

What Is the Cherokee Nation of Oklahoma?

From 1867 until 1906, the Cherokee Nation elected a series of Principal Chiefs. However, from 1907 until 1971, the President of the United States appointed the Principal Chief. In 1971, the Cherokee Nation elected W.W. Keeler, CEO of Phillips Petroleum, as Principal Chief.

Because of the wording of the 1906 Five Civilized Tribes Act and 1970 Five Civilized Tribes Act, which gave democracy of sorts, back to the Cherokees, the Principal Chief has only those powers provided by the organic document which created that office (the 1839 Constitution), limitation placed on the Cherokee Nation by Congress (1906 FCT Act) and those powers granted by Congress (1970 FCT Act).

The office of Principal Chief is not an inherent position. It was created by an act of the Cherokee people. That act is the adoption of the 1839 Constitution. Without that document, there could not have been a principal chief. The 1906 FCT Act provided that the Cherokee Nation shall continue, in full force and effect, in accordance with law, until such time as Congress shall deem otherwise. The only law in operation in 1906 was the Constitution of 1839 and Federal law.

The Constitution of 1839 created the office of Principal Chief. The 1906 FCT Act took democracy away from the Cherokees and handed to the U.S. President the power of appointment to fill that position. In 1970, when Congress "permitted" the Cherokee people to popularly select the individual the President had previously appointed, the only extra authority provided to the PC in that act was the power to "promulgate rules" to carry out the election.

There was no council to make election laws. That had been done away with by the Curtis Act. In carrying out the tenets of the 1970 FCT Act, W.W. Keeler promulgated rules for the 1971 and 1975 Principal Chief's election. The Constitution of 1839, which had created the office of Principal Chief, had no clear rules for carrying out an election. Since the 1906 FCT Act had made Cherokee laws unenforceable, Congress permitted the appointed Principal Chief to promulgate rules and nothing more.

Ross O. Swimmer was popularly selected by the Cherokee people in 1975 to serve a four year term as Principal Chief. He immediately began developing what he called a Constitution to be put to a vote of the Cherokee people. Since he had no authority to abrogate the 1839 Constitution which had created the office he was selected to, his so-called Constitution was nothing more than another set of rules promulgated for the popular selection of the PC to be held in 1979. Remember, as Principal Chief, he can only do what the law allows.

So let us Consider this, the citizenship rolls of the Cherokee Nation were frozen by an act of Congress in 1906. There have been no new citizens of the Cherokee Nation since that date and the only losses to citizenship have been the deaths of the original enrollees on the Dawes Commission Rolls. All the rest of us are merely descendants of citizens.

The CNO is nothing more than a descendancy organization established to permit us to "popularly select" our principal officer in accordance with the 1970 Principal Chiefs Act.

The reason Congress used the term "select" rather than elect becomes clearer as time passes. The descendants of the citizens of the Cherokee Nation have no authority to "elect" anyone since they are not citizens of the Cherokee Nation. Only citizens can take political actions such as carry out an election. Only the citizens of the Cherokee Nation can "elect" the principal chief.

What we have is a slight of hand in the smoke and mirrors game the U.S. has played with the Cherokees while they wait for our nation to die when the last Dawes enrollee is dead. That day is quickly approaching with less than 100 original Cherokee Dawes enrollees yet living and all now at least 100 years old.

In order for the descendants of the Cherokee citizens to disfranchise themselves through a "buy out" an act of Congress would be necessary to change the wording and intent of the 1906 FCT Act which closed the rolls and the 1970 Principal Chiefs Act which permits popular selection of the PC rather than "selection" by the President.

And for those of you who might be wondering what is the difference between popular selection and an election it lies in the political nature of the latter. A popular selection can be accomplished by any group of people authorized by Congress to carry it out. In other words Congress could have designated the Choctaws to popularly select the Cherokee chief.

On the other hand an election denotes a political act of a sovereign people to govern themselves, something Congress did not intend by the 1970 PCA. The ONLY Act of Congress that delegates the authority to take political and sovereign action by the Five Civilized Tribes is the Oklahoma Indian Welfare Act of 1936 which permits the tribes of Oklahoma to reorganize and remove any disabilities they may have suffered through congressional action.

By refusing to recognize the disabilities of the Cherokee Nation and creating a "pretend" government masquerading as the Cherokee Nation, the BIA, Congress and every principal chief since W.W. Keeler have stood by and watched as one by one the citizens of our Nation die and we inch closer and closer to annihilation. When the last Cherokee citizen is dead, the President, through the BIA, will look about and see no Cherokee Nation citizens and will declare the Nation extinct.

The Osages are the most recent tribe to see through the 100+ year-old Dawes Commission scheme. They had but one living original enrollee left and their Principal Chief declared an emergency. He immediately went into action to restore an authentic constitutional government and open the Osage Nation citizenship rolls. The Cherokees and Seminoles are the last of the FCT to refuse to recognize the threat to their national existence. Within ten years, perhaps less, the Cherokee Nation will cease to exist. So what this all tells is that it is obvious that the office of Principal Chief did not come out of thin air, and its historic provenance goes back only to the early 1800s. It had to come from somewhere and if it came from somewhere, then that somewhere must still be valid, or the office of Principal Chief is not valid. That somewhere is the 1839 Constitution, the most recent authentic constitution adopted by the Cherokee people. Thus, the Cherokee Nation, as constituted by the 1839 Constitution, diminished by the 1898 Curtis Act, shot forward in time by the 1906 FCT Act, continues to exist today only in the office of the Principal Chief.

The organization created by the Principal Chief in 1976, under the authority of the 1970 FCT Act, is not the Cherokee Nation, but is instead only an appendage of the office of the Principal Chief. Registry on a list of persons eligible to vote in the popular selection of the Principal Chief of the Cherokee Nation does not constitute citizenship in the Cherokee Nation. Nowhere did Congress require that the Principal Chief be popularly selected by Cherokee Nation citizens than it was Congress' intent that the President of the

United States be a Cherokee in order to make the appointment. In other words, claiming that those person on the CNO Registry must be citizens of the Cherokee Nation in order to vote would only hold water if the President of the United States had been required to be a Cherokee Nation citizen. He did not have to be, and those placed on the Cherokee Registry don't have to be and aren't. Therefore, inclusion on the CNO Registry list does not constitute dual enrollment for membership purposes in any other federally recognized tribe. So what does this all mean? Here it is by the numbers.

1. The United States Congress passed the Dawes Act in the 1890s to dissolve the governments of the Five Civilized Tribes. Some tribes resisted, particularly the Cherokee Nation. The Dawes Act stated specifically that its purpose was to divide up the tribal assets and terminate the existence of the governments of the Five Civilized Tribes.

2. The United States Congress passed the Curtis Act in 1898 to force the resistant tribes to agree to the allotment of their lands and dissolution of their governments. The Cherokee Nation agreed in 1901 and the end result was the allotment of tribal lands and assets through the creation of the Dawes Roll.

In the latter part of the 19th Century, it was the intention of Congress to destroy the governments of the Five Civilized Tribes. All lands and moneys of the Nations were to be divided among the numerous citizens and the tribes would be no more. Everyone thought the Final Roll and the division of the assets was the end. It wasn't.

3. In 1906, Congress was informed by the Dawes Commission that despite their best efforts, parcels of land remained to be allotted or sold and they could not finish their work if the governments of the Five Civilized Tribes terminated in 1906.

4. The United States Congress passed the Five Civilized Tribes Act of 1906 which provided for the continuation of the governments of the Five Tribes in accordance with law and providing that the President of the United States or his designee could appoint a "chief" to carry out the unfinished business of their respective nations.

The lands of the tribe yet to sold or allotted were valuable assets that could not just be "taken" from the Indian people. The 1906 Five Tribes Act provided for only three things:

- a. The continued existence of the governments of the Five Tribes until Congress deemed otherwise.
- b. Those governments would be controlled in their actions in accordance with existing law. Since Oklahoma was not a state yet and state law doesn't apply anyway, the only laws existing at that time were federal laws, ie the Dawes Act and the Curtis Act and Cherokee law, ie the 1839 Constitution.
- c. The U.S. President would have the authority to appoint the principal officer of the Five Tribes.

The governments of the Five Civilized Tribes were saved from oblivion by the 1906 FTA. Without it, there would be no Cherokee Nation today. Yes, there is a Cherokee Nation today, more on that later.

5. The U.S. Congress passed the Indian Reorganization Act (IRA) in 1934 to restore Indian governments and provide for self-governance. However, the act specifically excluded the tribes in Oklahoma.

6. The U.S. Congress passed the Oklahoma Indian Welfare Act (OIWA) in 1936 to restore self-governance to Indian tribes in Oklahoma. This Act provided for the reorganization of tribal governments and repealed any

disability Congress had imposed from past legislation, but only for tribes who reorganized under the authority of the OIWA.

It was the intent of Congress to right an historic wrong it had committed against the natives of the this country. In so doing, it provided a mechanism by which tribes might be restored to their sovereignty and self-governance. Any tribe could reorganize and four of the Five Civilized Tribes have done so. The only tribe not taking advantage of the provisions of the OIWA is the Cherokee Nation.

7. Thophlocco, Kialagee and Alabama/Quarsarte Tribal Towns are federally recognized local governments governing under charters obtained through the Oklahoma Indian Welfare Act.

8. The United Keetoowah Band is a federally recognized local government governing under a charter obtained through the Oklahoma Indian Welfare Act.

Nothing in the recognition of either the tribal towns or the UKB affects or hinders the rights of individuals as citizens of their respective larger nations. In other words, UKB is an inseparable parts of the Cherokee Nation (notice I did not say CNO). And the Creek Tribal Towns are inseparable parts of the Creek Nation. This is so, even if they prohibit their members from 'enrolling' in the greater part of the whole nation. It is the policy of the BIA and unfettered by Congress, that the United States, through the BIA, may develop government to government relationships with local governments within a greater tribe. The Creek Nation has provided in law that the government to government relationship between the Creek Nation and the Tribal Towns is approved. The adversarial relationship developed between the Cherokee Nation of Oklahoma and the UKB does not change the relationship of the individual citizens to each other. The Earl Boyd Pierce letter and the actual participation of the UKB in Cherokee Nation affairs prior to 1976, all point to the fact that the UKB and the Cherokee Nation are connected. Since the creation of the CNO in 1976, the Cherokee Nation itself has remained silent regarding it relationship with the UKB or through its sole embodiment in the office of the Principal Chief has furthered the antagonism.

9. The Creek Nation is a federally recognized government governing under a charter obtained through the Oklahoma Indian Welfare Act.

10. The Cherokee Nation is not a federally recognized government because it has not reorganized under the authority of the Oklahoma Indian Welfare Act. The CNO is recognized by the BIA for the purpose of social services delivery. Any further recognition of the CNO as a sovereign entity is at risk of being overturned in the federal courts.

A group of Cherokees, headed by then Principal Chief Ross O. Swimmer, developed what they called a "constitution" in 1976. Without authorization in the 1970 Five Tribes Act and definitely not under the authority of the 1839 Constitution, Swimmer did one of two things:

- a. He created an illegal institution known as the Cherokee Nation of Oklahoma (CNO) or,
- b. The CNO is nothing more than promulgated 'rules' to carry out the popular selection of the principal officer of the Cherokee Nation as provided for in the Act and its actions as a sovereign polity are an illegitimate usurping of the authority of the silent Cherokee Nation.

Either way, the 1976 Constitution, in spite of its language to the contrary, could not supercede the 1839 Constitution, as there was no law which provided for it. This means that the Cherokee Nation, as it existed in law between 1906

and 1976, continued unfettered except by limitation imposed by the Curtis Act and the 1970 FTA. After 1976, the Cherokee Nation became the silent twin of the CNO (man in the iron mask). While the sole embodiment of the Cherokee Nation resides in the office of the Principal Chief, he is aided in his work by a corporation he created which goes by the name Cherokee Nation of Oklahoma. We know this is so because of the Court case of Harjo v. Kleppe in which the Creek citizens demanded reorganization of their government. The Harjo Court found that because of the limitation of the Curtis Act, 1906 and 1970 Five Tribes Act, the sole embodiment of the Creek Nation rested in the office of the Principal Chief. The so-called constitution created by then Creek Chief Claud Cox did not and could not replace the original Creek Constitution of 1867 and was, therefore a nullity. The situation of the Cherokee Nation is the same. Nothing has occurred in the law which removes the disabilities imposed upon the Cherokee Nation by the Curtis Act.

The rights of the Creek Nation were restored in 1979 when that tribe reorganized under the authority of the OIWA and all disabilities imposed upon it by the Curtis Act of 1898 were superceded. This fact is spelled out in detail in the federal court case of Creek Nation vs. Hodel in which the Court ruled that the Oklahoma Indian Welfare Act had repealed the destructive effect of the Curtis Act for those tribe organized under it. The Creek Nation is organized under the OIWA, the Cherokee Nation is not. The Cherokee Nation, as yet unorganized, remains under the disabling cloud of the Curtis Act which dismantled its legislature, took away the authority of its tribal courts and made Cherokee law unenforceable.

11. The Five Tribes Act of 1970 provided for the "popular selection" of the principal officers of the Five Civilized Tribes. Previous to that time, the principal officers were appointed by the president. Four of the Five tribes, Cherokees, Creeks, Chickasaws and Choctaws moved quickly to hold elections. The Seminoles had continued to popularly elect their principal officers after 1906 despite the language of the 1906 Five Tribes Act delegating the appointment to the U.S. president. While the BIA refused to recognize their elections, they worked with the elected chief so long as he did what they wanted. When he refused, they simply appointed someone to do their bidding.

12. The Five Tribes Act of 1970 provided for the promulgation of rules to carry out the "selection."

The 1970 Five Tribes Act repealed that portion of the 1906 Five Tribes Act relative only to the appointment of the principal officers of the Five Civilized Tribes by the president. Nothing in the Act did or could be construed to repeal any of the disabilities imposed by the Curtis Act of 1898. In order for a federal law (relative to Indians) to do something, it must be specific and emphatic. The Courts of the United States have ruled that Congress must have its INTENT apparent in the wording of the law, to take away or restore the rights of an Indian tribe. OIWA is emphatic that its liberal provisions apply only to tribes organized under it. All others are excluded. The reason this language is there is to protect the rights of Indians in Oklahoma who did not want to retribalize, particularly mixed blooded Cherokees and some Creeks who had expressed their opposition to any bill which would provide for a restoration of the governments of the Five Civilized Tribes. The full bloods, however, wanted to reorganize and did so through the tribal towns and the UKB.

So in closing, what do we have here? We have four of the Five Civilized Tribes organized under a law which removes all disabilities

previously imposed by Congress. We have three Creek Tribal Towns organized under that same act as local governments who are working with the larger Creek Nation to assist their members. We have a group of Cherokees (UKB) organized under that same act, but who have been placed in an adversarial relationship with the corporate entity known as CNO and the sole embodiment of the Cherokee Nation, the Principal Chief, refuses to work with them. We have the Cherokee Nation catapulted forward in time by the 1906 FTA. We have the OIWA passed to restore tribal sovereignty for those tribe organized under it. We have the 1970 FTA providing for the popular selection of the principal officers of the Five Tribes as they existed under the law and repealing the appointment of the chief by the president and allowing the promulgation of rules to carry out the selection.

We have the chief of the Creek Nation creating a constitution later found to be bogus and the courts restored the old Creek Constitution and allowed the Creeks to reorganize under OIWA. We have a Cherokee chief, Swimmer, operating under a bogus constitution that by his own admission created nothing more than a corporation that would assist him in governing. We have a federal court case (Harjo) which states emphatically that the sole embodiment of the Creek Nation was the office of the Principal Chief.

All things being equal, and they are, the same is true for the office of the Cherokee Principal Chief as well. We have a court (Hodel) case which says the Creeks, by reorganizing under OIWA have had all disabilities removed. And we have the CNO officials laying claim to that same court case trying to give legitimacy to their court systems when there is not a shred of evidence that it was the intent of Congress to remove the Curtis Act disabilities unless a tribe took steps to reorganize under OIWA and the Harjo court gave no indication that it meant by its ruling that a tribe not organized under OIWA could claim the benefit of its provisions.

Therefore, what we have in our tribe, the Cherokees, are two entities, one, what is left of the Cherokee Nation and represented solely by the office of the Principal Chief as popularly selected by the Cherokee people every four years. The second entity is the Cherokee Nation of Oklahoma, a corporation created by Swimmer to first carry out the popular selection of the principal chief and then to assist him in governing. The Cherokee Nation is the office of the Principal Chief in accordance with law. The CNO is the chief's corporate partner. Wrap your mind around the fact that there are two entities, Cherokee Nation and the CNO.

So why such an adversarial relationship between the UKB and the CNO? First, the UKB knows the CNO is not the legitimate government of the Cherokee Nation. Second, the Principal Chief (Chad), acting as the sole embodiment of the Cherokee Nation, refuses to allow the UKB to interact in a positive manner and has refused to permit the Cherokee Nation to reorganize under the OIWA.

I hope this bit of information helps everyone to understand the situation among the Cherokees and why it is so important for the Cherokee people to recognize the unlawful governance practiced by the CNO over the Cherokee people and against the UKB, the Delaware and the Freedmen.

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