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TRIBAL GOVERNMENT COUNSEL AND ADVOCACY

Strengthening Our Relations:

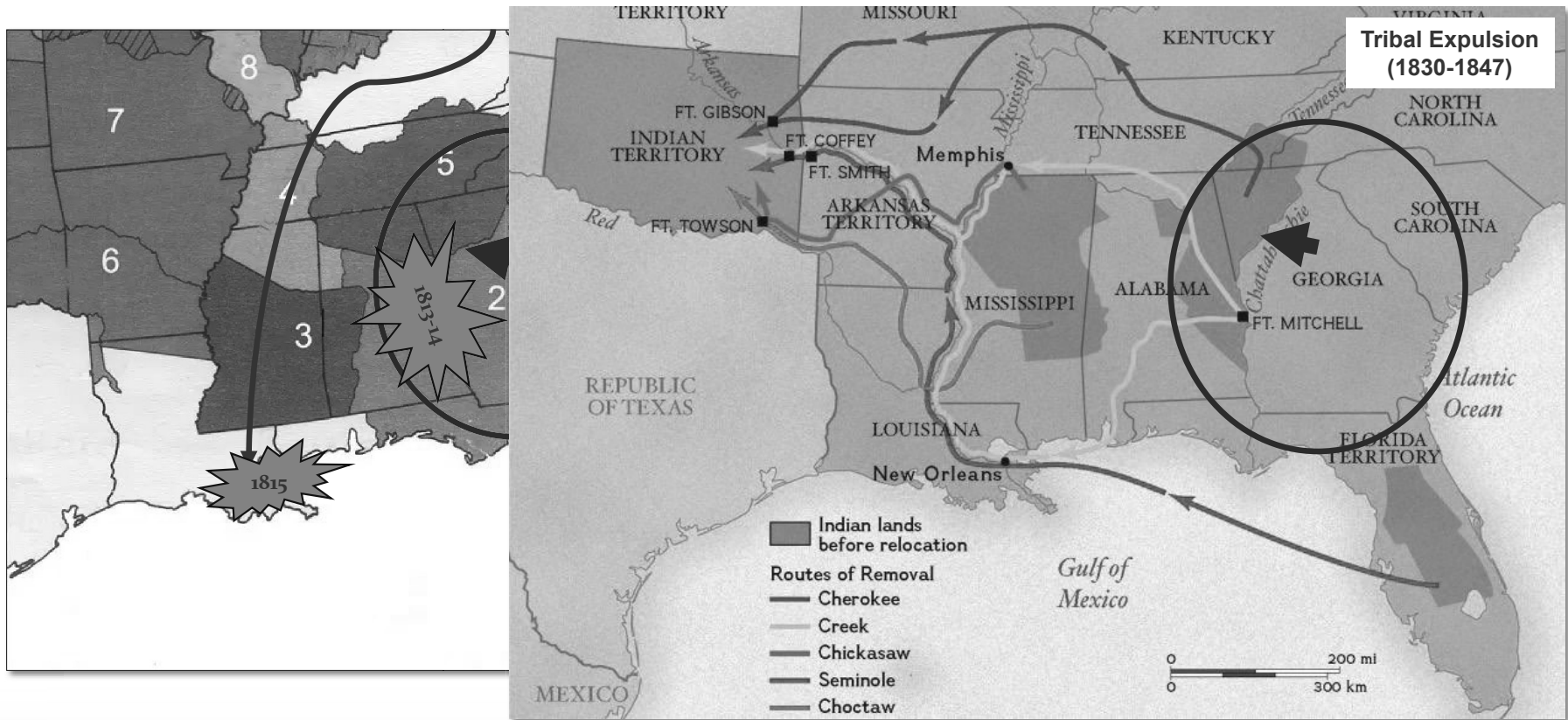
Tribal Sovereignty, Our Government-to-Government Dealings, and Improving Collaboration

STEPHEN GREETHAM
SPECIAL COUNSEL TO THE CHICKASAW NATION
FEBRUARY 21, 2024

Strengthening Our Relations: Introduction and Overview

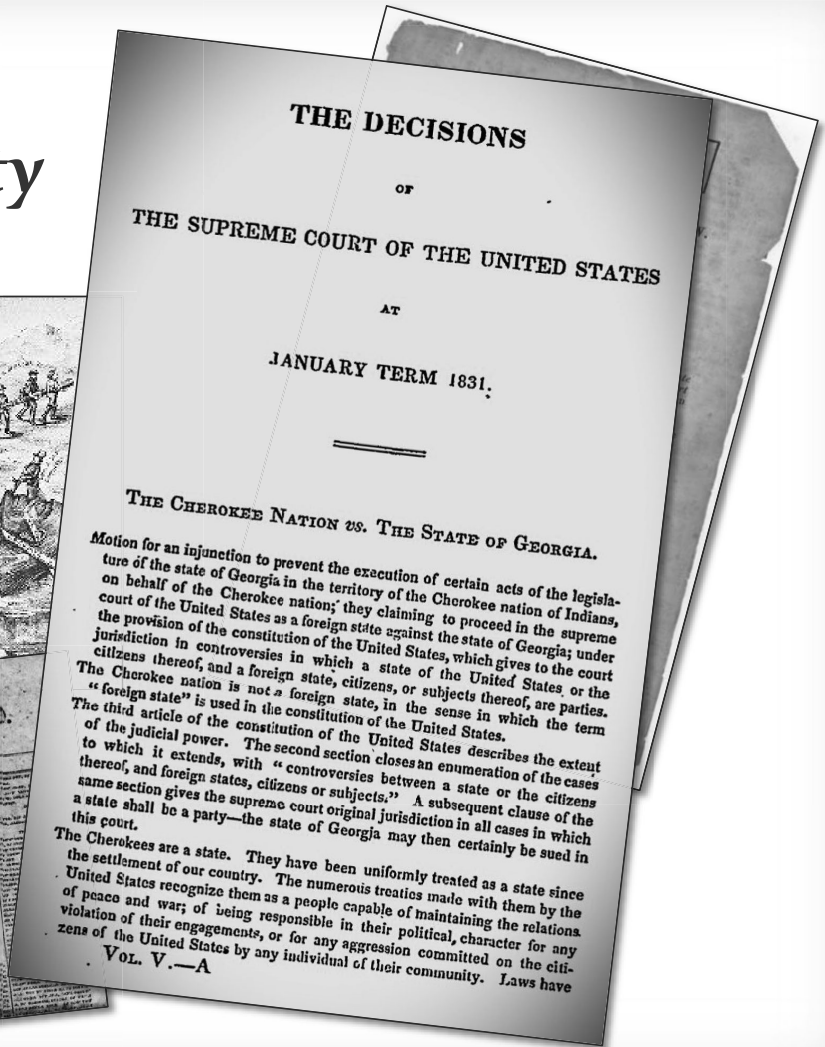
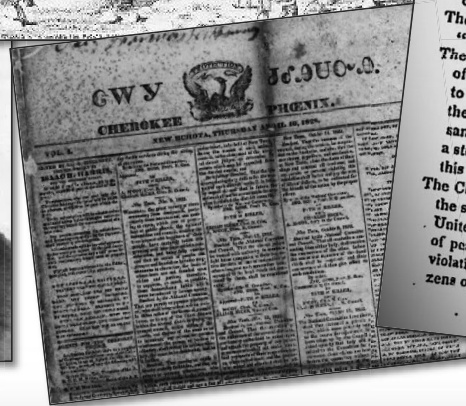
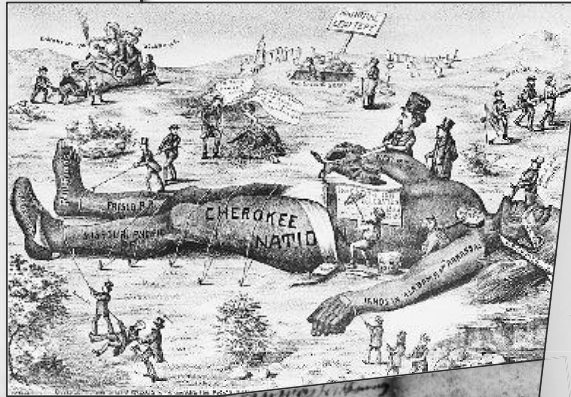
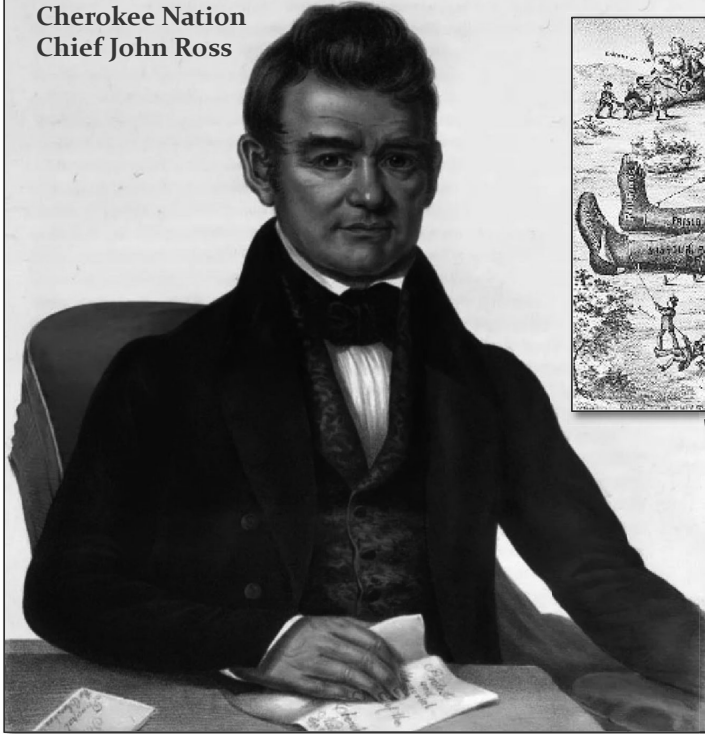
- Who is this guy and why is he talking to me?
- How where we are is relevant to this subject? (Slide 3-4)
- What is sovereignty, generally? (Slides 5-6)
- And more particularly, what is Tribal sovereignty—the general shape and meaning of it as a matter of federal law? (Slide 7-8)
- Tribal peoples and approaches to science and public health across cultural, legal, and political lines (Slides 9-10)
- Some closing thoughts (Slide 11)

Strengthening Our Relations: Georgia and Tribal Sovereignty



Strengthening Our Relations: Georgia and Tribal Sovereignty

Cherokee Nation
Chief John Ross



Strengthening Our Relations: What is sovereignty—as a general matter?

- Applied understanding arising from international context
 - The sovereign is that which is recognized (via norms, rules) as holding supreme political power within a defined sphere, whether that sphere is geographical or pertains to a particular subject matter
- Applied understanding within U.S. context
 - **Federal** – delegated “up”; supreme power with respect to U.S. international dealings and matters of national significance; **exercise subject to** the Law of Nation and U.S. Constitution (including Enumerated Powers Doctrine and Bill of Rights)
 - **State** – organic; supreme power with respect to domestic and internal matters; **exercise subject to** U.S. Constitution (including Supremacy Clause and Bill of Rights) and state’s basic law (e.g., enabling act, state constitution, etc.)
 - **Tribal** – organic; supreme power with respect to domestic and internal matters; **exercise subject to** Congress’s plenary authority and Federal Indian law principles (as developed through treaties, common law, and statutes) as well as Tribal government’s basic laws (e.g., traditions, any written constitution, code)

An Expressly Constitutional Relationship

A Relationship Born of Colonialism

Strengthening Our Relations:

What is sovereignty—more fundamentally?

- Sovereignty is akin to concepts of “freedom” and “liberty” but applies only to ***socially coherent political collectives***. It serves ***continuance***, empowering distinct peoples to survive as collectives.
- Sovereignty provides the ***necessary language of intergovernmental contact and conflict***; it is not merely some set of inelastic rules or isolated rights, but it instead manifests in the dynamics between and among self-governing peoples
 - In high-functioning dynamics, its exercise appears in ***substantive relational respect*** (e.g., pluralistic, intercommunity/intergovernmental, separate but mutual, *etc.*).
 - In poorly functioning contexts, its exercise tends toward ***abusive denialism and assimilationism*** (e.g., war, conquest, subjugation, political/cultural erasure, *etc.*).

Strengthening Our Relations: Tribal sovereignty as a matter of federal law

- Each Tribe has an ***inherent and recognized legal right*** to make and be governed by its own laws, the exercise of which is ***protected by and subject only to Federal (not State) law***.
- U.S. history has produced a complex landscape of law that is applied to changing “facts on the ground” under likewise changing Federal policies—policies that have been between seeking extermination and supporting self-determination.
- The legal result can be complicated, and whether we are mindful of it or not, each of us navigates the landscape of this law every day.

Strengthening Our Relations: Tribal sovereignty and undulating federal policies

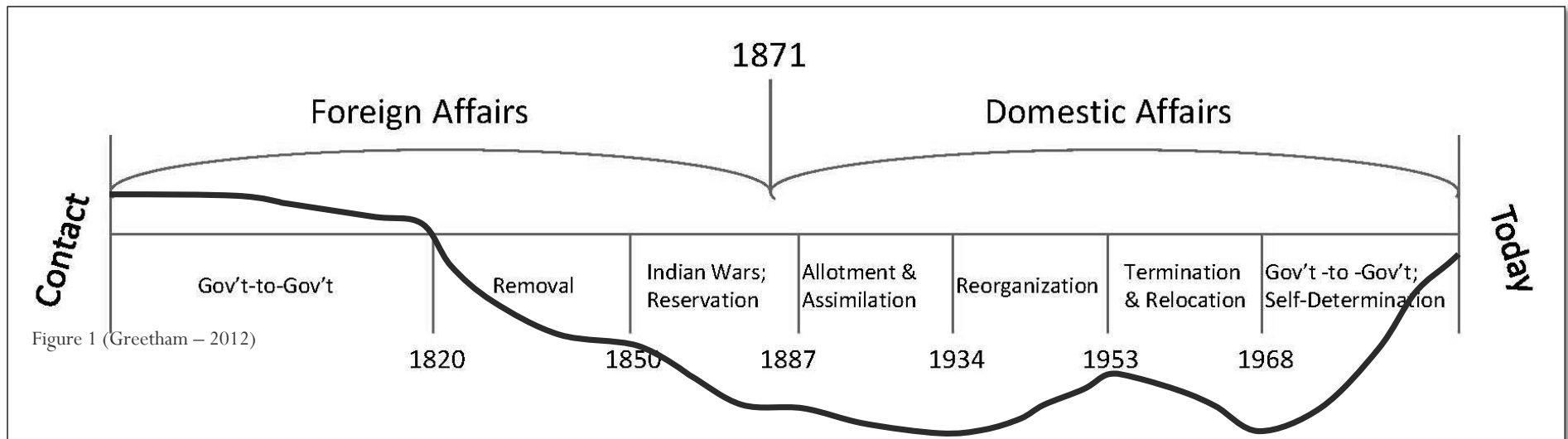
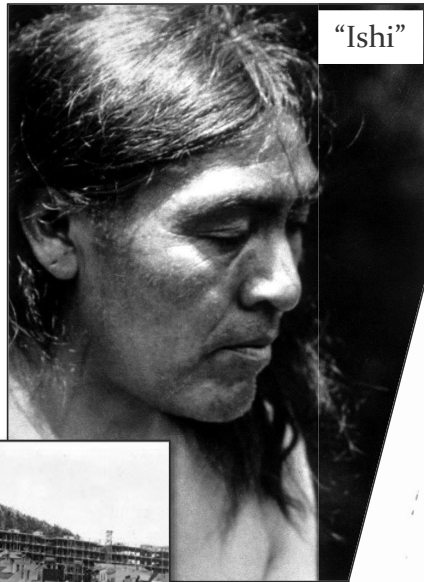
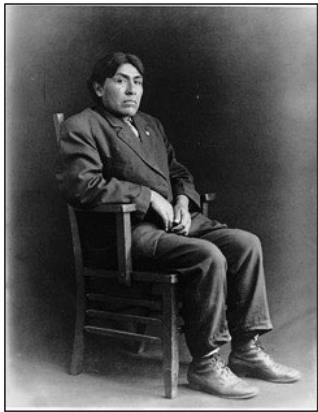


Figure 1 (Greetham – 2012)

Strengthening Our Relations: Tribal peoples, non-Tribal institutions, and public health



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NOV 2 4 1976

The Honorable James G. Abourezk
United States Senate

Dear Senator Abourezk:

In our March 15, 1976, letter report (HRD-76-108) we responded to your April 30, 1975, and subsequent requests for information concerning activities of the Indian Health Service.

After our March letter report, we obtained a copy of the draft Urban Associates report and sent it to you. As discussed with your office, an analysis of the Urban Associates report and a review of the Indian Health Service's research, development, and training programs will be included in our continuing review of the Urban Associates. As Chairman of the Subcommittee on Indian Health Service's Committee on the Subcommittee on Indian Health Service, be provided copies of our future reports.

This letter presents our findings on Indian Health Service topics on which you requested information:

- Medical research involving American Indian subjects.
- Research on the control of trachoma.
- Permanent sterilization of Indians at Indian Health Service facilities and contract facilities.

We discussed the results of our review with officials of the Indian Health Service, Department of Health, Education and Welfare (HEW). Their comments have been recognized in preparing this report. They did not review the report nor provide written comments on its contents. However, during a briefing on August 17, 1976, with Indian Health Service officials and also in their letter of August 11, 1976, they agreed with our observations and recommendations. Our observations are summarized below and recommendations. Our observations are summarized below and more detailed information is contained in the enclosure.

HRD-77-3



THE CORONAVIRUS CRISIS

Checkpoint Clash Escalates Between South Dakota Governor, Tribal Leaders

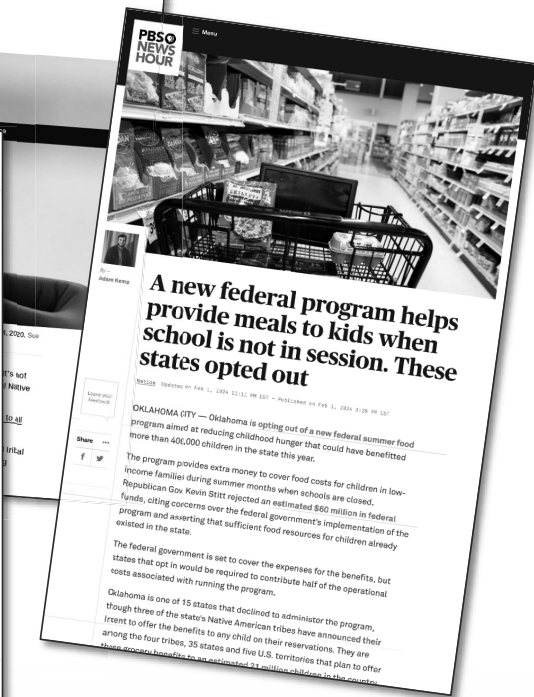
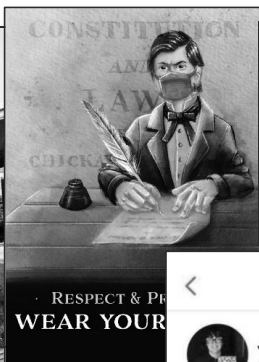
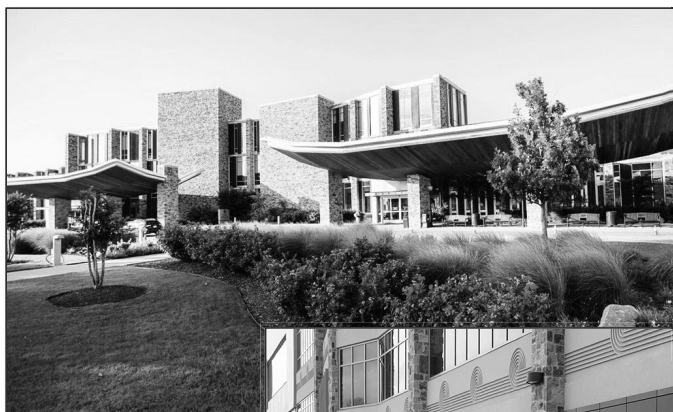
MAY 17, 2020 - 2:29 AM ET

by VANESSA BURNS

South Dakota Gov. Kristi Noem, who has not heard a different story all-home order, is deprecating that tribal leaders remove roadblocks they say have been put in place to protect reservation residents from the coronavirus pandemic.

South Dakota Gov. Kristi Noem says she will follow through on her threat to take legal action against two Native American tribes that have defied orders to remove highway checkpoints onto tribal land in an effort to prevent the spread of the coronavirus on their reservations.

Strengthening Our Relations: Tribal peoples, partnerships, and public health



Strengthening Our Relations: Some closing thoughts

- Tribal sovereignty is fundamental to Tribal continuance.
- The U.S. has a terrible history of undermining Tribal sovereignty—sometimes with intent and sometimes through ignorance.
- Since 1968, U.S. Federal policy has focused on a government-to-government relationship with Tribal nations, and that focus has been the single most positive shift in relations since the founding of the country—*not* just for Tribal nations and their citizens and communities but for the U.S., the States, and non-Tribal community members, as well. It is not even a close question.
- Current policy is *not* based on Federal altruism or generosity but, instead, on bedrock principles of Federal law (including the Federal trust responsibilities and Tribal self-determination) which are now reflected in statute, regulations, executive orders, etc.
- It is the law, but also it works . . . and improves all our outcomes.

Chokma'shki'!
Yakoke!
Thank you!

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