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David E. Wilkins

Documents of Native American  
Political Development

1500s to 1933

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1500s to 1933

DAVID E. WILKINS

OXFORD  
UNIVERSITY PRESS

2009

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Published by Oxford University Press, Inc.  
198 Madison Avenue, New York, New York 10016

www.oup.com

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Library of Congress Cataloging-in-Publication Data

Documents of Native American political development : 1500s to 1933 /  
[edited by] David E. Wilkins.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-19-532739-7

1. Indians of North America—Politics and government—Sources. 2. Indians of  
North America—Government relations—Sources. I. Wilkins, David E. (David Eugene), 1954–  
E98.T77D63 2009

323.1197—dc22 2008018420

1 3 5 7 9 8 6 4 2

Printed in the United States of America  
on acid-free paper

*This compilation is dedicated to my dear friend George Whitewolf (Monacan/Lakota). George has devoted his life to the Great Mystery, defended the earth as a warrior, acted in honor of his ancestors, and been an outstanding husband, father, uncle, and friend to countless peoples, especially the Monacan Nation and the Lakota people, as well as many others. Of equal importance, he has made countless sacrifices as a holy person in his sustained and principled efforts to help those in need.*

*His ceaseless efforts to remind native peoples of our sacred responsibilities to our nations, the earth, our forebears, present and future generations, and most emphatically to the truth have enabled him to profoundly influence several generations of native and nonnative peoples with regard to history, language, traditional knowledge, and cultural values.*

*George, for all you have done, continue to do, and have not yet completed, I dedicate this to you. You are a man of inspiration, integrity, and decency, and I express my most profound thanks for all that you have done for me (on many occasions), my family, and my wife's family as well.*

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# Preface



I FIRST BEGAN RESEARCHING native politics, history, and law in 1978 as an apprentice at the North Carolina Department of Archives and History. I was charged with investigating and writing reports on the political, genealogical, and territorial histories of the Coharie and Lumbee tribes of North Carolina. While engaged in that exciting work, I noticed that, despite the enormity of land loss, interethnic conflicts, and cultural assaults, the leadership and citizens of both of those nonfederally recognized tribes had historically found ways to retain a significant measure of self-governance. This resourcefulness had enabled them to cope fairly well within state and county systems intent on ignoring or at least marginalizing their distinctive rights as indigenous nations.

I then moved to Tucson, Arizona, in the fall of 1980 to begin my MA in political science. There I enrolled in a unique program that focused on the study of federal Indian policy, law, and treaties that had been developed by the late Vine Deloria Jr., the titan of indigenous scholars. By that time I was even more intent on understanding how and why the federal government had adopted the treaties, laws, and policies it had with regard to native nations (eastern and western). I was also eager to understand how tribal peoples had historically governed themselves before John Collier, Felix Cohen, and Nathan Margold—the Indian New Deal triumvirate—arrived on the federal scene in 1933 and, through the Indian Reorganization Act (IRA) of 1934, fashioned a law that encouraged native peoples to adopt written constitutional governments.

I also wanted to know what kinds of political and institutional adaptations Indian nations had made once they had sustained contact with the foreign political entities that had intruded upon their lands and established a permanent presence. Moreover, I was intent on learning why very little had been written about the historical evolution of indigenous governance for those First Nations not known as the Iroquois Confederacy (Seneca, Onondaga, Cayuga, Mohawk, Oneida, Tuscarora) or the Five “Civilized” Tribes (Cherokee, Choctaw,



Chickasaw, Creek, and Seminole)—two sets of native nations about which much material exists, though not all of it is particularly well written.

During the next decade, as I finished graduate school and joined the academy, I continued to collect any documents I encountered—treaties, tribal laws, constitutions (pre-IRA, IRA, and post-IRA), intertribal arrangements, superintendent reports, and so on—that evidenced native self-governance. And while my personal library of documents continued to expand, it was not until I had an opportunity to write *American Indian Politics and the American Political System* (2002; rev. ed. 2007) that I fully realized how many tribal nations, despite overwhelming odds and several generations of federal assimilation efforts, had engaged in the maintenance or reformulation of a remarkably diverse array of governing arrangements. These included indigenous and Western-inspired constitutions, business councils, powerful remnants of traditional structures, general councils, confederated alliances, and other such entities. Most commentators writing about Indian nations had simply assumed that the precontact governing/kinship systems of all native nations had been completely overwhelmed and effectively supplanted once most aboriginal lands had been lost to federal, state, and private interests and native peoples had largely become administratively subjugated. These commentators were profoundly wrong, as this compilation attests.

This book, like all of my other works, was inspired and at least partially structured by my relationship to Vine Deloria Jr. (Standing Rock Sioux). Vine passed away on November 13, 2005. In his teaching, writing, and our many conversations, he constantly reminded me that native peoples, despite several generations of oppressive federal laws and regulations, have continued to be self-governing bodies intent on wielding powers of autonomy and self-rule that best reflect the value of integrity and the process of maturity.

This work has also benefited immensely from my deep and abiding relationship with my dear friend Rudolph Coronado Jr. (Lumbee/Mexican American), who has devoted his life to helping others in many ways. Rudy and I have long shared a fascination with our people's self-governing skills, and, more important, he has computer and technical skills (which I lack) that have helped our traditional and constitutional governance work move along well.

Two other stalwart friends, David P. Marshall (Cherokee/Creek) and June Lowery (Lumbee), both advocates and defenders of their nation's sovereignty, constantly remind me to keep my eyes focused on the issues that matter to all native peoples.

I am also indebted to Joan Howland of the University of Minnesota Law School, who helped me secure the administrative support I needed to organize these documents. Thanks also to the law school's former co-deans, Guy-Uriel Charles and Fred L. Morrison, who provided collegial, financial, and secretarial help with this project. I am also deeply grateful to two undergraduate students, Natasha Hanson and Katelyn Brady, who labored for many hours typing these sometimes indecipherable documents. Their skills and fortitude are most appreciated. Finally, Rosemary Rogers helped keep this project moving forward and choreographed its successful completion.

Numerous other individuals, including Tsianina Lomawaima, Vivian Arviso, Sam Deloria, Richmond Clow, Julia Wallace, David Beck, Theda Perdue, Brian Hosmer, Howard Crumbie, Robert Odawi Porter, Claudia Haake, David Lewis, Phyllis Deery-Stanton, Dennis Griffin, Brenda Child, Jeanie O'Brien, Keith Richotte, Steven Crum, Russell Hawkins, Matthew Fletcher, Laurence Hauptman, and many others were generous with their time, knowledge, and advice on specific tribes or documents. Thanks to you all. Heidi Stark took time away from her dissertation to create the table that identifies the variety of governing systems in Indian country.

I am also indebted to the outstanding librarians and the collections they oversee at the University of Minnesota (particularly the Rare Book Room), the Newberry Library, Yale University, and the National Archives. In addition, I would like to extend a special thank-you to Mary Frances Ronan, a processing archivist in Washington, D.C., who helped me during a research visit to track down several key documents. She also corresponded me on multiple occasions and guided me skillfully through many of the data sets in the various record groups.

Thanks go to James Cook for guiding this project through from beginning to end. His patience, advice, and belief in the undertaking were extremely helpful. And to those who reviewed the initial book proposal and especially to the four readers who perused the finished manuscript—Tom Holm, Franke Wilmer, Richmond Clow, and Justin Richland—please accept my heartfelt appreciation. Your encouraging words and incisive critiques made this a much better compilation. No work is perfect, and this one has some flaws. I assume complete responsibility for those.

Finally, and as always, I express my love and thanks to my wife, Evelyn (Dine), and our children, Sion, Niltooli, and Nazhone. Their unabashed support and patience both compel and enable me to engage in such enterprises.

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# Introduction



FELIX COHEN IS considered by many the dean of what has come to be called federal Indian law. Between 1933 and 1948 he worked in the Department of the Interior and played a key role in that important transitional period for native nations as they emerged from decades of coercive assimilation policies into an era of federally supported self-governance. One of the major projects he oversaw, as leader of the Indian Law Survey, was the compilation and publication of the *Handbook of Federal Indian Law*, which was first published in 1942. In this path-breaking study, which I first read in 1983, Cohen made an observation that has remained with me ever since. He said, “Between the time of the adoption of the Constitution of the Five Nations [referring to the establishment of the Iroquois Confederacy, sometime between the eleventh and the fifteenth centuries] and the adoption by more than a hundred Indian tribes of written constitutions pursuant to the Act of June 18, 1934 [the IRA] there is a fascinating history of political development that has never been pieced together” (Cohen 1972, 128).

This anthology explores that “fascinating history.” It is only a beginning, however, because the field is so vast, the native nations are so diverse, and the data—both oral and recorded—are not as available as one would like. Still, in the necessarily selective choice of documents that ensue, the reader will notice several things: first, the wide range of tribal nations who adopted *constitutional* forms of government; second, the equally broad span of nations who continued to operate under what we might call, for lack of a better term, *traditional* or *organic* forms of government despite the heavy hands of federal officials intent on obliterating or at least profoundly diminishing all semblances of indigenous governance; finally, the creation of what we may call, also for lack of a better term, *transitional* institutional arrangements that many native nations adopted or were at least proposed for adoption by Indian communities and their leaders as a means of coping with the unprecedented swiftness of cultural and religious changes, territorial loss, demographic collapse, and reconfiguration. In some cases, transitional structures were developed or suggested by Indian nations in direct response to the oftentimes corrosive pace of colonial pressures. In other

cases, tribal peoples proactively and preemptively generated changes to their own historic institutions (e.g., selecting political elites, adopting legal codes) in an effort to be better situated politically, economically, and culturally.

There is, of course, a fourth category, a combination category really, that would include those native nations (and quite possibly nearly all nations) whose community members exhibited elements of more than one of the three sets of responses—constitutional, traditional, transitional. As one reads the ensuing selections and the accompanying explanatory headnotes, it will be evident in many cases that certain native leaders on occasion fashioned institutional arrangements that reflected elements of each approach. In other cases, however, many native nations clearly experienced deep schisms as a result of colonialism. Thus, while some tribal segments may have supported the adoption of a written constitution, other groups within the same nation would strive to perpetuate traditional organs of governance, while yet other parties may have sought another alternative institutional structure altogether.

This compilation of pre-1934 documents strikingly reveals that native nations, both internally and internationally, utilized an assortment of governing approaches. Many of these continue to be based on precontact institutional structures. Native nations continued to fight to govern themselves as much as they could despite the often oppressive environments they lived in from the 1860s to the 1930s. In other words, when John Collier proposed his New Deal for Indian nations and provided them an opportunity to exercise a measure of self-rule, the understanding of self-governance and of constitutional governance per se were intimately familiar to many native leaders even after several decades of harsh and coercive policies aimed at the dismantling of traditional self-governing structures.

The startling diversity evident in native governing structures, along with the value systems that underlay them, indicates that native peoples were more than willing to embrace new legal traditions and institutions in an effort to adjust to the shifting political, economic, legal, cultural, and vastly changed territorial conditions. At the same time, varying segments of many nations strove to maintain precontact sociocultural norms, institutions, and ceremonial traditions to distinguish themselves from other native nations and the inexorable tide of intruding powers.

## **Indigenous Governance in 1929**

Evidence of such diverse and extant native self-governance is powerfully revealed in the data compiled in a little-known survey initiated by Commissioner of Indian Affairs (CIA) Charles Burke in 1929. On March 14 of that year, Burke dictated a Bureau of Indian Affairs (BIA) circular, Circular 2565, which was then sent to every superintendent of Indian agencies and schools in the United States. Approximately 120 officials received the circular, which reads thus:

To All Superintendents:

Please furnish the Office with the following information at the earliest possible date, and not later than April 10.

1. Have the Indian tribes under your jurisdiction a tribal Business Committee, or other similar elective representative body of Indians to handle matters of business for the tribe?
2. Give the names of the present membership of such committee or committees, showing office held, date of election, term of office, existing vacancies, etc.
3. Have they a form of Constitution and By-laws governing their election, authority, etc? If filed with the Office, give date, file number, etc. and furnish a copy thereof.
4. If the tribe or tribes under your jurisdiction also have representatives to a super-organization of several branches of the same tribe, give appropriate information relative thereto.<sup>1</sup>

During the next several months 78 of the 120 superintendents responded. The information they provided gives us a vivid eyewitness account of what political life was actually like on many reservations. As important as these accounts are, however, the reader must carefully consider the information they convey. First, some of the superintendents' responses were very brief, and some reek of author bias against indigenous culture and government. Second, Commissioner Burke had requested information only about "Business Committees," the preferred organizational form endorsed by the BIA at the time in its efforts to stoke capitalism in Indian Country: other forms of native governing institutions that may have been in place were sometimes ignored or were openly denigrated by the superintendents.

Still, Elmer Rusco astutely informs us that "the replies to Circular 2565 do provide more information in one place on important questions about Native American governance than any other source. They reveal, first, the existence and vitality of many clearly traditional governments, although the superintendents were not asked about this topic" (Rusco 2000, 36).

A close analysis of the seventy-eight responses—prefaced with the important caveat that these were all written by nonnative federal employees generally intent on fulfilling a national policy aimed at the eradication or belittlement of indigenous culture, language, and identity, as well as the extraction of native resources into the body politic—yields a firsthand glimpse of what institutional and cultural structures were in place in a number of indigenous communities.

Table 1.1 depicts the significant organizational diversity the superintendents and agents described.

Thirty-five native communities, for instance, had business councils. These tended to be small organizations, begun in the early 1900s, consisting of native leaders whom the local agent frequently handpicked. They were often chosen because they had been deemed competent and were willing to work closely with the agent in his efforts to inculcate the Protestant ethic value of hard work, increase economic efficiency (particularly in agricultural pursuits), expedite the dissemination of information for the entire community, and introduce rudimentary forms of electoral politics in Indian Country.

1. Circular 2565, "Tribal Business Committees," Mar. 14, 1929, U.S. National Archives, Record Group 75, "Circulars, 1904–1934." The replies are located in Record Group 75, Entry 133, Replies to Circulars, 1907–1935; Reply to Circular 2565.

**TABLE 1.1.** Native Organizations Described by Indian Agents in 1929

Business Committee	No Business Organization Identified	Tribal Council	
Absentee Shawnee (OK)	Choctaw (MS)	Fort Hall (ID)	
Apache (OK)	Clallam (WA)	Gila River (AZ)	
Caddo (OK)	Colorado River (AZ)	Klamath (OR)	
Citizen Potawatomie (OK)	Colville and Spokane (WA)	Maricopa (AZ)	
Comanche (OK)	Crow Creek (SD)	Northern Navajo (AZ)	
Delaware (OK)	Eastern Navajo (NM)	Osage (OK)	
Fort Berthold (ND)	Fort Bidwell (CA)	Pima (AZ)	
Iowa (OK)	Fort Yuma (AZ)	Seneca (OK)	
Kaw (OK)	Jicarilla Apache (AZ)	Southern Navajo (AZ)	
Kickapoo (OK)	Lac du Flambeau, Bad River, and Lac Courte Oreilles (WI)	Tulalip (WA)	
Kiowa (OK)	Modoc (OK)	Warm Spring (OR)	
Menominee (WI)	Red Cliff (WI)	Western Navajo (AZ)	
Mexican Kickapoo (OK)	Rocky Boy Chippewa and Cree (MT)	Western Shoshone (NV)	
Nez Perce (ID)	Salt River, Pima, Yavapai (AZ)	Winnebago (NE)	
Northern Cheyenne (MT)	San Carlos (AZ)	Yakima (WA)	
Otoe (OK)	Sisseton Sioux (SD)		
Ottawa (OK)	Turtle Mountain Chippewa (ND)		
Pawnee (OK)	Walker River Paiute (NV)		
Pine Ridge Sioux (SD)			
Ponca (OK)			
Quapaw (OK)			
Quinalt (WA)			
Sac and Fox (OK)			
Snohomish (WA)			
Snoqualmie (WA)			
Standing Rock Sioux (SD)			
Swinomish (WA)			
Uintah and Ouray (UT)			
Warm Springs (OR)			
Wichita (OK)			
Winnebago (WI)			
Wyandotte (OK)			
Yankton Sioux (SD)			
Native Nations with Operating Constitutions	Traditional	Native Nations Operating Expressly without a Constitution	General Council
Cheyenne River Sioux (1925) (SD)	Eastern Navajo (NM)	Confederated Tribes of the Siletz Reservation (WA)	Cheyenne- Arapahoe (OK)
Confederated Salish and Kootenai (1930) (MT)	Fort Yuma (AZ)	Eastern Navajo (NM)	Flathead (MT)

TABLE 1.1. Continued

Native Nations with Operating Constitutions	Traditional	Native Nations Operating Expressly without a Constitution	General Council
Crow (1921) (MT)	Havasupai (AZ)	Flandreau Sioux (SD)	Fort Peck (MT)
Gros Ventre and Assiniboine (date unknown) (MT)	Navajo (Hopi Agency, AZ)	Fort Hall (ID)	Fort Totten (ND)
Menominee (1928) (WI)	Northern Pueblo (NM): (Picuris, Taos, San Juan, Santa Clara, San Ildefonso, Nambe, Tesuque, Santa Domingo, Cochiti, Pojoaque	Gros Ventre, Mandan, and Arikara (ND)	Nez Perce (ID)
Nez Perce (1927) (ID)	Puyallup (WA)	Lower Brule (SD)	Quapaw (OK)
Pine Ridge Sioux (1928) (SD)	Southern Pueblo (NM): Acoma, Laguna, Santa Clara, San Felipe, Santo Domingo, Jemez, Sandia, Zia, Isleta	Mescalero Apache (NM)	Red Lake Chippewa (MN)
Rosebud Sioux (Date Unknown) (SD)	Uintah and Ouray (UT)	Omaha (NE)	Southern Ute (CO)
Standing Rock Sioux (Date and certainty of constitution unknown) (SD)	Umatilla (OR)	Western Shoshone (NV)	Umatilla (OR)
Winnebago (1929) (NE)	Walapai (AZ)	White Mountain Apache (AZ)	Ute Mountain Tribe (CO)
Yankton Sioux (1932) (SD)	White Mountain Apache (AZ)	Yakima (WA)	
Business Committee (Defunct)	Business Committee (Met Infrequently)	Farm Chapter	Livestock Improvement Association
Flathead Agency: Flathead, Kootenai, Pend d'Oreilles, Kalispell, Spokane (MT)	Crow Agency (MT)	Fort Totten (ND)	Southern Navajo (AZ)
Lower Brule Sioux (SD)	Navajo (AZ)	Maricopa Indians (AZ)	Western Shoshone (NV)
Shawnee Tribe (OK)			

*continued*



TABLE 1.1. Continued

Acting Council	Chapter Government	Committee	Farm Improvement Association
Sac and Fox (IA)	Navajo (Leupp Agency) (AZ)	Flandreau Santee Sioux (SD)	Salt River Pima (AZ)
Intertribal Organization		Tribal Business Committee	Welfare Association
Northwestern Federation of American Indians (Nooksack, Lummi, San Juan, Samish, Swinomish, Lower Skagit, Upper Skagit, Kikiallis, Snoqualmie, Suquamish, Muckleshoot, Duwamish, and Stilliguamish)		Fort Belnap: Gros Ventre and Assiniboine (MT)	Rocky Boy Chippewa and Cree (MT)

*Source:* Record Group 75, Entry 133, Replies to Circular, 1907–1935; Reply to Circular 2565 (Washington, D.C.: National Archives Records Administration).

At Fort Berthold, North Dakota, for example, home to the Gros Ventre, Mandan, and Arickara, the business committee consisted of ten members, one of whom, Clair Everett, an Arickara, was female. The members were appointed annually, although the superintendent did not say whether he or the tribal communities made the appointment.

The Standing Rock Sioux (South Dakota) had a fourteen-member business committee, with two members elected annually from each of the reservation's seven districts. The superintendent of the agency called for the election of these individuals "at the request of the chairman of the committee." The superintendent, E. D. Mossman, stressed that the Indians preferred to hold meetings regularly, but he noted that "I advised them to not overdo the matter as it is expensive for everyone concerned and there is not a large amount of business for them to transact" (circular responses, March 29, 1929). The Standing Rock Sioux's principal "business," according to Mossman, consisted of "claims against the government [early land-claims efforts] and the adoption of new members and a few other such matters" (*ibid.*). Mossman indicated that the committee members sometimes made policy recommendations to his office and the BIA.

In Oregon, the district superintendent stated that the Siletz Confederated Tribe of Oregon had established an eleven-member business committee in 1921 specifically to address questions of enrollment. This committee, which in 1929 also included one female member, Mrs. Alex Catfish, among its members, also understood that it was to act for the tribe in all matters affecting the community.

At Fort Peck in Montana, the superintendent bemoaned the fact that, although a business committee had been in existence prior to his arrival in 1927, the tribal council in a general session had voted to terminate it and to thereafter handle all of the tribes' affairs in a general council that was open to

all adult tribal members. Upon his arrival, Superintendent Charles Eggers had sought to have the general council reprise the business committee but remarked that “they have invariably refused to do so” (circular responses, April 2, 1929). In a clear exercise of tribal sovereignty Eggers expressed his frustration that “those who have expressed themselves upon the matter state that they are opposed to anything of this kind for the reason that they fear a business committee would be too much under the influence of the superintendent, and the Office, and therefore they prefer that any matters of business be transacted by the Indians in general council” (ibid.). He indicated he had continued to lobby for a business council but had thus far been stymied because “those controlling the general council are opposed and so far have succeeded in blocking any attempt to have a business committee authorized” (ibid.).

In at least sixteen cases business committees were described as consisting of members who served for life or for an indefinite period. This is indisputable evidence of retained traditional attitudes about leadership since historically a number of indigenous communities had leaders who enjoyed lifetime tenure once they had attained a position of prominence.

Another twenty-eight native nations had what could realistically be called traditional or organic structures of governance still in place. Most of these were the various Pueblo peoples—nineteen in all—of the Southwest, who for federal administrative purposes had been divided into two large agencies, northern and southern. The Northern Pueblo Agency consisted of the Picuris, Taos, San Juan, Santa Clara, San Ildefonso, Nambe, Tesuque, Santo Domingo, Cochiti, and Pojoaque. Superintendent T. F. McCormick had this to say about the Pueblos under his administrative jurisdiction:

I wish to state that the status of the Pueblo Indians is much different from any of the Indian Tribes of the United States. The business transacted by the Pueblos is done through the Governor and his Council. No matter what proposition you have to put over, if it does not meet with the approval of the Governor and the Cacique [nonelected traditional religious and secular leaders], you can do nothing. They do not wish and will not tolerate any other council but this old tribal system that they have. . . . They have no form of constitution or laws governing their elections. In practically all cases the Cacique is the ruling man, and he chooses the Governor at his Pueblo. The Indians, in taking it over call it an election, but very few of them have what really could be called an election. Their present form of government has been in existence for hundreds of years and there is no way of introducing any other business committee as long as the old form of government exists in the pueblos. (Circular responses, April 12, 1929)

The Pueblos have inhabited the desert Southwest for thousands of years, and their governing systems, including caciques, long predate the Spanish, who arrived in the 1500s. The Spaniards introduced Catholicism and the more formal titles of “governor,” “lieutenant,” and “sheriff,” as well as the name “Pueblo,” which has remained in place. These introduced terms were then connected to the preexisting indigenous institutions and offices. In a basic sense, the Pueblos constitute both traditional and transitional styles of governance since they effectively managed to retain their own organic institutions and

cultural values and ceremonies while simultaneously accepting and incorporating European-derived ideas and institutions that entailed accommodations to the outside world. The two systems have continued to coexist in a majority of Pueblo communities.

The White Mountain Apache of the Fort Apache Indian Agency in Arizona had adhered to traditional governing structures, as evidenced by superintendent William Donner's statement that "they have a Tribal Council, according to their old Indian custom, consisting of the head chief and a number of sub-chiefs. . . . This council or business committee is to some extent elective; that is, when a sub-chief dies, the band meets in conference to decide on a successor and the name is then referred to the head chief, who makes the appointment" (circular response, April 5, 1929). The head chief and each of the twelve subchiefs were "appointed for life" (*ibid.*).

Many of the governing structures of the Puyallup Tribe of Washington State also remained intact, although they had changed the terms used to refer to them from "tribal committee" to "Trustees of the Puyallup Tribe" to "the Council of the Tribe." Henry Sicade, the tribe's secretary, wrote a letter to the Indian agent in Tulalip on April 2, 1929, describing his people's current structure:

We have a tribal committee of the Puyallup Tribe known as the "Trustees of the Puyallup Tribe." In early days before the advent of the whites, it was known and called "The Council of the Tribe." The Council then did all the tribal business; selected and recommended who would be the chief, sub-chief; made treaties, etc., and did all affairs for the tribe. Today this committee is composed of seven men of the tribe, elected for life. (Circular responses, April 2, 1929)

The Yuma Indians of the Fort Yuma Indian Agency appeared, at least according to their superintendent, to exhibit both traditional and transitional attributes and structures. Superintendent H. B. Jolley observed in his response to the CIA that "when I took charge here, the tribal business appeared to be handled by a committee of three old Indians, Chappo Jackson, Martin Aquinas and Nelson Rainbow, but their decisions were not accepted by a large portion of the Indians of the reservation" (circular responses, March 30, 1929). Jolley went on, however, to say that an attempt to create a business council had "resulted in a general disagreement and to date no council has been chosen" (*ibid.*).

The Uintah and Ouray Indians of Fort Duchesne, Utah, also exhibited elements of both traditional and transitional systems. The headmen of their various bands actually selected the five members of the business committee, who in turn chose the group's president.

In at least fifteen cases (e.g., Choctaw of Mississippi, Indians of the Colorado River Agency in Arizona, Colville and Spokane Indians of Washington, Paiute and Pit River of Fort Bidwell, California, Jicarilla Apache of Arizona) the superintendents declared that they could discern no evidence of a business committee or indeed any form of tribal organization for that matter. It is not easy to parse those observations, however. Did they mean that the tribes in question had no governing structures at all? Did they mean that the

tribes had some organizational units but had managed to conceal them from the superintendent? Did they mean that the developments were in such a state of flux that the agent could find no single term to accurately describe what was in place? Or did their silence mean that the circular's query was so narrowly focused that the superintendent simply had no reason to describe other less formal structures that may well have been present? Additional research is required before we can make a more informed analysis of what, if any, kinds of governing structures were or were not in place for this set of tribal nations.

Here are a few choice comments from agents describing the apparent absence of any form of native organization in their respective agencies:

*Choctaw Indian Agency* (Mississippi): "The Superintendent of this agency wishes to report that we have no tribal organizations, committees, nor finances of any kind or description at this agency." (Circular responses, April 6, 1929)

*Colorado River Agency* (Arizona): "I have to respectfully advise that neither the Mohave nor the Chemehuevi Indians have any tribal organization." The superintendent then noted, however, that "they do have several factional make-shift organizations that are of no benefit because what one faction wants another faction does not and they quarrel constantly. They are divided by religion and tribes." (Circular responses, April 5, 1929)

*Colville Indian Agency* (Washington): "The Colville and Spokane Indians under the jurisdiction of this Agency do not have tribal business committees or any other elective representative body to handle matters of business for the Tribes." (Circular responses, March 30, 1929)

*Jicarilla Apache* (New Mexico): "The Jicarilla Apaches do not have any organized tribal council or business committee, and there seems to be no desire among sufficient of them to organize one. Under present differences between members of the tribe it would be difficult to obtain a unified sentiment, and for that reason the matter is not being pressed by them." (Circular responses, September 13, 1933)

*Lac du Flambeau* (Wisconsin): "None of the Indian tribes under the jurisdiction of this office maintain any tribal Business Committee. Neither is there any other representative body acting in such business capacity." (Circular responses, March 27, 1929)

*Walker River Agency* (Nevada): "The Indian tribes of this jurisdiction have no tribal business committee or elective representative body of Indians. . . . Attempts have been made heretofore to formulate something along this line, but the plan did not prove to be a practicable one owing to existing conditions.<sup>2</sup> Such association has drawn them away from the tribal customs and has brought them more in touch with the ways and methods prevailing among white people." (Circular responses, March 30, 1929)

Circular 2565 also called for information about existing constitutions or bylaws. According to the responses, twelve tribes had (or were believed to

2. The "existing conditions" referred to included the allotting of the reservation's lands and the fact that, according to the superintendent, the Indians had already been economically and educationally incorporated into the neighboring community.

have) written constitutions (a number of these are reprinted in this volume), but the Choctaw, Chickasaw, Creek, Cherokee, and Seminole—the so-called Five Civilized Tribes, who as early as the 1820s had begun to adopt written constitutions that featured modified versions of U.S.-style constitutions—were not included in these circular responses. They were probably left out because their constitutional governments had been effectively emasculated by Congress in 1898 (30 Stat. 495), although the tribes eventually reasserted their political sovereignty in the 1970s.

The list of tribes with constitutions identified by superintendents in 1929 is certainly not complete, as the constitutions reprinted in the following pages attest. Moreover, Felix Cohen remarked in 1942 that at least sixty-five Indian nations had written constitutions or constitution-like documents on record with the BIA before the 1934 IRA was enacted (1972, 129). Many of these tribes also had business committees as well, although in one case, the Crow of Montana, the business committee that had been established in 1921 and approved by the BIA never functioned well and was subsequently scuttled because “there was very little interest in it and it was almost impossible to get an election” (circular responses, March 29, 1929).

The superintendents identified and in some cases discussed a number of other “elected” organizations that were present in 1929, including general councils, committees, tribal councils, farm chapters, tribal business councils, chapters, farm improvement associations, welfare associations, and livestock improvement associations. The organizations that dealt with farming and livestock are quite interesting because they reveal the efforts of both federal officials and tribal individuals to find viable economic outlets through modern farming and livestock-management techniques that would enable native entrepreneurs to gain a measure of self-sufficiency to compensate for what they had lost by being confined to reservations. The Indians of Fort Totten Agency in North Dakota, for example, had established four farm chapters, each with a president, vice president, and treasurer. These chapters followed parliamentary procedure and maintained minutes.

The communities with the most sophisticated “chapter” organizations were the Navajo of northern Arizona and western New Mexico. By 1900 the Navajo reservation had nearly quadrupled in size through several presidential executive order extensions, and it was clear that a single federal agent could no longer oversee the affairs of such a greatly expanded area and population. Thus, Navajo territory was divided into six separate agency jurisdictions, each with its own superintendent. The agencies were Leupp, San Juan, Western Navajo, Navajo Agency, Pueblo Bonito, and Hopi Agency (which included some Navajo).

John G. Hunter, the superintendent at Leupp Agency in 1927, is credited with the development of what became the chapter system of local government in Navajo country. Hunter recognized a need to reach more Navajos in order to better understand their common problems, especially those related to livestock and agriculture (Wilkins 2003, 81). By 1929 five chapters had been established within Leupp Agency, each with a president and vice president. According to then superintendent J. E. Balmer, the chapter officials had “authority to settle

all minor disputes arising in their district and to consult with their members on everything of importance” (circular responses, May 25, 1929). Chapter meetings were held once a month.

In other Navajo communities, however, traditional structures and roles remained prominent. Superintendent Edgar Miller of the Hopi Agency (which was also home to some Navajo) replied to the circular:

The Navajos of this reservation have a local Council, governed by the Chief and head man, with the three Navajo judges. The women take part as well as the men. This Council meets at the agency once a month, weather permitting, and goes into session on matters pertaining to the reservation, holds trials of offenders, etc., assisting the superintendent in all local matters of importance and administration. (Circular responses, April 3, 1929)

The gender dynamics of these early twentieth-century governing entities held particular interest. While not every superintendent identified by name or gender the native individuals then serving in governmental capacities, most did. Sixty-four superintendents listed the names of elected tribal business committee or other elective or nonelective council members, chiefs, or subchiefs as being all male. However, ten native political systems identified elected or appointed leaders as having at least one female member. The ten included the Crow (eight men, two women), Fort Berthold (nine men, one woman), Fort Hall (five men, one woman), Kaw (two men, one woman), Prairie Band of Potawatomie (five men, two women), Quapaw (three men, one woman), Sac and Fox (four men, one woman), Siletz (ten men, one woman), Snohomish (ten men, three women), and Quinaielt (three men, one woman). Comparatively, white women did not secure the right to vote in U.S. elections until the Nineteenth Amendment was ratified in 1920.

This lengthy descriptive assessment of the seventy-eight superintendents’ responses reveals an extensive range of governing, business, and customary institutions in Indian country, some of which resembled precontact structures that persisted. Understandably, there had of necessity been some changes because of the devastating impact of nearly six decades of federal, church, and societal pressures, policies, and personalities. In other words, by the time John Collier and the Indian New Dealers gained office in 1933 (while native nations were still reeling from ethnocidal educational policies, decrepit housing, continuing land and natural resource losses, and cultural and religious oppression), the remarkable persistence of many of their traditional, albeit modified, governing mechanisms provided them with a foundational core widely unacknowledged by commentators.

Of course, the scope and extent of precontact governing systems varied enormously, and many tribal nations had become ethnically, economically, and religiously segmented. This often led to intense intratribal conflicts over the direction in which the nation’s citizens wanted to move and the strategies they believed would help them cope with the ever-changing landscape. But even in the most intensely divided nations, the vying groups sometimes still based their decisions upon traditional structures and institutions that predated the arrival of non-Indians into their lands.

The ensuing documents graphically illustrate some of the breadth and depth of indigenous self-governance from the precontact period to 1933, the year John Collier arrived on the political scene. By using a simple chronological format I provide a collection of works (largely written by native individuals but some of which were penned by non-Indian officials or commentators) that is structurally similar to Francis P. Prucha's *Documents of United States Indian Policy*. I have included as wide a variety of documents covering as large a selection of native nations as possible. This diverse array of voices from native, federal, and many other sources across a lengthy span of time—but especially the early 1800s to the early 1930s—when most of the intense efforts to forcibly assimilate native peoples were made, provides overwhelming evidence of the remarkable resiliency of indigenous nations to politically adapt to ever-changing situations.

Each document is preceded by a descriptive and explanatory headnote that provides a necessary, if not always sufficient, historical, political, and cultural context for the entry. These headnotes vary in length, however. In some cases a fair amount is known about a particular document; in other cases, we have very little published or oral information about a specific entry.

As the table of contents indicates, besides the various native nations represented, I have also developed an index of documents by subject. The eight major categories are constitutions developed by native peoples; constitutions developed by or heavily influenced by nonnatives; laws, charters, legal codes, and so on developed by natives; laws, charters, legal codes, and so forth developed or influenced by nonnatives; documents written by U.S. Indian agents, commissioners of Indian Affairs, and other federal officials; U.S. congressional documents that describe indigenous governance; international (i.e., between native nations) confederacies, alliances, organizations, and so on; and finally indigenous narratives on politics and governance. This categorization provides a comprehensive overview that allows readers to quickly assess and identify the subjects they are most curious about while not interfering with the documents' historical evolution.

Interested readers now have a comprehensive though certainly not exhaustive reference work that demonstrates how a wide cross-section of native nations continued to exercise a significant, if variable, measure of self-governance—that most essential attribute of a sovereign nation—long after it was presumed that they had somehow “lost,” “surrendered,” or been physically “deprived” of that power. By focusing on specific native nations and, in some cases, segments of particular communities, one can see the evident tension in certain nations' ability to retain and operate under traditional forms of governance while dealing with the pressures of both coercive federal assimilation efforts and varying levels of voluntary assimilation that some groups of natives engaged in.

Because of space limitations, as well as the fact that there are more than 560 federally recognized native entities, such a compilation necessarily had to be quite selective. Certain selections (e.g., the Iroquois Great Law of Peace) will be familiar to some readers because of their importance in colonial history and their role in the development of the U.S. Constitution. In most cases I have reproduced only the key parts of the better-known documents. Many times,

however, the documents are either unknown or virtually so, and where a work's length is not inordinate, I have opted to reproduce the entire record.

Treaties and other diplomatic accords, particularly those of the colonial and early American period, contain much information that could easily have been included. Fortunately, there are several historical and recent publications that showcase nearly all Indian treaties,<sup>3</sup> and I believe that this study need not replicate those works. I have opted to reproduce the documents as they appear in the original sources, although the formatting of headings has been standardized. In addition, certain typographical errors have been corrected, and other minor stylistic changes have been made to the documents when necessary.

A bibliographical essay on native governance appears at the end of the book to guide interested readers to other useful materials on indigenous self-determination. Fortunately, interest in aboriginal governance has increased in the years since the self-determination era began in the 1970s, and a number of studies are now available on this important topic. A list of internet sites is also included to aid readers in finding additional information on native self-governance and specific nations.

3. Charles J. Kappler, comp., *Indian Affairs: Laws and Treaties*, vol. 2, *Treaties* (Washington, D.C.: GPO, 1904); Vine Deloria Jr. and Raymond J. DeMallie, comps., *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775–1979*, 2 vols. (Norman: University of Oklahoma Press, 1999); and Alden T. Vaughan, gen. ed., *Early American Indian Documents: Treaties and Laws, 1607–1789*, 20 vols. (Washington, D.C. : University Publications of America, 1979–2004).



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*Great Law of Peace,  
Gayanashagowa  
(Iroquois Nations, Estimated  
1000 AD–1525 AD but  
Exact Date Unknown)*

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This ancient oral tradition is considered the founding constitution of the five, later six, member native nations—Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora—who constitute the Haudenosaunee, or the Six Nations Confederacy, in what is now New York State. This founding account, considered by many to be among the oldest recorded constitutions in the world, was originally recorded on wampum belts (woven belts of carved shells) and was first written in English in the nineteenth century.

The Great Law of Peace serves both ceremonial and political purposes by providing a framework for the establishment and maintenance of peace and the resolution of disputes, a governing council of fifty sachems (chiefs), selected by female clan mothers, a consensus-based, decision-making process, and a set of protocols steeped in the kinship traditions of the respective nations. Multiple written versions of the law now exist, but in virtually every account the two central figures in the development of the Gayanashagowa are Deganawidah (the Peacemaker), a Huron who was said to have been born of a virgin, and Hayehwatha (Hiawatha), an Onondaga whose three daughters were killed by Atotarho, or Tadodaho, an Onondaga medicine man.

Deganawidah eased the grieving Hayehwatha with words of condolence and wampum shells, and together they crafted the instructions that became the Great Law. They then embarked on a diplomatic journey to help the other warring nations settle their disputes and to establish the confederacy.

The ensuing account has three major parts: an account of Deganawidah's appearance and his conversion of Tadodaho; an explanation of how the chiefs of the other nations were convinced to join the pursuit of peace; and a detailed description of the political and moral principles of the confederacy's structural arrangement. Although the general political unanimity of the six-member nations was deeply fractured during the American Revolution (some nations agreed to support the colonies, whereas others aligned with Great Britain), the framework of the Great Law endured, and even today certain members of each of the six nations maintain allegiance to this model of

governance. Importantly, though not uncontroversially, a sizable body of historical evidence shows that the character of U.S. democracy was influenced by the principles, concepts, and ideals articulated in the Great Law, including checks and balances, federalism, equal rights, consent, women's suffrage, and religious toleration.

Cohen, Felix S. *Handbook of Federal Indian Law: With Reference Tables and Index* (1942; repr., New York, AMS Press, 1972).

Fenton, William N. *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy* (Norman: University of Oklahoma Press, 1998).

Great Law of Peace. <http://www.indigenouspeople.net/iroqcon.htm>.

Lyons, Oren, and John Mohawk. *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution* (Santa Fe: Clear Light, 1992).

Morgan, Lewis Henry. *League of the Ho-dé-no-sau-nee or Iroquois* (1851).

Parker, Arthur C. *The Constitution of the Five Nations* (Albany: University of the State of New York, 1916).

Wallace, Paul A. W. *The White Roots of Peace* (Philadelphia: University of Pennsylvania Press, 1946).

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## Great Law of Peace

1. I am Dekanawidah and with the Five Nations' Confederate Lords I plant the Tree of Great Peace. I plant it in your territory, Adodarhoh, and the Onondaga Nation, in the territory of you who are Firekeepers.

I name the tree the Tree of the Great Long Leaves. Under the shade of this Tree of the Great Peace we spread the soft white feathery down of the segment thistle as seats for you, Adodarhoh, and your cousin Lords.

We place you upon those seats, spread soft with the feathery down of the globe thistle, there beneath the shade of the spreading branches of the Tree of Peace. There shall you sit and watch the Council Fire of the Confederacy of the Five Nations, and all the affairs of the Five Nations shall be transacted at this place before you, Adodarhoh, and your cousin Lords, by the Confederate Lords of the Five Nations.

2. Roots have spread out from the Tree of the Great Peace, one to the north, one to the east, one to the south and one to the west. The name of these roots is The Great White Roots and their nature is Peace and Strength.

If any man or any nation outside the Five Nations shall obey the laws of the Great Peace and make known their disposition to the Lords of the Confederacy, they may trace the Roots to the Tree and if their minds are clean and they are obedient and promise to obey the wished of the Confederate Council, they shall be welcomed to take shelter beneath the Tree of the Long Leaves.

We place at the top of the Tree of the Long Leaves an Eagle who is able to see afar. If he sees in the distance any evil approaching or any danger threatening he will at once warn the people of the Confederacy.

3. To you Adodarhoh, the Onondaga cousin Lords, I and the other Confederate Lords have entrusted the care taking and the watching of the Five Nations Council Fire. When there is any business to be transacted and the Confederate Council is not in session, a messenger shall be dispatched either to Adodarhoh, Hononwirehtonh or Skanawatih, Fire Keepers, or to their War Chiefs with a full statement of the case desired to be considered. Then shall Adodarhoh call his cousin (associate) Lords together and consider whether or not the case is of sufficient importance to demand the attention of the Confederate Council. If so, Adodarhoh shall dispatch messengers to summon all the Confederate Lords to assemble beneath the Tree of the Long Leaves.

When the Lords are assembled the Council Fire shall be kindled, but not with chestnut wood, and Adodarhoh shall formally open the Council. [ed. note: Chestnut wood throws out sparks in burning, thereby creating a disturbance in the council.]

Then shall Adodarhoh and his cousin Lords, the Fire Keepers, announce the subject for discussion.

The Smoke of the Confederate Council Fire shall ever ascend and pierce the sky so that other nations who may be allies may see the Council Fire of the Great Peace. Adodarhoh and his cousin Lords are entrusted with the Keeping of the Council Fire.

4. You, Adodarhoh, and your thirteen cousin Lords, shall faithfully keep the space about the Council Fire clean and you shall allow neither dust nor dirt to accumulate. I lay a Long Wing before you as a broom. As a weapon against a crawling creature I lay a staff with you so that you may thrust it away from the Council Fire. If you fail to cast it out then call the rest of the United Lords to your aid.

5. The Council of the Mohawk shall be divided into three parties as follows: Tekarihoken, Ayonhwhathah and Oghrenghrehgowah are the second party, and Dehennakrineh, Aghstawenserentah and Shoskoharowaneh are the third party. The third party is to listen only to the discussion of the first and second parties and if an error is made or the proceeding is irregular they are to call attention to it, and when the case is right and properly decided by the two parties they shall confirm the decision of the two parties and refer the case to the Seneca Lords for their decision. When the Seneca Lords have decided in accord with the Mohawk Lords, the case or question shall be referred to the Cayuga and Oneida Lords on the opposite side of the house.

6. I, Dekanawidah, appoint the Mohawk Lords the heads and the leaders of the Five Nations Confederacy. The Mohawk Lords are the foundation of the Great Peace and it shall, therefore, be against the Great Binding Law to pass measures in the Confederate Council after the Mohawk Lords have protested against them.

No council of the Confederate Lords shall be legal unless all the Mohawk Lords are present.

7. Whenever the Confederate Lords shall assemble for the purpose of holding a council, the Onondaga Lords shall open it by expressing their gratitude

to their cousin Lords and greeting them, and they shall make an address and offer thanks to the earth where men dwell, to the streams of water, the pools, the springs and the lakes, to the maize and the fruits, to the medicinal herbs and trees, to the forest trees for their usefulness, to the animals that serve as food and give their pelts for clothing, to the great winds and the lesser winds, to the Thunderers, to the Sun, the mighty warrior, to the moon, to the messengers of the Creator who reveal his wishes and to the Great Creator who dwells in the heavens above, who gives all the things useful to men, and who is the source and the ruler of health and life.

Then shall the Onondaga Lords declare the council open.

The council shall not sit after darkness has set in.

8. The Firekeepers shall formally open and close all councils of the Confederate Lords, and they shall pass upon all matters deliberated upon [by] the two sides and render their decision.

Every Onondaga Lord (or his deputy) must be present at every Confederate Council and must agree with the majority without unwarrantable dissent, so that a unanimous decision may be rendered.

If Adodarhoh or any of his cousin Lords are absent from a Confederate Council, any other Firekeeper may open and close the Council, but the Firekeepers present may not give any decisions, unless the matter is of small importance.

9. All the business of the Five Nations Confederate Council shall be conducted by the two combined bodies of Confederate Lords. First the question shall be passed upon by the Mohawk and Seneca Lords, then it shall be discussed and passed by the Oneida and Cayuga Lords. Their decisions shall then be referred to the Onondaga Lords, (Fire Keepers) for final judgment.

The same process shall obtain when a question is brought before the council by an individual or War Chief.

10. In all cases the procedure must be as follows: when the Mohawk and Seneca Lords have unanimously agreed upon a question, they shall report their decision to the Cayuga and Oneida Lords who shall deliberate upon the question and report a unanimous decision to the Mohawk Lords. The Mohawk Lords will then report the standing of the case to the Fire Keepers, who shall render a decision as they see fit in case of a disagreement by the two bodies, or confirm the decisions of the two bodies if they are identical. The Fire Keepers shall then report their decision to the Mohawk Lords who shall announce it to the open council.

11. If through any misunderstanding or obstinacy on the part of the Fire Keepers, they render a decision at variance with that of the Two Sides, the Two Sides shall reconsider the matter and if their decisions are jointly the same as before they shall report to the Fire Keepers who are then compelled to confirm their joint decision.

12. When a case comes before the Onondaga Lords (Fire Keepers) for discussion and decision, Adodarho shall introduce the matter to his comrade Lords who shall then discuss it in their two bodies. Every Onondaga Lord except Hononwiretonh shall deliberate and he shall listen only. When a unanimous decision shall have been reached by the two bodies of Fire Keepers, Adodarho

shall notify Hononwiretonh of the fact when he shall confirm it. He shall refuse to confirm a decision if it is not unanimously agreed upon by both sides of the Fire Keepers.

13. No Lord shall ask a question of the body of Confederate Lords when they are discussing a case, question or proposition. He may only deliberate in a low tone with the separate body of which he is a member.

14. When the Council of the Five Nation Lords shall convene they shall appoint a speaker for the day. He shall be a Lord of either the Mohawk, Onondaga or Seneca Nation.

The next day the Council shall appoint another speaker, but the first speaker may be reappointed if there is no objection, but a speaker's term shall not be regarded more than for the day.

15. No individual or foreign nation interested in a case, question or proposition shall have any voice in the Confederate Council except to answer a question put to him or them by the speaker of the Lords.

16. If the conditions which shall arise at any future time call for an addition to our change of this law, the case shall be carefully considered and if a new beam seems necessary or beneficial, the proposed change shall be voted upon and if adopted it shall be called "Added to the Rafters."

### *Rights, Duties, and Qualifications of Lords*

17. A bunch of a certain number of shell (wampum) strings each two spans in length shall be given to each of the female families in which the Lordship titles are vested. The right of bestowing the title shall be hereditary in the family of the females legally possessing the bunch of shell strings and the strings shall be the token that the females of the family have the proprietary right to the Lordship title for all the time to come, subject to certain restrictions hereinafter mentioned.

18. If any Confederate Lord neglects or refuses to attend the Confederate Council, the other Lords of the Nation of which he is a member shall require their War Chief to request the female sponsors of the Lord so guilty of defection to demand his attendance of the Council. If he refuses, the women holding the title shall immediately select another candidate for the title.

No Lord shall be asked more than once to attend the Confederate Council.

19. If at any time it shall be manifest that a Confederate Lord has not in mind the welfare of the people or disobeys the rules of this Great Law, the men or women of the Confederacy, or both jointly, shall come to the Council and upbraid the erring Lord through his War Chief. If the complaint of the people through the War Chief is not heeded the first time it shall be uttered again and then if no attention is given a third complaint and warning shall be given. If the Lord is contumacious the matter shall go to the council of War Chiefs. The War Chiefs shall then divest the erring Lord of his title by order of the women in whom the titleship is vested. When the Lord is deposed the women shall notify the Confederate Lords through their War Chief, and the Confederate Lords

shall sanction the act. The women will then select another of their sons as a candidate and the Lords shall elect him. Then shall the chosen one be installed by the Installation Ceremony.

When a Lord is to be deposed, his War Chief shall address him as follows: “So you, \_\_\_\_\_, disregard and set at naught the warning of your women relatives. So you fling the warnings over your shoulder to cast them behind you.

“Behold the brightness of the Sun and in the brightness of the Sun’s light I depose you of your title and remove the sacred emblem of your Lordship title. I remove from your brow the deer’s antlers, which was [*sic*] the emblem of your position and token of your nobility. I now depose you and return the antlers to the women whose heritage they are.”

The War Chief shall now address the women of the deposed Lord and say:

“Mothers, as I have now deposed your Lord, I now return to you the emblem and the title of Lordship, therefore repossess them.”

Again addressing himself to the deposed Lord he shall say:

“As I have now deposed and discharged you so you are now no longer Lord. You shall now go your way alone, the rest of the people of the Confederacy will not go with you, for we know not the kind of mind that possesses you. As the Creator has nothing to do with wrong so he will not come to rescue you from the precipice of destruction in which you have cast yourself. You shall never be restored to the position which you once occupied.”

Then shall the War Chief address himself to the Lords of the Nation to which the deposed Lord belongs and say:

“Know you, my Lords, that I have taken the deer’s antlers from the brow of \_\_\_\_\_, the emblem of his position and token of his greatness.”

The Lords of the Confederacy shall then have no other alternative than to sanction the discharge of the offending Lord.

20. If a Lord of the Confederacy of the Five Nations should commit murder the other Lords of the Nation shall assemble at the place where the corpse lies and prepare to depose the criminal Lord. If it is impossible to meet at the scene of the crime the Lords shall discuss the matter at the next Council of their Nation and request their War Chief to depose the Lord guilty of the crime, to “bury” his women relatives and to transfer the Lordship title to a sister family.

The War Chief shall address the Lord guilty of murder and say:

“So you, (giving his name), did kill (naming the slain man) with your own hands! You have committed a grave sin in the eyes of the Creator. Behold the bright light of the Sun and in the brightness of the Sun’s light I depose you of your title and remove the horns, the sacred emblems of your Lordship title. I remove from your brow the deer’s antlers, which was [*sic*] the emblem of your position and token of your nobility. I now depose you and expel you and you shall depart at once from the territory of the Five Nations Confederacy and nevermore return again. We, the Five Nations Confederacy, moreover, bury your women relatives because the ancient Lordship title was never intended to any union with bloodshed. Henceforth it shall not be their heritage. By the evil deed that you have done they have forfeited it forever.”

The War Chief shall then hand the title to a sister family and he shall address it and say:

“Our mothers, listen attentively while I address you on a solemn and important subject. I hereby transfer to you an ancient Lordship title for a great calamity has befallen it in the hands of the family of a former Lord. We trust that you, our mothers, will always guard it and that you will warn your Lord always to be dutiful and to advise his people to ever live in love, peace and harmony that a great calamity may never happen again.”

21. Certain physical defects in a Confederate Lord make him ineligible to sit in the Confederate Council. Such defects are infancy [infantilism], idiocy, blindness, deafness, dumbness and impotency. When a Confederate Lord is restricted by any of these conditions, a deputy shall be appointed by his sponsors to act for him, but in case of extreme necessity the restricted Lord may exercise his rights.

22. If a Confederate Lord desires to resign his title he shall notify the Lords of the Nation of which he is a member of his intention. If his co-active Lords refuse to accept his resignation he may not resign his title. A Lord in proposing to resign may recommend any proper candidate which recommendation shall be received by the Lords, but unless confirmed and nominated by the women who hold the title the candidate so named shall not be considered.

23. Any Lord of the Five Nations Confederacy may construct shell strings (or wampum belts) of any size or length as pledges or records of matters of national or international importance.

When it is necessary to dispatch a shell string by a War Chief or other messenger as the token of a summons, the messenger shall recite the contents of the string to the party to whom it is sent. That party shall repeat the message and return the shell string and if there has been a summons he shall make ready for the journey.

Any of the people of the Five Nations may use shells (or wampum) as the record of a pledge, contract or an agreement entered into and the same shall be binding as soon as shell strings shall have been exchanged by both parties.

24. The lords of the Confederacy of the Five Nations shall be mentors of the people for all time. The thickness of their skin shall be seven spans—which is to say that they shall be proof against anger, offensive actions and criticism. Their hearts shall be full of peace and good will and their minds filled with a yearning for the welfare of the people of the Confederacy. With endless patience they shall carry out their duty and their firmness shall be tempered with a tenderness for their people. Neither anger nor fury shall find lodgment in their minds and all their words and actions shall be marked by calm deliberation.

25. If a Lord of the Confederacy should seek to establish any authority independent of the jurisdiction of the Confederacy of the Great Peace, which is the Five Nations, he shall be warned three times in open council, first by the women relatives, second by the men relatives and finally by the Lords of the Confederacy of the Nation to which he belongs. If the offending Lord is still obdurate he shall be dismissed by the War Chief of his nation for refusing to conform to the laws of the Great Peace. His nation shall then install the candidate nominated by the female name holders of his family.

26. It shall be the duty of all of the Five Nations' confederate Lords, from time to time as occasion demands, to act as mentors and spiritual guides of their people and remind them of their Creator's will and words. They shall say:

“Hearken, that peace may continue unto future days!

“Always listen to the words of the Great Creator, for he has spoken.

“United people, let not evil find lodging in your mind.

“For the Great Creator has spoken and the cause of peace shall not become old.

“The cause of peace shall not die if you remember the Great Creator.”

Every Confederate Lord shall speak words such as these to promote peace.

27. All Lords of the Five Nations Confederacy must be honest in all things. They must not idle or gossip but be men possessing those honorable qualities that make true Royaneh. It shall be a serious wrong for anyone to lead a Lord into trivial affairs, for the people must ever hold their Lords high in estimation out of respect to their honorable positions.

28. When a candidate Lord is to be installed he shall furnish four strings of shells (or wampum) one span in length bound together at one end. Such will constitute the evidence of his pledge to the Confederate Lords that he will live according to the constitution of the Great Peace and exercise justice in all affairs.

When the pledge is furnished the Speaker of the Council must hold the shell strings in his hand and address the opposite side of the Council Fire and he shall commence his address saying: “Now behold him. He has now become a Confederate Lord. See how splendid he looks.” An address may then follow. At the end of it he shall send the bunch of shell strings to the opposite side and they shall be received as evidence of the pledge. Then shall the opposite side say:

“We now do crown you with the sacred emblem of the deer's antlers, the emblem of your Lordship. You shall now become a mentor of the people of the Five Nations. The thickness of your skin shall be seven spans—which is to say that you shall be proof against anger, offensive actions and criticism. Your heart shall be filled with peace and good will and your mind filled with a yearning for the welfare of the people of the Confederacy. With endless patience you shall carry out your duty and your firmness shall be tempered with tenderness for your people. Neither anger nor fury shall find lodgment in your mind and all your words and actions shall be marked with calm deliberation. In all of your deliberations in the Confederate Council, in your efforts at law making, in all your official acts, self interest shall be cast into oblivion. Cast not over your shoulder behind you the warnings of the nephews and nieces should they chide you for any error or wrong you may do, but return to the way of the people and have always in view not only the present but also the coming generations, even those whose faces are yet beneath the surface of the ground—the unborn of the future Nation.”

29. When a Lordship title is to be conferred, the candidate Lord shall furnish the cooked venison, the cornbread and the corn soup, together with other necessary things and the labor for the Conferring of Titles Festival.



30. The Lords of the Confederacy may confer the Lordship title upon a candidate whenever the Great Law is recited, if there be a candidate, for the Great Law speaks all the rules.

31. If a Lord of the Confederacy should become seriously ill and be thought near death, the women who are heirs of his title shall go to his house and lift his crown of deer antlers, the emblem of his Lordship, and place them at one side. If the Creator spares him and he rises from his bed of sickness he may rise with the antlers on his brow.

The following words shall be used to temporarily remove the antlers:

“Now our comrade Lord (or our relative Lord) the time has come when we must approach you in your illness. We remove for a time the deer’s antlers from your brow, we remove the emblem of your Lordship title. The Great Law has decreed that no Lord should end his life with the antlers on his brow. We therefore lay them aside in the room. If the Creator spares you and you recover from your illness you shall rise from your bed with the antlers on your brow as before and you shall resume your duties as Lord of the Confederacy and you may labor again for the Confederate people.”

32. If a Lord of the Confederacy should die while the Council of the Five Nations is in session the Council shall adjourn for ten days. No Confederate Council shall sit within ten days of the death of a Lord of the Confederacy. If the Three Brothers (the Mohawk, the Onondaga and the Seneca) should lose one of their Lords by death, the Younger Brothers (the Oneida and the Cayuga) shall come to the surviving Lords of the Three Brothers on the tenth day and console them. If the Younger Brothers lose one of their Lords then the Three Brothers shall come to them and console them. And the consolation shall be the reading of the contents of the thirteen shell (wampum) strings of Ayonhwathah. At the termination of this rite a successor shall be appointed, to be appointed by the women heirs of the Lordship title. If the women are not yet ready to place their nominee before the Lords the Speaker shall say, “Come let us go out.” All shall leave the Council or the place of gathering. The installation shall then wait until such a time as the women are ready. The Speaker shall lead the way from the house by saying, “Let us depart to the edge of the woods and lie in waiting on our bellies.”

When the women title holders shall have chosen one of their sons the Confederate Lords will assemble in two places, the Younger Brothers in one place and the Three Older Brothers in another. The Lords who are to console the mourning Lords shall choose one of their number to sing the Pacification Hymn as they journey to the sorrowing Lords. The singer shall lead the way and the Lords and the people shall follow. When they reach the sorrowing Lords they shall hail the candidate Lord and perform the rite of Conferring the Lordship Title.

33. When a Confederate Lord dies, the surviving relatives shall immediately dispatch a messenger, a member of another clan, to the Lords in another locality. When the runner comes within hailing distance of the locality he shall utter a sad wail, thus: “Kwa-ah, Kwa-ah, Kwa-ah!” The sound shall be repeated three times and then again and again at intervals as many times as the distance

may require. When the runner arrives at the settlement the people shall assemble and one must ask him the nature of his sad message. He shall then say, “Let us consider.” Then he shall tell them of the death of the Lord. He shall deliver to them a string of shells (wampum) and say “Here is the testimony, you have heard the message.” He may return home.

It now becomes the duty of the Lords of the locality to send runners to other localities and each locality shall send other messengers until all Lords are notified. Runners shall travel day and night.

34. If a Lord dies and there is no candidate qualified for the office in the family of the women title holders, the Lords of the Nation shall give the title into the hands of a sister family in the clan until such a time as the original family produces a candidate, when the title shall be restored to the rightful owners. No Lordship title may be carried into the grave. The Lords of the Confederacy may dispossess a dead Lord of his title even at the grave.

### *Election of Pine Tree Chiefs*

35. Should any man of the Nation assist with special ability or show great interest in the affairs of the Nation, if he proves himself wise, honest and worthy of confidence, the Confederate Lords may elect him to a seat with them and he may sit in the Confederate Council. He shall be proclaimed a ‘Pine Tree sprung up for the Nation’ and shall be installed as such at the next assembly for the installation of Lords. Should he ever do anything contrary to the rules of the Great Peace, he may not be deposed from office—no one shall cut him down—but thereafter everyone shall be deaf to his voice and his advice. Should he resign his seat and title no one shall prevent him. A Pine Tree chief has no authority to name a successor nor is his title hereditary.

### *Names, Duties, and Rights of War Chiefs*

36. The title names of Chief Confederate Lords’ Chiefs shall be:

Ayonwaehs, War Chief under Lord Takarihoken (Mohawk)

Kahonwahdironh, War Chief under Lord Odatshedeh (Oneida)

Ayendes, War Chief under Lord Adodarhoh (Onondaga)

Wenenhs, War chief under Lord Dekanyonh (Cayuga)

Shoneradowaneh, War Chief under Lord Skanyadariyo (Seneca)

The women heirs of each head Lord’s title shall be the heirs of the War Chief’s title of their respective Lord.

The War Chiefs shall be selected from the eligible sons of the female families holding the head Lordship titles.

37. There shall be one War Chief for each Nation and their duties shall be to carry messages for their Lords and to take up the arms of war in case of emergency. They shall not participate in the proceedings of the Confederate Council but shall watch its progress and in case of an erroneous action by a

Lord they shall receive the complaints of the people and convey the warnings of the women to him. The people who wish to convey messages to the Lords in the Confederate Council shall do so through the War Chief of their Nation. It shall ever be his duty to lay the cases, questions and propositions of the people before the Confederate Council.

38. When a War Chief dies another shall be installed by the same rite as that by which a Lord is installed.

39. If a War Chief acts contrary to instructions or against the provisions of the Laws of the Great Peace, doing so in the capacity of his office, he shall be deposed by his women relatives and by his men relatives. Either the women or the men alone or jointly may act in such a case. The women title holders shall then choose another candidate.

40. When the Lords of the Confederacy take occasion to dispatch a messenger in behalf of the Confederate Council, they shall wrap up any matter they may send and instruct the messenger to remember his errand, to turn not aside but to proceed faithfully to his destination and deliver his message according to every instruction.

41. If a message borne by a runner is the warning of an invasion he shall whoop, "Kwa-ah, Kwa-ah," twice and repeat at short intervals; then again at a longer interval.

If a human being is found dead, the finder shall not touch the body but return home immediately shouting at short intervals, "Koo-weh!"

### *Clans and Consanguinity*

42. Among the Five Nations and their posterity there shall be the following original clans: Great Name Bearer, Ancient Name Bearer, Great Bear, Ancient Bear, Turtle, Painted Turtle, Standing Rock, Large Plover, Deer, Pigeon Hawk, Eel, Ball, Opposite-Side-of-the-Hand, and Wild Potatoes. These clans distributed through their respective Nations shall be the sole owners and holders of the soil of the country and in them is it vested as a birthright.

43. People of the Five Nations Members of a certain clan shall recognize every other member of that clan, irrespective of the Nation, as relatives. Men and women, therefore, members of the same clan are forbidden to marry.

44. The lineal descent of the people of the Five Nations shall run in the female line. Women shall be considered the progenitors of the Nation. They shall own the land and the soil. Men and women shall follow the status of the mother.

45. The women heirs of the Confederated Lordship titles shall be called Royaneh (Noble) for all time to come.

46. The women of the Forty Eight (now fifty) Royaneh families shall be the heirs of the Authorized Names for all time to come.

When an infant of the Five Nations is given an Authorized Name at the Midwinter Festival or at the Ripe Corn Festival, one in the cousinhood of which the infant is a member shall be appointed a speaker. He shall then announce to the opposite cousinhood the names of the father and the mother of

the child together with the clan of the mother. Then the speaker shall announce the child's name twice. The uncle of the child shall then take the child in his arms and walking up and down the room shall sing: "My head is firm, I am of the Confederacy." As he sings the opposite cousinhood shall respond by chanting, "Hyenh, Hyenh, Hyenh, Hyenh," until the song is ended.

47. If the female heirs of a Confederate Lord's title become extinct, the title right shall be given by the Lords of the Confederacy to the sister family whom they shall elect and that family shall hold the name and transmit it to their (female) heirs, but they shall not appoint any of their sons as a candidate for a title until all the eligible men of the former family shall have died or otherwise have become ineligible.

48. If all the heirs of a Lordship title become extinct and all the families in the clan, then the title shall be given by the Lords of the Confederacy to the family in a sister clan whom they shall elect.

49. If any of the Royaneh women, heirs of a titleship, shall willfully withhold a Lordship or other title and refuse to bestow it, or if such heirs abandon, forsake or despise their heritage, then shall such women be deemed buried and their family extinct. The titleship shall then revert to a sister family or clan upon application and complaint. The Lords of the Confederacy shall elect the family or clan which shall in future hold the title.

50. The Royaneh women of the Confederacy heirs of the Lordship titles shall elect two women of their family as cooks for the Lord when the people shall assemble at his house for business or other purposes.

It is not good nor honorable for a Confederate Lord to allow his people whom he has called to go hungry.

51. When a Lord holds a conference in his home, his wife, if she wishes, may prepare the food for the Union Lords who assemble with him. This is an honorable right which she may exercise and an expression of her esteem.

52. The Royaneh women, heirs of the Lordship titles, shall, should it be necessary, correct and admonish the holders of their titles. Those only who attend the Council may do this and those who do not shall not object to what has been said nor strive to undo the action.

53. When the Royaneh women, holders of a Lordship title, select one of their sons as a candidate, they shall select one who is trustworthy, of good character, of honest disposition, one who manages his own affairs, supports his own family, if any, and who has proven a faithful man to his Nation.

54. When a Lordship title becomes vacant through death or other cause, the Royaneh women of the clan in which the title is hereditary shall hold a council and shall choose one from among their sons to fill the office made vacant. Such a candidate shall not be the father of any Confederate Lord. If the choice is unanimous the name is referred to the men relatives of the clan. If they should disapprove it shall be their duty to select a candidate from among their own number. If then the men and women are unable to decide which of the two candidates shall be named, then the matter shall be referred to the Confederate Lords in the Clan. They shall decide which candidate shall be named. If the

men and the women agree to a candidate his name shall be referred to the sister clans for confirmation. If the sister clans confirm the choice, they shall refer their action to their Confederate Lords who shall ratify the choice and present it to their cousin Lords, and if the cousin Lords confirm the name then the candidate shall be installed by the proper ceremony for the conferring of Lordship titles.

### *Official Symbolism*

55. A large bunch of shell strings, in the making of which the Five Nations Confederate Lords have equally contributed, shall symbolize the completeness of the union and certify the pledge of the nations represented by the Confederate Lords of the Mohawk, the Oneida, the Onondaga, the Cayuga and the Seneca, that all are united and formed into one body or union called the Union of the Great Law, which they have established.

A bunch of shells strings is to be the symbol of the council fire of the Five Nations Confederacy. And the Lord whom the council of Fire Keepers shall appoint to speak for them in opening the council shall hold the strands of shells in his hands when speaking. When he finishes speaking he shall deposit the strings on an elevated place (or pole) so that all the assembled Lords and the people may see it [*sic*] and know that the council is open and in progress.

When the council adjourns the Lord who has been appointed by his comrade Lords to close it shall take the strands of shells in his hands and address the assembled Lords. Thus will the council adjourn until such time and place as appointed by the council. Then shall the shell strings be placed in a place for safekeeping.

Every five years the Five Nations Confederate Lords and the people shall assemble together and shall ask one another if their minds are still in the same spirit of unity for the Great Binding Law and if any of the Five Nations shall not pledge continuance and steadfastness to the pledge of unity then the Great Binding Law shall dissolve.

56. Five strings of shell tied together as one shall represent the Five Nations. Each string shall represent one territory and the whole a completely united territory known as the Five Nations Confederate territory.

57. Five arrows shall be bound together very strong and each arrow shall represent one nation. As the five arrows are strongly bound this shall symbolize the complete union of the nations. Thus are the Five Nations united completely and enfolded together, united into one head, one body and one mind. Therefore they shall labor, legislate and council together for the interest of future generations.

The Lords of the Confederacy shall eat together from one bowl the feast of cooked beaver's tail. While they are eating they are to use no sharp utensils for if they should they might accidentally cut one another and bloodshed would follow. All measures must be taken to prevent the spilling of blood in any way.

58. There are now the Five Nations Confederate Lords standing with joined hands in a circle. This signifies and provides that should any one of the Confederate

Lords leave the council and this Confederacy his crown of deer's horns, the emblem of his Lordship title, together with his birthright, shall lodge on the arms of the Union Lords whose hands are so joined. He forfeits his title and the crown falls from his brow but it shall remain in the Confederacy.

A further meaning of this is that if any time any one of the Confederate Lords choose[s] to submit to the law of a foreign people he is no longer in but out of the Confederacy, and persons of this class shall be called "They have alienated themselves." Likewise such persons who submit to laws of foreign nations shall forfeit all birthrights and claims on the Five Nations Confederacy and Territory.

You, the Five Nations Confederate Lords, be firm so that if a tree falls on your joined arms it shall not separate or weaken your hold. So shall the strength of the union be preserved.

59. A bunch of wampum shells on strings, three spans of the hand in length, the upper half of the bunch being white and the lower half black and formed from equal contributions of the men of the Five Nations, shall be a token that the men have combined themselves into one head, one body and one thought, and it shall also symbolize their ratification of the peace pact of the Confederacy, whereby the Lords of the Five Nations have established the Great Peace.

The white portion of the shell strings represent[s] the women, and the black portion the men. The black portion, furthermore, is a token of power and authority vested in the men of the Five Nations.

This string of wampum vests the people with the right to correct their erring Lords. In case a part of all the Lords pursue a course not vouched for by the people and heed not the third warning of their women relatives, then the matter shall be taken to the General Council of the women of the Five Nations. If the Lords [who are] notified and warned three times fail to heed, then the case falls into the hands of the men of the Five Nations. The War Chiefs shall then, by right of such power and authority, enter the open council to warn the Lord or Lords to return from the wrong course. If the Lords heed the warning they shall say, "we will reply tomorrow." If then an answer is returned in favor of justice and in accord with this Great Law, then the Lords shall individually pledge themselves again by again furnishing the necessary shells for the pledge. Then shall the War Chief or Chiefs exhort the Lords urging them to be just and true. Should it happen that the Lords refuse to heed the third warning, then two courses are open: either the men may decide in their council to depose the Lord or Lords or to club them to death with war clubs. Should they in their council decide to take the first course the War Chief shall address the Lord or Lords, saying: "Since you the Lords of the Five Nations have refused to return to the procedure of the Constitution, we now declare your seats vacant, we take off your horns, the token of your Lordship, and others shall be chosen and installed in your seats, therefore vacate your seats."

Should the men in their council adopt the second course, the War Chief shall order his men to enter the council, to take positions beside the Lords, sitting between them wherever possible. When this is accomplished the War Chief holding in his outstretched hand a bunch of black wampum strings shall say to the erring Lords: "So now, Lords of the Five United Nations, harken to these last words from your men. You have not heeded the warnings of the

women relatives, you have not heeded the warnings of the General Council of women and you have not heeded the warnings of the men of the nations, all urging you to return to the right course of action. Since you are determined to resist and to withhold justice from your people there is only one course for us to adopt.” At this point the War Chief shall let drop the bunch of black wampum and the Lord may submit before the War Chief lets fall the black wampum. Then his execution is withheld.

The black wampum here used symbolizes that the power to execute is buried but that it may be raised up again by the men. It is buried but when occasion arises they may pull it up and derive their power and authority to act as here described.

60. A broad dark belt of wampum of thirty-eight rows, having a white heart in the center, on either side of which are two white squares all connected with the heart by white rows of beads shall be the emblem of the unity of the Five Nations. [Editor’s note: This is the Hiawatha belt, now in the Library of Congress.]

The first of the squares on the left represents the Mohawk nation and its territory; the second square on the left and the one near the heart represents the Oneida nation and its territory; the white heart in the middle represents the Onondaga nation and its territory, and it also means that the heart of the Five Nations is single in its loyalty to the Great Peace, that the Great Peace is lodged in the heart (meaning the Onondaga Lords), and that the Council Fire is to burn there for the Five Nations, and further, it means that the authority is given to advance the cause of peace whereby hostile nations out of the Confederacy shall cease warfare; the white square to the right of the heart represents the Cayuga nation and its territory and the fourth and last white square represents the Seneca nation and its territory.

White shall here symbolize that no evil or jealous thoughts shall creep into the minds of the Lords while in Council under the Great Peace. White, the emblem of peace, love, charity and equity surrounds and guards the Five Nations.

61. Should a great calamity threaten the generations rising and living of the Five United Nations, then he who is able to climb to the top of the Tree of the Great Long Leaves may do so. When, then, he reaches the top of the tree he shall look about in all directions, and, should he see that evil things indeed are approaching, then he shall call to the people of the Five United Nations assembled beneath the Tree of the Great Long Leaves and say: “A calamity threatens your happiness.”

Then shall the Lords convene in council and discuss the impending evil. When all the truths relating to the trouble shall be fully known and found to be truths, then shall the people seek out a Tree of Ka-hon-ka-ah-go-nah [a great swamp elm], and when they shall find it they shall assemble their heads together and lodge for a time between its roots. Then, their labors being finished, they may hope for happiness for many days after.

62. When the Confederate Council of the Five Nations declares for a reading of the belts of shell calling to mind these laws, they shall provide for the reader a specially made mat woven of the fibers of wild hemp. The mat shall not be used again, for such formality is called the honoring of the importance of the law.

63. Should two sons of opposite sides of the council fire agree in a desire to hear the reciting of the laws of the Great Peace and so refresh their memories in the way ordained by the founder of the Confederacy, they shall notify Adodarho. He then shall consult with five of his coactive Lords and they in turn shall consult with their eight brethren. Then should they decide to accede to the request of the two sons from opposite sides of the Council Fire, Adodarho shall send messengers to notify the Chief Lords of each of the Five Nations. Then they shall dispatch their War Chiefs to notify their brother and cousin Lords of the meeting and its time and place.

64. At the ceremony of the installation of Lords if there is only one expert speaker and singer of the law and the Pacification Hymn to stand at the council fire, then when this speaker and singer has finished addressing one side of the fire he shall go to the opposite side and reply to his own speech and song. He shall thus act for both sides of the fire until the entire ceremony has been completed. Such a speaker and singer shall be termed the “Two Faced” because he speaks and sings for both sides of the fire.

65. I, Dekanawida, and the Union Lords, now uproot the tallest pine tree and into the cavity thereby made we cast all weapons of war. Into the depths of the earth, down into the deep underearth currents of water flowing to unknown regions we cast all the weapons of strife. We bury them from sight and we plant again the tree. Thus shall the Great Peace be established and hostilities shall no longer be known between the Five Nations but peace to the United People.

### *Laws of Adoption*

66. The father of a child of great comeliness, learning, ability or specially loved because of some circumstance may, at the will of the child’s clan, select a name from his own (the father’s) clan and bestow it by ceremony, such as is provided. This naming shall be only temporary and shall be called, “A name hung about the neck.”

67. Should any person, a member of the Five Nations’ Confederacy, specially esteem a man or woman of another clan or of a foreign nation, he may choose a name and bestow it upon that person so esteemed. The naming shall be in accord with the ceremony of bestowing names. Such a name is only a temporary one and shall be called “a name hung about the neck.” A short string of shells shall be delivered with the name as a record and a pledge.

68. Should any member of the Five Nations, a family or person belonging to a foreign nation submit a proposal for adoption into a clan of one of the Five Nations, he or they shall furnish a string of shells, a span in length, as a pledge to the clan into which he or they wish to be adopted. The Lords of the nation shall then consider the proposal and submit a decision.

69. Any member of the Five Nations, who through esteem or other feeling wishes to adopt an individual, a family or number of families, may offer adoption to him or them and if accepted the matter shall be brought to the attention of the Lords for confirmation and the Lords must confirm adoption.



70. When the adoption of anyone shall have been confirmed by the Lords of the Nation, the Lords shall address the people of their nation and say: "Now you of our nation, be informed that such a person, such a family or such families have ceased forever to bear their birth nation's name and have buried it in the depths of the earth. Henceforth let no one of our nation ever mention the original name or nation of their birth. To do so will be to hasten the end of our peace.

### *Laws of Emigration*

71. When any person or family belonging to the Five Nations desires to abandon their birth nation and the territory of the Five Nations, they shall inform the Lords of their nation and the Confederate Council of the Five Nations shall take cognizance of it.

72. When any person or any of the people of the Five Nations emigrate and reside in a region distant from the territory of the Five Nations Confederacy, the Lords of the Five Nations at will may send a messenger carrying a broad belt of black shells and when the messenger arrives he shall call the people together or address them personally displaying the belt of shells and they shall know that this is an order for them to return to their original homes and to their council fires.

73. The soil of the earth from one end of the land to the other is the property of the people who inhabit it. By birthright the Ongwehonweh (original beings) are the owners of the soil which they own and occupy and none other may hold it. The same law has been held from the oldest times.

The Great Creator has made us of the one blood and of the same soil he made us and as only different tongues constitute different nations he established different hunting grounds and territories and made boundary lines between them.

74. When any alien nation or individual is admitted into the Five Nations the admission shall be understood only to be a temporary one. Should the person or nation create loss, do wrong or cause suffering of any kind to endanger the peace of the Confederacy, the Confederate Lords shall order one of their war chiefs to reprimand him or them and if a similar offense is again committed the offending party or parties shall be expelled from the territory of the Five United Nations.

75. When a member of an alien nation comes to the territory of the Five Nations and seeks refuge and permanent residence, the Lords of the Nation to which he comes shall extend hospitality and make him a member of the nation. Then shall he be accorded equal rights and privileges in all matters except as after mentioned.

76. No body of alien people who have been adopted temporarily shall have a vote in the council of the Lords of the Confederacy, for only they who have been invested with Lordship titles may vote in the Council. Aliens have nothing by blood to make claim to a vote and should they have it, not knowing all the traditions of the Confederacy, might go against its Great Peace. In this manner the Great Peace would be endangered and perhaps be destroyed.

77. When the Lords of the Confederacy decide to admit a foreign nation and an adoption is made, the Lords shall inform the adopted nation that its admission is only temporary. They shall also say to the nation that it must never try to control, to interfere with or to injure the Five Nations nor disregard the Great Peace or any of its rules or customs. That in no way should they cause disturbance or injury. Then should the adopted nation disregard these injunctions, their adoption shall be annulled and they shall be expelled.

The expulsion shall be in the following manner: The council shall appoint one of their War Chiefs to convey the message of annulment and he shall say, “You (naming the nation) listen to me while I speak. I am here to inform you again of the will of the Five Nations’ Council. It was clearly made known to you at a former time. Now the Lords of the Five Nations have decided to expel you and cast you out. We disown you now and annul your adoption. Therefore you must look for a path in which to go and lead away all your people. It was you, not we, who committed wrong and caused this sentence of annulment. So then go your way and depart from the territory of the Five Nations and from the Confederacy.”

78. Whenever a foreign nation enters the Confederacy or accepts the Great Peace, the five Nations and the foreign nation shall enter into an agreement and compact by which the foreign nation shall endeavor to persuade other nations to accept the Great Peace.

### *Rights and Powers of War*

79. Skanawatih shall be vested with a double office, duty and with double authority. One-half of his being shall hold the Lordship title and the other half shall hold the title of War Chief. In the event of war he shall notify the five War Chiefs of the Confederacy and command them to prepare for war and have their men ready at the appointed time and place for engagement with the enemy of the Great Peace.

80. When the Confederate Council of the Five Nations has for its object the establishment of the Great Peace among the people of an outside nation and that nation refuses to accept the Great Peace, then by such refusal they bring a declaration of war upon themselves from the Five Nations. Then shall the Five Nations seek to establish the Great Peace by a conquest of the rebellious nation.

81. When the men of the Five Nations, now called forth to become warriors, are ready for battle with an obstinate opposing nation that has refused to accept the Great Peace, then one of the five War Chiefs shall be chosen by the warriors of the Five Nations to lead the army into battle. It shall be the duty of the War Chief so chosen to come before his warriors and address them. His aim shall be to impress upon them the necessity of good behavior and strict obedience to all the commands of the War Chiefs. He shall deliver an oration exhorting them with great zeal to be brave and courageous and never to be guilty of cowardice. At the conclusion of his oration he shall march forward and commence the War Song and he shall sing:

Now I am greatly surprised. And, therefore I shall use it—The power of my War Song.

I am of the Five Nations  
 And I shall make supplication  
 To the Almighty Creator.  
 He has furnished this army.  
 My warriors shall be mighty  
 In the strength of the Creator.  
 Between him and my song they are  
 For it was he who gave the song.  
 This war song that I sing!

82. When the warriors of the Five Nations are on an expedition against an enemy, the War Chief shall sing the War Song as he approaches the country of the enemy and not cease until his scouts have reported that the army is near the enemies' lines, when the War Chief shall approach with great caution and prepare for the attack.

83. When peace shall have been established by the termination of the war against a foreign nation, then the War Chief shall cause all the weapons of war to be taken from the nation. Then shall the Great Peace be established and that nation shall observe all the rules of the Great Peace for all time to come.

84. Whenever a foreign nation is conquered or has by their own will accepted the Great Peace their own system of internal government may continue, but they must cease all warfare against other nations.

85. Whenever a war against a foreign nation is pushed until that nation is about exterminated because of its refusal to accept the Great Peace and if that nation shall by its obstinacy become exterminated, all their rights, property, and territory shall become the property of the Five Nations.

86. Whenever a foreign nation is conquered and the survivors are brought into the territory of the Five Nations' Confederacy and placed under the Great Peace the two shall be known as the Conqueror and the Conquered. A symbolic relationship shall be devised and be placed in some symbolic position. The conquered nation shall have no voice in the councils of the Confederacy in the body of the Lords.

87. When the War of the Five Nations on a foreign rebellious nation is ended, peace shall be restored to that nation by withdrawal of all their weapons of war by the War Chief of the Five Nations. When all the terms of peace shall have been agreed upon a state of friendship shall be established.

88. When the proposition to establish the Great Peace is made to a foreign nation it shall be done in mutual council. The foreign nation is to be persuaded by reason and urged to come into the Great Peace. If the Five Nations fail to obtain the consent of the nation at the first council a second council shall be held and upon a second failure a third council shall be held and this third council shall end the peaceful methods of persuasion. At the third council the War Chief of the Five Nations shall address the Chief of the foreign nation and request him three times to accept the Great Peace. If refusal steadfastly follows the War Chief shall let the bunch of white lake shells drop from his outstretched hand to the ground and shall bound quickly forward and club the offending chief to death. War shall thereby be declared

and the War Chief shall have his warriors at his back to meet any emergency. War must continue until the contest is won by the Five Nations.

89. When the Lords of the Five Nations propose to meet in conference with a foreign nation with proposals for an acceptance of the Great Peace, a large band of warriors shall conceal themselves in a secure place safe from the espionage of the foreign nation but as near at hand as possible. Two warriors shall accompany the Union Lord who carries the proposals and these warriors shall be especially cunning. Should the Lord be attacked, these warriors shall hasten back to the army of warriors with the news of the calamity which fell through the treachery of the foreign nation.

90. When the Five Nations' Council declares war any Lord of Confederacy may enlist with the warriors by temporarily renouncing his sacred Lordship title which he holds through the election of his women relatives. The title then reverts to them and they may bestow it upon another temporarily until the war is over when the Lord, if living, may resume his title and seat in the Council.

91. A certain wampum belt of black beads shall be the emblem of the authority of the Five War Chiefs to take up the weapons of war and with their men to resist invasion. This shall be called a war in defense of the territory.

### *Treason or Secession of a Nation*

92. If a nation, part of a nation, or more than one nation within the Five Nations should in any way endeavor to destroy the Great Peace by neglect or violating its laws and resolve to dissolve the Confederacy, such a nation or such nations shall be deemed guilty of treason and called enemies of the Confederacy and the Great Peace.

It shall then be the duty of the Lords of the Confederacy who remain faithful to resolve to warn the offending people. They shall be warned once and if a second warning is necessary they shall be driven from the territory of the Confederacy by the War Chiefs and his men.

### *Rights of the People of the Five Nations*

93. Whenever a specially important matter or a great emergency is presented before the Confederate Council and the nature of the matter affects the entire body of the Five Nations, threatening their utter ruin, then the Lords of the Confederacy must submit the matter to the decision of their people and the decision of the people shall affect the decision of the Confederate Council. This decision shall be a confirmation of the voice of the people.

94. The men of every clan of the Five Nations shall have a Council Fire ever burning in readiness for a council of the clan. When it seems necessary for a council to be held to discuss the welfare of the clans, then the men may gather about the fire. This council shall have the same rights as the council of the women.

95. The women of every clan of the Five Nations shall have a Council Fire ever burning in readiness for a council of the clan. When in their opinion it seems necessary for the interest of the people they shall hold a council and

their decisions and recommendations shall be introduced before the Council of the Lords by the War Chief for its consideration.

96. All the Clan council fires of a nation or of the Five Nations may unite into one general council fire, or delegates from all the council fires may be appointed to unite in a general council for discussing the interests of the people. The people shall have the right to make appointments and to delegate their power to others of their number. When their council shall have come to a conclusion on any matter, their decision shall be reported to the Council of the Nation or to the Confederate Council (as the case may require) by the War Chief or the War Chiefs.

97. Before the real people united their nations, each nation had its council fires. Before the Great Peace their councils were held. The five Council Fires shall continue to burn as before and they are not quenched. The Lords of each nation in future shall settle their nation's affairs at this council fire governed always by the laws and rules of the council of the Confederacy and by the Great Peace.

98. If either a nephew or a niece see an irregularity in the performance of the functions of the Great Peace and its Laws, in the Confederate Council or in the conferring of Lordship titles in an improper way, through their War Chief they may demand that such actions become subject to correction and that the matter conform to the ways prescribed by the laws of the Great Peace.

### *Religious Ceremonies Protected*

99. The rites and festivals of each nation shall remain undisturbed and shall continue as before because they were given by the people of old times as useful and necessary for the good of men.

100. It shall be the duty of the Lords of each brotherhood to confer at the approach of the time of the Midwinter Thanksgiving and to notify their people of the approaching festival. They shall hold a council over the matter and arrange its details and begin the Thanksgiving five days after the moon of Dis-ko-nah is new. The people shall assemble at the appointed place and the nephews shall notify the people of the time and place. From the beginning to the end the Lords shall preside over the Thanksgiving and address the people from time to time.

101. It shall be the duty of the appointed managers of the Thanksgiving festivals to do all that is needed for carrying out the duties of the occasions.

The recognized festivals of Thanksgiving shall be the Midwinter Thanksgiving, the Maple or Sugar-making Thanksgiving, the Raspberry Thanksgiving, the Strawberry Thanksgiving, the Cornplanting Thanksgiving, the Corn Hoeing Thanksgiving, the Little Festival of Green Corn, the Great Festival of Ripe Corn and the complete Thanksgiving for the Harvest.

Each nation's festivals shall be held in their Long Houses.

102. When the Thanksgiving for the Green Corn comes the special managers, both the men and women, shall give it careful attention and do their duties properly.

103. When the Ripe Corn Thanksgiving is celebrated the Lords of the Nation must give it the same attention as they give to the Midwinter Thanksgiving.

104. Whenever any man proves himself by his good life and his knowledge of good things naturally fitted as a teacher of good things, he shall be recognized by the Lords as a teacher of peace and religion and the people shall hear him.

*The Installation Song*

105. The song used in installing the new Lord of the Confederacy shall be sung by Adodarhoh and it shall be:

Haii, haii Agwah wi-yoh  
A-kon-he-watha  
Ska-we-ye-se-go-wah  
Yoon-gwa-wih  
Ya-kon-he-wa-tha  
Haii, haii it is good indeed  
That a broom,—  
A great wing,  
Is given me  
For a sweeping instrument.

106. Whenever a person properly entitled desires to learn the Pacification Song he is privileged to do so but he must prepare a feast at which his teachers may sit with him and sing. The feast is provided that no misfortune may befall them for singing the song on an occasion when no chief is installed.

*Protection of the House*

107. A certain sign shall be known to all the people of the Five Nations which shall denote that the owner or occupant of a house is absent. A stick or pole in a slanting or leaning position shall indicate this and be the sign. Every person not entitled to enter the house by right of living within it upon seeing such a sign shall not approach the house either by day or by night but shall keep as far away as his business will permit.

*Funeral Addresses*

108. At the funeral of a Lord of the Confederacy, say: Now we become reconciled as you start away. You were once a Lord of the Five Nations' Confederacy and the United People trusted you. Now we release you for it is true that it is no longer possible for us to walk about together on the earth. Now, therefore, we lay it (the body) here. Here we lay it away. Now then we say to you, 'Persevere onward to the place where the Creator dwells in peace. Let not the things of the earth hinder you. Let nothing that transpired while yet you lived hinder you. In hunting you once took delight; in the game of Lacrosse you once took delight and in the feasts and pleasant occasions your mind was amused, but now do not allow thoughts of these things to give you trouble. Let not your relatives hinder you and also let not your friends and associates trouble your mind. Regard none of these things.'

“Now then, in turn, you here present who were related to this man and you who were his friends and associates, behold the path that is yours also! Soon we ourselves will be left in that place. For this reason hold yourselves in restraint as you go from place to place. In your actions and in your conversation do no idle thing. Speak not idle talk neither gossip. Be careful of this and speak not and do not give way to evil behavior. One year is the time that you must abstain from unseemly levity but if you can not do this for ceremony, ten days is the time to regard these things for respect.”

109. At the funeral of a War Chief, say:

“Now we become reconciled as you start away. You were once a War Chief of the Five Nations’ Confederacy and the United People trusted you as their guard from the enemy.” (The remainder is the same as the address at the funeral of a Lord).

110. At the funeral of a Warrior, say:

“Now we become reconciled as you start away. Once you were a devoted provider and protector of your family and you were ever ready to take part in battles for the Five Nations’ Confederacy. The United People trusted you.” (The remainder is the same as the address at the funeral of a Lord).

111. At the funeral of a young man, say:

“Now we become reconciled as you start away. In the beginning of your career you are taken away and the flower of life is withered away.” (The remainder is the same as the address at the funeral of a Lord).

112. At the funeral of a chief woman, say: “Now we become reconciled as you start away. You were once a chief woman in the Five Nations’ Confederacy. You once were a mother of the nations. Now we release you for it is true that it is no longer possible for us to walk about together on the earth. Now, therefore, we lay it (the body) here. Here we lay it away. Now then we say to you, ‘Persevere onward to the place where the Creator dwells in peace. Let not the things of the earth hinder you. Let nothing that transpired while you lived hinder you. Looking after your family was a sacred duty and you were faithful. You were one of the many joint heirs of the Lordship titles. Feastings were yours and you had pleasant occasions.” (The remainder is the same as the address at the funeral of a Lord.)

113. At the funeral of a woman of the people, say:

“Now we become reconciled as you start away. You were once a woman in the flower of life and the bloom is now withered away. You once held a sacred position as a mother of the nation. (Etc.) Looking after your family was a sacred duty and you were faithful. Feastings... (etc.)” (The remainder is the same as the address at the funeral of a Lord).

114. At the funeral of an infant or young woman, say:

“Now we become reconciled as you start away. You were a tender bud and gladdened our hearts for only a few days. Now the bloom has withered away... (etc.) Let none of the things that transpired on earth hinder you. Let nothing that happened while you lived hinder you.” (The remainder is the same as the address at the funeral of a Lord.)

[Editor’s note: The above ellipses and “etc.” remarks are transcribed directly from the text I copied.]

115. When an infant dies within three days, mourning shall continue only five days. Then shall you gather the little boys and girls at the house of mourning and at the funeral feast a speaker shall address the children and bid them be happy once more though, by a death, gloom has been cast over them. Then shall the black clouds roll away and the sky shall show blue once more. Then shall the children be again in sunshine.

116. When a dead person is brought to the burial place, the speaker on the opposite side of the Council Fire shall bid the bereaved family cheer their minds once again and rekindle their hearth fires in peace, to put their house in order and once again be in brightness for darkness has covered them. He shall say that the black clouds shall roll away and that the bright blue sky is visible once more. Therefore shall they be in peace in the sunshine again.

117. Three strings of shell one span in length shall be employed in addressing the assemblage at the burial of the dead. The speaker shall say:

“Hearken you who are here, this body is to be covered. Assemble in this place again ten days hence for it is the decree of the Creator that mourning shall cease when ten days have expired. Then shall a feast be made.”

Then at the expiration of ten days the speaker shall say:

“Continue to listen you who are here. The ten days of mourning have expired and your minds must now be freed of sorrow as before the loss of a relative. The relatives have decided to make a little compensation to those who have assisted at the funeral. It is a mere expression of thanks. This is to the one who did the cooking while the body was lying in the house. Let her come forward and receive this gift and be dismissed from the task.” In the substance this shall be repeated for every one who assisted in any way until all have been remembered.

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## *Laws of the Praying Town Indians (Algonquian Peoples, 1640s–1670s)*

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The vast majority of native nations in North America, individually and collaboratively, in the mid-1600s and for at least 150 years thereafter, wielded unwritten systems of custom-based governance that were incorporated in the oral traditions and precedents, origin accounts, kinship systems, stories, norms, and values of their respective communities. For example, the nineteen Pueblo tribes of modern-day New Mexico organized (many say in 1598, the year they met Juan de Onate, the Spanish governor) a broad coalitional system of inter-tribal governance called the All-Indian Pueblo Council (AIPC), which, while respecting individual Pueblo political and cultural autonomy, enabled collaborative effort when dealing intergovernmentally with



the Spanish, Mexican, and later the federal and state governments. The AIPC, however, did not formally adopt a written constitution until 1965 (Sando 1976). Moreover, although it is clear that the AIPC was constructed in response to sustained contact with Spanish officials and settlers, the fact that the organization was never formally recorded is a telling reminder of the power of orality and political informality.

The Algonquian peoples of colonial Massachusetts (Pawtucket, Massachusett, Wampanoag, Narragansett, etc.) in the seventeenth century also had early and sustained political, economic, and religious involvement with white settlers, particularly those who practiced Puritanism, and members of those tribes who converted to Christianity saw a need for a formal organization, which led to profound changes in their traditional forms of government without a complete abandonment of it.

From 1646 to 1675 about fourteen praying towns were built and inhabited by Christian Indians following the political system of other municipalities in the Massachusetts Colony. Although these Indian “towns” were home to converted Indians, who dressed in English clothing, participated in the market economy, and learned to read and write in both their own language and English, the political system they adopted was unique since it was “made up of the English colonial and the traditional tribal systems; and superimposed on both of these was a biblical arrangement straight out of Moses” (MacCulloch 1966, 63).

The first praying town was established through the efforts of a recently converted Indian, Waban, and a Puritan missionary, John Eliot, also known as the “apostle to the Indians.” Waban and his followers, who had survived a smallpox epidemic, became Christian converts as a result of Eliot’s guidance, and after several meetings, the Indians informed Eliot that they wanted a piece of land so they could build a town. The following laws were developed by Waban and others to guide the community’s affairs.

While the Christian influence is certainly evident in the laws’ structure and tone, the town’s leaders were selected according to the customs and traditions of the native community. In fact, the Indians had “actively searched for an alternative social order that would sustain them, even while they selectively retained and reshaped Indian cultural practices” (O’Brien 1997, 48).

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## Laws of the Praying Town Indians

1. That if any man be man be idle a weeke, at most a fortnight, hee shall pay five shillings.
2. If any unmarried man shall lye with a woman unmarried, hee shall pay twenty shillings.
3. If any man shall beat his wife, his hands shall bee tied behind him and [he shall be] carried to the place of justice to bee severely punished.
4. Every young man, if not another's servant, and if unmarried, hee shall bee compelled to set up a Wigwam and plant for himselfe, and not live shifting up and downe to other Wigwams.
5. If any woman shall not have her haire tied up but hang loose or be cut as a men's [*sic*] haire, she shall pay two shillings.
6. If any woman shall goe with naked breasts they shall pay two shillings sixpence.
7. All those that wear long locks shall pay five shillings.
8. If any shall kill lice between their teeth they shall pay five shillings.

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### 3

## *Laws of the Cherokee Nation (Cherokee People, 1808–1817)*

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The Cherokee people of the Southeast have long maintained a distinctive status as one of the first native nations willing to make substantial modifications to their organic legal, political, linguistic, and cultural systems in an effort to cope with the rapidly changing world they inhabited after European settlement and interference. Often grouped with the Choctaw, Chickasaw, Creek, and Seminole and popularly known by Euro-Americans as the Five Civilized Tribes for the remarkable social, educational, and political transformations they made as their interactions with whites increased, the Cherokee were the first tribal nation to publish their laws, draft a written constitution that in some basic respects was comparable to that of the United States, and create their own written language. They were also, from very early in their relationships with the colonial and the federal governments, a people with clear political, clan, and economic differences that made uniform decisions less likely than among smaller Indian nations.

Although their contact with Europeans dates back to 1540, it was during the period that Rennard Strickland refers to as “white ascendancy” (1786–1828) that the already segmented Cherokee most

potently confronted the issue of adjusting their traditional culture to meet the ever-increasing Euro-American territorial, legal, and political demands and impositions. During this era certain members of the Cherokee's leadership set about modifying the U.S. legal system in ways that would benefit the changing Cherokee needs.

The most important factors that influenced the altering of their political, legal, and cultural systems were an evolving economic base; a fracturing of their religious system (in part because of the influence of Christian missionaries); the ascendancy of an increasing number of mixed-blood Cherokee; federal, state, and private pressures aimed at reducing the tribal land base; and the federal government's failed attempt to permanently emasculate the political sovereignty of the Cherokee Nation (and others) via the Curtis Act of 1898 (Strickland 1975, 41).

The following series of laws, which run from 1808 to 1820, were adopted by the Cherokee National Council.

Champagne, Duane. *Social Order and Political Change: Constitutional Governments among the Cherokee, the Choctaw, the Chickasaw, and the Creek* (Stanford, Calif.: Stanford University Press, 1992).

Cherokee Nation. "Laws of the Cherokee Nation" (Tahlequah, Cherokee Nation: Cherokee Advocate Office, 1852).

Strickland, Rennard. *Fire and the Spirits: Cherokee Law from Clan to Court* (Norman: University of Oklahoma Press, 1975).

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## Cherokee Nation Laws

Resolved by the Chiefs and Warriors in a National Council assembled, That it shall be, and is hereby authorized, for the regulating parties to be organized to consist of six men in each company; one Captain, one Lieutenant and four privates, to continue in service for the term of one year, whose duties it shall be to suppress horse stealing and robbery of other property within their respective bounds, who shall be paid out of the National annuity, at the rates of fifty dollars to each Captain, forty to the Lieutenant, and thirty dollars to each of the privates; and to give their protection to children as heirs to their father's property, and to the widow's share whom he may have had children by or cohabited with, as his wife, at the time of his decease, which he may have had by another woman, then, his present wife shall be entitled to receive any such property as may be left by him or them, when substantiated by two or one disinterested witnesses.

Be it resolved by the Council aforesaid, when any person or persons which may or shall be charged with stealing a horse, and upon conviction by one or two witnesses, he, she, or they shall be punished with one hundred stripes on the bare back, and the punishment to be in proportion for stealing property of less value; and should the accused person or persons raise up with arms in his or their hands, as guns, axes, spears and knives, in opposition to the regulating

company, or should they kill him or them, the blood of him or them shall not be required of any of the persons belonging to the regulators from the clan the person so killed belonged to.

*Accepted.—Black Fox, Principal Chief,  
Path Killer, Sec'd.  
Toochalar.  
Chas. Hicks, Secretary to Council.  
Brooms Town, 11th Sept. 1808*

Be it known, That this day the various clans or tribes which compose the Cherokee Nation have unanimously passed an act of oblivion for all lives for which they may have been indebted, one to the other, and have mutually agreed that after this evening the aforesaid act shall become binding upon every clan or tribe; and the aforesaid clans or tribes have also agreed that if, in the future, any life should be lost without malice intended, the innocent aggressor shall not be accounted guilty.

Be it known, also, That should it happen that a brother, forgetting his natural affection, should raise his hand in anger and kill his brother, he shall be accounted guilty of murder and suffer accordingly, and if a man has a horse stolen and overtakes the thief, and should his anger be so great as to cause him to kill him, let his blood remain on his own conscience, but no satisfaction shall be demanded for his life from his relatives or the clan he may belong to.

By order of the seven clans.

*Turtle at Home,  
Speaker of Council.  
Approved.—Black Fox, Principal Chief,  
Path Killer, Sec'd.  
Toochalar.  
Chas. Hicks, Secretary to the Council  
Oostanallah, April 10, 1810*

Whereas, fifty-four towns and villages have convened in order to deliberate and consider on the situation of our Nation, in the disposition of common property of lands, without the unanimous consent of the member of Council, and in order to obviate the evil consequences resulting in such course, we have unanimously adopted the following form for the future government of our Nation.

Article 1st. It is unanimously agreed that there shall be thirteen members elected as a Standing Committee for the term of two years, at the end of which term they shall be either re-elected or others: and in consequence of the death or resignation of any of said Committee, our head chiefs shall elect another to fill vacancy.

Article 2d. The affairs of the Cherokee Nation shall be committed to the care of the Standing Committee; but the acts of this body shall not be binding on the Nation in our common property and without the unanimous consent of the members and Chiefs of the Council, which they shall present for their acceptance or dissent.

Article 3d. The authority and claim of our common property shall cease with the person or persons who shall think proper to remove themselves without the limits of the Cherokee Nation.

Article 4th. The improvements and labors of our people by the mother's side shall be inviolate during the time of their occupancy.

Article 5th. This Committee shall settle with the Agency for our annual stipend, and report their proceedings to the members and Chiefs in Council; but the friendly communications between our head Chiefs and the Agency shall remain free and open.

Article 6th. The above articles for our government, may be amended at our electional term, and the Committee is hereby required to be governed by the above articles, and the Chiefs and Warriors in Council, unanimously pledge themselves to observe strictly the contents of the above articles.

Whereunto we have set our hands and seals at Amoah, this the 6th day of May, one thousand eight hundred and seventeen.

Approved in Council, on the day and date above written.

*Ehnautaunaueh*  
*Speaker of the Council.*

*Approved of the within government by the head Chief,*  
*Path Killer.*

*A. McCoy, Secretary to the Council.*  
*Chas. Hicks.*

Unanimously agreed, That schoolmasters, blacksmiths, millers, salt petre and gun powder manufacturers, ferrymen and turnpike keepers, and mechanics are hereby privileged to reside in the Cherokee Nation under the following conditions, viz:

Their employers procuring a permit from the National Committee and Council for them and becoming responsible for their good conduct and behavior, and subject to removal for misdemeanor and further agree, that blacksmiths, millers, ferrymen and turnpike keepers, are privileged to improve and cultivate twelve acres of ground for the support of themselves and families, should they please to do so.

*Jno. Ross, President of National Committee.*  
*A. McCoy, Clerk of National Committee.*

*In Committee, New Town, Oct. 26th, 1819*

This day decreed by the National Committee and Council, That all citizens of the Cherokee Nation, establishing a store or stores for the purpose of vending merchandise, shall obtain license for that purpose from the Clerk of the National Council, for which, each and every person so licensed, shall pay a tax of twenty-five dollars per annum, and that no other but citizens of the Cherokee Nation shall be allowed to establish a permanent store within the Nation. And it is also decreed that no pedlar or pedlars, not citizens of the Nation, shall be permitted to vend merchandise in the Nation, without first obtaining license from the Agent of the United States for the Cherokee Nation, agreeably to the

laws of the United States; and each and every one so licensed, shall pay eighty dollars to the treasury of the Cherokee Nation per annum, and all such person or persons, so licensed, shall obtain a receipt on the back of his or their license from the Treasurer for the sum so paid; and in case any person or persons violate this decree, he or they shall forfeit and pay a fine of two hundred dollars to the National treasury, and it shall be the duty of the Regulators or Lighthorse to collect the same—and any person discovering and giving information of the same, shall be entitled to the sum of twenty-five dollars. And it is also, hereby further decreed, that no person or persons, not citizens of the Nation, shall bring into the Nation and sell any spirituous liquors, and all such person or persons so offending, shall forfeit the whole of the spirituous liquors that may be found in his or their possession, and the same shall be disposed of for the benefit of the Nation; and if any person or persons, citizens of the Nation, shall receive and bring into the Nation spirituous liquors for disposal, and the same or any part thereof, be found to be the property of person or persons not citizens of the Nation, and satisfactory proof be made of the fact, he and the whiskey be subject to confiscation as aforesaid, and this decree to take effect from and after the first day of January, one thousand eight hundred and twenty, and to be strictly enforced; *Provided, nevertheless*, that nothing shall be so construed in this decree, as to tax any person or persons bringing sugar, coffee, salt, iron, and steel, into the Cherokee Nation for sale; but no permanent establishment for the disposal of such articles can be admitted to any persons not citizens of the Nation.

*Jon. Ross, President of National Committee.*

*his mark*

*Concurred—Path Killer,*

*X mark.*

*Chas. R. Hicks.*

*A. McCoy, Clerk.*

*New Town, 28th Oct., 1819.*

*In Committee, New Town, Cherokee Nation,  
October 30th, 1819*

Whereas, the Big Rattling Gourd, Wm. Gruit, Betsey Broom, the Dark, Daniel Griffin, and Mrs. Lesley, having lodged complaint before the Chiefs, of a certain company of persons having formed a combination, and establishing a turnpike arbitrarily, in opposition to the interest of the above named persons, proprietors of a privileged turnpike on the same road:

Be it now, therefore known, That said complaint having been submitted by the Council to the National Committee for a decision, and after maturely investigating into the case, have decreed, that said new company of the disputed turnpike shall be abolished, and that the above named persons are the only legal proprietors and privileged company to establish a turnpike on the road leading from widow Fool's, at the forks of Hightower and Oostenallah river to Wills creek, by way of Turkey Town; and the said company shall be bound to keep in repair said road, to commence from the first creek east of

John Fields, Sr., known by the name, where Vann was shot, and to continue westward to the extent of their limits, and that the widow Fool shall also keep in repair, for the benefit of her ferry at the fork, the road to commence from the creek to above named to where Ridge's road now intersects said road east of her ferry, and that the Ridges shall also keep in repair the road to commence at the Two Runs, east of his ferry and to continue by way of his ferry as far as where his road now intersects the old road, leading from the fork west of his ferry; and that also the Hightower turnpike company shall keep in repair the road from the Two Runs to where it intersects the Federal road, near Blackburn's; and *Be it hereby resolved*, That no person or persons whatsoever, shall be permitted to cut out any road or roads leading from any main road now in existence, so as to intersect the same again and to the injury of the interest of any person or persons residing on said road, without first getting an order from the National Council for the opening of said road; and person or persons violating this decree, contained in the foregoing resolution, shall be subject to such punishment and fine as the National Council and Committee may hereafter decide and inflict on such case as may be brought before them for trial.

*Jno. Ross, President of Committee.*

*his mark*

*Approved—Path Killer;*

*X mark.*

*Chas. Hicks.*

*A. McCoy, Clerk.*

*New Town, Cherokee Nation, November 1st, 1819*

In Committee.

The National Committee have taken up the case submitted to them by the Council relating to the exchange of horses between Otter Lifter and a runaway negro man, belonging to Wm. Thompson. The horse delivered to Otter Lifter by said negro man was proven away from him, and the question submitted to the Committee was, whether or not, the master of the negro man, Wm. Thompson, should be accountable to the Otter Lifter for the horse so proved away from him on account of the transgression of his said negro man; the Committee therefore have decided that Wm. Thompson ought not to be accountable for the contract entered into with his runaway negro man by any person contrary to his approbation, and *Resolved by the Committee*, that no contract or bargain entered into with any slave or slaves, without the approbation of their masters shall be binding on them.

*Jno. Ross, President of National Committee.*

*his mark*

*Path Killer;*

*X mark.*

*Chas. R. Hicks.*

*A. McCoy, Clerk.*

*New Town, Cherokee Nation, November 1st, 1819*

In Committee.

Resolved by the National Committee and council, That in case any person or persons, citizens of the Nation, not enrolled for the Arkansas country, who has or may take possession of, and occupy any improvement or place where Arkansas emigrants had left before any privileged emigrants to continue in this Nation, shall retake possession of such place or places aforesaid [and] shall be entitled to an exclusive right of the same.

*By order—Jno. Ross, President of National Committee.*

*his mark*

*Approved—Path Killer,*

*X mark.*

*Chas. R. Hicks.*

*New Town, Cherokee Nation, November 2nd, 1819*

Resolved by the National Committee and Council, That any white man who shall hereafter take a Cherokee woman to wife be required to marry her legally by a minister of the gospel or other authorized person, after procuring license from the National Clerk for that purpose, before he shall be entitled and admitted to the privilege of citizenship, and in order to avoid imposition on the part of any white man,

Resolved, That any white man who shall marry a Cherokee woman, the property of the woman so married, shall not be subject to the disposal of her husband, contrary to her consent, and any white man so married and parting from his wife without just provocation, shall forfeit and pay to his wife such sum or sums, as may be adjudged to her by the National Committee and Council for said breach of marriage, and be deprived of citizenship, and it is also resolved, that it shall not be lawful for any white man to have more than one wife, and it is also recommended that all others should also have but one wife hereafter.

*By order of the National Committee.*

*Jno. Ross, President of National Committee.*

*his mark*

*Path Killer,*

*X mark.*

*Chas. R. Hicks.*

*A. McCoy, Clerk.*

*New Town, Cherokee Nation, October 25th, 1820*

Resolved by the National Committee and Council, That single white men are hereby admitted to be employed as clerks to any of the stores belonging to natives, which may be established in this Nation, on condition, the employer obtains a permit and becomes responsible for the good behavior of such clerks, and it is also resolved, that any person or persons, whatsoever, who shall bring into the Cherokee Nation, without permission from the National Committee and Council,



a white family, and rent lands to the same, and proofs being authenticated before any of the judges in the district Councils, for such offenses, they shall forfeit and pay the sum of five hundred dollars, and one hundred stripes on the bare back.

*By order of the National Committee.  
Jno. Ross, President of National Committee.*

*his mark  
Path Killer,  
X mark  
Chas. R. Hicks.  
A. McCoy, Clerk.*

*New Town, Cherokee Nation, October 25th, 1820*

Resolved by the National Committee and Council, That the Cherokee Nation shall be laid off into eight districts, and that a council house shall be established in each district for the purpose of holding councils to administer justice in all causes and complaints that may be brought forward for trial, and one circuit judge, to have jurisdiction over two districts, to associate with the districts judges in determining all causes agreeable to the National laws and the marshals to execute the decisions of the judges in their respective districts, and the District Councils to be held in the spring and fall seasons, and one company of lighthorse to accompany each circuit judge on his official duties, in his respective districts, and to execute such punishments on thieves as the Judges and Council shall decide, agreeably to law, and it shall be the duty of the marshals to collect all debts, and shall be entitled to eight per cent for the same; and the Nation to defray the expenses of each District Council, and in case of opposition to the marshals in execution of their duty, they shall be justifiable in protecting their persons from injury in the same manner as is provided for the National lighthorse by law.

*By order of the National Committee.  
Jno. Ross, President of National Committee.*

*his mark  
Approved—Path Killer,  
X mark.  
Chas. R. Hicks.  
A. McCoy, Clerk.*

*New Town, Cherokee Nation, October 25th, 1820*

Resolved by the National Committee and Council, That a ranger shall be appointed in each district, whose duty it shall be to receive, post and advertise all stray horses that may be found in their respective districts, giving the age, height, color, and marks as plain as possible, and should the proper owner not reclaim his horse or horses in two months after posting such horse or horses, they shall be sold at public sale, on six months credit, and the purchaser keeping such horse or horses six months, and should the proper owner not reclaim his horse or horses in that time, such horse or horses to be the rightful property

of the purchaser; the money arising from the sales, to be paid into the National Treasury, and the ranger shall be entitled to one dollar for every horse so posted; and it shall further be the duty of the ranger to endeavor to place in good hands, all work horses for keeping on account of their labor, or otherwise; one dollar per week shall be allowed for keeping a horse on forage.

*By order of the National Committee.*

*Jno. Ross, President of National Committee.*

*his mark*

*Approved—Path Killer,*

*X mark.*

*Chas. R. Hicks.*

*A. McCoy, Clerk.*

*New Town, Cherokee Nation, October 25th, 1820*

Resolved by the National Committee and Council, That each head of a family shall pay a poll tax of fifty cents, and each single man under the age of sixty years shall also pay fifty cents per annum, into the National Treasury, to be applied for such purposes as the National Committee and Council shall deem proper.

*By order of the National Committee.*

*Jno. Ross, President of National Committee.*

*his mark*

*Approved—Path Killer,*

*X mark.*

*Chas. R. Hicks.*

*A. McCoy, Clerk.*

*New Town, Cherokee Nation, October 25th, 1820*

Resolved by the National Committee and Council, That a National turnpike gate shall be erected on the Federal road, near Captain David McNair's, and the rates of toll shall be equal to that of the turnpike on Nicojack Road, at Hicks', and the rates of the toll at Coosewatee shall be reduced so as to make it equal to the one on the Nicojack road; and it is also resolved that these persons who have entered into contract for the repairing of the Federal road, shall be bound in the penalty of the sum contracted for each payment, for the faithful performance of their contracts for putting the road in good repair.

*By the order of the National Committee.*

*Jno. Ross, President of National Committee.*

*his mark*

*Approved—Path Killer,*

*X mark.*

*Chas. R. Hicks.*

*A. McCoy, Clerk.*

## 4

*The Criminal Code of  
Tenskwatawa (Shawnee Prophet)  
(Shawnee People, 1805?)*

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By 1800 native nations had garnered a wealth of positive and negative experiences dealing with European powers and Euro-Americans. Northeastern, Southeastern, and Ohio Valley tribal nations had also been engaging in both cooperative and conflicting relationships for some time. Two Shawnee brothers, Tenskwatawa, or the Shawnee Prophet, a holy man, and Tecumseh, his older brother, whose people had steadily been losing lands to other tribes, Europeans, and American forces, established an intertribal movement that merged religious fervor, political ideology, and military action in an effort to restore indigenous territories, power, and identity.

After succumbing to the ravages of alcohol, Tenskwatawa, like Handsome Lake, the Seneca Prophet (1799–1814), and Neolin, the Delaware Prophet (1760), had several visions that led him to formulate the following criminal code. It aimed at restoring native traditions by banning alcohol, repudiating Christianity, and generally foregoing non-Indian values, materials, and goods. He also declared that he had acquired a unique “medicine” that would help native people turn back the whites.

Tecumseh, the political and military strategist, drew from his brother’s guidance and sought to forge an intertribal confederacy that linked native peoples from Canada to the Gulf of Mexico. A key element linking the tribal nations was his view that no native person had the right to sell land since, he believed, the earth belonged to all tribal nations. This intertribal confederacy was not originally intended as a military force but was designed to contain the ever-advancing whites. While Tecumseh’s oratorical skills were impressive enough to convince many tribes to join the coalition in 1811, before the task of consolidating the tribes was complete, his brother, Tenskwatawa, unsuccessfully engaged William Henry Harrison’s troops at Tippecanoe River in Indian Territory. The tribal coalition was defeated, however, and the prophet’s powers were diminished.

Tecumseh and some of the tribal coalitional forces—Winnebagos, Kickapoos, Potawatomies, and Wyandots—then joined the British army and fought in the War of 1812 against the United States. Nonetheless, this effort also proved futile, and Tecumseh was killed in 1813. With their military power broken, the tribes scattered throughout the Midwest.

The following code reflects one native leader’s vision-inspired effort to recover a measure of self-determination in the face of overwhelming odds.

Dowd, Gregory Evans. *A Spirited Resistance: The North American Indian Struggle for Unity, 1745–1815* (Baltimore: Johns Hopkins University Press, 1992).

Hertzberg, Hazel W. *The Search for an American Indian Identity: Modern Pan-Indian Movements* (Syracuse, N.Y.: Syracuse University Press, 1971).

Thompson, Joseph J. "Law amongst the Aborigines of the Mississippi Valley." *Illinois Law Quarterly* 6 (April 1924): 215–16.

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## Tenskwatawa's Criminal Code

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

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

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

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

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

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

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

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

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

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

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

12th. The Indians were to endeavor to do without buying any merchandise as much as possible, by which means the game would become plenty, and then by means of bows and arrows, they could hunt and kill the game as in former days, and live independent of all white people.

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

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

## 5

*Laws of the Creek Nation  
(Creek People, 1817–1824)*

The Creek Indians, originally of the Southeast, were the descendants of a diverse number of distinct ethnic groups who formed a powerful political and military confederacy in the late seventeenth century. They were originally geographically divided into two broad groups: the Upper Creeks, who lived along the Coosa and Tallapoosa rivers in present-day Alabama (and who generally resisted white assimilation), and the Lower Creeks, who lived near the Chattahoochee River in parts of Georgia and Alabama (mixed bloods who were generally more accommodating of white interests).

By the early 1800s and under constant pressure from and encroachments by whites, a civil war erupted within the Creek confederacy, pitting the so-called Red Sticks (Upper Creeks), who had aligned with the British, against the White Sticks (mostly Lower Creeks), who were siding with the United States. The ensuing laws were written by Chilly McIntosh, the son of William McIntosh of Coweta (a leader of the Lower Creeks) on January 7, 1825. Building on an earlier version that had first been drafted in 1817 by William McIntosh and others, these laws were adopted by the council that year. Before 1817, the governing principles created by the National Council were maintained by memory and were not systematically recorded.

These written regulations were not an attempt to unify or systematize all Creek rules, however. It appears that they were made in an ad hoc fashion as conditions within Creek society warranted. Nevertheless, they became the basis of Creek law. William McIntosh and several

others who had signed a number of land-cession treaties with the United States in direct violation of the Creek National Council's policy against such property sales were sentenced to death by the ruling body for these transgressions. McIntosh was killed in 1825, although his son, Chilly, escaped death. As one of the so-called Five Civilized Tribes, the Creek occupy a critical position in indigenous history and in intergovernmental relations with the United States. Seeing how their political and legal system evolved thus helps us to understand how some native peoples dealt with the harsh pressures exerted upon them by states, local whites, and the federal government.

Debo, Angie. *The Road to Disappearance: A History of the Creek Indians* (1941; repr., Norman: University of Oklahoma Press, 1979).

Waring, Antonio T., ed. *Laws of the Creek Nation* (Athens: University of Georgia Press, 1960).

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## Laws of the Muskogee (Creek) Nation

- Law 1st            Murder shall be punished with [the] death [of] the person who commits the act[, and that person] shall be the only one punish[ed] and only upon good proofs (1817).
- Law 2nd            If a man Kill another person and it can be provened [*sic*] to have [been] done by accident he shall not be punished.
- Law 3th [*sic*]      If a negro Kill an Indian the negro shall ~~be~~ suffer death. And if an Indian Kill a negro he shall pay the owner the value. If [the] person [is] not able to pay the value [he] shall suffer death.
- Law 4th            If a man[']s horse Kills another person he shall be said [*sic*] nothing to the owner about it, and if two person[s] ride one horse together and the horse flings them, and one is Killed and the [other] lives to get up [it] shall be considered an accident.
- Law 5th            If a man take[s] a weapon in hand and goes to Kill another person and the man he goes to Kill happens to Kill first, and the fact be so proven he shall be forgiven as he Killed the man to save his own life.
- Law 6th            If a man should Killed [*sic*] another in a rum drinking and it can be proven to the satisfaction of the Chiefs that when he committed the act that he was out of [his] senses, and that he and all his people were friendly to the person Killed previous to his death, then he shall not be punished but forgiven.

- Laws 7th If a man fired his gun at Deer, Bird or anything else, and he should be so unfortunate as to wound or Kill another person it shall be considered an accident and of course must not be punished.
- Laws 8th Stealing shall be punished as follows for the first offence the thief shall be whiped [*sic*] for the second offence shall be croped [cropped]. For the third offence he shall be put to death.
- Law 9th If a man stolen [*sic*] another he shall pay forty Dollars and in case he has no property to pay the fine he shall be punished the same as ~~stealing~~ the law for stealing Viz ... first time whiped 2d Croped 3d put to death.
- Law 10th If any person give faulse evidence by which another suffers punishment he shall receive the same punishment, which he inflicted upon the one against whom he stated the faulshood.
- Law 11th When a [man] dies and has children [they] shall have the property [and] his other relations shall not take the property to the injury of His children.
- Law 12th Should any of the friendly Indians owe a debt to Hostile, Indians owe a debt to friendly Indians may have been contractted (1817) before this time neither of them, shall to the other.
- Law 14th [*sic*] Friendly Indians must pay all debt[s] due to each other.
- Law 14th Should two persons swap horse the bargain shall be considered good unless one of the party proves that he was drunk at the time he swaped, and in case he makes these fact[s] Know[n] in five days after the swap his horse shall be returned to him, but if he does not cl[aim] within five days the bargain shall be considered good, and [he] cannot get his horse back.
- Law 15th No person shall received for damages done to his Crope [crop] by the stock of an other person unless he has a lawfull [*sic*] fence around his field and in case he should have a lawfull fence, and the stock of another person should injured his property in that case he shall recover for all damages, but if he has not a lawfull fence, and he should kill the stock of another person for injuring his property he shall pay for all he Kill.
- Law 16th Should any person set fire to the woods where he know, that there was Sows or Big [pig] or Calfs and any of them should be injured thereby he shall pay all damages to the owner, but if he can proove [*sic*] that he did not know, of suck [such] stock being there he shall not pay damages.

- Law 17th If [a man] goes out a fire hunting and should kill property belonging to another person, and he can prove it was done accidentally he shall not pay, if it can be proven, that he did it intentionally he shall pay the owner.
- Law 18th If a man has a dog and the dog should run away and Kill property belonging to another person the owner, shall not pay but if it can be proven that the dog owner set the dog on in the case he shall pay.
- Law 19th Should a White man take an Indian woman as a wife and have children by her and he goes out of the Nation he shall leave all his property with his children for their support.
- Law 20th If any of our people have children and Negroes and either of the children should take a Negro for as a husband or wife—and should Said child have a property given to it by his or her parent the property shall be taken from them and divided among the rest of the children as it is a disgrace to our people Nation for our people to marry a Negro.
- Law 21st Slave shall not raise property of any kind. If the master does not take it from them the law makers shall and they may do as they please with the property.
- Law 22nd If any person man should think proper to Sett his Negroe free he shall be considered a freeman by the Nation.
- Law 23th [*sic*] Prisoners taken in War shall not be Considered or traded as slave and it shall be the tudy [duty] of the law makers to make them as free of [as] ourselves.
- Law 24th If any Stud Horse or Bull Should Kill any man, Horse or Cows the master of the Stud Horse or Bull Shall not pay damages to the owner of the property Killed or injured.
- Law 25th If any person not living in the Nation buy a Horse from an Indian without a permit from the agent Big Warrior or Little Prince and Should lose the said Horse we will not aid or assist him in finding the Horse, but if he has a permit from either of the above named persons we will help him to get his horse.
- Law 26th There [are] four persons appointed to receive runaway Negroes and astray Horses, any persons carrying them to the above mention, shall be paid as follow[s:] Runaway Negroes fifteen Dollars, the owner must pay the Nation fifty Dollars Astray Horse two Dollars the owner must pay the Nation five Dollars.
- Law 27th If an Indian lose any part of his Clothing, and they Should be found by another and the finder does not tell of his having them he shall be punished.



- Law 28th If any one or two Towns belonging to our Nation remove from the Nation to any other Country the[y] shall have no claims upon this Country without the Consent of the Hole Nation (1819).
- Law 29th If a man has a wife and he Should make use of or unfortunately lose his property of any description and they Should part, the husband cannot call upon the woman for pay.
- Law 30th If a man makes a field and in doing so he turns a road belonging to the Nation he Shall not be interrupted, and if any[one] wishes to erect a mill he is at liberty to do so.
- Law 31st No Master Shall be bound for any trade or bargain made by his slave.
- Law 32nd No person belonging to the Creek Nation shall go into any of the United States Territories or Cherokee Nation and procure goods or any thing else upon a Credit, And should any citizens of the United States, Territories or Cherokee Nation sells [*sic*] goods on a Credit to any person residing in the Nation they do it upon their own responsibility, as the Chief and Warriors, will not interfere between the parties, when any Claims is brought before them.
- Law 33rd If the men who are or shall be appointed to put the laws in force shall neglect their duty or abuse their power by doing injustice to any one under color of their authority they shall make satisfaction to the party injured, and be broke, and any one Hinden [hinder] them for doing, their tudy [duty] or offers to commit violence upon their persons the party offending him shall be punished at the discretion of the chiefs of the town they may belong to.
- Law 33th [*sic*] And it be farther enacted if any person or persons Should tell such lies as should brought to disturpence of the Nation the punish[ment] shall be death.
- Law 34th And be it farther enacted if any slave should Kill a slave such punishment shall be death.
- Law 35th And be it farther enacted if any person or persons should under take to force woman and did it by force, it shall be left to the woman what punishment she Should [be] satisfied with a whip or pay what she say it be law.
- Law 36th And be it farther enacted if any person or persons borrow a horse and the horse Should die before Return to the owner, and if the owner of the ~~owner~~ horse Should mention before lone [loan] if the horse should die in his hand before return that he should pay full price and if never mention before lone it shall be his own loss.

- Law 37th And be it farther enacted if a woman should Kill a child and proof on her that she was guilty of it firs [first] whip second crop a[nd] third death.
- Law 38th And be it farther enacted if two persons Should steal and one Should tell on the other one should be whiped and the teller stand Clair [clear].
- Law 39th And be it farther enacted, if a man and wife should steal, while living together and after parted one Should tell on the other both Shall be punish as a thief.
- Law 40th And be it farther enacted if any person or persons should die without leaving property behind or haden [had not any] the Creditor shall loss. If he had property when they died, and put it into some persons hand the creditor shall look unto him for Payment.
- Law 41st And be it farther enacted if any person [or] persons should employed a White Man to work, after work done he shall go back into his own Country, shall not stay no longer than the work done.
- Law 42nd If a White Man should be ordered out of the Nation and if he should stay longer than the time expired he shall pay one dollar for every day.
- Law 43th [*sic*] If a person or persons should give bad talk to the against Warriors or chiefs, he shall be punish by the Section 8th.
- Law 44th The Citizens of the Nation shall pay Taxes for every year, or twelve months twenty five cts per head ten dollars stand stores and Ferriage.
- Law 45th If any person or persons should blow for rain or poison they shall not be interrupted.
- Law 46th Man and Wife if a husband Should die, it Shall be left to the kin people [of the man] who died how long she should be a widow ~~for four~~ two three or for [*sic*] years ~~and before four year ends~~ and if she should be widow for four years and before four years end, if she Should get to a man and proof on her She Shall be Whip and Cut the ears & Set her free.
- Law 47th If a lawyer Should violate the law first and Second shall be tole [told] and the third time shall be broke as a chief.
- Law 48th If a man may, have a wife and lived with her and his wife should sleep with another man and husband proof on her he shall cut Whip his wife and the man Cut the ears off. And Set her free.
- Law 49th No person shall permit a White into the Nation to live except the hole Nation agree to it.
- Law 50th If any person or persons Should get Kill in playing ball Shall not be punish if person Should take Stick and Knock person and Kill it Shall be death.

- Law 51st Person or persons Should take man wife way and be punish for it and Should die with it the punisher Shall be Kill as a murder.
- Law 52th [*sic*] If one family Should Kill Brother or Sister the punishment Shall be death by Section 1st.
- Law 53th [*sic*] If person Should get drunk and want to fight it Shall be Rope untill he get Soper.
- Law 54th And be farther enacted if person or persons Should violate the law of the Creek Nation shall be punished by the law of Section 8th and their Shall be one person appointed to command the lite horse, to punish the violator, and he who appoint it, to Command, he Shall See justice done. And not take property, but be punish by law.
- Law 55th And be it farther enacted if person or persons Should violate the law of the Creek Nation Should take up White Man with family into his house under employ for or any business and if the chiefs Should Complain to the employer to have them order out of the Nation before done. If they Should Steal, the person who Keep them Shall pay the full value of the losses.
- Law 56th If a White man Should want to keep store or stand in the Nation he shall come before the National Chiefs and Warriors and is Willing to pay what Sum the National Chiefs and Warriors may ask and than he shall obtain license from the Agent of the Nation.

*Laws Ended this day 15th  
March 1824th A.D.*

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## 6

## *Cherokee Constitution (Cherokee People, 1827)*

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After Georgia acquired statehood and increased its assault on the lands and rights of the Cherokee people, the nation's leadership engaged in several strategic actions designed to strengthen their resistance to jurisdictional losses, land dispossession, and so on: centralization of Cherokee governmental powers, a public relations campaign to garner support and assert national rights, and the continuation of an acculturation plan controlled by the Cherokee themselves.

One profoundly important gesture was the adoption of a secular national constitution that effectively supplanted the traditional Cherokee political system, which was based on clan structures, decentralized towns, and oral traditions. The constitution demonstrated the Cherokee's adaptive power and desire to resist the threats posed by local, state, and federal policymakers.

The Cherokee Constitution, the first written document adopted by a tribal nation, in key respects is loosely modeled after the U.S. and state constitutions in its stipulation of three branches of government, bicameralism, disenfranchisement of African Americans and women, and free exercise of religion. Yet it also contains specific provisions (e.g., communal land ownership) that sustained a measure of traditional Cherokee values and property notions.

McLaughlin, William G. *Cherokee Renascence in the New Republic* (Princeton, N.J.: Princeton University Press, 1986).

Norgren, Jill. *The Cherokee Cases: Two Landmark Federal Decisions in the Fight for Sovereignty* (Norman: University of Oklahoma Press, 2004).

Strickland, Rennard. *Fire and the Spirits: Cherokee Law from Clan to Court* (Norman: University of Oklahoma Press, 1975); appendix 3 has a copy of the constitution.

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## Constitution of the Cherokee Nation

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, in offering us an opportunity so favorable to the design, and imploring his aid and direction in its accomplishment, do ordain and establish this Constitution for the Government of the Cherokee Nation.

### *Article I*

Section 1. The Boundaries of this nation, embracing the lands solemnly guaranteed and reserved forever to the Cherokee Nation by the Treaties concluded with the United States, are as follows; and shall forever hereafter remain unalterably the same—to wit—Beginning on the North Bank of Tennessee River at the upper part of the Chickasaw old fields; thence along the main channel of said river, including all the Islands therein, to the mouth of the Hiwassee river, thence up the main channel of said river, including Islands, to the first hill which closes in on said river about two miles above Hiwassee old Town; thence along the ridge which divides the waters of the Hiwassee and little Tellico, to the Tennessee river at Tallassee; thence along the main channel, including Islands, to the junction of the Cowee and

Nanteyalee; thence along the ridge in the fork of said river, to the top of the blue ridge; thence along the blue ridge to the Unicoy Turnpike road; thence by a straight line to the main source of the Chestatee; thence along its main channel, including Islands to the Chattahoochy; and thence down the same to the Creek boundary at Buzzard Roost; thence along the boundary line which separates this and the Creek Nation, to a point on the Coosa river opposite the mouth of Wills Creek; thence down along the South bank of the same to a point opposite to Fort Strother; thence up the river to the mouth of Wills Creek; thence up along the East bank of said creek, to the West branch thereof, and up the same to its source; and thence along ridge which separates the Tembeshee and Tennessee waters, to a point on the top of said ridge; thence due North to Camp Coffee on Tennessee river, which is opposite the Chickasaw Island; thence to the place of beginning.

Section 2. 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; but the improvements made thereon, and in the possession of the citizens of the Nation, are the exclusive and indefeasible property of the citizens respectively who made, or may rightfully be in possession of them; Provided, That the citizens of the Nation, possessing exclusive and indefeasible right to their respective improvements, as expressed in this article, shall possess no right nor power to dispose of their improvements in any manner whatever to the United States, individual States, nor to individual citizens thereof; and that, whenever any such citizen or citizens shall remove with their effects out of the limits of this Nation, and become citizens of any other Government, all their rights and privileges as citizens of this Nation shall cease; Provided nevertheless, That the legislature shall have power to re-admit by law to all the rights of citizenship, any such person or persons, who may at any time desire to return to the Nation on their memorializing the General Council for such readmission. Moreover, the Legislature shall have power to adopt such laws and regulations as its wisdom may deem expedient and proper, to prevent the citizens from memorializing improvements with the view of speculation.

### *Article II*

Section 1. The Power of this Government shall be divided into three distinct departments:—the Legislature, the Executive, and the Judicial.

Section 2. No person or persons, belonging to one of these Departments, shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

### *Article III*

Section 1. The Legislative Power shall be vested in two distinct branches; a Committee, and a Council; each to have a negative on the other, and both to be styled, [on] the General Council of the Cherokee Nation; and the style of their acts and laws shall be “Resolved by the Committee and Council in General Council convened.”

Section 2. The Cherokee Nation, as laid off into eight Districts, shall so remain.

Section 3. The Committee shall consist of two members from each District, and the Council shall consist of three members from each District, to be chosen by the qualified electors of their respective Districts, for two years; and the elections to be held in every District on the first Monday in August for the year 1828, and every succeeding two years thereafter; and the General Council shall be held once a year, to be convened on the Second Monday of October in each year, at New Echota.

Section 4. No person shall be eligible to a seat in General Council, but a free Cherokee Male citizen, who shall have attained to the age of twenty-five years. The descendants of Cherokee men by all free women, except the African race, whose parents may been living together as man and wife, according to the customs and laws of this Nation shall be entitled to all the rights and privileges of this nation, as well as the posterity of Cherokee Women by all free men. No person who is of negro or mulatto parentage, either by the father or the mother side, shall be eligible to hold any office of profit, honor or trust under this Government.

Section 5. The electors, and members of the General Council shall in all cases except those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at election; and at the General Council, and in going to, and returning from, the same.

Section 6. In all elections by the people, the electors shall vote via voce. Electors for members to the General Council for 1823, shall be held at the places of holding the Several courts, and at the other two precincts in each District which are designated by the law under which the members of this Convention were elected: and the District Judges shall superintend the elections within the precincts which may be assigned them by the Circuit Judges of their respective Districts, together with one other person, who shall be appointed by the Circuit Judges for each precinct within their respective Districts; and the Circuit Judges shall also appoint a clerk to each precinct.—The superintendents and clerks shall, on the Wednesday morning succeeding the election, assemble at their respective Court Houses, and proceed to examine and ascertain the true state of the polls, and shall issue to each member, duly elected, a certificate; and also make an official return of the state of the polls of election to the principal Chief, and it shall be the duty of the Sheriffs to deliver the same to the Executive; Provided nevertheless, the General Council shall have power, after the election of 1828, to regulate by law the precincts and superintendents and clerks of elections in the several Districts.

Section 7. All free Male citizens (excepting negroes and descendants of white and Indian men by negro women, who may have been set free) who shall have attained to the age of eighteen years, shall be equally entitled to vote at all public elections.

Section 8. Each House of the General Council shall judge of the qualifications, and returns, of its own members.

Section 9. Each House of the general Council may determine the rules of its proceedings, punish a member for disorderly behavior and with the concurrence of two thirds, expel a member; but not a second time for the same cause.

Section 10. Each House of the General Council, when assembled shall choose its own officers; a majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalty, as each house may prescribe.

Section 11. The members of the Committee shall each receive from the public Treasury a compensation for their services which shall be two dollars and fifty cents per day during their attendance at the General Council; and the members of the Council shall each receive two dollars per day, for their services during their attendance at the General Council:—Provided, That the same may be increased or diminished by law, but no alteration shall take effect during the period of service of the members of the General Council, by whom such alteration shall have been made.

Section 12. The General Council shall regulate by law, by whom and in what manner, writs of elections shall be issued to fill the vacancies which may happen in either branch thereof.

Section 13. Each member of the General Council, before he takes his seat, shall take the following oath, or affirmation; to wit: “I, A. B. do solemnly swear (or affirm as the case may be) that I have not obtained my election by Bribery, Treats or any undue and unlawful means used by myself, or others by my desire or approbation, for that purpose; that I consider myself Constitutionally qualified as a member of \_\_\_\_\_; and that on all questions and measures which may come before me, I will so give my vote, and so conduct myself, as may, in my judgment, appear most conducive to the interest and prosperity of this Nation; and that I will bear true faith and allegiance to the same; and to the utmost of my ability and power observe, conform to, support and defend the Constitution thereof.”

Section 14. No person who may be convicted of felony before any court of this Nation, shall be eligible to any office or appointment of honor, profit or trust, within this Nation.

Section 15. The General Council shall have power to make all laws and regulations, which they shall deem necessary and proper for the good of the Nation, which shall not be contrary to this Constitution.

Section 16. It shall be the duty of the General Council to pass such laws as may be necessary and proper, to decide differences by arbitrators to be appointed by the parties, who may choose that summary mode of adjustment.

Section 17. No power of suspending the laws of this Nation shall be exercised, unless by the Legislature or its authority.

Section 18. No retrospective law, nor any law impairing the obligations of contracts shall be passed.

Section 19. The Legislature shall have power to make laws for laying and collecting taxes, for the purpose of raising a revenue.

Section 20. All bills making appropriations shall originate in the Committee, but the Council may propose amendments or reject the same.

Section 21. All other bills may originate in either house, subject to the concurrence or rejection of the other.

Section 22. All acknowledged Treaties shall be the Supreme law of the land.

Section 23. The General Council shall have the sole power of deciding on the construction of all Treaty stipulations.

Section 24. The Council shall have the sole power of impeaching.

Section 25. All impeachments shall be tried by the Committee;—when sitting for that purpose, the members shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present.

Section 26. The Principal Chief, assistant principal Chief, and all civil officers, under this nation, shall be liable to impeachment for any misdemeanor in office; but Judgment, in such cases, shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit, under this Nation. The party whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law.

#### *Article IV*

Section 1. The Supreme Executive Power of this Nation shall be vested in a Principal Chief, who shall be chosen by the General Council, and shall hold his office four years; to be elected as follows,—The General Council by a joint vote, shall, at their second annual session, after the rising of this Convention, and at every fourth annual session thereafter, on the second day after the Houses shall be organized, and competent to proceed to business, elect a Principal Chief.

Section 2. No person, except a natural born citizen, shall be eligible to the office of Principal Chief; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years.

Section 3. There shall also be chosen at the same time, by the General Council, in the same manner for four years, an assistant Principal Chief.

Section 4. In case of the removal of the Principal Chief from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the assistant principal Chief, until the inability be removed, or the vacancy filled by the General Council.

Section 5. The General Council may, by law, provide for the case of removal, death, resignation or inability of both the Principal and assistant Principal Chiefs, declaring what officer shall then act as Principal Chief, until the disability be removed, or a Principal Chief shall be selected.

Section 6. The Principal Chief and Assistant Principal Chief, shall, at stated times, receive for their services,—a compensation—which shall neither be increased nor diminished during the period for which they shall have been elected; and they shall not receive, within that period, any other emolument from the Cherokee Nation, or any other government.

Section 7. Before the Principal Chief enters on the execution of his office, he shall take the following oath, or affirmation; “I do solemnly swear (or affirm) that I will faithfully execute the office of Principal Chief of the Cherokee Nation, and will, to the best of my ability, preserve, protect and defend, the Constitution of the Cherokee Nation.”

Section 8. He may, on extraordinary occasions, convene the General Council at the Seat of Government.



Section 9. He shall from time to time give to the General Council information of the State of the Government, and recommend to their consideration such measures as he may think expedient.

Section 10. He shall take care that the law be faithfully executed.

Section 11. It shall be his duty to visit the different districts, at least once in two years, to inform himself of the general condition of the Country.

Section 12. The assistant Principal Chief shall by virtue of his office, aid and advise the Principal Chief in the Administration of the Government, at all times during his continuance in office.

Section 13. Vacancies that may happen in offices, the appointment of which is vested in the General Council, shall be filled by the Principal Chief, during the recess of the General Council, by granting Commissions which shall expire at the end of the next session.

Section 14. Every Bill which shall have passed both Houses of the General Council, shall, before it becomes a law, be presented to the Principal Chief of the Cherokee Nation. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journals, and proceed to reconsider it. If, after such reconsideration, two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other house; by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. If any bill shall not be returned by the Principal Chief within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it; unless the General Council by their adjournment prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

Section 15. Members of the General Council and all officers, Executive and Judicial, shall be bound by oath to support the Constitution of this Nation, and to perform the duties of their respective offices with fidelity.

Section 16. In case of disagreement between the two houses with respect to the time of adjournment, the Principal Chief shall have power to adjourn the General council to such a time as he thinks proper, provided, it be not to a period beyond the next Constitutional meeting of the same.

Section 17. The Principal Chief shall, during the sitting of the General Council, attend at the Seat of Government.

Section 18. There shall be a Council to consist of three men to be appointed by the joint vote of both Houses, to advise the Principal Chief in the Executive part of the Government, whom the Principal Chief in the Executive part of the Government, whom the Principal Chief shall have full power, at his discretion, to assemble; and he, together with the assistant Principal Chief, and the Counsellors, or a majority of them may, from time to time, hold and keep a Council for ordering and directing the affairs of the Nation according to law.

Section 19. The members of the Council shall be chosen for the term of one year.

Section 20. The resolutions and advice of the Council shall be recorded in a register and signed by the members agreeing thereto, which may be called

for by either house of the General Council; and any counsellor may enter his dissent to the resolution of the majority.

Section 21. The Treasurer of the Cherokee Nation shall be chosen by the joint vote of both Houses of the General Council for a term of two years.

Section 22. The Treasurer Shall, before entering on the duties of his office, give bond to the Nation with sureties to the satisfaction of the Legislature, for the faithful discharge of his trust.

Section 23. No money shall be drawn from the Treasury, but by warrant from the Principal Chief, and in consequence of appropriations made by law.

Section 25. It shall be the duty of the Treasurer to receive all public monies, and to make a regular statement and account of the receipts and expenditures of all public monies at the annual Session of the General Council.

### *Article V*

Section 1. The Judicial Powers shall be vested in a Supreme Court, and such Circuit and Inferior Courts, as the General Council may, from time to time, ordain and establish.

Section 2. The Supreme Court shall consist of three Judges, any two of whom shall be a quorum.

Section 3. The Judges of each shall hold their Commissions four years, but any of them may be removed from office on the address of two thirds of each house of the General Council to the Principal Chief, for that purpose.

Section 4. The Judges of the Supreme and Circuit Courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust, under this nation or any other power.

Section 5. No person shall be appointed a Judge of any of the Courts before he shall have attained to the age of thirty years, nor shall any person continue to execute the duties of any of the said offices after he shall have attained to the age of seventy years.

Section 6. The Judges of the Supreme and Circuit Courts shall be appointed by a joint vote of both houses of the General Council.

Section 7. There shall be appointed in each District, under the Legislative authority, as many Justices of the Peace as it may be deemed the public good requires, whose powers, duties, and duration in office, shall be clearly designated.

Section 8. The Judges of the Supreme Court and Circuit Courts shall have complete criminal Jurisdiction in such cases and in such manner as may be pointed out by law.

Section 9. Each Court shall choose its own Clerks for the term of four years; but such Clerks shall not be continued in office unless their qualifications shall be adjudged and approved of by the Judges of the Supreme Court, and they shall be removable for breach of good behavior at any time, by the Judges of their respective courts.

Section 10. No Judge shall sit on trial of any cause, where the parties shall be connected with him by affinity or consanguinity, except by consent of parties. In case all the Judges of the Supreme court shall be interested in the event of any cause, or related to all, or either, of the parties, the legislature may provide by law for the selection of three men, of good character and knowledge, for the determination thereof, who shall be specially commissioned by the Principal Chief for the case.

Section 11. All writs and other process shall run in the name of the Cherokee Nation, and bear test, and be signed by the respective clerks.

Section 12. Indictments shall conclude "against the peace and dignity of the Cherokee Nation."

Section 13. The Supreme Court shall hold its Session annually at the Seat of Government to be convened on the second Monday of October in each year.

Section 14. In all criminal prosecutions, the accused shall have the right of being heard, of demanding the nature and cause of the accusation against him, of meeting the witnesses face to face, of having compulsory process for obtaining witness in his favour, and, in prosecutions by indictment or information, a speedy public trial by an impartial trial jury of the vicinage, nor shall he be compelled to give evidence against himself.

Section 15. The people shall be secure in their persons, houses, papers and possessions from unreasonable seizures and searches, and no warrant to search any place or to seize any person or things, shall issue without describing them as readily as may be, nor without good cause supported by oath, or affirmation.—All prisoners shall be bailable by sufficient securities, unless for capital offenses where the proof is evident, or presumption great.

## *Article VI*

Section 1. Whereas the ministers of the Gospel are, by their profession, dedicated to the service of God and the care of souls, and ought not to be diverted from the great duty of their function, therefore, no minister of the Gospel, or public preacher, of any religious persuasion, whilst he continues in the exercise of his pastoral functions, shall be eligible to the office of Principal Chief, or a seat in either house of the General Council.

Section 2. No person who denies the being of a God, or a future state of rewards and punishments, shall hold any office in the civil department of this Nation.

Section 3. The free exercise of religious worship, and serving God without distinction shall forever be allowed within this Nation: Provided, That this liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this Nation.

Section 4. Whenever the General Council shall determine the expediency of appointing delegates or other public Agents, for the purpose of transacting business with the Government of the United States; the Principal Chief shall have power to recommend, and by the advice and consent of the Committee, shall appoint and commission such delegates or Public Agents accordingly,

and, on all matters of interest touching the rights of the citizens of this Nation, which may require the attention of the United States Government, the Principal Chief shall keep up a friendly correspondence with that Government, through the medium of its proper officers.

Section 5. All commissions shall be in the name and by the authority of the Cherokee Nation, and be sealed with the Seal of the Nation, and be signed by the Principal Chief.

The Principal Chief shall make use of his private seal until a National seal shall be provided.

Section 6. A sheriff shall be elected in each District by the qualified electors thereof, who shall hold his office for the term of two years, unless sooner removed.—Should a vacancy occur subsequent to an election, it shall be filled by the Principal Chief as in other cases, and the person so appointed shall continue in office until the next General election, when such vacancy shall be filled by qualified electors, and the Sheriff then elected shall continue in office for two years.

Section 7. There shall be a Marshal appointed by a joint vote of both houses of the General Council for the term of four years, whose compensation and duties shall be regulated by law, and whose jurisdiction shall extend over the Cherokee Nation.

Section 8. No person shall for the same offence be twice put in jeopardy of life, or limb, nor shall any person's property be taken or applied to public use without his consent; Provided, That nothing in this clause shall be so construed as to impair the right and power of the General Council to lay and collect Taxes. All courts shall be open, and every person for an injury done him in his property, person or reputation, shall have remedy by due course of law.

Section 9. The right of trial by jury shall remain inviolate.

Section 10. Religion, morality and knowledge being necessary to good Government the preservation of liberty, and the happiness of mankind, Schools and the means of education shall forever be encouraged in this Nation.

Section 11. The appointment of all officers, not otherwise directed by this Constitution, shall be vested in the legislature.

Section 12. All laws in force in this Nation, at the passing of this Constitution, shall so continue until altered or repealed by the legislature, except where they are temporary, in which case they shall expire at the times respectively limited for their duration; if not continued by act of the legislature.

Section 13. The General Council may at any time propose such amendments to this Constitution as two thirds of each house shall deem expedient; and the Principal Chief shall issue a proclamation, directing all the civil officers of the several Districts to promulgate the same as extensively as possible within their respective Districts, at least nine months previous to the next General election, and if at the first session of the General Council after such General election, two thirds of each house shall, by yeas and nays, ratify such proposed amendments they shall be valid to all intents and purposes, as parts of this Constitution; Provided, That such proposed amendments shall be read on three several days, in each house, as well when the same are proposed, as when they are finally ratified.

Done in Convention at New Echota, this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and twenty-seven; In testimony whereof, we have each of us, hereunto subscribed our names.

*John Ross, President of Con.  
Jno. Baldridge, his x mark.  
Delegate of Chickamauga District.*

*George Lowrey,  
John Brown,  
Edward Gunter,  
Delegate of Chatlooga District.*

*John Martin,  
Joseph Vann,  
Kelechulee, his x mark.  
Delegate of Coosawatee District.*

*Lewis Ross,  
Thomas Foreman,  
Kielechulee, his x mark.  
Delegate of Amohee District.*

*James Daniel,  
John Duncan,  
Delegate of Hickory Log District.*

*Joseph Vann,  
Thos. Petitt, his x mark,  
John Beamer, his x mark,  
Delegate of Etowah District.*

*Ooclenota, his x mark,  
Wm. Boling, his x mark,  
Delegate of Taquoe District.*

*John Timson,  
Situwakee, his x mark,  
Richd. Walker, his x mark,  
Delegate of Aquohee District.*

*A. M'coy, Secretary to Convention.*

## 7

*Description of Winnebago  
Government by Caleb Atwater,  
U.S. Commissioner  
(Winnebago People, 1829)*

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Before contact and for many generations thereafter, the governing institutions and traditions of most native nations were oral rather than written. Thus, in some cases much of what we know of a particular tribal nation's governing system derives from the observations of non-Indian laypersons, settlers, missionaries, academics, and federal officials. Indigenous and nonindigenous observers' recollections of native systems, of course, differ in their perspectives. Still, such accounts, when leavened with the historical and cultural record, can be quite useful by identifying native structures, pivotal events, and key personalities that orient the reader to what might otherwise be unknown—if the reader keeps in mind the varying degree of bias that was nearly always present (particularly in the first several centuries of intercultural interaction).

The following observations of a number of native nations are one example of such writing. They were made by Caleb Atwater, a U.S. commissioner hired to explore the Upper Mississippi and to negotiate land cessions by the indigenous nations in that region. Atwater honestly noted in the preface of his report that “I write sometimes to clear my own spirits, depressed by ill health, and almost sinking under that depression” (1831, v). By bearing in mind who the author is and the timing of the expressed views, we can more realistically appreciate and still benefit from the descriptive accounts of the tribes in question and learn something of their governing structures and social systems.

Atwater, Caleb. “The Indians of the Northwest, Their Maners [*sic*], Customs, etc., or Remarks Made on a Tour to Prairie du Chien; Thence to Washington City, in 1829” (Columbus, Ohio: 1831).

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### Indian Form of Government

Their form of government is aristocratical, and the whole structure of their society is equally so. The Winnebagoes are divided into seven tribes, or bands, some of these are named after animals, such as the Turtle tribe, the Snake tribe, Wolf tribe, &c., and others are named after inanimate things, as the Thunder tribe.

These tribes dwell in different places, in towns or villages; in each one of which, there are two civil Chiefs, who govern that town—for instance, Du Corri and Winnesheek are at the head of the government, of the Le Croix village situated near the Mississippi river, on its eastern bank, 80 miles north of the Prairie Du Chien. So of all the other tribes, each of which, has its town or seat of government, and is governed by its two civil chiefs. The civil government of the Winnebagoes, is in the hands of fourteen civil Chiefs, and when they are all assembled in one council, it is the grand national council.

In each village, the two civil chiefs, appoint all the officers, deemed necessary, civil and military, who obey them implicitly. There are two ways of arriving at these high stations, by birth and by election. When the father dies, if he has a son, who has arrived at the age of manhood, and who bids fair to make a good chief—that is, if he possesses a good form, has good bodily powers and mental faculties—is brave, sedate, wise and prudent, he generally succeeds his father in the government, on his father's demise. If the chief, at his death, leave[s] no son who is qualified for the high office of chief, but wills it to some other person, he succeeds to the government. If the chief has no son at his death, it is commonly the case, that his brother's son succeeds him. The line of succession may run out for want of a lawful heir, which is always supplied by an election. It may be changed too, where the heir is unqualified for the station. Great deference is always paid to the will of the dying chief, but every such case is always laid before a full national council, whose decision is final.

A chief may be degraded from his rank for bad conduct as Quasquawma was for signing a treaty with Gen. \*\*\*\*\* relinquishing the mineral country for no good consideration and which the General gave away again, for as little as he gave for it, to the very Indians, of whom the United States were compelled to purchase it, at a vast expense, in July and August, 1829.—When Quasquawma was degraded from his rank, of chief of the Musquawkee tribe, his son-in-law, Tiama was elected in his stead.

There is in every tribe, what answers to a standing army among us. The profession of arms holds out, to the great mass of the common people, the only road to the temple of fame, and no one can find a place in the army, unless he is well formed in body, of a good size, and possesses a good mind. He must be brave, artful, cautious, patient of fatigue and of hunger, and he must know no such thing as fear, where duty calls him to press forward. Death has no terrors for him, and cowardice is more despised than any one acquainted with them can imagine. The young man, who aspires to the honorable distinction of a "brave" or warrior, must exhibit such traits of character, as are deemed necessary for a soldier to possess, before he can be admitted into the army. When admitted, he wears on his head just as many feathers of the bald eagle, as he has slain human beings, and the size of the feathers indicate[s] the size of his victims. If he has slain a whole family, the father, the mother and five children, for instance, he wears two large feathers and five smaller ones. The feather denoting the father, in that case would be the largest, the one worn for the mother a size less, and the five for the children would vary in size to correspond with the size of the child. I do not remember one warrior of any nation, who did not wear at least, one feather, and some displayed a great number of them. If the warrior has taken a captive, he has a human hand

as large as life, painted either on his face, or on some part of his body, or on his blanket, some individuals have several such hands painted on them.

At the head of the army, belonging to each tribe, there is a person who occupies the same station as a General does with us, and he appoints all the inferior officers. The chiefs when met in council, call into it, their warriors, with whom they consult, but frequently they are called to receive the orders, which are obeyed to the letter. This council call before them, persons who are interested in the trial, if it be one, to hear his allegations and his proofs in his defense. They call in persons who can afford information on the subject, under consideration; but in all such cases, when these persons are heard, they retire from the council, who debate on all matters by themselves.

Seated on mats, in the eastern manner, like the Turks, around the wigwam or the lodge, no one rises to address his fellow chiefs, nor does he speak in a high tone of voice generally, but what he delivers, is in a low tone of voice, and all he utters is listened [to] in the profoundest silence. No speaker is ever interrupted in the midst of his discourse and no calls to order, as in our public councils are ever heard or needed.

If the Senate of the United States is the mildest, the most patriotic and wisest legislative assembly in the civilized world, as it truly is, the Winnebago council, is decidedly at the head of the savage world. Wisdom personified, either as a civilized man or as a savage, is seen in the deportment and conduct of each legislative body.—Like the court of Mar's [*sic*] Hill, at Athens, the Indian council, generally sits at night, when the mass of the nation is asleep. They sometimes sit in council nearly all night deliberating on some important matter, without coming to any result, which is again and again resumed, in the night until a final vote is taken and the cause decided. In many instances further information is needed, and in cases of difficulty, more time for reflection is wanted, or the council may be equally divided in opinion. Where the majority is small, and some members seem to be at a loss how to decide, the minority get a final decision, of a question postponed, in order to gain more strength, so as finally to succeed. I always ascertained at early dawn, the result of each night's council, through my friends, who belonged to it, and how each man had voted. The great body of the people have very little influence, almost none, with this council, and they never appear before it unless they are summoned to attend it.—They have no voice in electing the chiefs and in fact no political influence. The civil chiefs and the chief warriors, have in their hands, the whole government of the community, and they govern as they please. Disobedience to the orders of the rulers is punished with death, though, like the British nation, the Indians are not savages enough to cut the traitor into quarters after hanging him until he is dead.

Though I have been describing the form of government among the Winnebagoes, yet the Sauks and Foxes have the self-same aristocracy among them. How much of this form of government has been borrowed from the English and French, I cannot say but the Indians have no tradition of any other, ever in existence among them. If they had a house of Commons, elected by the people, I should suspect they had borrowed it from the English traders, who have visited them. Considering them as savages, and if they are to continue such, these are some of the advantages attending their form of government.



It is an efficient one, acts promptly and many times wisely. The person who is born to be a ruler from his earliest years, knows it, and studies to prepare himself for it. He is more grave, sedate and dignified in his manners, if a young man, than others of his age. He exhibits a noble and dignified deportment in his intercourse with the world, he appears more thoughtful and less frivolous than other persons of his years. He acts up to his destination in society. In his whole conduct, he is an example of obedience to “the powers that be,” and towards his equals, he is polite and conciliating, but always show[s] that he feels above the common mass of the people. The same remarks apply to the whole family of the chiefs, who always act as if they know their full value. The female part of it, exercised the same influence among the women, that the chiefs did among the men, and the presents they expected from us, had to be better, than those given to the common people. The daughter of a chief, never marries into a family below her’s [*sic*] in dignity. The pride originating in birth, is as deeply seated in the hearts of those who are nobly descended, among the natives of the Northwest, as it is among the petty princes of Germany.

It is customary for the chiefs to appoint two soldiers, in each village to keep order in it, and they faithfully do so.

In each tribe, some one man acts as a divider, by order of the civil chiefs, and by general consent. Whenever we made the men any presents, of pipes, paints, tobacco, or any thing else, the same seven men, if the Winnebagoes were the Indians receiving the presents, appeared, took charge of the property, and divided it in the most equitable manner, among all present at the time. They reserved nothing for themselves, generally, but held up their empty hands to show their disinterestedness.

If the Sauks and Foxes received presents, two men one for each tribe, acted as dividers, and the same individuals always performed the same duty.

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## 8

### *Laws of the Nez Perce (Nez Perce People, 1844)*

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The Nez Perce, or Nimi’ipuu, historically lived in bands and occupied territory in present-day Idaho, Oregon, and parts of Washington. As communities of kin and extended families, they lived in villages that were led by headmen. Situated near specific streams or rivers, villages were identified by their location. Several geographically connected villages encompassed bands that were the next largest unit of Nez Perce society. In 1800 their total population was estimated to be seven thousand. They spoke a common language and practiced a similar set of religious ceremonies.

By the early 1840s they had sustained contact with American explorers, Christian missionaries, and traders. These interactions, in addition to white settlers, U.S. government agents intent on transforming Nez Perce culture, and diseases, wrought havoc and created segmentation among the Nez Perce. The Upper Nez Perce, who lived along the Clearwater River, were generally considered more accepting of the teachings of Christian missionaries, who had settled among them in the 1830s. The Lower Nez Perce of the Wallowa Valley along the Salmon and Snake rivers were intent on retaining their traditional ways of living and thus resented and resisted the missionaries' and federal agents' demands to assimilate.

In 1842 a new U.S. government subagent arrived: Dr. Elijah White. Placed in charge of the Indians of Oregon Territory, White joined with the already-present missionaries and decided to create a new legal code for the Nez Perce as part of their "civilization" program. In his annual report of 1843 White glowingly noted that the tribes were "highly pleased" with the "laws" he had drafted since they had been "unanimously adopted by the chiefs and people in council assembled." We do not know, however, how "pleased" the tribe's members actually were; this may simply have been wishful thinking on the agent's part.

It does appear that the Upper Nez Perce, the so-called progressives of the tribe, agreed to these harsh laws—"whoever burns a dwelling shall be hung"—and may also have agreed to White's insistence that the various bands select a single "high chief." This last action caused a long-lasting internal rift among the Nez Perce. This selection is interesting in that it sheds light on how—very early in U.S. history—certain federal agents set about the task of imposing Western law on certain native communities and how these impositions affected political and cultural dynamics within the tribes.

Hampton, Bruce. *Children of Grace: The Nez Perce War of 1877* (New York: Holt, 1994).

U.S. Public Documents of the Senate of the United States. 28th Cong., 2d sess., vol. 1 (Washington, D.C.: Gales and Seaton, 1845).

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## Nez Perce Laws

Article 1. Whoever wilfully [*sic*] takes life shall be hung.

Article 2. Whoever burns a dwelling shall be hung.

Article 3. Whoever burns an out-building shall be imprisoned six months, receive fifty lashes, and pay all damages.

Article 4. Whoever carelessly burns a house, or any property, shall pay damages.

Article 5. If any enter a dwelling without permission of the occupant, the chiefs shall punish him as they think proper. Public rooms are excepted.

Article 6. If any one steal, he shall pay back two-fold; and if it be the value of a beaver skin and less, he shall have twenty-five lashes; if the value is over a beaver skin, he shall receive fifty lashes.

Article 7. If any one enter a field, and injure the crops, or throw down the fence, so that cattle or horses go in and do damage, he shall pay all damages, and receive twenty-five lashes for every offence.

Article 8. Those only may keep dogs who travel or live among the game. If a dog kills a lamb, calf, or any domestic animal, the owner of the dog shall pay the damage, and kill the dog.

Article 9. If an Indian break these laws, he shall be punished by his chiefs. If a white man break them, he shall be reported to the agent, and punished at his instance.

Article 10. If an Indian raise a gun or other weapon against a white man, it shall be reported to the chiefs, and they shall punish him. If a white man do the same to an Indian, it shall be reported to the agent, and punished at his instance.

*E. White.*

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## 9

### *Constitutional Ordinance of the Seneca Nation (Seneca People, 1845)*

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The Seneca, who call themselves Onotowella, or “great hill people,” were originally the largest and most powerful member nation of the Iroquois Confederacy. They played a key diplomatic and military role in the colonial and Revolutionary War eras and were very active in northeastern politics. They also had bustling treaty and trade relations with other tribes, as well as the French, the English, and the Americans. Seneca leaders such as Cornplanter and Red Jacket supported the British during the Revolutionary War and paid a heavy price afterward as U.S. and state negotiators and land-hungry whites pursued Seneca territory. As the Seneca gradually became one of the more politically and religiously divided Indian nations, they began a diaspora that led some of their citizens to various parts of New York, Canada, Pennsylvania, Ohio, and Indian Territory (present-day Oklahoma).

From 1788 to the 1830s the Seneca experienced a devastating loss of land, problems and opportunities brought in by Christian missionaries, and denial of access to hunting and agricultural grounds. This

dark period spawned two major developments: the birth of a religious prophet in 1799, Handsome Lake, who became one of the most important religious figures in Indian country; and institutional changes in Seneca governance that had a profound impact on Seneca society.

In 1838, for example, several corrupt Seneca chiefs engaged in the fraudulent treaty of Buffalo Creek, in which all of the Seneca reservations in New York—Buffalo Creek, Tonawanda, Cattaraugus, and Allegheny—were sold, and the Seneca leaders agreed to relocate to Kansas. Many Seneca protested the legality of this arrangement, however, and a new treaty was signed four years later to replace the Buffalo Creek accord. Still, the Seneca permanently lost two of their four reservations, Buffalo Creek and Tonawanda, although they were not required to move to Kansas.

These actions compelled John Seneca and forty-nine other chiefs to adopt the following ordinance aimed at stifling additional sales of communally held tribal land.

Hargrett, Lester. *Laws and Constitutions of the American Indian Nations* (Millwood, N.Y.: KTO Microfilm, 1976, reel 7, Hargrett #214).

Wallace, Anthony F. C. *Death and Rebirth of the Seneca*. With the assistance of Sheila C. Steen (New York: Knopf, 1970)

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## Constitutional Ordinance

Whereas, the usage, practice and custom of the Seneca Nation of Indians, to sell and dispose of their lands by the consent and agreement of a majority of their Chiefs, without the express consent of the warriors and people of the nation, has in these latter days of our weakness and limited territory, given great uneasiness to our people, and created an apprehension among them, that while this power continues to be thus vested, their homes will be insecure, and has impressed them with the belief, that they and their children must lie in continual fear that their lands will be sold without their consent, and the deepest misery thus entailed upon them and their posterity. And, whereas, a general council of the whole nation was convened at the council house at the Cattaraugus Reservation, on the 28th day of January, 1845, for the purpose of considering this subject, and of so altering our political usages and organization as after mature deliberation, it should be deemed wise and expedient. And whereas, also, the Sachems, Chiefs, and Head-men of the said nation duly assembled in such council, have after full discussion and mutual deliberation, determined that the welfare of the nation, and the security, prosperity, and happiness of their people require, that the express assent of the warriors and people, as well as of the chiefs of the nation, should be necessary to a valid sale or disposition of their lands: Therefore, we the chiefs and representatives of the Seneca Nation of Indians in such general council assembled, acting for and in behalf,

and by the authority of the said Nation, and in the exercise of the inalienable right of the said nation to alter and modify their political customs and usages, when it becomes necessary for their security, prosperity, and happiness, do hereby, in the name and behalf, and by the authority of the said Seneca nation, Resolve, Determine, Ordain, Publish and Declare, that our political usages, customs, organizations, and constitution be, and the same are hereby altered and amended, so that no sale or disposition of the whole, or any part of our lands hereafter to be made, shall be valid or of any effect, unless the same be made in full and open council of the Chiefs and Warriors of the nation, and by the express assent of two thirds of all the Chiefs, and of two thirds of the whole residue of the male population of the nation of the age of twenty-one years, whether attending such council or not, such assent to be given in writing, under the hands and seals of the parties in full and open council of the Chiefs and Warriors of the nation, assembled together in one council; but nothing herein contained shall in any manner alter, change, affect, lessen or diminish, the rights, powers, duties, privileges or authority of the chiefs in any other matter or respect whatever.

And We Do Further Resolve And Determine, that this ordinance or act of the nation, be entered at length in the records of this Council, and that four copies thereof be signed by the Chiefs assenting thereunto, one of which copies shall be delivered to the President of the United States, with the request that the same may be deposited with the archives of the United States; one of which shall be presented to the Governor of this State, with a request that it be sanctioned by the State and filed with its Records; one of which shall be presented to the Governor and Council of Massachusetts, with the request that it may be deposited among the archives of that Commonwealth, and kept in perpetual remembrance by its Governor and Council, and the other of which shall be deposited and kept with the Archives and Records of the Seneca Nation.

Done and Signed in open council at Cattaragus, the thirtieth day of January, 1845.

*John Seneca,  
And 49 other Chiefs.*

Copies of the foregoing constitutional ordinance signed & duly executed by the Chiefs of the Seneca nation, in open council assembled, have been furnished to the Governors of New York and Massachusetts, and also to the President of the United States, by a deputation of their chiefs, as formal and official notice to those authorities, of the only conditions on which the remaining paternal inheritance and domain of the Senecas in the State of New York, can hereafter be alienated and conveyed; and this act, on the part of that Nation, has been recognised, and the evidence thus furnished has been filed, among the Archives of those States; and of the United States, for the information and government of all parties concerned.

## 10

*Resolutions and Constitution  
of the Seneca Nation of Indians  
(Seneca of Allegheny and  
Cattaraugus, 1848)*

In the wake of the fraudulent treaty of 1838 and the reversal of most of that document's more damning provisions in 1842, especially the return of the Allegheny and Cattaraugus reservations and the reversal of the decision to force the tribe's members to move to Kansas, an internal conflict arose over the chiefs' role and powers, traditional customs, and who should receive the payment of treaty annuities—the chiefs or the people directly. In 1848 this clash led to the structural creation of a new political entity, the Seneca Nation of Indians, via a written constitution.

This political arrangement was novel on two accounts: First, the Seneca of Allegheny and Cattaraugus opted to formally separate from the traditional Iroquois Confederacy and the Seneca of Tonawanda; second, the traditional role of women as key participants in the political process was terminated since chiefs were no longer to play a role in Seneca governance. Some commentators assert that the drive to supplant the traditional form of government was inspired by the belief that the chiefs had deceived the Seneca people.

The constitution, written by a non-Indian lawyer, Chester Howe, abolished the office of chief, constructed a three-branch government that consisted of a tribal council (legislature); a president, treasurer, and clerk (executive branch); and a court system featuring peacemaker courts (judicial branch). The document also called for the tribe to receive legal guidance from the United States and New York State. The resolution that precedes the constitution paid homage to the Quakers and the missionaries of the American Board of Commissioners for Foreign Missions for having introduced Seneca to “the means for our culture and improvement, and laid the foundation for our education and civilization.”

Abler, Thomas Struthers. “Factional Dispute and Party Conflict in the Political System of the Seneca Nation (1845–1895): An Ethnological Analysis (Doctoral Thesis, University of Toronto, 1969).

Hargrett, Lester. *Laws and Constitutions of the American Indian Nations* (Millwood, N.Y.: KTO Microfilm, 1976, reel 7, Hargrett #218).

Porter, Robert B. “Building a New Longhouse: The Case for Government Reform within the Six Nations of the Haudenosaunee.” 46 *Buffalo Law Review* 805 (Fall 1998), 805–944.

## Resolutions Adopted by the Convention of the Seneca Nation of Indians: December 4th, 1848

Resolved, That this Convention feel grateful for the religious and scientific instruction which benevolent societies and individuals have bestowed upon us, as well as for the introduction of proper means among us for our improvement: and particularly do we desire to express our gratitude to the Society of Friends; they were the first to introduce the means for our culture and improvement, and laid the foundation of our education and civilization, by which means we have become wiser and enlightened, and been enable[d] to see and understand our rights; they also befriended and aided us when friendless, and without means to sustain ourselves in time of peril—always zealous and unremitting in their labours for our welfare. Also to the American Board of Commissioners, for Foreign Missions, in sending us missionaries and teachers to enlighten our minds and direct us to the true light, and teach us the plan of salvation: and also to the people of the State of New York, for their benevolent efforts in enacting laws for our protection and improvement, as well as for the large and generous appropriations made by them for erection of school house, and the payment of school teachers among our people, and we desire that these kind offices may be continued.

Resolved, That inasmuch as we have abolished our former government; that by so doing all appointments under that government have now become annulled, therefore,

Resolved, That the Seneca nation of Indians in this General Convention assembled, do hereby express their thanks to their friend and brother Sagaoh [Philip E. Thomas] of the city of Baltimore and State of Maryland, for the faithful discharge of his duties as representative of our nation (under our late government) to the United States Government at Washington, and having undiminished confidence in his integrity and ability, we do hereby constitute and appoint him our ambassador, under our new form of government, to represent us, and to have charge of all the interests and affairs of the Seneca nation of Indians to the United States Government at Washington.

Resolved, That as it is customary among our people that whenever any important event occurs in the history of any member of our nation, either by the natural transition from childhood to manhood, from warrior to chieftain, or from chieftain to sachem, therefore we declare, that in consequence of this change in our government of his re-appointment under the new, and with the consent of the relatives of our friend Sagaoh, that the name Sagaoh shall cease to be his name, by which he was called and know[n] among us, and that hereafter his name shall be Hai-wa-noh (Ambassador, representative, or Charge [chargé] d'Affaires) because he is to represent our nation and people, by which appellation he is henceforth to be known among us, and that the ceremony of christening be immediately performed. [Whereupon the ceremony of changing the former Indian name and christening Philip E. Thomas, of Baltimore, was performed, according to our customs and usages, by Sa-dye-na-wa (John Hudson), and declared that the said Thomas may hereafter by known by the name of Hai-wa-noh. (Great sensation and applause of approbation.)]

Resolved, That the Clerk and President are hereby authorized and empowered to prepare the credentials of Hai-wa-noh [Philip E. Thomas] our ambassador, whom we have hereby constituted and appointed; and forward the same to him as soon as practicable, together with the declaration, constitutional charter, and request him immediately to repair to the seat of the United States Government, and present them to the proper authorities, and also to notify of the change of his name, and his appointment as an officer of the government of the Seneca Nation of Indians.

Resolved, That copies of the declaration, constitutional charter, and resolutions of this Convention be forwarded by the Clerk to the Joint Committee of the Society of Friends on Indian Concerns, and to the Governors of the States of New York and Massachusetts, with the request that the same be put on file in the proper offices, and that our representative be requested to present copies of the same to the Congress of the United States, now convened at Washington, and to the Secretary of War, with the request that the same be put on file in their respective departments.

Resolved, That we have unabated and undiminished confidence in the abilities and qualifications of the United States Interpreter (Peter Wilson) for this agency, having always discharged his duty faithfully, and that inasmuch as the late chiefs under our former government have petitioned for his removal without just and reasonable cause, we hereby request our representative to protest and remonstrate against his removal.

Resolved, That the Clerk be hereby instructed to prepare and forward copies of the doings and proceedings of this Convention to the publishers of the Buffalo Commercial Advertiser, and the New York Tribune, with the request that the same be printed in their respective papers.

I hereby certify that the above copy has been examined and compared with the original now on file in the archives of the Seneca Nation of Indians, by me, and is a correct transcript of the same, and of the whole of said resolutions passed by the General Convention.

*William Jemerson,  
Clerk of the Seneca Nation of Indians.*

*Declaration of the Seneca Nation of Indians, Changing Their  
Form of Government, and Adopting a Constitutional Charter*

We, the people of the Seneca Nation of Indians, by virtue of the right inherent in every people, trusting in the justice and necessity of our undertaking, and humbly invoking the blessing of the God of Nations upon our efforts to improve our civil condition, and to secure to our nation the administration of equitable and wholesome laws, do hereby abolish, abrogate, and annul our form of Government by chiefs, because it has failed to answer the purposes for which all governments should be created.

It affords no security in the enjoyment of property,—it provides no laws regulating the institution of marriage, but tolerates polygamy.

It makes no provision for the poor, but leaves the destitute to perish.



It leaves the people dependent on foreign aid for the means of education.

It has no judiciary, nor executive departments. It is an irresponsible, self-constituted aristocracy.

Its powers are absolute and unlimited in assigning away the people's rights, but indefinite and not exercised, in making municipal regulations for their benefit or protection.

We cannot enumerate the evils growing out of a system so defective, nor calculate its overpowering weight on the progress of improvement.

But to remedy these defects, we proclaim and establish the following Constitution or Charter, and implore the Governments of the United States and the State of New York to aid in providing us with laws under which progress shall be possible.

Section 1. Our Government shall have a legislature, Executive and Judiciary departments.

Section 2. The Legislative power shall be vested in a council of Eighteen members who shall be termed the Councillors of the Seneca Nation, and who shall be elected annually on the first Tuesday of May in each year: and who shall be apportioned to each Reservation according to its population, two-thirds of whom assembled in regular session and duly organized shall constitute a quorum, and be competent for the transaction of business; but to all bills for the appropriation of public moneys the assent of two-thirds of the members elected shall be necessary in order that the bill should become a law.

Section 3. The executive power shall be vested in a President, whose duty it shall be to preside at all meetings of the council, having only a casting vote therein: and to communicate to the council at every session a statement of the condition of the national business, and to recommend for the action of the council such matters as he may deem expedient. In the absence of the President the council may choose a presiding officer pro tempore.

Section 4. The judiciary power shall be vested in three Peace Makers on each Reservation; any two of whom shall have power to hold courts, subject to an appeal to the council, and to such courts of the State of New York as the Legislature thereof shall permit. The jurisdiction[']s forms of process and proceeding in the Peace Makers' Courts shall be the same as in courts of the justices of the Peace of the State of New York, except in the proof of wills, and the settlement of deceased person's estates, in which cases the Peace Makers shall have such power as shall be conferred by law.

Section 5. All causes of which the Peace Makers have not jurisdiction, may be heard before the Council or such courts of the State of New York as the Legislature thereof shall permit.

Section 6. The power of making Treaties shall be vested in the Council, but no Treaty shall be binding upon the Nation until the same shall be submitted to the people, and approved by three-fourths of all the legal voters and also by three-fourths of all the mothers in the Nation.

Section 7. There shall be a Clerk, and Treasurer, and Superintendent of Schools, and overseers of the poor, and Assessors, and overseers of Highways, whose duties shall be regulated by law.

Section 8. Every officer who shall be authorized to receive public money shall be required to give such security as the President and the attorney for the Seneca Nation shall approve.

Section 9. There shall be a Marshall and two Deputies on each Reservation (Cattaraugus and Allegany) who shall execute all processes issued by the courts, and do such other duties as shall be prescribed by law.

Section 10. All officers named in this constitution or charter shall be chosen at the same time, in the same manner and for the same term as members of the council, and vacancies occurring in any office shall be filled in the manner to be prescribed by law, and every male Indian of the age of twenty-one years and upwards, either residing on one of the reservations (the Cattaraugus, Allegany, or Oil Spring) or owning, possessing and occupying any lands upon either of said Reservations, and which lands may have been taxed for highways or other purposes, shall be entitled to vote at all elections.

Section 11. Any legal voter shall be eligible to any office named in this Constitution or Charter, and all officers elect[ed] shall be inducted into office, and if necessary shall be impeached by the use of such forms and regulations as shall be prescribed.

Section 12. The compensation of members of the Council shall be one Dollar each per day while in session; but no member shall receive more than twenty-six Dollars during any one year. The compensation of all the officers shall be prescribed by law.

Section 13. The council shall meet annually on the first Tuesday of June, and Extra Sessions may be convened by the President at any time he shall think proper.

Section 14. The council shall have power to make any laws not inconsistent with the Constitution of the United States or of the State of New York.

Section 15. All offences which shall not be punishable by the laws of the United States or of the State of New York, shall be tried and punished in the Peace Makers' Court, or before the council as shall be prescribed by law.

Section 16. The rights of any member of the ancient Confederacy of the Iroquois to the occupancy of our lands and other privileges shall be respected as heretofore; and the council shall pass laws regulating for the admission of any Indian of other tribes or nations to citizenship and adoption into the Seneca Nation of Indians by his or her application for his or herself or family.

Section 17. This Charter may be altered or amended by a council of the people convened for that purpose on three months previous notice, by a vote of two-thirds of the legal voters present at such convention.

Section 18. The Saws [*sic*] Mills on the different Reservations now in operation are hereby declared to be national property, and the funds accruing therefrom shall be by the Council appropriated to National purposes. But nothing in this charter shall be construed as prohibiting the erection of Mills and other works for manufacturing or other purposes by any private individual upon his own premises, provided that in so doing he do [*sic*] not trespass upon the rights of any other individual; and all such erections by individuals shall be respected as strictly private property.

Section 19. The laws passed by the legislature of the State of New York for the protection and improvement of the Seneca Nation of Indians, and also all laws and regulations heretofore adopted by the chiefs in legal council assembled shall continue in full force and effect as heretofore except so far as they are inconsistent with the provisions of this Constitution or Charter.

Section 20. And in order to carry this form of Government into effect we hereby provide and declare that Solomon McLane shall be President, and that John Cook, George Deer, John Green Blanket, John Bennett, Charles Kennedy, Little Joe, George Green Blanket, Andrew John, and John Luke, shall be members of the council, and that William Jemerson shall be clerk, and Andrew John Treasurer of the Nation, and John Hudson Superintendent of Schools, and Joe White, John Tallchief and John Shanks Overseers of the poor, and Peter Snow, Solomon Obail, and Thomas Shango Assessors, and Joseph Dudley, Stephen Silverheel, and John Pierce Overseers of the Highways, and Stephen Silverheel, Marshall and Wm. Logan and Allen Jameson Deputy Marshalls and John Kennedy, jr., John Hudson, and John Cook Peace Makers for the Cattaraugus Reservation.

And that Soloman W. MacLane shall be superintendent of Schools, and David Shango, Robert Watt, Benjamin Lewis, Peter Jameson, John Snyder, Hamilton Shongo, Mash Pierce, James Long John, and Jabez Jones Councilors, and John King, John Jameson, Samuel Jones, Overseers of the poor, and Benjamin Williams, Jesse Plummer, and Dodge Fatty, Assessors, and Joseph W. Pierce, John Taylor, and Peter John Overseers of the Highways, and Ruben Jackson, Marshall, and James Tandy, Bush Pierce Deputy Marshalls, and Samuel W. Patterson, Tandy Jameson, and Benjamin Pierce, Peace Makers for the Allegany Reservation—the election of officers on the first Tuesday of May next.

Done in a general council of the people held at the Council House on the Cattaraugus Reservation on the 4th of December, A.D. 1848.

*S. McLane, Chairman.*

*Wm. Jemerson, Clerk.*

*(Signed by the representatives of the people of the Seneca Nation of Indians)*

<i>Andrew Snow,</i>	<i>Davis X Isaac,</i>
<i>John X Baldwin</i>	<i>John X Bark,</i>
<i>Allen X Jameson,</i>	<i>John X General,</i>
<i>Joel X Sundown,</i>	<i>John X Cattercook,</i>
<i>Jack X Kenjokedey,</i>	<i>Big X Chief,</i>
<i>Henry X Philips,</i>	<i>Jimmy X Cornplanter,</i>
<i>John X Jones,</i>	<i>Thomas X Snow,</i>
<i>John X Tallchief,</i>	<i>Peter X Snow,</i>
<i>Henry X Jacobs</i>	<i>John X Jameson,</i>
<i>Young X Jackson,</i>	<i>Old X Hemlock,</i>
<i>Allen X Snow,</i>	<i>Wm. X Ruben,</i>
<i>John X Shanks,</i>	<i>Young X General,</i>
<i>Paul X Peter,</i>	<i>John X Bennett,</i>
<i>Andrew X Fox,</i>	<i>Little X Joe,</i>
<i>Wm. X Spencer,</i>	<i>David X Button,</i>

<i>Ph'p X Kenjokedey, Sr.</i>	<i>John X Dick,</i>
<i>James X Gordon,</i>	<i>John X Spruce,</i>
<i>John X Wilson,</i>	<i>Joe X Logan,</i>
<i>Foster X Turkey,</i>	<i>Charles Kennedy,</i>
<i>Major X Harris,</i>	<i>Wm. X Logan,</i>
<i>Young X Farmer,</i>	<i>John X Greenblanket,</i>
<i>Henry X Moses,</i>	<i>George X Deer,</i>
<i>Thomas X Shongo,</i>	<i>Stephen Silverheels,</i>
<i>Joseph X Jameson,</i>	<i>John X Luke,</i>
<i>John X Deer,</i>	<i>Capt. Jackson,</i>
<i>John X Stephens,</i>	<i>George X Jimison,</i>
<i>George X Green,</i>	<i>Dav. X Greenblanket,</i>
<i>Soloman X Obail,</i>	<i>Abram X Johnnyjohn,</i>
<i>Young X Joe,</i>	<i>Peter X Johnson,</i>
<i>John X Pierce,</i>	<i>George X White,</i>
<i>John Hudson</i>	<i>John X Joe,</i>
<i>Alexan'r X Tallchief,</i>	<i>Thomas X Halfwhite,</i>
<i>Wm. X Tallchief,</i>	<i>Lafayette X Brooks,</i>
<i>David X Shongo,</i>	<i>Thomas B. Graybeard,</i>
<i>Wm. John,</i>	<i>Joseph X Dudley,</i>
<i>John X Cook,</i>	<i>Lorenzo X Sundown.</i>

I hereby certify that the above Copy has been examined and compared with the original now on file in the archives of the Seneca Nation of Indians by me, and is a correct transcript of the same and of the whole of said Declaration, Constitution and Charter.

*William Jemerson, Clerk of the Seneca Nation of Indians.  
Cattaraugus Reservation, Erie co., N.Y., Dec. 5th, 1848.*

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# 11

## *Organization of a New Indian Territory, by George Copway (Ojibwe, 1850)*

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George Copway, also known as Kah-Ge-Ga-Gah-Bouh (1818–1869), was a prominent, Canadian-born Ojibwe who in 1847 authored one of the first native autobiographies, *The Life, History, and Travels of Kah-Ge-Ga-Gah-Bouh*. Active in political, social, and literary affairs, he joined the Methodist Church as a young man and became a practicing missionary among his own people for a number of years before encountering problems that led to his expulsion.

While advocating for the sovereignty of tribal nations, he also struggled with the powerful tensions between his own nation's traditional values and institutions and the pull of modernity. His proposed "organization" for a new Indian territory, along with a bill he drafted and presented to Congress in 1850, contains fascinating insights into his views on the nature of tribalism, native self-governance, the assimilative process, the role of education, and the relationship between the United States and Indian nations.

Although his proposal did not receive a great deal of congressional or tribal attention, it is nonetheless interesting to read. While Copway's proposal can be viewed as an accommodationist tract, we can still see some evidence of his pride as an Ojibwe nationalist who sometimes recognized the integrity of tribal traditions.

Copway, George. *Organization of a New Indian Territory, East of the Missouri River* (New York: S. W. Benedict, 1850).

Konkle, Maureen. *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827–1863* (Chapel Hill: University of North Carolina Press, 2004).

Ruoff, A. LaVonne Brown, and Donald B. Smith, eds. *Life, Letters, and Speeches: George Copway (Kahgegahbow)* (Lincoln: University of Nebraska Press, 1997).

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## Organization of a New Indian Territory

### *George Copway's Plan*

To the honorable Senate and House of Representatives of the Thirty-first Congress of the United States:

Gentlemen: The history of a nation is always interesting. The more obscure the means of tracing it the more of interest attaches to it, as it slowly discloses itself to the eye of research.

The past of American history is to every meditative man full of silent instruction. The struggle between the two races, the European and the American, has been in steady progress since their first intercourse with each other. The pale-face has bequeathed his history's bloody page to his children after him. The Indians, on the other hand, have related the story of their wrongs to their children in the lodge, and have invariably taught them to look upon a pale-face as a hard brother.

The account of their hatred to each other in years long past, is, no doubt, without foundation. Its relation has, however, had the evil tendency of embittering one against the other, has kept them at variance, and prevented them

from learning of each other those noble qualities which all will acknowledge each possessed.

What a change! The progress of aggression has gone on with its resistless force westward with emigration, from the time the first colony was planted on the Atlantic's shores. Wave after wave has rolled on, till now there appears no limit to the sea of population. The North resounds with the woodman's axe; the South opens its valleys to make room for the millions that are swarming from the Old World to the New.

The rivers that once wound their silent and undisturbed course beneath the shades of the forest, are made to leave their natural ways, and, bending to the arbitrary will of man, follow the path he marks out for them. Man labors, and gazes in the astonishment at the mighty work his hands perform—he gazes at the complicated machinery he has set in motion. The Indian is out of sight—he sends no horror to the pale-face by his shrill war-whoop, nor pity by the wail of his death-song.

Steam thunders along over hills and vales that once were peaceful—on, on, to the mighty West.

The groans of the Indian are occasionally heard by the intoxicated and avaricious throng in the way of complaint; he has waited for justice, while those who have wronged him, like the wild horses of his prairie, neigh over his misfortunes.

The eagle of liberty stretches her wings north and south. The tide of emigration will soon reach the base of the Rocky Mountains and rise to the summit. Enterprise follows in its train; yet when blessings are lavishly bestowed on the pale-faces, as the consequence of attainments in knowledge, the red-man has been denied the least of those which the American government guarantees to its humblest subject.

These thoughts have arisen in my mind previous to calling the attention of the Members of this Congress to a plan for the effectual consolidation of the western tribes, with a view to their temporal and spiritual improvement.

Before stating the plan, which I have already laid before the American people, as the only means which can be used to save the Indians from extinction, I shall, in as brief a manner as possible, give a few reasons why they have not materially improved, and why their numbers have been greatly lessening.

1. Why has not the Indian improved when coming in contact with civilization? To give a statement of all the disadvantages he has had to encounter would not be in accordance with my present object; I will mention a few. In their intercourse with the frontier settlers they meet the worst classes of pale-faces. They soon adopt their ways and their vices, and their minds being thus poisoned and pre-occupied, the morality and education which the better classes would teach them are forestalled. This will not be wondered at when it is generally known that the frontier settlements are made up of wild, adventurous spirits, willing to raise themselves by the downfall of the Indian race. These are traders, spirit-sellers, horse-thieves, counterfeiters, and scape-gallowses, who neither fear God nor regard man. When the Indians come in contact with such men, as representatives of the American people, what else could be expected from them? They scarcely believe that any good can come out of

such a Nazareth as they think the United States to be; and all are aware that man is more prone to learn from others their vices than their virtues. It is not strange, that, seeing as he does the gross immorality of the white men whom he meets, and the struggle between the pale-face for wrong and the red-man for right, which begins when they first meet, and ends not until one dies, that he refuses to follow in the footsteps of the white man.

“What!” Said an Indian to me once, in the North-west, when I was endeavoring to convince him of the necessity of schooling his children, “shall my children be taught to lie, steal, kill, and quarrel, as the white man does? No, no,” he continued, shaking his head. Having never been in the midst of refined and civilized society, he knew not of its blessings. He judged from what he saw around him, and with such examples, he decided rightly.

There has been one class of adventurers who have moved westward, whose fathers were murdered by the Indians. These having an implacable hatred against the poor Indian, do all they can to enrage one race against the other, and if possible involve the two in war, that they may engage in their favorite work of depredation.

2. Their love of adventurous life. The suddenness with which a band of white men has ever intruded upon them, has prevented them from gradually acquiring the arts of civilized life; and leaving local employment, they have hunted for a living, and thus perpetuated that independent, roaming disposition, which was their early education. Their fathers having been Nimrods, in a literal sense, they followed in their steps. Not that I would have you suppose that there is no such thing as teaching the American Indian the peaceful arts of agriculture, for he has already proved himself teachable.

3. The perpetual agitation of mind which they experience in the annoyance they receive from mischievous men, and the fear of being removed westward by the American Government.

None but an Indian can, perhaps, rightly judge of the deleterious influence which the repeated removals of the Indians has wrought, since they began in the days of Jefferson, in 1804, and have been continued by succeeding administrations, until the last. Here let me say to Members of Congress, Mature a pacific policy, for the mutual good of the red man and the white man. Let each love the other with the same spirit that animated the bosom of William Penn, and we shall yet have many sunny days—days when the white man and the red man shall join hands, and together, as brothers, go up yet higher on the mount of noble greatness. Fear has prevented the Indian from making any very great advancement in agricultural science. Having seen the removal of many tribes, he is conscious of the fact, that the government may, and doubtless will, want more land, and they be obliged to sell at whatever price [the] government may see fit to give, and thus all improvements they may have made become valueless to them.

The missionaries, in many instances, have done nobly in subduing the wild and warring disposition of many of the Indians, but these lessons have all been lost by the removal of the Indian west. And if he say aught, he is represented by the agent in an antagonistic attitude toward his government, and the Indians become the sufferers.

4. The want of schools of the character that are required for the education of the Indians. You will, no doubt, tell me that the Indians have been taught the advantages of education—that some have even attended, not only the common school, but schools of a higher order and colleges, and have returned again to the forest, have put on the blanket and roamed the woods. This has not always been the case. I might name a great many, who, to my knowledge, have done well, and are doing well for themselves and for their people.

I have never heard of any inquiry having been made by any society or government, as to what is the best mode of education for Indian youth. My opinion may differ from that of more aged and experienced men, yet after much observation and inquiry, I am convinced that the three most requisite things for an Indian youth to be taught, are a good mechanical trade, a sound code of morality, and a high-toned literature.

The reason of their returning back again, was the absence of a good moral training, and their not having learned any trade with which to be employed on their leaving the schools. Having no employment and no income, they found themselves in a possession of all the qualities of a gentleman, without the requisite funds to support themselves.

Their training in moral culture had not been attended to, because some of those men who had been their instructors knew Christianity by theory only, not by a practical knowledge of the pleasing and persuasive influence of the Bible.

The Indian ought not to be allowed to stand still in the way of improvement; for if he does not advance, he will surely recede, and lose the knowledge he may already have attained. Let him taste the pleasures of education, and he will, if proper care be taken at the commencement, drink deep of the living spring.

5. The great quantity of land which they have reserved to themselves for the purpose of hunting. This wide field, filled with a variety of game, perpetuates their natural propensities to live by the use of the bow or gun, instead of the hoe or plow; to roam the fields instead of having a local habitation. When they have land that they can call their own, and limited, so that the scarcity of game will oblige them to till the soil for a subsistence, then they will improve, and the sooner this state of affairs is brought about, the better.

Some of my Indian brethren may wonder that I should offer this as one of my reasons, and my white brethren may think that I would limit the Indian to rather narrow quarters. If any argument I now bring forward will not bear investigation, why, throw it out. I but write what in my humble judgment is an impartial view of the subject, and state plans which I think best adapted to advance the interests of all, and which should be adopted in order to elevate the condition of the Indians of America.

6. The mode generally adopted for the introduction of Christianity among the Indians. This mode has not, I think, been one that would induce them to speedily relinquish their habits of life. I am aware that I here tread on delicate ground. There is zeal enough among the missionaries who labor among them to move the world, if there were any system of operation. There is piety enough to enkindle and fan to a blaze the fine devotional feelings of the Indians, if there were one uniform course taken by all those who go to teach them.



The doctrines which have been preached in this civilized country may be necessary for the purpose of stimulating various denominations to zealous labor, but in our country they have had a tendency to retard the progress of the gospel. The strenuous efforts that have been made to introduce doctrinal views, and forms of worship, have perplexed and prejudiced the mind of the Indian against Christianity.

It is true that every man who has been among the Indians as a missionary to them has not been as judicious as he should have been. The idea that anything will do for the Indian, has also been a mistaken one.

We want men of liberal education as well as of devoted piety. It is not requisite that a missionary carry with him the discipline of churches, but it *is* requisite that he carry with him consistency, in order to meet with success among the Indian tribes.

When they preach love to God and to all men, and act otherwise toward ministers of differing denominations, it creates doubts in the mind of the watchful Indian as to the truth of the word he hears. Let the men advocating the sacred cause of God go on together, let them labor side by side for the good of the Indian, and he will soon see that they intend his good. The Indian is not willfully blind to his own interests.

I have tried to convince the different missionaries that it is better to teach the Indians in English, rather than in their own language, as some have done and are now doing. A great amount of time and money have [been] expended in the translation of the Bible into various languages, and afterward the Indian has been taught to read; when he might have been taught English in much less amount of time and with less expenditure of money. Besides this, the few books that have been translated into our language are the only books which he can read, and in this are perpetuated his views, ideas and feelings; whereas, had he been taught English, he would have been introduced into a wide field of literature; for so very limited would be the literature of his own language, that he could have no scope for his powers; consequently, the sooner he learned the almost universal English and forgot the Indian, the better. If the same policy is pursued that has been, the whole of the world's history must be translated into Indian, and the Indian be taught to read it before he can know the story of the past.

There are other reasons that might be given, why the condition of the Indian has not improved, did space allow. I proceed to give the reasons for the gradual diminution of their numbers since their first intercourse with the whites, three hundred and fifty-six years ago.

1. Diseases introduced by Europeans. They had no knowledge of the small-pox, measles, and other epidemics of civilization's growth. The small-pox destroyed the Mandans, a tribe once occupying the shores of the upper waters of the Missouri, in '37 and '38. Entire families perished. American history relates many a distressing fact in relation to that ill-fated tribe. Foreign disease has preyed on the vitals of the Indian, and he knew not what remedies to use to arrest its progress, however skillful he might have been in curing the infirmities which were found with him. He knew no cure for the new diseases that ravaged among them.

2. Wars among themselves since the introduction of firearms among them. The weapons they used, previous to their meeting the whites, were not as destructive as the rifle. With the gun they have been as expert as they were with the bow and arrow. Champlain, in the year 1609, supplied the Algonquian tribes of the north with weapons of war for them to subdue the Six Nations, and the Dutch supplied the Six Nations in the now State of New York. The Spaniards of the South, and others, might be cited. They received these weapons of war from civilized nations, guaranteeing to them the free use of them.

3. The wars among the white people of this country. During these wars the Indian has been called to show his fear-less nature; and for obeying, and showing himself true to the code of a warrior, as he understood it, he has been called a savage, by the very men who needed his aid and received it. In the midst of these contests the Indians have been put in the front ranks, in the most dangerous positions, and have consequently been the greatest losers.

4. The introduction of spirituous liquors. This has been another, and perhaps greater than all other evils combined. The fire-water has done a most disastrous work, and the glad shout of the Indian boy has been hushed as he bended over the remains of his father, whose premature death has been brought on by its use. The Indian has not sufficient moral fortitude to withstand its evil seductiveness. Disease, war, and famine have preyed upon individual life, but alcoholic drinks have cut off from the list of nations many whose records are inscribed on the face of the mountain.

Peace and happiness entwined around the firesides of the Indian once—union, harmony, and a common brotherhood cemented them to each other. But as soon as these vile drinks were introduced among them dissipation commenced, and the ruin and downfall of a noble race went on. Every year lessened its numbers. The trader found this to be one of the easiest means of securing him rich gains. Wave after wave of destruction invaded the wigwam of the Indian, while the angel of death hovered over his lodge-fires with its insatiable thirst for victims.

In mockery of his wrongs, the eye of the distant observer has looked on the destruction of the Indian, and when he saw him urged to desperate deeds, the white man would calmly say, "Ah, the Indian will be an Indian still."

You say he loves it so well that it is impossible to keep it from him. There was a time when the cool water from the mountain tops was all that allayed his thirst. He loved that, because the Great Spirit sent it to him.

Traders carry the fire-water into the western country by hundreds of barrels, and it has become a common saying among the Indians, "If you see a white man, you will see a jug of rum."

The tide of avaricious thirst for gold rolls on, and the trader resorts to those means to satisfy it, that bring upon [the] Indian[s] poverty, misery, and death. One reason why the gospel has not been more readily received is, because the Indians have not been allowed to remain in a condition to hear and understand it.

The fears I entertain that the Indians will never have a permanent hold upon any part of their lands are from the following reasons.

1. Their position before the press of emigration. Their rights will be trampled upon by new settlers, and this, with other annoyances they may receive,

will unsettle their minds, and consequently they will remove step by step to escape such annoyance.

The present belief of the Indians is, that they will never again be removed, and that the land they now have is to be their own forever. But American enterprise will require railroads to be built, canals to be opened, military roads to be laid out through that western country, and this land will be demanded. The Indians will soon see that their permanency will be destroyed, and they will cease to improve the soil; since such labor would not be for their own benefit, but for the benefit of the white men who are crowding upon them.

The superior quality of the land for agricultural purposes, will also be an inducement for the emigrant to use all possible endeavors to obtain it.

2. The quantity of the land always has and always will retard the progress of their civilization. The game on those lands being abundant, will induce them to neglect the improvement of the soil, which otherwise they would attend to. What do we want land for, when the quantity we possess is a preventive to our improving any particular portion of it?

3. Necessity will oblige them to sell. They have ever reasoned thus: Our fathers sold their lands to the government and lived on the proceeds of the sale, and soon the government will want to buy this land, and our children will live on the annuities as we now do on ours; so they will fare as well as we have. In this way they become improvident.

4. The scarcity of food when the game has gone. This will produce trouble between the Indians and the white people of the West. However desirous the government may be to maintain peace with the Indians, it will itself occasion the trouble it so much fears.

The game is being killed more and more every year. It is computed by recent travelers, that one hundred thousand buffaloes are killed by trappers for their tongues and hides, which are sold to traders up the Missouri. Game of all kinds is fast disappearing from this side of the mountains. When by force of circumstance, the Indian is forced to live on the cattle of the frontier settlers, as soon as the first bullock is killed, the cry will be heard, "The Indians are coming! To arms! to arms!" and the soldiery of the United States must be sent to destroy them. The boom of a thousand cannon, the rattle of the drum, and the trumpet's blast, will be heard all over the western prairies; the fearful knell that tells of the downfall of a once noble race.

Desperation will drive the Indian to die at the cannon's mouth, rather than "remove" beyond the Rocky Mountains.

Should this time come, (God grant it never may,) the pale-face must not be surprised should he hear the battle cry resound from peak to peak, and see them descending upon the frontiers, to avenge their wrongs and regain their once happy possessions.

5. Their isolated condition. This will be perpetuated as long as the American government addresses them as distinct tribes. It should, instead of this, treat them as one nation. Not till they amalgamate, will they lose the hostile feelings they now have for each other.

Having, in as few words as possible, given the causes which, in my opinion, have prevented them from improving, have decreased their numbers, and

the foundation of my fears that they are yet in a critical situation, I will state the plan I have drawn up, and which I have been laying before the American people during the past year. I have had the honor of addressing legislative bodies from South Carolina to Massachusetts, as also the people of various cities and towns.

My object is to induce the general government to locate the Indians in a collective body, where after they are secured in their lands, they may make such improvements as shall serve to attach them to their homes.

This will be more applicable to the Indians of the Northwest than to those of the Southwest; for I would not be understood as thinking or legislating for the civilized portion, who are by far the most enlightened of the American Indians.

The questions naturally arise, When and how can this be accomplished? Is it practicable?

I feel that I am inadequate to perform the task of showing plainly the place where they ought to be settled, as well as the manner in which it is to be brought about. Different individuals will have different opinions on these points.

The location which I have chosen for their home, is the unsettled land, known as the North-west Territory, between the territories of Nebraska and Minnesota, on the eastern banks of the Missouri river. The great Sioux river being the eastern boundary, from its head waters draw a line westward until it meets the Missouri river; thence down the Missouri to the place of beginning. This would form an Indian territory large enough for all the scattered tribes of Michigan, Wisconsin, Iowa, &c.

The reasons why I have named this as the most suitable location for them are the following:

I would not be understood as dictating as to the country, where they are to form a nucleus of settlements. It is the idea with some that in the upper waters of the Mississippi river, would likely be the place. But my own ideas differ much from this. Because the upper waters of the Mississippi are going to be the greatest source of lumber trade, and the races coming in contact with one another must cause trouble along the river.

They will go away from the course of emigration which goes up the Missouri and thence westward. They would be two hundred and fifty miles north of this trail. The climate is best for them. Either north or south would not do. In the first, they would suffer from cold; in the last, from sickness.

The distance of this territory westward would cause their removal to be gradual, and by the time the whites should reach there, the Indians would be so far improved as to be enabled to live as neighbors, and could compete with whites in point of intelligence, and mechanical and agricultural skills.

The last, but not the least question which arises, is this, Is it Practicable? I think it is.

1. Their interest being in the hands of the United States government, the government would have an influence for good in reference to their annuities. By an annual distribution of these, they would become attached to the place of concentration.

2. All the treaties, having for their end the removal of the Indians, may be made with an understanding, that they are never to be moved again, should they go. This would be one of the greatest inducements that could be presented to them, and they would soon go. They are not stubborn beings. Convince them it is for their good, and you will speedily attain your object.

3. The Indians are a social race. They would rather live in large bodies than in small ones, particularly when they are partially civilized. The oftener they see one another, the more rapidly would their jealousies cease to exist. Their children, growing up together, would acquire a mutual attachment and a mutual regard for each other's welfare.

4. The language of the northwest tribes is peculiarly adapted for such a state of society; they would understand each other, the Ojibwa language being the great family language of all the Algonquian tribes west. This is one of the best appeals I made to them when I visited them. Tradition says we were all one people once, and now to be re-united will be a great social blessing. Wars must then cease.

5. By giving encouragement to those who would go there to settle, there would be no difficulty in getting them there, for the educated portion of them would be the first to go and lay the foundation for settlement. And such are those whom I would have go for they do so from good motives.

6. Should they not be induced to go in collective bodies? A proclamation from the President of the United States, calling upon all the northwest tribes to till the ground, as they must soon have recourse to farming for a living, would induce them individually to go without the chiefs, and they would, as soon as they entered the new territory, frame laws founded on republicanism. The hereditary chiefship must cease to exist, before they can make any rapid advancement; for when you allow the meritorious only to rule, there will be found a great many who will study hard to improve in general information, and fit themselves for statesmen and divines.

Having stated the reasons why I deem my scheme practicable, I will, in conclusion, allude to the advantages that would accrue, not only to the United States, but to the Indians.

### ***To the American Government.***

1. This system would simplify the Indian Department.
2. They would not have so much perplexity in adjusting difficulties.
3. The outlay in Indian agencies would be lessened.
4. Establish a court of justice in the Indian territory, and no trouble would be had with them, as the difficulties would be legally settled. For sometimes it has been the hasty means used to suppress the encroachments of the Indian on the white man which have caused the disgraceful wars which this country has seen. Such would be obviated.
5. The expense of fortifying the western country from the encroachments of the Indians would be dispensed with and even now they are not actually required. But if the government must build forts and establish military posts, let there be one, in the center of the new Indian territory, to give efficiency to the laws of the Indian government, to protect the peace and persons in that country.

Go in the spirit of the illustrious William Penn, that noble personification of Christianity, and you will have no trouble with the Indians this side of the Rocky Mountains.

6. The outlay for transporting the Indians would cease to be a burden. I believe the Indians would now go of their own accord, did they know that the land could be thus occupied by them.

7. The buying of the land from the Indians over and over would not then have to be done.

8. The peaceful and friendly relations that must then exist would be one of the strongest bonds of union in time of peace, and cause them to be neutral in time of war.

9. Besides the above considerations, there are higher motives which ought to prompt the members of Congress—motives arising in the consideration that you are only forwarding the great design of Heaven, to improve the races of this country. By intelligence enlarge the arena of human freedom, and your leading the Indian may be like the noble eagle's first flight with its young to the sun.

#### ***The advantages to the Indians.***

1. By having permanent homes they would soon enjoy the fruit of their labor. Poverty would be unknown, plenty would reign, and cheerfulness aid them in their work.

2. Seminaries of learning would be permanently located; every stone you laid for the foundation of a school would tell. The repeat removals of the Indians have retarded the progress of moral and physical training among them, and caused many good men to become discouraged in their alms-giving for their improvement. It has not been so much the fault of the Indian as it has been the error of judgment in the distribution of the means.

3. The appropriation by the United States, for the education of the Indians, of \$10,000, would then be a benefit to those for whom it is intended. Let the government endow a college in the central part of the Indian country, and it would have an influence for good to the end of time.

4. And besides this, what an amount would accumulate, were all the school funds which the Indians have even now, given by the government in its generosity for their annuities, and which now many Indian tribes know not what to do with, thus appropriated. Concentration of means and of effort on the part of the benevolently disposed, must necessarily in the process of time, do a great deal of good.

5. In treaties which are to be made, if a policy could be pursued in such a way as to get the annuities of the Indians to be paid in part toward the national education of the whole colony, much of what is needed in reference to means would be so augmented as to give whole districts of [the] country the benefit of an enlightened education.

But say you, How will you reconcile the different denominations of Christians who may go there to teach?

Having no predilection to division and discord, I would not have one dollar of the money which the generosity of the government should give, go toward

perpetuating discordant elements. No! I want to make the great family of the Indians One, should I live long enough—one in interest, one in feeling, one while they live, and one in a better world after death.

6. Emulation among themselves would spring up; and each would labor for the other's good, a spirit of rivalry would soon be seen were a premium to be given to those who should raise the largest amount of agricultural produce.

7. The result of all this would be a rapid increase of intelligence among the Indians, and steps would soon be taken to have a representation in Congress.

It is hoped that, without making any special plea for the red men, that sense of justice which dwells in the heart of every true American will lead the members of Congress to give the above reasons a passing consideration.

Gentlemen:—I herein place before you a Bill which I have drawn up by the request of the Members of the last Indian Committee of the House of Representatives, of last session, which might serve to suggest in the minds of your honorable body, the features of a Bill, and such other additions and alterations as the wisdom of Congress may devise.

*A Bill to Provide for the Organization of an Indian Territory  
East of the Missouri River*

Be it enacted by the Senate and House of Representatives of the United States, in Congress assembled,

That all of that part of the territory of the United States, bounded on the east by the great Sioux river, from its junction with the Missouri up to its source; on the north by a line from the source of the great Sioux river, westward until it strikes the Missouri river, down the channel of said river as the western boundary, to the junction of [the] Missouri river, or place of beginning; shall constitute a Territory to be called "the Kah-ge-ga\* Indian Territory." (Kah-ge-ga, and Indian name of firm, or ever; which would mean "Ever-to-be Indian Territory.")

Section 2d. And be it further enacted, That the said territory shall be forever hereafter reserved for the use of the various tribes who may have a right to the same, and the faith of the United States is hereby pledged, that all that part of the Indian tribes, shall be, and the same is hereby secured to them and to their heirs and descendants forever; and the United States will cause a grant or patent to be made and executed for the same—and in case [of] any two or more tribes, the grant to such tribes shall inure to the benefit of such united tribes shall agree upon. Provided, That such lands shall revert to the general Confederation, if the Indians, for whose benefit such have been or may be made, should become extinct or should abandon them.

Section 3d. And be it further enacted, That each of the tribes residing within the said territory, may establish and maintain such government for the regulation of their own internal affairs, as to them may seem proper; not inconsistent with the Constitution of the United States, or the Laws thereof.

Section 4th. And be it further enacted, that until otherwise provided by the people of said territory, through the general Council, and with the approval of Congress, a government of the said territory shall be appointed by the

President, with a resident Indian to be styled Lieutenant Governor, by and with the advice and consent of the Senate, who shall be, *ex-officio*, Superintendent of the Indian Affairs of said territory for the term of three years, and who shall take an oath of office, and shall receive as Governor and Superintendent an annual salary of three thousand five hundred dollars; and the salary of the Lieutenant Governor, to be annual, two thousand five hundred dollars, which shall be in full of all charges, allowances, and emoluments of whatever nature or kind. And the said Governor and Lieutenant Governor to reside at such place within said territory as may be selected by those occupying it and shall execute such duties as may be enjoined by laws, or as may be directed by the Governor and Council, approved of by the President.

Section 5th. And be it further enacted, That a Secretary of the said territory shall be appointed by the President, by and with the advice and consent of the Senate, for the term of four years, who shall take an oath of office, and shall receive an annual compensation of fifteen hundred dollars which shall be in full of all charges, allowances, and emoluments of whatever kind and nature; and it shall be the duty of the Secretary to reside at the place appointed for the residence of the Governor; he shall keep a record of all the official proceedings of the Governor and Lieutenant Governor of the said territory, and annually transmit copies of the same to the Houses of Congress; he shall discharge the duties of Governor of said territory, provided the Lieutenant Governor is away who is to discharge the duties *ex-officio* during the absence of the Governor or vacation of the office, and shall fulfill all other duties as shall be enjoined by law.

Section 6th. And be it further enacted, That as soon as may be, after his appointment, the said Governor and Lieutenant Governor shall convene at some proper point, a sufficient number of the chiefs or other representatives of the various tribes, who may reside within the said territory, and shall submit to them for their assent, such of the provisions of this Act as require the co-operation of the authorities of the respective tribes, in order to carry the same into effect, and such assent, if given, shall be in writing and in duplicate; one of which duplicates shall be preserved in the office of said Governor. Provided, the articles of confederation shall not be binding upon any tribe unless assented to by the chiefs of such tribes, being previously authorized thereto, or unless they shall, be ratified by such tribe. Provided also, That such confederation shall not take effect until the tribes assenting thereto shall in the aggregate, number at least one-fourth of the whole amount, and thereafter other tribes in said territory may join said confederation and become members thereof.

Section 7th. And be it further enacted, That a general Council of the tribes giving their assent and forming the confederacy thus provided, shall be annually held at such time and place as may be fixed on by the Governor and Lieutenant Governor; the said Council shall consist of not less than one nor more than five delegates from any tribe, who shall be elected by the respective tribes or selected from the existing chiefs, in proportion to their numbers, which proportion shall be determined by the Governor; the Lieutenant Governor shall preside over the general Council, which shall have power to make all needful regulations respecting the intercourse among the several tribes, to preserve peace, to provide for their common safety, and generally



to enact such laws as the welfare of the confederation shall demand, and as may be necessary to give effect to the purpose of this Act, not inconsistent with the Constitution of the United States; all the laws and regulations adopted by the said Council shall be submitted to the Governor for his consideration, and shall have no force unless approved by him; the Governor shall also have power to convene the said Council upon extraordinary occasions, and at all times to adjourn it; and the members of the Council shall, until otherwise provided, receive from the United States three dollars each, per day, during the attendance at the session thereof, and their reasonable expenses, to be settled by the Governor, in going to and returning therefrom. Provided, That nothing herein contained shall interfere with the right of the general government to regulate between the United States and the Indian tribes within said territory.

Section 8th. And be it further enacted, That all officers and persons in the service of the United states and all persons employed under treaty stipulation, and all persons traveling in or through said territory, and not residents thereof, shall be under the protection of and subject to the laws of the United States, and that they be required to have the usual license to be issued by the agent or agents, to be appointed by the President of the United States; and if any such officer or person shall, within said territory, commit any offense against the laws of any tribe of this confederacy, he may be tried and punished under the laws of said tribe, subject however to the approval of the government, who may confirm or remit the said judgment, or remove such offender from the limits of said tribe. Provided, That when the penalty be death, the judgment shall be forthwith communicated to the President by the Governor, who shall suspend the execution thereof until the pleasure of the President be known; and whenever an Indian of one tribe, or any other person residing therein, except as above provided, shall commit a capital offense upon a member or resident of another tribe, he shall be apprehended, tried and punished in such manner as shall be previously provided by the general Council.

Section 9th. And be it further enacted, That in accordance with pledges heretofore given in treaty with some of the Indian tribes herein proposed to be erected into a Territorial Government, to promote their advancement, protect their interests, and bind them more closely to the government of the United States, it shall be competent for the said confederate tribes to elect in such manner as the general Council shall prescribe, a delegate or commissioner to the Congress of the United States, or government of the same, who shall have the same powers, privileges and compensation as is usual in delegates or commissioners from any territories to have.

Section 10th. And be it further enacted, That it shall be lawful for any of the tribes entering into the confederacy, or the general Council, to adopt as the laws of such tribes or confederacy, any or all of the prohibiting provisions of the laws of the United States regulating trade or intercourse with the Indians and Indian tribes, with such penalties as shall be approved by the Governor, and establish a tribunal for the trial of offenders against the same, and it shall be the duty of the Governor to use all necessary means to carry the same into effect.

Section 11th. And be it further enacted, That the government of the United States shall establish in the center of said territory a military post of sufficient force for the protection of the inhabitants thereof, as well as to secure the Indians from the lawless, and that the officers and persons in the service of the United States so employed, shall be exempt from the previous act of the license of travelers.

Section 12th. And be it further enacted, That nothing in this Act shall be construed as authorizing or directing the violation of any existing treaty between the United States and any of the Indian tribes; nor shall anything in this Act be construed as changing the relation now existing between the United States and any tribe within said territory, which shall not become a member of said confederacy.

The recommendations of the Presidents for these ten or fifteen years back, and the action of the various Indian commissioners on the subject, has induced me to take up the subject, with the idea of benefiting the general interest of the Indians, and accommodating alike the American government.

My observations in the West, during the past season in Wisconsin, Minnesota, Iowa, and the valley of the Missouri, induce me to be sanguine, that whatever arrangement Congress may make for the Indians, for their good, will be hailed with approbation by the North-western Settlers, the missionaries, traders, governors, and others alike interested in the Indians.

As I did not receive an official authority from the present administration before I went to the North-west on a visit to all the Indian tribes, I could not give any official information to Congress, as I had anticipated, before going.

But, however, I hope the administration at present will not forget their verbal promise to me, through my friend the Hon. Abbott Lawrence—"That they will favor any humane measure which Congress, in its wisdom, may devise for the Indian Nations."

The only objection that I have to the country which I have named is the nude state of the country and the lightness of its soil; but this is not the only land which Congress might appropriate for such a purpose, as there are other lands which might be appropriated.

A scheme so vast and so important to the Indians, as well as to the relation of the general government with reference to the Indians, Congress, I hope, will take all necessary consideration which its importance demands; and knowing we have your sympathy, I feel safe in the thought, that you will do justice to the Indian.

I herewith submit letters from the Governors of different States, and others, Mayors, and public men, in recommendation of my scheme; you will observe the kind tone of these letters as a true indication of the manner in which I have been kindly received all over the Union, in pursuance of this object.

My friends have, in some instances, been mistaken in the idea that I was seeking something else than to be placed in a position to do good; and though glad to think that they have been kind in their well wishes, the greatest kindness

they will do me is, to aid me in my endeavors to do good to my unfortunate brethren in this country.

I have been desired to go over to the old world, and advocate the cause of brethren in this country, by my friends. I choose not to do so until I have tried every laudable effort in this country. And if in presenting the subject, I have not presented it in the right spirit, pardon me; yea, at the same time I would invoke your forgiveness for past offenses for my brethren, and hope the accumulated responsibility which our forefathers, on both sides, have thrown upon us, will teach us both to do now, in this our day, what ought to have been done long ago.

In presenting this object before different legislative bodies, during the past season, they, as you are well aware, have passed resolutions, recommending the matter, and should it be necessary others will do so; but it does not seem, in my mind, that it is necessary, since the kindness which the Members of Congress have ever manifested. I shall place the whole of this matter for your disposal, and shall be anxious to see the result. During this winter, until spring, I hope to be in Washington.

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### *Ottawa Laws (Ottawa People, 1850)*

The Ottawa (or Odawa) people originally lived near Lake Huron. Historically, they were closely affiliated with the Ojibwe or Anishinabe and Potawatomi peoples. In the late 1700s Pontiac, one of their most famous leaders, led an intertribal coalition that had some military success against the British. The Ottawa were divided by the American Revolution and the War of 1812, but by the early 1820s most had converted to Catholicism. Like many other tribes in the 1830s, they were facing a United States that was intent on securing as much land as possible for the ever-expanding white population. It was during this decade that they exchanged their last land holdings for territory in eastern Kansas.

Little is known about the “Ottawa laws,” but their tone reveals an interesting mix of rules and regulations aimed at providing some order to what was undoubtedly a disorderly time. Lester Hargrett says that an initial set of laws was “first reduced to writing by the Ottawa about 1840” (2003, 101). And according to the Reverend Jotham Meeker, a missionary of the American Baptist Mission Union, the laws had apparently been developed and were enforced by a council composed of “lawmen” who were elected by the people.

Hargett, Lester. *A Bibliography of the Constitutions and Laws of the American Indians* (Clark, N.J.: The Lawbook Exchange, Ltd., 2003).

———. *Laws and Constitutions of the American Indian Nations* (Millwood, N.Y.: KTO Microfilm, 1976, reel 7, Hargrett #209).

McClurken, James M. *Gah-Baeh-Jhagwah-Buk: The Way It Happened: A Visual Culture History of the Little Traverse Bay Bands of Odawa* (East Lansing: Michigan State University Museum, 1991).

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## Ottawa Laws

### *Stealing to Kill (The Ottawa Translation of These Laws Has Been Omitted.)*

1. If any person shall steal and kill an animal, upon conviction thereof the price of said animal shall be by him paid to the owner; and half the price he shall pay into the treasury.

### *Theft*

2. If any person shall steal an article of property, when it is known the stolen article must be taken. If the owner, upon seeing it, shall discover that it has not been injured, he must take it back. If it be injured, the thief shall pay one price and a half of the article. The full price must be paid to the owner, and the half price into the treasury.

### *Using without Permission*

3. If any person shall, without permission, be seen riding another's horse, for every mile he shall pay 25 cents. The price of horse hire shall be paid to the owner, and the balance into the treasury. If oxen shall be thus stolen, twice the price of ox hire shall be paid—one price of the hire shall belong to the owner, and the balance shall be deposited in the treasury.

### *Indian Horses*

4. If an Indian horse shall come into the Ottawa country no attention shall be paid to him. If any person shall, regardlessly, use him, the same that is paid for an Ottawa horse per mile shall be paid for him. All of it shall be deposited in the treasury.

### *White Person's Beast*

5. If a White person's domestic animal shall come into the Ottawa country, he may be caught, to be taken care of. No person shall be permitted to take him

far off, nor to work him. The person, on taking up such an animal, shall write descriptions of him, which must be taken to Westport and to Wolftown to be nailed to the doors, in order that the owner may know it, who must bring proof before he can take him, and sign his name to a written receipt. If the owner shall not come, he may be kept for one year, and then sold. For each month three dollars shall be charged for keeping him if in the winter, and in the summer two dollars. For every dollar 25 cents shall go to the treasury. Half a dollar shall be charged for advertising.

### *Good Fence*

6. A good fence must be constructed as follows: Eight rails high, and crossed stakes; and so made that neither small pigs nor hogs can get through.

### *Stock Destroying Crops*

7. If ether pigs, hog, cattle or horses, get through a good fence, and damage the crop, the owner of the said animals shall pay for it. But if the fence be not good, and animals get in, and damage the crop, the owner of the field shall lose [*sic*] it and shall neither injure nor kill the said animals.

### *Debts*

8. If any person shall owe his fellow Ottawa, having named a time to pay, and does not pay at that time, the creditor may ask him to set another time to pay, who must then name a time, not far off, but within two months. If he shall not then pay, the creditor may do as he shall think best. If he shall wish to take any articles of property; or animals, he may take them.

### *Revenge*

9. If any person, having his property lawfully taken shall become angry, or threaten to take revenge, or shall injure the other's property, he shall see more trouble. Whatever the lawmen shall decide on, so it shall be.

### *House Breaking*

10. If any person sees a house that is locked, he must not open it, unless he has permission from the owner. If he does regardlessly open it, he shall, on conviction, pay two dollars. One half shall belong to the owner of the house, and the other half shall be deposited in the treasury.

### *Searching*

11. If any person shall miss any thing of his property, he may send the lawmen to search in any suspected house—the owner of which shall submit. If he shall refuse he must stand convicted.

*Re-Exchanging*

12. If any person swops [*sic*] away his horse, and wishes to re-call his bargain, he can do so by paying \$5.00 in cash. All other articles exchanged may be re-exchanged by paying 25 cents on every dollar.

*Bad Stud*

13. If any person shall own a bad stud which shall kill a horse or colt, he must pay to the owner the value of that which is killed.

*Slander*

14. If any person shall injure another by slander, he shall pay to him the amount of injury done to him.

*Burning*

15. If any person shall set fire to the prairie, and burn another's property, he shall pay for what is burnt.

*Whiskey*

16. Whiskey on the Ottawa land cannot come. If any person shall send for it, or bring it into the Ottawa country, he who sends, or he who brings shall pay five dollars, and the whiskey shall be destroyed. Any one sending or bringing the second time, shall forfeit all of his annuity money. For the third offence, he shall be delivered over to the United States officers, to try the severity of the White men's laws.

*Gambling*

17. If any person on the Ottawa land shall be seen at moccasin playing he shall pay two dollars and a half.

*Borrowing*

18. If any person shall borrow or hire a horse, ox or wagon, the time shall be named for returning them, although he may be done using them the daily price of hire shall continue to be paid. If however sickness, or a severe rain storm should prevent, he may be excused. And also, all other articles borrowed must be returned at the time appointed. If they are not returned at the time, regular pay must then commence.—For every day the borrower must pay 12½ cents.

*Residents*

19. Whoever shall live on the Ottawa land must be dealt with if he shall violate any of these laws. He shall also be permitted to prosecute others if he shall be in any way wronged.

*Law Men*

20. When any one shall be elected to be a lawman he must not refuse to serve, unless he shall pay five dollars in order that he may be excused.

*Attendance*

21. The lawmen are required to be present at the Councils wherever held on the Ottawa land—sickness only may hold them back. If they shall carelessly neglect to attend after being informed, they shall pay each one dollar.

*Cancelling Debts*

22. The Ottawas, knowing that much evil has hitherto resulted from their running in debt, now resolve to act differently. Those who, from this time forward, shall go in debt, shall be compelled to cancel all such debts at each annuity payment. If any one shall not, at that time, pay his debts in full, any creditor whose claims have not been cancelled, let him come from wheresoever he may, can then act according to his own wish. He can require the lawmen to seize any property whatsoever belonging to the said debtor which he may wish. If he, the creditor, shall not want the said property, the lawmen must sell it, and make payment. The debtor must also pay over to the law ten cents for every dollar thus collected, which must be deposited in the treasury. Jan. 1850.

*Taxing*

23. For every acre of land cultivated in the Ottawa country ten cents shall be paid.—For older cattle, ten cents per head shall be paid. For horses the same amounts shall be paid which are to be paid for cattle. The above amounts are to be paid once every year, and to be deposited in the treasury. The time for collecting these payments shall be in the month of September. If any one shall fail to pay at that time, and shall not have paid at the annuity payment, his money shall then be taken. January, 1850.

*Poor Tax*

24. Every man living on the Ottawa land shall pay annually 12½ cents. This amount is also to be paid in the month called September, and is to be given for the benefit of the poor.—To be deposited in the treasury. January, 1850.

*Widows and Orphans*

25. On the Ottawa land if a married man shall die, having children, the said children shall own all of his fields, domestic animals, and houses; and the widow shall own every thing else of his personal estate. If the said man shall die without children the woman shall own all. If another person shall take any part of it by force, as a thief is dealt with by the law, so shall that person be dealt with who shall rob the widow and children of what belongs to them. January, 1850.

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*Constitution of the "Government  
by Chiefs" of the Seneca  
Nation of Indians (Seneca of  
Cattaraugus, Allegheny,  
and Oil Springs, 1854)*

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The constitutional revolution that occurred in 1848 with the adoption of the first written constitution inspired intense resistance from the deposed chiefs and their allies, who responded by establishing their own political party, the Chiefs' Party. After successfully gaining power, on November 30, 1854, they drafted a new constitution that sought to restore "a Government by Chiefs" through the adoption of another constitution that was based on the Iroquois nations' traditional customs.

The delegates declared that the 1848 constitution had "failed to secure the welfare of our people" and that it was too complex and expensive for the Seneca people. This attempt to reestablish the chieftainship system, however, failed, in part because the state of New York and the federal government gave their unconditional support to those who supported the 1848 constitution. After this failed attempt to nullify it, the 1848 document remained entrenched.

Hargrett, Lester. *Laws and Constitutions of the American Indian Nations* (Millwood N.Y.: KTO Microfilm, 1976, reel 7, Hargrett #218.

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**Constitution of the Seneca Nation of Indians**

We, the Delegates of the Seneca Nation of Indians, residing on the Cattaraugus, Allegheny, and Oil Spring Reservations, being here assembled in Convention, on the Allegheny Reservation, on this 30th day of November, 1854, recognizing the great truths that government can justly exist only for benefit of the people, and that every people has an unalienable right and power to create, modify, and change their government, from time to time, in such manner as, in their judgment, will best promote their honor and internal tranquility and happiness, and being fully impressed with the conviction that this power of subversion, or of change, should be exercised with the greatest caution, and only for the most substantial reasons, do solemnly declare that the Constitution of December 4, 1848, has failed to secure the welfare of our people; that it has turned out to be too complex for our use, and too expensive for our means; and that the good of



our nation requires a return to a simpler, and more efficient administration of our affairs: Therefore first rendering thanks to the Great Spirit of life, for the blessings which remain to us, and for the power, through the exercise of the right of self-government, of attempting to remove or diminish the evils from which we suffer, and praying that He will continue to regard with kindness this little remnant of his red children, and lead them in the path of safety, we do ordain and resolve, by a vote of more than two-thirds of the members present at this Convention, pursuant to a resolution of the Councilors of the nation, passed in accordance with the said Constitution, to submit to the people of the nation the question whether they will return to the old mode of government by chiefs, with certain restrictions upon the powers of the chiefs, and, to that end, we propose the following Constitution.

I. The government of the Seneca Nation of Indians, residing on the Cattaraugus, Allegany, and Oil Spring Reservations, in the State of New York, shall be “a Government by Chiefs,” according to the ancient forms and customs of the Six Nations, as hereinafter limited and restrained, and subject to the laws of the United States and of the State of New York, so far as they are applicable to the nation and its concerns and have been adopted and sanctioned by the nation or its competent authorities.

II. The chiefs in Council shall have power, from time to time to ratify and adopt such laws for the internal regulation and protection of the nation and of its members as the Legislature of the State of New York, or the Congress of the United States, may have passed or shall hereafter enact. But the chiefs shall not have power, in any manner, to add to, diminish, change, or abrogate this Constitution, nor shall it be added to, diminished, changed, or abrogated, except by a vote of the people.

III. No Indian, nor chief, nor private body of Indians, nor council of chiefs, shall have power to sell, alien, or dispose of any part or portion, or the use or right of occupancy of any part or portion of the said Reservations, or of any or either of them. Such Reservations, and each and every part thereof, remain and are the property of the nation so resident thereon; and no sale or disposition thereof, or of any part or portion thereof, or of the use of any part or portion thereof, shall be made, except by the consent of three-fourths of the people, of both sexes, and of the lawful age of twenty-one years, to be given in writing and in open Council, and such a sale, or disposition, shall be valid as a treaty. This article, however, shall not be construed retrospectively; nor shall it be deemed to interfere with the power the chiefs have, or may be invested with, by the laws of the State of New York, to permit white people to reside on the Reservations for the more convenient instruction of the people in religion, and the arts, knowledge, and sciences of civilization; nor with their powers and control over the mills and common property of the nation; nor with their powers, under any law of the State, which now exists or may hereafter be enacted, to grant rights of way upon and over said Reservations, upon just compensation to the nation, and to the individual Indians who may be damaged thereby.

IV. The connection between said Reservations shall not be severed by the chiefs; nor have they any power in general council or otherwise, by grant or partition, to allot or vest in any Indian or Indians, exclusive title in fee to any

part or parcel of said Reservations, or any of them. The absolute title or fee of the said Reservations, and of every part thereof, shall remain, as heretofore, vested in the nation.

V. The General Council of chiefs shall have no power to impose a direct tax upon the people, upon any pretense, or for any purpose.

VI. The Council of chiefs shall not appropriate, or expend for public objects, more than one thousand dollars a year of the public revenue; but if, in their judgment, a greater expenditure should be necessary, the chiefs in council may submit the question to the people, and, in said submission, shall distinctly specify the amount and object of such extraordinary expenditure, and shall have power to make it only after the free consent of the people shall be given. The form of the consent shall be settled by the chiefs in council.

VII. The United States annuities of money and of goods, and the interest of the Greig and Gibson fund, shall be sacredly and faithfully distributed among and paid to the people, who are entitled to the same. The State annuity of five hundred dollars shall be set apart and devoted to the support of the government by chiefs.

VIII. The General Council shall not exhibit any favoritism towards any one of the religious denominations which exist or may hereafter exist upon the Reservations. All religions and sects shall enjoy equal toleration, provided they shall not disturb or attempt to disturb the present good order of society, and provided they acknowledge the existence of the Supreme Being, or Great Spirit.

IX. The chiefs in General Council shall have power to regulate the tenure by which the Cayugas, Onondagas, and people of other nations, may reside upon the lands of and with our people.

X. The chiefs in General Council shall have power to declare for what causes a chief may be suspended or removed, and, for good cause shown, to suspend or remove chiefs from their station, authority and office.

XI. The right of the people to petition for the redress of wrongs, the removal of grievances, and for proper governmental action, shall be most sacredly maintained and respected.

XII. The acts, laws, resolutions and regulations made and adopted by the chiefs in council prior to 1848, and the by-laws and resolutions adopted, under the Constitution of December 4, 1848, shall continue in force, so far as they are applicable, and shall be applied by the chiefs in council to particular cases, as they shall deem requisite.

XIII. The revenues from the saw mills which now are or hereafter may be in operation upon the Reservations, and from other public property of the nation, after paying therefrom the expenses of the nation to the amount of one thousand dollars, shall be faithfully divided according to the population of the respective Reservations.

XIV. When the Seneca people shall have ratified and adopted this "Government by Chiefs," then the constitution of December 4, 1848, shall thereby be utterly superseded and annulled, saving always all rights and equities vested thereunder.

The foregoing preamble and articles were separately submitted to and passed by the convention, which did thereupon, by a vote of two-thirds of all

the members present, adopt the said preamble and articles, and recommend the same to the adoption of the people.

In witness whereof, by order of the convention, these presents are attested by its officers, and signed by its members.

*Henry Two Guns,  
Chairman, &C.  
Nathaniel T. Strong,  
Secretary of the Convention.*

## 14

## *Chickasaw Nation Constitution (Chickasaw People, 1856)*

The Chickasaw, according to many commentators, did not suffer as profoundly as the other major southeastern Indian nations. Nevertheless, they still lost a majority of their land in various treaty arrangements that were sometimes affected by bribery, the loss of annuities, and internal schisms.

They, too, resisted forced removal but were eventually made to relocate west when they participated in the 1837 Treaty of Doaksville. Although the Chickasaw adopted their first constitution in 1846, no text of that document has been found. Two other constitutions were also drafted in 1848 and 1851, but most people view the 1856 version as the first true formal constitution because it reaffirmed their sovereignty and independence from the Choctaw.

This document provided for a three-branch structure, a public school system, and a detailed bill of rights. This new system, which generated strong opposition, replaced their traditional structure, which had been based on the clan chiefs and a council arrangement, although elements of kin group law endured.

Brightman, Robert A., and Pamela S. Wallace. "Chickasaw," in Raymond D. Fogelson, ed. *Handbook of North American Indians: Southeast* (Washington, DC: Smithsonian Institution, 2004): 478–95.

Champagne, Duane. *Social Order and Political Change: Constitutional Governments among the Cherokee, the Choctaw, the Chickasaw, and the Creek* (Stanford, Calif.: Stanford University Press, 1992).

"Constitution, Laws, and Treaties of the Chickasaws" (Tishomingo City, OK: E. J. Foster, 1860).

## Constitution

We, the people of the Chickasaw Nation, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of [our] own form of Government, do, in accordance with the first, second, fourth and seventh articles of the Treaty between the United States, the Choctaws and Chickasaws, made and concluded at Washington City, June 22d, A.D. 1855, ordain and establish this Constitution for our Government, within the following limits, to wit: Beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles on a straight line below the mouth of False Washita; thence running a north-westerly course along the main channel of said Bayou to the junction of the Three Prongs of said Bayou nearest the dividing ridge between Washita; and Low Blue Rivers, as laid down on Capt. R. L. Hunter's Map; thence northerly along the eastern prong of said Island Bayou to its source; thence due north to the Canadian River; Thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to Red River, and thence down Red River to the beginning; Provided, however, if a line running due north from the eastern source of Island Bayou to the main Canadian, shall not include Allen's or Wapanacka Academy within the Chickasaw District, then an offset shall be made from said line, so as to leave said Academy two miles within the Chickasaw District, north or west and south from the lines of boundary.

### *Article 1*

#### BILL OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and established, we declare that

Section 1. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they have at all times the inalienable right to alter, reform or abolish their form of government in such manner as they may think expedient.

Section 2. All freemen, when they form a social compact, have equal rights, and no man or set of men is entitled to exclusive, separate, public emoluments or privileges, but in consideration of public services.

Section 3. No religious test shall ever be required as a qualification to any office of public trust in this Nation.

Section 4. All men have a natural and indefeasible right to worship God according to the dictates of their own consciences. No man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and preference shall ever be given by law to any religious society, or mode of worship; but it shall be the duty of the Legislature to pass such laws as shall be necessary to protect every religious denomination in the peaceable enjoyment of their own mode of worship.

Section 5. Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of that privilege: and no law shall ever be passed curtailing the liberty of speech, or of the press.

Section 6. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable searches or seizures; and no warrant to search any place or to seize any thing, shall issue without describing them, as near as may be, nor without probable cause, supported by oath or affirmation; Provided, however, that searches for, and seizures of, intoxicating liquors, are not to be considered unreasonable searches or seizures.

Section 7. In all criminal prosecutions the accused shall have a speedy public trial, by an impartial jury. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. And no person shall be holden to answer for any criminal charge, but on indictment or information.

Section 8. All prisoners shall be bailable by sufficient sureties, except such as may, in the opinion of the Judge of the examining court, be guilty of wilful murder.

Section 9. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. All courts shall be open; and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by course of law.

Section 10. No person, for the same offence, shall be twice put in jeopardy of life or limb; nor shall a person be again put upon trial for the same offence, after a verdict of not guilty. And the right of trial by jury shall remain inviolate.

Section 11. The Legislature shall have the power, by law, to prescribe the mode and manner of persons bearing arms in defence of themselves or their country.

Section 12. No person shall ever be imprisoned for debt.

Section 13. The citizens shall have the right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with powers of government for redress of grievances, or other purposes, by address or remonstrance.

Section 14. No power of suspending the laws of this Nation shall be exercised, except by the Legislature or its authority.

Section 15. The legislature shall pass no retrospective law, or any law impairing the obligation of contracts.

Section 16. Polygamy shall not be tolerated in this Nation from and after the adoption of this constitution.

## *Article 2*

### RIGHTS OF SUFFRAGE

Section 1. No idiot, or insane person or persons, convicted of any infamous crime, shall be entitled to the privileges of an elector.

Section 2. All elections by the people shall be by *viva voce*.

Section 3. All free male persons of the age of nineteen years and upwards, who are by birth or adoption members of the Chickasaw tribe of Indians, who shall have resided six months immediately preceding any election in the

Chickasaw Nation, shall be deemed qualified electors; Provided, however, That all Chickasaws who desire, shall be entitled to vote in the first general election held in the Chickasaw Nation under the authority of this constitution.

Section 4. Electors, in all cases, shall be privileged from arrest during their attendance at elections, in going to, and returning from the same, except in cases of treason, felony, or breach of the peace.

### *Article 3*

#### DIVISION OF THE POWERS OF GOVERNMENT

Section 1. The powers of the government of the Chickasaw Nation shall be divided into three distinct departments, and each of them confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another. And no person, or collection of persons, being one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

### *Article 4*

#### LEGISLATIVE DEPARTMENT

Section 1. The Legislative powers of this Nation shall be vested in two distinct branches; the one to be styled the Senate, and the other the House of Representatives; and both together, the Legislature of the Chickasaw Nation. The style of the laws shall be: "Be it enacted by the Legislature of the Chickasaw Nation."

Section 2. The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be one year from the day of the general election. And the session of the Legislature shall be annual, at Tishomingo; commencing on the first Monday in October, in each and every year.

Section 3. No person shall be a Representative unless he be a Chickasaw by birth or adoption, and shall have been an inhabitant of the Chickasaw Nation one year next [i.e., immediately] preceding his election, and the last six months thereof a citizen of the county for which he shall be chosen, and shall have attained to the age of twenty-one years at the time of his election.

Section 4. The Senators shall be chosen by the qualified electors for the term of two years, at the same time and place as Representatives. And no person shall be a Senator unless he be a Chickasaw by birth or adoption, and have been a citizen of the Chickasaw Nation one year next preceding his election, and the last six months a citizen of the senatorial district for which he shall be chosen, and shall have attained to the age of thirty years at the time of his election.

Section 5. The number of Senators shall not be less than one-third nor more than two-thirds of the number of Representatives.

Section 6. The Legislature shall have power, by law, to prescribe the mode and manner of enumerating and apportioning the number of inhabitants necessary for the election of Representatives to the Legislature; Provided, however,

no county shall have less than one Representative until the first enumeration and apportionment by the Legislature. The following shall be the apportionment of Representatives among the several counties, viz: the counties of Pickens and Tishomingo shall elect four Representatives each; the counties of Panola and Pontotoc, shall elect five Representatives each.

Section 7. The Legislature shall divide the Chickasaw Nation into four senatorial districts; Provided, however, until said division, the counties of Panola, Pickens, Tishomingo and Pontotoc shall each respectively constitute a senatorial district. And each senatorial district shall be entitled to elect three Senators.

Section 8. The House of Representatives, when assembled, shall choose a Speaker and its other officers, and the Senate shall choose a President and its officers. And each House shall judge of the qualifications and elections of its own members; but contested elections shall be determined in such manner as shall be directed by law. And a majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

Section 9. Each House may determine the rules of its own proceeding; punish members for disorderly conduct; and, with the consent of two-thirds, expel a member, but not a second time for the same offence.

Section 10. Each House shall keep a journal of its proceedings and publish the same. And the yeas and nays of the members of either House, on any question, shall, at the desire of any three members present, be entered on the journal.

Section 11. When vacancies happen in either House, the Governor, or the person exercising the power of Governor, shall issue writs of election to fill such vacancy.

Section 12. Senators and Representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same.

Section 13. The doors of each House shall be open, except the Legislature have a treaty under consideration.

Section 14. Neither House shall, without the consent of the other, adjourn for more than three days.

Section 15. Bills may originate in either House, and [be] amended, altered or rejected by the other; but no bill shall have the force of a law until it be read in each House two several days, and free discussion allowed thereon, unless two-thirds of the House in which the same shall be pending may deem it expedient to dispense with this rule. And every bill having passed both Houses, shall be signed by the Speaker and President of their respective bodies.

Section 16. All bills for raising a revenue for the support of the government of the Chickasaw Nation shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

Section 17. Each member of the Legislature shall receive from the public treasury a compensation for his services, which may be increased or diminished by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

Section 18. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this Nation, which shall have been created, or the emoluments of which shall have been increased during such term; except such offices as may be filled by elections by the people.

Section 19. No person, who may hereafter be a collector, or holder of public moneys, shall have a seat in either House of the Legislature, or hold any other office created under the constitution, until such person shall have accounted for, and paid into the treasury, all such sums for which he may be accountable.

Section 20. No money shall be drawn from the treasury but in consequence of an appropriation made by law. An accurate statement of the receipts and expenditures of public moneys shall be attached to, and published with the laws, at every regular session of the Legislature.

Section 21. The members of the Legislature shall receive, for their services, three dollars per day, until otherwise fixed by law; and be paid out of the public treasury.

Section 22. The House of Representatives shall have the sole power of impeachments; and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend only to removal from office, and disqualification from holding any office of honor, trust, or profit, under this Nation; but the parties convicted shall, nevertheless, be subject to indictment, trial, and punishment, according to law.

Section 23. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office during the pendency of their impeachment. The appointing power shall make a provisional appointment to fill the vacancy occasioned by the suspension of an officer, until the decision on the impeachment.

Section 24. The Legislature shall provide for the trial, punishment, and removal from office, of all other officers of this Nation, by indictment or otherwise.

## *Article 5*

### EXECUTIVE DEPARTMENT

Section 1. The Supreme Executive power of this Nation shall be vested in a chief Magistrate, who shall be styled "The Governor of the Chickasaw Nation."

Section 2. The Governor shall be elected by the electors of the Nation, at the time and places of elections for members of the Legislature, and shall hold his office two years from the time of his installation, and until his successor shall be qualified; but shall not be eligible for more than four years in any term of six years.

Section 3. No person shall be eligible to the office of Governor unless he shall have attained the age of thirty years, and shall have been a resident of



this Nation for one year next preceding his election. Neither shall any person, except a Chickasaw, by birth, or an adopted member of the tribe, at the time of the adoption of this constitution, be eligible to the office of Governor.

Section 4. The returns of every election for Governor shall be made out, sealed up, and transmitted to the National Secretary, at the seat of Government, who shall deliver it to the Speaker of the House of Representatives, during the first day of its organization, who shall proceed immediately to open and count the votes in the presence of both Houses of the Legislature. The person having a majority of the whole number of said votes shall be declared by the Speaker to be Governor. But if no person shall have a majority of said votes, or if two or more shall have an equal and the greatest number of said votes then said Legislature, on the second day of its organization, by joint vote of both Houses, shall proceed, without debate, to choose a Governor from a list of the names of the two persons having the greatest number of votes, or of the names of the persons having an equal and highest number of votes, so returned, as aforesaid.

Section 5. The Governor shall receive for his services a compensation, to be fixed by law, which shall neither be increased nor diminished during his continuance in office. The first Governor shall receive an annual salary of seven hundred and fifty dollars, and no more.

Section 6. He shall take care that the laws be faithfully executed.

Section 7. He may, by proclamation, on extraordinary occasions, convene the Legislature; and shall state to both Houses, when assembled, the purpose for which they shall have been convened. He shall, from time to time, give to the Legislature information, in writing, of the state of the Government; and recommend to their consideration such measures as he may deem expedient.

Section 8. In case of a disagreement between the two Houses with respect to the time of adjournment, the Governor shall have the power to adjourn the Legislature to such time as he may think proper: Provided, it be not beyond the time fixed for the meeting of the next Legislature.

Section 9. No person shall, while holding any office under this Nation, exercise the office of Governor.

Section 10. There shall be a seal of this Nation, which shall be kept by the Governor, and used by him officially; and shall be called "The Great Seal of the Chickasaw Nation."

Section 11. All commissions shall be in the name and by authority of the Chickasaw Nation, and be sealed with the Great Seal, signed by the Governor, and attested by the National Secretary.

Section 12. Every bill which shall have passed both Houses of the Legislature, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it to the House in which it shall have originated, who shall enter the objections at large upon the Journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be reconsidered. If approved by two-thirds of the members present of that House, it shall become a law. But in each case, the votes of both Houses shall be determined by yeas and nays. And the names of the members voting for and against the bill, shall be entered on the Journals of each House

respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it. Every bill presented to the Governor one day previous to the adjournment of the Legislature, and not returned to the House in which it originated, before its adjournment, shall become a law, and have the same force and effect as if signed by the Governor.

Section 13. Every order, resolution, or vote, to which the concurrence of both Houses of the Legislature may be necessary, except on questions of adjournment, shall be presented to the Governor, and before it shall take effect be approved by him; or being disapproved, shall be re-passed by both Houses, according to the rules and limitations prescribed in the case of a bill.

Section 14. Whenever the office of Governor shall become vacant by death, resignation, removal from office, or otherwise, the President of the Senate shall exercise the office of Governor until another Governor shall be duly qualified; and in case of the death, resignation, removal from office, or other disqualification of the President of the Senate, so exercising the office of Governor, the Speaker of the House of Representatives shall exercise the office until the President of the Senate shall have been chosen. And when the office of Governor, President of the Senate, and Speaker of the House, shall become vacant, in the recess of the Senate, the person acting as National Secretary for the time being shall, by proclamation, convene the Senate, that a President may be chosen to exercise the office of Governor. When either the President or Speaker of the House of Representatives shall so exercise the duties of said office, he shall receive the compensation of Governor only; and his duties as President, or Speaker shall be suspended; and the Senate or House of Representatives, as the case may be, shall fill the vacancy until his duties as Governor shall cease.

Section 15. There shall be a National Secretary, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall continue in office during the term of service of the Governor elect. He shall keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before the Legislature, or either House thereof; and shall perform such other duties as may be required of him by law.

Section 16. A National Treasurer, and Auditor of Public Accounts, shall be biennially elected by the joint ballot of both Houses of the Legislature; and in case of vacancy in either of said offices during the recess of the Legislature, such vacancy shall be filled by the Governor, which appointment, shall continue until the close of the next session of the Legislature thereof.

Section 17. When any office shall, from any cause, become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

Section 18. The offices of Governor, National Secretary, Treasurer, Auditor of Public Accounts, and Attorney General, shall be kept at the seat of Government; and the Governor, National Secretary, Treasurer, Auditor of Public

Accounts, and Attorney General, shall attend at the seat of Government, quarterly, and during each session of the Legislature, to attend to the duties of their respective offices.

## *Article 6*

### JUDICIAL DEPARTMENT

Section 1. The Judicial powers of this Nation shall be vested in one Supreme Court, in District Courts, and in such County Courts as the Legislature may, from time to time, ordain and establish, and as may be deemed necessary and be directed by the law.

Section 2. The Supreme Court shall consist of a Chief Justice and two Associates, any two of whom shall form a quorum.

Section 3. The Supreme Court shall have appellate jurisdiction only, which shall be co-extensive with the limits of the Nation, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law: Provided, nothing in this article shall be so construed as to prevent the Legislature from giving the Supreme Court original jurisdiction in capital cases, where the Judge of the District Court may be interested or prejudiced.

Section 4. The Supreme Court shall have power to issue such writs as shall be necessary to enforce its own jurisdiction; and also compel a Judge of the District Court to proceed to trial and judgment in a [case]; and shall hold its session twice in each and every year at the seat of Government, commencing on the first Mondays of the months of April and October.

Section 5. The Supreme Court shall appoint its own clerk, who shall hold his office for four years, and be subject to removal by the said court for neglect of duty, misdemeanor in office, and such other causes as may be prescribed by law.

Section 6. The Legislature shall, by joint vote of both Houses, elect the Judges of the Supreme and Circuit Courts, a majority of the whole number in joint vote being necessary to a choice. The Judges of the Supreme Court and Circuit Court shall be at least thirty years of age. They shall hold their offices during the term of four years from the date of their commission.

Section 7. The Circuit Courts shall have original jurisdiction over all criminal cases which shall not be otherwise provided for by law, and exclusive original jurisdiction of all crimes amounting to felony, and original jurisdiction of all civil cases which shall not be cognizable before County Judges, until otherwise directed by the Legislature; and original jurisdiction in all matters of controversy where the sum or amount in dispute is over fifty dollars. It shall hold its term in such place in each county as may be by law directed.

Section 8. Each county of this Nation shall constitute one judicial district until otherwise provided for by law.

Section 9. The Circuit Courts shall have power to issue all writs necessary to enforce their own jurisdiction, and have a superintending control and jurisdiction over County Courts, and of all cases of divorce, and of all suits, complaints and pleas whatever, without regard to any distinction between law and equity.

Section 10. There shall be a clerk of the District Courts for each county, who shall have their appointment from the District Judge, and shall hold his office for two years.

Section 11. The Judges of the Supreme Court and District Courts shall receive such compensation for their services as may be provided for by law; and such salaries shall not be increased or diminished during their continuance in office.

Section 12. There shall be established in each county in this Nation a Court, to be called the County Court, which shall have jurisdiction in all matters in controversy in any sum not exceeding the value of fifty dollars.

Section 13. There shall be elected, by the qualified electors of the respective counties, a Judge of the County Court, to be commissioned by the Governor, and hold his office for the term of two years, and until his successor is elected and qualified. He shall, in addition to the duties that may be required of him by law, as a presiding Judge of the County Court, be a Judge of Probate Court, and have such jurisdiction in matters relative to the estate of deceased persons; to appoint guardians, granting letters testamentary and of administration; to settle the accounts of executors and administrators, and guardians; and the District Court shall have original and appellate jurisdiction, and general control over the said County Court, under such regulations as may be prescribed by law.

Section 14. In the trial of all [cases] in equity in the District Court, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury, to be governed by the rules and regulations prescribed in trials at law.

Section 15. No Judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or where he shall have been of counsel in the cause. When the Supreme Court, or any two of its members, shall be thus disqualified to hear and determine any [case] or [cases] in said court, by reason of the equal division of opinion of said Judges, the same shall be certified to the Governor of the Nation, who shall immediately commission the requisite number of persons, learned in the law, for the trial and determination of said case or cases. When the Judges of the District Court are thus disqualified, the parties in controversy may, by consent, appoint a proper person to try the case; but in case of disagreement to appoint a proper person by the parties, the same shall be certified to the Governor, to be proceeded with as in the case of Supreme Judges. The disqualifications of Judges of County Courts shall be remedied as may hereafter be by law prescribed.

Section 16. There shall be one District Attorney elected, by the qualified electors of this Nation, who shall hold his office for two years, and his duties, salary and perquisites shall be prescribed by law. He shall also act as Attorney General for the Nation.

Section 17. There shall be elected, by the qualified electors of each county, one sheriff, and a sufficient number of constables, who shall hold their offices for two years; and the duties, salaries and perquisites shall be prescribed by law. The sheriff shall not be eligible more than four years in every six.

Section 18. All Judges of the several courts of this Nation shall, by virtue of their offices, be conservators of the peace throughout the Nation. The style of all writs and process, shall be, "The Chickasaw Nation." All prosecutions shall be carried on "in the name, and by the authority of the Chickasaw Nation," and conclude "against the peace and dignity of the Nation."

### *General Provisions*

Section 1. Members of the Legislature, and all officers, shall take the following oath, or affirmation, before they enter upon the duties of their offices: "I (A.B.) solemnly swear, (or affirm,) that I will faithfully and impartially discharge and perform all the duties incumbent on me, as——, according to the best of my skill and ability, agreeably to the constitution and laws of the Chickasaw Nation, so help me God."

Section 2. Treason against this Nation shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. And no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court. And any person guilty of treason shall suffer death.

Section 3. All property, both real and personal, of the wife, owned and claimed by her before marriage, and that acquired afterwards, by gift, devise, or descent, shall be her separate property. And laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property, as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Section 4. Divorces from the bonds of matrimony shall not be granted but in cases provided for by law, by suit in the District Court of this Nation.

Section 5. The Chickasaw captains, holding office under the Financial Constitution of the Chickasaws, shall continue to hold their offices, as superintendents of the payment of the Chickasaw annuity, until the fourth Monday in August, 1857.

Section 6. The Legislature, at its first session, shall determine the number of Annuity Captains, as well as to prescribe the mode and manner [in which] they shall be chosen, to superintend the payments of Chickasaw annuities.

Section 7. Every person shall be disqualified from holding any office or place of honor or profit, under the authority of this Nation, who shall be convicted of having given or offered any bribe to procure his election or appointment. Laws shall be made to exclude from office and from suffrage, and provide for the mode and manner of punishing those who may hereafter be convicted of bribery, perjury, or other high crimes and misdemeanors.

Section 8. All persons, other than Chickasaws by birth, who have been adopted as members of the Chickasaw tribe, either by common consent, in council, at any time previous to the adoption of this constitution, or who drew land and the Chickasaw annuities under the treaties of 1832 and 1834, between the United States and the Chickasaw Nation, are hereby declared to be Chickasaws by adoption, and shall be entitled to all the rights, privileges and immunities of this Nation; Provided, they are citizens of either the Choctaw

or Chickasaw Nation at the time of the adoption of this constitution, and have been recognized as such under the Financial Council of the Chickasaws.

Section 9. Any person, other than a Chickasaw, having legally intermarried with a Chickasaw woman, shall participate in the Chickasaw annuities, but shall not be eligible to any office of trust or profit in this Nation. In like manner, a wife, other than a Chickasaw woman, having legally married a Chickasaw husband, shall participate in the annuities of the Chickasaw tribe; Provided, they are residents of this Nation. This rule shall cease in cases where a husband or a wife, other than Chickasaws, die, or be separated from the bonds of matrimony. But such death or separation shall not affect the rights of the children (born during such intermarriage) to participate in all the rights, privileges, and immunities of the Chickasaws.

Section 10. No retrospective payments shall be made, out of the Chickasaw moneys, to any person herein adopted, or which may hereafter be adopted, under this constitution.

Section 11. The Legislature shall have the power, by law, to admit, or adopt any person to citizenship in this Nation, except a negro, or descendant of a negro: Provided, however, that such an admission, or adoption, shall not give a right, further than to settle and remain in the Nation, and to be subject to its laws.

Section 12. Whenever two-thirds of both branches of the Legislature deem it necessary, they may propose amendments to this constitution; and if two-thirds of both branches of the succeeding Legislature approve such amendments, they shall be engrafted to, and form a part of this constitution.

Section 13. The Legislature shall provide for the election of all officers necessary to carry into effect the general and specific powers of the several courts of this Nation not otherwise provided for in this constitution.

Section 14. All marriages which may have been either solemnized by the laws of the Choctaw Nation, or by mutual consent of parties which lived together as man and wife at least six months previous to the adoption of this constitution, are hereby declared to be legalized, to all intents and purposes. The Legislature shall, by law, prescribe the mode and manner by which such marriages may be proven and recorded.

Section 15. The provisions of this constitution concerning the term of residence necessary to enable persons to hold certain offices therein mentioned, shall not be held to apply to officers chosen at the first election by the people, or by the Legislature at its first session; but all Chickasaws by birth or adoption shall be eligible to any office at the first election by the people, or the Legislature at its first session, who have been actual settlers of the Chickasaw Nation one day next preceding their election.

Section 16. All general elections by the people, for officers under this constitution, shall be holden on the second Wednesday in the month of September, in each year. Immediately after the adjournment of this Convention, the Chief of the Chickasaw Financial Council shall appoint a sufficient number of judges and clerks in the several counties of this Nation, to cause polls to be opened in their places of holding County Courts, as established under the Choctaw law, on the second Wednesday in September next, (A.D. 1856,) for the purpose of voting for a Governor, District Attorney, electing Senators, Representatives,

County Judges, Sheriffs and Constables. The certificates of election of Senators, Representatives, County Judges, Sheriffs, and Constables, shall be given by the judges of the election in their respective counties. And the returns for Governor and District Attorney shall be sealed up and transmitted to the Secretary of the Financial Council, to be delivered to the Speaker of the House of Representatives on the first day of its organization, who shall open the same and count the votes in the presence of both Houses of the Legislature.

Section 17. That no inconvenience may arise from the political separation between the Choctaws and Chickasaws, it is hereby declared, that all the rights, privileges and immunities of citizens secured under article 5th of the treaty of June 22d, 1855, to all Choctaws who are now or hereafter may become residents within the limits of the Chickasaw Nation, are fully recognized and protected. And all the rights of property acquired by virtue of the constitution and laws of the Choctaw Nation shall remain precisely in the same situation they were before the adoption of this constitution.

Section 18. Full faith and credit shall be given to all the acts of the Chickasaw Financial Council so far as they are not repugnant to this constitution.

Section 19. The oath of office may be administered by any judge of this Nation.

Section 20. All rights and powers not herein granted or expressed are reserved unto the people; and any law that may be passed contrary to the provisions of this constitution shall be null and void.

### *Public Education*

A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the Legislature of this Nation to make suitable provision for the support and maintenance of Public Schools.

A Superintendent of Public Instruction shall be elected by joint vote of both Houses of the Legislature, who shall keep his office at the seat of government, and shall hold his office for the term of four years from the date of his election, whose duties shall be prescribed by law, and shall receive such compensation as the Legislature may direct.

The Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement; and such other means as shall be inviolably appropriated to the support of general education throughout this Nation.

All contracts which may have been made and entered into between the Board of Trustees of Public Schools and that of the teachers shall be binding; subject, however, to the approval or disapproval of the succeeding Legislature.

### *Slaves*

Section 1. The legislature of this Nation shall have no power to pass laws for the emancipation of slaves without the consent of their owners, nor with-

out paying their owners previous to such emancipation a full equivalent in money for the slave so emancipated. They shall have the right to pass laws to prevent the owners of slaves to emancipate them, saving the rights of creditors. They shall have full power to pass laws which will oblige the owners of slaves to treat them with humanity—to provide for their necessary food and clothing—to abstain from all injuries to them, extending to life or limb: Provided, also, that laws be passed to prohibit the introduction into this Nation of slaves who have committed high crimes in violation of laws of other countries.

Done in Convention, at Tishomingo City, C. N., this, the thirtieth day of August, A.D. 1856.

*Jackson Kemp, Pres. of the Convention.*

*Attest: Geo. D. James, Sec. of the Convention.*

*A. V. Brown, Secretary.*

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## 15

### *Stockbridge and Munsee Tribe Articles of Union and Confederation (Stockbridge and Munsee People, 1857)*

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The Stockbridge, part of the Mohican Nation, and the Munsee, a band of Delaware people, were jointly granted a reservation in Wisconsin in 1856. Both groups had suffered numerous relocations, loss of subsistence, and racial violence. Historically, they had existed in villages governed by chiefs and councilors. The head chief was known as a sachem. Heavily influenced by Christian missionaries, the threat of coercive removals, and congressional pressures to become U.S. citizens, the two tribes settled on a reservation in Shawnee County, Wisconsin, in 1856.

In 1837 the Stockbridge group adopted a written constitution that established an elected council that would meet twice a year and work in tandem with the executive authority of an elected sachem. When the Munsee consolidated with the Stockbridge in 1857, they incorporated many of the elements of the 1837 constitution in their new set of articles of union and confederation. These articles reflect a fairly sophisticated effort on the part of these two combined native peoples to forge a modified governing document consistent with their recent convoluted history, while still displaying some respect for their traditions.



Brasser, Ted J. "Mahikan." In *Handbook of North American Indians*, ed. William C. Sturtevant, vol. 15 (Washington, D.C.: Smithsonian Institution, 1978), 198–212.

Frazier, Patrick. *The Mohicans of Stockbridge* (Lincoln: University of Nebraska Press, 1992).

Hargrett, Lester. *Laws and Constitutions of the American Indian Nations* (Millwood, N.Y.: KTO Microfilm, 1976, reel 7, Hargrett #224).

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## Articles of Union and Confederation

Whereas, the Great Spirit has made bare His Almighty arm in the preservation and establishment of a part of the Muh-he-con-nee, known as the "Stockbridge and Munsee Tribe," on the western part of the Wolf River, on the north side of the southern boundary of the Menomonee Reservation in the State of Wisconsin, therefore,

We the Chiefs, Braves and Warriors of the Stockbridge and Munsee Tribe, being assembled at our new fire-place, at Muh-he-con-nee, in the State of Wisconsin, this sixth day of January, A.D., 1857, having considered that our peculiar situation highly demands combined efforts, in order the more effectually to execute our best intentions and purposes hereinafter enumerated, do hereby voluntarily make, ordain and declare that the following Articles shall be considered as Articles of our Union and Confederation, which shall remain unalterable, unless by common consent.

### *Article I*

There shall be no distinction made of the United Tribe of Stockbridges and Munsee Indians, on account of descent, or birth (saving where character and qualification shall render any person eligible for any post of trust or honor), but all shall alike be entitled to enjoy the rights, privileges and advantages of the Nation.

### *Article II*

That all such of the Stockbridges and Munsees, whether they are now residing in the State of New York, or Wisconsin, or West of the Mississippi, or anywhere in the United States, who were not provided for, either in land or money, shall have the privilege of coming and taking up lots of land on the tract given to the Stockbridges and Menomonees by the Treaty of February 5th, 1856.

### *Article III*

Every male, of the age of twenty-one years or upwards (or under twenty-one years if legally married, in which case he shall be admitted on an equal footing with those of the age aforesaid) shall be entitled to vote for National Officers herein elective.

*Article IV*

Schools and the means of education, shall ever be encouraged.

*Article V*

No person, or any assembly of people, met for the worship of God on the Lord's day, or at any other time, shall be disturbed.

*Article VI*

There shall be a Sachem elected for the term of three years, and five counsellors for the term of one year. One of the counsellors shall be chosen by the Sachem and Counsellors, a Secretary, whose duty it shall be to keep all the nets and proceedings of the Councils, and generally to do such writings of a public nature as shall be required by the Sachem and Counsellors, and in case of the death or resignation, or necessary absence of the Sachem, one of the Counsellors who had received the highest number of votes shall execute all the powers and perform all the duties of the Sachem, during the vacancy occasioned by the resignation, death or necessary absence of said Sachem, and in case of the death or resignation of a counsellor, the Sachem shall by notice, either in writing or otherwise, appoint a time and place to elect another in his stead to serve for the residue of the term. The Sachem and two others who had received the highest number of votes for counsellors, shall constitute the high Court of the Nation.

*Article VII*

A Treasurer, two Peace Makers, two Path Masters and a Sheriff, shall be elected annually on the day of Election, and their powers and duties shall be prescribed by law.

*Article VIII*

The General Election shall be held on the first Tuesday of January, annually, and it shall be the duty of the Secretary to give notice of the day of election by posting up notices in two of the most public places of the town, at least six days before the day of election.

*Article IX*

The election shall be by ballot.

*Article X*

The election shall be opened between the hours of nine and ten o'clock in the forenoon, and shall be kept open until four o'clock in the afternoon.

*Article XI*

The legislative Council and High Court of the Nation shall be held at such time as shall be provided by law.

*Article XII*

The Sachem and five counsellors, or a majority of them, shall adopt such of their original laws—criminal or civil as may be necessary and best suited to the circumstances of the tribe. They also shall have the authority to make other laws in all cases, for the good government of the tribe, not repugnant to any of the articles herein enunciated.

*Article XIII*

## BILL OF RIGHTS

Section 1. All men are born equally free and independent. All power is inherent in, and all government of right originates with the people, is founded in their authority, and instituted for their peace, safety and happiness.

Section 2. The people shall at all times have the right, in a peaceable manner to assemble together to consult for the common good.

Section 3. Excessive bail shall not be required.—Excessive fines shall not be imposed, and cruel and unjust punishment shall not be inflicted.

Section 4. No person shall be deprived of his liberty or property, but by the judgment of his peers or the law of the nation. Should the public exigency make it necessary for the common preservation to take any person's property, or demand his particular service, full compensation shall be made for the same.

*Article XIV*

The Sachem, Councillors [*sic*], Treasurer, Peace-Makers, Path-Masters and Sheriff, shall, before entering upon the duties of their respective offices, take and subscribe, the following affirmation:

“I do solemnly affirm that I will support the constitution and laws of this nation, and that I will faithfully discharge the duties of the office of \_\_\_\_\_ according to the best of my ability.

*Article XV*

Immediately after the signing of the articles herein enumerated, the council will proceed to elect two or three inspectors for the election of such officers as are required, in the foregoing articles, by ballot and who shall act in that capacity to intents and purposes therein during the term in which they are elected.

Agreeably to the foregoing articles of the constitution or union, the following names of persons to the offices to which they are hereby named, were elected by a majority of votes cast, to wit:

*Ziba T. Peters, Sachem, . . .*

## 16

*Proclamation of Neutrality  
by John Ross, Principal Chief  
of the Cherokee Nation (1861)*

As tensions mounted between the North and the South, the Cherokee Nation, internally divided along cultural and class lines (as were many other Indian nations), was courted by both the Confederacy and the Union to side with their respective forces in the impending civil war. Because of prior treaties with the federal government, as well as his fear of the consequences of wartime involvement, John Ross, as principal chief, initially urged neutrality for his nation. This proclamation reflects the strategic efforts of a principled native leader to protect his nation from a conflict that threatened his people's very survival.

The neutral stance of the Cherokee was short lived, however, and before long they, still led by Ross, had negotiated a treaty of alliance with the Confederate forces. With the Confederacy's defeat, however, the national government punished the Cherokee for having sided with its enemies by forcing additional Cherokee land losses via the Treaty of Fort Smith in 1866. During the American Civil War the Cherokee had also fought one another over the issues of slavery, cultural identity, and economic affairs.

Abel, Annie Heloise. *The American Indian as Participant in the Civil War* (Cleveland: Arthur H. Clark, 1919).

U.S. Commissioner of Indian Affairs. *Annual Report, 1863* (1864).

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## Proclamation

Owing to the momentous state of affairs pending among the people of the several States, I, John Ross, principal chief, hereby issue this my proclamation to the people of the Cherokee nation, reminding them of the obligations arising under their treaties with the United States, and urging them to the faithful observance of said treaties by the maintenance of peace and friendship towards the people of all the States. The better to obtain these important ends, I earnestly impress upon all my fellow-citizens the propriety of attending to their ordinary avocations, and abstaining from unprofitable discussions of events transpiring in the States, and from partisan demonstrations in regard to the same. They should not be alarmed by false reports thrown into circulation by designing

men, but cultivate harmony among themselves, and observe in good faith strict neutrality between the States to maintain their rights unimpaired, and to have their own soils and firesides spared from the baleful effects of a devastating war. There has been no declaration of war between the opposing parties, and the conflict may yet be averted by compromise or a peaceful separation. The peculiar circumstances of their condition admonish the Cherokees to the exercise of prudence in regard to a state of affairs to the existence of which they have in no way contributed, and they should avoid the performance of any act or the adoption of any policy calculated to destroy or endanger their territorial and civil rights. By honest adherence to this course they can give no just cause for aggression or invasion, nor any pretext for making their country the scene of military operations, and will be in a situation to claim and retain all their rights in the final adjustment that will take place between the several States. For these reasons I earnestly impose upon the Cherokee people the importance of non-interference in the affairs of the people of the States and the observance of unswerving neutrality between them; trusting that God will not only keep from our own borders the desolations of war, but that He will, in infinite mercy and power, stay its ravages among the brotherhood of States.

Given under my hand, at the executive office, at Park Hill, this 17th day of May, 1861.

*John Ross,  
Principal Chief, Cherokee Nation.*

## 17

### *Laws of the Delaware Nation (Delaware People, 1866)*

The Delaware, also known as Lenape, had experienced numerous removals since their first expulsion from their original territory in the Northeast, near the Delaware River and along the shores of the Atlantic Ocean. They spent time in Pennsylvania, Ontario (Canada), Ohio, Indiana, Missouri, and Kansas before their last major resettlement in 1867, among the Cherokee of Indian Territory, with whom they signed a contested agreement, with ambiguous provisions regarding Delaware autonomy, property rights, and their exact status among the Cherokee.

The Delaware dealt not only with internal cleavages but also with difficulties (which continue even today) in their political relationship with the Cherokee Nation. For instance, in 1977, Ross Swimmer, then chief of the Cherokee Nation in Oklahoma, asserted that the Delaware Tribe had actually ceased to exist from the time it signed

the 1867 agreement, and the BIA affirmed this contention in 1979. The Delaware fought these unilateral decisions, however, and in 1996 regained federal recognition as a separate nation.

The laws of the Delaware, adopted on July 21, 1866, were approved less than a month after the tribe had been forced to sign a land-cession treaty with the United States on July 5, 1866, in which the Delaware sold their Kansas lands and agreed to remove to Indian Territory. Delaware who chose to remain in Kansas were entitled to become U.S. citizens.

Little is known about who authored this set of laws, although Weslager suggests they were most likely written by a non-Indian lawyer to help the tribe cope with the “rude behavior” of those Delaware who had served on the side of the federal government during the American Civil War. He says, however, that the legal code was never really enforced and that it exacerbated the mounting tension between the more traditional-minded Delaware (i.e., those who did not believe in written laws) and tribal members (i.e., those who had adopted Christianity) who were bilingual and advocated Western education. Regardless of who authored these measures, it is clear that the Delaware, like other native nations at the time, were experiencing significant cultural, religious, and economic challenges that were intensified by the tribe’s impending relocation.

Goddard, Ives. “Delaware.” In *Handbook of North American Indians*, ed. William C. Sturtevant, vol. 15 (Washington, D.C.: Smithsonian Institution, 1978), 213–39.

Haake, Claudia. “Identity, Sovereignty, and Power: The Cherokee-Delaware Agreement of 1867, Past and Present.” *American Indian Quarterly* 26(3) (2002): 418–35.

U.S. House of Representatives. Report of the Secretary of the Interior, no. 119. “Laws of the Delaware Nation of Indians.” Serial set vol. 1284, session vol. 2, 39th Cong., 2d sess., H. Exec. Doc. 1, pt. 2 (1866).

Weslager, Clinton A. *The Delaware Indians: A History* (New Brunswick, N.J.: Rutgers University Press, 1972).

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## Laws of the Delaware Nation of Indians

The chiefs and councillors of the Delaware tribe of Indians, convened at their council house, on the reservation of said tribe, adopted July 21, 1866, the following laws, to be amended as they think proper:

### *Article I*

Section 1. A national jail shall be built on the public grounds, upon which the council house is now situated.

Section 2. Any person who shall steal any horse, mule, ass, or cattle of any kind shall be punished as follows: For the first offence, the property of the offender shall be sold by the sheriff, to pay the owner of the animal stolen the price of said animal, and all costs he may sustain in consequence of such theft. But if the offender has no property, or if his property be insufficient to pay for the animal stolen, so much of his annuity shall be retained as may be necessary to pay the owner of said animal as above directed, and no relative of said offender shall be permitted to assist him in paying the penalties of said theft. For the second offence the thief shall be sent to jail for thirty-five days, and shall pay all costs and damages the owner may sustain on account of said theft. For the third offence the thief shall be confined in jail three months, and shall pay all costs and damages as above provided.

Section 3. If any person shall steal a horse beyond the limits of the reserve, and bring it within the limits thereof, it shall be lawful for the owner to pursue and reclaim the same upon presenting satisfactory proof of ownership, and, if necessary, receive the assistance of the officers of the Delaware nation. And it is further provided that such officials as may from time to time be clothed with power by the United States agent, may pursue such offender either within or without the limits of the reserve.

Section 4. Whoever shall ride any horse without the consent of the owner thereof shall, for the first offence, pay the sum of ten dollars for each day and night that he may keep the said animal; and for the second offence, shall be confined in jail for the term of twenty-one days, besides paying a fine of ten dollars.

Section 5. Whoever shall reclaim and return any such animal to the rightful owner, other than the wrongdoer, as in the last section mentioned, shall received therefor the sum of two and fifty-hundredths dollars.

Section 6. In all cases of theft, the person or persons convicted of such theft shall be adjudged to pay all costs and damages resulting therefrom; and in case of the final loss of any animal stolen, then the offender shall pay the price thereof in addition to the costs and damages as provided in a previous section.

Section 7. Whoever shall steal any swine or sheep shall, for the first offence, be fined the sum of fifteen dollars; ten dollars of which shall be paid to the owner of the sheep or swine taken, and five dollars to the witness of the theft. For the second offence, the thief shall, in addition to the above penalty, be confined in jail for twenty-eight days. And for the third offence, the thief shall be confined four weeks in jail, and then receive a trial, and bear such punishment as may be adjudged upon such trial.

Section 8. Whoever shall steal a fowl of any description shall, for the first offence, pay to the owner of such animal the sum of five dollars. For the second offence, in addition to the above penalty, the thief shall be confined in jail for twenty-one days. The witness by whom such theft shall be proven shall be entitled to receive such reasonable compensation as may be allowed to him, to be paid by the offender.

Section 9. A lawful fence shall be eight rails high, well staked and ridered. If any animal shall break through or over a lawful fence as above defined, and do any damage, the owner of the enclosure shall give notice thereof to the owner of such animal without injury to the animal. The owner of such animal

shall therefore take care of the same, and prevent his doing damage; but should he neglect or refuse so to do, the animal itself shall be sold to pay for the damages it may have done. But if the premises be not enclosed by a lawful fence as above defined, the owner of the enclosure shall receive no damages; but should he injure any animal getting into such enclosure, shall pay for any damage he may do such animal.

Section 10. Every owner of stock shall have his or her brand or mark put on such stock, and a description of the brand or mark of every person in the tribe shall be recorded by the national clerk.

### *Article II*

Section 1. Whoever shall maliciously set fire to a house shall, for the first offence, pay to the owner of such house all damages which he may sustain in consequence of such fire; and, in addition thereto, for the second offence, shall be confined to jail for the term of twenty-one days.

Section 2. Should human life be sacrificed in consequence of any such fire, the person setting fire as aforesaid shall suffer death by hanging.

Section 3. It shall be unlawful for any person to set on fire any woods or prairie, except for the purpose of protecting property, and then only at such times as shall permit the person so setting the fire to extinguish the same.

Section 4. Whoever shall violate the provisions of the last preceding section shall, for the first offence, be fined the sum of five dollars, and pay the full value of all property thereby destroyed. For the second offence, in addition to the penalty above described, the offender shall be confined in jail for the term of thirty-five days, and for the third offence the same punishment, except that the confinement in jail shall be for the period of three months.

Section 5. Any person living outside of the reserve cutting hay upon the land of one living on the reserve, shall pay to the owner of such land the sum of one dollar per acre, or one half of the hay so cut.

Section 6. No person shall sell any wood on the reserve, except said wood be first cut and corded.

### *Article III*

Section 1. Whoever shall find any lost article shall forthwith return the same to the owner, if he can be found, under the penalty imposed for stealing such article, for a neglect of such duty.

Section 2. Whoever shall take any article of property without permission of its owner, shall pay the price of the article so taken, and receive such punishment as the judge in his discretion may impose.

### *Article IV*

Section 1. Whoever shall take up any animal on the reserve as a stray, shall, within one week, have the description of such animal recorded in the stray-book kept by the council.



Section 2. If the owner of said stray shall claim the same within one year from the day on which the description was recorded, he shall be entitled to take it after duly proving his property, and paying at the rate of five dollars per month for the keeping of such animal.

Section 3. The title to any stray, duly recorded, and not claimed within one year from the date of such record, shall rest absolutely in the person taking up and recording the same.

Section 4. Whoever shall take up a stray, and refuse or neglect to record a description of the same as provided in section one of this article, shall be deemed to have stolen such animal, if the same be found in his possession, and shall suffer the penalties inflicted of stealing like animals. The stray shall be taken from him and remain at the disposal of the council, and a description of the same shall be recorded in the stray-book.

### *Article V*

Section 1. If a person commit murder in the first degree, he shall upon conviction, suffer the penalty of death. But if the evidence against him be insufficient, or if the killing be done in self-defense, the person doing the killing shall be released.

Section 2. Whoever shall by violence do bodily harm to the person of another shall be arrested, and suffer such punishment as may on trial be adjudged against him; and should death result from such bodily harm done to the person of another, the offender shall be arrested and suffer such punishment as may be adjudged against him.

Section 3. Whoever shall wilfully [*sic*] slander an innocent party shall be punished for such slander at the discretion of the judge.

Section 4. Whoever, being intoxicated or under the influence of liquor, shall display, at the house of another, in a dangerous or threatening manner, any deadly weapons, and refuse to desist therefrom, being commanded so to do, and put up such weapons, either by the owner of the house or by any other person, shall for the first offence be fined the sum of five dollars, and pay all damages which may accrue; for the second offence shall be confined in jail twenty-one days and pay a fine of ten dollars, and pay all damages which may accrue; and for the third offence shall be imprisoned in the jail for thirty-five days, be fined twenty dollars, and pay all damages as aforesaid.

Section 5. Officers shall be appointed to appraise all damages accruing under the last preceding section, who shall hear all the evidence, and render judgment according to the law and the evidence.

Section 6. Whoever shall, being under the influence of liquor, attend public worship or any other public meeting, shall first be commanded peaceably to depart; and if he refuse, it shall be the duty of the sheriff to arrest and confine such person until he becomes sober; and the offender shall pay a fine of five dollars.

Section 7. It shall be the duty of the sheriff to attend all meetings for public worship.

Section 8. No member of the Delaware nation shall be held liable for any debts contracted in the purchase of intoxicating liquors.

Section 9. The United States agent and the chiefs shall have power to grant license to bring merchandise to the national payment for sale, to so many traders as they may think proper for the interest of the nation.

Section 10. It shall be unlawful for any person to bring any kind of drinks, except coffee, on or near the payment ground; and any person who shall offend against this section shall forfeit his drinkables and his right to remain on the payment ground.

Section 11. It shall be unlawful for any one person to bring within the reserve more than one pint of spiritous liquors at any one time. For the first offence against this section the offender shall forfeit his liquors and pay a fine of five dollars; for the second offence he shall forfeit his liquors and pay a fine of ten dollars; and for the third offence he shall forfeit his liquors and be fined the sum of twenty-five dollars.

Section 12. Any person who shall find another in possession of more than one pint of liquor at one time upon the reserve may lawfully spill and destroy the same, and shall use such force as may be necessary for such purpose. Should the owner resist, and endeavor to commit bodily harm upon the person engaged in spilling or destroying said liquor, he shall be taken into custody by the sheriff, and be punished as an offender against the law.

Section 13. The sheriff may lawfully compel any man or any number of men, ministers of the gospel excepted, to assist in capturing any person who shall violate these laws.

Section 14. Whoever shall offer resistance to any capture or arrest, for violating any of the provisions of these laws, shall be punished not only for the original offence for which he was arrested, but also for resisting an officer.

## *Article VI*

Section 1. All business affecting the general interests of the nation shall be transacted by the council in regular sessions.

Section 2. All personal acts of chiefs, councillors, or private individuals in such matters as affect the general interests of the nation, shall be considered null and void.

Section 3. Whoever shall violate the last preceding section by undertaking, in a private capacity and manner, to transact public and national business, shall be imprisoned in the national jail for a period not less than six months, nor more than one year, and shall forfeit his place in office or position in the nation, which place or position shall be filled by the appointment of other suitable persons.

Section 4. Councillors shall be appointed who shall take an oath faithfully to perform their duties to the nation, and for neglect of such duty others shall be appointed to fill their places.

Section 5. Should a councillor go on a journey, so that it is impossible for him to attend the meetings of the council regularly, he may appoint a substitute, who shall act for him in his absence.

Section 6. Certain days shall be set apart for council and court days.

Section 7. The chiefs and councillors shall appoint three sheriffs, at a salary of one hundred and fifty dollars per annum each; one clerk at one hundred dollars per annum, and one jailer at a salary of one hundred dollars per annum, whose salaries shall be due and payable half-yearly; and in case either of the above officers shall neglect or refuse to perform any of the duties of his office, he shall forfeit his salary, and his office shall be declared vacant, and another shall be appointed to fill the office.

Section 8. The chiefs and councillors shall semi-annually, in April and October, make an appropriation for national expenses, which appropriation shall be taken from the trust-fund or any other due the Delawares, and paid to the treasury.

Section 9. There shall be a treasurer appointed annually, on the first day of April, whose duty it shall be to receive and disburse all moneys to be used for national purposes, but the treasurer shall pay out money only on the order of the chiefs and councillors, and for his services shall be paid five per cent, on the amount disbursed.

### *Article VII*

Section 1. It shall be lawful for any person, before his or her death, to make a will, and thereby dispose of his or her property as he or she may desire.

Section 2. If a man dies, leaving no will to show the disposal of his property, and leave a widow and children, one-fourth of his property shall be set aside for the payment of his debts. Should the property so set aside be insufficient to pay all his debts in full, it shall be divided among his creditors pro rata, which pro rata payment shall be received by his creditors in full satisfaction of all claims and demands whatever.

Section 3. If the property so set apart for the payment of debt is more than sufficient to pay all debts, the remainder shall be equally divided among the children.

Section 4. The widow shall be entitled to one-third of the property not set aside for the payment of debts, and the remainder shall be equally divided among the children.

Section 5. If a man die, leaving no widow nor children, his debts shall first be paid out of the proceeds of his personal property, and the remainder, if any, with the real estate, shall be given to the nearest relative.

Section 6. Whoever shall take or receive any portion of the property belonging to the widows and orphans shall be punished as if he had stolen the property.

Section 7. The council shall appoint guardians for orphan children when they deem it expedient so to do.

### *Article VIII*

Section 1. If a white man marry a member of the nation, and accumulate property by such marriage, said property shall belong to his wife and children, nor

shall he be allowed to remove any portion of such property beyond the limits of the reserve.

Section 2. Should such white man lose his wife all the property shall belong to the children, and no subsequent wife shall claim any portion of such property.

Section 3. Should such white man die in the nation, leaving no children, all his property shall belong to his wife, after paying his debts.

Section 4. Should such white man lose his wife, and have no children, one-half of the personal property shall belong to him, and the other half shall belong to his wife's nearest relatives.

Section 5. Should such white man be expelled from the reserve, and the wife choose to follow her husband, she shall forfeit all her right and interest in the reserve.

### *Article IX*

Section 1. No member of the nation shall lease any grounds to persons not members of the nation.

Section 2. Should a white man seek employment of any member of the nation he shall first give his name to the United States agent, and furnish him with a certificate of good moral character, and also a statement of the time for which he is employed and the name of his employer.

Section 3. The employer shall pay all hired help according to agreement.

Section 4. Any person or persons violating any of the provisions of these laws on the reserve shall be punished as therein provided.

Section 5. All white men on the reserve disregarding these laws shall also be expelled from the reserve.

### *Article X*

Section 1. Whoever shall forcibly compel any woman to commit adultery, or who shall commit a rape upon a woman, shall, for the first offence, be fined the sum of fifty dollars and be imprisoned in jail for thirty-five days; for the second offence he shall be fined one hundred dollars, and be confined three months in the national jail; and for the third offence he shall be punished as the court shall see proper.

*Winnebago Tribe Laws and  
Regulations (Winnebago People  
of Nebraska, 1868)*

By the 1860s, the Winnebago, who refer to themselves as the Ho-Chunk (“people of the first voice”), had experienced multiple wars, numerous treaties, and several pressured migrations to various reservations—from Wisconsin, to Iowa, to Minnesota, to South Dakota, and finally to Nebraska—where in 1866 they purchased land from the Omaha people. By the 1870s, however, at least half of the tribe’s members, many of the traditional-minded Ho-Chunk, had opted to return to Wisconsin to rejoin those of the nation who had resisted removal.

The Nebraska-based Winnebago created the following set of laws and regulations to aid in the community’s social stability. The mix of recognized “chiefs” and “salaried police” appointed by the Indian agent indicates some blending of both traditional and contemporary systems of governance.

Hargrett, Lester. *Laws and Constitutions of the American Indian Nations* (Millwood, N.Y.: KTO Microfilm, 1976, reel 7, Hargrett #225).

Lurie, Nancy O. “Winnebago.” In *Handbook of North American Indians*, ed. William C. Sturtevant, vol. 15 (Washington, D.C.: Smithsonian Institution, 1978): 690–707.

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**Laws and Regulations of the Winnebago  
Tribe of Indians**

- I. Any member of the Tribe who may wilfully [*sic*] and maliciously take the life of another, shall be arrested by the Police and tried by the Chiefs, and if found guilty shall suffer death, the mode of death to be determined by the majority of the Chiefs.
- II. Any member of the Tribe who shall maliciously assault another with the intent to kill, shall, upon conviction thereof, be imprisoned for a term of not less than one, nor more than three months, and shall, in-addition thereto, be subject to a fine, or shall perform such labor as may be ordered by the Chiefs as a punishment for the offence.
- III. Any member of the Tribe charged with stealing property of any description from a white man, Indian, or from the United States shall be arrested by

the Police and brought before the Chiefs for trial, and if convicted shall be compelled to restore the stolen property or pay the value thereof to the party injured, and shall be imprisoned and required to perform such labor and for such time as may be deemed adequate to the offence.

IV. Any person who shall wilfully [*sic*] and maliciously kill or destroy a horse or other property belonging to a white man, an Indian, or the United States, shall on conviction be punished in the manner provided in law number three.

V. Any member of the Tribe who shall be found drunk, or who shall bring intoxicating liquors on the Reservation, or in whose possession it may be found, or who may send off the Reservation for it, shall for the first offence be imprisoned for a term not more than thirty, nor less than ten days, and for the second offence shall, in addition to the above punishment, forfeit his next cash annuity payment.

VI. If any Chief of the Tribe or member of the Police force is found drunk, he shall forfeit his next annuity payment, and shall be immediately deposed from office.

VII. If any person shall wilfully [*sic*] and maliciously burn the house or other property of another, or shall by setting fire to the prairie cause burning of another's property, he shall, upon conviction, pay for the property destroyed, and the annuity money due the offender shall be applied in the payment of the debt until the same is fully discharged.

VIII. If any member of the Tribe shall owe a debt to any one of the Tribe, and the debtor shall refuse to pay the same, he shall be brought before the Chiefs and the Agent of the Tribe, who, when satisfied that the debt is just, shall fix a time for its payment, and if the debtor fail to pay the debt in the time named, it shall be the duty of the Chiefs, upon receiving notice of the debtor's failure to pay, to instruct the Police force to at once seize such property as they can find belonging to the debtor, which said property shall be assessed by the Agent, and a sufficient quantity thereof to pay the whole of said indebtedness shall be turned over by the Chiefs to the creditor, and it shall be the duty of the Police force to protect the creditor in the possession of said property.

IX. If a stray animal shall come on the Reservation and shall be taken up by an Indian, it shall be the duty of the Indian who takes up the estray to immediately turn the same over to the Agent of the Tribe, who shall pay the Indian a fair compensation for his expenses and trouble.

X. Any Indian who may wilfully [*sic*] damage the property of another Indian shall be required to pay the injured party such an amount as the Chiefs may deem just and right.

XI. If any Indian or half-breed of the Tribe shall make mischief or create discontent among the Indians it shall be the duty of the Chiefs and Police to report him to the Agent, with the view of having him removed from the Reservation.

XII. Any Chief of the Tribe who may receive a bribe or present in money, goods, or other property for signing his name to a written obligation, acknowledging the indebtedness of the Tribe, or to a petition asking that the debt be

paid out of the annuity money belonging to the Tribe, shall immediately on conviction be deposed from the office.

XIII. It shall be the duty of the Chiefs to see that the children of their respective bands regularly attend the school on the Reservation, and if any scholar who shall have received clothing for attending school shall remain away from school, and the parents or guardians of such child shall fail to send the scholar or clothes back within a reasonable time, he or they shall be made to pay the value of the clothes from the annuity money of the scholar, parents, or guardians.

XIV. Any Chief who shall be convicted of crime, or tainted with corruption, or who shall neglect his band, or fail in any respect to guard over their interests, shall be deposed from office.

XV. If any member of the Tribe shall die in the possession of property, one-half of such property shall be given to his widow and one-half thereof to his children, the children to receive equal shares; if he leaves no children, all of such property shall be given to his widow and if he leaves no widow all of such property shall be given to his children in equal shares; if he has no widow or children all of such property shall go to his nearest relations in such proportions as the Chiefs deem fair and just.

XVI. If any member of the Tribe shall steal a horse or other property from an Indian belonging to another Tribe, he shall, on conviction, be required to return the property stolen to the owner, without delay; or if he cannot return the property, he shall pay to the party injured the full value of the property stolen, and in addition thereto shall forfeit his cash annuity for the two payments next succeeding the commission of the crime, and shall be imprisoned and put to hard labor for a term not exceeding three [months] nor less than one month.

XVII. For the purpose of enforcing the laws of the Winnebago Tribe, and for the prompt punishment of crime, and the preservation of order on the Reservation, there shall be appointed by the Agent of the Tribe a Police force, which shall consist of seven Indians selected from the Tribe, one of whom shall be designated and styled the Captain, who shall have immediate control of the Police, and shall receive a salary of three hundred dollars per year, and one of whom shall be designated and styled Lieutenant, who shall receive a salary of two hundred dollars per year; the residue of the force shall receive a salary of one hundred and fifty dollars each per year. The salaries of the Police, and all necessary and reasonable expenses incurred by them in the performance of their duties, shall be paid out of the annuity money belonging to the Tribe. The Agent shall have power to remove any one or all of the members of the Police force at his pleasure.

XVIII. The Executive and Judicial power of the Tribe shall be lodged in fourteen Chiefs, whose duty it shall be to guard with vigilance the interests of the entire Tribe, irrespective of distinct bands and individuals, to see that the laws are rigidly enforced, and that all offenders, without respect to person or rank, are brought to quick and prompt punishment, and they shall have jurisdiction of all cases arising under the laws of the Tribe. In all cases involving the

innocence or guilt of persons tried before them for violation of law, nine of the Chiefs shall constitute a quorum, and shall have power to decide all questions under the law the same as if the whole number of Chiefs were present; a majority of those present and acting shall be necessary to a decision.

This is to certify that the Winnebago Tribe, in Council assembled at the Winnebago Agency, Nebraska, July 21st, 1868, adopted the foregoing laws for their local government.

*Charles Mathewson,  
U.S. Indian Agent.  
Mitchell St. Cyr,  
U.S. Interpreter.*

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## 19

### *Okmulgee Constitution (Several Indian Nations in Indian Territory, 1870)*

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In the post-Civil War period, along with general reconstruction, the federal government also embarked on several new policy routes vis-à-vis its relationship to Indian nations: It negotiated numerous post-Civil War treaties with tribes who had sided with the Confederacy during the war; devised the Indian Peace Commission to negotiate peace treaties to end growing hostilities with a number of western tribal nations; established a ten-member Board of Indian Commissioners to work with the Secretary of Interior in an effort to improve federal Indian policy; and set the stage for the termination of Indian treaty making, which would come to pass in 1871.

These developments had deep and long-lasting implications for Indian peoples throughout the United States but especially in what was then called Indian Territory, those lands west of the Mississippi River, principally present-day Oklahoma and Kansas, which was even then (and later became) the home of many relocated native nations, including the Five Civilized Tribes.

The Five Civilized Tribes, who had settled in the West, both voluntarily and through the coercive Indian-removal period (1830s–1840s) originally owned all of what is today Oklahoma except for the so-called Panhandle. But as punishment for having signed alliances with the Confederacy, they were forced to surrender much of their western land when they renewed their political relationship with the federal government in the treaties of 1866.



In addition, during the next four years the Five Civilized Tribes and several other tribal nations faced concentrated congressional pressure to establish a territorial government that would have been significantly different from what the general council called for in the 1866 treaties. The Cherokee Treaty, for example, says in article 12 that the tribe will “agree that a general council, consisting of delegates elected by each nation or tribe lawfully residing within the Indian Territory, may be annually convened in said Territory” (Kappler 1903, 726).

The leaders of the tribes vigorously resisted the call for a territorial government, fearing that it would “work our certain and speedy extinction by subjecting us to the absolute rule of a people foreign to us in blood, language, customs, traditions, and interests, who would speedily possess themselves of our homes, degrade us in our estimation, and leave us a prey to the politicians and land speculators, thus destroying the unity of our race and producing national disintegration” (letter from Lewis Downing, principal chief of the Cherokee nation, February 9, 1870).

Tribal leaders responded to this political threat by taking the initiative, and on December 16, 1870, at a general council conference held at Okmulgee in the Creek Nation, they wrote and adopted an intertribal charter called the Okmulgee Constitution. The ten-member drafting committee consisted of representatives from the Five Civilized Tribes, as well as Ottawa, Osage, Eastern Shawnee, Quapaw, Seneca, Wyandotte, Confederated Peoria, Sac and Fox, and the Absentee Shawnee. The cumulative population of the assembled nations was about sixty thousand.

Although this constitution was never ratified by all of the tribes whose delegates had helped draft it, it established an intertribal diplomatic precedent that continued to resonate among those nations for many years to come.

Kappler, Charles J. comp. *Indian Affairs: Laws and Treaties*. 2 vols. (Washington, DC: Government Printing Office, 1903).

Message of the president of the United States communicating a copy of the proceedings of the Council of Indian Tribes held at Okmulgee in December 1870, 41st Cong., 3d sess., Senate Exec. Doc. 26 (Washington, D.C.: January 30, 1871).

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## Constitution of the Indian Territory

Whereas the people of the nations of Indians inhabiting the Indian Territory have agreed by treaty with the Government of the United States, and been by its agents invited to meet in general council under the forms prescribed by the treaties of 1866, and the action thereon of the Government of the United States,

having thus met to frame the laws and arrange the machinery of a government for the country occupied and owned by them, in order to draw themselves together in a closer bond of union, for the better protection of their rights, the improvement of themselves and the preservation of their race, and relying on the guidance and favor of Almighty God to carry out in a consistent and practicable form the provisions of said treaties at the earliest practicable day, do hereby enact and promulgate the following as the constitution or organic law of the said Indian Territory.

### *Article I*

Section 1. All that portion of the country bounded on the east by the States of Arkansas and Missouri, on the north by the State of Kansas, on the west by the Territory of New Mexico and the State of Texas, which has been set apart and guaranteed by the treaties and laws of the United States as a permanent home for the Indians therein lawfully resident, or such as may be in like manner settled therein hereafter, for the purpose of this constitution, shall be known and styled as the "Indian Territory."

Section 2. Each of the nations of Indians, who by themselves or through their representatives may enter this confederacy, do agree that the citizens of each and every one of said nations shall have the same rights of transit, commerce, trade, or exchange in any of the said nations as he has [*sic*] in his own, subject only to consistency with existing treaty stipulations with the United States and the laws regulating trade and intercourse, and under such judicial regulations as herein after provided. But no right of property, or land, or funds owned by any one nation shall be in any manner invaded by citizens of another nation; and it is hereby distinctly affirmed that the rights of each of these nations to its lands, funds, and all other property shall remain the sole and distinct property of such nations. Any Indian nation now represented in this general council, or which may hereafter enter in a legal manner or be now in said Indian Territory, may be admitted to representation, and [to] all the privileges of this joint government, by accepting and agreeing through their proper authorities to the provisions of this constitution.

### *Article II*

Section 1. The powers of this government shall be divided into three distinct departments, to be called the legislative, the executive and the judicial departments of the Indian Territory.

Section 2. No person belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in cases hereinafter expressly directed or permitted.

### *Article III*

Section 1. The legislative power shall be vested in a general assembly, which shall consist of a senate and house of representatives, and the style of their

acts shall be, "Be it enacted," or, "Be it resolved by the general assembly of the Indian Territory."

Section 2. The senate shall consist of a member from each nation whose population is two thousand citizens, and one member for every additional two thousand citizens or fraction greater than one thousand: Provided, Nations with populations less than two thousand may unite and be represented in the same ratio: And Provided Further, That the Ottawas, Peorias, and Quapaws shall be entitled to one senator, and the Senecas, Wyandottes, and Shawnees to one senator, and the Sac and Foxes to one senator.

Section 3. No person shall be eligible to a seat in the general assembly but a bona fide citizen of the nation which he represents, and who shall have attained to the age of twenty-five years.

Section 4. The house of representatives shall consist of one member for each nation, and an additional number for each one thousand citizens or fraction thereof greater than five hundred.

Section 5. The members of the senate and house of representatives shall be elected by the qualified voters of their respective nations, according to their laws and customs, and shall hold their office for the term of two years. Vacancies that may occur shall be filled in like manner.

Section 6. The senate when assembled shall choose a president and its other officers, and the house of representatives a speaker and its other officers; and each shall judge of the qualifications and returns of its own members. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Section 7. Each branch of the general assembly shall keep a journal, and determine the rulings of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offense.

Section 8. The general assembly shall have power to legislate upon all subject and matter pertaining to the intercourse and relations of the nations of the Indian Territory, the arrest and extradition of criminals escaping from one nation to another; the administration of justice between members of the several nations of the said territory, and persons other than Indians and members of said nations; and the common defense and safety of the nations of said Territory. But the said general assembly shall not legislate upon matters other than those above indicated. The general assembly shall meet annually on the first Monday in June at such place as may be fixed upon at their first regular session.

Section 9. Members of the general assembly, and other officers, both executive and judicial, before they enter upon the duties of their respective offices, shall take the following oath or affirmation, to-wit: "I do solemnly swear (or affirm as the case may be) that I will support the constitution of the Indian Territory, and that I will faithfully and impartially discharge, to the best of my ability, the duties of the office of \_\_\_\_\_ according to law: so help me God."

Section 10. The members of the general assembly shall be paid four dollars per day while in actual attendance thereon, and four dollars mileage for every twenty miles, going and returning therefrom, on the most direct route, to be certified by the presiding officer of each house: Provided, no member shall be allowed per diem compensation for more than thirty days at any annual session.

Section 11. Members of the general assembly shall in all cases, except of treason, felony, or breach of peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same.

Section 12. No power of suspending the laws of this Territory shall be exercised by the general assembly or its authority. No retrospective law, nor any law impairing the obligations of contract, shall be passed.

Section 13. Whenever the general assembly shall deem it necessary to provide means to support the government of the Indian Territory, it shall have the power to do so; but no revenue shall be raised not actually necessary and in accordance with law, uniform in its operation through the Territory.

Section 14. All bills making appropriations shall originate in the house of representatives, but the senate may propose amendments or reject the same. All other bills may originate in either branch, subject to the concurrence or rejection of the other.

Section 15. The house of representatives shall have the sole power of impeaching. All impeachment shall be tried by the senate. When sitting for that purpose, the senators shall be on oath or affirmation, and shall be presided over by the chief justice; and no person shall be convicted without the concurrence of two-thirds of the members present.

Section 16. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under this government; but the party, whether convicted, or acquitted, shall, nevertheless, be liable to indictment, trial, and punishment, according to the law, as in other cases.

Section 17. The salaries of all officers created under this constitution, not otherwise provided, shall be regulated by law, but no increase or diminution shall be made in the same during the term for which said officers may have been elected or appointed.

#### *Article IV*

Section 1. The executive power of this Territory shall be vested in a governor, who shall be styled the governor of the Indian Territory, and whose term of service shall be two years, and until his successor shall be elected and qualified. He shall be elected by the qualified electors of each nation on the first Wednesday in April, at the usual places of holding elections of the several nations. The returns of the election of governor shall be sealed up and directed to the secretary of the Territory, who shall open and publish them in the presence of the senate and house of representatives in joint sessions assembled.

The person having the highest number of votes shall be declared governor by the president of the senate; but if two or more shall be equal and highest in votes, then one of them shall be chosen by the majority of votes by joint ballot of both houses of the general assembly.

Section 2. The manner of conducting and determining contested elections shall be directed by law.

Section 3. No person shall be eligible to the office of governor who shall not have attained the age of thirty years.

Section 4. Whenever the office of governor shall be vacant by death, resignation, removal from office, or otherwise, the president of the senate shall exercise the office, until another governor shall be duly qualified. In case of death, resignation, removal from office, or other disqualifications of the president of the senate so exercising the office of governor, the speaker of the house of representatives shall fill the office until the president of the senate shall have been chosen and qualified to act as governor.

Section 5. The governor shall receive at a stated time for his service a compensation to be fixed by law which shall be neither increased nor diminished during the period for which he shall have been elected, nor shall he receive within that period other employment from the Indian Territory.

Section 6. The governor shall from time to time give the general assembly information in writing of the state of the Territory, and recommend to its consideration such measures as he may deem expedient, and shall take care that the laws be faithfully executed.

Section 7. The governor on extraordinary occasions may by proclamation convene the general assembly at the seat of government, to legislate upon such matters only as he may recommend.

Section 8. When vacancies occur in offices, the appointment of which is vested in the governor by and with the consent of the senate, he shall have power to fill such vacancies by commission, which shall expire at the end of the next session of the general assembly.

Section 9. The governor may grant pardons and respites and remit fines for offenses against the laws of this Territory, and shall commission all officers who shall be appointed or elected to office under the laws of the Territory.

Section 10. Every bill which shall have passed both houses of the general assembly shall be presented to the governor; if he approves, he shall sign it; if not, he shall return it with his objections to the house in which it may have originated, which shall enter the objections at large upon the journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered: if approved by two thirds of the members present of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the general assembly by their adjournment prevent

its return, in which case it shall be a law unless sent back within three days after their next meeting.

Section 11. There shall be a secretary of said Territory, who shall be appointed by the governor, with the advice and consent of the senate, and who shall hold his office for two years, and whose duties shall be prescribed by law. He shall also act as treasurer of the Territory until otherwise provided. Before entering upon his duties as treasurer, he shall give bond with such sureties as may be required by law. No money shall be drawn from the treasurer but by warrant from the governor, and in consequence of appropriations made by law. There shall also be appointed, in like manner, one marshal, who shall have power to appoint such deputies as may be authorized. There shall likewise be appointed one attorney general and two district attorneys, whose duties and term of office shall be defined by law.

Section 12. All commissions shall be in the name and by the authority of the Indian Territory, and be sealed with the seal and signed by the governor, and attested by the secretary of the Territory.

### *Article V*

Section 1. The judicial department of the Indian Territory shall be vested in a supreme court, three district courts, and such inferior courts as may be provided by law; but their jurisdiction shall not interfere with the civil and criminal jurisdiction retained to each separate nation by the treaties of 1866.

Section 2. The supreme court shall be composed of the three judges who shall be appointed by the governor, with the approval of the senate, as district judges. Two of said judges shall form a quorum of the supreme court for the transaction of business. Their term of office shall be six years, provided that the office of one of said judges shall be vacated in two years, of one in four years, and of one in six years, so that at the expiration of each two years one of the said judges shall be appointed, as aforesaid. The judge appointed for six years shall be the first chief justice of the supreme court, and upon the expiration of his term the senior judge in office shall be thereafter the chief justice.

Section 3. The supreme court shall meet at the capital, commencing on the first Monday in June and December in each year. The supreme court shall be a court of appellate jurisdiction from the district courts, and original jurisdiction in such cases as may be prescribed by law.

Section 4. The supreme and district judges shall have the power to issue writs of habeas corpus and other process[es] necessary to the exercise of their appellate or original jurisdiction.

Section 5. The district courts shall have original jurisdiction of all cases, civil and criminal, arising from trade or intercourse between the several nations, and all cases arising under the legislation of this government as may be prescribed by law.

Section 6. Writs of error, bills of exceptions, and appeals, may be allowed from the final decisions of the district courts in such cases as shall be prescribed by law.

Section 7. It shall be the duty of the general assembly to divide the Indian Territory into three districts which shall be as nearly equal in territory and population as may be practicable, assign one of the three judges to each district, and provide for the holding of terms of the district court in each, at such times and places as may be deemed expedient.

Section 8. No person shall be appointed a judge of any of the courts until he shall have attained to the age of thirty years, and be a person of good character and suitable qualifications.

Section 9. No judge shall sit on a trial of any case in which he may be interested, or in which he is connected to either of the parties, by affinity or consanguinity, except by consent of the parties; and in case of disqualification of any judge the vacancy shall be filled as may be prescribed by law.

Section 10. All writs and other process shall run in the name of the Indian Territory, and bear test and be signed by the clerk issuing the same.

Section 11. Indictments shall conclude "against the peace and dignity of the Indian Territory."

Section 12. Each court shall appoint its own clerk, whose duty and compensation shall be fixed by law.

### *Article VI*

The general assembly may propose such amendments to this constitution as three-fourths of each branch may deem expedient; and the governor shall issue a proclamation directing all civil officers of the Territory to promulgate the same as extensively as possible within their respective districts, at least six months previous to the annual sessions of the national councils of the nations [that are] parties hereto; and if three-fourths of such national councils at such next annual sessions shall ratify such proposed amendment, they shall be valid to all intents and purposes as part of this constitution.

### *Declaration of Rights*

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare—

Section 1. That all political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit. And they shall have at all times the inalienable right to alter, reform, or abolish their form of government as may be lawfully provided for.

Section 2. The free exercise of religious worship and serving God without distinction of creed shall forever be enjoyed within the limits of this Territory: Provided, that the liberty of conscience shall not be so construed as to excuse acts of licentiousness or justified practices inconsistent with the peace, safety, and good morals of this Territory.

Section 3. No religious test shall ever be required as a qualification to any office of public trust in this Territory.

Section 4. Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of this privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.

Section 5. The people shall be secure in their persons, houses, papers, and possessions, from all unreasonable searches, seizures, and intrusions; and no warrant to search any place or to seize any person or thing shall be issued without describing them as nearly as may be, nor without good cause supported by oath or affirmation.

Section 6. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury of the district wherein the crime shall have been committed; the right of demanding the nature and cause of the accusation, of having the witnesses to testify in his presence, of having compulsory process to procure witness in his favor, of having the right to be heard by himself and counsel, of not being compelled to testify against himself, nor to be held to answer to any criminal charge but on information or indictment by a grand jury.

Section 7. All prisoners shall be bailable before conviction by sufficient surety, except for a capital offence, where the proof is evident or the presumption great.

Section 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted, and all courts shall be open, and every person for an injury done him in his person, reputation, or property, shall have remedy as the law directs.

Section 9. No person for the same offense shall be twice be put in jeopardy of life or limb, and the right of trial by jury shall remain inviolate.

Section 10. No person shall be imprisoned for debt.

Section 11. The citizens shall have the right in a peaceable manner to assemble for their common good, to instruct their representatives, and to apply to those invested with the power of government for redress of grievances or other purposes by petition, address, or remonstrance.

Section 12. The privilege of the writ of habeas corpus shall not be suspended unless the public safety should require it.

Section 13. All powers not herein expressly granted by the nations [that are] parties to this constitution are reserved by them respectively, according to the traditions of their several treaties with the United States.



## 20

*Howard White, U.S.  
Indian Agent, Winnebago  
Agency, Nebraska  
(Winnebago People, 1872)*

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This short segment from Agent White's report details the election process of the Nebraska-based Winnebago. White appears to be pleased with the "electoral process," though it is clear from his tone that he wants to end the chieftainship system.

U.S. Commissioner of Indian Affairs. *Annual Report* (1872).

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### Howard White's Report

Winnebago Agency, Nebraska,  
*Ninth month 17, 1872.*

Respected Friend: I respectfully submit this my fourth annual report of the condition of the Winnebago Indians in Nebraska.

The past year has been marked by a steady improvement in the condition of this tribe. The men have nearly all adopted citizen's clothing; and the women, although they still persist in wearing their peculiar style of dress, I believe will be more easily influenced to adopt a better one when they come to live in houses.

There has been comparatively little sickness among the Indians, and I am able to report an increase of forty in the population during the year, most of which, however, is due to accessions from the Wisconsin branch of the tribe.

*Elections.*—The second annual election for twelve chiefs occurred about the 1st of Fourth month last, and resulted in the choice of seven new men, five of the old ones being re-elected. The interest in this election was much greater than that manifested the year before, and all seemed eager to participate in it, excepting the incumbents, who had concluded that it would be to the interest of the tribe not to hold any more elections.

The manner of voting was in this wise: Each of the old chiefs, and his opponent, selected by the opposition party, stood on opposite sides of the road, where they were joined by their respective supporters, when a count was taken. This plan was found to give much better satisfaction than voting by ballot, which was tried the previous year.

I believe these elections are a step in the right direction, as they not only give to the members of the tribe a republican form of government, and thus pave the way to citizenship, but they tend to break up the old tribal relations, and create a desire among the chiefs to become popular with their bands.

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21

*John S. Wood, U.S. Indian  
Agent, Blackfeet Agency,  
Montana (Blackfeet, Blood,  
and Piegan Peoples, 1875)*

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Although agent Wood had been on the job for less than a year, he clearly took his position seriously and here offers a descriptive account of how the Blackfeet—a confederacy that originally consisted of the Blackfoot, Blackfeet, Blood, and Northern and Southern Piegan—of Montana and Canada historically governed themselves. Wood, however, focused his comments only on the Blackfeet, Piegan, and Blood. He also laid out a strategic plan to forcibly modify the tribes' governing arrangements by introducing three head chiefs and a code of laws that he alleges the Indians adopted with gusto. This document, while providing a decent description of the traditional governing systems of these tribal nations, also importantly evidences the intent and process that federal officials used to radically transform those societies.

This system was intended to replace the band structure (wherein a headman led each band), which had functioned well historically. When conditions warranted, the headmen would gather together, select a leader, and make decisions. The Blackfeet Reservation was established in 1855, but the people had already experienced profound land loss, epidemic diseases, and the destruction of their buffalo-based subsistence economy and would continue to do so. The development of the Canadian-U.S. border also had an adverse affect on these native nations.

U.S. Commissioner of Indian Affairs. *Annual Report* (1875).

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### John Wood's Report

Blackfeet Agency, M.T.,  
*September 25, 1875.*

Sir: In compliance with instructions from your office, I have the honor to submit the following report of the Blackfeet, Blood, and Piegan Indians for the past year.

Having only relieved my predecessor on the 24th day of January last, my report can only embrace such information as my experience has collected during the time since, together with that received from sources deemed reliable.

Believing a knowledge of the traditions, religion, laws, and former condition of these people to be essential to a correct understanding of them, and a matter of interest to the Department, I deemed it proper to collect such information and data as came within my reach, and, though far from perfect, I beg to offer it, thinking such a statement may be of some value in view of the vast wave of civilization and settlement now rapidly spreading over the country and obliterating the past.

The Sakitapix nation, or people of the plains, as they call themselves, are divided into three tribes, viz: Piegans, Bloods or Kanaans, and Siksikas or Blackfeet. Their tribal possessions of land formerly embraced all the country from the forty-seventh degree to the fifty-first degree north latitude, taking in the upper valley of the Saskatchewan and of the headwaters of the Missouri, south and west, at the base of the Rocky Mountains, the lower Saskatchewan plains, or Cree and Assiniboine country, forming their extreme boundary; the total area being about twenty thousand square miles, of which five thousand square miles of their best lands are situated south of the forty-ninth degree parallel, or United States boundary-line. The migrations of the buffalo lead them to hunt north of the line during the greater portion of the summer, but they invariably take up winter-quarters on United States land.

Greatly reduced by almost constant war with other tribes, and the fearful ravages of smallpox, their present number is about 7,000 souls. They all speak the same language, with a slight difference in pronunciation of certain words. Each tribe is divided into a certain number of bands, with a band-chief or war-chief, and a mina maska, or priest of the sun, for each.

The sun, incarnated under the Napea, has been their principal divinity. In olden time the human sacrifice was annually offered in the person of a virgin twelve years old, but in latter years they contented themselves with bloody offerings of cut fingers instead.

The band-chief was responsible to other chiefs for the conduct of those under him, and controlled the war-chief and mina maska, or medicine-man. There were formerly thirty-three of these bands in the nation, each independent of the other, but answerable for all offenses against each to the Exkinoya, or Great Council of the tribe. The same organization and government prevailed in all the tribes, and each enjoyed its independence in all local matters. The Exkinoya of each tribe formed a confederate supreme council for the decision or sanction of all matters affecting the entire nation and the declaration of war or peace with neighboring tribes. Early in the spring of each year the head chief named a day for a general meeting of all the members of the tribe, which is then formed in a single camp for the summer season, under the direction of the soldiers or warriors, for the purpose of celebrating mis-i-mam, or the feast of the sacred seed, which is held for four days preliminary to the surrender of all authority by the band-chiefs over their kinsmen into the hands of the supreme confederate council.

There are seven degrees or classes in the soldiers' lodge, and every male in the tribe is compelled to pass through each degree, or class, before he ranks as a perfect warrior or is entitled to become a member of the supreme council. The probation time is four years in each class, but every year some new members take the places of those advanced to a higher degree. The passage from one class to another is marked by an examination of ability, the selling of insignia of rank to his successor, and the purchase of those belonging to the degree to which he is admitted; the usual price being from two to ten horses, from the lowest to the highest a certain amount of bravery being an indispensable requisite. The first four classes form the West Point education of the future warrior, while the last three prepare him for a statesman among his people. The seventh class, called Exkinoya, is at the head of the soldier lodge, and alone possesses and exercises all judiciary and legislative powers, and whose decision is final. The Exkinoya chief is head chief for the year, and the rest form the senate, while the other chiefs form a body of representatives. The sixth class included all the war-band chiefs; they are charged with the proclamation and enforcement of all laws enacted by the supreme council, the protection of the camp, all police matters, and also the punishment of public offenders. The fifth class busied themselves entirely with the hunting and marching of the camp.

The Exkinoya chief kept his council nearly every day settling differences among the members of the various bands, examining candidates for the different degrees, assigning the band-chiefs to their fall and winter quarters, the Blackfeet north, the Bloods in the middle, and the Piegans south, in the tribal lands. Okan, the feast of the sun, which is the national feast of the Blackfeet, is held for four days as a closing ceremony; after which the Exkinoya and soldiers' lodge dissolve themselves, and the members of the tribe resume their band-camp organization under their respective chiefs and disperse to their fall and winter quarters. About this time the several band war-chiefs, having selected their menu, started on the war-path, having first fixed a day and place to meet their people on the return of the war-expedition.

The foregoing is a brief statement of the customs and organization of these people in the past, showing a knowledge of the value of organization and government, and which prevailed at the time of the white settlement, about twelve years ago. On coming here I found them disorganized and spiritless, the different bands unfriendly, some hostile to each other and without any head-chiefs. They appeared to have no purpose in life except to hunt and procure robes and peltries for the traders. No thought of settlement, no knowledge of the value of agriculture, no comprehension of social or family relations or morality, and without any intelligence whatever except the animal instinct of self-preservation and the cunning that provides for it.

The cause of this strange contrast with their former condition, so far as I can learn, has been the greed of evil white men, who have reaped immense profit from illicit trade in whisky for robes and peltries, and whose immoral conduct, teaching, and example completely debauched the manhood of the Indians and made him the mean, treacherous, lying creature that he generally is, so distrustful of all, especially his agent, who, his enemies have taught him to believe, is his direct foe.

The new boundaries of the reserve allotted by act of Congress approved April 15, 1874, was a source of continual complaint, and which was aggravated by unfounded promises to the Indians that the said act would be rescinded and the former lines restored. The condition of the stock, wagons, tools, and agricultural implements could not be any worse, and this, coupled with the entire destruction of the farm-fence presented an appearance [that was] anything but encouraging. Such, in brief, was the condition of affairs on my arrival January 24 last.

My first object was to call the Indians together, nearly all of whom were scattered at long distances from here. After a considerable exertion I had the satisfaction of seeing them coming in little by little, until I had over five thousand, embracing bands belonging to the different tribes. I immediately commenced counseling them to organize, elect head-chiefs, and pass laws for their government. I urged and talked about the matter for several days, pointed out the evils of their condition, the curse of intemperance, which had destroyed their head-chiefs and so many of their kindred, over one hundred and thirty having fallen victims to whiskey the previous year; pointed to the growing white settlements, and told them they must change their course of life or they would become extinct in a few years, as the buffalo would become very scarce after a few more snows. Five days were passed in preliminary talks between the different bands, at the end of which I had the pleasure of convening them in council for the purpose of electing three head-chiefs and passing a code of laws. Little Plume, White Calf, and Generous Woman were the chiefs elected, and a code of laws was adopted, a copy of which was forwarded [to] your office April last, abolishing polygamy, traffic in women, punishment for theft, and assault or brutal conduct, and establishing the death-penalty for murder. Everything was fully deliberated upon during the three days' council, and the entire proceedings proclaimed and universally understood throughout the camp.

Although hopefully impressed by the manner in which the laws were passed, I was unprepared to find them so rigidly maintained and observed, and also to see the strict sobriety and exemplary conduct of these people here. . . .

These people are steadily progressing at present. Since the establishment of the laws not a single case of their infraction has occurred. No quarrels or intemperance; on the contrary, sobriety and kindness. They are at peace with Indians and whites, and have committed no thefts on either. The occupation of the whisky-trafficker is gone; as the Indians have declared against using his vile poison; but a strict watch must be kept on this class during the coming winter, when the robes and peltries of the Indians will stimulate them to extra exertions. Every precaution will be taken to prevent even a temporary relapse of the people to the misery and degradation of the past.

Very respectfully, your obedient servant,

*John S. Wood,  
United States Indian Agent. . . .*

## 22

J. L. Burchard, U.S.  
Indian Agent, Round Valley  
Reservation, California (Wailaki,  
Yuki, Pit River, Achumawi,  
Pomo, Konkow, Namlaki,  
and Wintun Peoples, 1876)

The indigenous people of the area now known as California were a large and extremely heterogeneous population, numbering in the hundreds of thousands before Spanish intrusion in the early sixteenth century. In successive waves, Spaniards, Mexicans, Russians, and Americans caused significant death and disruption of these varied peoples. Between 1769 and 1848, 90 percent of the native population of coastal California died from epidemic diseases that the Spanish had introduced, according to one estimate (Cook 1978, 81).

The discovery of gold in 1848 and the arrival of more than one hundred thousand gold seekers only exacerbated the situation for indigenous communities. When California attained statehood in 1850, the stage was set for an even more horrific turn of events. During this period, thousands of native people were exterminated despite the fact that the United States had completed eighteen treaties with more than one hundred native groups. California successfully resisted the ratification of these pacts, from which the Indians received no benefits, and their population continued to decline until the twentieth century.

In 1864, when the U.S. Congress authorized the establishment of several reservations, Round Valley was one of three set up by federal officials. Agent Burchard made the following comments about the governing system of the Indians “under his charge,” providing us with an overview of indigenous governance in California that is not widely known.

Cook, Sherburne F. “Historical Demography,” in Robert F. Heizer, ed. *Handbook of North American Indians: California* (Washington, DC: Smithsonian Institution, 1978): 91–98.

Heizer, Robert F., ed. *The Destruction of California Indians: A Collection of Documents from the Period 1847 to 1865 in Which Are Described Some of the Things That Happened to Some of the Indians of California* (Santa Barbara, Calif.: Peregrine Smith, 1974).

Kroeber, Alfred L. *Handbook of the Indians of California* (Washington, D.C.: USGPO, 1925).

U.S. Commissioner of Indian Affairs. *Annual Report* (1876).

## J. L. Burchard's Report

Office United States Indian Agency,  
Round Valley Reservation, Mendocino County, California,  
*September 1, 1876.*

Sir: In compliance with the regulations of the Indian Department, I have the honor to submit the following as my fourth annual report as agent of this reservation. . . .

I reported 192 more Indians on this reservation last year; 126 of this number are deducted from the Wylackie tribe, who are living on Eel River, in Humboldt County; most of them are under the care of Mr. Charles Fenton; as they support themselves without any expense to the Government and are doing well, I deemed it best not to report them. Many others are herding sheep and doing other labor for citizens, so that we have on this reservation at present but the number reported. The people of Healdsburg and vicinity are still anxious to have the Indians there brought to this reservation, and I have had official permission to bring them, and would gladly have done so, but I have no means as yet to defray the necessary expense. I have also received petitions from the citizens of Lake, Sacramento, and Colusa Counties, as well as from different portions of this county, to remove the Indians from their midst. Indians in this country off of reservations, without land of their own to cultivate or a fixed abiding place, live a roving and dissolute life; while drinking, gambling, and other ruinous vices not only impoverish them, but are fast hastening their utter extinction. . . .

### *Government Discipline*

There are no soldiers within one hundred and fifty miles of this agency; none have been needed; the best possible order has prevailed. The Indians have elected representatives from each tribe, who, with their chiefs, have made some laws for their government. They have their marshals and judges, and in all cases an appeal to the agent is provided for. This has been very satisfactory to the Indians. A few cases have occurred where light fines have been imposed, or confinement in the guard-house for a reasonable time, always with a salutary effect. If let alone by bad white men, there would be no trouble whatever. . . .

### *Miscellaneous*

We are in great need of more work-animals, wagons, harness, &c. If Hoopa reservation is discontinued and the Government property brought here, this great need will be met. Unless the reservations in this State are consolidated, all must suffer great embarrassment.

All of which is most respectfully submitted.

Your obedient servant,

*J. L. Burchard,  
United States Indian Agent.*

## 23

*Alex G. Irvine, Navajo Indian Agent (Navajo People, 1877)*

The Navajo, or Diné, people's origin story contains explicit reference to key individuals regarded as leaders. Called *naataanii*, they were selected by the Diyin Diné, or "holy people," to provide discipline for the community. The *naataanii* served as intermediaries between the people and the Diyin Diné. There were both peace and war *naataanii*, and they occasionally met in a gathering (called a *naachid*) to discuss matters of importance.

In the early 1600s Spanish intrusion brought profound changes to Diné society, including efforts to alter their traditional leadership patterns. The Spanish (and later the Mexicans and the Americans) sought to impose their ideas of government on the Diné people by selecting those individuals who might best serve colonial interests.

The bulk of the Diné people were militarily defeated by U.S. forces and imprisoned at Fort Sumner, New Mexico, in the early 1860s. General James H. Carleton, who oversaw the fort's operations, tried to break down the Navajo people's natural political leadership by geographically dividing the camp into sections and then selecting a chief or headman for each segment. But when the Navajo successfully achieved their release in 1868 and negotiated a reservation via the 1868 treaty in northeastern Arizona, they immediately sought to reconstitute their traditional ways of governing.

Although the Navajo's federal agents assigned to the reservation initially accepted the leaders who emerged, they later viewed such leadership as a problem. Eventually they claimed and exercised the power to appoint "head chiefs" for the entire Navajo population and continued to do so until the early 1900s. This account is interesting because it provides a pithy description of Manuelito, one of the Navajo nation's most important political figures. In addition, Irvine's account of the twenty-six-member council may be one of the last descriptions of the historic *naachid*.

Correll, J. Lee. *Through White Men's Eyes: A Contribution to Navajo History—A Chronological Record of the Navaho People from Earliest Times to the Treaty of June 1, 1868* (Window Rock: Arizona Bicentennial Commission, 1976).

Iverson, Peter. *Diné: A History of the Navajos* (Albuquerque: University of New Mexico Press, 2002).

U.S. Commissioner of Indian Affairs. *Annual Report* (1877).

Young, Robert W. *A Political History of the Navajo Tribe* (Tsaile, Ariz.: Navajo Community College Press, 1978).



## Alex G. Irvine's Report

Navajo Indian Agency,  
Fort Defiance, Ariz., September 1, 1877.

Sir: I have the honor to submit the following report upon the condition of affairs at this agency during the past year, and in order to make it intelligent, will first look at the *Navajos* as a tribe, their mode of living, customs, and habits.

The number of the tribe cannot be given with any certainty, and is estimated at from 12,000 to 15,000. There were present, at the distribution of annuity goods, 9,114; counted by Rev. Sheldon Jackson, of Denver, Colo., and First Lieut. Thomas Blair, who was detailed to witness the distribution, and I know it to be correct. Many were accounted for, and no doubt correctly, as being required to take care of the property left at home.

The *Navajos* are a pastoral people, and depend almost entirely upon their flocks of sheep and goats for their subsistence. The character of the country in which they live prevents them from being anything else. . . .

Wool is the principal article for sale and exchange, 200,000 pounds being sold by them this year. Next in order come the *Navajo* blankets; large quantities find their way to Southern Utah in exchange for horses. The blankets are made by hand, and are close, rather hard, and for camping out and saddle have no superiors, and are to be found in use all over the Southwest. Next in order come sheep and goat skins, of which large quantities are annually sold. The sheep industry I consider as of the most importance to the *Navajos*, and should be encouraged by all means, and the possession of horses discouraged; and if I were to make any recommendation at all upon the subject, it would be to allow no horses to be held by any Indian. In their hands they are a power for mischief, and no good ever comes of their possession of them. The horses are used for riding, not work. At first it might seem arbitrary, but it would cause the Indians to remain where they were placed, and be under better control. . . .

Whiskey is sold to the *Navajos* in large quantities at all the settlements around the reservation. The United States statutes should be amended so as to punish any who sell whiskey to Indians, either on or off the reservation.

The only unpleasantness or difficulty during the past year was on account of the change in the manner of issue of supplies, commenced January 1, 1877, when all refused to give their names, number of families, &c., when I stopped the issue to all who refused to comply, obtained a guard of ten men from Fort Wingate, and placed them over the Government stores. When they saw that I was determined, all the *Navajos*, with the exception of a few chiefs, submitted. I am having the same difficulty at the present time, enrolling for census required under act of March 3, 1877. A correct census has never been made; the nearest attempt was made by the agent in 1874, when he succeeded in enrolling 1,600 families, when the *Navajos* drove the agent, his family, and nearly all the employees from the reservation. The opposition comes from the council or chiefs, not from the *Navajos*. They are under the lead of Manuelito, who has been a disturber ever since the *Navajos* were placed upon the present

reservation. The council is composed of 26 chiefs or headmen, and they consider every pound of supplies and all the annuities as under their control and for their personal benefit. I have done much during the two years past to do away with that idea, but they are very tenacious and still hold out. I can very truly say that the 26 chiefs have given me all the trouble I have had at this agency, and they will do the same with any other agent.

Very respectfully, your obedient servant,

*Alex. G. Irvine,  
United States Indian Agent.*

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## 24

### *Objections of the Indian Delegations to a Bill Authorizing an Indian Delegate to the U.S. House of Representatives (Cherokee, Creek, Seminole, Choctaw, and Chickasaw Peoples, 1878)*

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Although several hundred tribal nations signed treaties with the United States, only two—the Delaware in 1778 and the Cherokee in both 1785 and 1835—negotiated accords with the federal government that granted those nations the right to have representation in the U.S. Congress. The Delaware Treaty states that the tribe was permitted to “form a state whereof the Delaware nation shall be the head, and have a representation in Congress” (7 Stat. 13).

The Cherokee Treaty of 1785 states that the Cherokee “shall have the right to send a deputy of their choice whenever they think fit, to Congress” (7 Stat. 18). And the Cherokee Treaty of 1835 declares that they “shall be entitled to a delegate in the House of Representatives of the United States whenever Congress shall make provision for the same” (7 Stat. 478). Neither the Delaware nor the Cherokee have ever actually had congressional representation, but the debate over the Cherokee Nation’s status and that of the other so-called Five Civilized Tribes intensified in the 1870s as demographic and intergovernmental tensions mounted.

The ensuing document is a vociferous and negative collaborative response by representatives of the Five Civilized Tribes to a pending bill that would finally have fulfilled the congressional representation

provision of the 1835 Cherokee Treaty. It would have provided a delegate to represent not only the Cherokee but all of the Five Nations as well. The native delegates resisted largely on the basis of sovereignty and their deep concern that they were being enfranchised without their consent.

Rosser, Ezra. "The Nature of Representation: The Cherokee Right to a Congressional Delegate." *Boston University Public Interest Law Journal* 15(91) (Fall 2005): 91–152.

U.S. Congress, House of Representatives. "Delegate in Congress from the Indian Territory—Objections of the Indian Delegations." 45th Cong., 2d sess., Misc. Doc. 32 (1878).

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## Objections of the Indian Delegation

Delegate in Congress from the Indian Territory.

Objections of the Indian Delegations to the bill H.R. 2687, and kindred measures in the Congress of the United States, providing for a Delegate in Congress from the Indian Territory.

February 25, 1878.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the Honorable the Congress of the United States:

The undersigned, duly appointed and accredited delegates of the Cherokee, Creek, Seminole, Choctaw, and Chickasaw Nations of Indians, respectfully ask leave to invite attention, as we now do, to the several bills now pending before the Senate and House of Representatives entitled generally as bills "to authorize the election of a Delegate to Congress from the Indian Territory." Our object in calling the attention of your honorable body to these bills is to inform you that we object to their passage, or either one of them, and ask that no such measures be enacted by you, for the following reasons:

1st. They propose to violate or supersede the Cherokee treaty of 1835. (Revision Ind. Treaties, p. 70) Article 7 of that treaty provides: "...It is stipulated that they (the Cherokees) shall be entitled to a Delegate in the House of Representatives of the United States whenever Congress shall make provisions for the purpose." By reference to the treaty provision it will be seen that the Cherokees will simply be "entitled" to a Delegate when Congress shall have made provision for such contingency. There is no provision in the treaty that would compel the Cherokees to elect and send a Delegate to Congress though Congress might make provisions for that purpose. The matter of availing themselves under the treaty of the privilege to send a Delegate to Congress is clearly left to the relation of the Cherokee should Congress make provisions for such Delegate. The bills under consideration make no provision for the assent of the

Cherokees or any other Indian nation to be affected by them. Indeed they are just the reverse; so that if either one of them becomes a law the Indian nations within its purview will be compelled by its terms to elect and send a Delegate to Congress, whether they choose to do so or not. Furthermore, the treaty quoted applies only to the Cherokees, and does not apply to the Choctaws, Chickasaws, Creeks, and Seminoles, and they have never assented to its provisions. It would therefore be manifestly wrong to apply these provisions to the people of these nations without their consent, especially when they are protesting against it. If the Cherokees should ever be entitled to a Delegate in Congress by virtue of Congressional action, as their treaty provides, they should exercise their own choice as to availing themselves of the privilege that might thus be given, and should, moreover, control their own elections for the purpose, at which no voters should be allowed except bona fide citizens of the nation; and such elections should not be interfered with or controlled in any manner by the Secretary of the Interior or any other officer of the United States, because the Cherokee Nation is not a Territory of the United States, nor are its citizens to be considered as citizens of the United States. The bills referred to, notably the one H.R. 2678, as a substitute for bill H.R. 979, and reported from the Committee on Indian Affairs [on] January 22, 1878, is sweeping in its character, and includes not only the Cherokees, but also takes in its scope the Choctaws, Chickasaws, Creeks, and Seminoles, and declares that the Delegates provided for shall be elected under the direction of the Secretary of the Interior, and that the election shall be conducted by such persons as he may appoint, and that he shall issue the certificate of election, as though the citizens of said nation were actually citizens of the United States and embraced within the territory of the United States. To show further that this is the tendency of the bill we need only refer you to its fourth and last section, which provides that all elections, after the first one, for a Delegate, "shall be held at the times prescribed by the existing laws of the United States for holding elections in the organized Territories of the United States, and the manner of holding said elections shall be prescribed by the Secretary of the Interior until otherwise provided by law." It will thus be seen that the elections for Delegate under the bill depend upon the laws of Congress already enacted for the "organized Territories" of the United States, and to other subsequent acts of Congress looking in the same direction, and not upon the legislative enactments of the Indian nations to be affected; and, furthermore, that the people of these nations are not to be consulted at all as to the manner of such elections, that matter being left entirely with the Secretary of the Interior, until "otherwise ordered" by Congress. These facts are enough to show you that the bill in question denies the Indians the highest and most sacred right of freemen, viz, the right of controlling their own elections; and, furthermore, proposed to make or consider the Indians as citizens of the United States, when they are in fact no such citizens. Indeed, by the Constitution of the United States no people can be represented in Congress but citizens of the United States, because no one can vote to elect a Representative but such citizens; so that the logic or result of the bill will be to make the Indians it affects citizens of the United States, who will thereafter be subject to taxation the same as other citizens, for it is a principle of your government that representation and taxation are inseparable.

There is a provision (fourteenth amendment) in your Constitution that declares in effect that all persons born in the United States and “subject to its jurisdiction” are citizens thereof, and are entitled to representation, “excluding Indians not taxed.” Also you have a statute (see Revised Statutes, Title XXV, s. 1992, p. 351) which declares that “all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.” If this bill becomes a law the Indians will be subject to the “jurisdiction of the United States,” because they (the Indians) will be, in the important privilege of their representation in Congress, subject to the control of the Secretary of the Interior and the Congress of the United States. This situation of affairs, giving the United States Government jurisdiction over the Indians, will, of course, make the Indians citizens of the United States, and as such they will be subject to taxation, and will no longer be Indians within the political meaning of the Constitution and statute referred to. In view of such a state of affairs, and of the further fact that no people are entitled to representation in the Congress of the United States except citizens of the United States, it cannot be denied that the bill under consideration, if it become a law, will have the effect of making the Indians it affects citizens of the United States. Such a radical change in the political status of our people would of necessity destroy their autonomy, and would at once destroy our own national organizations—a consummation which we are neither authorized nor disposed to accept, and which would be palpably in violation of all of our treaties and the public faith of your own government.

2d. The bills under construction are plainly violative of article 8, section 9, of the Choctaw and Chickasaw treaty of 1866. (See Revision Indian Treaties, p. 291.) That section provides that, whenever Congress shall make provision for a Delegate to Congress from the Indian Territory, such Delegate shall be elected by the general Indian “council” provided for in the treaty. This section provides as follows: “Whenever Congress shall authorize the appointment of a Delegate from said (Indian) Territory, it shall be the province of said council to elect one from among the nations represented in said council.” The bill in question entirely *ignores* this Indian council, in the matter of electing the Delegate provided for, and, as before stated, places such elections at the control of the Secretary of the Interior, and such acts of Congress as now exist or may hereafter be passed by Congress relating to the Territories of the United States. That this is the case, we cannot but be greatly astonished, as this legislative council, or Indian congress, is plainly provided for, and its jurisdiction clearly defined by the several treaties of 1860 between the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles. (See In. Treaties, pp. 90, 119, 289, 815.) This general Indian congress was organized in December, 1869, by the Interior Department, as authorized by treaty, and was legitimized by an act of the Forty-first Congress in 1870 (see U.S. Stats. 16, p. 359) when the sum of \$10,000 was appropriated to pay its expenses for that year. Every Congress, including the Forty-first, Forty-second, Forty-third, and Forty-fourth, has made appropriations to pay the expenses of this council, and there is now in the Treasury Department, subject to the expenses of said council, the sum of \$5,000, appropriated by the last (Forty-fourth) Congress. A notable feature of this organic act of Congress

of 1870 is that it provides, in accordance with the treaties of 1866, that other Indians of the Indian Territory, besides the Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles, shall be represented in the council, in the following proviso: "Provided, That any other Indian tribe, permanently located in said Indian Territory, shall be and is hereby authorized to elect and send to said 'general council' one delegate, and, in addition, one delegate for each one thousand Indians, or fraction of a thousand greater than five hundred, being members of such tribe, on the same terms and conditions and with the same rights and privileges, including right to compensation, as is provided for delegates of the tribes (Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles) hereinbefore mentioned, and a sufficient sum to pay the *per diem* and mileage of such additional delegates is hereby appropriated."

Also, in establishing this council, the census of the Indians was taken according to the treaties for that purpose; and, agreeable to which, the Secretary of the Interior is directed by the treaties to apportion the number of delegates to the council to which such tribe or nation is entitled according to the ratio provided by the treaties; and the Indian nations have accordingly passed laws (now in their statute-books) providing for the election of such delegates, who have been duly elected, as any other officers, and are commissioned, and are now members of the council. The several annual reports of the Indian Bureau and the Board of Indian Commissioners, since that time, show that there are represented in this general Indian council, at present, thirty-two distinct Indian tribes of the Indian Territory, making twenty-seven tribes besides the original ones—Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles; and but a few days since the Indian Department made estimates to Congress for the usual appropriations for this council, which, according to treaty stipulations, Congress is as much bound to appropriate as it is our current annuity funds. It will thus be seen that this Indian council (or congress) has, in good faith to the Indians, been as legally established as any other legislative body that the United States Government has ever authorized, and is still in existence; and we respectfully insist that Congress has no right to pass the bill referred to, or any other measure, in disregard of this council.

3d. This bill is not what it pretends to be. It assumes to be for the purpose of allowing the "Indian Territory" to have a Delegate in Congress, and its scope is confined to but five of the nations of that country, viz, the Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles. The other twenty-seven tribes of that country—the Osages, Quapaws, Senecas, Potawatomes, Comanches, Chiens, and Arapahoes, &c.—are entirely denied any representation. These Indians all have representation in the general Indian council now in the country, and are as much entitled to be represented as the nations named in the bill, as all alike reside in the Indian Territory, and the treaty obligations of all are equally binding on the United States Government. It seems to us that the simplest principles of common justice would require these Indian tribes to be also heard in choosing a Delegate to represent them. And further, we would, in this connection, beg to remind you that the Creeks and Seminoles, and the other tribes in the Indian Territory (about twenty-seven in number) that are not named in the bill, have never, either directly or indirectly, given their consent

that Congress should legislate for the appointment or election of a Delegate to represent them in Congress.

For the general reasons hereinbefore set forth, we respectfully protest against the passage by Congress of the bill H.R. 2687, or any kindred measure, providing for a Delegate in Congress to represent the Indian Territory.

*We have the honor to be, with great respect, your obedient servants,*

*B. F. Overton, Governor of Chickasaw Nation.*

*Josiah Brown, Chickasaw Delegate.*

*P. P. Pitchlynn, D. F. Harkins, Choctaw Delegates.*

*W. P. Adair, Daniel H. Ross, Cherokee Delegates.*

*John R. Moore, Pleasant Porter, D. M. Hodge, Yar Teka Harjo,  
Creek Delegation.*

*John F. Brown, Thomas Cloud, Seminole Delegation.*

25

*W. Bird, Agent, Fort Peck Indian  
Agency, Montana (Assiniboine  
and Yankton Sioux Peoples, 1878)*

The Fort Peck Reservation was congressionally established in 1888. Home to two distinctive tribal nations who were historical enemies, this confederation has led to uneasy relations between the two cultures. Although inhabiting the same reservation, the two nations are separated not only by name, culture, ideology, and values but also by geography inasmuch as the Yankton live on the eastern part of the reservation, and the Assiniboine on the western.

The agent's description of the chieftainship situation is most interesting, especially his unverified claim of how one can obtain the position of chief—"by purchase or otherwise"—suggesting that for the most part the office no longer had the legitimacy it once did in some of these communities. While it would be difficult to verify the veracity of this agent's views on the status of chiefs within these two nations, his account provides some description of their role that is not otherwise attainable.

Lopach, James J., Margery Hunter Brown, and Richmond L. Clow. *Tribal Government Today: Politics on Montana Indian Reservations* (Niwot: University Press of Colorado, 1998).

U.S. Commissioner of Indian Affairs. *Annual Report* (1878).

## W. Bird's Report

Fort Peck Indian Agency,  
Poplar River, Montana, August 17, 1878.

Sir: In accordance with directions conveyed to me in your circular-letter of the first of July, 1878, I have the honor to submit to you this second annual report.

At the period of my last annual report the agency occupied the old location at Fort Peck and a more recent one at Wolf Point, the former occupied by the Yanktonai and the latter by the Assiniboine Indians.

### *Number of Indians*

The number of these Indians as near as I have been able to ascertain is 3,780 Yanktonais and 1,615 Assiniboine. I do not regard this statement as absolutely accurate. The estimate is based on the ration tickets issued, and I find a most persistent disposition among all of the Indians to exaggerate when giving the number of their family for which to receive rations, but it is as near, probably, as can be obtained until they live in more permanent habitations. Those given as Yanktonais embrace quite a large number of Uncapapas, Tetons, and other bands of Sioux. . . .

The question of Indian Chiefs is one not easily managed. Among the Assiniboine at West Point, Eoshon or Red-Stone is the recognized chief; all the Indians there conceded to him the right of chieftainship in their tribe. But among the Indians making up the agency Indians now at Poplar River no chief is recognized as head. Medicine Bear was at one time regarded as the highest in authority, but he is getting old and of no influence in the tribe. In the camp, at present made up of near 600 lodges or families, there are over 50 chiefs, and no one is claiming over about 20 lodges: from this number down to half a dozen. At present the biggest chief seems to be the one who can secure the largest amount of annuity goods or rations, and new chiefs I find are made by obtaining a few adherent lodges from other chiefs, by purchase or otherwise, and straightway the Indian is a chief; or, some Indian will get hold of some old letter of recommendation from a military officer or Indian agent, and he sets up for a chief on the authority of his chief papers as he calls them. The credulity and ignorance of these Indians are past belief. It is no wonder that they are continually made the dupes of traders and other white men who are among them.



## 26

*Benjamin M. Thomas,  
Agent, Pueblo and  
Abiquiu Agencies, New Mexico  
(Pueblo Peoples, 1879)*

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As noted previously, the various Pueblo nations, despite several centuries of colonial intrusion and the Pueblo people's purposeful adoption of various Western institutions from the Spanish, Mexicans, and Americans, retained their extensive traditional governing institutions and offices and maintained an ability to shield the inner workings of their religious-based societies even to the ever-inquisitive eyes and efforts of their federal agents. Agent Thomas wrongly predicted the Pueblo's ultimate demise, while openly acknowledging their well-ordered communities.

Dozier, Edward P. *The Pueblo Indians of North America* (New York: Holt, Rinehart, and Winston, 1970).

U.S. Commissioner of Indian Affairs. *Annual Report* (1879).

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### **Benjamin M. Thomas's Report**

Office of the Pueblo Agency,  
Santa Fe, N. Mex., August 14, 1879.

Sir: I have the honor to submit hereby my seventh annual report as United States Indian agent.

The Pueblo Indians are an interesting people, both on account of their ancestry and their present condition and customs. Their history, as written by their conquerors, and also as recorded all over this country by the ruins of their habitations in the valleys, upon the high mesas, and finally in perpendicular cliffs, 2,000 feet from the ground, is a tempting subject for the student and writer.

The remnants of this decaying race maintain the old religious rites and ceremonies, the form of government, the manner of life, and the superstitions of their ancestors to a great degree, having simply grafted thereon something of the inferior civilization of the people among whom they have lived for more than two centuries.

They number at present about 10,613, and live in twenty-six pueblos, named as follows: [\* indicates estimated population]

1. Taos .....	430
2. Picuris.....	115
3. San Juan .....	500
4. Santa Clara .....	201
5. San Ildefonso.....	275
6. Pojoaque.....	28
7. *Nambe.....	100
8. Tesuque .....	96
9. Cochiti.....	238
10. Santo Domingo.....	937
11. San Felipe.....	528
12. Jemes .....	385
13. Zia .....	115
14. Santa Anna .....	342
15. *Sandia.....	225
16. *Isleta.....	1,200
17. Laguna.....	1,298
18. *Acoma.....	500
19. *Zuñi .....	<u>1,500</u>
Total of the Pueblo Agency (in New Mexico).....	<u>9,013</u>
1. Tegua .....	130
2. Shu-chum-a-way .....	108
3. Walapi.....	264
4. Mas-sung-na-way .....	241
5. Shu-paw-la-way .....	112
6. Shu-mo-pa-way .....	184
7. *Oraibe.....	<u>561</u>
Total of the Moqui Pueblo Agency (in Arizona).....	<u>1,600</u>

There are at least three dialects in use among the Indians of the 19 pueblos in New Mexico, and three or four more among those of Arizona; and of these dialects, but few Indians know more than one, so that the inhabitants of pueblos of different dialects are compelled to communicate through the Spanish language, which most of the Indian men can speak.

Each pueblo has its own officers and government and is entirely independent of all the other pueblos in that respect, there being no general officers in the Pueblo tribe. These governments are almost exactly the same, and are conducted by the following officers, viz:

The Cacique, who is chief officer of church and state, priest of Montezuma, and director of all the temporal affairs of the pueblo. It does not seem to be known

at the present time how the cacique was originally installed in the office, he alone having the power to appoint his successor, which duty is among the first he performs after succeeding to the office. The cacique, aided by three principals selected by himself, appoints the governor and all the officers. The appointments are communicated to the council of principales and then proclaimed to the people.

The Governor is appointed by the cacique for one year, and is the executive officer of the pueblo. Nothing can be done without the order of the governor. The position is purely honorary in respect of remuneration, but the honors do not cease with the office, for the dignified position of principal is awaiting him at the close of his term, and there is no anti-third term rule in the way of his holding the office time and again during his life.

The principales (ex-governors) compose a "council of wise men" and are the "constitutional advisers" of the governor. All important matters seem to be decided by a vote of the council.

The Alguacil (sheriff) attends to the duties of a sheriff, under the direction of the governor.

The Fiscal Mayor attends to the ordinary religious ceremonies.

The Capitan de la Guerra (captain of war), with his under-captains and lieutenants, generally has no duties to perform in these times of peace.

Each of the above officers has the necessary number of lieutenants for the discharge of the duties of the office.

It seems to be the habit of writers on the subject of the Pueblo Indians to say that their officers are selected by universal suffrage; but I have never been able to find the slightest evidence of this among the Indians, and am prepared to say that they have no such practice. It is certainly very difficult to find out what their customs and practices are, and I shall probably be compelled to investigate a few years longer before I can venture a statement of their religious belief—their practices in regard to "sacred fire," "devil worship," &c.

The Pueblo Indians are a very industrious, provident, and reliable people, and seem determined to live in harmony with all the world, even if it costs them their existence. Their great failing is lack of self-assertion. They were conquered and brought down from a condition of freedom and peace two centuries ago, even to a condition of servitude and the observance of the forms of an enforced religion, and the power of the "Fair God" has rested heavily upon them ever since. Their spirit has been broken, and it is a question, now being worked out, whether the effort of the United States Government to implant new hope and bring them up from their servile condition to fitness for citizenship has been exerted too late. They are susceptible of education, and it is believed that thousands of the Pueblo Indians can be formed into valuable citizens.

The year under report has passed without special incident. The Indians have generally been prosperous and their maturing crops, so far as I have been able to learn, are abundant. On account of the ravages of grasshoppers last season some of the Indians of the Pueblo of Laguna were quite destitute in the spring, and 10,000 pounds of wheat were issued, to enable them to raise a crop this season.

No definite report of the number of acres of land cultivated, nor of the quantities of the different crops raised can be made, because the Indians occupy so many reservations at such long distances from each other—the

extremes being more than 200 miles apart; but it can be definitely reported that the Pueblos are entirely independent of the department this year in respect to material resources. They have crops of corn, wheat, pumpkins, melons, red pepper, beans, apples, plums, peaches, grapes, and apricots; they have also large numbers of horses, mules, donkeys, cattle, sheep, and goats.

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27

*John Young, Agent, Blackfeet Agency, Montana (Blackfeet, Blood, and Piegan Peoples, 1879)*

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Commissioner of Indian Affairs Ezra A. Hayt, in his annual report to the Secretary of Interior in the fall of 1879, pointed out that in each of his three previous annual reports that he had strongly urged Congress to impose U.S. criminal laws and federal jurisdiction over certain crimes committed by anyone within Indian reservations (this would later occur in 1885 with the passage of the Major Crimes Act).

Hayt argued that this was necessary because “a civilized community could not exist as such without law, and a semi-civilized and barbarous people are in a hopeless state of anarchy without its protection and sanctions.” While Hayt acknowledged that some tribes “have regulations and customs of their own,” those, he declared, were “founded on superstition and ignorance of the wages of civilized communities, and generally tend to perpetuate feuds and keep alive animosities.”

The Blackfeet agent’s comments about the tribe’s governmental and legal arrangements vividly echo what Hayt said, while at the same time recognizing, if grudgingly, the ongoing legitimacy of the band chief system.

U.S. Commissioner of Indian Affairs. *Annual Report* (1879).

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**John Young’s Report**

Blackfeet Agency, Montana,  
July 28, 1879.

Sir: I have the honor to submit this my third annual report of affairs at this agency.

This agency is located in the north west corner of Montana, 60 miles from the Canada line. Its situation is on Badger Creek, which is one of the tributaries of the Marias River.

The tribes under the supervision of this agency, the Blackfeet, Bloods, and Piegans, are really one people, having the same origin, language, and habits. They are every year merging more and more into one tribe, known by the general name of Piegan. This is, however, exclusive of another branch of the same family, known as the Northern Blackfeet, who roam almost entirely across the line in the neighboring Dominion of Canada.

As near as can be ascertained, the Indians belonging to this agency number about 7,500 persons. They are organized in bands, or large families, numbering from 10 lodges up to 100, and are governed by laws made by the band chiefs in council, by whom also one or more head chiefs are elected. The agent, as the representative of the Great Father, is recognized as authority above the chiefs, and his approval is necessary for all trials and punishments, every offender being brought to the agency for trial.

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28

*Henry R. Mallory, Agent,  
Colorado River Agency, Arizona  
(Mohave and Chemehuevi  
Peoples, 1879)*

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The Colorado River Indian Reservation, situated on the California/Arizona border, was congressionally established in 1865 principally to be the home of the Mohave and Chemehuevi tribal nations but was also to be open to “all the tribes of the Colorado River drainage.” Primarily agriculturalists who grew corn, beans, wheat, and pumpkins, the native nations had historically been divided into large bands, each of which was further split up into local groups. Each nation also had a head chief, and subchiefs governed the individual bands. Although a clan network was in place, there was only a nominal organized system of government beyond the chiefs and headmen.

Upon the reservation’s establishment in the 1860s, the United States constructed an irrigation system and a boarding school in the late 1800s purportedly in an effort to “civilize” the Indians of this reservation.

Agent Mallory’s report is a disturbing account of the environmental and physical hardships (between 1877 and 1878, 170 people died from smallpox) the tribes had been enduring. It also describes in

ethnocentric terms the frustration he experienced in dealing with the “captains,” or headmen, who, in his opinion, continued to wield too much influence on the reservation. Mallory’s descriptive account of the reservation’s governing structures—the supreme chief and twenty-nine bands—provides good eyewitness evidence of tribal governance and the relationship between his office and the Indians.

Stewart, Kenneth M. “Mohave.” In *Handbook of North American Indians*, ed. William C. Sturtevant, vol. 10 (Washington, D.C.: Smithsonian Institution, 1983), 55–70.

U.S. Commissioner of Indian Affairs. *Annual Report* (1879).

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## Henry R. Mallory’s Report

Colorado River Agency, Arizona,  
July 1, 1879.

Sir: I have the honor to submit the following as my first annual report as agent of this reserve for the year ending June 30, 1879.

I entered upon the duties of agent [on] October 17, 1878, after having served five months as an employee, under my brother, the late agent, and four months subsequent to his death, as farmer in charge of agency. This change of administration and the uncertainty of the appointment of the succeeding agent, prevented the formation of new plans and a systematic prosecution of them until one-half of the year had expired. Since that time the advancement of the Indians is very manifest.

The prospect of a school in which their children were to be instructed exerted a powerful influence, as these Indians respected education very highly. This has led them to hope for better things, and has engendered a feeling of confidence in the government never before felt. Their visiting the agency to consult with me on their own private plans and asking advice, leads me to believe that the present year will advance them further than any year since this reservation was established.

This reservation extends for 75 miles north and south, divided in the center by the Colorado River, which is also the dividing line between California and Arizona Territory. The eastern and western boundaries of the reserve are two parallel mountain ranges, separated by some 20 miles. The northern and southern extremities end in a mesa or foot-hills of these ranges, which at those points approach the river-banks. Owing to the barren nature of these mountains and the immense mesa or foot-hills lying under them, only a narrow strip of land from one to three miles wide and about 40 long, is at all fitted for cultivation, and a considerable part of this is of such an alkaline nature that no crops can be raised on it. It is estimated that only about one-eighth of the reservation is fitted for

cultivation. I quote the following description of this bottom land, and it coincides exactly with my own experience and observation. Herman Ehrenburg, in a report to the Commissioner of Indian Affairs, dated 1865, reads as follows: . . .

The Indians and their character I have studied closely and with interest. Inspector Watkins informed me on his last visit here that these Indians stood among the lowest in the scale of civilization. This I believe to be true, and is due to the fact that since this reservation was established until the present year, when a school was permanently established, little, very little, has been done toward their elevation. They have been worked and fed and clothed, but not anything has been attempted, that I can learn, in the endeavor to educate or Christianize them.

I find them timid from ignorance and superstition, and peaceful from having been thoroughly subjugated by the military twenty years ago. I have never been called to settle any quarrels or disputes among themselves or the whites, nor have I ever heard of there being any. The only characteristics to encourage, and which I shall make the foundation of all improvement, are their great industry and natural agricultural habits; and I feel confident, if allowed to carry out my plans and get the Indians settled permanently on a farm, with gradual improvements made thereon in the way of houses, &c., and with their children being educated, that within a year they will rank very much above their present position.

The tribe, under a supreme chief, is divided into 29 bands, each under a captain elected by the band and confirmed by the agent. These bands live in winter in rude huts, made by excavating the sand a few feet in depth, and covering it over with poles, brush, and earth. In this building live from 10 to 30 individuals of both sexes. In summer this is burned and the band moves off to where a farm is selected. Here a rude shed is erected, which serves to protect them from the intense heat of the sun. When a farm is started all the band work indefatigably, and very frequently water the whole farm by hand from the river.

The dress of the men consists of a breech-cloth and shirt, but very frequently the latter is dispensed with. The women wear a bustle of willow bark extending to their knees, and a piece of calico thrown about their shoulders and tied in a knot across the breast. They have had clothing furnished them and are glad to wear it, but the expense is so much greater that they cannot afford to purchase them [*sic*].

The number of Indians now on the reservation is impossible to calculate. Owing to the desertion of all the neighboring towns and mines several hundred Indians there employed have returned to the reserve. I endeavored to obtain a count some months since, but owing to the lack of facilities with which to issue beef to individuals, only a part of the tribe could be induced to come to the agency. Therefore I am compelled to report the number of last year, viz, 502. This is the number I carry on my roll, but I am confident that there are three times that number on the reserve. Immediately upon receipt of supplies [in] the present year I shall take an official census and issue to individuals on that return. I strongly approve of this method, as it does away with the captains, which are of considerable annoyance to the agent, especially in case of employing the Indians to work.

## 29

*J. A. Stephen, Agent,  
Standing Rock Agency,  
Dakota Territory (Standing  
Rock Sioux People, 1880)*

The Fort Laramie Treaty of 1868, negotiated between the various Sioux bands, the Arapaho, and the United States, guaranteed peace among its major provisions, provided “for the absolute and undisturbed use and occupation of the Indians” the boundaries of the Great Sioux Nation Reservation, promised that no unauthorized whites would be allowed within the boundaries of the reserved lands, and pledged that Sioux land would never be subject to purchase by treaty with the United States unless the agreement was signed by at least “three-fourths of all adult male Indians” (15 Stat. 635).

However, in less than a decade, the Great Sioux Nation Reservation would be illegally invaded by gold diggers, silver miners, and unauthorized U.S. military personnel—led by Lt. Col. George A. Custer—who put immense pressure on the Sioux to sell their lands. When Custer and his troops were killed in 1876 by a sizable force of Lakota, led by Sitting Bull, Congress, incensed and embarrassed by this shattering defeat, attached a legislative rider to the 1876 Indian Appropriation Act that unjustly denied the Sioux all further appropriations and annuities until and unless they agreed to sell the Black Hills to the United States.

The United States then sought to collect signatures for the land-sale agreement. Although the 1868 treaty called for three-fourths of all adult male Indians to sign any such contract, the treaty commissioners were able to get only about 10 percent of the adult male Sioux to sign. Nevertheless, Congress subsequently ratified this deal in 1877. The transaction represented a unilateral violation of Sioux sovereignty and property and of the 1868 treaty. The next several decades were arguably the harshest years for the Sioux people as they lost additional lands by being forced onto six smaller reservations and were confronted with an intense assimilation campaign.

The ensuing short section of the Sioux agent’s annual report titled “chief” graphically shows how desperate he and other federal policymakers were to terminate or at least radically undermine the power of the chiefs, inasmuch as they viewed them as hindrances to the process of “civilization.”

Deloria, Vine, Jr. “The U.S. Has No Jurisdiction in Sioux Territory.” In Roxanne Dunbar-Ortiz, ed., *The Great Sioux Nation: Sitting in Judgment on*



*America* (New York: American Indian Treaty Council Information Center, 1977), 141–46.

Lazarus, Edward. *Black Hills/White Justice: The Sioux Nation versus the United States, 1775 to the Present* (New York: HarperCollins, 1991).

U.S. Commissioner of Indian Affairs. *Annual Report* (1880).

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## J. A. Stephen's Report

United States Indian Agency,  
Standing Rock, Dakota,  
September 1, 1880.

Sir: In compliance with the instructions as contained in your circular of July 18, 1880, I have the honor to submit the following as my second annual report for the year ending August 31, 1880, relative to the management and condition of the Indian agency now under my charge. . . .

Too many chiefs are also a drawback to Indian civilization. They know very well that as soon as the Indians settle down on separate farms they lose their influence over them, and as the farmers are especially the first receivers of annuity goods and not the chiefs, as heretofore has been the case, they often try to keep the Indians from taking claims and uphold their wild dances in order to maintain their authority. The chiefs received in former years most of the annuity goods for their band, and they divided those goods according to their notions to their friends and relations. Since the issue is charged and only the deserving Indian is getting the benefit, the chiefs are aware of the fact that their influence diminishes step by step according as the civilization of their respective tribes pushes forward. As soon as the leadership of these chiefs is broken and their counsels not listened to, the Indian question will be rapidly settled. No one else talks insubordination or war on the government except the chiefs; therefore I would recommend strongly to depose chiefs who are in the least hostile to the government.

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*P. B. Hunt, Agent, Kiowa,  
Comanche, and Wichita  
Agency, Indian Territory  
(Kiowa, Comanche, and  
Wichita Peoples, 1880)*

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In contradistinction to the Five Civilized Tribes of the eastern part of Indian Territory, the Kiowa, Comanche, Apache, Cheyenne, Arapaho, and others of the western section were denominated as the “wild tribes” by federal officials in charge of dealing with them, presumably because of their greater willingness to engage in conflict and their supposed lack of interest in the art of Western “civilization” as these authorities then understood it.

In 1879 the Kiowa and Comanche Agency had been relocated from Fort Sill, Oklahoma, to the Washita River in an effort to ease tensions and cut down on the loss of the Indians’ horse herds to thieves. The relocation also enabled the Indian agent to play a greater role in the settlement patterns of the relocated Indians so as to encourage farming and destroy the influence of particular chiefs.

Acting Commissioner E. M. Marble optimistically opined that the small-scale settlement patterns were not only inspiring individual farming blocks but also allowing the agent to modify the communal tribal patterns and to “impair” the chiefs’ authority. The agent’s views on this were even more forthright. The federal assaults on traditional native institutions were a sign of their ongoing vitality within the tribal community.

Mayhall, Mildred P. *The Kiowas*, 2d ed. Civilization of the American Indian Series (Norman: University of Oklahoma Press, 1984).

U.S. Commissioner of Indian Affairs. *Annual Report* (1880).

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### **P. B. Hunt’s Report**

Kiowa, Comanche, and Wichita Agency,  
Anadarko, Ind. Ter., September 1, 1880.

Sir: In compliance with instructions contained in circular letter dated July 18, 1880, I submit herewith my third annual report of the condition and affairs of the agency under my charge, being for the year ending August 31, 1880.

The Indians under my charge have all been quiet. There has been no outbreak, no disturbance of any kind, nor have I seen any evidence that any portion of them were unfriendly to the whites. Indeed, I am now satisfied that the chiefs and leading men of the Kiowa, Comanche, and Apache tribes—those that were last brought from the plains to a reservation and under civilizing influences—have determined never again to take up arms against the white man; that, unless there shall be some unusual provocation forcing them to hostility, history will never record another war with them. They young men might be led into any undertaking that would open to them an opportunity of displaying themselves as “braves,” or follow the natural propensity of the red man for the war-path. Some years must elapse before the inclination shall entirely disappear, and in the mean time they must become like the old men are now, cultivators of the soil and breeders of stock, and the local attachments of home and all the civilizing influences now being brought to bear upon them must have had their effect. . . .

It is from the rising generation that we must look for a marked and material advancement in civilization. It may be observed in the last two years the worst characters have lost their influence over the tribes. While a few years ago these restless spirits were making trouble by inciting their people to hold councils, and were actually collecting at the agency every few weeks and demanding that they be heard, then offer some complaint of an imaginary wrong, or make some foolish demand, it is seldom now that a council is held, either in camp or at the agency, or that the influence of these men is seen in any way.

I have endeavored to destroy the tribal relations as much as possible, and also to destroy the influence of certain chiefs. I have allowed relatives to band together and would appoint one of the number a chief or headman and suggest to him to take his people off to some good locality and make permanent houses. Of course every band formed this way weakens the influence of some chief in proportion as it took individuals from his band. Bands that at one time numbered over a hundred people, have been reduced in this way to less than twenty. I have had many houses made in this way by Indians who never worked before. The advantage to the man appointed by me was that he became more prominent and controlled the funds derived from the sale of beef hides.

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### *Constitutions of the Osage Nation (Osage People, 1861 and 1881)*

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The Osage, who call themselves Ni-U-Kón-Ska, or “children of the middle waters,” originally lived along the Osage River in present-day Missouri and comprised three significant bands: Great Osage, Little

Osage, and the Arkansas Osage. They were active fur traders with the French and later the Americans.

In 1808 the Osage signed their first land-cession treaty with the United States and agreed to the construction of a fort on the banks of the Missouri River. They also consented to accept the friendship and protection of the United States. Treaties in 1818 and 1825 resulted in additional land cessions, though the Osage kept a reservation in what became the Kansas Territory. In the 1850s they allied themselves with other Plains tribes and fought to prevent members of the Five Civilized Tribes from moving onto their lands.

During the American Civil War the Osage engaged in battle on both sides. Moreover, in 1861 they developed their first constitution, which vested legislative and judicial power in a council that convened twice a year. Executive authority was wielded by a governor, and the members of all three branches were popularly elected. This document, unlike the 1881 constitution, is not widely known and is therefore of historic value.

Facing relentless pressure to relinquish their land holdings, by 1870 the Osage were compelled to sell their remaining Kansas territory. With the revenues this sale generated, they purchased approximately one million acres from the Cherokee Nation in the part of the Indian Territory known as "the Outlet." There they established five villages and retained twenty-four tribal clans and two divisions, with a peace and war chief at the head of each division.

In 1881 the Osage forged a new constitution, modeled closely after those created by the Cherokee people in 1827 and 1839. It featured a three-branch government, although Osage lands were to be held in common.

Later, Osage territory was found to hold substantial oil and gas resources, and by the early part of the twentieth century, despite having their lands allotted, the Osage were for a time considered the richest people in the world. Such status attracted a bevy of exploiters, however, and when oil prices dropped in the 1930s, the economic status of the Osage declined precipitously.

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## Constitution of the Osage Nation (1861)

Therefore we the people of the Osage Nation in convention assembled at Council Village on the North Side of the Neosho River in the Osage Nation, on the 31st day of August, A.D. 1861 in pursuance of a previous agreement do hereby ordain and establish this Constitution for the Osage Nation of Indians.

### *Article 1*

Section 1. The Legislative and Judicial power of this Nation shall be vested in a council of (14) fourteen members chosen annually by ballot from among the citizens of the Osage Nation. The members shall be residents of the Nation and twenty-five years of age.

Section 2. A majority of the members shall be a quorum. To do business the President of the Council and any one or more members shall constitute the monthly court.

Section 3. The Legislative Council shall provide by law the manner and place of holding elections for officers of the Nation.

Section 4. All officers before entering upon their duties shall take an oath in accordance with their religious belief to support the Constitution of the United States and of the Osage Nation and faithfully to discharge the duties of their office to the best of their ability.

Section 5. The Legislative Council shall be the judges of the qualification of its members and determine the rules of their proceedings and shall keep a journal of all their proceedings and have published all laws they may pass. They shall appoint a clerk door keeper and all necessary officers to attend their sitting.

Section 6. The Legislative Council shall fix the seat of government and cause to be executed all necessary buildings for the convenience of the National Officers.

Section 7. The Council shall provide by-laws for a general system of education and district schools, they shall fix the salaries and compensation of all officers and employees. They shall provide by-laws for the protection of persons and property and for the punishment of all crimes known to the common law.

Section 8. Any person or persons in the Osage Nation whether citizen or not who shall by speaking, writing, act, or deed, try to subvert this constitution and overthrow the government shall be deemed guilty of treason and on conviction suffer death as shall be prescribed by the Legislative Council.

Section 9. The Legislative Council shall provide by law for the expenses of the government, and borrow money on the credit of the Nation. If necessary they shall provide for the support and protection of the poor, the helpless, the blind, the orphans and the property of decedents, deaf & dumb. They shall provide for the just and equitable distribution of national property and general funds of the Nation.

Section 10. The Legislative Council shall sit twice a year to enact laws, and shall receive, hear, and determine all petitions and memorials of the citizens. They shall meet and organize as soon as elected by the convention and fix by law the time of sitting.

Section 11. The Legislative Council shall sit once every month at a fixed time as a Judicial tribunal and shall hear and determine all cases of dispute regularly brought before them for adjudication, and shall have power to issue all necessary proceeds to enforce their orders and decrees while provisions are made by law for regular judges of courts.

Section 12. The presiding officer of the Legislative Council hereafter provided for in this Constitution shall be the Chief Justice of the Judicial tribunal. When sitting as a court of justice of both tribunals he shall keep strict order and decorum in the settings of both tribunals. He shall put all questions and name the result of decisions in both tribunals. He shall sign the journals of the court and of the Legislature.

Section 13. The Council shall designate the districts of each chief and hold him responsible for the good conduct of the citizens in his district. They shall fix by law the qualifications of voters and of *citizenship* in the Nation, and fill all vacancies of members of the Legislature until the election.

Section 14. This Constitution may be altered or amended in the following manner but shall never be abolished. That on a petition of a majority of the people to the Legislature, or whenever two-thirds of the Legislative Council may desire amendment they shall pass a law calling a convention of the people by the delegates at a time and place to be fixed by law and if the delegates shall determine on certain amendments they shall report it to the next Legislative Council and if two-thirds concur it shall be part of the Constitution or two-thirds of the Council proposing amendments and two-thirds of the next council thereafter confirming said propositions shall be part of the Constitution.

## *Article 2*

Section 1. The Executive power shall be vested in a Chief Magistrate of the Osage Nation. He shall hold his office for the term of two years and together with the president of the Council shall be elected bi-annually at the general election of Councilmen.

Section 2. The Chief Magistrate shall be designated by the governor of the Nation. He shall sign all laws he may approve and have a veto power and reprieve.

Section 3. The Chief Magistrate shall by and with the consent of the Council appoint all officers and see that all laws are faithfully executed. He shall with the consent of the Council adopt a seal of the Nation.

Section 4. The Chief Magistrate shall appoint a Secretary, a Treasurer, Auditor, Solicitor, and Chief Marshall whose duties shall be defined by law, and they shall be the legal advisers of the Governor. He shall advise the Legislature from time to time of the state of affairs.

## *Article 3*

Section 1. The Governor and Council or any Delegate or Representative duly authorized by them under the Seal of the Nation shall have full power and authority to negotiate treaties, sell and dispose of the public domain in accordance with

the Constitution of the United States and subject to the confirmation of two-thirds of the Council.

Section 2. In case of vacancy of the Office of Governor the President of the Council shall act as governor and the Council shall then elect a pro-tem from their own body.

Section 3. The Legislative Council shall provide by law for the punishment of malfeasance in office and the dismissal of offenders.

Section 4. The Governor shall have power to convene the Legislature on extraordinary actions, either for Executive, Legislative, or Judicial purposes, and issue commissions for all officers properly appointed.

Section 5. The President of the Council elect shall be fully empowered with authority to administer the Oath of Office to the members and other officers until persons are duly authorized by law to administer Oaths and any member, after sworn, may administer the Oath to the President.

Section 6. The Secretary of State, and Governor may take the acknowledgment of deeds and conveyances.

Section 7. A copy of this constitution shall be sent to the Commissioner of Indian Affairs at Washington with request to lay the same before the President of the United States, and one copy to the Governor of Kansas, and to the Cherokee Nation.

*Louis Choctaw, Secretary*  
*Joseph Swift, President of Convention*  
*Executive Office, Osage Nation, October 5, 1861.*

## Constitution of the Osage Nation (1881)

The Constitution of the Osage Nation, prepared by the authorized committee and adopted by the National Council.

The Great and Little Osages having united and become one body politic, under the style and title of the Osage Nation; therefore,

We, the people of the Osage Nation, in National Council assembled, in order to establish justice, insure tranquility, promote the common welfare, and to secure to ourselves and our posterity the blessing of freedom—acknowledging with humility and gratitude the goodness of the Sovereign Ruler of the universe in permitting us so to do, and imploring his aid and guidance in its accomplishment—do ordain and establish this Constitution for the government of the Osage Nation.

### *Article I*

Section 1. The boundary of the Osage Nation shall be that described in the treaty of 1876 between the United States and the Great and Little Osages, except that portion purchased by the Kaws.

Section 2. The lands of the Osage Nation shall remain common property, until the National Council shall request an allotment of the same, but the improvements made thereon and in possession of the citizens of this Nation

are [the] exclusive and indefeasible property of the citizens respectively who made or may rightfully be in possession of them. Provided, that the citizens of the Nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements, in any manner whatever, to the United States, individual States, or to individual citizens thereof; and that, whenever any citizen shall remove with his effects out of the limits of this Nation, and become a citizen of any other government, all his rights and privileges as a citizen of this Nation shall cease: Provided, Nevertheless, That the National Council shall have power to re-admit by law, to all rights of citizenship any such persons who may at any time desire to return to the Nation, on memorializing the National Council for such re-admission.

Moreover, the National Council shall have power to adopt such laws and regulations as it may deem expedient and proper to prevent citizens from monopolizing improvements with the view of speculation.

### *Article II*

Section 1. The power of this government shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial.

Section 2. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

### *Article III*

Section 1. The legislative power shall be vested in a National Council, and the style of their acts shall be:—Be it enacted by the National Council.

Section 2. The National Council shall make provision, by law, for laying off the Osage Nation into five districts, and, if subsequently it should be deemed expedient, one or two may be added thereto.

Section 3. The National Council shall consist of three members from each district, to be chosen by the qualified electors in their respective district, for two years, the elections to be held in the respective districts every two years, at such times and places as may be directed by law.

The National Council shall, after the present year, be held annually, to be convened on the first Monday in November, at such place as may be designated by the National Council, or, in case of emergency, by the Principal Chief.

Section 4. Before the district shall be laid off, any election which may take place, shall be by general vote of the electors throughout the Nation, for all officers to be elected.

The first election for all officers of the government—Chiefs, Executive Council, members of the National Council, Judges, and Sheriffs—shall be held at Pawhuska, before the rising of this council; and the term of service of all officers elected previous to the first Monday in November, 1882, shall be extended to embrace, in addition to the regular constitutional term, the time intervening from their election to the first Monday in November, 1882.



Section 5. No person shall be eligible to a seat in the National Council, but an Osage male citizen, who shall have attained to the age of twenty-five years.

Section 6. The members of the National Council shall in all cases, except those of felony or breach of the peace, be privileged from arrest, during their attendance at the National Council, in going to, and returning.

Section 7. In all elections by the people the electors shall vote viva voce. All male citizens, who shall have attained to the age of eighteen years, shall be equally entitled to vote at all public elections.

Section 8. The National Council shall judge of the qualifications and returns of its own members, determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds, expel a member; but not a second time for the same offense.

Section 9. The National Council, when assembled, shall choose its own officers; a majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, in such manner, and under such penalty as the council may prescribe.

Section 10. The members of the National Council shall each receive a compensation for their services, which shall be one hundred dollars per annum: Provided, That the same be increased or diminished by law; but no alteration shall take effect during the period of services of the members of the National Council by whom such alteration may have been made.

Section 11. The National Council shall regulate by law, by whom, and in what manner, writs of election shall be issued to fill the vacancies which may happen in the Council thereof.

Section 12. Each member of the National Council, before he takes his seat, shall take the following oath or affirmation:

“I, A. B., do solemnly swear (or affirm, as the case may be) that I have not obtained my election by bribery, treat, or any undue and unlawful means, used by myself, or others, by my desire or approbation for that purpose; that I consider myself constitutionally qualified as a member of \_\_\_\_\_, and that on all questions and measures which may come before me, I will so give my vote, and so conduct myself, as, in my judgment, shall appear most conducive to the interest and prosperity of this Nation, and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power, observe, conform to, support, and defend the constitution thereof.”

Section 13. No person who may be convicted of felony shall be eligible to any office or appointment of honor, profit or trust, within this Nation.

Section 14. The National Council shall have power to make all laws and regulations which [it] shall deem necessary and proper for the good of the Nation, which shall not be contrary to this constitution.

Section 15. It shall be the duty of the National Council to pass such laws as may be necessary and proper to decide differences by arbitration, to be appointed by the parties who may choose that summary mode of adjustment.

Section 16. No power of suspending the laws of this Nation shall be exercised, unless by the National Council or its authority.

Section 17. No retrospective law, nor, any law impairing the obligations of contracts, shall be passed.

Section 18. The National Council shall have power to make laws for laying and collecting taxes for the purpose of raising a revenue.

Section 19. All acknowledged treaties shall be the supreme law of the land, and the National Council shall have the sole power of deciding on the constructions of all treaty stipulations.

Section 20. The Council shall have the sole power of impeaching. All impeachments shall be tried by the National Council, when sitting for that purpose; the members shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

Section 21. The Principal Chief, Assistant Principal Chief, and all civil officers shall be liable to impeachment for misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust, or profit under the government of this Nation. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

#### *Article IV*

Section 1. The supreme executive power of this Nation shall be vested in a Principal Chief, who shall be styled "The Principal Chief of the Osage Nation." The Principal Chief shall hold his office for the term of two years, and shall be elected by the qualified electors on the same day; at the place where they shall respectively vote for members to the National Council. The returns of the elections for Principal Chief shall be sealed up and directed to the President of the National Council, who shall open and publish them in the presence of the Council assembled. The person having the highest number of votes shall be Principal Chief, but if two or more shall be equal and highest in votes, one of them shall be chosen by vote of the National Council; the manner of determining contested elections shall be directed by law.

Section 2. No person, except a natural born citizen, shall be eligible to the office of the Principal Chief; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years.

Section 3. There shall also be chosen, at the same time, by the qualified electors, in the same manner, for two years, an Assistant Principal Chief, who shall have attained to the age of thirty-five years.

Section 4. In case of the removal of the Principal Chief from office, or of his death, or resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Assistant Principal Chief.

Section 5. The National Council may, by law, provide for the case of removal, death, resignation, or disability of both the Principal and Assistant Principal Chief, declaring what officer shall then act as Principal Chief until the disability be removed or a Principal Chief shall be elected.

Section 6. The Principal Chief and the Assistant Principal Chief shall, at stated times, receive for their services a compensation which shall neither be increased nor diminished during the period for which they shall have been

elected, and they shall not receive within that period any other emolument from the Osage Nation or any other government.

Section 7. Before the Principal Chief enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the duties of Principal Chief of the Osage Nation, and will, to the best of my ability, preserve, protect, and defend the Constitution of the Osage Nation."

Section 8. He may, on extraordinary occasions, convene the National Council at the seat of government.

Section 9. He shall from time to time, give to the Council information of the state of the government, and recommend to their consideration, such measures as he may deem expedient.

Section 10. He shall take care that the laws be faithfully executed.

Section 11. It shall be his duty to visit the different districts at least once in two years, to inform himself of the general condition of the country.

Section 12. The Assistant Principal Chief shall by virtue of his office, aid and advise the Principal Chief in the administration of the government at all times during his continuance in office.

Section 13. Vacancies that may occur in offices, the appointment of which is vested in the National Council shall be filled by the Principal Chief during the recess of the National Council, by granting commissions, which shall expire at the end of the next session thereof.

Section 14. Every bill, which shall pass the National Council, shall, before it becomes a law, be presented to the Principal Chief; if he approves, he shall sign it, but if not, he shall return it with his objections to the Council, who shall enter the objections at large on their journals, and proceed to reconsider it.

If, after such consideration, two-thirds of the Council shall agree to pass the bill, it becomes a law, if any bill shall not be returned by the Principal Chief within five days (Sunday excepted) after the same has been presented to him, it shall become law, in like manner as if he had signed it; unless the National Council, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

Section 15. Members of the National Council and all officers, executive and judicial, shall be bound by oath, to support the Constitution of their Nation; and to perform the duties of their respective offices with fidelity.

Section 16. The Principal Chief shall, during the session of the National Council, attend at the seat of government.

Section 17. The Principal Chief shall recommend three persons, to be appointed by the National Council, whom the Principal Chief shall have full power at his discretion to assemble; he, together with the Assistant Principal Chief and the Counsellors, or a majority of them, may, from time to time, hold and keep a Council for ordering and directing the affairs of the Nation according to law.

Section 18. The members of the Executive Council shall be chosen for the term of two years.

Section 19. The Treasurer of the Osage Nation shall be chosen by the National Council for the term of two years.

Section 20. The Treasurer shall, before entering on the duties of his office, give bond to the Nation with sureties to the satisfaction of the National Council, for the faithful discharge of his trust.

Section 21. No money shall be drawn from the treasury, but by warrant from the Principal Chief, and in consequence of appropriations made by law.

Section 22. It shall be the duty of the Treasurer to receive all public moneys, and to make a regular statement and account of the receipts and expenditures of all public moneys at the annual session of the National Council.

Section 23. The "Fiscal Year" of the Osage Nation shall begin on the 1st day of October, and close on the 30th day of September of each year; and all books and accounts of the Treasurer, shall be kept, and duties of his office performed with regard to the beginning and ending of the fiscal year. The National Treasurer shall receive for his services ten (10) per cent of all moneys that may pass through his hands as provided by law.

### *Article V*

Section 1. The judicial powers shall be vested in a supreme court, and such circuits and inferior courts as the National Council may, from time to time, ordain and establish.

Section 2. The judges of the Supreme Circuit courts shall hold their commission for the term of two years, but any of them may be removed from office on the address of two-thirds of the National Council to the Principal Chief, for that purpose.

Section 3. The judges of the Supreme court and Circuit courts, shall at stated times receive a compensation which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the government of this Nation or any other power.

Section 4. No person shall be appointed a judge of any of the courts, until he shall have attained the age of thirty years.

Section 5. The judges of the Supreme courts and Circuit courts shall be elected by the National Council.

Section 6. The judges of the Supreme courts and of the Circuit courts shall have complete criminal jurisdiction in such cases and in such manner as may be pointed out by law.

Section 7. No judge shall sit on trial of any cause when the parties [are] connected (with him) by affinity or consanguinity except by consent of the parties. In case all the judges of the Supreme court shall be interested in the issue of a court or related to all or either of the parties, the National Council may provide by law for the selection of a suitable number of persons of good character and knowledge for the determination thereof, and who shall be specially commissioned for the adjudication of such case by the Principal Chief.

Section 8. All writs and other process shall run "in the name of Osage Nation" and bear test and be signed by the respective clerks.

Section 9. Indictments shall conclude against the peace and dignity of the Osage Nation.

Section 10. The supreme court shall, after the present year, hold its session three times a year, at the seat of government, to be convened on the first Monday in October, February and June of each year.

Section 11. In all criminal prosecutions the accused shall have the right of being heard; of demanding the nature of accusation; of meeting the witness face to face; of having compulsory process for obtaining witnesses in his or their favor, and in prosecutions by indictment or information a speedy public trial; nor shall the accused be compelled to give evidence against himself.

Section 12. All persons shall be bailable by sufficient securities, unless for capital offences when the proof is evident or presumption great.

### *Article VI*

Section 1. No person who denies the being of a God or a future state of reward and punishment, shall hold any office in the civil department in this Nation.

Section 2. When the National Council shall determine the expediency of appointing delegates, or other public agents for the purpose of transacting business with the Government of the United States, the Principal Chief shall recommend, and by the advice and consent of the National Council appoint and commission such delegates or public agents accordingly on all matters of interest touching the rights of the citizens of this Nation which may require the attention of the United States Government.

Section 3. All commissions shall be in the name and by the authority of the Osage Nation, and signed by the Principal Chief. The Principal Chief shall make use of his private seal until a national one shall be provided.

Section 4. A sheriff shall be elected in each district by the qualified electors thereof, who shall hold his office two years unless sooner removed. Should a vacancy occur subsequent to election, it shall be filled by the Principal Chief as in other cases, and the person so appointed shall continue in office until the next regular election.

Section 5. The appointment of all officers not otherwise directed by this constitution shall be elected by the National Council.

Section 6. The National Council may propose such amendments to this Constitution as two-thirds of the Council may deem expedient, and the Principal Chief shall issue a proclamation directing all officers of the several districts to promulgate the same as extensively as possible within their respective districts at least six months previous to the next general election, and if at the first session of Council after such general election, two-thirds of the Council shall by ayes and noes ratify such proposed amendments, they shall be valid to all extent and purposes as part of this constitution, Provided, That such proposed amendments shall be read on three several days in Council, as well as when the same are proposed as when they are ratified.

Done in convention at Pawhuska, Osage Nation, this thirty-first day of December, A.D., 1881.

*James Bigheart,  
President of the National Convention.*

Less than three months after they had adopted their constitution, the Osage devised a set of laws for their nation that dealt with a variety of topics: criminal offenses, theft, contracts, estates, intermarriage, taxes, and so on. According to their agent, L. J. Miles, the creation of a written constitution featuring elected officers and separate branches and the adoption of a legal code were a laudable combination because, in his view, “it will gradually but surely destroy the old chieftainship and Indian forms of government.”

Commissioner of Indian Affairs Hiram Price echoed that sentiment in his annual report to the Secretary of Interior when he observed that the chiefs’ powers would inevitably dissipate as white settlers advanced and that Western law was necessary for Indian civilization since “no ancient custom, or tribal regulation, will shield him [the Indian] from just punishment for crime.”

While Osage governance was surely evolving, these changes would undoubtedly not lead to a termination of Indian forms of government so long as Osage individuals continued to occupy political offices.

Hargrett, Lester. *Laws and Constitutions of the American Indian Nations* (Millwood, N.Y.: KTO Microfilm, 1976, reel 7, Hargrett #206) (Osage Constitution, 1881).

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## Laws of the Osage Nation Chapter 2

### *Article I*

#### AN ACT FOR THE PUNISHMENT OF CRIMINAL OFFENCES

Section 1. That in all cases of willful murder, the offender, upon trial and conviction by the authorized court of this Nation, shall suffer death, and when sentence of death shall have been passed, the court shall grant a respite of five days before such criminal shall be executed.

Section 2. That any person who shall, with malice aforethought, assault another with intent to kill, shall upon conviction thereof, be fined in a sum, for the benefit of the party injured, not less than fifty nor more than one hundred dollars, at the discretion of the court, and receive fifty lashes on the bare back. But if any person shall kill in self-defense or by accident, without any previous intent to do the same, he shall not be held accountable for such act, and be exempt from any fine or punishment whatever.

Section 3. That upon trial and conviction of any person charged with the offence of having committed a rape on any female, he shall be punished with fifty lashes on the bare back.

### *Article 2*

#### AN ACT FOR THE PUNISHMENT OF THEFTS AND OTHER CRIMES

Section 4. That any person who shall be convicted of stealing a horse, mule, jack or jinney [jenny], shall be punished by not less than twenty-nine nor more than fifty lashes on the bare back, and be compelled to make payment to the amount of damages or injuries sustained, if such stolen property be not restored, for the benefit of the person so injured; and for all other property which may be stolen, upon conviction of the party so offending, the punishment shall be in proportion to the magnitude of the offence, at the discretion of the court, and judgment against the offender for damages to the party injured.

Section 5. That if any person shall willfully and maliciously burn the house or other property of another, or otherwise kill or destroy the property of any person for the purpose of injuring or gratifying a spirit of revenge, such offender, upon conviction, shall be punished in like manner as provided in the section above, and be compelled to make ample remuneration by such compensation as the Court may determine.

Section 6. That any person who shall employ another, or aid or abet in the perpetration of any criminal offence, upon conviction thereof, such person or persons shall suffer such punishment as may be inflicted upon the principal offender; and be likewise to the same judgment for damages.

### *Article III*

#### AN ACT IN RELATION TO CONTRACTS

Section 7. That all lawful contracts shall be binding, and any person upon failure to comply with the terms of such contracts shall be liable to a suit at law, in the Court having jurisdiction in the matter, to be instituted by the creditor, and if upon trial, the law and testimony shall justify[,.] judgment shall be rendered in favor of such creditor for the amount which may be due by the defendant.

Section 8. That in all cases where a debt may be contracted, and it is agreed that property or trade shall be taken in payment of such debt, judgment shall be rendered accordingly; and the officer shall proceed to levy on the property of such debtor, and to summons two disinterested citizens, who shall be sworn by him, to aid in the valuation of such property, fairly and impartially, and when such property is so valued by the sheriff and such other persons, the creditor shall receive the same at such valuation as may be fixed by them.

Section 9. The following description of property shall be exempt from sale to satisfy any debt or judgment, and shall be reserved for the benefit of the owner thereof; viz: one horse in lieu thereof, one yoke of oxen, one cow and calf, one sow and pigs, farming utensils, household and kitchen furniture, and

fifty bushels of corn, and fire-arms, one saddle and bridle, and it shall not be lawful for an officer to levy on any of the above-mentioned property.

Section 10. When judgment is rendered, and the officer in whose hands an execution may be placed shall fail to find any property or effects in possession of the debtor to satisfy the same, and has cause to believe that some other person has in hands property or effects belonging to such debtor, the officer shall proceed to make inquiry of such person; and if such property or effects shall be pointed out, he shall proceed to make levy; but if such person shall refuse to give such information as may be satisfactory, the officer shall summon him before the clerk of the court, who shall require of him an oath to answer to the charges of holding the property or effects of such debtor.

Section 11. It shall not be lawful for any officer to levy on the house, farm, or any other improvements, of any person or persons.

#### *Article IV*

##### AN ACT RESPECTING PERSONS WHO MAY BE SUMMONED BY AN OFFICER

Section 12. Any person or persons who may be summoned to appear before the court to give in testimony, and shall refuse or fail to attend, unless on account of sickness or other lawful excuse—such person shall be fined in a sum not less than twenty, nor more than fifty dollars, at the discretion of the court; and any person who may be summoned by an officer to aid in the arrest of any criminal, and shall refuse, unless it shall be on account of sickness, or other lawful excuse, shall be fined twenty-five dollars.

Section 13. Any citizen who may be summoned to assist in arresting criminals shall be entitled to one dollar per day for his services out of the national treasury; and all persons summoned to give in testimony in court shall be entitled each to one dollar per day during their attendance at court, including going and returning home—against whom judgment may be rendered.

#### *Article V*

##### AN ACT RELATING TO ESTATES AND ADMINISTRATORS

Section 14. All written or verbal wills of deceased persons, when proved to the satisfaction of one of the judges of the court, shall be valid, and if by such will, any person or persons are designated to manage the business of any estate so left, such person shall receive from one of the judges of the court a written appointment for that purpose, and be required to enter into bond with sufficient security, for the faithful management of such business, in accordance with the provisions of said will, and for the careful preservation of all property and effect so left, all such wills shall be registered by the clerk of the court. All persons so appointed shall furnish, on oath, a schedule and description of all property and effects belonging to such estate, and which shall likewise be registered by the said clerk.

Section 15. Executors of wills and administrators on estate of deceased persons shall report annually to the judge of the court at the August term of the



Supreme Court, the condition of, and all that may have been done by them in reference to the business, property, and effects of such estate, as such persons may have in charge.

Section 16. Executors of wills and administrators shall be entitled to a compensation of eight per cent upon the amount of property and effects belonging to an estate, for their services, which shall be appraised by two or more persons to be appointed by the Chief Justice under oath.

Section 17. When a person dies without having made a will, one of the judges shall grant letters of administration to some competent and responsible person, to be selected from among the relatives of the deceased, if the safety of such property as may be left seems to warrant, and who shall be required to enter into bond, as provided above. And the property and effects shall belong equally to the children; the widow, also, of such deceased person shall be entitled to an equal share with the children, to be apportioned to her whenever she requires it, and the settlement of the business will safely permit, and the residue to the children as they become of age, to wit, males of eighteen years, and females at fifteen years, and in case such widow shall again marry and hold her property separately from her husband, and shall die without issue from her second marriage, such property shall be divided among the aforesaid children and in all cases where the wife dies holding property as above, and has children, and the husband survives, such property shall likewise be equally apportioned among the children and the husband; and if such husband should again marry and die without issue from such second marriage, his property shall be divided equally among his children. Any administrator, who may have charge of an estate, shall settle all just debts due out of its effects, and collect all outstanding claims in its favor. He shall cause public notice to be given, by written advertisements, for all persons having demands against such estate to bring them forward for settlement within twelve months, otherwise they shall be void and not recovered by law.

## *Article VI*

### AN ACT RELATING TO PUBLIC DOMAIN

Section 18. No person or persons shall be permitted to settle on or erect any improvements within one-fourth of a mile of the house, field or other improvements of another citizen, without their consent, under the penalty of forfeiting such improvements and labor for the benefit of the original settler; provided it may be lawful, however, where there may be a stream of running water for another citizen to improve one hundred yards from such field so situated.

Section 19. All improvements which may be left by any person or persons removing to another place, and the improvements [illegible] of two years, such improvements shall be considered abandoned, and other person or persons whomever [*sic*] may take and go in possession of such improvements in the same manner as if there were no improvements.

*Article VII*

## AN ACT TO LEGALIZE INTERMARRIAGE WITH WHITE MEN

Section 20. Whereas the peace and prosperity of the Osage people require that, in the enforcement of the laws, jurisdiction of the civil laws should be exercised over all persons whatever, who may, from time to time, be privileged to reside within the limits of the Osage Nation; therefore, any white man or citizen of the United States, who may hereafter come into the country to marry an Osage woman, shall first be required to make known his intentions to the National Council by applying for a license and such license may, under the authority of the National Council, be issued by the Clerk thereof; any person so obtaining a license shall pay to the clerk the sum of twelve dollars for such license, and take an oath to support the Constitution and abide by the laws of the Osage Nation; which oath may be administered by the President of the National Council, or the Clerk of the body, authorized for that purpose, and it shall be the duty of the Clerk to record the same in the Journals of the National Council. But if any white man, or citizen of the United States, shall refuse to ascribe to the oath, he shall not be entitled to the rights of citizenship and shall forthwith be removed without the limits of the Osage Nation as an intruder.

*Article VIII*

## AN ACT RESPECTING STRAY PROPERTY

Section 21. It shall be the duty of each of the sheriffs of the several districts to receive and advertise for public sale to the highest bidder all stray property that may be found or reported to them in their respective districts—such as horses, mules, \_\_\_\_\_, cows, hogs, sheep, and goats—giving a description of color, brands, and flesh marks, age and sex, and such property shall be sold for prompt payment in cash, national warrants, or certification, at the regular term of court, and on the first day thereof, and not before the hour of ten in the morning.

Section 22. All stray property, before being sold, shall be advertised at least sixty days by written advertisements, and posted at the court house, and in like manner in the register book, which shall be kept by the clerk of the court; and any person having property advertised under the provision of this act shall have the right of reclaiming such property by providing the same, on or before the day of sale, before one of the judges of the court; and the judge, if satisfied of the proof, after recording the same, and making his decision thereon, shall issue an order directing the sheriff posting the property to deliver it to the owner.

Section 23. If any person having property advertised under this act shall fail to prove the same, before the sale of the same, he shall forfeit his right to such property, except as hereinafter provided; but any person who shall prove such property in the manner therein before provided for, within nine months after the sale of the same, shall be entitled to receive from the Treasurer, on the certificate of the judge before whom the proof is made, the proceeds in kind of the sale of the same, deducting therefrom the sheriff's fees.

Section 24. Any person who may take up stray property shall, within ten days thereafter, be required to have the same posted; and any person failing to comply with this provision shall be liable to [a] fine of not less than ten nor more than twenty-five dollars.

Section 25. Any person who shall dispose of or willfully take any stray property not his own, or shall willfully kill or maim any such property, either before or after such property is posted, shall be deemed guilty of the same offence as if the act was committed upon the property of a citizen, and shall, upon conviction, be punished accordingly.

Section 26. It shall be the duty of the several sheriffs to have, if possible, all property that may be posted by them at the Court house on the day of the sale, and to place the purchaser there in possession of the same when sold, or within a reasonable time, if required to do so; the sheriff may retain ten percent in kind of all proceeds of sales of stray property, and be required to turn over the residue to the treasurer. The clerk of the court shall be present at all sales of stray property, and shall make and keep on record in his office a register of all sales by the sheriff, to whom made, amount in kind paid, date of sale and kind of property sold; and make therefrom a quarterly report to treasurer as he may direct.

### *Article IX*

#### AN ACT RELATING TO THE DUTIES OF THE HIGH SHERIFF

Section 27. The office of High Sheriff is hereby created. He shall be elected by the National Council for the term of two years.

Section 28. It shall be the duty of the High Sheriff to keep the Capitol, the furniture, and other property therein and thereto belonging in a State, of the keys and fastening of the door of the Capitol during the session of the National Council and the sitting of the Court.

Section 29. The Sheriff shall at all times keep the room of the Capitol clean and property ventilated, and during the session of the National Council and Court well-warmed and supplied with pure water. It shall be his special duty to cause to be prosecuted every person who shall be accused of violating the laws.

Section 30. The High Sheriff shall be conservator of the peace with such general powers as are exercised by the Sheriffs besides such special or extraordinary powers as may be conferred upon him by law. He shall wait upon, open and adjourn the session of the Court and execute its mandates. He shall also wait upon and execute all orders of the National Council, we shall have full authority during the session of the Council, and at all other times to suppress within the vicinity of the Capital all riotous broils, obscene, or other improper conduct, and to enforce obedience to the law and may, whenever necessary, summons any entire adequate force to his assistance, he may summarily arrest, imprison, and hold until duly sober, any person acting improperly, while under the influence of intoxicating drinks, and arrest, and imprison, all persons who may be guilty of a breach of the peace at or about the same of government.

Section 31. The High Sheriff shall have general supervision of the lower sheriffs, and see that they properly execute the laws in their respective districts, and he shall see that all taxes are collected as provided by law.

*Article X*

## DUTIES OF THE PROSECUTING ATTORNEY

Section 32. The Prosecuting Attorney shall be elected at the same time and in the manner that executive councilors are elected, and his term of office shall be that of the National Council electing him, and such prosecuting attorney before he enters upon the duties of his office shall be commissioned by the principal chief, his compensation shall be two hundred dollars per annum.

Section 33. That it shall be the duty of the prosecuting attorney to prosecute in behalf of the Nation all persons charged with criminal offences that may be brought before the court of the Nation, and be required to take the following oath or affirmation: "You do solemnly swear that you as prosecuting attorney for and on behalf of the Nation, will, to the best of your skill and ability prosecute all persons charged with criminal offenses that may be brought before the court, and that you will not take or receive any remuneration of any person charged with any criminal offence, but will be faithful to the Osage Nation in all prosecutions to the best of your ability, so help you God."

Section 34. There shall be a National Secretary, who shall be elected by the council for the term of two years, he shall be clerk of the council and court and shall keep a record of all the proceedings of both the council and court; and perform such other such duties that may be provided by law.

*Article XI*

## ATTORNEY

Section 35. Before any citizen shall be allowed to appear before the court of this Nation for the purpose of practicing at law he shall obtain a license from the clerk thereof, and pay in advance annually the sum of five dollars to practice before the court, and be required to take an oath that he will to the best of his knowledge and ability support and defend all cases that may be entrusted to his care.

Section 36. Any person engaged in the practice of law agreeable to the provisions of this act, who shall be convicted before the court of bribing or otherwise influencing any person to keep them from appearing at court, or proving unfaithful to their duties and oaths, shall be subject to a fine of twenty-five dollars, and the revocation of their license. All fines collected under the provision of this act shall be paid into the treasury.

*Article XII*

## LAWFUL FENCES

Section 37. A fence nine rails high, with cracks not exceeding four inches wide, for four rails up said fence, and a fence seven good rails high well staked and ridered, shall also be considered a lawful fence, and a board or wire fence four feet high with post[s] eight feet apart, shall also be a lawful fence; and any stock whatever, that may breake [*sic*] into the field of any person or persons

having a lawful fence, the owner of such property shall be responsible for the damage done.

### *Article XIII*

#### AN ACT PROHIBITING THE SALE OF TIMBER AND STONE

Section 38. No person or persons shall be allowed to sell to citizens of the United States any timber, rails, boards, or stones, under the penalty of being liable to a fine in a sum of not less than twenty-five nor exceeding fifty dollars for every such offence, or in default of payment shall be imprisoned for any term not exceeding thirty days at the discretion of the court.

### *Article XIV*

#### PERMITS TO EMPLOY OR RENT TO U.S. CITIZEN

Section 39. Any citizen of this Nation who may desire to employ or rent to a citizen of the United States shall be required to obtain a permit for that purpose from the Osage Council, and be approved by the Indian agent and the Indian Office at Washington.

Section 40. For all such permits granted the national secretary shall require of the person obtaining it one dollar for every month or fraction of a month for which it is granted. He shall report to the treasurer at the end of each quarter and turn over to him all the receipts that may come into his hands for the quarter then ending.

Section 41. After the expiration of the time of the permits, such person shall be deemed an intruder, and it is made the duty of [the] prosecuting attorney to report the same to the Indian agent.

Section 42. Any citizen of this Nation who shall hire or employ any citizen of the United States in any other manner than as provided in the first section of this article shall be deemed guilty of a misdemeanor, and, upon conviction, be fined in any sum not less than twenty-five nor exceeding fifty dollars, at the discretion of the court; and in default of payment be imprisoned, not less than fifteen nor exceeding thirty-days. No permits shall be granted longer than one year. Persons holding such permits shall be allowed two span of horses or oxen, two cows and calves, and ten hogs, all stock over this number as above specified shall be taxed.

### *Article XV*

#### DROVER'S TAXES

Section 43. Every person not a citizen of this Nation, driving stock into this Nation for the purpose of grazing or feeding the same shall be liable to a tax at the rate of five cents a head per month.

Section 44. It shall not be lawful for any citizen of this Nation to hold within the limits of the Osage Nation, for the purpose of grazing or feeding, any stock belonging to a citizen of the United States, until first procuring a per-

mit from the National Council for that purpose, and paying a tax as provided by law. Any citizen of this Nation violating the provisions of this act shall be liable to a fine of one hundred dollars, and in default of payment be imprisoned not less than thirty nor more than fifty days.

In all cases where a sheriff or other person acting under lawful authority, has reason to believe that efforts are being made to evade the provisions of this Act by collusion of some citizen of this Nation, with the owner of stock, such citizen claiming to be the owner, such sheriff or other person shall require the claimant to exhibit his bill of purchase of the stock in question; if deemed necessary to arrive as the facts, he may put such claimant or any other person supposed to be cognizant of the facts in the premises, upon oath, and question him or them as to the bona fide ownership of such stock, and in all such cases, if it appears that there has been fraud attempted for the purpose of evading the revenue laws of this nation, then and in that case there shall be levied double the amount of tax which would otherwise have been made. All money collected under the provisions of this Act shall be paid into the Treasury.

*Article XVI*

FIXING COMPENSATION OF OFFICERS

Sec. 45. From and after the first Monday of November, 1882, the salary and pay of the following officers and persons in the employ of the Osage Nation shall be as follows, to wit:

Principal Chief .....	Per annum...	\$300.00
Assistant Principal Chief.....	" "	200.00
Supreme Judges, each .....	" "	100.00
Members of National Council, each.....	" "	100.00
National Clerk .....	" "	200.00
High Sheriff.....	" "	100.00
Sheriffs, each.....	" "	80.00

Executive Councilors shall each receive a compensation for their services which shall be two dollars per day while in actual service.

**Chapter III**

*Article I*

AN ACT RELATING TO THE JUDICIARY

Section 1. That the seat of the Osage Government is hereby established at Pawhuska.

Section 2. The court established under the Government of this Nation, shall have jurisdiction of all suits [a]rising under the Constitution and laws of the Osage Nation.

Section 3. There shall be established a Supreme Court which shall consist of one Chief Justice, and two associate judges, who shall decide all civil cases.

Section 4. It shall be the duty of the three judges to choose two persons of good character and knowledge, who shall in conjunction with them, constitute a court for the purpose of hearing and deciding, all criminal cases. The compensation of persons chosen shall be one dollar and fifty cents per day while in actual service.

Section 5. No citizen of the Osage Nation who may be employed by the United States Government, as police, shall be chosen to sit as judge in the court of the Osage Nation.

Section 6. The commencement of all suits shall be by summons obtained from the clerk of the court, and which summons shall state the nature of the case upon which proceedings are founded, and be served by some lawful officer at least twenty days before the holding of said court, and such summons shall be returnable to the clerk with a certificate of service, and the court shall give judgment as [to] the right of the cause, and the matter in law shall appear under them without regarding any imperfection, defect, or want of form in such summons in process.

## *Article II*

### DUTIES OF SHERIFFS

Section 7. There shall be one Sheriff in each District, who shall enter into bonds with security to the amount of three hundred dollars for the faithful execution of duties of his office, and take the following oath. "I, A. B.," having been elected to the office of Sheriff of—District, do solemnly swear that I will, well and truly execute the duties of said office; according to the best of my ability, without fraud or partiality." It shall be the duty of the Sheriffs to attend the court to serve all summons or other process, which may be placed in their hands, and to take all necessary and proper measurements in the execution of the judgments of the court, and also to arrest and cause to be tried all persons who may be charged with criminal offences, and in case of resistance or strong apprehensions of resistance, the Sheriff shall summons each number of citizens as may be necessary to arrest any person or persons against whom criminal charges may be alleged, and to confine the same in jail until convicted or acquitted; should any person charged with criminal violation of law resist any lawful officer, or person authorized to cause arrest, while in the discharge of his or their duty, and such persons should be killed on account of unlawful resistance, such officer or other person shall not be held guilty of murder.

## *Article III*

### RELATING TO DISTRICT

The following divisions of the Osage Nation into five districts shall continue until altered by law, to wit:

Pawneenopahshe District

Section 8. Commencing at the Pawnee crossing on the Arkansas River, thence along the old Pawnee road, to the Elm Spring, thence along the Salt Creek road to the top of the dividing ridge between Hominy and Clear Creeks, thence in a direct line to where the Kaw road crosses the first hills, thence along said flint hills to the State line, thence west along said line to the Kaw boundary, thence along said boundary to the Arkansas River, thence along said river to the place of beginning.

Black Dog District

Section 9. Commencing at Elm Spring, thence south in a direct line to Prominent mount, thence in a direct line to where [the] Cherokee line crosses Delaware creek, thence south along said line to the Arkansas river, thence up said river to the Pawnee crossing, thence bounded by the first district.

Clammore District

Section 10. Commencing at the top of the dividing ridge, between Hominy and Clear creeks, thence east along said division to where the Cherokee line crosses Bird creek, thence south along said line to Delaware creek, to be bounded on the south by the Second, and on the west by the First districts.

Pawhuska District

Section 11. Commencing where the Cherokee line crosses Bird creek, thence north along said line to Sand creek, thence west in a direct line to Gus Strikeaxe's place, between Mission and Rock creeks, thence in a direct line to where the Elgin road crosses Rock creek, thence in a direct line to the first hills at the head of Bird creek, to be bounded on the west by the First, and on the south by the Third districts.

Strikeax District

Section 12. Commencing where the Cherokee line crosses Sand creek, thence along said line north to the State line, thence along said line to the First hills, thence along said hills to the head of Bird creek, to be bounded on the south by the Fourth district.

Resolved by the National Council:

Section 13. That we accept the sum of one hundred (100) dollars per year from the Indian agent in charge, in full for all salaries due us for services as members of the Osage Council, and that we ask the judges of the Osage Nation to accept one hundred (100) dollars per annum in full for their services as judges of the Osage Nation, to be paid as aforesaid, also, that all other officers whose salaries are prescribed at a stated amount per annum, be asked to receive thereby as above; all of the above salaries to be paid from our tribal funds in the hands of the United States Government.



Provided, That all the aforesaid officers shall receipt for the same in full for all moneys due them as officers of this nation, for the time for which they are paid.

Approved March 4th, 1882.

(Signed,) *Joseph Paw-Ne-No-Pan-She,*  
Principal Chief.

*E. M. Mathews, Secretary*

33

*P. B. Sinnott, Agent, Grande  
Ronde Agency, Oregon (Shasta,  
Kalapuya, Rogue River, Milalla,  
and Umpqua Peoples, 1884)*

As whites moved into Oregon in the mid-nineteenth century, they desired Indian land and pushed to have the native nations consolidated onto small reservations. The Grande Ronde Reservation, established by presidential order in 1857, was one of several set up for this purpose. It became the home of the Shasta Indians and four other tribal groups, with small numbers coming in from other tribes as well.

The Indians of Grande Ronde, like all other native peoples, were subjected to harsh assimilative policies, including the establishment of courts of Indian offenses, which featured Indians in judgelike roles. As the Secretary of the Interior, Henry M. Teller, put it in 1883 when he established these so-called “courts,” “If it is the purpose of the Government to civilize the Indians, they must be compelled to desist from the savage and barbarous practices that are calculated to continue them in savagery, no matter what exterior influences are brought to bear on them.” As these coercive institutions evolved, they became general courts that handled a number of minor “offenses” on Indian land (e.g., polygamy, Sun Dance, Scalp Dance—events and practices that federal officials deemed “heathenish customs”).

Rather remarkably, Agent Sinnott had a different take on these courts and found the tribes’ existing government more than sufficient for their needs.

Merrill, Brent, and Yvonne Hajda. “The Confederated Tribes of the Grande Ronde Community of Oregon.” In *The First Oregonians: An Illustrated Collection of Essays on Traditional Lifeways, Federal-Indian Relations, and the State’s Native People Today*, ed. Carolyn M. Buan and Richard Lewis (Portland: Oregon Council for the Humanities, 1991).

U.S. Commissioner of Indian Affairs. *Annual Report* (1884).

U.S. Congress. House. Executive Document no. 1, 48<sup>th</sup> Cong., 1<sup>st</sup> sess.,  
serial 2190, p. x.

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## **P. B. Sinnott's Report**

Grande Ronde Agency, Oregon,  
August 19, 1884.

Sir: In conformity with instructions from the Department, I have the honor to submit this my thirteenth annual report.

The Indians of this agency for the past year have been peaceable, quiet, and as a rule, industrious. These Indians no longer live, two or more families huddled together in one hut, as they once did. But each individual family lives in their own house, upon the small tract of land allotted to them, which they cultivate and improve to the best of their ability, and in a manner that would do credit to any community. All of the Indians of this agency wear citizens' dress, and make a commendable effort to conform to the customs of life and mode of living of the white people with whom they sometimes work. Many of them are experts in the management of farm machinery and frequently get jobs through harvest from whites outside the reserve. A few of them own threshers, reapers, and mowers, which they run at their own expense and for their own benefit. These Indians are purely an agricultural and stock-raising people. There are a few head of young horses on the reserve, owned by Indians that are as good as any in the country. Their small bands of cattle are of such quality that they are sought by the Portland and Salem markets. If a good young stallion for breeding purposes could be allowed these Indians the result would be that the pony would be, in a few years, replaced by a good serviceable farm horse.

### *Courts of Indian Offenses, Police, etc.*

The rules governing the court of Indian offenses have been enforced. I cannot see that the Indians have been benefited by the establishment of this court, as there has been a well-organized civil government at this agency for the last ten or twelve years, consisting of [a] legislature elected by the Indians as well as [a] court and court officers, all elected by the Indians. This additional court, without any compensation being allowed by the Department for pay of judges and officers, under these circumstances the judges hold court with great reluctance.

No police officers have been appointed at this agency. Nor are police officers necessary, as I have not at any time had any trouble to maintain peace and order without their aid:

Statistics herewith transmitted.

I am, very respectfully,

*P. S. Sinnott,  
Indian Agent.*

## 34

*Benjamin W. Thompson, Agent,  
Sisseton Agency, Dakota  
Territory (Sisseton and  
Wahpeton Bands of  
Dakota, 1884)*

Originally from the present-day Minnesota/Wisconsin border, the Sisseton and Wahpeton Dakota (also known as Ikce Wicasa) were part of the eastern Siouan linguistic family like their sister groups, the Wahpekute and Mdewakanton. They had early trade relations with French explorers and were active in the diplomatic tensions between the British and the French.

Most of the Dakota were divided into seven bands, in which kinship and clan played determinative roles in the groups' organization and band council arrangement. Each clan was led by a chief or counselor. During their long history, tribal leaders had at various times been chosen on the basis of either merit or lineage. An elite warrior society, known as the *akitcita*, maintained community discipline.

In treaties with the United States in 1837 and 1851, the Dakota sold virtually all of their lands save a section along the Minnesota River. The Sisseton and Wahpeton lived near Granite Fall, Minnesota. In 1862 increasing pressure from intruding whites, many of whom were illegally squatting on Dakota land, corrupt Indian agents and other officials, and starvation because of annuity mismanagement and misappropriation compelled the Sioux, led by Little Crow, to engage in hostilities against whites. Nearly five hundred whites were killed.

Both the state of Minnesota and the federal government responded swiftly and harshly to this assault by quashing the rebellion in short order. Although many Sisseton and Wahpeton had not been engaged in the fighting and many had actually fled to Canada, all of the Dakota would suffer from this tragedy. Three hundred Dakota were convicted in a military tribunal and sentenced to death. Eventually the number of sentenced Sioux was reduced to thirty-eight. Those individuals were hung at Mankato, Minnesota. Many others were imprisoned, and still others were expelled from the state. All of the Dakota's preexisting treaty rights were abrogated, and all of their land in Minnesota was confiscated.

In 1867 the Sisseton and Wahpeton were placed on two reservations: Fort Totten at Devil's Lake in North Dakota and the Lake Traverse Reservation on the border between North and South Dakota. Both reservations were established via the 1867 treaty with the United States, which openly acknowledged the support and alliance those Indians

had provided the white settlers during the 1862 war in Minnesota. The preamble of the treaty states that the Indians “not only preserved their obligation to the Government of the United States, . . . but freely periled their lives during that outbreak to rescue the residents on the Sioux reservation, and to obtain possession of white women and children made captives by the hostile bands” (15 Stat. 505).

Interestingly, Article 10 of this treaty explicitly recognizes the rights of the chiefs and headmen to adopt laws and regulations and to create a security force to govern their communities, although all of such laws required the “sanction of the agent”:

The chiefs and head-men located upon either of the reservations set apart for said bands are authorized to adopt such rules, regulations, or laws for the security of life and property, the advancement of civilization, and the agricultural prosperity of the members of said bands upon the respective reservations, and shall have authority, under the direction of the agent, and without expense to the Government, to organize a force sufficient to carry out all such rules, regulations, or laws, and all rules and regulations for the government of said Indians, as may be prescribed by the Interior Department: Provided, That all rules, regulations, or laws adopted or amended by the chiefs and head-men on either reservation shall receive the sanction of the agent. (ibid.)

Despite the promises outlined in the treaty, the Indians on both reservations suffered enormously during the next several decades because of land allotment, poverty, health problems, and federal policies aimed at their cultural destruction.

Despite this difficult period, Agent Thompson reported in 1884 that the Lake Traverse Sisseton and Wahpeton had adopted a constitution and a legal code in an effort to proactively cope with their new environment.

Black Thunder, Elijah. *Ehana Wayakapi: History and Culture of the Sisseton-Wahpeton Sioux Tribe of South Dakota* (Sisseton, S.D.: Sisseton-Wahpeton Sioux Tribe, 1975).

U.S. Commissioner of Indian Affairs. *Annual Report* (1884).

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## **Benjamin W. Thompson’s Report**

Sisseton Agency, Dakota,  
September 20, 1884.

Sir: I have the honor to submit my annual report for the fiscal year ending June 30, 1884.

This reservation is a triangle of land, lying upon the eastern border of Dakota between parallels 45 degrees and 46 degrees north latitude, having Lake Traverse as a part of its eastern boundary, and its southern point touching Lake Kampeska. It contains 918,780 acres. The Coteaux de Prairie, a fine range of hills, run from the northwest corner southeasterly through the reservation. The eastern slope of these hills is gashed with not less than fifty ravines, each having a stream of spring water in it. The bottom and sides are generally covered with a growth of oak, cottonwood, linden, box-elder and ash trees. The prairie east of the Coteaux is a body of very excellent farming land, as is also the valley of the Little Sioux River near the south end. The lakes upon the reservation and bordering it abound in excellent food fishes.

The tribes residing at this agency are parts of the Sisseton and Wahpeton bands of the Dakotas or Sioux. They are very nearly civilized. They all wear clothing like the white people and have abandoned almost all the customs of savage life. They are entirely self-supporting; most of them make their living from their farms. Some that live around the lakes subsist principally on fish, and do very little farming. One excellent mark of progress is that a large part of the farm labor is performed by men. There are a few who persist in the nomadic habits of their wilder state, but the number is decreasing. Quite a proportion of the people are the opposite of industrious, and perform the minimum of labor that will secure a living; in this, however, they may not differ materially from white men, except perhaps to a degree.

The births (63) outnumber the deaths (42) for the year, and the general health of the people has been good.

### *Lands in Severalty*

Their lands were allotted in severalty in 1876. At that time the larger part of the people were really incapable of making a proper selection of lands for farming purposes. They sought fuel, water, and shelter, and hence huddled into the ravines along the Coteaux or in the fringes of timber around the lakes. A large number of these allotments do not contain arable lands enough to enable the allottee to cultivate the fifty acres required before he can receive a patent. Hence the agents have been trying to induce them to change their locations and, retaining 40 acres of timber, take 120 acres of the rich prairie for cultivation. This movement has been partially successful, and quite a number have pushed out from the hills. Several of these have already received patents and at least twenty more have complied with the condition and are awaiting surveys to put their applications in form to forward. The stakes marking the subdivisions have been burned away by prairie fires, and it is necessary that the settled parts should be restaked in order to enable me to define those new locations and properly verify the applications for allotments and patents. There have been six patents issued to members of this tribe during the fiscal year.

### *Constitution and Laws*

In January of this year I approved the constitution and laws enacted by this people as permitted by article 10 of the treaty concluded with them May 2, 1867, copies

of which were duly furnished to your office. The code is simple and fragmentary, but experience will doubtless suggest improvements to their minds. The organization provides a justice of the peace and constable for each district, a central court of five judges, a chief, assistant chief, secretary, treasurer, and attorney. The law-making power is vested in two bodies—the council, composed of the recognized head men of the tribe, whose office expires and becomes elective at the end of the four years, and the house of representatives, composed of two delegates from each district, one of which is elected annually to serve two years. All laws require the approval of the chief and the agent before they can become operative.

The legislative bodies convened in February last, and added several statutes to their code. These laws for the most part had reference to the support and duties of their newly elected officers, and some municipal regulations. Some which touched upon white men and their property did not receive the sanction of the agent. The operation of these laws has been in the main beneficial. Several arrests have been made and punishments inflicted for drunkenness and bringing intoxicating liquors upon the reservation. A license from the legal authorities is made a prerequisite to marriage, and divorce is legally defined and granted only for adultery, desertion, and cruelty. The action of the court in some of these cases has been praiseworthy and the effect upon the people good.

A district constable assisted by a squad of three men captured and delivered to me, on the 30th of June, William Bailey, one of the most desperate horse-thieves infesting this part of the country, with two stolen horses in his possession. The Indian police retained him in custody, although his friends and accomplices were watchful to procure his escape, until I turned him over to the sheriff of Ransom County, Dakota Territory, who had a warrant for his arrest. The Indian police accompanied by the sheriff some 30 miles on his return with the prisoner and he made no effort to escape while they were present. He subsequently disarmed the sheriff and escaped with one of the stolen horses to the British Possessions. I mention this case in this connection as showing the value of organization and authority. These horse-thieves have made this reservation a place of rendezvous for many years, and the Indians have been afraid to meddle with them.

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## 35

### *Sisseton-Wahpeton Constitution (Sisseton and Wahpeton Peoples, 1884)*

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This constitution was probably drafted by Gabriel Renville (Ti Wakan), a mixed-blood head chief of the band since 1867. Renville had also been listed as chief of scouts, a service of both full-blood and mixed-blood Indians who worked as patrols, guards, and messengers

for the U.S. military. These scouts served under the command officer of Fort Wadsworth, later renamed Fort Sisseton, in South Dakota.

After its drafting in both Sioux and English, this document was adopted during a Grand Council meeting and submitted to the Department of the Interior, which approved it with some modifications. It was then sent back for final ratification by the Grand Council's members. A bicameral legislative body was devised, and its executive branch consisted of a head chief, assistant chief, attorney general, and other officers. Renville was chosen as the first head chief, a position with lifetime tenure.

There was also a supreme court with a chief justice and four associate justices. Although a promising system, within a few years, problems had arisen and began mounting. Crop failures, land allotment, and the ongoing discriminatory treatment of Indians by whites were all deeply frustrating. When Renville died in 1892, the tribe's constitutional efforts were weakened as a result. According to Elijah Black Thunder, in 1911 the tribal council was voted out of existence. In later years, the tribe rejected the Indian Reorganization Act of 1934 and did not establish another constitution until 1966.

Copy of Sisseton-Wahpeton Constitution in author's possession.

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## Constitution of the Sisseton and Wahpeton Nation (English Version Only)

Whereas in the year (1867) in a Treaty made between the United States and the Sisseton and Wahpeton Nations, it is provided in the tenth article that the chiefs and headmen located upon either of the reservations set apart for said bands are authorized to adopt such rules, regulations, or laws for the security of life and property, the advancement of civilization, and the agricultural prosperity of the members of said bands upon the reservations.

Therefore, we the chief and headman, with the Sisseton and Wahpeton in action in Convention assembled in order to establish justice, insure tranquility, promote the common welfare and secure to ourselves and our posterity the blessing of freedom acknowledging with humility and gratitude the goodness of the Sovereign Ruler of the Universe, in permitting us so to do, and imploring his aid and guidance in its accomplishment, do order and establish this Constitution for the Government of the Sisseton and Wahpeton nation.

### Constitution

#### *Article I*

Section 1. The boundary [of the] Sisseton and Wahpeton Reservation is that described in the treaty of 1867, Article 3.

Section 2. The vacant lands of the Sisseton and Wahpeton nation shall remain common property; whoever takes a claim and cultivates it, whatever possession he may derive from the same shall belong to the individual, but in all cases to be guided by [the] aforesaid treaty.

*Article II*

Section 1. The power of this government shall be divided into three distinct departments: 1. Legislative, 2. the Executive, 3. and the Judicial.

*Article III*

LEGISLATIVE

1. The Legislative power shall be vested in two distinct branches, the Council and the Representatives.
2. There shall be ten districts on the Reservation.
3. The members of the Council shall be the present living chiefs and headman recognized by the United States Government and these shall serve for four years, after which the people shall elect the Council, one Councilor for each district to serve for four years.
4. The Representatives shall consist of members from each district elected by the voters of that district, one for two years and one for one year; after the first year's election they shall, every year, elect one for two years.
5. Qualification of voters: all male citizens, who shall have attained the age of twenty-one years, shall [be] equally entitled to vote at all public elections, all voting shall be by ballot.
6. In the Legislative body, the council, shall judge the qualifications and returns of its own members and may by a two-third vote expel a disorderly member. The same power to be exercised by the Representatives and when a member is expelled from the council, or for any other cause is unable to act, the council with the Representatives shall choose his successor, and whenever a member is expelled from the Representatives, or for any other cause is unable to act, the Representatives with the Council, shall choose his successor.
7. A majority of each branch of the Legislative body shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalty as each branch may prescribe.
8. The officers of the government shall receive pay but the amount—shall be judged and decided by the Legislative body.
9. The Legislative body shall have power to make laws for buying and collecting funds for the purpose of raising a revenue.
10. The Legislative body shall have power to make laws for the security of life, peaceful possession of property and advancement in civilization but no retro-spection law shall be passed, nor any to oppose the laws of the United States.



11. The first general election shall be on the second Tuesday of February next, and after the first year, Election for district officers, shall be the first Tuesday in April, after the first election, the Secretary, Treasurer, Sheriff, Attorney, and five Judges of the Supreme Court shall be elected the first Tuesday in November, Every other year, by general election.

12. After the first election the Legislative body shall assemble on the fourth Tuesday of February and after the first year they shall assemble on the second Tuesday of January each year, but shall not extend their meeting to more than ten days. The place of meeting shall be the Sisseton Agency.

13. Any person elected to office in the Sisseton and Wahpeton Nation shall before entering upon their duties take the following oath:

In all my official act [*sic*], I promise to do so in conformity with the Constitution of the Sisseton and Wahpeton nation, so help me God.

### *Article IV*

#### EXECUTIVE

1. The executive powers of the Government shall be vested in one Principal Chief, who shall be styled the Principal Chief of the Sisseton and Wahpeton Nation. Gabriel Renville the present Principal Chief shall hold the office till his death.

2. There shall be an Assistant Principal Chief who shall be elected for four years by the qualified voters of the people.

3. Before the Principal [Chief] enters on the execution of his office he shall take the following oath:

I do solemnly swear that I will faithfully execute the duties of Principal Chief of the Sisseton and Wahpeton Nation and will to the best of my ability preserve, protect and defend the Constitution of the same.

4. The Principal Chief shall not attend the deliberation[s] of the Council, but whenever the Legislative body discusses a subject and desires its approval, they shall always present it to the Principal Chief for his approval, if he approves, he shall sign it and it shall become a law, if he disapproves he shall enter his objections in writing, return it to the body in which it originated, requesting a reconsideration, but if on reconsidering the Legislative body give[s] two thirds vote for the same it shall become a law.

5. He may on extraordinary occasion convene the Legislative body at the seat of the Government.

6. He shall from time to time give the Legislative body information of the state of the people, and recommend to their consideration, such measures as he may deem expedient.

7. He shall take care that the laws be faithfully executed.

8. It shall be his duty to visit the different districts once every year to inform himself of the general condition of the people.

9. The Principal Chief shall during the Session of the Legislative body attend the seat of Government.
10. The Assistant Principal Chief shall by virtue of his Office assist the Principal Chief and if by sickness or any other disability the Principal Chief is unable to perform his duties, they shall assumed by the Assistant Principal Chief.
11. In the case of the death of the Principal Chief his successor shall be elected by the qualified voters at the next general election, thereafter whose term of office shall be four years.
12. There shall be a Treasurer of the Sisseton and Wahpeton nation who shall be elected by the people every two years.
13. The Treasurer before entering on the duties of his office [shall] give bond to the nation, amount of such bond to be fixed by the Legislative body.
14. The Treasurer shall not pay out any money on his own account, the Legislative body shall make appropriation, and no money shall be drawn except by warrant of the Principal Chief.
15. The Treasurer shall have charge of all money and shall keep a record of Receipts and Expenditures and shall report the same every year to the Legislative body.
16. There shall be a Secretary of the Sisseton and Wahpeton nations, who shall be elected by the people for two years.
17. He shall make and have charge of all records of the nation, by the Clerk of the Supreme Court, grant marriage license[s], and keep a record of the same, and perform such other duties which may be prescribed by law.
18. The Sisseton and Wahpeton nation shall elect a Sheriff whose term of Office shall be two years, and who shall perform all the duties which may be prescribed by law.
19. The Sisseton and Wahpeton Nation shall elect an attorney whose term of Office shall be two years and who shall perform all the duties which may be prescribed by law.

### *Article V*

#### JUDICIAL

1. The Judicial powers shall be vested in a Supreme Court and District Justices of the Peace.
2. The Judges of the Supreme Court shall consist of five (5) members to be elected by the people for two years, and the Chief Justice shall be appointed by the Council from the five (5).
3. No person shall be appointed a Judge of any of the Courts until he shall [have] attained the age of twenty-five (25) years; and also no person who is a polygamist.
4. The Judge of the Supreme Court shall have complete jurisdiction in such cases as may be provided by law.

5. In any trial if any Judge is a relative of either of the contending parties, he shall not take part in said trial except by consent of both parties.
6. All writs and process shall read "In the name of the Sisseton and Wahpeton Nation" and be signed by the clerk who makes them; and all indictments shall conclude, "Against the peace and dignity of the Sisseton and Wahpeton Nation."
7. The Supreme Court shall meet every year on the second Tuesday in June at Sisseton Agency, and if necessary they may hold other meetings, but not more than four meetings each year.
8. Whenever anyone is accused and to be tried before the court he shall be assisted in hearing witnesses and of hearing the evidence of any witness.
9. The District Authority shall be as follow *[sic]*, every year on the second Tuesday of April there shall be elected by the people, a Justice of the Peace, and a Constable whose duties shall be those define by law.

#### *Article VI*

1. Whoever denies the existence of God shall not be eligible to any office.
2. The appointment of all officers not otherwise directed by the Constitution shall be vested in the Legislative body.
3. In order that the people may advance in civilization and education, the children shall be encouraged to attend school, and that education may be advanced, there shall be a Committee on education consisting of five members to be appointed annually by the Legislative body.
4. In order that there may be no misunderstanding between this nation and the United States this Constitution and all laws, shall be published in the English and Dakota languages; and to affect *[sic]* this, the Principal Chief shall appoint an Interpreter to assist.

#### *Article VII*

1. Any amendment to this Constitution shall be as follows:  
The Legislative body shall discuss the matter, and if two third[s] ( $2/3$ ) are in favor they shall notify the Principal Chief who shall communicate the same to each of the Districts for their consideration, and in six months after the people shall assemble in general convention, and if two third[s] ( $2/3$ ) are in favor of the amendment it shall be adopted.

#### *Article VIII*

1. This Constitution and these laws, shall become laws as soon as signed by a majority of the Chiefs and headman and two thirds ( $2/3$ ) vote of the people and approved by the United States Indian Agent.

*Article IX*

1. This Constitution and these laws in their adoption and administration shall be subject in every respect to the provisions of the Treaty made February 19, 1867, accepted April 22nd, 1867, proclaimed May 22nd, 1867.

**Laws 2**

*Chapter 2. Article 2*

DUTIES OF OFFICERS

1. The Principal Chief shall have and keep the national seal.
2. He shall have power to inspect the books of any Officer and the money in the hands of the Treasurer, and if he thinks that any Officer is not performing the duties of his office, as prescribed by law, he shall suspend him and during such suspension he may appoint a person to fill the vacancy.
3. Whenever a vacancy occurs in the office of Treasurer the Principal Chief shall appoint a suitable person to perform the duties of the office until his successor has been elected by the people; and the person appointed before he enters upon his duties shall give bond.
4. The Principal Chief shall from time to time, adopt such means as he may deem necessary to secure conformity in conducting elections.
5. Any person under sentence may be pardoned by the Principal Chief upon the recommendation of credible persons.
6. Whenever a vacancy occurs by death, or any other cause of any Officer elected by the people, the Principal Chief shall appoint a person to fill such vacancy until his successor is elected by the people.

*Chapter 2*

WICOWOYAKE II. OEHNAKE 2

1. The Sheriff and Constable shall take the following oath: I, AB, having been elected Sheriff of the Sisseton and Wahpeton Nation (or Constable) of \_\_\_\_\_ district do solemnly swear I will [well] and truly execute the duties of said office as defined and required of me by law according to the best of my skill and ability without fear or partiality so help me God.
2. The Sheriff shall always attend the sitting of the Supreme Court, and shall arrest any person accused of violating the law.
3. The duties of the Constable shall be with the Justice of the Peace of their District and shall make arrests for any violation of the law within their Districts, but they shall make no arrests outside of his own district.
4. In case of resistance or strong apprehension of resistance the sheriff or constable making any arrest may summon anyone to assist him; and if in making

such arrest, or in attempting to escape the person should be killed, it shall not be considered an offense against the law; but in all cases the Supreme Court shall judge the matter.

5. The District Constable shall be the road commissioner and shall perform all the duties which may be prescribed by law.

### *Chapter 2. Article II*

#### JUDICIAL OR SUPREME COURT

1. The Supreme Court shall have jurisdiction in all disputes in violation of the law, and all decisions shall be rendered according to law. The court shall also direct the mode of procedure of the Justice of the Peace as prescribed by law.

2. The Supreme Court alone shall have power to grant divorces.

3. Justices of the Peace: There shall be a Justice of the Peace in each District elected by the people.

4. The District Court shall have jurisdiction in all cases which do not exceed fifty dollars (\$50) and where the amount does not exceed Twenty-five Dollars (\$25) his decision shall be final; and when over Twenty-five dollars (\$25) and not over Fifty dollars (\$50) he shall grant an appeal to the Supreme Court.

5. When the law is violated by any person the Justice of the Peace shall order their [*sic*] arrest of the accused and immediately proceed to try the case.

6. The district Justice of the Peace shall keep a record of all prosecution and sentences and perform other duties which may be prescribed by law.

### *Chapter 2. Article 2*

1. The Attorney shall be elected as provided by the Constitution.

2. The attorney shall attend all the sittings of the Supreme Court [and] prosecute any offence against the constitution or law, and his duty shall be at all times to guard the interest of the Sisseton and Wahpeton nation.

### *Chapter 3. Crimes*

#### *Article 1*

#### CONSPIRACY

1. Any person who shall by force of arms attempt to subvert the Government of the Sisseton and Wahpeton nation shall be deemed guilty of breaking this law, and upon conviction thereof shall be imprisoned for a period not less than one nor more than ten (10) years.

2. No treaty shall be binding upon the Sisseton and Wahpeton nation which shall not be ratified by the Principal Chief, the Legislative body, and two thirds (2/3) of the electors.

*Article 2*

## MURDER

1. Every killing of a human being without the authority of law, shall be considered murder, and when from premeditated design to kill one and another is killed by accident, it shall be considered murder, and upon conviction thereof the person found guilty shall be hung till dead, or imprisoned for a period not less than two years, or for life, at the discretion of the court.
2. Any person who shall attempt to commit suicide shall be guilty of attempted murder and upon conviction thereof shall be imprisoned for a period not less than one nor more than twelve months; or be fined not less than five, nor more than twenty-five dollars at the discretion of the court.
3. Whoever shall cause the death of an unborn child shall be guilty of murder, and upon conviction thereof shall be imprisoned for a period not less than one nor more than five years.

*Article 3*

## ASSAULT [WITH] INTENT TO KILL

1. Any person who shall assault another with intent to kill shall be guilty of an offence against the law, and upon conviction thereof shall be imprisoned for a period not less than two nor more than ten years.
2. Any person who shall assault another with intent to steal shall be deemed guilty of an offence against the law, and upon conviction thereof shall be imprisoned for a period not less than six nor more than eighteen months; or pay a fine of not less than five, nor more than fifty dollars or both at the discretion of the court.
3. Any person who shall steal, conceal, or destroy any record of the Supreme Court Justice of the Peace, or belonging to the Sisseton and Wahpeton Nation shall be guilty of an offence against the law, and upon conviction thereof shall be imprisoned for a period not less than seven days nor more than one year, or pay the value of such a record, or both, at the discretion of the court.
4. Any person who shall willfully take or steal a horse, mule, cow, hog, sheep, or any other domestic animal, or any other thing shall be deemed guilty of an offence against the law, and upon conviction thereof shall be imprisoned for a period not less than ten days nor more than two years, or pay the value of the things stolen, and if he has sold or destroyed it he shall pay a fine of double its value, half of which shall be paid to the owner of the property, and half to the Sisseton and Wahpeton Nation.
5. If any person willfully kills any horse, cow, hog, or other beast of another; or shall willfully administer any poison; or maim such beast, he shall be guilty of an offence against the law, and upon conviction thereof shall be imprisoned for a period of less than one year, or pay a fine of the value of such beast, but if fined he shall not be imprisoned.

*Article 4*

1. Any person who shall ravish a female or shall administer any drug or any liquor in order to carnally know her, shall be guilty of an offence against the law, and upon conviction thereof he shall be imprisoned for a period of not less than one year nor more than ten years.

2. Any person who shall except hereinafter provided, offer to the Relatives or friends of any women or girl, any money, or other valuable considerations for the purpose of cohabiting with such girl or woman; and any female who shall offer herself for the purpose, shall be deemed guilty of an offence against the law, and any person who shall receive or offer to receive money shall be deemed guilty of an offence against the law, and any person convicted of either of the offences named in this (section), shall pay a fine of not less than five, nor more than twenty-five dollars, and shall be imprisoned until such fine is paid. And if any white man shall be found guilty of any of the offences herein mentioned, he shall be immediately removed from the reservation, and not allowed to return thereto, complaint shall also be made to the civil authority.

*Article 5*

1. No person except for medicinal purpose for the physician shall bring any whiskey, wine, beer, or any other intoxicating liquor within the Reservation and whoever does bring such on the reservation shall be deemed guilty of an offence against the law, and upon conviction thereof shall be imprisoned for a period of not less than twenty days nor more than one year, or shall be fined not less than Ten nor more than Fifty dollars, or both, at the discretion of the court.

2. Whoever drinks any whiskey, wine, beer, or any other intoxicating liquor, or is intoxicated shall be deemed guilty of an offence against the law, and upon conviction thereof shall be fined not less than one nor [more than] Ten Dollars, and shall be imprisoned until such fine is paid.

*Article 6*

1. Whoever shall falsify, or destroy any check, note, or warrant, shall be deemed guilty of an offence against the law, and upon conviction thereof shall pay double the amount of the falsification and matter destroyed and be imprisoned until such fine is paid.

*Article 7*

1. No one shall set fire to the prairie in this country between September first and January first[:] whoever does shall be guilty of an offence against the law; and shall be fined not less than five nor more than twenty-five dollars. And whenever [any person] destroys anything by fire [he] shall pay the value of the same, and if he is unable to do so, he shall be imprisoned at the Discretion of the Court.

2. Whoever between the first of January and the first of September shall burn any prairie and destroy anything by fire shall pay the value thereof.

*Article 8*

1. If any person falsify or maliciously speaks, writes, prints or disseminates any matter for the purpose of slandering the name of a person, his family, or friends shall be deemed guilty of an offence against the law, and shall be tried before the Supreme Court, and upon conviction thereof shall be fined not more than five hundred dollars, or imprisoned not more than six months and if fined, he shall be imprisoned until such fine is paid.

*Article 9*

1. The first day of the week being universally acknowledged as Sunday, this people shall observe the same and whoever does not observe it shall be guilty of an offence against the law, breaking the Sabbath shall be as follows;

First, Labor including plowing, and hay making,

Second, Amusements,

Third, Manufactures, And whoever violates this law shall be tried before the Justice of the Peace and upon conviction shall for the first offence [be] fined not less than five dollars and for the second nor more than ten dollars.

*Chapter 4. Crimes*

*Article 1*

DAMAGES

1. When any person is injured in property by another and a dispute arises[,] if the parties disputing do not settle the matter within ten days, they shall inform the Justice of the Peace, and each party shall appoint a referee and the Justice shall appoint a person of integrity, not interested in the dispute, and the three [shall] before the Justice of the Peace discuss and decide the matter, and their decision shall be final.

*Article 2*

1. In order that the crops of another be not destroyed, any owner of stock shall herd the same between the first of June and the (31st) of August and if he does not and anything is destroyed he shall be deemed guilty of an offence against the law, and the Justice of the Peace shall try the case and order the payment of the value thereof; but whoever has a field and does not guard the same during the months above named, and any thing is destroyed he shall receive no pay therefore.

*Chapter 5. Dances*

*Article 1*

1. Whoever dances or takes part in the Sundance, the Scalp dance, the War dance, including the Night dance, the Fox dance, and the Circle dance, shall be



deemed guilty of an offence against the law, and upon conviction thereof shall be fined not more than ten dollars.

2. If anyone engages in the so called witch craft . . . the sacred feast, the sacred dance, or other assimilating thereto, [that person] shall be treated in the same manner as above.

3. There shall be no giving or taking away [of] any property at the death of a person, and whoever does so shall be guilty of an offence against the law, and shall be tried before the Justice of the Peace, and upon conviction thereof the party giving away shall pay the value of the same, and the party receiving shall be compelled to return the same.

## *Chapter 6. Crimes*

### *Article 1*

#### MARRIAGE AND DIVORCE

1. Marriage to be valid requires the consent of both parties, and no female under the age of fifteen, and no male under the age of eighteen years, shall be capable of contracting marriage.

### *Article 2*

1. In the Sisseton and Wahpeton nation from this time forth, whoever desires to be married, shall come before the Clerk of the Court, and state his desire, procure a License, which he shall present to a Justice of the Peace, a Judge of the Supreme Court, or a minister, who shall perform the ceremony, shall enter the same in the License, and return it to the Clerk of the Court, provided no person having any divorced husband or wife shall be granted any License.

And any white man who desires to marry a woman of this nation, shall proceed in the same manner, for more than this he shall be guided by Treaty.

### *Article 3*

1. Every person shall have the right of courtship but no person shall visit a house for this purpose or trouble persons, after the doors is locked, and the parties retired, and whoever causes trouble by so doing shall be deemed guilty of an offence against the law, and shall be tried before the Justice of Peace and upon conviction shall be fined no more than five nor less than one dollar.

### *Article 4*

1. From this time forth no party shall be divorced without cause, cause for divorce shall be as follows; 1. Adultery, 2. Cruelty, 3. Failure to support for twelve months. When a divorce is sought the Supreme Court shall decide and its decision shall be final; but when a divorce is granted, it shall extend to both parties.

*Chapter 6. Crimes*

*Article 5*

DIVORCE

The Supreme Court in granting a divorce shall in all cases where there are minor children make such order concerning the care and custody of such children having due regard to the age and sex of the same.

*Chapter 7. Highways*

*Article 1*

For the purpose of building and repairing roads, all able bodied men between the ages of eighteen and fifty years, shall be required to labor two days each year on highways; and any person who will not work shall pay the sum of two dollars; and money so collected shall be used for the sole purpose of building and repairing roads. . . .

**Laws passed in the Legislative body of the  
Sisseton and Wahpeton Nation  
in the year of 1884.**

February 28th, 1884

House of Representatives. House bill No. 1.

An act providing account of Treasurer Bond.

1. Be it enacted by the Legislative body;

The Treasurer shall give Bond to the amount of two thousand (\$2,000) Dollars.

Henry Campbell  
Secretary

Jacob Sinukawaste  
President of House  
Confirmed by the Council

Amos Ecetukiya  
Secretary

Michael Renville  
President of Council  
Approved March 1st, 1884

Gabriel Renville  
Principal Chief of S.W. Nation

Approved March 17, 1884

Benj. W. Thompson  
U.S. Indian Agent.

House Bill No. 2

February 29th, 1884

An act providing for the Salary of Officers.

1. Be it enacted by the Legislative Body.
  1. The Principal Chief shall receive each year \$125.00
  2. The Assistant Principal Chief shall receive each year 50.00
  3. The Secretary shall receive each year 75.00
  4. The Treasurer shall receive each year 70.00
  5. The Attorney shall receive each year 50.00
6. The Judges of the Supreme Court shall receive pay according to the days they are in Session and at the rate of one dollar and fifty cents per day \$1.50
7. The Sheriff shall only receive pay according to the day he is engaged and at the rate of one Dollar per day and three cents (3 c) mileage going and coming, \$1.00
8. The members of the council shall receive two Dollars and fifty cents (\$2.50) per day while in session,
9. The Representatives shall receive two dollars and fifty cents (\$2.50) each per day while in session,
10. The pay of the Interpreter for the Ten (10) day Session shall be Two Dollars and fifty cents (\$2.50) per day.

*Approved by the agent  
March 17th, 1884  
Benj. W. Thompson*

*Approved March 7th, 1884.  
Gabriel Renville  
Principal Chief of the S.W. Nation  
U.S. Indian Agent*

House Bill No. 3.  
March 3d, 1884

1. Be it enacted by the Legislative body,  
That the sum of one hundred (\$100) Dollars be appropriated for the purchase of books and stationary [*sic*].

*Approved by the Executive March 5th, 1884.  
Approved by the U.S. Indian Agent March 17th, 1884.*

House Bill No. 4.  
March 4th, 1884.  
An Act providing for a License to Trade.

1. Be it enacted by the Legislative body,  
Any person desiring to trade within the bounds of the Reservation shall apply to the Secretary of the nation for a License and only those who have Licenses

signed by the Principal Chief shall be permitted to trade; The fee for such License shall be fifteen (\$15) Dollars, per year such fee to be paid to the Treasury.

*Approved by the Principal Chief March 5th, 1884.  
Approved by the U.S. Indian Agent March 17th, 1884.*

House Bill No. 5.  
March 5th, 1884.

An Act taxing wood and hay sold outside the Reservation.

1. Be it enacted by the Legislative body,

Any person selling a cord of wood for every cord, shall pay Ten (10 c) cents and for every one hundred (100) fence posts sold twenty (20 c) cents, such money to be paid into the Treasury.

2. Any person receiving authority to sell wood, shall pay Ten (10 c) cents per cord and Twenty (20 c) cents per one hundred (100) fence posts, such money to be paid into the Treasury.

3. Also any person selling hay shall, for every Ton, pay ten (10 c) cents, such money to be paid into the Treasury.

*Approved by the Principal Chief March 6th, 1884.  
Approved by the U.S. Agent March 17th, 1884.*

Council Bill No. 2  
March 5th, 1884.

An Act providing for a Revenue:

1. The mode of raising a Revenue in the Sisseton and Wahpeton Nation, the first year, shall be as follows,

- |                                                                       |         |
|-----------------------------------------------------------------------|---------|
| 1. Every holder of a Patent to pay annually                           | \$10.00 |
| 2. Persons who have not less than twenty-five acres under Cultivation | \$5.00  |
| 3. Persons who have not less than fifteen acres under Cultivation     | \$3.50  |
| 4. Persons who have not less than five acres under Cultivation        | \$2.50  |
| 5. Persons who have less than five acres under Cultivation            | \$1.00  |
| 6. Every voter without a farm to pay annually                         | \$2.00  |

2. To further the provisions of this act the Secretary of the Nation, shall, on the first of May and before the end of this month go from house to house and make a list of land under cultivation, such to be handed to the Principal Chief.

The Principal Chief, with the President of the Council, and the President of the house of Representatives, these three, shall make roll call and announce the amount each person is to pay.

3. Taxes shall become due on the first of July but six (6) months' grace will be given, viz; July, August, September, October, November, and December. The Treasurer shall notify by letter all delinquent taxes and if after such notification any person is still delinquent or refuses to pay, the Justice of the Peace shall be informed, and he shall cause the person to pay by Judgment.

4. All Revenue shall be collected upon land under cultivation (as above) but any person not paying may be imprisoned as follows; The Justice of the Peace may imprison him for not less than five nor more than fifteen days, according to his discretion.

*Approved by the Principal Chief March 7th, 1884.  
Sanctioned by the U.S. Indian Agent March 17th, 1884.*

Council Bill No. 3

March 4th, 1884.

A Committee selected.

1. It is provided in the Constitution, that the Constitution and all laws shall be published both in English and Dakota.

Resolved that we appoint a committee with power to do all that may be necessary for the same.

Such committee to be as follows:

Cal Benj. W. Thompson	W. S. Indian Agent
J. B. Brown	Attorney of the S. W. N.
David Ault Jr.	Assistant Principal Chief
Rev. E. Ashley	Interpreter for the S. W. N.

The above said [*sic*] passed both houses of the Legislative body....

## 36

*Constitution of the Sac and  
Fox Nation (Sac and Fox  
Peoples, 1885)*

The Sac (Asakiwaki-Sauk) and Fox (Moshkwahkihaki-Fox) are two distinct Algonquian-speaking peoples who originally lived in the Great Lakes region. After suffering devastating population losses, the two merged for survival, as well as for political and other reasons in the early 1700s, while maintaining their unique cultural identities.

Like many other tribal nations, they, too, experienced a number of removals (Iowa, Kansas, Indian Territory), which eventually led the tribe to divide into three separate groups and reservations. The Sac and Fox Nation of present-day Oklahoma, where they have resided since 1869, is the largest of the three. The other two are the Sac and Fox of the Mississippi in Iowa (or Meskwaki) and the Sac and Fox Tribe of Missouri, who live in Kansas and Nebraska.

Historically, the tribes' members were divided into bands or villages that were led by chiefs. Hereditary and clan-linked peace leaders exercised significant influence over band affairs. War chiefs also played prominent roles.

Led by a constitutional committee, the Sac and Fox who settled in what was then Indian Territory approved this, their first written constitution, in March 1885. Adopting the name Sac and Fox Nation, they created a three-branch government, in which a national council comprising five members from each band (a treaty chief, two councilors, and two others) wielded legislative power, a principal chief and an assistant principal chief assumed executive power, and a supreme court and a set of inferior courts exercised judicial power. The Sac and Fox Nation then declared that all tribal lands would be held as common property.

Ironically, this was the same month the U.S. Congress enacted the Major Crimes Act (23 Stat. 385), in which the federal government unilaterally assumed jurisdiction over seven "major" crimes when committed by an Indian against any other person in Indian country; it was also the same month that Congress authorized the appraisement and sale of the reservations of the Sac and Fox (of the Missouri) and the Iowa tribe of Indians located in Kansas and Nebraska (23 Stat. 351) with the consent of a majority of the chiefs, headmen, and adult males of each tribe. However, after sending a delegation to the Indian Territory to select a reservation, the Sac and Fox refused to accept the terms of the act and expressed their unwillingness to unite with the Sac and Fox of the Mississippi.

This very detailed document reflects the two nations' efforts to synthesize an organizational structure that contained elements of both their traditional institutions and contemporary constitutional governing principles.

Hagan, William Thomas. *The Sac and Fox Indians* (Norman: University of Oklahoma Press, 1958).

Hargrett, Lester. *Laws and Constitutions of the American Indian Nations* (Millwood, N.Y.: KTO Microfilm, 1976, reel 7, Hargrett #210).

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## Constitution

The constitution of the Sac and Fox Nation prepared by the authorized committee and adopted by the National Council:

The Sac and Fox tribes of Indians having united and become one body politic as long ago as the year 1804, under the style and title of the Sac and Fox tribe Indians of the Mississippi, therefore—

We, the people of the Sac and Fox tribe of Indians of the Mississippi, in National Council assembled, in order to extend the benefits of our National Government, as provided for in section 9, of our treaty with the United States, proclaimed October 14, 1868, to establish justice, insure tranquility, promote the common welfare and secure to ourselves and our posterity the blessings of freedom—acknowledging with humility and gratitude the goodness of the Sovereign Ruler of the universe in permitting us so to do, and imploring His aid and guidance in its accomplishment—do ordain and establish this Constitution for the government of the Sac and Fox tribe of Indians of the Mississippi, to be called and known as the Sac and Fox Nation:

### *Article I*

Section 1. The lands of the Sac and Fox Nation are those provided by the treaty of October 14, 1868, between the United States and the Sac and Fox tribe of Indians of the Mississippi, comprising 479,667 acres laying [*sic*] in the Indian Territory next west of the Creek Nation, the Cimarron river forming the north and the North Fork Canadian river the south lines thereof.

Section 2. The lands of the Sac and Fox Nation shall remain common property, but the improvements made thereon and in possession of the citizens of the Nation are the exclusive and indefeasible property of the citizens respectively who made or may rightfully be in possession of them. Provided, that the citizens of this Nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements whatever, to the United States' individual States, or to individual citizens thereof; and that whenever any citizen shall remove without the limits of this Nation with his effects and become a citizen of any other

government, all his rights and privileges as a citizen of this nation shall cease. Provided, nevertheless, That the National Council shall have power to readmit by law to all the rights of citizenship any such persons who may at any time desire to return to the Nation, on memorializing the National Council for such readmission. Provided, further, That nothing in this section shall be construed to include property right. Moreover, the National Council shall have power to adopt such laws and regulations as it may deem expedient and proper to prevent citizens from monopolizing improvements with the view of speculation.

### *Article II*

Section 1. The power of this government shall be divided into three districts departments, the Legislative, the Executive, and the Judicial.

Section 2. No person belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the case hereinafter expressly directed or permitted.

### *Article III*

Section 1. The legislative power shall be vested in a National Council, and the style of their acts shall be: Be it enacted by the Nation Council.

Section 2. The National Council shall consist of five members from each band, to wit: The treaty chief and councilors each, of their own choosing, and two additional members from each band, to be elected or selected by each band respectively, the councilors chosen and the last mentioned members to be elected as may be provided by law; each shall serve a term of two years.

Section 3. The National Council shall, after the present year, be held annually, to convene on the first Monday in October, at such places as may be designated by the National Council, or, in case of emergency, by the principal chief.

Section 4. The first election for all officers of the government—Principal and Assistant Principal Chiefs, Executive Council, members of the National Council, Judges and Sheriffs—shall be held at Sac and Fox Agency before the rising of this Council, and the term of service of all officers elected shall be extended to embrace the time intervening from their election to the first Monday in October, 1886.

Section 5. No person shall be eligible to [a] seat in the National Council but Sac and Fox male citizens who shall have attained the age of twenty-five years.

Section 6. The members of the National Council shall in all cases, except those of felony or breach of the peace, be privileged from arrest during their attendance at the National Council, in going to or returning therefrom.

Section 7. All officers of this Nation shall be elected by the National Council every two years, except as hereinbefore provided, as to the members of the National Council, immediately after the organization of each biennial Council.

Section 8. In elections by the people the electors shall vote viva voce. All male citizens who shall have attained the age of eighteen years shall be equally entitled to vote at all public elections.



Section 9. The National Council shall judge of the qualifications and returns of its own members, determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Section 10. The National Council, when assembled, shall choose its own officers; a majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalty as the Council may prescribe.

Section 11. The National Council is empowered to fix by law the salaries of all officers of the Nation and members of the National Council, except that of the treaty chiefs, who shall receive no other salary than that provided by the treaty of October 14, 1868. Provided, That the same are increased or diminished by law, but no other alteration shall take effect during the period of service of the members of the National Council by whom such alteration may have been made.

Section 12. The National Council shall regulate by law by whom and in what manner writs of election shall be issued to fill vacancies which may happen in the Council thereof.

Section 13. Each member of the National Council, before he takes his seat, shall take the following oath or affirmation:

I, A. B, do solemnly swear (or affirm, as the case may be) that I have not obtained my election by bribery, treat, or any undue and unlawful means, used by myself, or others by my desire or approbation for that purpose; that I consider myself constitutionally qualified as a member of the National Council, and that on all questions and measures which may come before me I will so give my vote and conduct myself as, in my judgment, shall appear most conducive to the interest and prosperity of this Nation; and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power observe, conform to, support and defend the constitution thereof.

Section 14. No person who may be convicted of felony shall be eligible to any office or appointment of honor, profit or trust within this nation.

Section 15. The National Council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the Nation, which shall not be contrary to this constitution.

Section 16. It shall be the duty of the National Council to pass such laws as may be necessary and proper to decide differences by arbitration, to be appointed by the parties who may choose that summary mode of adjustment.

Section 17. No power of suspending the laws of this Nation shall be exercised, unless by the National Council or its authority.

Section 18. No retroactive law, nor any law impairing the obligation of contracts, shall be passed.

Section 19. The National Council shall have power to make laws for levying and collecting taxes for the purpose of raising a revenue.

Section 20. All acknowledged treaties shall be the supreme law of the land, and the National Council shall have the sole power of deciding on the construction of treaty stipulations.

Section 21. The Council shall have the sole power of impeaching. All impeachments shall be tried by the National Council, when sitting for the purpose; the members shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

Section 22. The Principal Chief, Assistant Principal Chief, and all civil officers shall be liable to impeachment for misdemeanor in office; judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust or profit under the government of this Nation. The party, whether convicted or acquitted, shall be liable to indictment, trial, judgment and punishment according to law.

#### *Article IV*

Section 1. The supreme executive power of this Nation shall be vested in a Principal Chief, who shall be styled "The Principal Chief of the Sac and Fox Nation." The Principal Chief shall hold office for the term of two years and shall be elected by the National Council from the treaty chiefs on the organization of each biennial Council.

Section 2. No person except a native born citizen shall be eligible to the office of Principal Chief: neither shall any person be eligible to that office who shall not have attained the age of thirty-five years.

Section 3. There shall be chosen at the same time by the National Council, in the same manner, for two years, an Assistant Principal Chief, who shall have attained the age of thirty-five years.

Section 4. In case of the removal of the Principal Chief from office, or his death or resignation, or inability to discharge the powers and duties of the said office, the same shall devolve upon the Assistant Principal Chief, who shall be one of the treaty chiefs.

Section 5. The National Council may by law provide for the case of removal, death, resignation, or disability of both the Principal and Assistant Principal Chiefs, declaring what officer shall then act as Principal Chief until the disability be removed or a Principal Chief shall be elected.

Section 6. The Principal Chief and Assistant Principal Chief shall receive for their services no other compensation than that provided in the treaty of 1868, and they shall not receive within that period any other emolument from the Sac and Fox Nation or any other government.

Section 7. Before the Principal Chief enters upon the execution of his office he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the duties of Principal Chief of the Sac and Fox Nation, and will to the best of my ability preserve, protect and defend the constitution of the Sac and Fox Nation."

Section 8. He may, on extraordinary occasions, convene the National Council at the seat of government.

Section 9. He shall, from time to time, give to the Council information of the state of the government and recommend to their consideration such measures as he may deem expedient.

Section 10. He shall take care that the laws be faithfully executed.

Section 11. It shall be his duty to visit the different bands at least once in two years, to inform himself of the condition of the country.

Section 12. The Assistant Principal Chief shall, by virtue of his office, aid and advise the Principal Chief in the administration of the government at all times during his continuance in office.

Section 13. Vacancies that may occur in offices, the appointment of which is vested in the National Council, shall be filed by the Principal Chief during the recess of the National Council, by granting commissions, which shall expire at the end of the next session thereof.

Section 14. Every bill which shall pass the National Council, shall before it becomes a law be presented to the Principal Chief; if he approves he shall sign it, but if not he shall return it with his objections to the Council, who shall enter them at large on their journal and proceed to reconsider it. If after reconsideration two-thirds of the Council shall agree to pass the bill, it becomes a law. If any bill shall not be returned by the Principal Chief within five days (Sunday excepted) after the same has been presented to him, it shall become a law in like manner as if he has signed it, unless the National Council, by their adjournment, prevent its return, in which case it shall be a law unless sent back within three days after their next meeting.

Section 15. Members of the National Council and all officers, executive and judicial, shall be bound by oath to support the Constitution of their nation, and to perform the duties of their respective offices with fidelity.

Section 16. The Principal Chief shall, during the session of the National Council attend at the seat of government.

Section 17. There shall be an Executive Council composed of the treaty chiefs and their Councillors, who, or a majority of whom, may from time to time hold and keep a Council for ordering and directing the affairs of the Nation according to law.

Section 18. The Treasurer of the Sac and Fox Nation shall be chosen by the National Council for the term of two years.

Section 19. The Treasurer may be a member of the National Council and Treasurer at the same time, but he shall not receive the pay of but one of said offices.

Section 20. The Treasurer shall before entering upon the duties of his office give bond to the Nation with sureties to the satisfaction of the National Council for the faithful discharge of his trust.

Section 21. No money shall be drawn from the treasury but by warrant from the Principal Chief, and in consequence of appropriations made by law.

Section 22. It shall be the duty of the Treasurer to receive all public moneys and to make a regular statement and account of the receipts and expenditures of all public moneys at the annual session of the National Council.

Section 23. The fiscal year of the Sac and Fox Nation shall begin on the 1st day of October and close on the 30th day of September of each year; and all books and accounts of the Treasurer shall be kept, and duties of the office performed, with regard to the beginning and ending of the fiscal year. The National Treasurer's salary may be fixed by law.

*Article V*

Section 1. The judicial powers shall be vested in a Supreme Court, and such circuit and inferior courts as the National Council may from time to time ordain and establish.

Section 2. The Judges of the Supreme and Circuit courts shall hold their commissions for the term of two years, but any of them may be removed from office on the address of two-thirds of the National Council to the Principal Chief for the purpose.

Section 3. The salary of the Judges of the Supreme and Circuit courts may be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the government of this Nation or any other power.

Section 4. No person shall be appointed a Judge of any of the courts until he shall have attained the age of thirty years.

Section 5. The judges of the Supreme and inferior courts shall be elected by the National Council.

Section 6. The judges of the Supreme and Circuit courts shall have complete criminal jurisdiction in such cases and in such manner as may be pointed out by law.

Section 7. No judge shall sit on trial of any cause when the parties are connected with him by affinity or consanguinity, except by consent of the parties. In case all the court (Supreme) shall be interested in the issue of any court, or related to all or either of the parties, the National Council may provide by law for the selection of a suitable number of persons of good character and knowledge for the determination thereof, and who shall be specially commissioned for the adjudication of such case by the Principal Chief.

Section 8. All writs and other process shall run "in name of the Sac and Fox Nation," and bear attest and be signed by the respective clerks.

Section 9. Indictments shall conclude "against the peace and dignity of the Sac and Fox Nation."

Section 10. The place and meetings of the different courts shall be determined by the National Council.

Section 11. In all criminal prosecutions the accused shall have the right of being heard; of demanding the nature of the accusation; of meeting the witness face to face; of having compulsory process of obtaining witnesses in his or their behalf; and in prosecutions by indictment or information a speedy public trial; nor shall the accused be compelled to give evidence against himself.

Section 12. All persons shall be bailable by securities, unless for capital offenses when the proof is evident or the presumption great.

*Article VI*

Section 1. No person who denies the being of God, or a future state of reward and punishment, shall hold any office in the civil department of this Nation.

Section 2. When the Executive Council, or a majority of them, shall determine the expediency of appointing delegates or other public agents, for the

purpose of transacting business with the government of the United States, or other parties, the Principal Chief shall recommend and by the advice and consent of the Executive Council, or a majority of them, appoint and commission such delegates or public agents accordingly, on all matters of interest touching the rights or interests of the citizens of this Nation. The compensation of such delegates or agents shall be determined by the Council.

Section 3. All persons shall be allowed the right of counsel.

Section 4. All commissions shall be in the name and by the authority of the Sac and Fox Nation and signed by the Principal Chief. The Principal Chief shall make use of his private seal until a national one shall be provided.

Section 5. A Sheriff shall be elected by the National Council, who shall hold his office two years unless sooner removed. Should a vacancy occur subsequent to election, it shall be filled by the Principal Chief, as in other cases, and the person so appointed shall continue in office until the next regular election. The Sheriff shall have the power to appoint as many as one under [deputy] Sheriff from each band.

Section 6. The appointment of all officers not otherwise directed by this Constitution shall be voted for in National Council.

Section 7. The National Council may propose such amendments to this Constitution as two-thirds of the Council may deem expedient and the Principal Chief shall issue a proclamation directing all officers of the several bands to promulgate the same as extensively as possible within their respective bands at least six months previous to the next general election, and if at the first session of the Council after such general election two-thirds of the Council shall by ayes and noes ratify such proposed amendments they shall be valid to all extent [*sic*] and purposes as part of this Constitution. Provided, That such proposed amendments shall be read on three several days in Council, as well as when the same are proposed as when they are ratified.

Done in Convention at Sac and Fox Agency, Sac and Fox Nation, this 26th day of March, A.D. 1885.

<i>Ucquaw Ho Ko, his X mark,</i>	<i>Mahko Sah Toe, his X mark,</i>
<i>Nul Lah Ke, his X mark,</i>	<i>Henry Clay Jones,</i>
<i>Alex Connolly,</i>	<i>Keokuk, his X mark</i>
<i>Nom Mol Wah, his X mark,</i>	<i>William Harris,</i>
<i>Antoine Gokey,</i>	<i>Milton Carter,</i>
<i>Charles Keokuk,</i>	<i>My Aw Che, his X mark,</i>
<i>Waw Pe Ko Hal, his X mark,</i>	<i>Cup Law He, his X mark,</i>
<i>Ke Om Mo What, his X mark,</i>	<i>Kah Che Pim Mo Sah, his X mark,</i>
<i>Mash Ko Kaw, his X mark,</i>	<i>Wawpaw Ko Huck, his X mark,</i>
<i>Snow-que-quot, his X mark,</i>	<i>Tus-se-haw, his X mark,</i>
<i>Waw-kal-le, his X mark,</i>	<i>Maw Mal Le Haw, his X mark,</i>
	<i>Kish Ke Ten O Kah.</i>

At a full council of the Chiefs and head men of the Sac and Fox tribe of Indians of the Mississippi in the Indian Territory held in their Council house at Sac and Fox Agency, I. T., on this the 14th day of March, A.D. 1885, the following proceedings were had to wit:

After a full and fair discussion as to the advisability of the Sac and Fox tribe of Indians of the Mississippi in the Indian Territory organizing a civil form of government for their future government, it was decided that in such a course there was wisdom and an imperative demand therefor.

Therefore, it was resolved by said Council that a committee consisting of seven members of their tribe be appointed by said Council to draft a suitable constitution and laws looking to that aid, to be submitted to a regular Council to be held on the 26th day of March, A.D. 1885. The Council appointed as said committee, Wm. Harris, Mah-ko-se-toe, Nish-koh-kat, Mash-ko-kah, Show-que-quat, Nom-wol-wah and Robert Thrift.

Council adjourned to meet March 26, 1885, at Council room of Sac and Fox Agency.

*Chas Keokuk,  
Secretary.  
March 14, 1885.*

Sac and Fox Agency, I. T., March 26, 1885.

Council met pursuant to adjournment. Committee submitted report as per the appended Constitution, which was fully discussed and adopted. Said committee submitted also a code of laws, which was received and laid over until April 6, 1885, for action by the Council.

Members Present:

1. Ucquaw ho ko, Head Chief,

Keokuk,	Chief,	Ke Om Mo What,	Headman,
Che Ko Suk,	Chief,	Mash Ko Kaw,	Headman,
Cup Paw He,	Chief,	Show Que Quat,	Headman,
Wah Ko Mo,	Chief,	Kis Ke Ten O Kah,	Headman,
Mah Ko Se Toe,	Headman,	Antoine Gokey,	Headman,
Wah Pe Ko Hal,	Headman,	Black Neck,	Headman,
Nul Lah Ke,	Headman,	Kah Cae Pim Mo Sah,	Headman,
Maw Mal Le Haw,	Headman,	Waw Paw Ko Huck,	Headman,
Nom Mol Wah,	Headman,	My Aw Che,	Headman,
Waw Kal Le,	Headman,	Tus Se Haw,	Headman,
Milton Carter,	Headman,	Nish Ko Kat,	Headman.

Adjourned to meet at Council room, April 6, 1885, Sac and Fox Agency, I. T.

*Chas Keokuk.  
March 26, 1885.*

Sac and Fox Agency, I. T., April 6, 1885.

Council met pursuant to adjournment. All the members being present. The laws for the government of the Sac and Fox tribe as reported by committee was

[*sic*] then discussed and adopted by a three fifths vote, said adoption being by vote upon each act, by section seventeen, and then as a whole, until all acts hereto appended were adopted.

The following officers were unanimously elected, to wit:

Uc quaw ho ko, Principal Chief,	Keokuk, Assistant Principal Chief,
Wm. Harris, Treasurer,	Robt. Thrift, Prosecuting Attorney,
Alex. Connolly, Sheriff,	H. C. Jones, District Judge,
Additional Councillors:—Wah Pe Ko Hal, Maw Mal Le Haw, Milton Carter, Atoine Gokey, Mash Ko Kaw, Waw Paw Kohuck, Kish Ke Ten O Kah, Tus Se Haw.	

Resolution passed asking U.S. Indian Agent I. A. Taylor to forward copy of Constitution and laws to the Hon. Commissioner of Indian Affairs for approval. Council adjourned.

*Chas Keokuk,  
Treasurer. April 6, 1885.*

37

*Robert L. Owen, Agent, Union  
Indian Agency, Muscogee Indian  
Territory (Cherokee and Several  
Other Indian Nations, 1886)*

Commissioner of Indian Affairs John D. C. Atkins, in his annual report to the secretary of the interior in 1886, devoted much of his account to the so-called Five Civilized Tribes since “the influence of their example upon the semi-civilized and savage tribes makes the study of their condition and methods a matter not only of great interest but also of first importance.” While lauding these tribes for having “passed from a state of barbarism and savagery” because of their outstanding schools, churches, lucrative businesses, and so on, Atkins was not prepared to characterize them as fully civilized because “when we come closely to investigate the laws and customs of their system of government, it is radically different from that of any of our States.”

The principal “difference” he was referring to was that the tribes held their lands in common ownership. “This,” he said, was “the fundamental error from which proceeds the troubles which afflict the five nations.” Although it was nothing of the sort, this was the argument that an increasing number of federal, territorial, and corporate officials, as well as many white settlers, were then wielding as an excuse

to have the lands of the Five Tribes allotted and the remaining “surplus” lands thrown open for white settlement.

Atkins, fully aware of the trust relationship, the tribes’ long treaty history, their recognized political sovereignty, and their fee-simple land title, then shrilly noted that “these Indians have no right to obstruct civilization and commerce and set up an exclusive claim to self-government, establishing a government within a government, and then expect and claim that the United States shall protect them from all harm, while insisting that it shall not be the ultimate judge as to what is best to be done for them in a political point of view.” He said the current situation allowed the tribes to constitute what he called a “foreign sovereignty,” which, in his opinion, was repugnant to the U.S. Constitution.

The agent’s report for this year provides a fairly detailed description of the Cherokee Nation’s governing system, which he stated had elements of both state constitutions and “ancient customs.”

U.S. Commissioner of Indian Affairs. *Annual Report* (1886).

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## Robert L. Owen’s Report

Union Indian Agency,  
Muscogee, Indian Territory, September 20, 1886.

Sir: I have the honor to transmit this, the annual report of the Union Agency, for the year ending August 31, 1886.

It has been impossible to get full statistics from the executive departments of the Five Nations, as they are not able to give it [*sic*]. The Cherokees had a census taken in 1880, the Choctaws in fall of 1885, which I have the honor to transmit.

The jurisdiction of this agency extends over the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles, commonly called the “Five Civilized Tribes,” and its area extends from Kansas to Texas and from Arkansas to Missouri, 96th and 98th meridians west, including also the Cherokee Strip of 6,050,000 acres, which extends to the Panhandle of Texas on the west. . . .

The material and social condition of the people of this agency would probably greatly surprise those accustomed to think of the Indians as wild men. Entering the Cherokee Nation by the Missouri Pacific Railway, one first sees the town of Vinita, a town of a thousand people. It is surrounded by farms, on which comfortable cottages are to be seen. The town has broad streets, surveyed and permanently marked by rock shafts sunk at the center of prominent crossings. It has a number of respectable buildings devoted to business purposes, of stone, of brick, and of frame. The stores are well stocked with



merchandise, and do an extensive business. They are conducted in all cases by citizens of the Cherokee Nation under license of the Cherokee council or legislature, paying a certain tax, one-quarter of 1 per cent., on the gross invoices. The town is known as Vinita to the general public, but is incorporated as the town of Downingville. Its charter was granted some fifteen years ago by the Cherokee council. It has a Cherokee mayor and town council, a Cherokee treasurer, clerk, and town marshal, &c., with regular municipal regulations. It levies and collects taxes on all property within corporate limits. The mayor holds court and fines those violating city ordinances, or, in default, consigns the offender to the "calaboose." Inclosed I send you a copy of the "compiled laws of the city of Downingville," as a part of this report. It explains more fully than any other description could the status of affairs in this Indian town. . . .

The government of the Indian country in this agency is effected by the Federal law operating through the United States district court for the western district of Arkansas, the executive department through the Indian Bureau, and by the Indian laws. The district court has a certain criminal jurisdiction over cases arising between United States citizens only, and [those in which] the crime is committed either against a United States citizen or by a United States citizen against an Indian citizen. There is no civil jurisdiction over either cases where United States citizens are the only parties, or where United States citizens and Indian citizens are the parties at issue, a jurisdiction seriously needed. In the presence of so many United States citizens civil disputes are numerous, and some are of great magnitude; for example, that recently referred by this office to you, of the Concho Cattle Company et al. vs. Buchanan et al., involved \$180,000.

The Commissioner of Indian Affairs regulates, as the President may prescribe, under the direction of the Secretary of the Interior and agreeable to such, the management of all Indian Affairs and of all matters arising out of Indian relations. The regulations affecting this agency are modified by the special treaties made with the Five Civilized Tribes by the fact of their owning their lands in fee. The Indian agent is the authority sent to carry out and enforce these regulations, intercourse laws, and treaties, in so far as the executive department of the government is concerned, and has 43 police for the maintenance of good order, &c.

The Indian governments are shaped on the plan of the State governments, with [a] constitution based on that of the United States, and laws fitted to their condition and affected to some extent by their ancient customs. One illustrates all; and I give a brief sketch of the Cherokee government as most familiar to me.

Its constitution is based on that of Mississippi, suitable changes being made. The treaties with the United States are declared the supreme law of the land, and the intercourse laws in pursuance thereof paramount. Religious and political tolerance is secured, and the rights of person, property, and reputation protected. After declaring the boundaries of the Cherokee Nation, the title thereto in the nation as such, and the indefeasible right of the citizen to occupy and control what he wishes to cultivate, article 2, section 1, declares the power of the government shall be divided into three distinct departments, the legislative, the executive, and the judicial.

Section 2. No person or persons belonging to either of these departments shall exercise any of the powers properly belonging to any of the others, except in the cases hereinafter expressly directed and permitted.

The principal chief of the Cherokee Nation is simply a governor, with the functions that usually attach to that office, with the pardoning power, the right to veto, &c. He may be impeached as the governor of a State may be impeached. The executive office of the Cherokee Nation is thoroughly well managed. The chief has four secretaries, who are constantly employed in keeping a record of its affairs and managing the great and increasing business of the Cherokee Nation. As creditable documents issue from this little office as from the average State. Every letter is briefed, registered, and placed on the letter-record book, which has indexes of time, name and subject. Every letter sent out is duly copied in press-letter books. In this office are kept the archives of the nation, the various rolls made of the citizens of the Cherokee Nation, &c., and by him are drawn all warrants on the public treasury. The present incumbent, Dennis W. Bushyhead, is well educated, a man of the strictest integrity, of excellent executive ability, educated partly at Princeton, but far more by vigorous contact for over twenty years with the elements from all parts of the world thrown together on the gold fields of California in 1849. He is an American as well as a Cherokee, and indicates but little, as far as his personal appearance is concerned, of what race he sprang.

The Cherokees have a treasurer under a \$75,000 bond, but whose strongest bond is his honor, the ties with the people by blood, the associations of a life, and by the residence there of all his blood kin. The present treasurer has had this spring as much as \$350,000 cash in hand. He is the custodian and disbursing officer of the funds on lawful warrants and appropriations. He has a secretary salaried by the council.

The executive department has also an auditor who supervises the accounts of the nation in its internal management.

Each of the political districts (nine in number) has its sheriff, deputy sheriff; the latter, guards, clerk, deputy clerks are required to keep complete records of the various courts meeting in their several districts, all probate matters, transfers of property on the domain, all permits granted United States citizens by them, register brands of cattle owned by citizens and running on the public domain, and other matters requiring public record. Each district has also its prosecuting attorney, whose duty it is to conduct all examinations of persons charged with crime, and prosecute them, when indicted, in pursuance of law. He is duly sworn to do that "without fear or favor, partiality or malice, and to be faithful to the Cherokee Nation in all prosecutions to the best of his skill and abilities."

The chief has an executive council composed of three persons selected by the national council. Their duty is to advise and consult with him, when called on, as to the management of public affairs. The chief, in order to prevent as far as possible errors on the part of his somewhat inexperienced officers, has many printed forms, which he furnishes to them with printed instructions as to their several duties. This may be regarded as the best public school on the limits of the Cherokee Nation. I enclose, as part of this report, some of these forms

for your information. If any of these officers fail or refuse to do their duty, the chief is authorized, after due hearing, to suspend them until the next meeting of the national council, to whom he is required to report his action together with the defense of the accused officers. The council impeaches or reinstates, as the case may be.

The legislature, or "national council," of the Cherokee Nation is composed of a senate and house of representatives, the latter called the "council." It is controlled by the ordinary parliamentary rules that govern such bodies, although not carried out with the same degree of refinement found in a State legislature. Both languages are freely spoken in the senate and council, and they have interpreters for those who may not otherwise understand, but it will not be many years before the English language alone will be used, a majority speaking English and nearly all understanding it. Their complexion, however is rather swarthy as a whole, three-fourths, probably, being full-blood, there being at present but one white man, I believe, in the national council.

The senators and representatives are elected by the people, every man over eighteen having a vote and voting *viva voce*. There are two clerks and two judges at each election precinct, one of each from the two rival parties, and they record the voter's choice in his presence. Their ballot-boxes cannot be stuffed, but much eloquence is expended at times to throw out a troublesome precinct from being counted in the national council on some legal quibble in the election law.

The Cherokees in their local self-government are the most ardent politicians on the face of the earth, without exception. Each party has a thorough and complete organization, each with its platform, its three district lodge captains, its district managers, its three head managers, its manipulators. Each gives barbecues, has speakers to talk for them, and they vilify the opposing party with as much vigor and in as ingenious manner as could possibly be desired or hoped for in the most enlightened community. They resort to all the schemes known to mortal man to secure voters for their respective parties. They get the voter's bearing from every point of the compass; they know his church, his neighbors, his kin, his old party difficulties, his boon companions; they measure up his personal pride, his present need, his ambition, &c., and bring all this influence to bear. These things are educating the Cherokees, making them think. They now look to and demand the record, and as a people are well posted in the affairs of their nation.

The judicial department of the Cherokee Nation is composed of a district court for each of the nine political districts, with probate jurisdiction and original and exclusive jurisdiction over certain minor civil cases and misdemeanors, with right of appeal to circuit court, which meets semi-annually in each district. The circuit court has original jurisdiction over civil cases exceeding \$100 in value and in felony cases. The right of appeal lies from the circuit court to the supreme court of the Cherokee Nation. In cases involving the death penalty one of the justices of the Supreme Court presides. The Supreme Court is composed of a chief justice and two associate justices. It is a court of appeals and with original jurisdiction in murder and treason cases. It provides rules and regulations, and its decisions govern the lower court. These courts may

issue writs of attachment, garnishment, injunction, mandamus, &c., and entertain motions to abate, dismiss, or demur. There is a complete jury system and grand-jury system, and their code is very well adapted to afford remedy for any injury sustained in life, person, or property. Indictments conclude “against the peace and dignity of the Cherokee Nation.” In section 2, article 3, of the constitution we find the following, to wit:

In all criminal prosecutions the accused shall have the right of being heard; of demanding the nature of the accusation; of meeting the witnesses face to face; of having compulsory process for obtaining witnesses in his or their favor; and on prosecutions, by indictment or information, a speedy public trial by an impartial jury or the vicinage; nor shall the accused be compelled to give testimony against himself.

Sec. 12. The people shall be secure in persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without good causes, supported by oath or affirmation.

The Cherokee constitution was adopted in 1828, more than half a century since, by the Eastern Cherokees, and readopted in the convention of 1839 by both Eastern and Western Cherokees, and its principles are firmly established.

The public buildings of the Cherokee Nation are suitable to meet all the wants of their government. The national capitol at Tahlequah is of brick, stone capped, two stories high, with cupola, shapely and convenient. It contains the executive office, executive consultation room, supreme court room, supreme court consultation room, auditor’s office, office of the board of education, senate chamber, council chamber, treasurer’s office, and three committee rooms. . . .

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## 38

*Compact between the Several  
Tribes Constituting the  
International Council in Indian  
Territory (Cherokee, Creek,  
Choctaw, Chickasaw, Seminole,  
Caddo, Delaware, Kiowa,  
Comanche et al., 1886)*

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This is an example of the kind of diplomatic accord that Indian nations in the Indian Territory generated in an effort to improve international relations, satisfy the needs of their respective peoples, and protect their remaining lands and rights from non-Indians and the local,

regional, and national governments. It encompassed peace, recognition of a permanent homeland, criminal jurisdiction, extradition, banning of liquor, arbitration, and so on.

Cherokee Nation Papers, Collection, Western History Collections, University of Oklahoma.

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## Compact of the International Council

*Proceedings of the International Council at Eufaula,  
I. T., March 15th, 1886.*

Whereas, By the solemn pledges of Treaties we are assured by the Government of the United States that the lands we now possess shall be the undisturbed home of ourselves and our posterity forever; therefore, we, the authorized representatives of the several Nations [who are] parties thereunto assembled in Convention at Eufaula, Indian Territory, in order to establish closer relations between our several Nations, to enable us better to promote the general welfare of all the Indians and to preserve our lands and rights intact, do enter into the following Compact:

Section 1. Peace and friendship shall forever be maintained between the Nations [who are] parties to this Compact and between their respective citizens.

Section 2. Revenge shall not be cherished nor retaliation practiced for offenses committed by individuals.

Section 3. To provide for the improvement of our people in agriculture, manufactures, and other domestic arts adapted to promote the comfort and happiness of our women and children, a fixed and permanent location on our lands, is an indispensable condition. In order, therefore, to secure these important objects, to prevent any future removal and to transmit to our posterity an unimpaired title to the lands guaranteed to our respective Nations by the United States, we hereby solemnly pledge ourselves to each other that no Nation party to this Compact shall, without the consent of all the other parties, cede or in any manner alienate to the United States any part of their present Territory.

Section 4. If a citizen of one Nation commits wilful murder, or other crime within the limits of another Nation, party hereto, he shall be subject to [the] same treatment as if he were a citizen of that Nation.

Section 5. In case of property stolen, or taken by force or fraud, the property, if found, shall be restored to the owner; but, if not found, the convicted person shall pay the full value thereof.

Section 6. If a citizen of any Nation party to this Compact shall commit murder or any other crime and flee from justice into the Territory of another Nation party thereto, said criminal shall, on demand of the Executive of the Nation from which he fled (accompanied by reasonable proof of guilt), be delivered up to the authorities of the Nation having jurisdiction of the crime.

Section 7. We hereby further agree that if any one of our respective citizens, shall commit murder or other crime upon the person of any other citizen of this same Nation, in any place beyond the limits of our several Nations, the person so offending shall be subject to the same treatment as if the offense had been committed within the limits of his own Nation: Provided, that this section shall not apply to the Choctaws, Cherokees, Creeks, Chickasaws, and Seminoles.

Section 8. Any citizen of our Nation may be admitted to citizenship in another Nation, party hereto, by consent of the proper authorities of such Nation.

Section 9. The use of ardent spirits being a fruitful source of crime and misfortune, we recommend its suppression within our respective limits, and agree that no citizen of one Nation shall introduce it into the Territory of any other Nation party to this Compact.

Section 10. That remedy at law for the recovery of debts, or the enforcement of any contract, or to secure any right or demand held by the citizen of one Nation against a citizen of the other Nation, or a citizen of the other Nation, or a citizen of the same Nation against another citizen residing in the other Nation, shall be the same in all respects as between citizens within their own Nation: The object of this provision being to open the Courts of the Nations party to this Compact, fully to the citizens of all the other Nations.

Section 11. The legislative authorities of the Nations, parties to this Compact, may regulate by law the time, manner and conditions upon which the citizens of the other Nations, parties to this Compact, may be allowed to reside within its limits, for the purpose of trade, stock raising, farming or other business or pleasure, and certificates signed by the Principal Chief and attested by the seal of the Nation to which the person availing himself of the benefits of any law regulating such privileges, shall be taken as "prima facie" evidence of the citizenship of such person.

Section 12. In case of difficulty unfortunately arising between two or more tribes, parties to this Compact, it is agreed that the same shall be refereed for settlement to the Chief or Chiefs of such Nations as the parties differing may mutually agree upon, and the award of such arbitration shall be final and obligatory in character upon the parties.

Section 13. This Compact shall be obligatory on parties thereto when approved by the National Council of each Nation.

*Cherokees—S. H. Benge, Wm. P. Ross, Adam Feelin,  
Daniel Redbird, James Chambers, Frog Sixkiller.*

*Creeks—D. N. McIntosh, G. W. Stidham, Roley McIntosh,  
Chas. Gibson, Wm. Robinson, Sam Grayson.*

*Choctaws—Thompson McKinney, N. B. Ainsworth.*

*Chickasaws—Jonas Wolf, J. Brown, Jackson Greenwood.*

*Seminoles—Hulputta, his X mark; Fusutche, his X mark.*

*Caddos—Towacanai Jake, his X mark; White Bead, his X mark.*

*Toni—Canosta, his X mark.*

*Delaware—Lon Horn, his X mark.*

*Kiowas—Sun Boy, his X mark; Lone Wolf, his X mark; Big Tree, his X mark.*

*Comanche—Black Crow, his X mark.*

*Keechi—Cowarahuntus, his X mark.*

*Wichitas—Towancanai Jim, his X mark; Kowachitty, his X mark.*

*Towancanai—Naister, his X mark.*

*Interpreters—James H. Deere, J. S. Harrison, Punjo,*

*Keechi Joe, E. P. Gaforth.*

Resolved, That this council when it adjourns, do so to meet on the first Monday in June 1887, unless sooner called together by the Executives of the Five Civilized Tribes.

*S. H. Benge—President of International Council  
Sam Grayson,  
Clerk.*

## 39

### *Laws of the Pamunkey Indian Town (Pamunkey People, 1886 or 1887)*

The Pamunkey people have inhabited their present-day lands in Virginia for at least ten thousand years, and their language belongs to the Algonquian linguistic group. When the Jamestown Colony was established in 1607, they were one of the thirty or more tribes of the Powhatan Confederacy, led by the renowned Powhatan, or Chief Wahunsonacock.

In 1646 and 1677 the Pamunkey negotiated two treaties with the British Crown. Ever since the American Revolution, the Commonwealth of Virginia has remained legally bound to fulfill certain of these treaties' provisions. Moreover, since 1658 the tribe has retained a small reservation that is still home to a number of Pamunkey families.

Although the Pamunkey, like virtually every other tribal nation, have intermarried to various degrees with other racial groups, they have vigorously fought to preserve their distinctive political, territorial, and cultural status. Thus, after the American Civil War, they insisted on having their own school systems, apart from those for whites and blacks.

The ensuing legal code, adopted in 1886 or 1887, evidences a community anxious to maintain clear communal land boundaries and

a separate ethnic identity that adheres to a stern work ethic and an unambiguous moral code.

Pollard, Jno. Garland. "The Pamunkey Indians of Virginia." *Bureau of American Ethnology*, Bulletin 17 (Washington, D.C.: GPO, 1894).

Rountree, Helen C. *The Powhatan Indians of Virginia: Their Traditional Culture* (Norman: University of Oklahoma Press, 1989).

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## Pamunkey Laws

### *Government*

#### LEGAL STATUS OF THE TRIBE

In government the tribe is a true democracy, over which, however, the State of Virginia exercises a kindly supervision. The State appoints five trustees to look after the interest of the Indians. No reports of these trustees could be found on file at the office of the governor of Virginia, and their only function that could be ascertained to have been performed was the disapproval of certain sections in the Indian code of laws. Laws thus disapproved are expunged from the statute book. The tribe is not taxed, but they pay an annual tribute to the State by presenting through their chief to the governor of Virginia a number of wild ducks or other game.

As regards the internal government of the Pamunkey, the executive power is vested in a chief, while the legislative and judicial functions are performed by the chief together with a council composed of four men. The chief was formerly elected for life, but now both chief and council are elected every four years by vote of the male citizens. Their method of balloting for their executive officer is unique. The council names two candidates to be voted for. Those favoring the election of candidate number 1 must indicate their choice by depositing a grain of corn in the ballot-box at the schoolhouse, while those who favor the election of candidate number 2 must deposit a bean in the same place. The former or the latter candidate is declared chosen according as the grains of corn or the beans predominate.

The chief and council are the judge and jury to try all who break the law, and to settle disputes between citizens. Their jurisdiction is supposed to extend to all cases arising on the reservation and which concern only the residents thereon, with the exception of trial for homicide, in which case the offender would be arraigned before the county court of King William County. The Indians claim, however, that it would be their privilege to use the courts of the commonwealth of Virginia to settle such difficulties as could not be efficiently dealt with by their own courts, provided such difficulty arose from a breach of a State law. The writer does not know on what this claim is based. As may be seen from the printed transcript (verbatim et literatim)



of the written laws of the Pamunkey which follows, they impose only fine or banishment as penalties. There is no corporal punishment either by chastisement or incarceration.

#### TRIBAL LAWS

The Laws of the Pamunkey Indian Town written here in Sept. 25, 1887

The following Laws [were] made and approved by chief and council men Feb. 18th, 1886, for the Ruling of the Pamunkey Tribe of Indians.

1st Res. No Member of the Pamunkey Indian Tribe shall intermarry with any Nation except White or Indian under penalty of forfeiting their rights in Town.

2nd No non-resident shall be allowed to be hired or sheltered more than 3 months—and if any person are known to hire or shelter any such persons [they] shall pay 50c pr. day for every day over the above mentioned time. Amendment. Should such person or persons be quiet and agreeable they may be hired 30 or 60 days under good behavior.

3rd Any person slandering another without sufficient evidence shall be fined in the 1st offence \$5 Second \$10 and in the 3rd they are to be removed from the place by the Trustees' chief and counsel men.

4th No non-resident shall be taught in our free school except [by] the consent of [the] chief councilmen or any other Indian Tribe.

5th Any party or person found guilty of stealing any thing belonging to any one else they shall pay the party for the amt. that are [sic] stolen from them and also shall be fined from \$1 to \$5. 3rd time they are to be removed from the place.

6th If any person shall depredate or Trespass on another one's premises and shall break down gates or destroy fences or any other property [he] shall be made to pay or replace all damages and if any miners [sic] are engaged in such, their parent shall be responsible for their acts and each and any that are found guilty Shall be fined from \$1 to \$5.

7th Be it known that each road of Indian Town shall be 30ft. wide and all person that has moved their fence in the road shall have 30 days to move them out and if they are not moved they are to be moved by the chief and the council men and the expense paid by the Trespasser.

8th If any citizen are notified to attend any meeting and fails to do so without sufficient excuse [they] shall be fined from \$1 to \$1.50.

9th Be it known that all the citizens age 16 to 60 of Indian Town shall work on the road as far as red hill and any member [who] refuse[s] to work shall be fined 75c and Jacob Miles to be Road Master and he [is] to be paid \$1 pr. year.

10th Be it known that no person be allowed to swear on the highway of Indian Town and if so they are to be fined from \$1 to \$2. (Amendment) 1st offence 25 2nd 75 3rd 100.

11th Be it known that any person or persons seen or known to be fighting upon the highways or elsewhere of Indian Town in the Town the one found guilty of first breaking the peace shall be fined not less than \$3, nor more than \$5 dollars.

12th Resolve that each male citizen of Indian Town owning a piece of land shall pay \$1.00 pr. year or the value in produce to the Treasurer of Indian Town yearly for her benefits.

13th Be it known that the Hall Sein Shore of Indian Town shall be rented out yearly for the benefit of the Treasury of Indian Town and if any person are known to set any obstruction in the way [he] shall be fined \$5 in each offence.

14th If any person owning a piece of land and do not build and live upon it in 18 m it shall be considered as town property and the person shall be allowed 20 days to move what they have thereon off; then it shall be considered as Town Property and the town can allow anyone else the same privilege under the above obligations.

15th Any person that become rude and corrupt and refuse to be submissive to the Laws of Indian Town shall be removed by the Trustees, chief and councilman.

16th Any person that are in debt to the town and refuse to pay the amount[,] enough of their property shall be sold to satisfy the claim.

17th Be it known that we shall have a fence law and it shall be 4 ft. high on a ditch Bank and 5 ft. high on a level [*sic*]and the holes are to be 1 foot 4 in hole 2 ft. 6 in holes 3 ft. 8 in hole and Remainder to the judgment of the fencer.

18th An amendment to Resolution all male citizens of Indian Town from 18 year[s] upward shall pay \$1.00 pr. year and until the amt. is paid they will not be given no land.

Besides these written laws, there are others which have not been committed to writing, the most important of which relate to the tenure of land. The reservation belongs to the tribe as a whole, [and] there is no individual ownership of land. The chief and council allot a parcel of cleared ground of about 8 acres to the head of each family. The occupant is generally allowed to keep the land for life, and at his death it goes back to the tribe to be reallocated, unless the deceased should leave helpless dependents, in which case the land is rented for their benefit. The houses on the reservation are individual property and can be bought and sold at pleasure. . . .

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*Charles E. McChesney, Agent,  
Cheyenne River Agency, Dakota  
Territory (Blackfeet, Sans Arc,  
Minneconjou, and Two Kettle  
Peoples, 1887)*

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The year 1887 was a watershed for Indian nations. In February, Congress enacted the General Allotment Act (24 Stat. 388), which was designed to gradually dismantle tribal governments, abolish Indian reservations by the allotment of communally held reservation

lands to individual Indians for private ownership, and force Indians to assimilate into Euro-American society by extending the franchise and emphasizing agricultural pursuits.

It was one of the most destructive Indian-specific policies ever enacted by Congress because, before it was finally ended in 1934, the federal government had allotted 118 out of 221 reservations, thereby leading to the loss of millions of acres of land and to gross violations of indigenous treaty rights. These policies also enabled state governments to gain a permanent jurisdictional foothold within Indian country.

Reservations were not allotted instantaneously, however, as the president of the United States had to first authorize each allotting measure, and all eligible Indians were given four years to select their allotted section of land. Individual allottees then received patents, which meant that the United States would hold the allotment in trust—free from state or local taxation—for twenty-five years.

On the Cheyenne River Reservation, the agent's report for 1887 described the size of the reservation (about twelve thousand square miles) and the obstacles that were hindering the Indians' attempts to comply with federal pressure to become agriculturalists (e.g., arid or semiarid environmental conditions; insufficient water to sustain crops; shortages of federal money to make the land suitable for irrigation). Agent McChesney, in fact, urged the secretary of interior to allow the Indians to spend their time and limited resources raising livestock instead of farming.

With regard to governance, McChesney noted that the Indians had established a business council at the beginning of the year and that it had worked well during its inaugural period. This is one of the earliest references to business councils in Indian country and indicates the economic orientation that federal policymakers had decided to adopt as native communities faced increasingly persistent pressure to abandon the hunt and become agriculturalists.

U.S. Commissioner of Indian Affairs. *Annual Report* (1887).

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## Charles E. McChesney's Report

Cheyenne River Agency, Dakota,  
August 25, 1887.

Sir: I have the honor to submit the following report of this agency for the past year.

Cheyenne River agency is located on the west bank of the Missouri river, about 35 miles north of Pierre, Dak., the terminus of the Chicago and

Northwestern Railway, from which place a stage runs to a point opposite the agency three times a week. The mail and passengers are crossed over the river in a small row-boat. The nearest telegraph station is Fort Sully, 7 miles distant, on the east side of the river. There is frequently great difficulty in crossing the river. Owing to the swiftness of the current and numerous sand bars hours are sometimes consumed in the crossing, and at certain seasons of the year the river is impassable for three or four days at a time. There should be a telegraph station at either the agency or the contiguous post of Fort Bennett.

The Indians at this agency comprise the Blackfeet, Sans Arc, Minneconjou, and Two Kettle bands of Sioux. The census of June 30 last shows their number to be 2,936, as follows:

Band	Male	Female	Total	Children from 6 to 16 years of age		
				Male	Female	Total
Blackfeet...	102	121	223	27	31	58
Sans Arc...	349	431	780	78	101	179
Minneconjou...	575	673	1,248	126	172	298
Two Kettle...	320	365	685	76	82	158
Total...	1,346	1,590	2,936	307	386	693

The territory under the jurisdiction of this agency contains about 12,000 square miles, and the Indians are scattered over the greater portion of this area, along the timbered streams, mostly in camps of varying sizes. A few have taken separate places in years past, and the number so doing has increased greatly in the last two years. It is difficult to form anything like a correct estimate of the amount of tillable land, but there is probably not over 1,600,000 acres of good agricultural land. Gumbo is found to cover large areas of the bottom lands, so that only selected places can be cultivated...

At the beginning of the present year, in accordance with the wish of the Indians, a business council of thirteen members was elected by the Indians. The object of this council is to make known the wishes of the Indians in all the more important measures that arise from time to time that specially concern them, and through this council is made known to the Indians the instructions of the Department in all that affects them. So far the plan has been found to work well.

The court of Indians' offenses has during the year been organized in accordance with the orders of the Department. A large number of cases have been acted upon, mostly of minor offenses, and the agent has thus been relieved of a large amount of work that can be as well entrusted, in the majority of cases, to the Indians. The court has done good work, its findings have always been considered just, and its sentences commensurate with the offense committed. A majority of the Indians having expressed a desire to elect the judges of the court, I told them they could do so, and I would lay the matter before the Department. At a recent election the Indians chose three good men for judges, and I have transmitted their names to the Department, with the recommendation that they be appointed. It is thought it would be better to have paid judges for the court...

*Robert L. Owen, Agent, Union  
Agency, Indian Territory  
(Chickasaw People, 1888)*

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The Chickasaw, a Muskogean-speaking people, were originally from the present-day states of Tennessee, Mississippi, Kentucky, and Alabama. Like the other four “civilized” tribes, they were relocated to what became southern Oklahoma in the mid-nineteenth century. Closely affiliated with the Choctaw, they lived as citizens in the Choctaw Nation, although they inhabited their own district.

In 1841 the Chickasaw elected a chief and ten members from their district to serve on the Choctaw National Council. According to Champagne, two other Chickasaw political groups were vying for power as well—a conservative party that consisted of the king, the *iksa* [lineages based on the matrilineal system] council, and a number of planters; and the Chickasaw Commission, which was charged with managing the 1834 removal treaty’s benefits (7 Stat. 450).

The first Chickasaw constitution was adopted in 1846 at a convention attended by members of the district council. A revised and more detailed constitution was written in 1848. Then, in 1855 the federal government mediated the Chickasaw’s negotiations for a separation treaty with the Choctaw (11 Stat. 611). The following year the Chickasaw forged a new constitution. After aligning by treaty with the Confederacy in the American Civil War, the Chickasaw, like the other civilized tribes, were punished and forced to negotiate new treaties in 1866. That same year the Chickasaw also drafted a new constitution that freed their African American slaves and cemented their economic ties to the United States.

The following documents are the agent’s report and the 1887 constitution adopted by the Chickasaw people. The constitution contained a bill of rights, laid out a three-branch government, and interestingly discussed the fact that some Chickasaw remained opposed to providing basic civil liberties to African American freedmen who had been released from bondage under the terms of the 1866 treaty.

Champagne, Duane. *Social Order and Political Change: Constitutional Governments among the Cherokee, the Choctaw, the Chickasaw, and the Creek* (Stanford, Calif.: Stanford University Press, 1992).

Cushman, H. B. *History of the Choctaw, Chickasaw, and Natchez Indians*, ed. Angie Debo (1899; repr., Norman: University of Oklahoma Press, 1999).

U.S. Commissioner of Indian Affairs. *Annual Report* (1888).

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## Robert L. Owen's Report

Union Agency, Indian Territory, August 27, 1888.

Sir: I have the honor to transmit this, the annual report of Union Agency, for the year ending June 30, 1888.

In view of your instruction that this report is intended for public use, and should contain such information as in itself will afford to one who inquires for the first time a fair picture of the condition of this agency, I have not hesitated to substantially report what has been heretofore presented. . . .

### *The Political Condition*

The government of this country is effected by the Federal law, and by the laws of the several nations, the Federal law operating through the United States district court for the western district of Arkansas, which has both district and circuit court powers, and has cognizance of all criminal cases arising in which a citizen of the United States is a party, but does not have civil jurisdiction over the Indian country.

The Federal law (section 464, Revised Statutes of the United States) authorizes the President to prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and in section 463 *ibid.*, the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, and agreeable to such regulations as the President may prescribe, has the management of all Indian affairs and of all matters arising out of Indian relations. This places almost autocratic power in the hands of the Indian Office, and it applies to this agency except in so far as regulated by treaty and statutory provisions. Under section 464, Rules and Regulations of the Indian Department, of very complete and full character, have been made and approved by the honorable Secretary of the Interior, by which this office is guided. Section 2058, United States Revised Statutes declares:

Each Indian agent shall, within his agency, manage and superintend the intercourse with the Indians, agreeable to law, and execute and perform such regulations and duties \*\*\* as may be prescribed by the President, the Secretary of the Interior, or the Commissioner of Indian Affairs.

Under these rules and regulations an Indian police force of forty-three men has been established, which has been of much service in the prevention and suppression of crime as well as the execution of orders from the honorable Commissioner of Indian Affairs and of this agency.

The laws of the several nations have jurisdiction of all cases of either civil or criminal nature in which Indians or adopted citizens are the only parties, the jurisdiction varying, however, in the several nations. The Choctaws and Chickasaws claim and exercise exclusive jurisdiction, though the adopted citizen is a citizen of the United States and not of Indian blood. The Cherokees claim and exercise concurrent jurisdiction, while the Creeks and Seminoles do not exercise jurisdiction of intermarried United States citizens.

The laws and constitutions of the Five Nations are based upon those of the States, modified to suit their changing condition, and show every year marked improvement. Having previously given sketches of the Cherokee and Choctaw laws (Report of 1886 and 1887), I give brief outline herein of the Chickasaw laws.

In convention, at Camp Harris, August 16, 1887, the Chickasaw met and adopted their present constitution, with this preamble, to wit:

We, the people of the Chickasaw Nation acknowledge with gratitude the grace and beneficence of God in permitting us to make choice of our own form of government, do, in accordance with the first, second, fourth, and seventh articles of the treaty between the United States, the Choctaws and Chickasaws, made and concluded at Washington City June 22, A.D. 1855, and the treaty of April 23, A.D., 1866, ordain and establish this Constitution.

### *Article I. Bill of Rights*

That the general great, and essential principals of liberty and free government may be recognized and established, we declare that:

Section 1. All political power is inherent in the people, and all free governments are founded on this authority and instituted for their benefit; and they have at all times the inalienable right to alter, reform, or abolish their form of government in such manner as they may think expedient.

This bill of rights further declares:

All freedmen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive, separate, public emoluments or privileges, but in consideration of public services.

It is declared that—

All men have a natural and indefeasible right to worship God according to the dictates of their own consciences.

The liberty of the press and public is assured.

The security of the people in their persons, houses, papers, and possessions from all unreasonable searches and seizures is affirmed, declaring, however, the search and seizure of intoxicating liquors is reasonable.

In criminal prosecutions the accused is entitled to a speedy public trial by an impartial jury, the right of counsel, compulsory process for witness in his favor, and to be tried only on indictment or information, the right of bail, immunity from excessive fines, or cruel or unusual punishments, and remedy by course of law for any injury done him in his lands, goods, person, or reputation. He shall not be twice held for the same offense, and the right of trial by jury shall remain inviolate. No person shall ever be imprisoned for debt.

The right for petition is declared.

No retrospective law, or laws, impairing the obligations of contracts, is permissible.

Polygamy, or concubinage, is strictly inhibited.

The right of suffrage viva voce is declared to all Chickasaw citizens of the age of nineteen and upwards who have resided six months in the Chickasaw Nation preceding election.

The powers of the government are divided in three distinct departments: the legislative, executive, and judicial.

The Legislature of the Chickasaw Nation is composed of senate and house of representatives. It meets annually at the capital, Tishomingo, in the capitol, a decent brick building on an elevated wooded hill.

Senators hold office two years and must be thirty years old.

Representatives hold office one year and must be twenty-one years old.

The rules of the legislature are such as ordinarily govern such bodies.

“The supreme executive power of this nation shall be vested in a chief magistrate, who shall be styled ‘the governor of the Chickasaw Nation.’” His term is two years, and may hold only four years in period of six years. He must be thirty years old and a Chickasaw by birth or adoption. The returns of every election for governor are made out, sealed up, and transmitted to the national secretary at the seat of government, who shall deliver them to the speaker of the house of representatives during the first day of its organization, who shall proceed immediately to open and count the votes in the presence of both houses of the Legislature. The person having a majority of the whole number of votes is declared governor, and if no candidate have such majority the Legislature by joint vote, without debate, selects him from those having the largest votes. The governor has the usual powers attaching to such officers in the States—veto right, enforcing laws by militia, but not the pardoning power. The Chickasaws do not pardon or commute.

Under the executive department there is a national secretary, who keeps the records of the executive office. There is a national treasurer, under proper bond, with the usual functions of a treasurer. There is an auditor of public accounts and an attorney general with the duties indicated by their titles. In addition, each district has its sheriff and deputies and clerks and deputies.

The judicial department is comprised of four county judges, one each for the four counties, the circuit court with one circuit judge, ranking the four county courts, and the supreme court of a chief-justice and the associate justices, which is a court of appeals. The Supreme Court has also the power necessary to issue such writs as shall be necessary to enforce its own jurisdiction and to mandamus lower court. The circuit court has original jurisdiction over all criminal cases not otherwise provided for by law, exclusive original jurisdiction of all crimes amounting to felony and civil matter exceeding \$100 in value, and may issue all writs necessary to enforce its own jurisdiction. The country courts are probate courts and with jurisdiction in misdemeanors and minor civil matters. Appeals lie from this court to the circuit court and from the circuit court to the Supreme Court. All judges of the several courts are made “conservators of the peace.” Writs and processes of the court are “in the name and by the authority of the Chickasaw Nation,” and conclude “against the peace and dignity of the nation.”

Under the general provision of the constitution the rights of a wife to property separate from the husband is declared to all property, real and personal, owned by her pervious to marriage, or subsequently acquired by gift, devise, or descent.



It is provided specially that every person convicted of using bribes, perjury, or other crimes and misdemeanors, shall be disqualified from holding any office of honor or trust, and shall be disfranchised of suffrage.

The citizens of the Choctaw Nation are given every right of Chickasaws except suffrage, and Chickasaw citizens, by marriage or adoption, are entitled to every privilege but election to governor.

Public education is carefully provided for as the basis of the preservation of the rights and liberties of the people and the advancement of their happiness. It is declared that—

“The legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement, and such other means as shall be inviolably appropriated to the support of general education throughout this nation.”

The wording of this declaration is not fine English, but its purpose is splendid.

The laws of the Chickasaw Nation then proceed to fill in the detail of this broader plan, and defines with detail and care the respective duties of the national secretary, the district attorney, the treasurer, the auditor of public accounts, sheriffs and constables, the school superintendents, the clerk of the supreme court, the district or circuit judge, the district, county, and probate clerks.

Proper punishments are provided for murder, treason, burglary, larceny, arson, perjury, maiming, etc., from “hanging by the neck until he be dead” to a nominal fine.

The laws are reasonably well framed, though to some extent defective. Like the other nations, the Chickasaw law is superior to its execution, but it is improving under the great educational influences at work and the watchful scrutiny of the politicians of each other.

They publish their platforms, make stump speeches, hold barbecues, and ingeniously canvass their claims and criticize their opponents. To show the nature of this method, I enclose the position taken by the candidate opposing Governor William M. Guy, an honest and faithful man to the extent of his ability, who was a candidate for re-election during this present month. The following “executive policy” was declared by Mr. W. L. Byrd, candidate for governor.

### *Executive Policy*

- (1) If elected I shall be governor of the Chickasaw Nation.
- (2) I shall at all times watch and guard the interest and general welfare of my people impartially and without favoritism.
- (3) I shall select and appoint a wise and sufficient cabinet, with whom I shall consult on all matters of importance.
- (4) I shall maintain and enforce a sober administration.
- (5) I shall enforce the laws of the nation rigidly and effectively (assisted by the militia, if necessary).
- (6) I shall uphold and protest the right of the people, both as to life and property.

- (7) I shall take no stretches of power beyond what the laws repose in me.
- (8) I shall oppose to the bitter end any and all measures calculated to inure and impair the interest and welfare of the people, both as to the country and their rights in the country.
- (9) I shall endeavor by every possible means to unite and harmonize the willingness of the people to be governed (for in unity there is strength).
- (10) I shall appreciate competency, energy, and honesty.
- (11) I shall advocate economy, vigilance (for economy is the science of wealth, and eternal vigilance is the price of liberty).
- (12) The constitution and laws of the Chickasaw Nation shall be my guide and director.
- (13) Duty shall not find me lacking, and the people can approach me on any subject with full assurance of due consideration on my part.
- (14) I shall guard with care the finances of the nation and, and shall by every effort possible increase rather than diminish the same.
- (15) I shall see that all the officers of the nation discharge their duties as required of them by law, and for any willful neglect of duty or misdemeanor in office the offender shall be promptly suspended and proceeded with according to law.
- (16) I have ever been and ever shall be opposed to the adoption of the negro, and shall use every effort to cause the Congress of the United States to remove the negro from among us.
- (17) I shall yield patiently and tenderly to the wishes and desires of the people so far as the same is consistent with law, good faith, and expediency.
- (18) I shall endeavor, if possible, to get the people to agree with me in the fact that the successful government of the people consists in the willingness of the people to be governed.
- (19) I shall not favor any radical changes impairing the rights of those who are citizens by adoption or marriage.

Mr. Byrd was running as candidate of the Chickasaw national party.

Platform of the Chickasaw national party, adoption in convention at Hiestotibby Place, Tishomingo County, Chickasaw Nation, April 28, 1888.

We, the Chickasaw National party, agree not to support any person running for office unless he indorses the following platform:

- (2) That we want a fair and impartial administration, treating all alike and showing partiality to none.
- (3) That we oppose the adoption of the negro in any way, shape, or form.
- (4) That we oppose the law changing the holding of our lands, except in the present way.
- (5) That we are opposed to any officers usurping power, except it be given him by the constitution and laws of the Chickasaw Nation.

The position taken by Governor Guy is not less patriotic and virtuous, and out of these pledges open circulars widely distributed and published in Indian

newspapers good results must necessarily follow. In no country, I imagine, does party feeling run higher than that in the Indian Nations. In the Chickasaw, Choctaw, Cherokee, and Creek Nations the parties are very vigorous in pushing their candidates. It is largely the ins and outs, with a distinguishing feature more or less prominent, of a tendency to progress more marked in one party than the other. This progressive element is generally victorious. Much of the politics of the nations, however, stands on the plank of "for revenue only," without regard for the tariff, and is inspired by a desire both for the emoluments of office and for the honor of position.

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*Robert L. Owen, Agent, Union  
Agency, Indian Territory  
(Multiple Tribes, 1888)*

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As mentioned earlier, in 1870 a number of native nations in the Indian Territory made a collaborative effort to establish an international and constitutionally based body called the Okmulgee Council. Although ten tribes ratified the constitution, a two-thirds vote was required by mandate; thus the document received only equivocal federal support. Funded by federal dollars, this international indigenous council nonetheless continued to meet semiannually through 1875 and focused on maintaining peace and order, dealing with intrusive non-Indians, and coping with the influx of additional tribal peoples from other regions.

A new surge of international diplomacy featuring eastern and western nations began anew in 1879, when the leaders of various Indian tribes pledged to fund their own multitribal gatherings. This move would prove crucial as external pressure continued to mount for the tribes to open their lands for allotment despite the fact that the Five Civilized Tribes were expressly exempted from allotment in the General Allotment Act because they held fee simple title to their property.

Agent Owen's report contains some revealing observations by tribal leaders, along with a set of resolutions they formulated during their "international" meeting. Owen, however, ends this section of his annual account with a quirky comment about what he claimed was a lack of intertribal cohesion and a paucity of leadership from the Five Tribes that was belied by the evidence he had just provided.

U.S. Commissioner of Indian Affairs. *Annual Report* (1888).

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## Robert L. Owen's Report

### *International Council*

Pursuant to adjournment, the delegates from the different tribes of the Territory, who take interest in the annual caucus, met at Fort Gibson, Ind. T., on the 19th of June, 1888. Between two and three thousand people were present as spectators. About twenty tribes were represented, and the representatives had quite a pleasant time. A great many speeches were made. I give a brief synopsis of some of them.

Tabananaka, chief of the Comanches, said:

My Countrymen: The Western Indians stand to the civilized tribes as child to guardian. We have come to listen and take advice from older brothers for the better welfare of our people. You have made great strides on the white man's road. The Western Indians have a smaller idea of what is going on around them. We come to get your experience. We live on reservations, and are aware that dangers threaten our lands. You hold your lands in more solid form. We want your united experience. That is why we come to this council.

S. Houston Bengé, an educated Cherokee half-breed, chairman of the council, followed Tabananaka, and said:

I believe at one time the Indians were one great family, but that circumstances changed their language. We should all stand together. Tabananaka, we hold our land by the white man's title, but as a nation, and not as an individual. We have a patent. If your forefathers had educated their children you would have seen clearly and got a patent also, and not be in your present situation. I want to give you some advice. Take off your blankets, paint, and feathers, put on the civilized garb, go to work, build schools, and trust in God. If the Government sees you do this they won't bother you.

Rev. Samuel Smith, assistant Cherokee chief, said:

Friends and Brothers: I look on you with compassion. You say you are children. Bengé has told you truth. We owe all we have to our education. Educate, then, your children, and encourage and help the missionaries and teachers. Then your children will be competent to make your laws, and protect your persons and property as the Cherokees have done. If you were educated now, you could defend your land.

Big Tree, Kiowa chief:

Mr. President and Members of the Grand Council: Twenty-one years ago the United States granted my father by treaty the Wichita Hills in writing. We have the copy with us. We hold the land by solemn treaty guaranty. Still we are annoyed by Texas cattlemen; they are put out and press in again like water from an impending overflow. We see this with fear. I regard the civilized tribes as competent advisors. I came for advice. I believe in one chief and one law for all Indians of this Territory. They would be stronger than now. There are as many Indian tribes and bands as cow brands. Some are weak. Through them I fear a gap may be made. We should close up the files and do as United States do—have one head and one law. I saw men setting stakes on my land. I asked them what they meant. They said they were surveying a railroad. I told them they should ask my permission first. You may have granted them permission.

I don't know. I am groping blind-like. I am bitterly opposed to white settlement of Oklahoma. It would overthrow the Indians. I want that land used by Indians only. We should all organize and have one Indian government. We should never sectionize or allot.

Ex-Governor A. C. Burris, a Chickasaw Indian, in a respectable argument, said the Chickasaws owed all they had to their educated men, told the history of their advancement by missionaries, and said:

To-day the Chickasaws have many educated and intelligent men among them who are able to transact the business of my people in a correct and intelligent manner. That is what you, my brothers, need and must have to become a prosperous people. Build schools, encourage missionaries and teachers, make children study white man's language and books, and God will secure his red children every blessing.

White Wolf said:

We are one color, race, and blood. Your talk is good. We accept it as ours, and will keep it. The Indians of the plains are of one mind in this matter. We urge you, civilized brothers, use all your wisdom to help us on the road to safety for our lands. With that safe, there is hope of perpetuation.

Caddo Jake said:

I rejoice to meet my brothers like in old-time councils. We came West in obedience to treaty from Louisiana. The first Indian council was at Tahlequah. We regard it yet as binding, because especially danger approaches. We have come to get assistance of our elder brothers. I am an Indian and very ignorant. I feel like a man groping his way in the darkness of night without a single ray of light. I need advice and help. White people encroach on us. They insist on allotting our lands. We don't understand it, and want to have it put off until we can understand it better. The Government gave us this land as a people as our own, and now comes and wants to allot it, but I don't want to see it done. I oppose the white settlement of Oklahoma. It is dangerous to Indian rights. The true policy of the Indians is to unite and have one head, one law. I have done.

Wis-sha-wa, Sac and Fox Indian, said, among other things, he was a poor Sac and Fox, needing and asking help and advice of his civilized brothers. He opposed allotment. The five civilized tribes were doing well without allotment, and he wanted to follow their plan. He favored unification of all the Indians in one general government.

George R. Cheta, Otoe chief, said, among other things:

My brothers, let the spirit of the Great Spirit rule us in all our hearts, and direct us in all our works. He made us in one skin and in one family, and will lead us to one destiny. I favor schools, missionaries, and unification of all the Indians in one government as the only means for the welfare of us all.

White Horse, Otoe, said his home had been in Nebraska; that he favored unification; that he and his people were held on a small reservation, and to leave it must get a pass like a slave; he did not like it; that he worked hard for his living, and was denied his liberty in this way; asks advice.

Joe Vitter, an Iowa Indian, made a speech favoring education and unification.

Apache White Man made a speech favoring [an] Indian international council and against sectionizing. He said, "We come to you more intelligently

Indians and ask your advice." He said the white could see further ahead than the Indian, and there might be danger in this allotment to the Indian.

Whirlwind, Cheyenne Indian, made a speech against allotment and railroad surveys without consent of Indians on the land. He said:

The members of the council from the Five Tribes, we think, have more intelligence than ourselves. We have come to hear, believing they will suggest what is best for us all. We are trying to keep our promises to become like the white man. We think the white man ought to keep faith with us. He is encroaching on us.

Hon. Pleasant Porter, of the Creek Nation, made an eloquent and philosophic address in favor of unification. He said:

Mr. President and delegates representing the several tribes: I wish to make a short talk to-day. I have listened with a great deal of interest to the speeches made, and more especially those made by the delegates representing the tribes from the Western plains. During the council which met here last Monday this question was incidentally discussed by Mr. Benge and myself, whether it was practicable to unify the tribes of the Territory for their preservation. The reason for such action was that the preservation of our lands and political status under the present system has become uncertain, if not impracticable. It appeared certain that if the tribes of the Territory endeavored to preserve their rights by their own individual action it was impracticable, and they would fall to pieces. That requires no proof. If it were otherwise, many large tribes who held possession of the Atlantic coast would be in existence to-day. Tribes that had learned the wisdom of union and co-operation within their own borders have maintained themselves, their languages, and their rights to a large extent. Aggregation and general growth form the law of their existence. All communities grow according to the virtues found in their institutions. When the political bands that unite them in communities are strong enough to hold them together, growth and development is the rule. The Indian nations which have advanced furthest in understanding the principles of government have stood firmer in the advance of civilization, as witnessed in the condition of the civilized tribes in the Indian Territory. These tribes and others had considerable progress in formulating the principles of association, and hence when brought in contact with those of higher civilization they took more readily to the new order of things, and were enabled to make that degree of progress which has been spoken of so much to-day by our brothers from the West, and for which they deserve much credit. But their surroundings and that of their brethren to-day are very unlike.

At that time the white man was weak and courted the Indian as a friend and not as an enemy to be despised. To-day the Indians are weak and the white men strong and their friendship is of no particular value. Your route is certainly more difficult and harder than that traveled by the Cherokees and other civilized tribes. Therefore, I regard the talk by our Western chiefs as those of brave men who were willing to come forward and adapt their steps to the situation and help build a state for themselves and within themselves. I say it requires the courage of brave men to make the attempt, and the virtue almost of gods to carry it out. It will require all the virtue that flows under a red skin, and the laying aside of all

individual interest, and making it secondary to the interest of all Indians. It will require the laying aside of all the honors of leadership you have inherited from your ancestors in your organizations. You will have this to encourage you—the virtue that makes rapid advances where others require time. I take it for granted that the Indians of the plains are, driven by the pressure that surrounds them, willing to undertake it, and will be able to succeed. Now, I will admit that these civilized tribes do not seem to need such an organization, and it may be against their interest to favor it. They have made the advances spoken of, and have formed the governments that gave them protection under their system. They state truthfully that it is the word of sixty or eighty years. But you have the advantage of their experience, and the manhood that shines in your faces shows that you can do what they have done. The civilized tribes can not escape themselves if they fail to help you. The weak will fall, but not alone. The others will go down with them. It will be admitted that there are rights and interests involved and difficulties in the way in which they would lose and you would gain. But in a country and age with people surrounding you, among whom each man is a sovereign, it seems to me that it would not be difficult to recognize that you have all the rights the five tribes have.

In a policy looking to the unification of the Indian people of the Indian Territory, the aim would look only to political union. The question of lands and funds would not be touched. Should it become clear that our interests be in unification, let us try it; let us begin to-day in this age of advancement in the United States. One thing seems clear, we can not lose by it. If we fail we can not help it. If we neglect our opportunity we shall fail. Now, if we can find that this thing is reasonable let us adopt the policy of unification and take up the line of march like men and do it. Let us know not the Creek, the Cherokee, the Chickasaw, nor the Choctaw, but the Indian only; not one tribe, but all.

I would say further, no people ever acquired greatness without feeling they can attain it. The Indians have this appalling picture that others have faced, and when, years ago, they had thousands of warriors, now they have none, or but few. Extinction stares them in the face. In order to increase the growth of children you have to set before them pictures in advancing steps. It is true of nations, as well as individuals. There is something in the little word “hope.” It gives life and greatness. If the Indian people can grow so as to set a hope before their children and warm up their existence, a better future awaits them. But we must adopt a policy untried. All past policy has been death to the Indian. I believe this policy must come from us; from within ourselves; from our own minds. All natures grow from within. Communities have the same growth from within, not from without. Self-help, self-effort is all that succeeds in anything beneficial.

In education we need only two things—a knowledge of the English language and habits of industry, I propose on to-morrow to introduce resolutions, looking to the unification of the Indians on the plan so briefly sketched. I have said more than I expected. If we undertake this policy, we have young men among us of ability to carry it into statehood, the only existence possible in the United States. If a worthy policy is once set up, it will find men to carry it

out. It would command the moral support of the United States. You will have your own strength, and the support of every good white man in America. I will never have anything to say that I have not said to-day. I will never say anything else in a council. I will be true to myself, at least.

Others spoke in the same vein. After some days of caucusing the resolutions were adopted, as set forth below, and the council adjourned to meet again next year, after the matters therein resolved should have been presented and acted on by the various tribal authorities.

*Resolutions Passed by the Indian International  
Council, June 25, 1888*

Whereas the Indian tribes now settled in the Indian Territory have interests in common which will be better protected by closer and more helpful relations than have heretofore existed between the different tribes; and

Whereas a unification of the tribes in matters of general welfare is absolutely essential to the preservation of Indian rights, the final settlement of landed interests, and the establishment of proper safeguards for our homes in this country, which have been solemnly set apart for us; and

Whereas the welfare of the Indian people now settled in the Indian Territory will be best promoted by an organization which, originating with and established by the Indians themselves, provides by a common bond of union for the good of all, and which recognizes the ability of the Indian to protect his interests and devise plans for the civilization, education, and prosperity of the Indian race, and

Whereas the interest and safety of the individual is best assured when the interests and safety of the tribe or nation is secured, and the welfare of the tribe is assured when the safety and prosperity of the race is promoted, the general welfare demands that some plan of union be devised which, seeking the good of the individual, shall at the same time provide for those larger interests which attach to the Indian race as a whole; and

Whereas the United States by its Executives, Indian Commissioner, and Congress, has repeatedly expressed approval of the unification of the various tribes, and has in many treaties endeavored to secure some form of Federal compact which would embrace the Indian nations within its scope, secure the enactment of general laws for the government of all Indians, and establish one commonwealth in the territory to control all nations; and

Whereas from time immemorial the Indian has had such forms of government, even long before the white man came to America, and has found strength in union, prosperity in justly executed laws, and security in well-planned and far-reaching measures for the public safety; and

Whereas the Indians are best able to understand and provide for the difficult problem connected with their own future, and are ready to make necessary sacrifices to secure the true welfare of the Indian race: Therefore, be it

Resolved (1), That the general welfare of all the Indians requires a stronger and more lasting bond of union between the various tribes now in the Indian Territory than at present exists.



Resolved (2), That the unification of the tribes will best secure the general good of the Indian race.

Resolved (3), That all the tribes should have one common government with common laws, officials and institutions, in which all the tribes should have equitable representation.

Resolved (4), That to secure such form of government for the Indian Territory as will make it an Indian commonwealth, the assent of the Indian nations and tribes here represented to such plan is hereby requested, and the councils and tribes are invited to invest their official delegates to the next international council with the authority to adopt a plan of Indian Territorial government, which will, when approved by two-thirds of the tribes and Indian nations, be the general constitution of the unified Indian tribes for the government of this Territory.

Resolved (5), That the approval of the President of the United States be requested to this plan of this Indian Territorial government and tribal unification, and that a committee of three be appointed to present the plan to him as soon as possible.

Resolved (6), finally, That the next international council be called to meet for the adoption of the plan of government provided for the foregoing resolutions on the first Monday in June, 1889, and that in the mean time a special committee of five, to be appointed by this council, prepare a draft of a constitution for submission to the international council of 1889, such constitution to be the fundamental law of the Indian commonwealth herein provided for.

The following resolution was introduced by Mr. Armstrong, and passed. A copy was ordered to be sent to President Cleveland.

Whereas the Forty-ninth Congress of the United States at the last session passed a bill for the allotment of lands in severalty to Indians in the Indian Territory contrary to treaty stipulations [of] treaties made by and between the United States Government and said Indians in the Indian Territory, and contrary to the expressed wishes of this people;

Whereas it is the opinion of the delegates to the international council now in session at Fort Gibson, Ind. T., who have the authority to represent all the tribes in the Indian Territory, that if the terms of said bill are enforced at present it will work a great hardship upon and destroy and annihilate:

Resolved by the international council now in session at Fort Gibson, That the address of the international council of 1887, directed to the President of the United States, upon the subject of the allotment of Indian lands, is hereby reaffirmed and made part of this memorial, supplemented by renewing our earnest request to the President of the United States to defer further proceedings in the allotment of Indian lands until the work of special agents who have been intrusted to perform said duty be inquired into by him respecting the manner in which the lands of the Wyandottes and Senecas have been allotted by said agents.

Resolved further, That a copy of these resolutions or memorial be immediately and officially signed by the chairman of this council, and then forwarded to the President of the United States.

All this seems to argue serious business, and that unification is imminent. Not so. I don't think there is the slightest possibility of it. The Indians have

apparently no power of organization, and instead of centripetal motion and cohesion under dangers alleged, show only centrifugal motion. The Chickasaws break away from the Choctaws, and are at this moment on the verge of a political row. The Choctaws threatened a political disturbance in the election last month as to whether Wilson Jones, Esq., or Ben Smallwood, Esq., should be chief. The Cherokees had a division so fierce last fall that arms were used and Government aid invoked; and now the late Delaware tribe of Indians are so divided that any union, even for bringing suit to recover claims due them, seems impracticable, if not impossible.

In the international council not one of the chiefs or any of the Five Nations took part. Hon. John F. Brown, governor of the Seminole Nation, was not present. Hon. William M. Guy, governor of the Chickasaw Nation, was not present. Hon. Thompson McKinney, governor of the Choctaw Nation, was not present. Hon. Legus Perryman, governor of the Creek Nation, was not present. Hon. Joel B. Mayes, principal chief of the Cherokee Nation, took no part. Their absence is significant. The arguments in favor of union are good, but the five civilized tribes, for personal and political reasons, are not likely to permit any change in their present status.

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### *Charter of the Eastern Band of Cherokee Indians (Cherokee People, 1889, with Amendments Adopted in 1895 and 1897)*

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The Eastern Band of Cherokee Indians comprises those Cherokee who avoided removal or returned after they had been removed to their western lands by the federal government during the removal era of the 1830s and 1840s. They faced an uncertain future, and for some years the federal government sought to remove them to Indian Territory. In 1848 Congress enacted a law that placed the tribe under federal trust jurisdiction and granted its members the right to remain in North Carolina if the state agreed to acknowledge their rights as permanent residents. The state finally provided that recognition in 1866.

In a move to reorganize and stabilize their government, in 1868 the tribe held a general council meeting and elected its first principal chief two years later. Its lands were officially surveyed in 1876, and the Eastern Cherokee Reservation, also known as the Qualla Boundary Reservation, was created that same year.

In 1889, after several years of discussion, the tribe's leaders convinced the N.C. state legislature to enact a law recognizing the tribe as a corporate body. Corporate status allowed the tribe to sue and be sued regarding property matters (this law was amended in 1895 and 1897). The Eastern Band now had a system of government comparable to those of tribes with constitutions. The state's legal recognition of the tribe also affirmed the Cherokee's corporate right to have fee simple title to their lands. They remain one of the very few tribal nations holding such land title. The tribe now wielded both sovereign and proprietary rights.

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N.C. Private Law of 1895. Chapter 207 (1897).

N.C. Private Laws. Chapter 211 (1889).



## Charter

### *Chapter 211*

An act incorporating the Eastern Band of Cherokee Indians, and for other purposes.

The General Assembly of North Carolina do enact:

Section 1. That the North Carolina or Eastern Cherokee Indians, resident and domiciled in the counties of Jackson, Swain, Graham and Cherokee, be and the same are hereby created and constituted a body politic and corporate under the name, style and title of "The Eastern Band of Cherokee Indians," with all rights, franchises, privileges and powers incident and belonging to corporations under the laws of the State of North Carolina.

Section 2. That "The Eastern Band of Cherokee Indians," by that name and style, be and they are hereby authorized and empowered to sue and implead in law or in equity in all the courts of the land touching and concerning all the property of whatever nature held in common by the said North Carolina or Eastern Cherokee Indians in the said counties; and that the said "Eastern Band of Cherokee Indians," by that name and style, can and may be sued and impleaded in all the courts in the land touching and concerning the said property held as aforesaid in the said counties.

Section 3. That in all cases where the State of North Carolina has heretofore issued any grant to any person or persons for any of the land held as aforesaid by the said Eastern Cherokee Indians and under whom the said Indians claim title, as also all deeds made by commissioners of the State for what is known as "Cherokee lands, to any person or persons for any of the land held as

aforesaid in said counties by said Eastern Cherokee Indians, and under whom the said Eastern Cherokee Indians claim title, such grants and deeds are hereby declared valid as against the State.

Section 4. That in all cases where titles or deeds have been executed to the said "Eastern Band of Cherokee Indians," or any person or persons in whatever capacity in trust for them under that name and style by any person or persons, either collectively, individually, officially or in any capacity whatever, such deeds or titles are hereby declared valid against the State and all persons or any person claiming by, through or under the State by virtue of any grant dated or issued subsequent to the aforesaid deeds or titles to the said "Eastern Band of Cherokee Indians."

Section 5. That in case any person or persons now claiming any part of the lands described in the preceding sections adversely to the said Indians, under colorable title or titles, shall be sued by reason of such adverse claim or any possession under such colorable title or titles, this act shall not be used in evidence on either side, not shall it in any way prejudice the rights of either party, but such suit or suits shall be determined as if this act had not been passed.

Section 6. This act shall take effect from and after its ratification.

Ratified the 11th day of March, A.D. 1889.

Chapter 166

An act to amend chapter 211, laws of 1889, relating to charter of the Eastern Band of Cherokee Indians.

The General Assembly of North Carolina do enact:

That an act passed and ratified by the general assembly of North Carolina, private laws of eighteen hundred and eighty-nine (1889), chapter two hundred and eleven (211), entitled "an act incorporating the Eastern Band of Cherokee Indians, and for other purposes," be, and is hereby, amended by adding thereto the following sections, to-wit:

Section 1. That the officers of said corporation shall consist of a principal chief, assistant (or vice) chief, and, for the present, sixteen (16) members of council, as follows:

From Lellow Hill settlement, in Swain county	...	3 members.
" Big Cove " " "	...	3 members.
" Birdtown " Swain and Jackson	...	2 members.
" Nantahala " Swain county	...	1 member.
" Wolfstown " Jackson "	...	3 members.
" Paint Town " " "	...	2 members.
" Cheoah " Graham "	...	2 members.

Also, a secretary, treasurer, interpreter, doorkeeper, messenger, marshal of the nation, and other officers, as hereinafter provided.

Section 2. That the principal chief, assistant (or vice) chief, and members of the council shall be elected to their respective offices by the male members of the Eastern Band of Cherokee Indians, who have attained the age of

eighteen (18) years, and all other officers are to be appointed by the council, as hereinafter provided; that the term of duration of the office of principal and assistant chief shall be four (4) years, and that of members of council two (2) years, and all officers elected by the council shall hold until the first annual or grand council held after the election for members of council, and all officers of said corporation shall hold until their successors are duly qualified.

Section 3. That the election for principal chief and assistant (or vice) chief shall be held on the first Thursday in September next, and each four years thereafter, under such rules and regulations as may be prescribed by the council.

Section 4. That the election for members of council shall be held on the first Thursday in September, eighteen hundred and ninety-five (1895), and each two years thereafter, under the same rules and regulations as are prescribed by the council for the election of principal and assistant chief.

Section 5. That the council shall, sixty (60) days preceding the election held for members of council, appoint two (2) judges for every Indian town and settlement that is entitled to a member of council, who shall hold the elections for such town and settlement, and shall certify the result of the same, under such rules and regulations as may be prescribed by the council to the next succeeding annual or grand council: Provided, however, that the candidates for principal and assistant chief, who shall have received a majority or plurality of the votes cast by the nation shall be declared by the said annual council to be the duly elected principal and assistant chief for the term of four (4) years; and the members of council who shall be certified by the said judges of election to be elected for that town or settlement, shall be the duly elected members for the same, and shall hold their offices for the term of two (2) years.

Section 6. There shall also be an executive council, which shall consist of the principal chief, assistant (or vice) chief and their associates, who shall be appointed by the principal chief, and confirmed by the council, who shall receive the same compensation as is hereafter provided for members of council.

Section 7. That the principal chief shall receive as a compensation for his services such sum as may be fixed by the council, not to exceed the sum of two hundred and fifty dollars (\$250) per annum, and the assistant chief such sum as may be fixed by the council, not to exceed the sum of one hundred and twenty-five dollars (\$125) per annum, and they shall receive such traveling expenses as may be authorized or approved by the council. And the members of the council shall receive as compensation for their services the sum of two dollars (\$2) per day for such time as they may be necessarily in session. And all other officers shall receive as compensation for their services such sums as may be provided by the council.

Section 8. That hereafter there shall be elected from each town or settlement of one hundred (100) souls, two (2) members of council, and one (1) extra member in excess of two hundred (200) souls, and for less than one hundred (100), still one (1) member. In default of an election being held in any town or settlement entitled to a member of council, the people may send a delegate to the councils, and petition through him and make known their wants; but such delegates shall have no vote in the council.

Section 9. That the seat of government of the Eastern Band of Cherokee Indians shall be at Cherokee Council Grounds, Swain county, North Carolina, until changed by the council.

Section 10. That there shall be an annual or grand council held on the first Monday in October of each and every year, and, in cases of emergency, the principal chief can call a special council, but no business can be translated in either annual or special council unless a quorum of the members shall be present, which shall consist of a majority of the members of council elected at the last preceding election.

Section 11. The annual council shall be called to order by the assistant chief, and a chairman, vice-chairman, and clerk be elected, who shall receive as a salary for their services such sums as may be fixed by the council, and shall hold their offices until the next annual council. In the absence, or through neglect, of the assistant chief to organize the grand council, any member of the executive committee may organize the same; and after an organization is effected, the chairman shall call special councils to order and preside over the same or, in his absence, the vice-chairman. But the chairman shall have no vote, except in cases of a tie vote, when he shall vote yea or nay on all matters.

Section 12. That all acts of council, resolutions, etc., shall be signed by the chairman and clerk, and countersigned by the chief and vice-chief, and certified to by the secretary, and that the agent appointed by the president of the United States and confirmed by the senate, to supervise the schools of the Eastern Band of Cherokee Indians, shall be, and is hereby, made ex officio, by virtue of his office, secretary of this corporation, with the custody of the books and papers appertaining to the same in all respects.

Section 13. That the chief shall have the power to veto all acts, resolutions, etc., of council, but his veto shall not prevail against a two-thirds (2/3rds) vote of the council.

Section 14. That the principal chief shall, from time to time, give information as to the state of affairs of the Band, and recommend such measures as he may think expedient; and he shall also make an effort to see that the rules and regulations of the council be faithfully executed; and shall visit the different towns and settlements at least once in two (2) years.

Section 15. That in case of death, resignation or disability of the principal chief, the assistant (or vice) chief shall become the principal chief until removal of disability, or his successor be elected; or in case of death, resignation or disability of assistant (or vice) chief, the council may elect until removal of disability, or his successor be elected.

Section 16. That in case of death, resignation or disability of any member of the council, a new member shall be elected by such town or settlement, under such rules and regulations as may be prescribed by the council.

Section 17. No person shall be eligible to the office of principal or assistant chief under the age of thirty-five (35) years, and who is not at least one-fourth (1/4) Eastern Cherokee blood; nor shall any person be eligible to hold the office of member of council under twenty-one (21) years of age, and who is not at least one-sixteenth Eastern Cherokee blood.

Section 18. No person shall be eligible to any office or appointment of honor, profit or trust who shall have aided, abetted, counselled or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or who may hereafter aid or abet, counsel or encourage any pretended agents or attorneys in defrauding the Eastern Band of Cherokee Indians. Neither shall any person be eligible to such office, etc., that has been convicted of a felony, or who denies the existence of a God, or a future state of rewards and punishments. Free exercise of religious worship, and manner of serving God, shall be forever enjoyed, but not constructed as to excuse acts of licentiousness, inconsistent with the peace and safety of the Band.

Section 19. That the principal chief, before entering upon the duties of his office, shall take the following oath before some officer authorized to administer oaths:

“I do solemnly swear (or affirm) that I will faithfully execute the duties of principal chief of the Eastern Band of Cherokees, and will, to the best of my ability, preserve, protect and defend the constitution and laws made for their government.”

And the council, before entering upon their duties, shall take the following oath before some officer authorized to administer oaths, to-wit:

“I, A. B., do solemnly swear (or affirm) that I have not obtained my election or appointment as a member of this council by bribery, or any undue or unlawful means or frauds; that I will support the constitution and laws of the state of North Carolina, and that in all measures which may come before me I will so conduct myself as in judgment shall appear most conducive to the interest and prosperity of the Eastern Band of Cherokee.”

And all other officers of said corporation shall take such oaths as prescribed by the council.

Section 20. No money shall be paid out, except upon the warrant of the principal chief, authorized by an act of council, and the treasurer of said corporation shall give a bond for the faithful performance of his duties as such treasurer in double the sum of money that passes through his hands, and shall render a statement of all moneys received and disbursed by him at each annual council, and oftener if required to do so by the principal chief.

Section 21. That any officer of the Eastern Band of Cherokee Indians who has violated his oath of office, or has been guilty of any offense making him ineligible to hold office, may be impeached by a two-thirds ( $\frac{2}{3}$ ) vote of the council.

Section 22. That the council of the Eastern Band of Cherokee Indians shall direct the management and control of all property, either real or personal, belonging to the Band as corporation; but no person shall be entitled to the enjoyment of any lands belonging to the Eastern Band of Cherokee Indians as a corporation, or any profits accruing therefrom, or any moneys which may belong to said Band as a corporation, unless such person be of at least one-sixteenth (1-16) eastern Cherokee blood, and in case that any money derived from any source whatever, belonging to the Eastern Band of Cherokee Indians, shall be distributed among the members thereof, the same shall be divided per capita among the members entitled thereto.

Section 23. That the said Eastern Band of Cherokee Indians is hereby fully authorized and empowered to adopt by-laws and rules for the general government of said corporation, governing the management of all real and personal property held by the Eastern Band of Cherokee Indians as a corporation, and direct and assign among the members thereof homes in the Qualla Boundary and other land held by them as a corporation, and is hereby vested with full power to enforce obedience to such by-laws and regulations as may be enacted by the council through the marshal of the nation.

Section 24. Those as the county authorities of Jackson, Swain, Graham and Cherokee counties make no provisions for the support of the poor, nor provide free schools for the children of the Eastern Band of Cherokee Indians, the male members of said Band in said counties shall be exempt from the payment of any poll tax, or if said poll tax shall be collected, the same shall be paid over by the proper officers of said counties to the council of the Eastern Band of Cherokee Indians, to be used by the said Band for educational purposes.

Section 25. That a decree which the attorney general of the United States caused to be entered on October fifteenth, one thousand eight hundred and ninety-four (1894), in the circuit court of the United States for the Western District of North Carolina in the two suits, respectively, the Eastern Band of Cherokee Indians vs. William H. Thames et al., and the United States vs. William H. Thames et al., by which the title to the Qualla Boundary of land was vested in the Eastern Band of Cherokee Indians in fee as a corporation, as created by the act of assembly of the state as aforesaid, be, and is hereby, ratified and confirmed, and that said Indians, as such corporations, are also authorized to hold title to the several tracts of land conveyed in what is known as the "Ribbald deed," executed August fourteenth, eighteen hundred and eighty (1880), by William Johnston et al., to the commissioner of Indian affairs, as trustee for the Eastern Band of Cherokee Indians; and that section seven hundred and one (701), chapter sixteen (16), of The Code, entitled "corporation," so far as the same applies to this act, be, and the same is hereby, repealed.

Section 26. That the organization had and the by-laws passed by the Eastern Band of Cherokee Indians on December thirteenth (13), eighteen hundred and eighty-nine (1889), in pursuance to the act of incorporation aforesaid, be, and is hereby, ratified and confirmed. And all acts and resolutions of council, and contracts made by the said council in pursuance to said organization, not inconsistent with the constitution and laws of North Carolina, is hereby validated.

Section 27. The council of the Eastern Band of Cherokee Indians, organized under this act, are hereby fully empowered to convey all interests whatsoever to the Cherokee Indians residing in Graham and Cherokee counties, that the said Eastern Band Cherokee have in all the lands of the said Eastern Band Cherokees, situated, lying and being in the counties of Graham and Cherokee, North Carolina, upon the said Cherokee Indians residing in Graham and Cherokee counties conveying to the Eastern Band Cherokees, all interests whatsoever that the said Cherokee Indians residing in Cherokee and Graham counties may have in the lands known as the Qualla Boundary, in Jackson and



Swain counties, North Carolina. In the execution of which deeds the father or mother of such Cherokee residents of Graham and Cherokee counties, if living, shall represent the family; and the children of such father and mother precluded from afterwards claiming any interests whatever in the common property, either real or personal, held as a corporation or as common property.

All deeds executed by the Eastern Band of Cherokees, shall be under the corporate seal, and acknowledged as deeds of corporate bodies are acknowledged under the laws of this state.

All contracts, including the contracts made with D. L. Boyd for the sale of the timber in the Qualla Boundary, in Jackson and Swain counties, in North Carolina, the contract made with H. G. Ewart for professional services rendered the said Eastern Band, North Carolina Cherokees, and all other contracts, leases, agreements, etc., hitherto made by the Eastern Band, North Carolina Cherokees, whether made under a corporate seal or not, are hereby fully validated and legalized, as if the same had been so made under a corporate seal.

Section 27. This act shall take effect from and after its ratification.

Ratification the 8th day of March, A.D. 1895.

### *1897—Private Laws—Chapter 207*

#### CHAPTER 207

An act to correct and amend chapter 166, private laws of 1895, entitled “an act to amend chapter 211, laws 1889, relating to the charter of eastern band of Cherokee Indians.”

The General Assembly of North Carolina do enact:

That chapter 166, private laws of 1895, entitled “an act to amend chapter 211, laws of 1889, relating to charter of eastern band of Cherokee Indians,” be amended and corrected so as to read as follows:

Section 1. That the officers of said corporation shall consist of a principal chief, assistant (or vice) chief, and for the present fifteen (15) members of council, as follows:

From Yellow Hill settlement, in Swain county, 2 members; from Big Cove settlement, in Swain county, 3 members; from Birdtown settlement, in Swain and Jackson, 2 members; from Nantahala settlement, Swain county, 1 member; from Wolfstown settlement, Jackson county, 3 members; from Pointtown settlement, Jackson county, 2 members; from Cheoah settlement, Graham county, 2 members; also a secretary, treasurer, interpreter, marshal of the band and other officers as hereinafter provided.

Section 2. That the principal chief, assistant (or vice) chief and members of council shall be elected to their respective offices be male members of the eastern band of Cherokee Indians, who have attained the age of eighteen (18) years; and all other officers are to be appointed by the council as hereinafter provided; that the term of office of the principal and assistant chief shall be four (4) years and that of members of council two (2) years, and all other officers elected by the council shall hold until the first annual or grand council held after the election for members of council, and all officers of said corporation shall hold until their successors are duly qualified.

Section 3. That the election for principal chief and assistant (or vice) chief, shall be held on the first Thursday in September next, and every four years thereafter, under such rules and regulations as may be prescribed by the council.

Section 4. That the election for members of council shall be held on the first Thursday in September, eighteen hundred and ninety-five (1895), and each two years thereafter, under the same rules and regulations as are prescribed by the council for the election of principal and assistant chief.

Section 5. That the council shall, sixty (60) days preceding the election held for members of council, appoint two (2) judges for every Indian town and settlement that is entitled to a member of council, who shall hold the elections for such town and settlement, and shall certify the result of the same, under such rules and regulations as may be prescribed by the council, to the next succeeding annual or grand council: Provided, however, that the candidates for principal and assistant chief, who shall have received a majority or plurality of the votes cast by the band, shall be declared by the said annual council to be the duly elected principal chief and assistant chief for the term of four (4) years, and the members of council who shall be certified by the said judges of election to be elected for that town or settlement shall be the duly elected members for the same, and shall hold their office for the term of two years.

Section 6. There shall also be an executive council, which shall consist of the principal chief, assistant (or vice) chief, and three associates, who shall be appointed by the principal chief and confirmed by the council, who shall receive the same compensation as is hereinafter provided for members of the council.

Section 7. That the principal chief shall receive as a compensation for his services such sum as may be fixed by the council, not to exceed the sum of two hundred and fifty (\$250) dollars per annum, and the assistant chief such sum as may be fixed by the council, not to exceed the sum of one hundred and twenty-five (\$125) dollars per annum, and they shall receive such traveling expenses as may be authorized or approved by the council, and the members of the council shall receive as compensation for their services the sum of two (\$2) dollars per day for such time as they may be necessarily in session, and all other officers shall receive as compensation for their services such sums as may be provided by the council.

Section 8. That hereafter there shall be elected from each town or settlement of one hundred (100) souls two (2) members of council, and one (1) extra member in excess of two hundred (200) souls, and for less than one hundred (100) still one (1) member. In default of an election being held in any town or settlement entitled to a member of council, the people may send a delegate to the councils, and petition through him and make known their wants; but such delegates shall have no vote in the council.

Section 9. That the seat of government of the eastern band of Cherokee Indians shall be at Cherokee Council Grounds, Swain county, North Carolina, until changed by the council.

Section 10. That there shall be an annual or grand council held on the first Monday in October of each and every year, and in cases of emergency the

principal chief can call a special council, but no business can be transacted in either annual or special council unless a quorum of the members shall be present, which shall consist of a majority of the members of council elected at the last preceding election.

Section 11. The annual council shall be called to order by the assistant chief, and a chairman, vice-chairman, and clerk be elected, who shall receive as a salary for their services such sums as may be fixed by the council, and shall hold their offices until the next annual council: Provided, that all officers elected or appointed by the council shall hold office during the pleasure of the council, and for failure to perform their duties may be removed by said council and others elected in their stead. In the absence or through the neglect of the assistant chief to organize the grand council any member of the executive committee may organize the same, and after an organization is effected the chairman shall call special councils to order and preside over the same, or in his absence the vice-chairman, but the chairman shall have no vote except in the case of a tie vote, when he shall vote yea or nay on all matters.

Section 12. That all acts of council, resolutions, etc., shall be signed by the chairman and the clerk, and countersigned by the chief, and certified to by the secretary, and that the agent appointed by the general government to supervise the schools or affairs of the eastern band of Cherokee Indians shall be, and is hereby made, ex officio, by virtue of his office, secretary of this corporation, with the custody of the books and papers appertaining to the same in all respects: Provided, however, that if such agent fails to act the council may elect a secretary.

Section 13. That the chief shall have the power to veto all acts and resolutions, etc., of council, but his veto shall not prevail against a two-thirds ( $\frac{2}{3}$ ) vote of the council.

Section 14. That the principal chief shall from time to time give information as to the state of affairs of the band, and recommend such measures as he may think expedient, and he shall also make an effort to see that the rules and regulations of the council are faithfully executed, and shall visit the different towns and settlements at least once in every two (2) years.

Section 15. That in case of death, resignation or disability of the principal chief, the assistant (or vice) chief shall become the principal chief until removal of disability or his successor be elected; or in case of death, resignation or disability of assistant (or vice) chief, the council may elect until removal of disability or his successor be elected.

Section 16. That in case of death, resignation or disability of any member of council a new member shall be elected by such town or settlement, under such rules and regulations as may be prescribed by the council.

Section 17. No person shall be eligible to the office of principal or assistant chief under the age of thirty-five years, and who is not at least one-fourth ( $\frac{1}{4}$ ) eastern Cherokee blood, nor shall any person be eligible to hold the office of member of the council under twenty-one (21) years of age, and is not at least one-sixteenth ( $\frac{1}{16}$ ) eastern Cherokee blood.

Section 18. No person shall even be eligible to any office or appointment of honor, profit or trust who shall have aided, abetted, counselled or encour-

aged any person or persons guilty of defrauding the eastern band of Cherokee Indians, or who may hereafter aid or abet, counsel or encourage any pretended agent or attorney in defrauding the eastern band of Cherokee Indians. Neither shall any person be eligible to such office, etc., that has been convicted of a felony, or who denies the existence of a God or a future state of rewards and punishments. Free exercise of religion, worship and manner of serving God shall be forever enjoyed, but not constructed as to excuse acts of licentiousness.

Section 19. That the principal chief, before entering on the duties of his office shall take the following oath before some officer authorized to administer oaths: I do solemnly swear (or affirm) that I will faithfully execute the duties of principal chief of the eastern band of Cherokees, and will, to the best of my ability, preserve, protect and defend the constitution and laws made for their government. And the council, before entering upon their duties shall take the following oath before some officer authorized to administer oath, to-wit: I, A. D. do, solemnly swear (or affirm) that I have not obtained my election or appointment as a member of this council by bribery or any undue or lawful means or frauds; that I will support the constitution and laws of the state of North Carolina, and that in all measures which may come before me I will so conduct myself as in my judgment shall appear most conducive to the interests and prosperity of the eastern band of Cherokees, and all other officers shall take such oaths as prescribed by the council.

Section 20. No money shall be paid out, except upon warrant of the principal chief, authorized by an act of council, and the treasurer of said corporation shall give a bond for the faithful performance of his duties as such treasurer in double the sum of money that passes through his hands, and shall render a statement of all moneys received and disbursed by him at each annual council, and oftener if required to do so by the principal chief.

Section 21. That any officer of the eastern band of Cherokee Indians who has violated his oath of office, or has been guilty of any offence making him ineligible to hold said office, may be impeached by a two-thirds ( $\frac{2}{3}$ ) vote of the council.

Section 22. That the council of the eastern band of Cherokee Indians shall direct the management and control of all property, either real or personal, belonging to the band as a corporation; but no person shall be entitled to the enjoyment of any lands belonging to the eastern band of Cherokee Indians as a corporation or as a tribe, or any profits accruing therefrom, or any moneys which may belong to said band as a corporation or as a tribe, unless such person be at least one-sixteenth (1-16) eastern Cherokee blood, and in case that any money derived from any source whatever, belonging to the eastern band of Cherokee Indians, shall be distributed among the members thereof, the same shall be divided per capita among the members entitled thereto.

Section 23. That the said eastern band of Cherokee Indians is hereby fully authorized and empowered to adopt by-laws and rules for the general government of said corporation, governing the management of all real and personal property held by the eastern band of Cherokee Indians as a corporation or as a tribe, and direct and assign among the members thereof homes in the Qualla Boundary and other land held by them as a corporation or as a tribe, and is

hereby vested with full power to enforce obedience to such by-laws and regulations as may be enacted by the council, through the marshal of the band.

Section 24. That as the county authorities of Jackson, Swain, Graham and Cherokee counties make no provision for the support of the poor, nor provide free schools for the children of the eastern band of Cherokee Indians, the male members of said band in said counties, shall be exempt from the payment of any poll tax, or if said poll tax shall be collected the same shall be paid over by the proper officers of said counties to the council of the said eastern band of Cherokee Indians, to be used by said band for educational purposes.

Section 25. That a decree which the attorney general of the United States caused to be entered on October the fifteenth, one thousand eight hundred and ninety four (1894), in the circuit court of the United States for the western district of North Carolina, in the two suits, respectively: The eastern band of Cherokee Indians v. William H. Thomas, et al., and the United States v. William H. Thomas, et al., by which the title to the Qualla Boundary of land was vested in the eastern band of Cherokee Indians in fee as a corporation, as created by the act of assembly as aforesaid, be and is hereby ratified and confirmed, and that said Indians, as such corporation are also authorized to hold title in fee to the several tracts of land conveyed in what is known as the "Sibbald deed," executed August fourteenth, eighteen hundred and eighty (1880), by William Johnston, et al., to the commissioner of Indian affairs, as trustee for the eastern band of Cherokee Indians, and that section seven hundred and one (701) of chapter sixteen (16) of the Code, entitled "Corporation," so far as the same applies to this act, be and the same is hereby repealed.

Section 26. That the organization and the by-laws passed by eastern band of Cherokee Indians on December thirteenth, 13, eighteen hundred and eighty-nine, 1889, in pursuance to the act of incorporation aforesaid, be and is [*sic*] hereby ratified and confirmed, and all acts and resolutions of council, and contracts made by the said council, in pursuance to said organization, not inconsistent with the constitution and laws of North Carolina, is [*sic*] hereby validated; and that all acts and resolutions of council passed by the band in pursuance of chapter one hundred and sixty-six (166), private laws of eighteen hundred and ninety-five (1895), whether said acts and resolution be counter signed by the assistant (or vice) chief of said band or not, be and are hereby validated.

Section 27. All deeds executed by the eastern band of Cherokees shall be under the corporate seal, and acknowledged as deeds of corporate bodies are acknowledged under the laws of this state.

Section 28. That whenever it may become necessary, in the opinion of the council, to appropriate to school, church or other public purposes for the benefit of the band, any of the lands owned by the eastern band of Cherokee Indians as a corporation or tribe, and occupied by an individual Indian or Indians of the band, the council may condemn land for the aforesaid purpose only by paying to the occupant of such land the value of such improvements and betterments as he may have placed or caused to be placed thereon, and the value of such improvements or betterments shall be assessed by a jury of not less than six competent persons, who are members of the band, to be summoned by the marshal of the band, under such rules and regulations as may be prescribed by

the council: Provided, that either party to such condemnation proceedings may appeal from the judgment rendered therein without bond to the superior court of the county in which such land lies, but such appeal shall not stay execution, and the Judge of the superior court to which such appeal is taken may, in his discretion, require either party to give such bond, either before or pending such trial, as he may deem fair and reasonable.

Section 29. That the marshal of the band shall execute, serve, and carry into effect all orders, process and acts of the council affecting the rights, interests and affairs of the band as a corporation, under such rules and regulations, and for such fees and salary, as may be prescribed by the council, but the sheriff shall execute all papers and serve orders and process of the superior court in which any trial may be had.

Section 30. That all laws and clauses of laws in conflict with this act be and the same are hereby repealed.

Section 31. That this act shall be in force from and after its ratification.

Ratified the 8th day of March, A.D. 1897.

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## 44

### *Constitution of the Menominee Tribe of Indians (Menominee People, 1892)*

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The name Menominee derives from an Anishinabe word, “Manomini,” meaning “wild rice people.” In the past the Menominee lived near Lake Michigan in what is now Wisconsin and were active in the fur trade, especially with the French. A series of land-cession treaties with the United States significantly reduced their land holdings from almost ten million acres to fewer than 250,000 in northern Wisconsin.

As was the case with many native nations, internal tensions mounted among the Menominee as they struggled with the crushing paternalism of federal forces—especially local Indian agents—intent on devastating tribal life at all levels: religious, economic, political, and cultural.

Fortunately for the Menominee, their reduced territory still contained a vast swath of harvestable timber, and some Menominee saw logging as their best chance to gain a measure of economic independence. The Menominee who pushed for the tribe’s first written constitution engaged in what Hosmer has called “purposeful modernization” in an effort to moderate the tension between the rampant individualism of non-Indian society (which typically fails to recognize the larger society) and the communal values of traditional tribal

society (which was typically viewed as inhibiting economic development).

By enacting P.L. 153 on June 12, 1890, Congress acknowledged the tribe's right to cut and market its own timber, created a mechanism for funding this tribal enterprise—including the per-capita distribution of earnings to tribal members—and generally endorsed Indian participation in logging, something most other lumber-rich Indian tribes were denied.

This law was a principal impetus that compelled some Menominee tribal leaders, like Mitchell Oshkenaniew and Peter LaMotte, to demand a greater degree of self-determination. The 1892 constitution, written by Oshkenaniew and LaMotte, focused heavily on the construction and implementation of a business council that would have guided the tribe's affairs, had it become law. It was not approved, however, because of resistance generated by the local Indian agent and certain hereditary chiefs.

Beck, David. *The Struggle for Self-determination: History of the Menominee Indians since 1854* (Lincoln: University of Nebraska Press, 2005).

Hosmer, Brian C. *American Indians in the Marketplace: Persistence and Innovation among the Menominees and Metlakatans, 1870–1920* (Lawrence: University Press of Kansas, 1999).

National Archives. RG 75, Letters Received, 1881–1907, 1892, 31904.

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## Constitution of the Menomonee Tribe of Indians of the State of Wisconsin

Whereas, the government of the Menomonee Tribe of Indians having been under the rule or control of hereditary chiefs from time immemorial to the present time, and having arrived at a stage in civilization when this old system of government becomes an obstacle to the progress, the best interests and general welfare of the tribe, therefore;

We, the members of the Menomonee tribe of Indians in general council assembled, believing that individual rights and interests as well as a closer tribal union and a more compact and substantial form of government will best conserve our common rights, privileges and interests, insure our protection and promotion and better secure the blessings of civilization to ourselves and our posterity do ordain and establish this constitution for the government of our tribe, the duly constituted authorities of the United States assenting thereto;

### *Article I*

Section 1. The boundary and jurisdiction of the Menomonee tribe of Indians shall be the present boundary of the lands owned and occupied as a reservation

by said tribe of Indians, subject to such changes as may be made therein from time to time through the re-adjustment of their affairs with the United States. Said lands shall be divided by imaginary lines into three equal parts or districts, so that each district shall, as near as may be, include the same number of inhabitants qualified to participate in the general councils or elections of the tribe.

Section 2. All persons whose names rightly appear on the present duly authenticated rolls of this tribe, and their offspring, shall constitute the Menomonee tribe of Indians. And the Business Committee hereinafter provided for shall have power to determine by resolution who are entitled to have their names continued thereon or added to said roll from time to time, subject to approval of the Secretary of the Interior.

## *Article II*

Section 1. The conduct and settlement of all tribal business, and such matters as concern the general welfare of the tribe, shall hereafter be entrusted to the general supervision, direction and management of seven members of the tribe, who shall be chosen bi-ennially and be known and designated as the "Business Committee" of the Menomonee tribe of Indians, who shall see that the laws, rules and regulations of the tribe are faithfully executed, and no person shall be a member thereof who shall not have attained to the age of twenty five years, and who is not when elected, a member of said tribe and an actual inhabitant of the Menomonee reservation and does not possess such other qualifications as are herein provided.

Section 2. Each of the three Districts, when bounded and set off as hereinbefore provided, shall be entitled to choose by ballot of majority of its qualified electors, cast at an election duly called for the same day, two members of said "Business Committee" who shall hold their offices for the period of two years, and until their successors shall have been chosen and duly qualified.

Section 3. There shall also be chosen by a majority of all the qualified electors of said tribe, to be voted for in like manner and at the same time and for a similar term of service a seventh member of said "Business Committee," who shall be known and designated as "Chairman of the Business Committee" of said tribe, who shall preside over its deliberations, and possess the same rights and privileges as other members thereof, in addition to those hereinafter provided.

Section 4. In election by the tribe in General Council or by Districts, only male members who shall have attained the age of twenty-one years shall be entitled to vote.

Section 5. The "Business Committee" shall choose its own subordinate officers, and also a chairman pro tempore, in the absence of its chairman. They shall also have a common seal, which shall bear the device "Business Committee of the Menomonee Tribe," which shall remain in the custody of the Secretary thereof.

Section 6. The "Business Committee" shall have the sole power to try all impeachments of its members. When sitting for that purpose, they shall be on oath of affirmation; and no person shall be convicted without the concurrence



of two-thirds of the members present, a quorum voting. Judgments in cases of impeachments shall not extend further than to removal from office but the party convicted shall nevertheless be liable to indictment, trial, judgment, and punishment according to law.

Section 7. The "Business Committee" shall assemble at least once in every year, and such annual meeting shall be held on the third Monday in September unless said Committee shall by resolution appoint a different day, giving 15 days' general notice of said change.

Section 8. The times, places and manner of holding all elections shall be prescribed by said "Business Committee" when elected. The "Business Committee" shall be the Judge of the elections, returns and qualifications of its own members, and four of its members shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties as it may from time to time provide. It may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of five members thereof, expel a member. It shall keep a record of its proceedings and the yeas and nays of its members on any question shall, at the desire of a member present, be entered on said record or journal. It may adjourn from time to time, or take such recess as a majority of its members determine.

Section 9. The members of the "Business Committee" shall in all cases except felony and breach of the peace, be privileged from arrest during their attendance upon its sessions and in and for any speech or debate in said committee, they shall not be questioned in any other place.

Section 10. Every act, resolution, order, warrant, or contract which shall have received the approval of the "Business Committee" shall before it becomes of force and effect, be presented to the Chairman of said "Business Committee" who shall sign it together with the Secretary of said Committee, who shall also certify to its correctness under seal. No money belonging to Menomonee tribe shall be drawn from the Treasury, but in consequence of appropriations made and warrants duly drawn and issued by said Committee; and a regular statement and account of the receipts and expenditures of all tribal monies shall be kept and published from time to time.

Section 11. The "Business Committee" shall have power to make provision for the election or appointment of all its needful officers, including a Secretary and Treasurer thereof, as may be deemed expedient; and shall provide their duties except as herein provided and fix the rate of their compensation.

Section 12. The members of the "Business Committee" shall receive two dollars per day each, for the time they are actually employed, and the "Business Committee" shall fix the pay and determine the length of service of all other officers, agents, attorneys, or employees of the Menomonee tribe of Indians.

Section 13. The "Business Committee" shall also have power to appoint and commission one or more delegates to represent the tribe at Washington, D.C., and attend to such business as the Tribe may have before the Departments, in the Courts or before the Congress of the United States; and such Delegate or Delegates shall receive such compensation for services and expenses as the "Business Committee" may deem proper and shall determine.

Section 14. In the event of a vacancy in the offices of Secretary or Treasurer, or in the "Business Committee" by reason of death, removal, resignation or other wise such vacancy shall be at once filled by an election by the members of the "Business Committee" and such elected member or officer shall serve out the unexpired term of his predecessor, unless sooner removed by death or otherwise.

### *Article III*

Section 1. The Chairman of the "Business Committee" shall hold his office at a place to be designated by said Committee and shall see that the Menomonee tribe and each member thereof are protected in all their rights.

Section 2. He shall make a full report of his official actions and proceedings to the "Business Committee" in writing at the beginning of each annual session thereof, and may also communicate his views and recommend to said Committee at the commencement of every session the adoption of such measure, as he may deem to be for the best interests of the Menomonee tribe of Indians.

Section 3. The Chairman of the "Business Committee" shall see that all monies and annuities due the Nation from the United States or from any other source are promptly paid over according to agreement.

Section 4. In the absence or inability of the Chairman of the "Business Committee" to perform his said duties, a chairman pro tempore shall preside over the "Business Committee" when in session, who shall also discharge such other duties as appertain to that office.

Section 5. The Secretary shall keep and preserve the records of the "Business Committee" and assist the Chairman in the management of public business. He shall keep a record of all official papers and documents of every kind issued by the authority of the "Business Committee" and when necessary certify, sign, and affix the proper seal to the same. He shall perform such other official duties as may be enjoined upon him by the "Business Committee" or the Chairman thereof.

Section 6. The Treasurer shall be custodian of all moneys belonging to and paid over to the tribe and shall pay out the same under the direction of the "Business Committee" and with the signature of the Secretary and Chairman of the "Business Committee," but under no other circumstances shall he use, pay out or distribute the money of the Tribe. Before entering upon the duties of his office he shall execute a bond, in such sum and form as the "Business Committee" may direct, to be approved by the Chairman thereof. He shall pay over all balances in his hands to his successor in office so soon as he shall have qualified for its duties.

Section 7. Before entering upon the discharge of their duties, members of the "Business Committee" and all other officers, shall each take and subscribe to an oath or affirmation for the faithful performance and execution of the trusts reposed in them, which shall be duly filed or kept on record.

Section 8. For inability, neglect of duty or misdemeanor in office the Chairman of the "Business Committee" or any other officer of the tribe elected

or appointed, may, upon conviction by the Committee be removed from office, five of the members thereof being necessary to convict.

Section 9. Immediately after the adoption of these laws the Menomonee people in General Council and Convention assembled, by a majority vote, shall then and there proceed to elect by ballot, a Chairman of the "Business Committee" and six other members thereof, who shall constitute the first "Business Committee" of said tribe, who shall hold their offices until their successors shall have been chosen at a general election to be held as herein provided. The members so chosen shall then meet in session and elect a Secretary, a Treasurer, and a Sergeant-at-Arms and other necessary officers, who shall at once take the oath of office, to be administered by the Chairman, who with the Secretary, when chosen, is hereby especially authorized and empowered to administer oaths and affirmations.

Section 10. The "Business Committee" and the officers so elected and qualified shall immediately enter upon their respective duties, and serve until their successors have been duly elected or appointed and shall have qualified.

Section 11. The Chairman of the "Business Committee" shall call a special session thereof to convene at Keshena, Wisconsin, within thirty days after these laws shall have been adopted. The said Committee shall be called to order and the oath of the office administered by the Chairman or Secretary to all members who have not previously taken the same.

Section 12. The "Business Committee" for this special session only, may remain in session not exceeding ten days and shall fix the time of holding the first general election, and take such other action as may be necessary to put the tribal government as herein provided in full operation under these laws.

Section 13. At the first general election to be held on the third Monday in August 1893, there shall be elected a chairman and six other members of the "Business Committee" for a full term of two years, and in each alternate year thereafter all of the members of the "Business Committee" shall be elected to serve for the period of two years as hereinbefore provided.

Section 14. These laws may be altered or amended at any time by a two-thirds vote of the "Business Committee" with the approval of the Chairman thereof.

Done in General Council at Keshena, Wisconsin, by the Menomonee Tribe of Indians, this 27th day of August 1889.

*Mitchell Oshkenaniew  
Peter Lamotte...*

*Amended Constitution of the  
Seneca Nation of Indians (Seneca  
of Allegany and Cattaraugus  
Reservations, 1893)*

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On January 13, 1893, led by Wallace Halftown, the Seneca Nation revised its 1848 constitution. The 1848 document had formally established the Seneca Indians as a constitutional body distinct from the remaining members of the Iroquois Confederacy. With the adoption of the 1848 document, the tribe had abolished the ancient chief system and installed an elected set of officials and a three-branch government with equal representation from both Allegany and Cattaraugus (eight councilors each).

Not much is known about the 1893 amended constitution, although it appears to have coincided with a series of ninety-nine-year leases that went into effect in 1892 between the Seneca Nation of Indians and whites in and around the town of Salamanca, New York.

U.S. Commissioner of Indian Affairs. *Annual Report* (1893).

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**Amended Constitution of the Seneca  
Nation of Indians**

[Made and adopted in convention assembled, duly called and organized, in accordance with the provisions of the constitution of said nation, convened at the council house at Coldspring, on the Allegany Reservation; and also at the court-house on the Cattaraugus Reservation, on the thirteenth day of January, A.D. 1893.]

We, the people of the Seneca Nation of Indians, residing at Cattaraugus, Allegany, and Oil Springs reservations, in the State of New York, grateful to the Almighty God for our national preservation and freedom and manifold blessings heretofore by us enjoyed, in order to perpetuate the same do make and establish the following constitution:

Section 1. Our government shall have a legislature, executive, and judiciary department.

Section 2. The legislative power shall be vested in a council of sixteen members, who shall be called the councilors of the Seneca Nation of Indians, of whom eight shall be elected annually for the Cattaraugus and eight for the Allegany reservations. Such annual election shall be held on the first Tuesday

of May in each and every year from and after the adoption of this constitution, ten of whom assembled in session regularly organized shall constitute a quorum for the transaction of business. In all appropriations of public money an affirmative vote of at least ten of the whole number elected shall be necessary. It shall not be lawful for the council to make appropriations for public money exceeding the sum of the aggregate revenue of the nation in any one year. But the council shall make appropriation of public money to carry on the government in extraordinary cases for the welfare of the nation.

Section 3. The executive power shall be vested in a president, whose duty it shall be at all times to preside over the deliberations of the council, having only a casting vote therein, who shall from time to time give to the council information of the state of the nation and recommend to their consideration such measures as he shall judge necessary and expedient not inconsistent with the true spirit and intent of the laws of the Seneca Nation. He shall take care that the laws applicable to the nation be faithfully executed. He shall have power to fill all vacancies by appointment that may occur in council, either by death, resignation, or impeachment of any of the members, until such vacancy shall be filled by election. In case of death or absence of the president the council shall choose from among their number a presiding officer *pro tempore*.

Section 4. The judiciary power shall be vested in courts to be known by the name of peacemakers' and surrogate's courts. The peacemakers' courts shall be composed of three members each, one court to be established upon the Cattaraugus and the other upon the Allegany Reservation, the members of each to be elected from residents of the respective reservations on the first Tuesday of May, A.D. 1893. The whole number of peacemakers shall be elected in the following manner: One for one year, one for two years, one for three years; one for each reservation for each and every year thereafter. Term of office, three years. The jurisdiction forms of process, and proceedings under the law applicable to this court shall be the same as in courts of justices of the peace of the State of New York. The peacemakers on each reservation shall have the power to hold court and preserve order in the same manner as a justice of the peace; and shall have the further jurisdiction to grant divorces as between Indians residing on the said reservations and to hear and determine all questions and actions between individual Indians residing on said reservations involving the title or possession to real estate on said reservations. Any two of the peacemakers on either of said reservations shall have the power to hold courts and discharge all the duties of peacemakers' court. All determinations and decisions of this court shall be subject to appeal to the council, such appeal to be heard by at least a quorum of the council. All cases of appeal shall be decided by the council upon the evidence taken in peacemakers' court. In every case on appeal it shall be the duty of the peacemakers before whom the action or proceeding was heard to certify the evidence in the case taken before them to the council in the same manner as justices of the peace are required on questions on appeals of law. The council shall then decide the case upon the evidence so certified, and the decision of the council shall be final between the parties. Upon the hearing either party at interest shall have the right to appear

either by person or by counsel and argue the merits of the case. In every action in peacemakers' court such action shall be brought in the name of the real party at interest.

The surrogate's court shall be composed of one person for each of the Allegany and Cattaraugus reservations, and to be elected from the residents of the respective reservations at the next annual election after the adoption of this constitution, and to hold their office for the term of two years, and be elected every two years thereafter, and shall be known as surrogates, and shall have jurisdiction of all matters on each reservation for which they are respectively elected, the same as surrogates of the different counties of the State of New York, and the forms, process, and proceedings now adopted and in force among the surrogates of New York State shall be the forms, process, and proceedings in use and to be adopted in the courts hereby created, with the right of appeal from all decisions and determinations to the council of the Seneca Nation, the same as from peacemakers' court.

Section 5. The power of making treaties shall be vested in the council, subject to the approval of at least three-fourths of the legal voters and the consent of three-fourths of the mothers of the nation.

Section 6. There shall be a clerk and a treasurer to the nation. The rights, duties, and liabilities of such shall be as heretofore defined by law.

Section 7. There shall be two marshals for the nation; one shall reside on the Cattaraugus and one upon the Allegany reservations. The rights, duties, and liabilities of each shall be as heretofore defined by law.

Section 8. The council may provide for the election of highway commissioners, overseers of the poor, assessors, and policemen for each of the said reservations.

Section 9. All officers of the nation named in this constitution, except peacemakers and surrogates, shall be elected annually for the term of one year. All officers of the nation named in this constitution for such cause as recognized by law may be impeached and removed from office in such manner and form as prescribed by the council.

Section 10. Every male Indian of the Seneca Nation of the age of twenty-one years and upwards, residing upon either of the reservations of the nation, and who shall not have been convicted of a felony, shall be competent to vote at all elections and meetings of the electors of the nation, and shall be eligible to any office in the gift of the people of the nation.

Section 11. The compensation of all officers of the nation named in this section shall be such as prescribed by law, and the salaries shall not be enlarged or diminished during their term of office.

Section 12. The council shall meet annually on the first Tuesday of June in each and every year. The president shall have power to convene the council in extra session as often as the interest of the nation, in his judgment, requires.

Section 13. The council shall have power to make laws not inconsistent with the Constitution of the United States, or of the State of New York, or of this constitution.

Section 14. The laws and regulations heretofore made and adopted by the council, and not inconsistent with the constitution, shall continue in full force

and effect as heretofore, until repealed or amended to the extent and in the manner as the council shall deem lawful and proper.

Section 15. The present officers of the nation shall hold their office, respectively, until the first Tuesday of May, 1893, or until others are elected in their places in accordance with the terms of this constitution, and no longer, subject to be sooner removed by impeachment.

Section 16. This constitution may be altered or amended at any time the council see fit and necessary; and it shall be lawful for the council at their discretion, by at least a quorum vote, to appoint a committee of three on revision of the constitution. The duty of the committee shall be, on ten days' notice of their appointment to prepare amendment or alteration of the constitution, such as in their judgment is necessary and proper, and report the constitution as amended to the council, whereupon it shall be the duty of the council to submit the same to the electors of the nation for their approval or rejection, to be determined by a majority vote of the qualified electors at a meeting called by the council for that purpose on the Allegany and Cattaraugus reservations, respectively, such to be held on the same day. In case the amendments of the committee be rejected no action shall be taken by the council or the electors, relative to amending this constitution within one year from the date of said meeting and rejection.

Revised and done in pursuance to the resolution duly passed by the council of the Seneca Nation and voted on by the legal voters of the nation the thirteenth day of January, A.D. 1893, and carried.

*Wallace Halftown,*  
*Chairman of the Committee.*  
*Harrison Halftown,*  
*D. E. Shongo,*  
*Committee.*

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## *Muskogee (Creek) Nation Constitution (Creek People, 1894)*

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Although the Muskogee had (as early as 1859) adopted a constitution that called for the election of a principal chief and an assistant principal chief in the two established political districts, this document—at least initially—did not substantially interfere with the political autonomy of the historically vital town governments.

In 1867 the Muskogee Nation adopted a new charter that was more clearly patterned after the U.S. Constitution, although the

Creek's bicameral legislature was divided into a House of Warriors and a House of Kings. While some commentators have suggested that "the authority of the Creek constitution did not directly interfere with the existing village governments, others maintain that various Creek rebellions and internal conflicts were generated by the confrontation between the newly centralized Creek government and the preexisting *talwa*, or town governments.

This constitution would remain in effect until the early 1900s, when, as a result of the Curtis Act (28 Stat. 693), the courts and laws of the Five Civilized Tribes were essentially rendered ineffectual, although they were later reconstituted. Nevertheless, a strong reform movement arose in 1893 to make additional changes to the political system and to the constitution in particular. The plan to amend the constitution was approved in November 1893, and the new document was completed on January 17, 1894. Although adopted by the national council, the proposed constitution was never ratified by the Creek people and therefore never put into effect.

Creek constitutional government remained largely intact from 1867 to 1907 because more traditional-minded Creek were denied opportunities to modify their nation's government by a political and economic alliance between those Creek who were committed to constitutional-based government and U.S. officials.

*The New Constitution of the Muskogee Nation: English and Indian* (Eufaula, Indian Territory: Indian Journal Printing, 1894).

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## Muskogee Creek Nation Constitution

### *An Act*

Authorizing the preparation and drafting of a new constitution for the Muskogee Nation.

APPROVED NOVEMBER 2D, 1893

Whereas, Several attempts have been made in the past few years to submit to a vote of the people at large, articles of amendment to the constitution of the Muskogee Nation, and

Whereas, All such attempts have so far failed to allow citizens at large an opportunity to express their wishes on the subject, and

Whereas, There is no provision in the constitution itself as to how the constitution shall be amended or a new one adopted, and on that account the citizens at large have accused the members of council of taking too much authority upon themselves by refusing to say whether or not the constitution shall be amended, and



Whereas, There are serious faults in the constitution which the interests of the people and the perpetuity of our government demand shall be remedied at once; therefore,

BE IT ENACTED BY THE NATIONAL COUNCIL  
OF THE MUSKOGEE NATION

Section 1. That all the male citizens of voting age of the several towns shall meet in their respective towns at the usual place of meeting on the 15th day of December 1893, and shall then and there proceed to elect two delegates to represent their town, and the delegates thus elected shall meet in Okmulgee, Muskogee Nation, on the 1st Tuesday in January, 1894, and then and there organize by electing a chairman from one of their number and a clerk and interpreter from the outside.

Section 2. The said delegation when thus organized shall proceed to prepare and draft a new constitution for the Muskogee Nation which when completed shall be submitted to the principal chief.

Section 3. When the principal chief shall receive the proposed new constitution, he shall have the same carefully translated and printed in both English and Creek and shall send a copy of each to every town chief and shall also order the town chief to call a meeting of all voters in their respective towns and to submit to them the new constitution for adoption or rejection by the popular vote. The town chiefs shall call the voters of their towns to meet on the second Tuesday in June, 1894, to vote on the said constitution. The principal chief shall furnish the necessary blanks and the votes shall be recorded in duplicate, one copy to be held by the town chief and the other to be furnished to the president of the house of kings and the president of the house of kings shall submit all such returns to the national council at its regular session in October, 1894.

Section 4. If the constitution as herein above provided for shall be ratified by a majority vote of the people then the principal chief shall promulgate the same by proclamation and thereupon it shall become and be the constitution of the Muskogee Nation; provided, however, that nothing herein contained shall be taken, construed or held to in any way to interfere with the present constitution and laws or any officers now in office until after the expiration of the present constitutional term of council, except, however, that the next general election for election of Principal Chief and Second Chief and members of the council shall be held in accordance with the new constitution.

Section 5. The said delegates shall each receive Two Dollars (\$2.00) per day while in attendance at meeting, and mileage at the rate of ten (10) cents per mile in going to and returning from the capitol. The clerk and interpreter shall receive the same per diem and mileage as the delegates.

Section 6. The convention of the delegates herein provided for shall not sit longer than twenty days, exclusive of Sundays.

Section 7. That for the purpose of carrying this act into effect, there be and is hereby appropriated the sum of \$5000, or so much thereof as may be necessary.

Approved November 2, 1893.

*The New Constitution*

Okmulgee, I. T., January 17th, 1894.

To the Hon. Chairman of the Constitutional Convention:

Sir—Your committee to whom was assigned the duty of preparing a constitution as contemplated in the accompanying act of the national council, approved November 2d, 1893, respectfully submit the following as a result of their deliberations and recommend its adoption and submission to the principal chief for his further action as provided in the act referred to.

Respectfully,

*N. B. Childers, Chairman.*

*G. W. Grayson, Secretary.*

## **Constitution of the Muskogee Nation**

In order to establish justice, insure tranquility, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom:

We, the Muskogee people, gratefully acknowledging the goodness of the Supreme Ruler and source of all law in permitting us to choose our own form of government do ordain and establish this constitution for our government within the following limits, to-wit: All that country and territory embraced and described in a certain patent in fee-simple to the Muskogee Nation, executed in the city of Washington, D.C., dated August eleventh A.D. eighteen hundred and fifty-two, and signed by Millard Fillmore, then the President of the United States, which is therein granted and made over to the Muskogee Nation to belong to said nation as long as it shall exist as a nation, except all such portions thereof as have by the treaty made with the United States and proclaimed eleventh of August, eighteen hundred and sixty-six, and the agreement with said United States approved the thirty-first of January, A.D. eighteen hundred and eighty-nine, been ceded and relinquished to the said United States.

### *Article I*

Section 1. The lands of the Muskogee Nation shall remain the common property of the recognized citizens thereof share and share alike; and the national council may by law prescribe such regulations for the individual use thereof as it shall deem wise and proper; provided always, that no law or laws shall be enacted individualizing the fee in the soil.

### *Article II*

Section 1. The power of the Muskogee government shall be divided into three distinct departments—the Legislative, the Executive and the Judicial.

*Article III*

Section 1. The legislative power of this government shall be vested in a national council composed of two distinct branches—the House of Kings and the House of Warriors, the style of whose acts shall be—Be it enacted by the National Council of the Muskogee Nation.

Section 2. The House of Kings shall be composed of one member from each town or consolidation of kindred towns.

Section 3. The House of Warriors shall be composed of one member from each town or consolidation of kindred towns.

Section 4. Towns having a less number of legal voters than ten (10) shall not be entitled to individual representation in either branch of the national council, but may join with their kindred towns as they may elect and freely participate in all general elections submitted to the vote of the people, and every member of such union of towns shall be entitled to all the rights and privileges therein as are members of other towns.

Section 5. Each member of the national council shall be elected by the legal voters of the town or consolidation of towns which he represents under such regulations as may be prescribed by law, and shall hold his office for the term of four years.

Section 6. The members of the national council shall receive such compensation out of the national treasury as shall be prescribed by law, but not per diem or salary greater than four (\$4.00) dollars or mileage greater than ten (10) cents per mile shall be paid to such members.

Section 7. A majority of the members of each house shall constitute a quorum; but a less number may adjourn from day to day and compel the presence of absentees.

Section 8. Each house shall be the judge of the qualifications of its members and maintain order in its respective body according to such laws and regulations as shall by the joint action of both houses be prescribed for that purpose.

Section 9. The House of Warriors shall elect its own speaker.

Section 10. Each house shall choose its own secretaries whose terms of office shall continue at the discretion of the house which they serve, whose pay shall be provided by law.

Section 11. No person shall become a member of either house who shall not be an acknowledged citizen of the Muskogee nation and who shall not be attained to the age of twenty-two years.

*Article IV*

Section 1. The supreme executive power of this nation shall be vested in a principal chief who shall be styled “The Principal Chief of the Muskogee nation,” who shall be a native born citizen of this nation. He shall be elected for the term of four years by a plurality of the votes cast, of the recognized male citizens of this nation who shall have attained the age of eighteen years. There shall also be a second chief who shall be elected for the same term in the same manner as prescribed for the election of principal chief; and in case of the death, resignation or removal from the office of the principal chief, he shall

perform all the duties of that officer. He shall also preside as the President of the House of Kings.

Section 2. No person shall be eligible to the office of principal or second chief of the Muskogee Nation who is not a recognized native born citizen of the same and who shall have attained the age of thirty years.

Section 3. The principal chief is hereby invested with the reprieving and pardoning power, but shall exercise the same only under and in accordance with such restrictions and regulations as shall be provided by law. He shall see that all the laws of the nation are faithfully executed and enforced; shall at each annual meeting of the national council, render an annual report thereto of the condition of the affairs in the nation; and shall recommend such measures as he may deem necessary for the welfare of the nation.

Section 4. Whenever any bill or measure shall pass both houses, it shall be submitted to the principal chief for his approval or rejection. If he shall approve, it shall become a law. If he shall object to it, he shall, within five (5) days return it, accompanied with his objections to the house in which it originated; and if not so returned within five (5) days it shall become a law. If after a bill or measure has been vetoed by the principal chief, it shall again be submitted to the two houses for reconsideration, and receive a favorable vote of two-thirds ( $2/3$ ) of both houses it shall become a law.

Section 5. Whenever any bill or measure shall pass both houses and be submitted to the principal chief for his approval or rejection within five (5) days before the adjournment of the session of the national council, he shall be allowed the first three days of the next session of the council within which to return the same.

Section 6. The principal chief shall be allowed to select a private secretary who shall be compensated for his services out of the national treasury as provided by law.

### *Article V*

Section 1. The supreme law-defining power of this nation is hereby lodged in a high court to be known as a Supreme Court, which shall be composed of five (5) competent recognized citizens of the Muskogee Nation who shall have attained the age of twenty-five (25) years. They shall be chosen by the national council for the term of four years, and be paid as shall be provided by law.

Section 2. This court shall meet on the first Tuesday in October of each year, and shall have power to try all cases where the issue is more than one hundred (\$100.00) dollars. The presence of three (3) members shall constitute a quorum for business. This court shall have power to provide such rules and regulations for the government and maintenance of order and the dispatch of business within its body in accordance with such privileges and limits as the national council may provide by law.

### *Article VI*

Section 1. The present division of the Muskogee Nation into six judicial districts, to-wit: Eufaula, Wewoka, Deep Fork, Okmulgee, Coweta, and

Muskogee is hereby recognized and confirmed, and shall each be provided with one judge, one prosecuting attorney and one company of Lighthorsemen. The judge and prosecuting attorney of each district shall be elected by the national council by a plurality vote of the duly authorized members thereof, and shall each hold office for the term of two years. Lighthouse company shall be elected for the same term as the judge and prosecuting attorney, by a plurality vote of the legal voters of the nation resident in the district wherein the company is to serve.

Section 2. The district judge shall try and determine all causes civil and criminal arising within his district where the issue does not exceed one hundred dollars. He shall have the right to summon twenty-four disinterested men out of which number shall be selected, in criminal cases twelve, and in civil cases nine, who shall sit as jurors and whose pay shall be provided by law. He shall also be allowed a clerk who, together with himself shall be paid as shall be provided by law.

Section 3. Any person failing to obey a summons to serve as juror without good reason for such failure, shall be fined in the sum of five (\$5.00) dollars.

Section 4. It shall be the duty of the prosecuting attorney to indict and prosecute all offenders against the laws of the nation found within his district, and for his services shall receive such pay as shall be provided by law.

Section 5. The Lighthouse company shall consist of a captain and four (4) privates who shall be subject to the orders of the district judge. Their duties and compensation shall be fixed by law.

### *Article VII*

Section 1. There shall be a national treasurer who shall be elected at each general election by a plurality vote of the people for the term of four years. His duties shall be to receive, receipt for, and disburse all national funds as shall be directed and required by law. He shall report the amount of his receipts and disbursements at least once every year. He shall be required to execute such necessary bond for the faithful performance of his duties as shall be required by law, and shall receive such compensation as shall be provided by the national council.

Section 2. No moneys shall be drawn from the national treasury except to carry out appropriations made by the national council.

### *Article VIII*

Section 1. There shall be a national auditor who shall be a bona fide citizen of this nation who shall be elected by a plurality vote of a people at each general election, who shall hold his office for the period of four (4) years.

Section 2. He shall keep account of the financial affairs of the nation and render a report of the same to each annual session of the national council. He shall have the issuance of all evidence of obligation of the nation in accordance with such laws as the national council may provide. He shall execute to the nation sufficient bond duly secured for the faithful performance of his duties as

shall be required by law, and for his services receive such pay as the national council may provide.

## **General Provisions of the Constitution**

Section 1. All recognized male citizens of sane mind and not physically disabled, who shall have attained the age of eighteen years shall be entitled to vote in all general elections of the nation.

Section 2. All officers of this government shall be subject to impeachment and removal from office.

Section 3. The impeachment of all officers of this government below the rank of principal chief shall be tried by the supreme court under such laws as shall be made for the regulation of impeachment proceedings.

Section 4. The impeachment of the principal chief shall originate in the House of Warriors, and tried by the House of Kings sitting as a high court for that purpose, in accordance with law.

Section 5. No law impairing the obligations of lawful contracts or laws taking effect upon things that occurred before the enactment of the law shall be passed.

Section 6. All persons shall be allowed the right of counsel; and all cases shall be tried according to the provisions of the laws under which they respectively originated.

Section 7. All treaties shall be made by delegates duly recommended by the Principal Chief and confirmed by the national council; and such treaties shall be subject to the ratification of the national council. But no treaty providing for the sale of any portion of the lands or division thereof shall ever be made. All treaties shall be the supreme law of the land.

Section 8. No person for the same offense shall be twice put in jeopardy of life or limb; nor shall a person be again put upon trial for the same offense after a verdict of not guilty. And the right of trial by jury shall remain inviolate.

Section 9. No citizen shall ever be imprisoned for debt.

Section 10. All powers [that] are granted in the constitution shall be reserved to the people.

Section 11. The adoption or recognition of any person entitling him or her to the rights of a citizen of this nation shall not carry with it the right to any back, retrospective payment of moneys out of the treasury of the Muskogee Nation.

Section 12. The national council may propose such amendments to this constitution as two-thirds of each branch thereof may deem expedient.

## *Schedule*

Section 1. After the ratification of this constitution all existing laws not in conflict therewith shall remain in force until repealed or amended by the national council.

Section 2. The first general election under this constitution for principal and second chief, treasurer, auditor and members of the national council shall

take place on the first Tuesday of September A.D. 1895, under such rules and regulations as have been, or may hereafter be provided by the national council.

Section 3. When the election of officers under this constitution shall be ascertained and proclaimed by the principal chief they shall assume and enter upon the duties of the respective offices to which they have each been elected; and the retiring incumbents shall vacate their offices, turning over and delivering to the newly elected officers all moneys, books, records, papers or other properties belonging to the respective offices so vacated.

Section 4. The oath of office may be administered by any one of the retiring justices of the supreme court.

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*Dew M. Wisdom, Agent, Union  
Agency, Indian Territory  
(Cherokee, Choctaw, Chickasaw,  
and Other Nations, 1896)*

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In this section of his annual report, Agent Wisdom glowingly comments on recent electoral processes that had taken place among the Choctaw and the Chickasaw. Those two nations had installed as chief executives two men who represented the element in their respective nations that sensed that individual allotting of tribal lands was inevitable and therefore something they must accept.

Wisdom wrote to urge Congress to act upon the provision in the 1835 Cherokee Treaty that entitled them to send a delegate to the U.S. Congress. He argued that such a move would bring clarity to the status of the Cherokee Nation and save money for both the Cherokee and the federal government.

U.S. Commissioner of Indian Affairs. *Annual Report* (1896).

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**Dew M. Wisdom's Report**

*Report of Union Agency*

Union Agency, Muskogee, Ind. T., September 10, 1896.

Sir: I have the honor to submit herewith under appropriate headings my annual report for the fiscal year ending June 30, 1896, of the condition of affairs in this agency, and have accompanied the same with such suggestions and recommendations as I have thought proper to make in view of the surroundings. . . .

Election of chiefs.—The recent elections in the Choctaw and Chickasaw Nations have resulted favorably to the friends of allotment, and indicate, beyond doubt, that the Indian mind has undergone a change on this question. Green McCurtain, who ran as the advocate of "An equal division of lands and other tribal property," has been elected chief of the Choctaw Nation by a safe plurality; and, on a like issue, the Chickasaws have chosen R. M. Harris as their governor or principal chief. The election in each case seems to have passed off quietly, although hotly contested, and the result can not do otherwise than materially affect public sentiment in the other three tribes in this agency. Hitherto all the tribes have stood solid against allotment, and the victory achieved by McCurtain and Harris may be classed as a remarkable and significant one under the circumstances, and it is not believed that a similar result could be obtained in the Cherokee Nation if a fair vote could be had and the full-bloods were allowed to express their real sentiments and wishes at the polls.

It may be proper to remark here that the Indians in this agency vote by ballot, and have regular clerks and judges of the election, clothed with like powers as belong to such officers in the States, and while the Indian seems to be passionately fond of politics, his inclination to manipulate the returns and stuff the ballot box is about as well developed as that of his white brother in the States, who has not always set him a good example in such matters.

As germane to this question I have to report that many people of this Territory, both citizens and noncitizens, now advocate the election of a Delegate to Congress, which can be done under article 7 of the treaty of 1835, so far as the Cherokees are concerned, provided, as stated in the article, Congress shall make provision for the same. A Delegate so elected from the Territory by the people thereof might render efficient service at this time in explaining the complex condition of affairs which prevails here and in securing remedial legislation therefor. Notoriously, much of the legislation in behalf of the Indian country has been controlled by Members of Congress from the States on its borders, and it is not saying too much to state that selfish interests have swayed some of said Members, and such legislation has been enacted that rather promoted the interests of themselves or their friends than the Indians whom they ostensibly proposed to benefit. The Congress, as a whole, either does not understand the Indian question or is indifferent to it, and hence much of the legislation affecting this country is practically in the hands of a few men who are not always wise in their day and generation.

It is believed, too, that the election of a Delegate would be much cheaper and more economical for the Indians themselves and would not require them to send from each tribe large delegations to secure such legislation as they think they need and to prevent such legislation as they do not want. And, again, it is an anomalous condition of affairs that 300,000 people should live in a republican Government without representation in our national forum.



This question will doubtless be presented to the next Congress. It may be presented by a Delegate elected for that purpose; and, whether it is or not, Congress, in my opinion, should take the matter up and formulate such legislation as will attain the desired end. It is one of those irrepressible movements, springing from the people, that will come along with allotment, citizenship, and other kindred questions that are destined to revolutionize this Territory and lift it from its semi-barbaric condition into full standing as one of the mighty brotherhood of States....

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*Major A. E. Woodson, Acting  
Agent, Cheyenne and Arapaho  
Agency (Cheyenne and Arapaho  
Peoples, 1897)*

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The Southern Cheyenne and Southern Arapaho experienced several devastating massacres at the hands of the U.S. military—Sand Creek in Colorado (1864) and Washita in Indian Territory (1868). They were forced to cede great swaths of their territory in exchange for a limited and shared reservation in Indian Territory that was established in 1869.

With allotment pressure mounting, the Southern Cheyenne–Arapaho Reservation was set for dismantlement by an agreement in 1890 that was signed over strong native resistance. By 1892, with the official “opening” of the reservation to non-Indian settlers, more than three thousand allotments had been made to individual Indians—totaling some 529,000 acres—while more than 3,500,560 acres were made available to non-Indians for settlement.

But as Agent Wisdom irritatingly noted, tribal customs and traditional chiefs were still very much in existence, and the chiefs, in particular, continued to wield a significant degree of authority that he found most frustrating.

Berthrong, Donald J. *The Southern Cheyennes* (Norman, University of Oklahoma Press, 1972).

Fowler, Loretta. *Arapaho Politics, 1851–1978: Symbols in Crises of Authority* (Lincoln: University of Nebraska Press, 1982).

U.S. Commissioner of Indian Affairs. *Annual Report* (1897).

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## **A. E. Woodson's Report**

Reports of Cheyenne and Arapaho Agency,  
Cheyenne and Arapaho Indian Agency,  
Darlington, Okla., September 1, 1897.

Sir: I have the honor to submit my fifth annual report of the condition of affairs of this agency.

Location.—The agency is located at Darlington, on the north bank of the North Canadian River, in Canadian County, 1 mile and a quarter from the Rock Island Railroad, 1½ miles from Fort Reno, and 4 miles from the town of El Reno....

Tribal Government.—The progress of these Indians is more retarded by the influence of the quondam chiefs than any other causes. Old-time customs and tribal government prove a heavy handicap to the individual who strives to acquire independence. If he assumes the role of the white man he must be proof against ridicule and sarcasm of the nonprogressive element; he must shut his door to the hungry horde of visiting relatives, who would otherwise eat him out of house and home; he must deny them the unrestricted use of his property, in horses, cattle, and farm products, and must smother his inherited propensity for hospitality. To the Indians of the older time all eatables are common property; and so long as there are provisions in the larder they demand and receive a share of same by common consent.

Tribal visiting.—When visits are made by neighboring tribes the visitors return loaded with presents of ponies, blankets and provisions. The members of one tribe will impoverish themselves to make presents to their visitors and in like manner the others will do the same when the visit is returned. I have discouraged and in great measures (by cooperation with neighboring agents), broken up this practice at this agency. It was most injurious to allotted Indians. Only recently some of the nonprogressive applied for authority to visit the Utes in Colorado—more than 500 miles distant—which was denied them. I have not restricted the visits of individuals beyond reasonable limits, but I am well aware that if tribal visits were the least encouraged, they would spend the most of their time in that way. Tribal visiting serves no good purpose, but works great injury to all concerned. It should be prohibited at all agencies, since it exercises a retarding influence on all progress and keeps alive old customs that ought to be abrogated....

Remarks.—While I am of the opinion that the indiscriminate issue of rations serves but to prolong the continuance of their dependence upon the Government for support, I am not prepared as yet to recommend the discontinuance of the issue of subsistence to those who mostly deserve and need it, but I am firmly committed to the necessity of withholding gratuitous subsistence from the nonprogressive Indians who show no disposition to labor for their own support.

If we were influenced by sentiment, we might be disposed to hesitate ere we strip the red man of his savage environments and forbid his indulgence

in his old-time habits that have so hindered his advancement. At last he is brought to bay, with no means of retreat. He can not go further to escape contact with the civilizing influence of his once hated white enemy. He has made his last stand and now he slowly yields, determinedly fighting to the last. But we must not let our sympathy render us unmindful of our duty, though it involves apparent hardship. "The greatest good to the greatest number" should be our motto. We must admit that it is necessary and right to wipe out barbarism and superstition and substitute therefore the accessories of a higher civilization.

Reservation Indians are persistent beggars, and an agent's popularity with them is measured by his disposition to supply their wants. To be popular with them necessitates permitting them to have their own way in everything, and their way militates against all progress. No other way is so altogether the correct thing with the uneducated Indian. It is the road his forefathers traveled from time immemorial. But when he is required to adopt a certain course, which involves improvements in his condition, he acquiesces and acknowledges that he has been controlled for his own good. He respects the decision and firmness in his superiors, and is quick to recognize the effect of a stronger will power.

It may not be out of order to remark that the advancement of the Indians under my charge has not been accomplished without the exercise of unyielding firmness and a determined effort to put into practice the innovations and reforms started by myself, with the sanction of the Department, for their benefit. I have had to combat the united opposition of the old chiefs and their followers, who constitute the nonprogressive element among these allotted Indians. They have fought determinedly for the maintenance of tribal government, and the retention of their authority over their people. They were shrewd enough to read their destiny in the success of my plans for the civilization of their people, and they have opposed them with all the powers of persuasion, in order to influence those the least disposed to adopt the advice and instruction of those appointed over them. It has been a long and bitter fight, but the end is near, and the opposition almost gone. One by one their followers have dropped off, and now those who once held undisputed sway over their people are deserted, their power gone, and nothing left to them but the inevitable. They must accept it or go down to their grave, maintaining to the last efforts to retain their independence of the white man's control.

*Very respectfully, your obedient servant,*  
A. E. Woodson,  
*Major, United States Army, Acting Indian Agent.*

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*Pima Constitution  
(Pima People, 1901 or 1902)*

The Pima refer to themselves as Akimel O’odham, or River People, and they have resided in the desert Southwest for millennia. They are probably descendants of the ancient people known as the Hohokam, who practiced a sophisticated system of irrigation agriculture that enabled them and their modern-day ancestors to thrive. Although they had early contact with the Spanish in the late 1600s, unlike the Pueblo peoples they were never subject to Spanish colonial rule.

According to several sources, the Akimel O’odham acquired a “most favored status” in their relations with Spain, Mexico, the early United States, and other tribes in the region because of their geopolitical independence and their economic pragmatism. They also exhibited a well-regarded ability to selectively appropriate from other ethnic groups and states those material items that would best serve their needs.

The U.S. Congress established the 350,000-acre Gila River Reservation in 1859. It became the home for the Akimel O’odham and a related tribe, the Maricopas. Confinement on reduced lands had a profoundly negative affect on the Pima, and the next several decades proved a most destabilized time. The prime culprits were forced economic dependency, the introduction of Christianity, and the loss of water, which was now being diverted by non-Indian settlers in and around the growing community of Phoenix. The Indian agent’s report of 1901 specifically referred to “the starving and helpless condition of the Indians” he was responsible to as a result of the loss of water.

By the start of the twentieth century, education was also having an impact. A number of Akimel O’odham youth had attended distant boarding schools and returned to the reservation with new ideas on what their nation needed to do as it sought to adjust to contemporary life. The ensuing constitution, about which little is known outside of what Frank Russell wrote in a 1903 article, is another example of tribal citizens exerting their sovereignty by creating a new form of governance. Russell says it was written by a Pima, Earl A. Whitmore, who then submitted the charter to the Indian agent and the tribe’s elders for approval. Although the agent accepted it, internal conflict arose between some of the returned Indian students and a few chiefs, and ultimately the document was rescinded.

Interestingly, Agent Elwood Hadley stated in his 1901 annual report that on the nearby Salt River Reservation (also the home of some Pima and Maricopa) “a form of self-government” had been established that was working well. It consisted of a twelve-member council “which settles troubles among the Indians and promulgates rules for their

government, subject to the approval of the agent." Little else is known about the form or function of the Salt River governing arrangement.

Russell, Frank. "A Pima Constitution." *Journal of American Folklore* 16 (October–December 1903).

———. *The Pima Indians* (1940; repr., University of Arizona Press, 1975).

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## A Pima Constitution

The Piman stock occupies the southwestern part of Arizona and adjoining portions of Sonora. The Pima tribe lives upon two reservations in the Gila and Salt River valleys. They are famous for their skill in basket-making, and produce a fair grade of pottery, but they depend principally upon agriculture for a livelihood. In recent years those living about the agency on the Gila have been deprived of water for irrigating their farms by the white settlers who have taken out ditches from the river above them. The streams which formerly furnished far more than they could use is now a white stretch of blistering sand the greater part of the year. This has resulted in the impoverishment of the Indians; a few have died of starvation, and many others, owing to lessened powers of resistance, have succumbed to disease.

In addition to the discontent arising from the hard conditions of existence, the Santan community had become displeased with the miserly character of its old chief. Several of the younger men who had been away at Eastern school had begun to wield an influence. Finally, a more extensive system of canals than had heretofore been used was completed in the autumn, so that in October, 1901, the time seemed ripe for the election of a new chief and the adoption of rules that would insure the maximum benefits from the inadequate water supply. Accordingly, an attempt was made by some of the English-speaking young Pimas to formulate a constitution which was to be submitted to the agent and their elders for approval. The first suggestion of such an instrument came from Solon Jones, the Pima interpreter at Sacaton. Earl A. Whitman, disciplinarian at the boarding-school, undertook the task of writing it. The subjoined constitution was "modelled after that of the United States." It was submitted to the inspection of one of the employees of the school at the last moment before the meeting called for its adoption, and condensed to about one half its original length; but the arrangement of sections or language was not improved.

### Constitution

We the Indians of the Santan Reservation, in order to promote the general welfare of our Indians do ordain and establish this Constitution and By-laws for the Government of the Santan Reservation:

1. The executive power of the Reservation shall be vested in a Chief who shall be elected by the people; such election shall be subject to approval by the U.S. Indian Agent at Sacaton, Arizona. He shall serve four years, unless he for misbehavior be impeached by the Council and removed from office, the same to be approved by the U.S. Indian Agent.

2. The legislative power of the said Reservation shall be vested in the Chief and the Council, the latter to consist of eight Councilmen, two Assistant Chiefs, and the Head Chief.

The said Officers shall be of good repute and have the qualification of voters. One fourth of the said Council shall be elected every year by the people.

### *Head Chief*

1. The Head Chief shall have power to enforce the Constitution and By-laws.
2. All requests for improvements on the said Reservation shall be served by the Undermen, who shall submit the same in writing to the Chief.
3. He shall have power to call the Council together any time and put all questions before them for discussion and decision.
4. He shall see that the following rules are enforced.

### *Assistant Chiefs*

1. The said Assistant Chiefs shall be elected by the people of the Santan Reservation for the term of two years.
2. It shall be the duty of the Assistant Chiefs to receive all orders from the Head Chief and communicate the same to their respective people.
3. They are to receive and issue the annual ration from the U.S. Indian Agent. After receiving the articles they shall appoint one or more helpers who shall go from house to house and investigate the needs of the people.
4. They shall see to it that the Minute Men attend to their duties.

### *Duties of the Minute Men*

1. It shall be the duty of the Minute Men to superintend and direct the Canal or Dam work of those who have farms on the said Reservation.
2. They shall report to the President of the Canal all absentees from work.

### *Council*

1. It shall be the duty of the Council of the Santan Reservation to discuss and decide all general questions relating to the Reservation.
2. They shall try all cases or suits referred to them from the Head Chief.

### *President of the Canal*

1. The President of the Canal of the Santan Reservation shall be elected by the people of the said Reservation for the term of four years.

2. It shall be his duty to have the entire control of the Canal, the same to include Dam water distribution and all general contracts thereof.
3. It shall be his duty to see that his Undermen distribute the water fairly and in proportion to the needs of those cultivating the lands. In cases where the land is uncultivated the same shall not be irrigated.

### *The Water Directors*

1. The Directors shall be appointed by the Chief of the different villages of the Santan Reservation.

### *Road Master or Overseer*

1. The Road Master or Overseer shall be appointed by the Head Chief. This Overseer shall report to the Chief and Council; the same shall act upon and decide all matters pertaining to the same. This officer shall superintend all contracts thereof.
2. It shall be the duty of the Road Master or Overseer to cause all the public roads within the Reservation to be kept in good repair and clear of all obstructions including the two public roads leading to and from the agency.
3. Every male resident on or off the Santan Reservation who is subject to the use of the road shall perform either in person or by substitution two days' labor on the roads, which labor shall be performed at any time during the year subject to the orders of the Road Master. In default of performing such labor he shall pay to the Road Master the sum of one dollar, the same to be expended upon the road.
4. Any person or persons constructing a ditch across the public road shall see that the crossing is kept in good condition, and the same shall be inspected by the Road Master or Overseer. If it is improperly constructed, the Road Master shall notify him or them of the same, and upon neglect or refusal to comply with the requirements at the expiration of ten (10) days, the same shall be reported to the Chief and Council who shall impose a fine of not less than \$3.00 and not any more than \$5.00, the same to be applied to the public funds.
5. If the Road Master or Overseer shall neglect or willfully refuse to fulfill the duties of his office, he shall be subject to a fine of not less than \$4.00 or more than \$6.00, the same to be applied to the public funds. Upon the second offence he shall be removed from office and the Chief may appoint a man to fill the vacancy of the unexpired term.

### *Live Stock and Owners*

1. Live Stock running at large shall not be allowed to trespass.
2. Any animal found trespassing may be taken up by the owner of the field to the nearest corral and shut up. He shall then notify the owner to keep the same away. In case damage is done to the field, the owners of the stock shall be fined in a sum not to exceed \$1.00 nor less than 50 cents per head.

3. In case of excessive damage, the owner of the field shall notify the head Councilman of the said damage and the Councilman shall then appoint two disinterested men who shall investigate and appraise the value of the same to be reported and acted upon by the Council who shall then require the said amount paid by the trespasser.

### *The Field and Owners*

1. The field must be inclosed by substantial fences and have gates for their roadways, the same to be kept closed.
2. Any person or persons traveling through said fields must close the gates.
3. Any person or person using their stubble fields for pasturage must keep their fences in repair, but if the said fences are not in repair it will be considered the same as public domain and no damages can be collected for trespassing.
4. Any person or persons tearing down fences to enter or pass through the inclosure of another property without the consent of said owner shall be guilty of misdemeanor and shall be fined 50 cents for the first offence and \$1.00 for the second.

### *Labor on Ditch or Dam*

1. It shall be the duty of the Minute Men to notify all land owners on the Santan Reservation the day previous to the beginning of work on the Ditch or Dam.
2. Any person or persons failing to appear either in person or by a substitution, the Council shall impose a fine of \$1.00 upon said individual.
3. Any person has a right if he so desires to have a substitute in his place. No individual subject to these rules and regulations has any right to leave their work without consent of the Council.

### *Violating Constitution*

1. Any person or persons who shall in any way prevent the free enactment of these rules and regulations shall be fined the sum of \$1.00 each, the leader \$2.50 for the first offence and \$5.00 for the second offence.
2. Any person or persons found guilty and refusing to pay the required fine imposed upon them by the Council shall be remanded to the U.S. Indian Agent for trial.

### *Constitution*

1. The Head Chief shall be empowered to enforce this Constitution and By-laws, and he in turn shall be subject to the Council.
2. It shall be the duty of the Head Chief to take all cases unable to be settled by the Council before the U.S. Indian Agent at Sacaton, Arizona.
3. He shall try all cases with the exception of ligueur and murder, said cases to be tried by the U.S. Court.



4. Every bill before it becomes a law be presented to the U.S. Indian Agent, who, if approving it, shall attach thereto his signature. If the same does not meet with his approval he shall return it to the chief stating objections to same.

We the members of said committee respectfully submit this Constitution and By-laws for the careful consideration of the U.S. Indian Agent at Sacaton and trust the same will meet with his approval.

*Committee on Constitution and By-laws.*

*[Earl A. Whitman, Carlisle, Pa.]*

*[Antoine B. Juan, Albuquerque, N.M.]*

*[Edward Jackson, Tucson]*

*[John K. Owens, Santa Fe, N.M.]*

*[Kisto Jackson, Hampton, Va.]*

*Oliver Willington (assisted but did not sign)*

This document was submitted to the agent, who expressed his approval; then a meeting of the Pimas interested was called. They gathered to the number of nearly fifty and adopted the constitution with scarcely a dissenting voice. According to its provisions John Lewis was elected chief, and to one unacquainted with the Indian mind the subject would have seemed to have been settled amicably. But jealousy among the ex-Carlislians sent one sore head to the agent with complaints; the ex-chief had a great many cattle and horses running at large, so that he would be subject to fines, and ostensibly for the sake of his people he objected to the penalties imposed for trespass. Two or three followers of the old chief added their protest, so that the agent reconsidered his decision and vetoed the whole proposition.

Then the newly elected chief resigned, saying that he wished to have the constitution adopted but would not hold the position of chief if he was not the unanimous choice of the people. The constitution party continues to hold meetings, but the pride of the writer of the document prevents him, also, from attending them. The opposition maintains a lobby at the agency, and the end is not yet.

Turning to the subject-matter of the constitution itself, we observe that the arrangement is not good, the phraseology is bad, in places condensation would improve, and in others there are omissions. The tenure of the Head Chief corresponds both with the agent's term of office and the magic number—four—of the Pimas.

Article 2 provided for the election each year of one-fourth of a body of eleven persons, and it is clear that eight of them serve for one year only.

The first article under the heading of Head Chief calls attention to the fact that there is no distinction made between constitution and by-laws.

The next article introduces a new term, "Undermen," which is not defined and not needed; it is not translated from the Pima.

No provision is made for regular meetings of the council; this is probably due to the customs of the Pimas, which do not include regularly recurring festivals and other gatherings.

Mention is not made of the matter of electing nor the tenure of office of the "Minute Men." This, also, is an English term.

The manner of election of the Canal President is not indicated.

Provision is not made for the election of the "Chiefs of the different villages," nor is it evident that the "Water Directors" appointed by them are needed.

Road improvement upon this reservation dates back but a year or two, so that it is not surprising that the article devoted to the duties of the road master is sufficiently ambiguous to cause endless litigation were it adopted by a Caucasian community. "Every male resident on or off the Santan Reservation" includes such a large body of citizens that I fear the road master will have difficulty in enforcing the regulation.

The articles imposing penalties call attention to the fact that no provision is made for a treasurer: such an officer would have been superfluous heretofore in the Pima body politic.

The closing articles relating to the duties of the chief should have been included in the second section.

All is crude and incomplete, and yet the effort of these young men is worthy of our respect; for at the time of their birth their people had not a single house more pretentious than the willow ki, shaped like a beehive and scarcely high enough to enable its occupants to stand upright. They have grown up with almost purely aboriginal surroundings, their homes separated by several miles of absolutely uninhabitable desert from the nearest white habitations.

*Frank Russell.*  
*Cambridge, Mass.*

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### *Acts and Resolutions of the General Council of the Choctaw Nation (Choctaw People, 1904)*

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When Congress enacted the Curtis Act of June 28, 1898 (30 Stat. 495), it emphatically declared its intention to terminate the land tenure and court systems of the Five Civilized Tribes despite forceful and eloquent indigenous resistance. Various agreements negotiated separately with the Choctaw/Chickasaw (the Atoka), the Creek, and the Cherokee set March 4, 1906, as the date when those tribes would be forced to surrender the balance of their sovereignty and self-governing powers.

When it became apparent that tribal territories would not be fully divided by 1906, the tribes requested and received (via the Five Tribes Act of 1906) the right to continue to exercise a reduced degree of governing authority, although the United States unilaterally decided

it had the power to approve whatever laws the Choctaw enacted. Despite this temporary reprieve, most of the tribal councils stopped officially meeting once the bulk of their lands had been liquidated—the Choctaw legislature’s last meeting was in 1910—and in a bizarre twist the tribal chiefs were no longer chosen by their respective peoples but became political appointees of the U.S. president, a practice that would continue until 1970.

Oklahoma statehood in 1907 further dampened the self-governing powers of the tribes. But even as their governing authority faced profound curtailment, the Choctaw Nation continued to enact laws verifying their sovereignty even if these rulings required presidential approval.

*Acts and Resolutions of the General Council of the Choctaw Nation* (1904)  
(copy in author’s possession).

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## Choctaw Nation’s Acts and Resolutions

### *Acts of the Choctaw Nation*

October Session,  
1904.

#### BILL NO. 1

Resolution Authorizing the Chairman of Chief Message Committee to Appoint a Clerk.

Be it Resolved by the General Council of the Choctaw Nation in Regular Session Assembled:

Section 1. That the Chairman of the Committee on Chief Message shall appoint a clerk of said committee, whose duty it shall be to make and keep a full record of the said committee.

Section 2. Be it further resolved, That the clerk of said Chief Message Committee shall receive for his services the sum of four dollars (\$4.00) per day; that the National Auditor shall issue his warrant for actual service, and the National Treasurer shall pay the same.

And this resolution shall take effect and be in force from and after its passage and approval.

Proposed by L. H. Perkins.

In affect by statue of limitation Oct. 13, 1904.

*Green McCurtain,*  
*P.C.C.N.*

*Attest:*  
*J. W. Conser,*  
*Recording Secretary.*

BILL NO. 2

Resolution Authorizing the Chairman of the Finance Committee to Appoint a Clerk.

Be it Resolved by the General Council of the Choctaw Nation in Regular Session Assembled:

Section 1. That the Chairman of the Finance Committee shall appoint a clerk for the said committee, whose duty it shall be to make and keep a full record of the work of said committee.

Section 2. Be it further resolved, That the Clerk of the said Finance Committee shall receive for his services five dollars (\$5.00) per day.

That the National Auditor shall issue his warrant for actual services and the Treasurer shall pay the same; and this resolution shall take effect and be in force from and after its passage and approval.

Proposed by A. H. Reed.

In effect by statute of limitation this Oct. 13, 1904.

*Green McCurtain,*

*P.C.C.N.*

*Attest:*

*J. W. Conser,*

*Recording Secretary.*

BILL NO. 3

Resolution Authorizing the Chairman of the Committee on Petitions to Appoint a Clerk.

Be it Resolved by the General Council of the Choctaw Nation in Regular Session Assembled:

Section 1. That the Chairman of the Committee on Petitions shall appoint a clerk for the said committee, whose duty it shall be to make and keep a full record of the work of said committee.

Section 2. Be it further resolved, That the Clerk of the said Petition Committee shall receive for his services four dollars (\$4.00) per day; that the National Auditor shall issue his warrant for actual services, and the Treasurer shall pay the same.

And this resolution shall take effect and be in force from and after its passage and approval.

Proposed by J. P. Thompson.

In affect by statute of limitation this Oct. 13, 1904.

*Green McCurtain,*

*P.C.C.N.*

*Attest:*

*J. W. Conser,*

*Recording Secretary.*

BILL NO. 7

An Act Authorizing the Principal Chief to Appoint a Commission for the Enrollment of New Born Choctaws, and Other Purposes.

Whereas, By the terms of the supplementary agreement, the citizenship rolls of the Choctaw Nation were closed on September 25, 1902, and no children born of Choctaw Indian parentage thereafter could be enrolled; and

Whereas, Many Indian children have been born since the above date and whose right to enrollment and participation in the division of tribal property entitles them to favorable consideration; and

Whereas, Certain delinquent Choctaws who have had a tribal status have failed to secure enrollment.

Be it enacted by the General Council of the Choctaw National assembled:

Section 1. The Principal Chief is hereby authorized to appoint a commission, composed of three members, for the purpose of enrolling such children of Choctaw parentage as have been born since September 25, 1902, and children that may be born up to and including March 4, 1906.

Section 2. Said commission shall also be authorized to enroll such delinquent Choctaws as heretofore have had tribal status, and none other.

Section 3. The Commission thus created shall be under the supervision of the Principal Chief, who shall have power to supervise the work of the Commission and revise the same from time to time, and in the exercise of this authority shall have power to canvass the list of names of the children and delinquent Choctaws received by the commission for enrollment.

Section 4. Be it further enacted that it shall be the duty of the Commission to investigate each case on its own merits, and shall take testimony only after it fully appears that the parents of such children have been duly enrolled, and as such their names appear upon the final rolls, as approved by the Honorable Secretary of the Interior.

Section 5. Upon the completion of the enrollment of new born children and delinquent Choctaws, as herein before provided, said rolls shall be delivered to the Principal Chief, who is hereby authorized to procure such legislation by Congress as to secure the final enrollment of the aforesaid new born children and delinquent Choctaws.

Section 6. The Principal Chief shall designate one member of the Commission as Chairman, who shall keep the records, books, and papers in his custody, and shall furnish blank applications and such other necessary forms to applicants for enrollment as the Commission may deem necessary.

Section 7. Be it further enacted that each Commissioner under this act shall receive \$1,800 per annum, as a salary, and the additional sum of \$1,000 is hereby appropriated for the purpose of procuring such stationery, books, and defraying such other necessary incidental and contingent expenses of said Commission; and all payments shall be made quarterly upon the certificate of the Principal Chief to the Auditor, whose warrants the Treasurer shall pay out of any funds not otherwise appropriated.

Section 8. Be it further enacted that the contingent fund of the Principal Chief, in addition to that now provided by law, is hereby increased sufficient to carry the purpose of this act into effect, and an appropriation therefore is hereby made, and this act shall take effect and be in force from and after its passage and approval, and all acts and parts of acts in conflict herewith are hereby repealed.

Proposed by Daniel Webster, Chairman Choctaw Message Committee.  
Approved this the 20th day of October, 1904.

*Green McCurtain,*  
*P.C.C.N.*

*Attest:*  
*J. W. Conser,*  
*Recording Secretary.*

### *Amendment*

That line 3 in Section 1, be amended after the words "Choctaw parentage" by adding the words and "the Choctaw Freedom parentage,"

Amendment proposed by W. A. Shoney

### BILL NO. 13

An Act Providing for the Appointment of a Commission to Negotiate with the Chickasaws, or Their Representatives, a Settlement of all Existing Differences between the Choctaw and Chickasaws, and an Adjustment of all Other Matters of Joint Interest between the Tribes.

Be it enacted by the General Council of the Choctaw National Assembly:

Section 1. That the Principal Chief be, and he is hereby authorized to appoint a commission composed of three persons, of which he shall be a member and act as chairman, for the purpose of affecting a settlement upon the part of the Choctaw Nation of all existing matters between the Choctaw and Chickasaw Nations, and for the adjustment of all matters of joint interest between said tribes.

Section 2. That said Committee shall, upon its appointment, or as soon thereafter as is practicable, proceed to the consideration of the matters and things by this act committed to its charge, that a record of the final action, conclusions and recommendations of the joint commission shall be made and by this commission reported to the Principal Chief for transmission to the Council at its next succeeding session, either regular or extraordinary, for the Council's ratification or rejection, as to what may seem best for the interest of the Choctaw people.

Section 3. That the compensation for said commissions shall be five (\$5.00) dollars per day when actually engaged in the service herein provided for, and three (\$3.00) dollars per day in lieu of subsistences, including transportation and other necessary and incidental expenses.

Section 4. That the sum of five hundred (\$500) dollars, or so much thereof as may be necessary, shall be made available, and upon certification of the Principal Chief the National Auditor shall issue his warrant and the National Treasurer shall pay the same. That the contingent fund of the Principal Chief is hereby sufficiently increased to carry into effect the provisions of this act; and this act shall take effect from and after its passage and approval.

Proposed by Daniel Webster, Chairman on Chief Message Committee.  
Approved this the 27th day of October, 1904.

*Green McCurtain,*  
*P.C.C.N.*  
*Attest:*  
*J. W. Conser,*  
*Recording Secretary.*

BILL NO. 14

Memorial Requesting Continuance of Present Choctaw Townsite Commission until its Work is Completed:

Whereas, the Choctaw Townsite Commission has received notice through the Honorable J. George Wright, U.S. Indian Inspector for the Indian Territory, that owing to lack of funds said Commission would be dissolved on or about November 1st, 1904, and;

Whereas, the work of the Commission is far from completion, and a suspension or discontinuance of the Commission at this time, would irreparably injure the interests of the Choctaw and Chickasaw Nations,

Be it Resolved by the General Council of the Choctaw Nation in Regular Session Assembled:

That it is the sense of the Choctaw people that the townsite work should be pushed under present Commission to a speedy settlement, until the work is completed in the appraisal and sale of the townsites in the Choctaw and Chickasaw Nations, and that we hereby respectfully invite the attention of the Honorable Secretary of the Interior, to the utmost importance of an immediate completion of said work in order that the tribal affairs may be adjusted and a final settlement effected with the Government of the United States;

Be it further Resolved, that a copy of this resolution be forwarded to the Honorable Secretary of the Interior, expressing this sentiment, and that this resolution shall take effect and be in force from and after its passage and approval.

Proposed by J. L. Ward.

Approved this, the 28th day of October, 1904.

*Green McCurtain,*  
*P.C.C.N.*  
*Attest:*  
*J. W. Conser,*  
*Recording Secretary.*

## 51

*Menominee Constitution  
(Menominee People, 1904)*

The 1892 constitution was not enacted because of the tension between some of the traditional leaders, the Indian agents, and a number of the younger Menominee, who demanded a greater role in the tribe's economic development. By the early 1900s, the Menominee's logging industry had proved a major success, and another attempt was made—this time successfully—to adopt a modern constitution. Similar to the 1892 iteration, this document contained language that denounced the traditional system of hereditary chiefs and instead created a modern structure of governance with a fifteen-member business committee and a tribal chair.

After the charter was written, the tribe's membership adopted it in a general council session on October 18, 1904. Shepard Freeman, the agency superintendent, then certified and approved the new constitution on November 21, 1904.

National Archives. RG 75, Central Classified Files, Keshena 1907–1939, 054.

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### **Constitution of the Menominee Tribe of Indians of the State of Wisconsin**

Whereas, the government of the Menominee tribe of Indians is not organized according to civilized principles, but is an old form of government which has existed from the earliest ages, in which the ruling power has been under the control of hereditary chiefs, as handed down from generation to generation from time immemorial to the present time; and our tribe being now far enough advanced in civilization, in an age, when this old system of government becomes inefficient for promoting the progress [and] the best interests and general welfare of the tribe, therefore:

We, the members of the Menominee tribe of Indians in General Council assembled, believing that individual rights and interests as well as a closer tribal union and a more compact and substantial form of government will best conserve our common rights, privileges and interests, insure our protection and promotion and better secure the blessing of civilization to ourselves and our posterity, do ordain and establish this Constitution for the government of our tribe.



### *Article I*

Section 1. The boundary and jurisdiction of the Menominee tribe of Indians shall be the present boundary of the lands owned and occupied as a reservation by said tribe of Indians subject to such changes as may be made therein from time to time through the re-adjustment of their affairs with the United States. Said lands shall be divided by imaginary lines into three equal parts or districts, so that each district shall, as nearly as may be, include the same number of inhabitants qualified to participate in the General Councils or elections of said tribe.

Section 2. All persons whose names rightly appear on the present duly authenticated rolls of this tribe and their offspring shall constitute the Menominee tribe of Indians and the Business committee hereinafter provided for shall have power to determine by resolution who are entitled to have their names continued thereon or added to said roll from time to time.

### *Article II*

Section 1. All powers and authority relating to the conduct and settlement of all tribal business, and such matters as concern the general welfare of the tribe herein granted, shall hereafter be entrusted to the general supervision, direction and management of fifteen members of the tribe, who shall be chosen bi-ennially and be known and designated as the "Business Committee" of the Menominee tribe of Indians, who shall see that the laws, rules, and regulations of the tribe are faithfully executed and no person shall be a member thereof who shall not have attained to the age of twenty-five years, and who is not, when elected, a member of said tribe and an actual inhabitant of the Menominee reservation and does not possess such other qualifications as are herein provided.

Section 2. Each of the three Districts, when bounded and set off as hereinbefore provided shall be entitled to choose by ballot of a majority of its qualified electors, cast at an election duly called for the same day, five members of said "Business Committee," who shall hold their offices for the period of two years, and until their successor shall have been chosen and have duly qualified.

Section 3. In election by the tribe in General Council or by districts, only male members who shall have attained the age of 21 years shall be entitled to vote.

Section 4. The "Business Committee" shall choose their chairman from among the members thereof, who shall be known and designated as "Chairman of the Business Committee" of said tribe, who shall preside over its deliberations, and possess the same rights and privileges as other members thereof, in addition to those hereinafter provided.

Section 5. The "Business Committee" shall choose its own subordinate officers, and also a chairman pro tempore, in the absence of its chairman. They shall also have a common seal, which shall bear the device "Business Committee of the Menominee Tribe" which shall remain in the custody of the Secretary thereof.

Section 6. The "Business Committee" shall have the sole power of all impeachments of its members and all other officers under this constitution.

Section 7. The "Business Committee" shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the chairman of the "Business Committee" is tried the chairman pro tempore shall preside. No person shall be convicted without the concurrence of two-thirds of the members present. Judgments in cases of impeachment shall not extend further than to removal from office, but the party convicted shall nevertheless be liable to indictment, trial, judgment and punishment, according to law.

Section 8. The "Business Committee" shall assemble at least once in every year, and such annual meeting shall be held on the third Monday in September unless said Committee shall by resolution appoint a different day, giving 15 days' general notice of said change.

Section 9. The times, places and manner of holding all elections shall be prescribed by said "Business Committee" when elected. The "Business Committee" shall be the Judge of the elections, returns and qualifications of its own members, and a majority of its members shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as it may from time to time provide. It may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds of the members thereof, expel a member. It shall keep a record of its proceedings and from time to time publish the same, excepting parts as may, in their judgment, require secrecy, and the yeas and nays of its members on any question shall at the desire of any member present, be entered on said record or journal. It may adjourn from time to time, or take such recess as a majority of its members may determine.

Section 10. The members of the "Business Committee" shall in all cases except felony and breach of the peace, be privileged from arrest during their attendance upon its sessions and in going to and returning from the same; and for any speech or debate in said Committee, they shall not be questioned in any other place.

Section 11. Every act, resolution, order, warrant, or contract which shall have received the approval of the "Business Committee" shall, before it becomes of force and effect, be presented to the chairman of said "Business Committee"; if he approve, he shall sign it; together with the secretary of said committee, who shall also certify to its correctness under seal; but if not, he shall state his objections to the "Business Committee," who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members of the "Business Committee" agree to pass such act, resolution, order, warrant, or contract, it shall take effect. No money belonging to the Menominee tribe shall be drawn from the Treasury of the Menominee tribe of Indians, but in consequence of appropriations made and warrants duly drawn and issued by said Committee; and a regular statement and account of the receipts and expenditures of all tribal moneys shall be kept and published from time to time.

Section 12. The "Business Committee" shall have power to make provisions for the election or appointment of all its needful officers, including a Secretary, Treasurer, Sergeant-at-arms and other officers as may be deemed

expedient; and shall prescribe their duties except as herein provided and fix the rate of their compensation.

Section 13. The members of the "Business Committee" shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the Menominee tribe of Indians, or out of any funds available, belonging to said tribe in the United States Treasury; and the "Business Committee" shall fix the pay and determine the length of service of all other officers, agents, attorneys or employees of the Menominee Tribe of Indians.

Section 14. The "Business Committee" shall have power to appoint and commission one or more Delegates to represent the tribe at Washington, D.C., and attend to such business as the tribe may have before the Departments, in the Courts or before the Congress of the United States; and such Delegate or Delegates shall receive such compensation for services and expenses as the "Business Committee" may deem proper and shall determine.

Section 15. The "Business Committee" shall have power to make provisions for raising revenue. To lay and collect taxes and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the Menominee Tribe of Indians or in any officer thereof.

Section 16. No member of the "Business Committee" shall, during the time for which he was elected, be appointed to any other office under the authority of the Menominee tribe of Indians which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of the "Business Committee" during his continuance in office, after the election in the year 1906.

Section 17. In the event of a vacancy in the offices of Secretary, Treasurer, "Business Committee" or any other office under this constitution by reason of death, removal, resignation or otherwise, such vacancy shall be at once filled by an election or appointment by the members of the "Business Committee" and such elected member or officer shall serve out the unexpired term of his predecessor, unless sooner removed by death or otherwise.

### *Article III*

Section 1. The chairman of the "Business Committee" shall hold his office at a place to be designated by said Committee and shall see that the Menominee tribe of Indians and each member thereof are protected in all their rights.

Section 2. He shall make a full report of his official actions and proceedings to the "Business Committee" in writing at the beginning of each annual session thereof, and may also communicate his views and recommend to said committee, at the commencement of every session the adoption of such measure, as he may deem to be for the best interest of the Menominee tribe of Indians.

Section 3. The chairman of the "Business Committee" shall see that all moneys and annuities due the Tribe from the United States or from any other source are promptly paid over according to agreement.

Section 4. The chairman of the "Business Committee" shall have power to call special meetings of the committee, and with the consent of the "Business

Committee” to employ Counsel to prosecute or defend any suit, claim or demand in favor of, or against the Menominee tribe of Indians, and such committee shall make provision for the payment of such counsel or attorney who may be so employed.

Section 5. In the absence or inability of the chairman of the “Business Committee” to perform his said duties, a chairman pro tempore shall preside over the “Business Committee,” when in session who shall also discharge such other duties as appertain to that office.

Section 6. The Secretary shall keep and preserve the records of the “Business Committee” and assist the chairman in the management of public business. He shall keep a record of all official papers and documents of every kind issued by the authority of the “Business Committee” and when necessary certify, sign and affix the proper seal to the same. He shall perform such other official duties as may be enjoined upon him by the “Business Committee” or the chairman thereof.

Section 7. The Treasurer shall be custodian of all moneys belonging to and paid over to the tribe and shall pay out the same under the direction of the “Business Committee” and with the signature of the secretary and chairman of the “Business Committee,” but under no other circumstances shall he use, pay out or distribute the money of the tribe. Before entering upon the duties of his office he shall execute a bond, in such sum and form as the “Business Committee” may direct, to be approved by the chairman thereof. He shall pay over all balances in his hands to his successor in office so soon as he shall have qualified for its duties.

Section 8. Before entering upon the discharge of their duties, members of the “Business Committee” and all other officers shall each take and subscribe to an oath or affirmation for the faithful performance and execution of the trusts reposed in them, which shall be duly filed or kept on record.

Section 9. For inability, neglect of duty or misdemeanor in office the chairman of the “Business Committee” or any other officer of the tribe elected or appointed, may, upon conviction by committee, be removed from office, two-thirds of the members thereof being necessary to convict.

Section 10. Immediately after the adoption of these laws, the Menominee people in General Council and Convention assembled, by a majority vote shall then and there proceed to elect by ballot a “Business Committee,” who shall constitute the first “Business Committee” of said tribe who shall hold their offices until their successors shall have been chosen and qualified at a general election to be held as herein provided. The members so chosen shall then meet in session and elect a Chairman, a Secretary, a Treasurer, and a Sergeant-at-arms and other necessary officers, who shall at once take the oath of office, to be administered by the chairman, who with the secretary, when chosen, is hereby especially authorized and empowered to administer oaths and affirmations.

Section 11. The “Business Committee” and the officers so elected and qualified shall immediately enter upon their respective duties, and serve until their successors have been duly elected or appointed and shall have qualified.

Section 12. The chairman of the “Business Committee” shall call a special session thereof to convene at Keshena, Wisconsin, within seven days after

these laws shall have been adopted. The said Committee shall be called to order and the oath of the office administered by the chairman or secretary to all members who have not previously taken the same.

Section 13. The "Business Committee," for this special session only, may remain in session not exceeding twelve days and shall fix the time of holding the first general election, and take such other action as may be necessary to put the tribal government as herein provided in full operation, under these laws.

Section 14. A the general election to be held on the second Tuesday in June A.D. 1906, there shall be elected a "Business Committee" for a full term of two years, and in each alternate year thereafter all of the members of the "Business Committee" shall be elected to serve for the period of two years as hereinbefore provided.

Section 15. This constitution may be altered or amended at any time by a two-thirds vote of the "Business Committee."

The forgoing Constitution was read over both in English and Menominee and the provisions thereof were fully explained in council. Upon deliberation of all present it was agreed to adopt the foregoing instrument.

On motion, it was unanimously carried that the constitution presented and set forth in the records be adopted.

On motion, it was unanimously carried that the following named members of the tribe namely: Steve Askenit, Peter Lookaround, Reginald Oshkosh, Louis Keshena, Moses Corn, John Perote, Paul Kenaboway, Paul Baxter, Joseph Okatchecum, Alex Peters, Mitchell Oshkenauaniew, Moses Tucker, Wyuskasit, Wehshequanatt and Henry Wolf be elected to constitute the first "Business Committee" of the Menominee Tribe of Indians.

Resolved, That copies of these resolutions be sent one to the President of the United States, one to the Secretary of the Interior, one to the Commissioner of Indian Affairs, one to the Superintendent of the Green Bay Indian Agency, one to each Congressman of the state of Wisconsin and one to the Indian Rights Associations.

On motion, the General Council adjourned sine die.

Done in General Council at Keshena, Wisconsin, by the Menominee Tribe of Indians this 18th day of October, A.D. 1904.

In witness whereof we have hereunto subscribed our names.

*Thos. La Bell,*  
*President Pro tem of the General Council.*  
*Mitchell Mahkimetas, Secretary.*

I hereby certify that the foregoing resolutions were adopted at a Council Meeting of the Menominee Tribe of Indians held at Keshena, Wisconsin, on the 18th day of October, 1904, and that to the best of my belief represents the wishes of the members of the Menominee Tribe of Indians.

*Shepard Freeman,*  
*Sup't and Sp'l Dis. Agent.*  
*Dated at Keshena, Wisconsin, November 21st, 1904.*

## 52

*Constitution of the State  
of Sequoyah (Multiple Tribes  
in Indian Territory, 1906)*

By the early 1900s, as non-Indian Oklahoma Territory citizens and officials continued their efforts to obtain statehood, leaders of the Five Civilized Tribes, fearing the dissolution of their governments, separate territories, and possible absorption by Oklahoma Territory into a single state, began to aggressively pursue a new path to protect their governments and lands—separate statehood for the Indian Territory within the federal system.

The first serious discussion for Indian statehood began with a meeting of tribal leaders in 1902 at Eufala, located within the Creek Nation. There the delegates made it clear that they were adamantly opposed to a political and geographic merger with Oklahoma Territory. Tribal resistance continued to mount, and in 1905 a major gathering, called the Sequoyah Constitutional Convention, took place in Muskogee, also in Creek country. The tribes' leaders asserted that Indian Territory met all of the requisite criteria for statehood—adequate land base (31,400 square miles), sufficient population (750,000), acceptable communication and transportation infrastructure, and more than enough economic resources (e.g., coal, oil, gas, granite, lumber). They also said that several of their treaties with the United States and the 1897 Atoka Agreement recognized their right to be admitted as a separate state.

Convention delegates developed a detailed constitution, including a map that showed the counties' boundaries in the proposed state. Interestingly, the so-called Sequoyah movement had the support of a number of leading white politicians in Indian Territory.

Once the constitution had been written, it was put to a territory-wide referendum, where it was overwhelmingly ratified by a vote of 57,000 to 9,000. Although an impressive victory, less than half of the qualified voters actually participated in the referendum.

While bills were introduced in both houses of Congress in support of this new state, no substantive action was ever taken. Few in Congress wanted two additional Western states, and still fewer were willing to support an Indian state. Instead, Theodore Roosevelt recommended joint statehood in 1905, and in 1906 Congress passed an enabling act that set the stage for Oklahoma's admission as a single state in 1907.

Ironically, although the state of Sequoyah never materialized, much of the structure and many of the ideas laid out in their proposed constitution found their way into the newly formed charter of the state of Oklahoma.



## **Constitution of the State of Sequoyah**

### *Preamble*

Invoking the blessing of Almighty God and reposing faith in the Constitution and Treaty obligations of the United States, we, the people of the State of Sequoyah, do ordain and establish this Constitution.

### *Article I*

#### BILL OF RIGHTS

Section 1. All political power is vested in and derived from the people, is founded upon their will, and is instituted for the good of the whole.

Section 2. The people of this State have the inherent and exclusive right to regulate the internal government and police thereof, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness: Provided, Such change be not in conflict with the Constitution of the United States.

Section 3. All persons have an inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry. To give security to these is the principal office of government.

Section 4. All men have a natural and indefeasible right to worship God according to the dictates of their own consciences. No person shall, on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State, or be disqualified from testifying, or from serving as a juror. No human authority can control or interfere with the rights of conscience. No person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession; but this liberty of conscience shall not be so constructed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace, or safety of this State, or with the rights of others.

Section 5. No person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher, or teacher of any sect, church, creed, or denomination of religion; but, if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

Section 6. No money shall ever be taken from the public Treasury, directly or indirectly, in aid of any church, sect, denomination of religion, or in aid of any priest, preacher, minister, or teacher thereof, as such. No preference shall be given to, nor any discrimination made against, any church, sect, or creed of religion, or any form of religious faith or worship.

Section 7. No religious corporation can be established in this State, except such as may be created under general law for the purpose only of holding the title to such real estate as may be prescribed by law for church edifices, parsonages, cemeteries, and educational eleemosynary institutions.

Section 8. No power shall interfere to prevent the free exercise of the right of suffrage; and all elections shall be free and open.



Section 9. The courts of justice shall be open to every person, and remedy offered for every injury to person, property, or reputation, and right and justice shall be administered without sale, denial, delay, or prejudice. In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to know the accusation against him; to be furnished the names of the witnesses and an abstract of the evidence adduced against him upon which the indictment was found by the grand jury; to be confronted with the witnesses against him; in all cases to have compulsory process for the attendance of witnesses in his behalf; and to a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

Section 10. No person shall be compelled to testify against himself in any criminal case, nor shall any person be twice put in jeopardy for the same offense. If the jury disagree; if a new trial be granted by the court; if the judgment be reversed after verdict; or, if the judgment be reversed for error in law, the accused shall not be deemed to have been in jeopardy.

Section 11. The right of trial by jury shall remain inviolate; but a jury for the trial of criminal or civil cases, in courts not of record, may consist of less than twelve men, as may be prescribed by law; a jury trial may be waived by the parties in civil cases in manner prescribed by law, and a jury in a civil case may render a verdict by a majority vote. A grand jury shall consist of twelve men, any nine of whom, concurring, may find an indictment.

Section 12. No person shall, for felony, be proceeded against criminally otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; in all other cases offenses may be prosecuted criminally by indictment or information, as shall be prescribed by law.

Section 13. No person shall, without due process of law, be deprived of life, liberty, or property.

Section 14. Imprisonment for debt shall not be allowed, except for the non-payment of fines and penalties imposed for violation of law.

Section 15. All persons shall be bailable by sufficient sureties except for capital offenses, when the proof of guilty is evident, or the presumption great.

Section 16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

Section 17. The privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

Section 18. The military shall always be in subordination to the civil power. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

Section 19. No law shall be passed impairing the freedom of speech. Every person shall be free to say, write, or publish, whatever he will, on any subject, being responsible for all abuse of that liberty. In case of suit and prosecution for libel or slander, the truth thereof may be given in evidence.

Section 20. The people shall be secure in their person, papers, homes, and effects, from unreasonable searches or seizures; and no warrant shall issue to search any place, or to seize any person, or thing, except upon complaint in

writing, supported by oath or affirmation, describing, as nearly as may be, the place to be searched, or the person or thing to be seized.

Section 21. The right of a citizen to keep or bear arms in the common defense, and in aid of the civil power, when thereto legally summoned, shall not be questioned; but nothing herein contained shall justify wearing concealed weapons.

Section 22. Private property can not be taken for private use, with or without compensation, without the consent of the owner, except for private ways of necessity, for drains and ditches across the lands of others for agriculture, mining, milling, power, light, manufacturing and sanitary purposes, and then only in such manner as may be prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and such, judicially determined, without regard to any legislative assertion that the use is public.

Section 23. Private property shall not be taken or damaged for public use without just compensation, to be ascertained by a jury, or board of commissioners of not less than three freeholders, in such manner as may be prescribed by law; and, until the same is paid to the owner, or into court, subject to his unconditional order, the property shall not be disturbed nor his rights therein divested. The fee of land taken for railroad purposes, without consent of the owner, shall remain in him subject to the use for which it is taken.

Section 24. Laws impairing the obligation of contracts, or making irrevocable grants of special privileges or immunities; Ex post facto laws, or such as are retrospective in their operation, shall not be enacted by the General Assembly; nor shall separate or exclusive emoluments or privileges be granted, except in consideration of adequate public service.

Section 25. Treason against this State can consist only in levying war against it, adhering to its enemies, or giving them aid or comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No person shall be attainted of treason or felony by the legislature. No conviction can work corruption of blood or forfeiture of estate; and the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death.

Section 26. Slavery shall never exist in this State; neither shall involuntary servitude, except as a punishment for crime, whereof the criminal shall have been duly convicted. The State shall not lease or sell the labor of convicts, but may use it in employments not harmful to them.

Section 27. Persons elected or appointed to any office or employment of trust or profit under the laws of this State, or of any municipality therein, shall personally devote their time to the performance of the duties thereunto pertaining.

Section 28. The people have the right peaceably to assemble for their own good, and, by petition or remonstrance, to seek from those invested with the powers of government, redress of grievances.

Section 29. All persons are, and shall ever be, equal before the law. No citizen shall ever be deprived of any right, privilege, or immunity, or exempted from any duty or responsibility, on account of race, color, or previous condition.

Section 30. All rights not specifically granted to the State by the terms of this Constitution, are reserved to the people.

Section 31. The State of Sequoyah is an inseparable part of the Federal Union, and the Constitution of the United States is the Supreme Law of the land.

## *Article II*

### DISTRIBUTION OF POWERS

The powers of government shall be divided into three distinct departments—the Legislative, the Executive, and the Judicial—each of which shall be confined to a separate magistracy, and no person or collection of persons, charged with the exercise of powers properly belonging to one of these departments, shall exercise any power properly belonging to either of the others, except in the instances in this Constitution expressly authorized.

## *Article III*

### LEGISLATIVE DEPARTMENT

Section 1. The legislative power of this state shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, and be styled the “General Assembly of the State of Sequoyah.” The enacting clause of every law shall be, “Be it enacted by the General Assembly of the State of Sequoyah.”

Section 2. The Senate shall consist of twenty-one members, one to be chosen from each senatorial district, whose term of office shall be four years: Provided, at the first election under this Constitution the Senators for the odd numbered districts shall be elected for two years only.

Section 3. The House of Representatives shall consist of not less than forty-eight, nor more than seventy-five members, to be chosen biennially, whose term of office shall be two years.

Section 4. No person shall be a Senator or Representative, who, at the time of election, is not a citizen of the United States, and of this State, and who has not been, for one year next preceding his election, an actual resident of the county or district for which he is chosen. Senators shall be at least twenty-five years, and Representatives at least twenty-one years of age.

Section 5. The term of all members of the General Assembly shall begin on the day of their election.

Section 6. The General Assembly shall meet, biennially, at the seat of government, on the first Tuesday after the first Monday in January, until otherwise provided by law; but its first session, under this Constitution, shall be held as herein provided.

Section 7. The Governor shall, within ten days after any vacancy occurs in either house, issue a writ of election to fill such vacancy.

Section 8. No collector or holder of public money shall be eligible to any office of trust or profit in this State, until he shall have accounted for and paid over all sums for which he may have been liable.

Section 9. No person who denies the existence of a Supreme Being, nor any person who has been, or may hereafter be, convicted of embezzlement, or defalcation of the public funds of the United States, or of any state, county, or municipality therein, or who has been convicted of a felony, shall ever be eligible to any office of trust, or profit in this State: Provided, Persons who have, heretofore, been convicted of the crimes of unlawfully introducing, or of unlawfully disposing of, intoxicating liquors, shall not, on that account, be considered as coming within the disqualifications prescribed in this section. The General Assembly shall provide by law, for the punishment of embezzlement or defalcation as a felony.

Section 10. No member of the General Assembly shall be eligible to any other office in this State, nor to any office created by the General Assembly during his term of office.

Section 11. Each house shall elect or appoint its own officers and employees, and shall be the sole judge of the election and qualifications of its members. A majority of all members elected to each House shall constitute a quorum to do business: but a smaller number of either House may adjourn from day to day, and compel the attendance of its absent members, in such manner, and under such penalties, as it may provide.

Section 12. Each House shall have the power to determine the rules of its proceedings: to punish its members or other persons, for contempt, or disorderly behavior in its presence: to enforce obedience to its process; to protect its members against violence, unlawful restraint, offers of bribes, or private solicitation; and, by a two-thirds vote expel a member, but not a second time for the same offense. A member expelled for corruption, shall not, thereafter be eligible to membership in either House; and such punishment shall not bar an indictment and punishment for such offense.

Section 13. Each house shall keep a journal of its proceedings, and, from time to time, publish the same, except such parts as require secrecy. The "yeas" and "nays" on a question, shall, upon the demand of three members, be entered on the journal.

Section 14. The Sessions of each House shall be open, except when, in the opinion of its members, its business requires secrecy.

Section 15. Whenever an officer, civil or military, shall be appointed by the joint, or concurrent, vote of both Houses, or by the separate vote of either House, the vote shall be taken by "yeas" and "nays," and entered on the journals.

Section 16. Members of the General Assembly shall be privileged from arrest during attendance at the Sessions of their respective Houses, and in going to, and returning from the same, except for treason, felony, and breaches of the peace; and for any speech or debate in either House, they shall not be questioned in any other place.

Section 17. The members of the General Assembly shall be paid the sum of six dollars per day, for the days in session, not exceeding ninety days, and the sum of ten cents per mile from their homes to the Capitol, by the nearest traveled route; but such limitations of time shall not apply to its first session held under this Constitution.

Section 18. Each House, at the beginning of every regular session of the General Assembly, and whenever a vacancy may occur, shall elect from its members, a presiding officer, to be styled, respectively, President of the Senate, and Speaker of the House of Representatives; and whenever, at the close of any session, it may appear that the term of office of the Senator who has been elected President of the Senate, will expire before the next regular Session, the Senate shall elect as President, another Senator whose term of office does not so expire, who shall immediately qualify; and, in case of a vacancy in the office of Governor, or absence of the Governor from the State, or in case of the temporary mental, or physical, incapacity of the Governor to perform the duties of his office, such President of the Senate shall perform the duties, and exercise the powers, of Government, as elsewhere herein provided.

Section 19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose, and the contents of each bill, or resolution, shall be plainly and fully stated in its title.

Section 20. Every bill shall be read at length, on three several days in each House, unless the rules be suspended by a two-thirds vote of the House before which it is pending, when the same may be read the second or third times on the same day; and no bill shall become a law unless, on its final passage, the vote be taken by "yeas" and "nays." The names of the members voting for and against the same shall be entered on the journals, and a majority of each House must be recorded thereon as voting in its favor.

Section 21. A law may be revived, amended, or its provisions extended only by reenacting, and publishing it at length, and not otherwise.

Section 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases:

Changing the names of persons or places; laying out, opening, altering and working roads or highways; vacating roads, towns plats, street, alleys and public grounds; locating, changing county seats; regulating county and township affairs; regulating practice in the courts; regulating the jurisdiction and duties of justice of the peace, police magistrates, and constables; providing for changes of venue in civil and criminal cases; incorporating cities, towns, or villages, or changing or amending the charter of any town, city or village; providing for the election of members of the Board of County Commissioners in any county, or the election of officers of incorporated towns or cities; summoning and impanelling grand, or petit juries; providing for the management of common schools; regulating the rate of interest on money; opening and conducting of any election, or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; the protection of game or fish; chartering or licensing ferries or toll bridges; remitting fines, penalties, or forfeitures; creating, increasing, or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed; changing the law of descent; granting to any corporation, association, or individual, the right to lay down railroad tracks, or amending existing charters for such purposes; granting to any corporation, association, or individual, any special or exclusive privilege, immunity or franchise: In these, and all other cases where a general law can be made applicable, no special law shall be enacted.

Section 23. The General Assembly shall not have power to release or extinguish, in whole, or in part, the indebtedness, liability, or obligation of any corporation, or individual, to this State, or any county, district, or municipal corporation therein.

Section 24. No local or special bill shall be passed, unless notice of the intention to apply therefor, shall have been published in the locality where the matter, or thing to be affected, is situated, which notice shall be published at least thirty days prior to the introduction of the bill in the manner provided by law, and the evidence of the publication of such notice shall be exhibited and entered upon the journals of both houses of the General Assembly before the act is passed.

Section 25. No extra compensation shall be made to any officer, agent, employee, or contractor, after the contract is made or the service rendered; nor shall any money be appropriated, or paid, on any claim, the subject matter of which shall not have been provided for by preexisting law, unless such compensation, or claim, be allowed by bill, passed by two-thirds of the members elected to each House of the General Assembly.

Section 26. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that at which the two Houses are sitting.

Section 27. No money shall be drawn from the Treasury, except in pursuance of specific appropriations made by law, the purpose of such appropriations and the maximum amount in dollars and cents being distinctly stated in the bill; and no appropriation shall be made for a longer period than two years.

Section 28. The General Appropriation Bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the State: All other appropriations shall be made by separate bills, each embracing but one subject.

Section 29. No State tax shall be provided for, or appropriation of money made, except by a two-thirds vote of both Houses, for any purpose other than to pay the just debts of the State; to defray the necessary expenses of the government; to sustain public schools, and eleemosynary institutions; to repel invasion, and suppress insurrection or riot; to maintain necessary quarantine; and to protect human life: Provided, In case the revenues of the State, within the maximum limit of taxation authorized by this Constitution, are insufficient for its lawful expenditures, the General Assembly may, from time to time, during the first twenty-five years next after the admission of this State into the Union, borrow the necessary amounts of money not exceeding, in the aggregate, ten million dollars, to be due and payable at any time to be fixed by law, not exceeding forty years from date of loan, the rate of interest not to exceed four per centum per annum.

Section 30. No Act of the General Assembly shall limit the amount to be recovered for injuries resulting in death, or for injuries to person or property; and in case of death from injuries, the right of action shall survive, and the General Assembly shall prescribe in whose name, and for whose benefit, such action shall be prosecuted.

Section 31. No obligations or liability held or owned by the State against any railroad, or other corporation, shall ever be exchanged, transferred, remitted,

postponed, or in any way diminished, by the General Assembly; nor shall such obligation or liability be released, except by payment thereof into the State Treasury.

Section 32. No new bill shall be introduced into either House during the last three days of the session.

Section 33. The General Assembly shall have power to create new counties; to change county lines; to locate or change the State Capital, as provided by the Constitution, and to locate or change the location of all other State Institutions: Provided, Such location or change be ratified by a majority vote of the electors of the State, County, or District affected, at a general election, conducted in all respects as provided for amendments to this Constitution.

Section 34. The General Assembly shall provide by suitable laws for the opening and maintaining of roads and highways, bridges, ferries, toll roads, and toll bridges, and may, when deemed expedient, create a bureau to be known as the "Bureau of Statistics and History," which shall embrace Mining, Manufacturing, Agriculture, and Forestry. It may provide for a State Geologist, who shall be appointed by the Governor, by and with the consent of the State.

Section 35. Power to change the venue on civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law.

Section 36. No money or property belonging to the public school funds, or in this State for the benefit of schools, universities, or colleges, shall ever be used for any other than for the respective purposes to which it belongs.

Section 37. The General Assembly shall, from time to time, provide for the payment of all legal debts of the State.

Section 38. Any officer in this State who shall, in any manner, make any profit upon the public funds of any kind, belonging to the State, or to any County, or other subdivision of the State, shall be punished as provided by law, and such punishment shall include disqualification to hold office for a period of not less than five years.

Section 39. The General Assembly shall fix the salaries and fees of all officers in the State not herein provided for, and no greater salary or amount of fees than is fixed by law shall be paid any officer, employee, or other person, or at any rate than per value: and the number of clerks and employees of the different departments and institutions of the State, and their salaries, shall be fixed by law.

Section 40. Except as otherwise provided in this Constitution, no law shall be enacted by the General Assembly, exempting from taxation any property in this State.

Section 41. The General Assembly shall not alter or annul the Charter of any corporation now existing, nor remit any forfeiture of Charter, nor pass any law for the benefit of such corporation, except on condition that such corporation shall, therefore, hold its charter subject to the provisions of this Constitution.

Section 42. All wild fish, game, animals, birds, and fowls, in this State are declared to be the property of the State; and the General Assembly shall provide by law for their protection and preservation, and for the regulation of the use thereof.

Section 43. No officer of this State, or any county, city, or town, shall receive, directly or indirectly, for salary, fees or perquisites more than five thousand dollars per annum, and any and all sums in excess of this amount collected by any officer shall be paid to the proper officers as provided by law.

Section 44. The General Assembly shall, by law, prescribe the manner of contesting elections in cases not specifically provided for in the Constitution.

Section 45. The General Assembly may provide by law, for assessments on real property, for local improvements, in towns and cities, but such assessments shall only be made with the consent of a majority in value of the resident property holders owning property within the locality to be affected, and such assessments shall be ad valorem and uniform.

Section 46. The General Assembly shall enact laws prohibiting the manufacture or sale of adulterated food, and other articles, and providing punishment for the violation thereof.

Section 47. The General Assembly shall provide by law for the publication of the Constitution, and the revision and publication of all statutes and session laws of this State, with annotations thereon, at least once in every ten years. Such publications shall be sold at a price not exceeding ten per centum above its cost.

Section 48. The General Assembly shall have power to enact such land registration laws as will provide for inexpensive transfers, and the determination of the rightful owners of real estate, and shall have power to create the necessary agencies therefor.

Section 49. The General Assembly shall provide for the location and erection of the following buildings:

Normal School Buildings.

State Asylum Buildings for Deaf, Dumb, Blind Orphans.

State Reform School Building.

Agricultural and Mechanical College Buildings.

State Penitentiary Buildings.

State Asylum Buildings for the Insane.

State University Buildings.

State University Buildings for Colored Persons; and such other public buildings, except the State Capitol Building, as may be provided for by law.

## *Article IV*

### EXECUTIVE DEPARTMENT

Section 1. The Executive Department of this State shall consist of a Governor, Secretary of State, Attorney General, Treasurer of State, Auditor of State, and Superintendent of Public Instruction; all of whom shall, in person, keep their offices at the seat of government, and hold their offices for a term of four years, and until their successors are elected and qualified: Provided, such officers shall not be eligible for re-election for the next succeeding term.



Section 2. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "Governor."

Section 3. The Governor, Secretary of State, Attorney General, Treasurer of State, Auditor of State, and Superintendent of Public Instruction, shall be elected by the qualified electors of the State, at the time and places of voting for members of the General Assembly, in an ordinance with the provisions of this Constitution. The persons receiving the highest number of votes for each of the respective offices shall be declared duly elected therein, but if two or more candidates receive the same highest number of votes cast for any office, the General Assembly, by a majority vote of all the members elected to both Houses, in joint Session, shall choose one of such persons to fill said office.

Section 4. Contested elections for Governor, Secretary of State, Attorney General, Treasurer of State, Auditor of State, and Superintendent of Public Instruction, shall be determined, except as in this Constitution otherwise provided, by the members of both Houses of the General Assembly in joint session, who shall have exclusive jurisdiction to try and determine the same, and all such contests shall be tried and determined at the first session of the General Assembly after the election in which the same shall have \_\_\_\_\_.

Section 5. No person shall be eligible to the office of Governor, except of the United States, and of this State, who shall have attained the age of thirty years, and shall have been two years a resident of this State or Territory.

Section 6. The Governor shall be Commander-in-Chief of the military and naval forces of this State.

Section 7. He may require information in writing from the officers of the Executive Departments on any subject relating to the duties of their respective offices, and shall see that the laws are faithfully executed.

Section 8. He shall give the General Assembly, from time to time, and, at the close of his official term, to the next General Assembly, information by Message, concerning the condition and government of the State, and recommend for its consideration such measures as he may deem expedient.

Section 9. A Seal of the State shall be kept by the Secretary of State, used by him officially, as directed by law, and called the "Great Seal of the State of Sequoyah."

Section 10. All grants and commissions shall be issued in the name and by the authority of the State of Sequoyah, signed by the Governor and attested by the Secretary of State, and sealed with the Great Seal of the State.

Section 11. No member of Congress, or other person holding office under the authority of this State, or of the United States, shall exercise the office of Governor, except as herein provided.

Section 12. In case of death, conviction or imprisonment, failure to qualify, resignation, absence from the State, or other disability of the Governor, the powers, duties and emoluments of the office, for the remainder of his term, or until the disability be removed, or a Governor elected and qualified, shall devolve upon, and accrue to, the President of the Senate.

Section 13. If, during the vacancy of the office of Governor, the President of the Senate shall be impeached, removed from office, refuse to qualify, resign,

die, or be absent from the State, the Speaker of the House of Representatives shall, in like manner, administer the government.

Section 14. Whenever the office of Government shall have become vacant by death, resignation, removal from office, or otherwise, provided such vacancy shall not happen within nine months next before the expiration of the term of office for which the late Governor shall have been elected, the President of the Senate, or Speaker of the House of Representatives, as the case may be, exercising the powers of Governor for the time being, shall immediately cause an election to be held to fill such vacancies, giving by proclamation sixty days notice thereof, which election shall be governed by the rules prescribed for general election for Governor as far as possible.

Section 15. Every bill which shall have passed both Houses of the General Assembly shall be presented to the Governor; if he approve it, he shall sign it; but if [he] shall not approve it, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the whole number elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be considered; and, if approved by two-thirds of the whole number of members elected to that House, it shall be a law; but in such case the votes of both Houses shall be determined by "yeas" and "nays," and the names of the members voting for, or against, the bill shall be entered on the journals. If any bill shall not be returned by the Governor within five days, Sunday excepted, after it shall have been presented to him, the same shall be a law in like manner as if he approved it, unless the General Assembly, by its adjournment, prevents its return, in which cases it shall become a law, unless he shall file the same with his objections, in the office of the Secretary of State within twenty days after such adjournment, and shall give notice thereof by public proclamation.

Section 16. Every order, or resolution, in which the concurrence of both Houses of the General Assembly may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect, be approved by him, or, being disapproved, shall be repassed by both Houses, according to the rules and limitations prescribed in the case of a bill.

Section 17. The Governor shall have power to disapprove any item or items of any bill-making appropriations of money, embracing distinct items; and the part or parts of the bill approved shall be law, and the item or items of appropriations disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Section 18. In all criminal and penal cases, excepting in those of treason and impeachment, the Governor shall have power to grant reprieves, commutations of sentence, and pardons, after conviction; and to remit fines and forfeitures under such rules and regulations as shall be prescribed by law: Provided, the General Assembly may create a Board of Pardons for all the above programs, after which the Governor may exercise these powers only on recommendation of a majority of such board. In cases of treason he shall have power, by and with the advice and consent of the Senate, to grant reprieves and pardons. He shall communicate to the General Assembly, at every regular

session, each case of reprieve, communication of sentence, or pardon, with his reasons therefor, stating the name and crime of the convict, the sentence, its date, and the date of the communication, pardon, or reprieve.

Section 19. The Governor may, by proclamation, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if that shall have become, since its last adjournment, dangerous from an enemy or contagious disease; and he shall specify in his proclamation the purpose for which it is convened, and no other business than that set forth therein shall be transacted.

Section 20. In case of disagreement between the two Houses of the General Assembly, at a regular or a special session, with respect to the time of adjournment, the Governor may, if the facts be certified to him by the presiding officers of the two Houses, adjourn them to a time not beyond the date of the next session, and, on account of danger from an enemy or disease, to such other place of safety, within this State, as he may think proper.

Section 21. The Secretary of State shall keep a full and accurate record of all the official acts and proceedings of the Governor, and, when required, lay the same with all papers, minutes, and vouchers relating thereto, before the General Assembly.

Section 22. The Secretary of State, Attorney General, Treasurer of State, Auditor of State, and Superintendent of Public Instruction, shall perform such duties as may be prescribed by law; they shall not hold at one and the same time, any other office or commission, civil or military, in the State, or under any other State, or the United States, or any other power, and in case of vacancy occurring in any of said offices by death, resignation, or otherwise, the Governor shall fill said office for the unexpired term by appointment.

Section 23. When any office, from any cause, may become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill the same by granting a commission, which shall expire when the person elected to fill said office at the next general election, shall be qualified.

## *Article V*

### JUDICIAL DEPARTMENT

Section 1. The judicial powers of this State shall be vested in the Senate, sitting as a court of Impeachment; in a Supreme Court, in Circuit Courts, in County Courts; in Justices of the Peace; in Police Magistrates, and in such other Courts as may be created by law in and for Cities and Incorporated towns.

### SUPREME COURT

Section 2. The Supreme Court shall be composed of three judges, and they shall choose from among their number a presiding judge who shall be styled Chief Justice; two of whom shall constitute a quorum, and the concurrence of two shall be necessary to every decision. The General Assembly may, if it be deemed necessary, increase the number of judges of the Supreme Court to five,

and, on such increase being made, a majority of the judges shall be necessary to constitute a quorum, and the concurrence of three judges shall be necessary to each decision.

Section 3. No person shall be eligible to the office of Judge of the Supreme Court unless he shall be at least thirty years of age, shall have practiced law at least eight years, be of good moral character, learned in the law, a citizen of the State and of the United States, for two years a resident of the State, or Territory, and for one year an actual resident of the Grand Division from which he shall have been selected.

Section 4. The State is hereby divided into three Grand Divisions. One of the Judges of the Supreme Court shall be selected from each of said Grand Divisions, and they shall be elected by the qualified electors of the State. Said Grand Divisions shall be named respectively—North Grand Division, Southern Grand Division, and Western Grand Division. Said judges shall hold their offices during the term of six years from the date of their commission, except as herein provided. At the first meeting of the Court after the first judicial election under this constitution the judges shall, by lot, divide themselves into three classes, one of which said judges shall hold office for two, one for four, and one for six years, after which each judge of the Supreme Court shall be elected for a full term of six years. A record shall be made in the Court of this classification.

The Northern Grand Division shall be composed of the Counties of Quapaw, Cherokee, Lenahpa, Skiatook, Cooweescoowee, Mayes, Delaware, Tahlaquah, Tumechiche, Coweta, Euchee, Tulladega, Okmulgee, Flint, Sequoyah, and Arbeka.

The Southern Grand Division shall be composed of the Counties of Seminole, Spokogee, Cussehta, Muskogee, Eufaula, Breckinridge, Tobuksy, Hailey, Sans Bios, Thomas, Wade, Rutherford, Hitchcock, Push-ma-ta-ha, McCurtain, and Bixby.

The Western Grand Division shall be composed of the counties of Cheadle, Moseley, Blue, Tom Needles, Byrd, Johnson, Overton, Garvin, McLish, Washington, Curtis, Bonaparte, Gilbert, Jefferson, Guy, and Harris.

Provided, in case the General Assembly hereafter increases the number of Judges of the Supreme Court, it shall at such time re-district the State into a number of grand divisions equal to the proposed number of Supreme Judges, and rename such Grand Divisions.

#### JURISDICTION

Section 5. The Supreme Court shall have original jurisdiction in quo warranto and mandamus as to all State officers, and in habeas corpus. The Supreme Court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, writs of error and supersedeas, quo warranto, and other remedial writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction, and to hear and determine the same; its judges shall be conservators of the peace throughout the State, and each of them shall have power to grant any of the aforesaid writs, and to make writs of habeas

corpus, returnable either before himself, or before the Supreme Court, or before any Circuit Court of the State, or any judges thereof: Appeals from the Circuit Courts to the Supreme Court are hereby authorized.

The Supreme Court shall have general appellate jurisdiction, co-extensive with the State, in both civil and criminal causes, and shall have a general superintending control over all inferior Courts, under such rules and regulations as may be prescribed by law.

Section 6. The Supreme Court shall have a Clerk who shall be elected by the Court, who shall hold his office for the term of six years, unless sooner removed by the Court, and whose duties and emoluments shall be as provided by law.

Section 7. The Supreme Court shall appoint one Reporter of its decisions, who shall hold his office for six years, subject to removal by the Court, whose duties and emoluments shall be as provided by law.

Section 8. There shall be two terms of the Supreme Court held in each year at the seat of government, at such times as may be provided by law.

Section 9. In case all or any of the judges of the Supreme Court shall be disqualified from presiding in any cause, or causes, the Court, or the disqualified judge, shall certify the fact to the Governor, who shall immediately commission the requisite number of men having the same qualifications required for a judge of the Supreme Court, to sit in the trial and determination of such causes.

Section 10. From and after the election and qualification of the judges of the Supreme Court, each of said judges shall receive a salary of five thousand dollars per annum, payable quarterly, until otherwise provided by law, and their salaries shall not be increased or diminished during the term for which said judges were elected.

#### CIRCUIT COURT

Section 11. The Circuit Courts shall have original jurisdiction in all Law, Equity, and Criminal causes, the exclusive jurisdiction of which has not been by this Constitution vested in some other Court, and shall exercise a superintending control and appellate jurisdiction over County and Municipal Courts, and Justices of the Peace, and appeals shall be allowed to the Circuit Court from the final order, or judgment of County Courts, and it shall have power to issue, hear and determine all the necessary writs and process, to carry into effect their general and specific powers, and of which writs and process may be issued upon order of the judges of the appropriate Court during the term of the Court, or in vacation, and shall hold two or more terms of Court each year in every organized County.

Section 12. The State shall be divided into convenient Circuits, each circuit to be made up of contiguous counties, for each of which circuits a judge of the Circuit Court shall be elected, who, during his continuance in office, shall reside in, and be a conservator of the peace within the circuit for which he shall have been elected.

Section 13. No person shall be eligible to the office of judge of the Circuit Court unless he shall be at least thirty years of age, shall have practiced law

at least eight years, be of good moral character, learned in the law, a citizen of the State and of the United States, for two years a resident of the State or Territory, and for one year an actual resident of the District for which he shall have been elected.

Section 14. The General Assembly shall provide for the times of holding Court in each County, which shall not be changed by the General Assembly except at its regular session next preceding the general election for the judges of said Courts, but additional terms may be provided for in any County.

Section 15. The judges of the Circuit Court shall be elected by the qualified electors of the several Circuits, and shall hold their offices for the term of six years, and until their successors are qualified.

Section 16. Judges of the Circuit Court shall receive a salary of three thousand dollars per annum, payable quarterly, which shall not be increased or diminished during terms for which said judges shall be respectively elected or appointed.

Section 17. Clerks of the Circuit Court shall be elected by the qualified electors of the several Counties for the term of four years, and shall be ex-officio recorders, and they shall receive such salaries as may be provided by law.

Section 18. Judges of the Circuit Court may temporarily exchange circuits, or hold courts for each other, under such regulations as may be prescribed by law.

#### COUNTY COURT

Section 19. There shall be elected in and for each organized County one County judge, and one Clerk of the County Court, whose terms of office shall be four years and until their respective successors in office shall be qualified, and each of whom shall receive such salary as may be provided by law.

Section 20. No person shall be eligible to the office of County Judge unless he shall be at least twenty-eight years of age; shall have practiced law at least five years, be of good moral character, learned in the law, a citizen of the State and of the United States, for two years a resident of the State, or Territory, and for one year an actual resident of the territory composing the County in which he shall be elected: Provided, At the first election held under this Constitution, persons who have not practiced law at least five years may be elected.

Section 21. The Supreme Court, Circuit Courts, and County Courts shall be Courts of record, and shall respectively have a seal for the authentication of their process, acts and judgments.

Section 22. County Courts shall have original jurisdiction in all matters of probate, settlement of the estates of deceased persons, appointment of administrators, executors, guardians and conservators, and settlement of their accounts, and in all matters relating to apprentices, incompetents and insane persons: shall have jurisdiction to try and determine all misdemeanors, all actions at law where the amount in controversy does not exceed, excluding interest and costs, the sum of one thousand dollars, and in forcible entry and detainer, and unlawful detainer, and in actions of unlawful detainer, it shall not be necessary, in order to maintain said action, that the relation of landlord and tenant exist: Provided, That said County Courts shall not have jurisdiction of causes

in which the title to real estate shall be in controversy; and shall have appellate jurisdiction from the final judgment of Justice of the Peace, Municipal and other inferior Courts.

Section 23. In the absence of the Judge of the Circuit Court from the County, the judge of the County Court shall have power to issue orders for temporary injunctions, and other provisions [and] writs, in the County, returnable to the Court having jurisdiction, provided that either party may have such order by any superior judge, in vacation, in such manner as may be provided by law.

Section 24. In the absence of the Judge of the Circuit Court from the County, the judge of the County Court shall have power to issue, hear, and determine, writs of habeas corpus, under such regulations and restrictions as may be provided by law.

Section 25. In case of a vacancy occurring by death, disqualifications, resignation, or removal from office, of any judge of the Supreme, or Circuit, or County Court, such vacancy shall be filled by the Governor of the State, by appointment of a person possessing the qualifications herein required for judges of the Court to which he is appointed, who shall serve as judge until his successor is qualified, as provided by law.

Section 26. Judges shall not charge juries with regard to matters of fact, nor comment thereon, but shall declare the law, and in jury trials, on request of either party, shall reduce their charge or instructions to writing, and deliver the same to the jury prior to the beginning of the argument of Counsel.

Section 27. No Judge or Justice of the Peace shall preside or participate in the trial of any cause in the result of which he may be interested, or where either of the parties shall be connected with him by consanguinity or affinity, within such degrees as may be prescribed by law; or in which he may have been counsel, or have presided, in any inferior court.

Section 28. Whenever the office of judge of the Circuit, or County Court, of any County is vacant at the commencement of a term of such Court, or the judge of said Court shall fail to attend, the regular practicing attorneys in attendance on said Court may meet at ten o'clock A.M., on the second day of the term and elect a judge to preside at such court until the regular judge shall appear; and if the judge of said Court shall become sick, or die, or be unable to continue to hold such Court after its term shall have commenced, or shall, from any cause, be disqualified from presiding at the trial of any causes then pending therein, then the regular practicing attorney in attendance on such Court may, in like manner, on notice from the Judge or Clerk of said Court, elect a judge to preside at such Court or to try said causes, and the attorney so elected shall possess the same qualifications and have the same power and authority in said Court as the regular judge would have had, if presiding; but this authority shall cease at the close of the term at which such election shall be had. The proceedings shall be entered at large upon the record of the Court.

Section 29. The judges of the Supreme, Circuit, or County Courts, shall not, during their continuance in office, practice law, or appear as Counsel in any Court, State, or Federal, within this State, or any Department of the Government.

## STATE ATTORNEYS

Section 30. At the first election for members of the General Assembly after the adoption of this Constitution, and every four years, thereafter, there shall be elected by the qualified electors of each organized County, a State's Attorney, for such organized County, whose term of office shall be four years, and who shall perform such duties and shall receive such salary as may be provided by law.

## JUSTICES OF [THE] PEACE

Section 31. The qualified electors of each voting precinct in this State shall elect such number of Justices of the Peace as may be provided by law, whose terms of office shall be for two years, who shall be commissioned by the Governor, and their official oath shall be endorsed on the commission, and a copy thereof shall be filed in the office of the Clerk of the County Court. Justices of the Peace shall receive such compensation as may be provided by law.

Section 32. Justices of the Peace shall have original jurisdiction in the following matters: 1st: Exclusive of the County and Circuit Courts, in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars, excluding interest and costs, and concurrent jurisdiction in matters of contract where the amount in controversy does not exceed the sum of three hundred dollars, exclusive of interest and costs; 2nd: Concurrent jurisdiction in suits for the recovery of personal property where the value of the property does not exceed the sum of one hundred dollars, and in all matters of damage to personal property where the amount in controversy does not exceed the sum of one hundred dollars; 3rd: Concurrent jurisdiction, in actions of forcible entry and detainer, and of unlawful detainer, and in actions of unlawful detainer it shall not be necessary in order to maintain said action that the relation of landlord and tenant exist: Provided, Justices of the Peace shall not have jurisdiction where a lien on land, or title thereto, is involved; 4th: Such jurisdiction of misdemeanors as may be prescribed by law; 5th: To sit as examining Courts and commit, discharge, or recognize, offenders to the Court having jurisdiction for further trial, and to bind persons to keep the peace, or for good behavior. For the foregoing purposes they shall have power to issue all necessary process. They shall be conservators of the peace with their respective Counties.

Section 33. A Justice of the Peace shall be a qualified elector, a resident of the voting precinct for which he is elected, shall possess a fair business education, and be a man of good moral character.

Section 34. Appeals may be taken from the final judgment of Justices of the Peace to the County Courts under such regulations as may hereafter be provided by law. The qualified electors of each voting precinct in each county shall elect a constable for the term of two years, who shall be furnished by the presiding judge of the County Court with a certificate of election, on which his official oath shall be endorsed. His compensation and duties shall be prescribed by law.



Section 35. All judicial officers shall be commissioned by the Governor. All laws relating to Courts shall be general and of uniform operation. The organization, jurisdiction, powers, proceeding and practice of all Courts of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments and decrees of such Courts, severally, shall be uniform.

Section 36. The General Assembly may, for cause entered on the journals, upon due notice and opportunity for defense, remove from office any judge, upon concurrence of two-thirds of all members elected to each House. All other officers in this article mentioned shall be removed from office by the Governor on prosecution and final conviction for felony, or misdemeanor in office; or, the Governor may, upon the joint address of the Judge of the Circuit Court, the Judge of the County Court, and the three County Commissioners, remove from office all such officers mentioned in this article, for whose removal provision has not been otherwise herein made, for incompetency, corruption, gross immorality, criminal conduct, malfeasance, misfeasance, or nonfeasance in office.

Section 37. All Courts of record, inferior to the Supreme Court, shall, on or before the first day of June of each year, report in writing to the judges of the Supreme Court, such defects and omissions in the laws as their experience may suggest; and the judges of the Supreme Court shall, on or before the first day of January of each year, report to the Governor, in writing, such defects and omissions in the Constitution and laws as they may find to exist, together with appropriate forms of amendments and bills to cure such defects and omissions. The judges of the several Circuit Courts shall report to the next General Assembly the number of days they held Court in the several Counties composing their respective circuits, during the preceding two years.

Section 38. All officers provided for in this Article shall hold their offices until their successors shall be qualified, and they shall, respectively, reside in the division, circuit, county, or precinct, for which they may be elected or appointed. All officers, where not otherwise provided for in this article, shall perform such duties and receive such compensation as may be provided by law. Vacancies in such elective offices shall be filled by election; but where the unexpired term does not exceed one year the vacancy shall be filled by appointment as follows: Of Judges, by the Governor; of Clerks of Courts, by the Court to which the office appertains, or by the judge or judges thereof; and of all such other offices, by the Board of County Commissioners, in the County where the vacancy occurs.

Section 39. All process shall run in the name of the State of Sequoyah, and all prosecutions shall be carried on "In the name and by authority of the State of Sequoyah," and conclude "Against the peace and dignity of the State."

#### MUNICIPAL COURTS

Section 40. Municipal, or Corporation Courts, of towns and cities, may be invested with jurisdiction concurrent with justices of the peace.

*Article VI*

SUFFRAGE AND ELECTIONS

Section 1. Every male person over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections, except as otherwise herein provided:

First—He shall be a citizen of the United States, or, not being a citizen of the United States, he shall have declared his intention, according to law, to become such, not less than one year before he offers to vote.

Second—He shall have resided in the State one year; in the County six months; and in the voting ward, or precinct, thirty days immediately preceding the election at which he offers to vote.

Section 2. The following classes of persons shall not be allowed to vote at any election in this State:

First—Persons under the age of twenty-one years.

Second—Idiots, lunatics, or paupers supported by the State or County.

Third—All persons convicted of felony, or of the willful violation of any election laws, subject to such exceptions as the General Assembly may provide.

Fourth—Soldiers, marines and seamen employed in the service of the Army, or Navy of the United States.

Section 3. Elections shall be free, equal, and by secret ballot. No power shall ever interfere to prevent the free exercise of the right of suffrage.

Section 4. The General Assembly shall, at the first session thereof, enact laws to extend the right of suffrage to women of rightful age, and otherwise qualified according to the provisions of this article. No such enactment shall be of effect until submitted to the vote of the qualified electors at a general election, nor unless the same be approved by a majority of those voting thereon.

Section 5. David N. Robb, of Atoka, and David M. Hodge, of Broken Arrow, members of the Republican party, and Carl Pursel, of Muskogee, and Andrew B. Cunningham, of Tahlequah, members of the Democratic party, all of whom are legal electors of the proposed State of Sequoyah, (now Indian Territory), are hereby appointed a Supreme Election Board for Indian Territory, and its successor the proposed State of Sequoyah, with power of succession to the membership of said Supreme Election Board in case of death, disability, or failure to serve, on the part of any of such members of said board, succession to be in method following:

In case such vacancy shall be from the Republican membership thereof, the surviving Republican member shall immediately designate another Republican elector to fill such vacancy. In case the vacancy shall be from the Democratic membership of such board the surviving Democratic member shall at once appoint a Democratic elector to fill such vacancy.

In case any such vacancy, or vacancies shall not be filled as hereinabove provided, within five days from the occurrence of such vacancy, then the last presiding officer of this Constitutional Convention shall immediately fill such vacancy, or vacancies, by the appointment of an elector of the political party upon

the side whereon said vacancy exists. Provided, however, that after the election for ratification or rejection of this Constitution, instead of the filling of vacancies by appointments made by the last presiding officer of this Constitutional Convention, such filling of vacancies shall be by appointment of the Chairman of the State Committee of the party to which such vacancy belongs.

Said Supreme Election Board shall have supreme power in the calling and conduct of the election at which this Constitution is submitted to the people for ratification, and for the election of all officers whose election may be provided for at the time of the vote on the ratification of this Constitution, and for the election of all state, county, township, municipal, and other public officials, at any and all elections subsequent to said election for the ratification of this Constitution, until such time thereafter as the General Assembly of this State shall otherwise by law provide. Said Supreme Election Board shall designate all times, places, and the manner of holding elections, including the election for the ratification of this Constitution. It shall appoint all necessary election officers; none but electors qualified, under the provisions of this Constitution, shall be permitted to vote, or to hold any office of trust or profit in this State.

The Supreme Election Board, or a majority thereof, shall immediately upon the closing of the polls, at the elections, cause all legal votes to be counted, the result tabulated and transmitted to said Supreme Election Board; the result of each and every such election shall be at once certified by said Supreme Election Board, or a majority thereof, and the result shall be publicly announced: Said Supreme Election Board, under such rules as it may provide, shall hear and determine all contests.

Certificates of election issued and certified to by the Supreme Election Board, or a majority thereof, shall be final proof of the result of such election, not only as to the ratification of this Constitution, but as to the election of all public officers who shall receive such certificates of election.

The Supreme Election Board shall subdivide all counties into voting precincts, which shall remain until otherwise provided by law.

Section 6. All general elections for state and county officers, for members of the House of Representatives, and the Senate, of the State of Sequoyah, and Representatives to the Congress of the United States, shall be held on the Tuesday next following the first Monday in November of each year, except the first election, which shall be held as herein provided. Such elections may be held as herein provided for general elections, or, as may be hereafter provided by law. All State and county officers elected at a general election shall enter upon their respective duties on the first Monday in January next following the date of their election, or as soon thereafter as may be possible.

All officers whose election is not provided for in this Constitution shall be elected or appointed as may be provided by law.

No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall, at the same time, hold or exercise any office in this State to which a salary, fees or perquisites shall be attached. The General Assembly may by law declare what offices are incompatible.

Section 7. Senators and Representatives, and all Judicial, State, County, Municipal, and other officers, shall, before entering upon the duties of their respective offices, take and subscribe the following oath, or affirmation:

“I do solemnly swear (or affirm) that I will support, obey, and defend this Constitution of the United States, and the Constitution of this State, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses authorized by law; that I have not, knowingly, violated any election laws of this State, nor procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing, for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law.”

Section 8. The foregoing oath shall be administered by some person authorized to administer oaths, and, in the case of state officers, and judges of the supreme court, shall be filed in the office of the Secretary of State, and in the case of other judicial, county, municipal and other officers, in the office of the Clerk of the County in which the same is taken: any person refusing to take oath (or affirmation) shall forfeit his office; and any person who shall be convicted of having sworn (or affirmed) falsely, or of having violated said oath (or affirmation), shall be guilty of perjury and be forever disqualified from holding any office of trust or profit in this State. The oath, to members of the General Assembly, shall be administered by one of the judges of the supreme court, or by any other person authorized by law to administer oaths, in the hall of the House to which the member shall belong.

## *Article VII*

### EDUCATION

Section 1. General intelligence and virtue are essential to the preservation of government by the people, and it is a fundamental duty of the State to provide for its citizens the best possible preparation for intelligent and virtuous citizenship: therefore, the General Assembly shall establish and maintain a system of free public education for all persons in the State between the ages of six and twenty-one years, and also shall provide for the establishment and maintenance of institutions for the education of the deaf, dumb, and blind, of this State.

Section 2. The school funds of this State shall consist of the proceeds of all lands that may hereafter be granted by the United States; all moneys, stocks, bonds, or other property, that may be acquired, by donation or otherwise, for purposes of public education; the net proceeds of all sales of lands and other property and effects that may accrue to the State by escheat, the sale of estrays, fines, penalties and forfeitures; the net proceeds of a graduated inheritance tax, which is hereby authorized, and for which the General Assembly shall provide by law, to an amount not exceeding five per centum upon the estates of deceased persons of ten thousand dollars and upwards in value: the proceeds of such occupation tax as may be provided by law: the annual poll tax of not

less than one dollar, as provided in this Constitution: and other taxes herein provided for.

Section 3. No person shall be permitted to vote at any election in this State who shall not have paid his poll tax to the proper officer, at least thirty days before the holding of said election.

Section 4. In distributing the school fund no distinction shall be made on account of race or color. Separate schools shall be provided for children of African descent.

Section 5. No religious, or other sect, or sects, shall ever be permitted to control any part of the school funds of this State, nor shall any funds be appropriated for the support of any sectarian school.

Section 6. The General Assembly shall provide for the teaching of the elements of agriculture, horticulture, stock breeding and feeding, and domestic science, in the public schools of this State.

Section 7. Supervision of the Public Schools shall be vested in a Superintendent of Public Instruction, and in such other officers as the General Assembly may provide by law. The Superintendent of Public Instruction shall receive such salary and perform such duties as shall be prescribed by law.

Section 8. The General Assembly shall, as soon as practicable, provide by law for the establishment and maintenance of a university of the first class, to be located by a vote of the electors of the State of Sequoyah, as provided in this Constitution and to be styled "The University of the State of Sequoyah." The General Assembly shall also provide for the establishment and maintenance of such High Schools, Normal, Agricultural and Mechanical, and other Colleges, as it may deem expedient.

Section 9. The State University, and all other Institutions for higher education, shall be under the supervision and control of a board of seven members, of whom the Governor shall be one, and the remaining six who shall be nominated by the Governor, and, by and with the consent of the Senate, appointed. They shall hold office for six years, two retiring every second year, except that in the first board, two shall be appointed for two, and two for four years only. Not more than four members of such board shall belong to one political party. They shall be designated the "Regents of Education." They shall prescribe the methods of appointing the faculties of the Institutions under their care: arrange, in connection with the several faculties, the various courses of study; secure, as far as possible, helpful correlation and co-operation between the Institutions of higher learning in this State, and take such steps as may be practicable for establishing and maintaining the highest and most uniform standard possible, for literary and other degrees, which may be granted under the sanction or authority of the State.

### *Article VIII*

#### MINES AND MINING

Section 1. There shall be established and maintained the office of Inspector of Mines, the duties and salary of which shall be prescribed by law. When said office shall be established, the Governor shall, with the consent of the Senate,

appoint thereto a person proven, in the manner provided by law, to be competent and practical, and who has had not less than four years actual and continuous service either as a mining engineer, mine superintendent, mine foreman, or expert miner, in a mine in actual operation: His term of office shall be four years and until his successor is appointed and qualified. He shall take the oath and give the bond required by law. A suitable room in the Capitol shall be provided for him by the State.

Section 2. The General Assembly shall provide by law for the proper ventilation of mines, the construction of shafts for escape, and such other appliances as may be necessary to protect the health and secure the safety of the workmen therein, and shall make such regulations, from time to time, as may be necessary for the proper drainage of mines, the prevention of needless or wanton waste of mineral oil and gas from wells, and the protection of the streams and rivers of this State from being polluted.

Section 3. Neglect or failure of a mine owner, or mine lease, to comply with the laws and State regulations in regard to mines, or the orders of the Inspector of Mines made under and in pursuance thereof, shall render such mine owner, or mine leasee [*sic*], responsible for all damages to the life, health, or person, of employees, or other persons, resulting from such neglect or failure.

Section 4. All mines from which gold, silver, or other valuable metals, soda, saline, coal, mineral oil, mineral water, asphalt, gas, or other valuable deposits, are, or may be, produced, shall, in addition to the surface improvements, and in lieu of taxes on the land, be taxed on the gross product thereof, as may be prescribed by law: Provided, The product of all mines, and all gas, oil, and mineral water wells, shall be taxed in the proportion to the value thereof.

Section 5. Until the General Assembly of this State shall make provision by law for the safe operation of mines within this State, the act of Congress approved March 3, 1891, entitled, "An act for the protection of the lives of miners in the Territories," 26 Stat. L., 1104, Chap. 564, shall be in force as the law of this State.

Section 6. The General Assembly may provide that the science of mining metallurgy and the drilling, construction and management of oil, gas, and artesian wells, be taught in one or more of the institutions of learning under the patronage or control of this State.

Section 7. The Inspector of Mines shall appoint competent inspectors of oil and gas, who shall hold office under his direction and during his pleasure. Their powers, duties, and compensation, shall be such as the General Assembly may by law prescribe.

Section 8. All persons and corporations shall, upon payment of just compensation, have the right of way across public, private, and corporate lands, for the construction of ditches, canals and flumes, for the purpose of conveying water for domestic use; for the irrigation of agricultural lands; for mining and manufacturing purposes, and for drainage: The use of the waters of this State for domestic, irrigation, mining and manufacturing purposes, shall be deemed a public use. The procedure in exercising the right of eminent domain under this section, shall be the same as that provided by law for railroads.

Section 9. Boys under the age of fourteen years, and women, or girls, of any age, shall not be employed nor permitted to be in, or about, coal, iron or other mines for the purpose of being employed therein: Provided, however, that this provision shall not prevent the employment of boys and females who are over the age of fourteen years from clerical work at such mines or collieries.

## *Article IX*

### CORPORATIONS

Section 1. As used in this article the term "corporation" or "company" shall include all trusts, associations and joint stock companies having any powers or privileges not possessed by individuals or unlimited partnerships, and exclude all municipal corporations and public institutions owned and controlled by the State; the term "charter" shall be construed to mean the charter of an incorporation by, or under which, any such corporation is formed; the term "transportation company" shall include any company, trustee or other person owning, leasing or operating for hire, a railroad, street railway, canal, steamboat, or steamship line, oil, or gas pipe-line, and also any freight car company, car association, or car trust, sleeping car company, express company, or companies, trustee or person, in any way engaged in business as a common carrier over a route acquired in whole or in part under the right of eminent domain; the term "rate" shall be construed to mean rate of charge for any service rendered or to be rendered; the term "rate," "charge," and "regulation," shall include joint rates, joint charges, and joint regulations, respectively; the term "transmission company," shall include any company owning, leasing, or operating for hire, any telegraph or telephone line, or other means of communication; the term "freight" shall be construed to mean any property transported, or received for transportation, by any transportation company; the term "public service corporation" shall include all transportation and transmission companies, all gas, electric light, heat and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any street, alley or public highway, whether along, over, or under the same, in a manner not permitted to the general public; the term "person," as used in this article, shall include individuals, partnerships and corporations, in the singular as well as in the plural number; the term "bond" shall mean all certificates, or written evidences of indebtedness issued by any corporation and secured by mortgage or trust deed; the term "frank" shall be construed to mean any writing or token issued by, or under authority of, a transportation or transmission company, entitling the holder to any service from such company free of charge, or at a reduced rate. The provisions of this article shall always be so restricted in their application as not to conflict with any of the provisions of the Constitution of the United States, and as if the necessary limitations upon their interpretation had been herein expressed in each case.

Section 2. The creation of corporations, and the extension and amendments of charters (whether heretofore or hereafter granted), shall be provided for by general laws, and all corporations being creatures of the law shall be

amenable thereto and no charter shall be granted, amended or extended by special act, nor shall authority in such matters be conferred upon any tribunal or officer, except to ascertain whether the applicants have, by complying with the requirements of law, entitled themselves to the charter, amendment or extension applied for, and to issue, or refuse, the same accordingly; Provision shall be made, by general laws, for the voluntary surrender of its charter by any corporation, and for the forfeiture thereof for non-user or mis-user. The General Assembly shall not, by special act, regulate the affairs of any corporation, nor, by such act, give it any rights, powers, or privileges.

Section 3. A permanent commission, to consist of three members, is hereby created, which shall be known as the "State Corporation Commission." The Commissioners shall be appointed by the Governor, subject to confirmation by the Senate; and their regular terms of office shall be six years, except those first appointed under this Constitution, of whom one shall be appointed to hold office for two years, one for four, and one for six years. Whenever a vacancy in the Commission shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term, subject to confirmation by the Senate, as aforesaid. Commissioners appointed for regular terms shall, at the beginning of the terms for which appointed, and those appointed to fill vacancies shall, immediately upon their appointments, enter upon the duties of their office; but no person so appointed, either for a regular term, or to fill a vacancy, shall enter upon, or continue in, an office after the Senate shall have refused to confirm his appointment, or adjourned sine die without confirming the same, nor shall he be eligible for reappointment to fill the vacancy caused by such refusal or failure to confirm. No person while employed by, or holding any office in relation to any transportation or transmission company, or while in any wise financially interested therein, or while engaged in practicing law, shall hold office as a member of said commission, or perform any of the duties thereof. At least one of the Commissioners shall have the qualifications prescribed for judges of the Supreme Court; and any commissioner may be impeached or removed in the manner provided for the impeachment or removal of a judge of the Supreme Court. The commission shall annually elect one of its members chairman of the same, and shall have one clerk, one bailiff, and such other clerks, officers, assistants and subordinates as may be provided by law, all of whom shall be appointed, and be subject to removal by the commission. It shall prescribe its own rules of order and procedure, except so far as the same are specified in this Constitution. The General Assembly may establish within the department, and subject to the supervision and control of the commission, subordinate divisions, or bureaus of insurance, banking, or other special branches of the business of the department. All sessions of the commission shall be public, and a permanent record shall be kept of all its judgments, rules, orders, findings and decisions, and of all reports made to, or by it. Two of the commissioners shall constitute a quorum for the transaction of business, whether there be a vacancy in the commission or not. The commission shall keep its office open for business on every day except Sundays and legal holidays. Transportation companies shall, at all times, transport, free of charge, within this State, the



members of said commission and its officers, or any of them, when engaged on their official duties. The General Assembly shall provide suitable quarters for the commission and funds for its lawful expenses, including pay for witnesses summoned, and the costs of executing processes issued by the commission of its own motion; and shall fix the salaries of the members, clerks, assistants, and subordinates of the commission, and provide for the payment thereof.

Section 4. (a) Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters or certificates of incorporation and amendments or extensions thereof, for domestic corporations, and all licenses to foreign corporations, to do business in this State; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations, authorized by, or doing business with this State. The commission shall prescribe the forms of all reports which may be required of such corporations by this Constitution or by law; it shall collect, receive, and preserve such reports, and annually tabulate and publish them in statistical form, except so far as they are inconsistent with this Constitution, or may be hereafter abolished or changed by law.

(b) The commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies; and to that end the commission shall, from time to time, prescribe, and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules, regulations and requirements, the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted or acted upon, by any such company, inconsistent with those prescribed by the commission within the scope of its authority, shall be unlawful and void. The commission shall also have the right at all times to inspect the books and papers of all the transportation and transmission companies doing business in this State, and to require from such companies, from time to time, special reports and statements under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and the protection of employees; and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any transportation or transmission company in favor of, or against any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation or otherwise, in connection with public duties of such company. Before the commission shall prescribe or fix any rate, charge or classification of traffic, and

before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement, shall first be given by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company, or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than one a week for four consecutive weeks in one or more of the newspapers of general circulation, published at the seat of government, together with notice of the time and place, when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement, and every such general order, rule, regulation or requirement made by the commission shall be published at length for the time and in the manner above specified, before it shall go into effect, and shall also, as long as it remains in force, be published in each subsequent annual report of the commission. The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic, for transportation and transmission companies, shall be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the General Assembly to legislate thereon by general laws; Provided, however, that nothing in this section shall impair the right which has heretofore been, or may hereafter be conferred by law upon the authorities of any city, town, or county, to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it under municipal or county franchise granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies between transportation and transmission companies and their patrons.

(c) In all matters pertaining to the public visitation, regulation or control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and enforcing by its own appropriate process, against the delinquent or offending company (after it shall have been first duly cited, proceeded against by due process of law before the commission, sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness or reasonableness of the order or requirement alleged to have been violated as against the liability of the company for

the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution, or by law. The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisalment of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the commission, within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the commission may deem proper, or such sum, in excess of five hundred dollars as may be prescribed, or authorized, by law; and each day's continuance of such failure or refusal after due service upon such corporation of the order or requirement of the commission, shall constitute a separate offense: Provided, That should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

(d) From any action of the commission prescribing rates, charges or classifications of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon, or an increase thereof, as provided for in sub-section (e) of this section, an appeal (subject to such reasonable limitations as to time, regulations as to procedure, and provisions as to cost, as may be prescribed by law) may be taken by the corporation, the rates, charges or classifications of traffic, schedule, facilities, conveniences or service of which are affected, or by any person deeming himself aggrieved by such action, or (if allowed by law) by the State. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court from the Circuit courts, except that such an appeal shall be of right, and the Supreme Court may provide be rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inadequate. If such appeal be taken by the corporation the rates, charges or classifications of traffic, schedules, facilities, conveniences or service of which are affected, the State shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee. The General Assembly may also, by general laws, provide for appeals from any other action of the commission, by the State or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the Supreme Court only; and in all appeals to which the State is a party, it shall be represented by the Attorney General or his legally appointed representative. No court of this State (except the Supreme Court, by way of appeals as herein authorized), shall have jurisdiction to review, reverse, correct or annul any action of the commission,

within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court to the commission in all cases where such writs, respectively, would lie in any inferior tribunal or office.

(e) Upon the granting of an appeal, a writ of supersedeas [originally a writ directed to an officer, commanding that individual to desist from enforcing the execution of another writ that he was about to execute or that might come into their hands] may be awarded by the Supreme Court suspending the operation of the action appealed from, until the final disposition of the appeal; but, prior to the final reversal thereof by the Supreme Court, no action of the commission prescribing or affecting the rates, charges or classifications of traffic of any transportation of transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceedings resulting from such appeal until a suspending bond shall first have been executed and filed with, and approved by the commission (or approved on review by the Supreme Court), payable to the State, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized by the final decision of the court on appeal. The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any supersedeas), of the order or requirement appealed from, to keep such accounts, and to make to the commission, from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal, be not sustained on such appeal; and the commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase the said suspending bond, whenever, in the opinion of the commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner, and by such methods of distribution, as may be prescribed by the commission, or by law. All such appeals affecting rates, charges or classifications of traffic, shall have precedence upon the docket of the Supreme Court, and shall be heard and disposed of promptly by the court, irrespective of its place and session, next after the habeas corpus, and State's cases already on the docket of the court.

(f) In no case of appeal from the commission shall any new or additional evidence be introduced in the Supreme Court; but the chairman of the commission, under the seal of the commission, shall certify to the Supreme Court all the facts upon which the action appealed from was based and which may

be essential to the proper decision of the questions involved in appeal, together with such evidence introduced before, or considered by the commission as may be selected, specified and required to be certified, by any party in interest, as well as such evidence, so introduced or considered, as the commission may deem proper to certify. The commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons, upon which the action appealed from was based, and such statements shall be read and considered by the Supreme Court, upon disposing of the appeal. The Supreme Court shall have jurisdiction, on such appeal to consider and determine the reasonableness and justness of the action of the commission appealed from, as well as any other matter arising under such appeal; provided, however, that the action of the commission appealed from shall be regarded as prima facie just, reasonable and correct; but the court may, when it deems necessary, in the interest of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the commission by any party in interest,) before the appeal is finally decided.

(g) Whenever the Court, upon appeal, shall reverse an order of the commission affecting the rates, charges or the classification of traffic of any transportation or transmission company, it shall at the same time, substitute therefore, such order as, in its opinion, the commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations, affecting any or all actions of the commission therefore entered by it and appealed from but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of commission, prescribing or altering such rates, charges, classifications, rules or regulations, shall be retroactive.

(h) The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit or motion against any transportation or transmission company, for any claim or cause of action against such company, shall not be extinguished or impaired by reason of any fine or other penalty which the commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceedings, shall the reasonableness, justness or validity of any rate, charge, classification of traffic, rule, regulation or requirement, therefor prescribed by the commission within the scope of its authority, and then in force, be questioned; Provided, however, that no case based upon or involving any order of the commission, shall be heard, or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court as authorized by this Constitution or by any law passed in pursuance thereof.

(I) The commission shall make annual reports to the Governor of its proceedings, in which reports it shall, from time to time, recommend such new or additional legislation in reference to its powers or duties or to the creation, supervision, regulation or control of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

Section 5. Provision shall be made by general laws for the payment of a fee to the State by every domestic corporation, upon the granting, amendment, or extension of its charter, and by every foreign corporation, upon obtaining a license to do business in this State, as specified in this section; and also for the payment, by every domestic corporation, and foreign corporation doing business in this State, of an annual registration fee of not less than five dollars nor more than twenty-five dollars, which shall be irrespective of any specific license, or other tax imposed by law upon such company for the privilege of carrying on its business in this State, or upon its franchise or property; and for the making, by every such corporation (at the time of paying such annual registration fee), of such report to the State Corporation Commission, of the status, business, or condition of such corporation, as the General Assembly may prescribe. No foreign corporation shall have authority to do business in this State, until it shall have first obtained from the commission a license to do business in this State, upon such terms and conditions as may be prescribed by law. The failure of any corporation for two successive years to pay its annual registration fee, or to make its said annual reports, shall when such failure shall have continued for ninety days after the expiration of such two years, operate as a revocation and annulment of the charter of such corporation if it be a domestic company, or, of its license to do business in this State, if it be a foreign company; and the General Assembly shall provide additional and suitable penalties for the failure of any corporation to comply promptly with the requirements of this section, or of any laws passed in pursuance thereof. The commission shall compel all corporations to comply promptly with such requirements, by enforcing, in the manner hereinbefore authorized, such fines and penalties against the delinquent company as may be provided for, or authorized by this article; but the General Assembly may, by general law, relieve from the payment of the said registration fee any purely charitable institution or institutions.

Section 6. The exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the State from taking the property and franchises of corporations and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

Section 7. No transportation or transmission company shall charge or receive any greater compensation, in the aggregate, for transporting the same class of messages, over a shorter than over a longer distance, along the same line and in the same direction—the shorter being included in the longer distance; but this section shall not be construed as authorizing any such company to receive as great compensation for a shorter as for a longer distance. The State

Corporation Commission may, from time to time, authorize any such company to disregard the foregoing provisions of this section, by charging such rates as the commission may prescribe as just and equitable between such company and the public, to or from any junctional or competitive points or localities, or where the competition of points located without this State may make necessary the prescribing of special rates for the protection of the commerce of this State; but this provision shall not apply to mileage tickets, or to any special excursion, or commutation rates, or to special rates for services rendered to the government of this State, or of the United States, or in the interest of some public object, when such tickets or rates shall have been prescribed or authorized by the commission.

Section 8. No transportation or transmission company doing business in this State shall grant to any member of the General Assembly, or to any State, county, district or municipal officer, except to members and officers of the State Corporation Commission for their personal use while in office, any frank, free pass, free transportation, or any rebate or reduction in the rates charged by such company to the general public for like services. For violation of the provisions of this section, the offending company shall be liable to such penalties as may be prescribed by law; and any member of the General Assembly, or any such officer, who shall, while in office, accept any gift, privilege or benefit as is prohibited by this section, shall thereby forfeit his office, and be subject to such further penalties as may be prescribed by law; but this section shall not prevent a street railway company from transporting, free of charge, any member of the police force or fire department while in the discharge of his official duties, nor prohibit the acceptance by any such policeman or fireman of such free transportation.

Section 9. The doctrine of fellow servant, so far as it affects the liability of the master for injuries to his servant resulting from the acts or omissions of any other servant or servants of the common master, is, to the extent hereinafter stated, abolished as to every employee of a railroad company, engaged in the physical construction, repair or maintenance of its roadway, track or any of the structures connected therewith, or in any work in or upon a car or engine standing upon a track, or in the physical operation of a train, car, engine, or switch, or in any service requiring his presence upon a train, car or engine; and every such employee shall have the same right to recover for every injury suffered by him from the acts or omissions of any other employee or employees of the common master, that a servant would have (at the time when this Constitution goes into effect) if such acts or omissions were those of the master himself in the performance of a non-assignable duty; provided, that in the injury, so suffered by such railroad employee, resulting from the negligence of an officer, or agent, of the company of a higher grade of service than himself, or from that of a person, employed by the company, having the right, or charged with the duty, to control or direct the general services or the immediate work of the party injured, or the general services or the immediate work of the co-employee through, or by, whose act or omission he is injured; or that it result from the negligence of a co-employee engaged in another department of labor, or engaged upon, or in charge of, any car upon which, or upon the train

of which it is a part, the injured employee is not at the time of receiving the injury, or who is in charge of any switch, signal point, or locomotive engine, or is charged with dispatching trains or transmitting telegraphic or telephonic orders therefore; and whether such negligence be in the performance of an assignable or non-assignable duty. The physical construction, repair or maintenance of the roadway, track or any of the structures connected therewith, and the physical construction, repair, maintenance, cleaning or operation of trains, cars or engines, shall be regarded as different departments of labor within the meaning of this section. Knowledge, by any such railroad employee injured, of the defective or unsafe character or condition of any machinery, ways, appliances or structures, shall be no defense to any action for injury caused thereby. When death, whether instantaneous or not, results to such an employee from any injury for which he could have recovered, under the above provisions, had death not occurred, then his legal or personal representatives, surviving consort, and relatives (and any trustee, curator, committee or guardian of such consort or relative) shall, respectively, have the same rights and remedies with respect thereto as if his death had been caused by the negligence of a co-employee while in the performance, as vice-principal, of a non-assignable duty of the master. Every contract or agreement, express or implied, made by an employee, to waive the benefit of this section, shall be null and void; and the provisions of this Section shall apply to all corporations, domestic and foreign, doing business in this State. This section shall not be construed to deprive any employee, or his legal or personal representative, surviving consort or relatives (and any trustee, curator, committee or guardian of such consort or relatives), of any rights or remedies that he or they may have by the law of the land at the time this Constitution goes into effect. Nothing contained in this section shall restrict the power of the General Assembly to further enlarge for the above-named class of employees the rights and remedies hereinbefore provided for, or to extend such rights and remedies to, or otherwise enlarge the present rights and remedies of, any other class of employees of railroads, or of employees of any person, firm or corporation.

Section 10. No foreign corporation shall be authorized to carry on in this State, the business, or to exercise any of the powers or functions, of a public service corporation, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the Constitution and laws of this State, where the same can be made applicable to such foreign corporations without discriminating against it. But this section shall not affect any public service corporation whose line or route extends across the boundary of this State, nor prevent any foreign corporation from continuing in such lawful business as it may be actually engaged in within this State, when this Constitution goes into effect; but any such public service corporation, so engaged, shall not, without first becoming incorporated under the laws of this State, be authorized to acquire, lease, use, or operate, within this State, any public or municipal franchise or franchises in addition to such as it may own, lease, use or operate when this Constitution goes into effect, or to exercise the right of eminent domain. The property of foreign corporations within this



State shall always be subject to attachment, the same as that of non-resident individuals; and nothing in this section shall restrict the power of the State to enact proper laws governing or concerning foreign corporations whenever, and in whatsoever respect it may deem wise or expedient.

Section 11. The right of the State, through such instrumentalities as it may select, to prescribe and define the public duties of all common carriers and public service corporations, to regulate and control them in the performance of their public duties, and to fix and limit their charges therefore, shall never be surrendered nor abridged.

Section 12. The General Assembly shall enact laws preventing all trusts, combinations and monopolies, inimical to the public welfare, and shall have power to control by general law all corporations organized and doing business under the laws of this State, and all foreign corporations doing business in this State, engaged in mining, manufacturing or producing for sale any article of commerce of common consumption or use by the people of this State, so that said corporations shall be compelled to fix uniform maximum and minimum prices for said articles of commerce and common consumption and use, offered for sale in this State, and it shall be made unlawful for any corporation or corporations doing business in this State to discriminate against, or demand from the people of this State a greater or higher price for any article of commerce of common consumption, or use, than is charged by said corporation or corporations to the inhabitants of any other state.

Section 13. The exclusive right to build or operate railroads parallel to its own, or to any other line of railroad, shall not be granted to any company; but every railroad company shall have the right, subject to such reasonable regulations as may be prescribed by law, to parallel, intersect, connect with, or cross with its roadway, any other railroad or railroads; but no railroad company shall build or operate any line of railroad not specified in its charter, or in some amendment thereof. All railroad companies, whose lines of railroad connect, shall receive and transport each other's passengers, freight and loaded or empty cars, without delay or discrimination.

Section 14. The General Assembly shall enact general laws regulating and controlling all issues of stocks and bonds by corporations. Whenever stocks or bonds are to be issued by a corporation, it shall, before issuing the same, file with the State Corporation Commission a statement (verified by the oath of the president or secretary of the corporation, and in such form as may be prescribed or directed by the commission) setting forth fully and accurately the basis, or financial plan, upon which such stocks or bonds are to be issued; and where such basis or plan includes services or property (other than money) received or to be received by the company, such statement shall accurately specify and describe, in the manner prescribed, or directed by the commission, the services and property, together with the valuation at which the same are received, or are to be received; and such corporation shall comply with any other requirements or restrictions which may be imposed by law. The General Assembly shall provide adequate penalties for the violation of this section, or of any laws passed in pursuance thereof; and it shall be the duty of the commission to adjudge, and enforce (in the manner hereinbefore provided), against

any corporations refusing or failing to comply with the provisions of this section, or of any laws passed in pursuance thereof, such fines and penalties as are authorized by this Constitution, or may be prescribed by law.

Section 15. No property, nor right of way, shall be appropriated to the use of any corporation until full compensation therefore shall be first made to the owner in money, or first secured to him by a deposit of money subject to his immediate order, which compensation, irrespective of any benefit from any improvement proposed by such corporation, shall be ascertained in a court of competent jurisdiction, as shall be prescribed by law, and the provisions of this Constitution.

## *Article X*

### BANKS AND BANKING

Section 1. The General Assembly shall have power to provide for the incorporation of eleemosynary and educational institutions, banks or banking companies and trust companies, the same to be under the supervision of the State Corporation Commission.

Section 2. No bank, or trust company, shall be established otherwise than under a general banking law, nor otherwise than on a specie basis.

Section 3. Every bank or banking company, or trust company, shall be required to cease all banking operations within twenty years from the time of its organization (unless the General Assembly shall extend the time) and promptly thereafter close its business; but shall have corporate capacity to sue, and shall be liable to suit, until its affairs and liabilities are fully closed.

Section 4. The legal rate of interest shall be six per centum per annum, but ten per centum may be permitted by contract, and all contracts for a greater rate of interest than ten per centum per annum, either directly or indirectly, paid or to be paid, shall constitute usury, and shall forfeit an amount of the debt equal to double the amount of the entire interest so charged; this applies to all persons, natural and artificial.

## *Article XI*

### MUNICIPAL CORPORATIONS

Section 1. The General Assembly shall provide, by general laws, for the organization of cities (which may be classified) and incorporated towns, and restrict their powers of taxation, assessment, borrowing money and contracting debts, so as to prevent the abuse of such power. Provided, that cities and incorporated towns of 2,500 inhabitants, or more, shall have power to issue bonds for general improvements under such rules and regulations as may be provided by law.

Section 2. No municipal corporation shall be authorized to pass any laws contrary to the general laws of the State; nor to levy any tax on real or personal property, except as hereinafter provided.

Section 3. Except as herein otherwise provided, the State shall never assume or pay the debt or liability of any county, town, city, or other corporation

whatever, or any part thereof, unless such debt or liability shall have been created to repel invasion, suppress insurrection, or to provide for the public welfare and defense; nor shall the indebtedness of any corporation to the State ever be released or in any manner discharged, save by payment of the same into the public treasury.

## *Article XII*

### BOUNDARIES AND DIVISIONS

Section 1. The State of Sequoyah is bounded as follows: On the North by the Territory of Oklahoma and the State of Kansas; on the East by the States of Missouri and Arkansas; on the South by the State of Texas, and on the West by the Territory of Oklahoma: the area of the State of Sequoyah includes all lands within the boundaries of the Indian Territory, including the Quapaw Agency.

Section 2. This State is hereby divided into counties, named and described as follows: (All descriptions are referred to the Indian Meridian Guide and Base Line established by United States Geological Survey, 1895–1899):

Arbeka County.—Townships 14 and 13 North, Ranges 6, 7, 8, 9, and 10 East.—All of Townships 12, 11, and 10 North, Ranges 6, 7, 8, 9, and 10 East, lying north of the meandering center line of the North Fork River.

Bixby County.—Townships 1 and 2 North, and 1, 2, and 3 South, Ranges 12, 13, and 14 East.—Townships 1, 2, and 3 South, Range 11 East; Townships 2 and 3 South, Ranges 9 and 10 East.

Blue County.—Townships 4, 5, and the north half of 6 South, Ranges 9, 10, 11, 12, 13, and 14 East.

Bonaparte County.—Township 6 North, Ranges 7, 6, 5, 4, and 3 West.—All of Township 6 North, Range 2 West, lying west of the center line of the Canadian River and the east line of Range 2 West.—Townships 4 and 5 North, Ranges 2, 3, 4, 5, 6, and 7 West.

Breckinridge County.—Bounded by a line described as follows: Beginning at the northwest corner of Township 12 North, Range 18 East; thence east along the north line of Township 12 North to the center line of the Arkansas River; thence southeasterly along the meandering center line of the Arkansas River to a point where the center line of the Canadian River (extended) intersects; thence in a westerly direction along the meandering center line of the Canadian River to the west line of Range 18 East; thence north along the west line of Range 18 East to the point or place of beginning.

Byrd County.—All of Townships 6, 5, 4, 3, 2, and 1 North, Ranges 4, 5, and 6 East, lying south of the meandering center line of Canadian River.

Cherokee County.—Township 29 North, Ranges 18, 19 and 20 East.—All of Township 29 North, Range 21 East, lying west of the meandering center line of the Neosho river.—Townships 28, 27, 26, 25, and the North half of 24 North, Ranges 18, 19, 20, and 21 East.

Coowescoowee County.—Townships 24, 23, 22, 21, and 20 North, Ranges 15, 16, and 17 East; Township 21 North, Ranges 12, 13, and 14 East; Township 20 North, Ranges 14 and the East half of 13 East. From which

deduct the Southeast Quarter of Township 24 North and the Northeast Quarter of Township 23 North, Range 17 East.

Coweta County.—Bounded by a line described as follows: Beginning at a point where the North line of Township 19 North intersects the center line of Range 13 East; thence East along the North line of Township 19 North, to the center line of the Verdigris River: thence southerly along the meandering center line of the Verdigris River to the west line of Range 17 East, in Township 17 North; thence south along the said west line to the north line of Township 16 North; thence east along said north line to the center of the Verdigris River; thence southerly along the meandering center line of the Verdigris River to the east line of Range 17 East; thence south along said east line to the center line of the Arkansas River; thence westerly along the meandering center line of the Arkansas River to the north line of Township 17 North; thence east along said north line to the center line of Range 13 East; thence north along said center line to the point or place of beginning.

Curtis County.—Bounded by a line described as follows: Beginning at a point where the north and west State lines of this State intersect in Township 10 North; thence easterly and southerly following the meandering center line of the Canadian River or the north line of this State to the north line of Township 6 North; thence west along said north line to the west line of this State; thence north along said west State line to the point or place of beginning.

Cussehta County.—Townships 12 and 11 North, Ranges 11, 12, 13, and 14, East.—Townships 10 and 9 North, Ranges 12, 13, and 14 East.—All of Township 8 North, Ranges 12, 13, 14, East lying north of the meandering center line of the Canadian River.

Delaware County.—Townships 24, 23, 22, 21, and 20 North, Ranges 22, 23, 24, and 25 East; Townships 21 and 20 North, Range 26 East.

Euchee County.—Townships 20, 19, 18, 17, 16, and 15 North, Ranges 10, 11, and 12 East, and the west half of Townships 20, 19, and 18 North, Range 13 East.

Eufaula County.—Townships 12, 11, 10, 9, and 8 North, Ranges 15, 16, and 17 East.

Flint County.—Townships 14, 15, 16, 17, 18, and 19 North, Ranges 24 and 25 East.—All of Townships 14, 15, 16, 17, 18, and 19 North, Ranges 26 and 27 East, lying west of the Arkansas State line.

Garvin County.—All of Townships 2, 3, 4, 5, and 6 North, Ranges 1 West and 1, 2, and 3 East, lying south of the north boundary line of this State which is the meandering center line of the Canadian River.

Gilbert County.—Townships 1, 2, and 3 North, and Townships 1 and 2 South, Ranges 5, 6, 7, and 8 West.—The west boundary of this county being the west line of this State.

Guy County.—Townships 2 and 3 North, Ranges 2, 3, and 4, West. Townships 1 North and 1 and 2 South, Ranges 1, 2, 3, and 4, West.

Hailey County.—Townships 2, 3, 4, 5, 6, and 7 North, Ranges 16 and 17 East.—Townships 2, 3, and 4 North, Range 15 East.—Townships 3, 4, and 5 North, Range 18 East.—Townships 4 and 5 North, Range 19 East.

Harris County.—Townships 3 and 4 South, Ranges 1, 2, 3, and 4 West.—Township 5 South, Ranges 2, 3, and 4 West.—All of Townships 6, 7, and 8 South, Ranges 2, 3, and 4 West, lying north of the Texas State line.

Hitchcock County.—Townships 5 and 6 South, Ranges 15, 16, 17, 18, 19, 20, and 21 East.—All of Townships 7 and 8 South, Ranges 15, 16, 17, 18, 19, 20 and 21 East, lying north of the Texas State line.

Jefferson County.—All of Townships 3, 4, 5, 6, 7, and 8 South, Ranges 5, 6, 7, and 8 West, lying east of the west boundary line of this State and north of the Texas State line.

Johnston County.—Bounded by a line described as follows: Beginning at the northwest corner of Township 1 South, Range 4 East; thence east along the north line of Township 1 South, to the east line of Range 7 East; thence south along said east line to the north line of Township 2 South; thence east along said north line to the east line of Range 8 East; thence south along said east line to the center line of Township 5 South; thence on the west and south by a line described as follows: Beginning at the above mentioned beginning point, thence south along the west line of Range 4 East to the south line of Township 4 South; thence east along said south line to the center line of the Washita River; thence southerly along the meandering center line of the Washita River to the center line of Township 5 South; thence east along said center line of Township 5 South to the east line of Range 8 East.

Lenaha County.—Townships 29 and 28 North, Ranges 12, 13, 14, 15, 16, and 17 East; Townships 27, 26, and 25 North, Ranges 15, 16, and 17 East.

McCurtain County.—Townships 1, 2, 3, 4, 5, 6, and 7 South, Ranges 22, 23, 24, 25 and 26 East.—Township 8 South, Ranges 24, 25, and 26 East.—Township 9 South, Range 26 East.—All of Township 8 South, Ranges 22 and 23 East, lying north of the Texas State line.—All of Township 9 South, Ranges 23, 24, and 25 East, lying north of the Texas State line.—All of Township 10 South, Ranges 24, 25 and 26 East, lying north of the Texas State line.—All of Township 10 South, Range 27 East, lying west of the Arkansas State line and north of the Texas State line. All of Townships 1, 2, 3, 4, 5, 6, 7, 8 and 9 South, Range 27 East, lying west of the Arkansas State line.

McLish County.—Townships 1 North and 1, 2, 3, and 4 South, Ranges 1, 2, and 3 East. To which add the north half of Township 5 South, Range 2 East.

Mayes County.—The south half of Township 24 North, Ranges 18, 19, 20, and 21 East.—Townships 23, 22, 21, and 20 North, Ranges 18, 19, 20 and 21 East. To which add the Southeast Quarter of Township 24 North and the Northeast Quarter of Township 23 North, Range 17 East.

Moseley County.—Townships 1 and 2 North, Ranges 7, 8, 9, 10, and 11 East.—Township 1 South, Ranges 8, 9, and 10 East.

Muskogee County.—Bounded by a line described as follows: Beginning at the northwest corner of Township 15 North, Range 16 East; thence east along the north line of Township 15 North to the center line of the Arkansas River; thence southerly and easterly along the meandering center line of the Arkansas, to the center line of the Verdigris River (extended); thence northerly along the meandering center line of the Verdigris River to the north line of Township 15, North; thence East along said north line to the

east line of Range 20 East; thence south along said east line to the south line of Township 13 North; thence west along the said south line to the west line of Range 16 East; thence north along said west line to the point or place of beginning.

Okmulgee County.—Bounded by a line described as follows: Beginning at the northwest corner of Township 17 North, Range 13 East; thence east along the north line of said Township 17 North to the center line of the Arkansas River; thence southerly along the meandering center line of the Arkansas River to the north line of Township 15 North; thence west along the said north line of Township 15 North to the east line of Range 15 East; thence south along the said east line to the south line of Township 13 North; thence west along said south line to the west line of Range 11 East; thence north along the said west line to the north line of Township 14 North; thence east along the said north line to the west line of Range 13 East; thence north along said west line to the point or place of beginning.

Overton County.—Bounded by a line described as follows: Beginning at the northwest corner, Township 5 South, Range 4 East; thence east along the north line of Township 5 South, to the center of the Washita River; thence southerly following the meandering center line of said River to the center line of Township 5 South; thence east along said center line to the east line of Range 8 East; thence south along said east line to the south line of Township 6 South; thence west along said south line to the east line of Range 7 East; thence south along said east line to the south line of Township 7 South; thence west along said south line to the Texas State line; thence westerly along the Texas State line to the west line of Range 4 East; thence north along said west line to the point or place of beginning.

Push-Ma-Ta-Ha County.—Township, 2 North, Ranges 18, 19, and 20 East.—Townships 1 North, 1, 2, 3, and 4 South, Ranges 15, 16, 17, 18, 19, and 20 East.—Townships 1, 2, 3, and 4 South, Range 21 East.

Quapaw County.—All of Township 29 North, Range 21 East, lying east of the meandering center line of the Neosho River.—Township 29 North, Ranges 22, 23, 24, and 25 East.—Townships 28, 27, 26, 25 North, Ranges 22, 23, 24, and 25 East.

Rutherford County.—Bounded by a line described as follows: Beginning at a point where the center line of Range 24 East intersects the center line of the Arkansas River; thence easterly following the meandering center line of the Arkansas River to the Arkansas State line; thence southerly along the Arkansas State line to the south line of Township 6 North; thence west along said south line to the center line of Range 24 East; thence north along said center line of Range 24 East to the point or place of beginning.

Sans Bois County.—Bounded by a line described as follows: Beginning at a point where the west line of Range 18 East intersects the center line of the Canadian River; thence easterly along the meandering center line of the Canadian River to the east line of Range 20 east; thence south along said east line to the south line of Township 6 North; thence west along said south line to the west line of Range 18 East; thence north along said west line to the point or place of beginning.

Seminole County.—All of Township 11 North, Ranges 5, 6, 7, and the west half of 8 East, lying south of the meandering center line of the North Fork of the Canadian River.—Townships 10, 9, 8, 7, 6 North, Ranges 5, 6, 7, and the west half of 8 East; and all of Township 5 North, Ranges 5, 6, 7, and the west half of 8 East, lying north of the meandering center line of the Canadian River.

Sequoyah County.—Bounded by a line described as follows: Beginning at the northwest corner of Township 13 North, Range 21 East; thence east along the north line of Township 13 North to the Arkansas State line; thence south along the Arkansas State line to the center line of the Arkansas River; thence westerly following the meandering center line of the Arkansas River to the North line of Township 12 North; thence east along said north line to the west line of Range 21 East; thence north along said west line to the point or place of beginning.

Skiatook County.—Townships 27, 26, 25, 24, 23, and 22 North, Ranges 12, 13, and 14 East.

Spokogee County.—Bounded by a line described as follows: Beginning at a point where the center line of Range 8 East intersects the center line of the North Fork of the Canadian River; thence southeasterly following the meandering center line of the North Fork of the Canadian River to the west line of Range 11 East; thence north along said west line to the north line of Township 10 North; thence east along said north line to the east line of Range 11 East; thence south along said east line to the north line of Township 7 North; thence east along said north line to the center line of the Canadian River; thence southwesterly along the meandering center line of the Canadian River to the center line of Range 8 East; thence north along said center line to the point or place of beginning.

Tahlequah County.—Townships 19, 18, 17, 16, 15, and 14 North, Ranges 21, 22, and 23 East.

Thomas County.—Bounded by a line described as follows: Beginning at a point where the west line of Range 21 East intersects the center line of the Canadian River; thence northerly along the meandering center line of the Canadian River to a point where said center line (extended) intersects the center line of the Arkansas River; thence southeasterly along the meandering center line of the Arkansas River to the center line of Range 24 East; thence south along said center line of Range 24 East to the south line of Township 6 North; thence west along said south line to the west line of Range 21 East; thence north along said west line to the point or place of beginning.

Tobuksy County.—Bounded by a line described as follows: Beginning at a point where the west line of Range 12 East intersects the center line of the Canadian River; thence northerly and easterly, following the meandering center line of said River to the east line of Range 14 East; thence south along said east line to the north line of Township 7 North; thence east along said north line to the east line of Range 15 East; thence south along said east line to the south line of Township 5 North; thence west along said south line to the east line of Range 14 East; thence south along said east line to the south line of Township 3 North; thence west along said south line to the west line of Range 12 East; thence north along said west line to the point or place of beginning.

Tom Needles County.—The south half of Township 6 South, Ranges 9, 10, 11, 12, 13, and 14 East.—All of Townships 8 and 9 South, Ranges 6 and 7 East, lying north of the Texas State line.—All of Townships 7, 8, 9, and 10 South, Ranges 8, 9, 10, 11, 12, 13, and 14 East, lying north of the Texas State line.

Tulladega County.—Townships 19, 18, 17, 16, and 15 North, Ranges 6, 7, 8, and 9 East, being bounded on the north and west by the state line of this State.

Tumecliche County.—Bounded by a line described as follows: Beginning at a point in the north line of Township 19 North, where the center line of the Verdigris River intersects said line; thence East along said north line of said Township 19 North to the east line of Range 20 East; thence south along the said east line of Range 20 East to the south line of Township 16 North; thence west along said south line of Township 16 North to a point where said line intersects the center line of the Verdigris River; thence down the meandering center line of the Verdigris River to a point where said line (extended) intersects the center line of the Arkansas River; thence up the meandering center line of the Arkansas River to a point where the east line of Range 17 East intersects the said Arkansas River Center line; thence north along the said east line of range 17 East to a point where said east line intersects the center line of the Verdigris River; thence northerly along the meandering center line of the Verdigris River, to the north line of Township 16 North; thence west along said north line to the west line of Range 17 East; thence north along said west line to the center line of the Verdigris River; thence northerly along the meandering center line of the Verdigris River to the point or place of beginning.

Wade County.—Township 3 North, Range 19 East.—Townships 3, 4, and 5 North, Range 20 East.—Townships 1, 2, 3, 4, and 5 North, Ranges 21, 22, 23, 24, 25, and 26 East. All of Townships 1, 2, 3, 4, and 5 North, Range 27 East, lying west of the Arkansas State line.

Washington County.—Townships 5 and 6 South, Ranges 1 West and 1, 2 and 3 East.—All of Townships 7, 8, 9 and 10 South, Ranges 1 West and 1, 2 and 3 East, lying north of the Texas State line. From which deduct the north half of Township 5 South, Range 2 East.

Section 3. It is hereby directed that within sixty days after the acceptance of this Constitution and the admission of this State by Congress, the Supreme Election Board provided by this Constitution shall cause to be held a general election in this State, and in the counties, districts and municipalities thereof, for the election of a full complement of officers as provided by this Constitution, excepting only its first representatives in Congress, and that previous to the calling of such election said Supreme Election Board shall ascertain, as nearly as may be, the valuation of all taxable property of each and every county in this State, and that where said Supreme Election Board finds the aggregate value of all taxable property in any county to be of a sum total less than one million dollars that such county shall be considered as unorganized, and for the time being attached for administrative purposes, to the adjoining county having the lowest valuation of taxable property, and shall so remain as a district of said county to which it is attached until such time as the General Assembly shall otherwise provide: Provided, That at any time, at any regular election to be held in said unorganized county, upon the written petition of one hundred electors of such



unorganized county, addressed and delivered to said Supreme Election Board or its successor in the management of elections, thirty days prior to such proposed general election, requesting the separation and organization of such unorganized county, that the electors of said unorganized county shall, at said ensuing general election, be permitted to vote upon the question of the separation and organization of said unorganized county; and if the majority of the electors of said unorganized county voting at said election shall vote in favor thereof, said county shall be immediately detached and organized under its separate county government. Provided, however, that at all times such unorganized county shall have its full representation in the General Assembly of this State, and shall have four terms of county court in said unorganized county each year, held by the Judge of the county to which said unorganized county is attached, and the said court shall be held at the county seat of such unorganized county, and the Clerk of the County Court shall appoint and maintain a Deputy Clerk for said unorganized county, who shall be an elector of said unorganized county and maintain his office at said county seat of said unorganized county.

Section 4. The State of Sequoyah is hereby divided into twenty-one Senatorial Districts, each district composed as follows:

Districts	Counties
1st	Quapaw and Cherokee;
2nd	Lenahpa and Skiatook;
3rd	Cooweescoowee and Mayes;
4th	Delaware, Flint and Tahlequah;
5th	Tumehiche and Coweta;
6th	Euchee, Tulladega, and Arbeka;
7th	Okmulgee and Cussehta;
8th	Seminole and Spokogee;
9th	Muskogee and Breckinridge;
10th	Sequoyah and Thomas;
11th	Wade, Rutherford and McCurtain;
12th	Eufauia and Tobuksy;
13th	Bixby, Push-ma-ta-ha and Hitchcock;
14th	Hailey and Sans Bois;
15th	Blue and Tom Needles;
16th	Overton and Johnston;
17th	Byrd, Cheadle and Moseley;
18th	Garvin and McLish;
19th	Harris and Washington;
20th	Gilbert, Jefferson and Guy;
21st	Curtis and Bonaparte;

And one Senator shall be elected from each district.

Section 5. From the limit of seventy-five members of the House of Representatives, each county of this State shall first have one member. Thereafter to justly give representation to such counties as have population in excess of their pro rata proportion of the population of the entire State, the excess number of Representatives making the grand total not above seventy-five shall be ascertained, then taking all counties of the State, the population of which is greater than the sum obtained by dividing the total population of the State by the total number of counties of the State and adding such excess population together, divide the total of such additions by the divisor, being the excess authorized membership of the House of Representatives, the quotient will be the ration for additional representation in such counties of excess population, and said excess representatives shall be allotted as follows:

Any such county having an excess of population equal to one or more of such full ratios shall have an additional member of the House of Representatives for each such full excess ration, or in case any such County shall have less than a full excess ration or ratios, then its excess shall be multiplied by five, and if the sum so obtained equals one excess ratio such County shall have one additional member in the fifth term of the ensuing Federal Census decade. If the sum so obtained equals two full excess ratios, then such County shall have one additional member each in the fourth and fifth terms of the ensuing Federal Census decade. If the sum so obtained equals three full excess ratios then such County shall have one additional member each in the first, second and third terms of the ensuing Federal Census decade. If the sum so obtained equals four full excess ratios then such County shall have one additional member each in the first, second, third and fourth terms of the ensuing Federal Census decade. Provided, however, that in case the said excess ratio is less than the population of the County of this State having the smallest population, then the population of such least populous County shall in every instance hereinabove mentioned be treated as the true excess ratio.

Provided, That until the next Federal Census is taken and published, the population as ascertained according to the provision of this Constitution shall be the basis for the above apportionment and be ascertained and declared by the Supreme Election Board, and thereafter on the publishing of each Federal Census, the Governor, the Attorney General and the Secretary of State, of this State, shall, within thirty days from the publication of such Federal Census, and under the above rules, compute and declare the apportionment for the ensuing decade.

Section 6. The State of Sequoyah is hereby divided into eight Circuit Court Districts, each such district composed of the following counties:

The first District shall be composed of the counties of: Cherokee, Lenahpa, Skiatook, Cooweescoowee and Mayes.

The second District shall be composed of the counties of: Quapaw, Delaware, Flint, Sequoyah, Tahlequah, Tumechichee and Coweta.

The third District shall be composed of the counties of: Euchee, Arbeka, Tulladega, Okmulgee, Seminole, Spokogee and Cussehta.

The fourth District shall be composed of the counties of: Muskogee, Eufaula, Breckinridge, Thomas and Sans Bois.

The fifth District shall be composed of the counties of: Tobuksy, Cheadle, Moseley, Bixby and Blue.

The sixth District shall be composed of the counties of: Rutherford, Wade, Hailey, Push-ma-ta-ha, McCurtain, Hitchcock and Tom Needles.

The seventh District shall be composed of the counties of: Overton, Johnston, Byrd, McLish, Washington, and Harris.

The eighth District shall be composed of the counties of: Curtis, Bonaparte, Gilbert, Jefferson, Garvin and Guy.

And one judge of the circuit court shall be elected in each of said districts, as in this constitution provided.

Section 7. For the purpose of determining the population of each and every separate county of this State, it is hereby directed that the vote cast in each and every county at the election for ratification or rejection of this constitution be multiplied by five and one-tenth, the product so obtained is hereby declared to be the legal population of every such county and so to remain and be treated in all cases until the taking and publication of the next federal census.

Section 8. The county seat of each county named in this constitution shall be determined by the place receiving the highest number of votes at the election held for the ratification of this constitution by the electors of each county.

Section 9. The General Assembly shall provide by general law for the creation of new counties, locating or changing county seats and changing county lines, but each of said questions shall be submitted to a vote of the electors residing within the territory affected, and shall be approved by a majority of the votes cast for or against said proposition before such new county shall be created, the county seat located or changed, or the lines of any county shall be changed. But no new county shall be formed unless it contains taxable property of the valuation of one million dollars as shown by the last preceding tax return, and not then unless the remaining portion of the old county or counties shall each contain taxable property of the value of at least two millions of dollars; nor shall said new county contain a population of less than five thousand bona fide inhabitants; nor shall such new county have an area of less than four hundred square miles, nor shall the area of the old county or counties from the territory from which the new county shall be taken be respectively reduced in area to less than four hundred square miles. The General Assembly shall provide by law for an equitable division of the indebtedness of said old county or counties, as the case may be, so that the new county so created shall assume and become responsible for the payment of its just proportion of said debt or debts.

Section 10. Each organized county in this state shall be a body corporate and politic, and shall possess such powers as are provided in this constitution, together with such other powers as may hereafter be provided by law, including the following:

To sue and be sued; to purchase and hold real estate and personal property for the use of the county, and land sold for taxes as provided by law; to sell and convey such property; to make such order respecting the same as may be deemed conducive to the best interests of the county; to make all contracts and do all other acts authorized by law.

Section 11. The powers of a county shall be executed and administered by the Board of County Commissioners herein provided for, and by such other officers and agents as may be provided by law, and all suits brought for the benefit of the county or against it shall be brought in the name of the county. No execution on any judgment rendered by any court against a county shall be issued against said county, but the collection of said judgment shall be in the manner and form provided by law.

Section 12. There shall be, and are hereby created, the following county officers: Judge of the county court, clerk of the circuit court, who shall be ex-officio recorder, clerk of the county court, state's attorney, sheriff, who shall be ex-officio tax collector, county treasurer, county surveyor, three county commissioners, who shall be freeholders, and a county assessor. Each of said offices shall be filled by election, or by appointment, as herein provided, or as may hereafter be provided by law, for the creation of such other county officers as may be from time to time found necessary.

County judges, clerks of the circuit court, clerks of the county court, state's attorneys, sheriffs, county treasurers, county surveyors, county commissioners, county assessors, and such other county offices as may be created by law, shall be elected by the electors of each county and shall respectively perform such duties and receive such salary and emoluments as are herein, or as may hereafter be provided by law. After the first election held under this constitution the county commissioners shall divide each county into three compact districts as nearly equal in population as practicable, subject to alteration at least once in three years thereafter. At the next election preceding the end of the terms of said first-elected county commissioners, a county commissioner shall be elected for each of said county commissioner's districts.

Section 13. The Board of County Commissioners shall have no power or authority to create or recognize any debt or obligation of the county in excess of the limit fixed by law; nor to issue any obligation or evidence of indebtedness exceeding in the aggregate the limit of indebtedness fixed by law, for county purposes, for any one year, nor levy taxes exceeding in the aggregate one per centum of the value of the taxable property in the county: Provided, Sheriffs and County Treasurers shall not be eligible to re-election as their own immediate successors.

Section 14. No county shall in any manner whatsoever, either directly or indirectly, create any indebtedness exceeding two per centum of the assessed value of taxable property in the county as shown by the last general assessment roll of said county; nor in excess of the taxes for the current year, unless such excess shall have been authorized by a majority vote of the electors of said county.

Section 15. The Board of County Commissioners shall provide and furnish suitable rooms in which to hold Circuit Court and County Court, and proper offices for all county officers.

Section 16. Appeals may be taken to the Supreme Court from all final decisions or findings of the Board of County Commissioners in such manner as the General Assembly may provide.

*Article XIII*

## REVENUE, TAXATION AND EXEMPTIONS

Section 1. All property within the boundaries of the State, not exempt under the laws of the United States, shall be taxed in proportion to the value thereof, to be ascertained as provided by law. The word "property" as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal or mixed, capable of private ownership.

Section 2. All property used for free public libraries, free museums, cemeteries, property used exclusively for public schools and all property of the United States, this State, and of counties and municipal corporations in this State, shall be exempt from taxation. All property owned by the Murrow Indian Orphan Home, located near the city of Atoka, and all property owned by the Whitaker Orphan Home, located near the city of Pryor Creek, so long as the same shall be used exclusively as free homes or schools for orphan children and for poor and indigent persons, shall be exempt from taxation. The General Assembly may provide for the exemption from taxation of such other property as may be used exclusively for agricultural and horticultural societies, for schools, and for religious and charitable purpose, but such exemptions shall only be by general law. The General Assembly may provide for a deduction from credits of debts due to bona fide residents of this State, except in cases of credits secured by mortgages or trust deeds.

Section 3. All lands and the improvements thereon, except as herein provided, within the boundaries of this State, shall be assessed for taxation, except such as may be exempt by reason of treaty stipulations, existing between the Indians and the United States government.

Section 4. The specification of the objects and subjects of taxation shall not deprive the General Assembly of power to require other objects and subjects to be taxed, in such manner as may be consistent with the principles of taxation as fixed in this Constitution.

Section 5. The General Assembly shall provide in all cases where it may be necessary to sell real estate for the non-payment of taxes or special assessments, for State, County, Municipal, or other purposes, that a return of such unpaid taxes or assessments shall be made to the officer of the county having authority to receive state and county taxes, and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order or judgment of a court of competent jurisdiction, to be designated by law.

Section 6. The right of redemption from all sales of real estate for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate for a period of not less than four years from such sales thereof. And the General Assembly shall provide by law, for reasonable notice to be given to the owner, or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire: Provided, occupants shall in all cases be served with personal notice before the time of redemption expires: and provided further that minors, lunatics, imbe-

ciles and other incompetents and married women, shall be allowed three years in which to redeem real estate from sales for taxes or assessments after minors shall have reached their majority, after lunatics, imbeciles and other incompetents shall be restored to natural reason, and after married women shall have become femmes soles.

Section 7. The General Assembly shall not have power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

Section 8. All taxes levied for State purposes shall be paid into the State treasury.

Section 9. The General Assembly may invest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment or by special taxation of contiguous property, or otherwise, provided the consent of a majority of resident property owners affected by such local improvements shall have been first obtained. For all other corporate purposes, municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

Section 10. The General Assembly shall not impose taxes upon Municipal Corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

Section 11. No person who is in default, as collector or custodian of money or property belonging to a municipal corporation, shall be eligible to any office in or under such corporation. The fees, salary or compensation of no municipal officer who is elected or appointed for a definite term of office shall be increased or diminished during such term.

Section 12. No county, city, township, school district, or other municipal corporation shall be allowed to become indebted in any manner, or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding eight per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, school district or other municipal corporation, incurring any indebtedness as aforesaid, shall before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within thirty years from the time of contracting the same.

Section 13. The General Assembly shall provide by law for the levy and collection of all State, County, School and Municipal taxes, and for an annual poll tax of not less than one dollar on every male inhabitant of this State, over twenty-one and under sixty years of age, except paupers, idiots and insane persons; said poll tax shall be paid into the State School Fund.

Section 14. The total taxes on all property, for all purposes, including State, County, and Municipal taxes, shall not exceed in any one year thirty mills on the dollar, to be divided as follows: Not more than seven mills on the dollar for State purposes, of which two mills shall be for the support of public schools: Not more than ten mills on the dollar for county purposes, of which three mills shall be used for support of public schools: Not more than thirteen mills on the dollar for municipal purposes, of which five mills shall be used for the support of public schools: Provided, That the General Assembly shall, by general laws, authorize school districts to levy, by a majority vote of the citizens over twenty-one years of age therein, an additional tax of five mills on the dollar, in any one year, for school purposes: Provided, Further, that no such tax shall be appropriated to any other district than that for which it was levied: And Provided further, That to pay the bonded indebtedness of any municipality, an additional tax of five mills on the dollar may be levied by a vote of the electors of said municipality.

Section 15. Municipal corporations in this State may, in addition to taxes provided for school purposes by this constitution, by a majority vote of the electors of said municipality, levy an additional tax of four mills on the dollar of assessed valuation, for school purpose only; Provided, That no election shall be ordered for this purpose except upon the written petition of one-seventh of the property tax payers of said municipality. Provided, Further, That thirty days' notice by publication in the usual way shall be given, and proof of such publication filed with the petition.

Section 16. The Board of County Commissioners of each County shall equalize the valuation for tax assessment of their county as provided by law.

Section 17. The Governor, Secretary of State, and Attorney General shall be a State Board of Equalization and shall perform the duties thereof as provided by law.

Section 18. All revenue and appropriation bills shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

Section 19. The personal property of any resident of this state who is not married or the head of the family, in specific articles or money to be selected by such resident, not exceeding in value the sum of two hundred dollars, in addition to his or her wearing apparel, shall be exempted from seizure on attachment or sale on execution or other process from any court, issued for the collection of any debts, contracted for the purchase-money thereof, while in the hands of the vendee.

Section 20. The personal property of any resident of this State who is married or the head of the family, in specific articles or money, to be selected by such resident, not exceeding in value the sum of five hundred dollars in addition to his or her wearing apparel and that of his or her family, shall be exempt from seizure on attachment, or sale on execution, or other process from any court on any debt contracted; Provided that no property shall be exempt from debts contracted for the purchase money therefore while in the hands of the vendee; Provided further, That all necessary tools of mechanics and laborers and the implements of farmers, to an amount not exceeding three hundred dollars, shall be exempt from seizure on attachment or sale on execution. The General Assembly shall provide by law for the protection afforded in this and

the preceding section herein, so that all persons may enjoy the same without interference by any court, and without cost to them.

Section 21. Upon the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the life of the surviving spouse so long as he or she may remain unmarried, or so long as the guardian of the minor heirs of the deceased may be permitted, under order of the proper court having jurisdiction, to use and occupy the same with said minors.

Section 22. The homestead, not in any town or city, shall consist of more than one hundred acres of land, which may be in one or more parcels, with improvements thereon, to be selected by the owner; provided, the same shall not exceed in value the sum of five thousand dollars, and in no event shall such homestead be reduced to less than forty acres, with the improvements thereon, without regard to value; Provided further, that Indian homesteads in excess of one hundred acres made under the laws, and the treaties between the United States and the Indian tribes of this State, shall be affirmed and respected until said homesteads become alienable.

Section 23. The homestead in any city, town, or village, owned and occupied as a residence, shall consist of not exceeding one acre of land, with improvements thereon, to be selected by the owner; Provided, Said homestead shall not exceed in value the sum of five thousand dollars, and in no event shall such homestead be reduced to less than one quarter of an acre of land, together with the improvements thereon, without regard to value; Provided, That any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired.

Section 24. The homestead of a family shall be, and is hereby protected from forced sale, for the payment of all debts, except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in the last case only when the work and materials are contracted for in writing, with the consent of the wife given in the same manner as required in making a sale and conveyance of the homestead; nor shall the owner, if a married man, sell the homestead without consent of the wife, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money thereof, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the husband alone or together conditions of defeasance shall be void.

## *Article XIV*

### MILITIA

Section 1. The Militia shall consist of all able-bodied male persons [who are] residents of this State, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State: and



shall be organized, armed, equipped, and trained as may be prescribed by law, not inconsistent with the regulations governing the United States Army.

Section 2. The Militia of the State shall be divided into two classes, viz:— That portion which shall be organized, armed and equipped, which shall be known as the “Sequoyah National Guards” and the unorganized Militia, which shall be known as the “Sequoyah Reserves.”

Section 3. The Governor shall have power to call out the National Guard, and to call and organize the Reserve for the purpose of executing the laws of the State, repelling invasion, suppressing riot or insurrection, and preserving the public peace.

Section 4. Officers of the National Guard shall be selected from the organization to which they belong. All offices shall be filled by competitive examinations, to be held by a board consisting of three members, one of whom shall be an officer of the United States Regular Army, not below the rank of captain, one a medical officer of the National Guard and the third member to be selected by the other two. The United States Regular officer and Medical officer of the board to be designated by the Governor. Vacancies shall be filled by seniority, subject to examination by the board of officers as prescribed for original appointment.

Section 5. The Commissioned officers of the National Guard shall hold their respective office during good behavior, unless otherwise provided by law; provided however, that in case an organization of the National Guard shall be mustered out of service, the officers thereof shall be given certification of honorable discharge.

Section 6: No officer of the National Guard shall be deprived of his commission except by sentence of a properly constituted Court Martial having jurisdiction of the same.

Section 7. Their findings and decreases of Court Martial shall be reversible by a civil tribunal, except as provided by law.

Section 8. The officers of the military service of this State shall be, such as are provided by law.

Section 9. The execution by an officer in the Military services of this State of a written order, or of a verbal order, the interpretation of which could not be reasonably misunderstood, from his superior officer, of a person to whom he has been directed to report for duty, shall be a complete defense to any suit or action which may be brought against him in the Civil or Criminal courts of the State; but this shall not relieve the person responsible for such order from liability.

## *Article XV*

### PROHIBITION

Section 1. The manufacture, sale, barter or giving away of intoxicating liquors or spirits of any kind within this State is forever prohibited.

Section 2. Any persons who shall, within this State, manufacture, or for any purpose sell, barter or give away or by any means furnish, to any one any vinous, malt or fermented liquors or intoxicating spirits or drinks

of any kind whatsoever, and any person who may, within this State, in any manner advertise or solicit the sale or purchase of any such liquors, shall upon conviction thereof, in any court of competent jurisdiction, be punished for each offense by a fine not less than fifty dollars, nor more than one hundred dollars, and by imprisonment not less than sixty days, nor more than one year and one day: Provided, That the General Assembly may provide for one dispensary, under the supervision of this State, in each county, for the sale of liquors for medical, mechanical and scientific purposes only; each sale to be made upon sworn application in writing stating the purpose for which the liquor will be used; and any persons who shall make a false affidavit to obtain liquor for any other purpose shall be deemed guilty of perjury. Each sale shall be duly registered, and the register thereof, shall be, at all times, open to inspection by any officer or citizen of this State. If any person employed in a dispensary be convicted of making any sale of liquor for any purpose other than herein provided, he shall be punished by imprisonment for not less than one year and one day. The payment, in this State, by any person, of the special tax requirement of liquor dealers by the United States, shall be prima facie evidence of his intention to violate the provisions of this section.

Section 3. The Governor shall appoint three Commissioners, two from the dominant political party and one from the party casting the next highest vote at the last State election, one of whom shall be learned in the law, to be known as "Enforcement Commissioners," who shall be vested with full authority and power and be required, with the advice and under direction of the Governor, to strictly enforce the liquor laws of this State; and, in the performance of their duties, such Commissioners may command the aid of the Attorney General of the State, all State's attorneys, and all sheriffs and other executive officers of the counties, and any other persons by them appointed; but the authority so conferred upon such Commissioners shall not in any degree relieve any other officer from the discharge of any duty relating to the execution of such laws. The General Assembly shall, at its first session, fix the salaries of such Commissioners, and provide for them all assistance and expenses necessary for the proper performance of their duties, and enact laws for the aid and government of such Commissioners in the work of enforcing the laws aforesaid. The Governor may at any time remove any member of such commission from office for immoral conduct, inefficiency, or delinquency of duty, and appoint another competent person to fill the vacancy.

## *Article XVI*

### GENERAL PROVISIONS

Section 1. The following shall be the device for the "Great Seal of the State of Sequoyah":

In the center shall be a five-pointed star, with one ray pointing downward. The star shall be divided into five diamond-shaped rays by lines connecting the angles between the rays with the center. The upper lefthand ray shall contain

the symbol from the ancient seal of the Cherokee Nation, viz: A seven-pointed star surrounded by a wreath of oak leaves. The upper right-hand ray shall contain the symbol from the ancient seal of the Creek Nation, viz: A sheaf of wheat and a plow. The lower lefthand ray shall contain the symbol from the ancient seal of the Choctaw Nation, viz: A Tomahawk, bow and three crossed arrows. The lower right-hand ray shall contain the symbol from the ancient seal of the Seminole Nation, viz: A village with houses and factory beside a lake upon which an Indian is paddling a canoe. The lowest ray shall contain the symbol from the ancient seal of the Chickasaw Nation, viz: An Indian warrior standing upright with bow in his hand. Surmounting the star between the two upper rays shall be a half-length figure of Sequoyah holding a tablet upon which are inscribed the letters \_\_\_\_\_~O in the alphabet invented by Sequoyah, and forming the Cherokee words meaning "We are brethren." Surrounding the central star and grouped between its rays, shall be forty-five small stars, representing the forty-five States of the Union to which the forty-sixth is now added. In a circular band surrounding the whole device shall be inscribed "Great Seal of the State of Sequoyah, 1905."

Section 2. All courts of record and municipal corporations shall have a seal which shall be used in attesting all process, judgments, decrees, ordinances, or other official documents of the court or municipal corporation to which it belongs, in form as provided by law.

Section 3. The State of Sequoyah and the several counties, districts, and municipalities thereof shall never lend credit funds, nor guarantee, nor in any way contribute to private or corporate enterprises, nor in any way invest or become interested therein.

Section 4. No public officer in this State shall be permitted, at any time during his incumbency in office, to solicit or receive any gift, grant or emolument of any kind other than his salary as fixed by law for the doing or not doing of any act or thing incident to his official duties and obligations: Any violation of this provision shall work a forfeiture of the office held by him.

Section 5. The State of Sequoyah shall never be made defendant in any of its courts without its consent.

Section 6. The real and personal property of any femme covert in this State, acquired either before or after marriage, whether by gift, grant, inheritance, devise, or otherwise, shall so long as she may choose, be and remain her separate estate and property, and may be devised, bequeathed or conveyed by her the same as if she were a femme sole, and the same shall not be subject to the debts of her husband: Provided, that any land acquired from or through her husband shall not be disposed of in any way without his consent.

Section 7. The General Assembly shall provide by law for a Board of Health to be appointed by the Governor, with the consent of the Senate, which shall be known as the "State Board of Health," the duties of which shall be to examine and pass upon the qualifications of applicants for license to practice Medicine, Surgery, Dentistry or Pharmacy in this State; said State Board of Health shall have power to declare and maintain quarantine, and to prescribe such sanitary regulations as are necessary and are not in conflict with the laws of this State.

Section 8. Polygamy is forever prohibited in this State and the same shall be deemed a felony; any person convicted of such crime shall be punished by fine of not less than one hundred dollars and imprisonment for not less than one year and one day.

Section 9. No divorce shall be granted in this State otherwise than by judicial proceedings. Lotteries, or the sale or giving away of lottery tickets in this State are forever prohibited. Prize fights, or other brutal sports shall not be allowed in this State.

Section 10. The General Assembly shall, at its first session, pass laws to protect laborers on public buildings, streets, roads, railroads, canals, and other similar public works, against the failure of contractors and sub-contractors to pay their current wages when due, and to make the corporation, company or individual for whose benefit the work is done, responsible for their ultimate payment.

Section 11. The labor of children under twelve years of age in factories and workshops in this State is prohibited.

Section 12. It shall be unlawful for any person, or corporation to require from its servants or employees as a condition of their employment or otherwise, any contract or agreement, whereby such person or corporation shall be released or discharged from liability or responsibility, on account of personal injuries received by such servants or employees while in the service of such person or corporation, by reason of the negligence of such person or corporation, or the agents or employees thereof; all such contracts shall be absolutely null and void.

Section 13. No railroad hereafter constructed in this state shall pass within a distance of four miles of any county seat without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; Provided, Such towns or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

Section 14. Two months of current wages, for personal service, shall not be subject to garnishment.

Section 15. All labor of convicts confined in the State's prisons and reformatories shall be performed within the prison grounds, except where the work is done on public roads, or public works under the direct control of the State.

Section 16. The First day of the week commonly called Sunday, shall forever be respected as a day of rest, and the General Assembly shall enact appropriate laws making this provision of this Constitution effective.

Section 17. The provisions of this Constitution are not intended to conflict with, nor shall they ever be so construed as conflicting with, the Constitution of the United States, or with any right, or privilege, as to person or property, enjoyed by or secured to any Indians or other citizens of the Five Civilized Tribes, or their descendants, or to citizens of the Quapaw Agency, by any law or existing treaty between the United States and said Indian or tribes of Indians, and particularly as to homesteads, exemptions, and taxation.

*Article XVII*

## AMENDMENTS

Section 1. Any amendment or amendments to the Constitution may be proposed in either House of General Assembly, and, if the same shall be agreed to by two-thirds of all members elected to each of the two houses, voting separately, such proposed amendments or amendments shall, with the yeas and nays thereon, be entered on their journals; and it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State at the next general election, and cause the same to be published without delay for at least twelve consecutive weeks prior to said election, in at least one newspaper of general circulation published in each county; and if a majority of the electors voting at such election shall ratify the same, such amendment or amendments shall become a part of this constitution.

Section 2. If two or more amendments are proposed, they shall be submitted in such manner that electors may vote for or against each of them separately.

*Article XVII*

## SCHEDULE

Section 1. That no inconvenience may arise from a change from the present governments in force in the Indian Territory, to a permanent government, it is declared that all writs, actions, prosecutions, claims, or liabilities, of whatsoever nature and kind, and rights of individuals and of bodies corporate, shall continue as if no change had taken place in this government, and all process which may, before the organization of the Judicial Department under Constitution, be issued under the authority in force in the Indian Territory, shall be as valid as if issued in the name of the State of Sequoyah; and all writs and process, both civil and criminal, that have been issued by any of the Courts having Jurisdiction in the Indian Territory, and made returnable to said Courts, not served at the time the Courts of the State assume Jurisdiction, shall be, by the officers having charge thereof, served and returned into the appropriate Court of the State.

Section 2. All laws now in force in the Indian Territory, which are not repugnant to this Constitution, shall remain in force until they expire by their own limitation, or are altered or repealed by the General Assembly of this State.

Section 3. All fines, penalties, forfeitures and escheats, accruing to the Indian Territory, shall accrue to the use of the State, or to either of the Five Civilized Tribes of Indians, as the case may be.

Section 4. All recognizance, bonds, obligations, or other undertakings heretofore enter into the Indian Territory, or which may hereafter be entered into the Indian Territory before the organization of the Judicial Department under this Constitution, shall remain valid, and shall pass over to, and may be

prosecuted in the name of the State, and all bonds; obligations or other undertakings executed in the Indian Territory, or to any officer of the United States therein in his official capacity, shall pass over to the proper State authorities and to their successors in office, or the towns therein respectively interested, and may be sued for and recovered upon accordingly. All criminal prosecutions and penal action, which have arisen or which may arise in the Indian Territory before the organization of the Judicial Department under this Constitution, which shall then be pending, may be prosecuted to judgment and execution in the name of the State.

Section 5. All officers, civil and military, holding their offices and appointments in the Indian Territory, under the authority of the United States, or of either of the Five Civilized Tribes of Indians, shall continue to hold and exercise their respective offices and appointments until suspended under this constitution. Provided, that if the State of Sequoyah shall not be admitted into Union as one of the United States prior to the 4th day of March, 1906, nothing in this Constitution contained shall be constructed as being in conflict with the laws or agreements for the termination of the tribal governments of the Five Civilized Tribes, or, as authorizing the continuance in office of any of the officers thereof.

Section 6. This Constitution shall be submitted to the qualified electors of the Indian Territory for adoption or rejection at the election to be held Tuesday, the 7th day of November, 1905. Said elections, as nearly as may be, shall be called and held in all respects in the manner provided by this Constitution, and the returns, thereof, shall be made to the Supreme Election Board provided by this Constitution, who shall canvass the same, and if a majority of the legal votes cast shall be for the Constitution, the Supreme Election Board shall certify the result to the President of the United States, together with a statement of the votes cast thereon, and a copy of the articles, provisions and ordinances of said Constitution. Said Supreme Election Board shall, as herein directed, provide for the election of four Congressmen at Large, from the State of Sequoyah, to represent this State in the 59th Congress of the United States, and shall issue to each Congressman so elected, a certification of his election. They shall also provide for the selection of the county seat town of each county by the qualified electors thereof. A certificate of the vote cast for county seat in each county shall be returned to the Secretary of State when he shall be elected and qualified, and shall be filed and preserved by him.

At said election the ballot shall be in the following form:

Form of Ballot:  
Indian Territory, Proposed State of Sequoyah.  
For Ratification of Constitution.  
Yes.  
No.  
For County Seat of ..... County.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Congressmen at Large to represent the State of Sequoyah, in the 59th Congress of the United States, from the date of the admission of this State:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(Note, The voter, on the ratification or rejection of the Constitution, will vote either “yes” or “no,” that is, for the rejection of the whole Constitution, he will ignore the remainder of the ticket. If the elector votes “yes” on the ratification of the Constitution, he may vote for the town of his choice for county-seat of the county designated, and for four representatives of his choice for Congressmen, in all cases erasing all words and names for which he does not desire to cast his vote.)

The form of this ballot must be uniform at all voting places in the Territory, excepting only as to the name of the county and the towns in such county aspiring to be the county-seat thereof. The Board of Elections will so prepare the ballots in each county as to designate the name of such county and towns which said Board has recognized as properly aspiring to be the county-seat town, and have on the ballots of each county, the name of the county and such aspiring county-seat towns, printed thereon.

As to the candidates for Representatives at Large to the 59th Congress, the Supreme Election Board will cause the names of such candidates to be printed upon all ballots, and opposite each name of such candidates shall be printed the name of the party or convention nominating such candidate, provided, that not more than four candidates shall be allowed to be placed upon such ballot by any one political party or convention. The elector may vote for not exceeding four such candidates, and will distinctly erase the names of all candidates for whom he does not desire to vote.

Section 7. This constitution shall take effect and be in force immediately upon the admission of the Indian Territory as a State.

Section 8. Immediately upon the admission of the Territory as a State, the Supreme Election Board shall issue a proclamation which shall be published, and a copy, thereof, mailed to the chairman of the subordinate county election board of each county, calling an election by the people for all the state, district, or other officers created and made elective by this Constitution, and fixing a day for such election, which shall not be less than forty days after the date of such proclamation, nor more than sixty days after the admission of the Territory as a State. The County Election Board of the several counties shall thereupon order such election for said date, notice thereof to be given, in and for the length of time provided by the Supreme Election Board, for the election of all state, county and other public officers (Congressmen excepted). Every qualified elector of this State, at the date of said election, shall be entitled to vote. Said election shall be conducted in all respects in the manner provided by this Constitution.

Section 9. The Supreme Election Board, provided for in this Constitution, shall constitute a Board of Canvassers to canvass the vote of said election

for members of Congress, the state and district officers, and members of the General Assembly. The said Supreme Election Board shall assemble at the seat of government of the Territory on the 10th day after such election (or on the following day, if said day falls on Sunday), and proceed to canvass the vote for all state, district, county and other public officers and members of the General Assembly, in the manner provided by this Constitution; and they shall issue certificates of election to the persons found to be elected to said offices, severally, and shall make and file with the Secretary of State an abstract, certified by them, of the number of the votes cast for each person, for each of said offices, and of the total number of votes cast in each county.

Section 10. All officers elected at said election, except members of the General Assembly, shall, within thirty days after they have been declared elected, take the oath and give the bond required by this Constitution, and shall thereupon enter upon the duties of their respective offices; but the General Assembly may require by law all such officers to give other and further bonds as a condition of their continuance in office.

Section 11. The Governor-elect of the State, immediately upon his qualifying and entering upon the duties of his office, shall issue his proclamation convening the General Assembly of the State at the seat of government, on a day to be named in said proclamation, and it shall not be less than thirty nor more than sixty days after the date of such proclamation. Within ten days after the organization of the General Assembly, both houses thereof in joint session, shall then and there proceed to elect, as provided by the Constitution of the United States, and by law, two senators of the United States for the State of Sequoyah. At said election the two persons who shall receive a majority of all the votes cast by the members elected to the Senate and House of Representatives, shall be elected as such United States Senators, and shall be so declared by the presiding officers of said joint session. The presiding officers of the Senate and House shall issue a certificate to each of said Senators, certifying his election, which certificate shall also be signed by the Governor, attested by the Secretary of State and the Great Seal of the State.

Section 12. The General Assembly shall pass all necessary laws to carry into effect the provisions of this Constitution.

Section 13. Whenever any two of the judges of the Supreme Court of this State, elected under the provisions of this Constitution, shall have qualified in their offices, the causes then pending in the United States Court of Appeals for the Indian Territory, and the papers, records and proceedings of said Court, and other property pertaining thereto, in all cases over which the Supreme Court of this State is, by this Constitution, given jurisdiction, shall pass into the jurisdiction and possession of the Supreme Court of the State; and until so superseded the United States Court of Appeals of the Indian Territory, and the judges thereof, shall continue with like powers and jurisdiction, as if this Constitution had not been adopted. Whenever the judge of the Circuit Court of any district, elected under the provisions of this Constitution, shall have qualified in office, the several causes then pending in the United States District Court therein, within any county or counties in such district, papers and proceedings of said court and all other property pertaining thereto, in all cases over which the Circuit Courts of



this State are by this Constitution given jurisdiction, shall pass into the jurisdiction and possession of the Circuit Court of the State for such district, and until then the United States District Courts and the judges thereof shall continue with the same jurisdiction and powers, to be exercised in the same judicial districts, respectively, as heretofore provided by the laws of the United States. When the judge of the County Court of any county, elected under the provisions of this Constitution, shall have qualified in office, the several causes then pending in the United States District Court and in United States Commissioners Courts within any county in such district, and the records, papers and proceedings in said United States District Commissioners Courts, over which County Courts are given jurisdiction by this Constitution, shall pass into the jurisdiction and possession of the County Court of this State for such county; until the United States District shall be superseded in the manner aforesaid, the said District Courts, and the judges thereof, shall continue with the same jurisdiction and power to be exercised in the same districts, respectively, as heretofore constituted under the laws of the United States.

Section 14. Whenever this Constitution shall go into effect, the records, and papers and proceedings of the Probate Court in each county, and all causes and matters of administration, and all other matters pending therein, shall pass into the jurisdiction of the County Court of the same county, and the County Court shall proceed to final decree, or judgment, or order, or other determination of said matters and causes as the United States Courts, sitting as courts of probate, might have done if this Constitution had not been adopted. Provided, that the removal of causes to the several courts of this State shall apply only to such causes as by the laws of the United States, and the treaties of the United States with the several Indian Tribes of the Indian Territory, are properly removable to the State courts.

Section 15. All actions, causes, proceedings, and matters which shall be pending in the Supreme, Circuit, or County Courts of the Five Civilized Tribes of Indians, at the time of the admission of the State into the Union, whereof the Supreme, Circuit, or County Court would have had jurisdiction, had such court existed at the commencement of such actions, causes, proceedings and matters, respectively, shall be transferred to said Supreme, Circuit, or County Court, as the case may be; and all files, records, indictments, proceedings and matters shall be transferred to said State Courts and said Courts of this State, to which said causes shall be transferred, shall proceed to final decree, or judgment, or order, or other determination, as said Indian Courts might have done if this Constitution had not been adopted.

Section 16. The members of the General Assembly and all State officers, district, county, circuit, and supreme judges, elected at the first election held under this Constitution, shall hold their respective offices for the full term next ensuing such election, in addition to the period intervening between the date of their qualification to the commencement of such full term.

Section 17. This Convention does hereby declare on behalf of the people of Indian Territory, that this Constitution has been prepared and submitted to the people of the Indian Territory for their adoption or rejection, with no purpose of setting up or organizing a State government until such time as the

Congress of the United States shall enact a law for the admission of the Indian Territory as a State.

Section 18. The seat of State Government of the State of Sequoyah shall be located at the town of Fort Gibson, in said State, for the term of six years from the date of the admission of this State into the Union, and thereafter until its location be changed by an act of the General Assembly, which act, must, before becoming effective, be approved by a majority of the electors of this State, at a general election, of which six months' notice shall be given, as when amendments to this Constitution are to be voted on: Provided, If the people of Fort Gibson, shall fail to provide grounds and building suitable for State offices, including assembly rooms for the two Houses, free of cost to the State, the Supreme Election Board is hereby authorized to designate some other suitable place for the temporary seat of State government, until the first General Assembly, shall, by law, otherwise provide.

When this Constitution shall have been ratified by the people of the State of Sequoyah, it shall be correctly and properly engrossed on parchment, and when duly signed by the officers and members of this Constitutional Convention, shall be filed in the office of the Secretary of State and sacredly preserved by him as the fundamental law of the State of Sequoyah.

Done in open Convention at the City of Muskogee, in the Indian Territory, this eighth day of September, in the year of our Lord one thousand nine hundred and five.

We hereby certify that the foregoing is a true, correct and complete copy of the Constitution adopted by the Constitutional Convention of the State of Sequoyah (Indian Territory).

In testimony whereof we hereto set our hands this 14th day of October, 1905.

*P. Porter,*  
*Chairman.*

*Attest:*  
*Alex Posey,*  
*Secretary.*

*Phoenix Printing Co., Muskogee, I.T.*

*Unwritten Laws of the Apache  
(Chiricahua Apache, 1906?)*

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Historically, the Chiricahua Apache, like the other two major Apache bands, the Bedonkohe and the Neduais of southeast Arizona, did not have a central political authority. Valuing local autonomy, they instead exercised a system in which a chief led several extended families.

The Spaniards' arrival signaled new material, cultural, and economic directions for the Apache. Trading intensified, and the acquisition of horses enabled the Apache to become adept hunters and raiders. The Spanish military, however, retaliated by taking Apache scalps, as well as capturing and selling Apache individuals into slavery. These practices continued under the Mexican government after 1821.

When the United States entered the scene in the mid-nineteenth century, the situation deteriorated even further. Intrusive white settlers, miners, and a U.S. military buildup meant that Apache/U.S. relations would be contentious and often deadly affairs. Confinement on cramped and disease-ridden reservations in the early 1870s set the stage for another period of profound hardship for the Chiricahua.

After Mexicans killed several of his relatives in the 1850s, Goyathlay (also known as Geronimo) became actively involved in the defense of his people and their homeland. When he learned of the deaths of other prominent Apache, he began acquiring a reputation as a powerful warrior and a man of great wisdom who was skilled in his native religious traditions.

The story of his forced detention at the San Carlos Reservation, his flight into Mexico, and his small band's remarkable ability to elude capture for more than a year while being pursued by five thousand U.S. troops and hundreds of Indian scouts and Mexican soldiers is generally well known. In the fall of 1866 Goyathlay officially surrendered to General Nelson A. Miles. He and his fellow Chiricahua were promptly shipped to several internment camps in Florida and Alabama, where they were held as prisoners of war. During their incarceration, more than a quarter of these Apache died. Congress did not change their political status until 1913, when they were finally granted freedom.

In 1905 Goyathlay consented to relate his life story to S. M. Barrett, the superintendent of education in Lawton, Oklahoma. The following document is from one of the chapters of that story. It is Goyathlay's own rendition of an important aspect of Chiricahua life.

Debo, Angie. *Geronimo: The Man, His Time, His Place* (Norman: University of Oklahoma Press, 1976).

*Geronimo: His Own Story*, as told to S. M. Barrett (1906; rev. ed., New York: Meridian, 1996).

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## Unwritten Laws of the Apache

### *Trials*

When an Indian has been wronged by a member of his tribe he may, if he does not wish to settle the difficulty personally, make complaint to the Chieftain. If he is unable to meet the offending parties in a personal encounter, and disdains to make complaint, anyone may in his stead inform the chief of this conduct, and then it becomes necessary to have an investigation or trial. Both the accused and the accuser are entitled to witnesses, and their witnesses are not interrupted in any way by questions, but simply say what they wish to say in regard to the matter. The witnesses are not placed under oath, because it is not believed that they will give false testimony in a matter relating to their own people.

The chief of the tribe presides during these trials, but if it is a serious offense he asks two or three leaders to sit with him. These simply determine whether or not the man is guilty. If he is not guilty the matter is ended, and the complaining party has forfeited his right to take personal vengeance, for if he wishes to take vengeance himself, he must object to the trial which would prevent it. If the accused is found guilty the injured party fixes the penalty, which is generally confirmed by the chief and his associates.

### *Adoption of Children*

If any children are left orphans by the usage of war or otherwise, that is, if both parents are dead, the chief of the tribe may adopt them or give them away as he desires. In the case of outlawed Indians, they may, if they wish, take their children with them, but if they leave the children with the tribe, the chief decides what will be done with them, but no disgrace attaches to the children.

### *"Salt Lake"*

We obtained our salt from a little lake in the Gila Mountains. This is a very small lake of clear, shallow water, and in the center a small mound arises above the surface of the water. The water is too salty to drink, and the bottom of the lake is covered with a brown crust. When this crust is broken cakes of salt adhere to it. These cakes of salt may be washed clear in the water of this lake, but if washed in other water will dissolve.

When visiting this lake our people were not allowed to even kill game or attack an enemy. All creatures were free to go and come without molestation.

### *Preparation of a Warrior*

To be admitted as a warrior a youth must have gone with the warriors of his tribe four separate times on the warpath.

On the first trip he will be given only very inferior food. With this he must be content without murmuring. On [only] one of the four trips is he allowed to select his food as the warriors do, but must eat such food as he is permitted to have.

On each of these expeditions he acts as servant, cares for the horses, cooks the food, and does whatever duties he should do without being told. He knows what things are to be done, and without waiting to be told is to do them. He is not allowed to speak to any warrior except in answer to questions or when told to speak.

During these four wars he is expected to learn the sacred names of everything used in war, for after the tribe enters upon the warpath no common names are used in referring to anything appertaining to war in any way. War is a solemn religious matter.

If, after four expeditions, all the warriors are satisfied that the youth has been industrious, has not spoken out of order, has been discreet in all things, has shown courage in battle, has borne all hardships uncomplainingly, and has exhibited no color of cowardice, or weakness of any kind, he may by vote of the council be admitted as a warrior; but if any warrior objects to him upon any account he will be subjected to further tests, and if he meets these courageously, his name may again be proposed. When he has proven beyond question that he can bear hardships without complaint, and that he is a stranger to fear, he is admitted to the council of the warriors in the lowest rank. After this there is no formal test for promotions, but by common consent he assumes a station on the battlefield, and if that position is maintained with honor, he is allowed to keep it, and may be asked, or may volunteer, to take a higher station, but no warrior would presume to take a higher station unless he had assurance from the leaders of the tribe that his conduct in the first position was worthy of commendation.

From this point upward the only election by the council in formal assembly is the election of the chief.

Old men are not allowed to lead in battle, but their advice is always respected. Old age means loss of physical power and is fatal to active leadership.

### *Dances*

All dances are considered religious ceremonies and are presided over by a chief and medicine men. They are of a social or military nature, but never without some sacred characteristic.

### *A Dance of Thanksgiving*

Every summer we would gather the fruit of the yucca, grind and pulverize it and mold it into cakes; then the tribe would be assembled to feast, to sing, and

to give praises to Usen. Prayers of Thanksgiving were said by all. When the dance began the leaders bore these cakes and added words of praise occasionally to the usual tone sounds of the music.

### *The War Dance*

After a council of the warriors had deliberated, and had prepared for the war-path, the dance would be started. In this dance there is the usual singing led by the warriors and accompanied with the beating of the "esadadene," but the dancing is more violent, and yells and war-whoops sometimes almost drown [out] the music. Only warriors participated in this dance.

### *Scalp Dance*

After a war party has returned, a modification of the war dance is held. The warriors who have brought scalps from the battles exhibit them to the tribe, and when the dance begins these scalps, elevated on poles or spears, are carried around the camp fires while the dance is in progress. During this dance there is still some of the solemnity of the war dance. There are yells and war-whoops, frequently accompanied by discharge of firearms, but there is always more levity than would be permitted at a war dance. After the scalp dance is over the scalps are thrown away. No Apache would keep them, for they are considered defiling.

### *A Social Dance*

In the early part of September, 1905, I announced among the Apaches that my daughter, Eva, having attained womanhood, should now put away childish things and assume her station as a young lady. At a dance of the tribe she would make her debut, and then, or thereafter, it would be proper for a warrior to seek her hand in marriage. Accordingly, invitations were issued to all Apaches, and many Comanches and Kiowas, to assemble for a grand dance on the green by the south bank of Medicine Creek, near the village of Naiche, former chief of the Chokonen Apaches, on the first night of full moon in September. The festivities were to continue for two days and nights. Nothing was omitted in the preparation that would contribute to the enjoyment of the guests or the perfection of the observance of the religious rite.

To make ready for the dancing the grass on a large circular space was closely mowed.

The singing was led by Chief Naiche, and I, assisted by our medicine men, directed the dance.

First Eva advanced from among the women and danced once around the camp fire; then, accompanied by another young woman, she again advanced and both danced twice around the camp fire; then she and two other young ladies advanced and danced three times around the camp fire; the next time she and three other young ladies advanced and danced four times around

the camp fire; this ceremony lasted about one hour. Next the medicine men entered, stripped to the waist, their bodies painted fantastically, and danced the sacred dances. They were followed by clown dancers, who amused the audience greatly.

Then the members of the tribe joined hands and danced in a circle around the camp fire for a long time. All the friends of the tribe were asked to take part in this dance, and when it was ended many of the old people retired, and the "lovers' dance" began. The warriors stood in the middle of the circle and the ladies, two-and-two, danced forward and designated some warrior to dance with them. The dancing was back and forth on a line from the center to the outer edge of the circle. The warrior faced the two ladies, and when they danced forward to the center he danced backward: then they danced backward to the outer edge and he followed facing them. This lasted two or three hours and then the music changed. Immediately the warriors assembled again in the center of the circle, and this time each lady selected a warrior as a partner. The manner of dancing was as before, only two instead of three danced together. During this dance, which continued until daylight, the warrior (if dancing with a maiden) could propose marriage, and if the maiden agreed, he would consult her father soon afterward and make a bargain for her.

Upon all such occasions as this, when the dance is finished, each warrior gives a present to the lady who selected him for a partner and danced with him. If she is satisfied with the present he says good-by, if not, the matter is referred to someone in authority (medicine man or chief), who determines the question of what is a proper gift.

For a married lady the value of the present should be two or three dollars; for a maiden the present should have a value of not less than five dollars. Often, however, the maiden receives a very valuable present.

During the "lovers' dance" the medicine men mingle with the dancers to keep out evil spirits.

Perhaps I shall never again have cause to assemble our people to dance, but these social dances in the moonlight have been a large part of our enjoyment in the past, and I think they will not soon be discontinued, at least I hope.

Apache warriors do not go "courting" as our youths do. The associations in the villages afford ample opportunity for acquaintance, and the arranging for marriages is considered a business transaction, but the courtesy of consulting the maiden, although not essential, is considered very polite (Barrett 1996).

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*Laws, Bylaws, and Constitution  
of the Pueblo of Laguna (Laguna  
Pueblo People, 1908)*

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The Laguna people, who speak Keresan, live in northwestern New Mexico. The pueblo is actually six major villages, with Old Laguna serving as their political base. Dating back to at least 1697, the pueblo was originally home to refugees from the Pueblo revolt of 1680. Leaders of the pueblo agreed to peace with the Spanish in 1698.

According to oral history, the two original leaders of the pueblo were Hadjamunyi Kayokoi and Kamagashe, who had life tenure in their positions as both political and religious figures. But the Pueblo's geographical position near a major transportation artery has meant that, ever since colonial times, the community has been quite exposed to Spanish, Mexican, and U.S. acculturative forces. Ellis describes how ranchers, settlers, and at first Roman Catholics (during the Spanish era) and then Protestant missionaries (during the U.S. period) all played key roles that led to profound political and cultural changes in the Pueblo peoples.

In 1868 Walter Mormon, a white, arrived in the pueblo as a surveyor but later became a school teacher. He was followed in 1872 by his brother, Robert Mormon, who was also a surveyor. Several other whites, some of whom were cousins to the Mormon brothers, arrived shortly thereafter. Each of these men married Laguna women and began pushing for dramatic political changes (e.g., by writing the first constitution) and religious reforms (e.g., advocating Protestantism over Pueblo traditions and Roman Catholicism in their new homelands).

The Mormon brothers in fact became so entrenched and powerful in the community that each brother was elected to serve one term as governor. In the pueblo, however, these developments caused tremendous discord, which was exacerbated when, during his tenure as governor, Robert Mormon had two of the largest kivas destroyed. He also sought to have the Catholic Church demolished, but this attempt created an uproar among the more conservative Laguna citizens, who not only prevented the demolition but also began the slow process of revising some of their ceremonial life.

This 1908 constitution, the only pre-1934 charter among all of the pueblos, is a fascinating document that reveals the profound depths to which some non-Indians would go in order to impose constitutionalism within a native community. More research is needed to help us better understand the relationship between these two brothers and the Laguna people. The constitution was revised and replaced in 1949 and was further modified in 1958.



Ellis, Florence Howley. "Laguna Pueblo." In *Handbook of North American Indians*. Vol. 9: *Southwest*, gen. ed. William C. Sturtevant (Washington, D.C.: Smithsonian Institution, 1979), pp. 438–49.

National Archives, RG 75, Central Classified Files, 1907–1939. Series B: Indian Customs and Social Relations, reel 11, file 49623, 1934, 066 (October 1934). Special thanks the people of Laguna Pueblo for permission to reprint the following document.

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## Laguna Pueblo Constitution and By-Laws

*In effect January 1, 1908*

### SECTION I. ANNUAL ELECTION OF OFFICERS

An election shall be held on or near the first day of each calendar year in which the following officers shall be chosen to serve the ensuing year; all officers being elected by a standing vote of the general public:

One Governor*	One Secretary*
One 1st. Lt. Governor*	One Treasurer
One 2nd. Lt. Governor*	One Interpreter*
One Fiscal*	One Capt. of War
One 1st. Lt. Fiscal*	One 1st. Lt. Capt. of War
One 2nd. Lt. Fiscal*	One 2nd. Lt. Capt. of War

Mayordomos.

Court Officers.

\* These eight (8) officers shall be termed the "Court Officers", and shall be the sitting jury in all cases coming before the Court.

### Choosing Mayordomos

Any number of Mayordomos that the Pueblo deems advisable may be chosen.

### SECTION 2

The Governor shall be the supreme ruler, and his orders must be obeyed by the people in general. It is understood, however, that if any person considers that the ruling of the Governor is unjust, and that he is being imposed upon by his order, he shall perform the duty as ordered under protest, and then he shall have the right to demand that the matter be brought before the court officers for adjudication at the next meeting of said officers.

### SECTION 3. ALL DECISIONS TO BE MADE BY COURT OFFICERS

The Governor with the other seven court officers shall have the power to decide all matters of business that comes before the court. After they have examined

all witnesses and ascertained full details of the case, and, in their opinion, it has been sufficiently commented upon, they shall then retire to a private place to make their decision. If they cannot all agree upon a decision, the case shall be decided by a standing vote of all the officers except the Governor, and the Majority shall rule. The governor not having a vote, it shall be his duty and privilege to instruct the other officers regarding his views in the case before a vote is taken.

#### SECTION 4. ALL TROUBLES ARISING REFERRED TO GOVERNOR FOR INSTRUCTIONS

In case of any and all troubles arising among the people in any of the Laguna villages, including any associations, which cannot be mutually righted by the parties directly concerned in a manner wholly satisfactory to all parties directly affected, it shall be brought directly before the Governor for instructions. The Governor shall then have the power to order the method of settlement. It being understood that all actions of the Governor and court officers shall be in full harmony with the Territorial laws, and must not conflict in any way with said Laws.

#### SECTION 5. HOURS IN SESSION. MONTHLY MEETINGS OF OFFICERS

Unless otherwise ordered by the Governor, all meetings shall convene from 9 A.M. to 12 P.M. and from 1 P.M. to 4 or 5 P.M., as ordered by the Governor. Regular meetings of the court officers shall be held monthly on the last Saturday of each month.

#### SECTION 6. GOVERNOR TO PRESERVE ORDER IN ALL MEETINGS

The Governor being in full charge of all meetings, it shall be his duty to see that perfect order is preserved in every respect. In the discussion of all business but one person shall be allowed to speak at one time. When any one wishes to speak he shall first ask permission of the Governor to do so before proceeding.

#### SECTION 7. REQUESTING PRESENCE OF GENERAL & SUMMONSING [sic] PRINCIPAL MEN. CALLED WHEN NECESSARY ONLY

In special matters of business in which all of the people are equally interested, the Governor shall send a request to the Pueblo in general for their presence at the time such business is to be transacted. The Governor shall also have the right to summons any of the principal men to be present at any of the meetings, when in his opinion, their presence is needed; and in case any one of the men cannot come when summonsed [sic], he shall furnish the Governor with his reasons for not being present, who shall excuse him if his reasons appear justifiable. But the general pueblo shall not be requested to appear, nor the principal men summonsed [sic] unless their presence is absolutely necessary or very important.

## SECTION 8. TRANSACTING BUSINESS WITHIN MONTH

It shall be the duty of the Governor to see that all business on hand or coming up within any month be disposed of if possible before the beginning of the next month.

SECTION 9. ALL COURT OFFICERS REQUIRED TO  
BE PRESENT AT MEETINGS

All court officers shall be required to be present at each regular monthly meeting, and each special meeting when called by the Governor, unless it should be absolutely impossible for him to be there; in which case he shall send a substitute and notify the Governor of his inability to attend, giving his reasons therefore. The Governor shall then refer the matter to the court, and if in the opinion of the court, his reasons are justifiable he shall be excused, otherwise he shall be subject to the usual fine for being absent without proper reasons.

SECTION 10. EACH VILLAGE OFFICER SUBJECT TO  
ORDERS OF THE GOVERNOR

Each officer in charge of a village is strictly subject to the orders of the Governor. He shall give no orders to the people of his village without first submitting same to the Governor, unless, however, he should have a standing order from the Governor to give certain orders or perform certain duties whenever he deemed it necessary. All cases of emergency excepted.

## SECTION 11. GOVERNOR TO RECEIVE PUEBLO FUNDS FIRST

The governor shall receive all money belonging to the general fund, and turn same over to the secretary at the first regular meeting of the court officers, taking his receipt for same.

## SECTION 12. DUTIES OF THE SECRETARY

The Secretary shall keep a record of all court proceedings and all business transacted by the court. At the beginning of each regular meeting he shall call the roll of court officers and all specially summonsed persons who were expected to be present. He shall then read the minutes of the proceeding [*sic*] meeting, and the officers will then decide as to whether they shall be approved as they stand; all persons present having a right to suggest any necessary corrections. After they have been accepted the Secretary will then mark them "approved."

He shall receive all money belonging to the general fund from the Governor, giving him a receipt for same. He shall then turn this money over to the Treasurer at the first regular court meeting, taking his receipt therefore. He shall keep a record in his book of all pueblo money passing through his hands, showing from what it was received and for what paid out.

All disbursements of the treasury shall be made through the secretary. It shall also be his duty to attend all *official* correspondence as directed by the Governor.

#### SECTION 13. DUTIES OF THE TREASURER

It shall be the duty of the Treasurer to accept all Pueblo money offered him by the secretary, and to give him a receipt for same. He shall keep a record in his book of all money received and paid out. He shall pay out no money except through an order from the Governor attested by the secretary; and then he shall pay the money to the secretary, who keeps a record of same.

#### SECTION 14. DUTIES OF THE INTERPRETER

It shall be the duty of the Interpreter to do all necessary interpreting at each regular meeting of the court officers, and at each special meeting when called by the Governor. Also to do any other official interpreting when requested to do so by the Governor. It will be understood, however, that it shall not be his duty to interpret for private parties on business not concerning the Pueblo.

#### SECTION 15. DUTIES OF MAYORDOMOS

It shall be the duty of the Mayordomos to take charge, look after and direct all work on ditches, dams, and roads. He shall have the power to appoint some one to take care of the general stock while any public work is being done under his supervision.

They shall make their reports to the officer in charge of their respective villages, which officers shall repeat such report to the court officers at the next regular meeting. In case the village officers deems [*sic*] it necessary for the Mayordomo to report in person at the convening of the court officers, he shall order him to do so, provided, he has a standing order from the Governor giving him power to do so. In this case it shall be the duty of the Mayordomo to obey the command, and if he should refuse it will be sufficient cause for further action by the Governor.

In all work in which the Mayordomos have charge, all who come under their jurisdiction are subject to their orders, and any willful disobedience of his orders shall be sufficient reason for the Mayordomo to fine the guilty party the usual fee for such disobedience. But if the person effected [*sic*] has reason to believe that he is being treated unjustly, he shall have the right to demand that he be brought before the court officers for adjustment. All fines in such cases shall go to the mayordomo who made the charge.

It shall be his duty to take charge of all loose stock he may find on forbidden lands of the Pueblo, put them in a corral or otherwise take care of them, and immediately notify the owner; also to take charge of any similar stock turned over to him by other members of the Pueblo. He shall collect the usual fee from the owner as a recompense for his services. In case the stock has been turned over to him by another party, he shall have one-half of the fee for his trouble, the other half going to the man who bought in the stock.

All damages to crops &c. being determined according to the pueblo law hereto attached.

#### SECTION 16. OFFICERS HAVE POWER TO GRANT INDIVIDUAL ALLOTMENTS

When any member of the Pueblo desires a piece of unimproved Pueblo land, he shall select his land, and then make his application for same to the officers then in charge of the Pueblo. If the officers decide to grant him the land, or any part thereof, they shall mark out the boundaries of same. The Grantee shall thereafter have full possession of said land, unless the officers have cause to dispossess him for violation of the Pueblo Laws regarding same, hereto attached.

## Laws of the Pueblo of Laguna

*In effect January 1, 1908*

#### SECTION 1. TAKING UP STOCK ON CULTIVATED FIELDS

That from and after the above date it shall be the duty of all members of the Pueblo of Laguna to take up all loose animals found without herders remaining in the vicinity of cultivated fields of the said Pueblo, and deliver the same to the Supervisor or overseer of that district. By cultivated fields are meant all fields on the Laguna Pueblo lands in the vicinities of all the Laguna villages.

Payment for services in taking up stock:

That for said services the pay shall be 50% [*sic*] for the first animal and 10 cents for each succeeding one belonging to any particular owner. In case the person taking up the stock turns same over to the Mayordomo, then the Mayordomo shall receive one-half of this fee for his services, the person taking up the stock receiving the other half. It shall be the duty of the supervisor to place such animals under the care of a herder. Who shall receive 10 cents per day for each animal; provided, the owner does not call for them immediately after being notified.

Payment of damage:

Upon payment of all damages to crops &c., including cost of herding, by the owner, they shall be delivered up to him.

#### SECTION 2. DAMAGES TO FIELDS OR ORCHARDS

It shall be the duty of all members of the Pueblo whose fields or orchards have been damaged by animals to seize the same and turn them over to the nearest overseer together with a report of the damage done.

Determining damages reported:

The overseer shall at once appoint three disinterested persons to go upon the grounds and assess the damage done. The persons so appointed shall immediately perform their duty in the matter, and make report without delay to the overseer. They shall be entitled to receive 50 cents for each said services [*sic*], to be paid equally by the parties most interested.

Length of time in effect:

Provided, that this law shall be in full effect from the 1st day of February to the 1st of November of each year.

### SECTION 3. NO DIVORCES TO BE GRANTED BY THE PUEBLO

That no divorce shall be granted by the officers of the Pueblo of Laguna. They shall have the right, however, to examine the case and try to mutually adjust the matter if possible, by giving wholesome advice to the parties concerned. Should they find a probable reason for divorce, they shall advise the complaining party to take his or her case before the proper Territorial Authorities for further action in the case.

### SECTION 4. PRIVATE RIGHTS OF EACH MEMBER OF THE PUEBLO

That each member of the Pueblo of Laguna shall be assured his private rights as a resident of the Territory of New Mexico, and that no attempt shall be made by the officers of the Pueblo to enforce any other upon him depriving him of said rights.

### SECTION 5. CO-OWNERS OF UNIMPROVED LANDS

That all members of the Pueblo are declared co-owners of all lands of the Pueblo that are unimproved. Unimproved lands shall mean all lands belonging to the Pueblo of Laguna except that which has been granted to the various members of the Pueblo, by the officers thereof, for cultivating or other purposes as may be designated by the officers.

### SECTION 6. INDIVIDUAL RIGHTS OF PROTECTION TO IMPROVED LANDS GUARANTEED

That the right of full possession shall be guaranteed to any member of the Pueblo, holding lands granted to them by the officers of the Pueblo, for cultivation or other purposes. Provided, That no member holding said lands shall rent same to an alien, or if it is land secured for cultivating purposes he shall cultivate same within two years from the date he was given possession. Any violation of the above provision shall be sufficient cause for the officers to dispossess him of said land. He shall have the right, however, to rent or sell said land to any other member of the Pueblo after he has secured permanent possession of same.

### SECTION 7. OFFICERS ONLY HAVE POWER TO LEASE LANDS TO NON-MEMBERS

That no lease of land shall be given to any person not a member of this Pueblo for any purpose whatever, except by decision of the officers of the Pueblo of Laguna assembled for that purpose. The officers of the Pueblo will then have

the power to execute such leases in the name of the Pueblo; and all such leases must be signed by all of all court officers of the Pueblo, otherwise it shall be null and void.

SECTION 8. SALARIES OF COURT OFFICERS

The eight Court officers of the Pueblo shall receive compensation for their services as follows: Governor per annum, each of the remaining seven officers per annum.

SECTION 9. LAW FOR PASTURING SHEEP

The sheep herds [shepherds] of 1000 or more shall pay \$2.00 per day for pasturing within the limits of cultivated fields; herds of 500, \$1.00; herds of 100, .50 cents [*sic*]; provided, That he shall have the right to bring his sheep through the limits of cultivated fields over certain designated lines for the purpose of dipping and shearing, first notifying the proper official of the time he intends to drive his flock in.

SECTION 10. OFFICERS ABSENT LIABLE TO FINE

That in any case where a court officer is absent from a regular meeting, or a special meeting when properly notified and his reasons therefore are not considered justifiable, in the opinion of the court, he shall be fined the usual fee of .50 cents [*sic*] for such absence.

SECTION 11. COURT FEE OF .50 CENTS [*sic*] TO BE PAID

That both the plaintiff and defendant shall each pay a fee of .50 cents [*sic*] for each and all cases which they may bring [to] the court for action.

SECTION 12. PUEBLO, ONLY, TO MAKE AMENDMENTS

That no amendments or changes shall be made in these by-laws, constitution of laws, except by a decision of the general Pueblo.

SECTION 13. IN FULL FORCE JAN. 1, 1908. ALL OTHER WRITTEN  
LAWS NULL AND VOID

That the foregoing Laws, By-laws and Constitution shall be in full force and effect on and after January 1, 1908, and that after this date all other written laws and regulations of the Pueblo of Laguna, not embodied in the foregoing, shall be declared null and void.

SECTION 14. APPROVED BY THE GENERAL PUEBLO

That the above Laws, By-laws and Constitution were approved unanimously by the general Pueblo in a meeting convened for that purpose on December 21, 1907.

Signed by the Officers of the Pueblo as follows:

<i>/s/ William Paisano</i>	<i>Governor</i>
<i>/s/ John M. Chavez</i>	<i>1st Lt. Governor</i>
<i>/s/ Hill Kie/ his x mark</i>	<i>2nd Lt. Governor</i>
<i>/s/ Vicenti Alonzo/ his x mark</i>	<i>Fiscal</i>
<i>/s/ Jose Ross</i>	<i>1st Lt. Fiscal</i>
<i>/s/ Santiago Chermia</i>	<i>2nd Lt. Fiscal</i>
<i>/s/ Ulysses G. Paisano</i>	<i>Secretary</i>
<i>/s/ Frank Paisano</i>	<i>Interpreter</i>

*Witnesses:*

*/s/ Robert W. Cassady*

*/s/ W. G. Marmon*

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*Right of Indians to Nominate  
Their Agent or Superintendent  
(All Tribes, 1912)*

By the early 1900s, so many American Indians and “friends of Indians” had lodged complaints to federal officials about the poor economic, cultural, and political environment on reservations that, in 1912, a movement was begun to address the Indians’ lack of political voice in their own affairs. Exactly why Rep. John Stephens of Texas introduced H.R. 25242 in 1912, “a bill conferring upon tribes or bands of Indians the right of nomination of their agent or superintendent, to inspire them to interest themselves in their own affairs, and for other purposes,” is not known. Deloria and Lytle suggest that whether the bill was “simply to put the bureau (of Indian Affairs) on notice that Congress was watching it or whether he actually believed that his bill would resolve the question of arbitrary action by the agents, the corpus of this proposal was radically different from anything previously proposed for the reservations” (1984, 32).

The bill was radical because, for at least the previous four decades, while tribal nations had done a remarkable job maintaining a measure of self-governance, they had virtually no voice in deciding who the federal agent or superintendent would be that they had to deal with on a daily basis. Moreover, since the local agent and the agency’s superintendent had enormous discretionary authority over virtually every matter affecting reservation resources and residents, this early effort to accord Indians some choice in the selection of their own agent was a potentially revolutionary change.



The bill specified that, when 20 percent of the adult Indians made a proper petition to the current agent or superintendent, he was instructed to help create an election board so that the Indians could elect another individual. The proposal to choose another person, however, had to be approved by two-thirds of the Indians voting. Once the election results were certified, the secretary of interior was then obliged to act upon the tribal members' request. The Indians, by a similar voting procedure, could also prevent the transfer or dismissal of an agent.

Of course, the Indians' self-governing authority was constrained in at least two ways: First, the secretary of interior could refuse any nominee deemed "unfit" by reason of "intemperance, immorality, or lack of qualification," and second, the only tribes eligible for this bill's provisions were those considered "so far progressed in civilization as to be competent of organization in conformity with this act."

Despite these important caveats, this was a pathbreaking legislative proposal because, had it succeeded, it would have recognized a far greater degree of native self-determination not heretofore acknowledged for nearly half a century. Although hearings were held on the bill, it was not adopted. In part, the defeat can be attributed to the radical testimony of Martin J. Bentley, who called for an even greater degree of Indian autonomy from the Bureau of Indian Affairs.

This effort was reprised in 1916, when Senator Edwin Johnson of South Dakota introduced a similar bill, S. 3904, that would have conferred upon Indian nations the right to nominate their agent or superintendent and was introduced "to inspire them to interest themselves in their own affairs." Johnson insisted that he was motivated by the "democratic and American" principle that those governed deserved "the fullest consistent voice in the management and control of their own affairs." Nonetheless, this proposal also echoed the paternalistic tone of the earlier measure because the secretary of interior was again vested with the authority to reject the individuals whom the Indians selected.

This bill, while well intended, shows that Congress did not comprehend the depth of Indian discontent and frustration over the arbitrary and often draconian actions of Indian agents and superintendents, who frequently violated the Indians' cultural, religious, and political rights. Assuming the problem was the misuse of tribal funds and properties, Congress emphasized that improving the "management" of tribal affairs by giving Indians a choice of agents would rectify the situation. This measure also failed of enactment, however, and a real opportunity for the federal government to substantively improve its relationship with native nations and to recognize in them a degree of political sovereignty was shunted aside.

U.S. Congress. House. Hearings on H.R. 25242, Right of Indians to Nominate Their Agent, 62nd Cong., 2nd sess. (1912).

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## **Right of Indians to Nominate Their Agent (H.R. 25242)**

June 21, 1912.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter it shall be lawful for any tribe or band of Indians under the jurisdiction of any separate agency maintained for the benefit of any such tribes, bands, or where several tribes or bands under jurisdiction of any one agency may desire to act collectively, to indicate to the Secretary of the Interior by a two-thirds vote of the adult members thereof their choice and selection and nomination of their agent or superintendent, as the case may be; and it shall be the duty of the Secretary of the Interior to, in compliance therewith, appoint and designate such agent or superintendent so selected or nominated: Provided, That such selection may be made at any time after the expiration of sixty days from the passage of this act, and the person so selected, nominated or elected by any such tribe, tribes, band or bands, shall be a citizen of the United States above the age of twenty-eight years old who shall be acquainted with agriculture and who shall have resided with the State and have been engaged in agriculture not less than five years; provided further, That any such officer, agent, or superintendent shall not be removed from office except for good and sufficient cause and also by and with the consent of a majority of the adult voters of any such tribe or tribes, band or bands; that any such agent or superintendent so appointed shall submit to the Senate and House of Representatives on or before the first day of November of each year a report in which he shall set out in detail the increased or decreased acreage of the Indian lands under his jurisdiction and the amount of timber cut and sold therefrom, and the habits and educational progress, the number of Indian children in school, including a census of the resident Indians and non-resident Indians under his jurisdiction, giving the number of births and deaths and a general account of the progress of said Indians, including a schedule showing the names and numbers of employees, how employed, salary paid each and whether from tribal or public funds. Such agent or superintendent shall be paid the same compensation and in the same manner as now provided by law, except that no such agent or superintendent shall receive a salary in excess of one thousand eight hundred dollars per annum.

Section 2. That the Secretary of the Interior shall authorize the appointment or employment of such clerks, farmers, and such other employees as now authorized by law and which, in his opinion, are necessary at any agency or superintendency, and such agent or superintendent making such appointments shall be

responsible to the Department of the Interior for the efficiency and character of such employee so appointed by him: Provided, That no person so employed or appointed shall be related by blood or marriage to such agent or superintendent, and shall not act as the personal or family servant of such agent or superintendent; Provided further, That when competent to fill any position contemplated by this act persons of Indian blood shall be given the preference. Should any tribe, tribes, band or bands nominate or elect any persons who, by reason of intemperance, immorality, or lack of qualification to fill the position of agent or superintendent as contemplated by this act is deemed unfit for such position, the Secretary of Interior may refuse to appoint such persons, and any such tribe, tribes, band or bands may immediately thereafter, or as soon as convenient to them, proceed in like manner to make another nomination or election.

Section 3. That prior to the first election any such tribe, tribes, band or bands shall convene in mass assembly, after due general notice for a period of not less than two weeks, such notice to be given by the agent or superintendent then in charge, upon petition being filed with him and signed by not less than twenty duly qualified Indian electors: said petition shall indicate the manner of giving such notice, and such assembly shall consist of not less than twenty per centum of all resident electors of any such tribe, tribes, band or bands and shall select or elect a president, secretary, and treasurer from said assembly: and after so forming a permanent organization those assembled shall select three additional persons who shall be qualified electors and designated as electors, and who, in conjunction with the officers so selected, shall constitute an election board, the president of which shall give two weeks' public notice in such manner and form as to bring to general notice the time, place, and manner of holding an election for the purpose of selecting or electing such agent or superintendent; Provided, That the method or manner of election shall be free from fraud or deception and so conducted as to give each and every elector entitled to vote full and free opportunity to exercise such right.

Section 4. That it shall be unlawful for any person seeking the nomination or election to any such agency or superintendency to be present during the time or [*sic*] day of any such election or to go among the electors, after notice of such election has been given, seeking or inducing any such elector, either in person or by proxy; or if he shall give or cause to be given any article or thing of value, directly, or indirectly, or by any means whatever, to secure the vote of any such Indian [he] shall be disqualified for appointment.

Section 5. That the result of any such election shall be certified to the Secretary of the Interior by a certificate signed by the president and attested by the secretary of such election board, including in such certificate the number of electors, male and female, the name of the tribe, tribes, band or bands if they shall have acted either collectively or separately at such election. The confirmation or rejection of any such agent or superintendent so elected or nominated shall be made by the Secretary of the Interior within the period of twenty days of the receipt of such certificate of election or nomination; Provided, That such certificate shall be transmitted by registered mail.

Section 6. That the agent or superintendent, when elected or nominated and confirmed as contemplated by this act, shall give bond in manner and form as

now provided by law. Immediately following the approval of the bond of any such agent or superintendent, the Secretary of the Interior is directed to cause to be placed to his official credit or to be paid to him by warrant the sum of three hundred dollars out of any money in the Treasury to the credit of any such tribe, tribes, band or bands, which sum shall be used to defray the expenses of any such election when duly certified to such agent or superintendent by the secretary of such election board as herein provided. Such amount so paid by such superintendent shall be included in the annual report of the agent or superintendent.

Section 7. That the existence of the election board as contemplated by this act shall be continuous, and if any vacancy shall occur between elections, such vacancy shall remain until the next election, when a successor shall be voted for and such vacancy may be so filled; Provided, That should the office of treasurer, president, or secretary become vacant, such vacancy may be filled by a majority vote of the remaining members. The election board shall, when convenient, be provided with a room, a desk, a table, and eight chairs at any such agency or superintendency; and for purposes for other than election board the members shall constitute and be known and designated as a business committee. All matters of heirship affecting the rights of any member of such tribe, tribes, band or bands shall be submitted by such agent or superintendent to said board for opinion and determination, and the findings of said board shall be duly certified to the Secretary of the Interior by such agent or superintendent.

Section 8. That hereafter it shall be unlawful to authorize the uses of funds of any tribe, tribes, band or bands under the jurisdiction of any such elected agent or superintendent as contemplated by this act, until such proposed expenditure shall have been submitted to the business committee, who may make such report to the agent or superintendent as may be deemed by them expedient, either approving or rejecting such proposal. Such report shall be in duplicate, one copy to be forwarded to the Secretary of the Interior by such agent or superintendent, and the other copy shall be incorporated in and made a part of the annual report of such agent or superintendent.

Section 9. That for the protection of full-blood Indians, or others under disability, any allottee hereafter under such agent or superintendent who is a full-blood Indian, or by the agent deemed to be an incompetent Indian, may lease his allotment, subject to the approval of such agent or superintendent, for any period not exceeding five years either for cash or crop rent: in either event such crop or cash rent is to be in conformity with the prices, customs, and usages in the rental of land general in the locality.

That any allottee hereafter within the incompetent or full-blood class, or who is one-half Indian blood, may lease as now provided by law except as to crop rent, and with the modification that any such lease shall be approved by such agent or superintendent, by and with the advice and consent of the business committee. That any person who is of one-fourth Indian blood, or less, shall, at his option, have the full control and management of his allotment with respect to leasing and in all other respects than that the title to his allotment shall remain as now provided by law. That any such allottee who may exercise his right of option to control and manage his own allotment shall be paid upon application any funds to his credit now in the Treasury of the United States,

and he shall hereafter in no respect be under the care, control, or jurisdiction of the Interior Department more than any other citizen of the United States.

Section 10. That any person who is of half Indian blood may lease his allotment for any period not exceeding one year at his own option, or if for a longer period than one year, not exceeding five years, such lease shall be approved by the agent or superintendent: Provided, That any such lease shall be free from fraud and for an equitable consideration.

The parent or next of kin having the care and custody of any minor allottee may lease his allotment, for any period not exceeding five years, or his minority, with the approval of any such agent or superintendent, and cared for as other Indian moneys are now cared for under existing law, except that such agent or superintendent may pay to such natural guardian such sums and at such times as will in his discretion best promote the interests of such minor or orphan ward.

Section 11. That all individual moneys now to the credit of any individual allottee under the jurisdiction of any such agent or superintendent shall be turned over to his successor or retained by him if elected, and such sums shall be cared for as now provided by law, except that such agent, by and with the approval of the business committee, shall pay to such individuals either all or in part, such sum or sums as may be due them and as it may be deemed will best serve their interests.

Section 12. That this act shall not apply to the Five Civilized Tribes of Oklahoma or to the Apache band in such state, and for the purposes of this act the Kiowa and Comanche Indians shall elect an election board as herein provided, as shall also the Caddo, Wichita, and Delaware Indians within and under the jurisdiction of the Anadarko Agency, Oklahoma.

Section 13. That for the purpose of this act the Kaw and Osage Indians may organize as one tribe, and two members of the election board herein contemplated shall be Kaw Indians. No provision of this act shall be construed as extending any agency or superintendency, or as limiting the operation of existing law as to the rights and authority of the Secretary of the Interior to terminate any existing Indian school or superintendency within the meaning of this act.

Section 14. That it is further provided that any tribe or band of Indians coming within the meaning of this act shall not be entitled to its benefits unless they have so far progressed in civilization as to be competent of organization in conformity with this act and with ordinary preliminary practices in the perfection and maintenance of their organization as herein contemplated.

Section 15. That there be and is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty-five thousand dollars, to be used in the discretion of the Secretary of the Interior in carrying this act into effect, and for the payment of not to exceed the sum of one thousand dollars at any one agency or superintendency in payment for counsel when requested by said business committee, to be used in the investigation by such committee of the accounts of any outgoing agent or superintendent as may be deemed expedient by said committee.

Section 16. That this act shall be of full force and effect from and after the date of its approval.

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*Rules and Regulations for  
Annette Islands Reserve,  
Alaska (Tsimshian People,  
Metlakahtla, Alaska, 1915)*

The Tsimshian, meaning “inside the Skeena River,” were originally from northwestern British Columbia, where they lived in autonomous villages and maintained separate summer and winter homes. There they fished, hunted, and traded with other native peoples and, beginning in the 1830s, had economic dealings with the Hudson’s Bay Company.

Their lives and culture were profoundly altered in the 1850s, when an Anglican missionary, William Duncan, arrived and began efforts to convert and assimilate them. After mastering the Tsimshian language, Duncan and his small group of native converts proceeded in 1862 to relocate about fifteen miles south and there established a Christian colony called Metlakahtla (later dubbed Old Metlakahtla).

Duncan drafted a set of “rules of Metlakahtla,” which aimed at both fostering collective responsibility and reshaping Tsimshian behavior according to Anglo-Western sensibilities. All Tsimshian who wanted to live in the colony had to subscribe to the regulations Duncan had laid down:

1. To give up sorcery.
2. To cease calling in sorcerers when sick.
3. To cease gambling.
4. To cease giving away property for display.
5. To cease painting their faces.
6. To cease drinking intoxicating liquors.
7. To observe the Sabbath.
8. To attend religious instruction.
9. To send their children to school.
10. To be cleanly.
11. To be industrious.
12. To be peaceful.
13. To be liberal and honest in trade.
14. To build neat houses.
15. To pay the village tax (U.S. Senate. Survey of Conditions, pt. 35 (1939), 18564.

The colony grew, but it was also beset by religious factionalism. Indeed, even Duncan was accused of heresy by his own bishop. These incidents compelled Duncan and the Tsimshian (more than eight hundred by this point) to relocate again—in 1887—this time to Annette

Island in Alaska, just south of Ketchikan. This land had been set aside for Duncan and the Tsimshian by President Grover Cleveland, whom Duncan had lobbied directly. This area became known as New Metlakahtla.

Duncan envisioned this new colony as completely democratic, communalistic, and virtually utopian. Residents and those aspiring to join had to formally reaffirm their abandonment of traditional Tsimshian life and agree to strictly adhere to Duncan's idealistic principles. Also established was a form of self-government titled the "declaration of rights," which was written by Duncan and Judge Thomas N. Strong, a legal advisor from Portland, Oregon:

We, the people of Metlakahtla, Alaska, in order to secure to ourselves and our posterity the blessings of a Christian home, do severally subscribe to the following rules for the regulation of our conduct and town affairs:

- (1) To reverence the Sabbath and to refrain from all unnecessary secular work on that day; to attend divine worship; to take the Bible for our rule of faith; to regard all true Christians as our brethren, and to be truthful, honest, and industrious.
- (2) To be faithful and loyal to the Government and laws of the United States.
- (3) To render our votes when called upon for the election of the town council, and to promptly obey the bylaws and orders imposed by the said council.
- (4) To attend to the education of our children and keep them at school as regularly as possible.
- (5) To totally abstain from all intoxicants and gambling and never attend heathen festivities or countenance heathen customs in surrounding villages.
- (6) To strictly carry out all sanitary regulations necessary for the health of the town.
- (7) To identify ourselves with the progress of the settlement and to utilize the land we hold.
- (8) Never to alienate—give away—or sell our land, or building lots, or any portion thereof, to any person or persons who have not subscribed to these rules. (*ibid.*, 18567)

On March 3, 1891, the U.S. Congress formally established Annette Island as a reservation for Duncan, the Tsimshian, and others (26 Stat. 1101). Duncan dominated virtually every sphere of life within the colony. However, in 1898 Edward Marsden, a Tsimshian and an ordained minister, settled close by and began challenging Duncan's leadership by heading a group of Tsimshian who demanded greater autonomy.

Still, Duncan's influence was heavy, particularly in connection with economic pursuits. As evidence, in 1907 Congress enacted a law that conferred specific civil rights on the Metlakahtla people, including the right "to receive and obtain licenses as masters, pilots, and engineers, as the case may be, of any and all steamboats and other craft."

The conflict between Marsden and Duncan continued to fester, and in 1915 Marsden convinced Secretary of Interior Franklin Lane to adopt a new set of rules and regulations that essentially established a city-council type of government to regulate the community. This set of regulations effectively replaced the 1887 “declaration of rights” while maintaining a strong commitment to economic self-sufficiency.

Dunn, John, and Arnold Booth. “Tsimshian of Metlakatla, Alaska.” In *Handbook of North American Indians*, vol. 7, gen. ed. William C. Sturtevant (Washington, D.C.: Smithsonian Institution, 1990): 294–97.

Hosmer, Brian C. *American Indians in the Marketplace: Persistence and Innovation among the Menominees and Metlakatlans, 1870–1920* (Lawrence: University Press of Kansas, 1999).

U.S. Department of the Interior. “Rules and Regulations for Annette Islands Reserve” (Washington, D.C.: GPO, 1915).

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## Rules and Regulations for Annette Islands Reserve

Order of the Secretary.  
Department of the Interior,  
Washington, January 28, 1915.

Under the provisions of the act of March 3, 1891, the following rules and regulations are hereby prescribed for the occupancy and use of the Annette Islands Reserve, Alaska.

*Franklin K. Lane,*  
*Secretary.*

### *Rules and Regulations*

#### ARTICLE I.—OCCUPANCY

Section 1. By the act of March 3, 1891, the United States Congress set apart the body of lands known as Annette Islands for use and occupancy by the Metlakahtla Indians and such other persons as come within the purview of the act.

#### ARTICLE II.—LOCAL GOVERNMENT

Section 1. The local government of the Annette Islands Reserve shall be vested in a council consisting of 12 members, all of whom shall be members of the Annette Islands Reserve.



Section 2. The officials of the Annette Islands Reserve shall be a mayor, a secretary, and a treasurer.

Section 3. The members of the council and the officials of the Annette Islands Reserve shall be elected by ballot, printed or written, on the Tuesday last preceding December 25 in each year, at which election all male members of the Annette Islands Reserve above the age of 21, and not in arrears for nonpayment of taxes, fines, or fee for a permit to occupy a lot or tract of land, shall have the right to vote.

At each election, after the first held under these rules and regulations, each male voter may be required to present his receipt for taxes, fines, or fee for a permit to occupy a lot or tract of land, as evidence that he is entitled to vote.

Only male members of the Annette Islands Reserve above the age of 21, not in arrears for nonpayment of taxes, fines, or fees, shall be eligible for election to any office or to membership in the council.

The secretary shall, within three days after each election, report the names of the members of the council and the officials elected to the person in charge of the work of the Bureau of Education at Metlakahtla, who shall send these names to the Commissioner of Education through the district superintendent of schools and the Chief of the Alaska Division of the Bureau of Education.

Section 4. The members of the council and the officials elected shall enter upon their duties on the first Monday in January.

Section 5. The members of the council shall hold office for two years: Provided, That at the first meeting of the council elected under these rules and regulations the members shall be divided by lot into two classes of six members each, one class to serve for one year and the other class to serve for two years; at each annual election, after the first under these rules and regulations, there shall be elected six members of the council to serve for two years, or until their successors have duly qualified.

The mayor, the secretary, and the treasurer shall hold office for two years, or until their successors have duly qualified.

Section 6. At the first meeting of the council in January the members shall elect from their own number one person to be chairman of the council in the absence of the mayor. Such chairman shall assume all the duties of the mayor when the mayor is absent from the reserve. In signing official papers in the absence of the mayor the chairman shall use the title "Acting mayor."

Section 7. The council shall have regular monthly meetings, except during any period of the year when it would prove a hardship on the members of the council to leave their personal labors in order to attend such meetings. At such times the executive committee, provided for by Article V, Section 1, of these rules and regulations, shall carry on the work of the council and report its action at the first regular meeting of the council thereafter.

Section 8. All regular meetings of the council shall be open to the public, but no one not having a seat in the council shall be permitted to discuss matters before the council, except by permission or upon the invitation of the council. As far as possible, the council shall transact its business in the English language. Seven members of the council shall constitute a quorum.

ARTICLE III.—THE POWERS OF THE COUNCIL

Section 1. The council shall have power to pass such ordinances for the local government of the Annette Islands Reserve as shall not be in conflict with the laws of the United States, the laws of the Territory of Alaska, or the rules and regulations prescribed by the Secretary of the Interior for the Annette Islands Reserve.

A copy of each ordinance passed by the council and certified by the signature of the mayor or of the acting mayor shall, within three days after its passage, be handed by the secretary to the person in charge of the work of the Bureau of Education at Metlakahtla, who shall promptly forward the same to the Commissioner of Education, through the district superintendent of schools and the Chief of the Alaska Division.

Section 2. The council is authorized to levy an annual tax of three dollars (\$3), or of such a sum as it may deem necessary, not exceeding three dollars (\$3), upon each able-bodied male member of the Annette Islands Reserve between the ages of 21 and 60, said tax to be collected by the secretary and expended for public purposes, as the council shall direct. The council may, by a two-thirds vote of its membership, remit the annual tax of any individual who because of continued sickness, poverty, or physical or mental disability is unable to pay said tax.

Section 3. The council shall have authority to direct, by its ordinance, that every able-bodied male resident of Annette Islands Reserve shall perform, without remuneration, in each calendar year not more than two days' labor, of eight hours each, on the streets, roads, wharves, public buildings, or other public improvements within the Annette Islands Reserve undertaken by order of the council.

The secretary shall keep a record of the labor thus performed, showing the dates, the number of hours, and the character of the service rendered by each person.

Section 4. By the vote of a majority of its membership, the council shall have power to impose upon any violator of an ordinance passed by the council such a fine as may be deemed just, not exceeding ten dollars (\$10) for each offense.

In each case, before the council proceeds to vote thereon, the person accused of such violation shall be given opportunity to appear before the council and make any statement that he or she may wish to make.

The secretary shall, within three days after such a fine has been imposed by the council, hand to the person upon whom the fine has been imposed written notification thereof, countersigned by the mayor or by the acting mayor, setting forth the amount of the fine and the reasons for which it has been imposed.

Fines thus imposed shall be collected by the secretary and by him deposited with the treasurer, to be expended at the direction of the council as other funds are expended.

Whenever a fine [that] has been thus imposed remains unpaid for a period of four weeks from and including the day upon which notification thereof was received by the delinquent, the council, by the vote of a majority of its membership, may, in lieu of the payment of the fine, require the delinquent to labor not more than ten (10) days on the streets or other public works of the reserve.

The expenses in connection with such sentence shall be paid from funds under the control of the council.

Section 5. The council shall direct the secretary to draw warrants on the treasurer in payment of all valid claims against funds subject to its control. All such warrants shall be signed by the mayor or by the acting mayor.

Section 6. The council may issue to members of the Annette Islands Reserve permits to occupy land within said reserve, and it may cancel such permits, as provided in Article VII, section 1, of these rules and regulations.

Section 7. At the first meeting of the council in each year the council shall elect an auditing committee of three members and a public health committee of three members. From time to time, as the council may deem necessary, it may constitute other committees and define their duties. All committees elected under these rules and regulations shall serve without remuneration.

The secretary shall, within three days after their election, report the names of persons elected to membership in committees to the person in charge of the work of the Bureau of Education at Metlakahtla, for transmission to the Commissioner of Education.

Section 8. The council shall have authority to employ such a number of competent persons as constables as it may deem necessary in order to enforce its ordinances, to define their duties and to fix their remuneration, if any. The constables shall be under the immediate control of the mayor or of the acting mayor, subject to the instructions of the council.

Section 9. The council may create such additional offices, not in conflict with these rules and regulations, as it may deem necessary for the effective administration of the local government, provide for the filling of such offices, define the duties of the same, and fix the amount of remuneration, if any.

Section 10. The council shall prescribe rules regarding the place and conditions of the annual election. Notices of said election shall be posted in three or more public places in the reserve at least 10 days prior to such election.

Section 11. The council may by the vote of three-fourths of its entire membership remove the mayor, secretary, treasurer, or other official, upon sufficient evidence that he is unworthy to hold office; and the council may, by the vote of three-fourths of its entire membership, expel a member of the council.

Section 12. When a vacancy occurs in the membership of the council or in any office, the council may, until the time of the next annual election temporarily fill such vacancy by a two-thirds vote of its membership, and provide for the induction into office of the person so elected.

Section 13. The council shall provide for at least two mass meetings annually of the members of the reserve. Public questions may be discussed at these meetings and the secretary of the council shall take note of any petition made on these occasions and preserve it among the official records of Annette Islands Reserve.

#### ARTICLE IV.—THE DUTIES OF OFFICIALS

Section 1. The mayor shall be the executive head of the Annette Islands Reserve. He shall preside at the meetings of the council, but he shall not vote except in case of a tie vote in that body, when he shall cast the deciding vote.

Section 2. The mayor shall call a special meeting of the council whenever he deems such procedure necessary, or when he is requested, in writing, to call such meeting by five or more members of the council. He shall notify each member of the council, the secretary, the treasurer, and the person in charge of the local work of the United States Bureau of Education, either by special messenger, or through the United States mail, of the time and place of such meeting.

Section 3. The mayor shall sign all warrants drawn by order of the council on the treasurer.

Section 4. The mayor shall be chairman of the executive committee, hereinafter provided for, and he shall call a meeting of this committee at least once a month for the consideration of questions relative to the welfare of the community.

Section 5. The mayor shall have immediate control of the constables.

Section 6. The secretary shall keep the minutes of all proceedings of the council; he shall attend to the official correspondence of the council, he shall be the custodian of all the official documents of the Annette Islands Reserve.

Section 7. The secretary shall collect, without commission, and receipt for all taxes, fines, and fees levied by the council, and shall deposit said payments with the treasurer, taking proper receipt therefore.

Section 8. The secretary shall prepare for the signature of the mayor all warrants on the treasurer as ordered by the council.

Section 9. The secretary shall be custodian of all public buildings and property on Annette Islands Reserve not under the direct supervision of the United States Bureau of Education.

Section 10. The secretary shall keep a record of the births and deaths on the Annette Islands Reserve, and shall report these vital statistics every month to the resident representative in charge of the work of the United States Bureau of Education.

Section 11. The secretary shall be a member, ex officio, of the executive committee; he shall keep a record of its proceedings, and shall present all recommendations of this committee to the council when it convenes.

Section 12. The secretary shall post a copy of every ordinance passed by the council before it becomes operative in at least three public places on the reserve, and a fourth copy he shall, within three days after its passage, hand to the person in charge of the work of the United States Bureau of Education at Metlakahtla.

Section 13. The secretary shall receive a salary of ten dollars (\$10) per annum, which shall be paid upon a warrant ordered by the council.

Section 14. The secretary shall give bond to the United States, as the next friend of the people of Annette Islands Reserve, to be held by the Secretary of the Interior, in such sum as the Secretary of the Interior may direct, for the faithful performance of all his official duties. The annual premium on the bond of the secretary shall be paid from funds under the control of the council.

Section 15. The treasurer shall receive from the secretary all moneys collected by him, rendering proper receipt therefore.

Section 16. The treasurer shall pay out money only upon warrants drawn upon him by the secretary and countersigned by the mayor, or by the acting mayor. All warrants paid shall be preserved in his official files.

Section 17. The treasurer shall keep in a book which shall at all times be open to the inspection of the mayor, the secretary, the auditing committee, and the representatives of the United States Bureau of Education, a correct amount of all moneys received and paid out by him.

Section 18. The treasurer shall be, ex officio, a member of the executive committee.

Section 19. The treasurer shall make an annual report to the council at the last meeting in December, giving a full account of all receipts and disbursements for the year.

Section 20. The treasurer shall receive for his services ten dollars (\$10) per year, which shall be paid upon a warrant ordered by the council.

Section 21. The treasurer shall give bond to the United States, as the next friend of the people of Annette Islands Reserve, to be held by the Secretary of the Interior, in such sum as the Secretary of the Interior may direct, for the faithful disbursement of all moneys which may come into his hands by virtue of his office and for the faithful performance of all his official duties. The annual premium on the bond of the treasurer shall be paid from the funds under the control of the council.

#### ARTICLE V.—THE DUTIES OF COMMITTEES

Section 1. The executive committee shall be composed of the mayor, who shall be ex officio, its chairman, the secretary, the treasurer, and the person in charge of the local work of the United States Bureau of Education. The executive committee shall meet at least once a month. Meetings may be called at any time either by the mayor or the local representative of the United States Bureau of Education.

Section 2. It shall be the duty of the executive committee to make recommendations to the council regarding ways and means of bettering the conditions of the community. The secretary shall keep a record of the proceedings of the committee and shall report its recommendations to the council.

Section 3. In the absence of a majority of the members of the council from the reserve, the executive committee shall carry on the work of the council and shall report its actions in full to the council at its next meeting: Provided, That the executive committee shall have no power to levy taxes or fines, or to repeal any ordinance passed by the council.

Section 4. The council may add to the duties of the executive committee from time to time.

Section 5. It shall be the duty of the auditing committee, elected as provided in Article III, section 7, of these rules and regulations, to audit all claims against funds controlled by the council and to report upon the same to the council at the next meeting of that body. This committee shall audit the accounts of the treasurer and make a report

Section 6. It shall be the duty of the public health committee, elected as provided in Article III, section 7, of these rules and regulations, to assist the secretary in collecting and preserving the vital statistics, to assist the local representative of the United States Bureau of Education, who is a Territorial

health officer, in maintaining sanitary conditions throughout Annette Islands Reserve and enforcing quarantine regulations.

#### ARTICLE VI.—MEMBERSHIP

Section 1. The act of March 3, 1891, reserves Annette Islands for the use of Metlakahtlans who emigrated from British Columbia and such other Alaskan natives as may join them. Membership in the Annette Islands Reserve is therefore restricted to such persons as come within the purview of said act.

Section 2. Before exercising the right to vote for members of the council or otherwise to participate in the government of the Annette Islands Reserve, natives of Metlakahtla now 21 years old or over, all minors coming of age, and all other natives of Alaska who may be admitted to membership in the Annette Islands Reserve by vote of the council, as hereinafter provided, shall subscribe to the following declaration:

### Declaration

We the people of Annette Islands Reserve, Alaska, do severally subscribe to the following principles of good citizenship:

1. To be faithful and loyal to the Government of the United States of America.
2. To be loyal to the local government of our community, to obey its ordinances and regulations, and to obey the laws of the Territory of Alaska and the laws of the United States.
3. To cooperate earnestly in all endeavors for the education of our children, for the advancement of the community, and for the suppression of all forms of vice.

Section 3. All minor children of present or former members of the Annette Islands Reserve shall be considered members of the reserve until they reach their majority, at which time, in order to continue their membership, they must sign the declaration, as provided in paragraph 3 of section 4 of this article.

Section 4. A native of Alaska of indigenous race, over 21 years of age, residing outside of the Annette Islands Reserve, hereafter desiring to become a member of the Annette Islands Reserve, shall proceed as follows:

1. Make application in writing to the council of the Annette Islands Reserve, at Metlakahtla, Alaska, for admission to membership in the reserve.
2. If the council approves the application, by a vote of three-fourths of its entire membership, the application shall come before a mass meeting of the members of the reserve, upon proper notice of the time and place of such meeting.
3. In the presence of the mayor, council, and the citizens of the reserve, the declaration in section 2 of this article shall be read to the applicant, and he or she shall sign a copy of the declaration before two witnesses.
4. After the declaration has been duly signed and witnessed the mayor shall declare the applicant a member of the Annette Islands Reserve.

5. Minor children of persons so admitted shall be members of the reserve, but upon attaining their majority they shall, in order to continue their membership, proceed as set forth in paragraph 3 of section 4 of this article.

Section 5. Continuous absence from the Annette Islands Reserve for two years or longer shall constitute forfeiture of membership in the reserve. The permit to occupy land held by any person whose membership shall so lapse may be canceled by the council, as provided in Article VII, sections 1 and 6, of these rules and regulations. Such persons may be readmitted to membership in the reserve, as provided in section 4 of this article.

#### ARTICLE VII.—OCCUPANCY OF LAND

Section 1. The council, at any of its regular monthly meetings, shall be authorized to issue to any member of the Annette Islands Reserve unprovided with a parcel of land in the town of Metlakahtla the following permit:

Permit No. \_\_\_\_\_.

Metlakahtla, Alaska, (Date)

This certifies that \_\_\_\_\_, of Metlakahtla is authorized to enter upon and occupy that tract or parcel of land in Metlakahtla, on Annette Island, in the Territory of Alaska, according to the adopted plat thereof, and measuring \_\_\_\_\_ feet by \_\_\_\_\_ feet.

This permit shall be the evidence thereof, except it be before by us canceled upon our register by a two-thirds vote of the membership of the council for abandonment or for other reason deemed by the council to be good and sufficient, or except it be before by us canceled upon the request of the person to whom it has been issued.

Done by our order, under our seal, the day and year first above written.

The Town and Associated Community of Metlakahtla, . . .

Section 2. The council is authorized to issue similar permits for the occupancy and use of such tracts of land, other than mineral land, on Annette Islands as are cultivable to any member of the community who may be willing to clear and cultivate the same; not more than 10 acres of such land shall be assigned to any one person.

A description of each parcel of land thus assigned shall be made by the person in charge of the work of the Bureau of Education on Annette Islands, and the description of each tract of land assigned shall in each case be written out in full in the permit covering its assignment.

Section 3. A fee of five dollars (\$5) shall be paid by each member of the Annette Islands Reserve hereafter receiving, under these rules and regulations, a permit to occupy land, other than mineral, within the reserve. Such fees shall be collected by the secretary and by him deposited with the treasurer, to be expended for public purposes, as the council may direct.

Section 4. Every permit to occupy a lot within the town of Metlakahtla or to occupy a tract of land within Annette Islands Reserve issued under these rules and regulations shall be made in triplicate. The original permit shall be held by the person to whom it has been issued; the duplicate copy shall be preserved by the secretary in the official records of the Annette Islands

Reserve; the triplicate copy shall be sent by the secretary to the Commissioner of Education.

Section 5. All permits to occupy land within the Annette Islands Reserve in force at the date of the approval of these rules and regulations are recognized as of equal validity with those issued hereafter under section 1 of this article. An official record of such permits shall be made and preserved by the secretary, and a list certified by the mayor, stating the names of the persons holding such permits, the dates of the permits, and the number of the lot in the town of Metlakahtla covered by each permit, shall be sent by the secretary to the Commissioner of Education, together with a copy of the adopted plat of the town of Metlakahtla showing the numbers and dimensions of such lots.

Section 6. Should any permit to occupy land within or without the town of Metlakahtla be canceled for abandonment or misdemeanor, as provided in section 1 of this article, the person whose permit is canceled shall receive for improvements upon said allotment such compensation, payable from the funds under the control of the council, as may be fixed by a two-thirds vote of the entire membership of the council. Such improvements for which compensation has thus been made shall be the property of Annette Islands Reserve. The council shall have power by its permit to transfer to another person said allotment with the improvements thereon upon such terms as the council may prescribe. A full and complete record of all such proceedings, certified by the mayor, shall in each and every case be sent by the secretary of the council to the Commissioner of Education.

#### ARTICLE VIII.—SPECIAL PROVISIONS

Section 1. The person in charge of the work of the United States Bureau of Education at Metlakahtla shall have a seat in the council and all the privileges of a member of the council, except that he shall have no vote. He shall have authority to suspend the operation of any ordinance of the council whenever he feels that such action is for the best interests of the reserve, but he shall immediately report his action in the matter, with his reasons therefor, to the district superintendent of schools, who shall refer the matter to the Commissioner of Education for decision, with his recommendation thereon. With the approval of the Secretary of the Interior, the Commissioner of Education may declare null and void any ordinance passed by the council.

Section 2. Members of the Annette Islands Reserve wishing to form companies or corporations in order to conduct commercial enterprises may do so in accordance with the laws of the Territory of Alaska governing such procedure.

Section 3. Should any minerals be found within Annette Islands Reserve, and it is desired to mine and develop the same, the matter should immediately be brought to the attention of the Secretary of the Interior for his instructions thereon.

Section 4. These rules and regulations may be suspended or amended at any time by the Secretary of the Interior.



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*Constitutions of the Rosebud  
Sioux of South Dakota (Rosebud  
People, 1916, 1920, and 1924)*

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People of the Rosebud Sioux community are mainly Sicangu Lakota of the Tetowan or Teton, which means "prairie dwellers." The Rosebud Reservation was one of six carved out of the Great Sioux nation in 1889. The collective Sioux lands had first been demarcated in the 1851 Treaty (11 Stat. 749) between the Sioux people (and other native nations) and the United States and later still in the Fort Laramie Treaty of 1868 (15 Stat. 635). The discovery of gold, George Armstrong Custer's adventurous activities and eventual military defeat at the hands of the Sioux, and shifting federal policy (i.e., allotment and forced assimilation) all coalesced to reduce the land holdings of the Great Sioux Nation, including those of the Rosebud people.

By the early 1900s the Sicangu Lakota had been dealing with loss of lands via allotment and pressures from the local Indian agent intent on inducing the tribe's leadership to function in ways he considered more efficient. Before 1911, the tribe followed traditional leaders and generally adhered to the three-fourths rule first specified in the 1868 treaty, in which article twelve declared that no further land would be ceded unless the adult males approved the cession by a three-fourths majority vote. This principle was generally adhered to in the succeeding general council meetings that brought the entire tribe together to decide on matters that would affect the nation.

According to Biolsi, in 1911 the Rosebud superintendent decided to circumvent the tribal chiefs and the general council by creating a business committee composed of twenty elected members from the local farm districts. Importantly, the superintendent reserved the right to reject any elected Sioux officials he chose to exclude.

This system remained in place until 1916, when a new agency superintendent agreed to support new changes in tribal governance in an effort to create a more representative body and at the same time to impose further restrictions on tribal cultural expressions such as traditional dances. A constitution was then drafted, which, Biolsi states, was probably written by the superintendent, although other commentators suggest it was drafted by a member of the tribe's business committee who appointed a group to draw up a charter. The newly created document established the Rosebud Tribal Council, which consisted of twenty-four male delegates who were elected to two-year terms and came from each of the twenty-four identifiable communities. Only males allottees twenty-one years or older were allowed to vote.

Although the business committee delegates unanimously accepted the constitution, the document was never submitted to the community at large for approval and therefore never generated popular support. The fact that only allotted males were permitted to vote meant that many of the more traditional and still unallotted Indians would have no voice in tribal government. Even without adoption of the constitution, however, the tribal council framework became operational and immediately created tension between the more traditional, chief-led group and the business council supporters. Not surprisingly, the business council had the superintendent's support: "I feel that this instrument marks one of the most important milestones in the foreword progress of the tribe. . . . One of the principal things resulting from it is to very largely do away with the influence of the old self-styled chiefs who are very retrogressive in their influence," he stated.

Four years later, in 1920, an election was held on the reservation to determine whether the tribe was going to revive the general council framework or adopt the 1916 constitutional government. Nearly three-fourths of the voters opted for a general council political structure. A constitution was prepared in 1920, although it is unclear whether it was written by the superintendent or the tribe's members. This constitution, unlike its predecessor, was approved in a tribal-wide referendum.

The charter contained several important modifications: a name change from the Rosebud Tribal Council to the Rosebud General Council; a greatly expanded tribal membership that included not only allotted males but also "all bona fide members"; and provisions for a chairman, vice chairman, and other officials, as well as a board of advisers. The latter was to be composed of chiefs and headmen from the various farm districts.

The 1920 constitution was slightly modified in 1924. When the agency superintendent, James McGregor, reviewed it, he notified the Commissioner of Indian Affairs that "there seems to be a tendency in this new constitution to be wholly independent of Agency officials." This statement was a clear sign that the tribe's federal trustee was concerned about the degree of internal sovereignty the tribe was exercising. This document remained effective until it was replaced in 1933.

Biolsi, Thomas. *Organizing the Lakota: The Political Economy of the New Deal on the Pine Ridge and Rosebud Reservations* (Tucson: University of Arizona Press, 1992).

Clow, Richmond L. "The IRA and the Loss of Tribal Sovereignty: Constitutions on the Rosebud and Pine Ridge Reservations." *Great Plains Quarterly* 7 (Spring 1987): 125–34.

National Archives, RG 75, Central Classified Files, Rosebud, File 38194–16–054 (Mar. 1, 1916); File 101910–1922–054 (Dec. 20, 1920); File 101910–1922–054 (Dec. 5, 1924).

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## Constitution and Bylaws of the Rosebud Tribal Council (1916)

### *Article I*

Section 1. The Rosebud Tribal Council shall consist of duly elected members from the various established camps within the Rosebud reservation, as herein-after specifically named. The members of this council shall be male allottees of the Rosebud tribe not under 25 years of age.

Section 2. The several established camps or communities of the Rosebud reservation shall be entitled to membership in this council as follows:

Rosebud Agency Community,	Agency District,	1 member.
Lake View Day School	" "	1 member.
St. Francis Mission	" "	1 member.
Spring Creek Day School	" "	1 member.
Cut Meat Day School Community,	Cut Meat Dist.	1 member.
Ironwood Day School	" "	1 member.
Upper Cut Meat Day School	" "	1 member.
Lower Cut Meat Day School	" "	1 member.
He Dog's Camp Day School	" "	1 member.
Blackpipe Day School Community,	Blackpipe Dist.	1 member.
Red Leaf Day School	" "	1 member.
Corn Creek Day School	" "	1 member.
Little White River Day School Community,	LWR Dist.	1 member.
Pine Creek Day School	" "	1 member.
Ring Thunder Day School	" "	1 member.
Butte Creek Day School Community,	Butte Creek Dist.	1 member.
Whirlwind Soldier Day School	" "	1 member.
White Thunder Day School	" "	1 member.
Little Crow Day School	" "	1 member.
Big White River Day School Community,	B. W. R. Dist.	1 member.
Bull Creek Day School	" "	1 member.
Milk's Camp Day School Community,	Ponca District.	1 member.
Swift Bear's Camp Day School	" "	1 member.
Okreek Day School Community,	Keya Paha District.	1 member.

Additions to the membership of this council may be made on petition of any community having less than twenty adult male allottees not included in the other community memberships; which petition shall be read and filed at one regular meeting and which may be favorably reported by a majority of all tribal council members at the next regular meeting.

Section 3. An election shall be called in each of the foregoing established communities on the first Saturday of December of each year, for the purpose of electing a tribal member to represent such community for the two years beginning the first of January following. Each male allottee over twenty-one years of age shall be entitled to vote. The candidate receiving a majority of all votes presented at such election shall be declared a duly elected member for the two-year period following.

Section 4. The council shall have the power to establish the boundaries of the several communities, prescribe rules to govern the election of members and decide what members have been duly elected.

## ARTICLE II

Section 1. The official body of the Rosebud tribe shall be known as the "Rosebud Tribal Council," instead of the "Rosebud Business Committee," by which name it has heretofore been known. The present duly elected members of the said Rosebud Business Committee for communities named herein shall continue as duly authorized members of the Rosebud Tribal Council until the next regular election, as prescribed in the forgoing section.

Section 2. The Rosebud Tribal Council shall meet at Rosebud Agency in regular sessions on the second Tuesday of January, April, July, and September of each year. The regular meetings may be called by the superintendent of the Rosebud School, or by the president of the council on petition of five or more members.

Section 3. At the first regular meeting of a newly elected council, the Superintendent of the Rosebud School shall call the council to order and shall preside during the election of the regular officers of each council, which shall consist of a president, vice-president, secretary, and treasurer, to be chosen from duly elected members. The council, with the consent of the superintendent, may elect one of the clerks of the Rosebud Agency office as Recording Secretary, in addition to the regular secretary heretofore named. The president, secretary and recording secretary shall have the power to attest all acts of the council. In the absence of the president, the vice-president shall preside and perform all the duties devolving upon the president.

Section 4. A certificate of election shall be issued for each member of the Rosebud Tribal Council when the report of his election by the community has been approved, to read as follows:

We hereby certify that the report of the election of \_\_\_\_\_ to represent the \_\_\_\_\_ community for the \_\_\_\_\_ district of the Rosebud reservation for the two-year period beginning \_\_\_\_\_ has been considered by the Rosebud Tribal Council in general session assembled and such election approved.

Approved: \_\_\_\_\_

President.

Superintendent. \_\_\_\_\_

Secretary.

I, \_\_\_\_\_, hereby accept election to the Rosebud Tribal Council as set forth in the foregoing certificate and hereby, upon my honor, pledge myself to support the Constitution of the United States, the Constitution of the State of South Dakota, and to abide by the Constitution and by-laws of the Rosebud Tribal Council.

### ARTICLE III

Section 1. Should any community entitled to Council membership fail or refuse to elect a member, the Council may fill the vacancy by designating an allottee from such community, subject to the approval of the superintendent of the Rosebud School, and such member shall have full membership rights. The council, may, on petition from such community, order a special election and when such special election shall have been held and approved by the council, the member formerly elected by the council shall cease to serve and the newly elected member shall take [his] place.

Section 2. The Rosebud Tribal Council shall have the power to fill all vacancies which may occur in its membership, where the time is less than one year. Where the time is more than one year it shall be filled by the election of the community, as heretofore prescribed.

Section 3. The Council shall fill any vacancy occurring in the office of president, vice-president, treasurer, secretary, or recording secretary in the manner heretofore prescribed.

### ARTICLE IV

The purpose for which the Rosebud Tribal Council is organized and maintained is to represent the Rosebud tribe of Sioux Indians in all matters which by law or custom have heretofore developed upon the common council of the tribe or the Rosebud Business Committee. It shall be the purpose of this council to maintain harmonious cooperation with the Secretary of the Interior, the Commissioner of Indian Affairs, and the Superintendent of the Rosebud Agency, to the end that the highest interests of the Rosebud tribe of Sioux Indians may be the best served.

### ARTICLE V

The members of the Rosebud Tribal Council shall be entitled to the following remuneration for attendance on regular and special meetings, to be paid from tribal funds applicable: President, \$2.00 per day; Secretary, \$1.50 per day; all other members, \$1.25 per day, and each member ten cents per mile, one way, for the distance actually and necessarily traveled from his home to Rosebud Agency; provided that this shall apply only in case the Commissioner of Indian Affairs, shall grant the requisite authority for the Superintendent of the Rosebud Agency to pay such salaries and mileage.

ARTICLE VI

Section 1. Each member of the Rosebud Tribal Council shall pay into the treasury a membership fee of \$1.00 at the beginning of each year, to be used in payment of printing and other incidental expenses ordered by the Council, not to include salaries and traveling expenses provided for in the foregoing section.

Section 2. The treasurer shall keep careful record of all moneys received and paid out and he shall keep all moneys on hand deposited in the Agency safe for safekeeping.

Section 3. No funds shall be paid out by the Treasurer except as duly ordered by the Council.

ARTICLE VII

A quorum of not less than one-half the full membership shall be necessary to perfect the organization of the Council and to pass resolutions having for their purpose the expenditure of tribal moneys or fixing the rights of tribal members. For all other purposes no quorum shall be required.

ARTICLE IX

Section 1. No persons shall be eligible to membership in the Rosebud tribal council who has been convicted and sentenced to a penal institution for a crime committed by him after reaching the age of 21 years. Any duly elected council member who shall commit any crime or be guilty of drunkenness, adultery, or who shall abandon or fail to support his wife or children, or who shall repeatedly oppose the policy of the Secretary of the Interior or the Commissioner of Indian Affairs for the up-building of the Rosebud Indians, shall disqualify himself for membership, and on such finding by the Council, his election shall be annulled and the vacancy filled as heretofore prescribed.

Section 2. No council member or group of Council members shall make or circulate any petition to be sent to any officer of the government at Washington, D.C., except such petitions and resolutions as the Council in general session assembled shall make and transmit through the Superintendent of the Rosebud School.

ARTICLE X

The voters of each farmer's district may organize a local council, to meet at the farmer's station or some other designated place within the district, on the last Friday before each regular [meeting] of the Council. Another meeting shall be called on the first Friday after each regular or special meeting, in which voters may be apprised of the action taken at the meeting. Any petitions, when duly certified by the Chairman and Secretary of such local council, shall be presented to the Tribal Council through one or more members from such districts.

ARTICLE XI

When the several articles of the foregoing constitution for the Rosebud Tribal Council shall have been approved by the Rosebud Business Committee in

regular session assembled, and shall have been approved by the Superintendent of the Rosebud School, they shall then be submitted to the Commissioner of Indian Affairs. After being approved by the Commissioner of the Indian Affairs, they shall become operative April 1, 1916.

### *Resolution of Approval*

We, the President, Secretary and Recording Secretary for the Rosebud Business Committee, hereby certify that the foregoing Constitution and By-laws of the Rosebud Tribal Council were approved and adopted by unanimous vote of all members present at a regular meeting, convened at Rosebud Agency, South Dakota, February 28th, 1916, at which time the following members were present and voting: [names deleted]

Given under our hands and seals, at Rosebud Agency, South Dakota, this first day of March, 1916.

*President*

## **Rosebud General Council (1920)**

### *Article I*

The name of this organization shall be known as Rosebud General Council.

### *Article II*

The object of this organization will be to promote cooperation by the whole tribe to uphold the Constitution of the United States of America, and the policies of the Honorable Secretary of the Interior, the Honorable Commissioner of Indian Affairs, and work in cooperation with the Superintendent of the Rosebud reservation to the best interest of all concerned, and to safeguard and transmit to posterity the principles of freedom and justice.

### *Article III*

All bona fide members of the Rosebud Sioux tribe, shall be entitled to membership in this organization.

### *Article IV*

There shall be a Board of Advisers, consisting of the chiefs or headmen from each of the various Farm Districts of the Rosebud reservation, and the offices of this organization shall be ex-officio members of the said "Advisory Board."

Section II. There shall be a Chairman, a Vice Chairman, a Secretary, one Treasury [*sic*] and a Critic.

Section III. The President of the Rosebud General Council shall preside at all meetings of the said "Advisory Board" and in his absence, the Vice Chairman shall preside.

Section IV. Each chief or headman shall have power to send a representative, when he is not able to attend the session of the Board of Advisors.

*Article V*

The President of this organization shall, with the permission of the Superintendent, call all meetings through the various district farmers.

*Article VI*

The secretary of this organization shall keep all minutes, proceedings and records of all meetings of the said organization and also the business transacted by the Board of Advisors. It shall also be the duty of the said secretary to have all correspondence of the organization on file, and issue calls or notices of all future meetings of the Rosebud General Council, subject to the approval of the President of the Council.

*Article VI*

The treasurer shall, subject to the control of the Rosebud General Council, be charged with the collections and custody of the funds belonging to this organization, including funds obtained through gifts and otherwise obtained, and shall keep his accounts and report thereon at each regular meeting. His accounts shall be audited annually by the Board of Advisors, and said Advisory Board must submit a report of such audit at their regular meeting. The treasurer shall pay all bills, when audited, and approved in such manner as the Board of Advisors shall prescribe.

*Article VIII*

A critic shall be elected by the Rosebud General Council or appointed by the President of the said council, whose duties shall be to preserve order in all meetings and shall have the authority to call on the Sergeant of Arms if necessary, xxx xxx xxxxxxxx [illegible] to stop all debates or objectionable speakers, who may attempt to agitate or interrupt the meetings.

*Article IX*

The officers of this organization shall be elected for a term of two years, it shall be the duty of each elected officer to faithfully perform the duties that the Council may see fit to impose.

*Article X*

The regular meetings of this organization shall be quarterly on the first Friday of each last month of a calendar year, unless otherwise changed by the President of the Council.



*Article XI*

Each of the various farm districts shall be represented at the regular meetings by not less than two and not more than seven delegates.

*Rosebud General Council.  
Wood, South Dakota.  
December 20, 1920.*

**Amendments**

*Article I*

That the Rosebud General Council shall have and hold in reserve the authority and power to change and amend the Constitution and By-laws of the said council any time it sees fit to do so.

*Article II*

That no protests or complaints against the said Council be submitted to the Indian Office at Washington, D.C., by unauthorized individuals or by a body of men, unless such is authorized and sanctioned by the said Council.

*Article III*

The Rosebud General Council shall reserve the power and authority to elect and send delegations to Washington, D.C., any time the occasion may demand such action.

**Rosebud General Council (1924) Constitution  
and By-Laws Revised**

*Article I*

The name of this organization shall be known as the "Rosebud General Council."

*Article II*

The object of this organization will be to promote co-operation by the whole tribe to uphold the Constitution of the United States of America, the policies of the Honorable Secretary of the Interior, the Honorable Commissioner of Indian Affairs and the Superintendent of the Rosebud Indian Reservation, to the best interest of all concerned and to safeguard and transmit to posterity the principles of citizenship, freedom, and justice.

*Article III*

All bona fide members of the Rosebud Sioux tribe shall be entitled to membership in this organization and shall be enrolled as such.

*Article IV*

Section I. There shall be a "Board of Advisors" consisting of twenty members and each farm district of the Rosebud Reservation shall be represented in this "Board" as follows:

(5) from Spring Creek District, (2) Agency District, (3) from the Cut Meat District, (2) Blackpipe District, (2) Little White River District, (2) Butt Creek District, (1) Keyapaha District, (2) Big White River District, and (1) from the Ponca District. The District local council shall elect the Board of Advisors.

Section II. There shall be a chairman, a vice chairman, one secretary, one treasurer, a chief sergeant at arms and one Assistant for this "Board" and the Officers of the "Rosebud General Council" shall be ex-officio officers of the said "Board."

Section III. The Chairman shall preside at all meetings of the "Board" and in his absence, the Vice Chairman shall preside.

Section IV. Each member of the "Board" shall be required to attend all quarterly meetings of the Rosebud General Council, and all special sessions, but if he is not able to attend such, he shall have the authority to substitute a representative in his place and furnish him with written credentials.

*Article V*

The President of this Board of Advisors shall call all special sessions after securing the necessary permission from the Rosebud Superintendent but it must be for very important tribal business only.

*Article VI*

The duly elected Secretary of the "Rosebud General Council" shall be required to keep on file all records, correspondence and minutes and proceedings of each meeting and special sessions, and shall issue calls or notices of coming meetings, at the order of the President: Amendment: The Secretary shall be paid a sum of money, which the Council may prescribe, for the expenses of his office, at each quarterly meeting.

*Article VII*

The duly elected Treasurer of this organization shall be charged with the collections and custody of all funds belonging to the said organization, including funds accrued thru gifts or otherwise obtained, and shall be required to keep his accounts in a cash ledger and report thereon at each quarterly meeting. His accounts shall be audited by the "Board of Advisors" at each quarterly

meeting, and such audit shall be reported at such meetings. The Treasurer shall pay all bills in such manner as the "Board" may prescribe.

### *Article VIII*

A "Critic" shall be elected by the "Rosebud General Council" or shall be appointed by the President of the said Council, and his duties shall be to preserve order in all meetings and he shall be authorized to call on the Chief-Sergeant-at-arms, if necessary, to stop all debates and objectionable spectators who may attempt to agitate or interrupt the meetings.

### *Article IX*

The officers of this organization shall be elected for a term of two years, and it shall be the duty of each elected Officer, to faithfully perform the duties that the "Rosebud General Council" may see fit to impose upon them individually.

### *Article X*

The regular meetings of the "Rosebud General Council," shall be on the first Thursdays of each last month in a quarter of the calendar year unless otherwise changed by the Council.

### *Article XI*

Each local Council in the various farm districts of the Rosebud Reservation shall be represented at each of the quarterly meetings of Rosebud General Council as hereby designed: Springcreek District (5) delegates, Agency district (3) delegates, Cut Meat District (5) delegates, Blackpipe District (3) delegates and Little White River District (3) delegates, Butte Creek District (4) delegates, Keya Paha District (3) delegates, Big White River District (3) and Ponca District (2) delegates. Each of the above specified delegations shall be allowed to take only one private Guard or helper to the regular quarterly meetings of the Council. And said guards or helpers shall be entitled to have a voice in all such meetings and shall also have the privilege to vote in all elections of officers of the said Council.

### *Article XII*

The "Rosebud General Council" shall reserve the power and authority to select and send tribal representatives to Washington, D.C., in the welfare and best interest of the Rosebud Sioux tribe at any time the occasion may justify such action, and such delegates shall be furnished the proper credentials by the said Council and approved by the same to show that they have been duly authorized to represent the Rosebud Sioux, and further; that any and all other unauthorized delegates shall not be recognized as such by the Rosebud Sioux tribe. Any funds which the unauthorized delegates may secure from the Honorable

Commissioner of Indian Affairs from the Tribal Funds shall be at their own individual risk and responsibility.

*Article XIII*

That no protests or complaints by individual members or parties of men against the actions of the “Rosebud General Council” shall be submitted to the Honorable Commissioner of Indian Affairs at Washington, D.C., unless such action is submitted by the said Council as “minority report.”

*Article XIV*

The “Rosebud General Council” shall have and hold in reserve the authority and power to change and amend the Constitution and By-laws governing the said council any time it may see fit when approved by the Superintendent.

Revised and amended by the “Committee on By-Laws” at White River, South Dakota, on the 5th of December 1924.

Committee.

*Joseph Frightened,  
Edward Long Crow,  
Carlos Gallineaux,  
Clement W. Soldier (Clerk),  
/s/ Oliver Prue, Chairman.*

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*Alaska Native Brotherhood  
Constitutions of Grand  
and Subordinate Camps  
(Tlingit and Haida Peoples,  
Alaska, 1917–1918)*

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The Alaska Native Brotherhood (ANB), an interdisciplinary political and social organization founded in 1912, was originally established to advocate for equality and human rights for Alaska natives. Although its leadership was closely connected to the Presbyterian mission in southeast Alaska, the ANB was predominantly a native organization devoted to improving the living conditions of Alaska natives. A comparable body, the Alaska Native Sisterhood (ANS), was set up in 1923 with similar goals for native women.

Both groups aspired to achieve territory-wide influence, but, according to Haycox, it was generally limited to the Tlingit and Haida peoples of southeast Alaska. In its early years, the ANB pushed for U.S. citizenship for Alaska natives, fought racial discrimination, and encouraged its members to adopt Western culture. In more recent times it has advocated a reimmersion in indigenous customs and languages.

Moreover, while the ANB has always been an interest organization, it has received the attention of nonnative Alaskan politicians, who have been regular visitors. Department of Interior officials have “often sought the testimony of ANB leaders on Alaska’s policies and worked with them in implementing Alaskan programs” (Haycox 1996, 9).

Drucker, Philip. “The Native Brotherhoods: Modern Intertribal Organizations on the Northwest Coast.” *Bureau of American Ethnology*, bulletin 168, Smithsonian Institution (1958).

Haycox, Stephen W. “Alaska Native Brotherhood/Sisterhood.” In Mary B. Davis, ed. *Native America in the Twentieth Century: An Encyclopedia* (New York: Garland Publishing, 1996).

———. “William Paul, Sr., and the Alaska Voter’s Literacy Act of 1925.” *Alaska History* 2(1) (Winter 1986/1987): 17–38.

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## Alaska Native Brotherhood Constitutions of Grand and Subordinate Camps, 1917–1918, Sitka, Alaska

### *Grand Camp Constitution*

#### ARTICLE I. PURPOSE

The purpose of this organization shall be to assist and encourage the Native in his advancement from his native state to his place among the cultivated races of the world, to oppose, discourage, and overcome the narrow injustice of race prejudice, and to aid in the development of the Territory of Alaska, and in making it worthy of a place among the States of North America.

#### ARTICLE II. ELIGIBILITY

Those eligible to membership shall be the English-speaking members of the Native residents of the Territory of Alaska.

#### ARTICLE III. THE GRAND CAMP

The Grand Camp shall be composed of the officers of the Grand Camp, the Chairman of the Subordinate Camps, the past Grand Presidents, the past Chairman of the Subordinate Camps, and three delegates from each Subordinate Camp.

ARTICLE IV. OFFICERS

The officers of the Grand Camp shall be a Grand President, a Grand Vice President, Grand Secretary, Assistant Grand Secretary, Grand Treasurer, Grand Sergeant at Arms, and Grand Council with as many members as there are Subordinate Camps.

ARTICLE V. DUTIES OF OFFICERS

Section 1. The duty of the Grand President shall be to preside at the sessions of the Grand Camps and to exercise a general supervision of the work of the Grand Officers.

Section 2. The duty of the Grand Vice President shall be to perform the duties of the Grand President in his disability or at his request.

Section 3. It shall be the duty of the Grand Secretary to keep the records of the Grand Camp and to conduct such correspondence as he shall be directed to perform by the Grand President of the Grand Camp.

Section 4. It shall be the duty of the Assistant Grand Secretary to perform such duties as may be assigned to him by the Grand Secretary.

Section 5. The Grand Treasurer shall keep the funds of the Grand Camp and shall file a report for the Grand Camp with the Grand Secretary at least 2 weeks before each session of the Grand Camp.

Section 6. It shall be the duty of the Sergeant at Arms to perform such duties as may be assigned to him by the Grand Camp, the Grand President, or the Grand Council.

Section 7. The authority of the Grand Camp shall be vested in the Grand Council between the sessions of that body.

Section 8. The Grand officers shall serve for 1 year and shall be elected annually at the sessions of the Grand Camp except the Assistant Grand Secretary who shall be appointed by the Grand Secretary and shall serve at his pleasure.

ARTICLE VI. CONVENTIONS

The annual convention shall be held on the second Monday in November at a place designated by the preceding annual convention.

ARTICLE VII. REVENUES

The admission fee shall be \$10, of which \$1 shall be sent to the Grand Secretary to be transmitted to the Grand Treasurer for the use of the Grand Camp. The membership dues shall be 50 cents per month, half of which shall be sent to the Grand Secretary to be transmitted to the Grand Treasurer for the use of the Grand Camp.

ARTICLE VIII. COMMITTEES

The following shall be the standing committees of the Grand Camps, each of three members, Auditing and Finance; Constitution; Ritual; Benefits; Citizenship for Natives.

ARTICLE IX. CHARTERS

Twelve applicants shall be necessary to secure a charter for a subordinate camp.

ARTICLE X. BONDS

The Grand Treasurer and the Subordinate Treasurer shall give bond in the sum of \$\_\_\_\_\_.

ARTICLE XI. AMENDMENTS

This constitution may be amended at any annual meeting of the Grand Camp by a majority vote of the members present, provided that the proposed amendments are submitted to the subordinate camp at least thirty (30) days prior to the meeting of the convention of the Grand Camp. . . .

*Subordinate Camp Constitution, Alaska  
Native Brotherhood*

Section 1. This Camp shall be known as \_\_\_\_\_ (Name of Town) Subordinate Camp, Alaska Native Brotherhood.

Section 2. This Camp is subordinate to the Grand Camp of the Alaska Native Brotherhood, and all laws made by it are binding on this camp.

Section 3. No applicant shall be admitted to membership except at a regular meeting by a majority vote, and then only when the application has been received at a previous meeting.

Section 4. Any member guilty of misconduct may be expelled by a majority vote of the members. If the offence takes place in a meeting of the camp the member may be suspended or expelled at the same meeting where the offense occurs, but if the offense is committed otherwise, the member shall be given a trial after a week's notice. A member expelled cannot again become a member except by unanimous consent.

Section 5. The officers of this Camp shall be Chairman, Vice Chairman, Corresponding Secretary, Recording Secretary, Financial Secretary, Treasurer, and Camp Council composed of three members.

Section 6. It shall be the duty of the chairman to preside at all meetings. He shall be an ex officio member of all committees. The Vice Chairman shall perform the duties of the Chairman in his absence or disability. The Corresponding Secretary shall conduct the correspondence of the Camp under its direction; the recording secretary shall keep the minutes of the meeting; the financial secretary shall receive the dues of the members, giving his receipt therefore. He shall turn all moneys over to the treasurer who shall keep the accounts of the members of the Camp. The financial secretary and the treasurer shall make annual reports at the first meeting in November of each year. The financial secretary shall at each meeting make a written report of all moneys received at that meeting. The council shall have the

general care and custody of the property of the Camp, and shall have all the powers of the Camp requiring immediate attention when the camp is not in session. All officers shall serve for 1 year and until their successors are elected. The annual election shall be held at the first regular meeting after the new year.

Section 7. The admission fee shall be ten dollars (\$10.00), and the annual dues shall be six dollars (\$6.00) payable quarterly. Any member failing to pay his dues for the next year by the first regular meeting in November shall stand suspended and shall be deprived of all rights of membership while so suspended. He shall be reinstated on the receipt of his dues and by a majority vote of the members present at any regular meeting.

Section 8. Six members in good standing shall constitute a quorum for the transaction of business at any regular meeting.

Section 9. The Subordinate Camp Constitution shall not be amended except by a majority vote of the Grand Camp. Bylaws may be adapted not inconsistent herewith, if the same are approved by the Grand President and Grand Secretary.

Section 10. Order of Business:

1. Meeting called to order by chairman.
2. Reading of minutes of previous meeting.
3. Collection of dues. (five minutes' recess.)
4. Reading of communication and bills.
5. Unfinished business.
6. Reports of committees.
7. New Business.
8. For the good of the Camp.

Section 11. The following standing committee composed of three members each shall be elected at the annual meeting each year: Finance and Auditing Committee whose duty shall be to audit the reports of the officers and recommend plans for the raising of money and the care of the Camp funds; a Lecture Committee who shall endeavor to secure lectures at intervals on various subjects; a Benefit committee who shall look after the interests of all members as may be required of the Camp; Citizenship Committee who shall endeavor to get as many members to secure certificates allowing them to vote.

### *By-Laws, Alaska Native Brotherhood*

(1) Robert's Rules of Order shall be the authority on parliamentary law in both the grand and subordinate camps.

#### COMMITTEE REPORTS

(2) All standing committees shall make their reports at the annual convention of the Grand Camp.

Written and verbal reports from each subordinate camp shall be made to the Grand Camp at each annual convention.



## ORDER OF BUSINESS

(3)

1. Meeting shall be called to order by Grand President.
2. Invocation.
3. Roll call.
4. Reading of minutes of the previous meetings or convention.
5. Election of Officers for ensuing year.
6. Unfinished business.
7. Reports of Committee.
8. New business.
9. Good of Grand and Subordinate Camps.
10. All dues shall be collected.

59

*Constitution of the Red Lake  
Band of Anishinaabe  
(Red Lake People, 1918)*

The Anishinaabe, also known as Ojibwe or Chippewa, are a large cultural group with distinctive communities spread throughout Michigan, Wisconsin, Minnesota, North Dakota, Montana, and southern Ontario. Minnesota alone is home to seven separate bands: Boise Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth politically compose the Minnesota Chippewa Tribe, while the Red Lake Band operates under its own separate tribal government.

Although every Anishinaabe community lost a majority of its lands because of treaty provisions, fraud, allotment, and so on, the Red Lake people, while surrendering some land in treaties and agreements negotiated in 1864, 1889, and 1904, retained a significant portion of their original homelands—more than five hundred thousand acres—surrounding Lower Red Lake and a portion of Upper Red Lake in Minnesota.

The Red Lake Reservation is distinct for two further reasons as well: First, it was never subject to the broad allotment process mandated by the Nelson Act of 1889 (24 Stat. 44), and it is still held in common ownership by the nation's citizens; second, although Minnesota is a Public Law 280 state, which means that the state has been given jurisdictional authority over most of the Indian country within its borders, the Red Lake people have successfully fended off

the state's assertion of jurisdiction and remain largely free of state authority.

Precisely why the Red Lake people adopted and retained the powerful independent and nationalistic stance they have long maintained is beyond the scope of a brief headnote. However, scholars like Melissa Meyer have argued that part of their insistence on political, economic, and geographic autonomy dates back to the Nelson Act period, when federal officials sought to compel the Anishinaabe to surrender all of their reservations except White Earth and Red Lake, move to the White Earth Reservation, and take up farming on individual plots of land.

One of the provisions of the Nelson Act was the creation of what was called the Chippewa in Minnesota Fund, in which proceeds from timber and land sales were to be deposited for the benefit of all Anishinaabe. Most Red Lakers objected to the fact that the proposed sale of their reservation "would provide most of the revenue for the Chippewa in Minnesota Fund" (Meyer 1994, 54). Red Lake leaders did not believe that all Ojibwe people should benefit from the sale of their lands, nor did they agree with the breaking up of their collective territory. Their persistence against allotments and governmental dissolution spurred them to forge a new political arrangement in 1918, one that blended the traditional chief system with a modern constitutional framework.

The identity of the framer of the constitution is not known with certainty. However, a small committee consisting of Peter Graves, who was called the "organizer," Otto Thunder, P. H. Beaulieu, and Joseph Graves apparently played some role in developing the document. Many commentators consider Peter Graves, also known as Shawgahnahshee, to be the leading political figure at Red Lake during the first half of the twentieth century. Graves received his education at Lincoln Institute in Philadelphia and later served as an Indian Service employee. As principal organizer of what became the General Council of the Red Lake Band in 1918, Graves served first as treasurer, then as secretary-treasurer from 1920 until his death in 1957.

The constitution is a fusion of traditional governing institutions and contemporary constitutionalism. It served as a bold statement to the other Ojibwe bands, the state of Minnesota, and the federal government alike that the Red Lake community was a self-determined polity intent on maintaining a measure of political independence.

Ebbott, Elizabeth, for the League of Women Voters of Minnesota. *Indians in Minnesota*, ed. Judith Rosenblatt, 4th ed. (Minneapolis: University of Minnesota Press, 1985).

Meyer, Melissa L. *The White Earth Tragedy: Ethnicity and Dispossession at a Minnesota Anishinaabe Reservation, 1889–1920* (Lincoln: University of Nebraska Press, 1994).

Mittelholtz, Erwin F. "Historical Review of the Red Lake Indian Reservation: A History of Its People and Progress." Minnesota Collections 2 (Bemidji, Minn.: W. Wendell Palmer, Beltrami County Historical Society (1957), 138 pp.

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## Red Lake Chippewa Constitution

The members of the Red Lake Band of Chippewa Indians of the State of Minnesota, in Council assembled this 13th day of April, 1918, at Red Lake Agency, Minnesota, in order to form a perfect union do ordain and establish the following constitution:

Article 1. The organization shall be known as the General Council of the Red Lake Band of Chippewa Indians, and its principal place of business to be at the Red Lake Agency.

Article 2. This organization shall confer full and complete authority to several chiefs of the Red Lake Indian Reservation to call a meeting and each Chief shall have power to appoint five members from their band or other bands. The Chiefs together with their appointees shall constitute the Council of the Red Lake Band of Minnesota Chippewa Indians. They shall have power to fill vacancies in their councils temporarily.

Article 3. The chairman appointed by this council shall have no vote.

Article 4. The Secretary and the Treasurer appointed by this Council shall have right to vote.

(Article 5. This organization shall not in any way interfere with the provisions of the Constitution of the General Council of the Minnesota Chippewas.)

Article 5. Modified as follows:

This Organization and Council shall not recognize the General Council of the Minnesota Chippewas, as a medium for the transaction of their tribal property business and affairs, August 27, 1918.

Article 6. This council shall have the right and authority to decide in dispute as to Chiefs.

Article 7. This council shall respect and give proper consideration to petitions that may be placed before them by any member of the Red Lake Band.

Article 8. This council shall have authority to modify or add provisions to this constitution by a two-thirds vote.

Article 9. The majority vote in this Council shall govern.

Article 10. The funds collected on account of this Council shall be properly accounted for from source received, and as expended, which shall be expended as approved by the Council.

*/s/ Otto Thunder,*  
*/s/ Peter Graves,*  
*P. H. Beaulieu,*  
*Joseph Graves.*

*Committee on Constitution*

We, the undersigned, Chairman and Secretary, do hereby certify that the above Constitution was duly adopted by the Red Lake Band of Indians, duly assembled in session at the Red Lake Council Hall, Red Lake Agency, Minnesota, this 13th day of April A.D. 1918.

/s/ J. B. Jourdain, Chairman.  
/s/ Otto Thunder, Secretary....

## 60

*Yurok Laws (Yurok People, 1919)*

The Yurok, who call themselves Olekwo'l, live in present-day northern California near the mouth of the lower Klamath River. Historically they subsisted primarily by fishing, hunting, and acorn gathering. Although their first contact with Europeans was with the Spanish around 1775, it was not until the beginning of the gold rush (1849) that the Yurok had sustained contact with whites.

Like most other indigenous people in California, the gold rush precipitated an influx of whites, which led to the rapid dispossession and catastrophic depopulation of the Yurok. In 1891 a presidential order established the Yurok Reservation, which was created from two earlier reservations—Klamath River (1855) and Hoopa Valley (1864).

This new reservation was subsequently assaulted by the forces of allotment, and lands deemed “surplus” were sold to timber companies. The Yurok population continued to decline and around 1910 reached a low of 668, a loss of more than 70 percent since 1849. Despite these profound problems, many Yurok religious and traditional practices continued into the early 1900s. Alfred Kroeber, a leading anthropologist of the day, compiled a list of the principles of Yurok law and reproduced them in his important work, *Handbook of the Indians of California*, which he submitted to the Smithsonian in 1919. These legal guidelines of the Yurok show that, despite horrific and genocidal conditions, the community maintained a strong vestige of residual sovereignty that helped regulate community and interpersonal affairs.

Kroeber, Alfred Louis. *Handbook of the Indians of California* (1925; repr., New York: Dover, 1976).

## Yurok Laws

These are the standards by which Yurok regulate their conduct toward one another:

1. All right, claims, possessions, and privileges are individual and personal, and all wrongs are against individuals. There is no offense against the community, no duty owing it, no right or power of any sort inhering in it.
2. There is no punishment, because a political state or social unit that might punish does not exist, and because punishment by an individual would constitute a new offense which might be morally justified but would expose to a new and unweakened liability. An act of revenge therefore causes two liabilities to lie where one lay before.
3. Every possession and privilege, and every injury and offense, can be exactly valued in terms of property.
4. There is no distinction between material and nonmaterial ownership, right or damage, nor between property rights in persons and in things.
5. Every invasion of privilege or property must be exactly compensated.
6. Intent or ignorance, malice, or negligence, are never a factor. The fact and amount of damage are alone considered. The psychological attitude is as if intent were always involved.
7. Directness or indirectness of cause of damage is not considered, except in so far as a direct cause has precedence over an indirect one. If the agent who is directly responsible can not satisfactorily be made amenable, liability automatically attaches to the next agent or instrument in the chain of causality, and so on indefinitely.
8. Settlement of compensation due is arrived at by negotiation of the parties interested or their representatives, and by them alone.
9. When the compensation has been agreed upon and accepted for a claim, this claim is irrevocably and totally extinguished. Even the harboring of a sentiment of injury is thereafter improper, and if such sentiment can be indirectly connected with the commission of an injury, it establishes a valid counterliability. The known cherishing of resentment will even be alleged as prima facie evidence of responsibility in case an injury of undeterminable personal agency is suffered.
10. Sex, age, nationality, or record of previous wrongs or damage inflicted or suffered do not in any measure modify or diminish liability.
11. Property either possesses a value fixed by customs, or can be valued by consideration of payments made for it in previous changes of ownership. Persons possess valuations that differ, and the valuation of the same nonmaterial property or privileges varies, according to the rating of the person owning it. The rating of persons depends partly upon the amount of property which they possess, partly upon the values which have previously passed in transfers or compensations concerning themselves or their ancestors. . . .

## 61

*Western Shoshone  
Constitution (Western Shoshone  
People, 1919)*

The Western Shoshone of the Great Basin region are one of three large groups of linguistically related peoples; the other two are the Northern Shoshone of the Columbia River Basin and the Eastern Shoshone of the Great Plains. The Western Shoshone refer to themselves as the Newe, or “the people.” Historically, their territory extended from southern Idaho in the north, to Death Valley, California, in the south, and from central Nevada in the west to present-day Ely, Nevada, in the east.

Prior to Western contact, the Newe lived in small, extended-family groups tied to specific geographical areas and the food sources that predominated in those regions. Leadership was informal and noncoercive. According to Crum, several critical developments between 1848 and the 1860s caused profound internal changes among the Newe: (1) the impact of the Treaty of Guadalupe Hidalgo (negotiated in 1848 between Mexico and the United States), which established the United States as a force to be reckoned with; (2) the California gold rush of the 1840s, which prompted thousands of non-Indians to traverse Western Shoshone lands; (3) the permanent settlement of the Great Basin by non-Indians, begun initially by the Mormons, who established Salt Lake City; and (4) federal policies of removal, conflict, reservations, and assimilation, which led to a diminished political, cultural, and territorial status for the Western Shoshone (Crum 1994, 17–19).

In the midst of these developments, the Western Shoshone also engaged in diplomacy with the United States. The most important agreement was the Treaty of Ruby Valley, which was signed on October 1, 1863 (18 Stat. 689). Essentially a peace treaty, this pact did not involve any land cessions, although the Newe did agree to allow the construction of military forts and to settle on reservations once those had been established.

In 1877 a presidential executive order created their main reservation—in Duck Valley on the Idaho/Nevada border—onto which the BIA sought to convince all Western Shoshone to move. However, their spiritual and subsistence attachments to their homelands made the move improbable. Realizing the futility of its relocation efforts, the BIA eventually relented. Still, many Western Shoshone and some Paiute settled on the reservation, and in 1911 the leaders of the two tribes created a nine-member joint tribal council, which was led by several traditional leaders and a few younger individuals who had been educated at boarding schools. Over the next several years, the

council's position stabilized and evolved to include several new positions: chair, vice chair, and secretary. The council's membership was now being elected from districts.

In 1919 the council's leaders, "with assistance from the reservation superintendent," crafted the following constitution. The charter broadly spelled out the council's structure and specified the powers of the tribe's officials. Interestingly, it "also gave certain powers to the superintendent that permitted him to approve or disapprove of council decisions." Crum states that this provision was inserted by BIA officials as a warning to the tribal leaders, who a year earlier had tried to have the superintendent removed.

Moreover, Felix Cohen indicated that another entity known as the Western Shoshone Stock Association also adopted a constitution in 1922. I have not been able to locate a copy of this document, however. Cohen stated that it was "apparently not approved" by the department (Cohen papers, n.d.).

Cohen, Felix S. *Handbook of Federal Indian Law: With Reference Tables and Index* (1942; repr., New York, AMS Press, 1972).

Crum, Steven J. *The Road on Which We Came (Po'i pentun tammen kimmappéh): A History of the Western Shoshone* (Salt Lake City: University of Utah Press, 1994).

National Archives. RG 75, Central Classified Files, 1907–1939, Western Shoshone, File 9794-C-1936–057.

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## Western Shoshone Constitution

At a meeting of the Indian Council of the Western Shoshone Reservation, held on March 17, 1919, the following rules were adopted:

### *Duties of the President of the Council*

Call council meetings and keep the house in order.

Call general meetings of Indians of the reservation, when same have to do with business of the council.

To transact with the Superintendent, on behalf of the council, only such business as is first submitted to the council.

### *Duties of the Council*

To make such rules for the Indians of the reservation as are approved by the Superintendent, and to aid the Superintendent in carrying out rules and instructions issued by the Indian Office. Each councilman should also look to the interests of the people of his district and keep them advised in all matters pertaining to the council meetings and other matters of importance.

*Method of Adopting Rules*

The minutes of the preceding meeting will be read and their adoption voted upon. All rules when passed by a majority vote and approved by the Superintendent will be in effect.

*Caution*

Members of the council and of the tribe are not to discuss business of the council and tribe with outside parties. All matters should be fully discussed among the Indians that they may have a better understanding of their affairs.

*Western Shoshone Indian Council.*

## 62

*Constitution of the Oglala  
Tribal Council (Oglala  
Sioux People, 1921)*

Like their kinfolk on the Rosebud Reservation, the Oglala Lakota of the Pine Ridge Reservation also engaged in constitution writing early in the twentieth century. Although the Indian agent in 1885 had organized what he called an “agency board of councilmen” in an effort to replace what he considered the obsolete chieftainship system of governance and kinship, this imposed model did not last.

What followed in 1891 was the Oglala Council, an organization of individuals selected from the district councils. The group convened monthly to discuss various issues affecting the reservation’s residents. According to Biolsi, “the meetings commenced with a prayer and were conducted with an indigenous variant of parliamentary procedure” (1992, 52). Traditional chiefs and local headmen played prominent roles, but by 1907 tension was evident between older Lakota and the generally more progressive younger men.

In 1916 members of the Oglala Council, without involvement by the Indian agent, first drafted a constitution. The document authorized the district councils to elect ten councillors. Council meetings required representation from three-fourths of the reservation’s districts. This document also enshrined the chief’s position and declared that the “making of new chiefs and the making of new bands will be managed by the chiefs at their camps at home, and not to be handled within the Council” (ibid., 53). The BIA superintendent approved this document.



However, internal schisms mounted, and the arrival of a new superintendent led to an effort to create another governing structure, which was accomplished in 1921, when the Oglala drafted a second constitution, once again doing so without federal input or oversight. The charter was not, however, approved by the local agent, in part because federal officials believed that it vested too much power and autonomy in the older, more traditional leaders. Evidence of this appears in article thirty-one, which states that “the duties of the chiefs in the tribe shall be to keep at all places and times the dignity of the position of a chief to advise and give peaceful and wise counsel and to defend the rights of the tribe and his fellowmen.”

The Oglala Council continued to function even without an approved constitution. This changed, however, in 1928, when a new constitution was written and ratified.

Biolsi, Thomas. *Organizing the Lakota: The Political Economy of the New Deal on the Pine Ridge and Rosebud Reservations* (Tucson: University of Arizona Press, 1992).

Clow, Richmond L. “The Indian Reorganization Act and the Loss of Tribal Sovereignty: Constitutions on the Rosebud and Pine Ridge Reservations.” *Great Plains Quarterly* (Spring 1987): 125–34.

National Archives. RG 75, Central Classified Files, Rosebud, File 61020 (April 26, 1921).

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## Oglala Sioux Constitution

### *Preamble*

We, the members of the Sioux Tribe of Indians on the Pine Ridge Reservation, South Dakota, in order to establish a more perfect unity amongst us, to obtain justice, insure domestic peace, to secure the common defense, to promote our welfare and interest, to enjoy the blessings of rights, do ordain and establish this constitution for the Oglala Tribal Council.

### ARTICLE ONE

The name of this organization shall be called the Oglala Tribal Council.

### ARTICLE TWO

The object of this council shall be to bring about such tribal matters as shall be a benefit to the members and to promote the same legally according to existing treaties, agreements, special laws and executive orders and contracts now in force as shall be right and just to us as a race and individuals all other matters that may properly come before the Council.

ARTICLE THREE

The officers of the Council shall consist of a President, a vice President, a Secretary, an Assistant Secretary, a Treasurer and a Critic which shall be elected for one year.

ARTICLE FOUR

This council shall [be] composed of 5 delegates and 5 alternates from the following established Districts, namely, White Clay Wakpamni, Wounded Knee, Porcupine, Medicine Root, Eagles Nest, Pass Creek and Martin Districts properly elected.

ARTICLE FIVE

In case of vacancy, the next officer in order shall fill such vacancy and continue until next election.

ARTICLE SIX

Regular delegates, Vice President, Secretaries, Treasurer and the Critic are the only ones entitled to vote and shall make motions. In case of a tie vote the President shall decide and all chiefs and sergeant at arms or any member of the tribe in attendance shall have voice in discussion of questions.

ARTICLE SEVEN

The quorum of all sessions of this council shall consist of a majority of delegates present including the officers accepted.

ARTICLE EIGHT

The regular meetings of this council shall be quarterly. Special meetings may be called by the President upon written application of two delegates, provided that written notice is given in due time.

ARTICLE NINE

For general expenses of this Council an annual assessment of \$1.00 [shall] be assessed each family enrolled on the Pine Ridge Reservation.

ARTICLE TEN

Any money assessed or contributed for the funds of the Council shall not be drawn for any purpose except when appropriated by the Council and no part of the said funds shall be loaned or borrowed.

ARTICLE ELEVEN

There shall be a credential committee of three members appointed by the President, whose duty shall be to inquire into and investigate the proper election of all delegates from the several districts represented in the council and report their findings and facts for sitting or rejection of delegates by the council.

ARTICLE TWELVE

[If] any vacancy occurs in the membership of any committee the President may appoint members to fill such vacancy subject to the approval of the council.

ARTICLE THIRTEEN

Any member of the tribe, who shall represent himself to have authority of the tribe falsely in correspondence or in any act shall be fined \$25.00 for each act and if such person refuses or fails to pay the fine he shall be subject to trial by Indian Offense Court.

ARTICLE FOURTEEN

This constitution and By-laws may be amended or repealed by majority votes at any regular or special meetings of the Council.

ARTICLE FIFTEEN

The order of the business of the council shall be as follows:

1. Council called order.
2. Prayer.
3. Roll call of delegates.
4. An address.
5. Report of committee on credentials.
6. Reading of the minutes of last meeting.
7. Election of new officers.
8. Report of the Treasurer.
9. Report of Special Committees.
10. Unfinished business.
11. New business.

ARTICLE SIXTEEN

Each district named shall have its own organization district councils with regular officers as follows: A President, a Vice President, a Secretary, an Assistant Secretary, a Treasurer and a Critic elected for four years.

ARTICLE SEVENTEEN

For the conduct of its meetings and transactions of business the District Councils may make its own rules and by-laws consistent with those of the big council and the general practice of Parliamentary laws.

ARTICLE EIGHTEEN

Each district council shall elect for 4 years 5 delegates, and 5 alternates who must be resident members of that District by majority vote of the adult members of that district.

ARTICLE NINETEEN

All chiefs to be elected in the tribe to fill a vacancy must first be submitted properly to the tribal council for confirmation. The election of such chiefs shall be in accordance with the requirements and qualifications in manner to be provided hereinafter by the tribal council.

ARTICLE TWENTY

Sergeant at Arms from each district shall be appointed by the chief and chiefs of that district.

ARTICLE TWENTY-ONE

The tribal council shall appoint by regular vote any member of Sergeant at Arms as head of Sergeant at Arms over all others.

ARTICLE TWENTY-TWO

Upon sufficient cause a sergeant at arms may be suspended by his district council upon proper investigation.

All candidates for the position of a chief to fill vacancies in the tribe must first be submitted for approval to the district council of the district in which he is a member and a resident.

ARTICLE TWENTY-FOUR

For a cause sufficient a chief may be suspended by the council upon proper investigation by his district council, then by the tribal council.

ARTICLE TWENTY-FIVE

The duties of the President shall be to preside at all councils and may be relieved by the Vice President by arrangements and shall perform such other duties as may be assigned by the council.

ARTICLE TWENTY-SIX

The duty of the Vice-President shall be to perform the duties of the President in his absence.

ARTICLE TWENTY-SEVEN

The duties of the Secretary shall be to take down the minutes of the proceedings of the council and help correct records of all the business and minutes of the council in proper manner and all papers, records, documents, and other matters pertaining to his office and to perform such duties as maybe assigned him by the council.

ARTICLE TWENTY-EIGHT

The duties of the assistant secretary shall be to assist the secretary and perform the duties of the secretary in the absence of the latter and such other duties as may be assigned him by the council.

ARTICLE TWENTY-NINE

The duties of the treasurer shall be to receive and receipt for all moneys paid to the funds of the council which must be deposited in the name of the tribal council in some proper depository and shall keep correct records of all receipts and disbursements. He shall furnish such securities as proper for all the funds in his charge and any money out of said funds to be withdrawn or to be paid out upon the order of the council must be made by him only, duly countersigned to the President [and] the Secretary and [he must] report to the council from time to time as may be required of him by the council.

ARTICLE THIRTY

They duty of the critic shall be to observe and assist under his direction the presiding officer in the proper performance of his duties during the deliberations of the council.

ARTICLE THIRTY-ONE

The duties of the chiefs in the tribe shall be to keep at all places and times the dignity of the position of a chief, to advise and give peaceful and wise counsels, and to defend the rights of the tribe and his fellowmen.

ARTICLE THIRTY-TWO

The duties of the sergeant of arms shall be to have charge under the direction of the head of the sergeants of arms of all arrangements for the holding of meetings of the tribal council and to perform such others duties as may be assigned them by the tribal council.

## ARTICLE THIRTY-THREE

Any members of the tribe who is [sic] in any way connected with Indian service shall not hold office of the council nor the Position of a delegate but they shall have the privilege of voice in the council.

Ratified the foregoing constitution and by-laws of the Oglala Tribal council as presented by a committee appointed by the Oglala Tribal council at the request of a majority vote of the councilmen of said council and being ratified in open council on this 26th day of April, 1921. In witness whereof we have hereunto subscribed our names.

-----*President of Oglala Council*  
 -----*Secretary of Oglala Council*

## 63

*Fort Belknap Constitution  
 (Assiniboine and Gros  
 Ventre Peoples, 1921)*

The Fort Belknap Reservation, established by congressional act in 1888, is located in north central Montana, just south of the Milk River. The reservation is home to two linguistically distinct indigenous nations: the Siouan-speaking Assiniboine (“those who cook with stones”) and the Gros Ventre (A’ani’ or “white clay people”), who are Algonquian speakers. Before their geographic and political merger, the two nations had historically been enemies.

Although linguistically separate, the two peoples traditionally had similar political systems. They were loosely organized and divided into bands, each with its own chief. Chieftainships were based on merit and leadership qualities, not heredity. Among the Assiniboine, each band had its own council to oversee its affairs. They generally lived apart during the year but would unite in the summer months for socializing, hunting, and ceremonies.

Both peoples experienced multiple smallpox epidemics and suffered as the buffalo herds they depended on were slaughtered by whites. Each tribe participated in the multinational Fort Laramie Treaty of 1851, which substantially reduced their land holdings. Continued military conflicts and the ravages of disease further weakened both peoples.

The Fort Belknap Reservation was established for the Gros Ventre in 1888, and the Assiniboine moved into the area later. The land comprised three districts: Milk River, with a predominantly

Assiniboine population; Hays District, which is inhabited largely by Gros Ventre; and Lodgepole District, the smallest of the three, in which the Assiniboine are the majority.

In 1904 the superintendent organized the first tribal council, which consisted of elected members from the several districts. He later dissolved the council, however, because it had become a locus of disturbance, he reported. The next reservation-wide, binational organization was the Business Council of the Assiniboine and Gros Ventre, which was formed in either 1908 or 1909. Coincidentally, the U.S. Supreme Court handed down the foundational Indian water rights case in 1908, *Winters v. United States* (207 U.S. 564), which directly involved the two tribes and their right to an adequate water supply to aid in their transition to farming.

According to BIA records, the movement to establish the business council had “apparently” been “initiated by the superintendent of the reservation” so as “to obtain from a representative body of the Indians their views relative to the wants and needs of the people of the jurisdiction, both as a whole and in individual cases; thus taking over the functions of the old-time chiefs or head men of the tribes in this respect” (Central Classified Files, 1907–1919, Series B; Indian Customs and Social Relations, reel 3, File 9581-A 1936 068 [December 1933–October 1945, 6]).

About the same time the business committee was being formed, the Gros Ventre also established a claims committee, which filed land- and resource-based claims against the federal government for alleged violations of their treaty rights. However, it was the business council, renamed the Fort Belknap Tribal Business Council, that would mature into a larger, more representative body in 1921 with the adoption of a written constitution the same year the reservation was allotted. The constitution was written by unknown agents, though the superintendent apparently played a large part in its construction, which took place sometime between June 1 and December 21, 1921. It was then submitted to the BIA for approval, which was never granted. Nevertheless, the Indians operated under the constitution.

The constitution establishes a council of thirteen members—six Assiniboine, six Gros Ventre, and the Fort Belknap superintendent. The latter were permitted to vote only in the event of a tie. No real powers were provided, and much of the document was concerned with defining the order of business and other standard rules. Despite these apparent inadequacies, the charter still directly connects to the inherent sovereignty of the two tribes since “all matters of importance [must be referred] to the people for acceptance or rejection and is guided by the action of the Indians accordingly. In other words—and to quote an Old Time Indian—‘they [the Council members] are merely the Voice or Interpreter of the wishes of the people’ ” (ibid., 9).

This constitution served the Fort Belknap Indians until a new one was written in 1933, just prior to the adoption of the Indian Reorganization Act.

Fowler, Loretta. *Shared Symbols, Contested Meanings: Gros Ventre Culture and History, 1778–1984* (Ithaca, N.Y.: Cornell University Press, 1987).

Lopach, James J., Margery H. Brown, and Richmond L. Clow. *Tribal Government Today: Politics on Montana Indian Reservations*, rev. ed. (Niwot: University Press of Colorado, 1998).

National Archives. RG 75, Central Classified Files, 1907–1939, Fort Belknap, File 9581-A (1921).

Ridnick, David. *The Fort Belknap Assiniboine of Montana: A Study in Culture Change* (1938; repr., New York: AMS Press, 1978).

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## Fort Belknap Tribal Business Council Constitution and Bylaws

Article 1. The name of this organization shall be the Fort Belknap Tribal Business Council. Its purpose, to transact the Tribal business of the Fort Belknap Indians, Montana.

Article 2. The Council shall be composed of 13 members; six of whom shall be Assiniboine Indians, and six Gros Ventre Indians, and the Superintendent for the Fort Belknap Indians. The Indian Councilmen shall be at least 21 years of age and enrolled on the regular tribal rolls of the tribe represented.

Article 3. The period of service as Councilmen shall be for one year, beginning on July 1, and ending on June 30 of the following year, unless removed for cause by the Council.

Article 4. The Council shall elect its officers for the year at the first meeting following election as councilmen. The officers of this organization shall consist of a:

President.

Vice President.

Secretary.

Treasurer.

Sergeant-at-Arms.

The President shall preside at every meeting and shall enforce the Constitution and By-Laws. The Vice President shall preside in the absence of the President. The Secretary shall keep a correct record of all proceedings of the Council. He shall read the minutes of each meeting at each succeeding meeting, and shall call the roll, and preside in the absence of the President and Vice President. The Treasurer shall have the care of the funds of the Council. The Sergeant-at-Arms shall preserve order under direction of the presiding officer.



Article 5. The Council shall hold regular meetings once a month but special meetings shall be held when called by the president.

Article 6. Nine members of the Council shall constitute a Quorum for the transaction of business.

Article 7. The Councilmen of either tribe shall not adopt any resolution or attempt to enter into any agreement to its own advantage that may be detrimental to the interests of the other tribe, but shall at all time keep in mind the promotion of the common welfare and harmony of both tribes as a whole.

Article 8. This Constitution may be amended by an announcement of the amendment and a three-fourths vote of all members of the Council, the vote being taken at least a month after the announcement of the proposed amendment.

By-Laws. The following shall be the order of business which shall be subject to temporary change at any meeting by a majority vote:

1. Call to order.
2. Roll call.
3. Reading, correction, and adoption of the minutes of the previous meeting.
4. Unfinished business.
5. Report of Committee.
6. New business.
7. Adjournment.

The meeting shall be called to order as soon as it appears that a quorum is present.

If a Councilman, while speaking, be called to order he shall, at the request of the chair, take his seat until the question of order is decided.

Should two or more Councilmen rise to speak at the same time, the chair shall decide who is entitled to the floor.

No Councilmen shall interrupt another in his remarks except to call to a point of order.

A councilman shall not speak twice upon a question until all who wish to speak shall have had an opportunity to do so.

Speeches shall be limited to ten minutes, but this time may be extended by majority vote of the council.

A motion shall be open for discussion only after it has been seconded and stated from the chair.

At the request of five members the mover of a motion shall be required to reduce it to writing.

When a question is pending before the Council, no motion shall be in order except; to adjourn, to refer, for the previous question, to postpone indefinitely, to postpone for a certain time, to amend, which motions shall have precedence in the order mentioned.

Motions to lay on the table shall not be debatable except as limited by Robert's Rules of Order.

A motion to reconsider shall be entertained only when made by a councilman who voted in the majority, and in order to carry shall receive a majority vote.

The reports of Committees shall be subject to amendments and substitutes from the floor of the Council as are other motions and resolutions.

No motion or resolution shall be voted upon until the mover or introducer has had a chance to speak if he so desires.

When a roll-call vote has been taken, and all the Councilmen present have had the opportunity to record their votes, the ballot shall be declared closed.

When a roll-call ballot has been ordered, no adjournment shall take place until the result has been announced.

Robert's Rules of Order shall be the guide on all matters not provided herein.

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## 64

### *Bylaws of the Crow Indians (Crow People, 1922)*

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The Crow, who refer to themselves as Absaroke, meaning "children of the large-beaked bird," presently reside in southeastern Montana. Speaking a Siouan language and closely related to the Hidatsa people, the Crow were originally divided into three distinctive bands: River Crows, Mountain Crows, and Kicked-in-the-Bellies Crows. Once the Crow acquired horses, they became an even more powerful people dependent on buffalo, raiding, and trading.

The Crow are a matrilineal society, with a fully developed clan system consisting historically of thirteen clans. In the past each family group was led by a respected headman, chosen on the basis of his warrior capabilities. Their organic political leadership consisted of a council of chiefs.

During the early years of interactions with whites, sociocultural relations were generally peaceful. However, as more non-Indians moved in, so too did epidemic diseases, fortune hunters, land speculators, Christian missionaries, and cattle ranchers. And despite serving as scouts for the U.S. military against tribes deemed "hostile" by the Americans, the Crow, through a series of treaties and congressional acts, lost most of their aboriginal homeland, once estimated at about 38.5 million acres. In fact, by 1905 their landholdings had been reduced to a little more than two million acres.

Enduring substantial land dispossession, cultural deprivations, and subsistence losses, the Crow responded in the early twentieth century by developing a business council in an effort to exercise a measure of their retained sovereignty. The following set of by-laws, drafted in 1922, clearly reflects this.

Hoxie, Frederick E. *The Crow* (New York: Chelsea, 1989).

National Archives. RG 75, Central Classified Files, 1907–1939. Crow. File 9727–1930–054.

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## Bylaws

Governing the election, meetings and procedure of the Business Committee of the Crow Tribe of Indians of Montana.

*Committee:* This Committee shall be known as the Crow Business Committee. It shall be composed of seven (7) members, one for each of the seven districts hereinafter designated.

*Elections:* The election of committeemen shall be held in the respective districts on the 20th of December of each year, except when the 20th falls on Sunday in which event the election shall be held on the following Monday. Each committeeman shall be elected for a period of one year and shall represent his district from January 1, to December 31, of the year following his election, or until such time as his successor is duly elected. Should a vacancy occur during the year on account of death, resignation, or some other cause, a special election may be held in that district to elect some one to fill out the unexpired term.

The Superintendent shall make provision for the calling and holding of elections in the various districts under such supervision as will, in his judgment, best insure a fair election, including sufficient notice to the Indian electors of the district.

For the purpose of the election of said committeemen, all members of the tribe, 21 years of age and over, shall have the right of voting.

Immediately upon the completion of an election, the officers in charge of the election in each district shall report, in writing, to the Superintendent of the reservation, the name of the person, elected as committeeman for said district, such notification to be attested by the officers in charge of the election, and whenever practicable, by the District Farmer or other reservation employee.

*Districts:* The seven districts shall be as follows: Wyola–Wyola Farm District; Lodge Grass–Lodge Grass Farm District; Reno–Reno Farm District; Black Lodge–Black Lodge Farm District; Pryor–Pryor Creek Farm District; Upper Big Horn–Big Horn Valley . . . ; Lower Big Horn–Big Horn Valley from same line North to Two Leggings Bridge.

*Meetings:* All regular meetings of the Business Committee shall be called by the Superintendent of the Crow Reservation, or other officer in charge, not oftener than once every two months at such times as the business matters before the Committee seem to warrant, due notice thereof being given at least six days in advance, so that each committeeman may confer with the Indians of his district on matters of interest to them. All meetings are to be held at the Agency Office. Special meetings may be called when deemed urgent and necessary by the Superintendent, or when requested by at least five members

of the Business Committee, which request shall state the object for which the meeting is desired.

*Fees:* Each member of the Committee shall be paid not to exceed ten (10) cents per mile (one way only) by shortest convenient route from starting point to place of meeting. Each member of the Committee shall also be paid not to exceed Four (\$4.00) Dollars for each full day necessarily used in attending the meetings exclusive of the coming and going.

*Chairman:* The Business Committee may elect one of their members as chairman of said Business Committee. Pending election of a chairman or if the Committee shall fail to elect a chairman, the Superintendent shall preside. The Superintendent shall present matters of interest on which action is desired and furnish such information in his possession as he may deem proper and which will be helpful to the Committee.

*Secretary:* A Clerk shall be detailed by the Superintendent to act as Secretary of the meeting whose duty it shall be to record the proceedings of the meetings. He shall have no vote in the proceedings, except in case he is a member of the tribe and otherwise entitled to vote.

*New Matter:* Any member of the Business Committee may introduce subjects of general interest to the tribe for consideration and action at any business meeting, and such matters shall have the same attention as subjects presented by the Superintendent.

Any member of the Tribe may be granted permission by the Business Committee to present new matter for its consideration. The discussion of subjects, then under consideration, may be permitted by the Committee under such limitations or restrictions as it may see fit to impose.

*Reference to Tribal Council:* Matters of great importance to the tribe and which the Business Committee believes should be referred to a general tribal council, may by a vote of at least five of the members of the Business Committee and with the advice and consent of the Superintendent be referred to a meeting of the general council, provided that such general council of the tribe shall be called by the Superintendent at such time, with such notice, and under such restrictions as he may deem proper. The Superintendent shall also formulate rules for the guidance of such general tribal council in order that the proceedings may be recognized by the Government as the true action of the tribe.

*Executive Session:* Whenever the exigencies of the matter under discussion warrants, the Business Committee including Chairman and Secretary may go into Executive Session, thus excluding all persons not members thereof.

*Amendments:* These By-Laws may be amended by a majority of the Business Committee subject to the approval of the Indian Office.

The above By-Laws are hereby approved by the Crow Business Committee, May 9, 1922... [signed by Agency Superintendent and five business committee members]

*Constitution of the Cheyenne  
River Sioux Indians  
(Minneconjou, Itazapcosni,  
Sihasapa, and Oehe  
Numpa Peoples, 1923)*

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The Native peoples of the Cheyenne River Reservation are Lakota speakers and part of the Great Sioux Nation. Their reservation is located in north central South Dakota. One of the largest remaining reservations, it consists of approximately 1.5 million acres of land held in trust by the United States. The Cheyenne River peoples were signatories to the 1851 Treaty of Fort Laramie, which formally established the boundaries of the Great Sioux Nation, with the 1868 Fort Laramie Treaty further cementing the land rights of the Lakota and other tribal nations. The actual Cheyenne River Reservation was not officially demarcated until 1889, after the discovery of gold, Custer's defeat, and white settler interest in the area led the federal government to violate the previous treaties and force significant land reductions on the Lakota peoples via congressional agreements and the allotment process. Two congressional acts in particular were devastating to the tribe's land base: The so-called Surplus Lands Acts of 1908 and 1910 empowered the secretary of interior to make nearly 60 percent of the reservation available to non-Indians for homesteading purposes.

By the 1920s the Cheyenne River Sioux were in a state of disrepair with regard to their lands, health, housing, and other matters. Nevertheless, taking the initiative in 1923, the tribe's leadership drafted a constitution in an effort to assert a measure of political coherence for their nation. The Office of Indian Affairs received the charter on March 10, 1923, although the limited documentation available does not indicate that federal officials ever approved it. A slightly revised constitution was later written and submitted to the BIA in 1925 and was approved on May 25 of that year. This document remained in effect until the tribe formally adopted an Indian Reorganization Act (IRA) constitution in the fall of 1935.

Glover, John Henry. *Tribal Sovereigns of South Dakota: A Description of Contemporary Sioux Governments* (Rapid City, S.D.: Chiesman Foundation for Democracy, 2005).

National Archives. RG 75, Central Classified Files, 1907–1939, Cheyenne River, File 94590–1922–054.

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## **Cheyenne River Sioux Constitution**

We, the committee appointed to draft the Constitution and by-laws for the General Council of the Cheyenne River Sioux Indians, have the honor to submit the following, which we respectfully recommend be adopted.

### *Constitution and By-Laws of the General Council of the Cheyenne River Sioux Indians*

#### ARTICLE I

This organization shall be known as the General Council of the Cheyenne River Sioux Indians.

#### ARTICLE II

The officers of the Council shall consist of a Chairman, Assistant Chairman, Secretary and Treasurer.

#### ARTICLE III

A person to be eligible to election to any of the positions provided for in Article 2 hereof must be an allotted male member of the Cheyenne River Sioux Indians and must not be less than 30, nor more than 55 years of age, except in the case of the Secretary, to which position an allotted male member of the Cheyenne River Sioux Indians not less than 21 years of age shall be eligible.

#### ARTICLE IV

The officers provided for herein shall be elected by a majority vote of the Secretary council and the term of office in each case shall be one year, all officers to be elected at a General council which will be called for that purpose annually.

#### ARTICLE V

It shall be the duty of the Chairman to preside at all meetings and deliberations of the General Council. He can not vote upon any question of motion made by the Council except in case of a tie.

#### ARTICLE VI

The assistant Chairman shall perform the duties of the Chairman when the Chairman is absent from duty.

#### ARTICLE VII

Should both Chairman and Assistant Chairman be absent, a Temporary Chairman shall be elected by the council to serve only during that session of

the council. His duties and powers shall be the same as those of the regularly elected Chairman or Assistant Chairman.

#### ARTICLE VIII

It shall be the duty of the Secretary to keep accurate minutes of all meetings of the General Council and to answer and file all correspondence that may be received by him in connection with the deliberations of previous General Councils or matters to be taken up by subsequent councils.

#### ARTICLE IX

Should the regularly elected secretary be absent, a temporary secretary shall be elected by the General Council and it shall be the duty of the temporary secretary to keep accurate minutes of the meeting for which he was elected and immediately transmit the minutes to the regular secretary.

#### ARTICLE X

The Treasurer shall have charge of and account for all monies belonging to the General Council and shall make no disbursements therefrom except when the Council votes that the money be disbursed and the Treasurer receives an order for such disbursement signed by the Chairman and Secretary. He shall render a statement of all monies received, disbursed and on hand at the time of the regular election of officers provided for in Article IV hereof.

#### ARTICLE XI

Any or all officers of this Council shall be removed from his office if convicted for the violation of any State or Federal Law or for any violation of any regulation of the Indian Office, or taking charge of any matters or correspondence affecting the tribe without the full knowledge and consent of the General Council, or if he should absent himself from two successive councils without good and sufficient reason, the Council to be the judge of the reasons offered.

#### ARTICLE XII

Whenever the tribe congregates and a Tribal Council is called, all the male adults over the age of 18 shall have a voice and vote in the council, otherwise the General Council shall consist of forty delegates, ten to be elected by each of the four district Councils. For the purpose of transacting the business of the General Council, a quorum is present, the Council shall [missing words] proceed with the transaction of business, and in case of the failure of one or more of the regularly elected delegates to attend the General Council appointment to fill the vacancies resulting from such failure to attend shall not be made either by the Chairman or otherwise. [missing words]

ARTICLE XIII

All matters pertaining to and affecting the tribe as a whole shall be acted upon by the General Council.

ARTICLE XIV

Delegates shall be elected by the District Councils whenever action [*sic*] is received that a General Council has been called. As soon as the delegates have been elected by the District Councils the names of the delegates as elected shall immediately be certified to the Superintendent by the Chairman and Secretary of the District Councils, all the names so certified to constitute the roll of the General Council. This roll shall be called immediately upon the convening of a General Council and when a vote is taken upon any motion or question before the Council. In the latter case, the Secretary shall record the yea and nay votes by writing in the minutes the names of the delegates and the way they voted.

ARTICLE XV

A General Council shall be called by the Superintendent whenever ordered by the Indian Office, or in his judgment, he has received sufficient matter requiring the action of the General Council to justify him in calling a meeting of the same, or whenever the Indians of the reservation, through the Chairman of the General Council, have brought such matters to his attention. It shall be the duty of the Superintendent to notify each District of the call for a General Council 30 days in advance of the date set for the meeting of the General Council (or in case of emergency where great loss would result to the tribe if the 30-day notice is strictly adhered to, at least 10 days in advance of the date set for the meeting), the date for the meeting of the General Council to be determined by the Superintendent and the Chairman of the Council. When sending out the call for the meeting of the General Council, the Superintendent shall state in the call, the objects or points to be taken up by the Council and when the Council is convened the business to be transacted by the council is to be confined to that specified in the call; provided, that the Council shall take up important matters that may arise during the time between the call for the Council and the convening of the same.

ARTICLE XVI

When a member of the Council is recognized by the Chairman and takes the floor, he shall confine his remarks to the subject then under discussion and the length of time he shall be permitted to speak on that subject is not limited; provided, that no member shall be permitted to speak more than once on any subject without first securing permission therefor from the Chairman.



## ARTICLE XVII

Within ten days after the adjournment of the General Council, the Secretary shall transmit the minutes to the Superintendent, the minutes transmitted to be signed by the Chairman and attested by the Secretary.

## ARTICLE XVIII

All actions of the General Council shall be submitted to the Business Council. For the purpose of acting upon the minutes of the General Council, a meeting of the Business Council, the Superintendent and the Secretary of the General Council shall be held at the Agency Office on the tenth day after the adjournment of the General Council. All actions of the General Council that meet with the approval of the Business Council provided for in this article [*sic*]. Any action of the General Council that may be disapproved by the Business Council shall be referred back to the General Council for its reconsideration at its next meeting.

*Walter Swift Bird,  
Jas. Crow Feather,  
John Promise,  
Henry W. Fielder,  
Straight Head (his X mark).*

## 66

*Constitution and Bylaws  
of the Menominee Indians  
(Menominee People, 1924)*

Up to 1924, the same year Congress enacted the Indian Naturalization Act, which unilaterally gave the franchise to all those Indians who had not yet received it, the Menominee people had continued to show great skill as business entrepreneurs still wedded to communal decision making. That same year the Menominee reorganized their government by creating an advisory council of seven enrolled members who would play a central role in Menominee governance, though the tribe continued to rely on its general council for major decisions.

According to David Beck, the Commissioner of Indian Affairs had encouraged the Menominee to create an advisory council to help with local governance and to avoid discord, but the commissioner continued to wield extraordinary authority over the Menominee's decision-making capacity. Note the tone and language of the oath of office each

newly chosen advisory council delegate had to swear: "I, (name), do solemnly swear that I will support and defend the *Constitution of the United States of America*, and faithfully execute the office to which I have been elected" (emphasis mine).

Beck, David. *The Struggle for Self-determination: History of the Menominee Indians since 1854* (Lincoln: University of Nebraska Press, 2005).

Hosmer, Brian C. *American Indians in the Marketplace: Persistence and Innovation among the Menominees and Metlakatlans, 1870–1920* (Lawrence: University Press of Kansas, 1999).

National Archives. RG 75, Central Classified Files, Keshena, 1907–1939, 054.

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## Constitution and Bylaws of the Menominee Indians

1. A Committee of Menominee Indians, to be known as "The Advisory Council of the Menominee Indian Reservation," shall be selected to consist of seven enrolled and recognized adult members of the Menominee Tribe.
2. The method of selection shall be as follows: Three members shall be elected by the adult members of the tribe in the manner hereinafter described: Those desiring to be candidates shall, not less than ten days before election day, file their names in the office of the Superintendent of the Reservation, supported by a petition signed by not less than twenty-five qualified voters of the Tribe. The Superintendent shall prepare a ballot containing the names of all the nominees so filed. Election shall be held on a day in September to be designated by the Superintendent and properly advertised for not less than thirty days prior thereto. An election board shall consist of an Inspector, Clerk and Ballot Clerk, to be selected by the bystanders at the time designated for the opening of the polls, and who shall immediately thereafter declare the polls open. Polls shall be open at 9:00 A.M. and remain open until 5:00 P.M. Each voter shall obtain from the ballot clerk an official ballot, which shall bear the endorsement of the ballot clerk. The voter shall immediately mark his choice of three from the list of candidates, and deliver the ballot to the inspector who shall deposit same in the ballot box, and announce to the clerk the name of the voter, which shall be written on the polling list by the clerk. In case any voter is not able to prepare his ballot, he may call upon any member of the election board to assist him. Immediately after the closing of the polls, the ballot box shall be opened and the votes counted by the election officers. The ballots and tally sheets shall then be delivered to the Superintendent, who, with the two judges of the Indian Court of the Menominee Reservation, shall constitute the canvassing board. The three candidates receiving the highest number of votes shall be declared elected.

Another three members shall be selected by the Commissioner of Indian Affairs from a list of eligibles to be submitted to him by the Superintendent

of the Reservation. The six members selected as above shall meet at once and select a seventh member from the Tribe at large.

3. The seven members so chosen shall take office on the third Monday in October, or as soon thereafter, following their election, as practicable, and shall hold office for two years and until their successors are chosen and qualify.

4. Should any vacancy arise in the Advisory Council by the death, resignation, or otherwise, of any of its members, said vacancy shall be filled by the Advisory Council, subject to the approval of the Commissioner of Indian Affairs.

5. Before entering upon duty, each member of the Advisory Council shall subscribe in the presence of the Superintendent of the Reservation the following oath: "I, (name), do solemnly swear that I will support and defend the Constitution of the United States of America, and faithfully execute the office to which I have been elected."

6. At the first regular meeting held by the Advisory Council after its election, it shall select from its members a president and a secretary. The president's duties shall be to preside at all meetings when present, and the secretary's duty shall be to keep a record of all proceedings, and file a certified copy of the same in the office of the Superintendent, within ten days after the meeting. In the absence of either of the above officers, the Advisory Council shall elect a president or secretary pro tem. No business shall be transacted without the presence of a quorum, which shall consist of a majority of the members of the Council. The minutes of the Council shall be signed by the president and secretary and at least two other members of the Council.

7. The regular meetings of the Council shall begin each year on the third Monday in October, or as soon thereafter as practicable after the new Council is elected. In case of exigency, the President of the Council may call a special meeting of the Council, upon a request in writing by the majority of the Council members. All meetings are to be held in Keshens or Neopit, in the discretion of the Council. The total length of time consumed for all such meetings shall not exceed ten days in one year.

8. The Advisory Council as above constituted shall be the representatives of the Menominee Tribe of Indians in all matters affecting the welfare and business of the Tribe, including the conduct of the logging and milling operations on the Reservation, and it shall be the duty of the Council to consider all matters brought to its attention by the members of the Tribe, or by the Superintendent, or that may arise through its own investigations, and shall submit to the Superintendent of the Reservation for appropriate action such recommendations as it has to make. If the Superintendent fails to take satisfactory action, the Council may appeal to the Commissioner of Indian Affairs, through the Superintendent of the Reservation, and if the Superintendent of the Reservation fails or refuses to submit such appeal, the Council may communicate direct with the Commissioner of Indian Affairs.

9. Each member of the Advisory Council shall receive as compensation for his services, \$5.00 for each day's attendance at the regular and special meetings, and 10 cents per mile for the distance necessarily traveled from his home

to the meeting place and return; provided, that compensation shall not be paid for more than ten days in one year. This compensation shall be paid by check, drawn by the Superintendent of the Reservation from tribal funds applicable.

10. The Advisory Council may recommend to the Commissioner of Indian Affairs any changes in these regulations that may, at any time in its judgment, seem advisable.

*/s/ Department of the Interior.*

*Office of Indian Affairs.*

*Feb. 25, 1924.*

*Approved,*

*/s/ Chas. H. Burke*

*Commissioner.*

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## 67

## *Duwamish Constitution (Duwamish People, 1925)*

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The Duwamish were one of several small tribal nations (e.g., Suquamish, Snoqualmie, Stilliguamish, Snohomish, Skagit) who, under duress, negotiated and signed the Treaty of Point Elliott with the United States on January 22, 1855 (12 Stat. 927). In this land-cession treaty, the several tribes relinquished nearly eleven million acres of their territory in exchange for various financial and other inducements, including recognition of their sovereign status and proprietary rights to their much-reduced remaining lands. It would be nearly four years before the treaty was finally ratified by the U.S. Senate and proclaimed by the president in March 1859.

Historically, the Duwamish lived in several villages along the river bearing their name, and their territory encompassed what became the city of Seattle, which is named after Chief Seattle, or Sieahl, the first signer of the Point Elliott Treaty. Upon ratification of the agreement, the Duwamish gradually scattered widely and became deeply impoverished as their lands were settled by non-Indians.

The Duwamish struggled to retain their political autonomy, and in February 1925 the tribe's leaders, who had organized the Duwamish Tribal Organization, adopted their nation's first written constitution. This document laid out the organization's purpose, defined membership requirements, and identified the officers—president, secretary-treasurer, and business council members—all of whom were to hold office indefinitely until they voluntarily resigned or “unless [they

were] otherwise disqualified by charges made by a member or members" in good standing.

The Duwamish gradually became landless, and by the 1960s the BIA was no longer recognizing them as a distinct political entity. This diminished political status was judicially affirmed by U.S. District Judge George Boldt, author of the famous *Boldt* decision of 1974, which affirmed the right of certain treaty tribes to 50 percent of the commercial harvest of salmon. The Duwamish had sought inclusion in this settlement, in *United States v. Washington* (476 F. Supp. 1101 [1979]). However, Boldt ruled that, although it was clear that the tribe had had dealings with federal and state officials, it had not continued to exist as a continuous "separate, distinct, and cohesive Indian cultural or political entity"; therefore, they were ineligible to exercise fishing rights as a treaty tribe.

Presently, the Duwamish are continuing their efforts to reestablish their political status as a recognized native nation.

Harmon, Alexandra. *Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound* (Berkeley: University of California Press, 1998).

Suttlese, Wayne, and Barbara Lane "Southern Coast Salish." In *Handbook of North American Indians*, vol. 7, gen. ed. William C. Sturtevant (Washington, D.C.: Smithsonian Institution, 1980), 485–502.

Copy of this constitution in author's possession.

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## Constitution and Bylaws of the Duwamish Tribal Organization

February 6, 1925.

At Renton, King County,  
Washington.

### *Article I*

This organization shall be known as the Duwamish Tribal Organization, of the Duwamish American Indians.

### *Article II*

#### *(Statement of purpose)*

The purpose of this tribal organization shall be:

1. To promote, and co-operate with efforts and more perfect union and educational development of its members. [*sic*]
2. The establishment and cultivation of a clear acquaintance and comradeship among its members and to provide adequate meeting and discussion.

3. To promote morality, a good citizenship, of the younger generation, and to obtain all the rights thereof for its members.
4. To promote the study and to preserve the history and the traditions of the Duwamish tribe.
5. To promote the general welfare of the Duwamish tribe, and advancement of its members, and to investigate the legal problems of the Duwamish tribe, and to oppose any movement which may be detrimental to its tribe.

*Article III*

*(Membership)*

SECTION I

- A. The membership of this organization shall be divided into classes, namely: Active Indian, and junior of Indian blood only of the Duwamish tribe.
- B. Active members shall be adults, persons of Indian blood only, and shall be descendants of the Duwamish tribe, shall be eligible for membership, and can vote and hold office.
- C. Junior members shall be Indians and Indian blood under the age of twenty-one years.

*Article IV*

*(Officers)*

Section 1. The Officers of this organization shall be a President, a Secretary-Treasurer, and a business council.

Section 2. The Officers shall hold office until removed by death, [or] unless otherwise disqualified by charges made by a member or members of the organization in good standing.

All charges must be furnished in writing to the Secretary and supported by affidavits duly sworn to before a notary public, and two-thirds votes of the Council and of the members present at a special meeting called for that purpose.

Section 3. Only active members of good standing shall be eligible to hold office in the organization, either elective or appointive.

Section 4. The board of council and the members of the organization shall have the right to choose and appoint from its members to fill any vacancies that may be caused by death of any officers, and said appointed to hold office until the next regular meeting held on the first Saturday in May of each year, and the members shall determine the election of the said appointed or other selection and nomination for election.

Section 5. The President shall be a member and Chairman of the Board of Council; it shall be the duty of the President to preside in all meetings of the organization and of the Council, to see that the By-laws of the organization are regularly enforced, to call special meetings of the organization when requested by ten (10) or more members, or by the Board of Councils, and to provide on all public occasions unless otherwise arranged.

Section 6. The Board of Council shall have the right to appoint any of its members to perform the duties and exercise the powers of the President in his absence or disability of the President.

Section 7. The secretary shall be a member of the Board of Council, and shall keep a record of all proceedings of the organization and of the Councils, and shall receive and file the written reports of all officers and committees; each year he shall submit a written report of his activities, reading it at the yearly convention; and he shall receive all applications for membership of the tribe, and shall be ex-officio member of all committees, he shall have charge of all such documents and records which the organization shall order to be printed, and he shall submit all membership applications of the tribe to the presiding Chairman at the annual convention, to be determined by the Board of Council and the President.

Section 8. The Secretary-Treasurer shall be authorized and directed by Councils to receive all moneys belonging to the organization and to dispose of the same only when authorized by the President and the Council for expenses only.

### *Article V*

#### *(Board of Council)*

Section 1. The President, the Secretary-Treasurer, and the Council members shall constitute the Board of Councils.

Section 2. The President and the Secretary and Councils shall be elected at the regular annual meeting held on the first Saturday of May of each year, and shall hold office until removed by death or by resignation.

Section 3. The council shall consist of six (6) members elected by the Duwamish tribal organization, they shall act in the best interest of the tribe, they shall have the power and duty to transact such business as it may come before the Council for the best interest of the tribe, and no business shall be transacted without the approval of the President.

Section 4. The Board of Council shall direct the policy of the organization and be responsible for its management, and shall have power to determine any application for enrollments with the approval of the President.

Section 5. The membership in all classes, shall be determined and elected by the Board of Councils, with the approval of the President.

Section 6. Six members shall constitute a quorum of the Board of Councils.

Section 7. The Board of Councils shall authorize all expenditures of the organization funds, for any expenses, for rent of Hall, and President's traveling expenses on any matters concerning the Duwamish tribe, or any meeting where he may represent the part of the Duwamish tribe.

### *Article VI*

#### *(Dues)*

Section I. The annual dues in this organization shall be One (\$1.00) Dollar, payable in advance, except Junior members, which dues shall be fifty cents a year.

*Article VII*

*(Committees)*

Section I. The President shall have power to appoint Committees for any business or representation, and dismiss such Committees or other Committees as the members of Councils shall authorize.

*Article VIII*

*(Meetings)*

Section I. The regular annual meeting of the organization shall be held on the first Saturday of May at the hour of 10 o'clock A.M. at the home grounds, Renton, King County, State of Washington.

Section 2. The order of business shall be: Reading of the Minutes of the previous meeting, reports of officers, reports of Committees; unfinished business; new business; to fill any vacancies of the officers that [were] caused by death; determining application for membership and enrollment.

Section 3. Robert's Rules of Order shall be final authority on all questions of procedure.

Section 4. A quorum shall consist of not less than twenty members and a majority of the Councils Chairman, Secretary, shall constitute a quorum of the organization. [*sic*]

Section 5. Special meetings may be held at any time upon a call by the President or upon written request of ten (10) or more members of organization, or of the Board of Councils, upon ten (10) days' notice.

Section 6. The Board of Councils shall prepare for the annual meeting a program on such topics as are of interest to the membership, and any member may bring up any business for action or discussion.

*Article IX*

*(Amendments)*

Section 1. These by-laws may be amended at any regular meeting of this tribal organization, provided, written notice of such proposed amendments shall be filed with the Secretary of the organization not less than two weeks before such meeting, upon two-thirds vote of the members present.



*Constitution and Bylaws  
of the Oglala Tribal  
Council of the Pine Ridge  
Indian Reservation (Oglala  
Lakota People, 1928)*

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The Oglala Council had continued to meet even though the 1921 constitution lacked formal federal approval. Gradually, however, some Oglala grew frustrated with the political climate and began clamoring for a stronger constitutional structure. The arrival of a new superintendent helped fuel the discussions, which culminated in another constitution in 1928.

This later document was written by the Oglala and revised by the BIA (then led by Commissioner Charles Burke). The revised version provided Burke with a stronger veto power over any proposed amendments. The new “tribal council or business committee” was composed of three delegates from each of the seven reservation districts, and these individuals were elected to two-year terms. The legislative body would become known as the “Council of Twenty-one” or “Committee of 21.”

The preamble of the constitution emphasized both the treaty and statutory rights tribal members were entitled to. However, it also acknowledged “Almighty God as the source of all power and Authority in Civil governments, the Lord Jesus Christ as the rule of Nations, and His revealed will as of supreme Authority.”

Slated to meet but twice a year—January and July—at a place and time of the superintendent’s choosing, the council nevertheless set out to follow the three-fourths majority principle established in their treaty, and it quickly passed a motion to put that into effect. This decision-making structure was similar to what the Rosebud Sioux Tribal Council had opted for as well in their constitutional thrust during the same era.

This document would not endure, however, and within two years profound political and cultural differences led to early drafts of yet another constitution. The principle difference involved two factions: on the one hand, the younger students who had returned from boarding schools and favored both representative government and political participation by mixed-blood tribal members, and, on the other hand, the older Oglala—the chiefs, headmen, and their supporters—exemplified by the three-fourths majority rule, who favored full-bloods or those with mostly Indian blood.

National Archives. RG 75, Central Classified Files, Pine Ridge, File 1131-1924-054, pt. 1 (November 30, 1928).

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## **Constitution and By-Laws of the Oglala Tribal Council or Business Committee of the Pine Ridge Indian Reservation**

### *Preamble*

In order to secure to ourselves, and our posterity the political and civil rights guaranteed to us by treaties and statutes of the United States to obtain a higher education to cultivate good citizenship, to build up an independent and honorable life, to encourage and promote all movements and efforts leading to the good of the general welfare of our tribe, acknowledging Almighty God as the source of all power and Authority in Civil governments, the Lord Jesus Christ as the ruler of Nations, and His revealed will as of supreme Authority, we, the people, Members of the Sioux Tribe of Indians enrolled on Pine Ridge Reservation, South Dakota, in Council assembled, hereby adopt this Constitution and By-Laws governing the election, duties, etc., of a tribal council or business committee of the Sioux Indians of the Pine Ridge jurisdiction.

Article 1. The object of this organization will be to discuss business matters pertaining to the tribe with a view to promoting the social, financial and industrial welfare and best interest of the Indians and protecting their rights.

Article 2. The council shall be composed of three enrolled adult members from each of the following districts:

1. Wakpamni or Agency district,
2. White Clay or Oglala district,
3. Wounded Knee or Manderson district,
4. Porcupine District,
5. Medicine Root or Kyle district,
6. Pass Creek or Allen district,
7. Eagle Nest or Wanblee district.

The councilmen are to be elected by the voting members of the respective districts. Elections for all of the districts above set forth shall be held on the same day. The term of office shall be for a period of two years and the superintendent of the Pine Ridge Agency shall arrange for the first election of the councilmen under this constitution.

Article 3. The officers of the council shall consist of a president, vice president, secretary and treasurer. They shall be chosen from the elected council members by a majority vote of the council for the current two-year term, and be requested to subscribe to the following oath of office.

I \_\_\_\_\_ do solemnly swear that I will support and defend the Constitution of the United States against all enemies and to faithfully and impartially carry out the duties of my office to the best of my ability, and will cooperate with the superintendent in charge of the reservation to promote and protect the best interest of the Indians of the Pine Ridge Reservation and to assist them in every way in their efforts toward better citizenship and progress.

Article 4. Should an office become vacant by death, resignation or otherwise it may be filled by a majority vote of the council. Vacancies in the delegations are to be filled, when desirable, by the district in which the vacancy occurs.

Article 5. The regular delegates and officers of the council, excepting the presiding officer, are the only ones entitled to vote and make motions. In the case of tie vote, the presiding officer shall have the power to decide.

Article 6. The chief, sergeant at arms or any member of the tribe in attendance may have a voice in the discussion of questions purely for the purpose of advice for a peaceful, intelligent discussion and transaction of business.

Article 7. A majority of the members of the council shall constitute a quorum for transacting all ordinary business. No less than fifteen members shall be present, however, for the transaction of important business affecting the tribe as a whole.

Article 8. The business committee or council shall hold two regular meetings per year, in January and July at the agency headquarters at such time and such place as may be designated by the superintendent. Special meetings may be called by or on approval of the superintendent, notice of which shall be sent to each member of the council.

Article 9. Any vacancy occurring in the membership of any standing or temporary committee, not otherwise provided for, the president may appoint a member to fill such vacancy, subject to the approval of the council.

Article 10. Any officer or other delegate of the council, or any other member of the tribe who shall wrongfully represent himself or herself to have authority of the council, shall, upon conviction by the court of Indian offenses, be subject to such fine or other punishments as may be deemed proper by that tribunal, subject to the usual provision for the appeal to and investigation by the Superintendent and the Commissioner of Indian Affairs.

Article 11. This constitution and by-laws may be amended or repealed by two-thirds vote of the council at any regular meeting of the council, provided that such amendment or repeal in writing have been first proposed in the previous regular meeting; provided further, that no change, amendment, repeal or other alternation in the constitution and by-laws shall be effective until approved in writing by the Commissioner of Indian Affairs.

Article 12. The Order of the business of the council shall be as follows:

1. Council call to order,
2. Prayer,
3. Roll call of delegates and officers,
4. Reading, acceptance of the minutes of last meeting,
5. Report of the Treasurer,

- 6. Report of the standing committees,
- 7. Report of special committees,
- 8. Unfinished business,
- 9. New Business,
- 10. Adjournment.

Article 13. In the absence of the president the vice president shall preside.

Article 14. The secretary shall keep minutes of all regular and special meetings, including all business transacted by the council, conduct the necessary correspondence, and shall file a copy of the minutes in the office of the superintendent at the conclusion of each meeting. One copy shall also be sent through the superintendent to the Commissioner of Indian Affairs as soon as possible after the meeting.

Article 15. The duties of the treasurer shall be, to receive and receipt for all money paid into the funds of the council and to deposit same immediately in a safe depository in the name of the council and to keep correct records of all receipts and disbursements; said funds to be withdrawn or paid out only upon the written order of the council duly signed by the president and countersigned by the secretary. The treasurer shall furnish such security for the funds in his charge as may be deemed necessary by the council.

Article 16. Any member of the tribe who is an employee or who is holding any position in the Indian Service shall be ineligible to hold office in the council or as a delegate in the council, but may have a voice in the discussion of questions before the council.

Article 17. Any officers and delegates of the council shall be subjected to recall from office and position for reasonable cause upon proper investigation by the council or the Commissioner of Indian Affairs.

Adopted by the Oglala Sioux Indians of the Pine Ridge Reservation, South Dakota, in general council assembled on this 30th day of November, 1928.

*/s/ Jas. H. Red Cloud,*  
*President of General Council.*  
*/s/ Henry Standing Bear,*  
*Secretary of General Council.*  
*/s/ E. W. Jermark,*  
*Superintendent.*

[The following members' signatures appear on the original copy of the constitution and the bylaws.]

<p>Eagle Nest Dist.  <i>Wm. Randall</i>  <i>Noah Bad Wound</i>  <i>Red Willow</i>    <i>Frank Randall Chas.</i>  <i>Henry Standing Bear</i></p>	<p>Pass Creek Dist.  <i>Daniel Bad Wound</i>  <i>Robert Eagle</i>  <i>Trouble In Front</i>    <i>Little Hawk</i>  <i>Archie Prairie Chicken</i></p>	<p>Kyle Dist.  <i>Thomas Henry</i>  <i>Charles I. Hawk</i>  <i>Ralph Old Horse</i>  <i>[thumb mark]</i>  <i>George Gets There First</i>  <i>Thomas American Horse</i></p>
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Wounded Knee Dist.

*Samuel Kills Brave**Charles S. Topieces**Richard A. Hawk**Dana Long Wolf**Iron White Man**[thumb mark]*

Porcupine Dist.

*John Wood**[thumb mark]*

Wakpamni Dist.

*James H. Red Cloud**Charles Good Voice Iron**Harry Little Soldier**Mountain Sheep*

Oglala Dist.

*Henry Crow**Short Bull [thumb mark]**James Black Horse**Ivan Star Comes Out*

Witnesses to signature by thumb marks:

*Wm. Randall, Hisle, S. Dak.**Red Willow, Wanblee, S. D.*

## 69

*Constitution and Bylaws of the  
Klamath Business Committee of  
the Klamath Indian Reservation  
(Klamath, Modoc, Yahooskin  
Bands of Snake Indians, 1929)*

On the Klamath Reservation in Chiloquin, Oregon, the Klamath refer to themselves as Maklak, which means “people.” Historically, they were divided into several separate subdivisions, each of which was led by a chief. For the Klamath, sustained contact with whites did not occur until the 1850s. Then, like other native peoples, they suffered greatly from diseases introduced by the whites and from the severe diminishment of game by the intruding white settlers.

The Klamath and Modoc signed a land-cession treaty with the United States in 1864 (16 Stat. 707), in which they sold more than thirteen million acres of land in exchange for certain cash, services, annual annuities, and a reserved land base of a little more than one million acres. The Klamath also agreed to allow other tribes to settle on their reservation, although the original two tribes would not “forfeit any of their rights or privileges guaranteed to them” by such new admissions (*ibid.*).

Although a number of Klamath received individual land allotments between 1895 and 1910, a fair amount of their timber-rich territory remained unallotted because the land was ill suited for agricultural pursuits. In 1908 a tribal council was organized on the reservation. By 1913 certain Klamath began receiving per-capita payments

related to timber sales. As a result, tribal members gained an improved socioeconomic status atypical for Indians at the time. Because of their relative economic success, Congress forced the Klamath to pay for the services they received from the federal government. An increasing number of Klamath then began to petition federal officials to liquidate tribal property so that they could receive per-capita proceeds directly since they believed that the BIA was not doing an adequate job securing the best price for their timber.

In April of 1929, Superintendent L. D. Arnold, in response to Commissioner Burke's circular no. 2565 (see Introduction) inquiring about local governance at Klamath, said that "in this connection I have the honor to advise that the Indians... have a Tribal Council composed of 12 members." The council, said Arnold, did not have a constitution or bylaws and "their authority is governed by the regulations of the Indian Service."

Seven months later, however, a constitution had been written by the department and adopted by the Indians. This document was very similar to the 1928 Pine Ridge Reservation constitution discussed earlier. It remained in place until it was modified in 1975.

Stern, Theodore. *The Klamath Tribe: A People and Their Reservation* (Seattle: University of Washington Press, 1965).

U.S. Congress. Senate. Hearing before a Subcommittee of the Committee on Indian Affairs. *Survey of Conditions of the Indians in the United States*. 71st Cong., 3rd sess., pt. 13 (January 30–31 through February 3–5, 1931): 5268–70.

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## **Constitution and Bylaws of the Klamath Business Committee of the Klamath Indian Reservation**

In order to secure to ourselves and our posterity the political and civil rights guaranteed to us by treaties and statutes of the United States, to obtain a higher education, to cultivate good citizenship, to build up an independent and honorable life, to encourage and promote all movements and efforts leading to the good and the general welfare of our tribe, acknowledging Almighty God as the source of all power and authority in civil governments, the Lord Jesus Christ as the ruler of nations, and His revealed will as of supreme authority, we, the people, members of the several tribes of Indians enrolled on the Klamath Reservation, Oreg., in council assembled, hereby adopt this constitution and by-laws governing the election, duties, etc., of a business committee of the Klamath, Modoc, and Yahooskin Bands of Snake Indians of the Klamath jurisdiction.

Article 1. This organization shall be recognized as the business committee of the Klamath, Modoc, and Yahooskin Bands of Snake Indians, residing on the Klamath Reservation in Oregon.

Article 2. The object of this organization shall be to discuss and pass upon business matters pertaining to the tribe with a view to promoting the social, financial, and industrial welfare and best interest of the Indians and protecting their rights.

Article 3. The business committee shall be composed of eight enrolled adult members of the tribes, over the age of 21 years. The term of office shall be for a period of three years, and the superintendent of the Klamath Agency shall arrange for the first election of committeemen under this constitution, such election to be held within 30 days after the approval of this constitution by the Commissioner of Indian Affairs.

Article 4. The officers of the business committee shall consist of a president, a vice president, a secretary, and a treasurer. They shall be chosen from the elected committee members by a majority vote of the committee for the current 3 year term and shall be required to subscribe to the following affirmation:

"I \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies and faithfully and impartially carry out the duties of my office to the best of my ability, and will cooperate with the superintendent in charge of the reservation in all proper efforts to promote and protect the best interests of the Indians of the Klamath Reservation and to assist them in every way toward better citizenship and progress.

Article 5. Should an office become vacant by death, resignation, or otherwise, it shall be filled by a majority vote of the business committee. The business committee shall also provide the procedure for the filling of vacancies in its own membership, subject to the approval of the Commissioner of Indian Affairs.

Article 6. Indians not members of the business committee and others interested in the affairs of the Klamath Reservation may be admitted to the meetings of the committee and allowed a voice in the discussion of matters before the committee, but no one not a member of the committee shall have the right to vote. The president of the committee shall have the right to vote only in the event of a tie vote by the regular voting members.

Article 7. Whenever the business before the committee warrants such action, the committee may go into executive session, thus excluding all persons not members of the committee.

Article 8. A majority of the members of the committee shall constitute a quorum for the transaction of all business.

Article 9. The business committee shall hold four regular meetings each year, on the second Tuesday of the months of January, April, July, and October, at the agency headquarters. Special meetings may be called by the superintendent either on his own motion or upon the written request of five or more members of the committee, such request to state the purpose for which the meeting is called. Notice of such meeting shall be sent to each member of the committee not less than six days in advance of the meeting and such notice shall state the object for which the meeting is called.

Article 10. In the event of a vacancy occurring in the membership of any standing or temporary committee not otherwise provided for, the president may appoint a member to fill such vacancy, subject to the approval of the committee.

Article 11. This constitution and by-laws shall not be effective until approved by the majority vote of the adult members of a general tribal council, called for the purpose, and by the Commissioner of Indian Affairs and the business committee. Any amendment may be amended or repealed by a two-thirds vote of the business committee at any regular meeting of said committee, provided that such amendment or repeal has been first proposed in writing in the previous regular meeting; and provided further, that such amendment or repeal shall not be effective until approved by a majority vote of the adult member of a general tribal council and by the Commissioner of Indian Affairs.

Article 12. The order of procedure of the business committee shall be as follows:

1. Committee call to order.
2. Prayer.
3. Roll call of members.
4. Reading and acceptance of the minutes of last meeting.
5. Report of treasurer.
6. Report of standing committees.
7. Report of special committees.
8. Unfinished business.
9. New business.
10. Adjournment.

Article 13. In the absence of the president, the vice president shall preside.

Article 14. The secretary shall keep the minutes of all regular and special meetings, including all business transacted by the committees, conduct the necessary correspondence, and shall file a copy of the minutes in the office of the superintendent at the conclusion of each meeting. One copy shall also be sent through the superintendent to the Commissioner of Indian Affairs.

Article 15. The duties of the treasurer shall be to receive and receipt for all money paid into the treasury of the business committee and to deposit same immediately in a safe depository in the name of the committee and to keep correct records of all receipts and disbursements; and funds to be withdrawn or paid out only upon the written order of the committee, duly signed by the president and countersigned by the secretary. The treasurer shall furnish such security for the funds in his charge as may be deemed necessary by the committee.

Article 16. Any member of the tribe who is in the employ of the Indian Service shall be ineligible to membership in the business committee, but may have a voice in the discussion of questions before the committee, as provided in article 6.

Article 17. Any officer or member of the committee shall be subject to recall from office and membership for reasonable cause, upon proper investigation, by the committee or by the Commissioner of Indian Affairs.

Article 18. Election: The election of the business committee shall be held on the third Tuesday in December of every second year. Each member shall be elected for a period of three years and shall serve from January 1 of the year following his election until December 31 of the second year following



his election or until such time as his successor is duly elected; provided, that members elected at the first election following the approval of this constitution and by-laws, shall serve from the date they qualify until December 31, 1931.

Article 19. The election shall be conducted at one or more polling places under the direction of the superintendent of the reservation, who shall appoint a board of election for each polling place, such board to consist of three adult persons, carefully selected for known good character and ability to perform the duties required. It shall be the duty of the election board to provide the ballots, to carefully and truthfully interpret the ballots to such voters as are unable to read, and to count the ballots at the close of the election, provided, that whenever an election of members of the business committee is held, under the provisions of this constitution and by-laws, each candidate, or his authorized agent shall have the right to be present in any place during the balloting, and at the counting of the ballots thereafter in order that he may be in a position to detect any irregularities and report them to the superintendent or to the Commissioner of Indian Affairs.

All ballots after being counted shall be carefully preserved by the superintendent of the reservation until the term of office of the members elected by them has expired.

Article 20. Reference to General Tribal Council: Matters of great importance to the tribe and which the business committee believes should be referred to a general tribal council may be so referred by a vote of at least five of the members of the business committee, provided that such general council of the tribe shall be called by the superintendent at such time as he may deem proper.

Approved November 22, 1929.

*Klamath Business Committee,  
By Wade Crawford, President.  
Klamath General Tribal Council,  
By Luke Chester, President....*

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## 70

### *Governance among the White Mountain Apache of the Fort Apache Indian Agency (White Mountain Apache People, 1929)*

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The Apache are a large and diverse cultural-linguistic grouping of aboriginal peoples who historically covered a wide range of territory from present-day Arizona and parts of several Mexican states to New Mexico and Oklahoma. They refer to themselves as Ndee or Dine'é,

meaning “the people.” Contemporary scholars generally categorize the Apache into two groups—Western (those living in Arizona) and Eastern (those living in New Mexico and Oklahoma).

The Western Apache, since the mid-nineteenth century, have been divided into four bands: White Mountain, Tonto, Cibecue, and San Carlos. The White Mountain people generally maintained peaceful relations with the United States, unlike the Tonto and the Chiricahua, who were led by their vaunted leaders, Geronimo and Chief Victoria. With the establishment of Fort Apache in 1879, the White Mountain Apache were forced to settle on the military reservation. Some of them eventually became army scouts who actually served against the Chiricahua and the Tonto.

In the past the Apache had a complex system of band relationships and religious traditions, in which each band was led by a headman or chief, whose authority rested on his ceremonial knowledge and personal characteristics.

The following brief report, written in 1929, by William Donner, the agency superintendent, evidences the retained structures of traditional governance among the White Mountain Apache.

Goodwin, Grenville. *The Social Organization of the Western Apache* (Tucson: University of Arizona Press, 1969).

National Archives. RG 75, Entry 133, Replies to Circulars, 1907–1935; Reply to Circular 2565 (April 5, 1929).

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## **Governance within the White Mountain Apache Community**

April 5, 1929.  
Commissioner of Indian Affairs,  
Washington, D.C.

Dear Sir: Referring to Indian Office Circular No. 2565, dated March 14, 1929, I am supplying the information called for therein as follows:

1. There are no Indians under this jurisdiction other than the White Mountain Apache Tribe. They have a Tribal Council, according to their old Indian customs, consisting of the head chief and a number of sub-chiefs. Each sub-chief represents his particular band. This council or business committee is to some extent elective; that is, when a sub-chief dies, the band meets in conference to decide on a successor and the name is then referred to the head chief, who makes the appointment. The head chief as a rule appoints the party selected by the meeting of the particular band.

## 2. The names of the present members are as follows:

Head Chief, Baha, A-82,

Sub-Chiefs:

B-Band, Jack Keys, B-39,

C-Band, Johns Taylay, C-1,

D-Band, Gail Massay, D-1,

E-Band, Floyd Toggie, E-36,

F-Band, William Lupe, F-1,

G-Band, Elmer Declay, G-17,

H-Band, Harvey Yates, H-1,

L-Band, Charley Shipp, L-18,

P-Band, Isaac George, P-6,

R-Band, Wallace Altaha, R-14,

T-Band, Matthew Moody, T-8,

Y-Band, Custer White, Y-31.

#2 Commissioner of Indian Affairs.

John Taylay, Gail Massay, William Lupe, and Harvey Yates have been holding office for many years. It cannot be determined when they were elected. The head chief, Baha, was appointed by the old head chief, Alchesay, last July just before Alchesay's death. All other sub-chief: named herein were appointed to succeed deceased sub-chiefs in December 1927. All chiefs and sub-chiefs are appointed for life. We have existing vacancies of sub-chiefs for the following bands: "I," "M," "N," "O," "V" and "Z," It is understood that some time during the coming summer all vacancies of sub-chief will be filled.

3. The tribal government referred to above is of the old Indian custom. They have no written constitution or by-laws.

4. The tribe has no super organization of several branches of the tribe other than as indicated above.

Very respectfully,

*William Donner.*

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*Trustees of the Puyallup Tribe  
(Puyallup People, 1929)*

The Puyallup, who refer to themselves as S'Puyalupubsh (“generous and welcoming behavior to all people who enter our lands”), like many Puget Sound tribal nations (e.g., Klallam, Skokomish, Squaxin, Duwamish, Lummi), are part of the Southern Coast Salish culture, which historically relied heavily on salmon for both subsistence and religious traditions. They, along with several other tribes, negotiated their first and only treaty with the United States in December 1854, the Treaty of Medicine Creek (10 Stat. 1132). In exchange for ceded lands, they retained an 18,050-acre tract of land—what is present-day Tacoma, Washington—and also retained the “right of taking fish, at all usual and accustomed grounds and stations.”

Despite the reservation of their remaining lands, by the early 1900s the tribe’s members had become virtually landless through the forced allotment of their lands, leasing arrangements, and various questionable and sometimes fraudulent tactics that dispossessed most tribal members of their acreage.

While their land loss was catastrophic, the Puyallup continued to be a self-governing polity and exhibited political traits reminiscent of their ancient ways. The following letter from Henry Sicade, the nation’s treasurer in 1929, provides a vivid depiction of their governing system at the time.

Cohen, Fay G. *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights* (Seattle: University of Washington Press, 1986).

Deloria, Vine, Jr. *Indians of the Pacific Northwest: From the Coming of the White Man to the Present Day* (New York: Doubleday, 1977).

National Archives. RG 75, Entry 133, Replies to Circulars, 1907–1935; Replies to Circular 2565 (April 2, 1929).

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### Puyallup Trustees

Tacoma, Washington R. #2.

April 2nd, 1929.

Mr. Aug. F. Duclos:

U.S. Indian Agent, Tulalip, Washington.

My dear sir:—

We have a tribal committee of the Puyallup Tribe known as the “Trustees of the Puyallup Tribe.”

In early days before the advent of the Whites, it was known and called, “The council of the tribe.”

The council then did all the tribal business; selected and recommended, who would be the chief, sub-chiefs; made treaties etc., and did all affairs for the tribe.

Today this committee is composed of seven men of the tribe, elected for life. We have no dates as to their induction into office. We have the power to deal for the tribe; sign deeds if need be for tribal property and the government in times past has recognized us as the proper party to do tribal business.

James Goudy, R. #2, Olympia, Wash. is Chairman.

William H. Wilton, R. #2, Tacoma, Wash. is Vice Chairman.

Jos. Swayall, R. #2, Tacoma, Washington, is treasurer.

Henry Sicade, R. #2, Tacoma, Washington, is secretary.

Wallace Wright, R. #2, Tacoma, Washington, member.

Jerry Mecker, R. #2, Tacoma, Washington, member.

Jos. L. Young, Union City, Washington, member.

Yours truly,

*Henry Sicade,  
Secretary.*

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## 72

### *Northern and Southern Pueblo Governance (Various Pueblo Peoples, 1929)*

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I have previously discussed the Pueblo peoples and emphasized their distinctiveness, even among aboriginal nations. Such individuality is reflected in an unusual provision that expressly recognizes Pueblo self-governance: It appears in an unratified treaty that was negotiated between ten pueblos and James Calhoun, an Indian agent who was representing the United States, between July 7 and July 16, 1850. Article five declares that “it is expressly understood and agreed by the contracting parties that the respective Pueblos are to be governed by their own laws and customs, and such authorities as they may prescribe, subject only to the controlling power of the Government of the United States” (Deloria and DeMallie, vol. 2, 1999, 1267).

While the Pueblos were also heavily affected by coercive assimilation policies in later years, the ensuing report by the Northern and Southern Agency superintendents reveals that, insofar as their internal governance structure was concerned, the Pueblos continued to operate with a preponderance of autonomy.

Dozier, Edward P. *The Pueblo Indians of North America* (New York: Holt, Rinehart and Winston, 1970).

National Archives. RG 75, Entry 133, Replies to Circulars, 1907–1935; Reply to Circular 2565 (March 29 and April 12, 1929).

Norcini, Marilyn. “The Political Process of Factionalism and Self-governance at Santa Clara Pueblo, New Mexico.” *Proceedings of the American Philosophical Society* 149(4) (December 2005): 544–90.

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## Southern Pueblos Agency Governance

Box 563,  
Albuquerque, New Mexico.  
March 29, 1929.  
Commissioner of Indian Affairs,  
Washington, D.C.

Sir: Receipt is acknowledged of Office Circular 2865, relative to tribal business committees.

1. The Pueblos of this jurisdiction are organized under their own form of government, consisting of a Governor, subordinate officers, and council. This organization conducts the business of the pueblo. They are elected under the tribal customs, the Governor being elected every year and having the authority to appoint his subordinate officers, the council being made up of the older men of the pueblo. The councils in most of the pueblos are closely associated with their religion and the method of appointing same is not known. However, in the Pueblo of Isleta the council is composed of twelve men selected annually, six by the Governor and six by this office.
2. Two applicable as these pueblos do not have these men.
3. Not applicable.
4. The Pueblos of this jurisdiction are members of the so-called All Pueblo Council and the United States Pueblo Council. The qualifications of representatives to the first mentioned council are not known. The Governor and one delegate constitute the representatives to the United States Pueblo Council.

*Respectfully,*  
Lem A. Towers,  
Superintendent.

## Northern Pueblos Agency Governance

Santa Fe, New Mexico.

April 12, 1929.

Hon. Chas. H. Burke,  
Commissioner of Indian Affairs,  
Washington, D.C.

Dear Mr. Commissioner:

Replying to Office Circular No. 2565, I wish to state that the status of the Pueblo Indians is much different from any of the Indian Tribes of the United States. The business translated by the Pueblos is done through the Governor and his Council. No matter what proposition you have to put over, if it does not meet with the approval of the Governor and the Cacique, you can do nothing. They do not wish and will not tolerate any other council but this old tribal system that they have. The following are the names of the Governors of the different Pueblos of this jurisdiction:

Picuris———Reyes Mermejo  
Taos———Guadalupe Lucero  
San Juan———Santano Archuleta  
Santa Clara——Victoriano Sisneros  
San Ildefonso——Atalano Montoya  
Nambe———Antonio Vigil  
Tesuque———Hilario Vigil  
Santo Domingo——Jose E. Calabasa  
Cochiti———Salvador Pecos

The Governors are elected for one year and their term of office expires December 31st of each year. They have no form of constitution or laws governing their election. In practically all cases the Cacique is the ruling man, and he chooses the Governor of his Pueblo. The Indians, in talking it over call it an election, but very few of them have what really could be called an election. This present form of government has been in existence for hundreds of years and there is no way of introducing any other business committee as long as the old form of government exists in the pueblos.

While the Governor is supposed to be the head of the village, he cannot act on any proposition you put up to him without first holding a meeting with his Council and getting advice from the Cacique. If it pleases the Cacique he may put it over, but if it does not, and regardless of whether the Governor likes it or not, you can do nothing.

*Very Respectfully,*  
*T. F. McCormick,*  
*Superintendent.*

## 73

*Klamath Indian Corporation  
(Klamath, Modoc, and Yahooskin  
Band of Snake Indians, 1930)*

In 1927, two years before the Klamath constitution was adopted, certain Klamath leaders were on record as favoring the idea of incorporating under the name “Klamath Indian Corporation.” Led by Wade and Ida Crawford, a Klamath couple who were on the tribe’s business committee, they had first approached Sen. Charles L. McNary of Oregon that year and requested his help in introducing a bill they believed would effectively eliminate the BIA’s control over their lands and economic decisions. The fervent desire of the Klamath was autonomy over their lands’ natural resources.

Senator McNary introduced bills in 1928 and 1929, but neither gained much legislative traction. In 1930 the Crawfords began a more concentrated effort. They met with the secretary of interior, who assigned the bill writing to E. E. Riddis, an attorney in the solicitor’s office of the Department of the Interior. According to Riddis, the Crawfords and a Mr. Chester of the Klamath Business Committee met with him and provided the ideas that then formed the essence of S. 4165, “a Bill for the Incorporation of the Klamath Indian Corporation.”

According to Wade Crawford, the bill to incorporate was absolutely necessary:

Under the present administration the Indians have no ways of protecting their property or money. The administrators and guardian of the Indians’ property [the BIA] are not now subject to any court review of their actions, and the Indian has no place to which to appeal to have his property and his money protected. This condition has been going on for the last hundred years, and the Indians’ property is continually being dissipated and dwindling away. (U.S. Senate Hearings 1930, 7)

Senator McNary, who introduced this bill on April 25, 1930, pointedly noted that “the purpose is simply to remove the control of the BIA over the Indians as far as possible when they are competent and have property which they can control” (ibid., 5). John Collier, then the executive secretary of the American Indian Defense Association, in his supportive testimony, stated that “in our judgment the policy laid down in this bill is the most important new step in Indian affairs since the general allotment act” (ibid., 16).

The bill, if enacted, would have turned over all of the tribe’s property to the corporation. Enrolled members would have become



stockholders, though they would have been permitted to sell or transfer their shares only to the corporation. Interestingly, the proposed bill made no provision for any children who would be born after the corporation was established. Furthermore, the corporation was to be led by a nine-member board of directors whom the shareholders were to elect, even though the bill also called for a board of supervision. Finally, a fifty-year trust period was proposed, during which time the trust land was to be exempt from taxation.

Although Collier was generally supportive, he and a number of senators, as well as the Department of Interior, were concerned that the Klamath were not quite ready to be virtually self-governing. In fact, according to Deloria and Lytle, “the Klamath proposal did not establish self-government as much as it advocated a way of allowing Indians some voice in how their natural resources were to be exploited” (1984, 51).

Given the bill’s complexity and novelty, as well as the fact that not all Klamath were in agreement with the goal of pursuing federal incorporation, the bill foundered. When it was reintroduced in 1932, it contained virtually identical language. Again, however, it failed to generate much support and was not adopted.

Although at least two tribes (the Eastern Band of Cherokee and the Osage of Oklahoma) had previously incorporated, the Klamath plan was simply too far ahead of its time. Still, the ideas of economic development and a measure of native self-governance were now on the minds of some federal policymakers and would resurface when the Indian Reorganization Act came under discussion.

U.S. Senate. “Incorporation of the Klamath Indian Corporation.” Hearings before the Committee on Indian Affairs, 71st Cong., 2nd sess., on S. 4165 (Washington, D.C.: GPO, 1930): 1–2.

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## Klamath Indian Corporation

### *A Bill for the Incorporation of the Klamath Indian Corporation, and for other purposes*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Klamath and Modoc Tribe and Yahooskin Band of Snake Indians, hereafter referred to as the Klamath Tribe, be, and are hereby, constituted a corporation under the name “Klamath Indian Corporation,” having the powers of a body politic and corporate, as hereinafter provided.

Section 2. That a certificate of incorporation shall be issued by the judge of the United States Federal Court of the District of Oregon upon receipt of

petition, duly verified, signed by a majority of the adult members on the tribal roll of the Klamath Tribe; and upon the issuance of such certificate of incorporation all members on the tribal roll shall become shareholders, each in equal amount, and there shall be vested in each such enrolled member who had attained the age of twenty-one years one vote.

Section 3. All property, real and personal, held in trust for the Klamath Tribe by the United States shall be transferred by the Secretary of the Interior to the Klamath Indian Corporation under a trust patent to be made a fee patent in the discretion of the Congress of the United States not less than fifty years. All claims against the United States Government heretofore asserted that may be hereafter asserted by the Klamath Tribe shall be transferred to the corporation. All contracts of the United States in its capacity as guardian of the Klamath Tribe with the United States as a sovereign or with any private party for the benefit of the Klamath Tribe, including tribal reimbursable debts to the United States, shall become obligations of the corporation.

Section 4. The powers and functions of the corporation shall be to take, hold, control, administer, manage, operate, and dispose of all the collective and other corporate assets and property of every description, both real and personal, except that no authority is granted to sell any of the real estate included within the limits of the Klamath Indian Reservation, Oregon, to other than members of the Klamath Indian Tribe.

Section 5. The Klamath Indian Corporation shall have a duration of fifty years and have authority to (1) sue or be sued; (2) contract or be contracted with; (3) to have and use a seal; (4) to purchase, possess, and dispose of property, both real and personal; (5) to appoint officers; (6) to own stock in private corporations.

Section 6. The Klamath Indian Corporation shall be governed by a board of directors of nine members, to be elected by the adult shareholders, who shall each have one vote. There shall be an annual meeting of the stockholders of the corporation and such other meetings as may be called from time to time by any three of the directors. The board of directors shall be elected at the first annual meeting, three of which members shall serve for the term of one year, three for the term of two years, and three for the term of three years. After the first annual meeting one-third of the members of the board shall be elected at each, succeeding annual meeting. In case of death, resignation, or removal of any of the directors the vacancy shall be filled by the remaining members of the board. The board of directors shall choose a president, a vice president, secretary and treasurer. The secretary and treasurer shall not be required to be chosen from the membership of the board of the Klamath Indian Corporation. All officers and employees shall receive salaries in amounts to be fixed by the board.

Section 7. By mutual agreement between the Klamath Indian Corporation and any allotted member of the Klamath Tribe, the corporation shall have power to acquire the allotted land or any other trust individual property of any Klamath Indian, but not more than the appraised value of the property shall be a consideration for the transfer. The trust period of any member of the "Klamath Tribe" on his trust allotment may be reduced or extended by agreement in writing between the board and the allottee, and made of record in the office of the corporation,

the fee patent to be issued by the Secretary of the Interior on recommendation of the board based on the aforementioned written agreement.

Section 8. For the duration of the trust period adult members of the corporation shall be empowered to sell their shares of stock to the corporation, but no sale of stock shall be made from one Indian to another or to any white person. The shares of stock belonging to minors, inebriates, incompetents by reason of age or other infirmities, insane and persons imprisoned after conviction for a felony, shall be under the complete legal control of the board of supervision and shall not be subject to hypothecation or any other form of alienation while the disability exists, except that such shares or the net profits arising therefrom may be disposed of in whole or in part by the board of supervision to afford means of education or for the benefit of the health of the person while under disability.

Section 9. Immediately upon the formation of the Klamath Indian Corporation there shall be formed a board of supervision consisting of three members, one member to be named by the President of the United States, who shall be chairman of the board of supervision, and two members elected by the stockholders of the corporation. The elected members may be persons not affiliated with the Klamath Tribe of Indians. The term of office of the members of the board of supervision shall be two years. The salary of the chairman of the board of supervision shall be fixed by the President of the United States at not to exceed \$5,000 per annum, and the salaries of the other members shall be fixed by the board of directors of the corporation not to exceed \$5,000 per annum each. This board shall approve any obligations sought to be incurred by the corporation in excess of \$1,000. All transactions affecting the purchase by the corporation of the allotments or the share of stock of minor Klamath Indians shall be subject to approval of the board. It shall assist the corporation in all business matters upon request of the board of directors and it shall be the duty of the board of supervision to require an adequate system of accounting, make an annual audit of the books, and render duplicate copies of the audit to the President of the United States and cause to be filed in the office of the corporation a copy of the audit. The salaries and all expenses of the board of supervision shall be paid by the Klamath Indian Corporation from its funds. The officers of the corporation shall be amendable to the Federal laws and triable in the Federal Court for any acts of misfeasance or malfeasance.

Section 10. It is the intention of this act that the various transactions and operations of the Klamath Indian Corporation shall be as soon as practicable placed under the complete authority of the board of directors of the corporation, and the board of supervision shall serve as an advisory rather than an executive agency.

Section 11. The treasurer and secretary of the Klamath Indian Corporation and the members of the board of directors and board of supervision shall each be required to give surety bonds in an amount to be specified by the United States District Court for the District of Oregon, and such bonds shall be approved by it and filed with the clerk of said court.

Section 12. The Klamath Indian Corporation is authorized, with the approval of the board of supervision, to enter into contracts with the State of Oregon or subdivision thereof, for the purpose of securing educational, medical, or other

services for members of the corporation, and the funds of the individuals, subject to the restrictions specified herein, may be used to pay for such services or other similar services furnished by other agencies; public or private.

Section 13. The directors of the corporation shall declare and pay to the stockholders, quarterly or at shorter stated periods to be determined by the board, the net profits of the corporation: Provided, that it may accumulate in the treasury a reasonable working capital: And provided further, that it shall withhold disbursements of any share of profits to minors unless it is to be used to afford means of education or benefit of the minor's health.

Section 14. None of the property of the corporation shall be subject to taxation until otherwise provided by Congress.

Section 15. The corporation is authorized to make by-laws and adapt rules and regulations to carry out the purpose of this act.

Section 16. When the corporation has been organized and the board of supervision appointed, as hereinbefore provided, all jurisdiction of the Bureau of Indian Affairs over the Klamath Reservation will be terminated. Any powers of the Bureau of Indian Affairs, and the Secretary of the Interior, except the approval of the final roll which are not by preceding terms of this act transferred to the Klamath Indian Corporations, shall be transferred to the board of supervision hereinbefore provided.

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## 74

### *Constitution and Bylaws of the Flathead Business Committee of the Flathead Reservation (Salish [Flathead], Kootenai, Kalispel, and Spokane Peoples, 1930)*

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Established in Montana in the wake of the land-cession Hellgate Treaty of 1855 (12 Stat. 975) between the "Flathead Nation" (a confederation of tribes consisting of the Flathead or Salish, Kootenai, and Upper Pend d'Oreilles or Kalispel) and the United States, the Flathead Reservation comprises more than one million acres of land surrounded by soaring mountain ranges. The Salish did not actually have to move onto the reservation until the early 1870s, and one band of the tribe, led by Charlo, avoided the reservation until 1891. In the meantime, other tribal peoples were being relocated to the reservation, creating an ethnic-cultural mosaic of native peoples. The two largest groupings, the Confederated Salish and the Kootenai, generally live in the southern and the northern parts, respectively.

Like most other reservations, Flathead was allotted and open to homesteading, which led to the loss of nearly half the reservation's original land base to non-Indians. Because of the allotment policy, in 1909 Superintendent F. C. Morgan called for the establishment of a tribal council to deal with enrollment and allotment application and to discuss the creation of a business committee.

This was done via a general council gathering during which a nine-member business committee was elected (each member was to serve a two-year term). The first business committee consisted of the following individuals: Duncan McDonald and Moses Delaware (Flathead), Angus McDonald and Charles Allard (Kootenai), Peter Paul and Eneas Concow (Pend d'Oreilles), Pierre Magpie (Kalispel), Joseph Peon (Spokane), and Chief Charlo, who was listed as the "member at large."

This committee met "at intervals" until its last meeting on February 15, 1921. According to Superintendent Charles Coe, even though the business committee stopped meeting after this date, it continued to exist as a recognized entity. Coe stated that, since 1909, special general councils had occasionally been convened to act on certain matters and that in such instances "the Business Committee acted as members of the General Council."

On December 14, 1928, Superintendent Coe wrote a letter to Commissioner of Indian Affairs Charles Burke, in which he described the Rocky Mountain Power Company's application for a permit to develop a power site on the Flathead River near the town of Polson. He indicated that he had received petitions signed by a number of Flathead who favored the water project. Matters were complicated, however, because the Flathead's "so-called tribal council is not an elected council but a self-constituted and self-perpetuated one" that, in his opinion, was not representative "because the few mixed bloods who dominate it have always seen to it that any meeting was packed by their friends." Furthermore, according to Coe, an A. A. Grorud was active with the council and used his considerable influence to suppress or sidetrack issues that did not favor him or the council. Grorud had apparently initiated a few lawsuits on behalf of the Flathead, though all had been lost. Moreover, he had "collected a large sum of money from the Indians and through the Council." Coe emphasized that the petitioners were anxious to create not only a representative and regularly elected tribal council but also a constitution and a set of bylaws that would effectively blunt the influence of individuals like Grorud.

Commissioner Burke responded to Coe by instructing him to "assist the Indians of your reservation in drafting a suitable constitution and by-laws" and to submit those documents to his office "before submitting same to the general council of Indians." To help Coe, Burke included copies of constitutions from the Blackfeet, Crow, and Pine Ridge reservations to serve as "guides" in formulating the Flathead document.

A little more than a year later, a new commissioner, J. Henry Scattergood, writing on May 29, 1930, sent a “tentative draft of a constitution” for the Flathead Business Committee for Coe’s review. We do not know whether this draft was completed by BIA officers, written collaboratively by Superintendent Coe and Flathead delegates, or put together in some other fashion.

Coe was instructed to review the document “very carefully” and then submit a completed draft to Scattergood of a revised document “substantially along the lines of this draft,” along with explanations of any changes. Scattergood would then study the documents and decide whether to offer the constitution to a general council to be called by the superintendent or to present “them to a general election by districts . . . or whether it will be necessary to submit some to a general vote at all.”

Fahey, John. *The Flathead Indians* (Norman: University of Oklahoma Press, 1974).

National Archives. RG 75, Entry 133, Replies to Circulars, 1907–1935; Reply to Circular 2565 (April 2, 1929).

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## **Constitution and By-Laws of the Flathead Business Committee**

Article 1. This organization shall be known as the Flathead Business Committee.

Article 2. The object of this organization shall be to discuss matters pertaining to the tribe with a view to promoting the social, financial, industrial and general welfare and best interests of the tribe, and make such recommendations to the Superintendent or Office as the Committee deems advisable. This Committee shall also pass upon such matters as may be presented to it by the Superintendent for action, including functions of a tribal council.

Article 3. This Business Committee shall be composed of \_\_\_\_\_ enrolled members of the tribe and who are 21 years of age or more, such members to be elected by and for their respective districts, as follows:

Article 4. Each district shall elect its own committeeman or committeemen.

Article 5. The Superintendent shall make provision for the elections in each district, all of which shall be held on the same day. Notices of election, polling places, etc., should be posted for not less than two weeks preceding the election. The Superintendent shall appoint two supervisors for each voting precinct and take precautions to insure a fair election.

Article 6. Elections shall be regularly held on the \_\_\_\_\_ Tuesday of \_\_\_\_\_ of each odd year. The first election shall be held on a date to be fixed by the Superintendent approximately thirty days after the date of the final approval of this constitution by the Indian Office, and the committeemen then elected shall hold office until the election and qualification of their successors at the next regular election. The regular term of Office shall be for two years.

Article 7. Regular meetings of the Business Committee shall be held on the first Monday of the months of January, April, July, and October, at the Agency headquarters. Special meetings may be called by the Superintendent either on his own notion or upon the written request of five (5) or more members of the Committee, such calls and requests to state the purpose for which the meeting is to be called.

Article 8. If a vacancy occurs in a position of committeeman, the Superintendent may call a special election in the district involved, for the purpose of filling the vacancy.

Article 9. Before assuming their places on the Business Committee, members elect shall subscribe to the following oath or affirmation of office:

I \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies and faithfully and impartially carry out the duties of my office to the best of my ability, and will cooperate with the Superintendent in charge of the reservation in all proper efforts to promote and protect the best interests of the Indians of the Flathead Reservation and to assist them in every way toward better citizenship and progress.

Article 10. At the first meeting following election, the Committee shall elect a chairman, a vice-chairman, a secretary, and any other officers it may require to transact their business. A majority of the members of the committee shall constitute a quorum for the transaction of business.

Article 11. The Superintendent or a representative designated by him shall be present at all meetings of the Committee and confer and advise with them....

Article 12. The Chairman shall preside at meetings of the Committee. In the absence of the chairman, the vice chairman shall preside.

Article 13. The secretary shall keep the minutes of all regular and special meetings, including all business transacted by the Committee, and shall file one official copy of the minutes in the office of the Superintendent at the conclusion of each meeting. Also one copy shall be sent through the Superintendent to the Commissioner of Indian Affairs.

Article 14. Any member of the committee shall be subject to recall from office and membership for reasonable cause, upon proper investigation, by the committee subject to the approval of the Commissioner of Indian Affairs, or by the Commissioner.

Article 15. Matters of great importance to the tribe and which the business committee believes should be referred to a general tribal council or general tribal election may be so referred by a 2/3 vote of the Business Committee, provided that the calling, etc., of such general council shall be subject to and under the direction and supervision of the Superintendent or the Commissioner of Indian Affairs.

Article 16. This constitution and by-laws may be amended by a two-thirds vote of this Business Committee at any regular meeting, subject to the approval of the Commissioner of Indian Affairs.

## 75

*Kiowa, Comanche, and Apache  
Tribal Council Resolutions  
and Petitions (1930)*

In 1928 the Institute for Government Research (today the Brookings Institution) published a detailed report, *The Problem of Indian Administration*, which was the first comprehensive study of the status of American Indians. It included a muted critique of the multitude of problems present in the federal government's administration of Indian affairs. Commonly referred to as the Meriam Report (after its major author, Lewis Meriam), this study, complete with an ample list of policy recommendations, was the culmination of a two-year investigation into the following topics: health, education, economics, family and community life, urban Indians, legal issues, the impact of missionaries on native peoples, and the distinctive relationship between tribal nations and the federal government.

While identifying a panoply of difficulties affecting indigenous peoples, the report maintained that the most profound ailment was the crushing poverty that was rampant throughout Indian country. The principal agent of Indian poverty, noted Meriam, was the federal government's failure to provide sufficient economic replacements for the nearly absolute destruction of indigenous economies.

This indictment of the previous half-century of federal Indian policy did not sit well with congressional officials, who responded by embarking on their own comprehensive study of conditions in Indian country that same year. This multiyear investigation was overseen by the Committee on Indian Affairs, which titled its report the *Survey of Conditions of the Indians in the United States*. During its inquiry the committee held numerous hearings throughout Indian country and demonstrated that "if the tribes were given some form of political recognition, they would be able to withstand the most blatant abuses of the bureaucrats and protect themselves from the worst situations" (Deloria and Lytle 1998, 47).

The recorded testimony of senators and the fascinating verbatim responses of thousands of Indians from hundreds of native nations provides a treasure trove of data on many of the most pressing issues confronting Indians of the time. While deep frustration was often evident, there are also many striking accounts of self-governance. The following set of Kiowa, Comanche, and Apache (KCA) tribal council resolutions and petitions issued in 1931 reflect some of the concerns and interests of these three tribal nations.



*Problem of Indian Administration: Report of a Survey Made at the Request of Honorable Hubert Work, Secretary of the Interior, and Submitted to Him, February 21, 1928.* Institute for Government Research (Baltimore: Johns Hopkins Press, 1928).

U.S. Senate. *Survey of Conditions of the Indians of the United States.* Hearings before a Subcommittee of the Committee on Indian Affairs. 72nd Cong., 1st sess., pursuant to S. Res. 79, S. Res. 308, S. Res. 263, and S. Res. 416, pt. 26 (January 31, 1930; December 5, 1930; December 10, 1930; January 22, 1932; June 30, 1932).

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## Kiowa, Comanche, and Apache Council Resolutions and Petitions

Senator Thomas. I offer for the record resolutions and petitions which I have received from the Kiowa, Comanche, and Apache Tribal Council. The documents contain matters which these tribes desire that I call to the attention of the subcommittee: (The matter referred to follows:)

### *Increasing the Revenues Derived from the Production of Oil on the Lands in the Bed of the Red River*

Anadarko, Okla., November 18, 1930.

Subcommittee of the Senate Committee on Indian Affairs:

It has come to the knowledge of the three tribes that the fund in the Treasury of the United States held to the credit of the Kiowa, Comanche, and Apache Indians is being depleted each year by appropriations made for annuity payments to the three tribes and also for the maintenance of the Kiowa Indian Agency.

Also, it has come to the attention of the three tribes that the production is also decreasing in the areas belonging to the three tribes without any additional wells being drilled.

And, it has come to the attention of the three tribes that on account of the claim of overproduction the President has adopted an oil-conservation policy whereby no lands in the public domain over which the General Land Office has jurisdiction is [*sic*] not to be leased for oil and gas-mining purposes. On account of this fact our lands are not being leased and no additional production has been obtained since the three tribes above mentioned gained title to these lands. Therefore, we the Kiowa, Comanche, and Apache Indians, through our tribal business committee, hereby petition Congress to give us an appropriation in a sum large enough to make a survey and establish definitely whether or not our lands are being drained by offset wells adjacent to the area of this land. It is believed that the conservation policy is an excellent measure for the protection of the oil, but at the same time its scope is so large that it is not profitable toward the oil industry at the present time, as the oil industry is in

such a shape as to cause numerous suits in the courts of our country. The theory of oil conservation is practiced with the idea that as long as the oil remains in the land it can be produced sometime in the future with gainful results. However, in our case it does not appear to be practical for the reason that this oil will not remain in our lands on account of the adjacent wells belonging to commercial enterprises [that] are drilled daily and draining our lands of all the oil that is supposed to be conserved for us for future use. Therefore, after this survey is made and is shown beyond a reasonable doubt that our lands are being drained, in order to protect our interests and to increase our revenue, we petition Congress to instruct the General Land Office to lease our lands for oil and gas in order that production may be increased and more leases drawn to protect our interests in this matter.

We respectfully urge that the Senate subcommittee intercede in our behalf [and] that the foregoing petition be granted.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

*Public No. 217, Seventy-first Congress (H.R. 6564), Approved  
May 14, 1930 Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We, the Kiowa, Comanche, and Apache tribal business committee respectfully refer to paragraph 3, page 9, of the above reference, which reads as follows:

“For payment to the Kiowa, Comanche, and Apache Indians of Oklahoma, under such rules and regulations as the Secretary of the Interior, may prescribe, \$200,000, from the tribal trust fund established by joint resolution of Congress, approved June 12, 1926 (44 Stat. 740), being a part of the Indians’ share of the money derived from the south half of the Red River in Oklahoma.”

Wherein \$200,000 of the Red River oil money was appropriated to make a per capita payment to members of said tribes and urgently request that the act for the fiscal year 1932 appropriating funds for a per capita payment be made to read as follows:

“For payments to the Kiowa, Comanche, and Apache Indians of Oklahoma, under the authority of the Secretary of the Interior, to members of tribes living on date of passage of act, \$200,000, from the tribal trust fund established by joint resolution of Congress, approved June 12, 1926 (44 Stat. 740), being a part of the Indians’ share of the money derived from the south half of the Red River in Oklahoma. The payments to be made during the months of October and March in approximately two equal payments. The shares of minors under 18 years of age to be paid to the parents or caretakers.”

The reason for making the time of payments and the manner of handling minors’ funds as stated above is that these two questions cause quite a little confusion among the different groups of Indians and the department. If it is settled in the act these controversies are avoided, and the Indians will then know with approximate certainty the amount of funds they are going to get and

when it is going to be paid to them. This advance information will assist them in meeting their obligations and in planning their business.

The dates of payments mentioned above are close to the dates that the per capita payments have been made during the past few years. For many years prior to about four years ago the parents were paid the minors' funds who were under 18 years or age. We offer this further justification to the effect that the parents should have the minors' funds for the reason that approximately 675 of the children of these three tribes of Indians are kept at home and sent to public schools at no expense to the Government except the tuition paid to the districts.

Again, we respectfully urge that the subcommittee help us to have the paragraph quoted modified as requested.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

*Patents in Fee under General Policy Letter Dated April 17,  
1917 Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We, the Kiowa, Comanche, and Apache tribal business committee beg to call attention to the fact that there were approximately 110 Indians of the Kiowa Reservation issued patents in fee under the general policy letter dated April 17, 1917, without making application.

When the trust patents were issue to the Indians of the Kiowa Reservation under the acts of February 8, 1887, and June 6, 1900, it was under the conditions that the land was to be held in trust for a period of 25 years and handed down to them free of all encumbrances. The Government violated its pledge and issued patents in fee to the approximate[ly] 110 Indians. Some of them accepted the patents after they were issued and disposed of the land for much less than it was worth and in many cases unwisely expended the proceeds derived therefrom. Had not the patents in fee been thrust upon them most of them would still be in possession of their land.

In an Indian Office letter dated March 31, 1930, bearing file No.: L-S 1299-30, the Indian Office referred to the decision in its letter in language as follows:

“Herewith is a copy of the decree and order for judgment in the case of United States of America v. Theo Snook, et al., Equity No. 111, United States District Court for the District of South Dakota, cancelling a patent in fee issued to Ada Didler (Duggan) for her allotment on Rosebud Reservation during the trust period without her application or consent; also setting aside, canceling and declaring of no effect a tax deed and tax assessments.”

We urge that an adjustment be made for the class of Indians who accepted the patents and sold the land. That an appraisalment of the land at the time of sale be made and the amount ascertained the Indians received for the land, which was less than it was worth in nearly every case, and that Congress right

this wrong as far as possible by appropriating a sum to pay the difference between what the Indians actually received and what the land was actually worth at the time of the sale.

There were 10 of the Indians of the Kiowa Reservation whose patents in fee were canceled. During the time between the issuance and cancellation of these patents taxes were paid by them in the amounts shown opposite their respective names, which amounts have not been refunded. An effort has been made for the past two years to get a refund from the county authorities of the taxes paid by these Indians illegally. The Indian Department has advised that the suit has been instituted and judgment obtained against some counties for the illegal taxes collected. However, the county authorities of the Kiowa Reservation absolutely refuse to refund the money.

Since it was a [*sic*] illegal act on the part of the Government to issue these patents in fee under the policy letter, and the Indians suffered this loss, the Government should either detail a United States attorney to prosecute the suits against the county authorities until collections are made or should appropriate a sufficient amount to reimburse the Indians for all taxes paid and other expenses incurred by the illegal issuance of patents in fee without applications.

The taxes paid under protest are as follows:

Queton—\$78.75

Togonegatty—397.40

Yeahgope—205.30

Bointy—94.50

Koommahrosa (Otto Wells)—1,048.06

Tofpi—73.96

Neda Birdsong—986.23

Lillian Marie Goombi—253.34

Kaulaity—182.74

Tixney—141.69

We, the tribal business committee, urge that you take this up in the proper manner to see that the Indians are given justice for the illegal issuance of patents in fee without applications therefore.

Respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

*Relief for Indians and Delinquent Rentals Anadarko,*  
*Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We, the Kiowa, Comanche, and Apache tribal business committee, wish to call your attention to the conditions which have been brought about in this

section of the country by the long-continued drought, reduction in the price of farm products, and the general financial depression, which has made it very difficult for lessees to pay their rentals under the lease contracts which they have entered into with Indians approved by Government authorities.

The approximate amount of agricultural rentals collected from lessees annually is between \$700,000 and \$800,000. The records of the Kiowa Agency show that on November 15 there was a delinquency in the payment of these rentals in the amount of \$60,001.82. If the lessees can not pay the rentals which were due during the summer months it is quite evident they will be less able to pay their rentals which will become due during the winter months.

We have been advised by numerous bankers which have ordinarily loaned money to probably 75 percent of the lessees to be used in paying rentals that they could not loan to the lessees this year. We would be glad to have your committee call in a few bankers and let them explain why they can not extend credit to the lessees as in the past.

Another thing to be considered is that the bankers and merchants will not extend the usual credit to our Indians this winter as they have in the past. We doubt if more than 50 percent of the rentals can be collected which will fall due during the winter. Many of our Indians are depending largely on these rentals to provide food for themselves and families. If these rentals are not paid, or the matter taken care of in some other way, it will bring suffering to a great number of Indian families. If no solution is provided through Government channels by which the lessees may be provided help to pay their rentals, we recommend the following:

That Congress be asked to appropriate \$120,000 of Red River tribal funds to be loaned to Kiowa, Comanche, and Apache Indians for whom rentals can not be collected which fell due July 1, 1930, or may fall due from November 1, 1930, to April 1, 1931, provided they can not be collected within 45 days after they fall due. The loans to be made to the Indians of the three tribes, not to exceed the amount of rentals which are due and uncollected, but to be as much smaller as practicable, to provide for the needs of the Indian families. When the rentals are collected from the lessees and bondsmen, the loans [are] to be paid off, by the superintendent of the Kiowa Agency and the funds returned to the Red River fund in the Treasury. When rentals are not collected the Government [is] to make up the deficiency.

In this way the Indians would not be given anything nor neither would the tribes be losing anything. We believe that practically all rentals will be collected from lessees and bondsmen which may fall due in the time mentioned above by the close of the calendar year 1931.

We also urge, for reasons stated above, that an appropriation be made of \$10,000 from the general reimbursable fund to be loaned to the Indians of the Kiowa Reservation on a reimbursable agreement to assist them in the purchase of feed, seed, implements, livestock, etc. for use during the first six months of the year 1931.

Many of our Indians put forth creditable efforts to raise crops during the calendar year 1930 and made almost complete failure on account of the long-

continued drought. They need assistance just the same as the white farmers do who made failures under similar conditions.

In order for the above-requested money to give relief to the Indians, it is necessary that an appropriation be made during the month of December or the early part of January and become immediately available.

We urge that you give this request your favorable consideration.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

*Unlawful for Indians to Mortgage Crops  
Growing on Trust Land*

*Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We, the members of the tribal business committee of the Kiowa, Comanche, and Apache Indians respectfully refer to the following quoted decision:

“On June 30, 1922, the United States District Court, of Washington, in *United States v. First National Bank of Yakima* (292 Fed. 330), held that crops growing upon an Indian trust allotment are a part of the land, at least until the crops are severed from the land and that a mortgage on such crops by an Indian without the consent of the Government is necessarily null and void.”

The above court decision has deprived the Indians of credit they have built up in banks and with merchants in the localities where they live. To-day, many Indians are without credit. Many young men have become discouraged, being unable to farm actively on account of not knowing where they can receive help to make their crops.

We urge that Congress repeal this Federal law making it unlawful for Indians to mortgage crops that are raised on Indian trust land. The average farmer in southwestern Oklahoma mortgages his crop to secure the necessary food, clothing, seed, and other supplies while he is making the crops. Without being able to borrow on his crop many of them are unable to get sufficient credit to provide them with the necessities of life, seed, and feed while producing crops. The Indians who have trust property are affected in a like manner.

We therefore urge that you secure a repeal of this law in order that Indians may secure loans on their growing crops as other citizens of the country to better assist them in their agricultural activities.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

*Preference Right on Leasing Indian Land**Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We, the members of the tribal business committee of the Kiowa, Comanche and Apache Indians, respectfully urge that the so-called preference right extended to old lessees to release the land of Indians be discontinued. We understand that the so-called preference right had its beginning when we received our allotments and our land leased out to be broken out and many improvements made and that this preference right extended to lessees at the time to encourage them in making such improvements.

Since many years have passed and practically all land has been broken out that should be and improvements placed on our allotments, we believe we get less rentals by having preference right extended to old lessees than we would if the so-called preference right was not extended. We request that you take this up with the Secretary of the Interior and have it annulled. We have observed in many cases where the lands were advertised for lease at the Kiowa Indian Agency without preference right and brought more money than they would if a preference right had been reserved to the old lessee. There are many people who would bid on a place but knowing that the old lessee has the right to meet, the high bid, they consider it useless and therefore do not bid.

We urgently request, the Senate subcommittee to help us in getting the preference right annulled.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

*Determination of Heirship, Payment of Debts of Deceased,  
Request for Witness Fees for Two Disinterested Witnesses**Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We, the members of the tribal business committee of the Kiowa, Comanche, and Apache Indians, hereby request that the matter of determination of heirship be looked into in so far as it pertains to the payment of debts and obligations of the decedent.

It has come to our attention that all obligations of the deceased are being paid in the form of claims, merely requiring that the claim be submitted or presented in itemized form at the hearing. With the consent of the probable heirs it is usually recommended that same be paid.

We wish to elaborate on the fraudulent claims that appear to have been practiced through the medium of sworn affidavits and itemized statements in the cases of deceased Indian's [*sic*] estates, and respectively refer you to

the case of Tsatongkeah, who died April 15, 1930. The records of the Kiowa Agency will show that the decedent appeared at the Kiowa Agency office many times within the past 10 years or more, with the request that advance agricultural rentals be obtained for her in order to buy clothing and provisions. This woman was a widow with eight children, and with an income from agricultural rentals of \$150 per year. It would not be good business for any party to extend her credit in the amount of \$1,621.75 within a period of 20 months. Indeed, the fact that she made application for the collection of advance rentals to buy clothing, etc. would indicate that she was without funds or credit, but after she died, claims have been presented [to] the department in the sum of \$2,096.17, which we believe to be unjust, and if approved, may lead to similar practices in other cases. This woman has been known to be in destitute circumstances most of the time, especially the last three years of her life.

It does not seem fair in the division of any estate where all claims are to be paid without a thorough investigation with a view to ascertain definitely as to whether or not any indebtedness is just. In other words the presentation of a claim in the form of an itemized statement coupled with a sworn affidavit is all that is requested. It is deemed wise to investigate all claims thoroughly, afterwards same can be judged from its merits and the examiner of inheritance or the superintendent can recommend same if justified.

The Department of the Interior absolutely refuses to pay the indebtedness of a living Indian, but is willing to pay all debts after the Indian is dead which from appearances is not just.

This is not to be misconstrued, as we are not protesting against the payment of funeral expenses, doctor bills, and the like, but are protesting the payment of unfair debts after the Indian has died.

It has come to our attention that one of the requirements in connection with the determinations of heirship of deceased Indians is that the probable heirs furnish two disinterested witnesses. Ofttimes the probable heirs do not have the necessary funds with which to defray the expenses of said witnesses and they come to the agency gratuitously, or go hungry. When the Department of the Interior determines the heirs, they charge an heirship fee from \$20 to \$100, depending on the size of the estate. This fund, it is understood, is taken into the official accounts of the United States Government in a general fund and is used to pay the salaries of the examiner, stenographer, and parties working in like capacity. It does not appear to be unreasonable that we request at this time that the Department of the Interior investigate and set a uniform fee for all disinterested witnesses as some have to come many miles at their own expense. This fee could be provided for from the heirship fee that is collected from an estate after a hearing has been held.

We respectfully request that this matter be given your consideration.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*



*Fort Sill and Riverside Government Boarding Schools**Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We call your attention to the two Government-owned Indian boarding schools on this reservation. These tribes were among the last in Oklahoma to be allotted; therefore, [they] will need assistance for many years to come.

In order to provide additional schoolroom space, gymnasiums, dormitory space, quarters for employees, shops, equipment, improving water, sewer and lighting systems, construct the necessary walks, repair buildings and build the Fort Sill and Riverside Boarding School plants up to well-rounded schools, which will meet the needs of the Indians and reflect credit upon the Government, we urge that an appropriation of \$100,000 for each of these schools be made immediately.

There are more than 1,500 Indian children of proper age and health in the seven tribes under this agency. Among these children there are a number of orphans and many parents are unable to provide their children with the necessities of life and send them to school. It is especially for this class of Indian children that the schools will be most needed for years to come.

There are a number of Indian children attending public schools where the districts do not teach grades beyond the sixth grade. Parents can not provide funds to send them away. A number of this class of children will need school facilities in Government schools in order to give them the necessary training to enable them to cope with the white people of the country.

We urge that no discrimination be made against full blood or nearly full blood Indians putting their children in Government schools, who make especial efforts along the line of farming or other work by which they may earn a living for themselves and families. A policy of excluding the children whose parents are making efforts toward self-support from the Government schools would have a very discouraging effect on our people and would doubtless prevent a number of them from making the efforts toward self-support they would otherwise make if permitted to put their children in Government schools.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

*Reimburse Funds for Purchase of Trust Land for Homes**Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We, the members of the Kiowa, Comanche, and Apache tribal business committee, respectfully recommend that you secure an act of Congress to appropriate sufficient funds to buy surplus heirship land on the Kiowa Reservation which may be for sale. This level, good farming land to be sold to

worthy Indians who have no other land, on a reimbursable agreement. If the good land is continuously sold to white people the time is not far distant when the younger unallotted Indians will have only a small heirship interest in land and will be practically homeless. It is not desired to purchase worthless hillside land on which a man could be expected to make a living.

If the Government can provide funds in this way to purchase at a reasonable price such tracts of surplus land as may be for sale, retaining the title to the Government, holding it free from taxation, and having it sold to the worthy Indians who are without land for a home, on a reimbursable plan, giving them a period of 8 or 10 years to pay for same, it will be a great benefit to the Indians. If the purchases were made in a business way and sales made to worthy Indians, the Government could lose nothing more than the interest on the money and in this way provide a home for many a worthy Indian man and woman who otherwise might be homeless.

We respectfully ask your earnest consideration of this recommendation.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

### *Drainage*

*Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We have been informed that there was an appropriation of \$325,000,000 made for the purpose of controlling the floods of the Mississippi River and its tributaries.

Since the streams of this reservation are tributaries to the Mississippi River, we especially invite your attention to the great damage done by floods in the Sugar Creek, Cobb Creek, Rainy Mountain Creek, Cache Creek and Washita River Valleys and urge that you take this matter up with the authorities in charge of the flood control of the Mississippi River Valley and endeavor to get work started to control the floods of the streams named above on this reservation.

It is estimated that 70 percent of the Sugar Creek Valley land is owned by Indians. In fact, most of the valuable valley land was allotted to Indians. Therefore it is of special importance to the Indians that the flood-control work be done on this reservation at the earliest practicable date. It is of even more importance to the Indians than it is to the white people of this section of the country.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee,*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

*Suppression of Liquor Traffic among Indians under  
Jurisdiction of Iowa Agency*

*Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We, the undersigned members of the Kiowa, Comanche, and Apache tribal business committee, respectfully urge that a special liquor-enforcing officer be provided by the Government and given headquarters at Anadarko, Okla.

We wish to call your attention to the fact that the Indian population of the Kiowa Reservation is approximately 5,500. There are a number of bootleggers who make it a business to sell liquor to our Indians the same as to members of other races. A liquor-suppressing officer could not only work out of Anadarko and cover the Kiowa Reservation, but it would be convenient for him to also do some work on the Cheyenne and Arapaho and Shawnee Reservations.

We believe it is the intention of our Government to extend as much protection as possible to our Indian people in preventing bootleggers from furnishing them with intoxicating liquors.

The evil effect intoxicating liquors have on our Indians is so well understood by your committee that we deem it unnecessary to go into details in describing the bad results which come to our Indians by the use of intoxicating liquor.

Trusting that you will immediately take this up with the proper Government authorities and have a liquor-suppressing agent appointed and assigned to headquarters in Anadarko to work with the superintendent and other Government employees in the suppression of the liquor traffic, we are.

Very respectfully,

*Ned E. Brace,  
Chairman, Tribal Business Committee.  
Jasper Saunkeah,  
Secretary Tribal Business Committee.*

*Trust Period Extension, Kiowa, Comanche, and Apache Indians*

*Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We the Kiowa, Comanche, and Apache tribal business committee respectfully call your attention to the fact that the first extension of the trust period on the allotments of our reservation will expire in 1936. Experience has proven that a great majority of our Indians will not be advanced to that point where they can meet the burden of taxes and other responsibilities without another extension of the trust period to our Indians.

A large number of Indians among us who have applied for patent in fee to their allotments on the grounds of being competent, have disposed of their land and have nothing to show that they have made good use of proceeds of the land they sold. Many of the Indians were forced to sell their land on account of taxes and interest on loans made on their land.

We doubt if an Indian on this reservation can be found in our three tribes up to this time who has made enough money either by farming or otherwise to build himself a good home and improve his allotment. Very few, if any, have made enough money by farming or otherwise to make even a decent living and stay clear from debt.

In a way an Indian likes to be flattered so long as it does him no harm, but it has taught us that the many favorable comments made in the past by visiting Government officials with references to our progressiveness and prosperity, have created erroneous impressions as to our prosperity and is now working a hardship that we find it difficult to convince the different members of committees of Congress who handle Indian affairs as to our immediate needs. We have observed for a number of years in the past that the visiting officials are only taken around to the homes of some of our Indians who are classed as successful farmers. A report as to the progressiveness and prosperity of our Indians could not be helped but be forthcoming when modern bungalows, barns, chicken houses, good furniture, and other unearned improvements are viewed by visiting officials. Practically all of such improvements are made from the proceeds of land sales amounting to thousands of dollars in the past four or five years, and not from the sweat and labor of an Indian as commonly supposed; this merely being a gesture by the Government to establish some of the Indians in homes of the modern type and with a view to encouraging them toward self-support which they have not attained.

It is the desire, and if it is possible that some legislation be enacted so that at least 40 acres of each allotment should never be sold as to provide a home for the Indian.

We urgently request that at the opportune time you intercede with the Secretary of the Interior and the President of the United States in securing an extension of the trust period for the Kiowa, Comanche, and Apache Indians.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

*Recognition Should Be Given Our Tribal Business Committee  
by Congress and Other Departments of the Government*

*Anadarko, Okla., November 18, 1930*

Subcommittee of the Senate Committee on Indian Affairs:

We, the members of the tribal business committee of the Kiowa, Comanche, and Apache Indians, humbly ask that more recognition be given us on matters, tribal or individual, when properly presented to Congress and other governmental departments. We have found heretofore, that little or no recognition has been given to matters presented by the tribal business committee; our judgment or the desires of the Indians are hardly ever considered. We feel that after all, we understand better than anyone else, the needs of our own Indians.

We feel that it is only just that we be given a voice in matters effecting [*sic*] our funds. For the past 15 years or more appropriations have been made from our trust funds, amounting to hundreds of thousands of dollars, without the knowledge or consent of the Indians, for the maintenance of the Kiowa agency and hospital. We have for the past four or five years protested against the use of our tribal funds for the maintenance of the agency and hospital, but so far, we have been unable to get Congress to consider our protests.

The Indian Bureau and the superintendent in charge of this agency have their plans and policies to carry on the Indian work here. Whenever they ask for our assistance, we, as tribal business committeemen, gladly assist in every possible way to carry out their plans on the other hand, whenever we have any matters that need governmental attention, they are presented to the superintendent and the Indian Bureau, and that's the last we ever hear of them. If Congress does not recognize our wants and does not consider them, then we are helpless.

We respectfully request the subcommittee give the foregoing their earnest attention.

Very respectfully,

*Ned E. Brace,*  
*Chairman Tribal Business Committee.*  
*Jasper Saunkeah,*  
*Secretary Tribal Business Committee.*

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## *Makah Constitutional Discussion (Makah People, 1931)*

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The Makah, or “people of the point,” live along the Olympic Peninsula. Historically, they occupied five fairly autonomous coastal villages. The only recognized tribal nation with a treaty-specified right to engage in whaling (Treaty of Neah Bay, 1855), the Makah are culturally connected to the Nootkan people of Vancouver Island.

Although the 1855 treaty specified the boundaries of their reserved lands, several presidential orders enlarged their territory in 1872 and 1873. Nevertheless, the Makah, like other tribes, suffered debilitating epidemics and the loss of most of their subsistence rights. In the 1920s, the tribe’s economic problems were at least temporarily alleviated with the start of commercial logging in 1926, which supplemented their fishing industry. In 1931 the building of the first paved

road on the reservation spurred additional economic development. Educational changes, particularly the closing of the despised boarding school, which had taken Makah youth away from their homes for several generations, also aided their self-determination.

Along with these important developments, the Makah were making an effort to create a constitutional government. According to the testimony provided by Mack Colby, the Makah tribal chair, during a congressional hearing in 1931, certain Makah had drafted a constitution sometime before or during 1931, but the document was rejected by R. H. Bitney, the local superintendent, on the grounds that it did not reflect the views of a majority of the Makah people. Felix Cohen, who worked closely with John Collier in the development of the Indian Reorganization Act (IRA) and helped tribes formulate IRA-type constitutions, noted in his papers that a Makah constitution had indeed been adopted—"date unknown"—but he said it was not submitted to the bureau until June 1933, when it was disapproved.

I have been unable to secure a copy of this early constitution, but the conversation between Colby, Superintendent Bitney, several U.S. senators, and Assistant Commissioner Scattergood during the 1931 senate hearing is most revealing and points out the deep frustration many native peoples felt when dealing with the BIA when they attempted to establish organic governing documents.

Kirk, Ruth. *Hunters of the Whale: An Adventure of Northwest Coast Archaeology* (New York: Harcourt, Brace, and Jovanovich, 1974).

Renker, Ann M., and Erna Gunther. "The Makah." In *Handbook of North American Indians*, ed. William C. Sturtevant. Vol. 7, *Northwest Coast*, ed. Wayne Suttles (Washington, D.C.: Smithsonian Institution, 1990), 422–30.

U.S. Senate. *Survey of Conditions of Indians in the United States*. Hearings, pt. 21 (1931): 11836–39.

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## Makah Constitutional Discussion

Senator Frazier. Any other statement?

Mr. Colby. Yes; we organized a council down there, among the Indians, elected by the Indians; we had a constitution made to go by and Mr. Bitney turned it down. He would not recognize it.

Senator Frazier. The constitution, you mean?

Mr. Colby. He also told us to make another one. We did. We gave him one copy to be sent in and tried to have it approved by the Secretary of the Interior, and that is about two months ago and we have not heard from it yet.

Mr. Bitney. It was not approved?

Mr. Colby. I know it was not.

Senator Frazier. Did the department turn it down?

Mr. Colby. Yes, sir.

Mr. Bitney. Yes, sir.

Senator Frazier. On what ground?

Mr. Bitney. On the ground it was not made by the Indians. There were only about 40 out of the 400 there. To go back into this situation. In 1903 Superintendent Colvey, who was there, tried to work up a village council and studied the constitution. They had a number of night meetings and organized and they went over the constitution. They handled the village similar to an incorporated village. This fell into the decline about 1906 or 1907. They had allotments in 1907 or 1908, possibly later. They were completed in 1910. During the time the allotments were made, they called together all the Indians and they had a number of the headmen to decide, as the tribal council, who shall be considered as members of the Makah Tribe, and who shall not. This also fell into the discard and I think it was again started about the time this timber sale came up. This is still the old village council and under the council I could be mayor of the town. It does not say anything about having to be an Indian. They worked on this constitution. I showed them that in so far as the department was concerned, they could not recognize anything like that and I told them they would have to get the Indians together and work out what they wanted for a constitution and have a vote on it; send it to Washington, have it approved by the department, then go ahead and elect their officers and work as a tribal council. This has never been done. There are three factions at Neah Bay, all struggling for supremacy.

Senator Frazier. Three factions you say?

Mr. Bitney. Yes, sir.

Mr. Scattergood. Was this constitution and by-laws just the product of one faction?

Mr. Bitney. Yes, sir.

Senator Frazier. When you elected your council how were they elected? Did all the Indians have a chance to vote?

Mr. Colby. Yes, sir.

Senator Frazier. All factions?

Mr. Colby. There were 40 Indians there.

Senator Frazier. How many votes were cast at the time the council was elected?

Mr. Colby. I can not say. The biggest majority were there I expect of the 400. There are a lot of them kids and underage.

Senator Wheeler. How many grown people there?

Mr. Colby. I could not say. There is 90 per cent of the voting power right with us of the Makah Tribe. They want that.

Mr. Bitney. Why do they not hold a meeting and get together instead of circulating a petition that any of them will sign?

Mr. Colby. We had a meeting and they decided to send that petition out. The letter from the Indian Office stated that the question of a council in Neah Bay was discussed with the Indians and the majority of the Indians did not see why they should have a council in Neah Bay. Who discussed that with the Indians? I got the letter. It might be right over there.

Mr. Scattergood. Did you say a majority of the Indians said they did not want a council?

Mr. Colby. They did not want a council. That was turned down by the present acting commissioner in Washington, D.C.

Mr. Scattergood. If the majority of the Indians do not want a council, what do you say now about it?

Senator Wheeler. You mean they do want a council or do not want a council?

Mr. Colby. I can not read that.

Senator Wheeler. Do the majority of the Indians want a council or do they not want a council?

Mr. Colby. This letter said—

Senator Wheeler. No; I am asking you.

Mr. Colby. They want a council.

Mr. Scattergood. You said a minute ago that the majority did not want a council.

Senator Frazier. This is [a] letter signed by Garber, acting commissioner:

A copy of the proposed constitution was recently submitted to this office for consideration and the matter of organizing a tribal council has been discussed with the Indians of the Makah Tribe. Most of the members were content to have no tribal council as they appears [*sic*] to be of the opinion that there was no necessity for such an organization and no further action was taken by the tribe. As the members of this organization were not properly elected or approved by the tribe, we do not feel justified in recognizing the same as the authorized Makah tribal council. The papers you enclosed are returned.

This is under date of April 29, 1931.

Mr. Scattergood. If your people will get together and elect a tribal council we will be glad to recognize your council properly authorized.

Senator Wheeler. Do a majority of the Indians want a council[?] I am not talking about the children. I am talking about the grown-up Indians? [*sic*]

Mr. Colby. Their names are right here.

Senator Wheeler. A majority?

Mr. Colby. Yes.

Senator Frazier. This letter is writing [*sic*] to Senator Dill.

Senator Wheeler. If the majority of the Indians want a council there is no reason why they should not have it. Who gave the department the information that the majority did not want a council?

Mr. Bitney. I did.

Senator Wheeler. Where did you get the information?

Mr. Bitney. From the Indians.

Senator Wheeler. By what means?

Mr. Bitney. They asked about the tribal meeting—

Senator Wheeler. Did they hold a meeting and vote on it as to whether or not they wanted it?

Mr. Bitney. No, sir.

Senator Wheeler. How could you tell whether a majority did not want a council then?

Mr. Bitney. By the number of protests that came in.



Senator Wheeler. Well, that is not the way to find out. The way to find out whether they want a tribal council is to get them into a meeting then take a vote of the Indians. Notify all the Indians to be there. Notify all the Indians on your reservation there is going to be a meeting at such and such a time, then the majority of those Indians, when they get there, should decide. If some of them do not come, that is their fault, but the majority of the Indians at the meeting present should decide whether they want a council. If a majority are there, after they have been notified, decide they want a council, it is not up to the superintendent to inquire individually as to whether or not they do want one.

Mr. Bitney. I did not go around and inquire. They came into the office to me.

Mr. Scattergood. Can you not settle it that way?

Mr. Bitney. Absolutely. I think we should have a council, but we should have a council of all the Makah Indians.

Senator Wheeler. Notify all the Indians that at such and such a date there will be a meeting of the Indians and then when they come there, those that come there are the ones that should determine by a majority vote as to whether or not there should be a council.

Mr. Scattergood. And let both sides have an equal chance to be heard and let it be decided by the Indians themselves.

Mr. Colby. The idea of the Indians to have a council is this: There is a breakwater. They are advocating a breakwater is Neah Bay there. They had a meeting up here in Seattle—when was that?

Mr. Bitney. In October.

Mr. Colby. In October? There were some of our Indians went up to that meeting and at that meeting somebody made out a paper and got three of them to sign it and they did not know what they were signing.

Mr. Bitney. That was just a roster of the men there.

Mr. Colby. They had no business to do that at all. That is why we want this council. That has been happening all the time.

Mr. Scattergood. What about this breakwater, Mr. Superintendent?

Mr. Bitney. They wanted a roster of all the people who were there, just the names and who they represented.

Mr. Scattergood. Is this a Government proposal?

Mr. Bitney. Yes, sir.

Mr. Scattergood. What is the purpose of it?

Mr. Bitney. To establish a breakwater for the harbor of Neah Bay.

Mr. Scattergood. Will that interfere with the fishing of the Indians?

Mr. Bitney. No.

Mr. Scattergood. Are the Indians in favor of it?

Mr. Bitney. To my knowledge; yes. Aren't they?

Mr. Colby. Not where the jetty is marked there.

Mr. Bitney. Well, the Indians can not decide where they are going to put the jetty because it is off the reservation and in the harbor.

Mr. Scattergood. It is the War Department that determined the location of the jetty, is it not?

Mr. Bitney. Yes. I doubt very much if we will get it. It is a \$3,000,000 project.

Mr. Scattergood. Would the Indians be benefitted by it, Mr. Colby?

Mr. Colby. Well, they would in a way, those [that] have boats.

Mr. Scattergood. Do they not live by fishing?

Mr. Colby. We have been fishing all our lives without that breakwater.

Mr. Scattergood. If it helps the harbor it will help protect the boats, will it not, and make it safer for everybody?

Senator Wheeler. The main thing is this: Go up there and have the superintendent call all the Indians together. Get together in a hall, something like this, or some other meeting place. Then elect your council, then draw up your constitution; submit it to the department and I think the department will approve of it.

Mr. Bitney. Absolutely.

(Witness excused.)

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## 77

## *Indian Tribal Councils Act (1932)*

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By 1932, John Collier had already served nine years as executive secretary of the American Indian Defense Association (AIDA), a nonprofit body dedicated to improving the lives and protecting the remaining rights of native peoples. A social worker and soon-to-be-appointed commissioner of Indian affairs, Collier had long had an interest in Indian cultures, especially of the Pueblo peoples. Located in Washington, D.C., the AIDA and Collier constantly lobbied Congress on the raging problems bedeviling indigenous peoples (e.g., allotment-related difficulties, poverty, lack of cultural autonomy, and the BIA's overbearing and colonial role in Indian country).

A year before his appointment to the commissionership in 1933, Collier appears to have been a primary influence on Senator Lynn Frazier of North Dakota, who, in 1932, introduced S. 3668, a bill that authorized the creation of Indian tribal councils. This bill foreshadowed the IRA of 1934 and contained several provisions that indicated that the federal government was nearly ready to accept the concept and force of native self-governance. First, a petition signed by but 25 percent of the tribe's adult members was enough to force the CIA to call a general election to choose a constitutional committee.

That elected body was then charged with drafting the document and a set of bylaws and ensuring that the two documents were then received by every adult member of the tribe two weeks before the general meeting in which they were to be discussed, debated, and modified or adopted. The constitution was to specify the size of the tribal council and identify its powers, and elections were to be held

once a year. Also built into the constitution was a referendum process, which required a petition signed by 15 percent of the adults. The tribal councils were empowered to represent their communities before each branch of the federal government—a clear recognition of their governing capacity—unlike the previous business councils and other tribal organizations that typically lacked that status.

Several other provisions of the bill—those involving land, lawyers, and expenditures—hinted strongly at Collier’s influence, including a provision that stated that the Pueblo tribes were exempt and had the right to “retain their traditional and established tribal governments in accordance with their established customs.” Collier had spent a great deal of time in the Pueblo communities and viewed them with great respect.

The bill was not enacted, however. Perhaps it was simply too radical an idea at the time, or perhaps, as Vine Deloria Jr. suggests, larger national election-year issues simply eclipsed this topic. But the gist of the bill resurfaced in 1934, when John Collier, Felix Cohen, and Nathan Margold introduced a proposal that Congress adopted: the Indian Reorganization Act.

Deloria, Vine, Jr., ed. *The Indian Reorganization Act: Congresses and Bills* (Norman: University of Oklahoma Press, 2002).

U.S. Senate. *Survey of Conditions of Indians in the United States*. Hearings before a Subcommittee of the Committee on Indian Affairs. 71st Cong., 2d sess., pt. 22 (January 21, 1932).

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## Indian Tribal Councils Act (S. 3668)

A Bill Authorizing the Creation of Indian tribal councils, and for other purposes.

Section 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that upon the filing with the Commissioner of Indian Affairs of a written petition signed by at least 25 per centum of the adult members of any Indian tribe residing on any reservation under the jurisdiction of the United States, the Commissioner of Indian Affairs shall call a general election of the adult members of such tribe to be held within sixty days from the date of the filing of such petition for the purpose of choosing a constitutional committee to draft a proposed constitution and by-laws for such tribe. Such committee shall consist of not less than nine members. Within sixty days after its election such committee shall call a general meeting of the adult members of the tribe for the purpose of considering and acting upon a proposed constitution and by-laws for such tribe, and each adult member of the tribe shall be notified of the time and place of such general meeting. A copy of the proposed constitution and by-laws, together with a notice of such meeting, shall be distributed to each adult member of the tribe at least two weeks

prior to the time fixed for such general meeting. At such meeting the proposed constitution and by-laws may be adopted, amended, and rejected, in whole or in part, but subject to the exception contained in section 7, each such constitution shall provide for (1) the establishment of a tribal council of not less than \_\_\_\_\_ members and the powers to be conferred on such council; (2) a direct election at least once each year of the members of the tribal council by the adult members of the tribe or of the districts to be represented by such council members; and (3) a referendum on any question of policy on the petition of at least 15 per centum of the adult members of the tribe, the action of the adult members of the tribe on such referendum to be conclusive and binding upon the tribal council. The amount of any expenses incurred by or on behalf of any tribe in carrying out the provisions of this section shall be paid out of any money in the Treasury not otherwise appropriated. There is hereby authorized to be appointed such sum as may be necessary for such purposes.

Section 2. Such tribal councils shall be empowered to represent their several tribes before the Congress or the executive departments of the United States or in the courts. The expenses of any such council shall be paid out of the tribal funds of its tribe, or out of any other moneys over which such council may have exclusive jurisdiction under section 6 but not more than \$5,000 may be expended for such purposes in any year from the funds of any tribe.

Section 3. All authority vested in Indian tribes or tribal councils by existing laws shall be vested exclusively in the tribal councils provided for by this Act. Hereafter no tribal lands, or interest in lands, belonging to any Indian tribe, shall be sold, leased, encumbered, or in any manner disposed of, nor any permit granted thereof, nor any contract made for the use thereof, by the Secretary of the Interior, except by authority of the tribal council established pursuant to this Act, or, in the absence of such tribal council, by authority of the general council speaking for such tribe.

Section 4. Said tribal councils are hereby authorized to employ legal counsel. Such employment shall not be subject to the approval or control of the Department of the Interior, but the choice of counsel and the fixing of fees paid to such counsel shall be subject to review by the Attorney General on application of any member of the tribe.

Section 5. The Secretary of the Interior shall submit to the tribal council for each tribe all estimates for expenditures from funds credited to said tribe in the United States Treasury, and any recommendations made by the tribal council with respect thereto shall be transmitted to the Bureau of the Budget and to the Congress concurrently with the submission of such estimates.

Section 6. All funds derived from the use or sale of any tribal lands or property, including trespass fees and rights of way, shall be deposited in the Treasury of the United States to the credit of the tribe owning such property and draw interest at the rate of 4 per centum per annum, and no such funds shall be deposited to the credit of the fund entitled "Indian moneys proceeds of labor."

Section 7. Funds appropriated from the Treasury of the United States for the payment of the expenses of the tribal council, or obtained through contributions by or assessments against the members of the tribe, shall be under the exclusive control of the tribal councils herein authorized.

Section 8. The Pueblo tribes of the States of New Mexico and Arizona may retain their traditional and established tribal governments in accordance with their established customs, and all provisions of this Act relating to powers and functions of the tribal councils shall, so far [as] consistent with such governments, apply equally to such governments.

Section 9. The Secretary of the Interior shall dismiss any employee or officer under his jurisdiction who shall, in any manner, either directly or indirectly, interfere with any tribe or any of its members in the free exercise of the powers conferred by this Act.

Section 10. Any employee or officer of the United States who shall, in any manner, either directly or indirectly, interfere with any tribe or any of its members in the free exercise of the powers conferred by this Act shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than \$500 or by imprisonment for not more than six months, or both.

Section 11. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

## 78

*Removal of Certain Bureau of  
Indian Affairs Employees (1932)*

Two weeks after Frazier introduced the Indian Tribal Councils Act, he initiated another bill, S. 3717, which would have authorized (with the drafting of a petition signed by 25 percent of a tribe's adult members) a tribal community to remove from office any BIA employee on the reservation. Upon receipt of the petition, the tribal council (or the CIA in the absence of a tribal council) was to call a meeting within thirty days of all adults, who would then vote on the removal of the BIA official in question. If a majority voted for the measure, the secretary of the interior was obliged to remove the employee within sixty days.

This bill, like its companion measure, was also not enacted into law.

**Removal of Certain Bureau of Indian  
Affairs Employees (S. 3717)**

*A Bill Relating to the removal of certain employees  
in the Indian Service*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that on the receipt of a petition, signed by at least 25 per centum of the adult members of any Indian tribe

residing on any Indian reservation, calling for the removal of any official or employee of the Bureau of Indian Affairs from any office or position on said reservation, it shall be the duty of the general council representing such tribe, or of the Commissioner of Indian Affairs in the absence of any such council, to call, upon thirty days' notice, a meeting of the adult members of such tribe; and upon a majority vote at said meeting calling for such removal, the Secretary of the Interior shall remove such official or employee from his office or position on such reservation within sixty days from [the] date on which such vote is taken.

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## 79

### *Yankton Sioux Constitution (Yankton and Yanktonai Peoples, 1931)*

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The people of the Yankton Sioux Reservation refer to themselves as Ihanktonwan Dakota Oyate, or "people of the end village." Once residing in present-day Minnesota and Wisconsin, they gradually made their way to present-day south central South Dakota, near the Missouri River.

The Yankton, active in the fur trade with French trappers in the 1600s, have long maintained generally amicable relations with non-Indians. Despite that stance, by the 1830s they had suffered through various epidemics, a decline of game, and conflict with other tribes. They had also engaged in a series of treaties and agreements with the United States (e.g., 1830, 1837, 1858, 1868, 1876, 1889, 1894), whereby they lost the bulk of their aboriginal territory and were left with a significantly diminished land base. Hoover reports that the tribe organized its first constitution in 1891, although I have been unable to locate a copy of this document.

On August 23, 1924, during a council session the Yankton unanimously agreed to authorize its chairman, David Simmons, to appoint a business committee that was empowered to handle the tribe's business affairs. Simmons then designated eight individuals to constitute the business committee, and the same council delegates then ratified these appointments. The BIA gave its official approval of the business committee on September 30, 1924.

Little is known of the business committee's affairs from 1924 to 1931, but on September 28, 1931, the Yankton Sioux Business Committee drafted a constitution and bylaws that the secretary of the interior approved within a year. These documents, in modified form,

continue to serve as the tribe's governing charters today. In fact, the later iterations of the constitution (1962, 1975, and 1990) explicitly declare that theirs is not an IRA form of government and that the tribe "is not subject to the provisions of the Howard-Wheeler Act of 1934."

Hoover, Herbert T. *The Yankton Sioux*. In collaboration with Leonard R. Bruguier (New York: Chelsea House, 1988).

See document at <http://www.usd.edu/iaais/siouxnation/32constitution.html>.

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## Yankton Sioux Constitution

*Constitution and Bylaws of the Yankton-Sioux  
Business Committee of the Yankton Indian Reserovation,  
South Dakota, Adopted by the Tribal Council of  
September 28, 1931, and Authorized by the  
Commissioner of the Indian Affairs*

Article 1. This organization shall be known as the Yankton-Sioux Tribal Business and Claims Committee.

Article 2. The object of this organization shall be to discuss matters pertaining to the tribe with a view to promoting the social, financial, industrial and general welfare and best interests of the tribe, and make such recommendations to the Superintendent or the Indian Office and any others, as the Committee deems advisable. This Committee shall also pass upon such matters as may be presented to it by the Superintendent for action, including functions of a Tribal Council, and shall be delegated to act with all the power and authority in all tribal matters, including all tribal claims of every nation.

Article 3. The Business Committee shall be composed of (9) nine enrolled members, who must be more than 21 years of age, and who are actively engaged in a productive effort to support themselves and families.

Article 4. The election of Tribal Committeemen shall be held at a general Tribal Council, as follows:

1. A majority of the lawful votes present shall constitute a determination of all questions referred to a general Tribal Council.
2. A rising, or standing, vote shall govern all elections.
3. The White Swan District shall have the option of two (2) Committeemen, who shall be elected by the general Tribal Council. This district shall be composed of all the people located in the Lake Andes jurisdiction as related to the present agricultural district.
4. The Greenwood District shall have at least (7) seven Committeemen. This district shall be composed of all remainder of the reservation not included in the White Swan District.

5. In electing the Committeemen for the Business Committee at least nine (9) nominations shall be made, but not to exceed eighteen (18) nominations, after which a vote will be taken, and the nine (9) receiving the highest number of votes will be determined elected.

Article 5. The Superintendent shall make provision for each election. Notices of election and voting places, etc., should be posted not less than two weeks preceding the election. The Superintendent shall take precautions to insure a fair election.

Article 6. Elections shall be regularly held on the third (3rd) Tuesday of August of each odd year. The first election shall be held on a date to be fixed by the Superintendent at which nine (9) Committeemen shall be elected according to the provisions of this Constitution. They shall hold office until the first regular election shall be held in the first odd year after the adoption of this Constitution, as otherwise provided herein.

Article 7. Regular meetings of the Business Committee shall be held on the first Monday of the months of April, July, and October, at the Agency headquarters. Special meetings may be called by the Superintendent either on his own notion or upon the written request of five (5) or more members of the Committee, such calls and requests to state the purpose for which the meeting is to be called. Notices of all meetings are to be approved by the Superintendent.

Article 8. Before assuming their places on the Business Committee, members elect shall subscribe to the following oath or affirmation of office:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, and faithfully and impartially carry out the duties of my office to the best of my ability, and will cooperate with the Superintendent in charge of the reservation in all proper efforts to promote and protect the best interest of the Indians of the Yankton Reservation, and to assist them in every way toward better citizenship and progress.

Article 10. At the first meeting following election, the Committee shall elect a Chairman, a Vice-Chairman, a Secretary, and any other officers it may require to transact their business. A majority of the members of the Committee shall constitute a quorum for the transaction of business.

Article 11. The Superintendent or a representative designated by him should as a general rule be present at all meetings of the Committee and confer and advise with them, provided that when the business before the Committee warrants such action, the Committee may go into executive session excluding all persons not members of the Committee.

Article 12. The Chairman shall preside at meetings of the Committee. In the absence of the Chairman, the Vice-chairman shall preside.

Article 13. The Secretary shall keep the minutes of all regular and special meetings, including all business transacted by the Committee, and shall file one official copy of the minutes in the office of the Superintendent at the conclusion of each meeting. Also one copy shall be sent through the Superintendent to the Commissioner of Indian Affairs.



Article 14. Any members of the Committee shall be subject to recall from office and membership for reasonable cause, upon proper investigation by the Committee subject to the approval of the Commissioner of Indian Affairs, or by the Commissioner.

Article 15. Matters of great importance to the tribe which the Business Committee believes should be referred to a general Tribal Council or general tribal election may be so referred by a two-thirds ( $\frac{2}{3}$ ) vote of the Business Committee, provided that the calling, etc., of such general Council shall be subject to and under the direction and supervision of the Superintendent or the Commissioner of Indian Affairs.

Article 16. The office of the Business Committeeman shall be strictly honorary and without compensation, except when valuable and meritorious services are rendered by any member of the Committee in the discharge of his duties as a Committeeman, in which case claims may be made for compensation, subject to the approval of a general Tribal Council of the Yankton-Sioux Tribe, the Superintendent, and the Commissioner of Indian Affairs.

Article 17. This Constitution and By-Laws may be amended by a two-thirds ( $\frac{2}{3}$ ) vote of the Business Committee at any regular meeting, subject to the approval of the Commissioner of Indian Affairs.

Article 18. This Constitution shall be in full force and effect to govern the Yankton-Sioux Tribe on and after the date it is approved by the Commissioner of Indian Affairs at Washington, D.C.

We hereby certify that this is a true and correct copy of the Constitution and By-Laws as adopted by the Yankton-Sioux Indians in Council on September 28, 1931, at Greenwood, South Dakota.

*/s/ Robert Clarkson*  
*Rev. Robert Clarkson,*  
*Chairman.*

*/s/ Clement Smith*  
*Clement Smith,*

*Witness & Interpreter.*

*/s/ Joseph Grabbingbear*  
*Joseph Grabbingbear,*  
*Secretary.*

*/s/ Moses Archambeau*  
*Moses Archambeau,*  
*Witness & Interpreter.*

*/s/ C. C. Hickman*  
*C. C. Hickman,*  
*Supt. & S.D.A.*

## 80

*Concerns of the Western Shoshone Nation (Western Shoshone People, 1932)*

The Western Shoshone continued to fight for their rights and used every opportunity available to remind the federal government of its legal and moral obligations under the 1863 Treaty of Ruby Valley. This was evident in 1932, when they testified at a hearing held by the Committee of Indian Affairs. The views of the tribe's leaders reveal a people keenly aware of the ways their rights had been violated and of what needed to be done to rectify these transgressions.

Crum, Steven J. *The Road on Which We Came (Po'i pentun tammen kimmappéh): A History of the Western Shoshone* (Salt Lake City: University of Utah Press, 1994).

U.S. Senate. *Survey of Conditions of Indians in the United States*. Hearing before the Subcommittee on Indian Affairs, 72nd Cong., 1st sess., pt. 28. Nevada (1934): 14847–51.

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## Concerns of the Western Shoshone Nation

Minutes of Meeting of Various Members of the Western Bands of the Shoshone Nations of Indians at Elko, Elko County, Nev., October 10, 1932.

Pursuant to the call of Muchach Temoak, Billy Gibson, and other acting chiefs of the Western Bands of the Shoshone Nations of Indians, a meeting of said bands was called and held at Elko, Elko County, Nev., on the 10th day of October 1932, pursuant to resolutions and suggestions of Indian agents and officials from the Office of the Commissioner of Indian Affairs and of the Secretary of the Interior, and investigators accompanying a subcommittee of the United States Senate Committee on Indian Affairs.

There were present the various men, representatives, chiefs, and principal men, as set forth in the exhibit hereto annexed.

The meeting was called for the purpose of devising ways and means of recovering the rights of said Western Bands of Shoshone Nation of Indians under the treaty with the United States of October 1, 1863, ratified July 26, 1866, and proclaimed October 21, 1969, and signed by their Big Chief Temoak and the little chiefs and men of the tribe.

Over seventy representatives of the Western Bands of Shoshone were present representing bands from all parts of what was originally the Temoak

territory as defined in the treaty of October 1, 1863. Mr. Fred Snyder, superintendent of the Carson City Indian School, was also present and addressed the meeting. He advised them that he was willing to counsel with them but that the meeting was their meeting, and they should hold it and conduct it themselves. He, however, suggested the advisability of the immediate appointment or election of a council of five or seven of their chiefs or principal men, as suggested by the Senate Committee, to act as representative of all of the bands of the Western Shoshone Nation, with authority to act for them. Thereupon, after a general discussion in which a great many of those present engaged, the following men were informally nominated to serve as members of the council: Jack Frost, Wells, Nev.; Jimmy James, Lee, Nev.; John Couchum, Elko, Nev.; Bill Gibson, Elko, Nev.; Muchach Temoak, Ruby Valley, Nev.; Jack Muncey, Battle Mountain, Nev.; Harry Stanton, Ely, Nev.; Harry Johnny (alternate), Ely, Nev.

The name of each nominee was separately and severally put before the meeting and a vote was taken by calling for hands to be raised for or against. No votes were cast against any one of said candidates and all were unanimously elected. The meeting and the Indians present were then asked to express any objection to or dissatisfaction with any one of the members elected to the council. No objections were made or dissatisfaction expressed. The newly elected members of the council immediately entered upon their duties and occupied seats around the council table while the general meeting remained in session.

With the consent of all present Jack Frost acted as chairman of the meeting with the express approval of Muchach Temoak, who is his cousin and who is the grandson of old Chief Temoak, the chief of the Western Band of Shoshone Indians, who with other lesser chiefs signed the treaty of 1863.

Although all details of said treaty and the facts attending the execution of the same and the things done and performed and the things omitted to be done and performed, were discussed at great length, record was made only of the salient facts as follows:

1. A copy of the said treaty is hereto annexed and made a part hereof.
2. The older members of the tribe of their own knowledge, and the members of the present generation from knowledge and information handed to them by word of mouth from their fathers and grandfathers, duly established the territory as defined by said treaty, as definitely shown upon the map which is annexed to and made a part of these minutes.
3. The Shoshone Indians performed all of their agreements contained in article 1 of the treaty in that they forthwith ceased all hostilities and depredations upon the emigrant trains, the mail and telegraph lines, and upon the citizens of the United States within their country; and in such performance they performed far more than the letter of their contract, in that they assisted the soldiers of the United States not only to run down and execute Indians of hostile tribes who continued to commit depredations, but even apprehended and punished by death renegade Indians of their own tribe who refused to cease their depredations.
4. The Indians performed all of the agreements contained in article 2 of said treaty, in that they permitted the several routes of travel through their country to be forever and unobstructed by said bands for the use of the Government of the United States, and all emigrants and travelers under its authority and pro-

tection, without molestation or injury from them; that wherever depredations were committed by bad men of their nation, the offenders were immediately taken and delivered up to the proper officers of the United States to be punished as their offences should deserve, and guarded the safety of all travelers passing peaceably over said routes; that they permitted military posts to be established by the President of the United States along said routes and elsewhere in their country, and permitted station houses to be erected and occupied for the comfort and convenience of travelers and mail and telegraph companies.

5. That the Indians complied with all agreements contained in article 3 of said treaty, in that they permitted telegraph and overland stage lines to be continued without hindrance, molestation, or injury from the people of said bands, and protected the property and lives of passengers in the stages and of the employees of the respective companies; that when provision was made for the construction of a railway, they permitted such railway and its branches to be located, constructed, and operated without molestation from them through any portion of country claimed or occupied by them.

6. That they performed all of the agreements of article 4 of said treaty; in that they permitted the Shoshone country to be explored and prospected for gold and silver and other minerals, and permitted the mines to be worked, and mining and agriculture settlements and ranches to be formed and mills to be erected and timber taken for their use, and for other buildings and other purposes within said territory.

7. That they complied with all of the conditions of article 5 of said treaty, in that they have consistently recognized and maintained the boundaries of their said territory as in said article 5 set forth.

8. That they have always been ready, willing, able and anxious to comply with the conditions of article 6 of said treaty, namely to abandon their roaming life and to become herdsmen or agriculturalists and remove their camps to such reservations as might be indicated by the President of the United States within the country described in said treaty, and to reside and remain therein; but that neither the then President of the United States, nor any of his successors in office, nor any officer, bureau, department, commission or other authority of the United States ever did establish for the said Western Bands of the Shoshone Nation of Indians, any reservation within the said country described in said treaty.

That the said Shoshone Indians recognize the fact that the United States Government did establish a reservation, but allege the fact that the same was without the territory continuously and consistently claimed and acknowledged by them; that the territory within which the said reservation was established was among hostile tribes of Indians, and occupied by Indians of other nations; that it was far removed from the territory originally occupied by Chief Temoak and his tribes, and the territory within which Chief Temoak and his bands obtained their deer, ducks, geese, pine nuts, wood, and other means for their use, clothing, sustenance, and support; and that the said chiefs and the members of the tribes were and ever since have been justified in refusing to move to the said reservation so established; that the reservation so established is known as the Owyhee Reservation, situated partly in the State of Nevada, and partly in the State of Idaho.

9. That the United States has refused, failed and neglected to comply with its agreements contained in article 7 of said treaty, in that it has not paid to the said bands of the Shoshone Nation the sum of \$100,000, or any part, thereof that the United States did, as a matter of fact, shortly after the execution of said treaty, supply to the said Shoshone Indians at Ruby Valley in said county and State, a band of between 400 and 500 head of cattle, but thereafter forcibly took said cattle from said Indians and removed the same to the said Owyhee Reservation.

10. That the said bands of Western Shoshone did actually receive from the Indian commissioner some small amount of provisions and clothing, but have no knowledge as to the actual value thereof, except that they believe that such value did not amount to the sum of \$5,000 as recited in article 8 of said treaty, or to anything more than a nominal value.

11. That for many years last past said bands have been endeavoring, through the office of Indian Affairs, and through the Representatives in Congress from the States of Nevada, to obtain redress; that on several occasions they have sent representatives to the National Capital, and that they have held meetings for the purpose of discussing their rights under said treaty, but all without avail.

12. That about the year 1913, and shortly prior thereto, they were encouraged by sundry Indian agents to take up allotments and make filings on certain lands in Ruby Valley, and were told by such Indians agents that they had the right to use the water from a certain creek in the neighborhood of said lands, namely Overland Creek, for the irrigation of their said lands; that in their attempted use of said water, made under assurance thus given, they came into constant conflict with the white settlers, and at the present time have less than 40 acres of irrigated land on said creek.

13. That for many years last past they have consulted with and been advised by Milton B. Badt, an attorney at law, at Elko, Nev., and that they now believe that it is necessary to employ said attorney for the protection of their rights.

14. That the chiefs and principal men assembled at this meeting through the council this day elected are hereby authorized to enter into a contract with said attorney in all respects in accordance with the copy attached to and made a part of these resolutions, hereby approving any modifications that may be made therein by the Secretary of the Interior or the Commissioner of Indian Affairs, without the necessity of further action by the Western Bands of the Shoshone Nation or the said council if otherwise satisfactory to their said attorney.

15. That in the recovery of their said rights the said Western Shoshone look to the recovery from the United States of America of the agreed sum of \$100,000 stipulated in said treaty, together with the value of the reservation which the Government agreed to establish, but which it failed to establish within their territory (hereby estimated in the sum of \$100,000), and together with the value of the said band of cattle first furnished them and later forcibly taken from them by the United States (hereby estimated to be of the value of \$15,000) together with interest on said sums from October 1, 1863, and that such sums or the commensurate agricultural property and livestock be recovered for them

from the United States, together with such interest, costs, expenses, and counsel fees as may be properly recoverable.

16. We the representatives of the Western Shoshone Indians wish to call attention to the United States Senate Committee on Indian Affairs and the Commissioner of Indian Affairs that there has been very little work available during the past summer for the Indians and as a result that they are in need of food and clothing for the coming winter, and they request Congress to make an appropriation whereby they will be given work and enable them to buy food and clothing during the coming winter.

17. That they request Congress to make it possible for a speedy hearing of their claims and that if Congress does not make it possible for a speedy hearing they will be put to a disadvantage as many of their best witnesses are very old and they would not have the benefit of their testimony if it is delayed.

18. The Western Bands of the Shoshone Nation, through the general meeting and through the council just elected, request that provision be made giving to the Indians the privilege of hunting deer and many other wild game anywhere in the State during the seasons to be fixed by the Indians themselves as the proper open season, as the Indians always take game only during seasons which are naturally proper for the purpose. In asking for this privilege they desire to record the fact that whenever Indians shoot deer they use the hide for making gloves, dresses, and clothing, the hair for pillows and beds, the bones from the carcass for the purpose of scraping the hair from the hide, and that they use all of the inside stuff of the deer for making meal, and do not destroy or waste any part; that when white men kill deer they do it chiefly for the purpose of seeing him fall over; that they never use it like Indians; that when Indians wound a deer they track it until they finally kill and use it, while white men very seldom track a wounded deer, but permit it to die somewhere where it is eaten by coyotes, crows, magpies, and other birds and animals; that the Indians take game during natural open seasons which vary from year to year with the weather conditions, and that such open seasons are more beneficial to the game than the artificial seasons established by the State Law.

That in asking for the privilege described in this paragraph they have been advised of the decision of the United States Supreme Court upholding the right of the States to govern the open seasons for taking wild game even in contravention of the terms of a solemn treaty between the Indian nations and the United States Government before such State was admitted to the Union, by they feel that they are especially entitled to make this request in view of the fact that the United States has received all of the benefits and met none of the liabilities or obligations provided for in the treaty.

19. A general discussion was had of other pending affairs of interest to the tribes and the meeting thereupon adjourned subject to the call of the council.

*Jack Frost, Chairman.*

*Attest: A true record of the proceedings had at the meeting described.*

*Frederic Snyder;*

*Superintendent Carson City Indian School.*

*Exhibit A*

## AGREEMENT

This agreement made in duplicate at Elko, Elko County, Nev., this 10th day of October 1932 by and between the Western Bands of the Shoshone Nation Indians, represented by their chiefs and principal men parties of the first part, and Milton B. Badt, an attorney at law residing at Elko, Elko County, Nev., party of the second part, witnesseth: That whereas for a number of years the first parties have been consulting with the second party with relation to the rights of said first parties under a certain treaty between the United States of America and the Western Shoshone, dated October 1, 1863 (18 Stats. 689), ratified June 26, 1866, and proclaimed October 21, 1869; and

Whereas said second party has on numerous occasions appeared before various Indian agents, supervising engineers, the Department of the Interior, Senate investigating committees, and other persons and tribunals on behalf of said first parties; and

Whereas, as the result of recent hearings before a subcommittee of a committee of the United States Senate investigating Indians affairs, it was deemed advisable by the first parties to call a general meeting at Elko, Nev., on the 10th day in October, 1932, to decide on definite action to be taken by said first parties to establish and recover their rights under said treaty, which meeting has been this day held and sundry resolutions passed, including resolutions authorizing the execution of this contract; and

Whereas it has been claimed and maintained for many years by the said first parties, and has been made definitely and conclusively clear to the said first parties that the United States of America has violated the terms and conditions of said treaty and has not performed its covenants therein contained, although the said first parties hereto have done and performed all of the covenants of said treaty on their part to be performed, a copy of said treaty being hereto annexed and made a part here of, and hereby referred to for all purposes; and

Whereas the prosecution by the said first parties of their rights under said treaty requires the employment of counsel for said purpose:

Now, therefore, in consideration of the promises and of the mutual covenants herein contained, it is hereby agreed by and between said parties as follows:

1. The said first parties hereby employ the said second party as their counsel, attorney, and solicitor to take all steps and pursue all remedies which in his judgment shall appear necessary or proper for the recovery of said rights.
2. Said second party shall diligently, faithfully, and earnestly use his best efforts to accomplish the said purpose.
3. Said second party shall, in the performance of his duties hereunder, have the right to associate with him other counsel and to assign to such other counsel such part or portion of his compensation as may be agreed upon between the said second party and such associate counsel.
4. Said second party shall receive as his fees for said services and in full compensation therefore 10 percent of all recoveries had for the benefit of said first

parties, and in no event shall said second party be entitled to any compensation except as herein set forth.

5. In addition to such compensation said second party shall be entitled to reimbursement of all costs and expenses incurred by him in the prosecution of said claims, but nothing herein contained shall be construed as obligating said party to advance any moneys for such costs or expenses without first being advanced the same or indemnified therefore.

6. Said second party agrees that he will forthwith enter upon the prosecution of said claims, and will thereafter prosecute the same diligently to final action.

7. This agreement shall run for a period of 10 years from the date hereof unless consummated prior thereto.

8. That this agreement shall be subject to the approval thereof by the Secretary of the Interior and the Commissioner of Indian Affairs, and subject to all statutes and regulations of the United States of America, or any department thereof, governing the matter of contracts with the Indian Nations.

In witness whereof the said first parties have caused these presents to be executed in their said name of the Western Bands of the Shoshone Nation of Indians, by their chiefs and principal men hereunto duly authorized, at a meeting held in Elko, Elko County, Nev., attended by representatives of all of the said Western Bands of Shoshone Indians, as more particularly appears from the resolutions this day adopted by them, and the said second party has hereunto set hand at Elko, Nev., all the day and year first herein-above written.

The Western Bands of the Shoshone Nation of Indians,

By:

*Jack Frost,  
Bill Gibson,  
John Couchum,  
Jimmie James,  
Muchach (his x mark) Temoak,  
Jack Muncey,  
Harry Stanton,  
Harry Johnny,  
First Parties.  
Milton B. Badt.*

*Second Party.*

*Witness:*

*E. P. Caryville, District Judge.*



*Proposed Organization of the  
Tribal Advisory Committee  
of the Prairie Band of  
Potawatomi of Kansas  
(Potawatomi People, 1932)*

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Like their historical allies, the Anishinaabe and Ottawa peoples, the Potawatomi once lived in the Northeast. Forced west by the Iroquois, Huron, and other tribes, they eventually settled near the Great Lakes. Potawatomi refer to themselves as Weshnabek, or “the people.”

The Potawatomi diaspora led the tribe into several present-day states (Michigan, Wisconsin, Kansas, Oklahoma, Indiana) and the Canadian province of Ontario. They also negotiated fifty-three treaties with the United States. The two largest groups are the Citizen Band Potawatomi of Oklahoma and the Prairie Band of Potawatomi of Kansas. After separating from the Prairie Band in 1861, the Citizen Band accepted U.S. citizenship and individual land allotments. The Prairie Band stayed in Kansas and vigorously fought against the allotment process, although it, too, was eventually forced to cope with the allotment process.

According to several sources, the tribe’s council stopped functioning in 1900, and the federal government’s Potawatomi Agency was shuttered in 1903, when the Indians and the reservation were placed under the superintendent of the training school at that location: The idea was that school superintendents were better positioned to “civilize” Indians than bureaucratic agents.

Despite these administrative changes, the continuing loss of tribal land via allotment, and the cessation of federal treaty annuities in 1909, the Potawatomi still functioned as a viable political, economic, and cultural entity as evidenced by the following “proposed organization.” Both the date and the originators of the draft are unknown, but the Department of Interior formally approved the document in 1932.

Clifton, James A. *The Prairie People: Continuity and Change in Potawatomi Indian Culture, 1665–1965* (Lawrence: Regents Press of Kansas, 1977).

National Archives. RG 75, Entry 133, Replies to Circulars, 1907–1935; Reply to Circular 2565 (April 4, 1929).

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## **Draft of the Proposed Organization of the Tribal Advisory Committee of the Prairie Band of Potawatomi of Kansas**

1. Nominations—These will be made in a council of the Tribe, which council will be called by the Superintendent on thirty (30) days' notice.
2. Election—Voting will be by ballot and will be limited to the adult members of the Prairie Band of the Potawatomi Band of Kansas.
3. The committee will be composed of seven (7) members, elected for a term of four (4) years except for the first election at which the two nominees receiving the largest number of votes will be declared elected for a term of four (4) years; the two receiving the next largest for three years; the two receiving the next largest for two years; and the one (1) receiving the next largest for one (1) year. The Chairman and Secretary will be selected from its own membership by vote of the committee, at its first meeting after the annual election.
4. Vacancies—will be filled in the usual way at a general meeting of the Tribe.
5. The annual meeting for the election of committeemen and the transaction or discussion of matters affecting Tribal welfare will be held on the third (3d) Tuesday of September, at two (2) P.M.
6. Duties—(a) Handling of Tribal claims,  
(b) Making inquiries, recommendations, and suggestions pertaining to Tribal problems and general welfare.  
(c) Promoting Tribal welfare by counseling with the Indians on the Reservation and providing leadership in such things as farming, education, law enforcement, care of helpless, and like matters.
7. The nominations, elections, and filling of vacancies will be under the general supervision of the Superintendent.

*Wm. Wishkend,  
Chairman.  
Wm. Mzhickteno,  
Wm. Hale, Jr.,  
Patrick Matchie,  
Mimmie Evans,  
David Puckee,  
Anna Bender.*

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*Constitution of the Turtle  
Mountain Band of Chippewa  
Indians (Chippewa People, 1932)*

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Like the other tribes, this band of Anishinaabe had originally lived in the Northeast. By the seventeenth century, though, they had gradually made their way west to the Great Lakes, portions of Canada, and the Dakotas. Some of those who arrived in the area that became North Dakota intermarried with French trappers and Cree Indians and became known as Métis.

In 1882 the federal government, via an executive order, acknowledged the Turtle Mountain Band's claim to a reservation that encompassed twenty townships in north central North Dakota. However, in 1884, another such order unilaterally reduced the reservation to two townships (a loss of ten million acres) by claiming that many of the band's members, as Métis, were actually Canadian. The leader of the band, Chief Little Shell, fought vigorously to have his people's lands restored, to have the Métis reenrolled with the band, or at the very least to receive just compensation for the tribe's lost acreage.

In 1892 the federal government responded by coercing a number of the band's members to sign an agreement that would eventually—it was not ratified for twelve years—pay the tribe one million dollars for their ten-million-acre land cession. This pact became known as the "Ten-cent Treaty." Although agreeing to pay the tribe a pittance for its lands, the federal government refused to recognize the Métis as tribal members.

In 1917 the BIA inaugurated a competence policy, in which individual Indians who were deemed "competent" or were at least half white were given fee-simple titles to their tracts. Moreover, as a result of the national allotment process occurring on the reservation and in the public domain, the reservation was further diminished in scale, and increasing numbers of band members lost their allotments to foreclosure proceedings because they could not pay the required property taxes to the state.

Conditions continued to deteriorate, but, believing that the provisions of the Ten-cent Treaty were woefully inadequate, the tribe's leadership embarked on a court of claims suit against the federal government. The process proved quite difficult since tribes that pursued claims against the United States had to first lobby Congress to enact special jurisdictional acts in which the federal government would waive its sovereign immunity from suit.

The tribe's claims languished until 1932, when a BIA superintendent, Francis J. Scott, was hired. According to Richotte, Scott,

who was intent on establishing a constitutional government at Turtle Mountain, hired a non-Indian attorney, John A. Starman, to draft the tribe's first constitution.

Historically, the Ojibwe, like many Plains tribes, had lived in small hunting bands, where leadership was vested in qualified individuals of mature years who operated by consensus and persuasion. This constitution, adopted at a general council on October 8, 1932, established the "Turtle Mountain Advisory Committee," which consisted of a popularly elected chair, vice chair, and secretary-treasurer who were to serve one-year terms.

The superintendent's influence over tribal affairs was evident throughout the constitution-drafting process. Article two declares that "the duties of said Committee shall be to promote co-operation of the Turtle Mountain Band of Chippewa Indians *with the Superintendent and the plans of the government, and to assist the Superintendent in an advisory way in promoting the social, financial, and industrial welfare, and the best interests of the tribe*" (emphasis added).

This and certain other provisions suggest that the superintendent had placed himself in an enviable position and that Anishinaabe sovereignty was not thoroughly recognized. Keith Richotte asserts that the tribe's members adopted this document because they had been assured by the superintendent that the tribe's approval would expedite their efforts to have their claim against the government heard. Ultimately, a special jurisdictional act was introduced, but it was vetoed by President Franklin Roosevelt. The tribe's constitution, however, would remain as it was approved by the secretary of interior in December 1932.

Murray, Stanley N. "The Turtle Mountain Chippewa, 1882–1905." *North Dakota History: Journal of the Plains* 51 (Winter 1984):14–34.

National Archives. RG 75, Central Classified Files, 1907–1939, File 00–1932–068 (1933).

Richotte, Keith. "We the Indians of the Turtle Mountain Reservation :The Effect of Federal Policy on Tribal Governance and Sovereignty." PhD diss., University of Minnesota, n.d.

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## Constitution and Bylaws

### *For the Organization, Government and Election for an Advisory Committee of the Turtle Mountain Band of Chippewa Indians*

We the Indians of the Turtle Mountain Indian Reservation of North Dakota, in general tribal council assembled, do hereby establish an organization to be known as the Turtle Mountain Advisory Committee, and do hereby adopt the following Constitution and by-laws to govern the same.

## ARTICLE 1

The name of this organization shall be the Turtle Mountain Advisory Committee.

## ARTICLE 2

The duties of said committee shall be to promote co-operation of the Turtle Mountain Band of Chippewa Indians with the Superintendent and the plans of the government, and to assist the Superintendent in an advisory way in promoting the social, financial and industrial welfare, and the best interests of the tribe. It is also hereby empowered to consider all business matters pertaining to the tribe and to execute such tribal papers as may be presented for action by the Superintendent, including such instruments which by law require the tribal action. When in the opinion of the Superintendent or a majority of the members of the advisory committee a matter requires action of the general tribal council, the Superintendent may take appropriate steps for the calling of the general council of the tribe.

## ARTICLE 3. MEMBERSHIP AND ELECTION

Section 1. The advisory committee shall be composed of Chippewa Indians of the age of twenty-one years or more and having at least one fourth Indian blood, enrolled at the Turtle Mountain Agency, not under conviction for crime, and who shall be elected at a meeting of the tribe in general council, and who shall hold office for the term of two years or until their successors are elected and qualified, provided however, that at the first meeting of the council hereunder four members shall be elected for the term of two years, and four members of the council shall be elected for a term of one year, and thereafter four members of the council shall be elected annually by the general council for a term of two years. The members of the Council elected at such first meeting and election hereunder for the term of one year shall hold office until the 1st day in July, 1933, and the members of the advisory committee elected at such meeting and election hereunder for the term of two years shall hold office until the last day in July, A.D. 1934, unless sooner removed from office or a vacancy occurs.

Section 2. The first meeting of the general tribal council for the purpose of adopting this constitution and by-laws shall be held after fifteen days notice there of shall have [been] given by posting notices thereof at the agency office and at three other public places upon said Turtle Mountain Indian Reservation. At such first tribal council adopting this constitution and by-laws, such tribal council shall elect members of the advisory committee. The first general tribal council adopting this constitution and by-laws and electing members of the Advisory Committee as herein provided, shall take the place of an annual council meeting for the year 1932.

Section 3. The annual meeting of the general tribal council for the election of members of the advisory committee and for the transaction of such other business as may be approved by the Superintendent of the Reservation and the Commissioner of Indian Affairs, shall be held on the first Friday of

May in each year. The general tribal council shall convene at ten o'clock in the forenoon, and balloting shall be conducted between twelve o'clock noon and four o'clock in the afternoon. Fifteen days notice of said annual meeting shall be given by posting notices thereof at the agency office and at three other public places upon the Turtle Mountain Indian Reservation. The members of the advisory committee elected at such annual meeting shall take office on the first day of July thereafter.

Section 4. Balloting at first meeting of General Tribal Council. The balloting at the first meeting of the general tribal council adopting this Constitution and By-laws shall be under the supervision of the Superintendent, and only such names shall appear upon the written ballot as shall have been nominated at such tribal council meeting previous to the commencement of balloting (and who shall be approved by the Superintendent.) The superintendent shall keep the ballot open for a sufficient time to permit all members of the tribe present at such first meeting of the tribal council to ballot, but not exceeding three hours. The four persons receiving the largest number of votes shall be elected for the term expiring July 1st, 1934, and the four members receiving the next highest vote shall be elected for the term expiring July 1st, 1933. At such first meeting each enrolled member of the tribe qualified to vote may vote for eight candidates.

Section 5. Balloting. Balloting at the general tribal council shall be by written ballot and the hours of balloting shall be between the hours of twelve o'clock noon and four o'clock in the afternoon of the day of the meeting of the general tribal council. Balloting shall be upon ballots in such form as may be prescribed by the Superintendent, and the ballots shall be furnished by the Superintendent. The places of balloting shall be fixed by the advisory committee with the advice and consent of the Superintendent. Only such names shall appear upon the ballot as shall have been nominated in accordance with the provisions of these by-laws.

Section 6. Nominations. The advisory committee shall at its meeting in April of each year nominate two persons for every member of the advisory committee to be elected. (The superintendent shall also have the right to nominate an equal number of persons to the members to be elected by submitting such names to the Advisory Committee at its meeting in April of each year.) Nominations may further be made by petition of twenty-five enrolled members of the tribe entitled to vote, by filing such petitions of nomination with the superintendent prior to the 20th day of April preceding such annual election. Only such names shall appear upon the ballot as have been nominated in accordance with the provisions of this section. Provided, however, that at the first meeting and election hereunder in the year 1932, nominations shall be made in open meeting of the general tribal council, but such general tribal council shall not nominate more than twenty persons to fill the eight offices provided for herein, and not more than twenty names shall appear upon the ballot to be prepared by the superintendent for the use at such first election held hereunder.

Section 7. Members of the Turtle Mountain Band of Chippewa Indians duly enrolled upon the records at the agency of the Turtle Mountain Indian Reservation, twenty-one years of age and over and of sane mind, and not under

conviction for crime, shall be entitled to vote at all elections and meetings of the general tribal council provided for herein.

Section 8. Elections. All elections held under this constitution and by-laws shall be under the supervision and direction of the Superintendent of the Turtle Mountain Indian Reservation, who is hereby given power to prescribe such form, rules, and regulations as may be required, not inconsistent with the provisions of this Constitution and By-laws. The judges of election shall be two in number at each place of balloting and shall be appointed by the advisory committee. The Clerks of election shall be appointed by the Superintendent. Provided, however, that at the first election, all election officers shall be appointed by the Superintendent. The required number of persons receiving the highest number of votes at any election shall be declared elected members of the Advisory committee. In case of a tie the result shall be determined by lot in the manner and form prescribed by the Superintendent.

Section 9. Special Meeting of General Council. Special meetings of the general tribal council shall be called only by the Superintendent of the Turtle Mountain Indian Agency in accordance with the provisions of Article 2 hereof, who shall give at least fifteen days notice thereof by posting such notices at the agency office and at three other public places upon the Reservation. The notice of the special election shall clearly state the purpose for which such special meeting is called, and only such matters shall be considered at such special meetings as are specified in the notice given therefore.

Section 10. The advisory committee provided for herein shall meet quarterly at the Agency Office at Belcourt, North Dakota, on the first Monday of July, October, January, and April of each year. Special meetings may be called by or with the approval of the Superintendent.

#### ARTICLE 4. OFFICERS.

Section 1. The officers of the advisory committee shall consist of a Chairman, a Vice Chairman, a Secretary, and a Treasurer, to be chosen by the members of the advisory committee. Their term of office shall be for the term of one year and they shall be elected annually at the meeting of the advisory committee held on the first Monday of July of each year.

Section 2. Before entering upon the duties of their office, all members of the advisory committee and the officers elected shall subscribe to the following oath of office:

I, \_\_\_\_\_, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, and to faithfully and impartially carry out the duties of my office to the best of my ability, and will co-operate with the superintendent in charge of the reservation to promote and protect the best interests of the Indians of the Turtle Mountain Band of Chippewa Indians upon the Turtle Mountain Reservation, and to assist them in every way in their efforts towards better citizenship and progress.

Section 3. The Chairman shall preside at all meetings of the advisory committee and at all meetings of the general tribal council. In his absence, the Vice

Chairman shall preside, and in the absence of such officers the committee may choose a temporary chairman to preside over such meeting.

Section 4. The secretary shall make a record of the proceedings of the committee, and keep the records and books of the committee. Upon conclusion of a meeting of the committee, the secretary shall file a copy of the minutes with the superintendent bearing his signature and that of the Chairman, and shall also send one complete copy thereof to the Commissioner of Indian Affairs, through the Superintendent.

Section 5. The duties of the treasurer shall be to receive and receipt for all moneys paid into the funds of the committee or the council, or to deposit the same immediately in some safe depository in the name of the Turtle Mountain Advisory Committee, and to keep a correct record of all receipts and disbursements; said funds to be withdrawn or paid out only upon the written order of the Advisory Committee duly signed by the Chairman and countersigned by the Secretary. The treasurer shall furnish such security for the funds in his charge as may be deemed necessary by the committee.

Section 6. Any member of the tribe may be permitted to attend the meetings of the advisory committee, and upon unanimous consent of the committee, may be permitted to discuss questions before the committee; but no one not a member of the committee shall be permitted to vote at meetings of the advisory committee.

#### ARTICLE 5. CONSTITUTION EFFECTIVE IMMEDIATELY.

Section 1. This constitution and by-laws shall become effective immediately upon its adoption by the tribe in general tribal council called in accordance with the provisions hereof, and upon approval by the Commissioner of Indian Affairs; provided however, that the first advisory committee may be elected at such first general tribal council adopting this constitution and by-laws, but such advisory committee shall not qualify as such or assume such office hereunder, until this constitution and by-laws shall have been approved as adopted by the Commissioner of Indian Affairs.

#### ARTICLE 6. AMENDMENTS.

Section 1. Amendments to this constitution and by-laws may be proposed in writing at any regular meeting of the advisory committee and may be voted upon at the next regular meeting of the advisory committee, but such amendments shall not become effective until approved by the Commissioner of Indian Affairs. Amendments may also be proposed by resolution in writing and adopted at any regular meeting of the general tribal council, but such amendments shall not become effective until they have been approved by the Commissioner of Indian Affairs.

Adopted at a general council of the Turtle Mountain Indians held October 8, 1932.

*Kanick, Chairman*



*Constitution of the Hopi  
Council of New Oraibi  
(Hopi People, 1933)*

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Historically, the Hopi, or “peaceful people,” did not constitute a single tribe in the political sense since they inhabited several major autonomous villages—Walpi (First Mesa), Shungopovi (Second Mesa), and Oraibi (Third Mesa)—and a host of minor communities. Each principal village is led by a *kikmongwi*. These traditional leaders hold their positions for life and are the spiritual guides as well for their respective communities.

Today the Hopi occupy lands in northeastern Arizona between the Colorado River and the Rio Grande. As the westernmost Puebloan village, the Hopi, because of their geographic remoteness from the eastern Pueblo communities, did not face the same sustained level of cultural absorption by the Spanish and later the Mexicans. When the United States routed Mexico in the 1840s and gradually became the dominant military presence in the region, Hopi fortunes turned.

The Hopi Reservation was established by presidential order in 1882, and trading posts, epidemics, railroads, missionaries, federal policies of allotment and assimilation, and other native nations (especially the Navajo) all had a gradual but significant impact on Hopi lands, identities, and governing structures. As these forces coalesced, they generated increasing conflict within some villages, culminating in a powerful religious-political split in 1906 in Oraibi that led to the birth of three distinctive villages—Bacabi, Hotevilla, and New Oraibi.

In 1931 the Hopi people of New Oraibi decided to adopt a constitution and bylaws for their community. Those documents are reprinted here. According to Felix Cohen, a charter was also established in the villages of Mis-hong-na-va and Shu-pau-la-va that was approved by the Department of Interior on March 31, 1933. I have been unable to locate a copy of that document.

The constitution of the Hopi Council of New Oraibi was presented before the senate subcommittee of the Committee on Indian Affairs during the congressional hearing that was held at Oraibi on May 18, 1931. Otto Lomavitu, who identified himself as the president of the Hopi Council of New Oraibi, testified that this organization had been formed and the constitution had been drafted by a number of “educated” Hopi in Oraibi in an effort to create an organization that could more effectively represent their people’s needs. Lomavitu said a broader attempt at inter-village political cooperation—an entity called the Federation of Hopi Indians—had been tried a few years earlier, but he indicated that this had failed “through lack of cooperation on the part of the other people.”

This document, written by a small segment of the Hopi people, indicates the deep sense of political and cultural division that was evident in Hopi country. This rift would only intensify during the next several decades. For example, the Hopi tribal council and government were formally organized in 1935 upon adoption of the IRA. In a majority vote in 1936, the Hopi tribe officially adopted a constitution, although dissension was immediately apparent, and several villages refused to recognize the newly organized tribal council. They asserted that the Hopi tribal council “was regarded by a majority of Hopis as a rubber-stamp organization for the Indian Bureau superintendent” (Spicer 1967, 206).

James, Harry C. *Pages from Hopi History* (Tucson:University of Arizona Press, 1974).

Sturtevant, William C., ed. *Handbook of North American Indians*. Vol. 9, *Southwest*, vol. ed. Alfonso Ortiz (Washington, D.C.:Smithsonian Institution, 1979).

U.S. Senate. *Survey of Conditions of the Indians in the United States*. Hearings before a Subcommittee of the Committee of Indian Affairs. 71st Cong., 3d sess., pt. 18 (Washington, D.C.:GPO, 1932):9409–10.

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## Constitution

- I. Name: The name of this organization shall be the Hopi Council of New Oraibi.
- II. Officers: Its officers shall consist of president, vice president, secretary, treasurer, and sergeant at arms.
- III. Advisory: Its advisory board shall consist of four members, men of mature mind and who possess sufficient education as to readily understand transactions of different kinds.
- IV. Membership: Its membership shall be open to all men and boys of the Hopi Tribe of Indians.
- V. Object and Purpose: The object and purpose of this organization shall be—
  - (a) To hold the tribe in a bond of peace through mutual understanding and cooperation.
  - (b) To further progress in education, better living, sanitation, and all that goes to make up better civilization.
  - (c) To act as medium for better understanding between the United States Government, the officials who labor amongst us, and the Hopi Tribe through cooperation for the up building of our people.
  - (d) To defend our individual and tribal rights against encroachment as citizens of the United States, howbeit welcoming any aid which may be given our tribe free from graft.
  - (e) To be the channel through which governmental announcements and transactions shall be made in things pertaining to the Hopi Tribe.

VI. Religion: In things religious, this organization shall be neutral. It is the intention of the organization to cooperate with our Indian chiefs and elders in so far as they seek the welfare of our Hopi people, keeping in view that we are approaching a new era in Indian life, sponsored by the Government, with a view of finally absorbing the tribe into its full citizenry, and for the purpose the Government has placed its employees among us.

*By-Laws*

I. The Hopi Council of New Oraibi shall meet once every other month unless special occasion demands [an]extra session, and at such places as shall be agreed upon by the members.

II. The officers shall be elected by vote of the members, and shall hold office for two years, which term may be prolonged according to ability and efficiency.

III. It shall be the duty of the president and vice president to preside at all sessions, the vice president to preside in the absence of the president.

IV. The president shall have the power to examine the accounts of his subordinate officers and shall have access to all important communications, written or oral, which shall be in the possession of the members of this organization.

V. It shall be the duty of the secretary to take the minutes of the meetings, the names and addresses of the members, and to notify the members of the next session.

VI. It shall be the duty of the treasurer to file all money receipts and expenses and which he shall report to the members from time to time.

VII. It shall be the duty of the sergeant at arms to keep order during the session, and to call upon and urge delinquent members to be present at all the meetings of the organization.

VIII. The members of the advisory board shall be elected by vote and shall hold office for life, or until such time as they are not able.

IX. The membership fee shall be 25 cents per year, which shall be used in payment for light, writing materials, and other expenses.

X. It shall be the duty of all members of this organization to keep the president informed at all times of all important movements among the Indians.

XI. It shall be the duty of all members of this organization to contribute toward an emergency fund and the purchasing of fuel.

A copy of the Constitution and By-Laws of this organization shall be sent to the office of the Commissioner of Indian Affairs for file, to the agency office at Keams Canyon, Ariz., for record, and for each member shall be furnished with a copy of same.

The foregoing articles shall be subject to the revision and further amendments as time and circumstances may require.

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*Constitution of the Oglala  
Sioux Tribe (Oglala  
Lakota People, 1933)*

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The adoption of a constitution in 1928 did not ease internal tensions among the Oglala. In fact, profound differences remained between those who supported parliamentary democracy and those who favored the treaty-rooted, three-fourths majority-rule structure of governance. Thus, in 1931 a general council composed of “representatives, chiefs, councilors, and members of the tribe” met and voted to do away with the business council. The members then replaced that group with a more traditional Oglala administrative body (originally called the Oglala Treaty Council, although the word “treaty” was later replaced by “tribal”), which was to serve as a tribal advisory board.

Later that year they also began crafting a new constitution, which culminated in the 1933 document reproduced here. The constitution specified eight political districts, an executive branch, and quarterly meetings. One section of the bylaws titled “chiefs” declared that “the election of and the appointment of Chiefs and Sargent [*sic*] at Arms shall be made in accordance with the custom of the tribe (Sioux) and it shall in no way be arranged by the Council.” With regard to this constitution (and just one year prior to the IRA), Thomas Biolsi states that “the principle of three-fourths majority rule had triumphed over the principle of elective government on Pine Ridge Reservation” (1992, 59).

Felix Cohen reported that, even though the Oglala adopted this constitution on April 27, 1933, the Department of the Interior never officially approved it.

Biolsi, Thomas. *Organizing the Lakota: The Political Economy of the New Deal on the Pine Ridge and Rosebud Reservations* (Tucson: University of Arizona Press, 1992).

Clow, Richmond L. “The IRA and the Loss of Tribal Sovereignty.” *Great Plains Quarterly* 7 (Spring 1987):125–34.

National Archives. RG 75, Central Classified Files, Pine Ridge, File 51571–31, pt. 1 (April 22, 1933).

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## Constitution

### *Reservation, Pine Ridge, South Dakota*

Know Ye All Men by These Presents:

That, under and by virtue of the Treaty of 1868 we, the members of the Sioux Band of Indians duly enrolled on the Pine Ridge Indian Reservation in the State of South Dakota, for ourselves and successors do hereby, pledge to organize under a Tribal Council; That, under and by virtue of Statutes of the United States of America granting such rights as pertains to Civil and Tribal authority of this reservation.

#### ARTICLE ONE

The name of this organization shall be, Oglala Sioux Tribal Council.

#### ARTICLE TWO

This organization shall constitute membership limited to duly enrolled adult members of the Oglala Sioux Tribe. It shall consist of eight political Districts to be recognized as follows: White Clay, Wakpamni, Wounded Knee, Porcupine, Medicine Loot, Pass Creek, Eagle Nest, Martin. All members are entitled to a voice in all Tribal and Civil questions with only one vote and that in person on tribal business.

#### ARTICLE THREE

This organization shall be represented in authority by a Council to be composed of an Executive Board and Delegates from each District. The council shall have complete management of any business coming before and for the best interests of the Oglala Sioux Tribe. Each District shall be required to organize a sub-council consistent with the requirements of this Constitution and By-Laws.

#### ARTICLE FOUR

Regular meetings of the Council shall be held quarterly in accordance with its annual year commencing January 1st and ending December 31st of each year. Special meetings may be called by the President, Provided: that the Correspondent in charge of the Reservation shall be notified. That application and notice of Council is given in due time. That a special general council be called in December of each second year for the appointment of members to the Executive Board and for other purposes, to be called into session by the Tribunal of Chiefs.

#### ARTICLE FIVE

The Quorum of all sessions of the Council shall be a majority of the Councilmen. The presiding officer shall vote only in case of a tie vote. For the transaction

of business involving Tribal property the consent of not less than three-fourths of the adult males must be secured. Any other quorum provided by law or this constitution and by-laws shall be adhered to.

#### ARTICLE SIX

Any member of this organization who is employed by the Government shall not hold office on the Executive Board or the position of a Delegate. Any member of this organization charged with disloyalty to his Tribe by misrepresentation or otherwise shall be reprimanded or recalled by action of the Council.

#### ARTICLE SEVEN

The council is hereby authorized to assess funds against members of the organization to carry out the requirements of this Constitution and By-laws. Any funds assessed or contributed to the funds of this organization shall not be withdrawn for any purpose except when appropriated by the Council. No part of funds in the Treasury of the Council shall be loaned or borrowed.

#### ARTICLE EIGHT

This Constitution and By-laws may be amended or repealed by a majority vote of any regular council, provided: such action is filed and notices circulated thirty days before.

#### *By-Laws*

Executive Board. The members of the Executive Board shall be as follows: President, Vice-President, Secretary, Asst. Secretary, Treasurer and a Critic. Their term of office shall be for two years or until their successors in office are appointed. It shall be their duty to cooperate on all Official and Tribal matters and to confer with the Superintendent in Charge for the best interests of the Tribe only.

Delegates. Each District named in this Constitution and By-laws shall be represented by five (5) members to each session of the Council. Such Delegates to be elected and empowered only for one session of the Council by action of District Councils. Any Delegation or Delegate without proper credentials shall not be recognized in the Tribal Council.

Chiefs. The election of and the appointment of Chiefs and Sargent [*sic*] at Arms shall be made in accordance with the custom of the Tribe (Sioux) and it shall in no way be arranged by the Council.

President. The duty of the President shall be to preside at all sessions of the Council. By arrangement he may be relieved by the Vice-President or the next officer in order of authority. He shall file the Minutes of the Council properly signed by him and the Secretary as well as resolutions and decisions and any other important Council matter as he may be called on to perform by the Council.

Secretaries. The duties of the Secretaries shall be to take down the minutes of each session of the Council and maintain all records of importance in proper manner. They shall attend to all correspondence and any other work they may be called on by the Council to perform.

Treasurer. The duties of the Treasurer shall be to receive and receipt for all moneys paid to the Council which must be deposited in the name of the Council in some proper depository and shall keep records of all receipts and disbursements. He shall furnish sufficient bonds for all funds placed under his charge and such bonds shall be fixed and adjusted from time to time by the Council. Any funds to be paid out or withdrawn for any purpose shall be made upon the order of the Council only, signed by him and countersigned by the President of the Council. All money transactions and disbursements must be reported by him to the Council as may be required of him from time to time.

Critic. The duty of the Critic shall be to observe and assist under his direction the President officer [*sic*] to the end that proper manner and efficient order of business may be attained by the Council.

Approved: \_\_\_\_\_

Per Charles Little Hawk, Secretary

Referred for approval to the Supt. in Charge.

Mr. James H. McGregor, Supt. in Charge.

Date: \_\_\_\_\_

We, the undersigned members of the Oglala Sioux Tribal Council of Pine Ridge Agency, Pine Ridge, South Dakota, in Special Council assembled, have this day, the twenty second day of April in the year of our Lord Nineteen Hundred thirty three accepted changes in our Constitution and by-laws referred to us as representatives of our people, by the Superintendent in charge Mr. James H. McGregor and ask that approval be made by him as to form.

Signatures of the members of the Tribal Council on separate sheet of paper attached hereto. Copies of names are as follows:

<u>White Clay:</u>		<u>Porcupine:</u>
Milton Brave	John Rock	Robt. Bad Wound
Dan. Blue Horse	Thomas White Face	Charles Little Hawk
Lambert Hat	Louis Jumping Bull	George Means
oseph High Eagle		Eagle Bear
Joseph No Water		James Grass, Sr.
	<u>Wakpamni:</u>	<u>Medicine Root:</u>
	Strong Talk	Wm. Eagle Shirt
	Henry Standing Bear	Charles under the Baggage
	James H. Red Cloud	Thomas American Horse
	Charles Yellow Boy	Amos Red Owl
	Wm. Red Hair	

Wounded Knee:

*Richard Afraid of Hawk*  
*Frank Good Lance*  
*David Red Star*  
*James Kills on Horseback*  
*Dog Chief*

Pass Creek:

*Runs along the Edge*  
*Dan. Bad Wound*  
*Herman Conquering Bear*  
*Daniel Black Horn*  
*Edgar Fire Thunder*  
Executive Board:  
*Charles Red Cloud*

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*Constitution of the Camp  
McDowell Indians in Arizona  
(Yavapai People, 1933)*

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The Yavapai historically lived in what is today central and west central Arizona, where they occupy approximately ten million acres of land. Yavapai is considered a major dialect of the Yuman language. Today the Yavapai inhabit three separate reservations, each run by its own tribal government: the Camp Verde Yavapai Indian Community; the Yavapai-Prescott Tribe; and the group this section focuses on, the Fort McDowell Mohave–Apache Indian Community, which recently changed its name to the Fort McDowell Yavapai Nation.

Before the early 1860s the Yavapai had little contact with whites. In 1863, however, the discovery of gold quickly changed the demography of the region, as increasing numbers of whites intruded into Yavapai territory. Military posts were constructed, and efforts were made to pacify the Yavapai by forcing them onto reservations. Their most devastating defeat occurred in 1872, when a large band of Yavapai were massacred at Skeleton Cave in the Salt River Canyon.

Thereafter, they endured several forced relocations, as the ever-increasing white population demanded more land and water to irrigate it with. Struggling to cope with colonization, the Yavapai endured epidemics, harassment by local whites, and the difficulties associated with transitioning from a subsistence economy to wage labor, mining, farming, and ranching.

When Fort McDowell was abandoned as a military post, local whites and Mexican squatters moved into the abandoned territory. But the Yavapai, beginning in 1900, sent several delegations to Washington, D.C., led by Chief Yuma Frank, who requested that the abandoned fort be turned over to them. Their persistence paid off, and on September 15, 1903, President Theodore Roosevelt, by executive



order, established the Fort McDowell Reservation. This tract of land was bisected by the Verde River, and from the time of its establishment, the Yavapai have faced pressure from non-Indians, who have desired both tribal land and water, and from the city of Phoenix, situated less than thirty miles away.

One of the first American Indians to earn a medical degree was Dr. Carlos Montezuma, a Yavapai. From 1910 until his death in 1923 Montezuma actively supported his people's rights and worked to help them save their land and water resources.

According to the limited literature available, it appears that the Yavapai of Fort McDowell continued to effectively manage the pressures of living in an ever more congested area. Their traditional chief, or "civic leader," helped to maintain tribal cohesion. In addition, the local Indian agent attempted in 1925 and 1927 to establish farmer's and stockmen's associations within the tribe. His organizational efforts were not successful, however, because of a lack of interest and intratribal squabbling.

The agent also reported that the infighting increased after 1933, when the local chief passed away: "The Chief [whom he did not identify by name] used to play a very vital part in all business meetings and had a lot of influence over the Indians of both factions." The two feuding groups were called the "Gilbert Davis faction" and the Harry Austin faction," and, according to the agent from the Fort McDowell Sub-Agency in Scottsdale, Arizona, "these two factions have never agreed on any business matters brought before them, in any of our meetings." The fragmentary documentary record tells us that the members of these two groups each developed written constitutions, probably in 1933, and submitted them to the BIA for approval. The lengthier document was adopted on May 15, 1933, but was never officially approved because it was viewed "as going beyond legal powers." The rival document, a mere page and a half long, was apparently "never adopted" by the tribal constituency and was also rejected by the bureau. Unfortunately, the incomplete documentation is unclear on which faction authored which document, but both are presented here for study and review (copies in author's possession).

After the IRA was adopted in 1934, the tribe's leadership came together and on October 3, 1936, adopted, by a vote of sixty-one to one, a new constitution. John Collier approved the charter on November 13, 1936.

Khera, Sigrid. "Yavapai." In *Handbook of North American Indians*, gen. ed. William C. Sturtevant. Vol. 10, *Southwest*, vol. ed. Alfonso Ortiz (Washington, D.C.:1983), 38-54.

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## **Constitution of the Camp McDowell Indians of Arizona (1933)**

We, the Indian people of the Camp McDowell Reservation in Arizona, in compliance with the advice of the United States and in order to establish our rights and privileges allowed under the law of the United States on our reservation, do hereby ordain and establish this our Constitution.

### *Article I*

Section 1. All legislative, executive, and judicial power not specifically withheld by the United States and by the Indians themselves shall be vested in a tribal council known as the Federal tribal council, which consists of five members either male or female, enrolled or their descendents over the age of 25 years and resident of this reservation and not connected in any way with the Indian Bureau, the United States, the State of Arizona, or leases, permits, or other occupant of this reservation not Indian themselves of this reservation.

Section 2. One of the said members shall be president, who shall be chairman, one a secretary, who shall keep all records, and one a treasurer, who shall be custodian of all funds and shall hold office until the Tuesday in May, 1935, or until his or her successor is elected and qualifies.

Section 3. The tribal council shall have full authority to manage and regulate all affairs and matters arising on said reservation, not herein specifically withheld or that may be held by the government of the State and Nation.

Section 4. Any franchise, lease, permit use or occupancy or other right or privilege, or the sale grant of any portion of said reservation, or the granting, use or relinquishment of any water right of the Indian people of this reservation is hereby withheld exclusively to the Indian people of this reservation and only shall be delegated by a majority of the vote of said reservation qualified to vote, after first being unanimously approved by the council at least thirty days prior to such approval.

Section 5. As soon as elected, the council [shall] meet and approve their own government by-laws for the proper management of their own body and the reservation.

Section 6. The council shall meet officially on regular meeting days, which shall be the first in each month at \_\_\_\_\_ o'clock of said day in the \_\_\_\_\_ and shall not transact any business at other times, all of which said meeting shall be public to the Indians.

Section 7. The tribal council shall have the authority to refuse any persons, firm or corporation not a member of this tribe, the right of occupancy or the right to maintain any establishment or work or business or thing upon said reservation.

Section 8. Before any persons, other than tribal Indians, shall have the right to perform any kind of work on said reservation, approval must be obtained from tribal council.

Section 9. The tribal council shall have full powers of management of law enforcement, where not retained by the United States, and shall set up laws for the Indian people and establish a court and appoint officers or approve officers to be appointed by the Indian Bureau and particularly as follows:

- (a) To issue marriage licenses and perform marriage ceremonies.
- (b) To issue degrees of divorce and establish law thereafter in accordance with the tribal custom.
- (c) To prohibit other violations, where not inconsistent with the law of the United States and the State of Arizona, and to assist them in enforcement of their law.

Section 10. In all matters arising with outside interests the tribal council shall represent the Indian[s] of this reservation, but no binding contract shall be valid where inconsistent with Section 4 of Article 1 hereof or Section 1 of Article 3 hereof.

Section 11. The tribal council is hereby instructed to immediately start proper action against the City of Phoenix for proper redress for the occupancy by them of certain portion[s] of said reservation and for the acquisition of the Indian waters and water rights.

## *Article II*

Section 1. An election of a tribal council shall be held on the first Tuesday \_\_\_\_\_ of each odd year and the next regular election for tribal council shall be Tuesday \_\_\_\_\_, 1935.

Section 2. The tribal council shall hold offices for two years or until the first Tuesday \_\_\_\_\_, 1935, or until their successors are elected and qualified.

Section 3. At all election meetings for approval and convention, 30 day posted notice shall be made at not less than three places posted on said reservation, all of which must be held upon said reservation.

Section 4. All members of said tribe, now enrolled, and their descendants over the age of twenty-one years, male or female, shall have the right to vote upon all matters and at election meetings for approval and conventions.

Section 5. At nine o'clock in the morning of the day set for an election meeting approval or convention, those members of the tribe qualified to vote shall proceed to elect a chairman and secretary, the chairman [to] preside and the secretary to keep the record and three members additional, all of whom shall be qualified to vote, who shall act as the day board.

Section 6. The day board shall receive nominations at council elections for candidates for council, the voting shall then start, which shall be public and oral and no written ballot shall be used, each voter announcing in public his or her vote, which said vote shall be recorded to the candidates named. The candidates receiving the highest vote shall be elected President, the next highest the Secretary, and the [next] highest the Treasurer, and so on until the five members are elected to fill the new council.

Section 7. Those eligible for council shall be residents of the reservation, enrolled or their descendants, over the age of twenty-five years old, and not in the employment of the Indian Bureau, United States, Arizona, or

any person or firm, not a member of the tribe occupying said reservation by lease, permit, or otherwise, and shall not so be employed during his or her incumbency in office.

Section 8. Any councilmen resigning, or who shall die while in office, shall only be replaced by special election called by the council for that purpose.

Section 9. A majority of the council must vote in favor of a matter and a majority of the voters present at any election meeting for approval, or convention, must vote in favor of a matter before being declared passed. A quorum of the council shall be three members, one of whom shall be president and secretary. [*sic*]

Section 10. If any member of the council fail to attend two of the regular meetings in succession, if not too sick to attend, his office shall be forfeited and a special election called to replace, and members all meeting must be held on the reservation and public to Indians. [*sic*]

### *Article III*

Section 1. The right to issue franchise, to lease, permits, occupy, to sell, grant any portion of the reservation or to relinquish, let assign, or otherwise use any water right of the Indian people of the reservation to any person other than the Indian of this reservation shall [not]be delegated to any person or persons other than the Indians themselves and only then upon having unanimous approval of the tribal council.

Section 2. The tribe of the Camp McDowell Indians hereby adopted the provisions of the law of the United States and particularly with references to the right of Indians securing work on their reservation in preference to others working thereon, and such work must be given to them in preference to others and to be distributed to them alternately, with equal rights to all Indians upon said reservation who are capable and willing to work.

### *Article IV*

Section 1. Whenever two-thirds of the qualified Indian voters on said reservation or a unanimous vote of the council shall deem necessary any new amendment shall be proposed to this constitution and after due notice thereof, a convention may be held at which time a majority of the voters present having ratified the same, it shall then become a part of this constitution.

Done in convention after due notice to the Indian people, said convention then duly assembled, this constitution was duly ratified by a majority of the vote present and voting this 15th day of May, 1933.

## **The Constitution of Camp McDowell Arizona**

We, the people of Camp McDowell Indian Reservation, in order to establish a legislative body to represent the Indians of this reservation to promote the general welfare and co-operate with the Government do ordain and establish this Constitution for the Indian people of Camp McDowell Indian Reservation.

*Article One*

Section 1. A council of five members male or female over the age of 25 years enrolled in this reservation or their descendants shall be elected and shall be known as the Camp McDowell Indian Council, one for president, one vice president, one secretary, one assistant secretary, and one treasurer.

Section 2. The duties of the officers shall be as follows:

The chairman or the president calls the council to order and announces its business and signs all documents. The vice president shall act for the president in his absence, the secretary shall record the proceedings of the council, write all letters, sign all records and is responsible for all papers belonging to the council. The assistant secretary shall act for the secretary in his or her absence, the treasurer shall handle all money of the council receiving and disbursing as ordered by vote, and account for it to the council.

Section 3. The council shall meet every first Monday of each month or [when] called by the president for special meeting at any other time and all meetings shall be held at the agency.

Section 4. If any member of the council should resign or in case of death while in office or [be] removed for any misconduct he shall be replaced by special election called by the council.

Section 5. Three members of the council shall constitute a quorum and shall proceed with the meeting.

*Article Two*

Section 1. All elections shall run similar to the United States ballot system.

Section 2. All voters now enrolled on this reservation or their descendants 21 years of age or over shall vote by a ballot.

Section 3. Elections shall be held on the first Tuesday of every second year.

Section 4. Notice shall be posted at not less than three places on this reservation 30 days before any election for approval of convention.

Section 5. No candidates for the council office shall preside on the election board.

*Article Three*

Section 1. If the council deem it necessary to add new amendments to this constitution it shall call a meeting to pass or reject by the voters of this reservation and with the approval of the Government it shall become a part of the constitution.

Adopted by the Indians of this reservation by the majority vote this \_\_\_\_\_ day of \_\_\_\_\_ year of 193\_\_\_\_\_.

*Approved* \_\_\_\_\_  
*Approved* \_\_\_\_\_  
*Approved* \_\_\_\_\_

*Constitution and Bylaws of the  
Hoopa Business Council  
(Hupa People, 1933)*

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The Hupa people inhabit the Hoopa Valley Reservation in Humboldt County, California, situated along the Trinity River. The name “Hupa” derives from the Yurok name for the Hoopa Valley. Encompassing some 85,445 acres, their reservation is the largest in the state, and their population is also the most substantial of all native California tribal groups—about one thousand in the early nineteenth century and about twenty-five hundred in 2005.

Historically, the Hupa had no formal political infrastructure. The basic social unit was the family, with several families typically joining together to form a larger social entity. Like many native peoples in California, their lands and resources were vulnerable to exploitation and dispossession, especially after gold was discovered in 1848. As a result, the Hupa signed three treaties with the United States—in 1851, 1862, and 1864—although only the 1864 treaty, which established peace, friendship, and the reservation’s current boundaries, is today considered by both parties to have the hallmarks of a valid treaty (Deloria and DeMallie 1999, vol. 1, 231–32).

The final treaty, negotiated by Hupa, South Fork, Redwood, and Grouse Creek Indians, as well as Austin Wiley, California superintendent of Indian Affairs, declared in article one that the United States “by these presents doth agree and obligate itself to set aside for reservation purposes for the sole use and benefit of the tribes of Indians herein named, or such tribes as may hereafter avail themselves of the benefit of this treaty, the whole of Hoopa valley, to be held and used for the sole benefit of the Indians whose names are hereunto affixed as the representatives of their tribes” (ibid., 231).

In 1864 Congress also authorized the president to confirm a tract of land specifically for the Hupa people (13 Stat. 39). By executive order, President U. S. Grant formally set aside the reservation on June 23, 1876. This area was further expanded by another executive order in 1891. By 1916, according to the local superintendent of Indian Affairs, the Hoopa Valley Indians had organized a representative tribal council composed of Indians living on the reservation. The “Hoopa Council,” as it was called, was the authorized body for all of the Indians of the reservation.

The Hupa also had to deal with land allotments in the early twentieth century. Their situation was complicated by the fact that some Klamath River, or Yurok, Indians were claiming an interest in the lands and resources of the original Hoopa Valley Reservation. These events

played a role in the Hupa people's 1933 decision to adopt a constitution and bylaws to govern the "bona fide" residents of the twelve-square-mile Hoopa reservation. The three-member Hoopa Business Council and the subcouncil (three members from each of the seven districts) had the "freedom and liberty ... to carry out the wishes of the majority of the tribe in all cases, with the sole object of promoting the social, financial, tribal funds, and disbursements, industrial, allotment and general welfare of the tribe." The Council was to "diligently and wholeheartedly endeavor to co-operate with the Bureau of Indian Affairs."

The tribe's constitution was approved by the Commissioner of Indian Affairs on November 20, 1933. This document was superseded by a constitution adopted on May 13, 1950, which was approved by the BIA on September 4, 1952.

Cohen, Felix S., Papers. Box 6, folder no. 89 (Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Collection, New Haven, Conn.).

Wallace, William J. "Hupa, Chilula, and Whilkut." In *Handbook of North American Indians*, gen. ed. William C. Sturtevant. Vol. 8, *California*, vol. ed. Robert F. Heizer (Washington, D.C.: Smithsonian Institution, 1978), 164-79.

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## Constitution and Bylaws of the Hoopa Business Council

Article 1. This organization shall be known as the Hoopa Business Council.

Article 2. The members of the Business Council shall be elected to act for the tribe, with the power of rendering decisions for them after matters that [they] have taken under consideration with the sub-council; excepting in matters of minor importance not effecting Article 14, where questions of departmental policies are involved; they shall have the freedom and liberty, without consulting the sub-council, to act and pass upon such matters of minor character as may be presented to them by the superintendent, Commissioner of Indian Affairs or any member of the tribe.

The views of the tribe having been determined, the business council shall be cloaked with authority to act in any and all tribal matters, including tribal claims of every nature.

Regardless of personal opinion, it shall be the express and explicit duty of the business council to carry out the witness of the majority of the tribe in all cases, with the sole object of promoting the social, financial, tribal funds, and disbursements, industrial, allotment and general welfare of the tribe; to make such recommendation to the executive, judicial, and legislative branches of the government, or to any others that the business council and the tribe may deem advisable; and the business council shall at all times diligently and wholeheartedly endeavor to co-operate with the Bureau of Indian Affairs.

Article 3. The business council shall be composed of seven enrolled members of the Hoopa tribe; bona field residents of Humboldt County, California, and twenty-one years of age or over.

Article 4. The election of members of the business council shall be held at district councils as follows:

A majority of the lawful votes cast in each district shall determine the election of the business councilmen and sub-councilmen.

Ballot votes shall govern all elections unless otherwise ordered by the business council.

Four votes cast by duly elected councilmen shall constitute a majority sufficient to carry a motion, presented at the business council meetings.

Article 5. Notice of election, stating the place and hour of voting shall be posted not less than two weeks in advance.

A. The business councilmen shall preside over the election held in his [*sic*] district and take extra precaution to insure a fair election.

Article 6. Thereafter, elections shall be held every two years, in the month of May, the day to be determined by the business council.

Each district shall elect one councilman and three sub-councilmen according to the provisions of this constitution, the term of office being for a period of two years.

Article 7. The regular meeting of the business council shall be held on the first Thursday of each month, at the Agency Field district.

Special meetings may be called by the chairman either on his own motion or on written request of four or more members of the business council; such calls and requests stating the purpose of the meetings.

The business councilmen in each district shall meet with his or her sub-councilmen the last Thursday of each month.

Article 8. Any suggestions, complaints or requests shall be made to business councilmen or sub-councilmen in writing and shall be signed by parties making such assertions.

A. If a vacancy should occur in the position of a councilman, it shall remain discretionary with the district to fill out the unexpired term at a special election held at the district where the vacancy occurs.

B. The business councilmen shall confer with his sub-councilmen to determine a substitute in case of his temporary absence.

C. If a vacancy occurs in the sub-council, the councilman shall call a meeting of his district, and elect someone to fill such a vacancy by a majority of votes in the district.

Article 9. Before assuming their places on the business council, members elected shall subscribe to the following oath or affirmation of office:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the constitution of the United States against all enemies, and faithfully and impartially carry out the duties of my office to the best of my ability, and will co-operate with the Bureau of Indian Affairs in all efforts to promote and protect the Indians of the Hoopa reservation, and to assist them in every way towards better citizenship and progress.



Article 10. At the first meeting following election, a chairman, vice-chairman, secretary, treasurer, or any other officer needed to transact business shall be elected.

Five members of the council shall constitute a quorum for the transaction of business.

Article 11. Any official or employee of the Bureau of Indian Affairs, or anyone else who may have business with the business council sufficient to warrant his presence may attend the meeting of the business council to and advise with them on matters affecting the tribe.[sic]

Article 12. The secretary of the Business Council shall keep the minutes of all regular and special meetings, and include therein all business transacted by the Business Council. He shall file one copy at the agency headquarters, one shall be forwarded to the Commissioner of Indian Affairs and one copy shall be filed by the Secretary for council reference.

Article 13. Any member of the business council shall be subject to recall from office for reasonable cause upon investigation by the sub-council and approval of the business council.

Any sub-councilman may be subject to recall, for willfully neglecting his or her duties, or for any act detrimental to the welfare of the tribe, or by a petition signed by not less than 55% of the lawful voters of his district.

Article 14. Matters of great importance to the tribe, which the Commissioner of Indian Affairs, superintendent, or the business council believes should be referred to a general tribal council, shall be so referred.

Article 15. The office of business councilmen shall be strictly honorary and without compensation, except when valuable or meritorious services are rendered by any member of the business council in the discharge of his duties, in which case claim may be made for compensation. Before payment any such claim must be approved by the business council.

Article 16. This constitution and by-laws may be amended at any regular or special business council meeting; subject to the approval of the sub-council.

Article 17. It shall be the duties of sub-councilmen to investigate all complaints, requests, or assertions by any member within his district, and to present the same to the business councilman in written form by their councilman.

The superintendent shall assist the council in the promotion of a high standard of morals within the tribe.

He shall submit to them a statement of all funds obtained from the sale of land, timber, rights of way, mining royalties, or any money that may have accrued from any other sources pertaining to the rights of the tribe.

A copy of monthly disbursements shall be given to the council for reference and consideration.

He shall see that all necessary literature for conducting of the business council's affairs are properly typed or mimeographed.

Article 18. This constitution shall be in full force and effect to govern the Hoopa tribe and business council on and after the date it is approved by the Commissioner of Indian Affairs at Washington, D.C.

Signed by:

*Edward Marshall, Chairman,  
Gilbert Marshall, Secretary.*

# Appendix

## Selected Internet Sites



THE FOLLOWING INTERNET resources provide further information about various native political, legal, economic, and educational issues. Of course, it is not possible to verify the accuracy of all of the information at these sites. I encourage readers to visit the “official” electronic home pages of specific native nations. A brief list of those follows this entry.

### ALASKA NATIVE WEB SITES

[http://www.codetalk.fed.us/Alaska\\_Native.html](http://www.codetalk.fed.us/Alaska_Native.html)

### AMERICAN INDIAN LAW ALLIANCE

<http://www.ailanyc.org/>

### BUREAU OF INDIAN AFFAIRS

<http://www.doi.gov/bia>

### CENTER FOR WORLD INDIGENOUS STUDIES

<http://www.cwis.org/fwdp/index.php>

### INDIAN AFFAIRS: LAWS AND TREATIES

<http://digital.library.okstate.edu/kappler/>

### INDIAN COUNTRY TODAY

<http://www.indiancountry.com>

### INDIAN LAW RESOURCE CENTER

<http://www.indianlaw.org/>

### INDIANZ.COM

<http://www.indianz.com>

## INTERNATIONAL INDIAN TREATY COUNCIL

<http://www.treatycouncil.org/home.htm>

## NATIONAL CONGRESS OF AMERICAN INDIANS

<http://www.ncai.org>

## NATIONAL INDIAN GAMING COMMISSION

<http://www.nigc.gov/>

## NATIONAL TRIBAL JUSTICE RESOURCE CENTER

<http://www.tribal-institute.org/>

## NATIVE AMERICAN CONSTITUTION AND LAW DIGITIZATION PROJECT

<http://thorpe.ou.edu/>

## NATIVE AMERICANA: A SELECTIVE LIST OF INTERNET SITES

[http://www.ucdp.uc.edu/WHA\\_2005\\_Native\\_Americana\\_Webliography.doc](http://www.ucdp.uc.edu/WHA_2005_Native_Americana_Webliography.doc)

## NATIVE AMERICAN RIGHTS FUND

<http://www.narf.org>**American Indian Governmental Web Sites**

Blackfeet Nation	<a href="http://www.blackfeetnation.com">http://www.blackfeetnation.com</a>
Caddo Nation	<a href="http://www.caddonation.com">http://www.caddonation.com</a>
Cherokee Nation of Oklahoma	<a href="http://www.cherokee.org">http://www.cherokee.org</a>
Cheyenne River Sioux Tribe	<a href="http://www.sioux.org/index.html">http://www.sioux.org/index.html</a>
Chickasaw Nation	<a href="http://www.chickasaw.net">http://www.chickasaw.net</a>
Choctaw Nation	<a href="http://www.choctawnation.com">http://www.choctawnation.com</a>
Gila River Indian Community	<a href="http://www.gric.nsn.us">http://www.gric.nsn.us</a>
Kaw Nation	<a href="http://www.kawnation.com">http://www.kawnation.com</a>
Navajo Nation	<a href="http://www.navajo.org">http://www.navajo.org</a>
Osage Nation	<a href="http://www.osagetribe.com">http://www.osagetribe.com</a>
Pawnee Nation	<a href="http://www.pawneenation.org">http://www.pawneenation.org</a>
Rosebud Sioux Tribe	<a href="http://www.rosebudsiouxtribe.org">http://www.rosebudsiouxtribe.org</a>
Seminole Tribe	<a href="http://www.seminoletribe.com">http://www.seminoletribe.com</a>
Seneca Nation of Indians	<a href="http://www.sni.org">http://www.sni.org</a>
Spokane Tribe of Indians	<a href="http://www.spokanetribe.com">http://www.spokanetribe.com</a>
Suquamish Tribe	<a href="http://www.suquamish.nsn.us">http://www.suquamish.nsn.us</a>

# Bibliographic Essay



AS THE ORIGINAL peoples of North America, the nearly six hundred indigenous nations are sovereign polities who wield political self-determination, manage economic systems appropriate to their lands, and exercise cultural vitality that distinguish them from other native nations and the foreign powers that later came to their lands. The governing systems of such a diverse set of peoples varied widely. Historically they ranged from large, sophisticated, confederacies (e.g., Iroquois and Powhatan alliances) to smaller theocratic nations (e.g., Pueblos of New Mexico). Other nations operated under more informal governing structures based largely on kinship and band societies.

By the early 1930s, when this study concludes, modified and in some cases new institutions of governance had been developed as a result of the profound changes wrought on native nations by European powers and later the United States. These modified or transitional structures supplemented but rarely supplanted the preexisting governing arrangements that had existed since time immemorial. The newer political arrangements included tribal councils, general councils, business councils, chapters, constitutions, and international (or intertribal) organizations, to name but a few of these entities.

In the generations of sustained contact and interaction from the late fifteenth century to the first third of the twentieth century, the various indigenous political structures and traditions coexisted but also came under both direct and indirect assault by the Western political traditions of the European (and later the Euro-American) powers. Because the governments of the native nations were severely impacted by their interactions with these polities, the values, structures, and meanings of what constituted indigenous governance necessarily changed.

A number of individual native nations and their governing systems have received scholarly attention and merit close consideration. Oren Lyons and John Mohawk edited an excellent study, *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution* (Santa Fe:Clear Light, 1992), which highlights the important structure and philosophical paradigm

of the Iroquois Confederacy and the role these native nations played in the development of American constitutional democracy. It also poignantly illustrates the way in which subsequent interpretations and applications of the U.S. Constitution have served to destabilize and diminish the sovereignty and resources of indigenous peoples.

The great chiefdoms of the Cherokee, Choctaw, Creek, and Chickasaw have also received ample and well-deserved attention. Duane Champagne's *Social Order and Political Change: Constitutional Governments among the Cherokee, the Choctaw, the Chickasaw, and the Creek* (1992) is a detailed account of the critical transitional years of these four nations, during which they made strategic modifications to their traditional governing structures and incorporated constitutionalism as the basis of their governments.

Rennard Strickland's *Fire and the Spirits: Cherokee Law from Clan to Court* (1975), discusses the Cherokee Nation's reasons for and methods of modifying its customary legal system to incorporate elements of Western law, the ramifications of these modifications on the community, and its political relations with the state of Georgia and the federal government.

James J. Lopach, Margery H. Brown, and Richmond L. Clow's work, *Tribal Government Today: Politics on Montana Indian Reservations*, rev. ed. (Niwot:University Press of Colorado, 1998), while focusing largely on contemporary native politics in Montana, has a fair amount of discussion about the prehistory and transitional years as the state's native nations interacted with Euro-Americans.

Anthropologist Loretta Fowler has written several important studies that intimately address political life within the Arapahoe and the Cheyenne-Arapahoe communities. Two works in particular stand out: *Arapahoe Politics, 1851–1978: Symbols in Crises of Authority* (Lincoln:University of Nebraska Press, 1982), and *Tribal Sovereignty and the Historical Imagination: Cheyenne-Arapahoe Politics* (Lincoln:University of Nebraska Press, 2002)

Tribal nations with constitutions that predate the 1930s can find references to those documents in Lester Hargrett's book *A Bibliography of the Constitutions and Laws of the American Indian* (1947; repr., Clark, N.J.: Lawbook Exchange, 2003). This short bibliography is a gold mine of useful identifying data with some historical background for several native nations, including the Creek, Cherokee, Osage, and others. A related but more detailed study, *The Constitutions and Laws of the American Indian Tribes*, 33 vols. (Wilmington, Del.:Scholarly Resources, 1975), charts the constitutional and legal evolution of the major tribal nations of eastern Oklahoma from before their arrival in the state to the early 1920s.

A number of studies provide valuable information on the various historical, legal, and political developments that heavily affected native governance. One of them is Vine Deloria Jr. and Raymond J. DeMallie's two-volume account, *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775–1979* (Norman:University of Oklahoma Press, 1999). It is an outstanding work that fills in the gaps in the historical and indigenous perspective that previously plagued those who were searching for a more complete account of the diplomatic processes that developed among

native peoples and between native nations, various European countries, and the United States.

Frank Pommersheim's *Braid of Feathers: American Indian Law and Contemporary Tribal Life* (Berkeley: University of California Press, 1995) is a solid treatment of the evolution of tribal court systems and the distinctive political and structural constraints they struggle with in carrying out their responsibilities as the crucible of indigenous self-determination. Several other works by prominent historians and social scientists also provide substantial treatments of tribal governments, native politics, and federal Indian policies. Vine Deloria Jr. and Clifford M. Lytle wrote two books, *American Indians, American Justice* (Austin: University of Texas Press, 1983) and *The Nations Within: The Past and Future of American Indian Sovereignty* (New York: Pantheon, 1984), that describe and evaluate tribal political and judicial systems, tribal sovereignty, and the political machinations that went into the enactment of the Indian Reorganization Act of 1934.

Sharon O'Brien's *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989) was one of the first modern books to closely examine native governance and the federal policies that affected those polities. David E. Wilkins's *American Indian Politics and the American Political System*, 2d ed. (Lanham, Md.: Rowman and Littlefield, 2007) is a general political science text that focuses on the dynamics of indigenous politics and analyzes the structures and functions of native governments in relation to the states and the federal government. Elmer Rusco's *A Fateful Time: The Background and Legislative History of the Indian Reorganization Act* (Reno: University of Nevada Press, 2000) is a detailed treatment of that paradigm-shattering law, but it also contains several chapters that discuss the status of native governments before the 1930s.

Charles F. Wilkinson has written widely on the legal and political struggles of native nations. Although a number of native scholars and activists have challenged Wilkinson's views on congressional plenary power and the constitutional status of American Indian peoples, his contributions, most notably *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy* (New Haven, Conn.: Yale University Press, 1987) and most recently his *Blood Struggle: The Rise of Modern Indian Nations* (New York: Norton, 2005), are solid treatments of contemporary federal law and native assertions of sovereignty.

John R. Wunder has edited a six-volume study—*Native American Law and Colonialism, before 1776 to 1903; Constitutionalism and Native Americans, 1903–1968; The Indian Bill of Rights, 1968; Recent Legal Issues for American Indians, 1968 to the Present; Native American Cultural and Religious Freedoms; and Native American Sovereignty* (New York: Garland, 1996)—that broadly examines the way in which the federal government sought to forcibly integrate indigenous peoples into its political and legal framework. The volumes also contain the native peoples' responses to these mandatory assimilative attempts.

Steven L. Johnson's *Guide to American Indian Documents in the Congressional Serial Set: 1817–1899: A Project of the Institute for the Development of Indian Law* (New York: Clearwater, 1977) is a treasure trove that

identifies thousands of congressional (both the House and the Senate) reports, executive documents, and so on that explicitly address native peoples and issues. A number of these contain federal officials' descriptions of indigenous governments during this critical historical era.

Finally, a work by Felix S. Cohen work deserves mention. Although he is most noted for his classic study, *Handbook of Federal Indian Law* (Washington, D.C.:U.S. GPO, 1942), which is still the premier reference book on this topic, Cohen also wrote an important legal memorandum in 1934 that was designed to educate both tribal and federal officials on the constitutional writing process that had just been unleashed by the enactment of the Indian Reorganization Act. The memo contains a great deal of useful information about traditional tribal governing systems and early tribal constitutions. It was finally published in 2007 under the title *On the Drafting of Tribal Constitutions* (Norman: University of Oklahoma Press).

Two bibliographic essays highlight a number of other useful works pertaining to native governance and law:Nancy Carol Carter's "American Indian Tribal Governments, Law, and Courts," *Legal Services Quarterly* 18(2) (2000): 7–24;and Charles Wilkinson and Anna Nikole Ulrich, "Annotated Bibliography of the Basic Literature Needed for an Understanding of Tribal Governance," *Wicazo Sa Review* 17(1) (2002):7–12.

Finally, Milner Ball in "Constitution, Court, Indian Tribes," *American Bar Foundation Research Journal* (1987), vol. 1:1–139, and Nell Jessup Newton, "Federal Power over Indians:Its Sources, Scope, and Limitation," *University of Pennsylvania Law Review* (1984), vol. 132:195–288, detail the genesis and evolution of major Supreme Court doctrines like plenary power, the trust doctrine, and the discovery doctrine, that have been invoked to diminish the sovereign nature of native nations.

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