

SO THEIR REMAINS MAY REST:
CHEROKEE DEATH RITUALS AND REPATRIATION

A THESIS

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DEDICATION

For My Children: Mykeala, Daniel and Dominic

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ABSTRACT

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“Practices that surround the burial of the dead represent some of the most conservative and traditional aspects of cultural behavior.”¹ Roy S. Dickens

“So Their Remains May Rest” will explore early Cherokee customs and practices governing death, mourning, and burials in hopes of providing a better understanding of the effects of legislation in particular the “Native American Graves Protection and Repatriation Act” have had on the three federally recognized Cherokee bands, the non-recognized Cherokee bands, as well as on the anthropological and historical disciplines. In addition, this research will evaluate the effectiveness of the repatriation² legislation, particularly in relation to the Cherokees.

This subject was selected with the anticipation that with the Cherokee’s development of a written language there would be an abundance of primary sources with a native voice. Further research of this topic has shown (proven) the opposite to be true; what was discovered were papers, studies and diaries of European settlers, missionaries and scholars, (with) their observations often running contrary to one

another. Thus presenting a challenge of finding a balance between the native voice and the dominate non-native voice. Much of the Native American chapter in America's history has been forgotten; with entire histories of vastly different and complex societies lumped together and relegated to the footnotes of our history books. So much information has been scattered, lost to pillagers, time and/or lack of interest that it is the goal of this research to help reconstruct some of the scattered information or at the very least supply someone else with a good starting point.

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CHAPTER I

INTRODUCTION

The poet John Donne once wrote that “All mankind is of one author, and is one volume; when one man dies, one chapter is not torn out of the book, but translated into a better language” (Donne, Meditation XVII), “So Their Remains May Rest” will briefly explore the laws and rituals governing death, burial practices, mourning customs and repatriation among the Cherokees.³ The thesis of this study is to learn about Cherokee society and history, through the study of their death, funerary and mourning practices; with the belief that by looking at past customs and traditions we will be better able to evaluate the effectiveness of the current repatriation legislation, particularly in relation to the Cherokees. This paper will formulate a better understanding of the effect that repatriation has had on the three federally recognized Cherokee bands, the adopted members of the Cherokee Nation: the Shawnees and Delaware, as well as on the anthropological and historical disciplines.

Researching a topic as specific as this one has been a challenge; so much of the Native American chapter has been forgotten. Histories of vastly different and complex societies and cultures have been lumped together and relegated to the footnotes of our history books or worse what information had been available has been lost to pillagers, time, and lack of interest. One desired concomitant outcome of this research is to help reconstruct the scattered information or at the very least supply

someone else with a good starting point. It is this writer's belief that this research will aid future scholars, with both an interest in nearly forgotten traditions, as well as a reference point from which they can build their own research, with the hope of giving back this lost chapter so that it may be translated "into a better language."

As a result of these conditions, much of the materials collected during this study have come in pieces, small mentions here and there. In addition, the use of oral traditions and memoirs (from a vast array of individuals from differing backgrounds) has made the re-assembling of the information difficult. To help prevent the material from reading like a patchwork of information woven together, it has been grouped in chapters according to subject matter. Listed below is a brief synopsis of each chapter beginning with chapter one, which serves to provide a brief historgraphical overview of each chapter beginning with chapter two.

Chapter Two: Literary Review

This chapter serves as an overview to many of the sources used in the researching of this topic. Sources include books, journal articles, and the Library of Congress' online archives, as well as oral histories, which in addition to Cherokee oral histories included oral histories from adopted tribal members: the Delaware, Shawnee and narratives of former Cherokee slaves.

Chapter Three: In the Beginning, Death...: Death and Folklore

Chapter three discusses three Cherokee legends, which deal directly with death: the stories of the hunter Kana'ti and his wife Selu, *Stone Coat* and the *Sun's Daughter*. In his definition of folklore, former professor of linguistics and folklore

Aurelio M. Espinosa, suggested that when a society changes from a strictly oral culture to one based on the written word, as the Cherokees have done, that the culture does not lose its folklore, nor does it lose its validity, instead the written word serves to, “help to keep it alive and diffuse it among those to whom it is not native or fundamental. For, the folk memory, forgets as much as it retains and restricts and corrupts as much as it transmits and improves.”⁴ Espinosa’s argument also suggests that the exchange between written and oral traditions along with the fluctuation of “cultural change and exchange... plays an important a part as survival, population is as essential as scholarship.”⁵

Historians often take issue with the employment of folklore and oral histories in research, citing them as unreliable; however as the early Cherokee were an oral based society they, unlike their more modern counterparts, did not leave behind written records of their histories. These stories, while not taken as fact, do provide a researcher with valuable insight into the thinking and culture of many early Cherokees. The three Cherokee stories selected help to explain the early beliefs regarding how life was created, along with why it ends. In addition these stories help to explain the Cherokee’s early legal system, which for all intents and purposes, appeared to have been based on a need to maintain a harmonic balance within the different clans as well as within nature.

Chapter Four: Maintaining the Balance

Chapter four focuses on the early Cherokee legal concept of the Blood Law. In his writing, Lieutenant Henry Timberlake suggested that the Cherokee’s appeared

to have “no laws which govern them except when it comes to murder which is not really punished as it is avenged.”⁶ This chapter considers the concept of restoring balance, through the use of blood law, by reviewing a few of the recorded instances where the blood law was employed such as in the cases of James Vann, Chief Double Head and The Ridge.

Chapter Five: Death and Burial Customs

Chapter five discusses some of the Cherokee beliefs concerning death and their burial customs. This chapter will also explore several of the early popular, yet questionable, accounts of Cherokee burial customs, as they were observed by non-native travelers and traders, such as the written accounts recorded by Lt. Henry Timberlake, a member of the 2nd Virginia Regiment; Brother Martin Schneider, a Moravian Missionary who traveled through the Cherokee area; Anna Gambold, Moravian Missionary who lived among the Cherokee just prior to their removal; and John Haywood, a former lawyer turned amateur historian. These will be compared against the scant information left behind by native sources such as Mrs. Anawak Webb, Mrs. Lucinda Vann and Will West Long and more modern scholarly anthropological accounts such as those of James Mooney and Frans Olbrechts' research and Roy S. Dickens' archeological records to ascertain their true contribution and subsequent value to the historical record.

Chapter Six: Repatriated Remains

In 1832, with *Nunna daul Tsuny*, The Trail Where They Cried, the once united Cherokee nation, then comprised of seven sub-clans, was divided. Today the

Cherokees, as a whole, are comprised of three independently functioning and federally recognized nations: The Eastern Band, which remained on a portion of their ancestral land located in what is now the North Carolina Smokey Mountains, the Keetoowah Band in Tahlequah, OK and the Cherokee Nation, also in Tahlequah, OK. This chapter will also consider briefly the Cherokee Nation's 1867 incorporation of a portion of displaced Delaware ⁷ and again in 1870 with displaced Shawnees. ⁸

Chapter six will also focus on the historical evolution of the Native American Graves Protection and Repatriation Act (NAGPRA) including the events, which triggered the need for the act and the unique situation posed by the Cherokee Nations. Through the use of journal articles, cases and inventory lists this chapter will consider the effectiveness of the legislation, as well as the ongoing argument for and in opposition to NAGPRA, as made by both the scholarly and native communities. This chapter will also evaluate the affect that NAGPRA has had and will have on the way in which scholars gather their information.

Chapter Seven: Summary and Conclusion

This myriad of diverging accounts make it extremely difficult for historians to get at that "one" truth. What potential problems do these varying eyewitness accounts present for those seeking to have items repatriated to them? By utilizing, not only primary source accounts, but folklore, archeology and anthropology, and combining them, a historian is better able to narrow the possibilities thus getting closer to that truth. However, it is important to remember that in historical discipline, unlike those of math and science, nothing is finite, because it is a discipline that relies heavily on

the human memory, which is fallible. As a result there is no guarantee that one plus one will result in the outcome of two. Technology advances, people and societies change, as such our history and historical recollection tends to mirror these changes.

In the overall picture what effect will repatriation have on repairing the severely damaged relationship between the scholarly community and Indigenous nations? Does this legislation have the potential to heal past aggressions or is it simply a way to placate Indigenous nations into feeling as if they have a semblance of control or are we, as a culturally more sensitive and aware society, symbolically attempting to return to them the past that was stolen from them?

CHAPTER II

REVIEW OF LITERATURE

While still in the early research planning stages for this thesis one of the first contacts I made was with the Cherokee Cultural Center in Tahlequah, OK. After a long conversation, their Community Involvement Specialist warned that while the information on this topic existed, over time it had become scattered among foreign archives, universities, the three different nations, or has disappeared into the hands of private collectors; in addition much of the material would more than likely still be in need of translation. While encouraging me to pursue this topic he cautioned that the task, while feasible, would be a very difficult one; further he advised that, once found, much of the information would have to be pieced back together.

As there has not been a historical study devoted specifically to the topic of death and dying among the Cherokees, the research for “So Their Remains May Rest,” as predicted by the Community Involvement Specialist, has been difficult. While conducting preliminary research for this thesis, this writer discovered that much of the early Cherokee records were indeed left behind, in their capitol New Ochoa during their removal. Since then, many of these documents have found their way into the hands of private collectors.

During the course of research only one source, written in a native voice, which dealt with the topic of death and burial traditions of the Cherokees discovered, was a thesis published in 1982 by Laura Hughes-Hill. Hughes-Hill, then an anthropology student at the University of Tennessee, Knoxville, wrote of her experiences with contemporary Cherokee funerals in relation to the customs and traditions of the past. Other primary sources discovered were either written by missionaries, traders and/or anthropologists who had lived among the Cherokees. In addition to the primary sources discussed above, archeological records were used in researching this topic, such as Roy Dickens dissertation on the excavation of Cherokee burial mounds uncovered in Wilson North Carolina; Dicken's research helped provide plausible explanations for the discrepancies found among different primary sources.

Listed below is a small sample of the documents, books, digital archives and other sources used in this research along with a brief explanation behind their selection.

Books

Anna Rosina Gambold was one of the Moravian missionaries who lived among the Cherokees at the Springplace Mission and school in Georgia, 1805- 1821. The mission and school, supported by James Vann, a wealthy Cherokee trader, were created a few years prior to Cherokee removal to Indian Territory. During her stay among the Cherokee, Anna kept an extensive journal in which she recorded her thoughts and observations on everything, from the everyday workings of the school and its property, to the missionaries' interactions with the Cherokees and their

traditions. Her journals, compiled by the University of Nebraska under the title, *The Moravian Springplace Mission to the Cherokees 1805 - 1821*, were selected for their firsthand recordings of the blood feud between Doublehead, James Vann, Major Ridge and John Ross. Particularly her observations of Cherokee funerals, both traditional and those influenced by their interactions with the missionaries, proved to be most helpful.

Anthropologist James Mooney spent many years observing and recording legends and histories of the Eastern Band Cherokees; his studies were published in 1891 and 1900 as *History, Myths, and Sacred Formulas of the Cherokees* by the Bureau of American Ethnology. His research has since become a major source for much of what modern Scholars now know of Cherokee history, folklore, and rituals at a time when Cherokee youth were being assimilated, through education, finance and medicine into western culture. Mooney's research includes various legends and folklore such as the Cherokee's stories of creation and the land of the dead.

Roy Dickens' book entitled *Cherokee Pre-History: the Pisgah Phase in the Appalachian* focuses on remote areas of the Appalachian Mountains and the pre-historic burial mounds found there. *Cherokee Pre-History: the Pisgah Phase in the Appalachian* documents the burial evolution of the Cherokee by comparing their pre-historic burial mounds to their more contemporary burials. Dickens' book was selected for its information on ancient burials customs, and funerary objects.

Another valuable resource discovered was a series of six books, compiled by James and Alice Tyner, entitled *Our People and Where They Rest*, which detailed the

various private and community Cherokee cemeteries in the state of Oklahoma. Most of the cemeteries and burial places had been long forgotten and showed signs of severe neglect. While reading some of the interviews in the Doris Duke Collection (mentioned later in the chapter), I discovered many of the oral interviews that had topics which hinged upon either death customs or cemeteries; these had been conducted by either James or Alice Tyner. These books serve more of a geographical locator purpose for those who are looking for their ancestral remains. This book was also selected for its pictures of traditional burial plots and grave markers.

John P. Reid's *A Law of Blood: The Primitive Law of the Cherokee Nation*, examines the legal system established by the early Cherokee. He traces how these laws were created, enforced and how punishments were metered out when these laws were broken. In addition, Reid evaluates the influence that Western society had on the "primitive" legal system of the Cherokees. This source was selected for its sections on homicide and how it was punished, as well as laws concerning the care for and burial of corpses.

Digital Sources

As the Community Involvement Specialist had predicted, the search for primary sources proved to be a daunting process. Many of the documents, both primary and secondary, this writer discovered on the subject contained only short excerpts and on several occasions appeared to contradict one another. The lack of translated written Cherokee records meant that most of the material in a native voice was only available through the oral histories found in the Doris Duke Collection of American Indian

Oral History; many of these have been transcribed and are available online through the University of Oklahoma. From the Doris Duke Collection of American Indian Oral History, I was able to utilize nine oral histories which speak of death and burial practices including: John Armstrong (Cherokee), Anna Gritts Kilpatrick (Cherokee), Sarah Cheater (Cherokee), and Ross Bowlin (Cherokee). Also in this collection was an interview with a Mrs. Anawak Webb, a full-blooded Cherokee woman. Mrs. Webb, in her April, 1968, interview with J.W. Tyner, remembered an early childhood experience with a traditional Cherokee wake and funeral practices. In her interview, Mrs. Webb recalled a few of the details surrounding an uncle's death and preparation of his body for burial.

During the course of researching the oral history collection for potential primary sources, a few secondary sources covering Cherokee folklore emerged. The Cherokees have many oral traditions and folklore that speak directly to their beliefs concerning death. Some of these stories helped to explain the importance of cedar, fire and tobacco in relation to burials and post burial purification rituals. In the case of the story of the *Sun's Daughter*, these stories explain how death first entered the world. Bessie Hunter Snake, a Cherokee-Delaware, in her June, 1967, oral history interview tells the story of the hunter and his wife. It is within this story one can see the importance of maintaining a harmonic balance with nature.

Another valuable electronic source was the Library of Congress's *Born in Slavery: Slave Narratives from the Federal Writers' Project, 1936-1938*. The Federal Writers' Project began collecting oral histories from former slaves during the early

late 1920s on until the mid- to-late 1930s. Within the archive I discovered several oral histories of former Cherokee slaves, such as Betty Robertson's interview, which proved to be especially appealing. Robertson was one of James Vann's house slaves. In her interview, she tells what life was like on the Vann plantation but more importantly she speaks to her experience with a Cherokee funeral as well as the circumstances surrounding James Vann's death.

Also discovered while researching Cherokee Slave narratives was another source that spoke directly to the topic; in the archives of the African-Native American History and Genealogy is the oral history of Lucinda Vann. Like Robertson, Lucinda Vann, was a slave owned by Vann family. Within her oral history is a brief passage that speaks of her attendance of a Cherokee funeral while living with the Vanns.

While finding primary sources dealing with early Cherokee death and burial practices has proven frustratingly difficult, finding information on repatriation legislation, how repatriation claims are handled and the effect the bill has had and continues to have on anthropologists and historians has been considerably easier. The National NAGPRA (Native American Graves Protection and Repatriation Act) website maintained by the National Park Service contains a storehouse of information regarding NAGPRA legislation. This site also provides researchers with an online database of indexed Native American items, and any proposed amendments to the legislation. In addition the website provides a database of repatriation claims that have been filed and are waiting to be heard.

Another primary source on repatriation is the Smithsonian National Museum of the American Indian. Created through NAGPRA the Smithsonian National Museum of the American Indian serves to display, restore, and house collections once owned by the United States government or those donated through various nations. In addition to work typical of a museum the Smithsonian National Museum of the American Indian serves as the governing body over claims of repatriation. Their website provides valuable information for researchers such as the official definition of what items may be repatriated and who is eligible to file repatriation claims as well as providing researchers and tribal liaisons with step-by-step directions on how to file claims and the process the filed application will undertake before the claim can be awarded or denied.

While researching possible primary sources on Cherokee repatriation claims in the online databases of The Department of the Interior, The Library of Congress and other federal archives, I uncovered an interesting source in a seemingly unrelated collection. Stored within the Abraham Lincoln Papers of the Library of Congress was a letter, written during the Civil War, from Col. William F. Cloud, of the Second Kansas Army, to the Cherokee Nation dated August 03, 1862. In his letter to the Cherokee Nation Col. Cloud advised that for their safety, their Principal Chief (John Ross) and the Nation's Archives had been moved behind Union lines, where he assures the Nation that both Ross and the Archives should remain "unmolested under the penalties of the severest punishment." Ironically this ill-kept promise was one that foreshadowed the need for legislation such as the Native American Graves Protection

and Repatriation Act, a law that would take another one hundred and thirty years to come into being.

Although finding information on repatriation legislation itself has been relatively easy, locating materials on repatriation as it relates solely to the Cherokees has been difficult. The online repatriation databases, monitored and updated by the Smithsonian Repatriation office, lists no information on items repatriated nor does it list any repatriation claims made by the Cherokees. Unfortunately, the committee in charge of handling claim disputes and complex claims meets only bi-annually making it difficult to ascertain why no claims regarding the Cherokees have been approved. However, during the course of research, I discovered newspaper articles, written by the University's newspaper, discussing the recent return of several items to the Eastern Band of Cherokees by the University of North Carolina at Chapel Hill. Dr. Vincas P. Steponaitis, professor of archeology, in his interview for the University's paper, stated that among some of the items repatriated, by the university's anthropology department to the Eastern Band, included the artifacts and remains discovered during Roy Dickens' twenty year archaeological excavation project in Swannanoa, North Carolina. That provided scholars with valuable information about the Cherokees during their pre-Colonial Pisgah phase.

Journal Articles

Under the suggestion of the Cherokee Cultural Center's Community Involvement Specialist one of the first sources read was John Whitthoft's article written for the Journal of Cherokee Studies entitled "Cherokee Beliefs about Death."

Whitthoft, interviewed a Cherokee Medicine man named Will West Long who discussed many of the beliefs surrounding death as well as the relationship between the Cherokee medicine men and the role they had in death rites and funeral arrangements. Although this article spoke directly to the theme of this paper, it relied heavily on second hand information, and as such, shall be considered only as a secondary source.

In their article, “Purgatory and the Powerful Dead...,” Gary Laderman and Johnny Flynn discussed the history of death in relation to Native American beliefs. By studying the religious aspects of death and burial they illustrated the importance of repatriation in regard to these topics. Laderman and Flynn took an unexpected approach by comparing Christian beliefs regarding the dead to those of natives; this augmented their argument by equating the remains of the Native disinterred to souls locked in purgatory. This scholarship was selected for its insight into the history of repatriation. It was also chosen to provide a reference for the inclusion of an anthropological theme into a historical paper.

Clayton W. Dumont Jr., a professor of sociology, in his article “The Politics of Scientific Objections to Repatriation” for the spring 2003 edition of the *Wicazo SA Review*, critically analyzes the role that politics and scientific objections have played in the on-going fight between the “native peoples and man in the scientific community over the right to determine the significance of native dead.”⁹ Dumont evaluated the arguments of those opposed to and supporting the repatriation of native

artifacts. Dumont's article will be consulted to help illustrate the diverging opinions on repatriation among the scholarly community.

During the course my research of repatriation claims made by the Cherokees the Abbreviated NAGPRA Inventory of the North Carolina Archaeological Collection was discovered. Compiled by the Research laboratories of Archaeology at the University of North Carolina at Chapel Hill in 1998, the inventory, separated into sections, helped to explain the procedures used in the inventory process; it included an explanation of how the university's anthropology and archeology department determined the "Cultural Affiliation" of the various remains and artifacts as well as the procedures used by the school for any unaffiliated remains.

In Fall of 2005, D.S. Prensley, a Juris Doctor candidate at Cornell School of Law, wrote an article concerning the Native American Graves Protection and Repatriation Act of 1990. Prensley critically analyzes the legislation for what he refers to as the "missing native voice."¹⁰ In addition, Prensley researched the reasons for and the history behind the preservation of indigenous graves and the repatriation of artifacts and remains on both the national and international level. The destructive methods of testing, and/or preservation used on many native remains and artifacts were also discussed.

In addition while researching repatriation claims made by the Cherokees, the Eastern Band of Cherokee's tribal code was discovered. The code discussed the new tribal laws as they related to burial site preservation and human remains. The code very clearly outlines the rules and regulations enforced by the Tribal Council as

it relates to the study of Cherokee people and their remains. Surprisingly, the Code does not explicitly outlaw the excavation and study of remains and funerary objects. According to the code, any scholar be they non-Cherokee or Cherokee must seek permission from the council to excavate a site. If and when the council grants its consent, they do so under the stipulation that the remains are not to be subjected to destructive testing and must be re-interred with all the artifacts discovered “as soon as shall be reasonable.”¹¹ In addition, a copy of all information discovered during the study must be provided to the council and it in turn, will be responsible for placing the information in “permanent storage with the Museum of the Cherokee Indian.”¹² A similar policy was also instituted by the Inter-Tribal Council of the Five Civilized Tribes, of which the Cherokee Nation is a member.

In an attempt to streamline our historical studies into dates and events so they will fit neatly into one semester or one scholastic year, we, as historians and teachers of history, have left out much of the human component, making our history “boring” for future scholars. Nowhere is this more evident in the study of American history than in regard to Native History. This lack of genuine interest and authentic study has made the prospects on this subject few and far between, with some sources only mentioned in passing or not mentioned at all. This provides both an explanation for why the researching of topics, such as this one, prove to be needlessly tenuous and time intensive as well as to illustrate why it needs to be done.

CHAPTER III
IN THE BEGINNING, DEATH...:
DEATH AND FOLKLORE

It is a common belief held by folklorists and cultural anthropologists that oral traditions and stories, passed through the generations within various cultures, serve to provide an example of that culture's early belief system. Before written language was developed, these stories, often told by the societies' elders, wove lessons and moral guidelines into these stories that frequently formed the basic structure of that society's belief system. These stories allowed the elder generation to pass on to the younger generation the history, as well as the ideals and beliefs of their ancestors. This was accomplished in a way that was easily remembered thus virtually assuring the survival of these beliefs and traditions.

Often, we as historians, tend to be reluctant to use oral histories and traditions in our research. There are, without question, several legitimate reasons for this distrust of early oral histories and folklore. In the past many of the collected oral histories and traditions were recorded by untrained people, several of whom were seeking to prove a certain point or theory and as such would often "interpret" what their subject had said or asked leading questions in an effort to obtain a desired outcome. However, it is this researcher's goal for the purpose of this study that the use of oral traditions will serve to help provide an understanding of the culture which

in turn will help to provide an explanation for certain traditions and practices, as well as to help fill in missing pieces of information and/or supplement the research. As such, the use of folklore in this chapter will serve merely a supplemental role, a foundation of sorts, upon which to provide the reader with a rudimentary, but necessary, understanding of early Cherokee beliefs.

Biblical historian Theodor H. Gaster wrote that “folklore is that part of a people’s culture which is preserved, consciously or unconsciously, in beliefs and practices, customs and observations of general currency; in myths, legends, and tale of common acceptance.”¹³ Like many indigenous nations of the Americas, the Cherokees historically had a rich heritage of oral traditions and folklore. As this thesis’s primary focus is one that is historical in nature it will only briefly discuss the various oral traditions and folklore concerning death and/or the dead among the Cherokees. There are several Cherokee oral traditions or stories in which death is addressed, however for the purpose of this research only three will be discussed: the story of the first people *Kana’ĩ and Selu* and their sons the *Thunder Boys*, *The Daughter of the Sun*, and *Stone Coat*.

The legend of the lucky hunter Kana’ĩ and his wife Selu addresses the topic of death in almost a parable fashion. According to the legend Kana’ĩ and Selu have two boys,¹⁴ one that appears to be their natural child and another, whom they call the “Wild Boy.” According to the story, the couple’s biological child would play by the water everyday by himself: one day the parents heard the voices of two children. When their son returned from playing they asked him with whom he was talking. He

tells them of the little boy who comes out of the water claiming to be his elder brother and that his mother had been cruel to him by throwing him into the water. It was at this point that Kana'tī and Selu realized that the little boy had been created from the "blood of the game which Selu had washed off at the river."¹⁵ Kana'tī then told his son that the next time the boy appeared to capture him so that he could be seen. When the wild boy appeared again the child grabbed him and called for his parents, who took him home to tame him. The wild boy, however, remained wild at heart and led his "brother into every mischief."¹⁶

When the family was in need of food, Kana'tī would disappear into the woods and return with all types of game. The Wild One, wondering where all the game came from, convinced his younger brother that they should follow their father on his hunt. A few days later when their father gathered up his arrows and "started off toward the west,"¹⁷ the boys, taking care so as not to be seen, followed him into the mountains. From a hiding place they watched as their father lifted up a rock and immediately shot the deer that had come, running, from beneath it. The boys now knowing where the game came from ran ahead of their father in efforts to arrive home before him.

A couple of days later the boys sneak out to where their father kept the game. Once there, they raised the rock and let out a deer but forgot to replace it. Just as they drew back to shoot the first deer, another escaped from the hole, then another and another, until all the deer escaped. The deer were soon followed by other game such as rabbits, raccoons, turkeys, pigeons, and partridges all flocked to the air darkening the "air like a cloud" the noise from the wings making the sounds of thunder.¹⁸

The noise reached Kana'ti at home and he instinctively knew that his boys had gotten into trouble; he left to go determine what they had done. When he arrived at the place where he kept the animals, and saw what his boys had done, he went into the cave and without saying a word kicked over four jars which contained bedbugs, fleas, lice and gnats¹⁹ which swarmed over the boys stinging and biting them until they “dropped down nearly dead.”²⁰ Once their father decided they had been punished enough he knocked the insects off the boys, scolding them telling the boys in the past they had never gone without food. For whenever they were hungry Kana'ti would simply release an animal and they would be fed. Now they would have to hunt for their food and they may not even be able to find any. He then sent the boys home to ask their mother if she had any food for them to eat since game was now scarce.

When they arrived home, they were very hungry and asked their mother for food. She told them that there was no meat but to wait in the house and she would find them something to eat; she then gathered a basket and went to the storehouse. When she came back she had a basket full of corn and beans, the boys never seeing the inside of the store house once again became curious and decided to follow their mother. The next time Selu went to the storehouse the boys trailed after her. They climbed up the storehouse ladder and punched a peep hole in the clay wall. They watched as their mother rubbed her belly filling the basket with corn; she then rubbed her armpits and beans materialized. The Boys, concluding their mother was a witch, decided they could not eat the food she gave them for fear it would be poisoned. What's more if their mother was a witch this meant that she must be killed.²¹

The boys went back to the house and waited for their mother. When she arrived she “knew their thoughts before they spoke.”²² *You plan on killing me?* Selu asked the boys. The boys told her that they had no choice because she was a witch. *When you have killed me* she told them *clear the earth in front of our house* and “drag my body around it seven times in a circle” *then drag my body again seven times inside the circle once you have done that you will need to stay up all night and keep watch. If you do this you will have plenty of corn.* The boys then killed their mother with their clubs; once she was dead, they cut off her head and placed it on top of the roof facing west telling “her to look for her husband.”²³

With their mother dead, the boys then set out to do as she had told them to do. But instead of following her directions and clearing all the land in front of their home, they cleared only seven small patches and ran her body over the earth only twice.²⁴ When their father came home he asked the boys where their mother was. The two brothers told him that she was a witch and they had killed her. Furious over what they had done, Kana’ŋ left the boys. The boys desperately searched for their father. When they finally found him, he was sitting with their mother Selu, at the end of the world where the sun lives. Their parents greeted them warmly but told them they could not stay in the east with them, where the sun rises, they would have to live in the west in the darkening land²⁵ where the sun sets. After visiting with their parents the boys left and began their journey to the darkening land.

By its juxtaposition, its contrast of good and bad, the land of life (light, where the sun lives) against the land of the dead (the darkening land) the story of Kana’ŋ

and Selu in essence illustrates the dualistic principal basis for early Cherokee beliefs. In addition the story provides readers with a fundamental understanding of the fear many early Cherokees had of witches and witchcraft. Cherokee folklore is full of stories of witches, many of which end with the death of the witch as was demonstrated in the story of Kana'ti and Selu. In Charles Hudson's research, he argues that the Cherokees believe that a witch has the ability to read the thoughts of others, as Selu did in the story, and as such had the ability to harm a person just "by merely thinking it."²⁶

According to James Mooney's research, the most feared witch among the Cherokees was the Raven Mocker, which in turn was unique in its ability to become invisible. It would fly in on the night air making only the sound of gusting winds looking for the dying; once it finds one it literally scares and will "torment the sick"²⁷ until finally killing him. It was accepted that the Raven Mocker was the being responsible for stealing the last moments of life from the dying. In addition it was believed that these witches had the ability to extend their lives by stealing the souls from the living or the newly dead. One way in which this was done was through the ingestion of the liver or heart; this act will be discussed in greater detail in the chapter concerning burial customs.

Aside from the enactment of the law of blood, which will be discussed in chapter five, the one time it was permissible for one Cherokee to kill another was under the suspect of witchcraft. Judgment was often swift and did not normally require approval from the governing council. Research has yet to yield definitive

examples of this type of punishment being meted out aside from a brief mention in David Brainerd's Journal. On May 28 1822, as he departs from his stay with a Mr. Hoyt, Brainerd writes "In this family are [*sic*] sheltered and fed a poor and desolate woman & her young son of about 10 years. – A little before the birth of this son all her near relatives were slain for the supposed crime of witchcraft & she was spared only on the account of her situation."²⁸ Mention was made in an 1829 excerpt from the *Cherokee Phoenix* who had published a letter written by Mr. Kingsbury.

According to Mr. Kingsbury's letter "[t]he killing of persons for witchcraft, by which much innocent blood has been shed, is now hardly known."²⁹ Despite the lack of concrete historical data suggesting that witches were punished by death, it is evident (from the laws of the revised Cherokee laws and other legal documents forbidding the killing of a suspected witch without a trial) that the practice at one point in time was in fact imposed.

Much like in the story of Kana'ti and Selu, the story of Stone Coat³⁰ is one which bases its moral on overcoming witchcraft or evil. The story of Stone Coat offers an explanation for the origins of disease as well as the songs and chants needed to cure them.³¹ Stone Coat, according to legend, in his original form, was covered in a type of scaly armor that made him virtually impervious to assaults. He traveled from place to place and lived among the people,³² all the while, killing them so that he might obtain the food he wished to eat: the victim's liver. Stone Coat would stay with the people until they grew suspicious of him; once they did, he would move on to the next place.

According to the account given by Speck and Broom, Stone Coat happened upon a Cherokee village where he took on the appearance of a small orphan boy and a kind man had pity and took him in to raise as one of his own children. Soon after the man had taken in Stone Coat, he awoke to find one of his children dead. The child's body was examined and it was discovered that the liver was missing. The child's death caused great grief as this was "the first time that anyone had died."³³ The villagers sought out the medicine man for his advice on what should be done to find the killer and bring him to justice. The medicine man warned them to be patient least they wrongly accuse someone. A few days passed and another child was found dead with their liver was missing. The council gathered and it was decided that since no one had come into the village, the culprit must be one of their own; worse yet they feared that the killings would not cease until everyone in the village was dead.

Upon discovering a second child of his dead with their liver missing, the old man began to suspect the orphan boy whom he had taken in to his home. When he told the council of his suspicions, many suggested killing the boy right away while others, fearing that he was a powerful spirit, wanted to wait and seek the council of the medicine men. The council, finally decided to wait and observe the boy in hopes of discovering a way to kill him.

Eventually,³⁴ one of the medicine men had an idea of how to trap and kill the boy. He ordered that the council enlist the aid of seven women whose menstrual cycles coincided with the full moon. Once the women were found they were lined up and down the path that Stone Coat took while looking for victims. The women lining

the path bared their legs and waited for Stone Coat to appear; when he saw the women, he greeted them saying “Well, well! Beautiful women.”³⁵ All of a sudden Stone Coat became ill and began vomiting blood; as he passed each woman he would vomit more until he was so weak he fell to the ground, unable to move.³⁶ By now several of the villagers had gathered around to witness the death of Stone Coat.

Stone Coat, knowing his death was near, told the people to gather basswood and build a fire around him to burn his body. As the fire began to burn, Stone Coat began speaking to the people. He told the people that as his flesh burned and the smoke and smell of his charred flesh reached the sky, he would teach the people songs that would aid them in life. He demanded that the songs be learned by the people, who must, in turn, teach them to their children. Stone Coat then told them that had they attempted to kill him earlier, they would have not succeeded for it had been pre-ordained that they must know pain before they are given relief. Only once they knew the pain of suffering and the joy of relief then they would understand the importance of the songs they must now learn.

Because you have killed me, I leave behind death and disease in the world but I also leave you with the songs to help cure them. Once my spirit leaves my body and the fire dies you will find in my ashes strong medicines which will take the form of stones from my coat. The people witnessing the sacrifice gathered around and learned the songs, which they used in “dances when they were all together and others were used by the people alone for hunting, for war and other purposes, medicine.”³⁷ It was believed that before the arrival of the Stone Coat, there was no illness or death. It was

through their encounter and interaction with Stone Coat that these conditions came to the Cherokee.

Similar to the story of Kana'ti and Selu the story of Stonecoat discusses the concern the early Cherokees showed in regard to protecting themselves from the threat of witches and their magic. In addition, this story expands on the concept of duality, as he lay dying Stonecoat told the Cherokees that in order to understand the importance of pleasure and happiness, they first had to experience the pain of loss.

Like the stories of the first people, Kana'ti and Selu, and Stone Coat, the legend of *The Sun's Daughter* deals directly with the concept of death. According to the legend of The Daughter of the Sun, in the beginning, death was introduced to the Cherokee people by a jealous sun. The story, as recorded by anthropologist James Mooney, tells of a conversation between the Sun and her brother the Moon. The Sun hated the people of the earth, who were her grandchildren because they would never look at her directly without "screwing up their faces"³⁸ for that reason the Sun found them to be unattractive. She complained to her brother the Moon, "my grandchildren are ugly; they grin all over their faces when they look at me."³⁹ The moon, found the people of the earth to be beautiful, because his rays shone softer than his sister, the Sun's, when the people gazed upon him they had pleasant smiles on their faces.

The Sun became jealous of the favoritism the people of the earth showed her brother, the Moon, and decided to kill the people. Each day as the Sun approached the house of her daughter, she shone brighter and hotter creating fevers in the people. They began dying by the "hundreds, until everyone had lost some friend and there

was fear that no one would be left.”⁴⁰ The people seeking to end these fevers sought out the *Anisga'ya Tsunsdi'*⁴¹ (The Little Men) for help; they informed them that the only way to end the fevers was to kill the Sun.

The legend states that the *Anisga'ya Tsunsdi'* created a “medicine” which changed two men into snakes: one became a copperhead and the other a spreading-adder. These two snakes were sent to wait for the Sun at her daughter’s house; when the Sun arrived the snakes were to bite her. The next day as the Sun approached her daughter’s house the spreading-adder poised himself to spring upon the sun, instead he found himself blinded by her rays and was only able to “spit out yellow slime.”⁴² Then Sun unharmed simply passed by him and went into the house, the copperhead observing his partners failure crawled off “without trying to do anything.”⁴³

The people, still suffering from the fever, for a second time went back to the *Anisga'ya Tsunsdi'* for help. Again they made medicine this time changing “one man into the great Uketena⁴⁴ and another into a rattlesnake.”⁴⁵ The rattlesnake, eager to end the suffering of the people, raced ahead of the Uketena where he coiled himself up outside of the door of the Sun’s daughter. When the Sun’s daughter opened the door to look for her mother the impatient rattlesnake “sprang up and bit her and she fell dead in the doorway. He forgot to wait for the old Sun, but went back to the people, and the Uketena was so very angry that he went back, too.”⁴⁶

When the Sun arrived at her daughter’s house and saw her dead in the doorway she locked herself away from the world and grieved. With the sun grieving

and hidden away from the earth, the people no longer suffered from the fevers or died, however the world was always dark now and the crops began to die. For a third time the people sought the assistance of the *Anisga'ya Tsunsi'*, who informed the people that in order to bring the Sun out again they must send seven men to “bring her daughter back from Tsusgina'.”⁴⁷

This is the ghost country, which lies in Usunhi'yi, the Darkening Land in the west.”⁴⁸ Each man was given a “sourwood rod a hand-breadth long”⁴⁹ and were instructed to carry with them a box in which they were to place the Sun's daughter's spirit in. When the seven men arrived in Tsusgina'I, they found the Sun's daughter at a ghost dance, as the *Anisga'ya Tsunsi'* said she would be. Careful to heed the warning of the *Anisga'ya Tsunsi'* not to enter the circle, each of the seven men touched the Sun's daughter with their sourwood rod. When the seventh rod touched her she fell out of the circle, the men picked her up and quickly placed her in the box closing the lid behind her.

With the Sun's daughter safely in the box the seven men began their eastward journey home. Along the way back to the land of the living the Sun's daughter woke up and began to beg the seven men to open the lid of her box. Before the seven men left for the ghost country the *Anisga'ya Tsunsi'* warned them against opening the lid of the box once they had placed the Sun's daughter inside. Because of this warning the seven men made no answer to her pleas for water or food. As they approached her home, she begged them to open the box ever so slightly so that she may breathe. The

seven men, afraid she might be dying, agreed to raise the lid of her box so that she might get some air. As they lifted the lid they heard a “fluttering sound inside and something flew past them into the thicket and they heard a redbird cry, ‘kwish! kwish! kwish!’ in the bushes. They shut down the lid and went on again to the settlements, but when they got there and opened the box it was empty.”⁵⁰ The legend states that because the men had not kept the box closed, as they had been instructed to do, when someone dies they cross over into the ghost country for good.

The Sun, upon finding out that her daughter had escaped from the box, fell into a deep depression and began weeping until her tears “made a flood upon the earth.”⁵¹ Fearing that the Sun’s tears would not cease, the people held another council. At this council the people decided to send their most beautiful men and women to dance and sing for the Sun. They sang their “best songs, but for a long time she kept her face covered and paid no attention”⁵² to the dancers or their songs. Until the drummer quickly “changed the song”⁵³ the Sun, now curious, raised her head and “was so pleased at the sight that she forgot her grief and smiled.”⁵⁴

James Mooney,⁵⁵ notes in his research, that the folklore story of the Sun’s Daughter is what he calls a “principle myth” among the Cherokees. As a result there are many different variations of the story. The most common variation is the version told by Swimmer and is the one retold above. Another variation of the story comes from the 1835 Payne manuscript. This version tells how the earth was created by many different beings, the Sun was created first. According to the legend, when the creators fashioned the earth their intention was for the people to live forever but as

the Sun journeyed across the sky, he discovered that there was not enough land to support them and suggested to the other creators that the people should die.

The daughter of the Sun lived with the people and while the Sun was on its journey in the sky, his daughter was bitten by a snake and died. When the Sun returned from his⁵⁶ trip, he asked after her only to discover that she had passed away. Upon hearing of his daughter's death, the Sun consented that the people who would bring his daughter back from the darkening land would be able to live forever. After promising this he sent them to retrieve his daughter's spirit. Like in the Swimmer version the pilgrims were given a box and instructed not to open it until the spirit was near the body of the Sun's daughter. Prompted by curiosity they opened the box and her spirit escaped from within and as such it became the fate of all men to die.

These stories are told in much the same way as a parable, each one containing within, a hidden message or lesson for the listener. With the death of Stone Coat came disease but also the means by which these could be treated. As a result of the Sun's Daughter's death, The People discovered the need to and the ability in which to help others through the mourning process, through music and dance. As was illustrated in the stories of the hunter Kana'ti and his wife Selu, *Stone Coat* and the *Sun's Daughter*, the early Cherokees believed that in order for the world to function there must be balance; good and bad, life and death, and light and dark. There exist many everyday moral lessons found within these types of stories and when combined with historical records, are demonstrative of the very core of the early Cherokee belief system: harmony in duality.

CHAPTER IV
MAINTAINING THE BALANCE:
DEATH AS PUNISHMENT

Established in the previous chapter on folklore and oral traditions was the concept of maintaining balance and harmony with nature, and within, the clans, this harmony was fundamental to the early Cherokees. Nowhere is this more evident than in their early judicial system. Using oral histories, journals, and books such as John P. Reid's *A Law of Blood*, Charles Hudson's *The Southeastern Indians* and Rennard Strickland's *Fire and the Spirits*, this chapter will focus on how the use of death was employed to maintain this sensitive balance.

The Cherokees, like several of their fellow Eastern Woodland nations, such as the Natchez and the Creek,⁵⁷ believed in and followed an early code of justice often referred to as blood feud or blood revenge. Isaac Newton, in his third law of physics, suggested there is a basic principle which governs nature: every action has an equal and opposite reaction. Although the concept of blood revenge can be, and has been, paralleled with the Old Testament Judeo-Christian concept of an eye for an eye, the actual meting out of the punishment is more complex than simply killing a member of the offending party's clan.

Many early Cherokees believed that failure to avenge the victim would have two hazardous effects: first, the earth would be out of harmony, and it is when the

world was out of harmony that many believed that diseases would come to visit; second: the soul of the victim, if left un-avenged, would be condemned to roam the earth unable to cross over into the darkening land. In accordance with this belief it mattered not if the death had been intentional or accidental. Anthropologist Charles Hudson suggests that this blood law of retribution helped to prevent a “civil war” from breaking out between the clans. Thus, according to Hudson’s argument, the purpose for the law of blood served to help maintain peace, between the different clans and not to “exact justice as we understand it.”⁵⁸

For all intents and purposes, there was a loosely based code of conduct that governed blood vengeance. These regulations governed offenses from homicide, infanticide, fratricide, suicide and arguably the most feared offence, that of witchcraft. Depending on the incident, the punishment could be decided on and doled out by a single clan or family without having to consult the governing council. For the purpose of this chapter, this writer shall look at the following offenses: homicide, suicide and witchcraft (briefly discussed in the chapter on folklore) and will be reintroduced in the chapter on death customs.

A small sample table of possible crimes in which death was the punishment is listed on the next page.

Table 1.1 Crime and Death Punishment

| Crime | Convening Authority | Enforcing Agent | Punishment |
|---|--------------------------------------|---|---|
| Treason: intentional violation of community welfare | The Seven Clans Council | An elected group of leaders, one representative per clan | Death |
| Witchcraft | Council of the Seven Clans | Select individuals elected by the Council | Death |
| Homicide ⁵⁹ | Clan members of the immediate family | Oldest male, normally the brother | Death for the murderer or a member of his clan |
| Suicide | Punishment is left to the spirits | Clan would purify the blood, but are not responsible for punishment | Their ghost is confined to this land and is not able to pass into the Darkeningland |
| Theft from the dead | Clan Members of the deceased | Bone Bearer | Death |

If a member of a clan or family was killed, the responsibility of revenge often fell to the oldest male member of the victim’s family such as an older brother or matrilineal uncle.⁶⁰ This individual would then sneak into the camp of the offending party and kill the person responsible; if they were unable to discover the offender, then another member of the clan could be killed instead. Legal historian John Phillip Reid, in his book *A Law of Blood*, suggests that in early Cherokee law, the only evidence taken in to account was the actual deed; the circumstances surrounding the death, being intentional or accidental, were not considered “causation ... the only factor to be entered.”⁶¹ Reid suggests that the early Cherokee legal system was

concerned solely with finding who, if anyone was liable. If liability was found, the offender's entire clan shared the in the burden of culpability and not just the person directly responsible. According to Reid, the only time killing was justified, among the Cherokees, was when it was in accordance to a blood feud. This was considered essentially as erasing a debt owed to another in an effort to restore the natural balance.

Reid takes care to warn readers and scholars that when evaluating early Cherokee legal customs that “abstract principals are not the best tools for discussing Cherokee law.”⁶² For when the Cherokees themselves were confronted with a situation of law they would rely on their “instinct... [knowing] immediately how to act.”⁶³ To illustrate his theory Reid points to the case of James Vann. As Reid retells the story, the incident begins at a drinking party where Sour Mush, a prominent member of Vann's clan the Blind Savannah, is assaulted by a member of the Paint clan. Upset that not one of the younger members from his clan present at the drinking party came to his defense or avenged his assault, Sour Mush openly chastises them. After another round of whiskey, following the lead of Charles Hughes, a few members of the Blind Savannah clan sought to avenge Sour Mush's assault. When the group found the man responsible they attack him, beating him so badly that he dies.

According to the understood law, this death meant, that these members of the Blind Savannah clan by killing the man had upset the balance and in order to restore this balance, the Blind Savannah clan owed the Paint clan a life. It is unclear through the various accounts of this story what exactly transpired. Reid, however, theorizes

that Hughes, probably through a representative, asked the Paint Clan's council to substitute his life for that of James Vann's. Hughes argues that Vann was an incorrigible young man who, unlike himself, did not contribute to the Nation. Whatever Hughes' argument had been the Paint clan, despite the fact that James Vann had not been directly involved in the altercation, agreed to Hughes' request and substituted his life for that of James Vann's. When Vann learned of the Paint clan council's decision he willingly "reconciled himself to his fate, even deliberately riding into one ambush from which he luckily escaped."⁶⁴

An unknown period of time passed from when the verdict had been given, to when the clan came to claim the life of Vann. The selected members of the Paint Clan appeared while Vann was attending a function with his maternal uncle. According to Reid, Vann observing the arrival of the Paint clan feared his judgment was at hand picked up a gun,⁶⁵ walked over to where his maternal uncle was and shot him in the head. What happened from the time Vann had supposedly accepted his fate until it was time for him to meet his punishment, we as historians, can only hazard guesses: could he have simply panicked at the idea of his own death, we don't know. What is known is that the death of his maternal uncle, in accordance with the blood law, satisfied the debt owed to the Paint Clan.

Unfortunately, historical record shows that Charles Hughes had been correct in his assessment of the kind of man James Vann was to become. Historical records show that James Vann, as an adult, was a mean drunk. When intoxicated he would threaten and/or assault his wife and mother sending them running to the neighbors or

the missionaries. He owned and ran a tavern in open violation of the Nation's ban on alcohol and was known to frequently quarrel with his neighbors; in particular his brother-in-law John Falling.

Reid, suggests that Vann became the "scandal to the authorities of the Nation,"⁶⁶ however Reid fails to mention that James Vann had an unusual mix of balance of good and bad within his adult life. Vann helped to fund the Moravian Springplace Mission and school; he frequently provided them with food and other supplies they needed from his own provisions. Vann was also a member of the Light Horse Guard and along with his friend John Ross was a member of the Cherokee council.

Unlike the case of James Vann and the Paint Clan in 1807, when Chief Doublehead was murdered no one from his clan sought to avenge him. Like Vann, Chief Doublehead, caused the nation, as a whole, great distress. Against Cherokee law, Doublehead had been leasing ancestral Cherokee lands to white farmers, in what many argue, was an effort to add to his personal wealth. The council also knew of a land deal that Doublehead was in the process of negotiating with a Colonel Meigs. Finally to add fuel to the proverbial fire Doublehead had married the sister of James Vann's wife and had physically abused her while she was with child, and it had been this assault that resulted in her death.⁶⁷

While James Vann and Major Ridge were attempting to persuade council to allow for his death under the blood law for treason, for in selling Cherokee ancestral land, Chief Doublehead -- attending a ballgame inadvertently provided them with

another justification. On August 12, 1807, Anna Gambold, in her journal writes that during a ballgame Doublehead got into an argument with another Cherokee warrior named Bone Polisher.⁶⁸ The argument escalated and ended with Doublehead taking the life of the Cherokee warrior Bone Polisher. According to Anna Gambold's memoirs, Doublehead's murder of Bone Polisher allowed "The Ridge the opportunity to plot against"⁶⁹ him.

Doublehead, injured from his encounter with Bone Polisher, was drinking at local tavern when Major Ridge found him. Someone sitting at Doublehead's table held a candle up by his face and within a few moments Major Ridge appeared, blew out the candle and shot Doublehead through the jaw.⁷⁰ Surprisingly the shot did not kill him; when Major Ridge, Saunders and Vann found out that he had survived they ambushed him just after dawn in front of a large crowd that had gathered upon hearing all the commotion. Along with two men from Bone Polisher's clan the men assaulted Doublehead attacking him with a spade and tomahawk until he died.⁷¹ When Doublehead was dead Major Ridge turned to the crowd that had gathered and explained to them that he had been acting under the authority of the council to kill Doublehead.

When the council gathered again at Broomstown in 1808, to review laws and treaties, they elected to abolish the Blood law. This new law formally alleviated the burden and/or prevented Doublehead's clan from seeking to avenge his death. However, if nothing else has been determined concerning the Cherokee sense of justice it has been established that they believe that in order for the world to function

as it should, there has to be balance. By not avenging a loved one or fellow clansmen's death that person's spirit is unable to cross over into the darkening land. As long as their death remains unavenged the world, is out of balance. Within a few years of his death each member of the party who participated in the death of Doublehead found themselves also victims of the blood law. Arguably, allowing nature, herself, to restore the balance.

In 1807, James Vann believing that his brother-in-law John Falling had been encouraging his slaves to be insubordinate,⁷² challenged him to a duel; this resulted in Falling's death. According to the Moravian missionary journals, written by Anna Gambold, James Vann's mother arrived at the door late in the evening seeking the advice and help of Brother Gambold. Anna writes that the two men confronted each other each getting as close as possible to the other before firing their weapons, "Falling's charge had hit Vann's rock wall at the same time Vann's went through Falling's chest and threw him dead to the ground."⁷³ Falling's brother, who was there during the attack, promised to seek to have the blood debt repaid. Fearing for her son's safety, during a planned trip the next day to the Creeks, Vann's mother asked Brother Gambold to go to Vann and advise him how to handle the situation. Illustrating their lack of understanding of the law, Brother Gambold advised Vann to pay a visit to the Chief in order that his story may be known. Surprisingly, Vann agrees to do so claiming that Falling's brother would twist the story, to his advantage, and the Council would likely be convinced of Vann's guilt.

Because the two men had been from different clans, Falling's clan had the right to have the blood debt repaid. However, after the episode between The Ridge and Doublehead, the Council of Broomstown had ruled to strike blood revenge from the laws making blood revenge illegal. Historical records are not exactly clear as to how James Vann was killed or by whom. Reid, citing a 1941 *Ibid* article, written by Ralph Henry Gabriel entitled "Elias Boudinot Cherokee and His America,"⁷⁴ claims that in 1809, Vann, was killed, while helping the Light Horse patrol pursue a group of thieves within the Cherokee Nation's boundaries, by whom many believe, were members of Falling's clan who were satisfying the blood debt.

However, Anna Gambold, in her mission diaries, offers another version of the story. According to Gambold, James Vann and other members of his Lighthorse patrol had rounded up a group of thieves. When one member of the group of thieves refused to surrender, Vann ordered him to be shot. A couple of days later Vann, stopped by a local tavern where he stayed a few days becoming intoxicated. There he found himself engaged in several altercations and had threatened several men. Around midnight, on the day he died, Vann decided to leave and made his way toward an open door "when suddenly a shot from without ... pierced his heart. He fell lifeless to the floor without the perpetrator being seen."⁷⁵

In 1835, several members of the Cherokee Council signed the New Echota Treaty. This treaty resulted in the forced relocation of the Cherokees to land in Indian Territory, land in what is now Oklahoma. After the forced relocation a secret council was called, against the wishes of Principal Chief Ross, three members from each of

the men's clans were called to judge their fellow clansmen on the charge of treason and quite possibly murder. Each man was found guilty and as a result was condemned to death.⁷⁶ Major Ridge, his sons John and Elias Boudinot (Stand Waite), all of whom had signed the Treaty of New Echota, which forced the Cherokees to move west away from their ancestral land, were assassinated by those enacting the now illegal blood feud.

In an April 30, 1846, letter to the United States Senate and House of Representatives, Chief John Ross had to defend the very act he argued against. He asked why "Is it only in the Cherokee country where assassinations are committed? The law of retaliation still exists in full force in nearly all Indian tribes."⁷⁷ Ironically, Ross points out the same Blood Law the United States was accusing the "constituted authorities" of the Cherokee country of using to retaliate against Major Ridge (and the others because they had signed the land cession treaty), was the same law that The Ridge had voted for and had used to defend his killing of Chief Doublehead.⁷⁸

In the case of Vann's killing of his maternal uncle, the rule of blood revenge did not transfer into intra-clan affairs; deaths, murders and suicides were handled in a different manner intra-clan; one example was that of suicides. Suicides occurred for various reasons. One such reason involved the invoking of blood revenge; a person could voluntarily chose to take his life to pay the blood debt to potentially spare the lives of other members of his clan. Suicides, for reasons other than that of settling a blood debt, according to Frans Olbrechts, while uncommon, did occur and were viewed much how suicides are viewed by society today as the taking of a life.

Olbrechts, writes that when a person takes his life it always “causes a great commotion; but no special beliefs are connected with it, not with the ghosts of the victim. The burial takes place as usual.”⁷⁹ Reid suggests that when a person commits suicide their loved ones treat the death with the same respect they had if the death occurred another way. They believed that the punishment for committing the crime for taking a life would be meted out by the spirits. The death going unpunished or unavenged would cause the ghost or the spirit of that individual to roam the earth unable to cross over.

The duality of Cherokee beliefs as evidenced in their folklore and oral traditions translated into their early legal systems. In nature, they saw this balance in its simplest form and tried to model their behavior in accordance. Fire balanced water, good balanced evil and life balanced death.

CHAPTER V
TOBACCO, CEDAR AND FIRE:
BURIAL PRACTICES AND CUSTOMS

In his memoirs, Lieutenant Henry Timberlake wrote a brief passage on the Cherokees' burial customs and the laws governing them as he had observed. He writes that the Cherokees rarely bury their deceased. Instead they throw them in the water; but "if any white man will bury them, he is generally rewarded with a blanket" in addition to whatever the corpse bore, sometimes this included "guns, tomahawks, powder, lead, silver ware, wampum and a little tobacco."⁸⁰ Timberlake, however, later contradicts himself when he writes that the person responsible for the burial of the body immediately leaves the corpse unattended. Upon this person's departure, one is at liberty to take from the corpse any object on it "must take care never to be found out, as nothing belonging to the dead is to be kept, but every thing at his decease destroyed, except for these articles, which are destined to accompany him to the other world."⁸¹ Timberlake also warns that to steal from the dead is arguably "the worst of thefts"⁸² but the Cherokees had no punishments for crimes other than that of murder and even then the murder is "more properly avenged than punished."⁸³

In 1928, after helping to compile and edit Lieutenant Timberlake's memoirs, former Tennessee Justice of the Supreme Court, Samuel Cole Williams writes his book *Early Travels in the Tennessee Country 1540 -1880*. The book, was a compilation of accounts of everyday life, indigenous plant life, as well as recorded encounters with the indigenous people as made by traders, military personal and other travelers who passed through or moved to the state of Tennessee. One such account being Lt. Timberlake's, as mentioned above, another is that of Moravian missionary Brother Martin Schneider.

Brother Martin Schneider, like Timberlake, during his 1783 -1784 visit to Tennessee happened to witness a Cherokee funeral which he writes about in his journal. His story is dissimilar to that of Timberlake's, in the fact that Schneider writes how the Cherokee "bury their dead without any ceremony."⁸⁴ Unlike Timberlake's account the Cherokee funeral witnesses by Schneider, was one that involved cremation by fire and not a water burial as was mentioned in Timberlake's account. For he writes "If poor people die, they burn them in their own house, viz. if it is bad & the wife will not stay in it. But with the Chiefs they have another method; they lay them in close coffins of reed & put them upon props 10 feet high & so let them stand."⁸⁵

In 1823 John Haywood, a former lawyer turned state historian, wrote *The Natural and Aboriginal History of Tennessee: Up to the First Settlements Therin by the White People in the Year 1768*. Haywood, convinced that the Cherokee's were in fact descendants of ancient Jewish ancestry, he spent years researching county

records, diaries and as well as studying the customs and language of the Cherokees in an attempt to prove his theory. Despite modern geneological and historical evidence to the contrary, Haywood's theory, has yet to completely fade into oblivion. Like Timberlake and Williams, Haywood provides researchers with a possible glimpse into the mourning and burial customs of the Cherokees. However, unlike Timberlake and Williams, who by all accounts were simply recording their interactions with the Cherokees, Haywood, was attempting to prove a theory and, as such, his reasearch must be approached with caution.

Haywood, provides a brief look at the burial ceremonies of the Cherokees. He suggests that when a member of one of the Cherokee clans passes away, everyone in the person's clan mourns the loss by fasting for three days continuously around the person's burial site. At the conclusion of the three days, the mourners would then cut off approximately half of their hair.⁸⁶ If the death had been of a beloved woman or of a Chief professional mourners would then be hired, "who during six mounths [*sic*] lament the death of a King, crying with ahloud [*sic*] voice three times a day, mourning [*sic*], noon and evening."⁸⁷

Now consider, point by point, these three accounts regarding Cherokee burial customs and attempt to separate truth from supposition. First, there is the need to establish the understanding that each of the seven clans of the Cherokee had their own customs and traditions. However, all were based on the same basic principles. That being stated, accepting the understanding that each clan had its variations of death traditions, one must consider Timberlake, Schneider and Haywood's accounts and

comparing them against each other as well as the common burial customs and beliefs shared by the seven clans, as reported by James Mooney, Will West Long and others.

Timberlake's statement that "Cherokee rarely bury their dead; instead they throw them in the water" has been widely disputed. As was mentioned in the previous chapters, which discussed folklore and blood law, the Cherokees believed in a dualistic balance. This belief of balance is one that extended into death and the customs which govern it. In this context, Timberlake's claim that the Cherokees practiced water burials, research conducted, thus far, has yet to yield any evidence that the Cherokees ever practiced water burials. One reason being that any body of water, be it a river, lake or stream, was considered to be a sacred site and was used in various purification rituals,⁸⁸ a ritual which, according to information on traditional beliefs found on the Cherokee Nation's official website, is still, in various forms, practiced today "by some Cherokees."⁸⁹

Taking this ritual in accordance with information supplied by anthropologist James Adair who suggests the Cherokees held a deep abhorrence of the dead considering the dead to be impure. Not to mention that in addition to Adair's research, neither of the other primary documents written by Schneider or Haywood failed to mention any use of water burials. Schneider suggests that the body of the deceased is placed in his or her home and it is then burned. The exception is if the decedent is a chief. If so, then their body is placed within a coffin and raised on a burial scaffold;⁹⁰ the clan then gathered around the grave where they would fast for

three days. Here again Haywood fails to mention water and this leads one to conclude that the validity of a water burial seems highly unlikely.

Despite the fact that both the recollections of Haywood and Schneider suggest that the Cherokee's did not routinely practice water burials their accounts lack agreement when it comes to the relative manner in which the deceased were buried and how they were mourned. In Schneider's account, he mentions the practice of leaving the remains inside the deceased's dwelling then is placed on fire, he also, makes mention of the practice of scaffold burials for deceased chiefs; Haywood's account does not mention either partial cremation or scaffold burials. How can students of history explain these very different practices? One could argue that the clues for a possible explanation lay with Brother Schneider's writings. He tells us of his experiences with the "Chikamakas or lower Cherokees, which are properly one nation [*sic*] with the upper Cherokees & who have built 90 or 100 miles down the Tenessee [*sic*] river." ⁹¹

History, however, tells us that the Chikamakas⁹² were not solely Cherokee in ethnicity. Founded under the leadership of the Cherokee warrior Dragging Canoe the Chikamakas were a confederacy comprised of disenfranchised Cherokees, Creeks, Shawnees, Catawbas, Saponis, Mohawks, Delaware, Choctaws, Chickasaws, as well as a few Scottish, Irish and German.⁹³ The research on this topic has yet to produce information, which suggests that the Cherokees practiced scaffold burials. There is, however, a high probability that among the Chikamaka's a scaffold burial ceremony may have been conducted. Certain members of the groups who helped comprise the

Chikamaka confederacy, such as the Choctaws and the Mohawks, practiced this type of burial tradition in one form or another. Understanding this provides a logical explanation for the differences in Schneider's and Haywood's accounts, it is very plausible that Brother Schneider while in what he thought to be "Lower" Cherokee territory witnessed a scaffold burial and assumed those involved were Cherokee.

We know from the narrative of Cherokee Freedwoman Lucinda Vann, a former slave of James Vann, who speaks of her life with the Vanns, as well as a few of the customs practiced by the Cherokees. It is from her account that we are told it was customary that when a person passes away somebody sits with the body day and night until the body is interred in the ground.⁹⁴ Anawak Webb, in her interview for the Duke Collection of American Indian Oral History, appears to corroborate Lucinda Vann's account. In 1968 interview, Webb was asked if she remembered how the dead were prepared; she responded by describing her uncle's funeral she had attended as a child. According to Webb, a full blooded Cherokee,⁹⁵ when her uncle passed away, his body was laid out, while the men took turns between staying up with his body and making his coffin, the women made them coffee.⁹⁶ Once the coffin had been lined and finished the body was transferred to it and placed in a wagon and transported to the cemetery for burial. The casket was kept open while on its journey to the grave, once they were graveside the casket remained open while they sang songs. When they were finished singing, the coffin was closed and the body lowered in the ground.⁹⁷

In *The Swimmer Manuscript*, Frans Olbrechts writes that when a person dies the community gathers and forms a processional to the gravesite. The Chief of Coffin

Makers⁹⁸ stops every “200 yards or so”⁹⁹ and yell “other ones now”¹⁰⁰ and new pallbearers come forward replacing the previous ones. Once the body of the deceased reaches its final resting place at the cemetery, prior to the body being placed into the ground those gathered sing hymns either in Cherokee or English, the “cover [is] laid back so that only the face of the corpse can be seen.”¹⁰¹ Everyone then takes a turn passing by the coffin for the last goodbyes once the last person has passed, the coffin is nailed shut and the body is lowered into the grave.

In her diary, Moravian missionary Anna Gambold writes of a funeral service that she attended for a slave of the Vann’s. In her account she speaks of the body being interred in the ground remarking that for many of her students this was the first time they had ever seen a corpse or witnessed a funeral. According to Gambold, Cherokee tradition at that time was to turn over the “corpse to man for burial; he buries it in private and then has to distance himself from other people for a number of days and is not allowed to go into any house. His food is given to him in containers, out of which no one is ever allowed to eat again.”¹⁰²

While each of the accounts mentioned above suggest strong evidence supporting internment of the deceased, what of the actual burial ceremony? Both Timberlake’s and Schneider’s memoirs mention that the Cherokee buried their dead with, little or no ceremony; while in contrast to Timberlake and Schneider’s writings Haywood suggests the Cherokee’s mourn graveside for three days after which they cut their hair in grief. Three oral histories make no mention of any ceremonies other

than sitting with the corpse until its burial. Raising the question: whose recollection is most likely correct?

In his article “Cherokee Beliefs Concerning Death” for the *Journal of Cherokee Studies* ¹⁰³ anthropologist John Witthoft researches many of the Cherokee beliefs surrounding death and funerary practices. Witthoft discusses at length traditional burial practices, “conjuring and witchcraft”¹⁰⁴ with Cherokee conjurer Will West Long. In his interviews with Witthoft, West Long explains the different traditions that govern funerary rites and mourning practices. According to West Long burial of the deceased should take place the day after death, however until the body is interred someone, a conjuror or someone who has taken “witch medicine,”¹⁰⁵ should sit up with the body to protect it. According to the research conducted by James Mooney, only a conjurer who has taken the right medicines has the ability to see the Raven Mocker and thus has the ability to protect the dying or newly departed.

West Long, according to Witthoft, explains that Witches desire the life that resides in one of the four “Askina” or souls, for a witch this soul is a source of strength. According to Witthoft, Will West Long “explained a multiple – soul concept involving four souls and four stages of death.”¹⁰⁶ The first stage of death occurs immediately after a person dies, when his “soul of conscience”¹⁰⁷ leaves the body. The “soul of conscience” resides in a person’s head when the person passes away that soul immediately leaves the body and begins its “personal life, sometimes remaining nearby for a while, often seen as a ghost, harmless and powerless.” This soul is said to have its own personality and memory, which carries on after the body dies.

Wiffcoft relates that the moment the “soul of conscience leaves the body”¹⁰⁸ the body’s other souls begin to die. The second stage of death relates directly to the second soul and begins after the soul of conscience leaves the body. The second soul is located in the liver, and according to Wiffcoft it is this soul that is of “primary importance in doctoring and in conjuring.” It is this Askina that a witch is most interested in stealing after one dies, for according to what Will West Long tells Wiffcoft, when ingested by a witch this soul can extend their life, as illustrated by the story of Stonecoat. It is suggested that if a person’s death was not caused by an illness of the liver, then the soul located within it remains present within the body for up to a week. Slowly fading until it is absorbed “back into nature as a life force”¹⁰⁹ makes the second soul an available nutrient for a witch. This soul is most vulnerable to attack the first night after death and because of this the conjurer keeps a watch over the body “during the first night of death and ‘just’ “after burial.”¹¹⁰ The third soul is located in the heart, this soul is “non-individual” and is believed to take as long as a month to die. The fourth and final soul Will West Long makes reference to lives in the bones, and takes a year to die. As these two souls, found in the heart and bones, serve little or no purpose for a witch they are generally left alone.

In *The Night Has a Naked Soul*, anthropologist Alan Kilpatrick, suggests that each Cherokee community has one specific person who is responsible for the care and burial of the deceased; this research seems to support much of what Will West Long and Anna Gambold propose. Kilpatrick argues that one reason for this can be found in the fear of the dead being contaminated. He argues that after a person dies all of the

personal effects of the deceased are destroyed, then a new fire using cedar bough¹¹¹ and goldenrod weed is made to help cleanse the home.

The final step the selected individual performs is to cleanse the “grieving family.” He guides them to a stream or body of water when they are given an “emetic and then were ritually submerged seven times”¹¹² after which they were supplied with new clothing. The family is then placed in isolation for four days. According to ethnographer Frank Speck and sociologist Leonard Broom on the fifth day a dance is performed at the home of the deceased’s grieving family.

Arguably patterned after the dance in the story of the Sun’s Daughter the dance is designed to help alleviate the sorrow of the family and help to encourage them to return their “thoughts... to the normal affairs of life.”¹¹³ According to anthropologist Frans Olbrechts, who took over James Mooney’s uncompleted study of the Cherokees, this dance was not done to a set song or dance pattern. Instead the songs selected were chosen based upon which song would be best suited to amuse “the mourners present; it was thought that if they really enjoyed themselves on this occasion there was no fear that they would pine away with grief.”¹¹⁴

In his archeological study of the early Cherokee burial grounds during their pre-contact period, or their “Pisgah phase,” archeologist Roy S. Dickens discovered many remains at the Warren Wilson excavation site had been interred within the flooring of a home or just outside of it. According to Dickens, it appeared as if the burials were either “simple pits, side chamber pits or central chamber pits”¹¹⁵ the bodies excavated were found placed in a “loosely flex[ed] position with the head to

the west.”¹¹⁶ Dickens concluded the reason for the orientation of the head in this manner was to act as a sort of indicator to “other important sites or groups of sites.”¹¹⁷ However another possible explanation for the orientation of the heads of the dead in this manner can be found in the story of Kana’ti and Selu; it is in this story we are told that the darkening land was located in the west where the sun sat at night, the land and direction in which their spirit was to travel.

Dickens also discovered what appeared to be a hierarchy in how the remains were buried in relation to the layout of the home. Dickens surmised that the burial “pits” located at the side of the home appeared to be “reserved for infants and males of high rank”¹¹⁸ Dickens also noted that in several cases the burial placement coincided with placement of the home’s hearth. Charles Hudson in *The Southeastern Indians* provides a possible explanation for the placements of the dead under the home’s hearth. According to Cherokee beliefs of this time “fire was itself the ultimate symbol of a man’s struggle against pollution”¹¹⁹ and its counterpart water was the purifying force. As was mentioned earlier in the chapter, the Cherokee abhorred the dead fearing contamination; could it not be argued then that the placement of the hearth over the grave was a symbolic gesture, perhaps as a reminder of death?

These accounts by Anawak Webb, Anna Gambold and Will West Long coupled with the studies made by Alan Kilpatrick, John Witthoft and Roy S. Dickens suggest the practice of internment of the deceased and not of scaffold burial practices; as well as the practice of ceremonial mourning customs. This leaves only the practice of burning the deceased’s home and partial cremation mentioned by Brother

Schneider lacking a plausible explanation. During the course of research, for the possible use of cremation by the early Cherokees, two sources were found that provided possible corroboration to the funeral of which Brother Schneider spoke.

In his July 8, 1880, report to the Smithsonian Institute's Bureau of Ethnology, Major John Wesley Powell, references a discovery of a burial site in North Carolina. Powell writes that in 1821, a Mr. McDowell, while plowing the land, his plowshare struck across something in the ground which made a "hollow rumbling sound."¹²⁰ McDowell investigated the cause of the sound and uncovered a "layer of charcoal, beneath which was a slab of burnt clay"¹²¹ when he tried to move the slab it broke in to pieces revealing the remains of a "naked human figure."¹²² According to Powell's report, the supervising attendant under Col. C.W. Jenkes discovered many more of these "burned-clay sepulchers" in the "Cherokee" area of North Carolina.

According to the excavations done at the site at the time, it was determined that once a person had died, a pit was dug, their bodies placed inside with shards of broken pottery placed on top of the body and it was then lit on fire "which formed an entire shield of pottery for the corpse."¹²³ While this discovery does not make direct mention of the deceased's home being burned, one can make a logical assumption that given the technology used at the time the remains of a home burned could have easily been overlooked or simply regarded as kindling for a fire.

Another possibility can be found in Charles Hudson's research. In *The Southeastern Indians* Hudson makes reference to the burial ceremony for Tattooed-Serpent, as it was documented by the French soldiers who had witnessed the funeral

ceremony. According to the account once the Tattooed-Serpent and his wife were buried, their house “as was the custom” was “burned to the ground.”¹²⁴ In 1731 the French along with their allies the Choctaw attacked the Natchez. While many Natchez were taken as slaves, a small group, historically around 700 people, found refuge with their allies the Chickasaw and the Cherokees, in particular the Chikamaka tribe. Knowing this, one could argue that Schneider had witnessed the burial ceremony of a Natchez who had sought refuge among the Chikamaka Cherokees; thus Hudson potentially provides a plausible explanation for burning the homes of the dead as mentioned by Schneider.

In her 1982 thesis, Laura Hughes-Hill, an anthropology student at University of Tennessee Knoxville, makes mention of a burial practice in which the man who buried the deceased would, as part of the purification ritual, “smoke” the home with branches from evergreens, such as pine, where the deceased had died. After which he would enter the home unaccompanied, gather up the personal belongings of the deceased had have them “destroyed, buried or burned”¹²⁵ in an effort to end any possible contamination. The final stage of purification, according to Charles Hudson, is a symbolic one; the fire in the descendant’s home was extinguished with water. It is at this point where the two accounts appear to diverge slightly as Hughes-Hill’s account makes no mention of the use of water, once the old fire’s ashes and wood had been removed a new fire made of cedar and goldenrod was lit.

According to Will West Long once a person was buried the grave should only be tended until the fourth soul, which is located in the bones, was left the remains;

which generally takes a year. Once the year has past the grave should no longer be tended and the family should no longer visit the cemetery as being in the proximity of death one could unwillingly be inviting it into your home. In his report Olbrechts' notes that the local cemetery on the Qualla Boundary Reservation had been established by the missionaries, while they were they the Cherokee had tended and maintained the cemetery. When the missionaries left the cemetery went unattended.

What if anything can we, as students of history, learn from these diverging accounts? While each of these accounts vary in detail they all for the most part seem to have a cohesive strain running through them, each almost filling in the voids in the other's accounts. By comparing and contrasting the historical accounts, the anthropological accounts, and the archeological accounts one can critically evaluate the few primary sources we have on this subject thus providing a humanistic and personal understanding. But at what cost do we obtain this information? In his letter, dated July 8, 1880, to anthropologists in the field studying Native customs J.W. Powell advises them to actively and aggressively pursue information. He writes that the "mortuary customs of savage or barbaric people have a deep significance from the fact that in them are revealed much of the philosophy of the people by whom they are practiced."¹²⁶ Powell cautions these students in the field that in order to acquire this information "it will be necessary to interrogate the Indians themselves. This is not an easy task as the Indians do not talk with freedom about their dead."¹²⁷ He concludes this paragraph by telling these students to disregard any "stories of ignorant white

men and camp attaches... [as all] accounts should be composed of things actually observed.”¹²⁸

CHAPTER VI

REPATRIATED REMAINS

In 1990 the United States government passed legislation entitled Native American Graves Protection and Repatriation Act (NAGPRA); this new legislation protected the graves of Native Americans and helped to establish guidelines to have associated artifacts returned. What exactly is repatriation and why has it generated so much controversy? According to the National Museum of Natural History (Smithsonian Institution) repatriation “is the process by which museums and other institutions transfer possession and control of Native American, Alaska Native and Native Hawaiian human remains, funerary objects, objects of cultural patrimony and sacred objects back to the tribes of origin.”¹²⁹ Under the newly established NAGPRA guidelines, with the exception of the Smithsonian, every federal institution, museum or university had five years after the act went into effect to inventory any items of Native American origin and submit that inventory to the review committee. In 1991 the National Museum of the American Indian Act was passed; this legislation created, under the management of the Smithsonian Institution, the National Museum of the American Indian.

Subsequently to help govern the large inventory of native remains and artifacts as well as manage and process claims of repatriation the National Museum of the American Indian created The Repatriation Office. The review committee in an

effort to manage the large number of claims seeking items to be repatriated outlined a six step process. If a Native American group or any “concerned culturally affiliated individual”¹³⁰ discovered an item of affiliation, their first step in the process to have remains or an artifact repatriated would be to send the review committee a letter of informal request. This letter serves to notify the committee of the group’s or an individual’s potential interest in making a claim on a specific item.

Once the letter has been acknowledged by the repatriation review committee, the second step is for the interested party to send a formal letter, on official tribal letterhead, requesting permission to view the materials. Upon approval of this request the interested party then sends a formal letter requesting a consultation visit.

According to the official procedure guidelines it is during this consultation visit that the process of repatriation is explained, the piece or collection question is examined and the documentation process is begun. Often for those groups or individuals with limited funds a travel grant may be requested, this grant would help cover the costs of travel and accommodations for up to two tribal representatives.

The fourth step is for the group or individual to issue a formal request of repatriation. This formal repatriation request includes any documentation of affiliation that the group or individual possesses, such as geographical, linguistic, ethnological, biological (DNA evidence) and/or oral or written historical evidence. Once this evidence is gathered and researched by the assigned committee representative a final report is created and submitted for review by the Secretary of the Smithsonian through the General Counsel and Undersecretary for Science. Upon

the findings of the Secretary of the Smithsonian and the Undersecretary for Science official notification is then sent to the affiliated party or parties. This process could take years before the decision is finally made. Once the parties are notified, depending on the findings, the final step in repatriation takes place. If the findings are in favor of the repatriation claim, the parties who filed the claim are presented with two options. Option one: have the remains or artifacts repatriated to the tribe or the individual who filed the claim for reburial. Option 2: the individual or tribe can donate to the National Museum of the American Indian, the artifacts or remains for display.

If the findings are not in favor of repatriation the invested party or parties have the option to appeal the findings to the seven member Repatriation Review Committee. To help ensure neutrality and protect Native interests the committee is required to have at least two “traditional Indian religious leaders.”¹³¹ According to the Review Committee’s website, they meet twice a year to review claims and monitor the repatriation process. The Committee functions as a checks and balance system for those who file claims of repatriation and in 1995 the committee helped to create the travel grant program.

Now that the process has been explained, let us consider the concerns and obstacles that claims of repatriation have presented and their potential effects on the Native and academic communities. One of the newest areas of concern was recently discovered by researchers at the Smithsonian Institution; that of environmental and individual damage. During the early stages of repatriation, researchers discovered that

many of the remains and artifacts had been treated with or had prolonged exposure to hazardous chemicals and or pesticides. Environmental scientists fear that once these remains and or artifacts have been re-interred, the hazardous chemicals which they had been exposed to could seep into the ground and potentially contaminate crops and or ground water sources.

Another primary concern raised by anthropologists, and other scholars, is how to determine to whom the remains actually belong. According to an essay written by Joe Watkins, for Tamara Bray's book *The Future of the Past*, titled "Yours, Mine or Ours?" the struggle to determine which remains belonged to which group has always been a source of contention between anthropologists, archeologists and Native groups. Watkins, to illustrate his point, uses the debate surrounding the Kennewick remains as an example; in 1996 two young men happened across a human skull along a river bed near the town of Kennewick, Washington. It was with this discovery of a culturally unaffiliated human skull, which would later be named the Kennewick man, the debate over determining where those remains belonged and the act of repatriation itself would come, literally and figuratively, to a head.

Watkins divides the faction into two different groups the Retentionists and the Restitutionists. The Retentionists feel that the artifacts and remains had been safeguarded for so long by museums and various other institutions that they in fact have what Watkins terms "possessory rights."¹³² Within this group fall many social and forensic anthropologists who believe that repatriation of remains and artifacts would lead to a considerable loss of information pertaining to past civilizations and

cultures which lived in the Americas. One such opponent to repatriation argues that those in favor of repatriation are often “quick to condemn the parochial nationalism of their opponents, but rarely question their own more imperial nationalism.”¹³³

On the other side you have the Restitutionists who believe that the remains and artifacts should be returned to their place and/or people of origin. This group surprisingly appears to find its greatest support from archaeologists, who have generally been united in their support of repatriation to those whom can support claims of “cultural affiliation.” However, there is one exception where archeologists diverge in their support in repatriation and that is in regards to exceptionally old remains which have no direct link to any one existing cultural group; as with the case of the Kennewick Man.

Many Native American groups believe that the desire to determine where remains belong is in reality a stall technique used by anthropologists and archeologists. Some nations go as far to claim affiliation to all indigenous groups and thus if anthropologists are unable to identify to which indigenous group the remains belong, in lieu of the remains being housed in a museum or other institution, some indigenous nations, like the Lakota, are willing to receive the remains and rebury them on their reservation. Scholars object to this offer citing the fact that in time the remains could be correctly identified and returned to their rightful descendants. They argue that by repatriating the remains to a non-affiliated group like the Lakota, presents the problem of then having to potentially disinter the remains and repatriate them again if in time cultural affiliation can be made.

How does one assign cultural affiliation? One logical conclusion would be to look to the geographical origins of the remains in an effort to ascertain to which nation the remains might belong. This is not always a reliable indicator as we have historical documentation concerning the death toll brought on by the forced removal of the Cherokees from North Carolina, Georgia and Arkansas. According to an interview conducted with Eliza Whitmire, a former Cherokee Slave, detailing her account of traveling the *Nunna daul Tsuny* (Trail of Tears) the journey was one that was filled with “horror and suffering for the unfortunate Cherokees *and their* slaves.”¹³⁴[Emphasis mine] She recalls how many Cherokee people were forced from their homes and long after they left “greedy white men” pillaged their homes rounding up and stealing “their cattle, horses, and hogs, and they even rifled the graves for any jewelry or other ornaments that might have been buried with the dead.”¹³⁵ Many people died during the forced relocation to Indian Territory in Oklahoma. According to several accounts regarding the Trails of Tears, discovered in the Pioneer-Indian papers, the Cherokees often found themselves having to bury loved ones along the side of the trail.

Nick Comingdeer in his interview recalls how many older Cherokees would “carry their dead children all day and night when they could stop for the night. The fathers of the dead children, with the help of other Cherokees in the group, would dig a shallow grave and bury them.”¹³⁶ Mary Payne in her interview recalls that hundreds of people died along the trail and were “buried by the roadside”¹³⁷ These oral histories provide us with different examples why one cannot rely on geographical

location; several of the accounts mentioned above reference burials along the trail in unmarked graves in random intervals which indicates that just because the remains are found in an area not normally associated with a particular nation does not mean that all the remains in the geographical vicinity belong to that said group.

Another issue was raised in the interview with Eliza Whitmire and that is the reference to the slaves owned by the Cherokees. The army when forcing the Cherokees from their ancestral lands did not see a distinction between Cherokee master and Cherokee slave, both were equal and forced to make the journey. To make matters more complicated the Dawes Roll, which lists the members of the Cherokee people being removed included the slaves as members of the nation. This created a Cherokee Freedman community, whom the United States government viewed to have the same entitlements as people of Cherokee ancestry that is, with the Cherokee nation. According to Article III of the Cherokee Constitution written in 1975 membership requirements were defined as: “All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware Agreement dated the 8th day of May 1867 and the Shawnee Cherokee as of Article III of the Shawnee Agreement dated the 9th day of June, 1869 and/or their descendants.”¹³⁸ Which begs the question what happens to their remains? As recognized members of the Cherokee Nation are they afforded the same rights of repatriation? Or is there now a distinction drawn between Cherokee master and Cherokee slave?

What of the Shawnee, incorporated into the Cherokee nation in 1870, and the Delaware, incorporated into the Cherokee Nation in 1867? Like the Cherokee both the Delaware and the Shawnee as a result of their own “Trail of Tears” like the Cherokees became a fractured and fragmented nation. Currently there is only one federally recognized Delaware tribe and that is the Delaware Nation the United States government views those who were incorporated into the Cherokee Nation in 1867 as Cherokees and does not recognize The Delaware Nation at Moraviantown and The Munsee-Delaware Nation¹³⁹¹⁴⁰ which were established by Delaware who had escaped into Canada. The Shawnee like the Cherokees boast three recognized tribes The Absentee-Shawnee Tribe of Indians of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Shawnee Tribe which until 2000 were members of the Cherokee Nation.

Another issue that has presented itself during the history of the repatriation act surrounds the definition of who can file the claims? According to the legislation only federally recognized tribes and their members can file claims of repatriation. What happens when a nation or cultural affiliated groups comprises more than one federally recognized tribe? Take for example the Cherokee people; today the Cherokee are comprised of over fifteen individual tribes, of which only three, The Eastern Band of the Cherokee Nation, the Cherokee Nation and the Keetoowah Band are federally recognized; this means, according to the terms established in the bylaws, only three of the fifteen bands can file claims of repatriation. Even still no provision is outlined in the bylines providing guidelines when you have cases such as the Cherokees, where

one could potentially have multiple interested parties. How then do the Cherokee file repatriation claims? Should they file jointly as a single entity or as individual groups? If they file separately what determines the outcome of the claims? According to a source at the Cherokee Nation's Cultural Center, located in Tahlequah OK, each band submits their own claim seeking repatriation; if by chance one or potentially both of the two other bands file a claim on the same object it is then up to the Reparation Review Committee to determine to whom the remains or artifacts should be repatriated.

This lack of a clear-cut procedure combined with the tumultuous history between the Native Peoples and anthropology/archeology scholars continues to feed the distrust between the groups. In their article "Purgatory and the Powerful Dead: A Case of Native American Repatriation." Johnny P. Flynn and Gary Laderman address both the issue of Native American mistrust of outsiders as well as the "politicizing" of the dead. They form the basis of this argument by comparing early Christian beliefs regarding purgatory to the current states of Native remains, by doing so they draw the parallels of a soul seeking atonement until it can be purified thus entering the final resting place, Heaven. Flynn and Laderman further suggest that through the act of repatriation the Native Americans are reclaiming not only their dead ancestors but their past religious identities, thus regaining a sense of lost "political empowerment."¹⁴¹ Flynn and Laderman examine the Chumash and their struggle to try and regain sacred religious sites to which archeologists and other scholars had attempted to lay academic claim. Laderman and Flynn argue that this situation placed

a “historically marginalized people”¹⁴² into direct conflict with a socially accepted way of gathering and distributing knowledge. Leading us to ask if indeed the repatriation act is in essence supplying a once voiceless community with a voice with which they are saying “you have no choice but to hear me now.”

This article raises another question: Under the legislation what can be repatriated? According to the National Park Service’s website on the history of repatriation the provisions of the act allow for the repatriation of the following:

1. “Human Remains and associated funerary objects;”¹⁴³ because the article does not offer a definition of what constitutes human remains all Native American remains are covered under the repatriation act. The statute does however define associated funerary objects as artifacts discovered with the human remains for funerary rites purposes.
2. Unassociated funerary artifacts; are defined in article as artifacts discovered without affiliated human remains but are reasonably known to be associated with funerary customs and rituals.
3. Sacred objects; are artifacts needed in traditional religious ceremonies.
4. The last provision addresses objects of cultural patrimony; it describes objects of cultural patrimony as having continuous traditional, cultural and/or historical significance to the Native American group or culture.

According to Francis McManamon in his article for the National Park Service, “Managing Repatriation: Implementing the Native American Graves Protection and Repatriation Act” provisions key point in the definition describes objects of cultural

patrimony as “property was of such central importance to the Tribe or group that it was owned communally.”¹⁴⁴

Although one can argue that NAGPRA was created with the best intentions of protecting Native burial grounds and returning the artifacts taken from them; illustrated through this paper’s various sources the legislation concerning repatriation has created almost as many complications as it had hoped to resolve. The repatriation bylaws, as shown in the case of the Zuni and Cherokee Nations, were not written in such a fashion as to provide a clear answer on how to approach issues such as multi-claims or claims protecting spiritual knowledge from exploitation. The act creates debate and conflict not only within the academic community but within the Native Communities as well. Some scholars and Native groups argue the unfairness in the fact that one of the largest collectors of Native artifacts and remains is the Smithsonian Institute, which under the National Museum of the American Indian Act, is shielded from repatriation claims. In his book *Playing Indian* Phillip Deloria suggests there exists a precariously balanced, easily disturbed, relationship between “Indians” and “Non-Indians Americans” which is intricately woven “between destruction and creativity.”¹⁴⁵

CHAPTER VII

SUMMARY AND CONCLUSION

As illustrated in this research it is extremely difficult to find that one clear universal truth. By utilizing, not only primary source accounts, but folklore, archeology and anthropology, and combining them, this research has demonstrated the difficult process of research a historian, or repatriation committee member must endure in order to arrive at little more than a highly educated guess. Earlier in this paper the question was raised as to what effect, in the overall picture, will repatriation have on repairing the severely damaged relationship between the scholarly community and Indigenous nations. It should be emphasized that one key section of the legislation which continues to run contrary to the language and intent of the act is the fact that while holding all accountable, the federal government has taken the stance of “do as I say and not as I do.” With that mindset and the fact that the biggest “collector” of native goods is the Smithsonian, does this legislation truly have the potential to mend past aggressions or is it simply a way to placate Indigenous nations into feeling as if they have a semblance of control over their past? Are we simply giving them back the portions of their past that no longer serve our greater good. Thus holding items in trust in may be simply an attempt to maintain control over various native people.

What of the repatriation claims made by the Cherokees? According to the research conducted for this thesis, the Cherokees have successfully petitioned for the return of very few items. One of the largest collections the Cherokees have had repatriated came from the University of North Carolina at Chapel Hill where the remains and artifacts excavated during Roy Dickens Warren Wilson dig were stored. A few other items such as Booger masks and other smaller religious items have been returned. This leads one to questions why so few claims have been awarded. Many possible answers can be argued as to why this is so. In his book, Olbrechts, notes that once a person has been buried the grave was traditionally left unattended. He adds that there was “no visiting of graves” that the “graveyard is shunned and avoided as much as possible.”¹⁴⁶ While Will West Long tells us that there are five souls in the body, the last to leave is the soul housed in the bones. This soul remains in the bones for a year after the person has passed. According to Long once this soul leaves the body the grave of this individual should no longer be visited as at that point nothing of the deceased’s remains. Basing their argument on the suggestions and conclusions made by Frans Olbrechts and Will West Long, one could easily make a loosely educated assumption that the lack of successful repatriated claims stems from the “abhorrence” of death the Cherokees appear to have.

In addition, due to the nature of the act, only one claim can be approved and awarded whoever has the strongest ancestral claim. With the nation now divided into three units, short of direct ancestry being established, how does one determine the group with the stronger claim? Much like a judicial hearing, the act has found the

members of the Smithsonian and the repatriation committee serving, to determine which parent should be awarded custody.

With the stipulations imposed by NAGPRA where does this leave future scholarship and scholars of Native American history? It is the argument of this thesis that it leaves us in the unique position to do things the “right” way. While the early damages that were done in the name of knowledge cannot be undone we are now in the position where we can become true scholars and observers the active and “productive members of Indian society”¹⁴⁷ Vine Deloria, Jr. challenged us to be “instead of ideological vultures” guilty of the perpetuation of Native stereotypes.

NOTES

Abstract

¹ Dickens, Roy. *Cherokee Prehistory: The Pisgah Phase in the Appalachian Summit Region*. Pg 102

² Repatriation, according to the National Parks and Recreation website, is the process in which museum, universities and federal agencies return “certain” Native American cultural artifacts; in particular funerary items, human remains, sacred artifacts, and objects of cultural patrimony.

Chapter I

³ According to the History of the Cherokee website the correct name for the Cherokee was Aniyunwiya, which meant “Principle People”. However when settlers began to arrive in the area they learned the Choctaw word for the Aniyunwiya, which was Cherokee. Interestingly enough there is not a “Ch” sound in the Cherokee syllabary, they now refer to themselves as Tsalgi.

⁴ Leach, Maria, and Jerome Fried. 1949. *Funk & Wagnalls Standard Dictionary of Folklore, Mythology and Legend*. New York: Funk & Wagnalls Co.

⁵ Leach, Maria, and Jerome Fried. 1949. *Funk & Wagnalls Standard Dictionary of Folklore, Mythology and Legend*. New York: Funk & Wagnalls Co.

⁶ Timberlake, Henry Lieut. *Memoirs 1756 -1765* pg 90

⁷ Lenape

⁸ Shawano

Chapter II

⁹ Dumont Clayton W. Jr “The Politics of Scientific Objections to Repatriation” *Wicazo Review* Spring 2003

¹⁰ Presnsley, D.S. “Native American Graves Protection and Repatriation Act of 1990: Where is Native Voice is Missing” *Wicazo Review* Fall 2005

¹¹ The Cherokee Code: Published by Order of the Tribal Council of the Eastern Band of Cherokee Indians. 2005. Chapter 70-1 – 70-604 Skeletal Remains and Burial Site Preservation.

¹² The Cherokee Code: Published by Order of the Tribal Council of the Eastern Band of Cherokee Indians. 2005. Chapter 70-1 – 70-604 Skeletal Remains and Burial Site Preservation

Chapter III

- ¹³ Leach, Maria, and Jerome Fried. 1949. *Funk & Wagnalls Standard Dictionary of Folklore, Mythology and Legend*. New York: Funk & Wagnalls Co.
- ¹⁴ After the death of their parents the two boys become *Anisga'ya Tsunsdi'* or the Thunder Boys.
- ¹⁵ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 242
- ¹⁶ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 242
- ¹⁷ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 243
- ¹⁸ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 243
- ¹⁹ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 244
- ²⁰ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 244
- ²¹ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 244
- ²² Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 244
- ²³ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 244
- ²⁴ The legend states that this is why corn only grows in some places and is only harvested twice a year. There is also another version of the story in which the boys had not disobeyed their mother's directions but had mixed them up and had cleared seven plots and run her body over those empty plots twice.
- ²⁵ The darkening land is where the spirit of man and even some animals go once they have passed away.
- ²⁶ Hudson, Charles *The Southeastern Indians* The University of Tennessee Press 1979 pg 363
- ²⁷ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 402
- ²⁸ Brainerd, David. *The Brainerd Journal: A Mission to the Cherokees 1817 -1823*
- ²⁹ Kingsbury. letter. *Cherokee Phoenix, and Indians' Advocate* 1829. Wednesday, May 27, 1829.
- ³⁰ The legend of Stone Coat also explains the origins of all of the Cherokees songs and chants. Like the story of the Sun's Daughter and other Cherokee legends there is an alternate story in which the Stone Coat is known as the Stone Man and was recorded in Mooney's *History, Myths, and Sacred Formulas of the Cherokees*.
- ³¹ According to the research of Speck and Broom the legend of Stonecoat also accounts for the origins of the songs and chants used to aid in the hunting of game, protection from evil spirits, conflicts, peace treaties and affairs of the heart.

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- ³² The Cherokees often in their folklore referred to themselves as “the people” therefore in from this point of the retelling to the Daughter of the Sun myth the Cherokees shall be referred to as “the people”.
- ³³ Speck, Frank G and Broom, Leonard. *Cherokee Dance and Drama* pg 14
- ³⁴ It is not clear from the story how long it took
- ³⁵ Speck, Frank G and Broom, Leonard. *Cherokee Dance and Drama* pg 15
- ³⁶ Speck, Frank G and Broom, Leonard. *Cherokee Dance and Drama* pg 15
- ³⁷ Speck, Frank G and Broom, Leonard. *Cherokee Dance and Drama* pg 15
- ³⁸ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 252
- ³⁹ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 252
- ⁴⁰ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 252
- ⁴¹ The *Anisga'ya Tsunsi* were the sons of the Kan'ati, the first man, and Selu, the first woman. There are many legends surrounding the *Anisga'ya Tsunsi* in some of those legends they are also known as The Little Men or the Thunder Boys
- ⁴² Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 252
- ⁴³ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 253
- ⁴⁴ The Uktena, is believed to be a mythical horned serpent which has been described as being as large as a tree trunk, a large shining diamond crest on its forehead, scales which glisten like a fire. This creature's only weakness is its seventh spot on its head. Mooney, 297
- ⁴⁵ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 253
- ⁴⁶ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 253
- ⁴⁷ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 253
- ⁴⁸ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 253
- ⁴⁹ The sourwood tree is a hardwood tree indigenous to the Southeastern United States, pioneers used the sap as one ingredient in a concoction for treating fevers, the bark was chewed to soothe mouth pains, and a tea made from its leaves was used for treating diarrhea, indigestion and dysentery (Arbor Day Foundation). A hand-breadth is a form of measurement which approximates the width of the palm of a hand, roughly about 3.5 to 4 inches for a man. (American Heritage Dictionary)
- ⁵⁰ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 254
- ⁵¹ Mooney, James *History, Myths, and Sacred Formulas of the Cherokees*, pg 254
- ⁵² Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 254

⁵³ Mooney, James. *History, Myths, and Sacred Formulas of the Cherokees*, pg 254

⁵⁴ Mooney, James *History, Myths, and Sacred Formulas of the Cherokees*, pg 254

⁵⁵ James Mooney, an anthropologist, spent many years living amongst and recording the stories and oral histories of the Cherokees. These stories and histories have been compiled into the book *History, Myths, and Sacred Formulas of the Cherokees*

⁵⁶ Another interesting difference between the two legends is in the gender of the Sun. In Swimmer's version the Sun is a female entity and in the Payne manuscript the Sun is a male.

Chapter IV

⁵⁷ Hudson, Charles. *The Southeastern Indians* The University of Tennessee Press 1979 pg 231

⁵⁸ Hudson, Charles *The Southeastern Indians* The University of Tennessee Press 1979 pg 231

⁵⁹ The exception to this rule appears to be infanticide. The Cherokees were a matrilineal society as such the child is considered to belong to the mother's clan. That being said it appears according to sources that if infanticide was committed by the mother there was no punishment. However, if the father kills the child the mother's clan can decide to exact punishment with the punishment typically being death.

⁶⁰ The Cherokees traced their clan affiliation along their mother's line. As such the father would be from a different clan which would exclude him from participating in blood revenge.

⁶¹ Reid, John Phillip. *A Law of Blood* pg 76

⁶² Reid, John Phillip. *A Law of Blood* pg 76

⁶³ Reid, John Phillip. *A Law of Blood* pg 76

⁶⁴ Reid, John Phillip. *A Law of Blood*, pg 77

⁶⁵ It is unclear if the weapon was a rifle or a pistol

⁶⁶ Reid, John Phillip. *A Law of Blood* pg 78

⁶⁷ Wilkins, Thomas *Cherokee Tragedy: The Story of the Ridge Family and the Decimation of a People* pg 36

⁶⁸ In her journal Anna Gambold does not mention the name of the Cherokee man Doublehead attacked. His name was uncovered while researching the event in a book written by Thomas Wilkins entitled *Cherokee Tragedy: The Story of the Ridge Family and the Decimation of a People* pg 36

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- ⁶⁹ Gambold, Anna. *The Moravian Springplace Mission to the Cherokees Volume I 1805- 1813*. Aug 12, 1807
- ⁷⁰ Wilkins, Tomas. *Cherokee Tragedy: The Story of the Ridge Family and the Decimation of a People* pg 37
- ⁷¹ Wilkins, Thomas. *Cherokee Tragedy: The Story of the Ridge Family and the Decimation of a People* pg 38
- ⁷² Reid, John Phillip. *A Law of Blood* pg 78
- ⁷³ Gambold, Anna. *The Moravian Springplace Mission to the Cherokees Volume I 1805- 1813* pg 103
- ⁷⁴ Reid, John Phillip. *A Law of Blood* pg 78
- ⁷⁵ Gambold, Anna. *The Moravian Springplace Mission to the Cherokees Volume I 1805- 1813* Feb 21, 1807
- ⁷⁶ Wilkins, Thomas. *Cherokee Tragedy: The Story of the Ridge Family and the Decimation of a People*. pg 321
- ⁷⁷ Ross, John. *The Papers of John Ross V II 1840-1866* pg 292
- ⁷⁸ Ross, John. *The Papers of John Ross V II 1840-1866* pg 292
- ⁷⁹ Mooney, James and Olbrechts, Frans. *The Swimmer Manuscript: Cherokee Sacred Formulas and Medicinal Prescriptions*, pg 144

Chapter V

- ⁸⁰ Timberlake, Henry Lieut. *Memoirs 1756 -1765* pg 90-91
- ⁸¹ Timberlake, Henry Lieut. *Memoirs 1756 -1765* pg 90-91
- ⁸² Timberlake, Henry Lieut. *Memoirs 1756 -1765* pg 91
- ⁸³ Timberlake, Henry Lieut. *Memoirs 1756 -1765* pg 91
- ⁸⁴ Williams, Samuel Cole LL.D. *Early Travels in the Tennessee Country 1540-1800* pg 261-262
- ⁸⁵ Williams, Samuel Cole LL.D. *Early Travels in the Tennessee Country 1540-1800* pg 261-262
- ⁸⁶ Haywood, John. *The Natural and Aboriginal History of Tennessee: Up to the First Settlements Therin by the White People in the Year 1768*. pg 295
- ⁸⁷ Haywood, John. *The Natural and Aboriginal History of Tennessee: Up to the First Settlements Therin by the White People in the Year 1768*. pg 295
- ⁸⁸ *Cherokee nation cultural site*. November 25 2008 2008. Internet on-line. Available from <<http://www.cherokee.org/Culture/Default.aspx>>. [July 25, 2008].

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- ⁸⁹ *Cherokee nation cultural site*. November 25 2008. Internet on-line. Available from <<http://www.cherokee.org/Culture/Default.aspx>>. [July 25, 2008].
- ⁹⁰ Scaffold burial was a common burial method among many Indian nations in particular among the Plains Indians, such as the Blackfoot, Cheyenne, and the Ojibwe. There were a few Eastern tribes who also practiced scaffold burials such as the Choctaw in North Carolina
- ⁹¹ Williams, Samuel Cole LL.D. *Early Travels in the Tennessee Country 1540-1800* pg 357
- ⁹² The tribe Schneider refers to as the Chikamakas history knows as the Chickamaugas. However according to the tribe's website (<http://www.chikamaka.org/ccwy/>) the correct spelling of the band is "Chikamaka" as such whenever they are referenced in this chapter they shall be referenced to using the traditional spelling.
- ⁹³ "Chikamaka Band of the South Cumberland Plateau." <http://www.chikamaka.org/ccwy/> (accessed Oct, 20, 2008).
- ⁹⁴ Vann, Lucinda, *The American Slave: A Composite Autobiography*. Volume: 12. "Life on an Old Cherokee Plantation" interview Annie L. Faulton, (Westport CT. Greenwood Press, 1977), 342.
- ⁹⁵ Webb, Anawak Chuculate, "Burial Customs and Preservation and Preparation of Foods; Schooling; Early Day Dress and Customs and Beliefs Regarding Tobacco," interview by J. W. Tyner, tape recording, 8 April 1968, Oklahoma Federation of Labor Collection, M452, Box 5, Folder 2. Western History Collections, University of Oklahoma, Norman, Oklahoma.
- ⁹⁶ Webb, Anawak Chuculate, "Burial Customs and Preservation and Preparation of Foods; Schooling; Early Day Dress and Customs and Beliefs Regarding Tobacco," interview by J. W. Tyner, tape recording, 8 April 1968, Oklahoma Federation of Labor Collection, M452, Box 5, Folder 2. Western History Collections, University of Oklahoma, Norman, Oklahoma.
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- ⁹⁸ Mooney, James and Olbrechts, Frans. *The Swimmer Manuscript: Cherokee Sacred Formulas and Medicinal Prescriptions*, pg 137
- ⁹⁹ Mooney, James and Olbrechts, Frans. *The Swimmer Manuscript: Cherokee Sacred Formulas and Medicinal Prescriptions*, pg 137

¹⁰⁰ Mooney, James and Olbrechts, Frans. *The Swimmer Manuscript: Cherokee Sacred Formulas and Medicinal Prescriptions*, pg 137

¹⁰¹ Mooney, James and Olbrechts, Frans. *The Swimmer Manuscript: Cherokee Sacred Formulas and Medicinal Prescriptions*. pg 139

¹⁰² Gambold, Anna. *The Moravian Springplace Mission to the Cherokees Volume I 1805- 1813* November 9, 1808

¹⁰³ Witthoft, John. "Cherokee Beliefs Concerning Death" *Journal of Cherokee Studies* Fall 1983

¹⁰⁴ Witthoft, John. "Cherokee Beliefs Concerning Death" *Journal of Cherokee Studies* Fall 1983

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¹⁰⁹ Witthoft, John. "Cherokee Beliefs Concerning Death" *Journal of Cherokee Studies* Fall 1983

¹¹⁰ Witthoft, John. "Cherokee Beliefs Concerning Death" *Journal of Cherokee Studies* Fall 1983

¹¹¹ As a remembrance of those who had passed away the Creator fashioned a tree and placed their spirits inside of it, this tree is the cedar tree. It is believed that the bark of this tree holds special powers, one such being the power to ward off ghosts. Some people place a small twig by their front door to keep out evil spirits.

¹¹² Kilpatrick, Alan. *The Night Has a Naked Soul*. Pg 102. Syracuse University, 1997

¹¹³ Speck, Frank G and Broom, Leonard. *Cherokee Dance and Drama* pg 12

¹¹⁴ Mooney, James and Olbrechts, Frans. *The Swimmer Manuscript: Cherokee Sacred Formulas and Medicinal Prescriptions*. pg 139

¹¹⁵ Dickens Roy. *Cherokee Prehistory: The Pisgah Phase in the Appalachian Summit Region*. Pg 207

¹¹⁶ Dickens Roy. *Cherokee Prehistory: The Pisgah Phase in the Appalachian Summit Region*. Pg 207

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- ¹¹⁷ Dickens Roy. *Cherokee Prehistory: The Pisgah Phase in the Appalachian Summit Region*. Pg 207
- ¹¹⁸ Dickens Roy. *Cherokee Prehistory: The Pisgah Phase in the Appalachian Summit Region*. Pg 207
- ¹¹⁹ Hudson, Charles. *The Southeastern Indians* pg 318
- ¹²⁰ Powell, John Wesley, H. C. Yarrow, Edward Singleton Holden, Charles C. Royce, Garrick Mallery, James Constantine Pilling, James Owen Dorsey, Albert S. Gatschet, and Stephen Return Riggs. *First Annual Report of the Bureau of Ethnology to the Secretary of the Smithsonian Institution, 1879-'80*
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- ¹²⁴ Hudson, Charles. *The Southeastern Indians* pg 332
- ¹²⁵ Hughes–Hill, Laura. “Cherokee Death Customs” 1982
- ¹²⁶ Powell, John Wesley, H. C. Yarrow, Edward Singleton Holden, Charles C. Royce, Garrick Mallery, James Constantine Pilling, James Owen Dorsey, Albert S. Gatschet, and Stephen Return Riggs. *First Annual Report of the Bureau of Ethnology to the Secretary of the Smithsonian Institution, 1879-'80*
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- ¹²⁸ Powell, John Wesley, H. C. Yarrow, Edward Singleton Holden, Charles C. Royce, Garrick Mallery, James Constantine Pilling, James Owen Dorsey, Albert S. Gatschet, and Stephen Return Riggs. *First Annual Report of the Bureau of Ethnology to the Secretary of the Smithsonian Institution, 1879-'80*

Chapter VI

¹²⁹ National Museum of Natural History: Repatriation Office

¹³⁰ National Museum of Natural History: Repatriation Office

¹³¹ Native American Repatriation Review Committee – The Smithsonian Institution

¹³² Joe Watkins “Yours, Mine or Ours?” - Bray, Tamara. *The Future of the Past*

¹³³ Joe Watkins “Yours Mine or Ours” - Bray, Tamara. *The Future of the Past*

¹³⁴ Whitmire Eliza, “Intreview with Eliza Whitmire (ex-Slave Woman) Estella OK.” interview by James R. Carselowey, 14 February 1935, Oklahoma Federation of Labor Collection. Western History Collections, Pioneer - Indian Papers University of Oklahoma, Norman, Oklahoma.

¹³⁵ Whitmire Eliza, “Intreview with Eliza Whitmire (ex-Slave Woman) Estella OK.” interview by James R. Carselowey, 14 February 1935, Oklahoma Federation of Labor Collection. Western History Collections, Pioneer - Indian Papers University of Oklahoma, Norman, Oklahoma.

¹³⁶ Comingdeer, Nick, “Intreview with Eliza Whitmire (ex-Slave Woman) Estella OK.” interview by James R. Carselowey, 14 February 1935, Oklahoma Federation of Labor Collection. Western History Collections, Pioneer - Indian Papers University of Oklahoma, Norman, Oklahoma

¹³⁷ Payne, Mary “Life and experience of a Cherokee Woman.” interview by Ella Robinson, 10 May 1937, Oklahoma Federation of Labor Collection. Western History Collections, Pioneer - Indian Papers University of Oklahoma, Norman, Oklahoma

¹³⁸ I would be remiss if I neglected to address the controversy which surrounds the membership of Freedman. In a 2006 ruling the Cherokee Nation’s Judicial Appeals Tribunal decided that the new legislation, which limited membership to “by blood” went directly against the constitution of 1975 and as such was unconstitutional. According to her majority opinion Justice Stacey L. Leeds argued that “Article III expressly includes all people, who can prove that they were “citizens” on the Dawes Commission Rolls with no mention (one way or the other) about Cherokee or Indian blood quantum. The Cherokee Freedmen, the Shawnee and Delaware were all citizens at the time the Dawes rolls were finalized and they continue as citizens to this day.” She further points to the fact that much of the list compiled by the Dawes Commission were based on prior census lists controlled by the Cherokee and that the Cherokee themselves had in addition to “native Cherokees” had included the names of freedman, whites who had inter-married into the nation, and other “Indians” from other nations who were residing within the Cherokee Nation as “citizens” of the Cherokee Nation.

“Cherokee Nation” March 20, 2009 <http://www.cherokee.org/docs/news/Freedman-Decision.pdf>

¹³⁹ “National Congress of American Indians” March 26, 2009

<http://www.ncai.org/Federal-Recognized-Indian-Trib.119.0.html>

¹⁴⁰ "Delaware Tribe of Indians" March 20, 2009

<http://www.delawaretribeofindians.nsn.us>

¹⁴¹ Flynn, Johnny, and Gary Laderman. "Purgatory and the Powerful Dead: A Case of Native American Repatriation."

¹⁴² Flynn, Johnny, and Gary Laderman. "Purgatory and the Powerful Dead: A Case of Native American Repatriation."

¹⁴³ "National NAGPRA." 2007. National Park Service.

¹⁴⁴ McManamon, Francis. "Managing Repatriation: Implementing the Native American Graves Protection and Repatriation Act"

Chapter VII

¹⁴⁵ Mooney, James and Olbrechts, Frans. *The Swimmer Manuscript: Cherokee Sacred Formulas and Medicinal Prescriptions* pg 140

¹⁴⁶ Deloria, Vine Jr. *Custer Died For Your Sins: An Indian Manifesto* pg 95

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Chapter II

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