the asylum when it opened. During the nineteenth century, blindness caused by trachoma plagued the United States and Europe. Trachoma developed from untreated and repeated bouts of bacterial infection and often affected young children and female caregivers at high rates. Two major European outbreaks led to studies of trachoma that proved the disease was not airborne and the spread could be prevented through proper hygiene. In 1870, Britain established separate schools for children with trachoma and emphasized hygiene as a means of prevention. In the nineteenth century United States, however, treatment for the blind focused less on cure and more on the education and manual training for blind populations.

Despite the large number of blind people at the asylum, the nation did not provide the kind of education increasingly available to the visually impaired throughout the United States. Cities in the northeast, including Boston, Philadelphia, and New York, had opened

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<sup>62</sup> "An Act in Relation to the Asylum for the Blind, Insane, and Others," *Constitution and Laws of the Cherokee Nation*, (1875), 200; Steen, Carl T., M.D., "The Home for the Insane, Deaf, Dumb, and Blind of the Cherokee Nation," *Chronicles of Oklahoma* 21 (October 1943): 402-406.

<sup>63</sup> *Cherokee Advocate*, 11 April 1877.

<sup>64</sup> "1890 Trustees Report," "Report of Board of Trustees 1891," "Annual Report of the Trustees of the Asylum for the Blind," 30 September 1894, CHN 0067.

schools for the blind during the 1830s and 40s. In 1860, Arkansas established its first such institution in Arkadelphia; the school relocated to Little Rock eight years later.<sup>65</sup> In 1898, Lura A. Rowland Lowery, a graduate of the Arkansas School for the Blind, opened a private institution for the blind at Ft. Gibson in the Cherokee Nation. Most schools provided literacy skills, weaving and sewing, woodworking, and music classes. Some provided college preparatory training. The asylum did provide residents access to an organ and hymnals, but never employed a music teacher.<sup>66</sup> Education for the hearing impaired in the United States had made many of the same educational advances as that for the blind.<sup>67</sup> Closest to the Cherokee Nation was the Arkansas Deaf-Mute Institute, opened in Little Rock in 1867.<sup>68</sup> Despite the education many disabled people received at these schools, few graduates were able to overcome prejudice against the visually and hearing impaired that they were lazy, incapable of learning, and unable to earn their way in the world. Regarded as inefficient workers and relegated to under-paid manual labor work, many were unable to support themselves, so they returned to institutions and exchanged services for room and board.

Within the Cherokee Nation, however, people did not necessarily view blindness and other disabilities as deficiencies. Families with sufficient means accommodated blind family

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<sup>65</sup> Harry Best, *The Blind; Their Condition and the Work Being Done for Them in the United States* (New York: Macmillan Co., 1919), 323.

<sup>66</sup> "Expense Report 1878," CNP R18 F1434, University of Oklahoma, Norman.

<sup>67</sup> In 1817, the first permanent school for the deaf in the United States opened in Hartford, Connecticut. Early deaf education included sign language and on-the-job training. By the 1860s, the educated deaf provided a sizable number of the teachers for schools for the deaf. Richard G. Brill, *Education of the Deaf: Administrative and Professional Developments* (Washington: Gallaudet College Press, 1974), 93-98.

<sup>68</sup> "Annual Report of Commissioner of Education, 1911," 2 vols., 62<sup>nd</sup> Cong., 2<sup>nd</sup> sess., H. doc. 120 (1911-1912), 1355.

members. When her aging grandmother was thrown from a horse and injured, for example, Emma Blythe Sixkiller returned home from the Moravian mission school she had attended to help care for her. When her grandmother later lost her sight and her hearing, Sixkiller and her children assisted her in the final seven years of her life. In the Kerby Smith family, the mother believed her hearing loss resulted from an ear injury, and as she got older, she also lost her vision. Her family invented a system of hand shaking to communicate with the woman, perhaps drawing on the system that Cherokees without physical disabilities who lacked English language skills made use of to communicate.<sup>69</sup> Margaret Galcatcher, a blind resident at the Asylum in the 1880s, “did lots of work at the Asylum” according to the matron. Sah sah, a blind resident, and Creek Killer, a cripple, “formed a ‘cooperative association’ using each other’s strengths to visit the ‘ladies seminary’”<sup>70</sup> Family systems, adequate resources, and a community ethic protected disabled Cherokee Nation citizens from the same prejudices many disabled citizens in the states faced.

Families’ needs from the institution shifted over time. In 1877, the Steward reported the presence of eleven blind inmates and three labeled “insane” or “idiots” (probably the hearing and speech impaired), out of a total of twenty-two.<sup>71</sup> In addition to the sizeable blind population in the 1870s, the asylum also housed a significant number of amputees. By the 1890s, families had other institutional options. When Lura Rowland opened her school for the blind at Ft. Gibson, the Cherokee Nation appropriated \$300-\$600 annually for its

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<sup>69</sup> “Biography of Benjamin Franklin Stone,” 90: 505, IPP.

<sup>70</sup> *Cherokee Advocate*, 13 June 1877.

<sup>71</sup> Carl T. Steen, M.D., “The Home for the Insane, Deaf, Dumb, and Blind of the Cherokee Nation,” *Chronicles of Oklahoma* 21(October 1943): 402-406.

support.<sup>72</sup> Some Cherokee citizens opted to send their family members to this institution rather than the nation's asylum, where attention increasingly turned to the mentally ill.<sup>73</sup> The number of mentally ill people increased as attitudes toward the treatment of the insane changed. By the late nineties, the asylum employed male "sick nurses" who had previously been employed as prison guards.<sup>74</sup>

The insane were never the object of educational reforms like the deaf, mute, and blind people. Instead, their fate became aligned with legal and medical reforms. Unlike educational reforms, medical science in the nineteenth century, especially as it pertained to insanity, was fractured at best. Early nineteenth-century reformers encouraged moral therapies that discontinued or limited the use of restraints, focused on a positive "home" environment for institutionalized patients that included time outdoors, and established a routine for patients to wake, eat, exercise, engage in musical activities, and farm or perform other labor. They rejected earlier treatments of the insane that included bloodletting and chaining the insane indefinitely. Through proper treatment and moral therapy, they thought, insanity was temporary. The Civil War brought important change. Psychiatry and psychology were in their infancy, but war injuries led to the rapid growth of neurology as medical doctors explored treatments of nervous system injuries related to gunshot wounds. In 1874, Chicago neurologists began publishing the *Journal of Nervous and Mental Diseases*, and a

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<sup>72</sup> W. B. Richards, compiler, *The Oklahoma Red Book* (Tulsa: Press of Tulsa Daily Democrat, 1912), 198-199.

<sup>73</sup> The Cherokee Nation appropriated funds to Rowland's facility because some of its citizens were attending school there. W.C. Rogers Papers, R34 F60, Western History Collections, University of Oklahoma, Norman.

<sup>74</sup> Employee Pay, 1897 CNP Roll 18 f 1499; Employee Pay, 1898, CNP Roll 18, f1501, Record Group 1, Subgroup 12, University of Oklahoma Libraries, University of Oklahoma

year later, the American Neurological Society formed. Physicians began to question the ability to cure mental illness while they increasingly explained the cause of insanity as physical rather than moral.<sup>75</sup>

In the Cherokee Nation, asylum officials pursued treatments common throughout the United States. In 1877, expenditures included the purchase of “electrical apparatus” for use by Dr. Harris.<sup>76</sup> The use of electrotherapeutics was common throughout the nineteenth century: even the basement of the U.S. Capitol contained a room with electrical apparatus that officials used to stimulate themselves after lengthy sessions or long speeches.<sup>77</sup> Professionals and the public embraced the possibilities of electrotherapeutics as restorative and medicinal. Psychiatrists touted its use for the treatment of rheumatism, hysteria, neurasthenia, dyspepsia, and constipation. Although the asylum purchased the device, no evidence indicates how Dr. Harris used it or on whom. Electrotherapeutics was both cutting-edge and controversial: the Indian Territory Medical Association expelled at least one of its members because of his association with an “electric physician.”<sup>78</sup>

Another medical debate focused on the use of restraints. Asylum officials faced the practical reality of managing a soaring patient population at facilities built and staffed for smaller numbers. Most medical practitioners agreed that restraints presented a practical

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<sup>75</sup> Deutsch, 88-92, 95, 276.

<sup>76</sup> “To Hon. Charles Thompson” July 1877, CNP Roll 18 f 1428, Record Group 1, Subgroup 12, University of Oklahoma Libraries, University of Oklahoma

<sup>77</sup> Timothy Kneeland, *Pushbutton Psychiatry: A History of Electroshock in America*, (Westport: Praeger, 2002), xix.

<sup>78</sup> “The Indian Territory Medical Association,” Indian Territory Medical Association Papers, M310 I2 F3, Western History Collections, University of Oklahoma, Norman.



solution when a patient presented a danger to himself or others.<sup>79</sup> However, restraints also became a substitute for attendants. In the 1880s, Cherokee asylum officials justified the purchase of six straightjackets and two metal cages not only for inmate safety, but also for economic reasons. The trustees reported to Principal Chief Bushyhead that it had become “necessary during the past two years to have two substantial wooden cages constructed...for the safe-keeping of the more unruly and unmanageable inmates...to restrain them from harm.”<sup>80</sup> The cages also provided additional “protection to the plastering on the walls which had become injured and defaced.”<sup>81</sup> The purchase implies the failure of the asylum staff to keep pace with the changing resident demographics.

In its earliest years, the asylum encouraged the freedom and independence of residents both on and beyond its grounds. When seminary students visited the asylum and spent time with residents, Sah sah and Creek Killer formed a cooperative association of asylum residents to travel to the female seminary.<sup>82</sup> Residents also received leaves of absence from the asylum. Officials granted Josephine Rider a four- month leave and Arley Osage time away to visit with friends.<sup>83</sup> Dangers were inherent in such releases: Osage met an

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<sup>79</sup> Deutsch, 215, 218-221.

<sup>80</sup> “Officer Boards Trustees of Asylum for Insane, Blind, & Other of the Cherokee Nation October 1, 1885,” CHN 0067,

<sup>81</sup> Ibid.

<sup>82</sup> *Cherokee Advocate*, 13 June 1877.

<sup>83</sup> Quarterly Report Asylum for the Insane & Others Ending September 30, 1887, Officer Boards Trustees of Asylum for Insane, Blind, & Others of the Cherokee Nation, 1 October 1885, CHN 0067.

untimely death “while with some of her friends on 14 Mile Creek.”<sup>84</sup> Such tragedies ultimately led to stricter standards of release. In recognition of the difficulties many residents faced outside, asylum officials occasionally bent rules to readmit those who had left without authorization. One former resident, Goose, returned to the asylum after he had “forfeited his rights by leaving.” Instead of turning the old man away, the asylum admitted him illegitimately. He later died and was buried at the expense of the asylum.<sup>85</sup>

Residents sometimes managed successfully after their departures. After Rachel Cornsilk ran away, her neighbors reported that “she had greatly improved and that she would not return to the Asylum as an Inmate.” Little George, a resident of the asylum, courted a neighbor’s daughter, and with her mother’s approval, married and left the asylum. Dr. Adair reported to the council that Little George was able to find a home and “a person able, and willing to be burdened with his support.” The asylum, on paper, supported the residents’ return to their communities. After learning of Cornsilk’s improvement, asylum officials, “[l]et her go and [wished] joy be with her.” Adair called “attention” to “a pleasing first,” when Little George was able to sever his institutional ties. To Little George, the board and officials said, “go in peace, and joy go with you;” they blessed the union and “plac[ed] him upon a level with his neighbors.”<sup>86</sup> Little George and Rachel Cornsilk’s departures from the asylum represent less a success on the part of the institution as a success for Cherokee society. Institutional officials did not “release” these individuals because they had cured

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<sup>84</sup> “Officer, Boards, Trustees of Asylum for Insane, Blind, & Others of the Cherokee Nation,” October 1, 1885, CHN 0067.

<sup>85</sup> “Annual Report of the Blind and Insane Asylum for 1886,” CHN 0067, Tahlequah Records, Insane Asylum Records, Cherokee Nation Records, Muskogee Public Library, Muskogee, Oklahoma

<sup>86</sup> Quarterly Report Asylum for the Insane & Others Ending September 30, 1887, CHN 0067.

them. Instead, both individuals had established relationships—Cornsilk with her community and Little George with his wife--that made the institution unnecessary. The failure to form relationships jeopardized the ability of residents to live outside the asylum.

Despite praise for the residents' freedom and some residents' successful returns to their communities, the institution tightened its control of the residents. In 1890, the board took steps to limit residents' ability "to roam around the country as ha[d] been practiced in the years past."<sup>87</sup> These measures may have been for resident safety, but the change limited community interaction as well as the freedom of residents. Without access to the outside world, residents stood little chance of being released. Consequently, many of them met their end at the asylum, succumbing to a host of illnesses. Annie Young and Nelson Boston, for example, died of consumption.<sup>88</sup> William Patrick, who was blind and insane, "wasted away with general debility." Another resident died from "congestion of the Brain and complication of the bowels and spine."<sup>89</sup> Unable to help them further, the asylum provided coffins and a burial.

Just as their causes of death varied widely, those Cherokees who had been confined for insanity presented a wide range of symptoms and received various diagnoses. Some of the diagnoses reflected those common throughout the United States--fevers, acute mania, and epilepsy, which fell into the category of insanity throughout the nineteenth century.<sup>90</sup> In

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<sup>87</sup> "1890 Trustees Report," CHN 0067.

<sup>88</sup> *Cherokee Advocate*, November 1877; Insane Asylum, Thomas Lee Ballenger Papers, 1730-1968, Bulk 1835-1968, Ayer Modern MS, Newberry Library, Chicago, Illinois.

<sup>89</sup> "Annual Report, Office of the Medical Superintendent," 7 October 1884, CHN 0067.

<sup>90</sup> By the late nineteenth century, doctors recognized two classes of epileptics, the "quiet and peaceable" and the "noisy and violent." W.W. Godding MD, "Recognition of Classes of the Insane in Asylum Construction," *The Alienist and Neurologist* 7 (July 1885) n.p.

1884, asylum medical superintendent Dr. Adair reported the death of Ellen Garret, a Shawnee citizen of the Cherokee Nation, who was “insane and affected with Epileptic Spasms.”<sup>91</sup> Some patients fell into a general category of insane with little description or definition provided. Although the asylum failed to impart specific labels on everyone deemed insane, the *Cherokee Advocate* described specific cases of insanity. In 1887, the *Advocate* reported the suicide of former High Sheriff Samuel Sixkiller’s nephew. In response to a sudden bout of insanity, the young man threw himself into the path of an oncoming train.<sup>92</sup> The *Advocate* reported that one of the inmates at the Asylum “amuses himself by imitating the crowing of a rooster, which he begins at early dawn and keeps it up until day.” To the *Advocate* editor, the “poor man [was] hopelessly insane.”<sup>93</sup>

One of the reasons for imprecision is that not all Cherokees agreed on what constituted insanity. In the 1880s, an intermarried white man, Jim Connally, repeatedly entered the asylum. Connally lived in Vinita on a piece of land long associated with the ghosts of two horse thieves who made sounds resembling crashing dishes and pounding noises.<sup>94</sup> Even more powerful evidence of these ghosts was the dinner-plate size white lights that appeared at the horizon, moved mysteriously across the land, and then dipped out of sight. Rather than learn to live with presence of the spirits as Cherokees who resided in the vicinity had, Connally behaved menacingly toward his neighbors: he chased one young woman, lurked about another’s house, and caused a third woman to hide with her children in

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<sup>91</sup> “Annual Report of the Medical Superintendent,” 7 October 1884, CHN 0067.

<sup>92</sup> *Cherokee Advocate*, 9 March 1887.

<sup>93</sup> *Cherokee Advocate*, 9 February 1878.

<sup>94</sup> “Interview Joe J. Rogers,” 77: 382-390, IPP.

an inner room until he departed.<sup>95</sup> His behavior led to his repeated incarceration in the asylum. While there, he showed improvement, but, after returning home, his condition recurred. After one release, Connally had no sooner returned home than he began to chop down small trees on the property to barricade his road. Once he finished the small trees, he moved on to his orchards. To Cherokee people, cutting down a food source and harassing women and children, not seeing the ghosts, was evidence of insanity. Cherokees credited Connally's insanity to his unacceptable responses to ghosts, not to his imagining their existence. Cherokees knew they shared their world with ghosts. Seeing ghosts meant that Connally needed to placate them, not enter an asylum. But, of course, Connally, who soon disappeared, was a white man who could be expected to behave irrationally even in the face of an accepted occurrence.

Cherokees often conceived of mental health differently than whites, especially as it pertained to understandings of gender. Conditions and treatments at asylums in the United States tended to be gendered throughout the nineteenth century. Victorian psychiatrists often linked women's mental health to women's reproductive systems, including menstruation, pregnancy, childbirth, and menopause.<sup>96</sup> Doctors regularly diagnosed women with hysteria, but none of the women at the Cherokee asylum received this diagnosis. In 1878 following practice in the United States, the staff divided the building into two wards, one for men and one for women, and required residents to seek permission to visit with the opposite sex. In the steward's next report, he "regretted to say, that against these resolutions, there was a

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<sup>95</sup> "Interview with Stella Evelyn Carselowey (Crouch)," 22: 128-157, IPP.

<sup>96</sup> Peter McCandless,, "A Female Malady? Women at the South Carolina Lunatic Asylum, 1828-1915, *Journal of the History of Medicine* 54 (1999): 543-571.

general rebellion.” For Cherokees, normalcy included interaction and even intimacy between men and women, that is, except when women were menstruating.<sup>97</sup>

In 1891, the medical superintendent requested funds to hire a female nurse to attend to the five or six female residents who “do not appear to realize the propriety of personal cleanliness—the idea of attending to nature’s demands unaided never enters their minds.”<sup>98</sup> He almost certainly referred to menstruation. Historically menstruating women isolated themselves in special women’s houses, ate from special dishes, and bathed in fresh water before resuming their place in the community.<sup>99</sup> Other women in the household brought food, and both men and women took responsibility for fulfilling her duties.<sup>100</sup> Within a Cherokee worldview, blood belonged inside the body and when it flowed outside the body, it had the power to affect the health of the entire community. Cherokees who held to traditional beliefs about care of the sick, mentally ill, or infirm believed contact with menstruating or pregnant women could undo any treatment provided. In 1906, for example, when Nick Cummingdeer treated John Ragsdale’s wife for a snakebite, he specifically told Mr. Ragsdale not to permit any pregnant women to visit or the medicine would not take. Out of feelings of hospitality and neighborliness, Mr. Ragsdale allowed a pregnant neighbor to look in on his wife. Immediately after her visit, his wife took a turn for the worse that

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<sup>97</sup> “To Honorable C. Thompson,” 31 September 1878, CNP R18 F1437, Record Group 1, Subgroup 12, University of Oklahoma Libraries, Norman.

<sup>98</sup> “1890 Trustees Report,” CHN 0067,

<sup>99</sup> Hudson, *The Southeastern Indians*, 320-321.

<sup>100</sup> Theda Perdue, *Cherokee Women: Gender and Culture Change, 1700-1835*, (Lincoln: University of Nebraska Press, 1998), 29-30.

required Mr. Cummingdeer to return and repeat the treatment.<sup>101</sup> Failure of menstruating women to separate themselves jeopardized the health of all residents and, therefore, provided evidence of insanity. The public acknowledgement and sequestering of such women was as normal as was their social interaction when they were not menstruating.

Cherokees also did not necessarily distinguish between mental and physical illnesses or the cures appropriate for them. Consequently, the asylum often took on the appearance of a hospital. The Cherokees expected the medical superintendents to provide medical services to non-residents for fevers, bowel complaints, sore eyes, sore throats, pneumonia, and bronchitis. Sometimes superintendents found medical eligibility for admission difficult to determine. One, for example, wrote that “persons lame with old chronic ulcers of the leg frequently apply for admission...and we have doubts ...as to whether persons of this class are entitled under the law to a home in this Asylum.”<sup>102</sup> At other times, need for treatment was immediate, and the asylum provided emergency medical care. The *Cherokee Advocate* , for example, reported the amputations of B. T. Will’s leg in 1877 and fourteen-year-old Will Irons’s foot in 1888 at the asylum.<sup>103</sup> Alex Coon, sane and otherwise able-bodied, arrived with “one of those indolent ulcers” and died eight days later, a situation that obligated the asylum to pay for his burial in the asylum graveyard.<sup>104</sup> As a result of the additional burden such cases placed on the facility, the medical superintendent repeatedly called for clarification from the board for the admitability of patients with medical conditions who did

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<sup>101</sup> “An Interview with John R. Ragsdale,” 74:116-129, IPP.

<sup>102</sup> “Annual Report of the Medical Superintendent,” 7 October 1884, CHN 0067.

<sup>103</sup> *Cherokee Advocate*, 24 October 1877, 26 September 1888.

<sup>104</sup> “Annual Report of the Board of Trustees for Blind and Insane Asylum for years 1886 and 1887,” CHN 0067.

not fall under the specific categories of disabled and indigent.<sup>105</sup> Regardless of its official designation, however, Cherokees recognized the asylum as an institution intended to address public health, a designation that they interpreted broadly.

Because Cherokees regarded the institution as belonging to them, they visited residents frequently. Limiting visitors was common at many asylums for the mentally ill. Some reformers, including Dr. Benjamin Rush whom many considered the father of psychiatry in the U.S., advocated the complete isolation of residents from friends or family. Later reformers, including the Quakers who subscribed to a “home” setting for the mentally ill, rejected complete isolation from visitors.<sup>106</sup> The Cherokee Nation chose a middle ground: they did not isolate residents, but they did discourage visits that risked residents’ privacy and comfort and took advantage of institutional resources. In 1878, asylum officials requested that students from the seminaries discontinue their “frequent and unnecessary” visits to the asylum. Officials also discouraged family and friends of inmates from visiting. They reminded citizens that though the “institution was built with the public funds of the Nation,” it was not a “public house where they can come and eat and lounge at pleasure.”<sup>107</sup>

The asylum also struggled with whom to admit based on legal status. Funded by the Cherokee Nation, the asylum presumably was open to all Cherokee citizens but not to others. In 1893, the steward drew Principal Chief C. J. Harris’s attention to two “unauthorized inmates” and requested action to “relieve the Institution of the[ir] care and custody.” The first

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<sup>105</sup> “To Hon C. Thompson from Asylum Board,” 31 September 1878, R18, f1437, Record Group 1, Subgroup 12, University of Oklahoma Library, Norman, OK.

<sup>106</sup> Deutsch, 85, 92-96.

<sup>107</sup> *Cherokee Advocate*, 27 April 1878



was Perry Lee, a white United States citizen, “with no claims to citizenship whatsoever.”<sup>108</sup> Principal Chief Harris asked the United States agent to remove Lee from the asylum and place him in a federal facility. The agent replied that that no such facility existed, that the agency lacked the resources to provide for the man’s care, and that he had contacted Lee’s brother to encourage him to seek citizenship for Lee in Kansas where an asylum operated. The agent then requested that the Cherokee Nation, “as an act of humanity,” permit Mr. Lee to remain until his family could make other arrangements.<sup>109</sup> The Cherokee Nation responded “humanely” and continued his care. Like many Cherokee citizens who found care there, Perry Lee died at the asylum.<sup>110</sup> It is unclear what would have happened to Lee had the nation denied him services.

The second asylum resident was “Jonas, the colored adopted Cherokee freedman who is at the Asylum without ‘due course of law.’”<sup>111</sup> In Lee’s case, the issue of rights to services was clear--he had none--but Jonas’s case was more ambiguous. “Without due course of law” suggests a legal explanation for why his presence created a problem. An official admitted Jonas to the facility, so his initial admittance seems proper, but his eligibility for permanent residency appears to have raised questions. Questions over Jonas’s eligibility for asylum care coincided with efforts of the Cherokee Nation to exclude intermarried whites and freedmen from future claims to Cherokee land.<sup>112</sup> The Cherokee Nation also was struggling

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<sup>108</sup> Office of the Steward to Hon. CJ Harris, 30 September 1893, CHN 0067.

<sup>109</sup> From Dew M. Wisdom, U.S. Indian Agent to Hon CJ Harris, 7 August 1893, CHN 0067.

<sup>110</sup> “Annual Report, Office of the Medical Superintendent,” 7 October 1884, CHN 0067.

<sup>111</sup> “Office of the Steward to Hon. CJ Harris,” 30 September 1893, CHN 0067.

<sup>112</sup> Nancy Hope Sober, *The Intruders: The Illegal Residents of the Cherokee Nation, 1866-1907*, (Ponca City: Cherokee Books, 1991), 36-37.

to retain its sovereign right to determine membership and resented the federal government's imposition of a commission to determine which freedmen were entitled to inclusion. The Cherokee Nation was reluctant to acknowledge the citizenship of individuals who appeared before that commission rather than follow Cherokee procedures. Embracing racial segregation like the white South, the nation also resisted offering services to freedmen in the same facilities established exclusively for Cherokees. In 1889, rather than admit freedmen to the seminaries, the Cherokee Nation established a colored high school.<sup>113</sup> There is no evidence that Jonas personally had aroused animosity or suspicion, but his commitment occurred in a particularly charged racial climate. Jonas's initial admission to the asylum represents recognition by both Cherokees and African-Cherokees that national services extended to African-Cherokees, but it also points to the continued ambivalence of institutional officials to deliver those services as they would to other Cherokees and intermarried whites.

On many occasions, the nation turned individuals away from the asylum. In 1889, Judge Hubbell and Agent Bennett from Muskogee, Indian Territory, requested the Cherokee Nation take custody of an insane man who claimed to be Cherokee. Principal Chief Samuel Mayes, after investigating the man's claim to citizenship, refused their request, adding that, "today [there are] thousands of people claiming to be Cherokee that have not a shadow of a claim." Mayes was unwilling to place him in the Cherokee asylum, "unless [he was] thoroughly convinced that he [was] a Cherokee Indian." Nine years later, W. D. McBride, a hotel owner in Ft. Gibson, requested information from Principal Chief Mayes to determine

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<sup>113</sup> Daniel F. Littlefield, *The Cherokee Freedmen: From Emancipation to American Citizenship*, (Westport: Greenwood Press, 1978), 55-57, 94.

the “proper authority” to deal with a “crazy Negro” named William Biggs, whom McBride’s wife and daughter had awakened to find standing in their bedroom. Given the sensitivity of the situation, McBride worried that another episode could bring “fatal” consequences. McBride wrote that Biggs “was a state negro,” but he wondered if authorities at Ft. Smith could take charge of him.<sup>114</sup> Under Cherokee law, they could not. In 1893, Principal Chief C. J. Harris found himself confronted with the same problem in reverse when he requested the state of Missouri take responsibility for a demented man found near Echo, Indian Territory, on the grounds he was a former citizen of Missouri. The governor of Missouri denied any responsibility for the man on the basis that previous presumed residency in his state did not make the man a citizen.<sup>115</sup> The Cherokee Nation knew it bore no responsibility for non-Cherokee citizens and that the federal government had a responsibility to remove them. Resenting the continued exploitation of its resources by non-citizens, the nation sought remedies from state and federal authorities for U.S. citizens like Perry Lee and the Missourian who threatened the sustainability of the nation’s public health services.

The asylum was not without critics. The sister of resident Satiza complained that her sibling had received inadequate care, and trustee and steward William Hendricks charged that the facility was mismanaged and that the medical superintendent failed to attend properly to patients.<sup>116</sup> More dangerous to the institution and the nation that supported it was criticism from the Indian Territory Medical Association, inactive for several years before

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<sup>114</sup> W. D. McBride, Proprietor of McBride Hotel, Ft. Gibson, IT to PC Sam Mayes, 12 October 1897, CHN 0067.

<sup>115</sup> “State of Missouri Executive Department City of Jefferson,” 27 July 1893, CHN 0067.

<sup>116</sup> “Blind Asylum,” Hendricks Papers, Box H32, F27, Western History Collections, University of Oklahoma, Norman, OK.

reorganizing in 1889 with members from Oklahoma Territory, which lacked a professional association until 1893.<sup>117</sup> Many of the physicians in Indian Territory were employees of the railroads who did not have the same professional relationships with the Cherokee Nation as the physicians who originally organized the association.

Instead of advocating for the rights and sovereignty of the Cherokee Nation, the ITMA increasingly undermined the efforts of the Cherokee Nation and the other southern tribes to defend their rights. The ITMA's Committee on Medical Legislation promoted a Congressional bill that sought to apply Arkansas medical statutes to all of Indian Territory because, its members claimed, "we can expect little from the tribal governments and the sooner the matter can be placed with federal authorities the better."<sup>118</sup> Increasingly the association ignored the efforts of the Cherokee Nation to provide public health services to its citizens and instead called for the erection in Indian Territory of an insane asylum, a system of health boards, and regulations for medical practices. The goal was control over sovereign Indian nations and the establishment of services for the illegal residents of Indian Territory. In conjunction with others, they contributed to the destruction of the Cherokee Nation and its institutions, at least in the short term.

Facing allotment and dissolution, the Cherokee Nation "donated" the asylum facilities "together with ten acres of contiguous ground" for use as an asylum for "the Insane regardless of citizenship." In exchange for the lands and facilities, the United States agreed

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<sup>117</sup> "Oklahoma Territory Medical Association" *Encyclopedia of Oklahoma History and Culture*, Oklahoma State University, <http://digital.library.okstate.edu/encyclopedia/entries/M/ME004.html>, (accessed 10 January 2011).

<sup>118</sup> "The Indian Territory Medical Association," ITMA Papers, M310 I2 F3, Western History Collections, University of Oklahoma, Norman.

to fund the institution and “care for, free of charge, all the insane citizens of the Cherokee Nation.”<sup>119</sup> The Cherokee Nation thereby forced the United States to fulfill the nation’s obligations to its citizens. The asylum had served several purposes, and the inability of the nation to withstand the forces bent on its destruction does not diminish the successes of that institution. Most obviously, the asylum had taken care of the disabled when Cherokee families were no longer able to do so. The Cherokee Nation became a kind of extended family that supplanted the kin who traditionally had responsibility for maintaining the health of relatives, seeking treatment for those who fell ill, and caring for the disabled, elderly, and infirm. In that sense, the nation fulfilled the traditional roles of kin, but the asylum also represented the emergence of the Cherokee Nation as a modern nation state that promoted and protected public health. The asylum was a rebuke to those who challenged the competency of the Cherokee Nation to serve its citizens and evidence of the nation’s ability to exercise its sovereignty.

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<sup>119</sup> “Charter for Schools: Orphan, Insane,” T.L. Ballenger Collection B7 F285, Ayer Modern MS, Newberry Library, Chicago, Illinois.



## Conclusion

In April 2010 the Cherokee Nation dedicated the 1844 Supreme Court building, located in Tahlequah, Oklahoma, as the first of its tribally run museums; it began restoration of the National Prison in May. Principal Chief Chad Smith described the museums as “monument[s],” testaments to the continued sovereignty of the Cherokee Nation.<sup>1</sup> Tribal and local government officials, Cherokee citizens and Tahlequah residents, members of the press, and individuals representing historic preservation agencies attended both events. Leading up to these dedications, calls for artifacts went out to Cherokee Nation citizens and Oklahoma residents. Cherokee Nation Cultural Tourism staff contacted state and local museums to determine what objects might be held in their collections. Cherokee Nation researchers scoured archives throughout Oklahoma to gather information. Cherokee citizens performed most of the behind the scenes research, decision-making, site preparation, and marketing. The original institutions and their contemporary restorations as tribally run museums may seem like two very different national projects, but as Chief Smith articulated, they both represent the survival of the Cherokee Nation, “still a sovereign nation.”

Nineteenth-century Cherokee reformers established institutions as a national effort to provide protection and security to Cherokee people as clans and towns had done for previous generations. The Cherokee Nation did not abandon traditional ideas about caring for others

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<sup>1</sup> “Tribe Dedicates Cherokee National Supreme Court Museum,” 14 April 2010; “Tribe Begins Restoration of Cherokee National Prison Building,” 7 May 2010, *Cherokee Phoenix*.

when they were sick or disabled in spite of rapid culture change and removal; instead it offered national options for those unable to draw upon family or community as they had in the past. The orphan asylum recreated kin relationships among those living at the facility; it preserved the children's Cherokee identities; and it provided a range of educational and manual labor skills to sustain their lives within the Cherokee Nation. The prison reinforced the jurisdictional primacy of the Cherokee Nation over its citizens while it focused on restoring those imprisoned to productive lives. When the federal government pushed to dissolve the Cherokee Nation and disperse communal land-holdings among individual citizens, the Cherokee Nation pardoned its prisoners, "to give all an equal opportunity in caring for his share of the common property."<sup>2</sup> The release of the prisoners provided able-bodied men the opportunity to fulfill an older legal obligation to preserve common land holdings. The asylum for the deaf, dumb, blind and insane offered those unable to work in traditional capacities a home with a professional staff to provide for their particular disabilities. All of the institutions provided professional medical care. The Cherokee Nation offered Cherokee people alternative forms of care when families faced circumstances that prevented them from fulfilling traditional obligations.

The Cherokee Nation did not adopt institutions in a cultural vacuum. Officials understood how states and localities used these institutions. It was with this knowledge that the Cherokee Nation opened institutions similar in purpose to their non-Indian neighbors. However, these institutions were not replicas of the United States' facilities; they received financing from the Cherokee treasury, employed Cherokee people, preserved Cherokee language, and maintained a national Cherokee identity.

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<sup>2</sup> From the Executive Office of the Cherokee Nation, [January 1900 ?], f 2967, CHN 95.



These institutions belied the claims by advocates of allotment that Indian people were incapable of providing for themselves; the Cherokee Nation's institutions stood in stark contrast to conditions in Oklahoma Territory. When questioned in 1902 about turning over Territory institutions to the proposed state, Thomas H. Doyle, member of the Oklahoma statehood executive nonpartisan committee, responded, "We have no State Capitol, We have no penitentiary...We have no blind asylum."<sup>3</sup>

Oklahoma Territory offered little in the way of social services to the future state while the Cherokee Nation relinquished not only the land that it had governed but also the institutions that had cared for Cherokee citizens. After statehood, Cherokee County, Oklahoma, used the national prison as a county jail. The federal government assumed control of the Cherokee Orphan Asylum, which became a Bureau of Indian Affairs Boarding School. As for the mentally ill, the 1907-08 Oklahoma state legislature established the East Oklahoma Hospital for the Insane in Vinita, which had been in the Cherokee Nation. The hospital's first board of trustees included two former members of the Indian Territory Medical Association, Oliver Bagby and C. L. Long.<sup>4</sup>

At the dedication of the new Supreme Court museum, Dr. Bob Blackburn, president of the Oklahoma Historical Society, recognized the contributions of the Cherokee Nation to the state. "The Cherokee Nation legacy," he emphasized, "is important to all Oklahomans and especially vital to the people of the Cherokee Nation."<sup>5</sup> Social service institutions are a

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<sup>3</sup> Thomas H. Doyle, "Single Versus Double Statehood," *Chronicles of Oklahoma* 5 (1927), 266-286.

<sup>4</sup> W. B. Richards, compiler, *The Oklahoma Red Book* (Tulsa: Press of Tulsa Daily Democrat, 1912), 218-219.

<sup>5</sup> "Oklahoma's Oldest Public Building Set to Open as Cherokee Nation's First Wholly Owned and Operated Museum," 7 April 2010, *Business Wire*,

central part of that legacy. Poor relief, asylums for orphans and the disabled, and the penitentiary demonstrate both the persistence of traditional Cherokee values and the ability of the Cherokee Nation to adapt to changed circumstances. The institutions also reveal that the exercise of tribal sovereignty historically extended beyond the diplomatic front and into the lives of the Nation's citizens.

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56<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 1900, serial 4101.

56<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 1900, serial 4102.

56<sup>th</sup> Cong., 1<sup>st</sup> Sess., 1899, serial 3915.  
56<sup>th</sup> Cong., 1<sup>st</sup> Sess., 1899, serial 3916.  
55<sup>th</sup> Cong., 3<sup>rd</sup> Sess., 1898, serial 3757.  
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47<sup>th</sup> Cong., 1<sup>st</sup> Sess., 1881, serial 2018.  
46<sup>th</sup> Cong., 3<sup>rd</sup> Sess., 1880, serial 1959.  
46<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 1879, serial 1910.  
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43<sup>rd</sup> Cong., 2<sup>nd</sup> Sess., 1874, serial 1639.

43<sup>rd</sup> Cong., 1<sup>st</sup> Sess., 1873, serial 1601.

42<sup>nd</sup> Cong., 3<sup>rd</sup> Sess., 1872, serial 1560.

42<sup>nd</sup> Cong., 2<sup>nd</sup> Sess., 1871, serial 1505.

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40<sup>th</sup> Cong., 3<sup>rd</sup> Sess., 1868, serial 1366.

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