



## OMOHUNDRO INSTITUTE

### Episode 286: Elections in Early America: Native Sovereignty

[00:00:00] **Liz Covart:** *Ben Franklin's World* is a production of the Omohundro Institute.

Hello and welcome to episode 286 of *Ben Franklin's World*, the podcast dedicated to helping you learn more about how the people and events of our early American past have shaped the present-day world we live in. And I'm your host, Liz Covart.

Who is American democracy for and who could participate in early American democracy? Women and African Americans were often barred from voting in colonial and early republic elections, but what about Native Americans? Could Native Americans participate in early American democracy? This is a sticky question because many Native American peoples, then and now, belong to sovereign Native nations. So to answer our question about whether Native Americans could participate in early American democracy, we also need to explore how the sovereignty of Native nations relates to and fits within the sovereignty of the United States. Fortunately for us, we have two great and knowledgeable historians who can help us answer our sticky question: Kathleen DuVal and Julie Reed. Kathleen DuVal is the Bowman and Gordon Gray Distinguished Term Professor of History at the University of North Carolina-Chapel Hill. And Julie Reed is a citizen of the Cherokee Nation and an assistant professor of history at the Pennsylvania State University. Now, as we explore if and how Native Americans could participate in early American democracy, Julie and Kathleen reveal Native American ideas about self-government before, during, and after the American Revolution, how the Cherokee people viewed American democracy and American ideas about Native Americans, and information about the Cherokee Constitution of 1827 and the Cherokee election of 1828.

But first, my teammates Holly White, Joseph Adelman, and I have created a resource guide to help you explore the origins of American democracy and who could participate in that democracy beyond the short podcast series. You'll find this resource guide in the Omohundro Institute's brand new OI Reader. Now a web-based app, the OI Reader offers not just digital editions of the *William and Mary Quarterly*, the leading journal of early American history since 1943, but also an Open *WMQ* section where we can offer you additional digital resources for podcast episodes and series just like this one. To access this resource guide, visit [benfranklinworld.com/oireader](http://benfranklinworld.com/oireader). That's [benfranklinworld.com/oireader](http://benfranklinworld.com/oireader). Ok, ready to investigate if and how Native American nations fit within early American democracy? Allow me to introduce you to our guest historians.

Joining us we have two guests. First is Kathleen DuVal, the Bowman and Gordon Gray Distinguished Term Professor of History at the University of North Carolina-Chapel Hill. Kathleen is an expert on the history of early America, particularly on cross-cultural relations on North American borderlands. She's written and cowritten several books, including *Independence Lost: Lives on the Edge of The American Revolution*, which you may remember from episode 37. Our second guest is Julie Reed, an associate professor of history at the Pennsylvania State



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University. Julie is a historian of Native American history who specializes in the history of Southeastern Indians and the Cherokee people. She's written several articles and a book, *Serving the Nation: Cherokee Sovereignty and Social Welfare, 1800–1907*. Welcome to *Ben Franklin's World*, Kathleen DuVal and Julie Reed.

[00:04:02] **Julie Reed:** Thank you. Good to be here.

[00:04:04] **Liz Covart:** Now, scholars have argued that part of the reason the American Revolution and its War for Independence took place was because British North Americans wanted the right to govern themselves and to be represented in their government. Kathleen, would you help us gain a better perspective on what Native Americans thought in general about the idea of self-government in North America, especially around the time of the American Revolution?

[00:04:27] **Kathleen DuVal:** Well, Native Americans very much believed in self-government, by which they meant governing themselves, right? They were still in their own independent nations. Now by the time of the American Revolution, there were some Native people who had faced, you know, disastrous violence with the hand of colonists, and some of them had lost their independent nationhood. Some of them lived right within colonies and were part of colonies. But the vast, vast majority of Native people at the time of the American Revolution still lived in their own independent nations that had never been governed by Britain or any other outsiders, and they had every expectation that that kind of self-governance would continue.

[00:05:10] **Liz Covart:** So Native Americans across North America were largely autonomous peoples—and we should say here that we're talking about hundreds of different peoples—but all these peoples would've had a say in their autonomous Native governments, but not necessarily in colonial governments.

[00:05:27] **Kathleen DuVal:** That's right. If you looked at a map, if you made a map of, say, 1776 or 1783, of North America, it would be a, a patchwork quilt, if you will, a very messy patchwork quilt of different-size nations. And the United States is really just the nation hanging on that edge, that eastern edge on the Atlantic seaboard.

[00:05:49] **Liz Covart:** Now given Native Americans preference for self-government, what did that mean for their participation and views on the American Revolution? Julie, could you tell us how Native American views of self-government factored into the way that they looked upon the American Revolution?



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[00:06:05] **Julie Reed:** So, I mean, I would say that it meant different things for different Native nations, right? That one thing we often forget is that they weren't monolithic even in their positions on the American Revolution itself, and that Native nations made decisions about whether to enter the war and on whose side based on a lot of intertribal decision making as well as geopolitics that had existed on this continent long before Europeans arrived. And so there was a lot of decision making that went into individual communities' decisions. The Cherokees ended up siding with the British as a result of both the Proclamation of 1763, which was right on their borderland. So in a sense, it reinforced a border that Cherokees were very much in support of, and that American settlers were not very much in support of. And so it made perfect sense for the Cherokees to wind up siding with the British in this instance, but it didn't necessarily make sense for every Native nation to make the same decision.

[00:07:04] **Liz Covart:** That's a really good reminder, Julie, because we are speaking generally here about hundreds of different peoples with their own languages, traditions, and cultures. So we can better understand what American independence and American self-government meant for some Native peoples and their traditions, why don't we focus on one people, the Cherokee? How did the Cherokee receive the news of the American Revolution? Kathleen, could you tell us about this?

[00:07:31] **Kathleen DuVal:** So I think it's important to remember the Cherokees are, they still have a huge country in this era. It's parts of South Carolina, North Carolina, Tennessee, Georgia, Alabama, basically the whole southern Appalachians. And they've also, they've had a century of interactions with Europeans. And so, you know, as Julie said, Cherokees look to the British government to enforce the British government's own Proclamation of 1763. That Proclamation of 1763 says British colonists are supposed to stay off Native land unless they have permission by both Natives and the crown to be there. Now it's not every colonist is following it. Most colonists, as Julie said, are opposed to it. But so when this empire splits, Cherokees see the two sides as the colonist side is the problem, those are the people who are illegally settling on Cherokee land—illegal both in Cherokee law and in British law. And ideally the other side, the British side, the crown side, is who should be enforcing the law, particularly British law that says settlers aren't supposed to just willy-nilly, go onto Native land. And so the Cherokees started attacking some of these illegal settlements in 1776.

[00:08:43] **Liz Covart:** You've both mentioned that the Cherokees were an independent nation and, as such, they had their own laws. What was Cherokee society and governance like by 1783?

[00:08:55] **Julie Reed:** Well, it's undergone changes leading up to that point and is continuing to undergo changes and some of this expedites a lot of changes that were already underway. So one of the key things that takes place over the next several decades and really speeds up after the nineteenth century gets underway is a centralization of governing themselves, right? That in fact,



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many British folks would've liked to have seen this much earlier, kind of single leaders to deal with, right? Because it makes it much cleaner and neater to deal with a single person, a single spokesperson, and here's all these tribal chiefs from around the Indian country needing to come together. So Cherokees for their part are centralizing. They are becoming a more cohesive and cleaner and neater and more centralized set of leaders themselves. Not, again, there's still a lot of town autonomy. There's still a lot of regional autonomy. There are four major areas of Cherokee settlement post-American Revolution. Again, they're not all still on the same page. I mean, if we look even in terms of the Chickamauga Cherokees, who are a group of Cherokees who continue to fight well after the American Revolution for the British and the Americans has come to an end, the Chickamaugas continue to engage in warfare. They've even kind of moved themselves further south in closer proximity to old Creek towns in Alabama and in the southernmost portions of the Appalachian region in order to better fortify themselves and in alliances with some of these Creek folks, as well. And so in that regard, yes, they're centralizing, but there still isn't unity of decision making amongst all Cherokee people about how to move forward in this post-American Revolution moment.

And there will be more clarity around some of this moving forward, but it's still, it's still a slow process. It's still undergoing change. And obviously the American Revolution was particularly deadly for Cherokee people. You know, there were coordinated attacks on the part of the Carolinas in particular, taking on Cherokee settlements and towns, and a huge proportion, forty-three towns, were kind of attacked and burned and wiped off the map. And so we need to remember that this is also a period where there's a lot of flux in terms of where people are residing. There's a lot of flux in terms of larger movements of Cherokee people in this larger area. And again, there isn't unified agreement about how best to move forward, even at the same time that there is a centralization process happening.

[00:11:31] **Liz Covart:** So it sounds like the Cherokee had several different governments and many different local interests competing for some power as the larger Cherokee nation's government and interests were centralizing and consolidating. And it's really curious because if you think about it, what the Cherokee were experiencing in terms of all of this negotiation of power and trying to centralize, consolidate, and form a central government, while also contending with all these local interests, that's a process the American people would've been very familiar with as the new United States was also trying to figure all of this out, you know, in terms of creating a centralized government, while also contending with local and regional interests of its thirteen member states, and the fact that each of those member states really wanted its own power to govern as well. With this similarity in mind, how did the Cherokee approach their dealings with the new United States government and how did the new United States government approach its dealings with the Cherokee? Did the new United States view the Cherokee as an independent and sovereign people?



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[00:12:35] **Julie Reed:** The treaties would indicate they did [laughs]. I mean, you don't forge treaties with people that you don't feel you need to go to the negotiating table with. And so if we use treaties as one means of understanding the relationship between early American government and Cherokees then, in fact, yes. Yes. They were putting Indian agents in place in order to have kind of an ongoing relationship with tribes throughout the Southeast, still. And so this is further indications that they feel like they need kind of these ambassadors in the midst of Native Nations to both continue making sure agreements are being met and fulfilled, and at the same time, to anticipate future agreements that need to be made. So just looking at it from that standpoint alone—and there are other markers we could certainly use, but if we're using treaties and the idea of kind of Indian agents as ambassadors—then absolutely, the young United States absolutely see Native nations at sovereign.

[00:13:37] **Kathleen DuVal:** And the United States is just following in the footsteps of Britain and France and Spain, that none of them ever questioned whether Native nations were sovereign. And it was always a diplomatic relationship. It was always a matter of foreign policy, even though many times there were European decision makers would've liked for Native nations not to be powerful and not to be sovereign, they absolutely were. And so as Julie said, right, this new nation can't wipe that whole history off of the way law works. You know, the Cherokees say over and over, according to your own laws, not just ours, but your own laws we're a sovereign nation.

[00:14:13] **Liz Covart:** One of the narratives that I think is familiar to a lot of us is the fact that Thomas Jefferson and many of the American founders had often said that one of the goals of the United States was to quote “civilize and assimilate” Native American peoples into American society and culture. Could you tell us about these ideas and how the Cherokee responded to them?

[00:14:40] **Julie Reed:** Well, you know, these quotes go even further. There's “our blood will mix with your blood,” right? That it goes even more intimate perhaps than just some of these outward trappings, right? And I think that this is a moment when we can look at federal Indian policy as being one of lots of promise. That in fact, you know, it's hard to be too hard on these folks, because at least in theory, there is a belief on the part of these founders that in fact, Native peoples, if they are able to get this checklist of what it means to be civilized, you know, if men begin farming and women stop farming and do domestic things, and if they become literate and if they learn English and maybe they Christianize, then in fact they can be full participants in this fledgling project of democracy. And so it's always dangled out there as a possibility. The possibility never gets fully realized, though, and Cherokees kind of understand pretty quickly that even if they do those things, there isn't going to be the same kind of full inclusion, especially within a state-to-state context.



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And so the founders very much believed that this was a possibility. And if we think about the relationships between many of these Indian agents themselves, many of the men are married with the communities that they were living with. They produced children who had clans and had tribal affinities and communities. And so the kind of promises were being realized, at least in a family-to-family basis, in some instances. But the larger legal systems and the larger structures of states didn't necessarily make those things tangible and real widespread. And so there's a breakdown between what's held out of the promise and what's actually going to happen on the ground for Native peoples and their families.

[00:16:31] **Liz Covart:** So early on, the United States government was optimistic about its Native American diplomacy and policy, but I'm not quite sure if we have the picture or the sense that the Cherokee were as equally optimistic about the United States' diplomacy. What do you think about that, Kathleen?

[00:16:48] **Kathleen DuVal:** So there are some ways in which Cherokees are optimistic about this. And for one thing, they have, a lot of their history speaks to, you know, the state-to-state relationship that they hope will be able to continue. The 1817 treaty between the Cherokees and the United States offers any Cherokee man who wants to become a United States citizen to become a US citizen. He has to convert his property to private property, but he can have 640 acres of property. He has to renounce his Cherokee citizenship, but he then can become a full US citizen, full voting rights as a property owner. Now, the vast majority of Cherokees, say that doesn't really sound like the way we envision our future. We absolutely are Cherokee. There are some men who do take up this offer, do establish property rights of 640 acres or so within US law. They also don't stop being Cherokees. But then—and this is that divide between sort of policy and what happens on the ground—white people in Tennessee and Georgia just revolt at this idea. Many of them, I think, never believe in either of these possibilities, US citizenship for Cherokees or true Cherokee nationhood. And so I think the Cherokees, I talk about what the Cherokees think in this period, they are optimistic in that they have no idea that it's going to be as bad as it actually is. I don't think anybody sees that coming. But they also, I think, can pretty easily tell that complete assimilation into US society as neither possible or much more importantly what they actually want.

[00:18:24] **Liz Covart:** Could you tell us a bit more about white American ideas about the possibility of including Native Americans in their state and national governments, and even allowing for Native American participation in those governments? Was this inclusion something the Cherokee even wanted?

[00:18:41] **Julie Reed:** One of the key figures that I talk about a lot in my first book is Walter Adair Duncan, and his family takes these 640-acre reserves in the state of Georgia, but they very quickly are dispossessed of that land. And because their mother has a clan and is Cherokee, they



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all just resume their place back in the Cherokee Nation on a much smaller land base. So there's also these moments where Cherokee people are kind of playing around with this idea of like, which system is better for me? This is also a moment, this 1817 treaty that Kathleen references, there's this moment between that treaty, it's not until 1825 that many of these men, particularly if they've married non-Cherokee women, that their children will actually have a place in the Cherokee nation because they don't have clans, because their moms aren't Cherokee. And so there's this window of time where you can imagine Cherokee families, particularly Cherokee men who have married non-Cherokee women and their children are not citizens of the nation, and they don't have clans that say, hmm, maybe the US is offering something that perhaps the Cherokee Nation isn't.

But by 1825, the Cherokee Nation, it includes a citizenship law that makes room for those men's children as citizens. They don't have clans still, but they are citizens. And so you can imagine that people are saying, hey, actually there is more to offer in the Cherokee Nation, and if we add in the additional property rights that are being protected on the part of women within the Cherokee nation, well then not only are your sons being protected, but your daughter's property rights are going to be protected as well. So there's kind of a double protection for this next generation of children within the Cherokee Nation that southern states simply aren't offering.

[00:20:38] **Liz Covart:** I'd like for us to talk more about Cherokee citizenship and what it meant. But before we have that discussion, I'd really like for us to talk about the Cherokee Constitution of 1827. Now we've discussed how the Cherokee Nation was trying to centralize its government in the early decades of the nineteenth century. Kathleen, would you tell us about the context for the Cherokee Constitution of 1827 and what changes the 1827 constitution made to Cherokee society and governance?

[00:21:09] **Kathleen DuVal:** in some ways the 1827 Cherokee Constitution just sort of codifies some of the laws that had been coming together in the centralizing process over the previous couple of decades. The Cherokee Constitutional Convention convenes on July 4, 1827. Its preamble says, "We the Representatives of the people of the Cherokee Nation in convention assembled, in order to establish justice, ensure tranquility, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty, acknowledging with humility and gratitude the goodness of the sovereign Ruler of the Universe. . . do ordain and establish this Constitution for the Government of the Cherokee Nation." Right? So the Cherokee Constitution is a message of Cherokee sovereignty to the United States. They say we are a sovereign nation. We are founded on similar principles of liberty and self-government as the United States is. But the Cherokee Constitution is also its own important document within the Cherokee Nation. It's a compromise document. Compromises happen in terms of separation of church and state and some other things that the constitutional convention has to grapple with. Similar ways to the way the US Constitutional Convention grappled with. And I think it's important to remember these Cherokee delegates really were, as they claim in their preamble, representatives of the people of



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the Cherokee Nation who hope to ensure justice and tranquility and liberty and promote their common welfare.

The very first article of the Cherokee Constitution specifically outlines the borders of this nation, including its borders with Tennessee, with North Carolina, with Georgia, with the Creek Nation, and it declares in no uncertain terms—this first article says, “The Sovereignty and Jurisdiction of this Government shall extend over the country within the boundaries above described, and the lands therein are, and shall remain the common property of the Nation.” So there are all these debates going on in the Cherokee Nation, compromises in the law that don’t like parts of the constitution. But I think what the Cherokee Nation comes to in this period is that unanimous consensus over protecting these borders is what we have to both agree on, you know, have consensus on within the nation, and what we have to project in no uncertain terms to the rest of the world.

[00:23:30] **Julie Reed:** Yeah, and just to take that point even further, I think one of the kind of interesting pieces about this is that the Cherokees did not include a bill of rights. They did not include kind of this, let’s now talk about individual rights and what we need to protect, right? That this is kind of hard for people to wrap their heads around that individualism was a weapon that was being used against the Cherokee Nation and its land base. That if you could get individuals, much like you could in the 1817 or 1819 treaties to agree to 640-acre tracts of land, that you’re essentially, I mean, I think about it as shooting bullets into a bucket, right? That every time you get one of these 640-acre pieces, you are essentially dismantling the larger land base and taking it away.

And so this has already been a strategy that’s been at play, that individuals could help dismantle their own Cherokee Nation. And so I don’t think it’s an accident and I don’t, you know, it’s part of this kind of larger compromise. It’s certain that some Cherokees would’ve been very interested in individual rights, and we certainly have evidence that actually in the first article, kind of the second half of the first article, there’s a lot of talk of private property. So it’s not that they’re ignoring property rights, necessarily, but that they want to make clear that they are privileging the community as a whole and the communal lands as a whole over the individual ability to perhaps undo that land base through other strategies that the federal government may come up with.

[00:25:07] **Liz Covart:** Lots of scholars talk about constitutions, declarations of independence, and bills of rights as documents that were designed to solve specific problems at specific times. Could you talk to us a bit about why the Cherokee felt they needed to draft a constitution in 1827?





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[00:25:26] **Kathleen DuVal:** There are different Cherokees who think different things about the centralization process that's been going on for a while now, before 1827. And so there are a series of controversial meetings that happen even before the constitutional convention of groups of Cherokees. And I don't know what happens in those meetings, but somehow people with very different views about some things within Cherokee society come to this consensus that protecting the borders of the nation is the most important thing. And that writing a constitution, which I think many, you know, don't support at the beginning, is the way to do that. That it's this external message to send. And I think a lot of, not only discussions, but ceremonies and dancing and things like that, you know that, you know, outsiders don't record, go on in these meetings. And so this constitution is what people on the outside are supposed to see, and it reflects a lot of compromise. Compromise, you know, negotiation that's going on among Cherokees as they seek this message to send to the outside world.

[00:26:31] **Liz Covart:** Could you provide us with an example of where we can see the Cherokee Constitution representing a compromise on an issue?

[00:26:40] **Julie Reed:** I would say the language of God, right? The language of creator, that this was actually a point of major contention leading into the constitution itself. There's something that's referred to as White Pass Rebellion, where there were a group who were adamantly opposed to what was happening and one of their particular concerns—and we don't know all of them, we only have notes about the event, not the notes of the event itself—that there were real concerns about kind of the overwhelming use of kind of Christian language as opposed to a more cosmologically rooted Cherokee language of spirituality and the divine, right? And so the fact that you're not seeing the language of God or Jesus, or a number of other ways that perhaps these things could have been expressed is one of those. So the other things that you see in the constitution is commitments to education that were more secularized and some of these aren't realized immediately, but there is a desire on the part of many local people to have more control over the education being offered by missionaries, in particular. And so there is a strong push to get certain kinds of funding and certain kinds of educational institutions that will not be under the control of missionaries. So you're seeing a couple of these things play out at various points, but those are two examples that I can think of.

[00:28:02] **Kathleen DuVal:** There's actually a Cherokee law before the constitution that has an oath for office holders that does include God and is quite Christian sounding. So in effect, that law is repealed by the constitution. I think that's one of the places where you can see the compromise. It's not all this just sort of push toward one way of thinking.

[00:28:21] **Liz Covart:** Now what about the government established by the Cherokee Constitution of 1827? One of the major functions of a constitution is to provide a structure of government for a nation. So what was the structure of government for the Cherokee Nation?



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[00:28:37] **Kathleen DuVal:** So there is a, it becomes effectively a two-house body of congress. There's the National Committee and the National Council. Both are elected bodies. And by this point there are electoral districts, based somewhat on these older districts, that elect their own representatives. There's also a principal chief and a second chief who have fairly different responsibilities within the government. And then there's this whole other sort of system that we could also see as government, I think Julie knows more about than I do, which is clans and women's property rights and control over property. And then this national government that we tend to focus on from the outside has very little to do with that part of Cherokee governance that's going on on farms and towns.

[00:29:23] **Liz Covart:** Constitutions also usually set out parameters of who could be a citizen and who can participate in the government that the constitution established. Did the Cherokee Constitution of 1827 establish a democratic form of government? And if it did, what did the constitution have to say about who could participate in Cherokee governance?

[00:29:45] **Julie Reed:** Well prior to the nineteenth century, it was way more democratic than what even the early United States produces, that there were general councils that were held that men and women, and often children attended, and people worked very hard to reach consensus at the town and local level. And so it was a far more democratic process than what's produced as the United States is born. What, I guess the kind of irony of this moment in terms of the Cherokee Nation centralization process is that what was a far more democratic system becomes a far less democratic system, at least in terms of political engagement on the part of all Cherokee people. That the centralization process and later with the 1827 constitution that women and African-descended people, as well as biracial families, particularly women or men who have intermarried with African-descended peoples, are locked out of those political processes. So there is universal suffrage for all Cherokee men, but many, many groups are being locked out and disenfranchised as a result of the centralizing process, which is part, you know, one of the kind of great tragedies that I look at of this moment of Cherokee centralization. There's a lot of good that comes out of. But this disfranchisement of vast majorities of Cherokee people is, to me, one of the unfortunate byproducts of this moment.

[00:31:14] **Liz Covart:** So what voting requirements did the Cherokee Constitution of 1827 establish for Cherokee citizens?

[00:31:21] **Julie Reed:** Cherokee men twenty-five years of age or older. I mean, obviously everyone owned property because it was communal land base, so there was no need to put into place property barriers. Everyone met that criteria. No one who was descended from African Cherokees of any kind could vote and no women could vote in that election, despite the fact that many of those folks were considered citizens, all Cherokee women were considered citizens.



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African descended people were the kind of most vulnerable in this moment, that there really wasn't a lot of room for them to participate.

[00:31:55] **Liz Covart:** So it sounds like Cherokees may have borrowed lessons from state constitutions of the United States that disenfranchised women and people of color. This leads me to wonder how did Cherokees who could vote and participate in Cherokee governance before the constitution of 1827, how did they react to their disfranchisement by that constitution?

[00:32:17] **Julie Reed:** Even into the 1820s, even though women's councils have been rooted out, there is documentary evidence in places like Pine Log of women still exercising kind of local authority. So, you know, I think of these laws in relationship to my relationship to speed limit laws, that just because I see the fifty-five-mile-per-hour sign posted does not in fact mean that I'm going to abide by that fifty-five-mile-per-hour speed limit. And that, in fact, that's the approach that a lot of Cherokee people take, particularly to kind of older social welfare principles in particular. That in fact, people are acting locally in ways that reflect much older legal systems. And there are various moments that these kind of hit up against each other, but a lot of times they're not even visible.

They're not necessarily playing out on this national scene. And some of this, you know, I think about the constitution as also providing a certain amount of cover for people to continue doing as they have done. And that's not to say that the Cherokee Nation wasn't serious about adopting and putting in place this constitution and the laws and the structures that it dictated, but at the same time to suggest that they immediately started policing all of these things that they're putting on the page or that they even could have policed everything that they put on the page, it is simply not realistic. And so the constitution provides a certain kind of outward safety net, an international safety net, so that people internally can continue existing as their dignity and their communities dictate.

[00:33:50] **Liz Covart:** And while we're on the subject of government participation in voting, how did the Cherokee hold the election of 1828, which was the first election under this new Cherokee Constitution of 1827? Did the Cherokee offer secret ballots like we use to vote today?

[00:34:07] **Julie Reed:** No. voting took place in local districts, and there were not secret ballots. It was done publicly. I mean, if we think about these districts, they're still kind of formed around these older town influences, and so there's also a way in which towns can potentially replicate the kinds of authority and power they had before by bringing their local constituents in to kind of put forth a candidate, right? But at the same time, they're also looking for values that were important to those communities as well. And not every community necessarily has the same set of values at this moment. So, you know, some districts were far more open to missionaries and mission education. Some were far more resistant. Some had far more English speakers in them.



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Some were far more kind of exclusively Cherokee language speaking. And so all of those differences came to play in that 1828 election, as well.

[00:35:05] **Liz Covart:** So it sounds like from our conversation thus far, that the Cherokee really worked to change and adapt their society and government during their centralization process because they wanted a government and society that they felt was enlightened, democratic, and truly representative of what they thought a Native republic should be. And yet, on May 28, 1830, the United States Congress passed the Indian Removal Act, which was an act signed into law by President Andrew Jackson. The Indian Removal Act required the United States government to remove all southeastern Native American peoples to new lands west of the Mississippi River. What did the Indian Removal Act mean for the Cherokee, and how did it impact their society? These are the questions we're going to explore right after we take a moment to talk about our episode sponsor.

As Julie and Kathleen have noted, Cherokee governance has changed a lot over time and it's the job of historians and historians to help us see how humans and their institutions have innovated and changed. Now, as you know from many of our conversations on this podcast, most of what historians know about how people and their institutions have changed over time comes from their research in historical records. Conducting historical research is a painstaking process. It's a multiyear process that includes searching out historical sources, interpreting those sources, and then taking what you find to make a case for why we should view the past a certain way.

Likewise, each episode of *Ben Franklin's World* is also the result of a painstaking process. Each minute you hear on this podcast is a result of one hour of the audio team's labor. Now, The Omohundro Institute and I are committed to putting in this work because we want you to have access to well-researched history and information about the early American past. But this commitment takes a lot of resources and we could really use your help. This is why I'm asking you to support our work by joining the *Ben Franklin's World* Subscription Program. Your subscription of \$5.99 per month or \$60 per year will help us continue to produce the high-quality episodes that you've come to love. Episodes that skip hyperbole and provide solid historical research on complex issues. Plus, you'll also be supporting a podcast that finds its way into classrooms and study guides, lunchtime learning sessions, and extended dinnertime conversations.

As a thank you for your support, you'll receive a monthly bonus episode on the last Friday of each month, and you'll never have your episodes interrupted again with ads like this one. Please become a subscriber. Join our subscription program, [benfranklinworld.com/subscribe](http://benfranklinworld.com/subscribe) and help us continue to bring exciting new historical scholarship right to your ears. Join us at [benfranklinworld.com/subscribe](http://benfranklinworld.com/subscribe). Kathleen, would you tell us about the Indian Removal Act and how the act impacted the Cherokees and their ways of life?



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[00:35:51] **Kathleen DuVal:** So Andrew Jackson's election really changes everything for Indian sovereignty. The first way that the Cherokee see it is actually after he's elected, before he is even inaugurated. It basically gives license to Georgians who have been wanting to do this a long time, but have been kept from doing it by the Cherokee and by the US government. They just start coming onto Cherokee land. The Georgia state legislature basically outlaws the Cherokee Nation. Georgia passes a series of laws outlawing the National Council to basically, you know, overtly outlawing the Cherokee government, which obviously they don't have the right to do. They forbid the Cherokee Nation from charging fees and tolls on their ferries and roads, which is one of the ways in which a government in the early nineteenth century makes money. Georgia says, no, Cherokee Nation can't do that anymore. They call the editor of the Cherokee Phoenix newspaper in front of the Georgia Guard. The Georgia Guard is this new militia created to police the Cherokee Nation. So these things happen even before the Indian Removal Act has passed.

Now in the 1830s, Congress still, as we were talking about before, Congress still defines Native nations as something you have to make treaties with, right? So even the Indian Removal Act, says the United States needs to make treaties with Indians, Indian nations, for removals. So for Cherokee in 1830, the Indian Removal Act doesn't seem like the greatest threat. They have created this stance to the United States that says, no, we aren't going to make land cessions. They've created a consensus, really, within the people who are left within the nation that they won't agree to any treaties. So the threat really is these Georgian people who are on their land, the surveyors who come in and surveyors come into New Echota, the capital of the Cherokee Nation, and start just measuring stuff as if they're going to move in tomorrow. They arrest Samuel Worcester, who's one of the missionaries there. And Georgia says, if you're a white man living in the Cherokee Nation, you have to swear an oath to Georgia because the Cherokee Nation is Georgia. Worcester says, I'm a US citizen living in the Cherokee Nation, I don't need Georgia's permission to do that. So the Cherokee Nation takes Georgia to court. US Supreme Court basically agrees with the Cherokee Nation in Worcester v. Georgia, that Georgia's laws have no force within the nation. But the election of Jackson means that there's no executive to enforce the Supreme Court's decision. And then the Indian Removal Act does become the real threat to the Cherokee when they've lost that international support.

[00:38:26] **Liz Covart:** And what about Cherokee government? What did the Indian Removal Act of 1830 mean for Cherokee governance?

[00:38:37] **Julie Reed:** It moved west, but it also created a kind of a crisis of what is sovereignty to some extent. What is Native nationhood? And you know, one of the central questions that Cherokee people have to ask throughout this period is, are we a nation because we live on these lands, our homeland? Or are we a nation as a result of laws that can be physically transplanted somewhere else, right? That there's kind of a fundamental question that comes up between key leaders in the nation about what does it mean to be a sovereign nation, and how do we continue to exist as a sovereign nation in light of Indian removal?



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You know, I think it's also worth noting that there are kind of the big fights of elites, and then there are the everyday terror that on-the-ground Cherokee people are facing. And so once you unleash Southerners, it means that you can be robbed. It means that you can be raped. It means that you can be beaten. It means that you can have your property taken and there is simply no recourse for you. And so, you know, I always think about kind of these big high political and legal disputes that are happening, but also the kind of on-the-ground experiences of everyday Cherokee people that are happening as a result of this as well. And it ultimately will rip the Cherokee Nation apart, literally and kind of metaphorically. And divides continue to be real today for those of us that are Cherokee, you know? It divides between the Treaty Party who winds up signing the Treaty of New Echota in 1835, agreeing to removal—which is an unlawful treaty—versus the National Party who were behind Principal Chief John Ross, who opposed removal, that those divides cost additional lives within the nation. And that violence also got turned inward in a lot of ways. And that violence, you know, has had profound implications for generations of people, both pre- and postremoval.

[00:40:30] **Liz Covart:** Now we've been talking about early America and how the Cherokee Nation as a sovereign nation lives within its own territorial boundaries, which exist within the larger territorial boundaries of the United States. And as we've discussed, things change over time. Julie, once the Cherokees were removed from their homelands in the Southeast, how did the Cherokee history of sovereignty, territorial boundaries, and who could participate in the Cherokee and American democracies play out for the Cherokee Nation?

[00:41:01] **Julie Reed:** Whew. There's a lot more bumps in the road to kind of get at all of that. So there are more glitches after removal. You know, we could argue that the allotment of communally held lands in Oklahoma, what has become Oklahoma, is in some ways more detrimental, because at least in a postremoval period, the Cherokee Nation sustained a land base. That isn't necessarily true in the case of allotment, that the land gets parceled out to individual landowners. However, in the 1970s, the Cherokee Nation reemerges. We have what we call a jurisdictional area today, which spreads over fourteen counties in northeastern Oklahoma, and services are provided, courts happen. There are treaties that continue to kind of govern the lives of people living in those communities.

The recent McGirt decision is changing the calculus of all of this relative to criminal jurisdiction within those jurisdictional areas, particularly for the Muskogee (Creek) Nation. The case actually applied to them, but there are some similarities in treaties and the language of treaties, particularly post-Civil War, that seem to be applicable at least to the Cherokees, and possibly the Chickasaws, Choctaws, and Seminoles, and going to be repercussions that are going to play out more broadly as a result of McGirt, which essentially says that Muskogee (Creek) Nation never gave up their jurisdictional sovereignty over these spaces, even in the wake of Oklahoma statehood. And that, in fact, they do have criminal jurisdiction in these fourteen counties. So, you know, there are lots of people who think the sky is falling as a result of that. And then there are



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the more moderate folks who are like, okay, come on, the courts are, you know, still bureaucratic systems that move slowly and these things will be adjudicated and it's probably not, you know, it will be fine. We will figure this out. And I think Native nations, you know, in light of kind of continued existences over this long period with lots of bumps in the road, that in fact, this is what we have to do to kind of move into the future and have a new vision for what sovereignty is going to look like in the twenty-first century and beyond.

And I think it's worth kind of rolling back to this 1827 constitution, but also the removal moment, because there are so many things—as problematic as I might argue there are features of that constitution were—there were so many things built into that removal moment that I can't help but look at both the folks on the Treaty Party side and the folks on the National Party side and think how much forethought they gave to future generations and how to consider how what they've learned in that moment could in fact be modified in that moment to protect those future generations. So the fact that we're having a conversation in 2020 about a Cherokee delegate to Congress—which we've already seated our delegate, Kim Teehee, is our delegate, we're just waiting for Congress to put her in there—the forethought to put in treaties that in fact, the lands would be owned in fee simple, right? To attempt to stave off another moment, like removal. If like Cherokees own their land and have a title to it, then perhaps they won't be disfranchised or lose that land or won't see another moment like this. I mean, that didn't work out quite like they planned, but they put it in there with the idea that, in fact, there are things that they could do to protect the future generations of Cherokee people.

And I think that even leaders today, as we think about this McGirt decision, one of the great challenges that they have before them is, like, how can we be as thoughtful as the leaders who came before us? How do we make sure that what we're doing today is generative for future generations? And I think we have a lot to live up to in terms of the kind of forward-thinking and really thoughtful measures that Cherokees took in this removal era, in this moment of constitution writing, that have implications for us today and continue to protect Cherokee people today.

[00:45:02] **Liz Covart:** Sovereign Native nations have continued to exist and operate their own governments within the larger territorial boundaries of the United States. Julie, what does this mean for voting and government participation today? Can Native Americans vote in state and federal elections?

[00:45:20] **Julie Reed:** Well, I vote. I vote in my local elections here in Pennsylvania. I vote in the national elections, but I also vote in Cherokee Nation elections. So I'm in some ways a dual citizen. My father, on paper, it's more complicated because he's actually a member of two federally recognized Cherokee tribes. He's a member of the UKB and a member of the Cherokee Nation, although he votes in the Cherokee Nation elections. So, yeah, I mean, I think we're



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participating in multiple sovereignties, right? That we think about our local communities, that we find ourselves living today. We think about our national community that we find ourselves participating today, but we also have our tribal national communities that we think about, as well. However, those rights weren't evenly doled out. So again, thinking about this early allotment moment, that the Cherokees had a place at the table at the time of Oklahoma statehood and made sure that Cherokee Nation people were considered citizens in the state of Oklahoma and had voting rights immediately, unlike our Eastern Band cousins who remained in the East postremoval, who had to go to court to have those citizenship rights within the state of North Carolina put into place, you know?

It took the 1924 Indian Citizenship Act to make sure that those folks at the Eastern Band had their voting rights. And there are other communities who had to fight even longer in order to get those voting rights in place. So, Yeah, I mean, even every Native nation's relationship to voting rights within the larger United States is not uniform as a result of treaties, as a result of when they entered the union as a result of whether they had certain kinds of seat at the political table at the right moment, whether they had to go through court action. So these are very diverse histories around voting rights.

[00:47:10] **Liz Covart:** Are there any other issues of Native sovereignty that you think we should think about and consider more as we think about the relationships between Native Nations and the state and federal governments of the United States?

[00:47:22] **Julie Reed:** I think there's a way in which we don't talk about treaties enough, and we don't talk about moments of fissures related to treaties enough, so that when cases like *McGirt* happen, we have to kind of nationally educate ourselves very quickly. And that in fact kind of Native nations are constantly living and relating to these earlier treaties and these earlier moments that, I mean, the Cherokees, again, are a great example in that our Treaty of 1866 had to be adjudicated relative to the rights of the descendants of freedmen, and these are not documents that are somehow relegated to the past. That, well, they were done in the nineteenth century and so we're through with them. That they're living, breathing, constantly adjudicated documents that Native nations pay close attention to and have to think through.

The other part of that is I think it's dangerous to kind of think of federal Indian policies being clean and neat, and what happens for one Native nation will have the same ramifications for other Native nations. The federal government would very much like to have one federal Indian policy because, again, it makes it cleaner and neater. But on the other hand, tribes continue to kind of muddy the waters and say, well, those are not the rights that we laid forth in our treaties. And you know, that gas and mineral rights, for instance, is constantly needing to be adjudicated, and people are constantly having to protect boundaries. If we think about *Standing Rock*, right? That these are documents that mean a lot to communities and not every community is operating





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off of the same set of documents. So figuring this stuff out for the layperson is often incredibly complex and requires a lot of kind of on-the-ground learning when these kind of cases emerge like McGirt, where it's like, oh my goodness, we hadn't even thought about Native sovereignty, what is that? And you know, we have to rely on Samantha Bee to kind of quickly give us a quick and dirty on the family dollar account. You know, these things have to be explained and offered to the larger public because it's easy to kind of forget about Native sovereignty in the everyday. Yet for Native people, they don't have the option to just forget about Native sovereignty because it is impacting their daily lives still in all sorts of ways.

[00:49:42] **Liz Covart:** Julie Reed and Kathleen DuVal, thank you so much for joining us and for helping us better understand Cherokee sovereignty and democracy and the relationships between Native governance and United States governance.

Native nations like the Cherokee are sovereign nations. Their territorial boundaries may exist within the larger territorial boundaries of the United States, but these are independent nations with their own governments, laws, and customs. Now given that Native territorial boundaries exist within the larger territorial boundaries of the United States, citizens of Native nations are also citizens of the United States, as per the United States' 1924 Indian Citizenship Act. This means that many Native Americans have a vote in their local, state, and tribal governments, and in the United States government. With that said, Native Americans haven't always had a vote in the democracy of the United States. From the earliest days of the early republic, the United States followed in the footsteps of Great Britain, Spain, and France by negotiating with Native nations as sovereign nations. However, when the United States could not achieve its desired ends through diplomacy, like negotiating for cession of all Native claims to southeastern lands, it pursued domestic policy that called for acts like the Indian Removal Act of 1830, which forced Native Americans in the Southeast to move west of the Mississippi River.

For their part, the Cherokee existed and persisted as best they could. They treated with the United States, tended to their own tribal government, evaluated offers of American citizenship in the early nineteenth century, and when it suited them they drafted a constitution and structure of government that the United States would've recognized as democratic. Still, when we look at the Cherokee Constitution of 1827, we can see that the Cherokee formed their democracy on their terms. In the democracy formed by the Cherokee Constitution of 1827, only Cherokee men could vote. On paper, this changed the ways that Cherokee women and Cherokees of African and African descent could participate in Cherokee governance, the Cherokee Constitution of 1827 disenfranchised women in Afro-Cherokees. However, as Julie noted, this constitution wasn't always followed on the ground in local communities. In local communities Cherokees still practiced older customs, which allowed Cherokee women and those of African and African descent to still have a say in their local governance. And this brings us to an interesting point. The process of creating democracy and defining who that democracy is for and who can participate in it is a process. Democracy is something that seems to evolve and change with each



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generation and culture. And as we've heard from Kathleen and Julie, this process of evolution and change isn't unique to the democracy exercised by the United States. It applies to Native American democracies, too, and quite possibly it applies to all democracies.

Look for more information about Kathleen DuVal, Julie Reed, their books, plus notes, and links for everything we talked about today on the show notes page, [benfranklinworld.com/286](http://benfranklinworld.com/286). Don't forget to check out the early American elections resource guide that Holly, Joe, and I created for you. You'll find it in the OI Reader's Open *WMQ* section, which you can access quickly and easily by visiting [benfranklinworld.com/oireader](http://benfranklinworld.com/oireader). On Wednesday, October 28 at 8:00 p.m. (eastern), Holly, Joe, and I will be live in the *Ben Franklin's World* listener community on Facebook. We'll be there to chat with you and to answer your questions about voting, campaigns, and elections in early America. To participate in this conversation is absolutely free. You just need to be in the listener community at 8:00 p.m. (eastern) on October 28. And if you're not yet a member of the *Ben Franklin's World* listener community, it's quick and easy to join. Visit [benfranklinworld.com/facebook](http://benfranklinworld.com/facebook). Production assistance for this podcast comes from The Omohundro Institute's digital audio team, Joseph Adelman, Martha Howard, Holly White, Karin Wulf, and Peyton Young. Breakmaster Cylinder composed our custom theme music.

Finally, our series on early American elections and voting concludes next week with Joseph Adelman, who has created an episode for us about early presidential elections and the development of the electoral college. *Ben Franklin's World* is a production of The Omohundro Institute.