

CHEROKEE TRIBAL CITIZENSHIP: TRADITIONAL IDEAS AND NEW REALITIES.

AARON MASON
Northwestern Oklahoma State University

Who is a Cherokee Indian? What elements make up the Cherokee Tribe? Who should decide what criteria determines citizenship within the Tribe? These are but a few of the many difficult, probing and yet inter-related questions that Cherokees in Northeastern Oklahoma are wrestling with today. They are however, fundamental questions since they lay the foundations for the modern Cherokee tribe in terms of its tribal policies and external relations. On the surface, it might seem that determining the answers to such questions would be relatively simple. However, issues of race, the distribution of resources, ethnic identity, and conflicting views regarding history tend to make even the simplest of issues complex.

This article will examine the nebulous issue of citizenship in the Cherokee Nation from a historical and political perspective by comparing some of the Tribe's modern initiatives regarding citizenship reform with the more traditional assumptions which once guided tribal citizenship policies. In order to do so, a brief history of the Cherokee Nation will be presented. Commensurate with this, attention will be focused upon the traditional political structures of the Nation; namely how the clan system was eventually replaced by western styled courts and how the traditional

definition of citizenship evolved overtime. Hopefully, by comparing this transition from clans to courts, we may gain a better perspective of the modern Cherokee Nation's struggle with identity and thereby better enable us to see more clearly the complexity of the issues involved. The central focus of this debate concerning citizenship will focus upon the role played by the Cherokee Freedmen's descendants and their situation. The article will examine the arguments on both sides of the controversy and compare some of their respective claims. Finally, a few concluding observations will be made regarding citizenship in the Cherokee Nation and how this issue fits into the larger nature of contemporary federal Indian policy regarding the issues of paternalism versus self determination.

INTRODUCTION

The Cherokee refer to themselves as *Ani Yun Wia* or the principal people. This proud and powerful Nation occupied a large segment of the southeastern United States upon Spanish, British and French contact. In 1785, only two years after the formal conclusion of the revolutionary war, the Cherokee Nation signed the Treaty of Hopewell in South Carolina. The provisions of this treaty stated the willingness of the United States government and the American people to respect the integrity of the borders of the Cherokee Nation and further provided that "any non-Indian who resided or had attempted to settle on Cherokee land who did not remove himself within six months following the ratification of the treaty would forfeit, the protection of the United States, and the Indians may punish him or not as they please" (Sober 1991, 11). Thus, at least on paper, the United States government had promised to protect and respect Cherokee political sovereignty. However, more and more land sessions would be facilitated in the not so distant future. These would ultimately result in the reduction of the Cherokee land base to only a small section of territory in the extreme eastern portion of Tennessee and Northwest Georgia. By the early 19th century, land sessions and broken treaties continued to threaten the political existence of the Cherokee Nation.

Perhaps another and equally important transformation of the Cherokee Nation was also occurring at this time. In fact it had been an on-going phenomenon for at least 200 years prior to this time. This

phenomenon dealt with the evolution of the Cherokee Nation's traditional political and social institutions which would eventually contribute to changes in traditional definitions of Cherokee citizenship.

FACTORS CHANGING FROM CLANS TO COURTS

With the exception of the family unit itself, the single most important social, political and economic institution of traditional Cherokee society was embodied in the concept of clans. In antiquity there may have been more than a dozen or so individual clans. However, traditionally seven distinct clans have existed: the Wolf, Deer, Bird, Paint, Blue, Wild Potato and Twister (Rozema 1998, 9). Each of these clans were essential to the manner in which traditional Cherokee society was ordered and structured and their importance can be illustrated in a number of examples which range from spheres of the political, social and familial.

The traditional Cherokee clan system was so important due to the fact that it governed and facilitated most of the social, political and economic aspects of Cherokee life. One of the best examples of this concerned the definition of citizenship which was defined via membership in a clan. This was done at birth wherein clan membership was determined by one's maternal clan affiliation. Also, the process of adoption into Cherokee citizenship by non-Cherokees was traditionally accomplished by the clan structure. It had been at times quite common, even before contact with whites, for the Cherokee people to accept and absorb all types of people into their society. The only requirement which an individual was obliged to fulfill was adoption by a clan. As Theda Perdue states, "only those who belonged to Cherokee clans, regardless of language, residence, or even race were Cherokee" (Perdue 1998, 59). From these and numerous other examples, it is easy to observe that traditional Cherokee identity hinged greatly upon membership in a clan. In this regard Reed and Taylor state that "To be without a clan in Cherokee society was to be without rights, even the right to live" (Reed and Taylor 1993, 15).

The clan system was also pivotal for regulating the concept of legitimate marriage. In traditional Cherokee society, an individual's closest blood based relationships are determined by ones mother's clan membership. In this arrangement, it is relatively easy to establish ones kinship with others. In the Cherokee mind, to attempt to enter into the

covenant of marriage with a person of their mother's clan was unthinkable. In fact traditional Cherokee law regarding marriage strictly prohibited such behavior and declared it to be an act of incest which was an offense punishable by death (Reed and Taylor 1993, 17). Therefore, this clan based approach provided the mechanisms by which individuals formed basic family units and as such were invaluable to the maintaining of traditional Cherokee society, politics, culture and citizenship.

But as contact with non-Cherokees increased over time, changing domestic conditions impacted the clan system by altering the traditional status of women in Cherokee society. The cumulative effect of these changes tended to displace women and to render them powerless by excluding them from the traditional roles which they had once played within the clan system. This was especially true concerning food and changing eating habits. The traditional staple of the Cherokee diet was corn. "Selu" or corn was more than a multi-purpose food which could provide nourishment in a variety of forms. Rather, Selu possesses a deep spiritual significance to the Cherokee people which remains to this day. It relates to the Cherokee creation story of the first man and woman and connects the *Ani Yun Wia* to the Earth and their Creator. In this way, Cherokee women held powerful roles in Cherokee society and as such were vital to the successful facilitation and operation of clan life. Thus, the tendency of many Cherokee to begin adopting other foods was in itself almost a symbolic form of repudiation of the role of women in Cherokee society and what it meant to be Cherokee (Perdue 1998, 59). This in turn translated into a repudiation of the clan system upon which the concept of citizenship had been predicated. Further, the inclusion of non-Cherokee men into the Tribe who desired to control property and children without the consultation or consent of clan leaders seriously undermined the traditional powers exercised by women in the clan system of government which began to change the traditional system of a clan based definition of Cherokee citizenship. Eventually the effects of this erosion of traditional governing clan structures via the assimilation process would come to fruition and transform the Cherokee Nation's political institutions and rules governing citizenship forever.

EARLY CHEROKEE-BLACK INTERACTIONS

Complicating this situation, another pivotal citizenship issue with which the tribe had to deal from an early time involved the introduction of black slaves into the Cherokee Nation. This was an inevitable event since the Cherokees occupied the Southern US where slave holding was most likely to be found. As southern whites began to intermarry and become citizens of the Nation, it was likely that slaves would also enter into the Nation. But even prior to this, the Cherokees were already dealing with blacks as slaves. On May 4, 1730 “a delegation of 7 Cherokees accompanied by two English representatives sailed from Charleston to the man of warship *Fox*. On June 5th they arrived in London and on June 18th signed a treaty with the British which stated that “if any Negro slave shall run away into the woods from their English Masters, the Cherokee Indians shall endeavor to apprehend them and either bring them back to the Plantation from whence they run away or to the Governor.” The treaty also stipulated material rewards for the return of slaves such as guns, clothing and tools (Halliburton 1977, 8). Thus, there was little sympathy for blacks as slaves among the early Cherokees. They were seen largely as property and thus as something with which to bargain with the whites. This was quite different of course with other tribes such as the Seminole and the Creeks who more easily accepted and even embraced the concept of blacks as full citizens within their respective Nations.

As time passed, there was a greater willingness on the part of some Cherokees to accept the form of chattel slavery being practiced by whites. This was largely due to the aforementioned erosion of the formal clan structures and conventions of traditional Cherokee society. In fact by the late 1790s and early 1800's, many of the most well known and influential Cherokee families were slave owners. This list would include the following families: Ross, Vann, Foreman, Scales, Boudinot, Lowery, Rogers, Downing, Jolly, Adair and Waite. Of course slave holding in the Cherokee Nation was not universal. It tended to have parallels with slave holding among whites where wealthy individuals were involved. Statistics are interesting on this fact. An 1835, tribal census revealed that of the 16, 542 tribal members counted, there were also a total of 1,592 black slaves living in the Cherokee Nation. That roughly accounts for 1 slave per every 10 Cherokee citizens (Halliburton 1977, 57).

This is not to say that all Cherokees were pro slavery in their sentiments. To be sure, groups such as the Keetoowah Society, which was an organized group primarily composed of full bloods and traditionalists, often times opposed slavery and its adoption within the Nation. However, no serious active effort toward abolitionism existed in the antebellum Cherokee Nation.

Overall, attitudes toward slaves and their proper treatment among Cherokees were similar to whites in the south. In 1841, the Cherokee National Council passed the following acts and resolutions to control and regulate the institution of slavery within the Nation:

“Be it enacted by the National Council, That from and after the passage of this act, it shall be lawful to organize patrol companies in any neighborhood, where the people of such neighborhood shall deem it necessary; and such company, when organized, shall take up and bring to punishment any Negro or Negros that may be strolling about, not on their owners premises without a pass from their owner or owners.

“Be it further enacted that all masters or owners of slaves, who may suffer or allow their Negros to carry or own firearms of any description, bowie or butcher knives, dirks or any unlawful instrument shall be subject to be fined in a sum not less than 25 dollars.”

“Be it further enacted that from and after the passage of this act, it shall not be lawful for any person or persons whatever to teach any free Negro or Negros not of Cherokee blood or any slave belonging to any citizen or citizens of the Nation to read or write” (Halliburton 1977, 80-81).

Thus with many of the elements of southern white culture having been firmly assimilated into the fabric of Cherokee society, including the institution of chattel slavery, it is not too difficult to understand how a majority of Cherokees would eventually go on to support the southern Confederacy in 1861. Echoing these sentiments, the Cherokee Tribal Constitution adopted in 1839 excluded blacks from citizenship and made clear that the Cherokee Nation would exist as a political entity for Native Cherokees and intermarried and mixed blood whites. This was essentially the policy of the Cherokee Nation for the next 20 years. Then came the seismic shift which would forever alter the nature of federalism and its attendant relationships: the American Civil War.

POST CIVIL WAR ERA CITIZENSHIP ISSUES

As a result of its alliance with the Confederacy, the federal government felt justified in punishing the Cherokees and began an aggressive treaty making policy with the Cherokee Nation. The first action involved the settling of more tribes into Indian Territory. This could only be done by taking away certain lands from the Five Civilized Tribes and relocating other Indians, principally from the Great Plains like the Osage, Comanche, and Kiowa into Indian Territory. A second reason why many in Washington believed that new deals had to be made with the tribes concerned the presence of black slaves in the Indian Territory. The Lincoln administration had issued the Emancipation Proclamation of 1863. Subsequently, in late 1865 the 13th amendment abolished slavery forever “within the United States, or any place subject to their jurisdiction.” This meant that slavery was indeed dead in Indian Country including the Cherokee Nation. Many in Washington DC began arguing that the status quo of the antebellum Indian Territory could not be maintained in light of these new constitutional provisions. As a result, the Federal Government compelled the Cherokee Nation to agree to the provisions of the Reconstruction Treaty of 1866. The specific terms of the treaty were:

1. All Freedman and all Negros, who had been in the Nation at the beginning of the war who were now living in the Nation or who would return within 6 months from the date of the Treaty of July 19, 1866 and their descendants, were to be given the rights of Native Cherokees
2. Full Citizenship rights such as the right to vote was to be given to all male Freedmen of age except in cases where they had been convicted of a crime or had not resided in the Cherokee Nation at least 6 months.

On paper then, the freedmen had rights guaranteed by treaty; however, the devil was in the details. The major issue here concerned the time sensitive nature of where a particular Freedman was or had been or would be in case of a return to the Cherokee Nation. In other words, there was a residency requirement for the Freedmen to benefit from the provisions of the treaty. This was complicated by the fact that the war had created numerous white, Indian and black refugees. As a result, many Freedmen who were eligible for citizenship and its benefits

were often unable to return to the Nation within the prescribed timetable. Consequently, many legitimate Freedmen claimants were denied by the Cherokee authorities.

Another important issue at the same time involved the so called per-capita payments of the tribe. These per capita payments were funds derived from the leasing of grazing lands on the Cherokee outlet of Northern and Western Oklahoma. As such, periodically the Cherokee National Council made these payments to “Cherokees by Blood” or in other words, to Cherokee Nation citizens who were citizens by blood. This narrow definition made Freedmen, intermarried whites and a small group of Shawnee and Delaware Indians who had been incorporated into Cherokee Citizenship via a treaty with the United States in 1867 ineligible for these funds. The Freedmen protested this and viewed the Nation’s refusal to make the Freedmen and other tribal citizens eligible for the payments as further evidence of the Cherokee National Council’s unwillingness to abide by the provisions of the Treaty of 1866.

The intervening years between the civil war and the allotment of the Cherokee Nation prior to statehood under the Dawes Act were filled with a variety of legal challenges between the Freedmen and the Cherokee Nation. Many of these involved issues such as the per capita payments and whether the legality of rolls over which neither the National Council nor the Freedmen could agree could accurately be used as a basis for establishing citizenship within the Nation. Eventually, by 1906 a contested roll of approximately 4,900 Freedmen and their descendants had been compiled and submitted who were to share in the allotments of Cherokee lands. This number would be altered by the Supreme Court case of Cherokee Nation vs. Whitmire (1912). Those on the final roll approved by the Supreme Court and their lawful descendants would constitute the basis of the Cherokee Freedmen who were supposed to be guaranteed their rights in perpetuity.

For the Cherokee Nation and the Freedmen of the Tribe, the period of time between 1906 and the mid 1970’s were characterized largely by malaise and inactivity. Congress had effectively stripped the tribes of their most basic powers and essentially were operated by the federal government itself. In fact, Cherokee leaders were not even chosen by election of the Cherokee people but rather were selected by the President of the United States. This practice complemented the Federal Government’s posture of assimilation in the early 20th century and its

subsequent policy of termination of tribes in the 1950's. Eventually, as with all aspects of Federal Indian Policy, this policy of direct and overbearing federal intervention was replaced with a new and conflicting policy. This new policy, known as the Era of Self Determination, initiated in part by President Richard Nixon, sought to return to the tribes a greater sense and exercise of sovereignty over their own affairs. Much of the relevant legislation that exists today that seeks to empower tribes emerged from this era, including the Indian Education Act of 1972, the Indian Child Welfare Act of 1978 and the American Indian Religious Freedom Act of 1978.

THE MODERN CHEROKEE FREEDMEN ISSUE

The modern controversy involving the Cherokee Nation and the Freedmen descendants became reignited in the 1970's during the era of modern self determination for American Indian Tribes. In 1975, the Nation created a new constitution and in doing so modified the criteria for tribal membership to include only those persons who could trace their ancestry to an enrolled Indian ancestor listed on the 1906 Dawes Rolls of the Cherokee Nation. The term "Indian ancestor" is used since this includes not only Cherokees by blood but also incorporates those modern individuals who are the descendants of the Shawnee and Delaware brought into the Cherokee Nation in the late 1860's. As a result, only those with an Indian ancestor are eligible for modern tribal membership in the Cherokee Nation.

THE CHEROKEE NATION'S PERSPECTIVE

The Cherokee Nation argues its right to exclude non-Indian ancestors such as intermarried whites and freedmen based upon three separate but related criteria. The first concerns the notion of sovereignty and self determination. If a nation is sovereign, then by logical extension, it possesses the power to determine for itself its citizenship criteria. Such an assumption is compatible with contemporary Federal Indian policy as well as with numerous statutory laws and judicial precedents to support it. The second assertion is based upon the idea that the Congress has since 1866 imposed upon the Cherokee Nation a series of laws and treaty provisions which have had the effect of modifying the

original 1866 Treaty which the Freedmen claim as the basis of their right to enrollment and citizenship. From the perspective of the Cherokee Nation, these modifications which were exercised under the plenary power of Congress forever altered the original nature and meaning of the 1866 Treaty and as such permits the Cherokee Nation and any other Indian Tribes under similar circumstances to exercise the right of sovereignty to determine the nature of its citizenship policies. In essence, the tribe is arguing that membership in an Indian Tribe should require that one have an Indian ancestor. This does not preclude the possibility of modern day Blacks, Asians, Whites or Hispanics from being Cherokee Citizens. Indeed, most Cherokee Nation Citizens are of mixed races. However, they must have decent from an Indian ancestor listed on the Dawes Roll of 1906 to be a bonifide citizen.

Finally, the Cherokee Nation argues for the validity of this practice by saying that an Indian Tribe should be composed of citizens who share a common ancestry. They argue that the Cherokee Nation should be made up of the descendants of Cherokees and the incorporated Indian tribes of the Shawnee and Delaware. In short, an Indian Tribe should be composed of Indians by blood. The policy now in use by the Nation accomplishes this goal in that anyone today admitted to citizenship has an ancestor who was at least at the time considered to be an Indian by the commissioners and tribal authorities who worked to complete the final enrollment process at the dawn of the 20th century. These policies are designed, so the nation says, to return the Nation back to a more Indian based population. Such a notion is reasonable, particularly from the perspective of some traditionalists who might be inclined to support a more “conservative” or “traditional” approach to citizenship. However, at the same time, such a policy is also at odds with the traditional clan based system which did not view blood or race as a requirement or prerequisite for citizenship.

In order to implement this policy, the Cherokee Nation has for approximately the last 30 years been engaged in a series of legal contests both from within and without the tribal courts. For instance, in 1988, a Federal Appeals court ruled in the case of *Nero vs. Cherokee Nation* that the Cherokee Nation did indeed possess the right to establish its own citizenship requirements. Later, the Cherokee Nation Supreme Court ruled that the Tribe’s citizenship policy had been both legally and constitutionally accomplished. Then in 2003, came the case of *Vann vs.*

Kemphorne wherein the descendants of six Cherokee Freedmen filed a grievance against the US Department of the Interior in reaction to the Cherokee Nation's policy of excluding the Freedmen from citizenship. Eventually in 2006, the Cherokee Nation would pass a popular referendum among its voters that clearly stated the electorate's support of eliminating Freedmen descendants from citizenship. Since then, a number of legal battles in both federal and tribal courts have been fought to determine the status of the Freedmen descendants. Currently, the issue is unresolved and will ultimately be determined by the federal courts.

THE FREEDMEN'S PERSPECTIVE

What do the Freedmen descendants say to all this? There are many different objections and arguments that are often raised. However, for purposes of brevity and clarity, I will present two of the primary objections that are often pronounced from their side of the aisle.

The first often involves the charge that enrolled Freedmen had no Indian blood. Many Freedmen supporters claim that despite the often rigid social system of the Cherokee Nation which had in fact historically discriminated against blacks, there was mixing of Black and Cherokee producing mixed African-Indian progeny. This was not restricted to the Cherokee Nation. According to the Freedmen, there are many discrepancies and errors associated with the Dawes Rolls in general which calls into question their reliability. For example, the Freedmen claim the case of Ed Johnson is emblematic of this. Johnson is listed as a Chickasaw Freedman and **not** as a Chickasaw by blood. However, the application card that Ed Johnson used to become enrolled as a Chickasaw Freedmen lists his father as being Frank Colbert. Strangely enough, Frank Colbert was, according to Chickasaw records, a Chickasaw by blood and also is listed as Ed Johnson's former owner (Freedmen's Website). If these discrepancies are the case, then the facts detailed here would require that Ed Johnson was indeed a Chickasaw by blood. As such, he should be listed on the Dawes Roll not as a Freedmen, but as a Chickasaw by blood. The Freedmen supporters say that such problems are not isolated and as a result the Dawes Rolls are not an accurate means by which to establish an Indian identity which the Cherokee Nation says is its paramount objective.

Such criticisms of the Dawes Rolls are bolstered by other historical instances involving famous Cherokee Citizenship cases. One of the more well known of these concerns the Watts family of Arkansas. The Watts Family, a non Freedmen based family, claimed to be Cherokees by blood and had resided in the Cherokee Nation for over 30 years prior to allotment and the Dawes Act. However, when they applied for inclusion on the Dawes Rolls they were denied. The Watts Family believed that politics were at work as they had supported the Downing Party which had fallen out of favor with the more prevalent Ross Party or National Party in Cherokee politics. Such a charge of prejudice is not easy to dismiss when one considers the list of evidence they presented to the commissioners to be admitted to the Dawes Rolls. Among other evidence the Watts family presented in support of their claim to citizenship were “affidavits from 24 private individuals asserting that the Watts Family was of Cherokee blood; a certificate dated 5 November 1874 from John Vann, then Chief Justice of the Cherokee Supreme Court, stating that W. J. Watts had appeared before him and furnished sufficient proof to be admitted to citizenship; correspondence from officials of the federal government and the Cherokee Nation all containing statements proving their position; a letter from Cherokee Nation Chief Joel Mayes dated February 9, 1889; a letter containing the opinion of the US Attorney General A.H. Garland in his support” (Sober 1991, 78-79). In addition, Watts also had letters of support from Cherokee leaders such as Elias Boudinot and US District Judge Isaac C. Parker who personally vouched for his character and his Cherokee identity (Sober 1991, 67). Despite such credentials, the Watts family was denied admission to the Dawes Rolls while other claimants were admitted without the benefit of such extensive evidence. The Watts’ case causes many supporters of the Freedmen to suggest that various possible prejudices, be they political, racial or personal in nature may have indeed played a factor as to how the rolls were constructed. As such, they often contend that the Cherokee Nation’s policy of using the Dawes Rolls as the only means of tracing “Indian Blood” is not as reliable as the Nation claims.

Another major argument against the Cherokee Nation concerns the treaty rights issue. The Cherokee Nation claims among other things that the US Government has effectively modified the terms of the Treaty of 1866 which granted the Freedmen certain basic rights that could not be abrogated. As a result, the Nation claims the provisions pertaining to

the Freedmen are null and void. The Freedmen and their allies however argue that this line of reasoning by the Cherokee Nation is untenable. They contend that regardless of the US Government's actions, the Cherokee Nation is bound by the Treaty and cannot honorably repudiate any of its contents or provisions. In accordance with this argument, many Freedmen supporters such as David Cornsilk (2009) also argue that the labor of slaves who served in the Cherokee Nation essentially created an obligation on the part of the Cherokee Nation to accept as citizens of the Nation the descendants of those slaves.

In addition to and in a related sense, the Freedmen descendants also point to the Cherokee Nation's evolving policies toward the Shawnee and Delaware among their midst. As was stated earlier, in the late 1860's, these two tribes were incorporated into the body politic of the Cherokee Nation. While they were given the rights of full citizenship within the Cherokee Nation under the modern tribal constitutions passed since the era of self determination, many individual Shawnee and Delaware have traditionally voiced their desire to facilitate their own tribal governing structures and maintain separate land holdings apart from the Cherokee Nation. During the 1990's, a series of legal attempts by both the Shawnee and Delaware were undertaken to achieve this separation. Initially, both tribes met with differing results. The Delaware gained independence only to lose their separate status in a court battle with the Cherokee Nation. Recently, however, the Delaware did achieve a formal separate governance recognized by the United States. However, this recognition did not involve any land transfer for the Delaware Tribe of Indians and the DTI does not control its own land claims including individually allotted lands which are still held in trust by the Cherokee Nation. Some observers such as the Freedmen have interpreted the general reluctance of many Cherokee Nation leaders to oppose mutual separation from both of these tribes as being motivated by the desire to maintain under Cherokee control certain natural resources located on the lands that independent Delaware and Shawnee Nations would possess. Of course, the Cherokee Nation has argued that the granting of a separate status for these Delaware and Shawnee would lead to a disintegration of current Cherokee land holdings which could contribute to a dissolution, at least in part of the Nation. Nonetheless, this controversy has served to reinforce in the minds of some, such as the Freedmen descendants that for many in the Cherokee Nation policy regarding citizenship status is

driven less by concerns regarding authentic identity and more about monetary considerations. This seems especially clear in their minds when one considers the fact that as was previously demonstrated in this article, traditional definitions of citizenship relied on clan adoption and not any particular blood ties.

OBSERVATIONS ON PATERNALISM, AND ASSIMILATION

What can be made of this very complicated and confusing issue? Perhaps the major issue here concerns the ubiquitous and seemingly never ending problem of modern federal Indian policy, namely the conflicting forces of paternalism and sovereignty. This has traditionally been one of the most difficult obstacles to overcome for modern tribal governments in the era of self determination. The Cherokee Nation demands the right of self government and in accordance with that the right to determine issues such as citizenship. At the same time however, the Nation also wrestles with the realities of the modern world and that due to the competitive nature of the American economy as well as the complex relationships commensurate with federalism, the Nation requires a degree of intervention from the Federal Government to ensure the enforcement of its rights as a unique government entity unlike states or municipal governments. An example of this might include issues such as the enforcement of taxation exemptions that the Nation possesses. The plenary power of Congress to recognize the legitimacy of the Cherokee government provides its modern de-facto and de-jure legal status. With this protection however comes a price in the form of paternalism which sometimes rears its head in the form of interference as in the case of the Freedmen.

A clear manifestation of this “interference” albeit originally guised in benevolence concerns the inclusion of Indians as citizens of the United States. In 1924 when Congress declared all Indians to be US Citizens, many who supported this measure saw it as a means by which to give Indians greater equality with others. Paradoxically however, it also complicated the ability of a tribal government to effectively exercise true sovereignty over its members as well as its territory. This is well demonstrated in the contemporary case of the Freedmen. Lately, certain members of Congress have threatened to terminate funding for the

Cherokee Nation in response to the Freedmen issue. Why are some in Congress doing this? The answer concerns the notion that while the Freedmen have been considered Cherokee Citizens, they are undoubtedly US Citizens and are thus afforded the protections of the US Constitution which of course includes the Bill of Rights as well as the 5th and 14th amendments with their respective assurances of due process and equal protection of the laws.

The question therefore is, does the US Constitution apply such protections to the Freedmen or is this an internal matter for the Cherokee Nation's polity and government to determine for themselves? Some would argue that the Indian Civil Rights Act of 1968 might apply here and afford the Freedmen a remedy in that regard. This of course brings us back to the plenary power of Congress. Can the Congress, under this power, apply certain constitutional protections for American citizens in conjunction to their relationships concerning tribal governments in which they may hold membership as citizens? There are numerous precedents that can be mentioned here which would bolster each side of the argument but that is immaterial to our discussion here as my purpose is not to take sides. Rather, the purpose here has been to demonstrate that the case of the Cherokee Freedmen is best understood within the context of federal paternalism. The Federal government's involvement in the Freedmen's case is far from being just another issue with which tribal governments must contend. Rather, it is emblematic of the type of interference which historically has and continues to plague tribal governments.

Nonetheless, the idea of federal paternalism influencing the concept of Cherokee Indian identity and citizenship is alive and well. Perhaps, in some ways, this paternalism is to a certain degree perpetuated by the tribes themselves. Consider the modern situation in which a number of state governments have begun to issue "formal state recognition" to non-federally recognized tribes within their borders. This is significant in that this policy deals with Cherokee identity. Many Cherokee authorities have decried this process such as Wilma Mankiller. In a 1993 letter to Governor Zell Miller of Georgia, she stated that,

"Our concern deals with states creating Indian Tribes without specific recognition criteria. We pointed out how the United States Constitution gives Congress the "power to regulate Commerce with foreign nations, and among the several states, and with the Indian

tribes....” The US has a complex set of criteria and a federal acknowledgement process each tribal organization must undergo to determine recognition eligibility. Anyone even minimally versed in Indian legal or political affairs is aware that federal recognition of an Indian tribe is a very serious matter” (Western History Collection).

From this letter, it is clear that she voices her opposition to the idea of state recognition of Indian tribes. She does not believe that the states possess the constitutional right to engage in such a process. In conjunction with this idea, she voices her support for the idea that Congress has plenary power over Indian affairs and as such is the sole actor with the power to recognize tribes. While this makes sense in that she does not favor so-called “spin off Cherokee groups” and is based upon sound reasoning defending the integrity of the modern day Cherokee Nation, she is also, albeit indirectly, reinforcing the notion of paternalism in that she argues that the federal government must play an active role in determining the establishing of Indian identity.

If paternalism is objectionable, then why have the federal government act as a fellow gatekeeper in determining Cherokee identity? Of course there are clear reasons for this. However, it cuts to the heart of the citizenship issue in that in the minds of the Freedmen and others who have had their citizenship denied or revoked, that modern Cherokee identity can sometimes be based less upon traditional values and norms of citizenship (such as clans or adoption into the tribe without regard for blood ties) and more upon the capricious views of individuals. Indeed, one can certainly argue that if the Cherokee Nation is motivated by a desire to return the Tribe to a more traditional definition of citizenship, then its preoccupation with “Indian Blood” is perhaps misguided as the traditional definition was not concerned with race or biology. Rather, as it has been demonstrated, one’s inclusion into a clan notwithstanding issues of race or blood provided one their citizenship privileges.

Such a preoccupation with blood seems to be more in line with certain modern European nations such as Germany which requires those seeking full citizenship to demonstrate proof of German blood. Some have contended that the use of federally established rolls and or blood quantum provides evidence that modern tribal identity has been largely if not completely co-opted by the dominant society. They argue that for a modern tribal government to use what the federal government imposed upon it over 100 years ago as the basis for tribal membership represents

a departure from all traditional notions of tribal citizenship. They argue that these rolls and blood quantum were imposed by federal authorities at the beginning of the 20th century in the hope that by allotting Indian lands and by dividing them up among existing tribal members, the tribes would within a few generations become absorbed into the melting pot of American society.

However, others argue that tribes using rolls and blood quantum as a means by which to trace Indian decent have found an effective and fireproof way to maintain a perpetual Indian identity in the face of overwhelming assimilation. This is well evidenced in the differing enrollment requirements for the two federally recognized Cherokee bands in Oklahoma. Membership in the United Keetoowah Band of Cherokees requires a minimum blood quantum of $\frac{1}{4}$ Cherokee Blood. Conversely, membership in the Cherokee Nation only requires that one demonstrate descent from an Indian ancestor listed on the Dawes Rolls. Such a policy clearly makes the membership base of the Cherokee Nation not only larger, but also more stable and more likely to increase over time. Also, some Cherokee leaders argue that the traditional clan system mentioned throughout this work is not a feasible option by which to grant citizenship. This is due to the fact that the old clan structure has disintegrated over the years and many citizens are not able to determine their clan membership. Therefore, the Dawes Rolls constitute the most objective and therefore viable option by which to determine citizenship based upon Indian descent.

Finally, we can observe the possibility that today there are still many in contemporary society in general and some in Congress in particular who are hostile to the notion of expanded tribal sovereignty. Further, it should be remembered that these individuals, acting as strategic participants in the game of politics often times look for advantageous situations by which to strike a blow against tribes whenever and in whatever way they may find at their disposal. The issue of the Freedmen just might provide fuel for such an ideological fire. Under the guise of protecting the Freedmen descendants as American citizens from the excess of the Tribe, certain members of Congress have already threatened to reduce or entirely eliminate federal funding for the Cherokee Nation. An example of this concerns Congresswoman Maxine Waters (D) of California who has attempted to do so. Thus, the anger of anti-tribal forces may be rallied against the tribes in such a way that the Cherokee

Nation may never have foreseen. Such a conflagration might be directed against other tribes in a preemptive fashion as well and unleash a backlash of anti-tribal legislation from Capitol Hill. In this way, the Cherokee Nation might be following a policy of “cutting off its nose to spite its face.” On the other hand, the advocates of tribal sovereignty within the Cherokee Nation can be understood when they claim again, that this is the proper time and proper place for the Tribe to assert itself.

Clearly, the Cherokee Nation has come a long way from clan to courts in terms of defining citizenship. But in the end, the issue of federal paternalism coupled with a difficulty in reconciling traditional views of polity and identity with modern realities of the Cherokee Nation’s population seems to constitute the central problem in constructing the concept of modern Cherokee citizenship. Nonetheless, so long as the tribes rely upon federal recognition, they will always have to contend with paternalism in all of its oppressive manifestations be they in the form of regulations on the disposition of tribal properties, interference in dealing with the creation of tribal laws or the determination of tribal membership.

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