

1838 October Choctaw Nation Constitution

CONSTITUTION OF THE CHOCTAW NATION

October 1838

PREAMBLE

We, the people of the Choctaw Nation, have a right to establish our own form of Government, not inconsistent with the Constitution, Treaties and laws of the United States - by our representatives, assembled in convention at Nunihwaya on Wednesday the third day of October eighteen hundred and thirty-eight.

In order to establish justice, insure tranquility, promote the general welfare, and secure to ourselves and our posterity the right of life, liberty and property - We mutually agree with each other to form for ourselves a free and independent Government. And we do hereby recognize the boundaries assigned the Choctaw Nation by the second article of the Treaty made and concluded with the United States of America at Dancing Rabbit Creek on the twenty-seventh day of September eighteen hundred and thirty; viz:

Beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River; running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits; thence due south to Red River; thence down Red River to the western boundary of the state of Arkansas; thence north along that line to the beginning - the boundary of the same to be agreeable to the treaty made and concluded at Washington City in the year 1825.

DISTRICT BOUNDARIES

For the convenience and good government of the people of the Choctaw Nation - We do make, ordain and establish four districts in this Nation, to be known by the following names and boundaries, viz: Moshulatubbee district, Puckshanubbee district, Pushmataha district, and Chickasaw district.

This boundary line of Moshulatubbee district shall begin near Fort Smith, where the Arkansas boundary crosses the Arkansas River; thence along said River to the Canadian Fork, to where the Chickasaw district boundary strikes the same; thence along the said Chickasaw district boundary to where it strikes the dividing ridge between the Canadian and Red Rivers; thence eastwardly along said dividing ridge, to the western boundary of the State of Arkansas; thence along said Arkansas to the beginning.

The boundary of Puckshanubbee District shall begin on Red River where the Arkansas State line strikes the same; thence running up said River to the mouth of Kiomichie; thence up said Kiomichie to Jack's Fork; thence up said Jack's Fork to the Military Road leading from Fort Smith to Horse Prairie; thence along said Military Road to the boundary line of

Moshulatubbee District, on the top of the dividing ridge, between the Arkansas and Red Rivers; thence eastwardly along said district boundary to the western boundary of the State of Arkansas; thence along said boundary of the State of Arkansas to the beginning.

The boundary of Pushmatahaw District shall begin on Red River at the mouth of Kiomichie; thence running up said Red River to the mouth of Island Bayou, to where the Chickasaw district boundary strikes said river; thence along said Chickasaw district boundary to the dividing ridge between the Red and Canadian Rivers; thence eastwardly along the line of Moshulatubbee district on the top of the said dividing ridge, to where the district line of Puckshanubbee district intersects Moshulatubbee district; thence south along said Puckshanubbee district line to the beginning. The Chickasaw district shall be bounded agreeably to the lines agreed upon between the Chickasaws and Choctaws at a treaty held and concluded between them at Doaksville in January 1837.

ARTICLE I.

Declaration of rights.

Section 1. All free men, when they form a social compact, are equal in rights, and no man or set of men are entitled to exclusive separate public emoluments or privileges, but in consideration of public service.

Section 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. And, therefore, they have at all times an unalienable and indefeasible right to alter, reform or abolish their form of government, in such manner as they think expedient.

Section 3. There shall be no establishment of religion by law; no preference shall ever be given by law, to any religious sect, society, denomination or mode of worship, and no religious test shall ever be required as a qualification to any public trusts under this government.

Section 4. No human authority ought in any case whatever to control or interfere with the right of conscience.

Section 5. 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, unless just compensation be made therefore.

Section 6. No title of nobility, or hereditary distinction, privileges, honor or emoluments shall ever be granted or conferred under this government; nor shall an office be created, the appointment of which shall be for a longer time than during good behavior.

Section 7. The right by trial by jury shall remain inviolate.

Section 8. Every citizen has a right to bear arms in defense of himself and his country.

ARTICLE II.

Distribution of Powers.

Section 1. The powers of the Government of the Choctaw Nation shall be divided into four distinct departments, and each of them confided to a separate body of magistracy, viz. Those which are Legislative to one, those which are Executive to another, those which are Judicial to another, and those which are Military to another.

Section 2. No person or collection of persons, being one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted by the General Council.

ARTICLE III.

Legislative Department.

Section 1. The Legislative Power of this nation shall be vested in a General Council, and the style of their laws shall be; Be it enacted by the General Council of the Choctaw Nation assembled.

Section 2. The General Council of the Choctaw Nation shall be composed of forty Representatives; (viz.) thirteen Representatives from Pukshanubbee District; and nine Representatives each from Moshulatubbee, Pushmatahaw and Chickasaw Districts; and two thirds of the whole number, together with any two of the District Chiefs, or their Speakers, shall be deemed sufficient to compose the Council.

Section 3. In case of the death, resignation or inability of any of the Representatives from the several districts, the District Chief or his Speaker shall have the power to make temporary appointments until the next election.

Section 4. The Representatives from the several districts shall be chosen every year on the first Monday in July and the day following, until otherwise directed by law.

Section 5. No person shall be a Representative unless he be a citizen of the Choctaw Nation, or who shall not have attained to the age of twenty one years, or shall not when elected be an inhabitant of that district in which he shall be chosen.

Section 6. The Representatives to the General Council shall receive for their services such compensation as may be determined by the General Council.

Section 7. Every male citizen of the Choctaw Nation of the age of the age of sixteen years and upwards, who shall be an inhabitant of the Nation, and shall have resided in the district at least one month, shall be deemed a qualified elector.

Section 8. In all elections by the people, the election shall be in the following manner; (viz.) It shall be the duty of any of the light horsemen to proclaim to the candidates or their representatives to form into separate lines; the voters forming in a line with such candidates as they wish to elect; and there shall be two or more judges appointed by the Captain of the Light-horse company to determine the number of electors in each line, and their qualifications; and one of said judges shall publicly state the number of voters in each line, and proclaim the person having the highest number elected; and it shall be the duty of the judges of the elections to report to the district clerks the names of the persons elected, and to what office, and by what majority; whose duty it shall be to record the same and inform the district Chief of the result of the election.

Section 9. The General Council when assembled shall choose a Speaker, and its other officers, and when a majority of the General Council is assembled, it shall constitute a quorum to do business.

Section 10. The General Council may determine the rules of its own proceedings, and punish a member or other persons for disorderly behavior; and shall keep a journal of its proceedings, and cause a true copy of the same to be sent to each district.

Section 11. The General Council of the Choctaw Nation shall assemble at least once in every year, and such meeting shall be at Nunihwayah, or Bending Mountain, on the first Monday in October.

ARTICLE IV.

Executive Department.

Section 1. The Supreme Executive Power of this Nation shall be vested in four District Chiefs; and any two of them shall be deemed sufficient to exercise the duties of the Executive at the General Council.

Section 2. The Chiefs of the several Districts shall hold their office for the term of four years from the time of their installation, until their successors shall be duly elected; but shall not be eligible to the same office for more than two terms in succession.

Section 3. The District Chiefs and their Speakers shall be elected by the qualified electors in their respective districts; but in case of the death, resignation or removal from office of any of the District Chiefs, the Speaker shall order an election to take place on the first Monday in July following.

Section 4. Each Chief shall from time to time give the General Council information respecting the affairs of his own district, and recommend to their consideration such

measures as he may think expedient. And they shall take care that the laws be faithfully executed in their respective districts.

Section 5. Every bill which shall have passed the General Council, shall be presented to the Chiefs or their Speakers; if they approve it, they shall sign it, and it shall become a law; if not, they shall return it to the General Council with their objections. The General Council shall then reconsider it; and, if repassed by two thirds of the Representatives, it shall become a law, as if the Chiefs had signed it.

Section 6. Each Chief shall have the right to appoint his own District Secretary.

Section 7. The elections for District Chiefs and other officers in the several districts shall take place at the following places (viz.) that of Moshulatubbee District at Yoknachukma, or Good-Ground; that of Pushmatahaw at Lexington; that of Puckshanubbee District at Tayokhale or Standing-Pine. And the General Council shall have the power to designate by law the place of holding elections in the Chickasaw District.

Section 8. During the absence of any of the District Chiefs his Speaker shall exercise the duties of Chief.

Section 9. The term of office of the present Speakers in the several districts shall expire on the first Monday in July eighteen hundred and forty two.

ARTICLE V.

Judicial Department.

Section 1. The Judicial Power of this Nation shall be vested in a Supreme District Court, together with from one to three Inferior Courts, in each district.

Section 2. The Supreme District Court shall be composed of one Superior District Judge, With from one to three Inferior Associate Judges, composed of the Judges of the Inferior Courts. And the Inferior Courts shall be composed of one Judge to each Court.

Section 3. The Judges in the several districts shall receive their appointments from the District Chiefs in their respective districts; and shall receive such compensation as the General Council shall determine by law, and shall hold their office during good behavior.

Section 4. The General Council shall have the power by law to designate the times and places of holding the Superior and Inferior Courts in the several districts.

Section 5. The Judges of the several districts shall have power to order and direct the Lighthorsemen to summon and cause to attend at the Courts, any culprit or person charged with crime or misdemeanor, also any important witnesses or jury men that may be necessary.

Section 6. All trials shall be by jury composed of twelve freed disinterested citizens of the Choctaw Nation, and in all capital cases of life and death twenty four jurors to try such case or cases, and two thirds of them concurring, their decision shall be final, unless the Court and defendant shall be satisfied that justice is not done; in which case, the Court shall have the power to grant an appeal to the Superior District Court, whose decision shall be ultimate and final.

ARTICLE VI.

Military Department.

Section 1. The Military Department of this Nation shall consist of one Commanding Officer in each district, whose title shall be that of General, who, in time of war, shall command the forces within their respective districts.

Section 2. In case of an invasion or war, the District Chiefs shall have power to call on the Generals in their respective districts to parade their forces, who shall do so by calling on the Militia Captains to parade their warriors.

Section 3. Each General shall be entitled to appoint for himself two or more aids to be termed Majors.

Section 4. In case of war, when the whole forces of the Nation shall be assembled, the District Chiefs shall have the power to order an election to take place, for a Commander-in- Chief of the whole Choctaw Forces.

Section 5. The General Council shall have the power by law to designate the time of holding elections for the several Military Officers in the several districts, and to regulate the number of warriors to be commanded by each Captain.

ARTICLE VII.

Impeachment.

Section 1. The General Council shall have the sole power of impeaching.

Section 2. All impeachments shall be tried by the General Council; but no person shall be convicted without the concurrence of two thirds of the members present.

Section 3. The Chiefs and other civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend farther than removal from office. _

ARTICLE VIII

General provisions.

Section 1. The Choctaw Nation shall not, after the adoption of this Constitution, be responsible for or pay individual debt or debts; and no money shall ever be taken from the general annuity of the Nation to be applied to any purpose whatever, unless by special appropriation by the General Council.

Section 2. The citizens of one district of the Choctaw Nation shall be entitled to all the privileges and immunities of citizenship in the several districts.

Section. 3. All just debts, that may have been contracted by citizens of this Nation previous to the adoption of this Constitution shall remain in full force and virtue against them.

Section. 4. A person charged in any district with felony or other crimes, who shall flee from justice, and be found in any district, shall, on demand from the Chief of the district from which he fled, be delivered up by the Chief of the district in which he may be found, to be removed for trial to the district having jurisdiction of the crime.

Section.5. The General Council shall have the power to pass such laws and measures as they shall deem expedient for the general good of the Nation; provided no law be passed or adopted contrary to the provisions of this Constitution.

Section. 6. From and after the adoption of this Constitution, no free Negro, or any part Negro, unconnected with Choctaw and Chickasaw blood, shall be permitted to come and settle in the Choctaw Nation.

Section.7. When offenders against the laws of this Nation are arraigned for trial, they shall be at liberty to defend their own cause, or employ counsel, or both, that the trial may be fair and impartial.

Section. 8. The mode of declaring war in this Nation shall be by at least two thirds of the members of the General Council in full council, with the approval of at least two of the District Chiefs, or their Speakers, unless in the case of actual invasion by an enemy, in which case the people shall have the right to defend themselves until the Council is convened.

Section. 9. When a person shall be elected a member of the General Council, his term of service shall not expire until the next election day.

Section. 10. Any two of the District Chiefs shall have a right to order and convene the members of the General Council at any time when, in their judgment, the emergency of the case shall require it; but such called session shall not take place more than once in any one year.

Section.11. The District Chiefs shall have the power, by the advice and consent of the General Council, to appoint Commissioners or Delegates to transact such business as may become expedient to the Choctaw Nation, and all other officers whose appointments are not herein otherwise provided for.

Section. 12. The Military officers and warriors of this Nation shall not be allowed any compensation out of the Choctaw annuities; but shall serve their Country for honor.

Section. 13. The General Council of the Choctaw Nation shall have the power to pass such laws as they may think expedient to punish rebellion, treason and other high crimes against the Nation.

Section. 14. No person who is any part Negro shall ever be allowed to hold any office under this government

Section. 15. The General Council when in session shall have the power, by law, to naturalize and adopt as citizens of this Nation any Indian or descendant of other Indian tribes, except a Negro.

Section. 16. There shall be a Treasurer and Auditor elected by the General Council for each district, whose powers and duties shall be prescribed by law, and who shall hold their office two years, until their successors shall be duly elected and qualified.

Section.17. We do declare and ordain that all the provisions contained in the Constitution of eighteen hundred and thirty-four, not revised and adopted by the convention in eighteen and thirty eight, are hereby null and void, and that there shall be no alternations made to this Constitution until the annual meeting of the General Council in the year eighteen hundred and forty two. And that any law which may be passed contrary to the provisions of this Constitution shall be null and void; and all rights and powers not herein expressed, shall be reserved be reserved unto the people.

Approved October 1838.