

SOVEREIGNTY THROUGH ASSIMILATION: THE FEDERAL CONSTITUTION OF THE
CHEROKEE NATION

By

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ABSTRACT

This dissertation examines federal Indian law of the late nineteenth and twentieth centuries as constitutive rhetoric. Focusing specifically on the Cherokee Nation, I argue that the word “tribe,” as used in three federal acts, ascribed three different meanings to the people described by the term. With the passage of each act, Cherokee identity was federally manipulated, as the United States government integrated members of the Cherokee Nation into the American economy.

First, the Curtis Act, imposed with little input from tribes themselves, dissolved Indigenous national governments in Indian Territory – now the state of Oklahoma – and defined the citizens of those nations as individual landowners, identities significantly different from the collective tribalism that had previously dominated in Indian Territory. Almost four decades later, the Oklahoma Indian Welfare Act imposed yet another identity on Indigenous Oklahomans, as they were allowed to reorganize, but only under entrepreneurial identities. Finally, in 1970, the Principal Chiefs Act allowed Oklahoma’s tribal collectives to engage in tribal elections, allowing a democratic citizen identity, but only under the auspices of the federal government.

I conclude with implications for the modern Cherokee Nation’s tribal sovereignty, and for the continued use of imposed constitutive rhetoric by the United States government in its relations with tribal peoples worldwide.

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I find it difficult to think about this dissertation outside the context of geography. Everyone who helped make this project a reality is associated, in my mind at least, with a particular place. To acknowledge them requires a mental journey, from north to south, which simultaneously takes me closer to my personal connection to the topic of this study – the creation of Indigenous identity by the United States government.

The journey begins in Lawrence, Kansas with my academic adviser, Dave Tell. Having worked in journalism for well over a decade before beginning my doctoral work, my critical attention tends to focus on things a bit differently than Dave's. That previous career also left me with a tendency to double-space at the end of every sentence – a habit which, I'm sure, annoyed Dave to no end. However, we both seem to be blessed/cursed with an ability to make connections between people, places, and things that most people would overlook. Dave has taught me to utilize theory to present those connections in ways that provide enough structure to, hopefully, make them more visible to an academic audience. He has also been critical of my *overutilization* of the same theory. For both, I am deeply grateful. My often unannounced visits to his office always began with a promise to take up no more than ten minutes of his time. It's a promise I've never kept, but I hope he's had as much fun advising this project as I've had writing it.

All of the members of my dissertation committee provided significant input into this project, perhaps in ways they don't even realize. This is the most recent iteration of a paper that began in a seminar taught by Jay Childers several years ago. That original paper was quickly and haphazardly written, and utilized inappropriate and outdated theory. Dr. Childers was kind enough to point out *all* of those shortcomings, but he also urged me to continue my examination

of the relationship between the federal government and the Cherokee Nation. I hope he will find the present study more appropriate. Like many debate coaches, Scott Harris has such a broad range of knowledge that he would be an asset to *any* academic committee. I was fortunate enough to have him serve on mine, where he provided much-appreciated insight into – not only where changes could be made – but also into what was blatantly missing. Ray Pierotti’s knowledge and advocacy of Indigenous lifeways and their integration into academia is unparalleled among University of Kansas faculty. His assistance and encouragement in this, and several more of my academic projects, have been greatly appreciated. Donn Parson once admonished me, in writing, for neglecting the ethical implications of rhetorical theory and rhetorical exigencies. Throughout the research and writing processes of this dissertation, his words have echoed in my mind, and I hope their assimilation into my academic work is always evident.

This dissertation was set back at least a year by a badly broken ankle. Two doctors -- Pavika Saripalli, my general practitioner; and Matthew Kneidel, my orthopedic surgeon – made extra efforts to get me back on my feet in time to conduct the necessary archival research for this project. Both of them are true physicians, treating the whole patient as well as the afflicted area, and I can’t thank them enough. Moreover, a 2013 summer research fellowship from the University of Kansas Graduate School was awarded to me less than a month after I was able to start walking again. That financial assistance definitely helped thaw what had been a long, cold, crutch-borne winter.

Moving into Oklahoma – indeed, into the very heart of the Cherokee Nation – I find Vickie Sheffler, University Archivist, and Delores Sumner, Special Collections Director at Northeastern State University in Tahlequah. While I’ve known both of them for over twenty

years, it wasn't until I undertook this dissertation that I realized how understated their professionalism and organizational skills truly are. Tom Mooney, archivist at the Cherokee Heritage Center, is another Tahlequanian I've known for decades. His assistance with the W.W. Keeler archives provided what I think turned out to be the most fascinating material examined in this project.

Moving westward, out of the Ozark Mountains and into the Great Plains, I come to Stillwater, Oklahoma. David Peters and Kay Bost made my archival research at the Oklahoma State University Archives and Special Collections so much fun, I didn't even mind their occasional comments related to the burgeoning OSU/KU basketball rivalry. Just an hour or so south, in Norman, Robert Lay had practically all my work at the Carl Albert Center Congressional Archives on the University of Oklahoma campus done for me by the time I got there. All I had to do was collect it, and find even more topics to research later.

Two hundred miles to the southeast of Norman, I reach the terminus of my road trip, Wister, Oklahoma, where many of my relatives have lived for well over a century. While noteworthy contemporary family members are far too numerous to list, one Glenn in particular must be acknowledged. W.P. Glenn, my great-grandfather, lived most of his life in Wister. He was born in Indian Territory in 1895, and died in the state of Oklahoma in 1989. Fluent in the Choctaw language, he spoke of never having played with white children until he was eleven years old – the same year, 1907, that the Five Civilized Tribes were dissolved and Oklahoma statehood realized. Despite his red hair and Scottish name, he could make that claim with absolutely no irony. To him I owe, not only my very existence, but also my personal interest in the ways governments shape the lives of individuals. More than anyone else I've known, he lived the transformation I write about in this essay.

CONTENTS

Acknowledgements.....	iv
Introduction.....	1
Chapter 1. Cherokee Landowners.....	18
Chapter 2. Cherokee Entrepreneurs.....	42
Chapter 3. Democratic Cherokee Citizens.....	69
Conclusion.....	98
Bibliography.....	110

Introduction

In 1885, United States Senator Henry Dawes of Massachusetts spoke at the Lake Mohonk Conference in New York about a recent trip he had taken to Tahlequah, Indian Territory, the capital of the Cherokee Nation. The conference was attended by East Coast humanitarians who met at the lake annually to discuss “the Indian problem” – the assimilation of the people Indigenous to the lands claimed by the United States into a Euro-centric American identity (Debo vii). According to Dawes’s speech, the Indian problem was, primarily, one of economics. The Cherokees, he said, were doing quite well. There was no poverty, every family had a home, and the tribal government had built a capitol building as well as schools and hospitals. Yet, he continued, “the defect of the system was apparent” (22). Because all lands in the Cherokee Nation were owned in common, tribal members had no incentive to better themselves: “There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates, they will not make much more progress” (22).

Two years later, Congress passed an act bearing Dawes’s name, the Dawes Severalty Act of 1887, which allotted 160 acres to heads of American Indian families, 80 acres to unmarried adults, and 40 acres to children. The remaining land was opened to homesteading whites. The Cherokee Nation, along with the Choctaw, Chickasaw, Seminole, and Creek Nations, known collectively as the Five Civilized Tribes because of their early adoption of many Euro-American practices, were exempted from the 1887 Dawes Act. All five tribes were geographically located in Indian Territory, or what is now the eastern half of Oklahoma. All had democratic forms of government based on the U.S. federal system, but they owned their respective tribal lands communally. However, an allotment process similar to that created through the Dawes Severalty

Act was extended to the Five Civilized Tribes on June 28, 1889, with the passage of the Curtis Act (32-33). Passed without the consent of the five tribes affected (Johnson 17), the legislation divided the communally owned land of the tribes among the individual members. It also stipulated that no governmental officer of any of the tribes should, after July 1, 1898, “have any authority whatever,” (Curtis Act 100). Thus, governance by Indian law in Indian Territory was abolished, as the federal government prepared what had been known as Indian Territory to become the eastern-most section of the state of Oklahoma. Members of the Five Civilized Tribes became, by federal fiat, land-owning residents of the United States and Oklahoma (Debo 32).

The Curtis Act was the first in a series of laws that, from 1898 to 1970, exerted federal power over the Five Civilized Tribes. Each act cast the word “tribe” in different light, requiring different behaviors of the individuals thus described. However, these ruptures in the legislative presentation of “tribe” share a commonality, in that they position the referent Indigenous peoples in particular positions within the dominant Euro-American culture.

In this essay, I will argue that three federal legislative acts – the Curtis Act of 1898, the Thomas-Rogers Act of 1936, and the Principal Chiefs Act of 1970 – present the people objectified by the term “tribe” as, respectively, landowners, entrepreneurs, and finally, democratic citizens. In effect, the laws constituted tribes as American citizens with particular roles within a capitalistic economy. Though the acts all emanated from the same legislative body, the style, or word choice, differed between them. For example, the Principal Chiefs Act of 1970, unlike the two previous acts, had the word “Indian” nowhere in its text. Yet the word “tribe” operated as a lexical thread, binding all three acts together as directives of authority over the same groups of people – Cherokees, Choctaws, Seminoles, Creeks, and Chickasaws. It is my contention, however, that, in each law, “tribe” designated three very different definitions of the

people it referenced. The word, as presented in federal legislative discourse, *defined* the people thus described as three very different, but related, entities throughout the twentieth century.

Michel Foucault argued that discourse – the “practices that systematically form the objects of which they speak” (*Archaeology* 49) – does not possess a priori meaning that adheres to it indefinitely. Rather, discourse is inherently historical, and “must be treated as and when it occurs” (25). Discourse is composed of statements – words, fragments, sentences, etc. – each of which is a function of existence “that properly belongs to signs and on the basis of which one may then decide, through analysis or intuition, whether or not they ‘make sense’” (86). That is, discourse acts on the referent to which it is applied to form an understanding of that referent, and that understanding may be determined by a close examination of the texts in which it appears, although that formation of understanding may not be consistent through time. Such textual examination “transforms *documents* into *monuments*” of history, providing a view into a specific point in the past – that at which a document was drafted – thus giving a more lucid understanding of what the objects of that discourse really were, to the scribe(s) thereof. This malleable nature of discourse has, Foucault argued, resulted in “the proliferation of discontinuities in the history of ideas . . .” (7). It is just such a discontinuous application of the discursive statement “tribe” that this study takes as an object of examination.

I contend that the act carried out by the term “tribe” in its various iterations of federal discourse through the twentieth century was a creation – a constitution – of a group of people, as particular kinds of actors in a particular society. As Michael McGee and Maurice Charland demonstrated, constitutive rhetorics – those which bring a people into being – are “oriented towards action” (Charland 143). Such rhetorics provide people with “an objective existence defined by their collective behavior” (McGee 241). As the three federal documents at hand are

all laws – discourse enforceable through the power of government – they comprise a unique genre of constitutive rhetoric, in that they delineate what actions may, or may not, be taken by people who exist as a “tribe.” James Boyd White argued that the true nature of law is constitutive, in that it establishes a conversation by which:

“we” can determine what our “wants” are and should be. . . . The law should take as its most central question what kind of community we should be, with what values, motives, and aims. It is a process by which we make ourselves by making our language. (698)

As will be demonstrated herein, the three federal laws examined did exactly that – expressed what kind of community should exist in American society. The ethics of such constitutive rhetoric come into question, however, in that each of these laws was imposed on communities that were defined into American citizenship, not by choice, but by federal power. One day they were citizens of one of five Indigenous nations, living in Indian Territory; the next day they were Americans, living in Oklahoma, enabled and restricted in their actions by federal law that determined to “what values, motives, and aims” they should aspire (698).

This power of the federal government to constitute tribes in an image of its own choosing casts a long shadow over the concept of tribal sovereignty, which, even today, is of utmost concern to Indigenous Americans. As Yuanchung Lee observed, “[t]alk of tribal *sovereignty* is rife in the modern world,” though “the exact *extent* of an Indian tribe’s sovereign power is the subject of much heated debate” (347). Vine Deloria contended that federal power over Indigenous tribes continues to be viewed critically through a “persistent attitude of Indians that they have superior rights to national existence which the United States must respect” (*Behind* 20). Viewed against the background created by previous scholarly attention to the concept of

sovereignty in general, my analysis of federal/Indigenous relations illuminates the relatively unexamined *rhetorical* aspect of sovereignty – a people’s ability, or *inability*, to define themselves.

Giorgio Agamben has noted that much Western thought about the concept of sovereignty has been based on the writings of the fifth century B.C. poet, Pindar, who wrote in Fragment 169 of *nomos*, or law. Pindar posited that “*nomos*, sovereign of all,” is simply the possessor of “the strongest hand, [j]ustifying the most violent” (*Homo* 30). Thus, Agamben contends, society – ruled by law – and nature – ruled by the strongest – compose something of a Möbius strip, in which the two sides merge into one another so that they become indistinguishable:

Sovereignty thus presents itself as an incorporation of the state of nature in society, or, if one prefers, as a state of indistinction between nature and culture, between violence and law, and this very indistinction constitutes specifically sovereign violence. (35)

Sovereignty then, according to the Pindarian philosophy, is a veil of civility, placed over what is, in fact, nothing more than humanity’s implementation of its most animalistic tendencies – to subdue and/or destroy the weak. As commonly understood, the relationship between the U.S. government and Indigenous tribes is handily explained by the Pindarian concept of sovereignty (Miheuah 29). With superior weaponry, Euro-Americans possessed “the strongest hand” and inflicted the most violence, thus bringing Indigenous peoples of the continent under the control of the sovereign, the United States.

Yet, as noted above (Lee; Deloria *Behind*), tribal sovereignty is still a salient issue among Indigenous Americans. Is this modern sovereignty discourse simply a nostalgic yearning for

centuries past, before the imposition of U.S. violence/sovereignty over the tribes? In solidarity with Richard Scott Lyons, I would argue that it is not. While the Pindarian sovereignty of violence is indisputable, given the historical record, sovereignty also, as Lyons argued, possesses a strong rhetorical element. It is an ability to determine “communicative needs and desires,” to decide “goals, modes, styles and languages of public discourse” (449-50). In this examination, I augment Lyon’s concept of sovereignty to include the ability of a people to constitute themselves, to bring themselves into being, culturally and governmentally.

As will be demonstrated in this essay, the powers attendant to this particularly rhetorical view of sovereignty were assumed by the federal government *over* the Five Civilized Tribes in the earliest discursive era I will examine. For those tribes, the Curtis Act of 1898 was the first legal mechanism of what Angie Debo called the “second stage” of federal/Indigenous relations – after the “Indian Wars” of the nineteenth century were over and the federal government became less concerned with violence *vis-à-vis* Indigenous tribes, and more concerned with “economic absorption” of those tribes (viii). Foucault’s examination of the relationship between knowledge and power provides insight into this minimization of government violence that, as demonstrated by his observations, was not exclusive to the U.S. government’s treatment of Indigenous peoples.

According to Foucault, the eighteenth and nineteenth centuries were marked by an increase in the accumulation of social scientific knowledge by psychiatry, criminal anthropology, criminology, and other social scientific disciplines, that served to change the way penal systems in Europe and America operated. “[T]he knowledge of the criminal, one’s estimation of him, what is known about the relations between him, his past and his crime, and what might be expected of him in the future” was codified and utilized as a determination of punishment (*Discipline* 18). But, Foucault continued, power and knowledge have a symbiotic relationship by

which “there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations” (27). Knowledge of the individual allowed governments to gain the ability to *transform* that individual in ways that aligned him or her with norms that were established through the gathering of knowledge of large numbers of individuals. This process was not exclusive to the penal system of the era, but existed across society as various knowledge-generating disciplines – “the family and the army, schools and the police, individual medicine and the administration of collective bodies” – became “general formulas of domination” over the bodies of which they acquired knowledge (137-9, 140). Thus, such bodies of knowledge served to “discipline” individuals, to constrain and direct, to bring them under the minute conduction of government. This particular mode of power, which Foucault called “bio-power” was far more productive than previous violent methods of punishment, for “[h]ow could power exercise its highest prerogatives by putting people to death, when its main role was to ensure, sustain, and multiply life, to put this life in order?” (*Will* 138). Thus, this relationship between knowledge of the individual and power – this bio-power – became productive. As it coincided with the industrial revolution, it was “without question an indispensable element in the development of capitalism” (141).

Bio-power operates on the individual body, and is concerned with “its disciplining, the optimization of its capabilities, the extortion of its forces, the parallel increase of its usefulness and its docility” (139). Yet an attendant effect of this precise application of power is a broader result that serves to regulate populations “through infinitesimal surveillances, permanent controls, extremely meticulous orderings of space, indeterminate medical or psychological examinations . . .” (145). Such technologies gave rise to “comprehensive measures, statistical

assessments, and interventions” aimed – not simply at individuals for their own improvement – but at an entire social body, or population (146). Populations, Foucault argued, came, beginning in the eighteenth and nineteenth centuries, to exist as objects of bio-political technologies, “on which and towards which mechanisms are directed in order to have a particular effect,” but also as political subjects in ways that were “absolutely foreign to the juridical and political thought of earlier centuries . . .” (*Security* 42). The objectifying bio-political control of populations, through technologies that take assessment of individual members of those populations and subsequently act upon them, is of utmost importance to the study at hand. The population as a political subject will, as demonstrated in the subsequent chapters, become increasingly critical within the political context studied here, as the twentieth century came to a close.

As tribes across the United States were stripped of their governmental powers by either the Dawes Severalty Act of 1887, or the Curtis Act of 1898 – which applied only to the Five Civilized Tribes – such Foucaultian codified knowledge as described above, or “rolls,” of individual tribal members’ characteristics were established by agents of the federal government. The Curtis Act mandated that agents “make such rolls descriptive of the persons thereon, so that they may be thereby identified” and to hold anyone who refused to sign the rolls in contempt of the U.S. government (99). This stipulation, providing for federal, not tribal governmental, punishment for individuals refusing to submit to the knowledge-generating practices of the federal government is a blatant illustration of Foucault’s point when he claimed, “[m]ajor dominations are the hegemonic effects that are sustained by all these confrontations [in which the knowledge/power dynamic is implemented]” (*Will* 94). Once such rolls had been established, the then-accepted social scientific understandings of race-based ability to operate in American society were applied, so that, depending on each enrolled person’s physical appearance, the

amount of Indigenous ancestry that person was deemed to possess was utilized to determine what actions that person would be allowed to undertake, vis-à-vis his or her allotment. This enrollment process, which will be described in greater detail in Chapter One, was implemented throughout the twentieth century to exercise federal control over Indigenous peoples. Moreover, it continues, to this day, to serve a disciplining, dominating purpose over Indigenous lives by the federal government. Thus, the U.S. government's knowledge of each individual person, as derived through the enrollment process, served to create populations – formerly Indigenous tribes – under the surveillance and domination of the federal government.

During the embryonic stages of this essay, as I was collecting archival documents in the former Indian Territory – now Oklahoma – I was often asked by friends, archivists, modern tribal officials and others who at least feigned interest in my research, why my study centered on the term “tribe,” rather than more popular discursive units of study such as “Indian” or “Native American.” Certainly, those terms are worthy of analytical examination, but my concern is how the three federal laws examined in this essay operate – how they discursively *do things* to people. The individual Indigenous persons affected by the laws, along with their individual codified characteristics, certainly operate as apparatuses of the disciplining domination Foucault discussed. But what is *created* by each law, what is ultimately regulated by the federal government *through* those apparatuses is a population, or, in the federal government's own words, a “tribe.” The effects of each act on any one Indigenous American would certainly have great import to *that* individual, yet it would still be minimal in the total vast realm of U.S. governance. But, as each law acted on *all* individuals within particular Indigenous collectives, those collectives took on new characteristics as American citizens, federally disciplined through technologies that operated upon each one of them, enabled and restricted in the actions they

could take, and thus constituted as populations deemed economically appropriate by the U.S. government. This economization of Indigenous America, and its concurrent minimization of federal violence, was well-illustrated in 1879 by Captain Richard Henry Pratt, a participant in the post-Civil War “Indian Wars” of the Great Plains:

A great general has said that the only good Indian is a dead one, and that high sanction of his destruction has been an enormous factor in promoting Indian massacres. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him and save the man [sic] (Bordewich 282).

To some degree, Pratt’s views on Indigenous Americans were implemented in subsequent federal policy. Yet, the “Indian there is in the race” was not so much killed as utilized. It was disciplined through measurement and codification of “Indianness” to serve as a technology to integrate populations of Indigenous Americans into the American economic system by [re]constituting those populations as something other than what they had been before. As will be demonstrated herein, the twentieth century did bring a gradual economic absorption through this constitutive effect – yet also a gradual “resovereignization” – for one tribe in particular, the Cherokee Nation.

All three of the federal acts under examination applied to all of the Five Civilized Tribes. However, my focus will be predominantly on the Cherokee Nation for two reasons, both of which pertain to the availability of relevant texts. First, the Cherokees, relative to the other four tribes, have been actively engaged in highly publicized political entanglements with the U.S. government for a longer period time, well into the twenty-first century. An ongoing U.S./Cherokee dispute will, in fact, be discussed at some length in the third chapter of this essay.

Second, the Cherokee Nation operated – even before the 1839 forced removal of the tribe from their ancestral homeland in what is now the southeastern United States to Indian Territory, or modern-day Oklahoma – the only newspaper press operated by an American Indian nation in the nineteenth and early twentieth centuries. Several of the texts I will be examining were published in that newspaper, *The Cherokee Advocate*, and a subsequent Cherokee publication, *The Cherokee Nation News*.

In the following sections, I will first examine previous rhetorical criticism of the U.S./Indigenous relationship. Then, I will preview each of the three eras within the twentieth century that are marked by differing implementations by the U.S. government of “tribe” and its variations.

Literature Review

This analysis differs from previous rhetorical analyses of texts pertaining to American Indians in that it is primarily concerned with – not Indigenous reactions to federal actions –but rather the rhetorical creation *of* tribes themselves *by* the federal government. A seminal work of rhetorical analysis of American Indian protest rhetoric was offered by Randall Lake, who focused on messages created by members of the activist American Indian Movement, or AIM, in the 1970s. Lake argued that, while rhetoric by the group may have had minimal effect of the U.S. government or the American public, it served to enact what he calls “Red Power,” or agency of American Indians in the face of the overwhelming colonizing force of U.S. federal might. According to Lake that such rhetoric – while appearing to fail in bringing about change in relations between the federal government and American Indian groups – succeeded as “a form of ritual self-address” (*Enacting* 141) in creating in-group identification among American Indians.

Continuing in the examination of rhetoric related to AIM, Casey R. Kelly argued that the FBI in the 1970s engaged in a rhetoric of counterinsurgency as a strategy of exclusion. Such rhetoric, as exercised by the FBI, Kelly contends, served to construct a public understanding of AIM “as a savage criminal syndicate embodying an amalgam of the worst traits of America’s enemies: communists, terrorists, Viet Cong, and other revolutionaries” (*Counterinsurgency* 31). Kelly most recently examined the other side of the federal government/AIM tensions of the 1970s by analyzing AIM’s rhetoric during that organization’s occupation of Alcatraz Island from 1969 to 1971. Kelly argues that the group engaged in *détournement* – “subversive misappropriation of dominant discourse designed to disassemble and imitate texts until they clearly display their oppressive qualities” (“Détournement” 170). Such a strategy presented nineteenth century treaties between the U.S. and tribes, through parody, as “sacred and enduring promises” that provided historical precedent and justification for AIM’s takeover of the abandoned, federally owned island (181-2).

In an analysis of rhetoric historically related, yet antecedent to, the discourses examined in the project at hand, Jason Edward Black examined nineteenth century rhetoric by American Indian tribes and their white sympathizers, specifically in response to federal policies that mandated the removal of the Five Civilized Tribes from the southeastern U.S. to Indian Territory. Such rhetoric, Black posited, countered “discourses of territoriality, republicanism, paternalism, and godly authority” (66) and operated as modes of resistance to colonization.

Other analyses of resistance rhetoric have, like my current undertaking, focused specifically on Cherokees. William Strickland argued that Cherokees opposed to removal policies based their discourse on distrust that the U.S. government’s colonizing efforts would end at that point (294)– a fear that was realized with the passage of the Curtis Act. Also focusing on

the removal of the Cherokee Nation, Robin Patrick Clair argued that discourse by prominent Cherokee political figures at the time of the removal aroused the support of white sympathizers, yet fell short of affecting federal removal policy (331). While Lake, et al. have focused largely on Indigenous Americans' rhetorical responses to federal acts, I will examine the legislative discourse that rhetorically constituted – created, and imposed roles and restrictions upon – one particular tribe, the Cherokee Nation.

Beyond the disciplinary realm of rhetorical criticism, others have examined the relationship of Indigenous Americans and the symbolism associated with those peoples, particularly in regard to the utilization of such symbolism for the purposes of the dominant Euro-American culture. Devon Mihesuah argued that “[n]o other ethnic group in the United States has endured greater and more varied distortion of its cultural identity than American Indians” (9). As Robert Berkhofer illustrated, those distortions have most often taken the form of symbolism representing either the “noble savage,” in consubstantiality with nature, and immersed in a spiritual life that appears exotic to Euro-American observers (86-90); or the alternative “ignoble savage,” hell-bent on laying waste to any element of Western – and most often Westward – expansion across the American continent (100). Such symbolism, Carter Jones Meyer contended, has most often been utilized “by and for non-Indians” for commercial purposes, thus reducing Indigenous Americans to a commodified image, and discounting human attributes they possess (xiii). According to Ward Churchill, such distortions of Indigenous American culture have extended into the realm of the sacred, and have been utilized even within the halls of Euro-American academia: “Over the past two decades, the ranks of those queueing up to cash in on the lucre and luster of ‘American Indian Religious Studies’ have come to include a number of ‘New Age’ luminaries reinforced by a significant portion of the university elite” (*Fantasies* 99). This

endorsement of cultural appropriation by the academic community, Churchill argued, has created a situation in which Indigenous peoples themselves “are marginalized or barred from participation in the generation of ‘knowledge’ concerning their histories, cultures and beliefs” (117). Daniel Francis likewise argued that Indigenous Americans have taken part in the American economy more as products than participants (171), as representations of such peoples have presented an “image of a dying people” (23). Not only do those images carry value as economic commodities, they further serve to affirm values held dear by Americans, such as constant, inevitable expansion of their nation and culture (81). Fergus Bordewich demonstrated that such commodification extends far back to the beginnings of Euro-American/Indigenous relations, as “scalps,” the removed hair and scalp of Indigenous people served as currency in the Colonial era (37). Bordewich made the compelling argument that the history of the symbolism of Indigenous Americans – as created and implemented by Euro-Americans – is “a window into the American soul; through its cloudy and often confusing lens, we may see ourselves at both our worst and our best” (20). Throughout *Killing the White Man’s Indian* Bordewich used the term “Indian” to describe the people indigenous to the North American continent. In presenting his rationale for using the terminology, he stated:

“Indian” has the virtue of clarity; it remains by far the most commonly used term among natives themselves and the established form for organizations such as the National Congress of American Indians, the radical American Indian Movement, and the new National Museum of the American Indian, for such agencies as the Bureau of Indian Affairs and the Indian Health Service, and as part of the official name of most modern tribes (19-20).

In this essay, I will, in a similar fashion, use the term “Indian” when describing such Euro-American organizations and systems, as well as when referencing “Indian law” in general, as that is the common legal term for such federal legislation. I will, however, predominantly use the term “Indigenous” because of the very concepts of commodification explicated by Bordewich, et al. “Indigenous” denotes a culturally transcendent fact that clearly separates tribes I will discuss from Euro-Americans and – most importantly – the distorted terminologies and understandings created by those Euro-Americans to describe the people existing on the American continent before European arrival. The fact that “Indian” is used by Euro-Americans to denote two very different collectives who live on opposite sides of the earth from each other – American Indians and Asian Indians – speaks volumes about the “otherness” attributed to people thus described. Those volumes, however, will have to wait. As “Indian” is a term immersed in and emerging from Euro-American assumptions, “Indigenous” will serve my purposes herein, as I describe one century-long episode during which one group of “Indigenous” people became an “Indian” tribe. That is, how the Cherokees came to be described, defined, and constituted in a very Euro-American, governmentally administered manner. Summing up the effects of the appropriation and misinformation noted by the aforementioned writers, Vine Deloria argued that “[t]o be an Indian in modern American society is in a very real sense to be unreal and ahistorical” (*Custer* 2). My goal in this study is to side-step the cultural interaction between Euro- and Indigenous Americans, and demonstrate how the U.S. government took the liberty upon itself to make one tribe “real” within a limited historical era by [re]constituting that tribe in a way most beneficial to the economic concerns of Euro-Americans.

In the following chapter, I will examine the Curtis Act of 1898, and argue that it served as something of a capitalistic primer for Cherokees, as it constituted them as individual

landowners. In the second chapter, I will discuss the Oklahoma Indian Welfare Act, also known as the Thomas-Rogers Act, which expanded the capitalistic identity imposed by the Curtis Act, by constituting Cherokees as entrepreneurs. The third chapter will examine the Principal Chiefs Act of 1970. That law constituted Cherokees as democratic citizens, with a justification for such an identity based on their success as participants of entrepreneurialism. After discussing in each chapter how these laws served constitutive functions for Cherokees, I will examine counter-rhetorics to each respective act. Such counter-rhetorics proposed, with varying degrees of success, different bases for the constitution of the Cherokee collective. These rhetorical resistances, in short, presented – and in some cases, *still* present – alternatives to the federally imposed constitutive rhetoric that dominated Cherokee identities throughout the twentieth century.

I will conclude with implications of this federal constitutive power over the Cherokee Nation that will illustrate such discourse as pertinent, not only to the sovereignty of a twenty-first century tribe, but also to that of Indigenous peoples in other parts of the world where the United States has expanded its domination. Two years after the September 11, 2001 terrorist attacks on the World Trade Center, Ward Churchill argued that the resultant U.S. military actions in Afghanistan and Iraq were a continuation of the unchecked American aggression that had cost Indigenous Americans their traditional ways of life. Churchill claimed that U.S. domination in the Middle East was the result of the “kill-power” of the U.S. military, its ability to simply eliminate anyone who dared present obstacles in the path of American imperialism. I will conclude this analysis, however, with evidence that, in fact, the U.S. government is currently implementing a strategy in Afghanistan remarkably similar to the nineteenth century [re]constitution of American Indigenous tribes. Indigenous Afghans – termed “tribal” by the U.S.

Army – are not simply being violently eliminated, as Churchill suggests. Rather, they are being redefined and integrated into a capitalistic economic system, just as Cherokees were over a century ago.

Chapter 1.

Cherokee Landowners

Much of the discourse on the relationship between the United States government and Indigenous groups has centered on treaties, formal agreements “between two or more fully sovereign and recognized states operating in an international forum, negotiated by officially designated commissioners and ratified by the governments of the signatory powers” (Prucha, *American* 2). However, even in the early decades of U.S. national existence, there was a recognition of the federal/Indigenous relationship as unique, or as Prucha argues, anomalous: “[Treaties between the U.S. and tribes] exhibited irregular, incongruous, or even contradictory elements and did not follow the general rule of international treaties” (2). U.S. Supreme Court Justice John Marshall, in 1832, called Indigenous American tribes “domestic dependent nations” (5). Writing specifically about the Cherokee Nation in the 1832 case *Worcester v. Georgia*, Marshall elaborated:

They look to our government for protection; rely upon its kindness and its power, appeal to it for relief of their wants; and address the President as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and domination of the United States, that any attempt to acquire their lands, or to form a political connection with them, would be considered by all as an invasion of our territory, and an act of hostility. (5)

Given this clear expression of U.S. sovereignty over Indigenous tribes, it is not unexpected that, by the end of the nineteenth century, the U.S. government saw no need in dealing with tribes as if they were separate national entities, independent of the United States. In 1869, U.S.

Commissioner of Indian Affairs Ely S. Parker – himself a member of the Seneca tribe – declared that the treaty process falsely impressed upon tribes that they possessed some sort of national independence: “It is time that this idea should be dispelled, and the government cease the cruel farce of thus dealing with its helpless and ignorant wards” (Prucha, *Great* 164).

Treaty-signing with tribes fell under the purview of the President and the Senate, but it was the passage of a House appropriations bill that effectively ended the treaty process in 1871. The bill, providing treaty-obligated federal funds to the Yankton tribe, included the sentence: “[H]ereafter, no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty” (165). Thus, with any Indigenous collective identity negated by federal authority, the stage was set for the federal process of assimilating Indigenous Americans into the U.S. national identity. In this chapter, I will argue that, for the Cherokees, the first stage of that assimilation involved the federal imposition of the “landowner” identity by the Curtis Act of 1898. That federal legislation served the constitutive purpose of remaking the communal Cherokees as individual landowners. I will first elaborate on that imposed individual landowner identity. I will then discuss counter-rhetorics to that identity, focusing on one forwarded by a group of Cherokees – the Keetoowah Society – who based their alternative to the landowner identity on traditional religious tribal practices.

Individual Landowners

In 1887, Congress passed the General Allotment Act by a unanimous voice vote (Nabokov 237). Known more commonly as the Dawes Act, the law empowered the president to impose 160-acre allotments on Indian families. The Dawes Act was implemented across the continent, with the exception of the Five Civilized Tribes in Indian Territory. As the titular term

“Civilized” implies, the Cherokees, Choctaws, Chickasaws, Seminoles, and Creeks were already deemed somewhat more attune to Euro-American cultural practices than other Indigenous Americans. For a short while, those tribes were spared the allotment process that has been called “the ultimate threat to religious, social, and political identity” of Indigenous peoples on the American continent (232). The reprieve did not last long, however.

American corporations – initially railroads, but eventually petroleum companies as well – had been lobbying Congress for rights of operation in Indian Territory for years (Miner 20-35, 143-163). A U.S. government expedition had mapped out a rail line through the territory as early as 1853, but the end of the Civil War presented the opportunity the federal government needed to exercise power on what amounted to foreign lands. The 1866 treaties between the U.S. and the Five Civilized Tribes that had supported the Confederacy during the Civil War – including the Cherokees – granted two railroad rights-of-way, one running north-south, and the other east-west through Indian Territory. Construction of those railroads was already underway by the time the Curtis Act was passed, but not without difficulties between the railroad corporations and the tribes, which operated under a collective system of land use. Such a system was not conducive to the precise ownership and leasing authority with which railroads were accustomed to negotiating (1-19). Corporate interests, though, were not the only American entities demanding a drastic change in the governance of Indian Territory.

Following the Civil War, Euro-American settlers began moving into Indian Territory in “a deluge that engulfed the Indian settlements by the close of the century.” Many married Indigenous tribal members and were integrated into the respective tribes as “legal residents, who conformed to the tribal laws, and whose productive labor was wanted by the Indians” (Debo 12). Others were simply illegal aliens in the Indian Territory. Regardless of their legal status, by

1890, when the first U.S. census of Indian Territory was conducted, Euro-Americans in Indian Territory outnumbered Indigenous citizens. The Cherokee Nation was populated by 22,015 Indigenous tribal members and 29,166 Euro-Americans, as well as 5,127 African-Americans. Thus, Cherokees in the Cherokee Nation were only thirty-nine percent of the total population (13). As Debo stated, the Euro-American population was living under conditions never before encountered by American citizens:

Thousands of children were growing up with no educational opportunities of any kind, a large body of tenants were cultivating land to which they could never secure title, and the proud and self-assertive white Americans were paying taxes to support a government in which they had no voice and a school system from which they received no benefits (19).

Those Americans began clamoring for the abolition of the tribal governments, which came to fruition. The allotment process was extended to the Five Civilized Tribes when Congress passed the Curtis Act of 1898 (Miner 2-19; Debo 93). Thus began the process of transforming the Cherokee Nation and the other five affected tribes into what would become the eastern section of the state of Oklahoma.

The Curtis Act served a constitutive function for the Cherokees in that it specified exactly what actions the federal government demanded of individuals considered citizens of the tribes in Indian Territory. Constitutive rhetorics, Charland contends, “have power because they are oriented toward action . . . Ideology is material because subjects enact their ideology and reconstitute their material world in its image” (143). For the Cherokees, however, the Curtis Act was not a voluntary enactment of an ideology of their own choosing. It was, in effect, a blatant exercise of U.S. sovereign power, as the stronger nation imposed a materialistic, capitalistic

ideology and its attendant identity on the citizens of a weaker nation. As will be demonstrated in the progression of this essay, that capitalism-based identity became increasingly integrated into the Cherokee tribe through the twentieth century.

According to McGee, the power of constitutive rhetoric emerges when people respond “not only by exhibiting collective behavior, but also by publicly ratifying the transaction wherein they give up control over their individual destinies for sake of a dream” (243). The Curtis Act, though, imposed actions and identities upon the Cherokees that operated as a grossly distorted iteration of McGee’s description of constitutive rhetoric: They were forced to publicly ratify the law by *abandoning* their collective destiny as an Indigenous tribe, and to exhibit individualized, landowning behavior, for sake of a foreign nation’s dream – an American Dream – or as Nabokov described the allotment process, Indigenous peoples’ “worst nightmare” (232). As an editorial in the March 11, 1899 *Cherokee Advocate*, the official newspaper of the tribe, stated:

Four more weeks and the most obnoxious portion of the Curtis law is to be enforced – the section that makes it a criminal offense for any Cherokee to be in possession of more than 80 acres [160 acres for Cherokee families] of the common domain of the nation. (2)

The editorialist lamented the imposition of the American land-owning system as detrimental to the well-being of Cherokees who would be allotted the less-productive land of the nation: “In consequence, their [sic] will be greater suffering than was ever known before” (2). The editorial spoke to the dual nature of the constitutive power of the Curtis Act, as it operated on Cherokees themselves as well as the land on which they lived. However, the editorial missed the constitutive point of the Curtis Act. The *amount* of land owned by each Cherokee was of little consequence to the federal government. More important was the fact that each tribal member did

own land. As Foucault points out, governmental power is exercised over a population through technologies that operate on individuals, thus homogenizing and normalizing particular actions (Will 145) across that population. As such a technology, the Curtis Act redefined what the Cherokee tribe – a population – actually was by transforming the identities of the individual members of that population. Insofar as those identities directed individuals' actions in particular ways, the Cherokee population/tribe was reconstituted by the federal government.

First and foremost of the identity shifts imposed by the law was the recognition that they were, in fact, individuals. While this observation may seem tautological, it actually points to a seismic shift in the interaction between the tribes and the U.S. government, which, previous to the Curtis Act, had been a government-to-government relationship. The act mandated the creation of a census of individual members of the tribes, authorizing the federal census-taking commission to “make such rolls descriptive of the persons thereon, so that they may be thereby identified” and to hold anyone who refused to sign the censuses in contempt” (99). Although Henry Dawes died in 1903 and served only as nominal chairman of the federal commission that bore his name and oversaw the allotment process, the census that identified Cherokees was also known as the “Dawes Rolls.” The mandate to make the census “descriptive of the persons thereon” was based on a nineteenth century understanding of race, as determined by a person's physical appearance. The federal agents conducting the census determined what fraction of Indigenous blood a person possessed based on that standard, and entered a fraction next to each listed Cherokee's name (Sturm 53). As discussed in subsequent chapters, that concept of “blood quantum” would prove to be problematic later in the twentieth century, as the Cherokee Nation was reorganized based on the very blood-based racial standards imposed by the Dawes Rolls census-takers.

As an instrument of the Curtis Act, the Dawes Rolls atomized each of the Five Civilized Tribes into individual citizens. In addition, the act stipulated exactly what the role of those citizens was to be:

[T]he ‘Dawes Commission,’ shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location, and value of same. (92)

Thus, each of the Five Civilized Tribes was divided into its constitutive individual members, who were then, by fiat of federal legislation, each deemed landowners. In the spirit of Henry Dawes’s speech at Lake Mohonk, cited in the introductory paragraph of this essay, the tribal members of the Cherokee, Choctaw, Creek, Chickasaw, and Seminole tribes came to “own the land” (Debo 22), not as collectives, but as individuals. The term “landowner,” however, denotes two entities – the human owner and the land owned. Consequently, the Curtis Act should be considered for its effects on – not only the human Cherokee Nation – but the geographic Cherokee Nation as well – as both elements of the tribe underwent a forced transformation dictated by the discourse of the law. Moreover, both were necessary for the transformation of the Cherokee Nation into a portion of an American state – Oklahoma.

The law stipulated that allotment would occur only after the Dawes Rolls had been taken and “the survey of the lands of said nation or tribe is also completed” (92). James Scott described such creation of a cadastral system – a mapping, registering, and titling of property on a scaled grid – as a strategy of “sedentarization.” This process of engaging in “[e]fforts to permanently settle these mobile peoples” creates an apparatus of governmental control over those who

previously have escaped the purview of such oversight (1-2). As such a strategy, the Curtis Act permanently bound each Cherokee to a specific plot of land, of specific size, and in a specific geographic location. Speaking to the capitalistic nature of the implementation of a cadastral system, Scott noted that such a grid system facilitates “the commoditization of land as much as the calculation of taxes and boundaries” (51). This binding of humanity and land served as a technology of what Michel Foucault calls “disciplining,” which “functions to the extent that it isolates a space, that it determines a segment [and] focuses and encloses” (*Security* 44). Through both the documentation of blood quantum of each Cherokee allottee and the cadastral grid mapping of the geographical Cherokee Nation, the U.S. government developed a system of knowledge of the people who had previously been a collective tribe. Such quantifiable knowledge, Foucault argues, provides a mechanism of legal control – of bio-political power, or “bio-power,” by which basic biological features of humans become the object of political strategy (*Security* 1).

As a bio-political mechanism operating on the Cherokees themselves, the Curtis Act created documentation – crude though the process may have been – by which tribal members came to be known by their new government as particular kinds of citizens, based on a fraction of “Indian blood” each possessed (Sturm 1-2). This quantification became the object of much federal and Oklahoma state policy in the early years of the twentieth century, as Cherokees with high blood quanta were deemed mentally incapable of navigating the processes of land ownership and management. Their allotments were exempted from taxation and were held in trust by the federal government, thus prohibiting sale. On the other end of the blood quantum spectrum, however, tribal members with low blood quanta were considered to be more capable of understanding such transactions. Therefore, their allotments were taxed and salable (Debo

144-148, 179; Sturm 79). As a mechanism of bio-power operating on the land of the Cherokee Nation, the Curtis Act created a correspondence between each individual tribal member and the grid-descriptive land on which he or she lived. Thus it facilitated the 1907 transformation of the geographic Cherokee Nation and the lands of the other Five Civilized Tribes into the state of Oklahoma, as the land had, by then, already been isolated, segmented, and enclosed, to use Foucauldian terminology. So disciplined, the land was thus commoditized as either a particular quantity of agricultural capital – and only such, for full-blood or high blood-quanta Cherokees – or a salable asset in and of itself.

Constituted as the objects of the discourse of the Curtis Act, the “tribe” of Cherokees became individual citizen-subjects of the government authoring and authorizing that law – the United States, based on the knowledge that government had documented and mapped during the allotment process. Regardless of what the term “tribe” may have meant to Cherokees prior to the act, they were now U.S. citizens bound to specific plots of land through cadastral mapping, and prohibited from, or empowered with, particular actions vis-à-vis that land by the blood quanta registered in the Dawes Rolls. In effect, the Curtis Act operated as a constitutive *irony* on the tribes. As Kenneth Burke noted, the trope of irony emerges from a dialectical context “when one tries, by the interaction of terms upon one another, to produce a *development* which uses all the terms” (*Grammar* 512). The use of the term “tribe” in the text of the Curtis Act aligned the term with an ideology of individualistic enterprise, a concept removed from – in fact, dialectically opposed to – the collective lives of pre-Curtis Act Cherokees. As Henry Dawes made clear in his Lake Mohonk speech, individual ownership – “selfishness” as he termed it – was the only means by which development, by his assessment, would ever occur for the Cherokees.

The ramifications of this forced irony were not lost on Cherokees themselves. In the June 17, 1899 edition of the *Cherokee Advocate*, Robert Owen, a Cherokee attorney from Muskogee, Indian Territory, was quoted from a June 7 presentation he had given in Washington, D.C. about the recently passed Curtis Act. Owen's comments point to two aspects of traditional Indigenous life that would come to be negated by the new legislation. First is the collective ownership of land that Henry Dawes had found so onerous in his Lake Mohonk speech. Second is the spiritual import of that land to indigenous peoples. As Vine Deloria, Jr. pointed out in *God Is Red*, "American Indians hold their lands – places – as having the highest possible meaning, and all their statements are made with this reference point in mind" (75). In his 1899 comments, Owen pointed to this recently fragmented consubstantiality of American Indian tribes and the land, giving some insight into what "tribe" meant for the Cherokees themselves:

The wise men of the tribes see in the distribution of the land the beginning of the end of the disintegration of the five tribes and their ownership of the land. The Indian regards the land as a gift from God, not to be distributed and not to be bartered or given away. When a tribe holds its land as a whole, this can not be done, and its property is safe (1).

Owen feared that Cherokees unaccustomed to private ownership of land would simply sell their allotments, unwittingly turning the former tribal territories into sectionalized, divisible plots of property, legally indistinguishable from any others in the U.S. and having no particular import to American Indians' cultural collectives. In fact, Owen's fears would be realized in the subsequent decades, as land grafting of federal allotments became a common activity in the new state of Oklahoma, by both whites and tribal members alike (Debo 92-102).

Perhaps the most detailed description of the forced Cherokee identity shift brought about by the Curtis Act appeared in the March 1, 1899 edition of the *Cherokee Advocate*. Criticizing the 80 acre per person, 160 acre per family, ownership limit imposed by the allotment, the editorial described the collective process by which Cherokees had farmed previous to federal intervention. Cherokees who farmed small plots, according to the editorial, often depleted their food supplies in years of drought. However:

[i]t is then that the small farmer and some who don't farm at all are aided by the large farmer who has more than his pro-rata share in cultivation. The large farmers of this Nation have shown their patriotism and love for their fellow countrymen too often to be called insincere by any one who knows them. Several times in this Nation crops have been almost a complete failure. Then it was that the large farmers throughout the country, who had a surplus of corn on hand, opened their cribs to the needy and supplied them with sufficient corn to keep them from suffering, as they would have otherwise (2).

Those “large farmers,” under the Curtis Act, would have their land-holdings reduced to, at most, 160 acres. That reduction would, according to the argument presented in the editorial, bring about the very conditions that Henry Dawes had noted were absent during his visit, previous to his Lake Mohonk speech. As the editorial concludes, “[u]nder the Cherokee land tenure we never have had what could be termed actual beggars as in the States, but under the Curtis law we tremble, even to think what the future will bring forth” (2). With the benefit of hindsight, it is obvious that for some Cherokees, the future brought forth immense wealth in the oil fields that were eventually located in some areas of the former Cherokee Nation (Miner 162). Yet, for others, it brought destitution, and even death from malnutrition, as poverty – a condition Henry

Dawes had lamentably noticed missing during his 1885 visit to the Cherokee Nation – became common (Debo 355-6). But the economic *condition* of individual Cherokees was not the object of the Curtis Act. Rather, it was the economic *identity* that the law operated upon. It created, through the cadastralization of the land, and the quantification of Cherokeeeness by blood – and thus landowning ability – two of the “mechanisms of examination . . . mechanisms of discipline, and of a new type of power over bodies” that Foucault described as modern methods of governance (*Discipline* 191). This modernization – Americanization, in the case of the Cherokees – served to clear the way for the annexation of the Indigenous nation into the United States as part of a new state. In addition, it created citizens of that new state by forcing identities upon them that were far more compatible to existence in the American economy than the communalism they had lived under for time immemorial.

While an editorial in the September 30, 1899 edition of the *Cherokee Advocate* claimed the tribe had been “smothered by arbitrary power” (1) with the passage of the Curtis Act, an editorial five years later in the same publication (*Cherokee Advocate*, October 6, 1904) demonstrated an acceptance of the Cherokee identity shift from one of collectivism to one of individualism. The editorial, in fact, *urged* Cherokees to accept individual land ownership, and to agriculturally improve their allotments in order to increase the value of their new private property. In short, the article promoted everything Henry Dawes had hoped for in his Lake Mohonk speech nineteen years earlier. Titled “Good for the Indian,” the article quoted from a *Muskogee Democrat* editorial that mentioned a glut in the land market since the implementation of the allotment process. The *Muskogee Democrat* editor, Charles Gibson, implored any Cherokee to keep, rather than sell, his allotment so that he could “lease his land for agricultural purposes, thus insuring him in the course of a few years a home and farm” (2). The *Advocate*

editorial endorsed Gibson's claim and stated that "if the Indians of the territory would think a little more about what the future may have in store for them . . . they will find themselves better off by and by [sic]"(2). This acceptance by Cherokees of a federally imposed tribal identity illuminates one characteristic of Foucaultian disciplining power that may seem out of place in discourse of federal/Indigenous relations – its bloodless domination.

As understood by many modern Americans, the U.S. government – the Army cavalry, to be specific – militarily dominated the Indigenous peoples of the American continent through warfare carried out with modern Western technologies for which primitive weapons were no match. That is, after all, the narrative provided by cinematic entertainment through much of the twentieth century (Debo vii; Berkhofer 98; Mihesuah 29). But, as illustrated above, for the Cherokees and many other Indigenous tribes that fell under the purview of either the General Allotment Act of 1887 or the Curtis Act of 1898, domination came, not at the point of a gun or saber, but rather, at that of a pen.

There is a striking similarity between the changes in domination of Indigenous peoples by the American government at the turn of the twentieth century and the changes in European governments' punishment of criminals during the eighteenth and nineteenth centuries, which Foucault traced in *Discipline & Punish*. Foucault argued that psychiatry, criminal anthropology, criminology, and other social scientific disciplines began, in that era, to develop systems of quantitative and qualitative knowledge derived from the examination of individual criminals. Punishment was prescribed based on that knowledge. Such a system, he contended, still exists in the modern era, as social science provides "the mechanisms of legal punishment with a justifiable hold not only on offences, but on individuals; not only on what they do, but also on what they are, will be, may be" (18). Under the modern system, in contrast to pre-social-

scientific methods of punishment, prisoners are not simply punished with violence, but rather, transformed into citizens exhibiting behavior more aligned with the normative expectations of society (108). Likewise, the Dawes Rolls created a body of knowledge of each individual Cherokee's blood quanta, and by the scientific standards of the time, his or her correlative aptitude for ownership of the allotted land. At the same time, the geographic Cherokee Nation – the land itself – underwent a conversion into a normative gridded system that facilitated its transformation into a state. Thus, Cherokees became citizens and economic contributors to the American and Oklahoman economies as taxpayers and potential merchants of whatever goods their allotments might provide. This new form of domination of American Indigenes – the “second stage,” as Debo called it (vii) – was stained by significantly more ink than blood. As Foucault asked, “[w]hy would society eliminate a life and a body that it could appropriate?” (*Discipline* 109).

Not all Cherokees, however, resigned themselves to the new situation. Some began to make plans to remove themselves from the individual landowner identities imposed by the federal government. These resistances took various forms, several of which will be described in the following sections.

Resistance to the Landowner Identity

In the transcript of Muskogee attorney Robert Owen's Washington D.C. speech, published in the June 17, 1899 *Cherokee Advocate* and cited earlier, Owen mentioned traditional full-blood Cherokees, who, he contends, “are, as a race, lovers of isolation.” According to Owen, a movement was underway among such full-bloods to migrate to Mexico to “found a new Indian colony” (1). In the July 21, 1905 edition of the *Chelsea Commercial*, a newspaper in Chelsea, Indian Territory, the Cherokee superintendent of schools, S.S. Stephens, is cited as

presenting such a migration plan in Tulsa at an inter-tribal celebration. Stephens encouraged Cherokees to sell allotted lands and use the proceeds to purchase land in Mexico “which had all the facilities for typical Indian life that the Territory once had, but are now destroyed by the advance of civilization” (1). Stephens’s motivation for such an Indigenous exodus of Indian Territory is somewhat questionable though; he was also the Vinita, Indian Territory branch manager for a Kansas City corporation that was employed by the Missouri, Kansas and Texas Railroad to obtain right-of-way through Indian Territory (Miner 98). It is not beyond the realm of possibility that Stephens deemed the Mexico migration plan beneficial to all parties involved; the railroad could buy allotments for the right-of-way from Kansas to Texas, and the Cherokees could use the profit from their allotment sales to migrate to Mexico where they would be free to reconstitute their tribal system. Regardless of his motivation for the plan, Stephens’s dual role as a beneficiary of both the corporate Euro-American culture and the communal Cherokee culture was not uncommon among Cherokees. Stephens’s international/intercultural existence and the conflicting editorials in the primary Cherokee publication, the *Cherokee Advocate*, cited above, illustrate a key point: There was never a unified Cherokee resistance to the allotment process imposed by the Curtis Act. The appropriation of Euro-American practices by many Cherokees, as well as an influx of white Americans into the Cherokee Nation over the years since the tribe’s 1839 removal to Indian Territory – many of whom married Cherokees – made individual land ownership more palatable, if not desirable, for many of the people living within the geographic borders of the tribe (*State of Sequoyah*; Debo 98-99).

But one group of Cherokees, constituted decades before the allotment process began, did propose a counter-rhetoric to the federally imposed individual landowner identity. Though they were unsuccessful in stopping allotment, the Keetoowah Society did manage to preserve

elements of Cherokee culture than many feared would die out with the tribal system of communal land ownership.

Keetoowah Society

In 1859, the Cherokee Nation, like its neighbor the United States, was being torn between pro-slavery and abolitionist factions. Many of the wealthier Cherokees had adopted the practice of slavery before the tribe's 1839 removal, and continued that practice in the Indian Territory. On April 15 of that year, a group of conservative traditionalist Cherokees, several of them clergy in the pro-abolitionist Northern Baptist Church, met at Peavine Baptist Church to draft a constitution for a religio-political organization called the Keetoowah Society. To the founding members, the deplorable practice of slavery was just one of the growing influences of Euro-American culture on the Cherokees. They believed "the very culture that formed the basis of Cherokee identity was being challenged by an alien ideology that asserted the rights of the individual over the rights of 'the people'" (Minges 74). Neither the founders nor the modern adherents of Keetoowah philosophy perceived discrepancies in their Christian and Indigenous faiths, as both prescribe a moral code that privileges the collective over the individual (*Spirit*).

The founders derived their collective name – pronounced *kə-toó-wə* -- from Kituhwa, an ancient settlement in the Cherokees' original homeland in what is now North Carolina. That settlement is considered the geographic center of Cherokee culture. "Kituhwa" is also the name of what is called "the white path of righteousness," a moral code espoused by Keetoowah adherents. Again, that code stresses "placing the good of all above self interest," and is symbolically expressed in seven wampum belts, measuring from two to seven feet long, made of shells from the Atlantic coast (*Spirit*; Minges 76). According to modern Keetoowah Society member Benny Smith: "These wampums have served the Keetoowahs in the same way the Ten

Commandments have served the Christians. For generations, these wampums have been read to the Keetoowah once each year” (76-7). While the reading of the Kituhwa wampum is conducted in the Cherokee language and requires training passed down from father to son (*Spirit*), the text of the Keetoowah Society’s 1859 constitution does not. Written in the Cherokee syllabary, and easily translated into English, it stated:

Only fullblood Cherokees uneducated, and no mixed blood friends shall be allowed to become a member . . . All of the members of the Keetoowah Society shall be like one family. It should be our intention that we must abide with each other in love. Anything which derive from English or white . . . the Keetoowahs shall not accept or recognize . . . We must not surrender under any circumstances until we shall “fall to the ground united.” We must lead one another by the hand with all our strength. Our government is being destroyed. We must resort to bravery to stop it. (Mingus 78)

According to Mingus, the term, “fullblood” should not be understood in a modern sense of denoting ancestry, but rather, within a cultural context in which “blood” represented a level of allegiance to traditional tribal customs: “Some of those commonly referred to as fullbloods, including many of the leaders of the Keetoowah Society itself, were the products of Cherokee/white intermarriage” (78-9).

The Keetoowah Society – sometimes referred to as “Nighthawk Keetoowahs” for their tendency to hold their organizational meetings at night – operated as a somewhat secret organization through the remainder of the nineteenth century, utilizing secret handshakes and other exclusive identifying symbolism (*Spirit*). However, the pressure placed on the entire Cherokee Nation by the Curtis Act of 1898 brought the organization into the open.

A 1900 protest to the U.S. Senate filed by Cherokee attorney Frank Boudinot on behalf of the Keetoowah Society requested that Congress reconsider the allotment plans and the largely symbolic “agreement” made with the Cherokee Nation to implement those plans. The Keetoowahs claimed that the agreement was made by representatives of the Cherokee Nation who did not represent “full-blood Cherokees,” despite an earlier tribal government resolution to include at least two fullblood tribal members in any dealings with the federal government (Boudinot 3). The Cherokee Nation representatives, the protest argued:

[h]ave done exactly what we feared they would do, and made an arrangement by which, if carried out, our people will be robbed of almost everything they possess. Therefore your memorialists solemnly and earnestly protest against the consideration of the said so-called agreement. (4)

The Cherokee Nation, the Keetoowahs argued, had become diluted with voter-citizens who were either whites married to Cherokees and their offspring, or Freedmen – descendents of former slaves of antebellum Cherokee farmers – who were not sensitive to traditional Cherokee ways. Thus, they argued, the political desires of fullblood members – at least 10,000 Cherokees whom the Keetoowahs considered to be the rightful possessors of the Cherokee lands – were being ignored by the tribe’s government (4-5).

The Keetoowahs’ efforts to work within the federal system to protect their traditional lifeways failed, and once the Dawes Commission began the process of allotting land, their collectivistic traditionalist leanings were deemed illegal under the provisions of the Curtis Act. The leader of the Keetoowahs at the time – designated “chief” of the Keetoowah Society, but not the official Cherokee tribal chief – was Redbird Smith. He refused to sign the Dawes Rolls and encouraged other fullbloods to do the same. With assistance from mixed-blood Cherokees, Smith

was apprehended by Dawes Commission agents and forcibly enrolled as a Cherokee allottee. After his arrest, he ordered his followers to cease resistance to the allotment process, and the Keetoowah efforts to retain communal ownership of Cherokee lands ended. (Cornsilk). The Keetoowah Society's 1859 constitution and their 1900 protest to the U.S. senate constituted a tribal identity based on tradition, language, and religious adherence. It was, however, a pitifully weak counter-rhetoric to the Cherokee landowner identity that was not only imposed by the U.S. government, but also favored by many citizens of the Cherokee Nation who were not adherents of "Kituhwa," the traditional Cherokee "white path of righteousness" that had facilitated the Keetoowah's particular brand of religious nationalism for time immemorial (*Spirit*; Minges 77).

While the Keetoowah conception of a physically geographic, communally owned Cherokee Nation may have been trampled underfoot by the Curtis Act, the religious aspects of the society survived. As of 1919, there were twenty-two Keetoowah Society organizations operating independently across the land that had once been the Cherokee Nation (Cornsilk). As of 1984, followers of Kituhwa still gathered annually at a stomp ground – a traditional Cherokee socio-religious location – near Vian, Oklahoma to take part in traditional Cherokee dances and hear the Kituhwa wampum read by the Keetoowah chief (*Spirit*). Unaffiliated with any governmental entity – tribal or federal – the Keetoowah Society managed to maintain at least the spiritual elements of its collectivistic identity.

Even after the inevitability of a Cherokee landowner identity became apparent, an effort was undertaken by Cherokees and members of the other Five Civilized Tribes to constitute a hybrid Indigenous/landowner identity. At the urging of Cherokee citizen, James A. Norman, Cherokee Principal Chief W.C. Rogers and Choctaw Chief Green McCurtain called a convention in Muskogee, Indian Territory on August 21, 1905 to draft a constitution for a new American

state. The state was to be called “Sequoyah,” after the inventor of the Cherokee syllabary, the only Indigenous written language among tribes in North America. While the Five Civilized Tribes had generally resisted being part of any state in the past, the Curtis Act called for the complete end of tribal governance in the Indian Territory on March 4, 1906. (Mize). The tribes therefore saw statehood – of Indian Territory itself, separate from the western territory of Oklahoma – as a final effort to retain control over their governmental destinies. Creek Principal Chief Pleasant Porter, who served as chair of the Sequoyah Convention remarked: “Our present government shall not be annihilated, but transformed into material for a nobly established state. Thus shall we have life not death” (Maxwell 308).

Voters of the Five Civilized Tribes ratified the Sequoyah constitution on November 7, 1905, with 16,189 votes favoring and 3,175 opposing Sequoyah statehood (323). The Republican-led U.S. Congress and Republican President Theodore Roosevelt, however, refused to entertain the notion of Indian Territory and Oklahoma Territory coming into the Union as separate states. They feared that the state of Sequoyah would tend toward the Democratic Party, while the Oklahoma Territory was already heavily Republican. Two Democratic senators from Sequoyah would only offset the benefit of having two Republican senators from the state of Oklahoma (229). In 1907, Oklahoma – comprising both Oklahoma Territory and Indian Territory -- became the forty-sixth state of the Union, effectively ending any hopes that still remained of an Indigenous government within the borders of the United States.

Historian H. Craig Miner has argued that the possibility of a hybrid Indigenous/Euro-American identity in Indian Territory existed during the years between the Civil War and Oklahoma statehood, and that such an identity would have allowed the Five Civilized Tribes to engage in capitalistic corporate activity while still retaining their communal societies:

The failure of Indians, corporations, and government to work out a satisfactory economic co-existence over the period [between 1865 and 1907] was a major factor in creating the state of Indian “dependency” and rootlessness that had such tragic consequences in the twentieth century. (ix)

As argued here, however, “compromise” was not the intention of the federal government in passage of the Curtis Act. The law completely reconstituted the Cherokee Nation and the other affected tribes as entities they had never been before – individual landowners. It defined a key element of Cherokee culture, communally owned land, out of existence.

Conclusion

James Boyd White, in discussing law as constitutive rhetoric, has argued that bureaucratic discourse presses those engaged in it to think in terms of ends and means: “This often results in a reduction of the human to the material and the measurable, as though a good or just society were a function of the rate of individual consumption, not a set of shared relations, attitudes, and meanings” (698). Examining law as rhetoric, White contends, “might help us to attend to the spiritual or meaningful side of our collective life” (698). This examination of the Curtis Act as constitutive rhetoric, vis-à-vis the Cherokee Nation, supports Debo’s claim that the Curtis Act was based on the widespread “mystical faith in private ownership” that permeated the American consciousness at the turn of the twentieth century (21). The concept of collectivism was simply unacceptable to a nation that had already demonstrated its willingness to bring Manifest Destiny to its full fruition. Tribes would be redefined in the image of ideal Americans, even if by force, as was the case with Keetoowah chief Redbird Smith.

I have argued in this chapter that the Curtis Act of 1898 constituted the Cherokee tribe as a population of individual landowners through the knowledge-generating technologies of both the Dawes Rolls and the cadastralization – the mapped gridding – of the geographic Cherokee Nation. The Dawes Rolls provided a registry of each Cherokee’s blood quantum, and through scientific extrapolation common to the era, each Cherokee’s ability to manage land ownership. Depending on blood quantum – how much Cherokee a person appeared to be – the Curtis Act determined the actions, as constitutive rhetorics do, that each Cherokee could and could not exercise with his or her allotted land (Charland 143). The cadastralization of the land similarly created a registry of properties that correlated with the standards of American land surveying, thus paving the way for integration of tribal lands into the state of Oklahoma.

From a purely historical perspective, the border between the Cherokee Nation and the United States was effectively dissolved by the Curtis Act, as the residents and the land of the Indigenous nation were absorbed into the United States and Oklahoma. But from a rhetorical perspective, the border did not disappear at all. As demonstrated in subsequent chapters, the Cherokee “tribe” was reconstituted in various iterations as the twentieth century progressed. The blood quanta of signers of the Dawes Rolls continued, as they do to this day, to serve as a disciplining technology on the progeny of those early twentieth century Cherokees who wrote their names on the rolls and submitted themselves to a primitive scientific determination of their Cherokeeeness. Much divisiveness, often between Cherokees themselves, has arisen from the implementation of that technology through the twentieth century and into the twenty-first. Several episodes of such blood-based power struggles will also be discussed in the following chapters. The Dawes Rolls appear to have internalized the U.S./Cherokee border within each

individual Cherokee, and that individualized, internalized border has further served as a method of federal domination over the tribe.

Borders serve a “consummately rhetorical function” in that they divide the empowered from the disempowered, the “us” from the “them” (DeChaine 5). But, those struggles do no end when a border is shifted from the geographical landscape to another register. As Kent Ono has pointed out in his discussion of Mexican migration to the United States, “migrants carry borders with them . . . the issues about the border continue long after the border crossing” (28). In a similar fashion, Cherokees still carry within them a border that, as a geographical boundary, was erased in 1898. But as an internal division, it still serves to “qualify, measure, appraise, and hierarchize” them, just as it did their ancestors in 1906 (Foucault, *Will* 144). Every Cherokee possesses a card issued by the Bureau of Indian Affairs. On that card is the card-holder’s blood quantum, a fraction – “4/4,” “1/2,” “1/4;” all the way to “1/2,048” (Sturm 3) and potentially even smaller. The fraction designates how much of that person’s ancestry can be traced to a signer of the Dawes Rolls. In other words, that card, a Certificate of Degree of Indian Blood, or “CDIB card” (3), shows how much Cherokee a person is, based on two factors – the crude standards of racial identification used by federal officials to create the Dawes Rolls, and the generations between that signer of the rolls and the possessor of the CDIB card. The card indicates how far on each side of the U.S./Cherokee border each person is situated. As will be demonstrated in the following chapters, that position often determines a person’s relationship to the Cherokee tribe, to the U.S. government, and to other Cherokees.

As has been demonstrated in this chapter, the bloodless nature of the Curtis Act did not negate the violent nature of the law. It was still, as Nabokov has argued, “the ultimate threat to religious, social, and political identity” (232) of the Five Civilized Tribes. In the next chapter, I

will examine a perhaps more subtle shift in the relationship between Cherokees and the United States government, as the term “tribe” once again becomes a site of legal redefinition, expanding the roles of those so defined as even more active participants in the American economy.

Chapter 2.

Cherokee Entrepreneurs

In 1933, President Franklin D. Roosevelt appointed John Collier as the director of the Bureau of Indian Affairs. Collier, who had been a vocal advocate of Indigenous rights before his appointment to federal service, was given the task of creating a “New Deal” for the American Indian (Nabokov 305). The allotment system, which had dominated federal/Indigenous relations for the entire twentieth century up to that point, had proven to be a disaster. Collier reported to Congress in 1934 that, in fact, the 138 million acres that American Indian tribes had claimed previous to the Dawes and Curtis Acts had been cut to 47 million acres (306). Land grafting, the process through which both Euro-American and Indigenous land dealers took advantage of allottees who lacked the business experience to understand real estate transactions, resulted in much of the diminution of Indigenous land holdings (Debo 92-125). “To most Indian peoples,” Nabokov asserts, allotment was “their worst nightmare, the ultimate threat to religious, social and political identity” (232). As the twentieth century progressed, the failure of the Curtis Act to convert members of the Five Civilized Tribes into land-owning Americans became obvious to most observers (92). Instead of Indigenous Americans using what land they had been allotted to become financially successful – in Euro-American terms, at least – much of the allotted land was passed through sale or lease into non-Indigenous hands. A great deal of wealth was derived from the natural resources such as coal, timber, asphalt, and oil that was readily available on many allotments, but most of that wealth was beyond the grasp of the original Indigenous allottees (92). Congress, realizing the failure of both the Dawes Act and Curtis Act to transform Indigenous Americans into assimilated American citizens, repealed the laws in 1934.

Collier, Roosevelt’s new BIA director, summed up the true effects of the allotment

system: “It has thrown more than a hundred thousand Indians virtually into the breadline . . . [and] put the Indian allotted lands into a hopelessly checkerboarded condition” (306). His solution for the ills imposed on Indigenous Americans by allotment was the Indian Reorganization Act, also known as the Wheeler-Howard Act, after its congressional sponsors. The act allowed tribes to reorganize, to borrow money from a federal credit fund, and to elect their own leadership (308). Although tribes in Oklahoma were exempt from the original act, the Oklahoma Indian Welfare Act, or Thomas-Rogers Act, of 1936 applied the same federal policies to Indigenous people of that state as well.

Published only four years after the passage of the Thomas-Rogers Act, the final chapter of Angie Debo’s 1940 history of the creation of the state of Oklahoma, *And Still the Waters Run*, presented the Thomas-Rogers Act in a positive light, describing it as “a complete reversal of [the] Federal policy” (378) of casting Cherokees in the role of individual landowners, as discussed in the previous chapter. My reading of the act, as presented in this chapter, differs significantly from Debo’s. Rather than a “complete reversal” of the Curtis Act, I argue in this section that the Thomas-Rogers Act is an extension of the identity shift imposed on American Indians by previous legislation. Whereas the Curtis Act defined the Five Civilized Tribes as dispersions of individual landowners, the Thomas-Rogers Act imposed the roll of entrepreneur on those individuals. Rather than being a reversal of the forced transformation of tribal identity imposed by the Curtis Act, the Thomas-Rogers Act deepened the immersion of Indigenous people in the American capitalistic economy. As Curtis Act-enabled landowners, Cherokees were in no way *required* to implement the particularly economic brand of “selfishness” that Henry Dawes had referenced in his Lake Mohonk speech. Ownership was the action imposed and enabled by the Curtis Act. Economic utilization of individually owned allotments may have

been assumed by the federal government, but was in no way mandated. The fact that so many allotments were transferred from Indigenous to Euro-American ownership during the decades immediately following the allotment process indicates that many Indigenous people had no interest in being ranchers or farmers (Debo 92-125). It would have been hypothetically possible for a Cherokee, or any other Indigenous allottee, to live on his or her allotment, obtain food through hunting, fishing, or gathering of edible flora, and never engage in capitalistic activities associated with land ownership. But under the Thomas-Rogers Act, any group engaging in “tribal” activities was federally required to be a corporation. In addition to detailing the identity shift imposed by this new federal conception of a “tribe,” I will examine a counter-rhetoric to the federally imposed entrepreneurial identity and the absorption of that resistive rhetorical effort into a subsequent act of federal Indian law, the Principal Chiefs Act of 1970, which will be discussed in Chapter Three.

The Thomas-Rogers Act of 1936 authorized the U.S. Secretary of the Interior to “acquire by purchase, relinquishment, gift, exchange, or assignment” property, water rights, or surface rights to land that “shall be agricultural and grazing lands of good character and quality in proportion to the respective needs of the particular Indian or Indians for whom such purchases are made” (1967). This authorization, at first glance, does not seem to differ much from the Curtis Act, in that both laws provide American Indians with farm or pasture land. However, two paragraphs later, the act clearly defines *how* the possessors of such lands were expected to utilize it:

Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as the Secretary of Interior may prescribe. The

Secretary of the Interior may issue to any such organized group a charter of incorporation [which] may convey to the incorporated group, in addition to any powers which may properly be vested in a body corporate under the laws of the State of Oklahoma, the right to participate in the revolving credit fund. (1967)

That “credit fund” authorized in the act provided two million dollars of federal money to be loaned to such corporations, and to “local cooperative association[s],” also authorized by the act for the purposes of “[c]redit administration, production, marketing, consumers’ protection, or land management” (1967-1968).

The positive view Debo took of the Thomas-Rogers Act is understandable, given the law provided for the reorganization of American Indian collectives that had been dissolved by the Curtis Act. However, that ability to reorganize was allowed by the federal government only under certain economic conditions. Specifically, any organization of individuals who were listed – or had ancestors listed – on the Dawes Rolls could occur only within the context of a corporation. The act did allow for voting by members of any such “tribe” or “band” for the organization of a constitution and bylaws for each organized corporation. But, for the members of the former Five Civilized Tribes to collectivize again, they must do so with the goal of profiting monetarily through their collective. Under the act, such “tribe” or “band” need not include the entire collective of Cherokees, but rather “[a]ny ten or more Indians, as determined by the official tribal [Dawes] rolls” (1967). Self-governance, which Cherokees had enjoyed as a sovereign nation previous to the Curtis Act, was possible under the Thomas-Rogers Act, but only under the condition of incorporation.

A noticeable contrast between the Curtis Act and the Thomas-Rogers Act is the latter’s discounting of the landowner identity imposed by the former. The Thomas-Rogers Act calls for

the federal government to acquire land on behalf of Indigenous corporations and to hold such land “in trust for the tribe. . .”(1967). Stipulated in the first paragraph of the law, this provision illustrates two elements of the Curtis Act vis-à-vis land that both bear some examination. First, it intimates a congressional disenchantment with the effects of the failed Indigenous landowner identity. As described earlier in this chapter, land ownership by Indigenous Americans had – often through no fault of their own – proven a failure. Much of the land allotted by the federal government to tribes in the late nineteenth and early twentieth centuries had, in a relatively short period of time, ended up under Euro-American ownership. Under the new corporate tribal identity imposed by the Thomas-Rogers Act, the actual land utilized by corporate tribes would be owned by the federal government itself. As described in Chapter One, a similar “trust” relationship, under the provisions of the Curtis Act, had existed between the federal government and Indigenous Americans deemed to have too much Indigenous ancestry to successfully negotiate the intricacies of land ownership. Now, under the new law, *all* tribal entities – if they were to operate a land-related business – would do so under the federal trust system. That land could not be taxed, nor could it be sold, thus ensuring that tribal corporations would not lose any land they operated upon, except, of course, by fiat of the federal government.

Second, the very same paragraph creates a particular exemption to the tax-free status of such tribal trust land:

[T]he State of Oklahoma is authorized to levy and collect a gross-production tax, not in excess of the rate applied to production from lands in private ownership, upon all oil and gas produced from said lands, which said tax the Secretary of the Interior is hereby authorized and directed to cause to be paid. (1967)

This exemption illuminates congressional hopes that the former members of the Five Civilized Tribes might, through capitalistic activity, become assimilated into one of the most profitable corporate interests of the era – petroleum production. Moreover, it stands in stark contrast to the first article of the U.S. Constitution, which reserves for Congress the right to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” This paragraph from the Thomas-Rogers Act, with its stipulation of trust land and an exemption allowing state taxation of tribal petroleum production – seemingly a blatant violation of the very constitutive text allowing for the existence of Congress itself – demonstrates the constitutively rhetorical crux of the Thomas-Rogers Act: “Tribes” were no longer sovereign governmental entities, but rather, corporations, enabled and burdened with all of the qualities other corporations bear, save land ownership.

Oklahoma Senator Elmer Thomas, one of the sponsors of the bill, was quite clear about its purpose in a 1935 speech: “The whole plan of the bill is intended to extend to the Indian citizens the fullest possible opportunity to work out their own economic salvation” (8). Such “salvation” would allow Indians in Oklahoma to, as Thomas said in a statement released by his Senate office, also in 1935: “take their place alongside the white population in all the activities of our civilization” (1). Thus, by equating civilization with economic success, Thomas indicated that the spirit of the federal government’s nineteenth century allotment acts – the civilization of the Indian – had not changed. But, instead of casting an identity of landowner on each Indian, as the Curtis Act had done, a new identity – the entrepreneur – would be imposed by the Thomas-Rogers Act.

Maurice Charland noted that the “White Paper,” a document issued by the Quebec government in 1979, “outlined a proposed new political order in which Quebec would be a

sovereign state associated economically with Canada” (135), but free of Canadian governmental authority. The White Paper, according to Charland, “attempted to call into being a *peuple québécois* that would legitimate the constitution of a sovereign Quebec state” (134). The White Paper rhetorically *created* an independent Quebec government, much as the Declaration of Independence rhetorically created a collective that was independent of British colonial rule, and would eventually become the United States. In a similar fashion, the Thomas–Rogers Act created tribes as entrepreneurial enterprises. Both the White Paper and the Thomas-Rogers Act describe possible actions available to particular groups of people. It is this orientation toward action, Charland contends, that gives constitutive rhetoric its power (143).

One could argue, as Debo (1940) does, that the Thomas-Rogers Act was a less violent exertion of discursive power than the Curtis Act, as it was not enforced through the dissolution of already-existing national governments and forced relocation of tribal members to individual allotments of land. The law did not demand that every member of the former Five Civilized Tribes undertake a business venture. Certainly, the possibility already existed for any Cherokee, Chickasaw, Creek, Seminole, or Choctaw to open his or her own business, just as any other American citizen may have done. But, if any collective of Indigenous people in Oklahoma were to exist under the title of “tribe,” the Thomas-Rogers Act dictated that it would do so as a business enterprise.

As defined by the act, the term “tribe”— when adhered to by Indigenous Oklahomans — served to further assimilate those adherents into the Euro-American lifeworld of economic enterprise. As McGee argued, collectives of individuals:

are more *process* than *phenomenon*. That is, they are conjured into objective reality, remain so long as the rhetoric which defined them has force, and in the end wilt away, becoming once again merely a collection of individuals (242).

Rhetoric, according to McGee, creates political myths, or “visions of the collective life dangled before individuals in hope of creating a real ‘people’” (243). When people respond to that rhetoric, “not only by exhibiting collective behavior, but also by publicly ratifying the transaction wherein they give up control over their individual destinies for sake of a dream” (243), a people, or “tribe” in the case currently at hand, “actually exists in a specific, objective way” (243). Thus, the Indigenous people who reorganized under the Thomas-Rogers Act did so in a way that may have appeared to be a reformation of sovereign Indigenous nations, but was in fact an adherence to a political and economic myth advocated by the U.S. government.

United Keetoowah Band

An early manifestation of that adherence by Cherokees was the creation of the United Keetoowah Band of Cherokee Indians, Oklahoma. An early iteration of the group, the Keetoowah Society, as described in the previous chapter, had existed since 1859 as a traditionalist group of “fullblood” Cherokees. Minges has pointed out, however, that the term “fullblood” was, in the mid-nineteenth century, unrelated to the concept of blood quantum, which was introduced by the federal government with the allotment process of the early twentieth century: “One can see ‘fullblood’ as a connotation for traditional/conservative and ‘mixed-blood’ as implying acculturated/progressive” (78). The Keetoowah Society approved their own constitution on April 29, 1859, and existed outside the purview of either the Cherokee Nation or the federal government. As described in the previous chapter, the early Keetoowah constitution served as a counter-rhetoric to other constitutive texts, such as the Curtis Act and the

pre-allotment Cherokee Nation constitution, that sought to define Cherokees. James W. Duncan, secretary of the Keetoowah Society, wrote in the September, 1926 edition of the *Chronicles of Oklahoma*, that the Keetoowahs had experienced some dissension among their members at the time of the allotment process in the early twentieth century, though he did not detail the causes of that disagreement. Nevertheless, in the 1920s the factions mended their differences, and elected Levi Gritts as leader of the Keetoowah Society (Duncan 253). In the 1940s, Gritts, on behalf of the Keetoowah Society, undertook efforts to have the Keetoowahs recognized by the federal government as a corporation under the provisions of the Thomas-Rogers Act.

Correspondence between U.S. Representative William Stigler of Oklahoma and Gritts indicates that the society planned to implement the traditionalist policies of their 1859 constitution, once Stigler's bill providing federal recognition to the Keetoowahs, H.R. 341, had passed. As Gritts stated in a letter dated September 21, 1945:

I have never given you any information as to what our Keetoowah organization intends to do. As soon as our No. 341 Bill [has] passed we intend to re-enroll and adopt the old Constitution. We intend to establish local lodges all over Cherokee neighborhoods. I keep [the Keetoowah Society] advised as to who our friends are in securing the legislation (1).

In a subsequent correspondence, however, Gritts acknowledges the entrepreneurial nature of a federally recognized Keetoowah organization:

We intend to adopt the old Keetoowah secret organization so we can establish a regular information or educational bureau within our Society. We intend to make it so like other Secret Lodges, not be against anybody, only working for the

welfare of our membership... We think under [H.R. 341] it gives us the right, or authorizes us to select an attorney or anybody to represent us as a corporation (3 December 1945, 1).

Gritts's final correspondence with Stigler is dated April 17, 1946, after the bill had passed Congress but had yet to be signed by President Truman. Again, the letter indicates the traditionalist worldview of the Keetoowahs in a reference to the Cherokee celebratory community "hog fry" barbecue (Moss, 2008):

I wish you would let me know as soon as possible when Keetoowah Bill #341 is signed by the President. I have so many members of our Society asking me about it. We have a reorganization committee of our Society meeting every two weeks, for the purpose of re-enrolling our people. Next Wednesday they will meet at Tahlequah, Oklahoma, to try to designate the date and place for a general meeting of our Society. We expect to have a big barbecue to last about three days and have candidates for officers to speak at our gathering (1).

On August 10, 1946, H.R. 341 became Public Law 715, recognizing the Keetoowah Indians of the Cherokee Nation of Oklahoma as "a band of Indians residing in Oklahoma within the meaning of [the Thomas Rogers Act]" (1).

The term "band" bears some examination, as it appears to attribute some distinction between "the Keetoowah Indians" of the Cherokee Nation, and other members of that former Indigenous nation. The term had been applied for well over a century to designate Indigenous groups appearing to be subordinate collectives of a larger group that, to Euro-American observers, shared some attributes (Prucha, *American* 7). For example, a treaty signed by tribes

who lived along the Missouri River in 1825 stated, “The said bands also admit the right of the United States to regulate all trade and intercourse with them” (7). Those “said bands” were recognized as being distinct from one another, but their shared quality of existing along a major trade route, the Missouri River, earned them the title of “band” rather than “nation” or “tribe.” Though incidental to the argument currently at hand, it is still noteworthy and prescient of twentieth century federal Indian policy that, more than a century before the passage of the Thomas-Rogers Act, collectives of Indigenous Americans were already being categorized according to their *economic* relationship to Euro-Americans.

The 1859 Keetoowah Society constitution similarly defined members of that organization as Cherokee, yet of a particular type: “Only fullblood Cherokees uneducated, and no mixed blood friends shall be allowed to become a member” [sic] (Minges 78). The term “society” appears to have served a categorizing function for the Keetoowahs, much as “band” had for Euro-Americans in their descriptions of Indigenous groups. It rhetorically set them apart from the Cherokee Nation, which they felt had become too Euro-American in nature (77). As described by Minges, Freemasonry had become quite popular in the antebellum Cherokee Nation, and many of the founding members of the Keetoowah Society were members of Masonic lodges. “Society” may have been inspired by this prevalence of fraternal organizations among Cherokees (79). Regardless, it designated Keetoowahs as particular kinds of Cherokees – those adhering to traditional religious practices and language.

As applied in the 1940s to the Keetoowahs, however, the term “band” was synonymous with “tribe.” That is, both terms, under the provisions of the Thomas-Rogers Act, were to be read as “corporation.” The corporate charter issued to the Keetoowahs by the U.S. Bureau of Indian Affairs in 1950 designates them as “The United Keetoowah Band of Cherokee Indians,

Oklahoma” a “federal corporation chartered under [the Thomas-Rogers Act].” Thus, the secrecy of the “secret lodges” Gritts mentioned in his letter to U.S. Rep. Stigler, was somewhat precluded, in that the very existence of the United Keetoowah Band (henceforth UKB) was facilitated through public discourse at the highest possible U.S. governmental levels. Any activities undertaken by the United Keetoowah Band would be conducted – not as an independent collective operating outside the bounds of governmental control, as the Keetoowah Society had done in the past – but as a corporation under the auspices of the U.S. government.

That is not to say, however, that the UKB was wholly structured by federal oversight and in no way represented the traditionalist ethos of the Keetoowah Society. The band was authorized to create its own membership rolls separate from the Dawes Rolls that had served as the standard for Cherokee identity since 1906, and to “prescribe rules and regulations governing future membership” (UKB Constitution 2). One of those regulations imposed a one-quarter blood quantum as a rubric of UKB membership (Smith “Indian identity”), thus reifying the Keetoowah tradition of minimizing Anglo and mixed-blood influence on the group (Minges 78). It is noteworthy, however, that the imposition of a blood quantum solidified the term “fullblood” as a race-based designation, negating the culture-based connotation that, according to Minges, held sway in the nineteenth century Keetoowah Society (78). Moreover, in some accordance with the 1859 constitution’s derision of “[a]nything which derive from English or white...[sic]” (78), the UKB’s monthly meeting of the band’s governing body is, even today, conducted in both the Cherokee and English languages (UKB meetings, 2000-2007).

The correspondence between the Keetoowah Society’s Levi Gritts and U.S. Rep. Stigler, and the UKB membership blood quantum requirements, indicated that, unlike the Curtis Act, the Thomas-Rogers Act did allow the Keetoowahs some voice in constituting their own identities.

Moreover, access to the revolving fund set up by the Thomas-Rogers Act allowed the UKB to – as the band’s constitution states – “promote the general welfare of the Band and its members” (1). Such benefits were derived, though, only because the UKB had formed as a federally chartered corporation. The UKB was, and still is, the manifestation of an amalgam of federal and Indigenous discourses.

In the twenty-first century, the UKB has experienced numerous jurisdictional disputes with yet another Cherokee collective that also emerged under federal oversight – the Cherokee Nation of Oklahoma, or CNO (Snell, 2013). While the current CNO was constituted under the Principal Chiefs Act of 1970, the focus of the next chapter, its beginnings were heavily influenced by Tsu La Westa Nehi, also known as William Wayne (W.W.) Keeler. He, perhaps more than any other Cherokee individual, adhered to, and represented, the corporate entrepreneurial identity promoted by the Thomas-Rogers Act.

Entrepreneurial Cherokee Chief

W. W. Keeler was appointed by President Harry Truman as chief of the Cherokees in 1949, and held that post for over a quarter of a century (*Cherokee Nation News*, 29 December 1969, 1; *Cherokee Nation News*, 10 May 1970, 8). As the tribal governments of the Five Civilized Tribes had been dissolved by the Curtis Act in 1898, there was no sovereign national government of Cherokees at the time. But, tribal chiefs were named by the president, and were provided a “continuing authority to dispose of tribal property” (Haley 1). Keeler also served as chairman and chief executive officer of Phillips Petroleum (10 May 1970, 8) and chairman of the National Association of Manufacturers (29 December, 1969). Described in the December 29, 1969 *Cherokee Nation News* as “a curator of conservative values” (1), Keeler highlighted his tribal affiliation in speeches around the United States, including one on October 31, 1969 to the

Texas Manufacturers Association in Fort Worth titled “Needed: Prescription for Rehabilitating Welfare” (1969).

The term, “welfare,” in the title of Keeler’s speech referred to the U.S. Government’s system of assistance for economically underprivileged Americans. But as Keeler pointed out in the opening comments of his speech, as a “member of one of this nation’s minority groups – the American Indians,” he had learned “some basic lessons about the welfare problem,” which he then shared with his audience as “goals toward which the welfare system should be directed”(5). One of the goals of the U.S. welfare system, Keeler argued, was to “make productive the untrained, and the unmotivated” (6). Keeler then drew on his Cherokee affiliation to support his claim about the “unmotivated,” as he presented a view of traditional Cherokee life that contrasts starkly with that presented in the March 1, 1899 edition of the *Cherokee Advocate*, which was presented in the previous chapter of this essay. According to that late nineteenth century view, written as Cherokees were transitioning to the identity imposed by the Curtis Act, the “large farmers” of the Cherokee Nation showed their “patriotism and love for their fellow countrymen” by sharing food with those who farmed “in a crude and small way,” and “barely raised enough to live on each year” (2). As presented by Keeler, however, traditional Cherokee life was not quite so collectivistic:

To make sure everyone got and did his share of work on planting day, an elder in the village would go to a tall place in the village and call: ‘The new year is far advanced. He who expects to eat must work. He who will not work, must expect to pay the fine according to old custom, or leave the town. We will not sweat ourselves for a healthy idle waster.’ As you can see, the Cherokees had their own answer to social welfare. (9)

Keeler maintained that the U.S. system of welfare was “a self-defeating cycle” because it relied on “the handout approach” to economic assistance. Again contradicting the 1899 presentation of Cherokees’ economic assistance to less fortunate Cherokees, Keeler stated, “I have observed how [the U.S. welfare system] works – or doesn’t work, to be more correct – among the Indians, Eskimos, and Aleuts.” The U.S. government’s “welfare checks and handouts,” Keeler argued, caused, among those groups, the following self-destructive behaviors: “Parents became idle and dependent. Youngsters lost respect for the parents and spent their time at the trading post filling up on pop which did no more than bring decay to heretofore excellent teeth” (7).

Keeler concluded his speech by asserting that “[t]he few tribes that have been allowed to create and carry on their own programs have shown wisdom, initiative, and ability to retain and make the most of their assets” (19). He contended that his tribe, the Cherokees, served as an example of what efforts to “transform people into productive rather than dependent members of society” (22) could achieve. Cherokees were, he explained, “building a new and vigorous nation with the goals of bringing the economic benefits of modern America to our people.” The benefits listed by Keeler – benefits that epitomized the entrepreneurialism empowered by the Thomas-Rogers Act for a tribe – included “business enterprises, owned and operated by Cherokees,” “investment opportunities to communities where none existed before,” including “one electronics assembly plant employing more than 160 persons” (21). Thus Keeler advocated and provided examples of the entrepreneurial identity imposed on Cherokees by the Thomas-Rogers Act, which limited the organization of any Cherokee tribe to such capitalistic endeavors.

In an April 14, 1970 edition of the *Cherokee Nation News*, Keeler was referred to as the Principal Chief of the “Cherokee Nation or Tribe of Oklahoma” (1). That “tribe,” however, unlike the pre-Curtis Act nineteenth century Cherokee Nation, had no law-making or

enforcement powers, and no jurisdiction. It did, however, have an executive committee, led by Keeler. That committee oversaw, according to Keeler's "Message To the Cherokees" in that edition of the *Cherokee Nation News*, "ten approved programs now in operation" that served to provide "Cherokee employees with the opportunity to take a more active and responsible part in the operations of the affairs of the Cherokee Tribe" (1). In addition to those ten programs, which included Cherokee Nation Industries, the electronics assembly plants referenced by Keeler in his Fort Worth address, the tribe also operated the *Cherokee Nation News*, published weekly.

Keeler's adherence to the "Cherokee entrepreneur" identity was perhaps best illustrated in a story from the May 4, 1970 *Los Angeles Times*, and reprinted in the May 10, 1970 edition of the *Tahlequah Courier*, an independent Tahlequah, Oklahoma newspaper. The article, a biographical profile of Keeler, made the broad claim that "Cherokees have more college graduates per capita than any of the other Indian groups in America and claim more doctors, lawyers, teachers, legislators, judges, bankers, merchants, and business executives" (8). Keeler attributed the industriousness of Cherokees -- described in the article as the tribe's "giant leap forward" (8) -- to the "development of human resources" (8), and suggested other American Indian groups could learn some lessons from the Cherokees' acceptance of entrepreneurial identities: "Keeler said the key to making the Indian a force in the U.S. economy 'is to start out by putting factories in or near the reservations so [an Indian will] feel at home and natural'" (8). Given Keeler's strong adherence to the Cherokee entrepreneur identity, this statement is somewhat polysemic.

In one sense, Keeler seemed to suggest that simply constructing factories near areas where Indigenous people already lived would make labor in those factories less culturally destructive than other strategies aimed at economically assimilating Indigenous peoples into the

broader American culture. One such strategy undertaken by the federal government in the post-World War II era, known as “relocation,” encouraged Indigenous Americans to leave rural areas and settle in cities where they could more easily take part in the American economy. Discussed in more detail in the next chapter of this essay, relocation had already been deemed a failure by the time of Keeler’s 1970 *Los Angeles Times* interview. In another sense, however, Keeler’s statements can be read as suggesting that participation in a capitalistic economic system was an ontological condition of American Indigeneity. Capitalistic endeavor, Keeler appears to have suggested, was as “natural” for the Indigenous American as consubstantiality with the land (Deloria 1973, 75). This reading garners some support from another passage from Keeler’s October 31, 1969 speech to the Texas Manufacturers Association, in which he argues that traditional Indigenous life on the pre-Columbian American continent had made Indigenous Americans “economical, hard-working, and appreciative of time.” The hunting, gathering, and primitive agricultural practices of prehistoric American Indigenes had, he argued, made efficiency a natural characteristic of those people. But, the strongest, yet most unorthodox, expression of Keeler’s belief in the natural entrepreneurialism of Indigenous peoples comes from an article printed four months after the *Los Angeles Times* interview, in the September 10, 1970 edition of the *Tahlequah Pictorial Press*.

Headlined “Cherokees To Find Out If They Are Perceptive,” the front-page article appears, to the twenty-first century reader, almost satirical. Yet, it is an illustrative indication of Keeler’s view in 1970 of the “natural” integration of Cherokees into entrepreneurialism. The article announced a series of four sessions to be held by Harold Sherman, an “authority” on extra-sensory perception, or ESP, at the Cherokee tribal offices in Tahlequah, Oklahoma. The purpose of the sessions was to “explore the Indians’ ESP ability. Principal Chief W.W. Keeler

urged tribesmen to attend these classes.” As quoted in the article, Keeler concedes that “I call it intuition. Sherman calls it ESP,” but that the ability in question had served Keeler well “as a businessman.” Bracketing the ability under investigation solely in terms of business acumen, Keeler claimed that such a “locked up talent in these areas” could, if understood empirically, “‘add tremendously’ to the potential of the tribe.” Keeler’s final quotation in the story states: “I want to see if we can build a super people.”

Discourse of “super people” in the post-World War II era obviously appears eerily reminiscent of the Nazi regime of 1930s and 1940s Germany, which was inspired and led by Adolf Hitler’s rhetoric of racial superiority of the Aryan people and the elimination of other groups – primarily Jewish people (Toland 1976, 213). While Keeler’s hopes for a “super people” don’t appear to be quite as nefarious as Hitler’s, the statement, taken within the context of the article, does indicate two pertinent elements of Keeler’s conception of the Cherokee entrepreneurial identity. First, it correlates strongly with the reading of Keeler’s statement in the aforementioned 1970 *Los Angeles Times* interview in which he appears to argue that capitalistic activity was “natural” to Cherokees and other Indigenous Americans. Second, it indicates justification by Keeler for the blood-based identity adopted by both the United Keetoowah Band and the Keeler-led Cherokee Nation corporations to determine tribal membership and access to the benefits of that corporate activity. That blood-based identity, however, was *federally* created through the apparatus of the Dawes Rolls during the allotment process mandated by the Curtis Act of 1898.

Foucault argued that, in the late eighteenth century, a “whole corpus of individualizing knowledge was being organized that took as its file of reference . . . the potentiality of danger that lies hidden in an individual” considered a criminal by governments of the era (*Discipline*

126). Likewise, participants in military service – soldiers – became the objects known by a body of knowledge and discipline, so that “[b]y the late eighteenth century, the soldier has become something that can be made . . .” (135). Hence, the disciplining, codifying, quantifying, analytical corpi of knowledge created in various areas of life became “formulas of domination” by systems of government, as individuals became known for their individualizing characteristics, upon which augmentation or minimization could be exercised. The documentation of blood quantum of Dawes Rolls signers served a similar function, as Cherokees came under the domination of the U.S. government as American citizens. In his advocacy of participation in Harold Sherman’s ESP investigation sessions, Keeler expresses a desire to deepen the body of knowledge ascertained through the Dawes Rolls by studying the potentiality of business acumen associated with that federally derived body of knowledge. While Keeler no doubt saw that deeper understanding of Cherokees’ ontological business sense as a benefit to the entrepreneurial Cherokee identity he advocated, it would also serve – had it ever been derived – as a Foucaultian “formula of domination,” by the federal government, more solidly entrenching the Cherokee tribes – corporations – in a broader American economy. Though he himself was a Cherokee by Dawes Roll-derived blood, Keeler was also an industrialist. His public presentations indicated – as might be expected by a presidentially named chief – that he privileged the latter individual identity over the former, and considered domination by the federal government to be the best means of improving Cherokee life in the twentieth century.

An entrepreneurial tribal identity, based on a federally created body of knowledge – the Dawes Rolls – stood in stark contrast to the religion- and language-based identity advocated by the nineteenth century Keetoowah Society (Minges 78). Moreover, as discussed in the following

section, even some Cherokees contemporary to Keeler saw an entrepreneurial tribal identity as antithetical to their conception of Cherokeeity.

Resistance to the Entrepreneurial Identity

While his esteemed positions within the broader American culture indicate that Keeler may have served as a synecdochical representation of the Cherokee entrepreneurial identity to other Cherokees and white observers alike, not all people who identified as Cherokees were willing to follow his example. According to a *Muskogee Daily Phoenix* article reprinted in the *Cherokee Nation News* on August 19, 1969, a group called – or “so-called,” as the article is worded – the Original Cherokee Community Organization, or OCCO, filed a suit in federal court, asking for the ouster of Keeler and the executive committee, as well as “free elections for the Cherokees” (1). There is a subtle hint of the organization’s privileging of Cherokee traditions and language in the fact that the word used to greet others in the Cherokee language, roughly translated to “hello, how are you?” is pronounced “Oh See Oh!,” strikingly similar to a quick pronunciation of the acronym OCCO.

While the October 28, 1969 edition of the *Cherokee Nation News* announced the dismissal of the OCCO’s lawsuit, the paper also included an interview of George Groundhog, the chairman of the OCCO and plaintiff in the suit. Groundhog’s comments identified his organization as a counter-rhetoric to the federally imposed identity of the Cherokee entrepreneur so readily embraced and modeled by Keeler: “Chief Keeler,” Groundhog said. “Who is this guy Keeler? That’s the question. He just sits up there in Bartlesville [Oklahoma, headquarters of Phillips Petroleum] with all those oil wells” (1). Groundhog identified his organization’s aim as wresting control of “the tribe” (1) away from Keeler and the executive committee that oversaw the aforementioned Cherokee business interests because “they were not enough Cherokee to be

real Cherokees” (1). According to Groundhog, Keeler was unqualified to lead Cherokees *because* he was immersed in modern American, capitalistic economic practices – the very qualities that the Thomas-Rogers Act stipulated as necessary for Cherokee tribal existence. Groundhog’s rubric for what he considered a true traditional Cherokee identity was linguistic, and he claimed Keeler was unqualified, as a “real” Cherokee, to lead other Cherokees “[b]ecause he doesn’t speak Cherokee” (1). As he described the goals of the OCCO, Groundhog’s quotes are quickly integrated journalistically into a capitalistic realm: “‘Our aim,’ Groundhog said, ‘is to overthrow the power structure, Keeler. The rest of that bunch. Yes, power structure is a good phrase.’” That phrase is immediately followed by the editorializing comment: “Whatever the phrase, it all means money” (1).

Given the *Cherokee Nation News* was owned and operated by the Keeler-led Cherokee Nation and Tribe – itself a corporation under the definition set forth by the Thomas-Rogers Act – the newspaper’s presentation of Groundhog’s resistance rhetoric is revelatory of the overwhelming nature of the Cherokee entrepreneur identity and its integration in a capitalistic economy. As Kenneth Burke wrote in *A Rhetoric of Motives*, “to begin with ‘identification’ is, by the same token, though roundabout, to confront the implications of *division*” (22), and the *Cherokee Nation News* explicitly identifies the OCCO with the enemies of capitalism – the philosophical bedrock of the Cherokee entrepreneurial identity so vehemently espoused by Keeler: “Some mixed-bloods and newspapers in Northeastern Oklahoma have hinted that the OCCO has held secret meetings resembling Communist cell meetings of the 1930s” (1). In the August 19, 1969 *Cherokee Nation News*, the newspaper cited an anonymous source to identify OCCO in alignment with the social upheaval that was occurring throughout the United State in the late 1960s, again implying anti-American influences on the OCCO:

One government official, who asked to remain unidentified, termed the OCCO movement “part of a big plan on a multi-front level attempting to take over the Negroes, Cherokees and Indians and peoples to gain control of the governing powers of the United States.” (1)

The strategy of Burkean identification through division expressed in this passage was, according to Casey Ryan Kelly, not uncommon in 1960s and 1970s discourse about Indigenous activists. Federal officials, including the FBI, rhetorically aligned members of the American Indian Movement, an organization discussed further in the next chapter, with Castro-led Cuba, China, the Irish Republican Army, the Palestine Liberation Organization, the Weather Underground, the Communist Party, the Trotskyists, the Symbionese Liberation Army, and the Black Panther Party. According to Kelly, “[b]y blurring important distinctions between the goals of each organization listed above, AIM could be more easily categorized as a simple and familiar, yet dangerous enemy” (“Rhetorical Counterinsurgency” 240). In a similar fashion, the *Cherokee Nation News* – operated as a Keeler-led Cherokee corporation – provided a forum for the OCCO to express its concerns about Cherokee identity, but at the same time aligned the organization with enemies of the U.S. and capitalistic enterprise.

Groundhog countered such accusations by, again, drawing on his identification with Cherokee linguistic tradition and competence, but side-stepping the accusations of association with the commonly perceived enemies of capitalism. In describing the allegedly secret OCCO meetings, Groundhog stated:

We have a meeting . . . a lot of them are closed to the press. Well, we sit around and argue and talk and argue some more about what we want to do. All in Cherokee. . . Sometimes Mr. Trapp [OCCO’s legal counsel], sits there for a long

time. Then we decide that we may ask Mr. Trapp about the legal problems involved. I translate. Mr. Trapp looks at the law. (1)

In addition to traditional language competence in Cherokee leadership, Groundhog also expressed a desire for “free elections” among the Cherokees (1). Keeler countered that OCCO demand in an October 21, 1969 *Cherokee Nation News* article:

“I’ve been trying to get an election of the chief since 1954,” Keeler said. “But the [Thomas-Rogers] act of Congress ties us into the other four tribes. Some of the tribes want election; others don’t. So you have a very slow procedure, trying to convince Congress that maybe elections would be good for the Cherokees.” (1)

The counter-rhetoric offered by Groundhog and the OCCO – a constitutive worldview that defied entrepreneurialism as a defining Cherokee quality – harkened back to the nineteenth century Keetoowah Society constitution, which forsook anything “English or white” (Minges 78). Moreover, the OCCO suggests a Cherokee identity of democratic representation in tribal matters – again, a characteristic reminiscent of the sovereign pre-Curtis Act Cherokee Nation.

However, the focus of the OCCO’s dissatisfaction appears to be – not only linguistic incompetence and lack of democratic governance in the existing Cherokee corporate regimes – but also the fact that those systems existed under the auspices of the federal government. Groundhog’s views are somewhat similar to those of Levi Gritts, the Keetoowah Society chief who served as a liaison between U.S. Rep. William Stigler and traditional Keetoowah members during the legislative creation of the UKB. Both propose a return to more traditional Cherokee identities than those existing in their respective eras. Yet, the UKB was listed as a co-defendant in Groundhog’s aforementioned lawsuit against Keeler (George Groundhog). While this appears counter-intuitive, given the privileging of language as a rubric for “Cherokee-ness” shared by

both the OCCO and the UKB, Groundhog evidently considered any federally constituted Cherokee organization to be oppositional to the OCCO's aims. Yet, he evidently found no other recourse but to file suit in courts of the very government that created the corporate "power structure" he sought to overthrow. This limitation of agency illustrates how deeply immersed Cherokees were in the constitutive rhetoric of the Thomas-Rogers Act by the late 1960s.

Despite the derision of Groundhog and the OCCO by federally recognized Keeler-led Cherokee corporations, there is some evidence that the OCCO's politically reactionary ideals were eventually integrated into a federally imposed Cherokee identity. Charland argued that all rhetorical situations are grounded in ideology and, "because the constitutive nature of rhetoric establishes the boundary of a subject's motives and experience, a truly ideological rhetoric must rework or transform subjects" (148). The ideology of democratic rule had been an important element of the pre-Curtis Act Cherokee Nation (Debo 3-5; Boudinot 1-3), and the OCCO strove to have that mode of government reinstated as a method of determining tribal leadership. Even in the late 1960s, chiefs of the Five Civilized Tribes were presidentially appointed, and Keeler had, by that time, remained chief for almost two decades. But, such a transformation as Charland claims emerges from constitutive rhetoric appears to have begun for Cherokees in 1969. In that year, U.S. Representative Ed Edmondson of Oklahoma introduced H.R. 14676, a bill to allow members of the Five Civilized Tribes to select their own leadership. Thus, what began as an element of a counter-rhetoric espoused by the OCCO – democratic tribal leadership – came to be a new – yet, again, federally imposed – constitutive rhetoric for Cherokees.

The archival collection of Edmondson's legislative correspondences includes letters to and from Keeler, in which Keeler offered suggestions for the content of H.R. 14676. For example, Keeler proposed that the bill be worded to allow the Five Civilized Tribes to "select"

rather than “elect” their leadership because, he claimed, “[s]ome of the tribal groups said they did not want to hold elections as they could be costly and could dissipate tribal funds at the expense of important programs” (Keeler, 17 November 1969).

More revelatory, however, is a letter from Edmondson to Louella Pritchett, secretary of the OCCO:

Thank you for the copy of your November 25th letter to Senator McGovern concerning legislation which would authorize the Five Civilised [sic] Tribes of Oklahoma to select their principal chiefs. I am enclosing a copy of my bill on this subject, H.R. 14676, in hopes that it will be of interest to you. Needless to say, I am hopeful the House Interior Committee will be able to begin hearings on the bill as soon as possible. If there is anything else that I can do to be of service, please don't hesitate to let me know. (2 December, 1969)

While it is doubtful that the OCCO possessed the authority Keeler enjoyed in influencing H.R. 14676, Edmondson's letter does indicate his awareness that Cherokees who existed outside the federally imposed entrepreneurial identity were also interested in participating in the creation of whatever legislative discourse would direct their lives as Cherokees. Conversely, however, the correspondence between the OCCO and federal lawmakers also suggested that the OCCO was willing to submit to a federally imposed tribal identity, as long as it included characteristics they supported – in this case, democratic governance. Such an identity would be manifested by the passage of Edmondson's H.R.14676, which became federal law as the Principal Chiefs Act of 1970. In the following chapter, I will examine that law and the identity it imposed on the Cherokee tribe. I will conclude the current chapter, however, with a discussion of the continuation, well into the twenty-first century, of the entrepreneurial Cherokee identity.

Conclusion

I have argued in this chapter that the Thomas-Rogers Act constituted a new tribal identity for Cherokees, one that allowed the formation of tribal collectives only as entrepreneurial endeavors. I have provided two examples of that federally imposed identity – the United Keetoowah Band of Cherokee Indians in Oklahoma, and W.W. Keeler, Cherokee chief throughout a significant part of the twentieth century. I have also presented competing rhetorics to that identity that articulated non-entrepreneurial ways of being Cherokee, including the Keetoowah Society and the Original Cherokee Community Organization. While both counter-movements began existence outside the parameters of federal authority, what eventual success they had in reifying their respective constitutive rhetorics was undertaken within the federal system. The Keetoowah Society transitioned into a federally recognized tribal corporation, the UKB, and the OCCO made their dissatisfaction with the dominant corporate Cherokee regime known through the federal court system. While both movements could certainly be deemed failures, I would argue that their eventual absorption into the federal system is more indicative of the sovereign power of the U.S. government than the efficacy of counter-rhetorics in general. I will discuss this power, and the concept of tribal governmental sovereignty in more detail in the concluding chapter.

The Thomas-Rogers Act became law almost eighty years ago. Yet, its influence on current Cherokee collectives is still evident. In his November 6, 2011 inaugural address, Cherokee Nation Principal Chief Bill John Baker reflected the entrepreneurialism of the tribe quite succinctly:

I will aggressively push for more profits from our companies, so more money can go to our people. We are going to rethink our business strategy, our investment

strategy, and our gaming strategy. Why? Because we are going to work even harder to squeeze even more dollars out of our business and gaming, and use it, use those dollars, for you. Our government exists to serve you. (Baker)

Those “companies” to which Baker referred exist under the corporate umbrella of Cherokee Nation Businesses. According to the organization’s website:

Cherokee Nation Businesses is a wholly owned corporation of the Cherokee Nation and serves as the holding company for all of the Cherokee Nation’s for-profit entities. CNB owns companies in aerospace, information technology, security and defense, environmental, construction, health care services and other industries. (Cherokee Nation Businesses)

Clearly, the “ten approved programs now in operation” Keeler spoke of in his address to Cherokees in the April 14, 1970 edition of the *Cherokee Nation News* have been expanded. The Cherokee Nation Businesses website indicates that the holding company’s subsidiaries employ more than 5,700 people and generated more than \$715 million in revenue in 2012, with the profits “either reinvested into job creation or social services for tribal citizens” (Cherokee Nation Businesses).

While the Cherokee entrepreneurial tribal identity still resonates strongly, the Principal Chiefs Act of 1970 allowed tribes to define themselves in yet another identity – that of democratic citizen. The Principal Chiefs Act and that tribal democratic identity will be addressed in Chapter Three.

Chapter 3.

Democratic Cherokee Citizens

The three decades immediately following World War II present a study in contrasts of federal Indian law. The era began with efforts to terminate tribal entities in the United States once and for all, through assimilation strategies both cultural and geographic. It ended with some tribes, including the Cherokee Nation, regaining a limited ability to constitute their own tribal identities.

John Collier resigned as commissioner of Indian affairs in 1945. In 1950, Dillon S. Myer, who had overseen the federal detention of Japanese-Americans during the war was named to that position. A new political climate that harkened back to the allotment policies implemented through the Dawes and Curtis Acts of the late nineteenth century pervaded the relationship between the U.S. government and Indigenous Americans. Two buzzwords directed Myer's Bureau of Indian Affairs – "termination" and "relocation." Termination meant the cessation of any responsibility of the federal government to Indigenous Americans, and a complete assimilation of those peoples into the American mainstream (Deloria, *Behind* 20; Nabokov 334). Between 1954 and 1962, sixty-one tribal collectives were dissolved by Congress. Though many would later be re-established under subsequent legislation, termination illustrates the emphasis for cultural homogeneity that existed in the post-war years (Deloria, *Behind* 20; Nabokov 334, 337).

Along with termination policies, relocation served as yet another federal strategy to force Indigenous Americans into the broader cultural fold. Under that plan, the BIA assisted Indigenous families in moving from rural areas to urban centers like Chicago, Los Angeles, Seattle, St. Louis, and Detroit. Such assistance, however, did little to *culturally* assimilate the

removed families. For many, relocation “meant an anguishing dislocation. Stories filtered back [to rural Indigenous Americans] of loneliness, alcoholism, depression, police harassment, unemployment, and crime” (Nabokov 336). The policy is darkly reminiscent of the Cherokee “Trail of Tears” and other nineteenth century Indigenous removal efforts by the federal government – perhaps even *more* egregious in that relocation was a cultural as well as a geographic displacement. Lee argues, however, that the effects of both termination and relocation were minimal, considering 13,263 Indigenous Americans composed terminated tribes, out of a total population of 400,000 – slightly more than three percent. “Similarly, only approximately [three percent] of tribal lands...were terminated during this period” (*Rediscovering* 324-5). So, while the political spirit of the time immediately following World War II did not necessarily favor Indigenous Americans or their efforts to retain traditional cultural ways, the effects of the efforts toward total assimilation were, in mathematical terms at least, minimal.

The election of President John F. Kennedy in 1960 brought an end to the termination policy. Moreover, Kennedy vowed that no changes would be made to federal Indian policy without the consent of tribes themselves, and that the federal government would implement no measures to impair the cultural heritage of any Indigenous group (325). While Kennedy identified the termination system with Republican policy, his opponent in the 1960 presidential election, Republican Vice President Richard M. Nixon, also stated that he would prefer to see federal Indian policy developed “in full harmony with the deepest aspiration of the Indian citizenry” (Tyler 174).

During the 1960s, Indigenous Americans began using a political strategy that they had avoided in the past – public protest. As Vine Deloria stated:

The Indian people have generally avoided confrontations between the different minority groups and confrontations with the American public at large. They have felt that any publicity would inevitably have bad results and since the press seemed dedicated to the perpetuation of sensationalism rather than straight reporting of the facts, great care has been taken to avoid the spotlight (*Custer* 169-71).

Deloria pointed out that, while most Civil Rights protests of the era were aimed at acquiring access for African Americans to the same opportunities afforded Euro-Americans, Indigenous Americans were experiencing a completely different problem. While Euro-Americans seemed determined to keep African Americans *out* of their society, they had been working for almost a century to force Indigenous Americans *into* that society (173-5). Indigenous activist organizations like the National Indian Youth Council and the American Indian Movement (AIM) did not protest to gain access to the benefits of a Euro-American lifestyle. Instead, they demanded recognition by the federal government of each tribe as a sovereign nation, rather than as a ward of the federal system. Moreover, they called for recognition of treaties that had been signed in the past between the U.S. government and Indigenous American tribes, and a reimplementing of the treaty process, which the federal government had discontinued in 1871. In sum, AIM protesters wanted the federal government to interact with each tribe on a nation-to-nation basis (Deloria, *Behind* 4, 48-53).

Occupations by AIM of several locations – Alcatraz Island in 1969; BIA offices in Washington, D.C., in 1972; Wounded Knee, South Dakota in 1973 – brought, if not international status, certainly international media attention, to Indigenous protesters (81). Randall Lake has argued that the AIM protests of the late 1960s and 1970s were not, in fact, directed at the broader

Euro-American audience, but rather to Indigenous Americans themselves, and served a consummatory purpose. That is, by occupying locations without the consent of the “foreign” power of the U.S. government, AIM was enacting the national sovereignty they claimed rightfully belonged to tribes. (128). Though the occupations were temporary at best, they served, not only a consummatory purpose, but also a constitutive one. AIM’s enactment of sovereign Indigenous power provided a counter-rhetoric to the federal legislation that defined tribes as subordinate entities to the federal government. In taking forced possession of those locations, AIM exercised the Pindarian sovereignty discussed in the introduction of this essay. That conception of sovereignty places the entity that justifies utilizing the most violence as the sovereign. While that particular mode of sovereignty was short-lived – as the federal government soon regained control of each area overtaken by AIM – the protesters did, as Lake pointed out, *enact* sovereignty, and thus exercised the rhetorical sovereignty that allows for self-creation. They constituted themselves, albeit for a limited time, as the sovereign power and rightful possessor of each location, and acted accordingly.

While Indigenous activists were protesting for, and enacting, a tribal “self-determination” that they equated with national sovereignty (131), the administration of President Richard Nixon was espousing a policy toward tribes that was also titled “self-determination.” Nixon’s policy was strongly emphasized in a 1968 campaign speech in Omaha, Nebraska, in which he stated “the right of self-determination of the Indian people will be respected and their participation in planning their own destiny will be encouraged” (Strickland and Gregory 433). As president, Nixon later stated in 1969 that “an emphasis on progress through participation on the part of the Indians is now the basis of this Administration’s efforts” (433). Nixon stood by his pledge of self-determination – at least as he understood the term. An advisory committee composed of

Indigenous representatives provided input to federal Indian program implementation, and “[t]he recruitment of new Indian talent in the Bureau of Indian Affairs has begun to open lines of communication between Administration officials and the Indian community” (434). Nixon entertained no notions of abolishing the BIA – a demand made by Indigenous activists during their protests of the era (Lake 131). He saw self-determination as the ability of tribes – not to constitute themselves – but to provide input into the dynamics of their constitution by the federal government. An Interior Department manual, published on August 1, 1970, and replacing the previous manual of November 21, 1968, stated that the objectives of the BIA were to “actively encourage and train Indian and Alaska Native people to manage their own affairs under the trust relationship to the Federal Government” (1). So, the aim of Nixon’s administration was obviously not to rid the federal government of all responsibilities to Indigenous Americans. Rather, the Nixonian BIA encouraged “full development of their human and natural resource potentials” to better themselves economically (1).

But, as two Cherokee scholars, Rennard Strickland and Jack Gregory, pointed out in their September 4, 1970 article in *Commonweal* magazine, Nixon’s desire to encourage “full development” of tribal resources was not based entirely on humanitarian ideals. Rather, Indigenous Americans – especially those who held the same philosophies as W.W. Keeler on the importance of private industry— served as excellent examples of the power of capitalism to eradicate American social ills: “[T]here is a feeling that the Indian offers a chance to demonstrate that private enterprise and minority capitalism may yet prove to be the best solution to problems of poverty, whether Indian, Negro, Puerto Rican, or Appalachian” (433).

Perhaps because of a penchant for the aforementioned “sensational” coverage that the press provided for Indigenous protests (Deloria, *Custer* 169-71), Nixon’s concept of self-

determination was not as highly publicized as that of AIM activists. But it was within the framework of the Nixonian concept of self-determination that, in 1969, U.S. Rep. Ed Edmondson of Oklahoma introduced H.R.14676, the bill that would eventually become the Principal Chiefs Act of 1970. In this chapter, I will argue that this legislation constituted the Cherokees, along with the other Civilized Tribes, as democratic citizens. I will first discuss the proposed bill as a federal strategy to continue the imposition of economy-based identities on the Cherokees, as illustrated in the preceding chapters about the Curtis Act of 1898 and the Oklahoma Indian Welfare Act of 1936. Those bills had imposed identities of landowner and entrepreneur respectively. Then I will examine Indigenous input to the drafting of H.R. 14676. I will then examine the enactment, by Cherokees, of that constituting text in the formation of the modern Cherokee Nation. Finally, I will examine counter-rhetorics to the Cherokee democratic citizen identity, including resistance to a 2008 tribal law imposing governmental standards on artwork, and the Cherokee Freedmen controversy, also of the late 2000s.

Economics of the Democratic Citizen Identity

Nothing in the Principal Chiefs Act negates the entrepreneurialism imposed on the tribes by the Thomas-Rogers Act of 1936. It does, however, broaden the scope of the federally imposed limitations on the people objectified by the term “tribe.” Signed into law on October 26, 1970, by President Richard Nixon, the act stipulated that:

the principal chiefs of the Cherokee, Choctaw, Creek, and Seminole Tribes of Oklahoma...shall be popularly selected by the respective tribes in accordance with procedures established by officially recognized tribal spokesmen and or governing entity. Such established procedures shall be subject to approval by the Secretary of the Interior. (1091-1092)

Thus, a “tribe” now consisted of entrepreneurs who directed the oversight of their capitalistic endeavors through the process of popular vote. Again, signers of the Dawes Rolls – the census of Cherokees taken by the federal government to determine allotments in 1906 – and their descendents were certainly free to forego any tribal activities. They were, after all, American citizens, and could engage individually in entrepreneurialism outside the tribal context.

Moreover, they were certainly free to engage in democratic processes as citizens of the United States and their respective states, counties, and municipalities. But, as Charland pointed out, constitutive rhetorics “have power because they are oriented toward action” (143). The Principal Chiefs Act serves a constitutive purpose in the lives of those Cherokees *only* when they choose to engage in activities *as members of the Cherokee tribe*. As American citizens, they already enjoyed democratic leadership at various levels of governance. Moreover, as pointed in Chapter Two, they were certainly free – again, as American citizens – to engage in entrepreneurial activities. But, the parameters of the actions they may take as tribal members were set, and are still set, by both the Oklahoma Indian Welfare Act of 1936, as entrepreneurs, and by the Principal Chiefs Act of 1970, as democratic citizens. The latter federal act provided tribal members input, through the election process, of the operation of entrepreneurial activities that had, in fact, been ostensibly created for their own benefit. Previous to the Principal Chiefs Act, however, those businesses had been overseen by something of a federally nominated tribal fiefdom. W.W. Keeler, presidentially nominated as Cherokee chief, along with ten members of a tribal “executive committee” that Keeler appointed on his own accord, oversaw the operations of all the Cherokee business ventures. Keeler called executive committee meetings whenever he felt they were necessary, and no elections were held for any tribal offices (Bureau 1968). Testament to the power Keeler held as Cherokee chief was an article published in the November 18, 1969 issue of the *Cherokee Nation News*. Therein, Keeler announced his creation of the position of

“Deputy Principal Chief” and named Bob Stopp, the general business manager of tribal businesses, as the first holder of the deputy chief’s office. In the article, Keeler stated that, in creating the position, he was:

delegating to [Stopp] the necessary authority to work on all problems, make decisions and represent me at functions at which I would otherwise preside over or handle. Authority has also been delegated to him to sign letters and transmit instructions to those involved on all actions taken by the Executive Committee just as I would be doing. (1)

It is likely no coincidence that the creation of the deputy chief position was undertaken one month after the passage of the Principal Chiefs Act by Congress. The article read almost like a retirement announcement for Keeler, as he stated that “[i]n setting up this arrangement, I would hope that I have given a good example to Mr. Stopp of my efforts to consider, first, the best interest of the Cherokees” (1). The creation of the post was one of the last acts Keeler undertook as the singular appointed decision-maker of Cherokee entrepreneurialism.

In contrast, under the Principal Chiefs Act, anyone who was considered a member of the Cherokee tribe could exercise some control, through the election process, over the operation of tribally owned businesses.

McGee argued that all constitutive rhetorics are ideologically driven by “political myths.” Such myths, he argues, are “mass fantasies in which grown men [sic] justify their intention to act by ‘playing like’ the world is a more comfortable place than it appears to be” (244). Though they are purely rhetorical, such myths are still “*functionally* ‘real’ and important” (245), for they provide collective identity to a people (247). As argued in the two preceding chapters, the congressional constitution of the Cherokees as first, landowning individuals, and second,

entrepreneurs, was clearly an effort to situate the formerly collectivist Indigenous tribe as participants in an American capitalistic economy. The Principal Chiefs Act appears, *prima facie*, to operate outside of this economic political myth. But archived discourse, created within the federal bureaucracy during the drafting stages of the law, intimates an echo of Senator Henry Dawes's 1885 philosophy on the economic assimilation of the Cherokees. It appears that, to Harrison Loesch, secretary of the Department of Interior under Nixon, the economic success the Cherokees and other "Civilized Tribes" had enjoyed through previous federally imposed economic identities was the "incentive to better themselves" that Dawes had spoken of in his 1885 Lake Mohonk speech. That speech was cited in the opening passages of this essay (Debo 22). Now that the tribes had attained some economic prestige, they had earned, as archival evidence below would seem to indicate, self-governance.

In a letter written March 16, 1970, to Wayne Aspinall, the chairman of the U.S. House Committee on Interior and Insular Affairs, Loesch recommended several minor amendments to the wording of Edmondson's H.R. 14676. He expresses his support for the bill, stating that, "[a]t a time when the assets of the Five Civilized Tribes are increasing, it is essential that those persons determining the use of tribal assets be chosen by the tribal members" (2).

Loesch's letter was later drafted into a report from Aspinall's committee (Haley, 29 September 1970) and presented as accompaniment to the Senate version of the bill. The report stated that:

[c]hanges in the circumstances surrounding the Five Civilized Tribes are not consistent with the continuation of the appointive process [of naming tribal leadership]. The descendants of the Five Tribes are taking greater interest in the

affairs of those tribes. Popular participation in the choice of the principal officers will encourage even greater involvement in tribal activities. (2)

At that point, however, no governmental aspect of the tribes under consideration existed. As illustrated in the previous chapter, the tribes were entrepreneurial entities only, as defined by the Oklahoma Indian Welfare Act of 1936. Any “affairs of those tribes” or “tribal activities” were purely economic affairs and activities. The report continued to justify the Interior Department’s support of the bill, as it states:

The Five Civilized Tribes, often cited as the most acculturated tribes, have had their affairs administered by officials appointed by the President and under delegation of authority by the Secretary of the Interior. Popularly elected leaders would do much to strengthen the Indian peoples’ decisions. It would also be the best insurance that popular views are reflected to the fullest in the development of social and economic programs. (3)

So, at least to the Secretary of the Interior – the second highest federal authority, after the President, to oversee federal/Indigenous relations – the entrepreneurialism demonstrated by the Five Civilized Tribes under the OIWA appears to have *justified* democracy in tribal governance. Although Cherokees had enjoyed democratic self-governance as a sovereign nation until the passage of the Curtis Act in 1898, the federal government was now [re]conferring that self-governing capacity on the tribe. It appears that the federal philosophy toward Indigenous Americans had not changed much in the almost nine decades since Dawes’s Lake Mohonk speech. The tribes were to be capitalists first, and *then* democratic citizens.

A November 17, 1969 letter from Cherokee Chief W.W. Keeler to Rep. Ed Edmondson alluded to the federal privileging of economics over self-governance. According to Keeler, he

had recommended tribal elections for chief “to the Commissioner of Indian Affairs and/or the Secretary of Interior,” in 1954, fifteen years before the congressional consideration of the Principal Chiefs Act. That recommendation had been rejected (1). One may reasonably ask, what changes had occurred during that fifteen years to make Indigenous self-governance more palatable to the federal government? Certainly, the Civil Rights movement, as discussed earlier, had changed public perceptions of minority groups such as Indigenous Americans. But the most outstanding change within the former Cherokee Nation during that time was the implementation of eleven tribally operated businesses, as discussed in the previous chapter (*Cherokee Nation News*, 14 April 1970).

The most successful of those businesses was an electronics production factory called Cherokee Nation Industries. It began operation in June of 1969, a mere sixteen months before the passage of the Principal Chiefs Act. From June to September of 1969, the factory increased its workforce from thirty-two employees to fifty, and benefitted from engineering assistance from Western Electric and Phillips Petroleum, a relationship no doubt influenced by Keeler’s position as CEO of the latter corporation (*Cherokee Nation News*, 9 Sept. 1969). As it grew to two locations of operation by mid-1970, the factory was evidently so successful it was the subject of an August 10, 1970 hand-written note to Oklahoma Senator Henry Bellmon from Joe Cantrell, chairman of the Cherokee County [Oklahoma] Republican Central Committee and advisor to Bellmon on Indigenous matters:

I think you could really do yourself some good by ‘inspecting’ the electronics plants of ‘Cherokee Nation Industries’ at Stillwell and Tahlequah. This is one of the best examples of ‘self-help’ by a ‘minority’ group I know of. (from 15 employees to 80 – in one year). (1)

Cantrell added a bit of partisan strategy advice as a postscript: “(Beat [Democratic U.S. Representative] Ed Edmondson to the punch!)” (1).

So, by 1970, Cherokees had demonstrated their ability to be entrepreneurs with success worthy of emulation. Now they would be allowed to govern themselves. While the Principal Chiefs Act may have been passed within the same philosophical framework as the Curtis Act of 1898 – the law that began the economic identity transformation traced herein – the ethical dimensions of the two federal laws were significantly different, as will be illustrated in the following section.

Tribal Input to the Principal Chiefs Act

James Boyd White argued that law, as constitutive rhetoric, must be considered within an ethical register. Otherwise, he contended, law is reduced to “a reduction of the human to the material and the measurable, as though a good or just society were a function of the rate of individual consumption, not a set of shared relations, attitudes and meanings” (698). The true nature of law, he argued, is to establish a conversation by which a society determines how its aims, motives and values are to be translated into action: “The law should take as its most central question what kind of community we should be” (698). This is an especially salient point in any discussion of federal Indian law, for much of that body of legislation has been directed – not at determining “what our ‘wants’ are and should be,” as White phrased it (698) – but rather, at determining what “we,” as Americans, want “them,” the Indigenous tribes of the continent, to be. Notwithstanding the continuance of an economic motive to define the Five Civilized Tribes as participants in a capitalistic system, as discussed in the previous section of this chapter, the formulation of the Principal Chiefs Act differed significantly from that of either the Curtis Act or the Oklahoma Indian Welfare Act, precisely in such an ethical register. Certainly, the Principal

Chiefs Act provided a means for Cherokees and the other four tribes affected to constitute their own “we,” to determine how their values and motives would be translated into law. But the spirit of that ethical dimension of constitutive rhetoric was drawn upon even before the act was passed by Congress, as members of the Five Civilized Tribes – particularly W.W. Keeler – provided input to the formation of the law.

As briefly discussed in the second chapter on the Cherokee entrepreneurial identity, Keeler and Rep. Ed Edmondson engaged in an extensive correspondence in preparation for legislative hearings of H.R. 14676. The two men demonstrate in their correspondence a great deal of familiarity and trust with one another, always addressing letters with first names, “Bill” and “Ed.” The letters, in fact, intimate that Keeler was a significant driving force behind the substance of the final version of the bill. In a November 28, 1969 letter to Keeler, acknowledging the receipt of a November 17, 1969 letter from Keeler, Edmondson hand-wrote, at the end of the letter: “PS If your letter contains matters you’d like to keep between us, I’ll follow your wishes. It is a splendid letter. Ed” (1). That November 17 letter, written by Keeler, was in fact, quite revelatory in at least three regards.

First, it demonstrated Keeler’s prescient insight into issues concerning Cherokee self-governance. He pointed out the presence of Freedmen – descendants of former slaves of antebellum Cherokee plantation owners – on the Dawes Rolls (2). Those Freedmen would later be the focal point of significant controversy between the federal government and the Cherokee Nation, as discussed later in this chapter. He also broaches the subject of blood quantum in determining tribal membership, as well as the fact that many Cherokees at the time of allotment refused to sign the Dawes Rolls. Those Cherokees and their descendants were therefore excluded from federally recognized tribal identities (2). Circe Sturm has written extensively about the

“blood identity” issues that have arisen from that refusal to adhere to federal requirements. As she pointed out, that situation continues to cause bitter disagreement among Cherokees themselves about who may rightfully claim tribal membership (52-81).

Second, the letter demonstrates the significant input by tribal leaders into the Principal Chiefs Act. As discussed in the previous chapter, Keeler’s recommendation that the bill be worded in a way that would allow tribes to “select” rather than “elect” tribal chiefs, primarily because of concerns about the cost of elections, was implemented into the final bill. Also, Keeler recommended that the federal government retain oversight of tribal elections. He feared that “some of the militant anthropologists around who will bring civil rights suits against individuals or groups” because of their disagreement with tribal election procedures would present unnecessary interference in tribal self-governance (3). This recommendation by Keeler seems, at first glance, to run counter to the concept of Indigenous self-governance. However, it correlates quite well with Vine Deloria’s view of Indigenous peoples’ relationship with anthropologists and their efforts to educate Indigenous Americans about their own cultures and needs, expressed the same year as Keeler’s letter – 1969 – in *Custer Died For Your Sins*:

The massive volume of useless knowledge produced by anthropologists attempting to capture real Indians in a network of theories has contributed substantially to the invisibility of Indian people today...Some young Indians attend workshops over and over again. Folk theories pronounced by authoritative anthropologists become opportunities to escape responsibility...Workshops have become, therefore, summer retreats for non-thought rather than strategy sessions for leadership enhancement. (83-85)

In effect, Keeler was asking for protective oversight from the federal government against yet another Western institution – academia. He expressed tacit agreement with Deloria’s contention that Indigenous Americans would be better served by the ability to “consider their problems in their own context” (85) rather than have answers to tribal problems suggested by non-Indigenous individuals and institutions.

Keeler’s disenchantment with anthropologists is clearly illustrated in a 1969 *Kansas City Times* interview that was reprinted in the October 11, 1969 issue of the *Cherokee Nation News*. Keeler found academic efforts to rhetorically constitute the Cherokee tribe incompatible with the entrepreneurial Cherokee identity he so strongly advocated:

I know we’ve got mighty poor people. But we aren’t going to solve that problem by being something a bunch of anthropologists want us to [be] – Indians back in the woods who speak Cherokee and huddle around the fire at night. We as a tribe are going to be Indians who live in complex society where computers, mathematics, English, engineering and other skills are the prime mover. (Fisher 1)

Keeler’s distrust of the academic discipline of anthropology likely began in 1966, when a Carnegie Cross-Cultural Education Project, led by anthropologist Alfred L. Wahrhaftig was undertaken in Tahlequah, Oklahoma. According to an article in the August 19, 1969 edition of the *Cherokee Nation News*, Wahrhaftig presented the findings of the project to Congress on February 19, 1968, describing assimilation of Cherokees into the broader American culture as a “myth.” Moreover – and most likely, more insulting to Keeler – Wahrhaftig’s presentation to Congress accused the Keeler-run Cherokee entrepreneurial tribe of misusing two million dollars, a portion of the money that the Cherokees had been awarded by the federal government as payment, albeit somewhat late, for a nineteenth century land sale (Halsell 8). While some of that

money was distributed to signers of the Dawes Rolls and their descendents in 1962, the remaining two million dollars was set aside for “programs which will benefit the Cherokees in years to come” (*Cherokee Nation News*, 14 April 1970, 1). Those programs were, according to Keeler, the eleven businesses operated by the tribe (1). As presented by the *Cherokee Nation News*, Wahrhaftig’s claims were the inspiration for George Groundhog’s creation of the Original Cherokee Community Organization, the constitutive counter-rhetoric to the entrepreneurial Cherokee identity that was detailed in Chapter Two of this dissertation (Halsell 8). Quite clearly, Keeler felt that anthropological examination of his tribe was a hindrance to his efforts to strengthen the Cherokee entrepreneurial identity through the creation of industry. It is not outside the realm of possibilities that he feared Wahrhaftig’s congressional audience might be influenced by suggestions by the anthropologist to, yet again, reconstitute the tribe in ways not conducive to Keeler’s obvious capitalistic leanings.

Anthropological concerns about Keeler’s leadership notwithstanding, his recommendation that the federal government oversee the Five Civilized Tribes democratic processes of self-constitution was included in the congressionally approved version of the Principal Chiefs Act, which states that election procedures “shall be subject to approval by the Secretary of the Interior” (1091-1092).

Third and finally, Keeler’s letter to Edmondson is revelatory in that it includes a postscript indicating Cherokees had *already* begun engaging in democratic rule, albeit at a local, rather than tribal, level:

I believe you are aware that in those communities in Oklahoma that are predominantly Cherokee we now have elected representatives. These elected representatives in turn have elected a Chairman who speaks for them. This elected

group interviewed the many applicants and recommended to me three men for the position of General Manager of the Cherokee Nation or Tribe. They favored the man I ultimately selected for this position and he has been doing an excellent job.

(3)

While Keeler was a Cherokee, as determined by the blood standards of the 1906 Dawes Rolls, he was also appointed to his chief position by the president, as were all chiefs of the Five Civilized Tribes. Keeler's input to the Principal Chiefs Act might be viewed as simply one federally empowered bureaucrat making recommendations to another. But, his letter indicated that his decisions as chief were not necessarily unilateral. It appears that democratic leadership – of the tribe's entrepreneurial interests, at least – was implemented even before Cherokees were allowed to elect their own chief.

Keeler may have enjoyed significant influence on the Principal Chiefs Act, but he was by no means the only Indigenous American leader to provide input to the bill. An April 7, 1970 letter from W. E. McIntosh, president of the Inter-Tribal Council of the Five Civilized Tribes to Edmondson indicated that all five of the collectives subject to the provisions of the act made recommendations. The Inter-Tribal Council consisted of representatives from the Cherokee, Choctaw, Chickasaw, Creek, and Seminole tribes. McIntosh's letter expressed a collective desire to make minor changes to an early draft of the bill, including a section placing the financial responsibility of tribal elections on the federal government. That recommendation did not make its way into the final approved version of the bill. However, as the letter indicates, the input of the Inter-Tribal Council *was requested* by Edmondson, indicating that – by the standards described by White (1985) discussed in the opening paragraph of this section – the ethical dimensions of the Principal Chiefs Act were at least a consideration of federal officials during

the movement of the bill through Congress. Approved by Congress and signed by President Richard Nixon on October 22, 1970, the law was soon enacted by Cherokees, as they took on newly imposed identities as democratic citizens.

Democratic Citizens

While I use the term “democratic” in its most literal sense – from the Greek *demos*, “people” and *kratos*, “power” – it should not be understood that the democratic Cherokee identity removed the U.S. government from the political lives of Cherokees. The Principal Chiefs Act stipulates that the tribes’ election procedures were “subject to approval” by the U.S. government (1092). Consequently, the constitution of the Cherokee Nation of Oklahoma was approved by the federal government in 1975 and ratified by Cherokee voters in 1976. The preamble of that constitution stipulates that “[t]he term ‘Nation’ [in ‘Cherokee Nation’] as used in this Constitution is the same as ‘Tribe,’” thus positioning the Cherokee Nation as an object of the discourse exercised by the federal government’s implementation of “tribe” in the Principal Chiefs Act. Acknowledging the authority of federal discourse, Article One of that tribal constitution states: “The Cherokee Nation is an inseparable part of the Federal Union. The Constitution of the United States is the Supreme law of the land; therefore, the Cherokee Nation shall never enact any law which is in conflict with any Federal law.”

The constitution does, however, give Cherokee tribal members democratic abilities beyond those already provided them by virtue of their status as American citizens. They were given the authority to elect tribal officers, including the chief and deputy chief, as well as legislators who, collectively, were referred to as “the Council of the Cherokee Nation” (Article V, Sec. 1). Each of those fifteen councilors represented districts “within the historical boundaries of the Cherokee Nation of Oklahoma” (Sec. 3). Those council-members were given

the power to oversee the entrepreneurial activities of the tribe that had already been established, and to expand those activities as deemed necessary (Article X). Thus, control of Cherokee entrepreneurialism was shifted from a presidentially appointed chief to a democratically elected council and chief, the latter of which retained veto power over council acts (Article V, Sec. 11).

The constitution also stipulated who could actually take part in the actions afforded tribal members: “[a]ll members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls” (Article III, Sec. 1), the census, mandated by the Curtis Act of 1898, which, as discussed in Chapter One, bound individual Cherokees to particular plots of land. Under the new Cherokee constitution, tribal members were not bound to land, but rather to their blood – their family lineage to a signer of the Dawes Rolls. As W.W. Keeler warned in his 1969 letter to Rep. Ed Edmondson, such a blood-based rubric for tribal membership potentially denied tribal government activity to descendants of Cherokees who had managed to escape the oversight of the federal government as it implemented the provisions of the Curtis Act in the early years of the twentieth century (2). But, as the Principal Chiefs Act gave the BIA the power to approve or disapprove tribally derived constitutions, the Dawes Rolls provided the only “permanent corpus of knowledge” that would allow the Cherokee government to justify its membership to federal officials (Foucault, *Discipline* 190). It was, to date, the only existing disciplined ordering of Cherokee identity taken. As such, it was adopted by the Cherokee Nation itself as a determinant of tribal identity.

So, while Cherokees did not necessarily need to own property to engage in tribal politics, they did need to trace their ancestry to one of the individual Cherokees who had been listed on the Dawes Rolls in 1906 as a newly constituted owner of American and Oklahoman real estate. The “land” aspect of the landowner Cherokee identity, as described in the Chapter One, had

fallen to the wayside over the years, as Curtis Act allotments were sold and transferred out of Cherokee ownership (Debo 92-96). But the registry of those landowning Cherokees, the Dawes Rolls, still existed, and they became the rubric for Cherokee tribal membership through their adoption by the Cherokee Nation.

That standard of tribal membership, federally created and tribally adopted, has been the source of some turmoil, as well as a conduit of resistance to the democratic citizen identity, for the Cherokee Nation during the twenty-first century. In the following sections, I will discuss two controversial episodes centering on blood identity – one involving a Cherokee law regulating artwork, and another focusing on the Freedmen, modern-day descendants of antebellum slaves owned by Cherokees.

Art by Blood

As discussed in the first chapter, every Cherokee, along with every member of any other federally recognized Indigenous American tribe, is issued a card by the Bureau of Indian Affairs. On that card is the card-holder's blood quantum, a fraction that designates how much of a person's ancestry can be traced to a signer of the Dawes Rolls. That Certificate of Degree of Indian Blood, or "CDIB card," shows how much Indian a person is, based on two factors – the crude standards of racial identification used by federal officials to create the rolls, as described in Chapter One; and the number of generations that have passed between that signer of the Dawes Rolls and the possessor of the CDIB card. The Cherokee Nation does not impose a minimum blood quantum on tribal members, but each Cherokee citizen must be able to trace his or her ancestry to at least one signer of the 1906 rolls (Sturm 3). It is this federal recognition of Cherokee ancestry that provides the political agency allowing tribal members to have some control – through the election process – over Cherokee economic interests.

This blood-based rubric of tribal citizenship contrasts significantly with the findings of Sturm, who noted that while “culture is not a primary consideration when federal or tribal governments assign Indian identity, for most Native Americans *culture is the litmus test of ‘Indianness’*” (6) [Italics added]. Sturm describes an interview with an elderly woman who stated, “I can tell if someone is Cherokee. It’s the way they talk and act. I can tell if they have the blood” (119). Another interviewee of Sturm’s spoke of a man he knew who was white by phenotype, but:

he was raised by a Cherokee family. Everything about him was Indian except the color of his skin. It was the way he carried himself. He was never in a hurry. He would stop and really listen to people. He did things slowly, as if he had all the time in the world. (119)

These statements are significant in that they indicate an application of culture-specific behaviors and communicative practices as rubrics of Indigenous identity, rather than a federally imposed mathematical blood standard. Moreover, they are reminiscent of the cultural standards imposed by the nineteenth century Keetoowah Society, as described in the first chapter of this essay. According to Mingus, the term, “fullblood,” as used by Keetoowahs during that era, should not be understood in a modern sense of denoting blood ancestry, but rather, within a cultural context in which “blood” represented a level of allegiance to traditional tribal customs: “Some of those commonly referred to as fullbloods, including many of the leaders of the Keetoowah Society itself, were the products of Cherokee/white intermarriage” (78-9). This contrast between the federally imposed, tribally adopted, blood rubric for tribal citizenship and the culture- and communication-based standards that Sturm found utilized by many who consider themselves to

be Cherokee came to a fine point in January of 2008, when the Cherokee legislative council passed the Truth in Advertising for Native Art Act.

According to Cherokee Councilor Cara Cowan Watts, an advocate of the tribal law, the act applies specifically to artistic works marketed on property owned by the tribe, or at events sponsored by the Cherokee Nation. The act stipulates that “an object or action that is made with the intention of stimulating the human senses as well as the human mind/and or spirit regardless of any functional uses” must be created by a person with a CDIB card, if it is to be marketed at any location or event associated with the Cherokee Nation. Such objects or actions include “crafts, handmade items, traditional storytelling, contemporary art or techniques, oral histories, other performing arts and printed materials” (Travis Snell, 2008). The Cherokee Nation’s Truth in Advertising for Native Art Act negates any cultural, behavioral, or communicative standards for Cherokee authenticity. This negation sparked controversy later in 2008, when Murv Jacob, an artist known for his Cherokee-related works, faced exclusion because of the act.

Jacob studied painting under Cecil Dick, who has been referred to by the Cherokee Nation as “the Father of Cherokee Traditional Art” and as the recipient of “almost every art award given in the Native American art world” (Cherokee Nation 4 August 2006). Jacob himself has been recognized with numerous awards for his paintings, and his Cherokee tradition-based illustrations have been published by National Geographic, Time-Life, Harper-Collins, Dial, Parabola, and Oklahoma University Press. Jacob and his wife, Deborah Duvall, have written and illustrated a series of children’s stories based on Cherokee mythology, and those works, published by the University of New Mexico Press, have received critical acclaim as well (Fite, 7 January 2009). Moreover, he illustrated the cover of *Mankiller: A Chief and Her People*, the autobiography of Wilma P. Mankiller, first female chief of the Cherokee Nation.

Yet Jacob does not have a CDIB card and does not claim membership in any tribe. Therefore, under the Truth in Advertising for Native Art Act, his books and artwork were removed from the Cherokee Nation Gift Shop, located next door to the Cherokee Nation tribal headquarters and operated by the tribal government, as well as all other locations operated by the tribe. Jacob wrote a letter to the editor of the *Tahlequah Daily Press*, defending his Cherokee identity and privileging a culture-based, rather than blood-based, standard for Cherokeeity: “I’ve met very few folks who are actually ‘Indians.’ A card doesn’t make you Indian.” He claimed that Tribal Councilor Cara Cowan Watts, the key proponent of the Truth in Advertising for Native Art Act, possesses only one-two hundred fifty sixths Cherokee blood, and that many other Cherokee Nation members possess “such laughable, minimal blood quanta, some as low as 1/2048...You’d never guess they were Indians if they didn’t have that card” (Jacob 29 August 2008).

The public responses to Jacob’s letter in the *Tahlequah Daily Press* (Hoklotubbe, 8 September 2008; Murray, 3 September 2008; Scraper, 2008; Smith, 1 September 2008), lend some support to Sturm’s claim that, for people living in and around the Cherokee capital of Tahlequah, Oklahoma, culture and communicative practices carry more weight in determining a person’s Cherokeeity than blood relation to a signer of the Dawes Rolls. Yet, the Cherokee tribal council is democratically elected by Cherokee Nation members. The fact that the council *can* subsume creative expression into the democratic citizen identity created by the Principal Chiefs Act and enacted by the Cherokee constitution, indicates that – while other standards may indeed have some purchase among Cherokees – the standard of lineal blood ancestry is privileged for matters related to the democratic control of tribal entrepreneurial endeavors, even when those endeavors are of an artistic sort. Jacob is nationally recognized for the Cherokee themes of his creative works. He is one of the most commercially successful artists utilizing

Cherokee themes as inspiration (Fite, 7 January 2009). But he is not a member of a “tribe,” as defined by the Principal Chiefs Act. Therefore, the decisions made through the democratic process by those who *are* members of the Cherokee tribe limit Jacob’s access to a Cherokee identity.

Collectives of people, as McGee argued, are processes that are “conjured into objective reality, remain so long as the rhetoric which defines them has force, and in the end wilt away” (242). Consequently, Jacob is an artist somewhat out of his time. Under the constitutive rhetoric of the nineteenth century Keetoowah Society, perhaps, he would have been considered a member of the collective that inspired his art. To those Keetoowahs, “fullblood” was a term denoting cultural adherence, rather than a quantification of ancestry (Minges 78). In the twenty-first century, however, he is an artist who may be inspired by a culture, but cannot be a member of the “tribe” that evolved out of that culture, regardless of his commercial success. This marginalization through blood ancestry is an experience Jacob shares with 2,800 other individuals who have also been denied access to Cherokee identities in the twenty-first century. Those individuals, known as “Freedmen” are the subject of the next section, and their marginalized tribal identities are still an ongoing controversy.

Cherokee Freedmen

In 2006, the Cherokee Nation Supreme Court determined that the wording of the membership requirements for the tribe, as presented in the tribal constitution, did not differentiate between signers of the three separate rolls taken by the Dawes Commission under the provisions of the Curtis Act of 1898. The commission had created one roll specifically for Cherokees; another for intermarried whites living in the Cherokee territory; and yet another for Freedmen, freed slaves and descendents of those slaves, who had been emancipated at the end of

the Civil War from the ownership of Cherokee slave-owners. Those emancipated slaves had been given Cherokee citizenship by the Treaty of 1866 between the United States and the Cherokee Nation, which had supported the Confederacy during the Civil War. The 2006 Cherokee Supreme Court decision ruled that the constitutional membership requirement – “as proven by reference to the Dawes Commission Rolls” – did not differentiate between descendents of signers of the three different rolls, and granted tribal membership to descendents of Freedmen, even though they did not possess, by the standards created by the Dawes Commission, Cherokee ancestry (Snell, 14 June 2006). A tribal constitutional amendment referendum was held March 3, 2007 to change the wording of Cherokee membership requirements so that only descendents of signers of the Dawes Roll of Cherokees would be eligible for tribal citizenship. Seventy-seven percent of Cherokee voters approved the amendment (Snell, 5 March 2007).

As quoted in the *Tahlequah Daily Press* after the passage of the referendum, Cherokee Principal Chief Chad Smith described the vote as an exercise of Cherokees’ democratic citizenship: “The Cherokee people exercised the most basic democratic right, the right to vote,” said Smith. “Their voice is clear as to who should be citizens of the Cherokee Nation. No one else has the right to make that determination. It was a right of self-government” (Snell, 5 March 2007). Members of the U.S. Congressional Black Caucus, however, saw the vote as a violation of Freedmen’s rights and introduced HR 2824, a bill to sever the U.S. government’s relationship with the tribe until “the Cherokee Nation of Oklahoma restores full tribal citizenship to the Cherokee Freedmen disenfranchised” (1). A severance of that relationship would create an identity crisis for Cherokees, as their status as democratic tribal citizens was actually *created* through that relationship in the discourse of the Principal Chiefs Act of 1970. A federal lawsuit filed by Freedmen against the tribe is still under consideration at the time of this writing (Snell, 1 February 2014). Regardless of the outcome of that lawsuit, the Freedmen issue facilitated the

emergence of a constitutive counter-rhetoric to the democratic citizen identity allowed by the Principal Chiefs Act and the resultant Cherokee constitution.

Politicoethical Cherokee Identity

At a Cherokee Nation Council Rules Committee meeting held in 2006, after the tribal supreme court granted citizenship to the Freedmen but before the 2007 Cherokee election effectively removed them from the tribe, councilor Joe Thornton addressed the legislative committee, expressing support for the Freedmen:

The highest court in our nation has ruled the Freedmen have all the rights the Cherokees are entitled to. In 1866 we signed a treaty with the federal government. Within that treaty, all Freedmen were granted the same rights as the Cherokee. My father was a Methodist and my mother was Church of Christ. They instilled their ethical rights in me [sic], and I've been told we need to do the moral thing. (Snell, 28 April 2006)

Despite the majority support for the subsequent tribal constitution amendment denying tribal membership to the Freedmen, many Cherokees shared Thornton's belief that the Cherokee Nation had a moral obligation to allow Freedmen citizenship. Some tribal members, like pro-Freedmen activist David Cornsilk believe the exclusion of the Freedmen is a racist action (Barbery 2013), though the Cherokee Nation has pointed out that the tribe has numerous members of African-American descent whose ancestry can be traced to the Cherokee-by-blood Dawes Rolls rather than the Freedmen rolls (*Truth*). Even Todd Hembree, the Cherokee Nation Attorney General who represents the tribe in the ongoing Freedmen lawsuit, conceded that he brackets his personal views on the Freedmen from his tribal duties: "I did not vote for that petition [to remove Freedmen from the tribe], but that is my right as an individual. Now, when

the Cherokee people speak in overwhelming percentages [against Freedmen tribal citizenship], that's who I represent" (Barbery). In effect, Hembree is suggesting that the Cherokee Nation has obligations beyond those provided through the democratic process of elections, just as he has obligations beyond those required by his job as the attorney general of the tribe.

Jim George has argued that views such as those of Cherokee Councilor Thornton's – that acceptance of the Freedmen is "the moral thing" – represent a postmodern extension of Emmanuel Levinas's ethics of reciprocity (*Otherwise* 135-140) into the political realm. Such a perspective, according to George, is based on "right conduct" (44), the consideration of the self and others as inseparable subjectivities, rather than on "textual doctrine, regulatory moral codes, or rules and norms" of existing political structures:

[T]his ethical commitment is not focused on the conventional meanings of democracy and emancipation, imbued as they are with the universalist authority of a sovereign presence (the people, the class, the revolution, the rational, the system), but on those processes that, in any site of struggle, systematically exclude people from making decisions about who they are and what they can be.

(65)

Such a politicoethical stance is, according to Barbery, gaining a foothold among Cherokees vis-à-vis the Freedmen issue: "[T]here are signs emerging that the entrenched division surrounding the Freedmen controversy is slowly receding. Cherokee citizens have grown undoubtedly more docile, and in many cases, supportive of the Freedmen."

Conclusion

A pro-Freedmen Cherokee rhetoric, constituting the tribe as a political entity based on an ethic of "right conduct" rather than on the demands of democratic rule, is significant to twenty-

first century Cherokees in two regards. First, it demonstrates a willingness on the part of the tribe to adhere to treaties signed with the United States before the absorption of Cherokees into American citizenship implemented by the Curtis Act of 1898. Such a willingness is noticeably lacking in the United States government itself. The Curtis Act is, in fact, a prime example of the federal disregard for treaties signed with tribes that had at one time been considered sovereign nations (Debo 161). A politicoethical Cherokee identity rhetorically binds the modern Cherokee Nation to that of the nineteenth century tribe, demonstrating an ethical responsibility to provide a political home to the Freedmen, while at the same time providing something of a moral high-ground to the tribe vis-à-vis its relationship with the federal government: The United States may default on its obligations; but under a politicoethical tribal identity, the Cherokee Nation does not.

Second, and in a related manner, such a constitutive rhetoric transcends seven decades of exclusively American citizenship molded by the three federal acts examined in this essay, and creates a tribal identity wholly constructed by Cherokees themselves. As demonstrated in the previous chapters of this work, it is the first such identity in over a century. At the time of this writing, the Cherokee politicoethical constitutive identity is still a counter-rhetoric to the democratic citizen identity provided by the Principal Chiefs Act. But, as noted above, there is some indication that – not unlike the OCCO’s 1960s counter-rhetoric espousing democratically elected tribal leadership, and its absorption into an institutionalized tribal identity through the Principal Chiefs Act – the Cherokee politicoethical identity could eventually be adopted, and serve as augmentation of the democratic citizen identity.

I have argued in this chapter that the Principal Chiefs Act of 1970 – while still entrenched in an economic motive – was influenced by significant Indigenous input, and constituted

Cherokee tribal members as democratic citizens. From that democratic identity emerged the exclusion of a well-known artist known for his Cherokeeeness, and the Freedmen controversy, which provided the background against which a counter-rhetoric, a politicoethical tribal identity, emerged. In the following concluding chapter, I will discuss implications of the analysis that has been conducted herein, tracing ways in which the federal government's redefinition of Indigenous Americans served as something of a "proving ground" for international actions in the twenty-first century. Moreover, I will address the concept of tribal sovereignty, which, as Lyons argued, "has long been a contested term in Native discourse" (449).

Conclusion

In one sense, the Cherokee Nation appears to have come full-circle, from a sovereign nation interacting with other sovereign nations, specifically the United States, to a dispersion of individuals, and then back again to a sovereign nation. Yet, in another sense, the tribe seems trapped in an intractable relationship of power with the U.S. government. Both may, in fact, be true representations of the tribe.

I have argued here that federal legislative discourse through the twentieth century constituted the Cherokee Nation as three different, yet related, entities in a capitalistic economic system. This constitutive power was undertaken by ascribing three different meanings to the term “tribe,” in that federal discourse. First, the Curtis Act of 1898 imposed the role of landowner on tribal members, while simultaneously ending the collectivistic economic system, and the democratic government, Cherokees had previously enjoyed. The dynamic through which discourse became action – the apparatus that motivated the Curtis Act as constitutive rhetoric – was the federally administered census known as the Dawes Rolls. Through that instrument of examination, the ability of each Cherokee to operate in a capitalistic system was assessed and determined by his or her blood quantum – the amount of Cherokeeness a person was deemed to have by ancestry. Land was then allotted, and restrictions placed upon what could be done with that land, based on each person’s blood quantum. The Dawes Rolls served as a disciplining mechanism that “ordered” the lives of Cherokees in a manner conducive to capitalistic American citizenship (Foucault, *Will* 138, 141). To this day, the Dawes Rolls likewise serves as a federal disciplining mechanism on the lives of Cherokees.

The second piece of federal legislation examined was the Thomas-Rogers Act of 1936, which extended the role of Cherokees to entrepreneurs. Still a prominent aspect of Cherokee

tribal identity today, the entrepreneurial constitution of the tribe by the U.S. government allowed Cherokees to [re]formed as collectives, but only as corporations. Under the direction of presidentially nominated Cherokee Chief W.W. Keeler, multiple Cherokee corporations were formed under the provisions of the Thomas-Rogers Act. Again though, such corporate tribal identity was only extended to Cherokees who had signed the Dawes Rolls, or to their progeny. Thus was the disciplining power of the federal government maintained over Cherokees, even as entrepreneurs, even as their tribe/corporations began to experience some capitalistic economic success.

Finally, the Principal Chiefs Act of 1970 again recreated the tribe as democratic citizens, empowered with the agency to direct new governmental and already existent economic endeavors. Under this identity however, some turmoil has arisen as the democratic Cherokee government has enacted measures to marginalize and deny Cherokeeeness to some people who otherwise identify with elements of either Cherokee culture – as is the case with Murv Jacob and potentially, other artists – or historical precedence – as is the case with the Freedmen.

I have also provided examples of rhetorical resistances to those federal constitutive rhetorics, and illustrated how some elements of those counter-rhetorics were eventually successful to some degree. The Keetoowah Society, which offered resistance to the Curtis Act of 1898, was somewhat absorbed into a federally constituted realm with the creation of the United Keetoowah Band under the provisions of the Thomas-Rogers Act of 1936. Yet, some Cherokees still operate outside the bounds of either federal oversight or tribal governmental oversight as the Keetoowah Society. The basis for membership in that society is the same as it was over a century ago – adherence to “Kituhwa,” a traditional Cherokee moral code. (*Spirit*; Minges 2003, 74).

Another example of a counter-rhetoric that eventually came to some degree of fruition is seen in the efforts of George Groundhog and his organization, the Original Cherokee Community Organization. That group provided resistance to the federal rhetoric of the entrepreneurial Cherokee identity, arguing that that Cherokee leadership should be elected, not appointed by the United States President. The OCCO also argued that Cherokeeness should be based on use of the Cherokee language. Adoption of democratically elected leadership emerged with the federal passage of the Principal Chiefs Act of 1970. While fluency in the Cherokee language is not a requirement of Cherokee Nation membership today, there is some indication that such language proficiency is still an increasingly pertinent issue for Cherokees. A 2002 study conducted by the tribe indicated that no one under the age of forty could speak the language conversationally. Subsequently, the tribal legislative council passed the Cherokee Nation Language and Cultural Preservation Act, creating a language immersion program for pre-school age children. With the goal of “promoting Cherokee language, history, and culture,” the immersion program is taught “from a Cherokee cultural perspective while addressing the Oklahoma PASS (Priority Academic Student Skills) objectives” (Immersion Program). So, Groundhog’s concern for language proficiency, expressed half a century ago as a counter-rhetoric to the Cherokee Nation as it then existed, is now a concern of the Cherokee Nation itself. Yet, the adherence of the Cherokee language immersion program to both Cherokee and Euro-American educational standards, as indicated in the passage above, demonstrates the dual-culture nature of many aspects of modern Cherokee tribal existence. The tribe has regained some control over its own destiny through the democratic identity, yet is still wrapped in a tightly bound relationship with the Euro-American culture and its economic and governmental structures.

At this writing, it is still too early to determine the success of the politicoethical Cherokee identity promoted by tribal legislator Joe Thornton, tribal member David Cornsilk and other Cherokees who feel the tribe has a moral obligation to accept the Freedmen into the tribe. But, it is most likely that, should such an identity be adopted by Cherokees, it will be absorbed into – even implemented through – democratic tribal governance. Like the counter-rhetorics of the Keetoowahs – eventually transformed into the entrepreneurial identity as they were incorporated as the United Keetoowah Band; and the OCCO – whose call for tribal language proficiency was eventually integrated into the democratic tribe – any success the politicoethical tribal identity obtains will likely come through absorption into an already enacted federally-imposed tribal identity.

In the introductory comments to his 1978 lecture at the *Collège de France*, which addressed the subject of bio-politics, Foucault stressed that his study of discourse and its attendant effect of power were not intended to serve as a primer for revolutionaries. Rather, he said, his work was directed at pointing out the “field of forces” that underpin power: “If you want to struggle, here are some key points, here are some lines of force, here are some constrictions and blockages” (*Security* 3). If I were to apply some critical insight gained through this study, and attempt to illuminate a “tactical pointer” concerning a Cherokee counter-rhetoric to the federal constitution of the tribe – to identify perhaps the most successful of what Foucault called a “struggle” – in the political milieu examined in this essay, I would have to point to the Keetoowah Society (3). Certainly, Levi Gritts’s correspondence with U.S. Rep. William Stigler and the resultant formation of the United Keetoowah Band served to absorb some elements of the Keetoowah Society – the leadership organization, for example – into the entrepreneurial identity set forth by the Thomas-Rogers Act of 1936. Yet, the Keetoowah Society itself

continued, bracketed out of governance by the U.S., UKB, or later, the Cherokee Nation. As described in Chapter One, they began as a religio-political organization. But the creation of the UKB allowed for a separation of the political aspects of the Keetoowahs from the religious. The UKB took control of the former, while the Keetoowah Society continued to oversee the latter, privileging elements of Cherokee life that were not brought under the disciplining gaze of the federal government, such as stories, artifacts, songs, dances, language, a strong sense of collectivism, and the traditional seven-clan social system that had existed in the Cherokee culture for time immemorial. They continue to do so today. While members are not necessarily exempted from the constitutive rhetorics imposed on Cherokees by the federal government – many are members of the Cherokee Nation or the UKB – they determine their own Keetoowah Society membership, and have succeeded at least in *preserving* elements of Cherokee culture (*Spirit*).

Foucault termed counter-rhetorics as “counter-conducts,” as they present opposition to the conduction of power from a governmental entity to populations dominated by that government. Such counter-conducts, he said, are statements of “[m]y law, the law of my own requirements, the law of my very nature as a population, the law of my basic needs . . .” (*Security* 196). The Keetoowah Society appears to have, for over a century, parsed their requirement – an adherence to traditional practices – from those imposed on them by the U.S. government, while at the same time adhering to those imposed federal requirements. While the corporate-democratic Cherokee Nation is, in the twenty-first century, beginning to reintegrate elements of traditional Cherokee culture, such as language, into their tribal identity, the Keetoowah Society never loosened their grasp on such elements. It is not beyond the realm of possibilities that, should the federal constitutive hold on Cherokees experience a rupture in that power relationship,

the Keetoowah Society's adherence to pre-Curtis Act traditional practices could serve as a constitute rhetoric for yet another iteration of the Cherokee tribe.

Global Implications

The Cherokees are, of course, not alone in having their understanding of a “tribe” forcibly altered by the federal government. Over five hundred such groups of Indigenous Americans have experienced similar transformations since the allotment process began in the late nineteenth century (Mihesuah 20). Moreover, American troops currently engaged in military action in Afghanistan appear to be implementing a strategy of tribal redefinition that is eerily reminiscent of the federal treatment of Indigenous Americans in the early twentieth century.

In the National Geographic documentary film, *Restrepo*, Lieutenant Colonel William Ostlund of the U.S. Army's 173rd Airborne Division addressed a group of Afghan tribal elders after they had lodged complaints about their villages and subsistence crops being overrun by U.S. military personnel: “This is the deal we'll make: Everybody needs a job. We're going to try to bring some progress here, and some jobs.” Ostlund intimated that the U.S. government would pay the elders to rebuild their own village – a village severely damaged by U.S. military action. Ostlund's assumption that “everybody needs a job” is not simply his personal philosophy on the changes needed in Afghanistan. It speaks to a much broader strategy of redefining many of the people in Afghanistan by redirecting the actions available to them, in terms of their – by American standards – simple existence. In short, the U.S. military is proposing to constitute them as something other than what they were before U.S. presence in the region.

In a February 28, 2009 National Public Radio news broadcast, Major Blaine Clowser of the Kansas National Guard's Agribusiness Development Team, or ADT, provided an overview

of the work the team does in Afghanistan: “[H]opefully, we can assist them in developing an economic base that will create a little greater stability within that region.” The purpose of the project is to turn the small-scale farming conducted by Afghan tribal groups into agribusiness projects, with the goal of creating – not just food for tribes themselves – but monetary profit. Somewhat similar to the Thomas-Rogers Act of 1936, the ADT aims to redefine tribes as agricultural entrepreneurs. An examination of *Tactics, Techniques, and Procedures*, a manual utilized by the ADT in preparation for their Afghanistan missions among the Pashtun tribe, indicates terminology that could have come straight from the desk of nineteenth century U.S. Senator Henry Dawes, the orchestrator of the allotment process: “Many of these *individuals* do not even own the land on which they live or grow their food’ [my italics] (12); “[T]hey harbor a fatalistic view (*Inshallah* or God willing) of life . . . they live hand to mouth and do not see the value in planning for tomorrow” (19); “Farmers, regardless of country, race, culture, social and economic status, or language, have a singular focus – growing food for profit. Thus, the ADT experts are uniquely suited for . . . modernization of the Afghan farm economy” (17). While the manual does provide some generalities to ADT soldiers to help them better understand Afghan tribal cultures – “Afghan identity and loyalty is communal and public and takes precedence over individual and private” (30) – the chapter on “Cultural Influences” opens with a quote from retired General Anthony Zinni of the U.S. Marine Corps that seems to be as fatalistic about the U.S./Afghan tribe relationship as *Inshallah* evidently appears to the U.S. military:

We [in the U.S. military] never do a good job of culture intelligence, of understanding what makes people tick, what their structure is, where authority lies. Culture bias limits our ability to understand what is going on around us. (29)

Nevertheless, the ADT continues the attempt to restructure the actions available to Afghan tribal people, in terms of their agricultural projects. Consisting of American farmers, ranchers, and other agriculturalists who serve in their respective state National Guard units in Kansas, Texas, Washington, and other states with predominantly agricultural economies, the ADT's goal of "jump-starting the agricultural economy" of Afghanistan is, for the time being, an ongoing project (Medina). Such economic constitutive efforts – especially as they are carried out as part of an *international* contingency of military personnel – are described by Michael Hardt and Antonio Negri as a world order they term "Empire" (xi). Empire, they argue is very different from the traditional notion of "imperialism," for it does not involve any one nation-state. "Empire" is, in fact, a globalization of capitalism that "establishes no territorial center of power and does not rely on fixed boundaries or barriers" (xii). Rather, it relies on biopolitical technologies to absorb humanity throughout the world into capitalistic production and commerce. As evinced by the passages from the U.S. Army's Agribusiness Development Team training manual cited above, "nothing escapes money" – not even the simple act of growing or raising food. As Hardt and Negri argue, Empire ensures that, internationally, "[p]roduction and reproduction are dressed in monetary clothing . . . every biopolitical figure appears dressed in monetary garb" (32). In other words, imposed constitutive rhetoric is grounded in economic participation, just as the federal constitution of the Cherokee Nation was throughout the twentieth century. Insofar as the U.S. is implicated in the spread of Empire, it would appear that the constitutive demands placed on Cherokees by the federal government were, in a sense, a sort of practice for dissemination of capitalism on a more global scale. The people objectified by the [re]constitutive discourse have changed, but the roles cast upon them as capitalistic subjects are remarkably similar.

Burgeoning Rhetorical Sovereignty

In his November 6, 2011 inauguration speech, newly elected Cherokee Principal Chief Bill John Baker drew on both the Cherokee entrepreneur and the Cherokee democratic citizen roles, focusing heavily on the role of entrepreneur, but recognizing the interdependence of the two:

Very basic to our Cherokee belief system is the very premise that good is rewarded and evil punished. Our good is being rewarded today with economic opportunity, but we have many miles to go before the wrongs are righted. We simply ask the United States government to always respect our sovereignty, that we operate as nation-to-nation. We earned that right with our resolve, our blood, and our tears.

In his call for “more profits from our companies,” a reevaluation of “our business strategy, our investment strategy,” and greater efforts to “squeeze even more dollars out of our business,” Baker’s inaugural address was reminiscent of the rhetoric of Principal Chief W.W. Keeler, who championed “making the Indian a force in the U.S. economy” (*Tahlequah Courier*, 10 May 1970). Yet, Baker’s adherence to the Cherokee entrepreneur identity was tempered by a justification for that identity that harkens back to the pre-Curtis Act description of Cherokee collectivism, in which the more fortunate Cherokees literally shared the fruits of their labor with the less fortunate. Baker envisions a Cherokee Nation in which:

all Cherokees will be treated as family, because we are. Dentures, eyeglasses, and mammograms are not luxury items, but necessities, and they will be provided to those who need them. I understand that it is better to teach a man to fish than to

give him a fish, but let's remember, he must eat while he's learning to bait the hook...I am not concerned whether it is a hand-out or a hand-up. I'm going to offer a hand.

As suggested by Baker's address, the challenge of the Cherokee Nation appears to be negotiating the tension between assimilation and sovereignty. In much discussion of American Indians' place in the broader American culture, those terms are often positioned in dialectic opposition (Deloria, *Behind* 44). If we accept the Pindarian concept of the sovereign as the entity with "the strongest hand, justifying the most violent" (Agamben 30), there is no doubt that the term "tribal sovereignty" is, in the United States at least, a contradiction of terms. It is, at best, an implementation of what Kenneth Burke calls "casuistic stretching," a "transference of words from one category of associations to another" so that "one introduces new principles while theoretically remaining faithful to old principles" (*Attitudes* 229-230). "Tribal sovereignty" appears, like the examples of casuistic stretching Burke provided – "secular prayer" and "legal fictions" – to be a "stretched" term that applies the control over a collective tribal destiny like the Cherokees had before the Curtis Act to the modern relationship all tribes have with the federal government today. As Deloria has pointed out, tribal sovereignty, as presented by many Indigenous Americans, "dates back to pre-discovery days, when each tribe was independent and able to confront its enemies in battle" (*Trail* 44). Through nostalgia, cultural pride, or a combination thereof, such pre-discovery associations have been applied to modern federal/Indigenous relations, casuistically stretching the term "sovereignty" to include the amalgam of federally and Indigenously derived potentialities that exist for tribes today.

Yet, assimilation, specifically the federally imposed identity of entrepreneur, has been embraced by the Cherokee Nation, in order to exercise rhetorical sovereignty – "the inherent

right and ability of peoples to determine their own communicative needs and desires” (Lyons 450), and, as illustrated herein, to constitute themselves. Rhetorical sovereignty at least loosens the federal hold on tribal identities that, throughout the twentieth century, appeared to be unshakable. Even U.S. federal judicial decisions have supported a rhetorically constitutive form of tribal sovereignty, as indicated by the Supreme Court case *Santa Clara Pueblo v. Martinez*. In that decision, the high court determined that federal law should not “substantially interfere with a tribe’s ability to maintain itself as a culturally and politically distinct entity” (72). The Court agreed with the federal district court that had first ruled on the case that a tribe’s membership rules are “no more or less than a mechanism of social . . . self-definition, and as such were basic to the tribe’s survival as a cultural and economic entity” (54). Though the Cherokee Nation’s current membership rules are still bound to the federal disciplining technology of the Dawes Rolls, the precedent set by *Santa Clara Pueblo v. Martinez* intimates that such disciplining power may be escapable. Should the Cherokee Nation eventually *choose* to adopt the politicoethical tribal identity discussed in Chapter Three by accepting tribal members who are not listed on the Dawes Rolls as Cherokees by blood – the Freedmen – such a change could be seen as a loosening of the federal constitutive grip, and a strengthening of the tribe’s rhetorical sovereignty. Ironically, if federal courts determine in the ongoing Freedmen case that the tribe *must* accept the Freedmen as tribal members, tribal rhetorical sovereignty would appear to be shifting toward diminution. The results of the two hypothetical situations are the same; the power to bring into being through constitutive discourse in each is quite different. In the first, constitutive rhetoric is an exercise of Cherokee agency, of tribal self-definition. In the second, it is an exercise of federal agency.

In the October 21, 1969 edition of the *Cherokee Nation News*, Principal Chief W.W. Keeler was quoted as saying, “We can hold onto our tribal ways. We can remain Indians with our love of the land; our children, our ways. But we can’t go back. It’s hundreds of years too late for that” (1). The statement is an apt description of the modern Cherokee tribe. As dictated by the Curtis Act of 1898, Cherokees are American citizens, and will remain so for the foreseeable future. But increasingly, what *kind* of American citizens, and what actions such citizens can undertake as a tribe, are being determined by Cherokees themselves.

Works Cited

- Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Stanford, Calif. Stanford UP, 1998. Print.
- Amos D. Maxwell, "The Sequoyah Convention," Parts 1 and 2. *The Chronicles of Oklahoma* 28 (Autumn 1950): 299-331. Print.
- Baker, Bill John. "Inaugural Address." Cherokee Nation. Sequoyah High School Gymnasium, Tahlequah, OK. 6 November 2011.
- Barbery, Marcos. "From One Fire." *This Land* 4.10 (15 May 2013). Web. 7Mar. 2014.
- Bellmon, Henry. Letter to Ora Cockrell. 15 Oct. 1969. Bellmon Collection. Special Collections & University Archives. Oklahoma State University, Stillwater, Oklahoma.
- Berkhofer, Robert F. Jr. *The white man's Indian: Images of the American Indian from Columbus to the Present*. New York: Vintage, 1978. Print.
- Black, Jason Edward. "Native Resistive Rhetoric and the Decolonization of American Indian Removal Discourse." *Quarterly Journal of Speech* 95.1. (2009); 66-88. Print.
- Bland, Benjamin H. "Red populism: T.A. Bland, agrarian radicalism and the debate over the Dawes Act." *The Countryside in the Age of the Modern State*. Eds. Catherine M. Stock, Robert D. Johnson. New York: Cornell University Press, 2001. 15-37. Print.
- Bordewich, Fergus M. *Killing the White Man's Indian: Reinventing Native Americans at the End of the Twentieth Century*. New York: Doubleday, 1996. Print.
- Boudinot, Frank. *Protest of Keetoowah Cherokees*. 20 April 1900. Presented to the 56th Cong. 1st Sess. Sen. On 7 May 1900.

Burchell, Graham; Gordon, Colin; and Miller, Peter (Eds.) *The Foucault effect: Studies in Governmentality*. Chicago: University of Chicago Press, 1991. Print.

Bureau of Indian Affairs. "Constitution and By-laws of The United Keetoowah Band of Cherokee Indians Oklahoma." 3 October 1950.

--- "Corporate Charter of the United Keetoowah Band of Cherokee Indians, Oklahoma." 3 October 1950.

Burke, Kenneth. *A Grammar of Motives*. 3rd ed. Berkeley: California UP, 1969. Print.

--- *A Rhetoric of Motives*, 3rd ed. Berkeley: California UP, 1969. Print.

---. *Attitudes Toward History*. 3rd ed. Berkeley. California UP, 1984. Print.

Charland, Maurice. "Constitutive Rhetoric: The Case of the *People Québécois*." *The Quarterly Journal of Speech* 73.2 (May 1987); 133-150. Print.

Cherokee Nation Businesses. "Careers." Web. 10 January 2014.

"Cherokee's History Justifies Their Claim to Leadership." *Tahlequah Courier*. 10 May 1970. Print.

Churchill, Ward. *On the Justice of Roosting Chickens: Reflection on the Consequences of U.S. Imperial Arrogance and Criminality*. Oakland Calif.: AK Press, 2003. Print.

--- *Fantasies of the Master Race: Literature, Cinema and the Colonization of American Indians*. San Francisco: City Lights, 1998. Print.

- Clair, Robin Patric. "Organizing Silence: Silence as Voice and Voice as Silence in the Narrative Exploration of the Treaty of New Echota." *Western Journal of Communication* 61 (1997): 315-337. Web.
- Cornsilk, David. "Footsteps – Historical Perspective: History of the Keetoowah Cherokees." *The Cherokee Observer*. 1997. Web. 2 Feb. 2014.
- Debo, Angie. *And Still the Waters Run*. Princeton, NJ: Princeton University Press, 1940. Print.
- DeChaine, D. Robert. "Introduction of Rhetorical Border Studies." *Border Rhetorics: Citizenship and Identity on the US-Mexico Frontier*. Ed. D. Robert DeChaine. Tuscaloosa: U of Alabama P, 2012. 1-15. Print.
- Deloria, Vine. *God is Red*. New York: Grosset & Dunlap, 1973. Print.
- *Custer Died for Your Sins: An Indian Manifesto* 2nd ed. Norman: Oklahoma UP, 1988. Print.
- *Behind the Trail of Broken Treaties: An American Indian Declaration of Independence* 3rd ed. Austin; Texas UP, 1990. Print.
- "Disintegration of Tribes." *The Cherokee Advocate*. 17 June 1899. Print.
- Edmondson, Ed. Letter to Louella Pritchett. 2 December 1969. Edmondson Collection. Northeastern State University John Vaughan Lib., Tahlequah, Oklahoma.
- Fisher, James J. "Chief Says Tribe Must Advance." *The Cherokee Nation News*. 21 October 1969.
- "Suit to Discharge Chief Keeler Dismissed from District Court." *The Cherokee Nation News*. 28 October 1969.

“Five Tribes Finally Get to Elect Chief.” *Tahlequah Pictorial Press*. 29 October, 1970. Print.

Foucault, Michel. *Discipline & Punish*. 2nd ed. New York: Vintage, 1995. Print.

--- *The Will to Knowledge: The History os Sexuality:1*. London: 1998. Print.

--- *Security, Territory, Population: Lectures at the College de France 1977-1978*. New York: Picador. 2004. Print.

--- *The Archaeology of Knowledge*. New York: Vintage, 2010. Print.

Francis, Daniel. *The Imaginary Indian*. Vancouver: Arsenal Pulp Press, 1992. Print.

George Groundhog et al., Plaintiffs-appellants, v. W. W. Keeler et al., Defendants-appellees. 44 F.2d 674. United States Court of Appeals, Tenth District. 5 May 1971. Web. 20 January 2014.

“Good for the Indian.” *The Cherokee Advocate*. 6 October 1904. Print.

Haley, James. “Report to accompany S. 3116, Authorizing Each of the Five Civilized Tribes of Oklahoma to Popularly Elect Their Principal Officer, and for Other Purposes.” 29 September 1970. U.S. 91st Cong., 2nd sess. Report No. 91-1499.

Halsell, Kent. “OCCO Suit Seeking Overthrow of Cherokee Nation.” *The Cherokee Nation News*. 19 August 1969. Print.

“Immersion School.” Cherokee Nation. <http://www.cherokee.org/Services/Education/ImmersionSchool.aspx>. 12 April 2014.

“Indians Hold Annual Dance.” *The Chelsea Commercial*. 21 July 1905. Web.

Johnson, Benjamin Heber. "Red Populism: TA Bland, Agrarian Radicalism, and the Debate over the Dawes Act." *The Countryside In the Age of the Modern State: Political Histories of Rural America*. Eds. Catherine M. Stock and Robert D. Johnson. New York: Cornell U P, 2001, 15-37. Print.

Keeler, W.W. "Needed: Prescription for Rehabilitating Welfare." Texas Manufacturers Association. Fort Worth, TX. 31 October 1969.

--- Letter to U.S. Rep. Ed Edmondson. 17 November 1969. Edmondson Collection. Northeastern State University John Vaughan Lib., Tahlequah, Oklahoma.

--- "Five years of Cherokee Planning and Progress." *The Cherokee Nation News*. 14 April 1970. Print.

Kelly, Casey R. "Rhetorical Counterinsurgency: The FBI and the American Indian Movement." *Advances in the History of Rhetoric* 10. (2007): 223-258. Web.

--- "Détournement, Decolonization, and the American Indian Occupation of Alcatraz Island (1969-1971)." *Rhetoric Society Quarterly* 44.2 (2014): 168-190. Print.

Lake, Randall A. "Enacting red power: The consummatory function in Native American protest rhetoric." *Quarterly Journal of Speech* 69. (1983); 127-142. Web.

Lee, Yuanchung. "Rediscovering the constitutional lineage of federal Indian Law." *New Mexico Law Review* 27 (Spring 1997); 273-357. Print.

Loesch, Harrison. Letter to Wayne Aspinall. 16 Mar. 1970. Edmondson Collection. Northeastern State University John Vaughan Lib., Tahlequah, Oklahoma.

- Lyons, Scott Richard. "Rhetorical Sovereignty: What Do American Indians Want from Writing?." *College Composition and Communication* 51.3 (2000); 447-468. Print.
- McGee, Michael C. "In Search of 'The People': A Rhetorical Alternative." *The Quarterly Journal of Speech* 61.3 (1975). 235-249. Web.
- Medina, Adora. *Kansas ADT arrives in Afghanistan*. National Guard. 8 May 2009. Web. 20 April 2014.
- Meyer, Carter Jones. *Selling the Indian: Commercializing & appropriating American Indian cultures*. Tucson: University of Arizona Press, 2001. Print.
- Mihesuah, Devon. *American Indians: Stereotypes & realities*. Atlanta: Clarity Press, 1996. Print.
- Miner, H. Craig. *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907*. 2nd ed. Norman. Oklahoma UP, 1989. Print.
- Minges, Patrick N. *Slavery in the Cherokee Nation: The Keetoowah Society and the Defining of a People 1855-1867*. New York: Routledge, 2003. Print.
- Mize, Richard. "Sequoyah Convention." *Encyclopedia of Oklahoma History & Culture*. Oklahoma City: Oklahoma Historical Society, 2007. Web.
- Moss, Pat. Personal interview, 15 December 2008.
- Nabokov, Peter. *Native American Testimony: A Chronicle of Indian-White Relations from Prophecy to the Present, 1492-2000*. New York: Penguin, 1999. Print.

Ono, Kent. "Borders That Travel: Matters of the Figural Border." *Border Rhetorics: Citizenship and Identity on the US-Mexico Frontier*. Ed. D. Robert DeChaine. Tuscaloosa: U of Alabama P, 2012. 19-32. Print.

Prucha, Francis Paul. *American Indian Treaties: The History of a Political Anomaly*. Berkeley: California UP, 1994. Print.

--- *The Great Father: The United States Government and the American Indians*. 2nd ed. Lincoln: Nebraska UP, 1986. Print.

Restrepo. Dirs. Tim Hetherington, Sebastian Junger. National Geographic, 2010. Film.

Santa Clara Pueblo v. Martinez. 436 US. 50-83. Supreme Court of the U.S. 1978.
 lp.findlaw.com. Web. 29 April 2014.

"Second Annual Message." *The Cherokee Advocate*. 12 November 1904. Print.

Sequichie, J.B. Untitled Editorial. *The Cherokee Advocate*. 1 March, 1899.

Smith, Betty. "Indian identity remains in question." *Tahlequah Daily Press*. 1 Sept. 2008. Web.
 13 October 2013.

Smith, Robert. *Farmers Headed to Combat Zone*. National Public Radio. 28 Feb. 2009. Web. 20
 April 2014.

Snell, Teddy. "Freedmen pack CN Rules meeting." *Tahlequah Daily Press* 28 April 2006. Web.
 7 Mar. 2014.

--- "Blood Requirement Goes to Vote of the People." *Tahlequah Daily Press*. 14
 June 2006. Web.

--- "Cherokee Favor Amendment." *Tahlequah Daily Press*. 5 March 2007. Web.

--- "Fed Order Supercedes CN Decision." *Tahlequah Daily Press*. 22 September 2011.

--- "UKB loses casino stay request: Closure of the facility appears all but inevitable."

Tahlequah Daily Press. 28 August 2013. Web.

--- "Interior Files Motion for Summary Judgment in Freedmen Case." *Tahlequah Daily Press* 1

Feb. 2014. Web. 7 Mar. 2014.

Spirit of the Fire. Dir. Bill Jones. KJRH. Tulsa, Oklahoma. 1984. Television.

State of Sequoyah. Oklahoma Education Television Association. 7 June 2012. Television.

Strickland, William M. "The Rhetoric of Removal and the Trail of Tears: Cherokee Speaking

Against Jackson's Indian Removal Policy, 1828_1832." *Southern Speech Communication Journal* 47 (1981): 294. Print.

Sturm, Circe. *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma*.

Berkeley: California UP, 2002. Print.

The Truth about the Freedmen Issue. Cherokee Nation, 2008. DVD.

Thomas, Elmer. "A New Deal for Oklahoma Indians." 1935. Elmer Thomas Collection. The

Carl Albert Center for Congressional Research and Studies. University of Oklahoma.

---. "Statement by Elmer Thomas U.S. Senate." 1935. Elmer Thomas Collection. The Carl

Albert Center for Congressional Research and Studies. University of Oklahoma.

Tyler, S. Lyman. *A History of Indian Policy*. Washington Departn, D.C.: United States Department of the Interior, 1973. Print.

United Keetoowah Band monthly meetings. Personal communication. August 2000- July 2007.

United States. Center for Army Lessons Learned. *Agribusiness Development Teams in Afghanistan: Tactics, Techniques, and Procedures*. Nov. 2009. Print.

United States Cong. 55th Congress, 2nd Session. *Curtis Act. An act for the protection of the people of the Indian Territory, and for other purposes*. [Approved 28 June 1898]. Web. 8 October 2011.

United States Cong. 74th Congress. 2nd Session. *Thomas-Rogers Act. To promote the general welfare of the Indians of the State of Oklahoma, and for other purposes*. [Approved 26 June 1936]. Web. 8 October 2011.

United State Cong. 91st Congress, 2nd Session. *Principal Chiefs Act. An act to authorize each of the Five Civilized Tribes of Oklahoma to popularly select their principal officer, and for other purposes*. [Approved 22 October, 1970]. Web. 8 October 2011.

United States Cong. House. 110th Congress, 1st Session. H. R. 2824, *A Bill to sever United State government relations with the Cherokee Nation of Oklahoma until such time as the Cherokee Nation of Oklahoma restores full tribal citizenship to the Cherokee Freedmen disenfranchised in the March 3, 2007, Cherokee Nation vote and fulfills all its treaty obligations with the Government of the United States, and for other purposes*. [Introduced 21 June 2007]. Web. 9 March 2012.

United States Department of the Interior, Bureau of Indian Affairs. *Constitution and By-laws of the United Keetoowah Band of Cherokee Indians Oklahoma*. Washington, D.C.: United States Government Printing Office, 1951. Print.

White, James Boyd. "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life." *The University of Chicago Law Review* 52.3. (1985). 684-702. Web.