Corpus of the Written Cherokee Law

Rennard J Strickland, University of Oklahoma College of Law

Available at: https://works.bepress.com/rennard_strickland/90/
Corpus of the Written Cherokee Laws

By Rennard Strickland*

Professor John Phillip Reid has called the ancient law-ways of the Cherokees a “law of blood.”¹ This analysis, by contrast, concerns the “law on paper,” or the written laws of the Cherokees. The purpose of this study is to examine the development of the corpus of the new Cherokee law and trace developments that followed the substitution of “code law” for “blood law.”

The ancient Cherokees gathered yearly to hear their custodian of law, the Unagai, read the wampum and recite the body of tribal custom and regulation that governed the life of the Indian.² By the year 1898, not only had the meaning of the wampum been lost but no single individual would have been capable of reciting the vast body of treaties, public laws, Federal cases, tribal statutes, cases, and regulations that comprised the laws of the Cherokees. For in the 90 years between the adoption of the first written law (1808) and the abolition of tribal courts (1898), the wampum was supplemented by more than a million pages of legal manuscripts and printed material.³

The Early Written Law

“The adoption of the first written law at Broom Town,” William Potter Ross oratorially proclaimed to a group of young ladies at the Female Seminary graduation, “was for the Cherokees like the signing of the Magna Carta at Runnymede in 1215.”⁴ And, in fact, the gathering at Broom Town on September 11, 1808, has been celebrated among the Cherokees in much the same manner as the confrontation on that famous meadow among the English-speaking peoples.

The Ross analogy was apt, for the road from Broom Town, like the road from Runnymede, was a long one. Ironically, the law committed to paper at Broom Town had been enacted by oral agreement more than a decade earlier.⁵ But to men like Princeton-educated William Potter Ross, the law was not really law until written out in full and in English. Thus, to Ross and the other Cherokees of his generation, were the “civilized Indians” set apart from their savage neighbors.⁶

Despite the significance that Cherokee orators of the 1870’s and 1880’s attached to the act of recording this first law, their ancestors’ meeting at Broom Town issued no manifestos and, in fact, seemed to have placed little importance upon the act of recording the law. There is no evidence that copies of this act were widely distributed among the villages.⁷ One of the first Cherokee light-horsemen under the new law recalled “we had no written (printed)

---

³ In 1896, the Redbird Smith-Ketoowah movement of the Cherokees acknowledged that understanding of the wampums had been lost, and recovery of these ancient laws became one of the cornerstones of this nativistic revival. Thomas, Robert K. “The Origin and Development of the Redbird Smith Movement.” Master’s thesis, University of Arizona, 1953, pp. 119-35. The vast majority of this material remains the property of the Cherokee Nation and is stored in the Indian Archives of the Oklahoma Historical Society, to be transferred to the Cherokee National Archives at Tahlequah, Oklahoma. Cherokee National Historical Society, “Prospectus: Cherokee Cultural Center,” pp. 32-34.
laws. The newly-enacted regulations were not, in fact, printed until 1821, so, in a sense, the Cherokee law remained the oral law of a preliterate people, but with the important distinction that the law had been written and could be examined by any Cherokee citizen.

The Law of Abrogation of Clan Revenge in 1810, the Tribal Reorganization of 1818, and the Constitution of 1822 existed in handwritten manuscripts placed with the tribal chief. When the Cherokee Supreme Court began drafting written opinions, the manuscript copies of the laws were transferred to their care. As late as 1826, the Cherokees enacted a statute that requested four legislators to write in longhand six copies of the Cherokee laws so that they could be distributed among the people.

The Language of the Law

All early laws, including the manuscript copies, were in English, for in 1808 there was no written Cherokee language. Cherokee was an oral language only. The task of creating a written language for the Cherokee people had seemed an impossible one. Attempts by travelers to write a Cherokee vocabulary using the English characters produced some Cherokee words in a garbled kind of phonetic English that was totally unadaptable to use as a written language. Missionaries and their societies, along with academic linguists, had tackled the Cherokee language with little success. Development of Christian attitudes, as well as support for the newly-emerging legal institutions, was severely hampered by the absence of a truly effective Cherokee alphabet.

The Cherokees call the long-awaited creation of their written language “the miracle of the talking leaves” and have assigned to the illiterate mixed-breed Cherokee cripple who invented their alphabet a special place in their mythological world as a guardian of tribal spirits. Undoubtedly Sequoyah’s development of a usable syllabry was the most significant single event in the history of the Cherokee people.

Linguists have noted that the system was clumsy and missed several Cherokee sounds. Missionaries using English characters developed more sophisticated and workable alphabets for other tribes, but the Sequoyahian system possessed what Emerson called “the authentic sign.” Cherokees came to love their written language. It was theirs. The syllabry had been invented (Cherokees loved that term) not by missionaries or government agents but by one of their own.

The value of Sequoyah’s system in the development of legal institutions was the simplicity with which it could be learned. Sequoyah himself could neither read nor write the English language and simply adapted English characters until he had 86 symbols, representing the sounds of the Cherokee language. Thus, an

---

8 Cherokee Messenger, Aug. 1844, p. 16.
10 John Ross Papers, Reference Library, Thomas Gilcrease Institute, Tulsa, Okla.
11 However, today many of the texts are in the John Ross Papers at the Thomas Gilcrease Institute, Oklahoma Historical Society and the University of Oklahoma. The Supreme Court records are at the Tennessee State Library, Nashville.
12 Laws of Cherokee Nation (1852), p. 81. Citations are to this edition unless otherwise noted. This is, without doubt, the most accessible printing of early Cherokee laws (hereafter, LCN, 1852).
13 One noted Cherokee historian argues that in the 18th century “absence of a Cherokee written language undoubtedly helped them along the white man’s road, for they early began to utilize the convenience of the newcomer’s writing.” Malone, Henry Thompson. Cherokee of the Old South: A People in Transition. Athens: University of Georgia Press, 1956, p. 15.
15 The Kilpatricks in their field research noted that many Cherokees assigned fullblood status to Sequoyah while willingly acknowledging the mixed-breed status of political leaders such as John Ross. Kilpatrick, Jack Frederick, and Anna Gritts Kilpatrick. Friends of Thunder. Dallas: Southern Methodist University Press, 1964, p. 196 n. 85.
Indian already speaking the Cherokee language could learn to read and write in a matter of days.\textsuperscript{16}

Sequoyah's syllabry brought literacy to the Cherokees overnight. From the general introduction of the alphabet in 1822 until the publication of the \textit{Cherokee Phoenix} in 1828, most of the young people had acquired skill with the syllabry.\textsuperscript{17} Samuel Worcester, whose dedicated use of the alphabet in religious publications earned him the title "Cherokee Messenger," reported that a large majority of those between childhood and middle age "... read and write in the Cherokee language."\textsuperscript{18} By 1846 the editor of the \textit{Cherokee Advocate} noted with pride, "in proportion to population, there are fewer Cherokees who cannot read and write either Cherokee or English, than are found in many states of the union."\textsuperscript{19}

There is a theory that Sequoyah's achievement is a kind of Arthurian legend, a hoax created by missionaries to make the new written language acceptable, and that the Cherokees rarely used the syllabry for non-religious purposes. Studies of the records of the Cherokee court system establish that the Cherokee written language was used, and used extensively, in the administration of tribal justice. While English was clearly the primary language of the courts, the bilingual nature of the system continued through the abolition of tribal courts in 1898.\textsuperscript{20}

The importance of the Sequoyah syllabry to the study of Cherokee law extends far beyond the general benefit of increased literacy. The language system provided an effective medium for exchange of ideas and the ultimate transmission of the new legal system, which had been created by a mixed-blood minority, to the full-blood majority. Laws printed in Cherokee were thus read in the tribal language, and testimony was taken in court in the native tongue. Court proceedings were therefore able to unite two very divergent elements of Cherokee society. Many judges, for example, could not read the English language, but the bilingual nature of the court system enabled them to serve the tribe.\textsuperscript{21}

In short, the use of the Cherokee language through Sequoyah's syllabry legitimized the introduction of a questionable legal system drawn from the English-speaking world. The system was made sufficiently Cherokee to be accepted by the reticent full-blood who conservatively rejected both white dress and language. Sequoyah was himself a traditionalist, a Cherokee conservative, and is said to have resisted the use of his language by the missionaries. However, he was proud of the accomplishment of the Cherokees in building a

\begin{itemize}
\item \textsuperscript{16} In some areas, the Cherokees sought to counter mission education, which was English-oriented, with schools conducted in the Cherokee language. The National Committee and Council of the Cherokee Nation West passed a resolution that "Mr. George Guess (Sequoyah) be employed to teach school in the Cherokee language." Resolution, July 11, 1832, in "Cherokee Agency, West." Letters Received by the Office of Indian Affairs, Microfilm Publications, No. 234, Roll No. 78, The National Archives of the United States.
\item \textsuperscript{17} Elias Boudinot, in his effort to secure financial support for a tribal newspaper, reported "the simplicity of this method of writing, and the eagerness to obtain a knowledge of it, are evinced by the astonishing rapidity with which it is acquired and by the numbers who do so. It is about two years since its introduction, and already there are a great many who can read it. In the neighbourhood in which I live, I do not recollect a male Cherokee, between the ages of fifteen and twenty-five, who is ignorant of this mode of writing." Boudinot, Elias. \textit{An Address to the Whites Delivered in the First Presbyterian Church on the 26th of May, 1826}. Philadelphia: William F. Geddes, 1826, p. 12.
\item \textsuperscript{18} \textit{Cherokee Phoenix}, Mar. 10, 1830.
\item \textsuperscript{19} \textit{Cherokee Advocate}, Jan. 15, 1846.
\item \textsuperscript{20} Letter, Traveller Bird to Rennard Strickland, Mar. 15, 1868. In fact, two of the three justices of the Cherokee Supreme Court during the last term requested a Cherokee interpreter "not being altogether familiar with the English language, and not sufficiently so to fully comprehend the English proceedings of court." Minutes of Supreme Court of the Cherokee Nation, 1897. Official Cherokee Records, Vol. 234, pp. 226-28, Indian Archives, Oklahoma Historical Society. See also, \textit{Cherokee Advocate}, Nov. 17, 1877.
\item \textsuperscript{21} The author owns several English-language editions of Cherokee laws, which contain marginal notations in Sequoyan syllabry. Chief Thompson, the last non-English-speaking Chief of the Cherokees, estimated in 1877 that three-fifths of the tribe "think, reason, and read in Cherokee." \textit{Cherokee Advocate}, Sept. 5, 1877. Many legal records are found in the Cherokee language. The Kilpatricks have collected and translated a few of these in Kilpatrick, Jack Frederick, and Anna Gritts Kilpatrick, eds. and transl. \textit{The Shadow of Sequoyah: Social Documents of the Cherokees, 1862-1964}. Norman: University of Oklahoma Press, 1965, pp. 26, 28, 39, 44, 46.
\end{itemize}
The final triumph of Sequoyah’s system was assured in 1828 when the Cherokee Nation acquired a printing press and type cast in the Sequoyahian syllabry. From 1828 until 1907, the Cherokee Nation printed millions of pages of Sequoyahian materials. The official language publications were designed to advance the “civilization” of the Cherokees through the operation of a constitutional government and the court system. Religious material was also printed in the Cherokee language, but not so regularly, by the official tribal press.

The Cherokee Newspapers

The major written influence in the Cherokee legal system was the official tribal newspaper. The newspaper served as advance sheet, treatise, law school, court record, statute book, and legal conscience. The Cherokee Nation published two official newspapers, the Cherokee Phoenix and the Cherokee Advocate. The Phoenix was published at New Echota in the Cherokee Nation in Georgia from 1829 to 1834. The Advocate, the successor paper published after removal from Georgia to the Indian Territory, appeared in two series. The first Cherokee Advocate was published from 1844 until the pre-Civil War financial crisis forced suspension; the second series was published between 1869 and 1906, when the tribal government ceased to exist.

The influence of the newspaper in support of the court system was neither incidental nor accidental. The stated purpose of the newspaper was to advance the level of civilization of the Cherokee Indians through the emulation of white institutions. The legal system of the United States was clearly one phase that both the Phoenix and the Advocate felt worthy of adoption. The “Prospectus” for the Phoenix sets forth this goal.

The editors of the newspaper attempted to accomplish their goal of promoting a sound and viable legal system in four ways: (1) publication of the text of the laws; (2) strong editorials emphasizing law enforcement; (3) reporting facts of crimes and details of punishment; and (4) printing articles explaining operation of the Cherokee legal system and law-oriented stories reprinted from other papers.

One of the major features of the Cherokee papers, especially the early issues of the Phoenix, was the publication of the Cherokee laws, which were generally run on the front page in both English and Cherokee. The English and Cherokee laws were not run in parallel columns as is generally supposed.

This newspaper printing was the only publication for many revised statutes, and newspaper

Cherokee Phoenix: Pioneer of Indian Journalism,” 25 Chronicles of Okla. 102-18 (1947). The most complete file of the Cherokee Phoenix is in the British Museum, London. Dr. A. M. Gibson, head of Division of Manuscripts of the University of Oklahoma, has assembled, on microfilm, a complete file.

Foreman, supra note 26, pp. 76-85. An almost complete file is available in Newspaper Collections, Oklahoma Historical Society.


See, for example, Cherokee Phoenix, Mar. 13, 1828, p. 1, c. 1.
copies are often found pasted in the back of Cherokee law books.32

The newspapers' editorial columns regularly encouraged enforcement and support of the laws. Editorials were directed to officers who were slow or unwilling to arrest their constituents. A "Word to Sheriff" from the Cherokee Advocate illustrates the use of the printer's ink to strengthen the legal system. "Several scenes have occurred from the too frequent use of intoxicating liquors," the editor reports. Then follows the demand that the sheriff "Put into exercise the duty required of him by law, and rid the neighborhood of the nuisances of the whiskey shop."33

Both the Phoenix's and the Advocate's editors believed in teaching by example. The newspapers' reports of punishment received by criminals are extensive.34 Hangings were featured, with the added note of gallows confessions acknowledging guilt, justness of the court and criminal sanctions, including the hanging, and a warning to others not to follow the criminals' ways.35 The report of the hanging of Bear-Paw is typical. "This day, I address you, My Uncles, that you may abandon the practice of drunkenness," began the gallows oration. "Forsake all evil, I say, follow that which is good," the prisoner concluded.36

During the height of the Cherokee civil war of the 1840's, the Advocate's columns regularly listed murders, robberies, and arsons.37 The steps from crime to arrest to trial to punishment can be followed from week to week.38

When the newspaper purchased a set of italic type, W. P. Ross used this for added emphasis in his reports on punishments. The reader can almost feel the suffering of the Cherokee criminals.

Twiced—On Tuesday, 25th ult., Young Terrapin A-quo-nie convicted in Flint District, of having stolen saddles were punished with Thirty-nine stripes; and, on the day following with one-hundred and ten stripes each, for burning the store house of Colonel W. S. Adair. . . .39

For fear that some reader might miss the point of the report of punishment, an editorial comment such as "this teaches the lessons of crime" would follow.40

Reading the Phoenix and Advocate was about all the legal education some early lawyers received. Considering the frequency of reports on trials, explanations of the law and statutes, this may not have been such a bad education. The editors often chose to reprint legal items from exchange papers. The general reader would be attracted by the sensational facts and also introduced to the workings of the law.41 This was for the lawyer an

the 1844, 1845, and 1846 Cherokee civil war. Beginning in the Cherokee Advocate of Nov. 2, 1844, with a report that "Starr gang runs loose in the Cherokee Nation," to the Advocate of Sept. 17, 1845, which announces that the Starrs appear after amnesty, all of their robberies, murders, and other alleged crimes are chronicled. For a sampling of these stories, see Cherokee Advocate, Dec. 12, 1844 (Starr brother killed); May 22, 1845 (Starr raids); July 17, 1845 (War Department proposes to allow treaty with Starrs); Feb. 12, 1846 (Private Lighthouse); Feb. 26, 1846 (Tom Starr killed); and Mar. 5, 1846 (Ta-Ka-To-Ka, who killed Starr, found scalped). There are at least 25 other Starr stories during this period.

32 An example of this is a Cherokee-language law book in the collection of the Indian Heritage Association. Interestingly, both the Cherokee and English newspaper columns are included.

33 Cherokee Advocate, July 10, 1845.

34 For samples of these stories, see the following issues of the Cherokee Advocate: Oct. 19, 1844; Nov. 9, 1844; Jan. 23, 1845; Feb. 13, 1845; July 17, 1845; Dec. 25, 1845; Apr. 2, 1846; Oct. 22, 1870; Sept. 15, 1873; June 3, 1876; Oct. 17, 1877; May 11, 1878; Sept. 9, 1893 (five waiting death sentence); and Oct. 31, 1893.

35 Cherokee Phoenix, May 14, 1828.

36 Cherokee Phoenix, May 28, 1828.

37 More than 75 issues of the Cherokee Advocate that appeared in 1845 and 1846 carried stories on lawlessness. Many of these issues contained several stories. See the editorials, Cherokee Advocate, May 1, 1845, and Mar. 12, 1846.

38 It is especially interesting to follow an episode such as the Starr gang during their crime reign in western judge and lawyer.
early "case-method" approach, as illustrated by the reprint of a judge's charge on "common law murder doctrines." One editor noted that the material "should be read with attention by our lawyers" since "it embodies many principles . . . that will be advantageous to them in their practice."42

Full-length explanations were printed of how selected phases of the Cherokee laws operated. Essays appeared on grand juries, contempt of court,43 demurrers,45 disqualification of jurors, and duties of officers of the court.46 The Cherokee Advocate was edited almost exclusively by mixed-blood lawyers47 who naturally drew upon their own interest for materials to fill the paper. Rarely did a Cherokee editor have an assistant, a reporter, or even a secretary, and since the pressure for copy was great, the lawyer naturally turned to legal issues. The newspapers were, in a sense, an early law review or looseleaf service not unlike a weekly periodical treatise on Cherokee law. Many issues contained stimulating and highly informative discussions of specific points of view on legal questions of benefit to bench and bar, if not the general reader.

THE PUBLISHED LAWS

The first printed volume of Cherokee laws appeared in 1821 under the title Laws of the Cherokee Nation Passed by the National Committee and Council. This book, printed in English at Knoxville, Tennessee, is the earliest known publication of the laws of an American Indian tribe. An act of each of the council sessions of September 1808, April 1810, and May 1817, plus the acts and resolutions of the regular October sessions of the council for 1819 and 1820, comprise the laws printed therein.48

More than 200 editions of Cherokee laws are believed to have been published.49 These range from broadside announcements of a single new regulation50 through the 1893 edition of Laws of the Cherokee Nation, which contained more than 400 pages of regulations.51 Both Cherokee

42 Cherokee Advocate, Nov. 9, 1844. By 1880, the editor had adopted the policy of printing court opinions. "We publish a decision of the Supreme Court of Iowa, on account of its correct principle laid down, and of its justice; for the information of our courts. We have seen similar cases tried here, and they may come up again." Cherokee Advocate, May 26, 1880.
43 Cherokee Advocate, Sept. 19, 1877; Cherokee Advocate, Nov. 24, 1877.
44 Cherokee Advocate, Jan. 18, 1877.
45 Cherokee Advocate, Oct. 24, 1877.
46 Cherokee Advocate, Sept. 13, 1873. Cherokee Advocate, July 10, 1845 (sheriff); Cherokee Advocate, Mar. 14, 1877 (solicitor); Cherokee Advocate, Dec. 9, 1881 (attorney general); Cherokee Advocate, Apr. 1, 1891 (judges).
and English editions of most laws were published.

The process for publication was generally the same. Both the English and Cherokee translations appeared in the tribal newspaper. An excellent example of this procedure is given by the publication in 1878 of Penal Law: An Act for the Protection of the Public Domain, and In Relation to Intruders Upon the Same. The law was signed by the principal chief on December 12, 1878, and issued as a quasi-extra edition in the tribe's newspaper. In this case, the law was published under the heading "Weekly Advocate." Following the text of the law is the rather bitter comment of the printer: "This being Christmas week, and according to usage, we did not intend to issue any paper this week; but a penal law over which we had no control compels us to 'publish' this Christmas gift!"

If the publication was not a general revision or if a new edition of the laws was not soon planned, a pamphlet containing the new laws would be issued. Upon occasion, the newspaper edition would be the only general publication of laws that were of a private nature or of a limited duration or application. Ultimately, most laws would be issued in hardback form in editions of approximately 1,000 English and 1,000 Cherokee copies. The same type was often used in the newspaper edition, although some editions were not issued by the official Cherokee Nation press.

Cherokee printed laws were widely distributed. Attorneys were expected to purchase their copies, but the chief was charged with placing the laws in the hands of all public officials and with "posting a copy" in the seven district courthouses. Cherokee-language copies were free to non-English-speaking readers, and merchants made these editions available in their stores. Supreme courts in other states and territories were provided copies on an exchange basis. All Federal government agencies were to receive copies distributed by the executive secretary of the Cherokee Nation.

The Cherokee Nation relied generally upon the government publication of United States treaties, laws, and regulations. The chief kept the original copies of all treaties and agreements in Cherokee and English. The task of preparing these pamphlets placed quite a strain on the limited resources of the newspaper offices. In fact, in 1830 the Phoenix suspended publications of "our next paper...for the purpose of printing the acts of the last session of the General Council."

Only 500 copies in English and Cherokee of the Laws of the Cherokee Nation (1845) and Laws of the Cherokee Nation (1853) were printed. As few as 300 copies of Laws and Joint Resolutions of the National Council (1871) were ordered, while 2,000 copies of the English edition and 1,500 copies of the Cherokee edition of Constitution and Laws of the Cherokee Nation (1893) were issued. Most editions contained an act authorizing publication, which sets forth the number of copies authorized.

Many of the early laws were printed by private firms in Washington, and most of the final laws were the work of job printers in the Indian Territory. More than 18 separate firms are known to have published the Cherokee laws. When the American Board of Mission Press at Park Hill in the Cherokee Nation issued the printed tribal laws for 1839, 1840, and 1841, Samuel Worcester clearly noted in his annual report that the nation paid the missionary press for this work.

Cherokee Advocate, July 29, 1876, states requirements of "hanging up the books of law at each of the court houses." The Cherokee Phoenix, Feb. 4, 1829, reports laws and constitution "printed in parallel columns for sale at this office."

Cherokee Advocate, Mar. 11, 1876.

Cherokee Advocate, July 4, 1877.
ments in the public archives, but these were essentially ceremonial or symbolic documents.\textsuperscript{60} The \textit{Phoenix} and the \textit{Advocate} published the complete texts of regulations, laws, and other government enactments that related to the Cherokee people.\textsuperscript{61} Often sections of the congressional hearings and debates, presidential messages and documents were also printed.\textsuperscript{62}

Although a pamphlet version of the Trade and Intercourse Act was printed in English, no attempt was made until after 1850 to publish Cherokee-language editions of treaties and regulations.\textsuperscript{63} Thereafter, the nation published such documents with the regularity of tribal law.\textsuperscript{64} An 1884 two-volume edition of \textit{Treaties and Regulations}, in both Cherokee and English, was definitive and remained in use until tribal dissolution.\textsuperscript{65} In order to make the most significant treaty provisions available, the texts of treaties were printed in the back of the regular editions of \textit{Cherokee Laws}. As the body of Federal regulation and treaty law expanded, only relevant excerpts were included in the law books. These generally concerned land provisions and tribal boundaries.\textsuperscript{66}

\section*{Indian Legal Treatises}

There is a general impression that the Cherokees produced a number of treaties on Indian law. This is not so. Only two books that could be described as legal texts were published during the 90 years of the Cherokee court system. These were \textit{The Nutshell: Cherokee Constitution and the Laws and Rulings Bearing on the Autonomy of the Cherokee Nation Condensed in a Nutshell}, published in 1894,\textsuperscript{67} and \textit{Cherokee Citizenship and a Brief History of Internal Affairs in the Cherokee Nation}, which appeared in 1895.\textsuperscript{68}

Failure to produce a body of interpretative literature is understandable. The legal profession was small. Many judges and lawyers were not full-time legal officers, but were ministers, farmers, ranchers, and merchants. The early system was designed to stress simplified pleading and statutes, so questions presented were rarely sufficiently complex to require detailed analysis. There was a deliberate attempt to avoid technical questions. In later periods when a body of law became complex as in railroad operations, citizenship, or administration of estates, the highly-trained specialist such as E. C. Boudinot, Robert L. Owen, or W. W. Hastings, with law school education, assumed most of this work.\textsuperscript{69}

\begin{itemize}
\item \textsuperscript{60} One of the difficulties of Cherokee research is that the early tribal documents were considered by the Ross family to be personal property and were sold or given to a variety of institutions in a number of States. Haywood, supra note 2, p. 256.
\item \textsuperscript{61} Elias Boudinot was careful to reprint relevant materials on Cherokee removal during his tenure as \textit{Phoenix} editor. A sampling of congressional documents may be found in the pages of the \textit{Cherokee Advocate} as new legislation was limiting the jurisdiction of Cherokee tribal courts. See, \textit{Cherokee Advocate}, May 16, 1894 (Indian Territory Court Bill), Mar. 6, 1895 (Court Bill), Feb. 5, 1898 (Curtis Act).
\item \textsuperscript{62} Almost every issue of the \textit{Cherokee Phoenix} contains these materials. Note the \textit{Cherokee Phoenix}, Aug. 14, 1830; Sept. 4, 1830; Sept. 18, 1830; Jan. 22, 1831; July 30, 1831; Oct. 22, 1831; Jan. 21, 1832; Nov. 24, 1832; and Dec. 1, 1832.
\item \textsuperscript{63} This is understandable, since negotiations and correspondence between the United States and Cherokees after 1800 were almost exclusively in English. “Cherokee Agency,” Letters Received by the Office of Indian Affairs, Microfilm Publications, The National Archives of the United States, Washington, D.C.
\item \textsuperscript{64} The most readily-available edition is probably \textit{Treaties Between the United States of America and the Cherokee Nation from 1785}, published in 1870 by the National Printing Office in Tahlequah.
\item \textsuperscript{65} Both the Hargrett and Foreman bibliographies have missed these editions, which bear the year 1883 on the title page but were not issued until 1884.
\item \textsuperscript{66} \textit{Constitution and Laws of the Cherokee Nation} (1892), pp. 407-26.
\item \textsuperscript{67} Bruton, Wilson Otho, and William Christopher Norrid. \textit{The Nutshell: Cherokee Constitution and the Laws and Rulings Bearing on the Autonomy of the Cherokee Nation Condensed in a Nutshell}. Muskogee, Indian Territory: The Phoenix Printing Co., 1894. The only known copy of this treatise is at the Oklahoma Historical Society.
\item \textsuperscript{68} Watts, W. J. \textit{Cherokee Citizenship and a Brief History of Internal Affairs in the Cherokee Nation}. Muldrow, Indian Territory: Register Printing Co., 1895. Watts and his “Cherokee Citizenship Association” were in the center of tribal controversy. \textit{Cherokee Advocate}, Feb. 4, 1894; Feb. 28, 1894; Mar. 21, 1894; Apr. 18, 1894; Apr. 25, 1894. “John Watts: A Name Engraved in the Cherokee Nation,” \textit{44 Chronicles of Okla.} 330-32 (1966).
\item \textsuperscript{69} The lawyers “ads” in the \textit{Cherokee Advocate} often stated specialization. \textit{Cherokee Advocate}, July 11, 1877. The editor noted that “Campbell Taylor, Esq., seems to have pretty much all the
The birth of the Indian law treatise signals the beginning of the change from the tribal legal system. In Cherokee courts there was never a commercial market for published interpretations. Most of the tribal lawyers were familiar with the process of growth and evaluation of doctrines in such a small judicial system, with many lawyers learning their trade in Cherokee law offices. These treatises are an outgrowth of the movement toward termination and not a genuine product of the Cherokee court system. As more and more non-Indian lawyers began to practice in the congressionally-authorized Indian Territory courts, interpretative law books were needed to explain the Indian laws that governed land, inheritance, jurisdiction, and citizenship questions. The new books covered laws of all of the five civilized tribes, since the Indian Territory lawyer would not be limited to practice under the laws of the Cherokee Nation but would be using Indian laws in Federal courts.

**Court Records and Opinions**

Professor Zechariah Chafee, Jr., has observed that the appearance of written opinions is a sign of a maturing judicial system. Cherokee Supreme Court Justices were required from the very beginning of an organized appellate court system in 1822 to write an explanation citing the reasons for their decisions. These opinions were always in manuscript form, and no effort was ever made to publish these early judicial opinions.

Cherokee Supreme Court opinions were not published for a number of reasons. The bar was very small, and memory would serve in all but the most complex cases. Pleadings were simple, and issues raised were rarely complex. The nation was small, with a population of less than 15,000 persons. Those who appeared as counsel before the courts were, without exception, active in the national council or government agencies, which met in New Echota at the same time as the Supreme Court. The manuscript opinions were kept on file in the courthouse at New Echota and could be consulted if a question arose. Judicial continuity created a situation in the early years in which the bench would be familiar with all decisions rendered at other terms. There was no need for printed opinions by lower courts because the same judges served on district and supreme courts.

The situation became more complex after removal from Georgia: The circuits were larger, and the lower courts began to acquire their own judges; population increased, geographic areas expanded, the bar was enlarged, and issues became more complex. As early as 1850, the Supreme Court reflected on the need to make printed opinions available.

Again the *Cherokee Advocate* provided valuable service to the legal system. Important opinions were printed, but with no regularity. In 1877 the *Advocate* announced that the justices would publish their opinions from the current term. Apparently no publication of these opinions appeared. A synopsis of opinions, which was also announced as forthcoming...
from the Supreme Court, did not make print. The courts eventually published a small pamphlet entitled Rules of Procedure in the Supreme Court of the Cherokee Nation.

The courts continued to write manuscript opinions. Over 5,000 pages of these handwritten reports have survived, dating from 1822 and including the first and last opinions of the Cherokee courts. The occasional written opinion of a lower court was much less significant than the massive body of Supreme Court judicial reports, which were kept on file by the Clerk of the Court in the Cherokee Nation capital at Tahlequah.

The laws of the Cherokee Nation required complete records of all court proceedings from initiation to completion. Cases appealed were decided on the record and required transcripts of evidence, as well as pleadings, jury charges, and all papers in the case. While lower courts produced few written opinions, hundreds of thousands of pages of Cherokee judicial records survive. Ironically, there is no absolutely complete record for any of the seven judicial districts.

Symbolic Value

The legal system of the Cherokees as set forth in the printed laws had great symbolic value to the tribe. Whenever the civilization of the Cherokees was at issue, the written law was paraded forth as final and indisputable evidence of Cherokee accomplishment. As early as 1828, Elias Boudinot used the recently-published laws for this purpose in a speech before a missionary society in New Haven, Connecticut. The widespread distribution of these laws was a part of the deliberate campaign to influence attitude toward Cherokee achievements. The editor of the Advocate was most disturbed when the Secretary of the Interior had to write for a copy of the laws. He demanded to know "of what use will it be to argue to the good people of the United States that we have progressed . . . , and are therefore entitled to their respect and intervention against attempts by the greedy and covetous to wrong us, if we do not take the trouble of giving them evidence we have progressed and are progressing?"

Cherokee Nation. Indian Archives, Oklahoma Historical Society.


Looney, Rella. "Inventory of Records of the Cherokee Nation." Indian Archives, Oklahoma Historical Society.

Editor's Note: The preceding article is based on a chapter in a work by Professor Strickland, Fire and the Spirits: Cherokee Law From Clan to Court, soon to be published by the University of Oklahoma Press.

Cherokee Advocate, Dec. 9, 1871, and Jan. 9, 1889.


Looney, Rella. "Inventory of Records of the Cherokee Nation." Indian Archives, Oklahoma Historical Society.