

ITI FABVSSA

Supreme Court's McGirt decision affirms tribal treaty rights

In July 2020, the U.S. Supreme Court ruled on a case called *McGirt v. Oklahoma* and found that the Muscogee (Creek) reservation still exists under U.S. law. This decision countered what the State of Oklahoma thought for many years. The ruling – widely celebrated across Indian Country – was an important affirmation of treaty rights, which the Supreme Court failed to uphold in previous cases for many years. This case has major implications for Choctaw Nation because it has a similar legal history as the Creeks. This month's Iti Fabvssa provides some of the relevant history on Choctaw Nation and establishment of the State of Oklahoma to help understand what this history and landmark legal decision mean for Choctaw Nation and our local communities.

The Chickasaw, Cherokee, Choctaw, Muscogee (Creek), and Seminole Nations are Native American nations whose ancestral homelands are in the southeastern United States. For thousands of years, our ancestors enjoyed sovereignty, the power to govern ourselves. After Europeans arrived in what is now the United States, they referred to these nations as the "Five Civilized Tribes" because they adapted to the Euro-American market-oriented form of agriculture.

In the 1830s, the U.S. government strong-armed each of the Five Tribes to sign removal treaties that forced them from their homelands to Indian Territory, what is currently Oklahoma. These treaties stated that the Five Tribes would never become part of the United States or any of the states within it. Each tribal government would continue to have sovereignty over their lands, peoples, and borders. Such tribal lands are legally considered a reservation. If non-Choctaw people respected Choctaw laws, they could visit the Choctaw Nation, work there, or even become Choctaw citizens – much like we do today when we visit foreign countries like Canada or Mexico. The Choctaw government did everything within its power to ensure that our way of life continued in our new lands. But things drastically changed with the U.S. Civil War. As war broke out between the Union and the Confederacy, Union troops and federal agents retreated from the forts built to uphold treaty terms of protecting Indian Territory. The Choctaw and Chickasaw Nations had little choice but to side with the Confederate States of America in the conflict. After the U.S. defeated the Confederacy, the Five Tribes all signed new treaties with the United States in 1866. Because the Tribes had sided with the Confederacy, the U.S. forced them to accept concessions that included land loss and some of our control over our lands. The most significant requirement was the allowance of railroads to be built through Indian Territory.

The Missouri, Kansas, and Texas Railway, completed in 1872, was the first railroad to cross the Choctaw Nation. A rapid influx of American settlers accompanied the railroads into Indian Territory. This changed the population dynamics of Choctaw Nation since there were many non-Choctaw citizens now within its boundaries. Choctaw-U.S. treaties stated that Choctaw Nation could not arrest U.S. citizens, so Choctaw government had to rely on U.S. federal agents to take care of lawbreakers in their own lands. As U.S. agents became less reliable about removing lawbreakers from Indian Territory, this created new problems with crime.

At the same time, American settlers were pushing to acquire lands explicitly set aside by the U.S. government for Indians. By 1889, land runs were beginning to be held west of Indian Territory. Congress was also making plans to divide up Indian lands to gain access to natural resources, profit from selling land, and assimilate Native American peoples. In 1887, Congress passed the General Allotment Act, which divided tribal lands into individual parcels known as "allotments." Before then, most tribal nations had owned their lands in common, which meant no single individual Indian had exclusive rights to land. This ensured that every tribal member had a place to live and grow food for themselves and their families. The U.S.-imposed allotment system changed tribal communities into groups of private landowners in order to assimilate them into American society. The Five Tribes were originally exempt from allotment. But after Congress passed the Curtis Act in 1898, Choctaws were forced to accept allotment and move towards the disintegration of their tribal governments.

As part of the process of allotment, Congress created the Dawes Commission to organize rolls of tribal citizens. Tribal land would then be allocated to each citizen on the rolls. Once all Indians received their allotments, the U.S. would sell the remaining lands to American settlers who wanted land in Indian Territory. But this commission did not always negotiate in good faith. The commissioners were secretly authorized to take whatever steps necessary to destroy tribal governments, so that allotment could proceed, resources could be acquired, and land could be sold.

In 1905, representatives from the Five Tribes met at Muskogee, Indian Territory to organize against total political assimilation. The result of their organizing was a constitution convention for a singular government with Native representatives called the State of Sequoyah. Ratified by citizens of the Five Tribes, non-citizens of the Five Tribes, and U.S. citizens living in Indian Territory, the State of Sequoyah would have brought together a cross section of nations and peoples. Congress passed and submitted the Sequoyah constitution to President Roosevelt, but he preferred that Oklahoma Territory (to the west) and Indian Territory join as one state.

Although Oklahoma and Indian Territories were to be merged into a single entity, Congress planned to leave small tribal administrations in place to help close out each of the Five Tribes' unfinished business. The idea was this would occur soon after statehood, and the tribal governments would then go out of existence. But tribal governments were never completely dismantled.

On the eve of Oklahoma statehood, Congress passed the Five Tribes Act to extend the governments of the Five Tribes. In stating "the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes or nations are hereby continued in full force and effect for all purposes authorized by law," this law ensured that the Five Tribes' governments did not terminate when Oklahoma became a state. Furthermore, provisions within the 1906 Oklahoma Enabling Act ensured that the rights of Indian persons and property had to be respected.

Choctaw tribal government was never disestablished by Congress, but the State of Oklahoma and even some tribal officials thought it had been. Before any of the Five Tribes could be disestablished, their government affairs had to be settled. The Choctaws and Chickasaws owned almost a half-million acres of immensely valuable coal, asphalt, and timber lands that had to be sold before they could be officially disestablished. These lands and financial interests around them proved tricky to settle, in part due to poor administration and recordkeeping by the federal government.

Throughout the 1900s, Choctaw Nation remained a government, although it operated at a much smaller scale. Rather than being elected by Choctaw people, the Chief was appointed by the U.S. President. In the 1970s, Choctaw citizens prevented their government from being terminated. In the 1980s, they drafted a new constitution that made it possible for Choctaws to elect their own leadership. Since then, the Choctaw Nation, like the other tribes, has experienced a renaissance as a tribal government and become a powerful partner with the State of Oklahoma.



ENROLLMENT OF CITIZENS BY DAWES COMMISSION IN CHOCTAW NATION

Image Courtesy of the Phillips Collection, Western History Collections, University of Oklahoma.

The U.S. government created citizenship rolls so it could begin the allotment process, one of the first steps for disestablishing the Five Tribes' governments. Here, Choctaws are gathered so the Dawes Commission could place them on citizenship rolls.