Mountain Politics: What Happens if the Wrong Party Wins?

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November 2, 1920 was election day throughout the United States. As war weary Americans went to the polls, anxious to put western Europe's problems behind them, Democratic presidential hopefuls Cox and Roosevelt lost to Republican stalemates Harding and Coolidge. Under new and untested leadership, the nation prepared to "return to normalcy," prosperity, and blessed isolationism. In North Carolina, however, normalcy meant that Democrats, not Republicans, carried all ten congressional districts by more than thirty thousand votes--reportedly the greatest majority in state history.[1] But as celebrations kicked-off across the Old North State, dark clouds were gathering over the western horizon.

After an evening of gaiety and great expectations, post-election day dawned a bit differently for Democrats in the mountain counties. As local editions hit the streets, partisans discovered that despite widespread support for national and state tickets, the Grand Old Party had swept Jackson County's races for the third time in recent years.[2] Even worse, five more western counties--Macon, Graham, Clay, Swain and Cherokee--also reported substantial increases in Republican majorities.[3] If Democrats were to regain control in western North Carolina, something would have to be done--and fast!

Before Jackson County Republicans had a chance to savor their victories, Democrats demanded a recount and complete canvass of the election. Partisan leaders knew that once the culprits in each district were identified and "put to the challenge," it would not take long to correct "mistakes" in balloting and declare the "true" winners. Although newspaper reports and court documents are helpful, lost records and the passage of time make it difficult to determine exactly what took place during the Canvass Board hearings. But this much is certain. The election was overturned in favor of local Democrats and because they supported the wrong political party in Jackson County, North Carolina, the Eastern Band of Cherokee Indians was disfranchised for the next twenty-six years on the grounds that they were wards of the federal government and not *bona fide* state citizens.[4]

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Although Americans often take citizenship and voting rights for granted, historically these were cherished and jealously-guarded privileges. In fact, before the 14th Amendment was ratified in 1868, only native-born whites were considered to be "natural" U.S. citizens with full rights and privileges. Naturalized citizens ran a

close second, of course, while recent immigrants and non-whites were barely in the race. The original constitution was vague on the subject of citizenship, leaving the states to set their own standards. Thus it remained for the Supreme Court to define the parameters. This was done in the mid-1850s amid the rising tensions of sectional strife.

When the Supreme Court handed down the *Dred Scott* decision in March 1857, Chief Justice Roger B. Taney's majority opinion shook the Union. In defining U.S. citizenship, the Chief Justice visualized two categories of eligible persons. First were "native-born whites" or those "descended from persons considered to be citizens of the several states at the time the constitution was adopted," and second, those naturalized after immigration. Although citizens must be native or naturalized, said Taney, all persons born on American soil were not citizens. Children of foreign ambassadors, Indians, and "persons of color in general" were excluded.[5] The Chief Justice based his opinion upon a narrow interpretation of the U.S. Constitution, in tandem with the Declaration of Independence and the Articles of Confederation. These documents had never granted said status to Blacks, thus Negroes could not become citizens [national or state] "by any means whatsoever."[6]

Taney's opinion created an interesting paradox. As a southern Federalist-turned-Democrat and staunch advocate of states' rights, the Chief Justice toed the party line. Individuals born in the U.S. derived their civil rights and national citizenship from their status as state citizens. Therefore state citizenship took priority over national.[7] A state might also grant state citizenship to persons born outside the United States (including the territories), but this did not make them American citizens. Aliens had to be naturalized according to uniform national immigration and naturalization laws. In upholding Congressional prerogatives to define those laws, Taney weakened his own position. By implication, if the federal government could undermine a state's authority to regulate citizenship within its borders by excluding Blacks, nothing was truly sacred. Nevertheless, Negro citizenship was declared unconstitutional--period.

Indians, on the other hand, as the nation's "aboriginal inhabitants," were "entirely eligible" for naturalization according to Taney. While they could not arbitrarily declare themselves to be citizens, Native Americans willing to separate from their tribes and owe allegiance to the United States government could become naturalized through acts of Congress, ratified treaties, or formal application.[8] Afterward they were entitled to the same rights and privileges as other "foreign immigrants." Unlike Blacks, Indians could also become state citizens if agreeable to the individual states.

In its primary form the *Dred Scott* decision was relatively short-lived. Following the Civil War the 13th, 14th, and 15th Amendments granted former slaves their freedom, citizenship, due process and equal protection under the law, and voting rights. In addition to overturning *Dred Scott*, Congress placed national citizenship above

state definition by establishing *jus soli* (birth on American soil) as the legal basis for U.S. citizenship. *Jus sanguinis* (citizenship of one's parents) had been favored up to that point. The 14th Amendment dealt the states' rights movement another blow by providing means by which an increasingly powerful federal government could reign in traditional powers of the states.

Thus by 1870, blacks were *bona fide* U.S. citizens possessing the same rights and privileges as whites--theoretically. But what about the masses of unnaturalized Indians? Did the Reconstruction Amendments apply to them as well? Although that would seem to be the case, the answer was no. A few stumbling blocks remained. These were elucidated by the *Elk v. Wilkins* case of 1884.[9]

In 1880, an Indian named John Elk was denied the right to vote in Nebraska on the basis of non-citizenship. Elk later filed suit claiming that his civil rights under the 14th and 15th amendments had been violated. The case eventually reached the Supreme Court. Because the issue had been hotly debated in Congressional hearings on the Civil Rights Bill of 1866 and the 14th Amendment, the majority ruled that the framers and supporters of those bills had not intended to grant blanket citizenship to "wild, roaming Indians." Two anti-Indian clauses had been written into the amendment's final draft in order to avoid such confusion.[10]

The *Elk* ruling also upheld those portions of *Dred Scott* which applied to Indians. Birth on American soil did not make them citizens. In the absence of Congressional acts or treaties, Indians born or living within the "tribal condition" who were seeking to become U.S. citizens had to separate from their tribes, settle down, and apply for naturalization. They could not declare themselves to be American citizens by simply taking up residence among whites and paying taxes, as John Elk had done. This ruling was reinforced by *United States v. Wong Kim Ark* (1898).

Despite such legal complexities and entanglements, there were plenty of citizen Indians to be found. Among these was a small group of Cherokees living along the Oconaluftee River in the mountains of western North Carolina. As was frequently the case, trouble began when these Indians tried to exercise their rights and privileges and discovered them denied. Recalling that before 1868, although Native Americans could become naturalized by a variety of means, the rights associated with citizenship could only be obtained through the states in which they lived, especially the right to vote. National citizenship meant very little locally. Where Indians were accepted as state citizens they had civil rights and where they were not accepted, as in North Carolina, they had none.[11] After 1868, although naturalized, non-tribal, tax paying Indians were legally citizens of the U.S. and the states in which they lived, very little changed. Like Blacks, Native Americans remained at the mercy of their states.[12]

Because they met those criteria, one assumes that the Oconaluftees (of N.C.) became *de facto* citizens in 1868. Unfortunately, this was not the case. As the 14th Amendment neared ratification, hard times forced them to seek the aid and protection of the U.S. government.[13] Once recognized as a distinct tribe under the supervisory care of the Commissioner for Indian Affairs, the Eastern Band of Cherokees (formerly the Oconaluftees) were no longer eligible for citizenship. In practice, however, the state granted the Cherokees permanent resident status in 1866 (a reward for serving the Confederacy) and by 1868 North Carolina tacitly, if not officially, accepted the Band as tax paying, voting citizens.[14]

For the most part whites seem to have ignored the handful of Indian voters because they did not influence local elections. But as time passed and electoral margins grew slimmer, Democrats recognized that Cherokee votes cast for the GOP might one day stand between them and victory.[15] When that day arrived in November 1920, tolerance of Indian voters came to a screeching halt in Jackson County.

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Although controversy surrounding Cherokee citizenship boiled over in 1920, it had been simmering for nearly a century. In fact, efforts to prevent tribal participation in state and local politics may have begun as early as 1817. In that year an extensive land-cession treaty was negotiated by Major General Andrew Jackson. This treaty divided the Cherokee Nation into two units, East and West. In formally securing land beyond the Mississippi River for the Western Cherokees, Jackson encouraged those wishing to remain in the East to take up personal reservations and become U.S. citizens.[16] This was the only way they could be assured of retaining their ancestral homes and improvements. Of course, national citizenship meant virtually nothing without a *quid pro quo* from the states. And North Carolina refused to comply.

So many Eastern Cherokees wished to remain on ceded lands in North Carolina, Tennessee, Georgia, and Alabama, that another treaty was concluded in 1819 by Secretary of War John C. Calhoun.[17] Under these agreements federal lands in the West were exchanged in proportion to tribal lands in the East. With less acreage within the old Cherokee Nation open to white settlement, the 1819 cession was required to balance what had been granted in the Arkansas Territory.

Although most of the mountain Cherokees eventually moved west, agent Robert Houston reported that as of late November 1820, forty-nine heads of household had applied for North Carolina reservations under these treaties.[18] William Walker and Yona (Big Bear) received their reservations (and citizenship) as signees of the 1819 treaty, bringing the total of North Carolina reserves to fifty-one.[19]

As ceded territories became available, state officials wasted little time in surveying and selling acreage to whites. Predictably, some federally assured reservations were sold during this bonanza. As historians have indicated, this was probably due to the state's eagerness to obtain new territory and revenue from land sales rather than malicious intents to defraud the Indians.[20] It is also possible that although the

Indian lands had been surveyed and brought to the attention of the sales commissioner for this area, these tracts may not have been registered with local officials.[21] This was because Houston intended to ship the plats to Washington *en masse* after the surveyor completed his work in Alabama. The sales continued as federal and state authorities battled for jurisdiction in this matter.

Hostilities between citizen Indians and white settlers escalated for several years. Although the matter of jurisdiction could not be solved as handily, a landmark decision in *Eu-che-lla v. Welsh* (1824) upheld the Indians' rights to their land. The state was ordered to reimburse the Cherokees for acreage already lost and allow them to settle elsewhere in the area.[22] While a few returned to tribal lands, relinquishing their U.S. citizenship in the process, most remained in the vicinity of the Oconaluftee River where they became known as the Oconaluftee (or Qualla) Citizen Indians. Folk history notwithstanding, this group formed the nucleus of the latter-day Eastern Band of Cherokees.[23]

As time passed, the Qualla Indians remained aware that despite their legal status as landowners (and soon to be taxpayers), they would never be secure until North Carolina accepted them as permanent residents and citizens. Because they had been "imposed on, cheated, and defrauded" long enough, Chiefs Yonaguska, Long Blanket, and Wilnota, plus fifty-seven other citizen Indians, appointed John L. Dillard as their attorney and representative in June 1829. The Oconaluftees formally acknowledged their separation from the Cherokee Nation at this time.[24] Dillard was soon replaced by prominent businessman and politician William Holland Thomas, who had been adopted by the tribe as a youth.

Because the Qualla Indians were only marginally associated with the Cherokee Nation, they were not expected to move west when the Treaty of New Echota was signed in 1835.[25] But having learned not to rely on the kindness of strangers, the Oconaluftees took steps to safeguard their futures in December 1836. At this time they petitioned the North Carolina legislature for permission to remain in the state as citizens under Article 12 of that treaty.[26] They also requested legislation protecting them against fraud after the Nation moved west. The General Assembly acquiesced in passing the Indian Fraud Act in January 1837, which implied their right to remain in the state since it did not take effect until after removal. But despite Thomas's best efforts, racial and political considerations prompted legislators to withhold the brass ring by their refusal to declare the Cherokees to be full-fledged North Carolina citizens.[27]

This standoff continued for years. Because the (Oconaluftee) Citizen Indians were neither fish nor foul as far as the state was concerned, they were never secure in their property or civil rights. For this reason, Thomas purchased land for the Cherokees in the mountains of western North Carolina throughout the years when removal seemed to be a possibility. Having been instructed to convey this land "in

such a manner as to prevent it from being sold," with few exceptions Thomas kept the titles in his own name until well after the Civil War.[28]

When the War began, W. H. Thomas--now Colonel Thomas--realized the Confederacy would eventually press the Oconaluftees into service. Therefore, in a dual effort to keep the Indians together and improve their overall chances of remaining in the state, the Colonel mustered nearly 400 Indians into a legendary unit known as the Thomas Legion. Among these were full bloods who spoke virtually no English.[29]

After serving "the Cause" with distinction, the Cherokee troops returned to their beloved mountains only to face disease, starvation, and all manner of deprivations. These problems were compounded as their white chief succumbed to debilitating mental illness and financial ruin caused by the war.[30] With Thomas periodically hospitalized and no longer capable of managing his affairs, his vast holdings fell into the hands of creditors. Included were the titles to more than 50,000 acres of Cherokee land.[31]

When poor health forced Colonel Thomas to step down as white chief, he left his adopted people without money, guidance, and the titles to their land. For serving the Confederacy the Cherokees had finally acquired their long sought status as permanent North Carolina residents. But the people were barely surviving. Unable to pay taxes or handle their legal affairs, the Oconaluftees applied to the U.S. government for aid and were placed under the supervisory care of the Commissioner of Indian Affairs--a move which not only made them wards of the federal government, but also placed them on a collision course with the future.

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When Jackson County voters entered the polls on 2 November 1920, they had their civic work cut out for them. On the ballots were eighteen state and federal offices, nine local races, and two constitutional amendments.[32] Although little concerning campaign issues or individual candidates exists, post-election coverage indicates that local Democrats clearly expected to win. When the GOP swept all nine races, that confidence quickly turned to rage and disbelief. Refusing to accept defeat by less than one hundred votes, partisan leaders demanded an immediate recount and complete canvass (meaning a precinct by precinct examination) of the election.

In accordance with North Carolina statutes, canvass proceedings began at the Jackson County Courthouse at 11 a.m. on 4 November, the second day after the election. For the most part compliance with established legal procedures began and ended at this point.[33] As the courtroom filled with spectators, tension steadily mounted as howling Democrats vowed to overturn the election and belligerent Republicans swore to retain victory at all costs. Once the meeting began and Canvass

Board members H. A. Pell; H. C. Moss (clerk); E. M. Moss; P. N. Price; John Phillips; M. R. Matthews; J. C. Brown; S. T. Bryson; J. J. Cowan; R. W. Green; R. B. Shuler; C. P. Dillard; T. H. Queen; J. J. Mason (chairman); Ramsey Dills; G. H. Moody; and F. A. Brown were sworn in, conditions deteriorated as the crowd realized there were fifteen Democrats and only two Republicans on the panel.[34] Although it would appear that the deck had been deliberately stacked against the GOP, state laws required that precinct judges appoint one of their number to serve on the Board.[35] Since fifteen of seventeen precincts were predominantly Democratic, that party held the majority. As it stood, the outcome was a foregone conclusion--and everyone knew it!

As canvassing got under way, an Asheville attorney representing the Democrats fired the first shot by challenging (meaning to question) a number of votes cast in Barkers Creek township, the county's heaviest Republican stronghold. Trouble began when attorney J. Walter Haynes proposed throwing out the votes of "one hundred and five illiterate women from Barkers Creek," whom he claimed should have "come under the grandfather clause [of 1900] just like the Negroes." Among the spectators a free-for-all erupted as a group of men jumped to their feet and surged forward, bellowing that their women had been insulted! Haynes had implied, of course, that these women should have never been allowed to register and vote.

According to Democrats, several hundred "wild mountain men" from Barkers Creek stopped the proceedings by threatening Haynes and the Board, while Republicans contend that seventy-five to one hundred "civilized men" merely voiced their opposition.[36] At any rate, the crowd settled down after local attorney George Sutton (for the Republicans) proposed waiving literacy requirements for white voters in both parties. It was further agreed that legal age, precinct residency, and payment of poll taxes would be accepted as the only grounds upon which voters could be challenged.[37] With order restored the hearings adjourned until 9 a.m. Friday.

As the errant attorney left the building, a crowd followed him down Main Street to the Commercial Hotel. There they continued to jeer at him "in ever increasing numbers." With tempers flaring and a mob estimated to have numbered between one and three hundred, Board chairman J. J. Mason telegraphed Governor Thomas W. Bickett requesting him to send the state militia to Sylva. Rather than sending in the troops, the Governor urged everyone to calm down and allow the canvassing to continue. However, added Bickett, the Board should remove the precinct boxes to Waynesville or Asheville for counting if the "best citizens" could not force the others to "behave and recognize authority."[38]

Just when things seemed to be cooling down, several men who reportedly had been drinking and carrying guns gave Haynes fifteen minutes to get out of town--or else! While it is anyone's guess as to whether the crowd would have become violent, a number of prominent citizens pressed the attorney not to tempt fate by remaining in Sylva. Later that afternoon Republican D. G. Bryson drove Haynes to the depot in Addie Community "in a real fast car," where he caught the next train to Asheville.[39] Although it is not clear why local Democrats engaged his services in the first place, J. Walter Haynes displayed his legal acumen by not returning to Jackson County.

Despite explicit regulations governing canvassing, the Board acted haphazardly for several weeks. Chairman Mason adjourned the hearings from day to day without apparent reason and conducted the entire process under highly unorthodox circumstances.[40] For example, after several voters contacted the Sheriff and swore that they had registered for one party but had "accidentally" voted for the other, the Board subtracted votes from each side. Another instance involved ballots cast by several soldiers. These votes were challenged because the men failed to pay their poll taxes on time, meaning on or before the first of May each election year. By disqualifying these ballots the Board ignored a state rule exempting military personnel from paying poll taxes while on active duty.[41]

With obvious contempt for the statute prohibiting canvass boards from "going behind the results of an election," the Board stubbornly refused to certify the election in favor of the Republicans after several days of hearings.[42] Despite extremely close margins (ranging from twenty-eight to eighty-seven ballots), the number of successfully challenged votes was still too low to overturn the election by 13 November. The *Asheville Times* announced on 15 November that canvassing had ended and the Republicans had won, but this was clearly not the case.[43]

As the hearings dragged on yet another week, the atmosphere in Sylva became volatile once again. Fueling the fire this time were two "stuffed" ballot boxes--one from Sylva and one from Barkers Creek. According to state law, stuffed boxes were to be automatically disqualified.[44] Had this been done not only would hundreds of true ballots have been sacrificed for the sake of a dozen false ones, but there would have undoubtedly been another fracas. Having already decided against disqualifying those precincts, the Board was under intense pressure to pronounce the winners.[45] But since the Democrats refused to concede the election, the canvassing continued as pols relentlessly sought some means to their end.

Fortuitously an opportunity soon presented itself. It seems that when the ballots of Qualla township were first counted, the Board discovered that two Indian women whose registration had been successfully challenged on the basis of illiteracy had cast ballots anyway.[46] Although there was no mention of throwing out the Indian vote at that time, by mid-November the situation had become desperate. While several precincts (including Qualla) were being recounted on 18 November, Clerk H. C. Moss moved to disqualify all Indian voters on the basis of their questionable citizenship. Not surprisingly, the majority of Cherokees voted Republican.

Realizing this tack would spark controversy--and overturn the election--Moss claimed a legal precedent in the Hyatt case of 1900.[47] At that time in dismissing allegations against two registrars charged with refusing to register Indian voters,

Judge James E. Boyd found the Cherokees to be wards of the federal government and not citizens with voting privileges. After H.A. Pell seconded the motion, Republican H. R. Queen challenged the Board's authority to make such a decision and requested time to research the issue. Chairman Mason decided instead that the ballots cast by duly registered Cherokees would be allowed to stand since no one had challenged their rights to register and vote before the election.[48] But when the canvass had been completed and victory was still not within reach, Moss's suggestion seemed more attractive.

As word quickly spread that the Indians might be disfranchised despite Republican objections, the committee accepted Governor Bickett's suggestion to move the hearings from Sylva to Asheville--another Democratic stronghold. The Board reconvened in the Buncombe County Clerk of Court's office on 19 November. Although several precincts remained under scrutiny, the main issue was the fate of the Indian vote. A number of spectators were present as usual, including two Cherokee Indians--former Chief Dave Blythe (1915-1919) and Carl Standingdeer, a graduate of the Indian school at Carlisle, Pennsylvania. The *Asheville Times* reported that ex-Chief Blythe lent a "particularly impressive air" to the proceedings as he pleaded that the votes of his people, the "original Americans," not be thrown out. But the die had already been cast.[49] Democrats had sacrificed Indian interests before and were fully prepared to do so again.

Despite Republican claims that the North Carolina Supreme Court had already recognized the Cherokees as state citizens, the following Tuesday J. J. Mason called the roll on H. C. Moss's motion to throw out the Indian votes. With thirteen of seventeen members present the motion easily passed by a margin of nine-to-two. Mason and G. H. Moody abstained from voting. Shortly thereafter, as Dave Blythe identified the voters, registrar Gilbert Moody and precinct judge K. Howell stated their party affiliations and removed the names of eighty-three Indians from the Qualla precinct book.[50] There were seventy-nine Republicans and four Democrats. Among Republicans, forty-two were women and thirty-seven, men. By disqualifying all Cherokee voters the Board subtracted a total of one hundred and eighteen ballots from Republican candidates while removing only twenty-seven from the Democrats.[51] No actions were taken regarding the stuffed boxes.

With their task "properly" completed, the Board adjourned to Sylva. On Wednesday, 24 November, Chairman Mason stood at the front door of the Jackson County Courthouse and announced that with two exceptions the Democratic candidates had won the election. After being sworn in by Clerk of Court W. L. Henson they would begin serving their two-year terms on Monday, 6 December.[52] With that declaration, the election of 1920 was officially over--at least for the day.

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As expected after such an emotional and prolonged ordeal, this matter was not so easily laid to rest. The day J. J. Mason called the roll on the Cherokee vote, H. R. Queen announced that the Republicans would seek legal action if the election was overturned. Attorney General James S. Manning authorized the ousted candidates to initiate *quo warranto* proceedings on 3 December 1920.[53] Although the authenticity of Manning's letter was later questioned by Democratic attorneys, the Republicans began filing against their competitors on 18 December.[54] For the sake of expediency the individual suits were later consolidated into *Z. V. Watson, et al . v. E. L. Wilson, et al .*

When these cases appeared on the Superior Court docket in February 1921, despite numerous allegations of wrongdoing on both sides, there was only one question to be settled: Were the relators (Republicans) duly elected to office on 2 November 1920? When Republican attorneys J. J. Britt and the firms of Smathers and Ward, Sutton and Stillwell, produced the original election returns as proof, Democratic attorneys L. M. Bourne, G. Lyle Jones, Felix Alley, Walter E. Moore, Theo F. Davidson, W. R. Sherrill, C. C. Buchanan, and J. J. Hooker, called for a judgment of non-suit based on the lack of *prima facie* evidence. Judge B. F. Long, a newly-elected Democrat, concurred. J. J. Britt then requested a jury trial. In countering the Republicans, L. M. Bourne suggested that the judge appoint a referee to hear each case rather than subject the court to a lengthy trial requiring "hundreds and possibly thousands of witnesses." Upon consideration Judge Long agreed to appoint attorney J. D. Mallonee of Murphy (another prominent Democrat) as referee on the condition that each candidate post a bond of $1,500 and agree to divide evenly any additional court costs.[55]

The attorneys began arguing their cases before Mallonee in March 1921. Despite numerous questions involving the legality of the Canvass Board's actions, Mallonee upheld the judgment of non-suit on 21 April.[56] On 28 April Republican attorneys filed responses with the Clerk of Court indicating their clients' refusal to accept the referee's decision and their intentions to seek another trial. They would take their grievances all the way to the Supreme Court if necessary![57]

Apparently the relators fared no better the second time around. Not only were the cases bound over to another referee, attorney W. E. Breece of Brevard, but his ruling was never recorded.[58] Since these suits were under consideration well into 1922, it is possible that approaching elections simply rendered Breece's opinion moot. Yet after nearly two years of bitter controversy, it is curious that court records do not indicate the final disposition of these suits or the thousands of dollars in secured bonds posted by the litigants. While it is probably safe to assume that the defendants received their money, there is no official documentation.

It is also interesting that this episode did not adversely affect the defendants' political careers. Of the original seven, five were reelected in 1922 despite the elec-

tion-day (1922) murder of prominent Barkers Creek Republican George Revis by Democratic poll-watcher and former Canvass Board member, Walt Fisher.[59]

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As noted, the Republicans began filing suit in December 1920. When I discovered these records in the basement of the Jackson County Courthouse, each packet was found to contain numerous documents. Among these were the relators' complaints and defendants' responses; all bonds and court bills of cost; copies of Attorney General Manning's letter granting permission to begin *quo warranto* hearings; and J. D. Mallonee's decision in the 1920-21 suits. Folders from the second round of suits (which began in October 1921) contain the same items, minus the judgment and final disposition of the cases and bonds.

The documents within these folders make interesting, not to mention entertaining, reading. They also provide a unique glimpse into Jackson County's political history. Many charges were leveled against the Democrats, including the Board of Canvassers. Among these were illegal canvassing procedures; unfair challenging practices; allowing some who did not pay a poll tax to vote; vote buying; ballot box stuffing; dragging drunks to the polls; misuse of absentee ballots; intentional replacement of impartial precinct judges and registrars with friends of the Democratic candidates; and refusing to register GOP voters, the majority of whom were women. The two most serious accusations were conspiring to disfranchise the Cherokee Indians and "going behind the results of a fairly won election".[60]

In response, the Democrats charged Republicans with intentionally disrupting the hearings; pooling money to pay the poll taxes of illegally registered Indians; and otherwise influencing them to vote their ticket. The "influences" included cash, liquor, food, and political promises. Additional allegations mirror those leveled against the Democrats. In each case the names of "illegally registered" and "injured" (wronged) parties within each precinct are listed as proof.

From these allegations it is apparent that despite warnings from Governor Bickett, local Democrats may have underestimated Republican polling power among the two groups targeted by the GOP--women and Cherokee Indians. In August 1920, while lamenting the effects female voting would have on race relations within the state, the Governor urged ratification of the suffrage amendment. Waxing sentimental, Bickett declared that if many women voted, the white government for which North Carolinians had fought "with their backs against the wall," would be destroyed.[61] State Democrats obviously believed that most women willing to "barter their precious birthright" of political non-participation for the "very sorry mess of pottage" called suffrage were either Black or Indian.

Although it has been suggested that Democrats were simply "caught off guard" by the unusually large Cherokee turnout, the local newspaper reports something

more. In June 1920, around primary time, the *Jackson County Journal* ran several articles of interest to political strategists. Featuring Commissioner of Indian Affairs Cato Sells, the first article states the federal government's intention to revoke wardship status and grant citizenship to individual Indians as soon as they were found capable of handling their own affairs.[62] Since the Eastern Cherokees were well acculturated, having been both taxpayers and voters (in small numbers) since 1868, this article could have been an open invitation to register new voters within the tribe.

Another article paid homage to women's suffrage by highlighting voter training courses at Chapel Hill. There more than eight-hundred coeds were "learning how to register and vote, pay poll taxes, and successfully challenge illegal voters."[63] Although women's suffrage never gained momentum in Jackson County, there were coeds in Cullowhee attending what would later become Western Carolina University. And where there were students, there was hope. It seems that the local movement received a serious blow when a national suffrage speaker attacked the Bible for "holding women back" during a Sylva address in December 1912.[64] After that regrettable *faux pas*, Democrats closed the coffin of what was believed to have been a dead issue.

Completing this threesome was a warning from the GOP that unless Southern Republicans recruited more voters, this region would be penalized by a reduction of representatives in future national conventions.[65] When this information is coupled with the subsequent voter turnout, a pattern of successful recruiting emerges.

Sadly, few precinct records from that era have been preserved. This makes it difficult to tell how many women voted in this election, much less to which party they flocked in the greatest numbers. But one may safely assume that most adhered to local (and national) customs by supporting their "family" party. Because the electoral margins between candidates were so slight, female voters played a crucial role in this election despite lingering hostilities towards women's suffrage. Information gleaned from legal documents and precinct records (primarily from Barkers Creek) indicate that women of all ages turned out to register and vote in 1920, as they did for every election thereafter.[66] Court records also reveal that the majority of Cherokee voters were women.[67]

Granting that Republican registrars probably did scour the Quallatown area looking for voters, making some promises along the way, there is no proof that the Party pooled money to pay the Indians' poll taxes as alleged by the Democrats. At that time the tax could not exceed two dollars per voter and had to be paid in person. Despite claims that the Cherokees had not been assessed poll taxes for "a great number of years" and their names did not appear in the Sheriff's receipt book, Qualla records indicate that at least nineteen Indians paid poll taxes in 1909.[68] Since ten of those nineteen are known to have voted Republican in 1920 and at least one more

probably voted Democratic (Sibbald Smith), it is possible that some of these men had been paying poll taxes all along. This cannot be proven one way or another for the Sheriff's records have apparently been destroyed and efforts to locate a privately-held receipt for 1919-1920 have not proven successful.

The possibility that Cherokees were poll tax-paying voters is also heightened by the fact that several Indians placed their names in Jackson County's Permanent Registration book between 1902 and 1908.[69] Mandated by section 4, article 6 of the North Carolina constitution, this roll waived literacy requirements for all males eligible to vote on 1 January 1867 or their direct lineal descendants.[70] Registrants received certificates from the Secretary of State prohibiting precinct judges from questioning their ability to read or write thereafter. Taken together this evidence not only proves that some Indians paid poll taxes after 1900, but elucidates the Cherokees' belief in and claims to state citizenship, despite their tribal standing.

Aside from partisan efforts to recruit Cherokee voters in 1920, history was also on the side of the GOP. The Indians had been reluctant to identify with either political party during the 1840s and 50s for fear of offending the wrong group at the wrong time. Nevertheless, they favored the Democrats until after the Civil War because of W. H. Thomas's activities. After the tribe came under federal protection in 1868, however, Republican influences began to take hold.[71] Although historians debate the reasons for this political about-face, the fact remains that by the mid-1880s most Cherokees voted Republican. Local Democrats blamed this misfortune upon the arrival of Quaker school superintendent Henry W. Spray and his wife, Anna. Mrs. Spray is said to have been an enthusiastic suffragette.

The Sprays' alleged influence over Indian voters may have extended into 1920. In explaining the healthy turn-out of women voters it has been suggested that in addition to teaching young Cherokee girls to read and write, Anna Spray may have encouraged their belief in women's suffrage.[72] When questioned during the canvass hearings why more Indian women had voted than men, C. W. Standingdeer replied that more women than men could read and write English, thus they were able to pass the literacy tests designed [in 1900] to block minority voters.[73] This factor, coupled with the effects of increased acculturation and interaction with area whites; available media sources; and military and civilian participation in World War I, increases the probability that it was Anna Spray's former students and their daughters who made history by becoming the first Cherokee women to vote in Jackson County. They were also the voters whose ballots pushed the Republicans across the finish line.[74]

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Despite passage of the General Citizenship Act of 1924 conferring U.S. citizenship on all American Indians, the Eastern Band of Cherokees remained disfranchised

in Jackson County until 1946. Did they accept this situation passively? Despite a flurry of activity in 1920, the answer appears to have been yes. Granting that silence does not always imply consent and can in fact be deceiving, especially within "traditional" societies, there is no evidence that the tribe took formal actions on its behalf until 1946. However, there were a few individuals who were determined to regain the franchise. Among these were Sibbald Smith and Henry Owl.

Between 1924 and 1928, Sibbald Smith wrote to Democratic Congressman Zebulon Weaver several times begging for help in this matter.[75] As congressman from western North Carolina, Weaver served on the Indian Affairs Committee and helped draft the Allotment Act of 1924. Smith, related to former Principal Chief Nimrod J. Smith, was a Democrat. He was also permanently registered in Jackson County under the grandfather clause to the constitutional amendment of 1900. Weaver said he had been unable to look into Smith's problem in time for him to register for the 1928 election because he had been out of town. It seems more likely that despite his connections and interest in the Eastern Band, the congressman feared angering his white constituents by aiding "unpredictable" Cherokee voters. Had they not voted the wrong ticket before? In remarks published in the *Asheville Times*, Indian agent Ralph Stanion later accused Weaver of political cowardice in his failure to fight for Cherokee voting rights.[76]

Sylva businessman and political leader E. Lyndon McKee also wrote to Weaver in October 1928 requesting clarification of the Cherokees' citizenship status.[77] On the heels of the General Citizenship Act had come the Allotment Act 1924, drafted in part by Congressman Weaver. While the former conferred the full rights of citizenship upon all Native Americans, the latter implied that these rights would not be forthcoming until the lands held in common by the Eastern Band had been allotted to individual Cherokees. Despite interest in private ownership by some members of the tribe, there was no real movement in that direction. According to McKee, by 1928 Democratic registrars were under intense pressure to register Indian voters (for either party) and needed advice. If the Cherokees were not legally U.S. citizens, then registration was pointless. But if they were citizens, then perhaps stiffer educational requirements could be instituted to discourage them at the polls. Because of his candidacy and potential conflicts of interest, Weaver dodged the bullet by advising McKee to seek advice elsewhere.

Also noteworthy were the efforts of Henry Owl, a graduate of Lenoir- Rhyne College and the University of North Carolina at Chapel Hill. Owl testified before the Senate Committee on Indian Affairs on 26 May 1930 that he had repeatedly been denied voter registration in Swain County despite the Citizenship Acts of 1924 and 1929. The latter had been intended to quell confusion arising from the acts of 1924. Owl insisted that he met all legal requirements and could pass any literacy test produced. The registrar at Ravensford precinct (in Swain County) had nevertheless refused to examine him because he was an Indian and not a citizen. Attorney W. G.

Hall witnessed this incident and testified that other Cherokees had been similarly denied registration in his presence.[78]

In conjunction with Owl's testimony was an opinion issued by state Attorney General Dennis Brummett. In a letter to the Jackson County Board of Elections, dated 9 May 1930, Brummett stated that he believed the Indians "are probably within their rights to vote under the Act of 25 June 1929," but it would most likely take a court case to determine that right "without a doubt." He recommended that they be allowed to register in the meantime if otherwise qualified.[79]

Accepting that more Cherokees were concerned with surviving the Great Depression than participating in county elections, one wonders why the Band failed to press its advantage at this time. After all, there were those who clearly wished to hasten assimilation and "Americanization" processes on the reservation.[80] Yet, instead of pursuing their complaints against Jackson and Swain counties, the Cherokees allowed this issue to drift throughout the 1930s. But times were changing. In 1946 more than 300 honorably discharged veterans once again found their paths to the polls blocked by intransigent registrars. Having fought totalitarianism abroad, these veterans made it clear that they would no longer be treated like second-class citizens at home.[81] It was time for action.

The Steve Youngdeer American Legion Post in Cherokee formed a six-man franchise committee, headed by post commander Jack Jackson. Allied with lodges throughout western North Carolina, this group lobbied the local election boards in earnest. When talk failed to produce action by the May deadline for primary registration, the committee hired Asheville attorney Frank Parker to represent them. (One assumes the Band's chances of retaining unbiased legal counsel locally to have not been good.) Again the veterans got nowhere. Finally, the Youngdeer Post informed U.S. Attorney General Tom Clark of their grievances.[82] By June 1946, federal wheels began to turn.

It is hardly surprising that in facing the prospects of a federal lawsuit, Jackson County registrars began registering Cherokee voters. By October 1946 the names of seventy-nine Indians had been placed on the books.[83] Although many of these registrants were in their early twenties and mid-to-late thirties, and, unlike 1920, men outnumbered women nearly two-to-one, the majority were middle-aged or elderly. Among these were several whose names had been stricken from the rolls in 1920.[84] That these folks reregistered at the first opportunity underscores their desire to participate in the democratic process and their determination to be recognized as American citizens. It also indicates that the Band may not have accepted disfranchisement as passively as has been believed.

Because voter qualifications are stated in the front of most precinct books, it is amazing that the Cherokees had to fight so hard to register. Of course, hindsight is always 20/20. As of 1 January 1940 the requirements were

1.) Citizenship, native or naturalized.
2.) Age 21 by time of the election.
3.) Residence of one year in the state and 4 months in the precinct where casting ballot.
4.) Educational ability, unless permanently registered under the grandfather clause, to read or write any section of the state constitution in the English language to the satisfaction of the registrar.

** There are no requirements as to sex, county residence, or payment of poll tax or any other tax.

The addendum regarding taxation deserves particular attention, because from 1924-46 local officials prohibited Cherokees from voting in Jackson County because the federal government had removed their lands from county tax rolls in 1924 in preparation for general allotment.[85] Allotment never came and the Qualla Reservation remained federal and therefore nontaxable by state or local authorities. Since those qualifications were taken directly from the North Carolina constitution and election laws of 1939-40, neither of which had been changed since 1921, the time-honored tradition of denying qualified Cherokees their right to vote on the basis of their tax-exempt status was patently illegal.

***

Jackson County Democrats needlessly feared the resumption of Cherokee voting. As precinct records and election results clearly indicate, the GOP never regained its influence on the Reservation.[86] Then, as now, the Democrats held a comfortable majority. Political insiders have indicated that although the Band takes little interest in county affairs, when the Cherokees vote in local elections they usually vote Democratic. In state and national elections they tend to vote Republican. This is an interesting twist in light of what happened in 1920. Although it has been seventy-two years since the Cherokees were disfranchised and a lot of water has passed under the bridge, this also indicates that the Band may have adopted the number one rule of mountain politics: In order to get along, go along.

That this election was overturned by discarding the Indian votes offends modern sensibilities, but it was neither illegal nor unconstitutional. There were sound traditional and legal precedents on both sides. As is typical of matters involving Native Americans, this situation remains open to personal interpretation. Some would argue, for instance, that Cherokees descending from the original [Oconaluftee] Citizen Indians were already citizens and their constitutional rights were violated. If those Indians became U.S. citizens between 1817 and 1821 and were never forced to relinquish that status, that would appear to be true. But if Band members lost

their citizenship by resuming tribal relations in 1868, then according to subsequent court rulings they were wards of the federal government and not *bona fide* citizens possessing full rights and privileges. This argument is reinforced by the fact that although it could have easily done so in 1866 (or earlier or later for that matter), the North Carolina General Assembly refused to accept the Cherokees as state citizens.

Thus, it would have been perfectly legal (and proper) for the Board of Elections to have thrown out the Indian votes on 4 November 1920. But the decision was not made until almost three weeks later when it was obvious that the election could not be otherwise overturned. This reticence stemmed from a number of reasons. First, precinct registrars and judges were solely responsible for examining and registering persons within their districts. Once a voter's name was placed on the books, he or she was duly registered unless successfully challenged and disqualified.

Second, good ward bosses always knew how their constituents intended to vote, for promises were made well in advance of each election. This was how persons were identified by party affiliation and eliminated during the canvassing shenanigans. Because Republican registrars had been replaced in plenty of time to locate and register stragglers in most districts, Democratic strategists found themselves in an unenviable position. Angry pols had to admit that their men in Qualla had (1) allowed an unusually large number of Cherokees to register; (2) failed to challenge their registration; and above all else, (3) not recognized or taken seriously their intentions to support the GOP.

As an interesting aside, challenging was an affair for which everyone in the precinct turned out. It was pure entertainment. The registration books were open (by law) from 9 a.m.-3 p.m. the Saturday before each election at the usual polling places. Anyone could (and did) question anyone else's qualifications to vote in that ward. If the challenges were met, then all was well. If not, that individual was stricken from the books. According to court records, the Qualla books were open for inspection and a few voters were challenged on the basis of illiteracy and so forth. But there were no general protests against Indian voters. Since everyone knew the Cherokees intended to vote the GOP, it is clear that the Democrats did not feel particularly threatened by their participation--that is, until the wrong party won.

Finally, it is possible that the local machine did not wish to alienate the tribe by blatantly disqualifying their ballots. After all, if the Indians really were on the fast-track to allotment and full citizenship as Indian Commissioner Cato Sells had intimated, there would have been several hundred potential voters for the Democrats to woo and win. But progress towards general citizenship was stalled at the federal level, perhaps indefinitely. This left the Democratically-controlled Canvass Board in the awkward position of having to choose between saving the Cherokee votes and losing the election or throwing them out and claiming victory for their party.

In the end the real issue was not whether the Cherokees were state citizens or

federal wards or why they had suddenly registered and voted. The problem was that because too many Indians had been allowed to register and they had not voted Democratic, the wrong party won--again. There can be no doubt that had the shoe been on the other foot those eighty-three ballots would have never been seriously challenged. Recalling that it was their erstwhile friend Andrew Jackson who enabled the Oconaluftee Citizen Indians to remain in western North Carolina after 1817, it seems fair to conclude that had their descendants not forsaken the Party of Jackson in the County of Jackson, the Eastern Band of Cherokee Indians would have never been disfranchised for helping the wrong party to win.

Appendix I Cherokee Reservations in North Carolina, 1820

On 21 November 1820, in a letter to Secretary of War John C. Calhoun, Indian agent Robert Houston reported the names of 49 Cherokee heads of families who had applied for personal reservations in North Carolina and 17 who wished to remain in Tennessee. The North Carolina reserves are listed below. In addition to these 49, Yona and William Walker received their reservations as signees of the Treaty of 1819, bringing the total to 51. Special Files of the Office of Indian Affairs, 1807-1904, National Archives, 25/1303-1305, Special File 31. See also William G. McLoughlin, *The Cherokee Ghost Dance, Essays on the Southeastern Indians*, 1789-1861, (Mercer University Press, 1984), 181-191, Table 1.

Jack	John Welsh
Con-naughty	The Cat
Big Tom	Wallee
Johnston (or Johnson)	The Club
Back Water	Jacob
The Fence	Thomas
The Old Mouse	Cul-sow-wee
Am-ma-cher	Panther
Eu-chu-lah (Euchella)	Yellow Bear
The Wolf	Jenny (a widow)
Coo-lee-chee	The Bear going in the Hole
The Trout	John
Little Deer	Beaver Toter
The Whipperwill	He-ne-lah
The Six Killer	John Bean
Ah-leach	Wha-ya-kah or Grass Grow
Ool-lah-nottee	Ske-ken
Too-le-noos-tah	Bag or Sap Sucker
Parch Corn Flower (or Flour)	John Quchey
Ca-te-hee	Eunoch or Trout
Suaga	Old Nancy (or Old Nancy Widow)
William Reed, for wife	Oo-santertake
Yoon-ne-giskah	Tegentasey
Toonangh-heale	Sharp Fellow
Gideon F. Morris, for wife	

Appendix II Quallatown Indians Adverse to Removal, December 1836

The Quallatown Indians listed below petitioned the North Carolina legislature for permission to remain in the state as permanent residents and citizens in December 1836. Numbers in () represent family members. Senate Document 408 (29-1), Serial 477, 17-19.

Yonaguska	(9)	Ca-ne-tutuh	(5)
Long Blanket	(3)	Tutlestah	(5)
Wil-nota	(7)	Iyentuga	(8)
John Sonih	(6)	Little John	(6)
Tom Canought	(6)	Old Jake or Chugoltoih	(5)
Tiyahah	(4)	Charley	(9)
Siula or Weaver	(7)	Arche	(3)
Tutlesta	(4)	Chunowhinka	(4)
Flying Squirrel	(5)	Skeikih	(4)
Ooh-sowih	(4)	Ahquottaga	(3)
Cotutta	(8)	Tutlestah	(3)
Aroneach	(6)	Tekinnih Soeeska	(7)
Tarapin or Culasowah	(5)	Chinoque	(3)
Nickojack	(9)	Stekoih	(8)
Ooh Sowih	(6)	Kahukih	(8)
Chuheluh or Fox	(6)	Tickoneeska	(8)
Tetonneeska	(7)	Scitta or Cannala	(6)
Che-ye-nana	(7)	John Wayne	(7)
Little Jake	(6)	Tiyunohella	(11)
Ula-nah-hih	(5)	Tutlestah, his son	(4)
Waggula	(2)	Tuniih	(4)
Co-ult	(6)	Yonachuheyuh	(5)
Culasutta	(4)	Wah-he-yuh-ca-gees-ka	(4)
Oh-la-yo-hih	(3)	Nancy and family	(6)
Wallis	(5)	Sanders, an orphan	(1)
Sicatowih	(6)	Standing Wolf	(9)
Chigasutta	(8)	Lowen	(3)
Big Jack	(4)	Little George	(5)
John Davidson	(2)	Tiniih Sicatowih	(8)
Chugotoih	(6)	Tohead	(5)
		Total	333

Appendix III Republican Cherokees, 1920

Because these names were taken directly from court records, misspellings are "original." Of these 79 voters, 42 were women, 37 were men. Of 42 women, 32 were married. In 1946, of 79 registrants, 27 were women, 52 were men. Names and ages in () are from 1946 records. Z.V.Watson v. E.L. Wilson.

*Areneech,	Jeff (Arneach, 72)	Hornbuckle,	I.C.
Areneech,	Mrs. Sarah	Hornbuckle,	Miss Maggie
*Bigmeat,	Mrs. Charlotte (59)	Hornbuckle,	William
Bigmeat,	Isiah (Isaiah)	Kanot,	Mrs. Eliza (Konott)
*Bigmeat,	Robert (45)	Lambert,	Miss Cora
Bigmeat,	Mrs. Sarah	Lambert,	John
*Bigwitch,	Joseph (75)	Lambert,	S.C.
Bigwitch,	Mrs. Sally	Lambert,	Miss Virdie
Blackfox,	Charlie	Littlejohn,	Mrs. Levi
Blythe,	David	Littlejohn,	Wiggins
Blythe,	Jarrett	Long,	Miss Nora
Blythe,	Mrs. Mary	Queen,	Levi
Blythe,	Mrs. Nannie	Queen,	Mrs. Mary
*Bradley,	Henry (63)	Reed,	Mrs. Katie
Bradley,	Joe	Sanders,	Mrs. Polly
Bradley,	Miss Nancy	Sannook,	Mrs. Molinda(Saunooke)
Calonaheskee,	Mrs. Nannie	Smith,	Duffy
Crowe,	Miss Alice	*Smith,	Elwood (60)
Crowe,	Mrs. Annie	Smith,	J.D.
*Crowe,	J.W. (Crow, 63)	*Smith,	Jacob Owl (65)
Crowe,	Joseph	Smith,	Mrs. Nan
Crowe,	Mrs. Margaret	Smith,	Mrs. Olive
Cucumber,	Miss Annie	*Smith,	Oliver (49)
Cucumber,	Arch	Smith,	T.J.
Cucumber,	Miss Gena	*Sneed,	Cam (Camble, 57)
Cucumber,	Mrs. Katie	*Sneed,	Mrs. Mindie (57)
Cucumber,	Mrs. Lizzie	*Stamper,	Ned (74)
Driver,	Mrs. Carolina	*Stamper,	Mrs. Sallie (72)
Driver,	Ned	*Standingdeer,	C.W. (64)
Featherhead,	Wilson	Stillwell,	Miss Aminita Sanock
George,	Dawson	Tarquitt,	Mrs. Annie (Tahquette)
George,	Elijah	Taylor,	Julius
*George,	Shorn (75)	Taylor,	Miss Stacey
Georgie,	Mrs. Rosie	Tiger,	Mrs. Rachel
Goings,	Bird	*Toineeta,	Mrs. Martha (53)
Hipps,	Mrs. Nannie	Tolley,	Mrs. Lizzie
Hornbuckle,	Mrs. Alice	Welch,	Mrs. Lottie
Hornbuckle,	Mrs. Annie	*Welch,	Mrs. Maude (52)
Hornbuckle,	Fred	Youngbird,	Yona
Hornbuckle,	George		

* Denotes voters who re-registered in 1946.

Appendix V 1909 Poll Tax List, Qualla Precinct

According to documents within the Charles A. Bird Collection, Special Collections, Hunter Library, Western Carolina University, Cullowhee, North Carolina, the following Cherokee Indians paid poll taxes in 1909. Of these 19 men, l0 are known to have voted Republican in 1920 and at least one more (Sibbald Smith) probably voted Democratic. * Denotes these voters.

Arch,	Johnston	*George,	Dawson
*Bigmeat,	Isaiah	George,	Manley
*Bigwitch,	Joe	George,	N.J.
*Blythe,	Davis (David)	*George,	Shorn
*Blythe,	J.B. (Jarrett)	*Hornbuckle,	Israel
Blythe,	James	Howell,	John
Bradley,	G.W.	Sanders,	Cudge
*Bradley,	Henry	Smith,	Sibble (Sibbald)
Crow,	Ossie	*Taylor,	Julius
*Featherhead,	Wilson		

Notes

[1] *Jackson County Journal* 5 November 1920.

[2] *Asheville Citizen* 3 November 1920. The local GOP recorded victories in 1908, 1916, 1920, and again in 1926, due to a split within the local Democratic Party. See Gordon B. McKinney, "Politics," in Max R. Williams, ed., *The History of Jackson County* (Sylva: Delmar, 1987), 236.

[3] *Asheville Times* 6 November 1920. The *Asheville Times*, owned by Jackson County entrepreneur C.J. Harris, was the GOP's regional organ. According to this article Republican strength was growing so rapidly throughout western North Carolina that Democrats feared they would lose control if measures were not undertaken to "stem the tide." Although there was no mention of Cherokee voting in those counties, Indian populations were present in some (if not all) of them. The article further states that much to the Party's surprise, GOP majorities had averaged 300 in this election whereas in previous years the margins of victory typically ranged between 10 and 20 votes.

[4] *Asheville Citizen* 3 November-21 December 1920; *Asheville Times* 5 November-24 November, 1920; *Charlotte News and Observer*, 6 November 1920; *Jackson County Journal*, 5 November-31 December 1920, 18 February 1921, 4 March-1 April 1921, 29 July 1921, 4 November 1921, 24 February-31 March 1922, 19,26 May 1922, 13,20, October 1922, 1 November 1922; *Raleigh News and Observer* 7,11,20,21,23,24 November 1920; Jackson County Superior Court, Sylva, Cross Reference to Court Papers; Jackson County Superior Court, Sylva, Minute Docket No.13, p 262; Jackson County Superior Court, Sylva, Judgment Book M, p 218-221 (individual cases filed collectively as *Zeb. V. Watson*, et al. v. *Ernest L. Wilson*, et al., hereinafter cited as *Watson v. Wilson*). Although documents generated by *quo warranto* hearings in 1921 and 1922 are available, the Sheriff's poll tax receipt book, Barker's Creek and Qualla township's 1920 precinct registers, and the Canvass board's official minutes were apparently destroyed during the 1960s, if not earlier. No copies were made.

[5] *Dred Scott v. Sanford*, 60 U.S. 393 (1857), hereinafter cited as *Dred Scott*. In this classic states' rights ruling Taney firmly upheld Congress's constitutional right to set uniform naturalization laws for the country. In doing so the Chief Justice qualified that prerogative by ruling that Congress could not declare Blacks to be U.S. citizens "by any means whatsoever" and neither could the individual states. This creates an interesting paradox in which Taney not only contradicted himself (regarding Congress), but also the states' rights position which declared such matters to be within the realm of the individual states. According to the dissenting opinion there were numerous cases where states had already accepted Blacks as citizens with voting rights. Taney ruled this to be unconstitutional because it had not been the original intent of the Declaration of Independence, Articles of Confederation, or the U.S. Constitution to grant said status to Negroes. The Chief Justice cites numerous statues and precedents. Indians, on the other hand, because they were the nation's "aboriginal inhabitants," were "entirely eligible" for naturalization but could not declare themselves to be citizens. The process had to be conducted according to rules set forth by Congress. Furthermore, the individual states could recognize Indians (unlike Blacks) as *bona fide* state citizens if they chose to do so, although without Congressional approval those Indians could not become U.S. citizens. Because Taney placed state citizenship anterior to national, which meant that one's civil rights were obtained through the state in which one lived, state citizens were decidedly better-off than those possessing national citizenship alone.

[6] Ibid.

[7] Charles Herman Pritchett, *The American Constitution* (New York: McGraw-Hill Book Co., 1959), 631-633, hereinafter cited as Pritchett.

[8] *Dred Scott*

[9] *Elk v. Wilkins*, 112 U.S. 94 (1884), hereinafter cited as *Elk*. In April 1880, John Elk, an American Indian voluntarily separated from an unknown tribe, presented himself to Charles Wilkins, a precinct registrar in Omaha, Nebraska, for voter registration. Although Elk apparently met state requirements for registration, Wilkins turned him away because he was not a *bona fide* U.S. citizen. Elk later filed suit claiming that his constitutional rights under the 14th and 15th Amendments had been violated. The Court ruled against Elk in 1884 on the basis that although he had voluntarily separated from his tribe and had been living among whites for some time, he had not filed for naturalization with government immigration officials. Although it had been overturned by the 14th Amendment, the majority upheld those portions of the *Dred Scott* decision which applied to Indians. In doing so the Court ruled that Elk had no more right to arbitrarily declare himself to be a U.S. citizen than any other "foreign immigrant."

In their dissenting opinion, Justices Harlan and Wood eloquently argued that John Elk... "Born, therefore, in the territory, under the dominion and within the jurisdictional limits of the United States, the plaintiff has acquired, as was his undoubted right, a residence in one of the States", with her consent, and is subject to taxation and to all other burdens imposed by her upon residents of every race. If he did not acquire national citizenship on abandoning his Tribe and becoming subject by residence in one of the States to the complete jurisdiction of the United States, then the 14th Amendment has wholly failed to accomplish, in respect to the Indian race, what we think was intended by it; and there is still in this country a despised and rejected class of persons, with no nationality whatever; who, born in our territory, owing no allegiance to any foreign power, and subject, as residents of the states, to all the burdens of government, are yet not members of any political community nor entitled to any of the rights, privileges or immunities of citizens of the United States." See also Indian citizenship in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), hereinafter cited as *Wong Kim Ark*.

Appendix IV Final Precinct Tallies From 1920 Election

PRECINCT	SHERIFF ZVW/ELM	TREASURER ACQ/JWD	REG. OF DEEDS ADP/RRN	SURVEYOR JCR/TFB	CORONER JRD/GCW	COMMISSIONER JAS/GCT	COMMISSIONER SMP/TAD
BARKERS CRK.	245(242)/38(38)	245(242)/36(36)	249(246)/36(36)	249(246)/36(36)	245(242)/40(40)	250(247)/38(38)	245(242)/35(35)
CANADA	160(153)/69(68)	155(148)/68(68)	165(158)/63(63)	165(158)/64(64)	165(158)/64(64)	165(158)/64(64)	161(154)/64(64)
CANEY FORK	164(162)/178(176)	165(163)/179(177)	161(159)/184(182)	165(163)/181(179)	165(163)/180(178)	164(162)/181(179)	166(164)/182(180)
CASHIERS	34(34)/114(114)	36(36)/113(113)	35(35)/114(114)	35(35)/114(114)	35(35)/114(114)	28(28)/114(114)	34(34)/121(121)
CULLOWHEE	114(113)/308(307)	113(112)/314(313)	117(116)/309(308)	112(111)/316(315)	112(111)/316(315)	112(111)/313(312)	114(113)/316(315)
DILLSBORO	168(166)/127(126)	164(162)/129(128)	163(161)/134(133)	162(160)/132(131)	160(158)/137(136)	163(161)/134(133)	161(159)/131(130)
GREENS CRK.	100(100)/57(57)	103(103)/54(54)	102(102)/55(55)	104(104)/52(52)	103(103)/54(54)	102(102)/59(59)	99(99)/51(51)
HAMBURG	170(169)/163(162)	173(172)/158(157)	176(175)/156(155)	174(173)/159(158)	176(175)/157(156)	163(162)/149(148)	182(181)/167(166)
MOUNTAIN	39(38)/74(74)	39(38)/75(75)	42(41)/72(72)	41(40)/71(71)	41(40)/72(72)	43(42)/69(69)	44(43)/74(74)
QUALLA	319(240)/161(157)	319(240)/161(157)	320(241)/160(156)	319(240)/161(157)	318(239)/162(158)	319(240)/161(157)	319(240)/161(157)
RIVER	91(88)/107(106)	94(91)/108(107)	97(94)/106(105)	94(91)/107(106)	94(91)/107(106)	90(87)/101(100)	101(98)/107(106)
SAVANNAH	80(79)/212(212)	87(86)/208(208)	87(86)/208(208)	87(86)/208(208)	87(86)/208(208)	76(75)/221(221)	80(79)/207(207)
SCOTTS CRK 1	64(62)/63(59)	62(60)/65(61)	63(61)/66(62)	63(61)/66(62)	60(58)/69(65)	63(61)/65(61)	64(62)/65(61)
SCOTTS CRK 2	112(106)/121(118)	114(108)/121(118)	113(107)/122(119)	113(107)/122(119)	113(107)/122(119)	114(108)/121(118)	113(107)/122(119)
SCOTTS CRK 3	56(55)/90(89)	56(55)/92(91)	56(55)/91(90)	56(55)/91(90)	55(54)/91(90)	56(55)/93(92)	56(55)/93(92)
SYLVA	425(418)/392(384)	436(429)/388(380)	442(435)/387(379)	438(431)/392(384)	433(426)/396(388)	430(423)/387(379)	441(434)/391(383)
WEBSTER	116(115)/155(155)	113(112)/159(159)	118(117)/156(155)	117(116)/156(156)	116(115)/157(157)	120(119)/153(153)	117(116)/159(159)
TOTAL	2,457/2,429	2,474/2,428	2,506/2,419	2,494/2,428	2,478/2,446	2,458/2,423	2,497/2,446
MARGIN	+ 28: R	+ 46: R	+ 87: R	+ 66: R	+ 32: R	+ 35: R	+ 51: R
FINAL COUNT	2,339/2,401	2,356/2,401	2,388/2,392	2,376/2,401	2,360/2,419	2,340/2,396	2,379/2,419
FINAL MARGIN	+ 62: D	+ 45: D	+ 4: D	+ 25: D	+ 59: D	+ 56: D	+ 40: D
ZEB. V. WATSON, (R) V. E.L. WILSON, (D)							
ASKEW C. QUEEN, (R) V. J.W. DAVIS, (D)							
S. MATT PARKER, (R) V. T.A. DILLARD, (D)							
A.D. PARKER, (R) V. R. RAYMOND NICHOLSON, (D)							
J.C. REED, (R) V. T.F. BUCHANAN, (D)							
J.R. DILLARD, (R) V. GROVER C. WILKES, (D)							
J.A. STILLWELL, (R) V. G.C. TURPIN, (D)							

SHERIFF	DEM'S LOST 27
TREASURER	REP'S LOST 118
COMMISSIONER	
REG. OF DEEDS	*NUMBERS IN ( )
SURVEYOR	REPRESENT TALLY
CORONER	AFTER CANVASS
COMMISSIONER	

[10] Congressional debate on the Civil Rights Bill of 1866 and the 14th Amendment may be found in numerous House and Senate reports and documents, including *S.Exdoc.* 31 (39-1), 1238, in which President Johnson expressed his concerns over the wording and intentions of the Civil Rights Act. According to Johnson, this act (passed over his veto in 1866) made all "Chinese of the Pacific States, Indians subject to taxation, the people called Gypsies, as well as the entire African race" citizens of the United States. More importantly, as the President pointed out, the act did not "purport to give these persons any status as citizens of States except that which may result from their status as U.S. citizens," for "the power to confer the right of State citizenship is just as exclusively with the several States as the power to confer the right of federal citizenship is with the Congress." Because this act could not grant state citizenship to Blacks (or anyone else), the Radical Republicans prepared to amend the Constitution once again.

Other sources include the Congressional Globe and a variety of newspapers. See also *Elk v. Wilkins* (1884); William H. Barnes, *History of the Thirty-Ninth Congress of the United States* (New York: Negro Universities Press, 1868); Benjamen B. Kendrick, *The Journal of the Joint Committee of Fifteen on Reconstruction, 39th Congress, 1865-1867* (New York: Negro Universities Press, 1914); John H. Killian, ed., *The Constitution of the United States of America, Analysis and Interpretation*, prepared by the Congressional Research Service (Library of Congress, Washington, D.C.: U.S. Government Printing Office, 1987); Edward McPherson, *The Political History of the United States of American During the Period of Reconstruction, April15, 1865-July 15, 1870* (New York: Da Capo Press, 1871); Donald J. Musch, ed., *Sources and Documents of the United States Constitutions, National Documents 1826-1900*, 2nd Series, Volume 3 (London: Oceana Publications, 1985); *The Reconstruction Amendments' Debates: The Legislative History and Contemporary Debates in Congress on the 13th, 14th, and 15th Amendments* (Richmond: Virginia Commission on Constitutional Government, 1967).

See also the 14th Amendment to the U.S. Constitution, specifically sentence one, section 1, which states that "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The phrase "subject to the jurisdiction thereof" excluded members of federally-recognized tribes living "in the tribal condition," owing direct allegiance to their chiefs and tribes rather than the U.S. government. The second clause, taken from the original constitution, appears in sentence one, section 2, and states that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." As the majority ruled in *Elk*, had the framers intended to grant blanket citizenship to Indians, these clauses would have been completely unnecessary. The *Elk* ruling was upheld in *U.S. v. Wong Kim Ark* (1898).

[11] *Dred Scott.*

[12] The Civil Rights Act of 1866 declared "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed," to be U.S. citizens. Because the status of naturalized, non-tribal, tax-paying Indians was not seriously addressed, it can be assumed that the legitimacy of their national citizenship was not in question. After the 14th Amendment put constitutional "teeth" into this act, states continued to set their own voting requirements, including residency, literacy tests, and payment of poll taxes. Therefore, although their national citizenship may have been reinforced, citizen Indians were not guaranteed (and usually did not receive) civil rights within the states.

[13] For a thorough discussion of the controversy surrounding Cherokee citizenship, see George E. Frizzell, "The Politics of Cherokee Citizenship, 1898-1930," *North Carolina Historical Review* 61 (April 1984): 205-30, hereinafter cited as Frizzell. See also Frizzell, "The Native American Experience," in Max R. Williams, ed., *The History of Jackson County* (Sylva: Delmar, 1987), 33-66, hereinafter cited as Frizzell in Williams.

[14] Frizzell, 209-10. Also John R. Finger, *The Eastern Band of Cherokees* (Knoxville: The University of Tennessee Press, 1984), 102, hereinafter cited as Finger, *Eastern Band*. On 19 February 1866 the N.C. General Assembly passed an act declaring that ..."the Cherokee Indians who are now residents of the State of North Carolina, shall have the authority and permission to remain in the several counties of the State where they now reside; and shall be permitted to remain permanently therein so long as they may see proper to do so, anything in the treaty of eighteen hundred and thirty-five [Treaty of New Echota] to the contrary notwithstanding." *Public Laws of the State of North Carolina Passed by the General Assembly at the Session of 1866* (Raleigh, 1866). This act did not confer state citizenship upon the Cherokees .

[15] Ibid, Frizzell, 207. Although the Cherokees did not vote prior to the Civil War, by the late 1840s they were reluctant to affiliate with one of the major political parties for fear the other would take offense and block their on-going efforts to obtain state citizenship. By all indications this was an astute observation. In 1855, after Governor Bragg ruled that with a few possible exceptions (including Junaluska) the Cherokees were not state citizens and could not become state citizens without the General Assembly's expressed consent, Thomas insinuated that prominent Whigs would never grant Indian citizenship because they feared the Cherokees would follow his lead and vote Democratic. See also John R. Finger, "N.C. Cherokees, 1838-1866: Traditionalism, Progressivism, and the Affirmation of State Citizenship," *Journal of Cherokee Studies* (Spring 1980): 22-3.

Ironically, by the mid-1880s the Democrats were attempting to block Cherokee voting. As a reward for their service to the Confederacy, the General Assembly granted the Cherokees permanent resident status in 1866. But legislators tempered this victory by continuing to deny them state citizenship, including the right to seek legal recourse in N.C. courts. As racial qualifications for suffrage were abolished under the new constitution, Reconstruction officials allowed some Indians to register and vote. It is difficult to judge how many

Cherokees actually voted because Jackson County registers were not preserved. Based upon twentieth-century figures, one assumes their numbers were few. In Williams, 50, Frizzell also suggests that as state Democrats began recouping their pre-war strength in the early 1870s, local partisans may have gerrymandered boundary lines between Jackson and newly created Swain County in order to destroy a potentially Republican voting bloc. By the time a federal court ruled that members of the Eastern Band were in fact wards and not U.S. or N.C. citizens in 1897, those Cherokees who voted typically cast their ballots for the GOP. See *United States v. D.L. Boyd*, 83 F.547 (4th Circuit, 1897), quoted in Commissioner of Indian Affairs, *Annual Report*, 1897, in U.S. Congress, House, Fifty-fifth Congress, Second Session, (Washington, D.C.: Government Printing Office, 1897), Document No.5, 579-84; Frizzell, 213.

[16] Cherokee Treaty of 1817, in Charles J. Kappler, *Indian Affairs: Laws and Treaties*, 5 Vols. (Washington, D.C., 1904-1941), II, 140-44, hereinafter cited as Kappler. See also *Papers of Andrew Jackson*, vol. 45, 20 June 1817-22 October 1817, series 1, Reel 23, Microfilm 316, Western Carolina University. Under this treaty lands within North Carolina, Tennessee, Georgia, and Alabama were ceded to the U.S. in exchange for equal amounts in the West. The treaty was concluded on 8 July 1817 by Major General Andrew Jackson and Tennessee Governor Joseph McMinn (among government officials) and "the chiefs, head men, and warriors" of the Cherokee Nation east and west of the Mississippi River. The treaty was ratified on 26 December 1817. In terms of latter-day consequences, the most controversial features of this treaty are found in Article 8 as follows: "And to each and every head of any Indian family residing on the east side of the Mississippi River, on the lands that are now, or may hereafter be, surrendered to the United States, who may wish to become citizens of the United States, the United States do agree to give a reservation of six hundred and forty acres of land, in a square, to include their improvements, which are to be as near the centre thereof as practicable, in which they will have a life estate, with a reversion in fee simple to their children, reserving to the widow her dower, the register of whose names is to be filed in the office of the Cherokee agent, which shall be kept open until the census is taken as stipulated in the third article of this treaty. Provided, that if any of the heads of families, for whom reservations may be made, should remove therefrom, then, in that case, the right to revert to the United States. And provided further, that the land which may be reserved under this article, be deducted from the amount which has been ceded under the first and second articles of this treaty." This last clause accounts for the treaty of 1819.

This article raises some interesting questions about the nature of Indian citizenship. For example, according to Chief Justice Taylor in *Eu-che-lla v. Welsh*, 10 North Carolina Reports 155, 74-87 (1824), although "treaties and legislative acts are to be construed in good faith according to the intention of the parties making them," and Jackson is assumed to have negotiated in good faith, it is not clear whether those receiving reservations actually became U.S. citizens. The treaty was ratified, therefore if the phrase "who may wish to become U.S. citizens" was a *bona fide* offer, those Indians meeting the requirements were naturalized. But that is not explicitly stated. Because the Indians acknowledged themselves to be under the protection of the U.S. government by virtue of the 1795 Treaty of Greenville (according to Chief Justice Taylor), in reality they may have been federal wards or at least quasi-citizens all along.

Regarding citizenship, the treaty of 1819 comes a little closer to stating it but once again falls short. Under article 2 ..."the United States do agree...to allow a reservation of six hundred and forty acres to each head of any Indian family residing within the ceded territory...who choose to become citizens of the United States, in the manner stipulated in said treaty" [of 1817]. One wonders if the Cherokees were required to take a loyalty oath or otherwise renounce their membership in the Cherokee Nation upon signing the roll. If so, their rights to land (and citizenship) should not have been tied to their reservations. Supposing an Indian family wanted to sell their tract and move elsewhere? American citizens could live wherever they chose. If the head of the household wished to return to the tribe, giving up his (or her—several widows received land) U.S. citizenship in the process, were his children not entitled to remain on their reservation as naturalized citizens by rights of *jus sanguinis*? If they were wards, the answer most likely would have been no. However, if they were in fact naturalized citizens, how could they have been refused? This policy seems to follow the assumption that tribal kinship and hierarchy would continue among the citizen Indians despite efforts to acculturate, civilize, and ultimately integrate them into white society. Another explanation lies within the fact that the government wished to extinguish Indian titles to abandoned properties, making such land available for re-sale.

[17] Treaty with the Cherokee, 1819, Article 1, Kappler, 177-80.

[18] In a letter to Secretary Calhoun, 21 November 1820, agent Houston listed the names of forty-nine Cherokees requesting reservations in North Carolina. Houston also stated that the reservations had been surveyed "agreeably to the treaties and opinion of the U.S. Attorney General" and that the commissioner appointed to "superintend the land sales at this place" was furnished with a list of all of the reserves taken subsequent to July 1818. Houston wanted the commissioner "to notice these claims at the time the lands were proposed for sale." These plats and certificates were to be sent to Washington as soon as the surveyor finished his work in Alabama. This list may be found in the Special Files of the Office of Indian Affairs, 1807-1904, National Archives, 25/1303-1305, Special File 31. For a list of Cherokee reservations granted under the 1817 treaty, alphabetized but not listed by state, see Journal and Account Book, 1801-1817, Records of the Cherokee Agency in Tennessee, 1801-1835, 13. Also Finger, *Eastern Band*, 10. See Appendix I, North Carolina Reserves.

[19] Treaty with the Cherokee, 1819, Kappler, 177-80. A number of Cherokees traveled to Washington to conclude this treaty with Secretary of War Calhoun in February 1819. The treaty was ratified on 10 March 1819.

See Calhoun's letters to Tennessee Governor Joseph McMinn, who served as Cherokee agent for this region from February 1823 until his death in November 1824. The Secretary authorized McMinn to draw up to two thousand dollars "on this department" [War] to defray expenses and dispense the "goods," which included one rifle and ammunition, one blanket, and one brass cooking kettle or one beaver trap to each departing Cherokee warrior, as he had done in 1817. Although Calhoun stressed that those Indians accepting reservations were no longer "independent" and had to come under the laws of the United States, he never referred to them as citizens. See Calhoun's letters to McMinn, 29 December 1817 and 11 March 1819, in the McMinn Papers, Records of the Cherokee Indian Agency, 14; also Abstracts of All Letters Received, Secretary of War Relating to Indian Affairs, 22.

[20] Finger, *Eastern Band*, 10-11.

[21] Houston to Calhoun, 21 November 1820.

[22] Although the citizen Indians received reservations on federal lands, those lands were subsequently turned over to the state of North Carolina. This placed them in the awkward position of being U.S. but not state citizens, living on federal lands which had been incorporated into a well established state. As North Carolina pressed its sovereignty, the federal government asserted its right to control and protect the Indian population by virtue of its treaty-making powers. Although one can understand why the government would intervene on behalf of the unacculturated, non-English speaking Cherokees, these actions call the nature of their citizenship into question once again. It appears that these Indians may have always been federal wards. See Finger, *Eastern Band*, 10-11; also *Eu-che-lla v. Welsh*, 10 *North Carolina Reports* 155, 74-87, (1824).

[23] For an enlightening discussion of the facts and fallacies surrounding the Tsali legend and the evolution of the Eastern Band, see Duane H. King, "The Origin of the Eastern Cherokees as a Social and Political Entity," in Duane H. King, ed., *The Cherokee Indian Nation: A Troubled History* (Knoxville: University of Tennessee Press, 1979), 164-79, hereinafter cited as King. See also Finger, *Eastern Band*.

[24] King, 166-67; Finger, *Eastern Band*, 11. This implies that government officials had not required the N.C. citizen Indians to formally renounce tribal membership upon becoming U.S. citizens. The Cherokee Nation, on the other hand, quickly severed relations with the Oconaluftees upon acceptance of the treaties of 1817 and 1819.

[25] King, ibid, 168-78; Finger, ibid, 14-42.

[26] Unfortunately this article, which bears a strong resemblance to Article 8 in the 1817 treaty, appeared in the treaty signed by representatives of the Cherokee Nation but was stricken from the copy ratified by the U.S. Senate. Since the North Carolina Cherokees were never parties to the treaty it appeared that without legislative recognition of their rights to remain in the state, not only might they be forced off their land one day but also denied any claim to the Nation's allotment. Article 12 is as follows: "those individuals and families of the Cherokee Nation that are averse to removal to the Cherokee country west of the Mississippi and are desirous to become citizens of the states where they reside and as such are qualified to take care of themselves and their property shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements, and per capita improvements; as soon as an appropriation is made for this treaty. Such heads of Cherokee families as are desirous to reside within the States of North Carolina, Tennessee, and Alabama, subject to the laws of the same; and who are qualified or calculated to become useful citizens shall be entitled, on the certificate of the commissioners to a preemptive right to one hundred and sixty acres of land or one quarter section at the minimum Congress price..." President Jackson allegedly removed this clause so Cherokees wishing to remain would have to "acquire their own land and fend for themselves." W.H. Thomas went to Washington in an attempt to clarify the Oconaluftees' status regarding tribal allotments and rights to remain on their reservations. Although Thomas failed to get an iron-clad guarantee against removal, he was assured that the N.C. Indians were entitled to benefits under the treaty even though they had relinquished their membership in the Cherokee Nation. While trying to secure their state citizenship, Thomas purchased vast tracts of land throughout the western North Carolina mountains for the Cherokees as "insurance" against future removal. See Finger, *Eastern Band*, 17. Also Treaty of New Echota, in Kappler, 439-49.

[27] The Indian Fraud Act of January 1837 is as follows: "All contracts and agreements of every description made after 18 May 1838, with any Cherokee Indian or any person of Cherokee blood, within the second degree, for an amount equal to ten dollars or more, shall be void unless some note or memorandum thereof be made in writing, and signed by such Indian or person of Indian blood, or some other person by him authorized, in the presence of two witnesses, who shall also subscribe the same." Although some would argue that enactment of this protective legislation implied acceptance of the Cherokees as permanent residents and citizens of North Carolina, as Governor Bragg reiterated in 1855, the Cherokees were not state citizens until the General Assembly passed an act declaring their citizenship. Act of 21 January 1837, Laws of North Carolina, *1836-1837*, 30. See also Finger, *Eastern Band*, 18. See Appendix II for a listing of Quallatown Cherokees who were "averse to removal" and wished to continue as "citizens of and subject to the laws of the State of North Carolina." Senate Document 408 (29-1), Serial 477, 17-19.

[28] John R. Finger, "The Impact of Removal on the North Carolina Cherokees," in William L. Anderson, ed., *Cherokee Removal: Before and After* (Athens: The University of Georgia Press, 1991), 99, hereinafter cited as Finger in Anderson. Despite popular misconceptions that Indians were not allowed to own private lands in North Carolina, Jackson County records indicate that W.H. Thomas transferred several tracts to individual Cherokees.

On 12 February 1856, Thomas "forever" granted to Standing Wolf (Wahheyuahcatauga) of Jackson County and his heirs an inalienable deed to 281 acres in Deertown in exchange for $925.69 "cash in hand." The deed carried a life estate which descended to his children and included all rights, including water. Thomas stipulated that although the land legally belonged to Standing Wolf and his heirs, it could not be sold without his (Thomas's) consent "if living," or consent of Deertown "if dead." Standing Wolf also had to agree not to permit intoxicating beverages on his land. Other deeds, each with the same provisions and each signed by their Cherokee owners (in syllabary), include 40 acres in Wolftown to Enola in exchange for $200 (2/12/56); 150 acres in Deertown to Tizell Sinika in exchange for $1,000, a balance of $351.12 owed to Thomas (2/12/56); 53 acres in Wolftown to Young Squirrel (Salolanelah) for $300 (2/27/56); and several others including Jenny Reed and Wilson Reed, whose claims were upheld by probate court in 1875. See General Index to Deeds and Records of Deeds, A-480-82; D-599; F-217, 220, 230, Jackson County Courthouse, Registrar of Deeds. There are several deeds registered as "bonds" which list Thomas as lien holder. These documents carry the same stipulations as the others but remained in Thomas's name because the buyers owed him varying amounts of money.

After 1871 it may have been more difficult (if not impossible) for Cherokees to purchase private land within the state. According to the Entries and Grants section of N.C. Public Statutes, 1871-1873, "...only those entries of land made or to be made by persons who have or may come into the State with the *bona fide* intent of becoming residents and citizens thereof shall be deemed and taken to be good." Since the Cherokees were not recognized as *bona fide* citizens, they may have no longer been able to purchase or receive titles to new lands. See *Public Statutes of N.C. General Assembly, 1871-1873*, 374-382., hereinafter cited as N.C. *Public Statutes*.

[29] The 400 Cherokees serving in Thomas Legion represent the enlistment of nearly every man capable of military service at that time. There were also 30 Cherokees who served the Union after being captured and "reformed" by federal troops in Tennessee. As if conditions were not bad enough, one of these Union men returned to Quallatown after the war, bringing the deadly smallpox virus with him. The resulting epidemic claimed more than 100 lives. See Vernon H. Crow, *Storm in the Mountains, Thomas's Confederate Legion of Cherokee Indians and Mountaineers* (Cherokee: Press of the Museum of the Cherokee Indian, 1982), hereinafter cited as Crow. See also Frizzell in Williams, 47-8.

[30] John Ehle, *Trail of Tears, The Rise and Fall of the Cherokee Nation* (New York: Doubleday, 1988), hereinafter cited as Ehle. Also E. Stanley Godbolt and Mattie U. Russell, *Confederate Colonel and Cherokee Chief, The Life of William Holland Thomas* (Knoxville: University of Tennessee Press, 1990), hereinafter cited as Godbolt and Russell.

[31] In a bond registered in probate court 4 October 1869, R.B. and William Johnston of Buncombe County acknowledged the receipt of $6,000 from Enola Sawnuke Bigwitch and Ah-cheel-e-fos-kih, "Chief and agent of the Cherokee Indians living in Jackson and Cherokee counties," as partial payment for lands upon which the Indians had settled and were paying taxes. This document further states that the Indians would receive full title to these lands if the outstanding debt of "not more than $30,000" was paid within 18 months or, upon relinquishing the land, monies already paid ($6,500) would be refunded. After the Eastern Band received federal recognition in 1868, Congress authorized litigation on behalf of the Cherokees in 1870. As a result of this action the Johnstons were reimbursed for their investment and the Eastern Band received 50,000 acres, known as the Qualla Boundary, in 1874. See Record of Deeds, D-599, Jackson County Courthouse, Registrar of Deeds; also Frizzell in Williams, 48.

[32] By a margin of 100,000 votes North Carolinians approved two amendments to the state constitution which "completed the tax amendments." These acts increased the amounts of state, county, and poll taxes, authorized an income tax, altered voter qualifications by reducing two years residency in the state to one year in the state plus four months in a precinct, and eliminating payment of poll taxes as prerequisites to registration and voting. The national and state races ranged from the presidency to district judges. Although each category (federal, state, local) had its own separate ballot, it was possible to vote a straight party ticket. The local races featured Zeb V. Watson (R) v. Ernest L. Wilson (D), Sheriff; Askew C. Queen (R) v. J.W. Davis (D), Treasurer; S. Matt Parker (R) v. T.A. Dillard (D), Commissioner; A.D. Parker (R) v. R. Raymond Nicholson (D), Registrar of Deeds; J.C. Reed (R) v. T.F. Buchanan (D), Surveyor; J.R. Dillard (R) v. Grover C. Wilkes (D), coroner; J.A. Stillwell (R) v. G.C. Turpin (D), Commissioner; C.Z. Candler (R) v. M. Buchanan (D), Commissioner; and John B. Ensley (R) v. C.C. Buchanan (D), Representative. See *Jackson County Journal* 5 November 1920; also *Constitution of North Carolina in North Carolina Public Laws andResolutions Passed by the General Assembly, 1921 Session* (Raleigh: Mitchell Printing Company, State Printers, 1921): 22-3. See also *Consolidated Statutes of North Carolina*, Annotated, II, (1919), 379-97, for regulations concerning elections.

[33] Ibid., *Consolidated North Carolina Statutes*, II, 5985; "Canvass Board Meetings," 394, hereinafter cited as *Consolidated Statutes*.

[34] *Watson v. Wilson, quo warranto* proceedings in the Superior Court of Jackson County, North Carolina, February Term, 1921, case l, file 61.

[35] *Consolidated Statues*, no. 5984, "County Board of Canvassers," 394.

[36] See varying accounts of the Canvass Board hearings in the *Asheville Citizen* 3 November-21 December 1920; *Asheville Times* 5 November-24 November, 1920; *Charlotte News and Observer*, 6 November 1920; *Jackson County Journal*, 5 November-31 December 1920, 18 February 1921, 4 March-l April 1921, 29 July 1921, 4 November 1921, 24 February-31 March 1922, 19,26 May 1922, 13,20, October 1922, 1 November 1922; *Raleigh News and Observer* 7,11,20,21,23,24 November 1920; Jackson County Superior Court, Sylva, Cross Reference to Court Pa-

pers; Jackson County Superior Court, Sylva, Minute Docket No.13, p 262; Jackson County Superior Court, Sylva, Judgment Book M, case l, file 61, p 218-221 (individual cases consolidated into *Zeb. V. Watson*, et al. v. *Ernest L. Wilson*, et al.).

[37] Ibid.

[38] *Asheville Citizen* 9 November 1920.

[39] Although court records and newspapers previously cited all contain accounts of and references to the "riot" in Sylva, the more sensational and entertaining reports may be found in the *Charlotte News and Observer* and the *Raleigh News and Observer.*

[40] In *Watson v. Wilson*, the relators claimed (and the defendants admitted) that the Canvass Board met on Thursday 4 November at 11:00 and adjourned after a "disturbance" of disputed origin until Friday the 5th at 9:00. On Friday, another incident disrupted the proceedings and prevented the Board from completing the canvass. They adjourned until Saturday the 6th at 9:00. The other stops and starts were as follows: after 6 November the board met on Tuesday the 9th at 2:30, adjourned until Wednesday the 10th at 2:30; met on Wednesday, Thursday, and Friday and "sifted through several precincts but did not declare the election," adjourned until Tuesday the 16th at 2:00; met, adjourned until Wednesday the 17th at 9:00; met, adjourned until Thursday the 18th at 9:00, when they "refused to declare the election;" adjourned and "secretly" decided to move the proceedings to Asheville on Friday 19 November at 2:30 pm, in spite of laws (Statutes 5985 and 5986) stating that canvass boards shall meet in the courthouse of the county in which a disputed election occurred and proceed to canvass the votes "without delay" and declare the winners. When these actions were discovered the Board adjourned until Saturday 20 November at 9:00 am, at which time counsel for the Republicans was denied; adjourned until Tuesday 23 November at 9:00 am, at which time 118 votes for the GOP candidates were thrown out. The Board then adjourned to meet in Sylva on Wednesday 24 November at 10:00 am, at which time they "pretendingly" completed the count and canvass and publicly announced the Democratic winners.

[41] *Asheville Citizen* 12 November 1920; *Jackson County Journal* 12 November 1920; *Raleigh News and Observer* 20 November 1920; *Watson, et al. v. Wilson*, et al. Interestingly, the Canvass Board members, precinct judges, and spectators who attended these sessions all knew how each person in the precinct voted and subtracted their challenged votes accordingly. Although it has been suggested that there may have been a system of colored ballots in use to identify each party, N.C. election laws were quite specific about the color (white) of paper used, its size, and the exact procedure for casting ballots. Since no eyewitnesses have surfaced with specific information on balloting procedures in individual precincts, there is no way of knowing how carefully the letter of the law was followed. According to the N.C. Election Board, there had to have been a measure of consistency or the state would not have certified the elections. Sources have related how good precinct judges always knew how their registrants had voted because they had promises for certain candidates well in advance of each election. Vote buying was common and was actually encouraged in those days and both parties participated in this practice openly.

As for challenging procedures, according to the 1919 N.C. Election Laws, challenges to voter qualifications were to be made on the Saturday before each election when each precinct judge was to keep the registration books open from 9:00 until 3:00 at the usual polling place. At this time anyone could review the list of voters and challenge—which means to question—the qualifications of any registered voter. Once challenged, the precinct judge was required to inform the registrant and resolve the issue. For example, if residency was questioned, the voter must prove he had lived in the state for two years, the county for six months, and 4 months in the precinct or ward in which he registered. If he was challenged for not paying the poll tax of up to $2.00—which had to be paid in person—he must produce his receipt, and the poll tax payment book maintained by the Sheriff had to be examined. If his age was questioned, he had to produce evidence of being twenty-one years old or older, and if his literacy was questioned, he must prove his eligibility by reading any section of the state constitution required by the precinct judge. If the voter successfully answered the challenge, then he was considered to be duly registered. If not, his name was stricken from the rolls. In every case the precinct judge was the one responsible for making the final decision of qualification. Although the Canvass Board heard challenges day after day during their proceedings—challenges which were not made in advance of the election—the names of numerous voters eliminated prior to the election are found within *Watson v. Wilson*. See *N.C. Statutes*, nos. 5939-40 and 5971-82, 380-93.

[42] North Carolina Statute 5986 grants..."the Board of County Canvassers authority to judicially pass upon all facts relative to the election and judicially determine and declare the result of the same. They have the authority and power to send for papers or persons. However... although the return of the Board of Canvassers is *prima facie* correct, their judgments or decisions are not so conclusive as to exclude collateral attack in a civil action in the nature of *quo warranto*." Furthermore, by Code 1883, Section 2694, ..."the quasi-judicial functions of county canvassers do not extend beyond an inquiry into and a determination of the regularity and sufficiency of the returns themselves *(Peebles v. Commissioners)*. The power conferred on boards is limited to canvassing the election and is confined to an examination and determination of regularity and authenticity and does not extend to inquiries into any facts by which it may be claimed that the election was fraud and invalid." See *Consolidated Statutes*, no. 5986, 395.

[43] *Asheville Times* 15,18 November 1920. On 18 November the paper announced that because the Democrats refused to give in canvassing was continuing and majorities were still being lowered. Up to this point

there had been no mention of throwing out Cherokee votes other than those who failed to meet state requirements in literacy, age, or residency. See *Watson v. Wilson* .

[44] N.C. Statute 5983, *Consolidated Statutes*, 393. During the first count more ballots than registered voters were discovered in the Barkers Creek and Sylva boxes. Sylva was the largest Democratic precinct; Barkers Creek the largest Republican. Since disqualifying either box would have generated controversy, the Board opted to leave them alone.

[45] According to the *Raleigh News and Observer* 20 November 1920, Attorney General James S. Manning urged the Canvass Board to "consider the serious nature of tossing boxes from the disputed precincts," suggesting instead that they "use any means, including recalling each voter, to find fraud but not dismiss legal votes." Although each party claimed that it would have won the election had those boxes been disqualified, since Barkers Creek was the only Republican stronghold in the county, it is more likely that the Democrats would have won.

[46] *Asheville Citizen* 19 November 1920; *Asheville Times* 11,12 November 1920.

[47] Ibid, *Asheville Citizen* and Frizzell, 216-17. In July 1900, four Indians obtained warrants for the arrest of Ransom Hyatt and John M. Enloe, Democratic registrars in Jackson and Swain counties respectively, charging them with refusing lawful registration to qualified Indians. After Hyatt and Enloe's attorneys charged the Indians with perjury, they admitted that they had been rejected on the basis of their wardship status and the presumption that they were not American citizens. The matter was later referred to the United States court for the Western District of North Carolina. Although the case had been continued until its January term, Judge James E. Boyd dismissed the case (and the charges) after deciding the Cherokees were wards without voting privileges. This ruling harkens back to the earlier discussion of the Eastern Cherokees and their official and unofficial status in North Carolina.

[48] According to the *Raleigh News and Observer* 21 November 1920, Attorney General Manning sent J.J. Mason a telegram urging him to conclude the hearings as soon as possible. In this message Manning reiterated his belief that the Cherokees had the right to vote, if qualified, because the state Supreme Court had referred to them as citizens in at least two rulings. See *State v. Jacob Wolf*, 145 N.C. 440 (1907) and *Eastern Band of Cherokee Indians v. United States and Cherokee Nation*, 117 U.S. 880 (1886), a.k.a. "Cherokee Trust Funds." Furthermore, said Manning, because no one had raised the issue of Indian voting prior to the election and he had not been asked to rule in this matter, in his opinion the votes should be allowed to stand. The Attorney General was also aware of the agreement to exempt whites from literacy requirements. He warned that if challenged this agreement would not be effective against election laws. After the election was overturned and law suits were filed, it is interesting that the Eastern Band did not take legal issue with this agreement.

[49] *Asheville Times* 20 November 1920.

[50] *Asheville Times* 23 November 1920; *Asheville Citizen* 24 November 1920; *Jackson County Journal* 26 November 1920; *Raleigh News and Observer* 24 November 1920. Those in favor included Ramsey Dills, H.C. Moss, H.A. Pell, John Phillips, J.J. Cowan, P.N. Price, R.B. Shuler, J.C. Brown, and W.J. Fisher, who replaced an original member. Those opposed included T.H. Queen and K. Howell, another replacement. G.H. Moody and J.J. Mason abstained from voting. Of the eighty-three Cherokees removed from Qualla precinct's roll, seventy-nine were Republicans and four were Democrats. The names of the Republican Cherokees were discovered among court documents previously believed to have been lost or destroyed and are listed in Appendix III. Because they were not identified in said documents, the four Democrats remain unknown. After conducting a thorough search of the Jackson County Courthouse and adjacent storage facilities, I have reluctantly concluded that Qualla township's 1920 register, along with the Sheriff's poll tax receipt book and other records related to the *quo warranto* hearings of 1921 and 1922, were filed together and destroyed during the 1960s, if not earlier. However, from the contents of a letter in the Zebulon Weaver Collection at Western Carolina university, it appears likely that Sibbald Smith was one of them. See *Watson v. Wilson* . See also the Zebulon Weaver Papers, Special Collections, Western Carolina University, Smith to Weaver, 16 October 1928.

[51] *Asheville Times* 23 November 1920. Excluding the two offices "duly won" by Republican candidates Dr. C.Z. Candler and John B. Ensley, the election returns (original and adjusted) may be found in Appendix IV.

[52] *Watson v. Wilson*. See also Jackson County, North Carolina, December 1880, Swearing in of all County Officials, Jackson County Courthouse, which contains the records of all officials, regardless of category, sworn into office after December 1880. N.C. Statute 5991 decrees that election results shall be announced at the courthouse door and shall be considered to be *prima facie* (legally sufficient to establish a fact or case unless disproved) correct unless overturned by court judgment. *Consolidated Statutes*, 397.

[53] *Quo warranto* refers to an English writ requiring a person to show by what authority he exercises a public office, franchise, or liberty.

[54] Attorneys for Wilson, et al. understandably doubted the authenticity of Manning' s letter granting permission for *quo warranto* proceedings. A carbon copy of this letter appears in each case file. These letters have been typed on typical "onion-skin" paper and do not bear Manning's personal signature, letterhead, state seal, or any other outward sign of authenticity or legality.

[55] Jackson County Superior Court, Sylva, Minute Docket No.13, 262-3. Because the court term was not long enough for an extended trial, the Republicans agreed to the referee since it was in their best interests to obtain a speedy resolution.

[56] *Watson v. Wilson*. Also recorded in Minute Docket No.13, 286.

[57] Ibid.

[58] Minute Docket No.13, 318. Attorney General Manning granted permission for new *quo warranto* hearings in July 1921 and a court date of 2 August was assigned. But because the necessary bonds had not been filed by all parties, court appearances were postponed until the October 1921 term, at which time Judge W.F. Harding assigned attorney W.E. Breece of Brevard as referee. Although each case folder was intact when discovered, there are no records regarding Breece's decision. It is possible that the Breece Collection, formerly housed in Special Collections at Western Carolina University, contains information otherwise unavailable. This collection has been returned at the Breece family's request and is not accessible at this time.

Regarding the bonds, in the first trial each relator and defendant was required to post a $1,000 bond payable to the Attorney General in order to cover costs to the state. Judge Long required each party to post a $1,500 bond to cover the cost of the referee and the stenographer, Mrs. Amma W. McCarthy of Asheville, with the agreement that additional expenses were to be shared equally between the parties. The relators were also required to post a $1,500 bond (each) payable to the defendants to cover their costs and inconvenience. The case files contain these documents, including Mrs. McCarthy's bill totaling $70.75 and Mallonee's fee of $215.00, duly certified by the Clerk of Court. In the second trial, Manning required each man to post a $1,500 bond for the state. Judge Harding required the relators to post $2,500 bonds payable to the defendants and agree to divide additional expenses between themselves. Under N.C. Statute 5986, had the relators proven their cases their "reward" would have been the contested offices. The bond guarantors were as follows: (1) in the case of J.R. Dillard v. G.C. Wilkes, J.B. Ensley and John Dillard signed with J.R. Dillard and W.E. Grindstaff with Wilkes; (2) J.C. Reed v. T.F. Buchanan, J.W. Keener and I.H. Powell signed with Reed and J.H. Wilson with Buchanan; (3) J.A. Stillwell v. G.C. Turpin, G.M. Cole and C.L. Candler with Stillwell and N.L. Sutton and D.M. Hall with Turpin; (4) S.M. Parker v. T.A. Dillard, C.L. Candler with Parker and J.N. Wilson and W.F. Holder with Dillard; (5) A.D. Parker v. R. Raymond Nicholson, R.A. Painter and W.J. Turpin with Parker and T.H. Hastings and G.T. Nicholson with Nicholson; (6) A.C. Queen v. J.W. Davis, S.C. Cogdill, D.U. Queen, and L.B. Sutton with Queen and T.O. Wilson, J.D. Davis, and Theo Buchanan with Davis; (7) Z.V. Watson v. E.L. Wilson, D.G. Bryson, J.M. Worley, and Gola P. Ferguson with Watson and J.W. Davis and M. Buchanan with Wilson.

[59] In 1922, Raymond Nicholson was reelected Registrar of Deeds; J.W. Davis, Treasurer; T.F. Buchanan, Surveyor; T.A. Dillard and G.C. Turpin, County Commissioners. They were sworn in on 4 December 1922. See Jackson County, 1880, Swearing in of all County Officials. As a result of this ill-fated election, in 1921 the General Assembly placed Jackson County under the Australian Ballot (secret ballot) Act passed in 1917 for Buncombe and Madison counties. Just how successful this act was in cleaning-up sloppy electoral processes is not clear. According to the *Jackson County Journal*, 19,26 May 1922, when the Republicans held their local convention, members urged partisans of both parties to pledge themselves to running clean, honest campaigns. Ex-relator Zeb Watson, who still believed the Democrats had intentionally stolen the last election, voiced his opposition to using the education test for counting votes and offered $50.00 to any Democratic platform "which declared the same." On 2 November 1922 the paper reported that with the exception of Barkers Creek precinct, not only had Democrats taken Jackson County elections "straight across," but other western N.C. counties which had been "solidly GOP" had also gone Democratic.

As an interesting, albeit tragic aside, as Barkers Creek voters went to the polls in November 1922, a fight erupted between prominent resident and businessman George Revis, a stolid Republican, and poll-watcher and former Canvass Board member Walter J. Fisher, Democrat. Revis, the "ward boss" who owned the lumber yard and store which served as the polling place, was reported to have been drinking heavily. Eyewitnesses say this was not true because he and his son Jewel had been driving community residents to the polls that day as usual. In a typical election-day scuffle, Revis reportedly chided Fisher about the 1920 election. After Revis shouted something about the Democrats not being able to "steal" this one so easily (because of the Australian Ballot Act), Fisher drew a pistol and shot Revis to death. In the ensuing melee Jim Sutton shot Fisher in the leg as the rest of the crowd scattered. In a personal interview an elderly resident said that "adder seein' two men shot dead [Fisher survived with a serious leg wound] and the hat blowed offen a nuthern's head" the very first time he tried to vote, he decided "votin'" was not for him and he never went back! Fisher was acquitted of George Revis's murder in February 1923. Personal interviews; see also Jackson County Superior Court, Sylva, Minute Docket No.13, February Term, 1923, 396. Although Fisher received a jury trial, the case folder has not been located among county records.

[60] After listing the 79 disfranchised Indians, the relators claimed ..."that the said Board of Canvassers, in throwing out, rejecting, and refusing to count the said votes on the pretended and unlawful ground that the said voters, being Indians, were wards of the Federal Government, when they were, in fact, citizens of the United States and of the State of North Carolina, possessing all of the constitutional and statutory requirements for voting in the said State of North Carolina, to-wit, being citizens of the United States and of said State, twenty-one years of age, resident in the State two years, in the County of Jackson six months, and in Qualla precinct four months, and with their poll taxes for the year 1919 duly paid on or before the first day of May 1920, duly registered, and being able to read and write any section of the Constitution of North Carolina in the English language and otherwise legally qualified, thereby depriving said voters, on the alleged ground that they were Indians and wards of the Federal Government, of the equal protection of the laws, denying to them

citizenship of the United States and of the State of North Carolina, in violation of the Fourteenth Amendment to the Constitution of the United States."—

This argument, based upon the mistaken belief that Indians obtained their citizenship and voting rights under the 14th and 15th Amendments, harkens back to the earlier discussion of Indian citizenship. Further complicating this issue were various court rulings in favor of Cherokee citizenship, such as State v. Jacob Wolf (1907), and the Eastern *Band of Cherokee* Indians v. United States and Cherokee *Nation*, a.k.a. "Cherokee Trust Funds" (1886). In the D.L. Boyd case of 1895 (United States v. Boyd, et al. [1895], *House* Doc. 3382, 54th Congress, Session I, 633 and House Doc. 5, 55th Congress, Session 2 [Serial 3641], 579-84), the Cherokees were determined to be wards of the federal government and not state citizens, although "they probably should be." In 1895 Congress agreed that there would have to be specific legislation declaring their citizenship, "more than Article 12 of the Treaty of New Echota," and although the Band was bound by N.C. laws and was not part of the Cherokee Nation, it had not been released from ward status by the federal government. The Boyd ruling, backed up by the Hyatt case, was used to throw out the Cherokee vote. See also *Asheville Citizen* 19 November 1920; Frizzell, 213; and Finger, *Eastern Band*, 173-74.

Because the topic of Indian citizenship is full of complex legalities and maddening circular arguments, in order to sort things out, one must return to the U.S. Constitution and how it has been interpreted over time. Despite the treaties of 1817 and 1819, the Civil Rights Act of 1866 (which naturalized non-tribal, tax-paying Indians) and the 14th and 15th Amendments, the Supreme Court consistently ruled that tribal Indians were not U.S. citizens. As the Democrats correctly argued, ..."the tribe known as the Eastern Band of Cherokee Indians are not citizens of the State of North Carolina, for that they have never been recognized as such under the constitution and laws of the United States and the Indian treaties made in pursuance thereof, and cannot become such without the consent and cooperation of the government of the United States, which consent and cooperation has never been granted or extended to them by the said government; that they have never been recognized by the State of North Carolina as citizens, entitled to vote under its constitution and its statutes. Recalling that the citizen Indians relinquished their U.S. citizenship when they applied for government assistance in 1868 and became officially recognized as a tribe, although it can certainly be argued that North Carolina gave the Cherokees its tacit approval to vote and consider themselves to be *de facto* citizens, implied consent does not equal consent explicitly granted under federal and state laws.

Curiously, there is no indication that the Cherokees took a strong interest in these proceedings. There was no mention of Indians attending the trials of 1921-22, protesting their disfranchisement, or giving any type of testimony other than Blythe and Standingdeer at the Canvass Board hearings on 19 November. Furthermore, efforts to obtain information from prominent tribal members yielded few results since all professed to have never heard of this.

[61] In his "Second Message to the Special Session of the General Assembly" on 13 August 1920, Governor Thomas W. Bickett urged legislators to ratify the Woman Suffrage Amendment, despite reservations they might have, because its passage was "an absolute moral certainty." In doing so he stated that he did not believe that very many [white] women in North Carolina actually wanted to vote and those that did were "unconsciously offering to barter a very precious birthright for a very sorry mess of pottage." More importantly Bickett said that he feared women's suffrage would "have an unfortunate effect on race relations within the state" which could ultimately destroy the "white government within these borders" for which the state "had fought with its back against the wall" [1861-65] and had "struggled to maintain for the last twenty years." He was alluding to the advent of literacy tests and poll taxes in 1900. Because the "line of demarcation" between the parties had "largely been one of color," the Governor feared that women's suffrage would "re-open these old questions and force us to fight the battle for white government in North Carolina once again." Although Bickett was probably referring to black women rather than Indians, from this message it is clear that top Democrats recognized that a strong turnout of women voters, particularly minority women, could unfavorably affect the partisan balance in certain areas. See R.B. House, ed., *Public Letters and Papers of Thomas Walter Bickett, Governor of North Carolina 1917-1921* (Raleigh: Edwards and Broughton Printing Co., 1923): 60-3.

According to Frizzell, 218-19, since the Cherokees had not attempted to register and vote in significant numbers since 1900—the year the educational (or literacy) test and poll tax were implemented—local Democrats assumed the usual custom of refusing Indian registration would continue. Republican registrars had also been replaced by Democrats well in advance of this election *(Watson v. Wilson)*. When eighty-three Indians (the majority of whom were women) successfully registered and voted in 1920, the Democrats were "caught off guard." The Party later charged Republicans with threatening and otherwise intimidating poll keepers into registering these Indians. Also see the *Asheville Citizen* 19,24 November 1920 and John R. Finger, *Cherokee Americans, The Eastern Band of Cherokees in the Twentieth Century* (Lincoln: University of Nebraska Press, 1991), 45, hereinafter cited as Finger, *Cherokee Americans*. Although this may indeed have been the case, it remains curious that no one questioned the propriety of registering these Indians, particularly first-time female voters, during the challenging period before the election. In personal interviews sources have indicated that "challenging day" was an occasion for which everyone in the precinct turned out. Although the relators complained that they were denied access to registration lists in Canada and River precincts, the Qualla poll book was apparently open for public inspection the Saturday before the election. Therefore it must be assumed that no one really cared that these Cherokees intended to vote—that is, until the wrong party won!

[62] *Jackson County Journal* 11 June 1920. This edition also listed the candidates emerging from local primaries. The only specific references to the candidates or their campaigns are found throughout May editions of the *Journal*, in which county Democrats endorsed B.F. Long for Superior Court Judge and James H. Cathey pledged to "do a good job" if elected county Treasurer, only to withdraw after noting "division and strife" within the Party.

[63] *Jackson County Journal* 18 June 1920.

[64] Gordon B. McKinney in Williams, 237. The issue of women's suffrage never attracted much attention in Jackson County. When a national suffrage speaker reportedly attacked the Bible for "holding women back" during a Sylva address in December 1912, the fledgling movement was dealt a serious blow locally.

[65] *Jackson County Journal* 23 July 1920.

[66] In accordance with state regulations requiring that voter registration lists be updated periodically, on 26 January 1950 Barkers Creek registrar J.T. Jones completed transferring names from an old register into the "new register book" for this precinct. With his signature he certified that "this 416 names on the new book will be good until 1970." Among the names transferred were fifty women listed as having registered to vote in 1920. These women ranged in age (at the time of registration) from 21 to 60, with a majority having been 21. This number represents less than half of the "105 illiterate women from Barkers Creek" attorney J. Walter Haynes wanted to disqualify from that election.

[67] Of the 79 Republican Cherokee voters, 42 were women and 37 were men. Of those 42 women, 32 were married. See Appendix III for names of Cherokee voters.

[68] The Charles A. Bird Collection, Special Collections, Western Carolina University, hereinafter cited as the Bird Collection, contains a list of individuals from Quallatown precinct who paid their poll taxes in 1909. Of 192 names on the list, only 19 names, alphabetized separately at the end, are apparently Cherokee. A couple of poll tax receipts (not from Indians) are included in this file. See Frizzell, 217; also the Bird Collection at Western Carolina University. These 19 Cherokees are listed in Appendix V.

[69] Among the Cherokees listed under Qualla precinct in the Jackson County Permanent Registration Book, maintained in the Registrar of Deeds office, Jackson County Courthouse, are James Blythe, age 47, who served as the first "Indian" Cherokee agent, Daniel Blythe (Dave?), age 45, and Sibbald Smith, age 30. These men signed the roll on 24 October 1908.

[70] Under Statute 5939, Registration of Voters (and section 4, article 6 of the N.C. Constitution), those individuals who were eligible to vote in N.C. on 1 January 1867 (presumably after the 1866 Civil Rights Act took effect) or their direct lineal descendants, were exempt from the educational (literacy) requirements imposed by a constitutional amendment in 1900 to restrict Black voting. Thereafter, upon presentation of a certificate issued by the Secretary of State, no precinct judge or registrar could inquire whether such person could read or write. In order to qualify for exemption under this grandfather clause, registrants had to present themselves between 1 October 1902 and 1 December 1908.

[71] Although historians have proposed several explanations for this turn-about, the Cherokees, like Blacks, may have simply opted to follow political self-interest. During the War the Democratic South brought them nothing but suffering, yet afterwards the Republican federal government came to their aid. See Frizzell, 209; Frizzell in Williams, 53; and Finger, *Eastern Band*, 150-153.

[72] Frizzell in Williams, 53.

[73] *Asheville Citizen* 20,24 November 1920; *Asheville Times* 24 November 1920; Frizzell, 223-4.

[74] Since the margins of victory ranged between 28 and 87 votes, had the Cherokee women not voted, 3 of 7 races would have gone to the Democrats. Regarding Indian participation in WWI and WWII, both as soldiers and civilians on the home front, see John R. Finger, "Conscription, Citizenship, and Civilization: WWI and the Eastern Band of Cherokees," *North Carolina Historical Review*, 3 (July 1986): 283-308; Finger, *Cherokee Americans*, 34-45; 97-143; and William J. Wood, "War and the Eastern Cherokees," *Southern Indian Studies*, 2 (1950): 47-53. Despite questionable legality and propriety in conscripting non-citizen (and often non-English speaking) Indians into the U.S. military, a number of Eastern Cherokees joined or were drafted into the armed services during WWI in order to "make the world safe for democracy." Wood suggests that many of these soldiers (particularly after WWII) were favorably impressed with the outside world and the opportunities offered by military life, such as education, training, travel, and economic security. They found themselves better able to mingle with outsiders and felt a renewed pride in their "ancient warrior status." Along with this pride came the realization that taking aggressive action against problems, whether alone or as a group, was more rewarding than disassociation or passive acceptance.

[75] Although there may have been a general lack of interest in voting within the tribe, it is possible that area whites may have intimidated the Cherokees into quiescence. Not only were their settlements and homesteads relatively isolated during this era, but frequent references to 'appropriate' and 'justifiable' lynchings may be found throughout corresponding editions of the *Jackson County Journal*. One such incident involved a black man who had the audacity to wave at a white woman as the train on which he was riding passed through Jackson County. The woman's husband raced to the depot in Bryson City, where he forced the man off the train and 'beat him unconscious' with a piece of metal pipe. When questioned about the incident, the doctor treating the offender replied that when he awakened—if he awakened—the patient would be a smarter man.

In preparation for the general allotment which never came, the federal government took the Cherokee lands into trust and removed the Qualla Boundary from county tax rolls in 1924. The local newspaper estimated that in Jackson County alone the loss of tax revenue would exceed one million dollars. When the Band was disfranchised in 1920, Carl Standingdeer likened the Cherokees to the American colonists—they now had "taxation without representation." After 1925 Jackson County turned the tables once again and declared that despite their new citizenship status and the fact that they had been paying taxes for many years without voting, the Cherokees were not entitled to "representation without taxation" and would remain disfranchised. See Frizzell, 229-30; Frizzell in Williams, 54-5; Finger, *Cherokee Americans*, 46-7; *Jackson County Journal* 20 July 1927, 19 June 1930; Ben Oshel Bridgers, "An Historical Analysis of the Legal Status of the N.C. Cherokees," *North Carolina Law Review* 58 (August 1980): 1075-1131.

[76] Zebulon Weaver Collection, Special Collections, Western Carolina University, hereinafter cited as the Weaver Collection. See letters from Sibbald Smith, 16 October and 25 October 1928. Although Smith refers to correspondence with Weaver in early 1924, these letters were not found within this collection. In the letter of 16 October, Smith claims he was denied registration despite presentation of his permanent registration certificate issued by the Secretary of State. Smith said that the registrar could not "read intelligently or explain the clause in the constitution he required Indians to read." "It grates on my common sense of justice to be refused my franchise by a tool of such characters," said Smith, and after pleading to Weaver's "finer sense of fair play" in helping him overcome the wiles of those who would slander him for standing up for his rights, he ends the letter by saying, "I NEED HELP." In the second letter Smith begged Weaver to answer him because he was "worried to death" about his status and the registration period was drawing to a close. Weaver replied to Smith on 30 October 1928, promising to look into his problem. Weaver to Ralph Stanion 5 October 1928; *Asheville Times* 4 October 1928.

[77] E.L. McKee to Zebulon Weaver, 9 October 1928, and Weaver to McKee, 11 October 1928, Weaver Collection. McKee, husband of North Carolina Senator Gertrude Dills McKee, referred to the confusion generated by the General Citizenship Act and the Cherokee Allotment Act, both of 1924. Although the Citizenship Act conferred full rights of citizenship on all Indians, the Allotment Act implied that these rights would not be forthcoming until lands held in common by members of the Eastern Band had been allotted to individual Indians. Although Congress considered the matter to be settled, North Carolina continued to ignore Cherokee citizenship. In June 1930, in response to this confusion, the Secretary of the Interior advised Congress to pass legislation specifically conferring full citizenship upon the Cherokee Indians residing in the State of North Carolina. This act granted full rights of franchise to those Indians otherwise meeting state requirements for voting. See Frizzell, 228-29; Act of June 19, 1930, 46 Stat. 787.

[78] Henry Owl received an undergraduate degree from Lenoir-Rhyne College and a master's degree in history from the University of North Carolina at Chapel Hill. His unpublished M.A. thesis is entitled, "The Eastern Band of Cherokee Before and After Removal," 1929. See *House Doc.* 1762, 71 Congress, 2 Session, Serial 9193, *Conferring Full Rights of Citizenship Upon Certain Cherokee Indians* (Washington, D.C.: Government Printing Office, 1930),3-4. See also Frizzell, Ibid., and Finger, *Cherokee Americans*, 49-50.

[79] Ibid, *House Doc.*

[80] Fred Blythe Bauer was leader of the "white Cherokee" faction during the 1930s. Among other things he advocated dividing tribal lands and allotting them to individual Indians (general allotment) in order to promote individualism, free enterprise, and the defeat of incipient "communist/socialist economic policies" on the Qualla Reservation being fostered by the Office of Indian Affairs. For an interesting interpretation of Cherokee history, see Fred Blythe Bauer, *Land of the North Carolina Cherokees* (Brevard: George E. Buchanan, 1970). See also Finger, *Cherokee Americans*, 88-97.

[81] Finger, *Cherokee Americans*, 42, 110-112. Regarding these Cherokee veterans in 1919, in honor of Steve Youngdeer's valor and ultimate sacrifice in the line of duty (Youngdeer, widely noted for his willingness and indeed *eagerness* to "go over the top" of the trenches, was the only Eastern Cherokee killed in action during WWI; Joe Kalonuheskie, also of Cherokee, N.C., died after the Armistice of wounds and pneumonia, the federal government agreed to offer full citizenship to all honorably discharged Indian veterans who applied. See "An Act Granting Citizenship to Certain Indians," 41 Stat. 350, 6 November 1919. Whether through misunderstanding or neglect, none of the North Carolina Cherokees applied in time to receive their certification before the election of 1920. In 1946 the Youngdeer Post was understandably determined not to allow this situation to continue.

[82] Ibid. After appealing to several state officers, including Governor R. Gregg Cherry and Attorney General Harry McMullen, the franchise committee conveyed their grievances to U.S. Attorney General Clark. Clark in turn sent two FBI agents to Cherokee to investigate the matter. Although Swain County election officials agreed to meet with the committee and took their demands under consideration, according to the *Sylva Herald* 15 August 1946, Jackson County officials refused to cooperate. See also Frizzell, "Politics of Cherokee Citizenship," 230; *Asheville Citizen* 11 June, 13 October, 1945; *Raleigh News and Observer* 10 June 1946; *Sylva Herald* October 1946. Also, see personal interview with Mary Ulmer and Going Back Chiltosky, April, 1991.

[83] Qualla Precinct Book, 1924-1953, Jackson County Courthouse, Registrar of Deeds office. Although sources report fifty-five Indians as having been registered in 1946, this researcher counted at least seventy-nine. The Cherokees may be easily distinguished from whites because Indian registrants are "checked off" in the "col-

ored" column. It is also possible that some white Cherokees with anglicized names registered as "whites."

[84]See Appendix III, disfranchised Cherokees. Those with an * re-registered in 1946. In 1946, 27 Cherokee women and 52 men registered to vote in Jackson County.

[85]Some of the old precinct books have these qualifications inside the front cover, along with sample ballots from the 1950s. See also the Constitution of the State of North Carolina and North Carolina Election Laws, *State of North Carolina Public Laws and Resolutions Passed by the General Assembly at its Session of 1921* (Raleigh: Mitchell Printing Company, 1921): 22-23; also *Public Laws*, 1939-40. See also Statute 5937, Voter Qualifications, *Consolidated N.C. Statutes*, II, 380. Footnote 71 explains the local controversy over the tax-exempt status of Cherokee lands. The legal basis for the federal government's action stems from *McCulloch v. Maryland* (1819), in which Chief Justice John Marshall ruled that because "the power to tax was the power to destroy," states could not tax federal lands or facilities. When the government took the tribe's land in trust, it became "federal" and henceforth non-taxable by the State of North Carolina and Jackson County.

[86]Despite Republican victories in 1926, the GOP never regained its strength in Jackson County. On 1 November 1922 and 7,14 November 1946, the *Jackson County Journal* (later the *Sylva Herald*) proudly proclaimed Democratic victories in the precincts "straight across," with the notable exception of Barkers Creek, due to the "influences of the right type of people." Although the *Sylva Herald* reported that in November, 1946 the GOP received its heaviest vote in recent years throughout western North Carolina, the greatest gains were made in Haywood County rather than traditionally Republican Swain.

Beginning in January 1950, precinct registrars were required to indicate party affiliation beside each registered voter's name. Those who refused to declare themselves were not allowed to vote in the primaries. Accordingly, the number of Cherokees registering Republican between 1950 and the mid-1960s was low and confined to certain families. As of October, 1990 there were 679 Cherokees registered in Jackson County. In the Qualla precinct, which includes 1,116 whites, 642 Indians, 3 blacks, and 3 "others," there are 934 Democrats, 712 Republicans, and 118 unaffiliated voters. See Qualla precinct book, 1950-1973, Registrars' Office, Jackson County Courthouse, and Jackson County Statistical (breakdown of precincts), 10/08/90, obtained from the Supervisor of Elections.