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The Saga of Tsali: Legend Versus Reality

By JOHN R. FINGER*

Every racial or ethnic group has certain heroes who symbolize the aspirations and accomplishments of its members, and for the Cherokee of North Carolina one such figure is Tsali (known as "Charley" to whites of his day). Accounts of his heroism vary, but the most prevalent story can be quickly summarized: Tsali and his family were among the thousands of Cherokee residing in Georgia, Alabama, Tennessee, and North Carolina who were rounded up by the United States Army in 1838 in preparation for their enforced removal westward over the infamous "Trail of Tears." During the roundup Tsali's wife was brutally mistreated by the soldiers. Enraged, Tsali killed one of his captors and escaped with his family into the Great Smoky Mountains, where several hundred other Indians were already hiding. Major General Winfield Scott, the officer in charge of removal, did not relish the prospect of tracking down the scattered bands in such rugged terrain. He had already removed most of the Cherokee Nation, and the relatively few fugitives were occupying land that was of little value to whites. So, the story goes, Scott agreed to ignore most of the fugitives—in effect giving his tacit consent for them to remain in North Carolina—if they would turn in Tsali and his accomplices in murder. When informed of this, Tsali said that he did not wish to have his own people track him down, and he surrendered voluntarily. As a final humiliation, the army required the other fugitive Cherokee to execute Tsali, two of his sons, and a brother.¹

From these accounts, then, the heroic Tsali emerges and becomes readily definable. He sacrificed his own life so that his people could remain in their North Carolina homeland; later they would coalesce into the Eastern Band of Cherokee Indians. As the anthropologist Paul Kutsche points out, Tsali thus combines some of the attributes of George Washington (the father of his nation) and Jesus Christ (who died so that others might live).² Today the hagiography of Tsali takes its most visible form in the romanticized outdoor pageant, *Unto*

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¹This is the account found in James Mooney, "Myths of the Cherokee," U.S. Congress, House of Representatives, *Nineteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, 1897-98*, House Documents, Fifty-sixth Congress, Second Session (Washington, D.C.: Government Printing Office, 1900), No. 539, Part 1, pp. 131, 157-158, hereinafter cited as Mooney, "Myths of the Cherokee." Mooney's portion of the report has been reprinted as *Myths of the Cherokee and Sacred Formulas of the Cherokees* (Nashville, Tenn.: Charles Elder, 1972).

²Paul Kutsche, "The Tsali Legend: Culture Heroes and Historiography," *Ethnohistory*, 10 (Fall, 1963), 343, hereinafter cited as Kutsche, "The Tsali Legend."



These Hills, witnessed annually by thousands of tourists visiting the Qualla Boundary Reservation and the town of Cherokee, North Carolina. The pageant purports to depict the origins of the Eastern Band and devotes considerable attention to Tsali's heroic role (though the theatrical version of Tsali differs somewhat from most published accounts).³

The best-known scholarly account of Tsali was written by the eminent ethnologist, James Mooney, and appears in his "Myths of the Cherokee," published in 1900.⁴ Mooney's principal sources for the Tsali episode were William Holland Thomas, who had been a participant in the events, and Washington (Wasituna), Tsali's youngest son. But Mooney interviewed the two men more than fifty years after the occurrence of the events they were attempting to recall. Thomas, moreover, was a very old man suffering from mental illness when Mooney met him, and he apparently never told the ethnologist about his important documentary materials relating to Tsali. Despite the questionable reliability of Mooney's informants, most writers continue to rely upon his account when discussing Tsali. Some also include oral traditions that persist among the North Carolina Cherokee, but these are suspect because they vary so remarkably and contain details conflicting with known circumstances of 1838.⁵

³The pageant is staged throughout each summer tourist season. The script was written by Kermit Hunter and published as *Unto These Hills: A Drama of the Cherokees* ([Chapel Hill]: University of North Carolina Press for the Cherokee Historical Association, [1951, c. 1950]). According to figures supplied by the Cherokee Historical Association, the sponsor of *Unto These Hills*, the drama has attracted a total audience of more than 3.6 million people from its first staging in 1950 through the 1978 season. Laurence French has recently criticized both *Unto These Hills* and the Cherokee Historical Association in "Tourism and Indian Exploitation: A Social Indictment," *Wassaja* ("A National Newspaper of Indian America"), September, 1977.

⁴Mooney, "Myths of the Cherokee," 131, 157-158. As an ethnologist, Mooney was most concerned with the traditions, legends, and myths among the Cherokee. He did not view Tsali's heroism as a myth, however, but as a well-substantiated event. The thrust of this article is to show that Mooney's title is ironically appropriate for Tsali as well.

⁵Accounts relying in large part on Mooney include Alberta and Carson Brewer, *Valley So Wild: A Folk History* (Knoxville: East Tennessee Historical Society, 1975), 65-67; John P. Brown, *Old Frontiers: The Story of the Cherokee Indians from Earliest Times to the Date of Their Removal to the West, 1838* (Kingsport, Tenn.: Southern Publishers, 1938), 520-522, hereinafter cited as Brown, *Old Frontiers*; Samuel Carter III, *Cherokee Sunset: A Nation Betrayed* (Garden City, N.Y.: Doubleday and Company, 1976), 235-236; Ralph Henry Gabriel, *Elias Boudinot, Cherokee, & His America* (Norman: University of Oklahoma Press, 1941), 169-170; Chapman J. Milling, *Red Carolinians* (Chapel Hill: University of North Carolina Press, 1940), 367-368; Henry M. Owl, "The Eastern Band of Cherokee Indians Before and After the Removal" (unpublished master's thesis, University of North Carolina, Chapel Hill, 1929), 91, 101-105; Douglas L. Rights, *The American Indian in North Carolina* (Winston-Salem: John F. Blair, second edition, 1957), 196, 200-202; W. R. L. Smith, *The Story of the Cherokees* (Cleveland, Tenn.: Church of God Publishers, 1928), 166-167, 224-225, hereinafter cited as Smith, *Story of the Cherokees*; Marion L. Starkey, *The Cherokee Nation* (New York: Alfred A. Knopf, 1946), 326-328, hereinafter cited as Starkey, *Cherokee Nation*; and Robert Sparks Walker, *Torchlights to the Cherokees: The Brainerd Mission* (New York: Macmillan Company, 1931), 328-329.

Among the accounts containing oral and "traditional" stories of Tsali are Gloria Jahoda, *The Trail of Tears* (New York: Holt, Rinehart and Winston, 1975), 226-227; Mollie Sequoyah in Kutsche, "The Tsali Legend," 340-343; Grace Steele Woodward, *The Cherokees* (Norman: University of Oklahoma Press, 1963), 12-13, hereinafter cited as Woodward, *The Cherokees*; and Dale Van Every, *Disinherited: The Lost Birthright of the American Indian* (New York: William Morrow and Com-

The most important attempt to analyze critically some of the Tsali accounts has been Paul Kutsche's 1963 article in *Ethnohistory*.⁶ Kutsche discussed the versions related by Mooney, Charles Lanman, Mollie Sequoyah, and several United States Army officers.⁷ Unfortunately, two factors prevented his being able to assess adequately the historical accuracy of these conflicting stories: he was apparently unaware of other evidence that would have helped him to do so; and, more important, his major interest was not in what actually occurred but in explaining how the informants' different views reflected their cultural biases.

For the historian interested in the Tsali story, a fundamental question remains: what actually happened? One of the few scholars to go beyond Mooney's narration of events is Mattie Russell. Her unpublished doctoral dissertation (1956) on William Holland Thomas includes an account of the Tsali episode which refutes portions of Mooney's and is the most detailed and accurate heretofore written.⁸ Russell provides a rough framework for the reconstruction of the episode and, with the recent discovery of even more evidence, it is possible to present a fairly complete account of the events surrounding Tsali's death. It is also possible to answer a related question: does the historical Tsali match the legendary figure?

In order to understand what took place, it is necessary to know something about the legal status of the North Carolina Cherokee during removal. These Indians were always considered a marginal offshoot of the main portion of the Cherokee Nation, whose population was concentrated in northern Georgia and southeastern Tennessee. Nonetheless, the treaty providing for removal, signed in 1835 by a minority of the tribe at New Echota, Georgia, applied to the North Carolina Cherokee as well as to the rest. One group of Cherokee, however,

pany, 1966), 262-264, hereinafter cited as Van Every, *Disinherited*. Starkey, *Cherokee Nation*, 328-329, has an interesting discussion of the conflicting stories among the Cherokee.

Relying upon neither Mooney nor "traditional" accounts is Nathaniel C. Browder, *The Cherokee Indians and Those Who Came After: Notes for a History of Cherokee County, North Carolina, 1835-1860* (Hayesville: Draft copy, 1973), 68-70, 225-257, hereinafter cited as Browder, *The Cherokee Indians*. Browder debunks nearly every other account of Tsali while offering only a bare outline of his own version. Also highly critical of the "Mooney Myth" is Fred B. Bauer, *Land of the North Carolina Cherokees* (Brevard, N.C.: George E. Buchanan, 1970), 24-25, 54-56. An author who recognizes the discrepancies between Mooney's version and the military dispatches is Michael Frome, *Strangers in High Places: The Story of the Great Smoky Mountains* (Garden City, N.Y.: Doubleday and Company, 1966), 117-119. A detailed version of the Tsali episode relying in large part on two alleged witnesses is John Preston Arthur, *Western North Carolina: A History (From 1730 to 1913)* (Raleigh: Edwards and Broughton, 1914), 577-579, hereinafter cited as Arthur, *Western North Carolina*.

⁶Kutsche, "The Tsali Legend," 329-357.
⁷Charles Lanman, *Letters from the Alleghany Mountains* (New York: George P. Putnam, 1849), 112-114, hereinafter cited as Lanman, *Letters from the Alleghany Mountains*. Mollie Sequoyah, an Eastern Cherokee, gave an oral account of the Tsali incident to Kutsche and his wife. The army officers' reports, with appropriate citations, appear later in this article.

⁸Mattie Russell, "William Holland Thomas, White Chief of the North Carolina Cherokees" (unpublished doctoral dissertation, Duke University, Durham, 1956), 85-91, hereinafter cited as Russell, "William Holland Thomas"; see also her article, "Devil in the Smokies: The White Man's Nature and the Indian's Fate," *South Atlantic Quarterly*, 73 (Winter, 1974), 63-69, hereinafter cited as Russell, "Devil in the Smokies." It is unfortunate that Dr. Russell's dissertation has received so little attention from historians and others who have written about the Eastern Band of Cherokee Indians.



Andrew Jackson Smith (1815-1897), a native of Pennsylvania and an 1838 graduate of the United States Military Academy, was a second lieutenant in the First United States Dragoons at the time of the Cherokee removal. He remained attached to the First Dragoons until 1861, after which time he served as a general in various United States Cavalry units. Photograph (ca. 1864) courtesy Library of Congress, Washington, D.C.

The following day they managed to find Tsali's camp, situated on a steep cliff near where the Tuckasegee River joins the Little Tennessee. Thomas, in an account written eight years later, said that he and the soldiers spotted the Indians' rifles leaning against a tree and managed to get to them before the Indians could react. Neither Lieutenant Smith nor his immediate superior, Lieutenant C. H. Larned, noted this in their official reports of 1838. Larned merely mentioned that "two of the fugitives were armed with good rifles" and that all of them surrendered "without difficulty or resistance." There were eight Indians in camp, but it was Smith's understanding that twenty belonged to Tsali's group. Hoping the remainder would soon come in and surrender, he decided to spend the night in camp with the Indians under guard. By morning four more fugitives had arrived, raising the number of captives to twelve—five men, including Tsali, and seven women and children.¹⁰ Though the army documents are silent on the point, Mooney identified the other captives as Tsali's wife, brother, three sons, and their families.¹¹

On the same morning, November 1, a messenger brought Lieutenant Smith orders to return immediately to Fort Cass and also conveyed the disquieting news that the original sixteen Indian prisoners had escaped. Smith promptly

¹⁰William H. Thomas to General Winfield Scott, March 7, 1846, William Holland Thomas Papers, Manuscript Department, Duke University Library, Durham, hereinafter cited as Thomas Papers. Lieutenant A. J. Smith to Lieutenant C. H. Larned, November 5, 1838; and Lt. Larned to Maj. Gen. Scott, November 5, 1838, Records of the Bureau of Indian Affairs, Letters Received, 1824-1881 (Cherokee Emigration), Record Group 75, National Archives, Washington, D.C., hereinafter cited as RG 75 (Cherokee Emigration). See also Russell, "William Holland Thomas," 85-86. The letter of Lieutenant Smith was published in the following Washington, D.C., newspapers: *Globe*, November 17, 1838; *Daily National Intelligencer*, November 19, 1838; and *Niles' National Register*, November 24, 1838, hereinafter cited as *Globe*, *Daily National Intelligencer*, and *Niles' National Register*.
¹¹Mooney, "Myths of the Cherokee," 131; see also Arthur, *Western North Carolina*, 578.

sent the messenger to tell the rest of the soldiers to join him on the march; then, expecting to consolidate his command before sunset, he set out with his three enlisted men and twelve prisoners. For some unexplained reason, Thomas did not accompany them. Smith allowed the Indians to carry their rifles, but only after removing the locks and confiscating their powder and ball.¹² Mooney's and most other accounts—published and oral—claim the Indians were mistreated during the day's march. The soldiers supposedly even prodded Tsali's wife with a bayonet to make her move faster.¹³ The official army reports say nothing about such mistreatment, and, in fact, General Scott in his report to the War Department emphasized the kindness accorded the captives.¹⁴ Under the circumstances, of course, one would hardly expect the officers to comment about such abuses, had they occurred. Whatever the truth, Smith and his men found nothing on the part of the Indians to arouse suspicion during the day. But that evening, according to Smith's report,

I discovered an unwillingness among the Indians to travel, & in order to make greater speed, I put some of the children on horses, but it was with great difficulty that I could then get them along. I suspected all was not right, & frequently cautioned the men to be on their guard. Shortly after sunset I discovered a long dirk knife in the possession of one of the Indians, & ordered it to be immediately taken from him. He turned it over without any hesitation, & we had proceeded but a short distance before I spied an axe or _____ which I also ordered to be taken from them, but, I am sorry to say, too late, for I had scarcely finished the order, before I saw the axe buried in the forehead of one of my men. This being the signal for attack the others fell immediately to work, & in less than one minute they killed two, wounded a third, & commenced searching them, & carrying off every article they could lay their hands on. I, fortunately, escaped unhurt, & owe my life in a measure to the spirit & activity of my horse.¹⁵

A few days after these events, following an interview with Smith, Lieutenant Larned filed a report with General Scott which provided additional information. Larned said that during the day of November first two of Smith's men had dismounted "in order to give their horses to the women and children." They had continued traveling without incident until, "just at sunset," Smith spotted the Indian carrying a dirk and had it taken. After this, Larned said,

¹²Lt. Smith to Lt. Larned, November 5, 1838; Lt. Larned to Maj. Gen. Scott, November 5, 1838, RG 75 (Cherokee Emigration); Thomas to General Scott, March 7, 1846, Thomas Papers. Smith said the first group of Indian prisoners numbered sixteen, while Larned said fifteen.

¹³Mooney, "Myths of the Cherokee," 131. Other accounts relate more extreme brutality. Mollie Sequoyah says that Tsali's infant child was accidentally killed as a consequence of the soldiers' cruelty. Kutsche, "The Tsali Legend," 341. The pageant *Unto These Hills* has Tsali's wife being killed by a drunken soldier. Woodward, *The Cherokees*, 12-13, has an oral account of how an Indian maiden, about to be raped by two soldiers, killed them with Tsali's hatchet. The chivalrous Tsali stoically accepted the blame to save his people from further trouble. See a similar tale in Van Every, *Disinherited*, 263-264.

¹⁴Maj. Gen. Scott to War Department, November 6, 1838, RG 75 (Cherokee Emigration).
¹⁵Lt. Smith to Lt. Larned, November 5, 1838, RG 75 (Cherokee Emigration). Although Smith was in the First Dragoons, the slain enlisted men belonged to the Fourth Infantry Regiment. Browder, *The Cherokee Indians*, 68-69, reprints this letter and condemns Lt. Smith for fleeing from the Indian murderers.

all went on quietly for a short time when just after passing a laurel branch Lieut Smith perceived a small axe in the hands of another Indian who walked in front of him close behind the rear man of his party and before the command "take away that axe" could be wholly uttered the weapon was buried in the brain of the Soldier, who fell lifeless beneath the feet of Lieut Smith's horse, while at the same instant the Corporal in front of the party was mortally wounded by a blow with the butt of a rifle, the third man nearly stunned with a Tomahawk and three Indians seized the Lieut himself, who was enabled to break from their grasp only by the spirit and activity of his horse, which terrified by their yells sprang off instantly at full speed. He was pursued immediately by one of the Indians with the loaded musket taken from the Corporal[] but only for a short distance, when his pursuer [sic] returned to the main body and after rifling the dead and wounded men, the whole of them sought refuge in the mountains which rose abruptly from the road. The men for whom Lieut Smith had sent in the morning came up very soon after and every effort was made to recover some of the Indians, but it was already dark and the mountains into which they had plunged barely practicable by day light, the search therefore was soon discontinued.

The Corporal died that night and Lieut Smith in obedience to the orders which he had received returned immediately to Fort Cass."

From the reports of Smith and Larned, it appears that the Indians had acted in concert in making their escape; Mooney says they made their plans while conversing in Cherokee, confident the soldiers could not understand what they were saying.¹⁷ Army reports do not indicate which of the culprits was Tsali, but popular accounts and traditions would lead one to believe it was either the man with the ax or the rifle.

Thomas rejoined Smith the same evening of the murders and then accompanied him to Fort Cass, where the officer wrote his official report to Larned. This document was dated November 5, as was Larned's report to General Scott at his headquarters in Athens, Tennessee. Scott promptly informed the War Department of the incident and summoned Thomas and Colonel William S. Foster, commander of the Fourth Infantry Regiment. Thomas's expertise in Indian matters could be most helpful to Colonel Foster, who was to be in charge of a punitive expedition. Scott's succinct orders to Foster, dated November 7, specified three main objectives: (1) "The Individuals guilty of this unprovoked outrage must be shot down"; (2) the white families living in the area must be protected; and (3) Foster must "collect all, or as many as practicable, of the fugitives (other than the murderers) for emigration." Scott was careful, however, to distinguish between Thomas's Oconaluftee Indians and the fugitives. The former were "not to be considered fugitives, or to be interrupted, if they continue, as heretofore, peaceable & orderly," while the latter "can now only be considered as so many outlaws." Scott gave Foster considerable discretionary authority, including the mustering of volunteers for a one-month period. Foster's mission would be completed, Scott said, when he had "done enough to satisfy national honor in respect to the murders & murderers mentioned."¹⁸

¹⁷Lt. Larned to Maj. Gen. Scott, November 5, 1838, RG 75 (Cherokee Emigration).

¹⁸Mooney, "Myths of the Cherokee," 131.

¹⁹Maj. Gen. Scott to Colonel William S. Foster, November 7, 1838, RG 75 (Cherokee Emigration).



Major General Winfield Scott (1786-1866), one of America's most distinguished soldiers, was placed in charge of the Cherokee removal. Scott offered no objection to the decision of Colonel William Stanhope Foster to permit Euchella's band of Cherokee to remain in North Carolina following the execution of Tsali. Engraving courtesy American History Division, New York Public Library, Astor, Lenox and Tilden Foundations.

In his report to the War Department, Scott declared that the murders were "wholly unprovoked." Despite this, his orders to Foster would have "nothing in them of a vindictive character, except as regards the murderers." He remarked that most of the Cherokee were indignant about the murders and that it would be easy to obtain the services of many warriors in apprehending the killers. "I shall, however, only accept the services of a few runners . . . deeming it against the honor of the United States to employ, in hostilities, one part of a tribe against another."¹⁹

Scott may have been reluctant to employ one part of the Cherokee Nation against another, but he had no such qualms about using William Thomas and his Indian wards to track down the fugitives: "Col. Foster will also have the aid, as runners, guides, and interpreters, of some of Mr. Thomas's Oconeluftee Indians, as well as the personal services of Mr. Thomas himself, who takes a lively interest in the success of the expedition."²⁰ Later events suggest that Scott verbally made two additional points in his instructions to Foster and Thomas: first, they should keep the other fugitive Cherokee from allying with Tsali's band; and, second, some of those fugitives might be allowed, under Foster's discretionary authority, to remain in North Carolina if they helped apprehend the murderers. Although the latter instruction would contravene Scott's statement to the War Department about not using tribal members against one another, the

¹⁹Maj. Gen. Scott to War Department, November 6, 1838, RG 75 (Cherokee Emigration). Relevant portions of this letter were published in the *Globe* on November 17, 1838, in the *Daily National Intelligencer* on November 19, 1838, and in *Niles' National Register* on November 24, 1838. See also a similar letter from Scott to James Monroe, November 9, 1838, W. H. Thomas Collection, Archives and Special Collections Division, Western Carolina University Library, Cullowhee, hereinafter cited as Thomas Collection, WCU. (This James Monroe should not be confused with the former president, who died in 1831.)

²⁰Maj. Gen. Scott to War Department, November 6, 1838, RG 75 (Cherokee Emigration).

List of cherokees who
serv'd in capturing Charley and
others,

Flying squirrel,	Stekoe
Shcikihi	son of chogyah,
wah chaucha	son of chogyah,
Yonachuheyah	Big, Tannah
Blip Tjionshala	Little John
Tiw onceska	John Ewoks,
John Tannege	Ahquottaga
wah honyah Cagasha	ohyusha,
wah hahoo,	Bob Love
Tillchah or Chumouhinka,	Amazona,
castorham,	old Lowon
George,	Howestekuh
Little swaga,	Blch Johnson
Loyon	John Big Tasha
son of Jophib, BT,	Yonachuheyah
Tannictosleh	son of Duke Lower
Tiveyondia or	son of young ashka
Ground squirrel	Calip's son
Larkson Blythe	Pantley's son
Tinjahah	Moahah
or a bowie,	Tjionshala's son
	Castor's son of ashka

This "List of cherokees who serv'd in capturing Charley and others," in the handwriting of William Holland Thomas, is from the William Holland Thomas Papers, Manuscript Department, Duke University Library, Durham; reproduced by permission.

actions of Foster and Thomas indicate they believed Scott would accept such a quid pro quo with the fugitives.²¹

Thomas refused Scott's offer of liberal compensation for undertaking a possibly hazardous mission by saying he did not want anyone to question his motives. After setting out from Athens with Foster and the troops, he soon moved ahead to enlist the aid of his Oconaluftee wards. Upon arriving at Quallatown, Thomas sent out some warriors to locate Euchella (Utsala), another Cherokee fugitive and leader of a ragged, starving handful of people. Euchella's wife and son had recently died of hunger while hiding in the mountains, and the old warrior was understandably bitter toward the whites. Yet, he could be of immeasurable assistance in finding his fellow fugitive and friend, Tsali (they had resided near one another along the Nantahala River). Thomas apparently conveyed to Euchella the possibility of remaining in North Carolina with the Oconaluftee if he and his band would aid in capturing the murderers. This is the most plausible explanation for the warrior's arrival at Quallatown on November 12, ready to lead his men in pursuit of Tsali. The Oconaluftee provided an additional force, under the command of Flying Squirrel. The total number of Indians joining the search was about sixty.²²

The most important information concerning the pursuit of Tsali is included in several letters and enclosures sent by Colonel Foster to General Scott. These are located in the Records of the Adjutant General's Office at the National Archives, and for some unknown reason all but one have been almost totally ignored by scholars. The first letter, dated November 15, 1838, was written at "Camp Scott," on the Little Tennessee River in Macon County, North Carolina, where Foster and his regiment had been since the evening of November 12. On the morning of that day, Foster reported, Lieutenant Larned and William Thomas, with a mounted company of men, had left for the Oconaluftee River "in pursuit of old Charley and his sons." Two days later Captain George Archibald McCall took a company of men and two Indian guides to the mouth of Deep Creek (the site of present-day Bryson City) and from there followed it into the mountains to its source; from that point McCall was to cut eastward and link up with Lieutenant Larned, who was working his way westward from the Oconaluftee River and

²¹See Thomas to General Scott, March 7, 1846, Thomas Papers; and William H. Thomas, *Argument in Support of the Claims of Cherokee Indians . . . and Per Capita Allowance* (Washington, D.C.: N.p., 1839), 19, on microfilm reel No. 2 of W. H. Thomas Papers, Newspapers and Microforms Department, Duke University Library, Durham, hereinafter cited as Thomas, *Argument in Support of the Claims of Cherokee Indians*; see also Mooney, "Myths of the Cherokee," 157. The two Cherokee commissioners later said that Foster had made such an agreement with the Indians "in pursuance of instructions from General Winfield Scott." *Memorial of the Cherokee Indians*, 16. In his memoirs, Scott said nothing about the Tsali episode and surprisingly little about Cherokee removal. See Winfield Scott, *Memoirs of Lieut.-General Scott, L.L.D.* (New York: Sheldon and Company, 2 volumes, 1864), I, 301-330.

²²In his 1839 account of this incident, Thomas indicated that the Oconaluftee Indians made the only contact with Euchella. Thomas, *Argument in Support of the Claims of Cherokee Indians*, 19. In 1846, however, he said that he had gone with a single guide to Euchella's lair and personally convinced him to help. Thomas to General Scott, March 7, 1846, Thomas Papers. A similar version is in an account of 1849. Lanman, *Letters from the Alleghany Mountains*, 112-113. Thomas was seeking a favor from Scott in 1846, so it is possible he exaggerated his personal role in the events.

its branches. Other officers, each with competent guides, were scouring nearby areas but were hampered by rain and fog, "which, in these mountains turns day into night." Foster said he planned to examine a "perfect circle of thirty-five miles" around his camp.²¹

Foster informed Scott that he had already accomplished one of his assignments—namely, to protect and reassure the "poor and ignorant population" of the area. A second order, to assemble the fugitives other than the murderers, would also be easy to achieve inasmuch as they numbered fewer than 100 and were starving. But the primary goal—to capture and punish the murderers—"is from the smallness of their numbers & the nature of the country yet doubtful." Foster assured Scott, however, that his men and allies were on the trail of the culprits, "and these mountains can never again be a place of refuge to them." He did not mention that his allies included Euchella's band and the Oconaluftee Indians, who had been on the trail of Tsali for several days.²²

On November 19 Foster again reported to Scott, this time to announce "that I have captured (through the exertions of Mr. Thomas, the O. co ne lufty Indians, and Euchella's band, headed by himself) two of the murderers." They were Tsali's oldest son, Nantayalee Jake, and Nantayalee (or Big) George, who, according to Foster, "were the principal actors in the murder." Also taken prisoner were Tsali's wife and the wife and little daughter of George. Euchella's men and the Oconaluftee, by then numbering about forty, were aiding the mounted company "in close pursuit of the remaining murderers." Of the three men still uncaptured, Foster said, only one, Lowen, "was active in the murder." Thus, Foster's informants indicated that at most Tsali had played only a minor role in the murders.²³

Just five days later, on November 24, Foster triumphantly notified Scott that his mission was finished. Of the twelve Indians held as prisoners by Lieutenant Smith at the time of the murders, all but Tsali had been captured. Three adult males "were punished yesterday morning by the Cherokees themselves in the presence of the 4th Regt. of Infantry." Only in this indirect manner did Foster acknowledge the executions that had taken place. Tsali's son Washington was

²¹All of Colonel Foster's letters and enclosures were included with a letter General Scott sent to the Adjutant General Maj. Gen. Winfield Scott (from Headquarters, Eastern Division, Utica, New York) to Adjutant General's Office, December 28, 1838, Records of the Adjutant General's Office, 1789's-1917, Letters Received, Main Series, 1822-1860, File Designation S-568-1838, Record Group 94, National Archives, hereinafter cited as RG 94. See specifically Colonel Foster to Maj. Gen. Scott, November 15, 1838 (enclosure "A" of S-568-1838), RG 94.

²²Colonel Foster to Maj. Gen. Scott, November 15, 1838 (enclosure "A" of S-568-1838), RG 94. Foster also reported that Tsali and two sons, John and Nantayalee Jake, had separated from the two other male fugitives, Nantayalee George and Lowen. It is probable that the son Foster called "John" was actually Washington. The 1850 census for Haywood County lists an Indian named John Washington who was the appropriate age. Seventh Census of the United States, 1850: North Carolina, Haywood County, Population Schedule, 59, copy in the Archives, Division of Archives and History, Raleigh. If John and Washington were not the same person, there remains the problem of what became of John, who was not among those executed. It is unclear what relationship, if any, Tsali had with Nantayalee George and Lowen (whom Thomas called "Lowna"). Thomas, *Argument in Support of the Claims of Cherokee Indians*, 19.

²³Colonel Foster to Maj. Gen. Scott, November 19, 1838 (enclosure "B" of S-568-1838), RG 94.

spared because of his youth. The most interesting aspect of this letter is that Foster viewed his mission in the mountains as completed, although Tsali was still at large. This would be logical enough if, as Foster had earlier indicated, Tsali was not a principal figure in the murders.²⁴

In the same communication Foster included a strong plea that Euchella and his band be allowed to remain in North Carolina:

All the objects of your instructions have been fully complied with; (the emigrating of the Outlying Indians alone excepted) and these General are very few in number; and they consist principally of Euchella's band; this band and their chief, from the first have behaved nobly; himself, his brother, and Wau-chu-sha-[sic] and six others are the only men of this band; in all about Forty Strong. I have given them in writing my permission in consequence of their friendship, indefatigable, & untiring industry, in the late pursuit, apprehension, & punishment, of the murderers, to remain in this country, so long as they conduct themselves as peaceable [sic] citizens of North Carolina, subject to the final decision of the Government [.] I march tomorrow for Fort Cass; upon my arrival at which place, I shall give you a detailed report of all my proceedings in this country: To remain here longer I consider as wholly unnecessary; I hear nothing of fugitives, or outlying Indians—(except Euchella's band.) I do not believe there are sixty souls, in the whole Country; perhaps fifteen or twenty grown men, poor, needy, naked, and destitute, entirely harmless, and wholly [sic] inoffensive, and even useful, to this sparsely settled Country: these Sixty Souls might, no doubt be collected in the next two months.²⁵

Foster enclosed a petition signed by thirty-one residents of the area. The petitioners testified that Euchella's band was "a well disposed, peaceable, inoffensive, body of people, mostly women and children principally unarmed & few in number" who had been "very useful to us the inhabitants of this district." They called attention to the band's recent service in apprehending the murderers and asked that they be permitted to remain in the area until the federal government "can finally decide upon the matter of their ultimate residence, with, or near, us." The petitioners pledged in the meantime to do their utmost to turn over any lawbreaker from the band to state authorities.²⁶

On the same day that he wrote to Scott, Foster issued the following proclamation:

Know all people by these presents, that I, William Stanhope Foster, a Colonel in the Army of the United States, in command of the Troops now in North Carolina do, in consideration of the general good character, & peaceable, inoffensive, and useful conduct of

²⁴Colonel Foster to Maj. Gen. Scott, November 24, 1838 (enclosure "C" of S-568-1838), RG 94. This letter mentions neither Tsali nor Washington by name, but the information it provides and later events justify inclusion of their names by this writer. Washington was apparently about sixteen years old in 1838.

²⁵Colonel Foster to Maj. Gen. Scott, November 24, 1838 (enclosure "C" of S-568-1838), RG 94. See also William H. Thomas, undated claim submitted to the United States government seeking payment of money spent to provide Euchella's band of Indians with food. Thomas Papers.

²⁶Petition dated November 18, 1838, signed at Joe Welsh's house, Macon County, North Carolina (enclosure "D" of S-568-1838), RG 94.

Copy

Head Quarters 5th Infantry
Camp Scott in State Line District
North Carolina 24th Nov 1838.

Know all People to these Presents That I
William Stanhope Foster, a Colonel in the Army of
the United States in Command of the District within
North Carolina, do in consideration of the general good
character and peaceable, industrious and useful conduct
of Euchella and his band of about thirty souls, combined
with his and their solemn pledges to live upon good
and peaceable conduct and obedience to the Laws of
North Carolina, as well as their promise to apprehend
and deliver every Offender of their tribe against such
Laws to the Civil Authority of the State, and more
particularly in consideration of his recent great actions
in pursuing, capturing, delivering, and finally, punishing
the Outlaws and Murderers of Charley, have granted to
them the aforesaid Euchella, his Brother, and all others of
his band as aforesaid, my permission to live in this country
as associates and Brothers of the O co ne luffy Indians
until a final decision shall be made in this matter by
the Government at Washington, and I do hereby charge
all Troops, and request all Citizens to respect this my
permission in the strictest manner, until such final decision of the
Government shall be made known.

Wm. S. Foster Col. in S. Army

A handwritten copy (corrected) of Colonel William Stanhope Foster's proclamation of November 24, 1838, granting to "Euchella and his band of about thirty Souls . . . permission to live in this country [North Carolina], as associates and Brothers, of the O co ne luffy Indians until a final decision shall be made in this matter. . ." From Federal Records, Bureau of Indian Affairs, Letters Received, 1824-1880, microfilm copy in State Archives.

Euchella and his band of about thirty Souls; combined with his and their solmen [sic] pledges to me given of good and peaceable conduct, and obedience, to the Laws of North Carolina, as well as their promise to apprehend, and deliver, any offender, of their tribe against such Laws to the Civil Authority of the State, and more particularly in consideration, of his recent good actions, in pursuing, capturing, delivering, and finally punishing the outlaws, and murderers, of Charley's band grant to him the aforesaid Chief, Euchella, his Brother, and all other of his band as aforesaid my permission to live in this country, as associates and Brothers, of the O co ne luffy Indians until [sic] a final decision [sic] shall be made, in this matter by the Government [sic] at Washington, and I do hereby charge all Troops, and request, all citizens to respect this my permission in the strictest manner, until such final decision of the Government shall be made known."

Foster wrote his final letter to General Scott on December 3, 1838. This is his one dispatch that has received previous attention from scholars. In it Foster reported that Euchella and Wa chu cha had finally captured Tsali himself and had executed him at noon on November 25, the day after Foster and his men had left the mountains. Thus, he said, the honor of both the United States and the Fourth Infantry Regiment had been satisfied. Foster reported that the only other fugitives he had encountered on his mission were members of Euchella's band, who were released upon "final termination of the affair." Because of their assistance in apprehending the murderers, he repeated his request that they be allowed to remain in the mountains with William Thomas and the Oconaluftee Indians. Foster made a special point of commending Drowning Bear (Yonagaska), the aged chief of the Oconaluftee, who had been both honorable and useful in the recent events.²⁹

Foster's reports provide little information about how the Indians were tried or how their executions were carried out. In his 1839 account of the affair William Thomas said simply that when the murderers were captured they still had in their possession the caps and other items taken from the dead soldiers. This physical evidence and the testimony of other Cherokee comprised an overwhelming case against them, and they admitted their guilt.³⁰

The Hamilton (Tennessee) *Gazette* reported that of the first eleven prisoners taken, Colonel Foster and his Cherokee allies agreed that three deserved death. Six Indian executioners were selected, two to fire at each of the condemned men; one was to aim at the head and the other at the heart. After Foster placed a "bandage" over the prisoners' eyes, the three were shot in the presence of the Fourth Infantry. The Indians were buried near the graves of the two soldiers they had slain. Foster, according to the newspaper, had so much confidence in the Cherokee to mete out proper punishment that he and his men did not remain for

²⁹Proclamation of Colonel William S. Foster, November 24, 1838 (enclosure "E" of S-568-1838), RG 94.

³⁰Colonel Foster to Maj. Gen. Scott, December 3, 1838 (unlettered enclosure of S-568-1838), RG 94. The fact that portions of this letter were published probably explains why it, out of several in S-568-1838 of RG 94, has received attention from scholars. See the *Globe*, January 4, 1839, and *Niles' National Register*, January 5, 1839. By the time Foster wrote this letter Scott had been transferred to New York State, where trouble was brewing along the Canadian boundary.

³¹Thomas, *Argument in Support of the Claims of Cherokee Indians*, 19.

the execution of Tsali. He was not disappointed, for Tsali was shot in the same manner.³² In the estimation of Thomas, at least, the Indian allies had thus accomplished in a few days what might have taken the army "months, and probably years" to conclude.³³

There is no evidence that Foster forced the Cherokee to perform the executions, and, in fact, one account says the Indians insisted upon executing their brethren themselves.³⁴ This is at least plausible, for during the previous century the Cherokee had on occasion given "satisfaction" by executing tribal members who were guilty of murdering outsiders.³⁵ Thomas stated that the Indians felt the executions were almost an obligation: Euchella told the doomed men "they must die for their offense, as the ancient custom existing between the whites and Cherokees, required life for life. They were then, as is the practice of the Cherokees, shot by his warriors."³⁶ On the other hand, it is possible that Euchella and the other Cherokee viewed the executions not as an ancient obligation but simply as an unpleasant necessity. Regardless of what the army actually required of them, they perhaps believed they had to perform the task in order to retain Colonel Foster's favor. Since many whites as well as Indians viewed removal as an injustice, Foster no doubt preferred that the records show the Cherokee rather than the army had executed the prisoners.

General Scott believed that Foster had handled his mission with his usual "intelligence, judgment & success" and expressed neither surprise nor anger over the decision to allow Euchella to remain in North Carolina. In January, 1839, the commissioners for Cherokee removal officially agreed to permit Euchella and his band to remain with the Oconaluftee. Eventually, after the vagaries of many years, these and a few other Indians in western North Carolina acquired a large tract of land and received recognition as the Eastern Band of Cherokee Indians—with full rights to remain in the state.³⁷

³²Undated extract from *Gazette* (Hamilton, Tennessee) published in *Niles' National Register*, January 5, 1839, and *Daily National Intelligencer*, January 7, 1839, hereinafter cited as *Gazette*. There was no mention of the source for the *Gazette* article. See also William H. Thomas to Matthew Russel, November 25, 1838, Thomas Collection, WCU. An army officer said that the victims had been tied to trees before being shot. Captain John Page to T. Hartley Crawford, commissioner of Indian Affairs, December 4, 1838, RG 75 (Cherokee Emigration); see also Arthur, *Western North Carolina*, 578-579.

³³Thomas, *Argument in Support of the Claims of Cherokee Indians*, 19.

³⁴Arthur, *Western North Carolina*, 578.

³⁵John Phillip Reid, *A Law of Blood: The Primitive Law of the Cherokee Nation* (New York: New York University Press, 1970), 150, 170-171; and Wilcomb E. Washburn, *The Indian in America* (New York: Harper and Row, 1975), 17-18. Reid has a detailed analysis of the practice of blood retaliation as it operated within the context of kinship.

³⁶Thomas, *Argument in Support of the Claims of Cherokee Indians*, 19. The *Hamilton Gazette* said that "'Blood for Blood' is the governing principle" of the Cherokee.

³⁷Maj. Gen. Scott to Adjutant General, December 28, 1838, S-568-1838, RG 94; *Memorial of the Cherokee Indians*, 16. For the story of the Eastern Cherokee in the years immediately following the Tsali episode, see Russell, "William Holland Thomas," chapters IV-XII; Russell, "Devil in the Smokies," 59-69; Mooney, "Myths of the Cherokee," 158-181; Charles C. Royce, "The Cherokee Nation of Indians: A Narrative of Their Official Relations with the Colonial and Federal Governments," U.S. Congress, House of Representatives, *Fifth Annual Report of the Bureau of American Ethnology*

And what of Tsali? It would be too much to expect that his story would escape the attention of writers more imaginative than William Thomas and Colonel Foster. As early as 1849 Charles Lanman, a Whig journalist, had set the stage for the emerging legend of a heroic Tsali by adding a romantic twist to his death. Lanman portrays Tsali making an impassioned speech before his execution, expressing his love for his homeland and family and rebuking Euchella.³⁸ Such a speech was almost a stock item for nineteenth-century writers succumbing to the "noble savage" literary convention. Perhaps Tsali made such a speech, but there was no mention of it at the time of his death. What is interesting about Lanman's account, however, is the fact that he had been a recent guest of Thomas and had presumably heard of Tsali from him. Perhaps in the 1840s Thomas believed a little embellishment of the episode would reflect well upon the Eastern Cherokee. In any case, the ennobling of Tsali begun in 1849 has continued. One writer calls him a "grand hero" who made the "supreme sacrifice" for his people.³⁹ Another says that he is a figure who has "soared to an eminence in Cherokee annals" comparable to that of great heroes like Sequoyah.⁴⁰ A third author, referring to his "sacrifice," says that "History records no finer act of patriotism."⁴¹ Yet another, reaching a conclusion that can hardly be disputed, calls him the "beloved idol" of the Eastern Band.⁴² Finally, the author of a recent novel about Tsali says the warrior "deserves a prominent place in the national heritage of the entire nation. . . . Surely Tsali can stand shoulders high with any other national hero."⁴³

One problem with hero worship is that the real person and his exploits often become obscured in shrouds of emotionalism, polemics, and selective forgetfulness. So it has been with Tsali. But on the basis of evidence now available, it is possible to make a number of conclusions about the whole episode that place him in a somewhat different light from that of the heroic legend.

First, there is no documentary evidence to support the charge that the soldiers of the United States Army mistreated Tsali and his band. General Scott, in fact, had specifically ordered his men to show every kindness toward the Indians during removal.⁴⁴ This does not mean that such cruelty did not occur—merely that a

to the Secretary of the Smithsonian Institution, 1883-84, House Documents, Forty-eighth Congress, First Session (Washington, D.C.: Government Printing Office, 1887), 313-316; and Richard W. Iobst, "William Holland Thomas and the Cherokee Claims," a paper presented at the Ninth Annual Meeting of the Southern Anthropological Society, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, in April, 1974. The meeting will be hereinafter cited as Ninth Annual Meeting, Southern Anthropological Society.

³⁸Lanman, *Letters from the Alleghany Mountains*, 113-114.

³⁹Smith, *Story of the Cherokees*, 167, 225.

⁴⁰Van Every, *Disinherited*, 263-264.

⁴¹Brown, *Old Frontiers*, 521.

⁴²Woodward, *The Cherokees*, 13.

⁴³Denton R. Bedford, *Tsali* (San Francisco: Indian Historian Press, 1972), x-xi. In stark and lonely contrast to the paeans of praise is Browder's conclusion that Tsali, "far from being a hero . . . met a fate appropriate to his deeds." Browder, *The Cherokee Indians*, 70.

⁴⁴Orders No. 25, Headquarters, Eastern Division, Cherokee Agency, Tennessee, May 17, 1838, in U.S. Congress, House of Representatives, *Removal of the Cherokees*, Executive Documents, War

reasonable doubt exists as to the army's culpability in the Tsali episode. What is clear is that the Indians willfully killed two soldiers rather than just one (who Mooney implies was accidentally slain).⁴⁵ And, if one is to believe Colonel Foster and his informants, the younger male Indians rather than Tsali were the principal actors in the murders.

The evidence regarding General Scott's role, while not clear-cut, does seem to sustain traditional accounts. Scott may well have told William Thomas and Colonel Foster they could promise the other fugitives that they would be left alone, at least for the time being, if they aided in the capture of Tsali. As for Thomas, it is obvious he was an important participant in the events, but there is no evidence to support Mooney's tale of his visiting Tsali's lair after the murders and personally convincing the Indian to surrender.⁴⁶ The documentary accounts, moreover, make it clear that Tsali did not surrender at all but was tracked down by other Cherokee, apprehended, and executed by them. Thus, there was no "noble sacrifice."

It is unfair to claim the army humiliated the Indians by having them execute Tsali and his cohorts; instead, the executions may logically be viewed either as a traditional Cherokee means of giving "satisfaction" to outsiders or simply as an action calculated to win Colonel Foster's favor. More important, the capture and execution of Tsali in no way affected the right of the Oconaluftee Cherokee to remain in North Carolina. These Indians already had at least tacit permission to stay. Only Euchella's small band directly benefited from participation in the events.⁴⁷

Finally, although Tsali does not measure up to his legend, he may be viewed as heroic insofar as he was consciously resisting the enforcement of an unjust, arbitrary policy—Cherokee removal. Unfortunately, there is no way of knowing what his thoughts or motives were at the time. But quite apart from what he actually did or his reasons for doing it, he provides a very legitimate symbol for the Eastern Band of Cherokee Indians, affirming their traditional attachment to their homeland. As long as his legend has meaning to his people it will continue to endure.

Department, Twenty-fifth Congress, Second Session (Washington, D.C.: Thomas Allen, 1838), No. 453, pp. 8-11.

⁴⁵Mooney, "Myths of the Cherokee," 131.

⁴⁶Mooney, "Myths of the Cherokee," 158. Assuming that Mooney faithfully related what was told him, it appears that the aged Thomas had created the story out of confused memories of his mission to Tsali's camp before the murders. Or, perhaps he willfully exaggerated his own exploits. Kutsche underestimates Thomas's role but is quite correct in saying that it had become exaggerated by Mooney's time. Kutsche, "The Tsali Legend," 346-348.

⁴⁷This point has been most recently made by Duane H. King in "The Origin of the Eastern Band of Cherokees as a Social and Political Entity," a paper presented at the Ninth Annual Meeting Southern Anthropological Society. A revised version of that paper will be published in the near future in Duane H. King (ed.), *The Cherokee Nation: A Troubled History* (Knoxville: University of Tennessee Press, [projected 1979]).