

1-1-2017

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Austin C. Megli

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Recommended Citation

Megli, Austin C.. "The Choctaw Nation of Oklahoma: History, Influences, and Contemporary Setting of the Choctaw Legal Structure." *Tribal Law Journal* 18, 1 (2018). <https://digitalrepository.unm.edu/tlj/vol18/iss1/1>

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The Choctaw Nation of Oklahoma: History, Influences, and Contemporary Setting of the Choctaw Legal Structure

Austin C. Megli*

INTRODUCTION

The Choctaw Nation of Oklahoma is the third largest Indian tribe in the United States.¹ The traditional territory of the Choctaw Nation was historically the area that would later become the State of Mississippi.² However, due to forced removal in 1830 by the Treaty of Dancing Rabbit Creek, the Choctaw people were split up and most were relocated to Indian Territory in what is today Oklahoma.³ Situated in Southeastern Oklahoma, the Choctaw Nation is made up of over 200,000 members.⁴ Roughly 6,000 people in Southeastern Oklahoma speak the Choctaw language.⁵ The Tribe's land base consists of over 11,000 square miles made up of ten-and-a-half counties.⁶ The modern tribal government is organized into three separate branches: legislative, executive, and judicial.⁷

The goal of this tribal profile is to provide an overview of the internal laws of the Choctaw Nation of Oklahoma; to give a detailed emphasis on the tribe's historic use of customary law, governance structures, enacted law, case law; and to examine how their internal law changed throughout history. By helping the reader become familiar with the history of Choctaw customary law and the contemporary structure of the Choctaw government, this profile will assist practitioners and academics in understanding the Choctaw Nation's tribal court.

*Austin C. Megli is a Juris Doctor and Master of Business Administration candidate at the University of New Mexico School of Law. He is an enrolled member of the Choctaw Nation of Oklahoma and is expected to graduate in the spring of 2018. The author wishes to thank his family for their unconditional support and Professor Christine Zuni Cruz for her inspiration, guidance, and commitment to the study and promotion of internal indigenous law.

¹ OKLAHOMA INDIAN TRIBE EDUCATION GUIDE, THE CHOCTAW NATION OF OKLAHOMA 4, Oklahoma State Department of Education (July 2014).

² Sandy Garret, OKLAHOMA'S FEDERALLY-RECOGNIZED INDIAN TRIBES 111, Oklahoma State Department of Education (1992), <http://files.eric.ed.gov/fulltext/ED370753.pdf>.

³ MARY B. DAVIS, NATIVE AMERICA IN THE TWENTIETH CENTURY: AN ENCYCLOPEDIA 607 (Mary B. Davis ed., 1994).

⁴ *The Choctaw Nation of Oklahoma*, CHOCTAW GLOBAL STAFFING, <http://www.choctawglobal.com/home/choctaw-nation-of-oklahoma>, (last visited Nov. 19, 2017).

⁵ DONNA AKERS, CULTURE AND CUSTOMS OF THE CHOCTAW INDIANS 161 (Tom Holm ed., 2013).

⁶ *Tribal Home Visiting*, Administration for Children and Families, https://www.acf.hhs.gov/sites/default/files/ecd/choctaw_nation_coh3_profile.pdf. (last visited Oct. 30, 2017).

⁷ CHOCTAW NATION OF OKLA. CONST. art. V, § 1 (1983).

Part I of this paper will describe the customary laws of the Choctaw Nation. Part II of this paper will describe the governance structures of the Choctaw Nation. Part III will describe enacted law in the Choctaw Nation. Part IV of this paper will describe case law in the Choctaw Nation.

I. CUSTOMARY LAW

A. *Historic Customary Law*

Historically, Choctaw society was divided into two parts—or two moieties—that functioned together, the “Imoklasha” and the “Imhulata.”⁸ Each moiety, or one of the two social groups, was made up of several smaller clans, called “Iksas.”⁹ The moiety structure was an essential part of Choctaw culture. For example, members of one moiety supported members of the opposing moiety through the grieving process when a member of their family died.¹⁰

Choctaw men and women had to select their husband or wife from the opposite moiety.¹¹ Marriage created balance in Choctaw society because it brought the two moieties together.¹² This balance is suggested in the Choctaw term for family “chuka achafa,” or “one house.”¹³ Being a matrilineal society, when children were born, they inherited their mother’s moiety instead of their father’s.¹⁴ During games and functions, children participated in the activities of their mother’s moiety, while the children’s father participated in activities of his own moiety.¹⁵ A child’s maternal uncle was responsible for raising and disciplining the children, instead of the father.¹⁶ If their mother died, the children would stay with their mother’s family, rather than with their surviving father, so that they could stay within their own moiety while they grew up.¹⁷ The community has passed this information down from generation to generation through an oral tradition.

The Choctaws did not have written laws, but instead they relied upon an oral tradition.¹⁸ They used this oral tradition to “convey history, beliefs, values, and traditions from one generation to the next.”¹⁹ This oral tradition was usually told

⁸ JEAN MARGARET KELLEY, *THE CHOCTAW ECONOMY: RECIPROCITY IN ACTION* 18 (1991).

⁹ CYRUS BYINGTON, *A DICTIONARY OF THE CHOCTAW LANGUAGE* 180 (John R. Swanton, Henry S. Halbert, eds., 1915) (Iksa in the Choctaw language is defined as “a clan.”).

¹⁰ Iti Fabvssa, *Choctaw Family*, Biskinik, Sept. 2016, at 15, https://www.choctawnation.com/sites/default/files/import/Biskinik_September_2016_Original.pdf.

¹¹ JOHN R. SWANTON, *SOURCE MATERIAL FOR THE SOCIAL AND CEREMONIAL LIFE OF THE CHOCTAW INDIANS* 83 (1931).

¹² See MICHELENE E. PESANTUBBEE, *CHOCTAW WOMEN IN A CHAOTIC WORLD: THE CLASH OF CULTURES IN THE COLONIAL SOUTHEAST* 150 (2005).

¹³ Iti Fabvssa, *supra* note 10, at 15.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Suzianne D. Painter-Thorne, *One Step Forward, Two Giant Steps Back: How the ‘Existing Indian Family’ Exception (Re)Imposes Anglo American Legal Values on American Indian Tribes to the Detriment of Cultural Autonomy*, 33 AM. INDIAN L. REV. 329, 336 (2009).

¹⁷ Iti Fabvssa, *supra* note 10, at 15.

¹⁸ AKERS, *supra* note 5, at 93.

¹⁹ *Id.*

through stories.²⁰ The stories “educated, enlightened, conveyed morals and beliefs, and entertained.”²¹ These stories were used as teaching tools, as they conveyed moral teachings concerning everyday life.²² For example, “The Possum and the Raccoon” teaches those to appreciate what they have and not to yearn for other’s belongings.²³

B. *Influences on Customary Law*

Although the customary law governing the Choctaw Nation was well established and observed by the Choctaws, external influences on Choctaw life—beginning with Hernando De Soto’s invasion of Choctaw lands in 1540—led to immense changes to their customary law.²⁴ These external influences ranged from trade, intermarriage, western diplomacy, and western schools.²⁵ In 1818, at the request of Choctaw leadership, Christian missionaries began moving into the Choctaw towns bringing western education and religion with them.²⁶ In 1826, Choctaw leaders began to draft what would be the first written constitution for the Choctaw people, signifying the first movement away from a completely oral tradition.²⁷ Andrew Jackson’s Indian Removal Act in 1830, which authorized his administration to seek removal of all southern Natives, in combination with the 1830

²⁰ *Id.*

²¹ *Id.*

²² *See id.*

²³ *See Native American Legends: The Possum and the Raccoon, a Choctaw Legend*, FIRST PEOPLE: THE LEGENDS, <http://www.firstpeople.us/FP-HTML-Legends/ThePossumandtheRaccoon-Choctaw.html> (Oct. 7, 2017) (Choctaw legend states “The Choctaws knew Possum when he had hair on his tail. Possum’s tail was gray with white hair mixed in and it was very nice to look at. When Possum met Raccoon he looked and looked at Raccoon’s tail. Raccoon’s tail had stripes on it and Possum wished that he had stripes on his tail too. Possum asked Raccoon, “Raccoon, how did you get those stripes on your tail?” Raccoon said, “All raccoons have stripes on their tails.” Possum told Raccoon, “I want stripes on my tail too!” Raccoon said, “You are a possum and you should have a possum tail.” “But I want stripes”, Possum pouted. So Raccoon said, “Someone told me that you could wrap bark from a tree around your tail, then cook your tail over a fire. When your tail is cooked, it will have stripes.” Possum ran to a tree and took some bark and wrapped his tail. Then Possum built a fire and cooked his tail. When Possum unwrapped his tail there were no rings. Possum looked again and saw that there was no hair. Possum began to cry. Then Possum said, “I was so silly. I will always like my tail, no matter how it looks.” But the hair never grew back.”).

²⁴ *See* William C. Sturtevant, *Spanish-Indian Relations in Southeastern North America*, 9 *Ethnohistory* no. 1, Winter 1962, at 47-48, (explaining that De Soto’s invasion must have been the most traumatic because he moved from village to village, seizing chiefs in order to extort food, porters, safety, and women for the army).

²⁵ Ryan L. Spring, *Issuba Ombinili Tvshka Choctaw Light-horsemen, Historic Preservation Department Choctaw Nation of Oklahoma 5*. (<https://www.choctawnation.com/tribal-services/cultural-services/historic-preservation>) (Power Point).

²⁶ Iti Fabvssa, *The Office of Chief and the Constitution of the Choctaw Nation*, BISKINIK, May 2014, at 10.

²⁷ *Id.*

signing of the Treaty of Dancing Rabbit Creek, led to many Choctaws being displaced and forcibly removed to Indian Territory in present day Oklahoma.²⁸ Specifically, “as many as possible of their people not exceeding one half of the whole number... depart[ed] during the falls of 1831 and 1832; the residue to follow during the succeeding fall of 1833.”²⁹ Those Choctaws that stayed in Mississippi are federally recognized as the Mississippi Band of Choctaw Indians, a separate entity from the Choctaw Nation of Oklahoma.³⁰

Traditional law and customs remained intact in the Choctaw Nation, but the tribe slowly became more open to adopting western ideas in order to survive. “The moiety system was discontinued after the Trail of Tears.”³¹ In fact, on October 6, 1836, the Choctaw General Council passed a law that “the custom of not intermarrying with their own Iksa among the Choctaw people shall forever be abolished; and all persons, without any distinction of Iksa, are left to make their own choice as to whom they shall marry.”³² Also, on October 8, 1835, the 2nd session of the General Council passed laws amending traditions such as traditional marriage ceremonies and matrilineal inheritance.³³

Similarly, the Choctaw Nation’s transition away from solely relying on oral tradition was exemplified by the creation of the first written compilation of Choctaw laws and treaties.³⁴ In 1869, Joseph Folsom wrote, “Choctaws have, for several years past, steadily demanded to have the laws of their Nation printed in one volume.”³⁵ This was needed so that both English and Choctaw readers could understand and be put on notice of Choctaw laws.³⁶

C. Customary Law in Contemporary Tribal Setting

Present-day government of the Choctaw Nation consists of three branches of government: the executive branch comprised of the Chief; the legislative branch comprised of the Tribal Council; and the judicial branch comprised of the Choctaw Nation Constitutional Court and Courts of General Jurisdiction.³⁷ The overarching mandate of the preamble of the Choctaw constitution is to “secure to ourselves and our posterity the blessings of our ancestral heritage [and] culture.”³⁸ This commitment to conservation of tradition is also apparent in the oath of office for all

²⁸ See AKERS, *supra* note 5, at xxvi.

²⁹ *Letter from the Assistant Clerk of the Court of Claims, Transmitting a Copy of the Findings Filed by the Court in the Case of John T. Ayers, Executor, Against the United States*, 61st Cong. 13 (1909) (https://books.google.com/books?id=7-5GAQAIAAJ&pg=PA13&lpg=PA13&dq=as+many+people+as+possible+of+the+whole+number...departed+during+the+falls+of+1831+and+1832&source=bl&ots=ddhgRaztqu&sig=UE-PRsDzu-SLCG2DNnNIU1b30xI&hl=en&sa=X&ved=0ahUKEwj406Spva_YAhXI6YMKHULRDIQQ6AEIKjAB#v=onepage&q=during%20the%20fallsof%201831%20and%201832&f=false).

³⁰ *History, Mississippi Band of Choctaw Indians*, <http://www.choctaw.org/aboutMBCI/history/> (Nov. 11, 2017).

³¹ Iti Fabvssa, *supra* note 10, at 15.

³² JOSEPH P. FOLSOM, CONSTITUTION AND LAWS OF THE CHOCTAW NATION TOGETHER WITH THE TREATIES OF 1855, 1865 AND 1866 71 (1869).

³³ *Id.* at 70-71.

³⁴ *See id.* at 3.

³⁵ *Id.* at 3.

³⁶ *See id.* at 162-163.

³⁷ CHOCTAW NATION OF OKLA. CONST., *supra* note 7, art. V, § 1, art VI, § 1, art VIII, § 1, art XII, § 1.

³⁸ *Id.* at Pmbl.

elected officials: “I will devote my best efforts toward the preservation of the heritage and tradition of the Choctaw Nation in order that all mankind may better understand, evaluate, and appreciate the history of its glorious past and enjoy its brilliant future.”³⁹

While Choctaw law is codified, the district court still “incorporate[s] traditional values into the system to provide a more personal touch to its solutions on matters brought before it.”⁴⁰ The Choctaw Code of Civil Procedure makes room for traditional law, as it says, “In matters not covered by statute, traditional tribal customs and usages may be applied.”⁴¹ In sum, despite the Choctaw Nation’s extensive history of change, the tribe’s contemporary system attempts to incorporate customary law whenever possible.

II. GOVERNANCE STRUCTURES

A. *Historic Governance Structure*

Historically, there was not an overarching political structure encompassing all of Choctaw society. Instead there was a political structure for each town.⁴² These towns were organized into two-part-power-arrangements.⁴³ This bilateral separation was encompassed in a “white” and “red” distinction, which meant civil and war divisions of government, respectively.⁴⁴ The town chiefs were always white chiefs.⁴⁵ Also, each town chief had a chosen assistant chief who organized festivals and dances.⁴⁶ The red, or war chief, held political power during armed conflicts.⁴⁷ Every five years, or when need arose, the town chiefs would meet at Mobile, the center of the Choctaw Nation in the Mississippi area.⁴⁸ There would be a nation-wide council to deal with major problems regarding trade alliances, peace, and war that concerned all the towns.⁴⁹

When choosing town leaders, the clan mothers would discuss and choose a chief’s maternal nephew or niece for the position.⁵⁰ Then, they would convey their choice to the council who would announce the choice to the people.⁵¹ These positions were hereditary based, passing from the chief to a maternal nephew or niece, and no one else could be selected.⁵² The choice regarding who would be

³⁹ *Id.* art. XVII.

⁴⁰ *About Tribal Court*, Choctaw Nation, <https://www.choctawnation.com/government/tribal-court/about-tribal-court> (last visited Sept. 1, 2016).

⁴¹ CHOCTAW NATION CODE OF CIV. P.

⁴² *See* KELLEY, *supra* note 8, at 19.

⁴³ *Id.* at 19.

⁴⁴ CAROLYN KELLER REEVES, *THE CHOCTAW BEFORE REMOVAL* 123 (1985).

⁴⁵ KELLEY, *supra* note 8, at 18.

⁴⁶ *Choctaw History*, Five Civilized Tribes, <http://www.fivecivilizedtribes.org/FiveTribes/Choctaw/ChoctawHistory.aspx> (last visited Dec. 1, 2016).

⁴⁷ KELLEY, *supra* note 8, at 19.

⁴⁸ *Id.* at 20.

⁴⁹ *Id.* at 19.

⁵⁰ *Id.* at 42.

⁵¹ *Id.*

⁵² *See* CLARA SUE KIDWELL, *Choctaw*, in *ENCYCLOPEDIA OF NORTH AMERICAN INDIANS* 119 (Frederick E. Hoxie ed., 1996).

chosen as chief depended on who possessed qualities to make a great leader.⁵³ To be chosen one had to possess the qualities of “generosity, cooperation, truthfulness, and responsibility towards others in everyday life.”⁵⁴ Most importantly, the clan mothers had the ultimate voice in appointments to political offices.⁵⁵

Lastly, a council of elders advised the town’s population and chief.⁵⁶ These elders would mediate disagreements and give speeches to persuade the community on issues the community faced.⁵⁷ Also, “in the traditional Choctaw judicial system, when an individual was accused of a crime, a trial was held in which members of his Iksa were his defenders, while those of the opposite Iksa served as prosecutors.”⁵⁸ The Choctaw societal structure would stay this way through the 18th century, withstanding increased European pressures.⁵⁹

B. *Influences on Governance Structure*

As stated before, external influences on customary law also influenced the governance structure. To adjust to these changes, Choctaw leaders created the “Issuba Ombinili Tvshka,” Choctaw light-horsemen, to provide functions where traditional systems diminished.⁶⁰ The light-horseman acted as law enforcement, as judge, and carried out punishments for crimes.⁶¹ Some of the laws enforced were regarding liquor consumption, theft, adultery, or murder, which all called for the same punishment of 39 lashes.⁶² The light-horseman held these same roles for a short time after the tribe’s removal from Mississippi.⁶³

In 1834, following the removal, Choctaw leaders signed the first Choctaw constitution; the first constitution to ever be signed in what is now Oklahoma.⁶⁴ The leaders built the Council House and gave it the sacred name of “Nanah Waya.”⁶⁵ This constitution established three Choctaw districts, as had existed prior to removal. These districts were named after three prominent chiefs; Moshulatubbee, Apukshunnubbee, and Pushmataha. Each district had its own chief and they were aided by a 27-member General Council with nine members from each of the three districts.⁶⁶

A new constitution was ratified in 1838 at the Choctaw Nation’s capital, Nanah Waiya.⁶⁷ This constitution created a fourth district, the Chickasaw district, as well as establishing four powers of government: the legislative power with a General Council; the executive power consisting of four district Chiefs; the judicial power consisting of a Supreme Court and Inferior Courts; and a military power that created

⁵³ KELLEY, *supra* note 8, at 42.

⁵⁴ *Id.* at 42.

⁵⁵ *Id.* at 42-43.

⁵⁶ *Id.* at 41.

⁵⁷ *Id.* at 41.

⁵⁸ Iti Fabvssa, *Early Political Structure*, BISHINIK, Apr. 2010, at 9.

⁵⁹ *Choctaw History*, *supra* note 46.

⁶⁰ *See* Spring, *supra* note 25.

⁶¹ ANGIE DEBO, *THE RISE AND FALL OF THE CHOCTAW REPUBLIC* 45 (1961).

⁶² Spring, *supra* note 25, at 6.

⁶³ *See* Carolyn Thomas Foreman, *The Light-Horse in the Indian Territory*, 34 CHRON. OF OKLA. 17, 24-32 (1956), <http://digital.library.okstate.edu/Chronicles/v034/v034p017.pdf>.

⁶⁴ Oliver Knight, *Fifty Years of Choctaw Law, 1834 to 1884*, 31 CHRON. OF OKLA. 76, 77 (1953), <http://digital.library.okstate.edu/Chronicles/v031/v031p076.pdf>.

⁶⁵ DEBO, *supra* note 61, at 74.

⁶⁶ *Choctaw History*, *supra* note 46.

⁶⁷ *See* Choctaw Nation of Okla. Const. Oct. 1838, Preamble.

a General in each district.⁶⁸ Also, the 1838 constitution had a declaration of rights, which guaranteed individuals the right to a trial by jury and the right to bear arms.⁶⁹ The inclusion of the judicial power limited the light-horseman's role to solely law enforcement.⁷⁰

The Choctaw Nation sustained this governance structure in slightly altered forms until the end of the 19th century.⁷¹ This changed under a policy of assimilation used in the General Allotment Act (the Dawes Severalty Act) in 1887,⁷² which was imposed upon the Choctaw Nation in the Curtis Act in 1898.⁷³ The latter legislation, which abolished tribal courts and was intended to hasten the destruction of tribal governments, also codified the text of an agreement that the Choctaw and Chickasaw Nations had signed in 1897 with the Dawes Commission at Atoka.⁷⁴ The Atoka Agreement implemented allotment.⁷⁵ "In 1902 the Choctaw and Chickasaw signed a supplement to the Atoka Agreement in order to expedite the allotment process and facilitate implementation of the Curtis Act."⁷⁶

The Five Civilized Tribes Act of April 26, 1906 provided "the final disposition of the Affairs of the Five Civilized Tribes in Indian Territory and for other purposes."⁷⁷ This Act greatly reduced the powers of the Choctaw government.⁷⁸ The Tribal Council remained, but it could only meet for 30 days each year and its legislation had to be approved by the President of the United States.⁷⁹ The Choctaw Nation government persisted on a limited, appointment type basis. The 1906 Act provided that the Principal Chief would hold office unless removed by the President of the United States.⁸⁰ From Oklahoma statehood through 1971, the President of the United States appointed the Principal Chief of the Choctaw

⁶⁸ *Id.* art. II § 1 (establishing the distribution of powers); art. III § 1 (establishing the legislative department); art. IV § 1 (establishing the executive department); art. V § 1 (establishing the judicial department); art. VI § 1 (establishing the military department).

⁶⁹ *Id.* art. I § 7-8.

⁷⁰ JAMES C. MILLIGAN, *THE CHOCTAW OF OKLAHOMA* 98 (2003).

⁷¹ Clara Sue Kidwell, *Choctaw (tribe)*, in *ENCYCLOPEDIA OF OKLAHOMA CULTURE AND HISTORY* (Oklahoma Historical Society 2009), <http://www.okhistory.org/publications/enc/entry.php?entry=CH047>; *See* Five Civilized Tribes Act of April 26, 1906, Pub. L. No. 59-129, 34 Stat. 137 (providing for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes).

⁷² *See* Kidwell, *supra* note 71; *See* Dawes Act of 1887, ch. 119, 24 Stat. 388.

⁷³ *See* Kidwell, *supra* note 71; *See* Curtis Act of 1898, Pub. L. 55-517, 30 Stat. 495, 497-8 (assimilating the Dawes Act).

⁷⁴ *See* Kidwell, *supra* note 71; *See* Curtis Act at 505-19 (incorporating the Atoka Agreement of June 28, 1898).

⁷⁵ *See* Kidwell, *supra* note 71; *See* Curtis Act at 515.

⁷⁶ *See* Kidwell, *supra* note 71.

⁷⁷ *Choctaw History*, *supra* note 46.

⁷⁸ *See* Five Civilized Tribes Act of Apr. 26, 1906, 34 Stat. 137 *reprinted in* 3 *INDIAN AFFAIRS: LAWS AND TREATIES* 169-181 (Charles J. Kappler ed. 1913) http://digital.library.okstate.edu/kappler/vol3/html_files/SES0169.html (last visited Nov. 2, 2016).

⁷⁹ *Id.* at § 28.

⁸⁰ *Id.* at § 6.

Nation.⁸¹ Up until 1971, six chiefs were appointed for the Choctaw Nation.⁸² In 1971, the Choctaw Nation popularly elected its chief and ushered in the era of self-determination for the Choctaws.

C. *Governance Structure in Contemporary Tribal Setting*

On October 22, 1970, Congress authorized each of the Five Civilized Tribes to popularly select their Principal Chief.⁸³ Chief Harry J.W. Belvin had been the appointed chief since 1948, and in 1971 he became the first elected Choctaw chief in 65 years.⁸⁴ In 1978, a General Council was created to draft a new constitution for the Nation.⁸⁵ Within the year, the General Council drafted the first modern constitution officially adopting “The Choctaw Nation of Oklahoma” as the Tribe’s official name.⁸⁶ This constitution established a three branch system of government: a legislative department consisting of a Tribal Council, an executive department consisting of the Chief, and a judicial department consisting of a Supreme Court.⁸⁷ In 1983, a new constitution was signed.⁸⁸

The contemporary Choctaw Nation government is federally recognized and has sovereign status granted by treaty and law. The current governance structure in the Choctaw Nation originated from the constitution that was approved by the Assistant Secretary of Indian Affairs on June 9, 1983, and ratified by the Choctaw people a month later on July 9, 1983.⁸⁹ The constitution currently uses a tripartite structure of government. Nonetheless, the Choctaw Nation has preserved distinctive aspects of governance that distinguish it from the U.S. governance system.

Unique aspects are found in each branch of the Choctaw government. The executive power consists of the Chief of the Choctaw Nation and an Assistant Chief.⁹⁰ The Chief and Assistant Chief must be at least 30 years old, be no less than one-quarter degree of Choctaw blood, not have a felony conviction, and have been a resident of the Choctaw Nation for two years or more.⁹¹ The Chief is popularly elected by citizens of the Choctaw Nation, while the Assistant Chief, with consent of the Tribal Council, is appointed by the Chief.⁹² The Chief holds the power to veto any legislative act, rule, or regulation of the Tribal Council.⁹³ There is no longer a “Principal” Chief of the Choctaw Nation, but instead, the leader is addressed as “Chief.”⁹⁴ The Assistant Chief serves as Chief at the death, removal, or inability of the elected Chief to serve.⁹⁵

⁸¹ *Id.*

⁸² *Chiefs*, CHOCTAW NATION, <https://www.choctawnation.com/history-culture/people/chiefs> (last visited Nov. 19, 2016).

⁸³ Five Civilized Tribes Act of Okla., Pub. L. No. 91-495, § 1, 83 Stat. 1091 (Oct. 22, 1970).

⁸⁴ *Chiefs*, *supra* 82; Iti Fabvassa, *supra* note 26, at 10.

⁸⁵ *Id.*

⁸⁶ *Id.*; See CHOCTAW NATION OF OKLA. CONST. March 21, 1979, Preamble.

⁸⁷ CHOCTAW NATION OF OKLA. CONST., art. V, § 1 (1979); *id.* art. VII, § 1; *id.* art. VII, § 1; *id.* art. XII, § 1.

⁸⁸ CHOCTAW NATION OF OKLA. CONST. (1983).

⁸⁹ *Id.* art. XXI.

⁹⁰ *Id.* art. VI, § 1, 2.

⁹¹ *Id.* art. VI, § 3, 4, 5.

⁹² *Id.* art. VI, § 6, 7.

⁹³ *Id.* art VII, § 4.

⁹⁴ *Choctaw History*, *supra* note 46.

⁹⁵ *Id.*

The legislative department consists of a Tribal Council.⁹⁶ The Tribal Council consists of 12 members, one from each of the 12 districts of the Choctaw Nation.⁹⁷ The Council is responsible for reapportionment based on population when it becomes necessary.⁹⁸ Members of the Tribal Council must have resided in their respective district for one year, be at least one-quarter Choctaw blood, and be at least 21 years old.⁹⁹ The Tribal Council enacts legislation, rules, and regulations for the general good of the Choctaw Nation.¹⁰⁰ The Tribal Council can override the Chief's veto with eight members voting in favor of overturning the veto.¹⁰¹

The judicial department's authority is vested in a Tribal Court, which consists of a three-member court appointed by the Chief with consent of the Tribal Council. One of the members must be a licensed attorney who can practice before the Supreme Court of Oklahoma, while the other two members may be non-lawyers.¹⁰² All members of the judicial department must be residents of the Choctaw Nation, while only the two non-lawyer members must be qualified electors of the Choctaw Nation.¹⁰³ The judicial department consists of a Constitutional Court and a Court of General Jurisdiction¹⁰⁴

III. ENACTED LAW

A. *Historic Use of Enacted Law*

The history of enacted law of the Choctaw Nation, in the understanding of legislative based enactment began in 1834 when the newly formed National Council commenced passing resolutions and drafting laws that dealt with the "internal affairs" of the Choctaw Nation.¹⁰⁵ The first law enacted by the National Council was "an Act making the killing [of] a person for a witch a capital offense."¹⁰⁶ In 1834, the Council met for three days and passed two other laws regarding wills and compensation for broken fences.¹⁰⁷

The National Council continued to authorize a widespread system of laws governing the Choctaw Nation between 1834 and 1906. These Acts provided procedures for establishing a judiciary, punishing criminals, and settling issues relating to property disputes. The most notable Act was adopted in 1857 which required all Choctaw laws to be translated from English into the Choctaw language.¹⁰⁸

⁹⁶ CHOCTAW NATION OF OKLA. CONST. art. VIII, § 1 (1983).

⁹⁷ *Id.* art. VIII, § 2.

⁹⁸ *Id.*

⁹⁹ *Id.* art. VIII, § 3.

¹⁰⁰ *Id.* art. IX, § 4.

¹⁰¹ *Id.* art. IX, § 10.

¹⁰² *Id.* art. XII, § 1.

¹⁰³ *Id.* art. XII § 2.

¹⁰⁴ *About Tribal Court*, CHOCTAW NATION, <https://www.choctawnation.com/government/tribal-court/about-tribal-court> (last visited Nov. 20, 2016).

¹⁰⁵ *See* FOLSOM, *supra* note 32, at 69.

¹⁰⁶ *Id.* (This is the very first law that is known to have been passed by the National Council).

¹⁰⁷ *Id.* at 69-70.

¹⁰⁸ *Id.* at 162 (This translation had to be "printed in pamphlet form, in both the English and Choctaw languages, if practicable, if not, in the English alone").

In 1898, the federal government stripped the Choctaw Nation of its powers and terminated the Choctaw courts.¹⁰⁹ The Choctaw Nation government was nearly terminated with the passage of the Oklahoma statehood enabling act in 1906.¹¹⁰

B. *Enacted Law in Contemporary Tribal Setting*

With the enactment of the present-day Choctaw constitution in 1978, the Tribal Council gained the authority to “enact legislation, rules, and regulations... for the general good of the Choctaw Nation.”¹¹¹ As of 2016, the Tribal Council has now enacted 12 different Tribal Codes.¹¹² The codes address areas such as: traffic, public health and safety, juveniles, jurors, children, adoption, civil procedure, criminal acts, criminal procedure, guardianship, marriage and divorce, and worker’s injury.¹¹³ The Tribal Council meets monthly and keeps its records on the Choctaw Nation’s website.¹¹⁴

IV. CASE LAW

A. *Case Law in Contemporary Tribal Setting*

The modern day Choctaw court system comprises a Constitutional Court, a Court of General Jurisdiction, an Appellate Division, and a District Court.¹¹⁵ The Constitutional Court has “exclusive jurisdiction to decide disputes, by vote of two (2) members, arising under any provision of the Choctaw Nation Constitution or any rule or regulation enacted by the Tribal Council.”¹¹⁶ The Constitutional Court has supervisory authority over the Court of General Jurisdiction.¹¹⁷ Additionally, the Constitutional Court has discretionary authority to hear an appeal from any judgment from the Appellate Division of the Court of General Jurisdiction.¹¹⁸

The Court of General Jurisdiction has civil and criminal jurisdiction of all Indian Country described in Article I, Sec 2 of the Choctaw Nation Constitution.¹¹⁹ The Court of General Jurisdiction operates through the Appellate Division and the District Courts of the Choctaw Nation.¹²⁰ The Court of General Jurisdiction does not have jurisdiction over matters arising under the Choctaw constitution or any rule or regulation enacted by Tribal Council.¹²¹

The Choctaw Nation Appellate Division has full authority on appeal from the District Court to affirm, reverse, modify, or vacate any action in the District Court.¹²² Also, the judges of the Court of Appeals meet to revise the Court’s rules,

¹⁰⁹ Curtis Act, 517 § 28.

¹¹⁰ Oklahoma Enabling Act, ch. 3335, 34 Stat. 267 (1906).

¹¹¹ CHOCTAW NATION OF OKLA. CONST., art. IX, § 4 (1983).

¹¹² *Tribal Codes*, CHOCTAW NATION, <https://www.choctawnation.com/government/tribal-court/tribal-codes> (last visited Nov. 26, 2016).

¹¹³ *Id.*

¹¹⁴ *Council Meetings and Bills*, CHOCTAW NATION, <https://www.choctawnation.com/government/tribal-council/council-meetings-and-bills> (last visited Nov. 23, 2016).

¹¹⁵ *About Tribal Court*, *supra* note 40.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ CHOCTAW NATION OF OKLA. CONST., art. I, § 2 (1983).

¹²⁰ *About Tribal Court*, *supra* note 40.

¹²¹ *Id.*

¹²² *Id.*

which apply to the Court of Appeals, District Courts, and all other courts of record.¹²³ The Choctaw Nation District Court focuses on family issues such as divorce, child custody, child support, parental rights, visitation and adoption, civil matters, juvenile matters, and guardianship.¹²⁴ The Choctaw Nation District Court also presides over criminal matters in accordance with the Tribal Law and Order Act adopted and incorporated into the Choctaw Nation tribal law in 2015.¹²⁵ The State and Courts of Indian Offenses recognize all decisions made by the District Court. The Choctaw Nation District Court incorporates traditional values into the system to provide better solutions on matters brought before it.¹²⁶

The Choctaw Nation has a common law system.¹²⁷ The rules of procedure for Choctaw Courts are prescribed by the Tribal Council and must ensure that all Choctaw members have due process of law.¹²⁸ The Choctaw Nation seeks to preserve its history. When a clerk is directed to destroy the record, it is required to first try and preserve it.¹²⁹

Decisions of the Choctaw Nation courts are obtainable from numerous sources. The court clerk is required to “keep the records and books and papers appertaining to the court and record its proceedings.”¹³⁰ For example, all decisions of the District Court are “available for public use in the court clerk’s office.”¹³¹ In addition, the Choctaw Nation official website contains forms to help guide people to access the courts, along with the Tribal Codes.¹³² Also, a limited number of Court decisions are available on Westlaw by searching the Oklahoma Tribal Court Reports (OKTRIB–CS) database.¹³³ Court records are also available by searching the On Demand Court Records database.¹³⁴

V. CONCLUSION

Choctaw Customary law has changed immensely over the past 600 years. Although the Choctaw Nation has been subject to many changes and influences over time, customary law still plays a role in the tribal court system and the way the Choctaw Nation is governed. Numerous underlying forces of history have shaped the legal development of the Choctaw Nation’s court system and governance structure into what it is today.

¹²³ CHOCTAW NATION OF OKLA. CODE OF CIV. P., ch. 1, § 74 (They “meet at least every 2 years during the month of June and revise their general rules”).

¹²⁴ *About Tribal Court*, *supra* note 40.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ CHOCTAW NATION OF OKLA. CODE OF CIV. P., ch. 1, § 2.

¹²⁸ CHOCTAW NATION OF OKLA. CONST., art. XIII, § 2.

¹²⁹ CHOCTAW NATION OF OKLA. CODE OF CIV. P., ch. 1, § 24.1 (The record “shall first be offered to the Choctaw Nation Tribal Museum, the Oklahoma Historical Society or a county historical society or museum within the State of Oklahoma”).

¹³⁰ CHOCTAW NATION OF OKLA. CODE OF CIV. P., ch. 1, § 33.

¹³¹ *Id.* ch. 1 § 24.

¹³² *Tribal Forms*, CHOCTAW NATION,

<https://www.choctawnation.com/government/tribal-court/tribal-forms> (last visited Nov. 8, 2016).

¹³³ *Oklahoma Tribal Court Reports*, WESTLAW, <https://1.next.westlaw.com/Browse/Home/Cases/TribalCases/OklahomaTribalCourtReports> (last visited Nov 14, 2016).

¹³⁴ ON DEMAND COURT REPORTS, <http://www1.odcr.com/> (last visited Nov. 26, 2016).