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Cherokee Nation Tribal Profile

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INTRODUCTION

The Cherokee Nation is one of the largest Indian tribes in the United States.[2] The traditional territory of the Cherokee Nation originally encompassed the entire southeastern portion of the United States.[3] Due to forced removal in 1838–39,[4] however, the Cherokee people were displaced to Indian Territory in what is now the state of Oklahoma.[5] Located in northeastern Oklahoma, the Cherokee tribe currently has over 150,000 members.[6] In addition, approximately 13,000 people in northeastern Oklahoma currently speak a dialect of the Cherokee language.[7] The tribal land base consists of 124,000 acres spanning fourteen counties.[8] Although the land base does not have the status of a reservation, the Cherokee Nation is "considered a jurisdictional service area."[9] The current tribal government is organized into a "tripartite democratic structure" consisting of legislative, executive, and judicial branches.[10]

The focus of this profile is to provide an overview of the internal laws of the Cherokee Nation, with specific emphasis upon tribal use of traditional law, law of governance, enacted law, case law, and legal issues concerning the tribe at the international level.

I. Traditional Law Section

A. Historical Use of Traditional Law

The traditional Cherokee conception of law was not embodied in conventional ideas of Western law.[11] In fact, during the eighteenth century, the Cherokee had no centralized political system, police system, or formal court system.[12] Rather, the Cherokee people were divided into independent towns with "some evidence that each town had a war chief and a peace chief[,]…charged respectively with the external and internal affairs of government."[13] In addition, each town also maintained a council, although these councils were mere "deliberative bodies; they did not legislate or adjudicate."[14] National councils were

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[2] TILLER'S GUIDE TO INDIAN COUNTRY 502 (Veronica E. Velarde Tiller ed., 1996) [hereinafter TILLER'S].
[3] *Id.*
[4] NATIVE AMERICA IN THE TWENTIETH CENTURY: AN ENCYCLOPEDIA 97 (Mary B. Davis ed., 1994) [hereinafter NATIVE AMERICA].
[5] TILLER'S, *supra* note 1, at 502.
[6] *Id.*
[7] NATIVE AMERICA, *supra* note 3, at 95.
[8] TILLER'S, *supra* note 1, at 502.
[9] *Id.* See also NATIVE AMERICA, *supra* note 3, at 95.
[10] TILLER'S, *supra* note 1, at 503.
[11] RENNARD STRICKLAND, FIRE AND THE SPIRITS 10 (1975).
[12] WILLIAM G. McLOUGHLIN, CHEROKEE RENASCENCE IN THE NEW REPUBLIC 10–11 (1986).
[13] WILMA MANKILLER & MICHAEL WALLIS, MANKILLER: A CHIEF AND HER PEOPLE 19 (1993).
[14] JOHN PHILLIP RE_Id._ A LAW OF BLOOD: THE PRIMITIVE LAW OF THE CHEROKEE NATION 30 (1970).

occasionally called during this time, but only to deal "with major problems of war, peace, or trade alliance that concerned all the towns."[15]

The traditional law of the Cherokee emanated from religious beliefs, rather than from written secular rules mandating certain behavior.[16] The basic tenet of religious belief that guided tribal life was the maintenance of harmony.[17] Specifically, Cherokees lived by "a clearly established pattern and structure to their lives, sustained by age-old customs, rituals, beliefs, ceremonies, and symbols guiding the rightful and eternal order of things."[18] These prescriptions for conduct embodied "spiritual significance in every respect" and "[t]here was no secular area of life free from spiritual meaning" because all aspects of Cherokee life were "woven together into a unified pattern of religious rules and connections involving harmony with the world above, the world below, and the world around…."[19] Moreover, the "[s]piritual leaders or orators would recite the law once a year through reading from wampum belts. In the beads of these belts were the history and tradition of the people…."[20]

Manifestation of this social and religious synchronism was "through mutual submission to customary procedures exercised by clearly defined groups, such as the clans."[21] In essence, "Cherokee law was not a law of individual responsibility but of clan relationships: a law which consisted largely of procedural rules defining who could act, when he could act, and what form his action should take."[22] Cherokee traditional law contemplated only clan wrongs, and not "public wrongs" or adjudicable private disputes; so the clan became the sole adjudicatory entity.[23] Simply put, a Cherokee looked to his clan if he sought "legal redress or felt obligated to avenge wrongs done by others."[24] Finally, it should also be noted that the seven Cherokee clans[25] were traditionally matrilineal.[26] Examples of traditional law enforced via this matrilineal clan system included regulation of such matters as marriage, clan member protection, homicide, family life, and inheritance.[27]

Most studies of the traditional law of the Cherokee have focused on the use of this law in cases of homicide. For example, McLoughlin states, "[a]s an extended family the clan had the duty to avenge or seek restitution for loss by death (whether by malice or accident) of any of its members."[28] Under traditional Cherokee homicide law, basically, when one Cherokee killed another Cherokee,

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[15] McLOUGHLIN, *supra* note 11, at 10.
[16] STRICKLAND, *supra* note 10, at 11.
[17] McLOUGHLIN, *supra* note 11, at 4.
[18] *Id.*
[19] *Id.* at 15.
[20] Chadwick Smith & Stephanie Birdwell, Cherokee Courts: A Historical and Modern Perspective 7 (1993) (on file with author).
[21] RE_Id._ *supra* note 13, at 231.
[22] *Id.* at 233.
[23] *Id.* at 233–5.
[24] *Id.* at 41.
[25] THEDA PERDUE, CHEROKEE WOMEN: GENDER AND CULTURE CHANGE, 1700–1835, at 42 (1998).
[26] MANKILLER & WALLIS, *supra* note 12, at 19.
[27] McLOUGHLIN, *supra* note 11, at 11.
[28] *Id.* at 12.

their respective clans would settle the matter internally through restitution.[29] There was an exception to this stringent rule, however, that involved the ability of an "individual who had innocently or by accident taken the life of another…[to] flee to one of four 'free cities,' or 'sacred cities of refuge,' where the murderer would be safe. A priest might offer the same protection on sacred ground in any town."[30] It must be kept in mind, however, "[t]he purpose of clan retaliation was not punitive but rather to equalize the balance of things and to overcome the disorder brought by premature death."[31] Other traditional Cherokee laws based upon the clanship system prescribed that "women held the property, including the dwelling and garden."[32] Furthermore, clan membership dictated marital relations by prohibiting the marriage of members of the same clan.[33]

B. Modifying Influences Upon Traditional Law

Although the traditional law governing the Cherokee tribe was well established and well adhered to by its members, external influences upon Cherokee life commenced as early as 1690.[34] Between 1776 and 1794, external impacts included encroachment on the Cherokee land base, destruction or cession of over half of all Cherokee towns, significant declines in Cherokee population due to disease and warfare, and intermarriage between whites and Cherokees.[35] Furthermore, the impact that Christian missionaries had upon the diminishing use of traditional law and culture were not insignificant.[36] The repercussions of these external influences upon Cherokee culture included disenfranchisement from ancestral Cherokee lands due to a loss of three-fourths of all Cherokee land, a growing population of mixed-blood children from interracial marriages who could not speak Cherokee, and a corruption of the matrilineal clan system resulting from marriages between Cherokee women and white men who did not respect the right of the wife to property, children, and inheritance.[37]

Perhaps most importantly, external influences produced an emerging value system among the Cherokee based on secular activities such as "trade, hunting, warfare, diplomacy, and commercialization" in opposition to the traditional value system based on religion.[38] This movement away from adherence to religious values ultimately resulted in some secularization of Cherokee law because "those laws with a clear connection with the traditional Cherokee religion began to change."[39] Accordingly, the more tenuous connection with religious tradition forced the Cherokee into accommodating a new way of life by either

[29] OHN PHILLIP RE_Id._ A Perilous Rule: The Law of International Homic_Id._, in THE CHEROKEE INDIAN NATION 33 (1979).
[30] STRICKLAND, *supra* note 10, at 28.
[31] McLOUGHLIN, *supra* note 11, at 12.
[32] MANKILLER & WALLIS, *supra* note 12, at 19.
[33] PERDUE, *supra* note 24, at 44.
[34] McLOUGHLIN, *supra* note 11, at 3.
[35] *Id.* at 25, 31.
[36] MANKILLER & WALLIS, *supra* note 12, at 79–80.
[37] McLOUGHLIN, *supra* note 11, at 25, 31.
[38] STRICKLAND, *supra* note 10, at 45.
[39] *Id.* at 54.

combining traditional ways with new ways, or in the alternative, finding Cherokee versions of new ways.[40]

For example, perhaps the greatest transforming factor upon Cherokee jurisprudence was the realization of a need to centralize the political power of the tribe.[41] To this end, the Cherokee were forced to "find ways to accommodate old traditions to new circumstances."[42] The objective, however, was to keep traditional values while adopting external practices that would provide both economic and political security.[43] As a result, the Cherokee political organization took on the outward appearance of white government with a traditional internal angle. Outwardly the tribe moved under the leadership of a single leader and a system of government modeled after that of the states,[44] adopted a constitution, a written legal code, a formal court, a general council, and an internal policing system.[45] Nevertheless, "[w]hile the outward appearance and functioning of the political organization had changed greatly, it was still based on long-established patterns that were familiar to the average Cherokee."[46] For example, an 1817 Cherokee government act retained the mandate of traditional matrilineal clan law by guaranteeing "property gained through 'the mother's side.'"[47] Another act from 1808 still addressed the issue of clan retaliation by stating that "regulators who killed another Cherokee in the line of duty were exempted from blood revenge."[48] In addition, this traditional law of clan revenge "influenced some jurors toward leniency."[49] Finally, the restructured system "tried hard to reconcile old communal patterns and nomenclature (chiefs, council, speaker) with new structures."[50]

Despite these attempts at retention of traditional elements of Cherokee culture and law, external influences worked to lessen these traditional law influences. While the function of the "clan relationships and responsibilities" remained, these elements were relegated to a "secondary role."[51] Ultimately, there was a final refutation of the clan revenge system for homicide, and a move to a "national system of law enforcement and punishing of crimes not associated with clan revenge."[52] The laws adopted by the Cherokee were changing and emerging in a manner that prevented maintenance of the law singly through the oral tradition.[53] The Cherokee had moved away from "their traditional reliance on unwritten custom, oral law, ad hoc councils, and decentralized town

[40] McLOUGHLIN, *supra* note 11, at 32.
[41] V. RICHARD PERSICO JR., Early Nineteenth–Century Cherokee Political Organization, in THE CHEROKEE INDIAN NATION, *supra* note 24, at 96.
[42] McLOUGHLIN, *supra* note 11, at 57.
[43] *Id.*
[44] *Id.* at 287.
[45] *See* McLOUGHLIN, *supra* note 11, at 45, 287; See STRICKLAND, *supra* note 10, at 56, 58, 64, 65.
[46] RE_Id._ *supra* note 28, at 92.
[47] HENRY THOMPSON MALONE, CHEROKEES OF THE OLD SOUTH 82 (1956).
[48] PERSICO, *supra* note 40, at 99.
[49] WILLIAM G. McLOUGHLIN, AFTER THE TRAIL OF TEARS: THE CHEROKEE'S STRUGGLE FOR SOVEREIGNTY 1839–1880, at 305 (1993).
[50] McLOUGHLIN, *supra* note 11, at 287.
[51] *Id.* at 330.
[52] *Id.* at 45.
[53] *Id.* at 287.

autonomy."[54] By the time of Cherokee removal in 1838–1839, the Cherokee Nation was deeply entrenched in a modified legal system consisting of a centralized government and formally codified laws.

It is of vital importance to keep in mind, however, that the adoption of new written laws did not cause the complete erosion or disappearance of Cherokee traditional law and governance.[55] For example, "when the priestly religious complex ceased to function as a tribal governing force, lesser 'medicine men,' with purported powers to bring divine assistance and to heal, assumed many of the new social and legal roles in the life of the individual Cherokee."[56]

C. Status of Traditional Law in the Contemporary Tribal Setting

The contemporary government of the Cherokee Nation is comprised of three branches of government: the executive branch comprised of the Principal Chief; the legislative branch composed of the Tribal Council; and the judicial branch encompassing the Cherokee Nation District Courts and the Judicial Appeals Tribunal. The overarching mandate of the current administration is to proliferate Cherokee culture.[57] This commitment to culture dictates "all you do as a Cherokee Nation employee" and influences all policy concerns and decisions made by the tribe or tribal officials.[58] The role of traditional law within the contemporary tribal setting, however, is more narrowly defined.

All current Cherokee law is codified and statutory.[59] According to the Director of the Law and Justice Department, this system of law has been criticized as being too much like state law.[60] However, a critical difference exists between state law and Cherokee law in the fact that Cherokee law has "cultural distinctions built into this Euro-American style code used today."[61] In fact, "[t]here are a number of concepts that are fundamental to the new legal system that are rooted in the old ways."[62]

For example, the Cherokee Nation Indian Child Welfare Act statute makes reference to an Indian custodian as being "any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent of such child" (emphasis added).[63] Another reference to traditional law makes a person guilty of a crime if that person "willfully breaks, defaces, or otherwise injures any house or place of worship including traditional stomp grounds, or any part thereof, or any appurtenance thereto" (emphasis added).[64] This enactment is a

[54] *Id.* at 226.
[55] STRICKLAND, *supra* note 10, at 183.
[56] *Id.*
[57] Telephone Interview with Diane Blalock Hammons, Director, Cherokee Nation Law and Justice Department (Sept. 26, 2001).
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] E–mail from Rennard Strickland, Dean and Philip H. Knight Professor of Law, University of Oregon School of Law, to author (Sept. 28, 2001, 11:56:00 MST) (on file with author).
[63] 10 CHEROKEE NATION CODE ANNOTATED § 40.2 (3) (1993) [hereinafter CNCA].
[64] 21 CNCA § 1765 (1993).

significant preservation of the continuation of traditional law by the judiciary and legislature because during a particular religious service in July, those who practice the Cherokee religion are able to hear the "story of the Cherokees, of the ancient way, and of the path they must follow."[65]

Another example of traditional law being retained or mentioned in the Cherokee Nation Code is a provision allowing for a solemnization of marriage by "religious leaders of the Keetoowah Society or the Four Mothers Society."[66] Finally, the code also enables the presiding judge in a court proceeding to appoint an interpreter, presumably to aid native Cherokee speakers with the legal process.[67]

In addition to statutory mentions of tradition, tradition is also incorporated into the still valid Cherokee Constitution of 1975. Article 5, Section 10 of the Constitution requires that all council members and executive officers "do everything within the individual's power to promote the culture, heritage and traditions of the Cherokee Nation…"[68] In addition, according to members of the Cherokee Judicial Appeals Tribunal, the justices serving in their official capacity have a constitutional mandate to interpret the Constitution and Cherokee Code as they are written.[69] Therefore, as long as any "traditional law does not conflict with our current Constitution or statutes, we are obliged to follow it and to give it priority."[70] On the other hand, some restraint on the application of traditional law has come from the court's adoption of the Federal Rules of Civil Procedure. According to the Chief Justice, "[t]here is always a difficult balance between the traditional and the modern applications of law, particularly in the area of procedure. We try to maintain a balance where the Cherokee citizen can feel comfortable when coming before this Court."[71] In addition, the court is also open to use by the lay practitioner and the court strives "to minimize legal complexity so that our citizens can come before the Court for redress of their grievances."[72]

Judicial opinions that emanate from the Cherokee judiciary, however, use little traditional law in their reasoning.[73] The Director of the Law and Justice Department remarked that during her tenure there have been few, if any, opinions or arguments incorporating traditional law.[74] Nevertheless, the Chief Justice of the Judicial Appeals Tribunal commented that the court is "always mindful of traditional precedent and encourage[s] all of those who practice before our court to enlighten us on any traditional precedent available."[75]

An interesting contemporary example of the use of traditional beliefs occurred in the 1970's "Girl Scout Murder" case, when a Cherokee tribal member

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[65] RENNARD STRICKLAND, THE INDIANS IN OKLAHOMA 108 (1980).
[66] 43 CNCA § 4 (1993).
[67] 20 CNCA § 1 (1993).
[68] CONST. OF THE CHEROKEE NATION OF OKLAHOMA art. V, § 10.
[69] E–mail from Darell R. Matlock, Jr., Justice, Cherokee Nation Judicial Appeals Tribunal, to author (Sept. 27, 2001, 04:13:00 MST) (on file with author).
[70] E–mail from Darrell Dowty, Chief Justice, Supreme Court of the Cherokee Nation (Sept. 26, 2001, 04:46:00 MST) (on file with author).
[71] *Id.*
[72] *Id.*
[73] Hammons, *supra* note 56.
[74] *Id.*
[75] Dowty, *supra* note 69.

was brought up on murder charges.[76] In that case, the accused Cherokee was hidden out and "provided sanctuary" by a traditional Keetoowah leader who made it clear that he was "following an ancient doctrine of the priestly pre-contact Cherokee world" which included the "traditional historic institution of sanctuary."[77] This use of traditional law was eventually thwarted when state investigation officials threatened the traditional leader's wife and children.[78] Although the accused was arrested and the traditional leader was charged with harboring a fugitive, subsequent legal proceedings found the accused Cherokee not guilty, and the charges against the leader were dropped.[79] Another incident involved a noted Cherokee artist who was involved in a car accident in which he was accused of being intoxicated.[80] The accused was subsequently charged with homicide for the death of his passenger, and was jailed pending trial.[81] During his incarceration, the artist "called upon traditional medicine and Cherokee spiritual leaders who met with him in the Mayes County jail. A number of traditional tobacco and other verses were used."[82] The accused subsequently spent only a limited time in jail, and was never brought to trial on the charge.[83]

In conclusion, it seems that despite the Cherokee Nation's long history of change, the contemporary tribal setting does in fact incorporate traditional law whenever possible. In fact, during the summer of 2001, the tribe began work on a juvenile code with an "effort to look at incorporation of traditional law ways."[84]

II. Law of Governance Section

A. Historical Law of Governance

The traditional Cherokee system of government had no "formal political mechanism" on the tribal level.[85] Rather, the "basic political unit of the Cherokee was the town."[86] Historically, Cherokee towns, which were scattered throughout what is today the southeastern portion of the United States, were autonomous political units.[87] Although politically independent, these towns were "held together by a common culture, language and history."[88] In each town was an individual town council house within which two distinct organizations coexisted.[89] During times of peace, a white organization composed primarily of priests performed "both secular and religious functions."[90] In this organization, primary authority was

[76] Strickland, *supra* note 61.
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] See *Id.*
[82] Strickland, *supra* note 61.
[83] *Id.*
[84] *Id.*
[85] The Cherokee Nation Official Site (2001), at http://www.cherokee.org/TribalGovernment/LegislativeBranch.asp.
[86] *Id.*
[87] MANKILLER & WALLIS, *supra* note 12, at 19.
[88] The Cherokee Nation Official Site, *supra* note 84.
[89] THOMAS E. MAILS, THE CHEROKEE PEOPLE 91 (1992).
[90] *Id.*

vested in a Peace Chief, who was assisted by "a principal assistant, a great speaker, and seven councilors representing the seven clans."[91] During times of war, however, a red organization whose function was "exclusively military" took control of the town.[92] The principal officer of the red organization was the Great War Chief.[93] The red organization was subject to being overruled by the Peace Chief at any time.[94]

It is important to note that "Cherokee women played an important and influential role in town government."[95] In addition to the fact that Cherokee tribal society was based on a matrilineal clan system,[96] certain women were also part of "an assemblage of Beloved Women…[that was] present at every war council. These [women] served as counselors to the male leaders, and also regulated the treatment dealt to prisoners of war."[97]

Despite the autonomy of individual Cherokee towns, there is evidence that a national capital existed at Echota in present day Tennessee.[98] On a high mound was a "huge heptagon-shaped building where all festivals were celebrated, major war parties assembled before going off to war, and from where a measure of control was dispensed to the entire nation."[99] In fact, "national councils were occasionally called in the eighteenth century to deal with major problems of war, peace, or trade alliance that concerned all the towns."[100] Nevertheless, "[t]he Cherokee had no national executive office or bureaucracy, and most decisions were made by a legislative framework of national, regional, and village councils, which had no specialized rules and [sic] procedures."[101] In addition, the Cherokee clan system also helped fulfill "the basic responsibilities of government."[102]

B. Modification of Law of Governance

As stated previously, external influences upon Cherokee life commenced as early as 1690.[103] Europeans "increasingly treated [Cherokees] as a single political entity."[104] This treatment forced the tribe to centralize its governmental and political structure.[105] As Perdue notes, "a centralized Cherokee government originated in the late eighteenth century out of the need to coordinate foreign policy and to protect the entire nation from violence provoked by the actions of individual warriors."[106] In an effort to cope with non- Cherokee influences, the "Cherokee

[91] The Cherokee Nation Official Site (2001), at http://www.cherokee.org/TribalGovernment/ExecutiveBranch.asp.
[92] The Cherokee Nation Official Site, *supra* note 84.
[93] The Cherokee Nation Official Site, *supra* note 90.
[94] *Id.*
[95] MANKILLER & WALLIS, *supra* note 12, at 19.
[96] *Id.*
[97] MAILS, *supra* note 88, at 93.
[98] The Cherokee Nation Official Site, *supra* note 84.
[99] *Id.*
[100] McLOUGHLIN, *supra* note 11, at 10–11.
[101] DUANE CHAMPAGNE, SOCIAL ORDER AND POLITICAL CHANGE 31 (1992).
[102] PERDUE, *supra* note 24, at 135.
[103] See McLOUGHLIN, *supra* note 11, at 3.
[104] PERSICO, *supra* note 40, at 96.
[105] See *Id.*
[106] PERDUE, *supra* note 24, at 135.

political organization often took on at least the outward appearance of white forms of government."[107] Specifically, the Cherokee established a tribal council "based on the model of the town council"[108] and used a principal chief whose "power depended upon the number of other influential men he could persuade to back him."[109] The most important resultant effect was that the new, central Cherokee government "rather than a Cherokee's family now assumed responsibility for punishing murder and, by implication, for protecting a person's life."[110]

As time passed, Cherokee political organization continued its formal move "toward the centralization and delegation of power,"[111] with "the external threats of removal, pressures for land sales, and American intruders onto Cherokee land [providing] an explanation for Cherokee political unification and increased centralization and differentiation."[112] The evolution of Cherokee government culminated in 1820, when a National Council created "eight judicial districts and provid[ed] for the election of four delegates to the National Council from each district."[113] In 1827, elected delegates from these eight judicial districts gathered at New Echota to produce the first written Cherokee Constitution.[114] The new Constitution was "modeled after the United States Constitution,"[115] and divided the power of Cherokee government "into three distinct departments; the Legislative, the Executive, and Judicial."[116] In addition, the Constitution provided for "two legislative houses, a legal system that included a supreme court and jury system for trials, and a national police force to enforce [Cherokee] written laws. It [also] boldly proclaimed the existence of an independent Cherokee Nation with complete dominion over…tribal lands…."[117]Unfortunately, the Cherokee Constitution also adopted European notions that "limited women's rights by excluding them from all government offices and prohibiting them from voting."[118]

Perhaps the most significant change in the Cherokee law of governance, however, was the "major innovation" of the Constitution establishing "a strong principal chief with veto power over Council actions."[119] Accordingly, the Principal Chief now held "some of the power formerly centered in the Council."[120] This structure of government would remain basically the same until the forced removal of the Cherokee people to Indian Territory.[121] In fact, on the eve

[107] PERSICO, *supra* note 40, at 92.
[108] *Id.* at 97.
[109] *Id.* at 105.
[110] PERDUE, *supra* note 24, at 142. See also RE Id. *supra* note 13, at 231, 233 (stating that this change was important because prior to the centralization of the Cherokee government, clans assumed responsibility for defining individual actions and responsibilities).
[111] PERDUE, *supra* note 24, at 143.
[112] CHAMPAGNE, *supra* note 100, at 105.
[113] PERDUE, *supra* note 24, at 145 (noting that these changes "further undermined the authority of local town councils").
[114] MANKILLER & WALLIS, *supra* note 12, at 83–84.
[115] *Id.*
[116] CONST. OF THE CHEROKEE NATION OF 1827 art. II, § 1, in STRICKLAND, *supra* note 10, at 228.
[117] MANKILLER & WALLIS, *supra* note 12, at 84.
[118] *Id.* at 86.
[119] PERSICO, *supra* note 40, at 101.
[120] *Id.*
[121] See *Id.*

of departure for Indian territory in 1838, "a great council of the people" was held to present and approve certain resolutions that included the assertion that "their duly elected leaders, as well as their constitution and written laws, remained in full effect and their duly elected officials continued to exercise their offices."[122] For the Cherokee people "these resolutions also affirmed the continuity of the ancient traditions, customs, and values of their forefathers as well as those new laws adopted."[123]

It should be noted that upon arriving in Indian Territory, the newly removed Cherokee encountered a group of already established Cherokee and tension resulted between the two groups. To help resolve this tension, the Cherokee Nation, "as the present body politic, was established by the Act of Union of 1839 between Cherokees already established in the Indian Territory, or Old Settlers, and the newly arriving Cherokee, or Immigrants."[124] Soon thereafter, this united group of Cherokee people "adopted a second Constitution in 1839 and began existence in Indian Territory as an Indian republic."[125] The most significant difference between the Constitution of 1827 and the new 1839 Constitution was that under the Constitution of 1839, "the principal and second principal chiefs would now be elected by popular vote rather than by the legislature or council."[126] Upon approval of the new Constitution in 1839, a "newly elected council of the reunited Cherokee Nation assembled…, and took power as the official government."[127]

The Cherokee Nation continued with this law of governance in some form or another until the end of the nineteenth century. However, "from the end of the 19th Century until 1907, the Oklahoma Territory was being prepared for statehood."[128] In spite of the fact that "by the time of Oklahoma statehood the Five Civilized Tribes had been operating their constitutional republics for more than three-quarters of a century,"[129] the grant of statehood in 1907 resulted in a complete shutdown of the formal Cherokee government.[130] This suppression of the formal Cherokee government was in place for sixty-eight years.

During this period, however, the Cherokee government continued to exist "on a very limited, appointed type basis."[131] From statehood through 1975, "the

[122] McLOUGHLIN, *supra* note 48, at 2, 3.
[123] *Id.*
[124] *Foreword* to CNCA, at VII (1993).
[125] *Id.*
[126] McLOUGHLIN, *supra* note 48, at 21.
[127] *Id.* at 22.
[128] Justice Philip H. Viles, Jr., Keynote Address at the Second Annual Native American Symposium at the University of Arkansas, in GREGORY UPTON, A HISTORY OF THE JUDICIAL APPEALS TRIBUNAL (SUPREME COURT) OF THE CHEROKEE NATION 1990–1996 app. at Newspaper Articles (1996) (on file with author) [hereinafter A HISTORY OF THE JUDICIAL APPEALS TRIBUNAL].
[129] STRICKLAND, *supra* note 64, at 51.
[130] Viles, *supra* note 127, at app. at Newspaper Articles. See also Smith & Birdwell, *supra* note 19, at 17 (As a result of the Dawes Commission, the Oklahoma Enabling Act of 1907, and fluctuating federal Indian policies, "[t]he Cherokee people were bureaucratically prevented from electing their own Principal Chief and legislature" while "[s]chools and services previously controlled by the Cherokee Nation were administered through the Bureau of Indian Affairs.").
[131] Letter from Dwight Birdwell, Cherokee Nation Judicial Appeals Tribunal Chief Justice, to Joe Byrd, Principal Chief of the Cherokee Nation (Sept. 5, 1995) in A HISTORY OF THE JUDICIAL APPEALS TRIBUNAL, *supra* note 127, at app. at Letters and Related Documents.

Principal Chief of the Cherokee Nation was appointed by the President of the United States on an 'as-needed' basis. These appointments in the early years were for one day at a time, when the Chief would sign documents, purporting to be acting as head of the Cherokee Nation."[132] In 1941, United States President Franklin Roosevelt somewhat modified this practice by appointing J.B. Milam to serve as the Cherokee Principal Chief for an entire year, albeit with no supporting Deputy Chief or legislative body.[133] Milam continued in the capacity of appointed Principal Chief until his death in 1949, whereupon United States President Harry Truman named W.W. Keeler as his successor.[134] Principal Chief Keeler held office as a presidential appointee until 1971[135] when the Cherokee people held "the first election for Chief since statehood."[136] As a result of this election, Keeler "became the first chief elected by all of the Cherokee people since 1903."[137]

At the end of Keeler's term in 1975, a second tribal election narrowly named Ross Swimmer as the new Principal Chief of the Cherokee Nation.[138] It should be noted that at this point, the Cherokee Nation was still a "one-person government."[139] Consequently, Principal Chief Swimmer quickly moved for the adoption of a new constitution because the election for principal chief had been so close and contentious. It was his hope that the constitution would have a unifying effect. It would also show [the Cherokee people] that he did not intend to usurp the government, but rather to lead as an executive with the power of the tribe divided among three separate entities.[140]

C. Status of Law of Governance in the Contemporary Tribal Setting

The modern day Cherokee Nation government is "federally recognized" and has "sovereign status granted by treaty and law."[141] The basic law of governance in the Cherokee Nation derives from a Constitution that was "approved by the Commissioner of Indian Affairs of [sic] September 5, 1975, and…ratified by the Cherokee people on June 26, 1976."[142] Accordingly, the preamble states that the Constitution was ordained and established "for the government of the Cherokee Nation" as well as "to preserve and enrich our tribal culture."[143]

The 1975 Constitution mandates the structure of the Cherokee government by vesting governmental power into "three (3) separate departments: Legislative, Executive and Judicial" which, "except as provided in this Constitution…shall be

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[132] Viles, *supra* note 127, at app. at Newspaper Articles. See also STANLEY W. HOIG, THE CHEROKEE AND THEIR CHIEFS 261 (1998) ("Congress authorized the pres_Id._nt of the United States to appoint principal chiefs for the Cherokees.").
[133] Viles, *supra* note 127, at app. at Newspaper Articles; Smith & Birdwell, *supra* note 19, at 19.
[134] Viles, *supra* note 127, at app. at Newspaper Articles; HOIG, *supra* note 131, at 262.
[135] Viles, *supra* note 127, at app. at Newspaper Articles.
[136] *Id.*
[137] MANKILLER & WALLIS, *supra* note 12, at 217.
[138] *Id.* at 218.
[139] Viles, *supra* note 127, at app. at Newspaper Articles.
[140] MANKILLER & WALLIS, *supra* note 12, at 218.
[141] The Cherokee Nation Official Site (2001), at http://www.cherokee.org/TribalGovernment/Government.asp.
[142] *Id.*
[143] CONST. OF THE CHEROKEE NATION OF OKLAHOMA pmbl.

separate and distinct and neither shall exercise the powers properly belonging to either of the others."[144] The Constitution also delegates the seat of government of the Cherokee Nation to be located in Tahlequah, Oklahoma.[145]

The governance system currently used by the Cherokee Nation with its Constitution and tripartite structure of government is clearly based on a western governmental model. However, the Cherokee Nation has also retained unique aspects of governance that distinguish it from the United States system of government. These unique structures are found in all three branches of the Cherokee government.

Pursuant to the Cherokee Constitution, executive power in the Cherokee Nation is vested in a Principal Chief.[146] "The Principal Chief is responsible for the execution of the laws of the Cherokee Nation, establishment of tribal policy and delegation of authority as necessary for the day-to-day operations of all programs and enterprises administered by the Cherokee Nation Tribal Government."[147] In addition, there is a Deputy Chief who "is empowered to act as directed by the Principal Chief" and also "presides over the Council as its president."[148] Both of these positions "are elected to four-year terms by popular vote of registered Cherokee voters."[149] The Principal Chief and Deputy Principal Chief must be citizens of the Cherokee Nation and members by blood of the Cherokee Nation of Oklahoma.[150]

The legislative body of the Cherokee Nation is comprised of a fifteen member "Tribal Council elected to represent nine districts of the Cherokee Nation."[151] The function of the Tribal Council is primarily to "initiate legislation and conduct other business which will further the interests of the Cherokee Nation and its membership."[152] All Tribal Council members are elected for a four-year term of service.[153]

The third and final governmental arm of the Cherokee Nation is the judicial branch. The judiciary is composed of a three member Judicial Appeals Tribunal appointed by the Principal Chief and approved by the Council.[154] Members of the Tribunal must also be members of the Cherokee Nation and admitted "to practice law before the highest Court of the State of which they are residents."[155] The purpose of the Tribunal is to "hear and resolve any disagreements arising under any provisions of [the] Constitution or any enactment of the Council."[156] The Tribunal must ensure that "any litigant receives due process of law together with prompt ad [sic] speedy relief."[157] Finally, the "decision of the

[144] *Id.* at art. IV.
[145] *Id.* at art. XVII.
[146] *Id.*
[147] *Id.*
[148] *Id.*
[149] *Id.*
[150] CONST. OF THE CHEROKEE NATION OF OKLAHOMA art. VI, § 2.
[151] The Cherokee Nation Official Site, *supra* note 140.
[152] The Cherokee Nation Official Site, *supra* note 84.
[153] *Id.*
[154] CONST. OF THE CHEROKEE NATION OF OKLAHOMA art. VII.
[155] *Id.*
[156] *Id.*
[157] *Id.*

Judicial Appeal Tribunal shall be final insofar as the judicial process of the Cherokee Nation is concerned."[158] Additionally, there is the Cherokee Nation District Court created by a Cherokee Nation legislative act that was later codified to "provide for the establishment of a Cherokee Nation District Court of general jurisdiction to hear cases and controversies arising under the Constitution, treaties and laws of the Cherokee Nation."[159] All decisions of the District Court are "subject to review by the Cherokee Nation Judicial Appeals Tribunal as the court of final review."[160]

One unique requirement of the Cherokee Nation Constitution is the oath required of all elected or appointed officers to not only "preserve, protect and defend the Constitutions of the Cherokee Nation, and the United States of America," but also to do everything within their power "to promote the culture, heritage and traditions of the Cherokee Nation."[161] Perhaps the most unique aspect of the governing document of the Cherokee Nation, however, is the statement in Article XIV that "[n]othing in this Constitution shall be construed to prohibit the right of any Cherokee to belong to a recognized clan or organization in the Cherokee Nation."[162] The Constitution is filed in the office of the Cherokee Nation and is "sacredly preserved as fundamental law of the Cherokee Nation."[163]

Finally, it is important to note that the modern day Cherokee Nation has incorporated into its law of governance the use of enabling, or support, programs and services that are "internal to the Cherokee Nation"[164] and provide "oversight, regulatory and management authority of various enterprises and functions related to the Cherokee Nation."[165] The use of these services depends "on the respective legislative authority chartering the activities or business enterprise."[166] These services are not, however, available for use by the general public.[167] A sample of these support programs includes the Internal Audit and Review Division, which ensures "financial, operational and organizational compliance" via audits; the General Council Division, which provides "legal and policy advice to the executive"; the Law and Justice Department, which provides "quality representation of the Cherokee Nation in tribal, state and Federal lawsuits"; and the Constitution Convention Commission, which "oversee[s] the conduct of a constitutional convention as called for by a vote of the Cherokee people in the 1995 election."[168]

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[158] *Id.*
[159] 20 CNCA § 11 (1993).
[160] *Id.*
[161] CONST. OF THE CHEROKEE NATION OF OKLAHOMA art. XIII, § 1.
[162] *Id.* at art. XIV (arguably referring to religious freedom).
[163] *Id.* at art. XVIII.
[164] The Cherokee Nation Official Website (2001), at http://www.cherokee.org/TribalGovernment/EnablingList.asp.
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.* (including additional enabling and support programs: the Internal Audit and Review Division, the Finance Management Division, the Gaming Commission, the General Council Division, the Human Resources Division, the Information Systems Division, the Law and Justice Department, the Planning and Development Division, Natural Resources, Real Estate Services, the Tax Commission, the Tribal Operations Division, the Constitution Convention Commission, and the Cherokee Nation Tag Office).

III. Enacted Law Section

A. Historical Use of Enacted Law

"Early in the nineteenth century, the National Council…began passing resolutions and making laws that dealt with internal affairs" of the Cherokee Nation.[169] The first enacted Cherokee law was written and adopted in 1808.[170] Passed by the Cherokee National Council, the first law was recorded in English and established regulating parties to "suppress horse stealing and robbery" and to "give protection to children as heirs to their father's property."[171] Two years later a second written law enacted by the Council "completely discarded clan revenge."[172] Between the years 1808 and 1829, the enacted laws of the Cherokee Nation came to be comprised of approximately two hundred separate resolutions.[173]

After removal of the Cherokee Nation to present day Oklahoma, the National Council continued to enact an extensive system of laws governing the Cherokee Nation between the years 1839 and 1851.[174] These acts included measures providing for the punishment of criminal offenses, establishing a judiciary, regulating property issues, and authorizing the translation of all the laws of the Cherokee Nation into the Cherokee language.[175]

At the end of the 1870's, when the Cherokee Nation "was making a desperate fight against territorial government,"[176] the Council continued to enact laws for the Cherokee Nation.[177] The Council's final codification and publication of laws occurred in 1892.[178] These laws were published in both English and Cherokee.[179] Then, "in 1898, the federal government stripped the Cherokee Nation of its powers" and terminated the Cherokee courts.[180] Ultimately, the "Cherokee tribal government was dissolved with the coming of Oklahoma Statehood" in 1907.[181] The laws enacted prior to statehood, however, remained valid, "although there were few, if any, methods to enforce those laws or a forum to seek redress."[182]

B. Status of Enacted Law in the Contemporary Tribal Setting

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[169] PERSICO, *supra* note 40, at 99.
[170] MALONE, *supra* note 46, at 76.
[171] STRICKLAND, *supra* note 10, at 58.
[172] MALONE, *supra* note 46, at 77.
[173] STRICKLAND, *supra* note 10, at 211–226.
[174] *See Generally* THE CONSTITUTION AND LAWS OF THE CHEROKEE NATION of 1839–51 (prov_Id._ng reproduction of all laws enacted from 1839-1851 and reproduction of the 1839 Constitution) [hereinafter CONSTITUTION AND LAWS].
[175] *See Generally Id.* at 17–239.
[176] MORRIS WARDELL, A POLITICAL HISTORY OF THE CHEROKEE NATION, 1838–1907, at 300 (1938).
[177] Smith & Birdwell, *supra* note 19, at 36.
[178] *Id.*
[179] *Id.*
[180] *Id.* at 5.
[181] *Foreword* to CONSTITUTION AND LAWS, *supra* note 173.
[182] Smith & Birdwell, *supra* note 19, at 36.

With the adoption of the modern day Cherokee Constitution in 1975, the Tribal Council was given authority to "establish laws which it shall deem necessary and proper for the good of the Nation."[183] In 1986, acting pursuant to this constitutional mandate, the Cherokee Nation Tribal Council approved a modern day Cherokee Nation Code comprised of legislative acts of the Cherokee Nation that had been enacted in 1975.[184] The 1986 Code consisted of twenty-two titles, "many of which were created, and reserved for future use, in order to permit systematic integration of future legislation into the Code."[185] The Code embodied "the continual endeavor of the Cherokee people to govern themselves and maintain their cultural identity while at the same time adjusting to the social and economic demands of the day."[186] Accordingly, then Principal Chief Wilma Mankiller stated in the Cherokee Code Forward that "[t]he power of the Cherokee people to enact a Constitution and Code and govern themselves by them are fundamental attributes of their sovereignty."[187] Some examples of 1986 Code non-reserved provisions include: Business Organizations, Elections, Public Finance, and Courts and Procedure.[188]

The 1986 Code was replaced in 1992. The current code emanated from a "statute recodification project" in 1992 that reviewed Cherokee Nation statutes enacted prior to Oklahoma statehood, as well as after 1975.[189] As a result, "the Council of the Cherokee Nation in September 1992 provided for revocation of certain statutes, affirmance of others and modification of some."[190] The Council examined the bodies of law "to determine their validity, i.e. whether or not they were implicitly or explicitly repealed by subsequent legislation and their present applicability."[191] This code, which is in use today, "represents the continuum of legal existence of the Cherokee Nation from time immemorial to the first treaty with the fledgling United States of America in 1785 to its present efforts of governmental revitalization."[192]

The titling system of the current Cherokee Code is "based on the Oklahoma titling system because it was designed for a general government and the Cherokee public was familiar with that titling system."[193] The system includes eighty-five separate titles[194] and addresses such issues as Attorneys Practicing Before the Cherokee Nation Courts; Care and Custody of Children; Citizenship; Tribal Corporations; Crimes and Punishments; Criminal and Civil Procedure;

[183] CONST. OF THE CHEROKEE NATION OF OKLAHOMA art. V, § 7.
[184] CNCA at vii (1986).
[185] *Id.*
[186] *Id.* at ix.
[187] *Id.*
[188] 3, 7, 10, 19 CNCA (1993). See also 1–22 CNCA (1993) (including other titles: Agriculture and Livestock; Commerce, Trade and Industrial Development; Conservation and Natural Resources Council, Domestic Relations, Education; Fish, Game and Wildlife; Health and Social Services; Highways, Motor Vehicles and Traffic; Insurance, Labor and Industrial Relations, Minors, Office of the Principal Chief and Deputy Principal Chief; Public Communications, Transportation and Utilities; Revenue and Taxation, and Waters and Water Rights).
[189] *Foreword* to CNCA, at VII (1993).
[190] *Id.*
[191] Smith & Birdwell, *supra* note 19, at 37.
[192] *Foreword* to CNCA, at VII (1993).
[193] Smith & Birdwell, *supra* note 19, at 38.
[194] *Table of Contents* to CNCA vol. 1, at III, vol. 2, at III, IV (1993).

Elections; Heritage; Public Health and Safety; Revenue and Taxation; and Records.[195] The Code was adopted in 1992 and "[t]he Cherokee Nation Code Annotated was published by West Publishing Company, in August 1993, as a two volume set with pocket part servicing."[196]

IV. Case Law Section

A. Historical Use of Case Law

Cherokee case law has always been an important part of the internal law of the Cherokee Nation. Beginning in 1823, the first case heard before the new Supreme Court of the Cherokee Nation was recorded in the "Record Book of the Supreme Court of the Cherokee Nation."[197] In the early 1800's, "[w]hen the Cherokee Supreme Court began drafting written opinions, the manuscript copies of the laws were transferred to [the Court's] care"[198] and "[f]rom the very beginning of an organized appellate court system in 1822, Cherokee Supreme Court justices were required to write an explanation citing the reasons for their decisions."[199] The importance of case law is underscored by the fact that "[i]n the ninety years between the adoption of the first written law (1808) and the abolition of tribal courts (1898) the wampum was supplanted by more than a million pages of legal manuscripts and printed material."[200]

After removal, "the Cherokee Supreme Court reflected on the need to make printed opinions available" because "[t]he circuits were larger,…population increased, geographic areas expanded, the bar was enlarged, and issues became more complex."[201] Consequently, the "courts continued to write manuscript opinions" for appellate cases that "were decided on the record and required transcripts of evidence, as well as pleadings, jury charges, and all papers in the

[195] See 1–86 CNCA (1993) (including titles: Abstracting, Agriculture and Animals, Aircraft and Airports, Amusements and Sports, Attorneys, Banks and Trust Companies, Blind Persons, Cemeteries, Census, Children, Citizenship, Civil Procedure, Common Carriers, Contracts, Conveyances, Commissions, Corporations, Council, Courts and Procedures, Crimes and Punishments, Criminal Procedure, Damages, Debtor and Creditor, Definitions and General Provisions, Elections, Eminent Domain, Ethics, Game and Fish, Guardian and Ward, Heritage, Housing, Inebriates, Initiative and Referendum, Insane and Feeble Minded Persons, Insurance, Intoxicating Liquors, Jurors, Justices, Labor, Landlord and Tenant, Language, Marriage and Family, Mental Health, Mines and Mining, Mortgages, Motor Vehicles, Negotiable Instruments, Notaries Public, Nuisance, Officers, Oil and Gas, Historical Societies and Associations, Partnership, Pledges, Poor Persons, Prisons and Reformatories, Probate Procedures, Professions and Occupations, Property, Public Buildings and Public Works, Public Finance, Public Health and Safety, Public Lands, Public Libraries, Records, Revenue and Taxation; Roads, Br_Id._es and Ferries; Schools and Education, Securities, Sovereignty, State Government, Statutes and Reports, Torts, Towns and Communities, Trusts and Pools, United States, Waters and Water Rights, Wills and Succession, and Worker's Compensation).
[196] Smith & Birdwell, *supra* note 19, at 38.
[197] STRICKLAND, *supra* note 10, at 73.
[198] *Id.* at 104.
[199] *Id.* at 117.
[200] *Id.* at 103.
[201] *Id.* at 117.

case."[202] The "massive body of Supreme Court judicial reports…were kept on file by the clerk of the court in the Cherokee Nation capital at Tahlequah."[203]

The historic case law system was affected by the eight-district division of the Cherokee Nation that resulted in a varied tribal makeup based on "original settlement patterns dictated by political considerations."[204] This organization allowed district judges to "adapt their rulings to the consensus of a smaller unit of the tribe[,]" which resulted in an "ability and willingness to consider the circumstances of each case."[205] In fact, under this system, the "strict letter of the law was often modified to prevent unreasonable results" and "the individual could be seen and judged on his own merit or, at least, on the community's general impressions of his merits."[206]

In the late 1890's, however, "the overwhelming majority of cases decided by the Cherokee Supreme Court involved statutory interpretation.[207] In these cases, "[t]he judges systematically applied the language of an act to the facts of a case."[208] In addition, "customary law came to play a smaller and smaller role in Cherokee ways as the old usage was nullified in conflicts between ancient custom and statutory law."[209] Furthermore, by the mid-1870's, "[t]he Cherokee Supreme Court clearly felt restrained by previous decisions. As soon as briefs of lawyers began to make reference to earlier cases, citations to specific cases began to appear in court opinions."[210] In fact, "precedent as a basis for decision became the pattern…."[211]

Unfortunately, the promulgation of case law ended in 1898.[212] Just prior to statehood, "[t]he clerk of the Cherokee Supreme Court noted on the ledger pages for 1898 the absence of three tribal justices. The record book for that year opened with the miscellaneous federal orders closing the Cherokee courts."[213] For all intents and purposes, "the formal use of Cherokee law [had] ended. Cherokee judges were no longer allowed to enforce tribal regulations."[214]

B. Status of Case Law in the Contemporary Tribal Setting

The modern day successor to the Cherokee Nation Supreme Court is the Judicial Appeals Tribunal, with the Cherokee Nation district courts operating as lower courts of general jurisdiction.[215] The Tribunal has "subject matter jurisdiction over disagreements under the Constitution of the Cherokee Nation, any Council

[202] *Id.* at 118.
[203] STRICKLAND, *supra* note 10, at 118.
[204] *Id.* at 152.
[205] *Id.*
[206] *Id.* at 153.
[207] *Id.* at 159.
[208] *Id.*
[209] STRICKLAND, *supra* note 10, at 161.
[210] *Id.* at 163.
[211] *Id.*
[212] *Id.* at 175.
[213] *Id.*
[214] *Id.*
[215] Smith & Birdwell, *supra* note 19, at 27.

enactment, tribal membership and employee rights."[216] In addition, "[d]ecisions of the Cherokee Nation District Court are subject to review by the Cherokee Nation Judicial Appeals Tribunal as a court of final review."[217] The Tribunal has "superintendence over these courts of inferior jurisdiction through and by means of decisions made and declared by the Judicial Appeals Tribunal upon questions of law, evidence, and practice, submitted to them in the course of the trial, or examination of all causes of which they shall be allowed cognizance by law."[218]

The Cherokee judicial system has incorporated various mechanisms borrowed from the United States legal system. For example, to fill procedural gaps in the Cherokee Nation Code Annotated, "[u]nless a specific procedure is provided,…the Cherokee Nation has incorporated by reference the Federal Rules of Civil Procedure."[219] In addition, to deal with evidentiary matters, the Cherokee Nation has "incorporated by reference the Federal Rules of Evidence."[220]

The Cherokee case law system itself is based on precedent. Both final and intermediate decisions are rendered on the basis of "the just and true interpretation of the law, and the settlement of the dispute and administration of justice between the parties."[221] The Code mandates that each decision "be accompanied with a statement, as far and as full as may be practicable, or necessary for the purpose, of the grounds in law or evidence upon and by reason of which, such decision has been made."[222] The underpinning of this rule is to provide information essential "to give value and force to a law precedent for the government and guidance of the courts and citizens of the Nation in similar cases arising thereafter."[223] In addition, "[a]ll decisions made by the Judicial Appeals Tribunal shall have the force of law, as to the construction and application thereof, in all the courts of this Nation, until such construction or application shall be limited, altered, or in any manner amended, by the subsequent decision of a subsequent case by the Judicial Appeals Tribunal."[224] Further, the current Tribunal is "mindful of traditional precedent and encourage[s] all of those who practice before [the] Court to enlighten [the Court] on any traditional precedent available."[225]

Decisions handed down by the Cherokee judiciary are available from various sources. For example, all decisions of the Judicial Appeals Tribunal are "preserved and open to inspection" after the court forwards "copies of each decision to the Secretary-Treasurer of the Cherokee Nation" as required by

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[216] *Id.*
[217] *Id.*
[218] 20 CNCA §52 (1993).
[219] Smith & Birdwell, *supra* note 19, at 44.
[220] *Id.*
[221] 20 CNCA § 56 (1993).
[222] *Id.* ("Each decision shall be attended or preceded by a distinct statement of the issue between the parties, the situation of the case as set forth by the ev_Id._nce before the court, the law or laws governing the case, and the interpretation and application of the same by the court, with the reasons therefor, and the principles of law or ev_Id._nce involved in the suit and affecting the decision thereof; and of such other matters and cons_Id._rations, having relation to the decision, which the court may deem essential….").
[223] *Id.*
[224] *Id.* § 54.
[225] Dowty, *supra* note 69 (stating it is unclear what would constitute traditional precedent or what time period would be sufficient for the Tribunal to take it under advisement).

Cherokee Code.[226] In addition, the official website of the Cherokee Nation contains all Judicial Appeals Tribunal Decisions from 1996–1999.[227] Finally, selected Tribunal decisions can be found on Westlaw by searching the Oklahoma Tribal Court Reports (OKTRIB–CS) database.

The rules for the District Court of the Cherokee Nation include a provision regarding the removal of court files on file in the Court Clerk's office.[228] Accordingly, "[a]n attorney of record in the case or Official reporter may take the Court files from the Clerk's Office" for official use as long as the clerk is provided with a written receipt and the files are returned to the clerk within forty-eight hours.[229] Criminal case files, however, can only be removed from the court clerk's custody "upon order of the court."[230] All original papers in a case are kept on file with the court clerk in the Cherokee Nation District Courthouse in Tahlequah.[231]

V. New Developments

The Cherokee Nation recently created a Cherokee Nation office in Washington, D.C. and is working to develop and support the needs of this office.[232] The "D.C. office currently has two staff members that devote their time to cementing relationships with elected officials and decision makers in federal programs. Their knowledge and expertise has been crucial in arranging for Cherokee elected officials to meet with U.S. Senators, Representatives and key staff people within federal programs."[233] According to one of the staff members, this office is currently in the process of "coming up to speed on national Indian legislative issues and networking with the federal agencies."[234] At this time, the Cherokee Nation is not actively working to develop law specific to its rights in the international arena.[235]

[226] 20 CNCA §55 (1993).
[227] The Cherokee Nation Official Website (2001), at http://www.cherokee.org/TribalGovernment/JudicialBranch.asp.
[228] Dist. Ct. Rule § 1, cl. 3 in CNCA, at 1039 (1993).
[229] *Id.*
[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] The Cherokee Nation Official Website (2001), at http://www.cherokee.org/TribalGovernment/SR2001CommunityPage.asp?_Id._1.
[234] E–mail from Leigh Ann McGee, Cherokee Nation Washington, D.C. Office, to author (Oct. 18, 2001, 05:37:00 MST) (on file with author).
[235] McGee, *supra* note 233.