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NOTES

NATIVE LAW: LAW AND ORDER AMONG EIGHTEENTH-CENTURY CHEROKEE, GREAT PLAINS, CENTRAL PRAIRIE, AND WOODLAND INDIANS

*Ken Traisman**

A study of the Cherokee, the Great Plains, the central prairie, and the woodland Indians of the eighteenth century reveals three different systems of deterring and punishing crime and, more generally, of maintaining tribal harmony. Among the Cherokee, the central prairie, and the woodland Indians, the procedures for dealing with murder and theft demonstrate how these tribes upheld tribal order. The Cherokees had an ancient matrilineal clan system that (1) united the scattered Appalachian tribes into a nation, and (2) provided an unwritten code of blood vengeance, which discouraged and punished criminals and gained revenge for the victim's kin. They also used "satirical sanctions" to punish and deter lesser crimes.

Unlike the Cherokees, the central prairie and woodlands Indians disapproved of and feared blood vengeance. Generally, these tribes tried to redress the murder victim's kin with gifts rather than demand that the killer's life be taken. Although written criminal codes were rare among American Indian tribes, Tenskwatawa of the Shawnees, a central prairie and woodlands tribe, produced one in the early 1800s in response to the phenomenon of frequent European-Indian interaction.

The Great Plains Indians upheld tribal order and battled crime by using policemen who detected, judged, and punished criminals, directed the movement of the tribe from one camp site to another, and organized buffalo hunts.

The Cherokees

The Cherokees occupied the wooded Appalachian ranges of southwestern Virginia, the western Carolinas, eastern Tennessee, northern Georgia, and northeastern Alabama. By mid-seventeenth century, their population peaked at 22,000 spread over 40,000 square miles.¹ The Cherokee Nation was divided into more than

* J.D., 1983, Loyola University, Chicago.

1. J. TERRELL, AMERICAN INDIAN ALMANAC 131-33 (1971) [hereinafter cited as TERRELL].

sixty independent towns and five distinct regional groups connected by winding trails and divided by towering mountain ridges. Their language was subdivided into three distinct dialects. The tribe's matrilineal clan system united the geographically and linguistically separated people. According to European traders, the Cherokees were very clever, but their Indian foes and allies considered them cowardly warriors.

"The Cherokees have no law," remarked eighteenth-century observers;² rather, they were ruled by a morality extracted from tribal customs. They had no codified or common law. The Cherokees had no concept of jurisdiction or real property. Distance was measured by degree of danger of attack; land was controlled, not owned. Their "legal" system worked properly when it maintained social harmony.

National government was nonexistent among the Cherokees. Instead, they had many town councils, which only met to resolve current crises. Although there is little evidence of exactly what the councils did, they apparently participated in war and peace talks, but did not legislate. The councils occasionally settled disputes among persons as to who would farm which plots, and decided when tilling, sowing, and harvesting would be done, so that farm workers would not be ambushed by Creeks or Mohawks.

The seven clans of the Cherokees were what made them a nation. They had "a national law . . . derived from rules of conduct and attitudes of the mind concerning their kinship system, with its seven matrilineal, exogamous clans."³ The Cherokee described his society in clan-kin terms. "Without clans the Cherokees might have lacked the apparatus for expressing their nationhood."⁴ The matrilineal clan system linked the Cherokees not as a political state but as an ethnic nation of shared experience and common culture. In the town council the seven clans sat separately, but there was no interclan rivalry there; representation of each clan eliminated dissension within each clan and often cleared the way for a consensus in the council.

The Cherokee belonged to his mother's clan. His maternal uncle was his tutorial and disciplinary authority. He called his mother's brother "uncle," but his mother's sister was called "mother." Everyone in an individual's grandmother's clan, both

2. Reid, *The Cherokee Thought: An Apparatus of Primitive Law*, 46 N.Y. U. L. REV. 283-84 (1971) [hereinafter cited as Reid].

3. *Id.* at 290.

4. *Id.* at 292.

patrilineal and matrilineal, was called "grandfather" or "grandmother." The Cherokees distinguished not by generation but by clan classification. An example of the manner in which the clan-kin system worked was provision of food and shelter for clan-kin fleeing another town. If a female member of the Blind Savannah clan fled from Creek raids to another town, she would have an extension of her family in that town to protect her, house her, and even avenge wrongs committed against her.

One of the primary functions of the clan system was to avenge or satisfy homicides. (Other functions undoubtedly included terminating incestuous relationships, but data is scarce.) If a member of one clan killed a member of another clan, the victim's clan was owed one life from the clan of the killer. An eighteenth-century English commentator, Lieutenant Henry Timberlake, wrote in his memoirs that homicide was the only "crime" among the Cherokees, and it was "revenged [rather] than punished."⁵

Suppose a Cherokee male, Tuckaseegee, a member of the Blind Savannah clan, was married to a Deer clan member. Tuckaseegee's role in the settlement of the homicide was determined by the clan of the victim and the killer. If the victim was a Blind Savannah member, particularly if he was kin of Tuckaseegee, Tuckaseegee would have a duty to participate in determining who among the killer's clansmen would be killed to avenge the Blind Savannah member's death. If the killer was a Deer member, Tuckaseegee's wife and children and his wife's brother would be liable for the Blind Savannah member's death. It would be unlikely, but within Tuckaseegee's right, for him to avenge his clansman's death by asking that his wife or brother-in-law be killed.

If the killer was a Blind Savannah member and the victim a Wolf member, Tuckaseegee would be liable. However, Tuckaseegee would only be in danger of dying for his clansman if the killer was a kinsman. If the killer was Tuckaseegee's brother and he had fled, Tuckaseegee's life would be in jeopardy. In such a case the slayer, Tuckaseegee's brother, would seemingly escape any punishment, but through the Cherokees' eyes this was not injustice. The killer's clan-kin were willing to accept the consequences of their relative's acts. In fact, there would be a right of substitution where, for example, an uncle could ask that he be killed in his foolish, impetuous nephew's stead. From the Cherokee perspective, justice was done and responsibility for the killing was assumed. In such a proud and socially conscious society, the

5. LIEUTENANT HENRY TIMBERLAKE'S MEMOIRS 1756-1765 (S. Williams ed. 1948), cited in Reid, *supra* note 2, at 283.

possibility of having one's clan-kinsman answer for one's transgression was no less a deterrent than if the killer himself had to answer for the crime.

If Tuckaseegee's brother, a Blind Savannah member, was killed by Tuckaseegee's son, a Deer member, and Tuckaseegee did not want to see his son's life taken, he could theoretically demand the life of any other Deer member. However, public opinion would disapprove. In such a situation, Tuckaseegee could demand compensation for the slaying in blankets, corn, or ornaments rather than blood. Although the blood settlement was the general rule, valuable compensation eased the social tensions of having either to demand the death of a close relative in order to avenge the death of a clansman, or demand the death of the killer's clansman to avoid demanding the death of a kinsman.

Most homicides were accidental, resulting from hunting mishaps. The Cherokee social system discouraged aggressive behavior within the tribe in two ways. First, personal property was often shared, so there was little incentive to steal. A hungry family could always find a meal. A traveler could always find shelter. There was no horse theft because they were of little value in the mountains. Second, the Cherokees were perpetually at war, although their friends, the Chickasaws, and their foes, the Shawnees, called Cherokee warriors "old women."⁶ The aggressive brave could vent his anger against his Choctaw, Creek, Catawba, and Shawnee enemies.

More than a vendetta allowed by law, the Cherokee blood feud was a vendetta required by law, accepted by society, and executed according to an accepted, customary formula of conduct. Blood vengeance deterred and punished homicides. One could not slay freely—there was a price to be paid in blood by the killer or his kinsmen.

For less grievous antisocial behavior, the Cherokees used a system of ostracism, sarcasm, and ridicule to punish and deter criminals, and to keep peace in the tribe. Satirical sanctions were the main form of punishment and deterrence among the Cherokees. Trader James Adair, who lived among the Cherokees in the eighteenth century, provided this description of the satirical sanctions.

They commend the criminal before a large audience, for practicing the virtue, opposite the crime, that he is known to be

6. *Id.* at 285.

guilty of. If it is for theft, they praise his honest principles; and they commend the warrior for having behaved valiantly against the enemy when he acted cowardly; they introduce the minutest circumstances of the affair, with severe sarcasms which wound deeply. I have known them to strike their delinquents with those sweetened words so good naturally [sic] and skillfully that they would sooner die by torture than renew shame by repeating the action.⁷

Law and order were not enforced by a coercive state, but by public opinion supported by fear of disgrace and shame. Among a proud and social people, bitter mockery received from friends, family, and clansmen was particularly painful; thus satirical sanctions were an effective deterrent and punishment. Codified law and penal institutions were unnecessary. John Philip Reid asserts that as a deterrent, the satirical sanctions were at least as effective as physical coercion was in contemporary Europe.⁸

Ostracism was used as a penalty for more disruptive acts than those meriting merely satirical sanctions. Disruptive political or social behavior and aggressiveness were punishable by ostracism. One punished by ostracism would have his clan protection withdrawn and would be given "the silent treatment" by his townspeople.

The lack of written law among the Cherokees did not mean that their unwritten law, i.e., their tribal customs, were disobeyed. Generally, their unwritten codes of conduct were far more willingly heeded than modern-day written laws.⁹ The relatively primitive Cherokee was just as fettered, perhaps more, by his customs as we are by our written laws. Moreover, the Cherokee did not seek to break out of the bonds but graciously accepted them and lived by them.

The main apparatus for maintaining law and order among the Cherokees was the clan system, the societal "adhesive" that bound the people of scattered settlements into one ethnic nation. The clan system also functioned to avenge homicides. Cherokee society effectively discouraged antisocial behavior. There was little thievery because personal property was often shared; the Cherokees were always at war, so violent braves could vent their wrath against tribal enemies instead of their tribesmen. Finally,

7. ADAIR'S HISTORY OF THE AMERICAN INDIANS 469 (S. Williams ed. 1930), as quoted in Reid, *supra* note 2, at 298.

8. Reid, *supra* note 2, at 297-98.

9. R. LOWRIE, PRIMITIVE SOCIETY 398 (1920), as cited in Reid, *supra* note 2, at 301.

embarrassing satirical sanctions deterred and punished crimes other than homicide. The Cherokees' closely woven society and deeply rooted tribal customs effectively maintained law and order, so that the town councils—unlike the Great Plains Indians' equivalent—did not have to legislate, but only met in times of crisis.

Great Plains Indians

On the eighteenth-century Great Plains, extending from southern Saskatchewan to northern Oklahoma, dwelt thirty-two Indian tribes, speaking eighteen distinct languages. These tribes were generally police societies. Among the Great Plains tribes were the Blackfoot, the Crow, the Atsina, the Oglala-Dakota (numbering 25,000), the Assiniboine, the Arapaho, the Cheyenne, and the Kiowa.¹⁰ The Siouan tribes of the southern Great Plains included the Iowa, the Ponca, the Kansa, and the Arikara. The political hierarchy in a Great Plains tribe typically included an executive officer of the council, the chief, a legislative body, the council, and an administrative body—the police.

The tribe lived in a camp with their tipis set in a rough circle. At the center was the chief's tipi, which was also used for council meetings. Thus the dwelling's central location was for status and convenience. The groups conducting police duty placed their tipis near the chief's tipi to protect him and for convenience, because the chief could easily communicate orders to the police. Family units placed their homes around the chief's and the police tipis, forming a circle.

The council was a far more coercive body than the Cherokee town council. The Cherokee town council met in times of crises because tribal custom controlled individual behavior. The Great Plains council met regularly and exercised direct control over individual and societal behavior. The council limited, directed, and sanctioned hunts, festivals, and war activities.

The police were chosen in a number of ways among the Plains Indians. The Blackfoot Indian chief appointed two or three societies each spring to act as police for the year. The Crow chief picked police from the military societies. There was no fixed rule of rotation, so the same military society might contribute policemen for many successive years. The Cheyenne Dog Society always served the police function, although the Star Society chose the camp cir-

10. TERRELL, *supra* note 1, at 288.

cle location, which was a police function in other tribes. The Kansa band chiefs would designate twenty braves to be policemen. The Iowa chief chose two bodyguards from among honored braves; however, the position of bodyguard could be sold for a good horse.

The police implemented the council's decisions as to how the tribe would function socially and economically. As a result, the police directed the tribal buffalo hunt, camp movement, and formation of the camp circle, and, in addition, settled intratribal disputes and regulated war parties.

Police activities can be divided into three areas: prevention of violations of tribal order; detection of violations of tribal order; and punishment for violations of tribal order. The police prevented violations in three situations: during movement of the camp, within the camp settlement, and during the communal buffalo hunt.

When the camp moved, the police acted as guards against attack from outside enemies. Among the Blackfoot and Kiowa, the police ranged themselves in front, behind, and on both sides of the moving party. The duty of the Crow police included selection of a route to the next settlement. The Assiniboine police traveled in three groups: one scouted, one guarded in advance of the party, and one guarded the rear of the party. Among the Atsinas one police group, the Star Dance body, supervised the movement of the camp, while another group, the War Dance body, selected the location of the new site. Any Atsina who did not set up camp in his police-assigned place was subjected to punishment.

Within the settlement, the police acted as sentries to protect the camp from outside attack and to prevent tribesmen from committing any unauthorized acts of war. It was not uncommon for the chief to order the police to forbid people to leave camp. Such orders not only halted unauthorized military aggression, but prevented wanderers from inadvertently scaring off buffalo herds. Arikara police outlawed wood chopping when buffalo were near because the noise scared away the animals. The police also enforced no-hunting orders, which, along with the no-leaving-camp orders, were primarily designed to protect and conserve the tribal food source. The police did not permit the acts of a few to jeopardize the tribe's bounty. For example, a Blackfoot woman who left camp to pick berries in disobedience of a no-leaving-camp order had her basket spilled by the police when she returned.¹¹

11. W. McCLINTOCK, *THE OLD NORTH TRAIL* 464 (1910), as cited in Humphrey,

Complete control over the population was exerted by the police during the communal buffalo hunt. During the hunt, police power or the threat of its implementation prevented premature attacks on the herd, which could endanger the entire tribe's take. An offender would be punished by confiscation of the game taken, destruction of his property, corporal punishment, or capital punishment in extreme cases. Economic necessity demanded that the buffalo-hunt rules be obeyed; the threat of punishment was an effective deterrent. Crows who violated the buffalo-hunt rules were beaten, their weapons were broken, and their game was confiscated. Blackfoot violators were whipped and their tipis destroyed. The Great Plains tribes were utterly dependent on the buffalo for food, clothing, and shelter. Failure to effectuate a successful hunt meant doing without in a region of little else. Police control provided every hunter with an equal chance to take his game. Therefore, the general welfare of the tribe was preserved. The Assiniboine police even collected all the meat obtained during the hunt, after which it was served at a festival.

The police not only implemented the rules handed down by the chief or the council, but also acted as judges and detectives in criminal cases. If a suspect's guilt was obvious, the police quickly administered punishment. For example, a buffalo-hunt violator might be beaten and his property destroyed. Where a culprit was not readily identifiable, the police investigated. In one case, an aborted Cheyenne embryo was found in camp.¹² Since it was considered to be a bad omen to have a tribesman's (here, embryo's) killer go free unpunished (resulting in a scarcity of game and failure of war parties), the perpetrator had to be found and punished for the good of the tribe. The police lined up the women of the tribe and had them bare their breasts, so the police could find the most recently pregnant woman, therefore, the criminal. A punishment of banishment was ordered by the council and enforced by the police.

Great Plains police administered punishment only for violations against tribal order. Clearly, buffalo-hunt violations jeopardized tribal welfare and therefore were punishable. As indicated above, among the Cheyenne an unsolved murder of a tribesman was believed to drive off game and to cause war parties to fail, thus af-

Police and Tribal Welfare in Plains Indian Cultures, 33 J. OF CRIM. L. & CRIMINOLOGY 156 n.34 (1942) [hereinafter cited as Humphrey].

12. Humphrey, *supra* note 11, at 157-58, citing Hoebel, *Associations and the State in the Plains*, 38 AM. ANTHRO. N.S. 436 (1936).

fecting the entire tribe's welfare. Among the Blackfoot Indians, the murder of a tribesman and repeated adultery were capital offenses enforced by the police; but in the Assiniboiné tribe almost all crimes—except disobedience to the police—were individual affairs to be settled between the perpetrator and the victim or the victim's kin.

Crimes against the tribe's general welfare were punishable by corporal or capital punishment or attachment of the criminal's property. Blackfoot, Crow, Kansa, and Arikara police all had authority to whip or beat violators. The Northern Cheyenne police had the right to kill a whole family as punishment. The Cheyenne generally banished murderers for life. Blackfoot, Ponca, Atsina, Assiniboiné, and Oglala police had the authority to destroy a criminal's home and animals; Iowa and Kansa police did not have this right. Offenders who resented their punishment had no recourse among the Great Plains tribes. A Ponca violator who resented his punishment was further punished for his protest. Generally, offenders who graciously accepted their punishment were restored to their former status in the community. Assiniboiné police observed a criminal for four days after punishing him. If he showed no resentment or anger, the property destroyed as punishment was replaced. Similarly, in the Ponca Tribe, a criminal who took his punishment well for four days would be given a gift for each place on his body that was struck. Each policeman would say, "Where did I strike you?" The criminal would point to the place on his body and the policeman would present a gift to him.¹³

The police prevented violations of tribal order when the camp moved, within the settled camp, and during the communal buffalo hunt. They detected crime, judged the guilt of suspects, punished the guilty, and compensated criminals who gracefully accepted punishment. The police tried, and were generally effective, in upholding tribal welfare and harmony.

Central Prairie and Woodland Indians

The eighteenth-century Indians of the central prairie and the woodlands inhabited the Midwest from northeastern Minnesota to southern Ontario, and south into northeastern Arkansas. The Sauk, the Fox, and the Kickapoo tribes lived in western Illinois

13. Humphrey, *supra* note 11, at 160 n.55, citing Skinner, *Societies of the Iowa, Kansa, and Ponca Indians*, 11 ANTHROPOLOGICAL PAPERS OF THE AMERICAN MUSEUM OF NATURAL HISTORY 685 (1915).

and western Wisconsin; the Osage in southern Illinois and central Missouri; the Potawatomi in central Michigan; the Ottawa in northern Michigan and southern Ontario; the Shawnee from northeast Georgia to Illinois and Indiana; and the Iroquois in Ohio. Crime among the Indians of the central prairies and the woodlands was less prevalent than among contemporary Europeans.¹⁴

Murder among the central prairie and woodland Indians was not as severe an offense as it was among the Cherokees, or even in modern American society. One might say that central prairie and woodland Indian murderers "got off easy." The form of punishment, or more precisely the form of compensation, was dictated by tribal custom, not by codified or common law. When an Indian was murdered by a tribesman, an ad hoc council of the old men of the tribe met and decided upon a gift to be sent by deputies to the murdered person's kin. The deputies presented the gifts, condemned the act, and asked for peace between the victim's and the killer's families. If the victim's family refused to accept, the old men would intervene with more presents and offer to act as mediators. If the victim's family could obtain what it wanted as a peace offering, settlement was reached. If even the mediators could not help render a settlement, the killer's family—induced by gifts—delivered the killer to the victim's family, who would decapitate him and send the head to his relatives. Then, the victim's and the killer's families received gifts from each other and members of the tribe to restore tribal harmony and good feelings. The gift-giving and mediating was performed to prevent the kind of blood feud common to the Cherokees. The fear of the central prairie and woodland Indians was that the pendulum of vengeance would sway endlessly, wastefully, and brutally between the kin of the victim and the killer. Among the Cherokees, however, where the murderer's clan gave one person's life to redress the murdered person's clan, there were no perpetual feuds. Once the killer's clan paid for the crime, the blood feud ended. The rationale behind the central prairie and woodland Indians' murder settlement procedure was that killing the killer would not bring back the victim; therefore, it would be better for the victim's kin to accept some compensation than to receive nothing. Items offered in compensation included horses, silver, and pelts. Occasionally the murderer would marry the victim's widow to compensate her loss of a husband.

14. Thompson, *Law Amongst the Aborigines of the Mississippi Valley*, 6 ILL. L.Q. 204, 212 (1924).

The victim of theft, like the murder victim's kin, was usually compensated for his loss. The thief was compelled to return the stolen goods to the owner or somehow to render satisfaction if the stolen goods were lost, eaten, spent, etc. If the thief failed to make restitution, the victim and his comrades would sack the thief's home and seize all his belongings. If the thief was guilty, he was without remedy against the victim and his comrades and had to accept the plundering as punishment. If the alleged thief was not guilty, he would oppose the pillage and if he killed a pillager in doing so, the alleged thief was not required to make a settlement with the pillager's family.

There were no organized police forces per se among the central prairie and woodland Indians, as exemplified by the Sauk and Fox tribes. Able-bodied men accepted the responsibility of protecting homes, women, and children from outside attack and internal turmoil. In a family's lodge, the young men slept near the door so they would be the first to meet a would-be attacker. Just as Great Plains Indian police directed the movement of camp, decided where the camp would be located, and supervised the communal buffalo hunt, Sauk and Fox "soldiers" or "warriors of approved valor" were assigned special duties by the chief.¹⁵ These duties included enforcing tribal order during the annual hunt and at any large ceremony. A young man achieved the status of "warrior of approved valor" by winning promotion through his actions. At each stage of the progression toward soldierhood, the youth was given a particular mark or ornament at a ceremony. Generally, there were six stages with certain duties assigned at each stage.

Criminal codes were extremely rare among eighteenth-century American Indians. Codes were not needed where ancient tribal customs dictated standards of behavior to which the populace adhered. However, Tenskwatawa, "The Prophet" of the Shawnee in the late-eighteenth and early-nineteenth centuries, developed what resembles a criminal code.¹⁶ John Upton Terrell asserts that there were no better hunters, no better warriors, and no more intelligent Indians than the Shawnee, who wandered throughout the south-central United States.¹⁷ The code was given from memory by Thomas Forsythe in a letter to General William Clark on December 23, 1812:

15. *Id.* at 218, citing A. FLETCHER, HANDBOOK OF AMERICAN INDIANS [n.d.].

16. *Id.* at 214. Tenskwatawa, whose name means "Open Door," was twin brother to the great Tecumseh, whose name means "Spring."

17. TERRELL, *supra* note 1, at 137.

1st. Spiritous liquor was not to be tasted by an Indian on any account whatever.

2nd. No Indian was to take more than one wife in future, but those who now had two, three, or more wives might keep them, but it would please the Great Spirit if they had only one wife.

3rd. No Indian was to be running after the women; if a man was single let him take a wife.

4th. If any married woman was to behave ill by not paying proper attention to her work, etc., the husband had a right to punish her with a rod and as soon as the punishment was over, both husband and wife was to look each other in the face and laugh, and to bear no ill will to each other for what had passed.

5th. All Indian women who were living with white men were to be brought home to their friends and relations, and their children to be left with their fathers, so that the nations might become genuine Indians.

6th. All medicine bags, and all kinds of medicine dances and songs were to exist no more; the medicine bags were to be destroyed in presence of the whole of the people collected for that purpose, and at the destroying of such medicine, etc., everyone was to make open confession to the Great Spirit in a loud voice of all the bad deeds that he or she had committed during their lifetime, and beg for forgiveness as the Great Spirit was too good to refuse.

7th. No Indian was to sell any of their provisions to any white people, they might give a little as a present, as they were sure of getting in return the full value in something else.

8th. No Indian was to eat any victuals that was cooked by a White person, or to eat any provisions raised by White people, as bread, beef, pork, fowls, etc.

9th. No Indian must offer skins or furs or anything else for sale, but ask to exchange them for such articles as they may want.

10th. Every Indian was to consider the French, English, and Spaniards, as their fathers or friends, and to give them their hand, but they were not to know the Americans on any account, but to keep them at a distance.

11th. All kinds of white people's dress, such as hats, coats, etc., were to be given to the first white man they met, as also all dogs not to their own breed, and all cats were to be given back to White people.

12th. The Indians were to endeavor to do without buying

any merchandise as much as possible, by which means the game would become plenty, and then by means of bows and arrows, they could hunt and kill the game as in former days, and live independent of all white people.

13th. All Indians who refused to follow these regulations were to be considered as bad people and not worthy to live, and must be put to death [A Kickapoo Indian was actually burned in the spring of the year 1809 at the old Kickapoo town for refusing to give his medicine bag, and another old man and old woman were very near sharing the same fate at the same time and place.]

14th. The Indians in their prayers prayed to the earth, to be fruitful, also to the fish to be plenty, to the fire and sun, etc., and a certain dance was introduced simply for amusement; those prayers were repeated morning and evening, and they were taught that a deviation from these duties would offend the Great Spirit.¹⁸

There was an obvious need for a code of behavior dealing with how to interact with whites; tribal customs could provide little guidance in the face of the new phenomenon of frequent Indian-Anglo contact. Conflicts between the old ways and the new came to a boil, leaving the population in need of direction. In the second and sixth paragraphs of the above code, the old ways expired, but in the eleventh and twelfth paragraphs, they prevailed. The first, eighth, tenth, and eleventh provisions were designed to uphold the health of the tribe as it encountered a foreign population having different dress, habits, and diseases. Notwithstanding the thirteenth paragraph, which imposes capital punishment for violations of the code, the code is more moral than legal. The purposes of the code were to preserve the physical and spiritual integrity of the tribe, which were the purposes of Cherokee tribal customs and Great Plains Indians police.

Conclusion

The motivation behind the legal systems of the Cherokees, the Great Plains, the central prairie, and the woodlands Indians was tribal order, harmony, and peace. In the Cherokee Tribe, murder was avenged through a blood vengeance procedure, which was firmly entrenched in a matrilineal clan system. Blood vengeance quelled any tribesman's compulsion to take the law into his own

18. Thompson, *supra* note 14, at 215-16.

hands; blood vengeance not only allowed but demanded revenge. Once a blood debt was satisfied between two clans, the feud ceased and good feelings were restored. The Cherokees used their highly social nature to deter and punish crime. The satirical sanctions were only effective because Cherokees valued self-esteem and needed to belong to a community. Related to this, the fact that Cherokees often shared personal property deterred theft.

The Great Plains tribes, unlike their Cherokee, central prairie, and woodland brethren, had active legislative and law-enforcement bodies. Their nomadic existence and the topography and fauna of their region dictated that tribal order be strictly maintained. When a tribe changed camp sites, they were particularly vulnerable to attack; adherence to police orders ensured the tribe's safety. Because Great Plains tribes depended on the buffalo, anyone who disrupted a hunt or scared off a herd necessarily had to be punished—obeying police directions served to benefit tribal welfare. One person's disobedience, for example, chopping wood while a herd was near or prematurely attacking the herd during a hunt, jeopardized the entire tribe's take of meat and hides.

The Cherokee legal system was influenced by their terrain. The rugged mountains separated the people into many towns and districts, making the clan system essential to the maintenance of nationhood. On the Great Plains, generally only crimes against tribal welfare and order were punished. Private disputes between tribe members were left to the parties to resolve.

In their system of maintaining tribal order, the central prairie and woodland Indians experienced less police influence than the Great Plains tribes, and unlike the Cherokees, they compensated a murder victim's kin, rather than taking the killer's or the killer's clansman's life. The central prairie and woodland regions were more bountiful than the Great Plains region, and the central prairie and woodland tribes (with the possible exception of the Shawnee) were much less nomadic than the Great Plains Indians; hence, a powerful police force was not necessary. Able-bodied braves and "warriors of approved valor" sufficiently protected the tribe from outside attack and internal conflict.

The central prairie and woodland Indians' compensatory homicide settlements, handled by ad hoc committees of elder tribesmen contrasted with the Cherokee blood vengeance settlements. The central prairie and woodland Indians feared that interfamily killing would be perpetuated and tribal harmony disrupted by a blood vengeance system. This interest in tribal peace was coupled

with the reasoning that it was better to be compensated for the loss of a kinsman than to receive nothing, and killing the killer would not bring the victim back to life.

The Shawnees of the central prairie and the woodland regions were unusual in that they had a written criminal code that addressed the new problem of frequent Indian-Anglo interaction. The necessity for a written code was an ominous indication that while tribal customs were adequate for upholding tribal harmony as long the American Indians lived in isolation in the mountains, on the prairies, in the woodlands, and on the plains, this harmony would dissipate once whites began to utilize the continent's natural resources on a large scale.

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