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THE TRAIL OF TEARS

Speech of Earl Boyd Pierce
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Tahlequah, Oklahoma

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Fellow citizens: The management of this program suggested that a resume of a few highlights of our history may be of some interest to our younger generation and not be a-miss on this occasion. We are commemorating today the 121st anniversary of the erection of the first constitutional government ever known by any people in this area. Perhaps we should reflect for a moment upon the character of the transplanted men who had the vision and ability upon their arrival here to erect a suitable government, establish a public educational system, the first such system by any nation on earth, and for 66 years maintain a social order conducive to the highest concepts of mental culture, religion, and refinement; and all, accomplished at no cost whatever to anyone but themselves.

What manner of men and women were these who came into this region, both before and after 1835 and prior to 1840 who could possibly have done so much as was done by them. What were the circumstances that brought them here? What produced the causes for the display of such outstanding talent, fortitude and determination? What is the story behind their accomplishment? In fine, how was the new government created here in September, 1839; and what were some of its salient contributions to the development of our beloved country? These questions in part will be answered today, although I am well aware that the task could be performed by others much more competently.

The complete Cherokee story, of course, has never been told; and certainly today, neither time nor propriety permits a full portrayal

of its splendor. If your speaker had the knowledge and ability to do so, he would be prompted by the presence of this sympathetic and enlightened audience to undertake it. But being well aware of my personal limitations, I will forego it.

Our story I say in all its glory, despite the painstaking efforts of able historians, legal scholars, and other students of the American Indian has never been fully told. Many facets of our history have been covered in several volumes by competent men and women, it is true. But no one has yet done a definitive work on the Cherokees. The Nation's archives, both federal and state, contain a large part of the story. More may be found in the shelves of history and in the decisions of our state and federal courts. My effort today, the facts at least, for example, which give a glimpse of our history, the Treaty of 1835 and its consequences, have been inspired by only one of these decisions: The Western Cherokee Case vs The United States, decided in December 1891 by the Court of Claims.

It will be remembered that in 1838, only a year before the adoption of our new constitution, the Cherokees were divided into 3 separate and distinct and almost hostile divisions. Each was led by some of the truly great men of our history.

The Western Cherokees or "Old Settlers", so called, had for many years inhabited this portion of present Oklahoma: some 13 million acres ceded to them by the Treaty of 1828.

For years they stood as a protective buffer, often times militantly between the Osages, the Kiowas and Comanches, the celebrated "Lords of the Plains", and the White settlements in Arkansas. They were about six thousand in number, having an elected principal chief, a legislative assembly, statute laws, and exercised a type of sovereignty which had been and was continued to be exercised until statehood by the different Indian nations in this territory.

They were fully recognized as a body politic as any other of the limited Indian governments which the United States recognized through the medium of treaty obligations. Among their leaders were the chiefs Tah-lon-tee-skee and his brother OO-Loo-Teka or John Jolly, the foster father and benefactor of Sam Houston, Walter Webber for whom Webber Falls was named, John Thornton, the diplomat and scribe, and the great Sequoyah.

The so-called "Eastern Cherokees", also an educated people, were at this time stripped of all their liberties and were prisoners in Georgia under the guard of 5 thousand United States soldiers, who had hunted them down from their mountains and driven them out of their valleys and from off their farms and were now bringing them to the terms of an enforced emigration. In number they were about 18,000. They had refused to obey the terms of a compact or Treaty which is our main subject today. They also had had a national autonomy; their individual rights and duties were prescribed by printed statutes; they had possessed schools, farms, orchards, religious institutions and had so far progressed in the arts of civilization as to have established ferries and built turnpike roads and imposed tolls. They likewise had been recognized by the United States as a body politic, capable of entering into the obligation of a treaty-making power.

Within the mass of the Eastern Cherokees there was or had been a small body of extremely patriotic, honest and intelligent men, exceptionally friendly to the United States, who because of their vision, liberality and devotion to their people and for grave moral reasons, had aided the Government in its attempt to obtain a peaceable emigration from Georgia, and more especially had assumed the right of doubtful legality to execute the treaty of New Echota, on behalf of the 18,000 Eastern Cherokees. In doing so they had brought down on themselves the suspicion and enmity of nearly every Indian

in America. Among their leaders were perhaps the brightest stars in the Cherokee galaxy: Major Ridge, George Chambers, Andrew Ross, Robert Rogers, John Gunter, John A. Bell, David Cordery, Charles F. Foreman, George W. Adair, Elias Boudinot, James Starr, Stand Watie and John Ridge, and they were known as the treaty party. But between 1835 and 1838, that is to say, between the treaty of New Echota and the forcible removal of the Eastern Cherokees, the Treaty Party, some 2200 in number, had voluntarily emigrated to Indian Territory and had merged with the Old Settlers, or Western Cherokees.

The great body of Eastern Cherokees still in the East had been led by a chief whose intellectual successes deserve to be ranked among the extraordinary achievements of diplomacy and statesmanship. For eight years he maintained a contest with both the Government and the State of Georgia in the field of intellectual resource--objecting, procrastinating, evading; sometimes invoking moral forces, sometimes foreshadowing forceful resistance. Again and again he achieved the negative triumph of frustrating the emigration of his people. And it is not a trivial event in American history that for six years his resistance was effectual against the iron determination of President Andrew Jackson. The name of this leader was Coo-wees-coo-wee, but he is generally known only as John Ross.

In 1836 the Government, apprehensive of collision with the people of Georgia, and weary of being thwarted in the diplomatic field, sent a military force to bring negotiations to an end and effect a forcible removal. The commander was an officer of what is termed the old school, a strict disciplinarian. He deemed it the highest duty of a soldier to obey orders. But almost immediately he seems to have passed under the strategic magnetism of Ross. Insensibly, unconsciously, in feeling and in judgment, he went over to the Cherokee

side. His first dispatch from the field was in these terms:

Headquarters, Valley Town, N. C.
August 1, 1836.

"To the MAJOR-GENERAL COMMANDING THE ARMY."

"Sir: The feeling and disposition of the Indians are altogether adverse to removal; I have had two meetings on the subject without any decision. On Wednesday next we have another, when I expect a large number will be present; it will then be determined whether they will go peacefully or by force. If they hesitate, I will take them. Under any circumstances I shall take hostages. "I am so constantly engaged that I have little time to write: I am day and night employed." "I have the honor to be, very respectfully, yours, etc.,

"John E. Wool,
"Brig., Gen., Commanding.

In less than two months he wrote as follows:

Headquarters Army, E. T. and C. N.
"Red Clay, Sept. 25, 1836.

"To the Hon. Lewis Cass,

"Sir * * * * During the whole period of holding the council the Cherokees appeared pacific in their language and conduct, and generally conducted themselves with as much order and propriety as the same number of men assembled in any part of the United States would have done.

"I have the honor to be, very respectfully,
your obedient servant.

John E. Wool,
"Brig. Gen., Commanding in the Cherokee Country.

And in less than five months more he wrote:

Headquarters Army, C. N.
"New Echota, Georgia, Feb. 18, 1837.

"To Major M. M. Payne."

"Sir: * * * * So determined are they in their opposition that not one of all those who were present and voted at the council held but a day or two since at this place, however poor or destitute, would receive either rations or clothing from the United States, lest they might compromise themselves in regard to the treaty.

"The same people, as well as those in the mountains of North Carolina, during the summer past, preferred living upon the roots and sap of trees rather than receive provisions from the United States; and thousands, as I have been informed, had no other

food for weeks. Many have said they will die before they will leave the country.

I am, very respectfully, your obedient servant,

"John E. Wool,
"Brig. Gen., Commanding in C. Nation

For twenty months the troops did not move, and the eviction did not begin.

In 1837 the Government fixed the 23rd of May, 1838, as the time, and sent the renowned General Winfield Scott with reenforcements and positive orders. He moved quickly and successfully, and has thus recorded the most painful experience of his military life:

"Food in abundance had been provided at the depots, and wagons accompanied every detachment of troops. The Georgians distinguished themselves by their humanity and tenderness. Before the first night thousands--men, women, and children, sick and well--were brought in. Poor creatures. They had obstinately refused to prepare for the removal. Many arrived half starved, but refused the food that was pressed upon them. At length the children, with less pride, gave way, and next their parents. The Georgians were the waiters on the occasion; many of them with flowing tears. The autobiographer has never witnessed a scene of deeper pathos."

The treaty of New Echota is the root from which controversies innumerable, involving force, bloodshed, diplomatic negotiations, Congressional action, and judicial determination sprang for more than a century. Its history is this:

The first direct governmental act for the resettlement of our people was the treaty of 1817. Under it several thousand voluntarily emigrated to 4 million acres within the present boundaries of Arkansas and became known as the Western Cherokees. Their portion of the country east of the Mississippi was granted to the United States, but in the succeeding years border rapacity in Georgia intruded on the lands of the remaining Cherokees. More than five hundred Cherokee farms it is said, were occupied by intruders. Demands were made to

remove the entire Cherokee people and to open their homeland to settlement in Georgia. The Cherokees protested in vain against the invasion of their country by these intruders and pointing to solemn treaty provisions demanded that they be removed.

In 1830, in a message to Ross and his people in Georgia the government said: "The United States, in order to avert the evils and unhappy difficulties that now exist, and are likely to continue, between the Cherokees and the United States, and with a view to promote the future peace and happiness of all concerned, propose to enter into a contract or treaty on the following terms." Such was the preamble by the agent of the United States, Col. John L. Lowrey, dated October 20, 1830, to the proposition which followed it: First, That the United States should grant them a country west of the Mississippi equal in value to their own. Second. That they should allow to Cherokees who should choose to become citizens, being able to sustain themselves, a reservation in fee simple. Third. That they should allow to each and every Cherokee 200 acres of land for which the United States should pay a fair price if ultimately abandoned Fourth. That they would "remove those who should choose to emigrate, at the expense of the Government, and furnish them with provisions for one year after they arrived at their new homes, and also pay them for all their stock, except horses and other personal property, which they may choose to take with them, thereby giving them a perfect choice to go or stay, and in either event to be provided for as above described."

A liberal school fund was also to be added, to be vested in the hands of such trustees as should be worthy of trust, "that the rising generation should thereby be enabled to improve in useful learning."

These propositions were submitted to the general council of the

Cherokees then in session, and two days later Chief Ross communicated its decision in a note characteristic of the clearness, terseness, and dignity which ran through all of his diplomatic writings:

New Echota, C.N.,
October 22, 1830.

"COL. JOHN LOWREY, "Special agent."

"Sir: "The Cherokees have long since come to the conclusion never again to cede another foot of land, and of this determination there is abundant proof among the public documents in the offices of the General Government. The President was addressed upon this subject fully at Nashville last summer through the agent, and they now only ask from the General Government the protection of those rights which have been solemnly guaranteed to them under former treaties.

"The offer of new guaranties can be no inducement to treat.

"I am, sir, etc.,

"John Ross"

At the beginning of 1835 the Eastern Cherokees were still in the Southern States and no treaty for their removal had been made. But the Government had then brought to the work of negotiation a less scrupulous representative, a minister from New York, and he, failing to accomplish anything with the constituted authorities of the Cherokee Nation, devised a scheme which he thus sketched in an official report to his superior, the Commissioner of Indian Affairs:

Red Clay Council Ground,
October 27, 1835.

"To the HON. ELBERT HERRING, Commissioner."

"I have now just opened negotiations with them, and I hope to come to a treaty, now I have commenced; but there are still many difficulties in the way, and the only way I have of accomplishing it now is the fear of the Indians of Georgia legislation. Alabama and Tennessee, I think, will also pass some wholesome laws to quicken their movements.

"I have the council which the commissioners were authorized to call still in reserve, and if I am broke up here I shall notify these gentlemen that they will not be received at Washington, and that they must treat here or nowhere, during General Jackson's administration, and at the proper time, when the legislature begins to press the call, then

convene at New Echota.

"With great respect, your obedient servant,

"J. F. Schermerhorn,
"Com. to treat with Cherokees east.

This scheme was effectually carried out. An assemblage of Cherokees estimated at from two to three hundred men, women, and children, were brought together at New Echota, and twenty of these signed the treaty, not one of whom possessed official or delegated authority. At the same time the commissioner succeeded in getting two Western Cherokees to sign the certificate of approval on behalf of the Western Cherokee Nation, which appears appended to the treaty (7 Stat. L., p. 487). Their authority as delegates has never been found and their mission, if any, was undoubtedly to counsel the Eastern Cherokees against the treaty. Their action was afterwards ascribed by themselves to ignorance and persuasion and was immediately and always disavowed by the Old Settlers, the Western Cherokees. As to Ridge and Boudinot and their associates, there is abundant proof that they acted from the purest motives and I have found no evidence to the contrary: They simply desired their people removed from the reach of the Georgians who were determined to take their lands and property by force. As the sensitive, liberally educated minister and great editor, Elias Boudinot afterwards said: When he observed that only degradation could possibly result by his people remaining, his admonition to them was to "Fly for their lives." Tippling shops, he said, surrounded the borders of his country and the lower vices were making their appearance among the female population. Only in the west he believed, could Cherokees continue to flourish. Every man who signed the treaty knew that he may well be signing his own death warrant.

Thus on the 29th of December, 1835, the treaty of New Echota was executed.

On the 3rd of February following a general council was convened by Ross which unanimously adopted a resolution setting forth--

"We do most solemnly protest before God and man and of its ratification by the Senate of the United States, as we are determined never to acknowledge any acts of individuals without authority to treat away the most sacred rights and dearest interests of the Cherokee people."

On the 5th day of March following Maj. William M. Davis, the enrolling and appraising agent of the United States, thus reported to the Secretary of War, and the accuracy of his statement is confirmed by Lieut. Hooper, one of the witnesses who attested the treaty, who reported to his superiors as follows:

Cherokee Agency, East,
5th March, 1836.

"HON. LEWIS CASS,
"Secretary of War, Washington City."

"Sir, that paper, containing the articles entered into at New Echota in December last, called a treaty, is no treaty at all, because not sanctioned by the great body of the Cherokee people, and made without their consent or participation in it pro or con; and I here solemnly declare to you, without hesitation, that upon a reference of this treaty to the Cherokee people it would be instantly rejected by more than nine-tenths of them.

"Wm. M. Davis."

On the 28th day of September of the same year, the national committee and council, in general council assembled, again declared that the treaty of New Echota was not the act of the Cherokee people, and hopeless of redress from the Executive, addressed a memorial to Congress, penned by the brilliant Ross which among other things set forth:

"That your memorialists and chiefs, national committee and council, and people of the Cherokee Nation, in general council assembled, solicit permission to approach your honorable bodies under circumstances peculiar in the history of nations, circumstances of distress and anxiety beyond our power to express. We earnestly bespeak your patience,

therefore, while we lay before you a brief epitome of our griefs.

"The instrument in question is not the act of our nation; we are not parties to its covenants; it has not received the sanction of our people. The makers of it sustain no office nor appointment in our nation under the designation of chiefs, headmen, or any other title by which they hold or could acquire authority to assume the reins of government and to make bargain and sale of our rights, our possessions, and our common country. And we are constrained solemnly to declare that we cannot but contemplate the enforcement of the stipulations of this instrument on us against our consent as an act of injustice and oppression which we are well persuaded can never knowingly be countenanced by the Government and people of the United States, nor can we believe it to be the design of those honorable and high-minded individuals who stand at the head of the Government to bind a whole nation by the acts of a few unauthorized individuals. And therefore we, the parties to be affected by the result, appeal with confidence to the justice, the magnanimity, the compassion of your honorable bodies against the enforcement on us of the provisions of a compact in the formation of which we have had no agency.

"In truth, our cause is your own; it is the cause of liberty and of justice; it is based upon your own principles, which we have learned from yourselves, for we have gloried to count your Washington and your Jefferson our great teachers; we have read their communications to us with veneration; we have practiced their precepts with success. And the result is manifest. The wilderness of the forest has given place to comfortable dwellings and cultivated fields, stocked with the various domestic animals. Mental culture, industrious habits, and domestic enjoyments have succeeded the rudeness of the savage state. We have learned your religion also. We have read your sacred books. Hundreds of our people have embraced their doctrines, practiced the virtues they teach, cherished the hopes they awaken, and rejoiced in the consolations which they afford. To the spirit of your institutions, and your religion, which has been imbibed by our community, is mainly to be ascribed that patient endurance which has characterized the conduct of our people under the laceration of the keenest woes. For assuredly we are not ignorant of our condition; we are not insensible of our sufferings. We feel them, we groan under their pressure, and anticipation crowds our breasts with sorrows yet to come."

The only answer that was made to this memorial came in the form of a dispatch from the Acting Secretary of War to Gen. Wool:

War Department,
October 12, 1836.

"I am instructed to express the surprise of the President that you permitted the council of the Cherokees to remain in session a moment after it became apparent that it was determined to declare the treaty void."

Ross had been elected principal chief of the Cherokees in 1828, and for ten years performed with astonishing ability two distinct and difficult tasks--that of repelling and outwitting the treaty-seeking agents of the United States, and that of keeping a saddened and dissatisfied people, deprived of their property and maddened by repeated aggressions from becoming the aggressors. A confidential agent of the War Department, sent to ascertain the truth of various matters, reports in September, 1837-----

"Though unwavering in his opposition to the treaty, Ross's influence has constantly been exerted to preserve the peace of the country; and Col. Lindsay says that he alone stands at this time between the whites and bloodshed."

When the removal of the Cherokees began all that Ross had struggled to prevent was accomplished, and the accomplishment had demonstrated to his mind a power that was irresistible. His policy of negotiation, procrastination and appeal to moral forces had resulted in a disaster which had driven every family out of their own home and every man out of his own country. In a word, his policy seemed a mistake, his public career finished, and himself utterly overthrown. An ordinary man so overthrown would have bowed his head and acknowledged that his life-work had ended.

But it is at this point that his success begins. Where the rest of his nation saw only humiliation and submission he saw an opportunity. With a skill and readiness that belong to the marvels of political biography, in less than two months he gave to it form and effect. He changed the future into an enduring victory and made the past a

transitory defeat. On the 1st of August, 1838, while the dispirited throng of Cherokee exiles paused in their march at a temporary halting place, the name of which does not appear on the map nor in the list of post-offices, and which is known only from what transpired there as Aquohee camp, he framed a declaration of rights which secured and until the Curtis Act in 1898, 60 years later, retained the autonomy of the Eastern Cherokees.

The instrument, after again declaring that the Eastern Cherokees were not a party to the pretended treaty of New Echota and will forever demand redress for the wrongs and injuries which have been brought upon them by the United States, sets forth in terms which will bear the scrutiny of scholars in modern international law that--

"Whereas the Cherokee people have existed as a distinct national community in the possession and exercise of the appropriate and essential attributes of sovereignty for a period extending into antiquity beyond the dates and record and memory of man;

"And whereas these attributes, with the rights and franchises which they involve, have never been relinquished by the Cherokee people, but are now in full force and virtue;

"And whereas the natural, political, and moral relations subsisting among the citizens of the Cherokee Nation towards each other and towards the body politic cannot, in reason and justice, be dissolved by the expulsion of the nation from its own territory by the power of the United States Government.

"Resolved, therefore, by the national committee and council and people of the Cherokee Nation, in general council assembled, that the inherent sovereignty of the Cherokee Nation, together with the constitution, laws, and usages of the same, are, and by the authority aforesaid are hereby declared to be, in full force and virtue, and shall continue so to be in perpetuity, subject to such modifications as the general welfare may render expedient."

When the column of captives or emigrants, which ever they were, entered the Indian Territory at the end of the "Trail of Tears" the Western Cherokees, who had been passing hospitable and kindly resolutions of welcome, were astounded by the intimation from Ross

that their government was to come to an end, and that they themselves as a people would be lost and merged in the greater mass of the intruders; that thenceforth in short the constitution and laws and government of the Eastern Cherokees would reign over them.

Ross never varied the simplicity of his position, a position which he maintained with calmness and dignity and invincible firmness. In the throes of this controversy, a great tragedy was taking place, the two Ridges and the scholarly Boudinot were assassinated on the same day, June 22, 1839. Within four years following and as a direct consequence of the ill-fated treaty, over 400 men, the flower of our nation, met their deaths. The conflict touched every family among our people. The taking of the life of the Patriarch, James Starr, set off a chain reaction which detonated for years. Among the descendants of the slain on both sides are found many of our greatest leaders and cherished names. Their sons and daughters illuminate this audience today with the proudest memories. But we must go on.

On July 19, 1839, an Act of Union was agreed to by a few of the Old Settlers including Sequoyah and the Eastern Cherokees and steps were taken to form a convention to write a constitution. This was done and the same was proclaimed here in Tahlequah on September 6, 1839. By its terms, the land out here was secured for all resident Cherokees, and by a regular election, Ross was allowed full authority to lead our people to new heights of culture and refinement.

Thus the intra-tribal struggle temporarily ended. With John Ross fully in power the nation quickly restored social order, established its magnificent school system, encouraged religion, founded again its newspaper, and withal, a prosperous and happy people emerged. Prosperity reigned and party strife subsided, only to be ligh ed again at the out-break of the American Civil War, which