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**Comparing Texts of the *Okmulgee Constitution*:
Fourteen Instrument Versions and Levenshtein's Edit Distance Metric**

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Abstract

In 1870, the Five Civilized and other tribes within the Indian Territory initiated a series of council meetings to deal with seven federal stipulations presented at Fort Smith in 1865 and with new treaties established in 1866. One development was the so-called December 1870 *Okmulgee Constitution*, fashioned in the Creek capital, that provided a model for a new full-fledged Indian state to replace the Territory. Various versions of the text of that document (and of a revised rendition) were published, as part of the official and unofficial record of the sequence of proceedings. This study examined fourteen variants of that *Okmulgee Constitution*, in terms of the documents' provenance and of their variability as quantified through the application of Levenshtein's edit distance algorithm.

**Comparing Texts of the *Okmulgee Constitution*:
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“Knowledge is affected at the stage of reproduction by the errors that seem to inevitably creep in whenever a text is reproduced. From the hand copyists of the ancient world to the latest computer composition techniques of today, the reproduction of texts has always involved the introduction of error” (Neavill, 1975, p. 29)

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Preamble

In an unforgettable motion picture from 1942, two of Hollywood’s most famous characters uttered the same phrase. In that unique sentence, their song and time together in Paris were recalled in an intense stream of sadness and of desire that made the cinematic expression so visibly painful. Such moments encapsulate the very essence with which the film industry has provided instances of love reigning supreme, regardless of any surrounding chaos.

“Play it again, Sam,” Ingrid Bergman cooed.

“Play it again, Sam,” Humphrey Bogart demanded.

Who could *possibly* forget such a significant quotation from the Big Screen?

It seems that we all have, since the script of *Casablanca* provided for an entirely different, and a more complex, rendering of those two scenes. Bergman, as Ilsa Lund, softly spoke “Play it once, Sam, for old time’s sake,” followed by the request “Play it, Sam. Play ‘As Time Goes By.’” Bogart – in the role of Richard “Rick” Blaine, owner of Rick’s Café Américain – later angrily rebuked the same piano player: “You played it for her and you can play it for me.... If she can stand it, I can. Play it!” (Koch, 1973, pp. 87 and 95).

Fred R. Shapiro, editor of *The Yale Book of Quotations* (2006), described movie misquotations in an “On Language” article for the *New York Times* (2010, p. 18). These specific

bons mots, he acknowledged, “have come to replace Biblical verses and Shakespearean couplets as our cultural *lingua franca*, our common store of wit and wisdom.”¹ Yet as a student of English, Shapiro skillfully enumerated a series of possible grounds for the fracturing of such fixed lines. The variants might be compressed; they might be shortened to stand alone more firmly; they might be adjusted to increase their degree of euphony or perhaps their diction; they might be manipulated to assure that we can hold on to and thereby secure a fleeting memory; or they might just be an exhibition of “wholesome fabrication.” Shapiro cited Ilsa’s request as the most famous “film line improved by the popular mind” and concluded that “[i]t is a fitting homage to the fantasy machine of Hollywood that its verbal gems are no less compelling when their origins are themselves fantasies.”

Compression; euphony; wholesome fabrication. Perhaps we were too busy *looking* at Ingrid Bergman, instead of *listening* to her. Variants happen.

The variant within literature

The variant is the lifeblood of text analysis. Such entities have both plagued and rewarded countless investigations that have searched for the true underlying basis of classical as well as modern materials. In many cases, the examinations of religious texts, medieval literatures, or Shakespearian editions frequently led to conclusions that were immediately susceptible to challenge, primarily because there was never the ability to compare any of the versions at hand with the absent primary document. These derived conclusions were only

¹ Such work did not go unrecognized: the *New York Times* Learning Network (Doyme and Schulten, 2010) later proposed an Internet-based educational exercise crafted to use these famous words to address the question ‘What do we say about ourselves when we quote lines from movies or elsewhere?’ Shapiro included the phrase “Play it, Sam. Play ‘As Time Goes By’” in *The Yale Book of Quotations* (2006, p. 260).

transitory and speculative – and perhaps even illusory – in nature, because the original had long disappeared.

The extreme text cases

Thus, philology – in its interrogation of literary scholarship, and its concomitant history and criticism² – has had to navigate through a past that began with assessing representations of religious documents such as the Bible, “the immutable word of God that may, of course, be annotated, *but not rewritten*” (Cerquiglini, 1999, p. 35; emphasis added).³ Such restraint is particularly important for the Koran, considered by Muslims as the infallible word of Allah,⁴ but textual difficulties have been acknowledged (see Bellamy, 1993 and especially 1996). Ehrman (1993, pp. 275-276), in a consideration of the evolution of the New Testament, observed that

before any one group had established itself as dominant and before the proto-orthodox party had refined its christological views with the nuance that would obtain in the fourth century, the books of the emerging Christian scriptures were circulating in manuscript form. The texts of these books were by no means inviolate; to the contrary, they were altered with relative ease and alarming frequency,

and that

[s]cribes altered their sacred texts to make them ‘say’ what they were already known to ‘mean.’

² Uitti (2005) provided a synopsis of the realm of philology.

³ See Shaheen (1984), though, regarding the 1560 publication, and the subsequent use by the Puritans and others, of the *Geneva Bible*.

⁴ Sura 47 of the *Koran* declares “Allah will bring to nothing the deeds of those who disbelieve and debar others from His path. As for the faithful who do good works and believe in what is revealed to Mohammed – which is the truth from their Lord – He will forgive them their sins and ennoble their state” (*The Koran*, 1974, p. 123).

Smith, too, observed in 1885 that the Old Testament possessed a “text [that] has nevertheless suffered not a little in the period which elapsed between the original writing and its definite settlement in the present form” (p. 344).

Careful contrasts made within such studies have attempted to illuminate the exclusion and the incursion of variant elements among those renditions, with the understanding that such occurrences are part of the penalty associated with the copying process, perhaps stimulated – in whole or in part – by this text “improvement” consideration of which Ehrman spoke. Problems have arisen, though, whenever an attempt has been made to recreate a lost document. The process cascades into “one unique and supposedly established text [that] loses something that is there,” i.e., the course of reformulation yields yet another variant (Cerquiglini, 1999, p. 39).

Many of the difficulties associated with traditional philology can be eliminated promptly when the initial document is available. Variants certainly exist for all possible forms or formats of any replicated text, but there is an immediate limit to certain aspects of speculation regarding any material if its original does indeed exist, no matter how many spelling, punctuation, and/or grammatical faults it may hold according to today’s standards. Those blemishes frequently provoke attempts to improve the initial form, especially when ensuing renderings correct, say, blatant spelling errors. However, such editorial decisions should be based on *all* the data, and not just upon a currently accessible subset that might itself contribute to conjecture of what the true original *might* have contained. Greetham (1984), for example, assessed the influence of John Trevisa, a Middle English translator, by presenting Trevisa’s personal approach to the task of focusing on a fundamental problem of all translations. Trevisa had declared that different nationalities “vnderstondeth others speche no more than gaglinge of gees” (p. 154) and so professional translators should and must be impelled to consider those very differences among

languages. This emphasis pinpointed the need for fidelity to the text, instead of editing ingenuity, as the fundamental goal under consideration. Fowler (1995, pp. 130-131) further remarked upon Trevisa's use of explanatory notes within his conversions, and upon Trevisa's apparent "learning in the course of the translation." Both characteristics were discernable in Trevisa's transformation of Ranulph Higden's *Polychronicon* from around 1385, and that product "differs dramatically from all his other translations in the number and magnitude of the notes that he has inserted by way of comment of explanation of Higden's text" (p. 178).⁵

Early French materials: *La Chanson de Roland* and Chrétien de Troyes

Cerquiglini spoke extensively of the scope of French language development that fueled a departure from Latinized devices and an outcome wherein "French literature invented its genres, from the epic poem to a form destined for some success, the romance" (1999, p. 20). This path automatically led to variants, such as those found in seven complete versions of the *La Chanson de Roland* (*The Song of Roland*; see Brault [1978] for side-by-side French and English texts). These materials confirmed all forms of changes – identified as *innovations* in the vocabulary of philology – that induced both good and bad effects upon the text (1999, pp. 37-38). Robertson, in his study of *The Song*, promptly declared that "[a]ll literary translations are interpretations... attempts of many translations to reproduce in some manner the 'flavour' or the 'effect' of the original poem *always* wind up presenting but one view and one interpretation" (1972, p. xiii; emphasis added).⁶

⁵ Trevisa included his "gees" remark as part of the prologue to *Polychronicon*.

⁶ James A. Bellamy, cited earlier regarding problems observed in the text of the *Koran*, has also examined Arabic names found in *The Song* (1987).

Chrétien de Troyes⁷ is credited with developing the episodic romance genre during the twelfth century,⁸ represented today by half a dozen or so extant manuscripts (Busby, 2005). The Arthurian texts set the stage for further literary maturity, but the fixation upon heroes and upon the *mervelleux*, or marvelous,⁹ reached almost limitless bounds at the end of the thirteenth century with the appearance of Marco Polo's *Description of the World*.

Marco Polo's *Description of the World* as a popular exemplar

Polo's story oozed the realm of the *mervelleux*, and its contributions to the literary world deserve greater exhibition. Bynum (1997, pp. 2-3) considered the issue of "wonder" expressed in that account and spoke of "the period from about 1180 to 1320 [that] saw a great increase in stories of marvels, monsters, miracles, and ghosts; and the characterization of medieval Europe as 'awash in wonders.'" Here, Polo established a substantial travelogue, salted with – even centuries later – unimaginable deeds accomplished in faraway lands. The hunger for such tales, "even through awkward and impoverished prose such as Marco Polo's, or credulous tale-telling such as [Sir John] Mandeville's" led, Bynum declared, to "a powerful sense that what is wonderful is not chickens and peacocks – even Cyclopes and cannibals – per se but a world that encompasses such staggering diversity" (p. 20).¹⁰ Further, the excursion's report was penned by Rusticiano da Pisa, a medieval writer whose Arthurian cycles were well known, especially since he was the first Italian to write such material (Lacy, 1986, pp. 465-466). Rampant popularization

⁷ Rather little is known about the life of this writer, but Uitti and Freeman (1995, pp. 1-16) offered some observations.

⁸ See Lacy and Grimbert (2005) for a collection of perspectives.

⁹ Such fabulous examples included Erec's mantle of exotic animal fur in Chrétien's first romance *Erec et Enide* from about 1170. That fur was thought to have been from the red panda, *Ailurus fulgens* (Nickel, 1991, p. 135).

¹⁰ The interest continued, as illustrated by the recent publication of *Marco Polo and the Encounter of East and West* (Akbari and Iannucci, 2008).

was accelerated by Rusticiano's use of French as the publishing vehicle, precisely the same effect as Cerquiglini had spoken of for those earlier literatures that had been widely distributed in the same manner. To close the literary and historical circle here, it need only be observed that Paulin Paris, the father of philology and medievalism, confirmed that French – and not Italian – had been the language of the initial version of Polo's *Description of the World* (see Wright, 1854, p. xxiv).¹¹ Such wild demand for the account swiftly propagated variants (and then variants of variants) of *Description*. Indeed, just one depiction of this intersection of marvel and manuscript divergence will suffice to demonstrate the construction of textual variants – Polo's recorded observation of the unicorn.

Wild animals have always fascinated. Nickel (1991) illustrated the long history, beginning before 1000 BC, of the growth of menageries that graced the collections of royalty, populated frequently as the result of exchanged diplomatic gifts.¹² All the exotics were there: elephant, leopard, crocodile, hippopotamus, and especially, as depicted in Albrecht Dürer's famous 1515 woodcut, the rhinoceros.¹³ However, the latter rendering was created two centuries *after* Marco Polo's excursion to the East, and the unicorn at the time of his journey was still considered a special or mythical animal (see Beer, 1977), even though the Greeks and the

¹¹ Eileen Power's (1924) brief biography of Polo, and the status of Venice at that time, incorporated a footnote reference attributed to Paulin Paris, regarding Rusticiano, that appeared in Yule's edition (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 1, p. 61): "It will be seen that we are here a long way removed from the ordinary principles of Round Table Romances. And one thing besides will be manifest, viz., that Rusticien de Pise was no Frenchman!"

¹² Barnet (1997, pp. 6-7) provided an image of an elephant given as a gift by Louis IX of France to Henry III of England in 1255, a year after Polo's birth.

¹³ To be fair, even the Dürer rhinoceros drawing was a variant of a variant. Kurth (1963, p. 35 and image number 299) said that "Dürer himself had never seen such an animal, but had drawn it after seeing a sketch and after descriptions in a letter from Lisbon."

Romans had been familiar with the rhinoceros (Nickel, 1991).¹⁴ Its embodiment in fable and in heraldry was supplemented simultaneously by phallic symbolism and by an underlying feminine source that is confirmed by its French name, *la licorne* (*Harrap's Unabridged Dictionary/Dictionnaire*, 2001, p. 1325). With Polo's report of personal observations of unicorns from halfway around the world, the revelation struck a substantial confirming chord within the courts of Europe that Pliny, in his *Natural History*, had been right: this earth was inhabited by

a very fierce animal called the monoceros, which has the head of the stag, the feet of the elephant, and the tail of the boar, while the rest of the body is like that of the horse; it makes deep lowing noise and has a single black horn, which projects from the middle of its forehead, two cubits in length (Bostock and Riley, 1890, p. 281).¹⁵

As the years went by, though, the text that sustained Polo's unicorn remark in *Description* was altered as it passed through one translation after another. Five *Description* sources, distributed over one and two-third centuries, clearly illustrate the voyage that these unicorn variants traversed:

- Marsden's 1818 translation, from the Italian of Ramusio, portrayed this animal in the following manner, well after the understanding that Polo had seen the rhinoceros (Wright,

¹⁴ There were some physiological issues apparent in the general understanding of the unicorn. Yule (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 2, p. 291) remarked upon the prevalence in depictions of the animal of a twisted nature to its horn. The narwhal (*Monodon monoceros*) has this attribute, but the unicorn allegedly did not. A small, mid-14th century ivory casket with scenes from French romances is evidence of the perseveration of this error (see the detail on pages 62 and 247 of Barnet, 1997), but even today the unicorn with a wound tusk resides in the coats of arms of Great Britain and of Canada. Narwhals appear on the coats of arms of the latter's Northwest Territories and Nunavut.

¹⁵ The monoceros lives now among the stars, as a constellation between Canis Major and Canis Minor (Allen, 1963, pp. 289-290). See plate 12 in Tirion and Sinnott (1998) for its composition, including the Cone and the Rosette Nebulas.

1854, p. 368): “In the country are many wild elephants and rhinoceroses, which latter are much inferior in size to the elephant, but their feet are similar. Their hide resembles that of the buffalo. In the middle of the forehead they have a single horn; but with this weapon they do not injure whom they attack, employing only for this purpose their tongue, which is armed with long sharp spines, and their knees or feet; their mode of assault being to trample upon the person, and then lacerate him with the tongue.”

- Yule, in the late nineteenth century and based on Pauthier’s 1865 source,¹⁶ stated: “There are wild elephants in the country, and numerous unicorns, which are very nearly as big. They have hair like that of a buffalo, and a horn in the middle of the forehead, which is black and very thick. They do no mischief, however, with the horn, but with the tongue alone; for this is covered all over with long and strong prickles [and when savage with any one they crush him under their knees and then rasp them with their tongue]” (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 2, p. 285, and see the rhinoceros zoological illustration on p. 289).¹⁷
- Moule and Pelliot (1938/2010, p. 372), by using a number of manuscripts that supplemented a newly found augmented Latin version of Rusticiano’s text (i.e., one located in 1933), demonstrated in a concatenated manner the span of variant elements

¹⁶ This decision by Yule to use this specific variant is a bit of a surprise, following his criticism of Pauthier’s text in an earlier review of several versions of *Description* (1868, pp. 156-166), but Yule contended that his translation was “not always from the Text adopted by Pauthier himself, but with the exercise of my own judgment on the various readings which that Editor lays before us” (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 1, pp. 141-142).

¹⁷ Sir Henry Yule (1820-1889; see MacLagan, 1890) produced two editions – in 1871 and 1875 – on Polo’s epic journey; a third was created in 1903 by Henri Cordier. The two volumes used in this study – *The Travels of Marco Polo: The Complete Yule-Cordier Edition* (1993) – were formed from the republication of the third revised edition that included Cordier’s 1920 *Ser Marco Polo: Notes and Addenda to Sir Henry Yule’s Edition, Containing the Results of Recent Research and Discovery* (vol. 2, following page 662 of the Index).

that had been induced over time. These later additions from four different sources are collectively shown here in italics and grouped by color. For the unicorn, they declared that: “They have *many* wild elephants and they *also* have unicorns enough which are not at all by any means less than an elephant *in size*. *And* they *are made like this, for they all* have the hair of a buffalo; it has the feet made like *the feet of* an elephant. It has one horn in the middle of the forehead very thick *and large* and black. And I tell you that it does no harm *to men and beasts* with its *horn, but only with the* tongue *and knees*, for on its tongue it has very long spines *and sharp*; so that *when they wish to hurt anyone they trample and press him down with the knees, afterwards inflicting* the harm which it does with [its] tongue.”

- Latham (1958, p. 27), by manipulating a combination of Rusticiano’s French and Moule and Pelliot’s main Latin selection, plus “the addition... of any significant matter furnished by less reliable sources,” recorded: “They have wild elephants and plenty of unicorns, which are scarcely smaller than elephants. They have the hair of a buffalo and feet like an elephant’s. They have a single large, black horn in the middle of the forehead. They do not attack with their horn, but only with their tongue and knees; for their tongues are furnished with long, sharp spines, so that when they want to do any harm to anyone they first crush him by kneeling upon him and then lacerate him with their tongues” (p. 253).
- Waugh (1984, pp. 147-148), using “a new Italian translation by Maria Bellonci,” described the animal this way: “They have wild elephants and unicorns as big as the elephants, with pelts like buffaloes and feet like elephants. The unicorn has one very large black horn in its forehead, but it does not defend itself with it. The unicorn uses its

spikey tongue and its knees for this purpose, first crushing its quarry by kneeling on it and then lacerating it with its tongue.”

Clearly, these renditions converge to some basic underlying description, but the original specifications – unlike remaining data fragments from contemporary authors like [Walt Whitman](#),¹⁸ for example – are now lost. Yet, these very brief portions of the Polo story insinuate that there must exist many more disparities within this very small subset of all possible editions.¹⁹ There is no doubt vernacular writing can withstand this level of variability – the induced richness and assortment actually might serve as a reward in itself – and it must be remembered that Polo dictated the *Description* to Rusticiano, who then conveyed it into a different language than Polo’s. Rusticiano unquestionably made editorial adjustments among the twists and turns of such an astounding narrative, and *Description*’s prologue, if through no other evidence, announced his own intervention without interfering whatsoever with Polo’s account.²⁰

The opening line of that section commenced with the command that

¹⁸ Henry (2010) tendered another path into Whitman’s world: through the design and typography of *Leaves of Grass* from 1860.

¹⁹ Yule collated an extensive “Bibliography of Marco Polo’s Book” and a “Bibliography of Printed Editions” (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 2, pp. 553-582).

²⁰ Such interventions have continued, sometimes in order to launder old texts of objectionable expressions. Bosman (2011) indicated that new print and digital editions of Mark Twain’s two stories, *The Adventures of Tom Sawyer* and *Adventures of Huckleberry Finn*, would replace the term *nigger* with *slave* and the element *injun* with *Indian*. It was noted that “[t]he news set off a storm of angry online commentary, scolding the publisher for ‘censorship’ and ‘political correctness,’ or simply for the perceived sin of altering the words of a literary icon.” Alan Gribben (2011a, p. 11), the editor of this joint republication, stated that “valiant and judicious defenses of the prevalence of the n-word in Twain’s *Huckleberry Finn*” have occurred. He considered the conversion of such deprecating vocabulary as a way to make the two stories more attractive to readers; the task became “the rescue of these two novels for students, parents, and teachers who have found the works, merely owing to one repugnant racial slur, disturbing to read in our integrated public schools” (Gribben, 2011b). As a result, four instances of *nigger* in *Sawyer* and 219 in the text and index of *Finn* were modified to *slave* (2011a, p. 9); 67

[g]reat princes, emperors, and kings, dukes and marquises, counts, knights, and burgesses and people of all degrees who desire to get knowledge of the various races of mankind and of the diversities of the sundry regions of the world, take this book and cause it to be read to you (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 1, p. 1).

Yule listed the “filiation of chief MSS and editions” in his Appendix G, with a diagram linking various editions of *Description* (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 2, p. 552). That plan separated the Italian models (including Ramusio’s from 1559 and Marsden’s of 1818) from the French ones in a journey culminating with Pauthier’s more refined 1865 interpretation; the latter was employed ultimately as the source for Yule’s own work. All versions, however, were derived from Rusticiano’s original rough French product that Yule had declared was “the most precious of all the MSS. of Polo” (vol. 2, p. 534).²¹ Further, the Appendix of Loseth’s (1970) *Tristan* volume incorporated Rusticiano’s prologue to that romance. Its passage began with “Seigneurs empereurs et princes et ducs et contes et barons et

occurrences of *injun* in *Sawyer*’s character name *Injun Joe*, and another 17 elements from both titles were adapted to *Indian* (p. 14); eight *Sawyer* examples of *half-breed* were converted into *half-blood* (p. 14), and “two archaic references to skin color” were implemented (p. 15). Coverage of the proposed modifications has appeared in the international press (Mark Twain’s work should not be censored, says US poll, 2011).

²¹ The Société de Géographie of Paris republished Rusticiano’s French version in 1824 (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 2, p. 553). Note that sequential renditions fed upon one another: Yule concluded that “the French editions published in the middle of the 16th century were *translations* from Gynæus. Hence they complete this curious and vicious circle of translation: French – Italian – Pipino’s Latin – Portuguese? – Gynæus’s Latin – French!” (vol. 1, p. 96; emphasis original). All together, by the middle of the nineteenth century, Yule was able to identify about eighty manuscripts (vol. 1, p. 116 and vol. 2, pp. 530-551). As a comparison, “it is by hundreds that Mandeville’s manuscripts can be reckoned” (vol. 2, p. 599).

chevaliers...,” portending that Rusticiano had purposely fastened his successful romantic introduction element, deployed in *Tristan*, to the data of Polo’s journey.

From a commercial point of view, Rusticiano’s strategy of writing under the romance format made financial sense, and history has plainly shown that Polo’s book was a huge success, regardless of the source employed.²² In terms of text analysis, however, these varied manipulations would have caused considerable concern for traditional philologists like Karl Lachmann, of whom Cerquiglini said “assumed that... copyists were guilty only of mistakes due to miscomprehension, inadvertence, and fatigue and that these errors represented degradation. *Every copy represented decline*” (1999, p. 48; emphasis added).²³ The controversy of the provenance of these Polo texts was fully underway during Lachmann’s time, with examinations of the Marsden English translation of *Description* in 1818 and of the republication of

²² In his original Preface from 1870, Yule acknowledged that Marsden’s translation had “continued to be the standard edition, and maintain[ed] not only its reputation but its *market value*” (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 1, p. xxi; emphasis added).

²³ A classic example of copy error in *Description* involved the number of male offspring attributed to Kúblái Khan. In chapter 9 of Book II, Polo stated that “[t]he Emperor hath, by those four wives of his, twenty-two male children,” but Yule remarked in a footnote that “[i]t is very probable that *xxii* was an early clerical error in the texts of Polo for *xii*.” A listing, supplying the names of these descendents, supported the contention that there were just a dozen sons from his spouses. Polo’s notation that “[t]he Great Kaan hath also twenty-five other sons from his concubines” went unchallenged (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 1, pp. 359-362; emphasis added). In an instance of a numeric reduction, the date of a battle between the Khan’s troops and those of the King of Burma is reported to be 1272 (vol. 2, p. 98), yet Chinese annals declared the year to be 1277 and Yule stated that “it is probable that the 1272 or *MCCLXXII* of the Texts was a clerical error for *MCCLXXVII*” (vol. 2, p. 104; emphasis added). Even more appropriate to the investigation of errors, Yule cited the report of the DeLagree and Garnier Expedition of 1866-1868 as evidence to locate Polo’s “Province of *Anin*” within Indo-China (vol. 2, pp. 119-122; emphasis added). Various spellings abound in *Description* variants for this location – *Amu*; *Anyüë*; *Aniu*; *Auin*; and *Anyn* – but Yule remarked that between *Anin* and *Aniu*, “the two words are so nearly identical in mediæval writing, and so little likely to be discriminated by scribes who had nothing to guide their discrimination, that one need not hesitate to adopt that which is supported by argument” (p. 120; emphasis added).

Rusticiano's French version six years later. Since then, however, this strict, almost punitive, scrutiny has been attenuated, such that not all differences are now considered as catastrophically incorrect.²⁴ John Trevisa's frequently opinionated interventions, revealed by his inserted notes in conversions produced in the late fourteenth century, were already very different from the Lachmann proposals of almost mechanical error creation.

Greetham (1984, p. 153) made clear that "[t]ranslation, through its emphasis on continuity and tradition rather than individual creativity and idiosyncrasy," was the order of the day during Trevisa's time, even if the latter's intercession was simultaneously creating "fiction" (in more than one sense, it would seem) in the process. Rather, Trevisa's influences were contemporary manifestations of textual understanding that eventually propelled other competent translators to adjust the output of their work during their handling of similar earlier manuscripts. Tanselle, in a step more distant from the nineteenth century ideas pertaining to philology, commented further (1990, pp. 29-30) that any analysis of these texts is *obliged* to interrogate "the role of history in human discourse, and it must therefore assess the historical status of preserved texts – the tenuous relation of the texts of artifacts to verbal communication – if it is to offer a satisfying model of human thinking." Consequently, the examination of old documents – and the responsibilities adhering to such efforts – must motivate such intrusion: "... we have to

²⁴ Even Yule was aware of the problems associated with various recensions. In his Introduction, he stated the reasons for selecting, as the basis for his own English rendition, Pauthier's French text from the array of other possibilities. He remarked that "[a] translation from one of those texts is a translation at first hand; a translation from Ramusio's Italian is, as far as I can judge, the translation of a translated compilation from two or more translations, and therefore, whatever be the merits of its matter, *inevitably carries us far away from the spirit and style of the original narrator*" (*The Travels of Marco Polo: The Complete Yule-Cordier Edition*, 1993, vol. 1, p. 141; emphasis added).

consider making alterations in what has been passed down to us;... *there is no coherent argument for considering inherited texts as inviolable*” (p. 29; emphasis added).

Gabler’s recent assessment of the [Homer Multitext Project](#)²⁵ echoed Tanselle’s thoughts and spoke of the evolving understanding of “the variability and dynamics of texts and of the autonomous vitality of textual traditions; though at the same time, admittedly, we feel challenged and disoriented by the multiplicity of factors assumedly shaping texts and textual traditions as freshly perceived” (2010, p. 2). If Latham’s 1958 version of *Description* may be considered one final time, his decision to employ during his translation “the addition... of any significant matter furnished by less reliable sources” may be an echo of the fundamental tradition of Rusticiano himself: any such editorial behavior was purposely enacted in the quest for a better story. Reaching this goal, however, may have violated the rigid prerequisites of surgical precision, demanded by the original philologists, during the act of translation and/or copying.

Alf layla wa layla – The Thousand and One Nights – as an analogous example

Description was not alone among popular literature to exhibit such distortions and a single instance will suffice to demonstrate the pervasiveness of variants across such prose. The series of tales commonly known in the West as the *Arabian Nights*, or (more closely to its Arabic title, *Alf layla wa layla*) *The Thousand and One Nights*, offered a parallel to *Description*.²⁶ The

²⁵ The endeavor’s Web site proposed that “The Homer Multitext project, the first of its kind in Homeric studies, seeks to present the textual transmission of the *Iliad* and *Odyssey* in a historical framework. Such a framework is needed to account for the full reality of a complex medium of oral performance that underwent many changes over a long period of time. These changes, as reflected in the many texts of Homer, need to be understood in their many different historical contexts. The Homer Multitext provides ways to view these contexts both synchronically and diachronically.”

²⁶ One viable alternative candidate for this discussion might be the works of Shakespeare. Charlton Hinman’s classic examination of these writings, at almost the atomic level, was an exercise in the study of typesetting and proofreading that instituted specific line numbers – in

Introduction to *The Arabian Nights Encyclopedia* (Marzolph and van Leeuwen, 2004, vol. 1, p. xxiii) declared that “[n]o other work of fiction of non-Western origin has had a greater impact on Western culture than the *Arabian Nights*.”²⁷ In total, more than 500 stories were created, based loosely on a copious array of original sources. A string of translations from the Arabic began in 1704 with a work in French by Antoine Galland (Forster, 1839, p. v) that promptly assured a publishing path similar to that of *Description*.²⁸ This rendition was followed by Edward Lane’s 1839 depiction in English (that yielded its alternative title, derived from Lane’s designation *Arabian Nights’ Enchantments*) and then on to Richard Burton’s product in the late 1880s. The former is known now for its morality, while the latter exhibited “a particular obsession with various kinds of sexual practices” (Marzolph and van Leeuwen, 2004, vol. 1, p. xxv).

Much has been written about these stories – as documented by the robust contents of *The Arabian Nights Encyclopedia* – and particularly about the volumes’ illustrations that have become such an important component of this title’s existence. Kobayashi (2006) and Sironval (2006) have created two such discussions of these images, and the variety of graphics themselves

place of act-scene data – for the texts. See his *The First Folio of Shakespeare* (1968, pp. xxii-xxiv), wherein the best possible pages from an array of sources were assembled into an “ideal” facsimile. However, unlike Shakespeare’s material, both *Description* and *Arabian Nights* traversed the same multiple-translation path, beginning in the French, before becoming available in English at a much later date.

²⁷ It is important to recall that Mack (2008, p. 54; emphasis original) decided that, following Galland’s publication of these tales, “[t]he phenomenal success of the *Nights* throughout Europe was all the more noteworthy for the fact that, however well known its stories may have been among their original non-European audiences and progenitors as a body of oral tales – tales, moreover, specifically of that sort that were told in the local marketplace, or recited from memory by a parent or grandparent within the comforting glow of the family hearth – the *Nights* had never been held in particularly high regard within the Arab world as a work of any genuine literary and artistic merit or accomplishment.”

²⁸ *The Encyclopedia of Islam* (Gibb, 1960, pp. 358-364) listed the derivatives that followed Galland’s *Les Mille et une Nuit*. Even the commonly understood original title of *Alf layla wa layla* evolved over the centuries; *One Thousand Tales* was one such example from the tenth century (Esposito, 2009, p. 164).

may be compared by consulting Forster's 1866 edition – i.e., one “embellished with six hundred engravings” – and that of Payne (1901). Burton, famous for his military service and explorations, thought of himself as an expert on sexual behavior and, besides *The Arabian Nights*, made available the *Kama Sutra* through a shell organization named the Kamashastra Society that was designed to market these and other erotic materials by subscription only so as to circumvent the parameters of the 1857 British *Obscene Publications Act* (Farwell, 1988, p. 379).²⁹

Nevertheless, the issue of variants pervades the publication history of this work: Farwell has noted that

[s]ince *The Arabian Nights* is actually a collection of anonymous folk tales, there does not exist a single complete written source. In compiling his version, Burton consulted no less than twenty-one other translations and manuscripts to make his ten volume work, and still more manuscripts to produce his six-volume supplement (1988, p. 362).³⁰

Burton had announced in his foreword that “the object of this version is to show what ‘The Thousand Nights and a Night’ really is. Not... by straining *verbum redder verbo*, but by writing as the Arab would have written in English” (1905, p. xiii). Alternatively, Edward Lane's son wrote in 1882 that his father's “success is to be found partly in the instinctive sympathy for the spirit of the East, which enabled him faithfully to reproduce the characteristic tone of the original, and partly in the rich store of illustrations of oriental life and thought contained in his Notes” (1912, p. v). Such flexibility in the reproduction of *The Arabian Nights* – textually

²⁹ See Grant (2005, p. 509) for his remarks on the *Kama Sutra* as a “text [that] emerges at the intersection of discourses on the Orient and on sexuality, and that consequently... both provides a powerful position from which to challenge English sexual morality, and draws upon and contributes to the depiction of India as an essentially different culture.”

³⁰ Burton's suite continued to make news, even in the twenty-first century; see Sommer (2010).

faithful or not, as implicitly constrained or released by the phrases “as the Arab would have written” or “to reproduce the characteristic tone” – certainly led to materials that differed to a substantial degree.

In that collection, *The Three Apples* – which was a historically accurate tale when describing Jaafar, the Vizier character³¹ – plumbed assumed infidelity and subsequent murder, in parallel to the overall frame basis of *The Arabian Nights* itself. *The Three Apples* is thus one of the oldest components of *The Arabian Nights* (Marzolph and van Leeuwen, 2004, vol. 1, pp. 414-415) and Allen (1984, p. 52) identified it as “a quintessential murder mystery.” The following two passages from its beginning reveal the textual elasticity – as well as the liberties – taken during the initial publication by Lane and then later by Burton:

- “One night, after the adventure above described, the Khaleefeh Hároon Er-Rasheed said to Jaafar, his Wezeer, We will go down tonight into the city, and enquire respecting the affairs of those who are present in authority, and him against whom any shall complain we will displace. Jaafar replied, I hear and obey....” (Lane, 1912, p. 222).
- “They relate, O King of the age and lord of the time and of these days, that the Caliph Harun al-Rashid summoned his Wazir Ja’afar one night and said to him, ‘I desire to go down to the city and question the common folk concerning the conduct of those charged with its governance, and those of whom they complain we will depose from office and

³¹ Pinault (1992, pp. 82-99) addressed the biographies of Caliph Harun al-Rashid and Jaafar, his Vizier, as portrayed in chronicles of the times, and of their roles in *The Three Apples*. Interpretations of these two characters included stating that the Vizier “was clever and gifted of speech” (p. 83), and that the Caliph – as demonstrated more than once in *The Three Apples* story – again “appears capricious, alternating generosity with violence” (p. 99). The difference between the real world and that of literary fantasy is that Harun ultimately did instigate the death of Jaafar, whereas the Vizier character in *The Three Apples* nimbly circumvented such an outcome, much as Scheherazade did throughout *The Arabian Nights* by utilizing her tales.

those whom they commend we will promote.’ Quoth Ja’afar, ‘Hearkening and obedience!’” (Burton, 1905, p. 186).

Knipp (1974, pp. 52-53) presented a similar comparative exhibit, using a segment from the very first pages of the Introduction to *The Arabian Nights*. He took the following texts from the volumes created by Lane, Payne, and Burton:

- “Lane: At midnight, however, he remembered that he had left in his palace an article which he should have brought with him; and having returned to the palace to fetch it, he there beheld his wife sleeping in his bed, and attended by a male negro slave, who had fallen asleep by her side. On beholding this scene, the world became black before his eyes....”
- “Payne: In the middle of the night, it chanced that he bethought him of somewhat he had forgotten in his palace; so he returned thither privily and entered his apartments, where he found his wife asleep in his own bed, in the arms of one of his black slaves. When he saw this, the world grew black in his sight....”
- “Burton: But when the night was half spent he bethought him that he had forgotten in his palace somewhat which he should have brought with him, so he returned privily and entered his apartments, where he found the Queen, his wife, asleep on his own carpet-bed, embracing with both arms a black cook of loathsome aspect and foul with kitchen grease and grime. When he saw this the world waxed black before his sight....”

Additionally, Knipp included the same sections from the French texts of Galland, Mardrus, and Khawan; from his own translation into English from the Arabic of the Second Calcutta Edition;³² and from the Arabic segment from that original material itself, in support of his conclusion that

Galland's story-telling skill is not only unusual in a scholar but perhaps also represents a deeper affinity with the Arabic tales than other redactors have shown, the kind of affinity without which any translation is likely to be cold and mechanical, no matter how well-meaning the translator may be. The reader who goes back to Antoine Galland's *Les Mille et une Nuit* is truly returning to the source. It is difficult to find a more happy, creative, and successful translation in the West (p. 54).

These observations would postulate that any attempt to compare these two *Apples* variants or any of the Introduction fragments would face the possibility of considerable side-by-side textual disparities: Lane's *he thought* vs. Payne's and Burton's *he bethought him*, or Lane's *attended by a male negro slave* vs. Burton's *embracing with both arms a black cook of loathsome aspect and foul with kitchen grease and grime* might be representative of such divergence. Note as well that the similarity between textual pieces of the Payne and the Burton passages would substantiate the proposition that the latter consulted the former to a substantial extent: Payne's *so he returned thither privily and entered his apartments* is nearly replicated in Burton's *so he returned privily and entered his apartments*. Instead, Lane used *palace* instead of *apartments* as the architectural term for this scene. In examining texts, such hints – manifested too by shared *absences* of wording, relative to other renditions – can steer an understanding of textual evolution. Knipp (1974, pp. 44-45; emphasis added) uninhibitedly declared that Burton's explanatory introduction to his *Arabian Nights* volumes

³² See Marzolph and van Leeuwen (2004, vol. 2, p. 545) for a note on this specific edition.

was laying the groundwork of a deception. The “long years of official banishment,” as he self-pityingly calls them, spent in such “dull and commonplace and ‘respectable’ surroundings” as South America and the deserts of West Africa, were never spent laboring on a translation of the Arabian Nights. Burton did not work on this text for twenty-five years, as his mendacious dedication to Steinhauser implies, and he did not graciously hold back its publication for four years merely to give John Payne “precedence and possession of the field,” as his Foreword rather disingenuously asserts. *He waited in order to crib.* He based his translation, which is therefore hardly a translation at all, on John Payne’s version (1882-84); he did it in only two years, toward the end copying Payne verbatim for whole pages at a stretch; he did it to make money, and he sold it as he had planned in advance to the 1,500 subscribers left over from Payne’s limited edition of 500.

While such data may reduce the literary status of Burton, it at least aids in determining the provenance of elements in this long chain of publishing.

Ultimately, though, all these aspects may be perceived as describing their respective similar scenes, much as the variability of the rhinoceros images in Polo’s *Description* may too be understood, even if these passages were not offered in a textually identical manner. It is abundantly evident that the flexibility of prose permits this, but within limits (including, on occasion, before the courts), and so there are useful or interesting editions of literary fabric available alongside less entertaining ones that may be collectively crafted into an overall understanding of the prose. Burton’s addition of “stronger words” to spice the text of *Arabian Nights* (Knipp, 1974, p. 50) was within these bounds – especially since the material was privately published by Burton and, it would seem, from its commercial success. But Knipp declared that

English readers for the most part erroneously think that Sir Richard Burton is the pre-eminent translator of the Arabian Nights, whereas the chief distinction his version can claim is to be the most recent lengthy one in English, and, despite its undeniable interest as an element in the Burton legend, the most nearly unreadable one in our language (pp. 45-46).

Knipp considered Galland's work to be a "rare thing among scholars, an entertaining, readable, gracefully written book which at the same time only a man of very special learning could have done" (p. 48). In either case and in assessing virtually any translation of the *Arabian Nights*, the confluence of multiple languages, times, and skills has returned a rich array of variant texts.

The variant within government documents

There are some published materials, resting between the bounds set to approximate Cerquiglini's "immutable word" reservation for ecclesiastical copy and this universe of popular writing populated with such gems as Polo's *Description* or *Arabian Nights*, which might actually relish, if possible, some textual intervention. The types of documents that constitute this middle ground include published laws, ordinances, and contracts.

Since the time of the Pharaohs, declarations or covenants have been pronounced to guide societies, often through acts of diplomacy with neighboring groups. The *Treaty of Alliance Between Hattušili, King of the Hittites, and the Pharaoh Ramesses II of Egypt*, consummated in the thirteenth century BC, is considered the first valid treaty, but it was purposely written as a personal directive of the King and of the Pharaoh. Because of this approach, two dissimilar texts were created, reflecting these authorships and, thus, the two visions of individual, implied power (Langdon and Gardiner, 1920, pp. 199-200). Ultimately, this disparate format model was found wanting: subsequent protocols for such exchanged instruments were developed to assure

identical texts³³ and to underwrite that their substances would form a single “impersonal and objective document” that would be “precisely identical” (p. 199).

The creation of corresponding domestic, rather than international, expressions for order has been demonstrated in the development of constitutions that serve as fundamental statements of a group’s beliefs and goals. The words of the Constitution of the United States (2004) – the first such document of the modern era – have changed over time, in part under the pressure of an ever-growing diverse population, and it has been considered internationally as a valuable model for a national pronouncement.³⁴ Yet this pivotal publication in American history, even though it might be expected to afford Cerquiglini’s proposed almost Bible-like accuracy, has not been reliably reproduced. A number of misspellings has been known for years – the terms *labour* may be considered as one of many justifiable candidates. Nick Levinson (personal communication, 1 May 2010) conducted an extensive examination of the instrument through a series of direct comparisons among the National Archives’ high-resolution page images³⁵ of this document and sixteen subsequent renderings. The latter texts (and the number of discrepancies found relative to the National Archives publication) consisted of the *United States Code* (N = 36); various

³³ Aust (2005, p. 61) described the authentication of such transactions.

³⁴ There are some substantial replicas – the *Constitution of the Republic of India, 1950* consists of 395 Articles and twelve supporting Schedules (see Sharma [1950], and especially Ramaswamy [1956] for the development of this instrument). Wolfrum and Grote (2006, p. 5) acknowledged that this document “is often referred to as the world’s lengthiest, most complex Constitution,” necessarily formed upon the conviction that “a strong measure of centralism was absolutely vital if the goal of achieving and preserving national unity in a country as diverse as India was to be attained.” Hammons (1999, p. 845) analyzed 145 state constitutions written since 1776 and concluded that “longer and more particularistic constitutions last longer than short, framework constitutions. The data reveal that, rather than reduce durability, the greater the percentage of particularistic provisions in a constitution, the longer the constitution lasts.” This observation was in contrast to the traditional expectation that a briefer instrument is better, as typified by the succinct yet very resilient *United States Constitution* itself.

³⁵ These materials are accessible through the [Charters of Freedom](#) Web site.

renditions of the *United States Code Annotated* (total N = 118); the *United States Code Service* versions (total N = 275); the *Statutes at Large* (N = 92); the *United States Code Congressional and Administrative News* (N = 6); the *Federal Register* (N = 2); the Senate and the House of Representatives pamphlets (total N = 116); *Black's Law Dictionary* (N = 54); two forms created by the Library of Congress (total N = 235); and the 1987 *Bicentennial Keepsake Edition* (N = 82). Of these 1,016 core errors, almost a quarter was due to the 173 examples of word or incursion difficulties, 48 instances of misspelling, and 27 cases of word absence. If nothing else, such results reinforce Karl Lachmann's hypothesis that copyists are error-prone and that this shortfall in turn leads to degraded replication (Cerquiglini, 1999, p. 48).

A brief history of the Indian Territory

In the penultimate section of An act erecting Louisiana into two territories, and providing for the temporary government thereof (2 *Stat.* 283 [1804]), the United States government began to formulate Indian removal from areas east of the Mississippi to sites within the domain acquired from France in 1803.³⁶ The *Treaty Between the United States of America and the Republic of France* (8 *Stat.* 200 [1803]), and in particular the two supplementary transactions identically named the *Convention between the United States of America and the French Republic* (8 *Stat.* 206 and 208 [1803], respectively), specified this transfer.³⁷ These lands had been held by Spain prior to its *Treaty of San Ildefonso* of 1800 with France.³⁸ Most importantly for American

³⁶ See Cohen (1942a, pp. 53-62) for a concise summary of these federal actions.

³⁷ See footnote a in the *Treaty of Alliance Between the United States of America and His Most Christian Majesty* (8 *Stat.* 6) for a compilation of treaties and conventions between the United States and France during the years 1778 through 1831. The *Treaty Between the United States of America and the Republic of France* and the two Conventions are listed as items 6 through 8.

³⁸ The full title of this latter instrument was the *Preliminary and Secret Treaty between the French Republic and His Catholic Majesty the King of Spain, Concerning the Aggrandizement of*

Indians anywhere within that domain, Article 6 of the *Treaty Between the United States of America and the Republic of France* declared that “[t]he United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and the nations of Indians, until, by mutual consent by the United States and the said tribes or nations, other suitable articles shall have been agreed upon” (8 *Stat.* 200, 202 [1803]).

This legislation was the mechanism by which the federal government specified the parameters for executive, legislative, and judicial departments to administer and lead the incorporation of this immense area. Yet in the history of North America, the relevant concepts of *Indian country* and *Indian territory* have evaded both clear definition and unambiguous policy (see Williams, 1943, with particular reference to the Indian Territory and Oklahoma). As early as the *Royal Proclamation of 1763* (*The Annual Register*, 1765, p. 211), King George III declared that:

... we do therefore, with the advice of our Privy Council, declare it to be our royal will and pleasure, that no Governor or commander in chief, in any of our colonies of Quebec, East Florida, or West Florida, do presume, upon any pretense whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as described in their commissions; as also that no Governor or commander in chief of our colonies or plantations in America do presume for the present, and until our further pleasure be known, to grant warrants of survey or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from

His Royal Highness the Infant Duke of Parma in Italy and the Retrocession of Louisiana (1969). It is available in French in *The Consolidated Treaty Series* (1969, pp. 375-378).

the west or northwest; or upon any lands whatever, which, not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them.³⁹

Eight months earlier, the *Treaty of Paris* (1969; [Treaty of Paris, 1763](#)) had resolved the French and Indian War, which thereby transferred vast amounts of land to both Britain and Spain. In this single stroke, the disputed lands west of the Appalachian Mountains (absent New Orleans) were turned into British Indian territory, extending all the way to the Mississippi River, but there was not a single word in the instrument about the peoples who lived in this province.⁴⁰ Calloway provided a pair of contemporary maps to illustrate this transition, with Spain acquiring land west of the Mississippi to compensate for their loss of Florida in the east, and he described the area as “an empire greater than that of imperial Rome” that immediately fostered tremendous management and financial difficulties (2006, pp. xviii-xix and 4, respectively). As one way to reduce expenditures, the *Royal Proclamation of 1763* was designed to separate the colonists from the tribes, so that policing costs, among other expenses, could be kept low. This situation was

³⁹ It is imperative, during any investigation involving the *Royal Proclamation of 1763*, that consideration is spent on *The Annual Register* text and not upon the version found in, for example, the *Documents of American History* editions (see Commager and Cantor, 1988, pp. 47-50). The latter, even with the use of ellipses, fails to deliver the true content or complexity. As one such instance, the King through this transaction made land grants to military personnel for service in the French and Indian War: “To every person having the rank of a field officer, 5000 acres. To every captain, 3000 acres. To every subaltern or staff officer, 2000 acres. To every non-commissioned officer, 200 acres. To every private man 50 acres” (*The Annual Register*, p. 211). These conveyances were not provided by the *Proclamation* passage found in *Documents of American History*.

⁴⁰ This sudden deluge of land caused difficulties. As one example, the management of trade with the tribes had been left by the British government to the separate colonies, but following the *Royal Proclamation of 1763*, the British believed that “the essential thing was to protect the Indians from the traders, as otherwise friendly relations could not be established.” An ensuing extensive trading post system was proposed, yet the plan “had to be abandoned primarily because of the expense and of the virtual impossibility of creating a revenue in America” (Beer, 1907, pp. 257-260). See Henderson (1994, pp. 248-249) for a description of British – and then later, of Canadian – treaty making with the tribes of Canada between 1693 and 1930.

complicated by the strong relationships developed by the western tribes with the French and/or with the Spanish that provided relatively little exposure to the expectations of the British. One specific example was the reluctance of the British to provide gifts to the tribes: Calloway remarked that the “Indians expected the British to lubricate their diplomacy” with such offerings, as the French had done in the past (p. 67),⁴¹ but sending troops instead further exacerbated Indian perceptions of their expected submission – willingly or otherwise – to the British. Sir William Johnson, as British Indian Superintendent for the Northern Department, observed in a letter to the British Board of Trade that “the Indians in the several countries [are not] at all pleased at our occupying them, which they look upon as the first steps to enslave them and invade their properties” (Parkman, 1933, p. 342). The loss of such diplomatic provisions destabilized the tribes, and this situation in turn jeopardized the safety of the colonists and others.⁴²

The British left the west in 1772, stopped patrolling the frontier, ceased separating the land-hungry colonists from the tribes, and relocated to the major cities along the Atlantic coast (Sosin, 1961, pp. 211-238). The land speculators – including George Washington and others – promptly in turn invaded the west (Calloway, 2006, pp. 60-65). Finally, 1783 is remembered for

⁴¹ Jacobs (1950) has much more on this form of contest, including specific expectations of the Ottawas, Hurons, and Chippewas “who had long been accustomed to French finery for their women” (p. 161). Sir William Johnson had seen that “the French had found it a great deal cheaper to control the Indians by bestowing lavish gifts upon them than to maintain a standing army which would hold them in check by force” (p. 184). Ammunition was a particularly critical asset that the British were very reluctant to supply to the tribes. The difficulties induced by this absence affected subsistence hunting and ultimately served as an important stimulus for Pontiac’s War (Peckham, 1994, p. 101).

⁴² Sir William Johnson was installed as the British Indian Superintendent for the Northern Department (and John Stuart in the Southern Department) by the 1764 “Plan for the Future Management of Indian Affairs” (O’Callaghan, 1856, pp. 637-641). A two-part table at the end of that plan detailed a “List of Indian tribes in the Northern District of North America” and a similar one for the Southern District. The latter, i.e., for the area administered by Stuart, included the “Cherokees,” “Creeks,” “Chickasaws,” and “Chactaws.”

the final transition that led to the birth of the United States. The first Article of the [*Paris Peace Treaty of 1783*](#) “acknowledge[d] the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free sovereign and independent states” (*Journals of the Continental Congress*, 1928, p. 24). Calloway observed that “[n]either the Peace of 1763 nor the Peace of 1783 made any mention of the Indian peoples who inhabited the territories being transferred. In both cases, Indian interests were sacrificed to imperial agendas” (2006, p. 169). The United States, on the other hand, created the [*Northwest Ordinance*](#) in 1787 that pronounced in Article 3 that

[t]he utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them (Documents illustrative of the formation of the union of the American States, 1926, p. 52).

During the subsequent century, Indian concerns were again relinquished.⁴³

⁴³ Miller (2009, pp. 90-91) spoke of the effect within Canada of the *Royal Proclamation of 1763* by stating that

[t]he first phase of Upper Canada treaty-making drew to a close by the end of the first decade of the nineteenth century, a generation after the influx of Loyalists [from the United States] and more than forty years since promulgation of the Royal Proclamation of 1763. In those four decades, a great deal had been accomplished, and many elements of what would become the Canadian treaty-making tradition had been put in place and that up to this time,

a major factor underlying the relatively harmonious relations in Upper Canada was the continuing numerical strength and utility of First Nations [i.e., of the tribes of Canada].

The great expanse west of the Mississippi, resulting from the Louisiana Purchase, would be traversed forty years later by Lewis and Clark as a critical, introductory exploration of an unknown portion of the new, broader United States. Such a crossing included the prospect of interactions with poorly known, or even unheard of, indigenous peoples. In his letter of instructions to Captain Meriwether Lewis in June 1803, President Thomas Jefferson reiterated that Lewis should “[i]n all [his] intercourse with the natives, treat them in the most friendly & conciliatory manner which their own conduct will admit” (Jackson, 1978, p. 64), very much adhering to the parameters of the *Treaty Between the United States of America and the Republic of France*.

The British, though, had already started this diplomatic work. Schwartz (2000, p. 91) illustrated his chapter entitled “Britain Gains Control of the Continent” with the 1755 map created by John Mitchell (1711-1768). The title of this chart – A Map of the British and French Dominions in North America with the Roads, Distances, Limits, and Extent of Settlements – publicized its intended use: it had been commissioned by the British government to serve as a definition of British claims within North America prior to the French and Indian War.⁴⁴ Prior to the onset of this conflict, a series of British treaties had been consummated with the tribes,⁴⁵ but as Calloway (2006, p. 49) made abundantly clear, “[d]espite their council fire rhetoric of kinship and affection for their European ‘fathers’ and ‘brothers,’ Indians fought not out of love for the

In the earliest years of settlement, indigenous people were often useful to the struggling newcomers as sources of information, advice, food, and sometimes labour in making farms.

⁴⁴ Berkeley and Berkeley (1974, pp. 262-267) identified other situations in which copies of Mitchell’s map were applied to boundary questions, including the final determination in the 1930s of the line between the states of New Jersey and Delaware (see *New Jersey v. Delaware*, 1934 and 1935).

⁴⁵ See these early instruments at the [Early recognized treaties with American Indian nations](#) Web site.

French or the British but in a consistent effort to keep their country independent of either.” These latter transactions were fabricated through a different style and format than usually found in international treaties: they were more aligned with creating enduring friendships, such as the Covenant Chain developed between the British and the Iroquois (Jennings, 1971; Tooker, 1978). The legal foundation for all these activities, though, was endlessly clouded by different perceptions of what could – or could not – be done with lands controlled by the Indians. The necessity for British military to move from the western frontier created at the end of the French and Indian War, in order to control rising problems with the colonists in the east, freed up exploration of and speculative endeavors surrounding tribal lands. The King of England believed that he had ultimate prerogative control of these domains; the colonies such as Virginia with their special Crown charters assumed that they had almost unlimited western access to much of these areas; and the remainder of those living along the Atlantic (and hemmed in against the Appalachian Mountains by the restrictive parameters of the *Royal Proclamation of 1763*) held that the tribes, if they so wished, should be able to sell their lands to willing buyers. Williams (1990, pp. 287-288; emphasis original) considered that

[w]hat directly concerned whites was the Indians’ ability or inability to pass a vested title to land without the positive sanction of a European-derived sovereign entity. Only when it became apparent to Indian tribes that their own survival required a less accommodating stance towards whites’ invitations to enter the market economy for land would American colonizing legal theory directly confront the issue of rights and status of Indians in lands they did *not* desire to surrender to the whites. And that particular confrontation would not occur with notable inconveniencing frequency until after the Revolution and the adoption of a policy by the United States of simply removing the tribes by military force

from their lands to make way for white settlement. Only then would American legal theory directly confront the question of whether Indians had natural rights in lands that they refused to sell to whites, and the answer was that they did not.⁴⁶

Formal, more contract-like treaties with the Indians began after the American Revolution, when the new federal government systematically began to address its relationships with the tribes. Evolving pressures – and the results of the War of 1812 – helped remold the design and the contents of each successive wave of negotiations. Cohen (1942a, p. 5) remarked that “Indian country at any particular time must be viewed with reference to the existing body of federal and tribal law,” and throughout all these interactions – and even beyond the termination of treaty making in 1871 (see 16 *Stat.* 544, 566) – the tribes were *active* participants in any of these developments.

The history of a formalized Indian Territory reached back then to the thoughts of George Washington in 1783 of a demarcation line between Indians and the settlers (Berkhofer, 1972, pp.

⁴⁶ The absence of Indian natural rights in the lands was subsequently demonstrated in a series of United States Supreme Court proceedings known collectively as the Cherokee Cases. Burke (1969, pp. 530-531) spoke of Chief Justice John Marshall’s influence on these two events – *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832) – and on the effect of the previous decision in *Johnson v. McIntosh* (1823) that claimed that the Doctrine of Discovery placed title for tribal holdings in the United States. He also concluded that

[t]he key to understanding the Cherokee cases is to realize that the Court and the Constitution, as the Justices interpreted it, always came first. In *Cherokee Nation v. Georgia*, Chief Justice Marshall resisted the political and moral pleas of the Cherokee because he believed that the Constitution would not allow the Court to accept jurisdiction and that “[t]he Marshall Court was moved by politics and morality in the Cherokee cases but it moved no farther than the law allowed.” Calloway (2008, pp. 267-270) described that this was the first instance of the tribes – and specifically of the Cherokee – appearing before the United States Supreme Court, even though they had previously used British and colonial venues to address their needs. The crux of these cases, however, was that “Marshall’s opinion in *Cherokee Nation* and *Worcester* thus defined the status of Indian tribes in the United States. *Cherokee Nation* defines the tribes’ relationship to the federal government, *Worcester* their relationship to the states.” See Norgren (2004) for more on these two critical trials.

237-238), and later to the contemplation of pure removal that surfaced at the beginning of the nineteenth century. At that latter moment in American history, there was no greater stimulus to a redefinition of Indian country than the removal of the Five Civilized Tribes, i.e., of the Cherokee, Chickasaw, Choctaw, Creek, and Seminole, to an area within the newly acquired District of Louisiana.⁴⁷ The decision to relocate these groups to a site west of the Mississippi River took a markedly concerted effort, but there had been earlier similar expedited excursions, especially with tribes of the Northeast. Dowd (2004, pp. 146-151), for example, made particular note of the repositioning of the Stockbridge Mahicans, the Brothertown Lenapes, the Susquehanna Valley Delawares, and the Shawnees from Massachusetts, New Jersey, and Pennsylvania in his discussion of the removal of the Five Civilized Tribes to the Indian Territory.⁴⁸ It must also be

⁴⁷ Reports of the affairs of these tribes are numerous, beginning in particular with James Adair's 1775 *History of the American Indians* (Williams, 1930). Williams was aware (p. v) that this tome had "always been regarded and treated by ethnologists and historians as reliable authority on the Southern Indians, as well as on Southern history in a period of no little obscurity." Adair wrote tribe-specific descriptions for four of the Five Civilized Tribes: An account of the Cheerake nation, &c. (pp. 237-273); Account of the Muskohge nation, &c. (pp. 274-301); Account of the Choktah nation, &c. (pp. 302-376); and Account of the Chikkasah nation (pp. 377-402). The Southeast volume of the *Handbook of North American Indians* (Sturtevant and Fogelson, 2004) is especially useful for information regarding all five entities for periods both before and after removal. Among other aspects, the geographical area along the coast of the Gulf of Mexico was crammed with smaller tribes, now lost in history. See Goddard, Galloway, Jeter, Waselkov, and Worth (2004) in the *Handbook* for more on these tiny entities, and for directives within the same tome to materials on other small groups. Galloway (1994) illuminated the British negotiations with the Choctaw, following the *Royal Proclamation of 1763*, which may be considered as representative of such activities involving the Five Civilized Tribes during this period of history. Finally, John Wesley Powell placed the Cherokee in the Iroquoian linguistic family (1891, pp. 76-81) and the other four within the Muskogean one (pp. 94-95) in his famous publication entitled *Indian linguistic families of America north of Mexico*; the latter family is now spelled as Muskogean (Goddard, 1996, p. 292).

⁴⁸ Haake (2008) additionally discussed the Delaware, who had the distinction of creating the first recognized treaty with the United States, the [*Treaty with the Delawares, 1778*](#) (Kappler, 1904b, pp. 3-5), and who also came to rest in the Indian Territory with the Five Civilized Tribes as the result of the [*Treaty with the Delawares, 1866*](#) (pp. 937-942). Goddard (1978) described the history of this collective of linguistically and culturally similar bands. The three maps of Fig. 5

recalled that removal was an old political strategy in North America. The French population of Acadia, in Nova Scotia, faced unceasing turbulence as Britain and France competed for control of North America. With the *Treaty of Paris*, French Catholics in Canada were to be re-established in Louisiana, but prior to that, Acadians were shuffled around throughout the British colonies or sent to England; they were unwelcome everywhere. However, the grace period stipulated in the *Treaty of Paris* was a limited one, just as it would be in the forthcoming [Treaty with the Choctaw, 1830](#) (Kappler, 1904b, pp. 310-319) when involuntary American Indian removal began. Article 4 of *Paris* stated that

[h]is Britannick Majesty farther agrees, that the French inhabitants, or others who had been subjects of the Most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to the subjects of his Britannick Majesty, and bring away their effects as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts or of criminal prosecutions: The term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratification of the present treaty (1969, pp. 324-325; [Treaty of Paris, 1763](#)).

The group was portrayed in an 1803 United States federal document from President Thomas Jefferson, delivered to furnish “a digest of the information [he had] received relative to Louisiana, which may be useful to the Legislature in providing for the government of the country” (Description of Louisiana, 1834, p. 344). The section devoted to the population at that time began with the statement “[t]he inhabitants of Louisiana are chiefly the descendents of the

(p. 222) show the group’s relocation areas in today’s Indiana, Kansas, Missouri, Oklahoma, and Wisconsin.

French and Canadians,” and declared – more specifically for the Arcadians – that they had been “banished from Nova Scotia by the British” (pp. 347-348). Calloway (2006, p. 161) concluded that these “exiles suffered hostility, social ostracism, economic deprivation, and appalling mortality rates,” circumstances echoed in later remarks made regarding the lives of American Indians.

Following the Louisiana Purchase, treaty activity increased with these five Southeastern Indian groups. Foreman (1932, p. 19) stated that almost two dozen such transactions transpired. In parallel, any account of the area that became the State of Oklahoma in the twentieth century exposed the stark difficulty of the task of developing this vast region. Morris, Goins, and McReynolds, in their *Historical Atlas of Oklahoma*, assembled a corresponding series of more than eighty maps to demonstrate graphically the “constant process of exploration and discovery, the development of frontier posts and forts, the removal of peoples and the formation of nations, the settlement of communities, the organization of territories, and finally the formation of the state with its increasing importance within the nation” (1986, p. v). The maps unveil the underpinnings of this truly remarkable portion of America, but the post-Purchase journey during the nineteenth century became a punishing ordeal for those tribes compelled to transfer – and then to live – there.

The Purchase was itself a critical variable for the redistribution mechanics applied to Indian tribes, and in more than one way. The language in Article 9 of the 1814 *Treaty of Peace and Amity Between His Britannic Majesty and the United States of America* at the termination of the War of 1812 was significant because it paved the way to negotiations later expressed through those new treaties that Foreman had identified (8 *Stat.* 218, 222):

The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratification; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities. Provided always that such tribes or nations shall agree to desist from all hostilities against the United States of America, their citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly. And his Britannic Majesty engages, on his part, to put an end immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom he may be at war at the time of such ratification, and forthwith to restore to such tribes or nations respectively all the possessions, rights, and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities. Provided always that such tribes or nations shall agree to desist from all hostilities against His Britannic Majesty, and his subjects, upon ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

The prototypic [*Treaty with the Cherokee, 1817*](#) (Kappler, 1904b, pp. 140-144) represented these new instruments, and it initiated a long series of transactions across almost three decades that systematically exchanged land in the east for property farther west. Articles 1 and 2 spoke of the tribe's voluntary land cession, and Article 5 delivered the federal promise to provide an equivalent acreage in exchange. However, it soon became quite apparent that, as tribal

resistance rose against such removal processes, their voluntary compliance with the program diminished and severely restricted the possibility of future progress.

In his 1824 annual message, President James Monroe spoke of the need for the creation of a special area “[b]etween the limits of our present States and Territories and the Rocky Mountains and Mexico” that would conform to such a reserved enclave. Monroe understood well and noted that with the tribes, “[d]ifficulties of the most serious character present themselves to the attainment of this very desirable result on the territory on which they now reside. To remove them from it by force, even with a view to their own security and happiness, would be revolting to humanity and utterly unjustifiable” (Message from the President of the United States, 1824, p. 16). Yet even with this concern, political pressures from the southern states and increasing tribal reluctance to participate voluntarily in such handovers spawned the *Indian Removal Act of 1830*. This legislation was designed “to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal *west of the river Mississippi*” (4 Stat. 411; emphasis added). In this process, a true Indian Territory was finally created and *forced* repositioning became the policy.⁴⁹

⁴⁹ This was only the onset of a very difficult and complicated journey over the next three-quarters of a century. As Grant Foreman announced in his important volume, *A History of Oklahoma* (1942, p. 41),

[t]here was no phase of Oklahoma history of such baffling and continuous concern as the necessity and conception of government for the country; and no problem rendered so difficult of solution by the many complexities inhering in the vague and indefinable thing called “Indian Territory,” as the erection of a suitable government.

As a specimen of the inherent convolution of these activities at the very end of the nineteenth century, the [Atoka Agreement](#) outlined the process of allotment in severalty for the Choctaw and Chickasaw tribes in the Indian Territory. These proceedings were then incorporated into the so-called Curtis Act (see §29; An act for the protection of the people of the Indian Territory, and for other purposes, 1898) that abolished tribal courts, instituted tribal rolls, and applied allotment to the holdings of the Five Civilized Tribes throughout the Indian Territory. Yet, even at that late stage in the mismanagement of the Territory’s future, the Act sustained Congress’s “belief that

A few months after the *Removal Act*, the Choctaw signed the first such more severe transaction with the new proviso of a specified exit timeline (the [Treaty with the Choctaw, 1830](#); Kappler, 1904b, pp. 310-319). Instantly, the days of voluntary submission were over, as reflected in Article 3 of *Choctaw* that specified that full departure schedule: "... and will so arrange their removal, that as many as possible of their people not exceeding one half of the whole number, shall depart during the falls of 1831 and 1832; the residue to follow during the succeeding fall of 1833" (p. 311; emphasis added). Similar documents were fashioned with the Creek (the [Treaty with the Creek, 1832](#); pp. 341-343); with the Chickasaw (the [Treaty with the Chickasaw, 1832](#); pp. 356-362); with the Seminole (the [Treaty with the Seminole, 1832](#) and [1833](#); pp. 344-345 and 394-395, respectively); and with the Cherokee (the [Treaty with the Cherokee, 1835](#); pp. 439-449). Under these conditions, tribal opposition escalated and the course of the land exchanges became far more difficult; the Seminole, for example, only reached Indian Territory under duress in 1842. Much of this tribal dismay may be seen in the five-volume collation, *Correspondence on the subject of the emigration of Indians (1834 and 1835a-d)*, that was produced by the Senate in response to a resolution offered in December 1833.⁵⁰ At

the tribal governments so modified will prove so satisfactory that there will be no need or desire for further change till the lands now occupied by the Five Civilized Tribes shall, in the opinion of Congress, be prepared *for admission as a State to the Union*" (p. 512; emphasis added).

⁵⁰ These *Serial Set* volumes were republished as *The Indian Removals* (1974). Interestingly, the version of this motion's text, published in the first volume of this set, was unlike that of the original text found in the *Congressional Globe*, which read:

Resolved, that the Secretary of War communicate to the Senate the correspondence between that department and the several agents, and other persons who have been employed in the removal, or in the arrangements for removal of the Indian tribes. Also, all correspondence between the department and other individuals on the subject of Indian affairs, including the names of agents or other persons who have been employed in making Indian treaties, in the removal of Indians, taking the census of Indians, or in locating the reservations allowed by treaties to Indians, with a statement of the several sums disbursed by each, showing the amount expended, the persons to whom it has been

the conclusion of this ordeal, the Five Civilized Tribes took in exchange almost all of present day Oklahoma; Prucha (1990, p. 70) created a map of the Indian Territory that indicated these tribal assets up to the year 1855.

Garrison, however, made it clear that many of the problems associated with the history of Indian removal began as soon as the United States became a nation: “The new Constitution was silent on how the framers thought the new government should deal with the Indian tribes. Consequently, the Indian policy of the United States *was left open* for determination by Congress and the president” (2002, p. 17; emphasis added). This “left open” scenario supported an attitude in the federal and specifically in Southern state governments that leaned heavily in the direction of legislating diminished tribal sovereignty. The concept of the President of the United States behaving as a Great Father to all Indians developed around this time; Fig. 1 depicts Andrew Jackson in this paternal manner towards his Indian “children.”

paid, and the specific services or consideration which they have been paid (In Senate, 1834).

Within this passage, the Correspondence compilation determined instead:

Resolved, that the Secretary of War communicate to the Senate the correspondence between that department and the several agents, and other persons who have been employed in the removal, or in the *arrangement* for *the* removal of the Indian tribes, *since the 28th May, 1830*; also all correspondence between the department and other individuals on the subject of Indian affairs, including the names of agents or other persons who have been *engaged* in making Indian treaties, in the removal of Indians, or in locating the reservations allowed by treaties to Indians, with a statement of the several sums disbursed by each, showing the amount expended, the persons to whom it has been paid, and the specific services or consideration *for* which they have been paid (1834, p. 4; emphasis added).



Fig. 1. Andrew Jackson as the Great Father.
Used with the permission of the William L. Clements Library
at the University of Michigan.

The expansion in the South of agricultural pursuits, and in particular of cotton, made land critical to future profits and there were ample opportunities to present the argument that Indians were not making adequate use of their lands and thereby were blocking production. The looseness of Chief Justice John Marshall's opinion in *Worcester v. Georgia* (1832) – when he acknowledged only the tribes' right of occupancy on their lands – meant that state courts could accelerate the ultimate taking of these domains through the mechanism of removal. Garrison concluded that through such federal judicial opinions

the chief justice's dangerous dicta that implied that the southern states could perhaps extinguish the Indian usufruct or, alternatively, sell land in spite of the Indian title, prolonged, and perhaps exacerbated, the tribal title question. By postponing an official

enunciation of federal supremacy over Indian affairs, Marshall also unwittingly invited southern politicians and judges to challenge Congress's authority and allow a states' rights boil to fester into what eventually became the crisis of the Indian Removal (pp. 83-84).

States' rights were pivotal in eventually splitting the South away from the Union, and in that process, these entities grasped local jurisdiction for Indian law.⁵¹ In a sense, it was frighteningly easy for these tribes to be disenfranchised – almost everyone, at both the federal and the state levels, was against maintaining ancestral lands and tribal sovereignty – and in the case of the Five Civilized Tribes, this journey was well documented through the treaties consummated with the federal government in the early nineteenth century. The punishment was further aggravated by the Civil War, as exemplified by the lives of the Cherokee (Confer, 2007, p. 156).⁵²

The Civil War era in the Indian Territory⁵³

The onset of the Confederate States of America (CSA) in the beginning of 1861⁵⁴ was immediately followed by a request for a Bureau of Indian Affairs and for a Commissioner to

⁵¹ See Harring's plethora of state legal decisions between 1835 and 1880 that eventually stimulated the federal government to convey to the states its responsibility for Indian criminal jurisdiction (1994, pp. 44-53).

⁵² In a recent issue of the quarterly publication produced by the National Museum of the American Indian, Stephey and Adams (2011, p. 30) concluded that

[l]ike participants of all races, innumerable Indian individuals and their families emerged from the Civil War with terrible losses. Even more immeasurable was the damage to the wealth and wellbeing of the tribes, especially those just recovering from the trauma of the Removals. The lands of the Indian Territory, painfully developed by the nations removed from the Southeast, were devastated by fighting, both by invaders and domestic factions, or were left abandoned. Lawlessness persisted after the war. The abrogation of U.S. treaties became an excuse to dissolve Midwestern reservations and push Indians further away from western settlement.

⁵³ There are four commentaries that form the minimum reading list for an understanding of these treaty transactions between the CSA and the tribes: Franks (1972 and 1973); McNeil (1964); and Morton (1953a and b).

administer it (Richardson, 1905, p. 58). This program was fully implemented with the appointment in mid-March of Albert Pike as the “Commissioner of this Government to all the Indian Tribes West of Arkansas and South of Kansas” (*Message of the President and Report of Albert Pike, Commissioner of the Confederate States to the Indian Nations West of Arkansas, of the Results of His Mission*, 1861, p. 3). Two months later, an Act for the protection of certain Indian tribes was passed. CSA President Jefferson Davis tantalizingly described this now-lost document as “a declaration by Congress of our future policy in relation to those Indians” that was “transmitted to the Commissioner and he was directed to consider it as his instructions in the contemplated negotiations” (p. 3).⁵⁵ By the end of May, Pike was at Fort Smith in Arkansas, and then in the Indian Territory where he consummated on 10 July the initial product of this policy, the [Treaty with the Creek Nation](#) (Matthews, 1864/1988, pp. 289-310). Eight correlated contracts ensued, the last with the Cherokee in October 1861.⁵⁶

Pike’s *Report* thus forms a direct connection between that vanished CSA Indian policy instrument and the reality of his dialogues with the tribes in the Indian Territory. Relevant to the present study of variants is Pike’s depiction of the ordeal of preparing all the necessary materials required by his official task:

⁵⁴ See Jefferson Davis’s inaugural address of 18 February 1861 (Richardson, 1905, pp. 32-36).

⁵⁵ The act was specifically cited in the preambles of four of the nine Indian Territory treaties that followed these “contemplated negotiations” ([Treaty with the Creek Nation](#); see Matthews [1864/1988], p. 289; [Treaty with the Choctaws and Chickasaws](#), p. 311; [Treaty with the Seminole Nation](#), p. 332; and [Treaty with the Cherokees](#), p. 394), and once in Article 5 of *Cherokees* (p. 396).

⁵⁶ See the Web site entitled [So long as grass shall grow and water run: The treaties formed by the Confederate States of America and the tribes in Indian Territory, 1861](#) for the complete suite of documents. Absent the question of this tribal sovereignty, there was a report published in the *Southern Historical Society Papers* of a CSA treaty with Mexico that had been designed to coordinate the return of thieves and stolen property. This confederate instrument was alleged to be “the only one ever negotiated with a foreign power” (Confederate treaty, 1900, p. 255).

I found it necessary, on account of the pressure caused by the copying of treaties and the multiplicity of accounts and abstracts, to avail myself of the very valuable and constant services, as a skilled accountant and copyist, of Capt. Johnson, and of those of Mr. Walter L. Pike (for whose labor I have allowed no charge to be made) as a copyist (*Message of the President and Report of Albert Pike, Commissioner of the Confederate States to the Indian Nations West of Arkansas, of the Results of His Mission*, 1861, p. 9).

“Capt. Johnson” appeared as W. Warren Johnson in these transactions.⁵⁷

The Constitution of the Confederate States of America and slavery

The linkage between the creation of the CSA and their amity with the tribes of the Indian Territory may be found in the historical background of the CSA’s *Constitution*. The initiation of a new government by the CSA required an instrument to define its future. At first appearance, the contents of the *United States Constitution* were virtually replicated in 1861 by the CSA. However, while slavery has traditionally been identified as one of the pivotal seeds for the Civil

⁵⁷ Pike was evidently never afraid to speak his mind. In a controversial collection of materials formed by the federal Commissioner of Indian Affairs after the Civil War and calculated to defame John Ross, the leader of the so-called Loyal Cherokee, Pike remarked about his own experiences as the Commissioner of Indian Affairs for the Confederacy in a letter dated 17 February 1866 to Commissioner Dennis W. Cooley. In that communiqué, he said that “[t]he simple truth is, Mr. Commissioner, that the ‘loyal’ Cherokees hated [CSA Brigadier General] Stand Watie and the half-breeds, and were hated by them. They were perfectly willing to kill and scalp Yankees; and when they were hired to change sides, and twenty-two hundred of them were organized into regiments in the federal service, they were just as ready to kill and scalp when employed against us in Arkansas. We did not pay and clothe them and the United States did. They scalped for those who paid, fed and clothed them. As to loyalty, they had none at all” (Thoburn, 1924, p. 179). With relevance to the present study, Roberts (1979, p. 104; emphasis added) reported that Cooley, at the September 1865 meeting at Fort Smith in Arkansas, “appeared highhanded and arrogant, making demands the Indians were unprepared to meet. *He ignored entirely the written legal structure of the Cherokees, modeled after the United States Constitution*, and virtually deposed John Ross.” It is interesting to note further that Cooley was mentored by Senator John Harlan (R-IA), who later introduced a bill (Senate bill number 1237) in Congress in January 1871 to follow up on the creation the *Okmulgee Constitution* (Bills introduced, 1871a).

War, simmering political issues were at least as important, since the CSA felt that the application of United States constitutionalism had deteriorated and, in the process, had thus moved away from nurturing the original precepts of the Founding Fathers. The CSA version was developed to return to those earlier days when there had been a more representative government, a proposal that followed in the footsteps of the Antifederalists. The latter's position had emerged during the recasting of the *Articles of Confederation* into a new *United States Constitution*, and adherents to this political cause were particularly interested in asserting that the locus of sovereignty should remain with the states (DeRosa, 1991, pp. 120-134; Siemers, 2002). Davis (2000, p. 26) stated that the principles for such actions implied that a conservative approach to success required that “[t]he Constitution of the Confederate States need therefore be more a matter of restoration, than of innovation.”

There was no clearer evidence of this faithfulness to that original material than the launch of the constitutional convention itself. The eventual chairman of the Permanent Constitution Committee, Robert Barnwell Rhett (SC-Dem.),⁵⁸ offered on 26 December 1860 An ordinance recommending and providing for a convention for the slaveholding states of the United States, designed to form the Constitution of a Southern Confederacy by declaring: “And it be further ordained, That in the opinion of this Convention, *the Constitution of the United States should constitute the basis of the Confederation of such States* as shall withdraw their connection with the Government of the United States” (*Journal of the Convention of the People of South Carolina*, 1862, pp. 92-93; emphasis added). In preparation for the development of a Provisional Constitution two months later, Alexander Hamilton Stephens – who had served in the U.S. House as a Representative from Georgia – recommended that, far from discarding the past, “the

⁵⁸ Field (1999) provided a summary of the life of Rhett, one of the main architects of succession.

leading object was to sustain, uphold, and perpetuate the fundamental principles of the Constitution of the United States.” Given this groundwork, it took a total of just four days to draft, debate, and approve the CSA’s Provisional Constitution (Lee, 1963, pp. 62-67). State ratification of the Permanent Constitution followed, in less than three weeks (p. 137).

This refocusing upon state rights in the South was immediately revealed in the words of their own new preamble:

We, the People of the Confederate State, *each State acting in its sovereign and independent character*, in order to form a permanent federal government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity – invoking the favor and guidance of Almighty God – do ordain and establish this constitution for the Confederate States of America (DeRosa, 1991, p. 135; emphasis added).⁵⁹

The near replication of the contents of the *United States Constitution* by the new CSA rendition was a firm confirmation of constitutionalism – and of the contents of the original federal document – but with an eye instead towards *explicitly* reserving the rights of states to conduct

⁵⁹ The provisional CSA *Constitution* from 8 February 1861 may be differentiated from the permanent version of 11 March 1861 by comparing their preambles. The former stated:

We, the Deputies of the Sovereign and Independent States of South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana, invoking the favor of Almighty God, do hereby, in behalf of these States, ordain and establish this Constitution for the Provisional Government of the same: to continue one year from the inauguration of the President, or until a permanent Constitution or Confederation between the said States shall be put in operation, whichever shall first occur (Matthews, 1864/1988, p. 1),

whereas the latter announced:

We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity – invoking the favor and guidance of Almighty God – do ordain and establish this Constitution for the Confederate States of America (p. 11).

their own business without federal interference. Note, however, that some of these fundamental state rights attributes have been cited subsequently as the true basis for the *failure* of the CSA. Owsley (1925) exposed the issues of local defense; of the relationship of the states to their troops in the service of the CSA; of the suppression of the writ of habeas corpus; of conscription; and of the impressment of property as pivotal in the breakdown of cohesion between the states and the central CSA government, and of their combined ultimate failure against the federal government.

Nevertheless, the creation of an instrument that placed more emphasis on state, rather than on federal, sovereignty fostered immediate differences. The concept of citizenship was one important exemplar, one that was a particularly turbulent one when ascertaining the position of slaves within contemporary 19th century American society, and the question formed the cornerstone of the *Dred Scott v. Sandford* (1857) decision before the United States Supreme Court. *Dred Scott* concluded that

we must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights (p. 405).

Further, slave ownership was determined to be safe from federal meddling:

The Government of the United States had no right to interfere for any other purpose but that of protecting the rights of the owner, leaving it altogether with the several States to

deal with this race, whether emancipated or not, as each State may think justice, humanity, and the interests and safety of society, require. The States evidently intended to reserve this power exclusively to themselves (p. 426).

In line with this outcome, clause 4 of section 9 of Article I of the CSA *Constitution* forcefully declared that no law “denying or impairing the right of property in negro slaves shall be passed,” echoing the previous *Dred Scott* findings. Incorporating these two positions on citizenship and slave ownership also assured the framers of the CSA *Constitution* that the resulting national government would not be compelled to expand only through the addition of those states that individually sanctioned slavery.⁶⁰

A coherent approach to, and the recognition of, slavery were essential elements of Confederate society that struck a chord with the Cherokee, Chickasaw, Choctaw, and Creek tribes, since their societies too had applied slavery within their communities that originally began through the concerted federal effort after the Revolution to “civilize” tribes in the Southeast. Indeed, prior to Independence, both the English and the French had employed slavery during the

⁶⁰ A century earlier, at the time of the *Royal Proclamation of 1763* and the implementation of the first official boundaries for Indian Country, one-fifth of the population of all those living in the colonies were slaves (Calloway, 2006, p. 31). Further, in British West Florida, acquired as part of the negotiations following the Seven Year’s War, “African slaves were deemed essential to the economic transformation of the colony and the British required manpower to do the heavy and laborious work of the plantations. Slaves worked as field hands and as domestic servants; they worked in towns as well as on plantations, as coopers, carpenters, sawyers, brick makers, and boatbuilders. The British army used them as laborers and some slaves served as sailors” (p. 157). Slavery was thus a prevalent and well-established fixture of American society at the onset of the United States. George Washington’s Mount Vernon and surrounding facilities grew through the efforts of more than 200 slaves; an entry from Washington’s diary, dated 18 February 1786, enumerated these people and their responsibilities within his estate (Jackson and Twohig, 1978, pp. 277-283). Hirschfeld (1997, pp. 16-20) remarked that between this inventory and one collated in 1799, Washington’s slave population expanded by 65% while the size of his lands increased by only about 10%, placing further pressure on the ability of the site to support both a business venture and its personnel. Washington died in 1799, and the family’s slaves were freed after the death of Martha Washington in 1802.

early period of their time in North America (Gallay, 2002, pp. 45-48 and 308-311, respectively), and the English remembered their experiences with the Irish in order to rationalize their use of African and Indian slaves in the New World (Canny, 1973). The Dutch brought slavery to the North in the seventeenth century; the Shinnecock tribe of Long Island even today continues to combat prejudice based upon past intermarriages of tribal members and the Black community (Levy, 2010, p. 47). In several situations, the competition between the imperialist nations caused parallel conflict among the Five Civilized Tribes. The Creek and Choctaw had traded with the Spanish in Florida in the last quarter of the seventeenth century, but the rise of British influence saw them deal with the Cherokee, Creek, and Chickasaw in an exchange program centering upon the acquisition of firearms by the latter, which in turn assisted slave raids upon the Choctaw. To counterbalance this, the French assisted the Choctaw at the turn of the eighteenth century (Champagne, 1992, pp. 50-54).

Relationships formed between traders and hunters of deerskins and furs involved by necessity loans for weapons and munitions that were repaid at the end of a hunting season. A lack of hunting success led to shortfalls and chronic debt that strained social order; the Yamasee War between 1715 and 1717 was caused by the hostility that grew between the loan makers and their clients in South Carolina (see Ramsey's chapter appropriately entitled "Tinder" for a discussion of credit and of Indian slaves; 2008, pp. 20-25 and 26-32, respectively). At the turn of the nineteenth century, treaties containing land cessions to the United States frequently had articles describing moneys paid by the federal government to the tribe(s) for their land. Parameters for the immediate transfer of funds to traders to resolve outstanding debt were also specified; two examples will be sufficient. The [*Treaty with the Chickasaw, 1805*](#) (Kappler, 1904b, pp. 79-80; emphasis added) included a payment by the federal government of "[t]wenty

thousand dollars for the use of the nation at large, and *for the payment of the debts due to their merchants and traders.*” Similarly, the [Treaty with the Choctaw, 1805](#) (Kappler, 1904b, pp. 87-88; emphasis added) specified in Article 2 that

[f]or and in consideration of the foregoing cession on the part of the Choctaw nation, and in full satisfaction for the same, the commissioners of the United States, do hereby covenant, and agree with the said nation in behalf of the United States, that the said States shall pay to the said nation fifty thousand five hundred dollars, for the following purposes, to wit: *Forty eight thousand dollars to enable the Mingoes to discharge the debt due to their merchants and traders;* and also to pay for the depredations committed on stock, and other property by evil disposed persons of the said Choctaw nation; two thousand five hundred dollars to be paid to John Pitchlynn, to compensate him for certain losses sustained in the Choctaw country, and as a grateful testimonial of the nation’s esteem (see Royce Areas 55 and 61, respectively, for the Chickasaw cession in present day [Kentucky, Tennessee, and Alabama](#), and the Choctaw one in [Alabama](#) and [Mississippi](#)).

Thus, in the Choctaw transaction, 95% of the \$50,500 derived from the transfer was immediately siphoned off to resolve overdue accounts. However, times had changed and these payments had evolved from simple short term loans, designed to sustain a single hunting season, to long exposures for major amounts of money. As Champagne (1992, pp. 111-112) established, families developed among the Five Civilized Tribes from the intermarriages of white traders and Indian women, whose offspring became more involved in agriculture as the fur and deerskin trade evaporated due to diminished animal populations. In that transition, the new business class understood British and American trading dynamics and this knowledge in combination with the

ability to use English, placed certain families in influential positions: “By 1818 the Chickasaw had a class-stratified society, consisting of a very small group of slaveholders and merchants and a large majority of hunter-farmers.” While they could not effectively modify the political underpinnings of the tribal councils,

[t]he conservative [Chickasaw] chiefs induced the planters to help manage increasingly complex and threatening relations with the U.S. government; in return, the chiefs were willing to pay off the debts of the merchants and planters, as they did in the 1805 treaty, and allow the planters to benefit personally from treaty arrangements, if that ensured that the planters would help protect the nation from American political and territorial encroachments.

This land-for-debt-resolution approach was used throughout the first half of the nineteenth century, and such negotiations identified persons or organizations due money through attached schedules. In the [Treaty with the Chippewa, etc., 1833](#) (Kappler, 1904b, pp. 402-410; see Royce Area 187 in the current states of [Wisconsin](#) and [Illinois](#)), Schedule B (pp. 406-409) enumerated debts of the Chippewa, Ottawa, and Pottawatamie totaling \$175,000 of which \$20,300 were due agents of the American Fur Company alone.⁶¹

This transition from a hunting society into an agricultural one necessitated a reliance upon a substantial work force and, subsequent to removal to the Indian Territory, the Cherokee

⁶¹ The federal government became embroiled in a myriad of compensations during treaty negotiations of this period. The [Treaty with the Chickasaw, 1818](#) (Kappler, 1904b, pp. 174-177) was populated with small payments for past fouls. In Article 5, in order “to shew the regard the President of the United States has for the said Chickesaw nation, at the request of the chiefs of said nation, the commissioners agree to the sum of one thousand and eighty-nine dollars shall be paid to Maj. James Colbert, interpreter, within the period stated in the first part of this article, *it being the amount of a sum of money taken from his pocket, in the month of June, 1816, at the theatre in Baltimore*” (p. 175; emphasis added).

markedly increased this dependence (Abel, 1915; Davis, 1933; Miles and Naylor-Ojurongbe, 2004).⁶² In the first real removal event, the [Treaty with the Cherokee, 1817](#) (Kappler, 1904b, pp. 140-144) instigated the breakup of the Cherokee nation, with about 1,000 citizens moving to the west and 12,000 remaining behind in the tribe's original lands. Champagne (1992, pp. 131-132) remarked that President Andrew Jackson offered only two alternatives: assimilation or removal. These early departures were energized by a desire to maintain whatever was left of tribal life, even if that meant departing the bitterly contested areas of the east. However, with the demise of the fur and deerskin trade, this subset of Cherokee "took their local kinsmen and villagers with them; many of them were slaveholders who intended to continue the plantation economy in the west and not return to hunting and the fur trade, as American officials had suggested" (p. 132).⁶³ The subsistence mentality of the Cherokee towns meant that these laborers for new plantations in the west were not going to be Cherokee, but rather Black slaves. Thus, in some ways the federal government motivated the direct transfer of slavery to the Indian Territory in order to service the greed for land by citizens of the United States. The states of Alabama, Georgia, North Carolina, and Tennessee were especially involved throughout, and the states' rights issues that grew from these transactions – supported by Jackson during his administration – would come back half a century later to stimulate a civil war.

In structuring their alliances with the CSA during that Civil War, these tribes agreed to plans that contained specific slavery provisions, such as Article XXXII of the [Treaty with the Creek Nation](#) that pronounced:

⁶² Graebner (1945) provided a glimpse of the new lives that evolved for the tribes in the Indian Territory.

⁶³ Saunt (2004, pp. 132-135) covered both the deerskin and the slave trade in sequential sections of his piece on Southeast history prior to 1776. Remini (2001, pp. 226-238) described fully the Indian removal Acts.

It is hereby declared and agreed that the institution of slavery in the said nation is legal and has existed from time immemorial; that slaves are taken and deemed to be personal property; that the title to slaves and other property having its origin in the said nation, shall be determined by the laws and customs thereof; and that the slaves and other personal property of every person domiciled in said nation shall pass and be distributed at his or her death, in accordance with the laws, usages and customs of the said nation, which may be proved like foreign laws, usages and customs, and shall everywhere be held valid and binding within the scope of their operation (Matthews, 1864/1988, p. 296).

Similar sections were contained in the six transactions with the Choctaw and Chickasaw, the Seminole, the Great and Little Osage, the Seneca and the Seneca and Shawnee, the Quapaw, and the Cherokee. Only the two remaining formal documents – the ones with the “wild” tribes, the [*Treaty with the Comanches and the Other Tribes and Bands*](#) and the [*Treaty with the Comanches of the Prairies and Staked Plain*](#) – deferred this aspect, but they did contain statements of acknowledged responsibilities for the return of stolen property, among which was included the item of fugitive slaves. Based in part upon these elements, Abel concluded that “the Confederate Indian treaties were, in a variety of ways and to the same extent that the Confederate constitution itself was, a reflection upon *past history*” (Abel, 1915, p. 167; emphasis added). Morton added that “[i]n several aspects the Indian treaties of the Confederate States were in striking contrast with the treaties formerly made with them by the United States. The Confederacy conceded much more than the United States had ever granted,” but that “[t]he Creeks were divided on the question of the war, and the same was true of the Cherokees and the Seminole” (1953b, pp. 305 and 307, respectively). Franks (1972 and 1973) produced a useful summary of the substance of all these transactions between the CSA and the tribes; Moore (1951) talked of other interactions

among these parties; and Cheatham (2003) discussed CSA interest in the Quapaw, Osage, and Cherokee lands in Kansas.

American Indian constitutions

In preparation for a discussion of constitutions developed by American Indians, it is useful to note the operational definition of the term *constitution*, as presented in a collection focusing on American Indian nation building. Joseph P. Kalt, the co-director of the Harvard Project on American Indian Economic Development at the John F. Kennedy School of Government, observed that a “constitution is a fundamental framework that empowers the people to state who they are, define how they will make community decisions, choose their direction, solve their disputes, and *stay a people*” (Kalt, 2007, p. 79; emphasis original). This overall characterization is not much different from other perceptions of the concept of a constitution, but within the context of American Indians, the emphatic *stay a people* is of extreme importance, founded upon abundant traditions. These beliefs form a sequence that Brightman concluded offers to many Indian tribes a “continuity with what one’s ancestors are supposed to have been continuously doing for a long time, if not from mythological time immemorial” (2006, p. 358).

However, Kalt offered more, in terms of accurately considering both the needs and the desires of Indian nation building through the mechanism of a formal constitution, whether in written or unwritten format. Four central issues – “getting things done,” “defending sovereignty,” “developing economically and perpetuating culture,” and “affirming ‘this is who we are’” – were considered pivotal to remaining a successful entity. Indeed, with respect to the third matter of sustainability, there has been substantial research confirming that a tribe’s system of government is the make-or-break key to economic success and cultural perseverance. These ground rules help the tribe organize itself as it wishes – and as it sees itself – to be and places it

on a path toward acquiring a refined capability to self-govern effectively, long before tackling the mundane day to day problems of sustaining its sovereignty within the challenging political and social climates of the United States. In their study, Cornell and Kalt examined fifteen tribes from throughout the continental United States and determined that as “constitutions to legal or business codes to the tribal bureaucracy... become more effective at maintaining a stable environment in which investors feel secure and effort is rewarded, the odds of successful development improve” (1992, p. 9). One way to bolster these odds is to supplement the traditional political structure of legislative, executive, and judicial branches with an independent accountability institution. This latter structure would provide a process to control potential political power mismanagement by incumbents and/or by factions that might in turn cause detriment to the community. Cornell and Kalt cited the work of Pierre Clastres on American Indian populations (1977, p. 175) that spoke specifically to the role of a chief. In such settings, Clastres determined that the qualifications of a chief center upon

his “technical” competence alone: his oratorical talent, his expertise as a hunter, his ability to co-ordinate martial activities, both offensive and defensive. And in no circumstance does the tribe allow the chief to go beyond that technical limit; it never allows a technical superiority to change into a political authority. The chief is there to serve society; it is society as such – the real locus of power – that exercises its authority over the chief. That is why it is impossible for the chief to reverse that relationship for his own ends, to put society at his service, to exercise what is termed power over the tribe: primitive society would never tolerate having a chief transform himself into a despot.

In the nineteenth century, there were strong American Indian leaders like Crazy Horse of the Lakota Sioux, who tirelessly placed his community before all else and who answered directly to such perusal (Bray, 2006), but later political interactions with the federal government – and especially as the result of dictated requirements of federal or Secretarial approval clauses – made tribal self-accountability rules much more necessary. Such demarcations may appear today in a code of ethics attached to a tribe’s constitution, as expressed for example by Section 2-702.3, [Legislative Purpose and Intent](#), within the 2002 Chickasaw Nation Code. This segment acknowledges that

[t]he government of the Chickasaw Nation is founded upon the consent of the governed and Chickasaw Citizens are entitled to have complete confidence in the loyalty and integrity of their government. The purpose of this Act, therefore, is *to increase accountability to Chickasaw Citizens by their elected, appointed and assigned Public Officials and Employees of the Nation in exercising the authority vested or to be vested with them as a matter of public trust* (emphasis added).

The Cherokee Nation of Oklahoma challenged outdated federal approval aspects, mandated for such instances, by purposely removing such parameters from their new tribal constitution. The effect was to gather increased tribal sovereignty in the process (Kalt, 2007, p. 110).

Models of constitutions

A citation to any of these recent constitutions is a small reflection of the history of such tribal declarations. These concepts have been developed for at least the last three centuries in North America, as may be seen through the following exemplars.

- *The Iroquois Constitution*

In 1916, Arthur C. Parker, the staff archeologist at the New York State Museum, published a description of the so-called *Great Binding Law of the Iroquois*.⁶⁴ Parker named this record “The Constitution of the Five Nations,” since it was developed before the Tuscarora tribe joined this confederation at the beginning of the 18th century.⁶⁵ Historically, this constitution was transferred as an oral document, supported by wampum belts that served as cues to each law within the instrument; it now resides in the State Museum, following a request by the Six Nations at the turn of the twentieth century.⁶⁶ Schaaf (1988) provided one example of the many analyses that centered on parallels found between the Iroquois and the *United States Constitution*, and Williams (1994, p. 983) spoke directly to “how one group of North American indigenous peoples, the Five Confederated Tribes of the Iroquois, confronted the immensely difficult problems of intercultural communication and accommodation during the early Encounter era.” The suite of problems identified by Williams has perplexed all tribes in North America, but especially those in the eastern portion of the continent during the initial surges of European invasion.

The central theme of the *Iroquois Constitution* “embraces a narrative of the events in the lives of Hiawatha and Dekanawida that lead up to [the document’s] foundation” and that “[i]ts

⁶⁴ Parker’s text is available at Fordham University’s [Internet Modern History Sourcebook](#) Web site. Fenton (1968, book 3, pp. 1-158) used the *Museum Bulletin* to recapture this material. Ritchie (1956) wrote a memorial piece on Parker upon the latter’s death on New Year’s Day, 1955.

⁶⁵ Parker specifically declared 1724 as the year of that latter event, but this date has been challenged: Landy (1978, p. 519) concluded that “the adoption of the Tuscaroras into the League must have taken place sometime after the middle of September 1722 and before the end of May 1723.”

⁶⁶ There is an extensive history of the creation and use of wampum. See Holmes (1882), Beauchamp (1901), Speck (1919), Jacobs (1949), Snyderman (1954), Herman (1956), and Murray (2000, pp. 116-140) for more on this material in art and in commerce. Jacobs (p. 604) declared that “wampum was a necessity in almost all native diplomacy.”

special interest lies in the fact that it is an attempt of the Iroquois themselves to explain their own civic and social system” (Parker, 1916, p. 8). Hiawatha and Dekanawida were considered as important cultural heroes, but the latter was seen as the founder of this Constitution and actually speaks within the instrument as the messenger of its text: “I am Dekanawidah and with the Five Nations’ Confederate Lords I plant the Tree of the Great Peace” (p. 30). Vecsey (1986), in twenty-two brief segments, provided an overview of the entire document, with bibliographic citations to other materials appended to each of the descriptions. Even though religion played a significant part in the instrument – in terms of both the past and the future – the outcome was a *political* statement and not just a religious one.⁶⁷ Further, the *Iroquois Constitution* enumerated specific performance expectations of tribal leaders, just as the modern 2002 Chickasaw Nation Code affirmed for their public officials and employees. Section 24 of *Iroquois* dictated that

[t]he Lords of the Confederacy of the Five Nations shall be mentors of the people for all time. *The thickness of their skin shall be seven spans – which is to say that they shall be proof against anger, offensive actions and criticism. Their hearts shall be full of peace and good will and their minds filled with a yearning for the welfare of the people of the Confederacy.* With endless patience they shall carry out their duty and their firmness shall be tempered with a tenderness for their people. Neither anger nor fury shall find

⁶⁷ Kalt (2007, p. 84) used this *Iroquois Constitution* as a prototypic example of the use of an instrument’s preamble as a foundation for declaring the collective *we* and for setting the stage for criteria for group inclusion. Such declarations permitted, for example, an application of Creek law in Chapter XX of their Laws of the Muskogee Nation (McKellop, 1893, pp. 102-104) that enumerated adopted legislation for “Persons to whom citizenship has been granted” for the years 1867, 1883, 1885, 1889, and 1890 under a pronouncement that “[t]he following persons are hereby declared full citizens of the Muskogee or Creek Nations, and they shall be subject to the Creek laws, and shall have all the rights, privileges and immunities of the original members of the tribe.”

lodgement in their minds and all their words and actions shall be marked by calm deliberation (Parker, 1916, p. 37; emphasis added).

The rules of this political relationship, therefore, were to be formed upon these episodes, with peace and harmony established as goals for all members of the confederation. Unanimity in decision-making and the maintenance of strong alliances, coupled with an absence of intertribal and interclan warfare, were paramount to collective success. The modeling was clear-cut and evident to all: “All these traditions relate the efforts of Deganawida or Hiawatha or both to establish the confederacy and recount how these founders, and on occasion their embassies, went among the various tribes, finally gaining from them acceptance of the idea of the Great Peace” (Tooker, 1988, p. 317).⁶⁸

In 1998, Lutz (p. 125), based upon his own constitutional criteria (1988), claimed that “the Iroquois were created as a people with the adoption of the Great Binding Law,” because the Great Binding Law: (1) defined a way of life; (2) created and defined the people sharing this way of life; (3) created and defined political institutions for collective decisionmaking; (4) defined the regime (those with the right to hold office), the public (those for whom political actors speak), and citizenship (those with participatory rights); (5) established the basis for the regime’s authority; (6) distributed political power; (7) structured conflict so it could be managed; and (8) limited the power of those in government.

⁶⁸ Tooker concluded, however, that there was no known strong evidence for the long-held contention that the *Iroquois Constitution* functioned as a direct model for the creation of the *United States Constitution* (1988, pp. 321-327). Grinde and Johansen (1991, pp. 306-308, n. 2), however, argued that there are ample data to support this connection between the Iroquois and the federal *Constitutions*. The authors used an extensive footnote in their concluding chapter to counter Tooker’s contention.

The strength of this instrument was evident to Lutz:

The Iroquois Confederation's Great Binding Law is the only surviving Native American constitution that predates European influence.... Even as the sole survivor of its kind, the Iroquois Confederation Constitution is a useful example of the consequences of institutions in general, and the design principles of confederations in particular. The fact that the Iroquois independently created the oldest surviving constitution in North America is a very good reason why the Confederation is worth attention, and why its constitution should become part of the canon of American foundation document (p. 127).⁶⁹

- **Constitutions developed later, in response to the *Indian Reorganization Act of 1934* and Felix Cohen**

In the twentieth century and as part of the New Deal era (Smith, 1971), the publication of the so-called Meriam Report (Meriam, 1928) exposed to some degree the abysmal living conditions among the tribes and the appalling mismanagement of tribal assets by the federal government.⁷⁰ In response to this criticism, the federal decision to concentrate upon the sovereignty of tribes led to the 1934 [*Wheeler-Howard Act*](#) (48 Stat. 984, 987), more commonly

⁶⁹ Federal celebration of the *Iroquois Constitution* has continued; see Acknowledging the contribution of the Iroquois Confederacy of Nations to the development of the *United States Constitution* and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States established in the *Constitution* (1988).

⁷⁰ Critchlow (1981, p. 325) spoke of the stimulus for the Report caused by “years of vehement criticism of the U. S. Indian Service,” but Rusco challenged the true magnitude of the effect that the Meriam Report had on subsequent legislation. It “was important in crystallizing a near-consensus, among the friends of Indians, that previous Indian policy had been a failure,” yet it “did not clearly identify reasons for the failure of forced assimilation, nor did it offer a comprehensive strategy to replace the failed ideology underlying previous policy” (2000, p. 285).

called the *Indian Reorganization Act* (IRA).⁷¹ Two substantial purposes of this legislation were, inter alia, to offer a tribe or tribes residing on a single reservation the opportunity “to organize for its common welfare,” and to end the debilitating land allotment program that destroyed tribal holdings. In one phrase, the Meriam Report located the underlying blame for the failure of the 1887 *Dawes Act* (24 Stat. 388) that had initiated allotment in severalty: “That the whole Indian problem is essentially *an educational one* has repeatedly been stated by those who have dealt with Indian affairs” (p. 348; emphasis added). This perception was a reiteration of that published in a 1929 *New York Times* article, where it was observed that the new Secretary of the Interior, Ray Lyman Wilbur (1875-1949), “looked on the problems of the Indians as being those of readjustment, whereas his predecessors never quite overcame the frontiersman’s attitude” (A new deal for the Indians, 1929, p. 22). Later, Wilbur went so far in his memoirs as to remark that “[p]iecemeal legislation for individual reservations had created a patchwork of laws which made Indian administration probably the most confusing job in the federal government” (Robinson and Edwards, 1960, p. 784). In many ways, these views revealed that very little had changed in the Indian world during the century since Lewis Cass (see Silby, 1999) had assessed Indian removal by suggesting that “[i]f a paternal authority is exercised over the aboriginal colonies, and just principles of communication with them, and of intercommunication among them, are established and enforced, we may hope to see that improvement in their condition, *for which we have so long and so vainly looked*” (Cass, 1828, p. 61; emphasis added).⁷²

⁷¹ These parameters are available in 25 U.S.C. §476 under “[Organization of Indian tribes; constitution and bylaws and amendment thereof; special election](#)” (*United States Code*, vol. 15, 2008, pp. 820-821).

⁷² See McLaughlin (1888) for a discussion of Lewis Cass as Governor of Michigan Territory and, within the same role, as *ex officio* Superintendent of Indian Affairs in the region between October 1813 and August 1831. McLaughlin rated very highly Cass’s contributions under both

It was this almost archaic Indian affairs environment that Congress endeavored to readdress through the *Indian Reorganization Act* of 1934, confounded as well by land issue parallels that existed between the *Dawes Act* and the *Indian Reorganization Act*. The removal program from the early nineteenth century had been replaced fifty years later by one of allotment, but the rules expounded in the *Dawes Act* had not been extended “to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sac and Foxes, in the Indian Territory” (24 Stat. 388, 391). This meant that when the *Wheeler-Howard Act* was passed almost five decades later, the State of Oklahoma and the Territory of Alaska were exempt from most of that new legislation. These latter difficulties were resolved in 1936 through the passage of the *Oklahoma Indian Welfare Act* (49 Stat. 1967) and the *Composite Reorganization Act for Alaska* (49 Stat. 1250). This almost endless thrashing, though, had substantial political costs, including the resignation in 1945 of the Commissioner of Indian Affairs, John Collier (Philp, 1977 and 1979).

All of these activities spawned additional difficulties. Several years after the initial legislation, Nash (1938, p. 45) concluded that “[i]n general, it is apparent that Indian opposition to the *Indian Reorganization Act* is based on erroneous fears that it will in some way take away individuals’ ownership of their allotments or that it will weaken or abrogate treaty rights.” Neither was a shallow concern, since these two mechanisms formed the only true insulation between the tribes and their total assimilation and concomitant cultural destruction. Sadly, Rusco (2000, p. 282; emphasis added) observed that virtually the same environment had

responsibilities by concluding that “one may venture to say that those were the years of his greatest usefulness, and that that work has left a most enduring mark on the history of the country” (p. 311). Hill (1974, pp. 94-96) compiled facts on the complex arrangement of the Michigan Superintendency for the years between 1824 and 1851.

enveloped the federal government during the legislation defining the IRA: “[t]here is no evidence that more than a handful of legislators knew or cared what the bill contained, as Collier once admitted, somewhat imprudently” and that this

major change in overall policy took place against a background of limited and inadequate information on important questions – matters at the heart of the change that occurred – on the part of even key players. This is most apparent when one asks what the status of Native American governments was at the time of this vote. No one involved in the process knew the answer, not even Indian Commissioner John Collier, *although he and others assumed they did.*

Nevertheless, the IRA was fashioned to offer a broad spectrum of options, including the chance to develop a tribal constitution, as noted in [Section 16](#) of the IRA. [Section 17](#) permitted the formation of business corporations, while [section 19](#) of the IRA afforded participants with extra flexibility, particularly in terms of the resulting combination of two or more tribes:

The term “Indian” as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. *The term “tribe” wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo or the Indians residing on one reservation.* The words “adult Indians” wherever used in this

Act shall be construed to refer to Indians who have attained the age of twenty-one years (p. 988; emphasis added).⁷³

One of the architects of the IRA was Felix Cohen (1907-1953), who was initially employed by the federal government to help create this specific act.⁷⁴ Processes culminating in efficacious constitutional construction were therefore part of a critical step in drawing the tribes into a universe of self-government under this program. His work, *On the Drafting of Tribal Constitutions* (2006), highlighted his efforts to ensure a meaningful constitution. Many of these thoughts were assembled within the shadow of Nathan R. Margold, the Solicitor of the Department of the Interior between 1933 and 1942. Margold had a special interest in social reform and in Indian Affairs (Strum, 1999), and this positioned him well to contribute effectively to the IRA development at Interior. In addition, he had spent time as the special counsel for the National Association for the Advancement of Colored People. As the Solicitor, Margold worked with Cohen to mold criteria for appropriate tribal constitutional instruments. The Solicitor's

⁷³ The revisions proposed by the *Composite Reorganization Act for Alaska* began by declaring (49 Stat. 1250, 1250)

[t]hat sections 1, 5, 7, 8, 15, 17, and 19 of the Act entitled "An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes," approved June 18, 1934 (48 Stat. 984), shall hereafter apply to the Territory of Alaska; *Provided*, That groups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 16, 17, and 10 of the Act of June 18, 1934 (48 Stat. 984).

Similarly, §3 of the *Oklahoma Indian Welfare Act* stated in part (49 Stat. 1967, 1967): "Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as the Secretary of the Interior may prescribe."

⁷⁴ Cohen subsequently amassed the critical *Handbook of Federal Indian Law* in 1942.

opinion, delivered on 25 October 1934 and entitled [Powers of Indian tribes](#), set the stage for these entities to expedite such decisions for their people. Importantly, Margold reaffirmed that

[p]erhaps the most basic principle of all Indian law, supported by a host of decisions hereinafter analyzed, is the principle that *those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished.* Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation. The powers of sovereignty have been limited from time to time by special treaties and laws designed to take from the Indian tribes control of matters which, in the judgment of Congress, these tribes could no longer be safely permitted to handle. The statutes of Congress, then, must be examined to determine the limitations of tribal sovereignty rather than to determine its sources or its positive content. What is not expressly limited remains within the domain of tribal sovereignty, and therefore properly falls within the statutory category, “powers vested in any Indian tribe or tribal council by existing law (Powers of Indian tribes, 1938, p. 18; emphasis original).

This opinion was bolstered by extensive case law citation, structured to provide pertinent examples, since Margold’s approach was to be general in nature and “subject to correction for particular tribes in the light of the treaties and statutes affecting such tribe wherever such treaties or statutes contain peculiar provisions restricting or enlarging the general authority of an Indian tribe.” Further, this format and the resulting statutes were to be “liberally construed... [with]

doubtful expressions being resolved in favor of the Indians” (see *Alaska Pacific Fisheries v. United States*, 1918, p. 89).⁷⁵

In the Introduction to Cohen’s work (2006, pp. xxv), David E. Wilkins perceived that “Cohen probably had a hand in developing” Margold’s statement and so the nature of “self-governance” concepts was well considered; these became the primary building blocks of *On the Drafting of Tribal Constitutions* itself. To substantiate further the linkage among the IRA, Margold, and Cohen, it should be recalled that Cohen’s “Powers of Tribal Self-government” chapter in *Tribal Constitutions* purposely identified the second, or “In addition to all powers vested in any Indian tribe or tribal council by existing law,” paragraph of the IRA as the language that “specifically grants certain powers to organized Indian tribes” (p. 56) and that Margold’s 1934 Powers of Indian tribes opinion “discussed in great detail” those very authorizations that “are vested under existing law” (p. 60).

Cohen’s labors to form useful legislation were rewarded. Following the passage of the IRA, more than one hundred sixty tribes developed constitutions to declare the basis of their visions of self-government: see, for example, Table B on pp. 21-30 in Haas (1947), or Cohen’s list that was ordered by state (1942a, p. 129). The Haas Table is valuable because it partitioned the organized tribes into three separate groups: one for those with constitutions prepared under the *Reorganization Act*, and one each for those entities in Alaska and in Oklahoma that were brought under the *Act* through subsequent legislation in 1936. One pertinent example within each subdivision may be seen in the [*Constitution and Bylaws of the Pueblo of Santa Clara, New Mexico*](#) (1936); the [*Constitution and By-laws of the Metlakatla Indian Community, Annette*](#)

⁷⁵ See also *Seufert Bros. Co. v. United States* (1919), *Choate v. Trapp* (1912), and *Jones v. Meehan* (1899) for further support for this approach to addressing negotiated settlements with the tribes.

[Islands Reserve, Alaska](#) (1946); and the [Constitution and By-laws of the Absentee-Shawnee Tribe of Indians of Oklahoma](#) (1939).⁷⁶

- **Nineteenth century constitutions, leading up to the *Okmulgee Constitution***

Arrell Gibson's opening statement, in his presentation of the constitutional experiences of the Five Civilized Tribes, gave a critical perspective upon these specific tribes, their lives within the Indian Territory, and their efforts to govern themselves. He suggested (1974, p. 17) that

[t]here is the widespread and mistaken notion that constitutional government did not reach Oklahoma until 1906 when the convention at Guthrie prepared the state's organic law as a prelude to admission to the American Union. To the contrary, roots of Oklahoma constitutional government extend back into the early nineteenth century when this area was the Indian Territory, and they focus on the constitutional experiences of the so-called Five Civilized Tribes – Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws – colonized here from the southeastern United States in fulfillment of the federal government's Indian removal program.

The Five Civilized Tribes fueled the evolution of Indian constitutionalism in the Territory in many ways. For example, the Cherokee and the Creek, along with the Osage, entered into an accord in 1843 – the *Compact Between the Several Tribes of Indians (Constitution and Laws of the Cherokee Nation*, 1875, pp. 274-276) – that was the early basis for the development of intertribal harmony in their new location. The document recorded sections identifying consensus

⁷⁶ Note that the Metlakatla were one such group that also exercised the option provided by §17 “[i]n order to enable the Community and its members to do various kinds of business for the common welfare” ([Corporate Charter of the Metlakatla Indian Community](#), 1946, p. 1). The entire series of resulting IRA documents was published by the Office of Indian Affairs and distributed through the Federal Depository Library Program under the Superintendent of Documents classification number of I 20.9/2:.

on business development, land holding, extradition, and citizenship, that is, on organizational elements that would appear again in later instruments.

Gibson's remarks were supported by Duane Champagne's study entitled *Social Order and Political Change: Constitutional Governments Among the Cherokee, the Choctaw, the Chickasaw, and the Creek* (1992). This robust examination of the determinants of successful democratic government systematically interrogated the histories of these members of the Five Civilized Tribes. The Seminole – Creek descendants who had moved to Spanish Florida at the beginning of the eighteenth century (Sturtevant and Cattelino, 2004) and subsequently removed to the Indian Territory during the nineteenth century – were barred from Champagne's analysis. Following this exclusion, a more firmly controlled investigation of the sociological and political record of the remaining four nations was possible. That examination revealed that all four nations had had substantial opportunities to interact with foreign governments – French, Spanish, English, or American – over a period of continuous political change within the continent (see Waselkov, 2004).

In parallel, Royce (1887, p. 134) proposed that

[t]he Cherokee Nation has probably occupied a more prominent place in the affairs and history of what is now the United States of America, since the date of the early European settlements, than any other tribe, nation, or confederacy of Indians, unless it be possible to except the powerful and warlike league of the Iroquois or Six Nations of New York. It

is almost certain that they were visited at a very early period following the discovery of the American continent by that daring and enthusiastic Spaniard, Fernando De Soto.⁷⁷

De Soto may have been bold and may have discovered the Mississippi River,⁷⁸ but he was brutal in his treatment of the indigenous people he encountered. This behavior had been sanctioned by the Spanish crown and, ultimately, by a Spanish Pope. Dickinson (1990, p. 298) elaborated upon the mission's underlying purposes and specified that De Soto's *entrada* or entry into the Southeast and his justification was expedited by

[m]ost Spanish jurists and theologians [who] rationalized that war would be proper if it were needed to Christianize infidels and to protect Christians. Furthermore, they reasoned that the sufferings and deaths of stubborn heathens in a "just war" would be more than compensated by the blessings of Christian salvation and Spanish civilization which surviving converts and their descendants would enjoy. Greedy as the Spaniards were for the wealth of the Indies, they proclaimed that conversion of the Indians was their prime objective in the conquest of the Americas.

The *Requerimiento* or requirement was an official declaration read to the Indians, placing the onus on them to conform or to perish (see Hanke, 1938 and 1949, pp. 31-36; the document is

⁷⁷ Hudson (1997, pp. 445-460) collected evidence of the path that De Soto had taken; see Saunt (2004, p. 129) for this course, superimposed upon a map of historical sites and battles between 1500 and the end of the nineteenth century.

⁷⁸ In the literature, De Soto has been identified with one of two first names: *Fernando* or *Hernando*. The Final report of the United States De Soto Expedition Commission (Swanton, 1939, p. 65) used *Hernando* as the appropriate name, but pointed out that the earliest narrative of the expedition was printed in 1557 and that its English title was *True Relation of the Hardships Suffered by Governor Fernando de Soto and Certain Portuguese Gentlemen During the Discovery of the Province of Florida. Now newly set forth by a gentleman of Elvas* (p. 4). See the discussion of the directive for the painting [*Discovery of the Mississippi by De Soto A.D. 1541*](#) by William Henry Powell that depicts that event; the piece is in the Rotunda of the United States Capitol.

available in Washburn, 1964, pp. 306-309). Williams (1990, pp. 88-93) described this instrument and its history through the mid-sixteenth century when it was abolished; at that point the Spanish goal was changed from a military conquest to a “missionary enterprise.” Nevertheless, when applied, “[t]he *Requerimiento* had to be read aloud to any group of Indians newly discovered by Spanish conquistadores before hostilities could legally be commenced against them” (p. 91). In due course, “[w]hether or not the Indians comprehended the alien version of the *Requerimiento* or the ultimatum it contained, Spain relied on that document as the official legitimizing basis of its right to conquer and rule throughout the Americas. Subsequent papal legislation intended to protect the Indians... went unnoticed in the jungles of Mexico, Peru, and the other outposts of the sixteenth century Spanish colonial frontier” (pp. 92-93).⁷⁹ Seed (1992, p. 204; emphasis added) made this comprehension proviso even clearer – “No demonstration of understanding was required: rather, the issue of reception was studiously ignored. *It was the act of reading the text that constituted the authority.* The only other action needed to legitimate Spanish rule was to record that the act of reading had taken place.”⁸⁰ As a byproduct of De Soto’s condoned destruction, Indian “[p]olitical hierarchies were toppled, alliances broken, and trading routes disrupted,” and subsequent “rebuilding of political and social

⁷⁹ There is another historical event that contributed to Spanish exploration. It is alleged that Antonio de Nebrija, who wrote in 1492 the first modern Spanish grammar entitled *Gramática de la lengua castellana* or the *Grammar of the Castilian Language*, responded to Queen Isabella’s inquiry of its use by stating that “language is the perfect instrument of empire” (Trend, 1967, p. 54). Interestingly, there are known variants of Nebrija’s work as well, including *Gramática* (Street, 1966). Cohen (1942b) offered a view of one of these later papal bulls that considered the equality of races, as well as an analysis of the Spanish origins of Indian rights in the law of the United States, but see a later reassessment of this latter position (Boast, 2008).

⁸⁰ Similar protocols were developed by the English, as demonstrated by the 1609 “Instructions from the Virginia Council in London advocating Christian conversion of the Indians, tributary status for Powhatan, and agreements with his enemies” (see an assortment of these directives, and the 1646 *Treaty of Peace with Necotowance, King of the Indians*, in Vaughan and Robinson, 1983, pp. 6-8 and 67-70, respectively).

orders produced the more familiar nations of the historic period: Cherokees, Creeks, Catawbas, Choctaws, and others” (Saunt, 2004, pp. 130-132).⁸¹

Such exposures – whether diplomatic or otherwise – to the French, Spanish, English, and Americans, however, taught useful lessons about the expectations of the invaders. Indeed, Dickinson’s concluding remark, that “[t]he notary’s quill overpowered the conquistador’s lance” (1990, p. 312), said volumes about the transitions that occurred in the Southeast and elsewhere in North America. As this changeover unfolded, it became critical for the tribes to develop the ability to engage and negotiate under all forms of oppression, whether the coercion came from local or international sources. As one regional example, the Cherokee negotiated an early treaty in 1785 with the Assembly of Franklin, a proposed entity that withdrew from the State of North Carolina (Williams, 1933) and whose constitution “was essentially identical” to that state’s (Adams, 1980, p. 95). This *Treaty of Dumplin Creek* was followed by another instrument in 1786, the *Treaty of Coyatee*, and both were created to quell sustained difficulties along the frontier that separated the proposed state from Cherokee lands; the secession endured for four years (see Brown, 1938). Deloria and DeMallie identify both compacts under the same title, the *Treaty Between the Cherokee and the State of Franklin* (1999, pp. 1479-1480 and 1480-1483, respectively), as representative exhibitions of American Indian diplomacy. During the turbulence of these affairs, there was confusion about whether the Cherokee would effectively join the breakaway state. Alden (1903, p. 283; emphasis added) listed various contemporary correspondence regarding this possibility: “[i]n the spring of 1785 it was reported that a project of quite a different character was on foot, with the object of getting an accession of population and territory toward the south. It was nothing less than the incorporation of the Cherokee

⁸¹ The Catawba lived to the east of the Cherokee (Rudes, Blumer, and May, 2004).

Indians into the new state – something decidedly exceptional in United States history” and that “the Cherokees were likely to be incorporated in the state of Franklin *and send delegates to her general assembly.*”

An offer of such legislative representation for Indians was not unique. The earlier federal [*Treaty with the Delawares, 1778*](#) (Kappler, 1904b, pp. 3-5) had proposed in Article 6 that it is further agreed on between the contracting parties should it for the future be found conducive for the mutual interest of both parties to invite any other tribes who have been friends to the interest of the United States, to join the present confederation, and *to form a state whereof the Delaware nation shall be the head, and have a representation in Congress* (p. 5; emphasis added).

Thus, the concept of, and the opportunity to create, an Indian state had already been conceived ninety years before the Okmulgee Council sessions. Further, during their negotiations with the CSA in 1861, similar statements regarding representation in the Confederate House of Representatives appeared in the treaties with the Five Civilized Tribes, i.e., in the [*Treaty with the Creek Nation*](#) (Matthews, 1864/1988, pp. 289-310); the [*Treaty with the Choctaws and Chickasaws*](#) (pp. 311-331); the [*Treaty with the Seminole Nation*](#) (pp. 332-346); and the [*Treaty with the Cherokees*](#) (pp. 394-411). Wilson (1975) provided an analysis of this tribal representation in the Confederate government, and stated that Elias Cornelius Boudinot (Cherokee), Robert M. Jones (Choctaw), and Samuel Benton Callahan were the three assigned two-year delegates to the Confederate House of Representatives derived from these negotiations for the Cherokee, the Choctaw and Chickasaw, and the Creek and Seminole nations, respectively. Even though the legislative privileges and responsibilities of the three were restricted – e.g., they could address the assembly but could not vote on bills or resolutions – their

service was a breakthrough for the tribes, and “[t]hese men’s congressional careers constituted the first instance of Indian participation in a white government’s legislature” (p. 353).

Nevertheless, ongoing trade issues, and the expansion of slavery in the Southeast in reaction to the agricultural labor demands of first rice and then cotton planters, required considerable dexterity by each tribe to individually balance its own needs within their swirling relationships with the invaders. These pressures were coupled with dissimilarities in sociological structure among the tribes (see Urban and Jackson, 2004), and with disparate religious resistance to institutional change that could ultimately impede tribal consensus required to sustain such transformations. Further, inter-tribal collisions occurred. The Chickasaw, for example, were allocated at removal to an area within settled Choctaw land in the Indian Territory (*Treaty with the Choctaw and Chickasaw, 1837*; Kappler, 1904b, pp. 486-488), but the association became untenable (Wright, 1929). As a result, the subsequent preamble of the *Treaty with the Choctaw and Chickasaw, 1855* (Kappler, 1904b, pp. 706-714) declared that “the political connection heretofore existing between the Choctaw and the Chickasaw tribes of Indians has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a re-adjustment of their relations to each other and to the United States.” The new treaty was therefore devised to define a district exclusively for the Chickasaw (Article 2, p. 707), sealed with a \$150,000 Chickasaw payment to the Choctaw (Article 8).⁸² Other post-removal negotiations, formulated to ease antagonisms, occurred in the Indian Territory between the

⁸² The Choctaw and Chickasaw had had difficulties long before their relegation to the Indian Territory. Champagne (1992, p. 60) specified that “[b]etween 1730 and 1760 the Choctaw and Chickasaw were in a nearly constant state of war” as the result of the Choctaw’s political alignment with the French and the concomitant competitive linkage between the Chickasaw and the English. See Brightman and Wallace (2004, p. 491) and Galloway and Kidwell (2004, pp. 511-514).

Civilized Tribes and others: Deloria and DeMallie listed the 1843 *Compact Between the Cherokee, Creek, and Osage* and the 1859 *Compact Between the Cherokee, Creek, Chickasaw, and Seminole* as two such occurrences prior to the Okmulgee Council meetings (1999, pp. 737-740). Both instruments spoke to the tribes' shared concerns of extradition, alcohol use, revenge, and peace, and of the need for a process to overcome the penalties of removal that had "extinguished our ancient council fires and changed our position in regard to each other" (pp. 737 and 739, respectively).

What is critical to this study of the *Okmulgee Constitution* was the boldness and aptitude with which the Cherokee, Chickasaw, Choctaw, and Creek had initiated diplomacy, formulated pacts with neighboring tribes, created functional constitutions, and instigated progress well before the post-Civil War demands espoused by the federal government. Indeed, in the case of the Cherokee, four decades separated their 1827 constitution, a document carefully modeled after the federal instrument, from the Okmulgee proceedings. That initial Cherokee perspective had been formed in the very teeth of early yet intense removal activities, when the tribe was then fighting (and had been so since the first hints of potential removal in 1809) to remain in the Southeast. A tribal transition at that time towards agriculture and away from the dying fur trade, the disregard exhibited by the federal government towards acknowledged treaty parameters, and a secularized tribal council exacted a national declaration of unity in that year. In subsequent years and under even more severe pressure to remove, none of the other three tribes established such political cohesion (Champagne, 1992, pp. 121-122). This profound step by the Cherokee – and the inability of the other three tribes to make such a smooth transition over the next several decades – induced for these entities various delays in achieving badly needed institutional adaptations. In fact, the Choctaw had prepared a constitution prior to that of the Cherokee, but

no substantial adjustments in functional organization were accomplished; Champagne therefore used 1860 as the effective date of a successful constitutional government for the Choctaw (p. 1).

As further evidence of the prevalence of such legal endeavors, Hargrett (1947, p. vii) assembled a very useful bibliography of the laws and constitutions crafted by American Indians. This ensemble collected publishing histories and provenance annotations of these items for the Cherokee, Chickasaw, Choctaw, Creek, Nez Perce, Omaha, Osage, Ottawa, Sac and Fox, Seminole, Seneca, Stockbridge and Munsee, and Winnebago tribes. There were also observations pertinent to the two special areas of the Indian Territory, which focused exclusively on the *Okmulgee Constitution* (pp. 91-95) and on the last minute but unsuccessful bid for the State of Sequoyah (p. 110) that just predated Oklahoma's statehood (The State of "Sequoyah," 1905; Proposed state of Sequoyah, 1906; Maxwell, 1950a and b). As an acknowledgement of the learned experiences of these tribes, the [*Constitution of the State of Oklahoma*](#), adopted in 1907, employed the 1905 *Constitution of the State of Sequoyah* as an essential model and source for the new state's primary document (see Proposed state of Sequoyah, 1906, pp. 47-87).

Hargrett's "Chronology of Principal Events" (pp. xvii-xviii) furnished an overview of these legislative evolutions. These selected adoption dates, with their particular focus on the products of the Five Civilized Tribes, are indispensable to the present analysis of the *Okmulgee Constitution*:

- "1826 – The Choctaw in Mississippi adopt a constitution."
- "1827 – The Cherokee Nation adopts a constitution."
- "1834 – The Choctaw reestablish national government in the West and adopt a new constitution."

- “1839 – The reunited Cherokee establish national government in the West and adopt their permanent constitution.”
- “1846 – The Chickasaw tribe adopts a constitution.”
- “1856 – The Seminole Nation is organized in the West and a written constitution adopted shortly afterward.”
- “1857 – The Chickasaw, now separated by treaty from the Choctaw, organize the Chickasaw Nation, adopt a constitution, and begin the regular printing of their laws.”
- “1859 – The Creek Nation adopts a constitution.”
- “1860 – The Choctaw Nation adopts its permanent constitution.”
- “1867 – The Creek Nation adopts its permanent constitution. The Chickasaw Nation adopts its permanent constitution.”
- “1870 – The General Council of the Indian Territory writes a constitution, never ratified, for a proposed Indian Territory.”

The text of the 1856 Seminole constitution has not been found (p. 105), leaving instruments from four of the Five Civilized Tribes.⁸³ Jeffrey Burton, in his analysis of the ever-changing legal venues in the Indian Territory between 1866 and 1906, thought that these four constitutions were “drawn after the pattern set by the States whose institutions were known to [these tribes], implied or envisaged a relationship with the United States similar to what then subsisted between the federal Government and the governments of the individual states. Only the Seminole devised a

⁸³ To be complete when considering participants at the Okmulgee Council meetings, the Osage Nation in Kansas adopted a constitution in 1861. The sole remaining example of the text is a broadside now held by the National Archives (Hargrett, 1947, p. 99). Augustus Captain, an Osage delegate at the sessions, served on the team that drafted the *Okmulgee Constitution*.

constitution that was distinctly their own.”⁸⁴ Nevertheless, the criminal and civil codes, while less elaborate than those of a State, were quite appropriate and functional for each nation (1995, pp. 72-82).⁸⁵ As one immediate index of the significance of these tribal documents, it should be noted that in proceedings before the United States Court of Appeals for the Indian Territory between the years 1896 and 1905, the Cherokee constitution was cited in five separate cases (*Crawford v. Duckworth*, 1899; *Crowell v. Young* 1901 and 1902; *Price v. Cherokee Nation*, 1904; *Dick v. Ross*, 1905); the Choctaw in two (*McCurtain v. Grady*, 1896; *Ansley v. Ainsworth*, 1902); and the Creek in one (*Ex parte Tiger*, 1898); see Bernholz (2004).

A further benefit of Hargrett’s work was the compilation of microfilm images of many of these documents (see *The Constitutions and Laws of the American Indians*, 1976). The entries in both the printed text and the seven microfilm reels were coordinated, with a description noting each item, even if the graphic material was unavailable for reproduction. As a result, the sequence depicted in the “Chronology of Principal Events” was enhanced with a series of clear

⁸⁴ The “Key to Chapter Coverage” map displayed in the “Southeast” volume of the *Handbook of North American Indians* (Sturtevant and Fogelson, 2004, p. ix) ascertained that the Cherokee, Chickasaw, Choctaw, and Creek tribes were original residents of, at most, Alabama, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee. Burton’s remark would thus potentially hypothesize that an inquiry into the contents of the contemporary constitutions of Mississippi, and of North and South Carolina and perhaps of Tennessee, respectively, might secure insight into the composition of the 1826 Choctaw and the 1827 Cherokee tribal constitutions. The [1865 Alabama](#), the [1865 Georgia](#), the [1817 Mississippi](#), the [1776 North Carolina](#) (with amendments through 1835), the [1776 South Carolina](#), and the [1796 Tennessee](#) state instruments are all readily available.

⁸⁵ Just as the 1856 Seminole constitution is now unobtainable, “[n]o code of laws for the Seminole was ever published and no manuscript record other than the revised code of 1903 is known” (Burton, 1995, p. 80). Hargrett (1947, p. 105) described “an unpublished manuscript volume containing some acts passed by the council in the years 1884, 1886, 1887, and 1893” and indicated that “[t]he same office has also an unpublished typewritten translation into English of the acts passed by the council from 1897 to 1903. The translation, from Seminole originals in private hands, was made in 1906 by George Washington Grayson (1843-1920), a prominent Creek Indian.” As will be seen, Grayson served as Secretary during the Okmulgee Council meetings.

bibliographic data for each of the critical documents that now illuminate the constitutional evolution for each of these Indian nations.

It is this last identified transaction in 1870, the framing of the initial *Okmulgee Constitution*, which reflects in many ways the attributes of all those predecessor instruments, just as the *Constitution of the State of Oklahoma* was shaped in part upon the text of the earlier *Constitution of the State of Sequoyah*. The antecedent path's importance is re-amplified when the timeline at the *Okmulgee* convention is investigated. After an initial exploratory meeting in September 1870, the Council reconvened in December. An entry in the *Journal of the General Council of the Indian Territory* for the afternoon session on 8 December (1871, pp. 19-20) referred to a subsequently adopted resolution that authorized convention President Enoch Hoag "to appoint a committee of ten to devise a permanent organization of the Indian Territory, as contemplated in the treaties of 1866, with the several tribes resident in the said Territory."⁸⁶ Those delegates returned a report on 10 December, stating that the committee "regard[ed] the organization of the Indian Territory, under any form of government, as of the gravest importance to all the people who inhabit it" and that the working group

respectfully recommend that the Council proceed to form a constitution for the Indian Territory, which shall conform to existing treaty stipulations, provide for an Executive, Legislative and Judicial Department, and vested with such powers only as have been conceded to this General Council, and not inconsistent with all rights reserved to each nation and tribe who were parties to the treaties of 1866, and, also, with the final

⁸⁶ See the contemporary newspaper article "The gentle savage" (1873), from the *Chicago Daily Tribune*, for more on Hoag.

provision that such constitution shall be obligatory and binding only upon such nations and tribes as may hereafter duly approve and adopt the same (p. 24).

Two days later, the following twelve convention participants were appointed to draft the *Okmulgee Constitution* (pp. 25-26):

W. P. Ross – Cherokee

G. W. Johnson – Cherokee

Campbell Leflore – Choctaw

C. P. H. Percy – Chickasaw

Colbert Carter – Chickasaw

Ok-tar-har-sars Harjo – Muskokee

John F. Brown – Seminole

G. W. Stidham – Muskokee

Francis King – Ottawa

Riley Keys – Cherokee

Joseph P. Folsom – Choctaw

Augustus Captain – Osage

Of the nations represented here, only the Ottawa had not written at least one functional constitution (Hargrett, 1947).⁸⁷ In addition, at least three of these men had played a part in writing those initial instruments for their respective people: Joseph P. Folsom had signed the 1860 Choctaw instrument (*Constitution and Laws of the Choctaw Nation*, 1861, p. 23); Charles P. H. Percy had been the Chickasaw President at the time of their 1867 document (*Constitution*,

⁸⁷ The Ottawa were transferred from Kansas to the Indian Territory in 1867 after almost endless movement from their original home around the Great Lakes. Feest and Feest (1978, p. 772) commented that “[d]uring historic times, the Ottawas were chiefly living in various coastal and riverine regions of the Michigan Lower Peninsula and in adjacent parts of Ontario, Ohio, Indiana, Illinois, and Wisconsin, and (at a later date) also in Kansas and Oklahoma.” Figures 1, 5, and 6 of that presentation revealed the abundance of their territories, villages, migrations, reservations, and land cessions (pp. 773, 778, and 779, respectively). Their tribal status was terminated in 1956 (70 Stat. 963), but restored in 1978 when that earlier act was repealed (92 Stat. 246). During this interlude, they did not appear as a tribal entry in the “Oklahoma” section of the 1974 *Federal and State Indian Reservations and Indian Trust Areas* (United States, 1974). The Peoria and Wyandotte in Oklahoma each suffered a similar pattern of termination (70 Stat. 937 and 893, respectively), exclusion from the *Federal and State Indian Reservations* publication, and then reinstatement simultaneous with that of the Ottawa. Today, the Ottawa occupy just 26.63 acres in northeastern Oklahoma (Tiller, 2005, p. 860).

Laws, and Treaties of the Chickasaws, 1867, p. 19); and Ok-tar-har-sars Harjo had participated in the 1867 Creek text (*Constitution and Civil and Criminal Code of the Muskokee Nation, Approved at the Council Ground Muskokee Nation, October 12, 1867*, 1868, p. 8).⁸⁸ Ultimately, all these tribal constitutions within the Indian Territory became void in 1906 upon the passage of the Oklahoma Enabling Act (34 Stat. 267). Statehood commenced on 16 November 1907 (35 Stat. 2160), but it was “specifically conditioned on the federal government’s reserving and protecting all Indian rights within the territory” (Biber, 2004, p. 206).⁸⁹

The *Journal* entries following these assignments offered little extra data, other than to specify that the group “retired from the Council for the purpose of entering upon their duties” in the afternoon of the 13th (p. 28), or that on the 16th President Hoag “announced that the Committee on the Constitution had reported only a portion of its work, which was taken up, read twice, and interpreted;” this latter progress was supplemented by “another portion” the following

⁸⁸ Hargrett (1947, p. 62) indicated that the 1861 *Constitution and Laws of the Choctaw Nation* was “the only volume of Indian session laws now known to have been printed within the jurisdiction of the Confederate States of America.”

⁸⁹ Besides this stipulation, Biber summarized other Oklahoma statehood requirements in the Oklahoma Enabling Act:

The Osage Reservation was required to be incorporated as a single county within the state. The state capital was to be maintained at Guthrie until 1913, and the state government was limited as to the number of public buildings it could construct in Guthrie until 1913. The state constitution was to protect religious freedom, to prohibit polygamy forever, and to prohibit the liquor trade in the former Indian Territory for at least twenty-one years after admission. By now standard conditions as to the disclaimer of federal and Indian lands within the state, equality of taxation for non-residents, and no taxation of United States property, were provided. The public school system was to be “open to all the children of said State and free from sectarian control; and said schools shall always be conducted in English.” The state was also to “never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude.” Public lands and moneys granted by the federal government to the state for educational purposes were to be used only for the state school system. Restrictions as to the leasing, sale, advertisement for sale and leasing of public lands granted to the state were also imposed.

day (p. 33). On 19 December – just one week after the committee was initially convened – “the entire constitution, as drafted by the committee, was read a second time and interpreted,” with a third reading initiated that afternoon (pp. 34-35). The *Journal* identified six motions, by delegates from the floor, to modify the constitution’s text; there were four adoptions, one rejection, and one withdrawal of these suggestions (pp. 35-36). During the afternoon of 20 December 1870, four extra and successful modifications were proposed, followed by a final vote on the entire instrument. Delegates cast 52 ballots in favor, and 3 against, the rendered proposal.⁹⁰

Thus, in little more than a single week, the full text of the 1870 *Okmulgee Constitution* was composed, debated, and amended. By comparison, the creation of the *United States Constitution* had dragged out over more than sixteen weeks, between 25 May and 17 September 1787, during which “[f]or nearly all that time, the delegates struggled over control of the proposed government, over the proper relationship between the state and national governments, and over the nature of an effective and safe relationship between the several departments of the government in the republican form” (Jillson, 1988, p. 193). The tribal representatives at the *Okmulgee* convention, however, had before them as a model the *United States Constitution*, that of the Confederate States of America, and – most importantly, as it turned out – four of their own tribal instruments: the 1839 Cherokee, 1860 Choctaw, and the Creek and the Chickasaw documents from 1867. Direction might also have been found from colonial documents that revealed thresholds for office holding; these criteria included an array of property and residence, religious, gender, moral, and ethnic parameters. The Okmulgee Council members would have

⁹⁰ The negative votes in this round of balloting were delivered by Ezekiel Proctor, Henry Chambers, and Sanford W. Perryman; Proctor and Chambers represented the Cherokee nation and Perryman was from the Muskogee (p. 37).

known that Indians had been disqualified from voting and holding office in Georgia, South Carolina, and Virginia (Miller, 1899, p. 104), and that the apportionment of the federal House of Representatives was based on populations “excluding Indians not taxed” (The Constitution of the United States of America: Analysis and Interpretation, 2004, p. 119).⁹¹

Critically, the United States instrument had its own predecessors as political models. Gordon, in his chapter titled “The development of constitutional government and countervailance theory in seventeenth-century England” (1999, p. 16), contended that

there are only two basic models of social organization. In one, the authority to command is structured in hierarchical order, with each entity in the system obligated to obey those superior to it; at the top is an entity that is supreme. The other model depicts a network of independent entities that interact with each other, with no supreme authority. The operational concept that drives the analysis of the first model is the notion of ‘sovereignty.’ Its counterpart in the second is ‘countervailance,’ or the dynamics of checks and balances.

Further, this latter prototype was conceived in 1642 when King Charles I of England responded to Parliament’s so-called *Nineteen Propositions* that required resolution to avoid conflict between the Crown and that body. Charles’s response in part was that “the Lords [of Parliament], being trusted with a judicatory power, are an excellent screen and bank between the prince and the people, to assist each against the encroachments of the other,” and Gordon

⁹¹ The concept of “Indians not taxed” had a confusing history that endured until the twelfth decennial census in 1900 when it was finally determined that Indians “were to be included in the total population of the country like everyone else” (Seltzer, 1999, p. 4). This approach led to the important Census publication *Report on Indians Taxed and Indians Not Taxed in the United States (except Alaska) at the Eleventh Census: 1890* (1894, p. 22) that formally declared an Indian Territory count of 59,367.

proposed that “[a]fter the Revolution of 1688, [this countervailance position] was virtually uncontested as the standard theory of the English constitution” (p. 258). With specific reference to the United States, David Hume’s 1767 compilation, *The History of England, From the Invasions of Julius Caesar to the Revolution in MDCLXXXVIII*, stated that “[i]n some of these declarations [i.e., those made by King Charles I in 1642], supposed to be penned by Lord Falkland, is found the first regular definition of the constitution, according to our present ideas about it, that occurs in any English composition; at least any, published by authority” (1795, p. 324). This specific edition was reproduced in Philadelphia three decades after the original had been in London but there can be no doubt that the Founding Fathers consulted this material during the preparation of the *United States Constitution*. That “standard theory of the English constitution” held sway in the colonies as well, but the full power of this policy became evident only after Independence and through the development of state constitutions, very much the same environment for which the *Okmulgee Constitution* was designed: twelve of thirteen colonies had by 1777 created such foundations for their futures and these models helped shape the national one (Gordon, 1999, pp. 294-299).⁹² Gordon went so far as to explain that “it is plain that the chief source of American ideas concerning the fundamental theory of the English constitution was [Charles-Louis de Secondat, the Baron de] Montesquieu.... A better case could perhaps be made for the influence of volumes 5 and 6 of Hume’s *History of England* (1765-1762), where he

⁹² See Adams (1980) for the list of these early state constitutions. Four were created before the Declaration of Independence (New Hampshire, 5 January 1776 [pp. 68-70]; South Carolina, 26 March 1776 [pp. 70-72]; Virginia, 29 June 1776 [pp. 72-73]; and New Jersey, 2 July 1776 [pp. 73-74]) and six were formed afterwards (Delaware, 21 September 1776 [pp. 74-76]; Pennsylvania, 28 September 1776 [pp. 76-80]; Maryland, 8 November 1776 [pp. 80-81]; North Carolina, 18 December 1776 [pp. 81-82]; Georgia, 5 February 1777 [pp. 82-83]; and New York, 20 April 1777 [pp. 83-86]). Connecticut and Rhode Island used modifications to their royal charters from 1662 and 1663, respectively (pp. 66-68). Only Massachusetts (16 June 1780 [pp. 86-93]) fell beyond this 1777 threshold.

depicts the contest between Parliament and the Stuart monarchs as hinging upon whether political power in England should be concentrated and absolute, or dispersed and limited” (pp. 322-323, n. 53). Hume’s volume 5 (1765) contained “the first regular definition of the constitution.”

Therefore, the overall desire to construct an appropriate and enduring fundamental plan for the tribes of the Indian Territory was mediated by these prior, well established examples of sound constitutional elements. These four edited entries from Hargrett’s “Chronology of Principal Events” – along with their sources – are necessary for this *Okmulgee Constitution* presentation:

- “1839 – The reunited Cherokee establish national government in the West and adopt their permanent constitution” (*Laws of the Cherokee Nation: Adopted by the Council at Various Periods*, 1852; Corden and Richards, 1912, pp. 201-210).
- “1860 – The Choctaw Nation adopts its permanent constitution” (*Constitution and Laws of the Choctaw Nation: Together with the Treaties of 1855, 1865 and 1866*, 1869; Corden and Richards, 1912, pp. 211-223).
- “1867 – The Creek Nation adopts its permanent constitution” (*Constitution and Civil and Criminal Code of the Muskokee Nation, Approved at the Council Ground Muskokee Nation, October 12, 1867*, 1868).
- “1867 – The Chickasaw Nation adopts its permanent constitution” (*Constitution, Laws, and Treaties of the Chickasaws*, 1867; Corden and Richards, 1912, pp. 228-237).

Upon examining these materials, it is apparent that the Committee on the Constitution relied far more heavily upon the general format of the original federal Constitution coursing through the

creation of these earlier tribal constitutions rather than directly upon the United States or the Confederate States of America materials. There was certainly a substantial amount of textual cross-pollination among the individual tribal products, revealed by the constitutional ideas shared across these final tribal endeavors and by their modeling, for the most part, upon the 1839 Cherokee standard. It appears then, based on this close correspondence, that the easy access to such contemporary Indian documents, as well as to the collective memory of the Committee membership, facilitated the prompt maturity of the final version of the *Okmulgee Constitution* in 1870.

Hargrett's précis of each document acknowledged that these instruments were very serviceable right up to the enabling act for Oklahoma in 1906. He stated that for the Cherokee, "[t]he 1837 constitution, which was modeled closely upon that of the United States, and again the 1839 constitution, which, with few changes, remained in force until dissolution of the Cherokee government in 1906" (p. 4); that the Choctaw's 1862 amended version of the 1860 Doaksville rendition, "which represented a compromise between the 'progressive' and the conservative elements and which, with few changes, remained in force" until that very moment in 1906 (p. 56); and that the same conditions prevailed for the constitutions formed by the Creek and by the Chickasaw in 1867 (pp. 81 and 42, respectively). The implicit recognition by the tribes that these materials pronounced the true underlying expectations of a successful constitutional government for each of them must have reinforced the efforts expended by the Committee in their construction of *Okmulgee*. If nothing else, the brevity of the creation timeline for the *Constitution* confirmed that the convention had a common concern, based on similar dreams, for a good tribal – and in the near future perhaps, for a good Indian state – government. The collective knowledge encountered through previous constitutional experiences

was thereby blended into a joint *confederation* document. Appendix IX reveals the contributions to the final text of the 1870 *Okmulgee Constitution* by those earlier Indian statements. In two instances, pertinent United States treaty material contributed parallel text. These uses applied specifically to *Okmulgee's* Article I, §1 that defined the boundaries of the Indian Territory and for Article III, §10, which described per diem and mileage payments to General Assembly members. The appropriate treaties cited for Article I, §1 were the [*Treaty with the Western Cherokee, 1833*](#) (Kappler, 1904b, pp. 385-388), the [*Treaty with the Choctaw and Chickasaw, 1855*](#) (pp. 706-714), and the [*Treaty with the Choctaw and Chickasaw, 1866*](#) (pp. 918-931); the last instrument supplied reimbursement data that may have helped craft Article III, §10. *The Constitution's* Article III, §4 described delegates to the proposed House of Representatives reminiscent of those four Confederate States of America treaties that pledged similar avenues for delegates, i.e., the [*Treaty with the Creek Nation*](#) (Matthews, 1864/1988, pp. 289-310); the [*Treaty with the Choctaws and Chickasaws*](#) (pp. 311-331); the [*Treaty with the Seminole Nation*](#) (pp. 332-346); and the [*Treaty with the Cherokees*](#) (pp. 394-411). The applicable articles from these four instruments were added to the possible provenance path list for Article III, §4.

- ***Okmulgee Constitution***

Therefore, in between the *Iroquois Constitution* and the instruments created under the *Indian Reorganization Act* of 1934, there were these attempts made by the Civilized Tribes to form relevant constitutional formulae for a better future, both before and after removal to the Indian Territory.⁹³ However, the unique difference between the *Okmulgee Constitution* on the one hand, and the *Iroquois Constitution* and those examples constructed much later under the

⁹³ In his *Handbook of Federal Indian Law*, Cohen developed an extensive list of early tribal constitutions that revealed a diverse tribal interest in such documents, even before the motivation of the *Indian Reorganization Act* (1942a, p. 129, n. 59).

IRA legislation on the other, is that subsequent to the Civil War the Indian Territory tribes were neither confederated as the Iroquois were originally, nor were they commingled on a single reservation, as stipulated by the IRA specifications. The task before them was to construct the basis of a single federal state from a number of Indian ones, an unprecedented opportunity.

Near the very end of the Civil War, the Indians of the Territory met at Camp Napoleon in late May of 1865 and collectively signed a compact with the intent to “afford sufficient strength to command respect and assert and maintain our rights” in forthcoming negotiations with the federal government (Thoburn and Wright, 1929, pp. 849-850; Lewis, 1931, p. 361). The event was well attended, with five to six thousand Indians gathered to produce a document of about 700 words (Thoburn and Wright, 1929, p. 849). For comparison, the [*Treaty of Fort Laramie with Sioux, etc., 1851*](#) (Kappler, 1904b, pp. 594-596), one of the last major treaty councils of the Plains, was an assembly of from ten to twelve thousand Indians (Hafen and Young, 1938, p. 183; Great Indian council of the plains, 1851). Population estimates for these Indian Territory tribes – totaling 15,500 – were reported on 20 July 1865 by Confederate military as 4,000 Cherokee; 4,000 Choctaw; 4,500 Muscogee; 1,100 Seminole; 1,200 Chickasaw; 300 Osage; 200 Reserve Caddos; and 200 Reserve Comanches. Counts for the “wild” prairie tribes were unavailable. This report was accompanied by the Camp Napoleon compact text (The war of the rebellion: A compilation of the official records of the Union and Confederate armies, 1896, pp. 1102-1103). La Vere (2000, p. 176) summarized that event as “the most comprehensive gathering of Indians since the great international councils of the 1840s.” Under these circumstances, the broad array of participatory tribes and bands, and the declared motto preceding the compact’s testimonium, were indications of that concerted attempt:

Whereas the history of the past admonishes the Red Man that his once great powerful race is rapidly passing away as snow before the summer sun. Our people of the mighty nations of our forefathers many years ago having been as numerous as the leaves of the forest or the stars of the heavens, but now by the vicissitudes of time and change and misfortune and the evils of disunion, discord, and war among themselves are but a wreck of their former greatness. Their vast and lovely country and beautiful hunting grounds abounding in all the luxuries and necessities of life and happiness given to them by the Great Spirit having known no limits but the shores of the great waters and the horizon of the heavens, is now on account of our weakness, being reduced, and hemmed in to a small and precarious country that we can scarcely call our own, and in which we cannot remain in safety, and pursue our peaceful avocations – nor can we visit the bones and graves of our Kindred so dear to our hearts and sacred to our memories, to pay the tribute of respect unless we run the risk of being murdered by our more powerful enemies, and whereas there yet remains in the timbered countries on the plains and in the mountains many nations and Bands of our people which if united would afford sufficient strength to command respect and assert and maintain our rights –

Therefore we the Cherokees, Choctaws, Muskogees, Seminoles, Chickashaws, Reserve Caddoes, Reserve Osages, and Reserve Comanches, Composing the Confederate Indians Tribes, and Allies of the Confederate States, of the first part, and our Brothers of the plains, the Kiowas, Arrapahoes, Cheyennes, Lapan, and the several bands of the Comanches, the Nacones, Cochateks, Senawuts, Yameparckas, and Mootchas, and Jim Pockmark's Band of Caddoes, and Annadahkos of the second part; do for our

peace happiness and the preservation of our race make and enter into the following league of compact, To wit –

1st. Peace and friendship shall forever exist between all the Tribes and Bands parties to this compact. The Ancient Council fires of our forefathers already kindled by our brothers of the timbered countries, shall be kept kindled and blazing by brotherly love until their smoke shall ascend to the Spirit Band to invoke the blessings of the Great Spirit in all our good works. The Tomahawk shall forever be buried, the Scalping Knife shall be forever broken. The War path heretofore leading from one tribe to another shall grow up and become as the wild wilderness. The path of peace shall be opened from one Tribe or Band to another and kept open, and traveled in friendship, so that it may become whiter and brighter as the time rolls on, and so that our children in all time to come shall travel no other road, and never shall it be stained with blood of our brothers.

2nd. The parties of this compact shall compose (as our undersigned brothers of the timbered countries have done) an Indian Confederacy, or a Band of Brothers having for its object the Peace, the Happiness, and the Protection of all alike and the preservation of our race. In no case shall the war path be opened to settle any difficulty or dispute that shall hereafter arise between any of the Bands or Tribes parties to this compact or individuals thereof. All difficulties shall be settled without the shedding of any blood and by the suggestions of the Chiefs and headmen of the Tribes, Band, or person interested.

The Motto or great principal of Confederate Indian tribes shall be “An Indian shall not spill an Indian’s blood.”

In testimony of our sincerity and good faith in entering into this Compact, we have smoked the Pipe of Peace and extended to each other the hand of friendship and

exchanged the tokens and emblems of Peace and friendship peculiar to our Race this the 26th day of May 1865 (Lewis, 1931, pp. 361-363).⁹⁴

Federal officials at the Headquarters of the Department of Arkansas were aware of this Camp Napoleon transaction, and reported to the Secretary of the Interior, James Harlan, on 28 June 1865 that:

[a] grand council of Indian tribes was held at Camp Napoleon, Chatatumaha, on the 26th of May ultimo, at which the Cherokees, Choctaws, Chickasaws, Creeks, Comanches, Caddos, Cheyennes, Seminoles, Osages, Kiowas, Arapahoes, Lipans, Northern Osages, and Anadarkoes are said to have been represented. A solemn league of peace and friendship was entered into between them, and resolutions were passed expressive of their purposes and wishes. They appoint commissioners, not to exceed five in number, from each nation to visit Washington for conference with heads of Departments. A delegation from this council is now at Fort Smith and requests by telegraph that I will furnish passports for their commissioners to Washington, D. C. (Message of the President of the United States, and accompanying documents, to the two Houses of Congress, at the commencement of the first session of the Thirty-ninth Congress, 1866, p. 479).⁹⁵

Ensuing meetings in June and July, in anticipation of the expected federal conference, were not particularly fruitful: “no general solidarity among the tribes or factions” was established (Bailey, 1972, p. 58). As it turned out – and reported a decade and a half later in a series of transmissions

⁹⁴ Deloria and DeMallie (1999, pp. 740-741) presented the Camp Napoleon compact as well. Note too that there are textual differences among the renditions of this document.

⁹⁵ Charles C. Royce (1887, p. 341), in an important study of the Cherokee, stated that “[i]t was, therefore, with much gratification that the Secretary of the Interior learned... of the holding of a council at Camp Napoleon... which was attended by representatives of all southern and southwestern tribes, as well as by the Osages.”

by the Secretary of the Interior (Letter and accompanying documents transmitted by the Secretary of Interior, in response to inquiries of the Committee on Education and Labor as to existence of lands in the Indian Territory available for settlement by the colored population, 1882) – the President determined that the treaty negotiations, and an attempt to solve the issue of resettlement of Blacks “in organized communities of their own race” (p. 1), would take place at Fort Smith in September, instead of receiving the tribal delegates in Washington.

Later still, the *Okmulgee Constitution* was established by these same tribes in response to the specific conditions announced at the Fort Smith meeting (see below) and to the federal performance demands set in their post-Civil War treaties. Several delegates at the Camp Napoleon event participated again at the Okmulgee Council gatherings (see the *Camp Napoleon Compact* signatures in Clampitt, 2005, pp. 50-51 for a comparison with the delegate lists in the *Okmulgee Journal* publications). In many ways, the *Okmulgee* instrument was a comparable effort to leverage the potential advantages obtainable as a confederation instead of as a series of independent tribes, much as had occurred under the *Iroquois Constitution* and as had been envisioned and expressed at Camp Napoleon.⁹⁶ *Okmulgee* was stimulated by federal enthusiasm for these Indian Territory groups to postulate a constitution for a “Territory of Oklahoma” (see [Treaty with the Choctaw and Chickasaw, 1866](#); Kappler, 1904b, p. 922), and in preparation for

⁹⁶ Schmeckbier (1927, p. 102) summarized this strategy by saying that [t]he old idea of a real Indian Territory again came to the fore, and provision was made for a general council of delegates from each tribe, which council was to have the power to legislate upon all rightful subjects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in the territory, the arrest and extradition of criminals and offenders escaping from one tribe to another, the administration of justice between members of the several tribes of the said territory, and persons other than Indians and members of those tribes or nations, the construction of works of internal improvement, and the common defense or safety of the nations of the territory.

Indian statehood. The proposed entity's name reflected the tribes' commitment to such an outcome: *Oklahoma* was derived from a "combination of two Choctaw words 'Okla' meaning people and 'Humma' red" (Origin of county names in Oklahoma, 1924, p. 80). The name had been suggested by Reverend Allen Wright of the Choctaw Nation, who acted as a Commissioner for the federal government during the negotiations of that treaty (see p. 931) that proposed that the Superintendent of Indian Affairs would serve as the Governor of this new Territory (Wright, 1936, p. 156).⁹⁷ The tribes, after much delay, reacted to the federal request to break ground for such a political entity. In April 1870, Samuel Checote, the Principal Chief of the Creek, called for an International Council to formalize the Indian position as one means of protection against the pending avalanche of settlers and political change (Burton, 1995, pp. 26-27).⁹⁸ This fresh eagerness – supplemented by the accumulated experiences gathered at the *Camp Napoleon Compact* summit in 1865 attended by almost two dozen Territory tribes and through the Five Civilized Tribes' familiarity compiled from past constitution construction – meant that such federal requirements might be met satisfactorily. In brief, this desire came to fruition, with the creation of the *Okmulgee Constitution* in December 1870, and a subsequent modified version in

⁹⁷ Muriel Wright (1889-1975), who wrote prolifically upon the history of Oklahoma, was the granddaughter of Reverend Wright (1826-1885). Among other achievements, in 1855 he was the first Indian student from the Indian Territory to receive a Master of Arts degree; he served as Principal Chief of the Choctaw between 1866 and 1870; and he translated the laws of the Chickasaw Nation from English into Choctaw in 1872 (Meserve, 1941).

⁹⁸ In the same role, Checote two years later and as part of a joint Cherokee and Creek delegation cosigned a protest against surveys proposed under the Indian appropriations bill for the 1873 fiscal year (see Indian appropriations bill, 1872). Lambert (1926, p. 277) observed that "[s]ome of the documents [Checote] helped to prepare and sign, which were presented to the government at Washington, in the years 1872-74, protesting against the proposal of our Government extending territorial jurisdiction over the Five Civilized Tribes, were statesman-like and lofty in appeal and worthy to find a place along side with other great papers of State." A photograph of 'Governor Checote' was included in that Lambert article.

1875.⁹⁹ In total, nine council meetings took place between the Fall of 1870 and the Summer of 1875 and these were reported in eight *Journal* publications. All sessions took place in Okmulgee, the capital of the Creek Nation.¹⁰⁰ The text of the *Okmulgee Constitution* only appeared in three of these official statements, i.e., in the *Journal* from each of the adjourned first, the sixth, and the adjourned sixth sessions.

Appendices I through VIII contain the full document titles, their years of publication, and brief notes to indicate highlights – and to illustrate a few problems – of those events. The first Appendix follows the published format and holds journal entries for both the initial session and its adjourned sitting. Each Appendix includes a list of tribal participants for the occasion(s). The intent was to provide through these Appendices a view of the processes addressed by these delegates in their response to the stipulations ordered by the Southern Treaty Commission in 1865 and to the 1866 treaty parameters. Table IA displays the range of delegate tribes, taken from the *Journal* issues, in attendance at each of the nine sessions. An additional column in Table IA identifies, for reference, each tribe’s page number in Wright’s *A Guide to the Indian Tribes of Oklahoma* (1951). This tabular presentation reveals that the Cherokee, Creek, and Sac and Fox had representatives at every meeting, whereas delegates from the Chickasaw, Choctaw, and Seminole attended only two, eight, and eight times, respectively. Seven groups participated at just a single session.

⁹⁹ Hill (1909, p. 487) called the *Constitution* “the first practical plan for the government of the Indian Territory.”

¹⁰⁰ In 1949, the Oklahoma Historical Society and the State Highway Commission erected a [roadside marker](#) commemorating this event. The sign stated: “Erected 1878, Ward Coachman, Principal Chief. Creek Nation organized 1867 under written constitution and Okmulgee named as capital. Noted Chiefs here included Samuel Checote, Joseph Perryman, Isparhecher, Pleasant Porter. ‘Okmulgee Constitution’ written here in Inter-Tribal Council, 1870, intended for organization of all Indian Territory.”

As one guide to the individual aid provided by direct or at least strong reference to the 1839 Cherokee, 1860 Choctaw, 1867 Creek, and 1867 Chickasaw constitutions, Appendix IX holds 41 Chickasaw, 40 Choctaw, 38 Cherokee, and 18 Creek passages that were likely considered to assist the weaving of the final *Okmulgee* wording.¹⁰¹ As Champagne concluded (1992, p. 254; emphasis added), “[n]one of the southeastern nations began with political institutions that closely resembled a differentiated constitutional government. The formation of the southeastern constitutional governments reflects both consensual and coercive modes of change.” Further, “[t]he different paths to constitutional polities among the southeastern nations in terms of degree of differentiation of the polity, rate of formation, stability, and relative use of coercion are *most simply explained by variations in the combined relations of societal differentiation and the degree and form of social-political integration.*” In particular, “Creek society showed the least amount of national political integration, and the continuity of adherence to a nondifferentiated form of political order by regional conservatives resulted in the most normatively unstable constitutional government, the most frequent use of coercion to protect the constitutional government, and the least differentiated constitutional polity” (p. 252). This absence of Creek political amalgamation was stimulated by “considerably more negotiation and *conflict over the fundamental rules of political order* than the Cherokee, Choctaw, and Chickasaw cases” (p. 228).

The stipulations that had been forced upon the Indian Territory tribes by the federal government in 1865 at Fort Smith, and in the suite of treaties created the following year, meant that the dissimilarities among the national constitutions would need to be revamped in order to

¹⁰¹ The text similarity count, noted for the possible Chickasaw constitutional segments reappearing in the *Okmulgee Constitution*, is especially interesting to consider, given that the Chickasaw delegates only participated in the adjourned first and the second Council meetings.

satisfy the federal demand for a strong common constitutional government. The various textual contributions observed in Appendix IX accurately reflect the Okmulgee Council representatives' perception of the difficulty that the Creek had had, as well as the delegates' apparent decision to use the contents and core facets of the stronger and more compatible previous constitutions to supply a new, more robust confederation under statehood. The 2:1 ratio of Chickasaw, Choctaw, and Cherokee to Creek textual similarities in the coordinated *Okmulgee Constitution* is a pronounced indication of this caution. The examination of those four earlier constitutional documents also shows that there can be no doubt that the Chickasaw, Choctaw, and Creek constitutions were developed, at a minimum, upon the experiences linked to the 1839 Cherokee document. As one case in point, §8 of the Declaration of Rights in the *Okmulgee Constitution* acknowledged that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, and all courts shall be open and every person for an injury done him in his person, reputation or property, shall have remedy as the law directs.” Article VI, §7 of the 1839 *Cherokee Constitution* claimed that “[t]he right of trial by jury shall remain inviolate, and every person, for injury sustained in person, property, or reputation, shall have remedy by due process of law” while the 1867 *Chickasaw Constitution* stated “[e]xcessive ball shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. All courts shall be open; and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by course of law.” Unmistakably, the Chickasaw statement is closer to the text employed in *Okmulgee*, but it is also evident that the Cherokee rendition must have been a contributor to its creation, which was likely affected itself by the contents of Amendment 7 of the United States *Bill of Rights* regarding trial by jury in civil cases: “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be

preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

The tribes collated their experiences to create the *Okmulgee Constitution*, but their own individual documents reflected intratribal awarenesses or concerns that were lost in the final fabric of *Okmulgee*. Perhaps one of the clearest images of this may be found in *Okmulgee*'s Article 4, §7: “The Governor, on extraordinary occasions may by proclamation convene the General Assembly at the seat of Government to legislate upon such matters only as he may recommend.” As seen in Appendix IX, there is abundant similarity among *Okmulgee* and the 1839 *Cherokee* and 1860 *Choctaw Constitutions* for this section, but *Choctaw* reveals an added proviso that must have been significant for that tribe (emphasis added): “The Principal Chief, may by proclamation, on extraordinary occasions convene the General Council at the Seat of Government, *or at a different place if that have become since their last adjournment, dangerous from an enemy or from contagious disease.*” The memory of the smallpox epidemic, brought to the Choctaw in the Indian Territory by the Chickasaw in 1838, and of other outbreaks throughout the area could have been a major stimulus for the latter component of this qualification (Foreman, 1934, p. 49; Swagerty, 2001, pp. 257-258).

Nevertheless, it would have been nothing short of negligence if the Okmulgee Council participants had disregarded previous constitutions – federal, state, *or* tribal – during their planning of the *Okmulgee Constitution*. Regardless of the contemporary newspaper reports in the mid-West and East that offered hyperbole when describing Indians beyond the Mississippi River – e.g., “They have nerve enough for their savage purpose of exterminating the whites from the territory made sacred to them as the burying ground of generations” (From Leavenworth, 1866) or “The public has long since ceased to have any sentiment about ‘the noble savage;’ it

knows him to be a wild, half-brutalized creature, given to many vices, and hating industry” (The President’s policy toward the Indians, 1869) – the *Okmulgee Constitution* established that the tribes took their task and responsibility very seriously (see Williams, 1879); that their constitutional product was a sound prototype, based on acceptable constitutional parameters; and that it clearly would be perceived as a manifestation of *their* needs and dreams for a better future.¹⁰² Evidence of the influence of a previous *state* constitution, as Burton (1995, p. 74) had

¹⁰² The horror of Indian idleness was utilized by the Spanish to rationalize their conquest in the New World. The *Laws of Burgos* of 1512 created seven ground rules for future Spanish colonial legislation. One contributor to the underlying discussions proposed that the King had the responsibility to “curb the vicious inclinations and compel them to industry” while another advocate recommended that “Indians did have to be enslaved in order to be saved” (Williams, 1990, p. 87). With these views of the lives of the Indians; the formularization of new legal grounds (and the resulting *Requerimiento* to deploy in the field); and the blessing induced by papal legitimating permission, the unending terror that began with De Soto was considered part and parcel of the duty to Christianize the peoples of North America. Williams sensed, though, that the final product of all these Spanish activities “ultimately succeeded only in erasing a multiplicity of cultures and beliefs from the New World” (p. 96). Unfortunately, this opinion of sloth persevered and even invaded judicial opinions four hundred years later. In *United States v. Kiya* before the U.S. District Court in North Dakota, Judge Charles Fremont Amidon remarked that “it was the purpose of Congress to try the experiment of placing the Indians, as far as possible, in the same situation as other residents of the communities in which they lived, compelling them to live upon their lands, and by industry support themselves therefrom, and subjecting them to the laws of the local community of their residence. *It was hoped that in this way the Indian would be led out from the habits of indolence and shiftlessness, which had characterized his life while residing upon reservations and supported by the government, into a life of self-supporting industry and law-abiding citizenship*” (1903, p. 881; emphasis added). There was a further apparent transfer from early sixteenth century Spain. Franciscus de Vitoria’s report *On the Indians Lately Discovered* produced three fundamental statements: “1. The inhabitants of the Americas possessed natural legal rights as free and rational people; 2. The Pope’s grant to Spain of title to the Americas was ‘baseless’ and could not affect the inherent rights of the Indian inhabitants; and 3. Transgressions of the universally binding norms of the Law of Nations by the Indians might serve to justify a Christian nation’s conquest and colonial empire in the Americas” (Williams, 1990, p. 97). This third factor allowed for the possibility that Spain might serve as a guardian over the Indians because – in Vitoria’s words – “if they were all wanting in intelligence, there is no doubt that this would not only be permissible, but also a highly proper, course to take; nay, our sovereigns would be bound to take it, *just as if the natives were infants*” (p. 104; emphasis added). There is very little difference between the underlying sentiment contained in this approach and its final conclusion, and in the deduction

referenced with regard to the development of these four earlier Indian instruments, is readily available. Article 11 of the [1796 Tennessee Constitution](#), for example, pertained to that instrument's Declaration of Rights and §6 stated a matching outcome to that found in *Okmulgee*: "That the right of trial by jury shall remain inviolate" (Poore, 1877, p. 1674).

The administrative responsibilities to organize productive Okmulgee Council meetings, then, were substantial, given the multiplicity of tribal differences and their histories. The growing list of interpreters – from six to eleven members – between the December 1873 adjourned fourth and the May 1874 fifth Council sessions illuminated the ensuing complexity of these proceedings (*Journal of the [Adjourned Session of the] Fourth Annual Session of the General Council of the Indian Territory*, 1874, p. 3 and *Journal of the Fifth Annual Session of the General Council of the Indian Territory*, 1874, p. 4). Further, the efforts made to include the "wild" tribes in the Territory's future considerations were clearly a combination of compliance with federal demands specified in the second of seven stipulations – "Those settled in Indian territory must bind themselves, when called upon by the government, to aid in compelling the Indians of the plains to maintain peaceful relations with each other, with Indians in the territory, and with the United States" – with a demonstration of deeply felt tribal internationalism. The inclusion of remarks in the *Journal* for the fifth and the sixth annual sessions, made by a wide variety of delegates, was an expression of concern for enhanced participation by *all* tribes in the Indian Territory. The target, nevertheless, remained the federal promise in stipulation six from

relating to Indians and tribal sovereignty, three hundred years later, of Chief Justice John Marshall in *Cherokee Nation v. Georgia* (1831, p. 27; emphasis added): "They may more correctly perhaps be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases – meanwhile they are in a state of pupilage. *Their relations to the United States resemble that of a ward to his guardian.*"

1865: “It is the policy of the government, unless other arrangements be made, that all the nations and tribes in Indian territory be formed into one consolidated government, after the plan proposed by the Senate of the United States, in a bill for organizing the Indian territory” (Message of the President of the United States, and accompanying documents, to the two Houses of Congress, at the commencement of the first session of the Thirty-ninth Congress, 1866, p. 503).

This dream of an Indian state actually died slowly between 1866 and the turn of the twentieth century, absent all the efforts extended by the tribes of the Territory; Buck (1907) highlighted many of the difficulties that arose between those in favor of, and those against, Indian statehood. Abel (1908, p. 101) provided statements, beginning in 1868, from the files of the Southern Superintendency that decried the delay in the actual formation of the General Council specified in the 1866 treaties,¹⁰³ the crucial organizational element that was assigned the responsibility of the eventual creation of the *Okmulgee Constitution*. Years later, in an 1874 memorial to President Ulysses S. Grant, the tribes’ endless frustrations were evident. Acknowledged representatives of the Five Civilized Tribes declared that they

were the signers of treaties that year [i.e., 1866], and made between our several nations and the government. *We fully understood the purport, intent, and scope of these treaties at the time they were made, as they were repeatedly interpreted and fully explained to us by the United States commissioners, and were discussed by us in detail, article by article,* and that

¹⁰³ The Southern Superintendency “was responsible for the Cherokee, Creek, Chickasaw, Seminole, Quapaw, Seneca and Mixed Band of Seneca and Shawnee living in the Indian Territory, and for the Osage Indians of southern Kansas” (Hill, 1974, p. 174).

we do hereby most solemnly and emphatically declare that the articles of the treaties of 1866, which authorize the establishment of a “general council” of the Indians, *do not authorize the formation by Congress of a Territorial government of the United States over the Indians of the Indian Territory* (In the Senate of the United States, 1879, pp. 375-376; emphasis original).

It was further stated that the *Removal Act* and subsequent treaties decreed lands “*as an Indian country exclusively*” in which the zones had been allocated through fee simple patents to the tribes which consisted of non-United States citizens (p. 376; emphasis original). This form of legal transfer effectively blocked the area from becoming a Territory of the United States, but if such a geographic entity was to be imposed unilaterally upon the tribes by the government, the representatives assured the latter that this outcome would then occur “simply by virtue of your superior power, and without the shadow of authority from any concessions made by us [i.e., by the tribes]” (p. 377).

The concern was widespread; even the popular press chimed in. Jenness (1879, p. 444) wrote in an informative travelogue published through the *Atlantic Monthly* that

[e]arly in the present century, when our government formed treaties with the Cherokee and Creek Indians which resulted in their removal from Georgia and Alabama to the Indian Territory, there was not the remotest probability that so soon as 1878 there would be a demand for the removal of the barriers against immigration to their new lands, which then appeared beyond the desires of the white man.

The tribal fears of the future were also listed (p. 450):

The principal objection which the Indians urge against opening the Territory is that they would be unable to cope with the white man in mechanical skill and business enterprise;

that should they consent to have their lands sectionized, and one hundred and sixty acres apportioned to each member of the tribes, a few years, or even months, would find them robbed of their property by sagacious speculators, and left destitute and without the power to earn a living for themselves and their families.

This latter vision was precisely how later prospects unfolded: the appropriations act in 1893 contained a provision for the allotment in severalty of lands held by the Five Civilized Tribes that installed immediate United States citizenship, and for the elimination of tribal land holdings “with the consent of such nations or tribes of Indians, so far as may be necessary, . . . to enable the ultimate creation of a State or States of the Union which will embrace the lands within said Indian Territory” (27 *Stat.* 612, 645). The consequential allotment program turned into a management fiasco as Indians lost their land through illegal activities: “Despite the intentions of government officials to protect Native Americans in the possession of their lands, unscrupulous whites were still able to find ways to circumvent the law and thereby engage in speculation of Indian lands” (Wickett, 2000, p. 61). The Oklahoma state demographics for 1910 amply illustrated the tribes’ catastrophic loss of the Territory: “out of a total state population of 1,657,155 citizens, 1,444,531 were classified in the census as white, 137,612 as Negro, and 74,825 as Indian” (p. 65). What eighty years earlier had been a reserved area for tribes transferred through the removal policy became after Oklahoma’s statehood an extension of the rest of America, an area populated by only 4.5% of those displaced people for whom the land had been originally allocated.¹⁰⁴ In the end, the proviso contained in stipulation six at Fort Smith

¹⁰⁴ Even in the face of these losses, the Civilized Tribes have remained vibrant. Table 37 of the 2010 *Statistical Abstract* provided figures from the 2000 Census for “American Indian and Alaska Native Population by Tribe.” The Table specified that “[r]espondents who identified themselves as American Indian or Alaska Native were asked to report their enrolled or principal

in 1865 – “unless other arrangements be made” – was executed to abandon the proposal for an Indian state.

The federal charge given to the General Council and the climate surrounding its activities

The creation of the General Council was a tortuous affair. Federal sources of the period summarized the flow of events and two relatively recent articles – Applen (1971) and Nolen (1980) – presented another pair of descriptions. Denson (2004) illuminated the specific challenges faced by the Cherokee between the years 1830 and 1900, and made particular use of federal documents to describe the Council events. It is clear from these accounts that there was significant delay between the end of the Civil War with its immediate creation of new treaties with the Five Civilized Tribes in the Indian Territory, and the formal meeting of the appointed General Council in the Fall of 1870. The difficulty arose when attention was directed to previous treaties that had assured the tribes that their lands would never become part of any federal territory or state. As part of the initial removal process, Article 4 of the [*Treaty with the Choctaw, 1830*](#) (Kappler, 1904b, pp. 310-319) spoke directly to this promise:

The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or state shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State (p. 311).

tribe. Therefore, data shown here reflect the written tribal entries reported on the questionnaire.” These counts therefore potentially identified Civilized Tribes members beyond Oklahoma (including those still resident in the east), but the counts were impressive nonetheless: the Cherokee numbered 729,533 and remained the largest declared tribal collective in the United States.

An alteration to this directive required tribal consent, which was acquired in September 1865 at Fort Smith, for which “the President appointed a commission comprising the following persons: D. N. Cooley of Indian Affairs; Hon. Elijah Sells, superintendent southern superintendency; Thomas Wistar, a leading member of the society of Friends; Brigadier General W. S. Harney, United States Army; and Colonel Ely S. Parker, of General Grant’s staff” (Message of the President of the United States, and accompanying documents, to the two Houses of Congress, at the commencement of the first session of the Thirty-ninth Congress, 1866, p. 202). It was at this gathering that the Southern Treaty Commission unveiled the federal government’s position on the projected future of the tribes in the Indian Territory. The treaties sealed with the Confederate States during the Civil War were promptly brought forward and identified as critical evidence that “by these nations having entered into treaties with the so-called Confederate States, and the rebellion being now ended, they are left without any treaty whatever, or treaty obligations for protection by the United States. Under the terms of the treaties with the United States, and the law of Congress of July 5, 1862, *all these nations and tribes forfeited and lost all their rights to annuities and lands*” (p. 502; emphasis added).¹⁰⁵ The reference to the “law of Congress of July 5, 1862” targeted the enabling provision

¹⁰⁵ Congress was quite concerned with this defection. The Message included a statement alluding to reports that

[p]ortions of several tribes and nations have attempted to throw off their allegiance to the United States, and have made treaty stipulations with the enemies of the government, and have been in open war with those who remained loyal and true, and at war with the United States. All such have rightfully forfeited all annuities and interests in the lands in the Indian territory; but with the return of peace, after subduing and punishing severely in battle those who caused the rebellion, the President is willing to hear his erring children in extenuation of their great crime. He has authorized us to make new treaties with such nations and tribes as are willing to be at peace among themselves and with the United States (Message of the President of the United States, and accompanying documents, to

that all appropriations heretofore or hereafter made to carry into effect treaty stipulations, or otherwise, in behalf of any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, may and shall be suspended and postponed wholly or in part at and during the discretion and pleasure of the President (An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and sixty-three, 1862, p. 528).

Fresh treaties were then offered to the tribes in attendance at Fort Smith, involving seven requisites:

1. Each tribe must enter into a treaty for permanent peace and amity with themselves, each nation and tribe, and with the United States.
2. Those settled in Indian territory must bind themselves, when called upon by the government, to aid in compelling the Indians of the plains to maintain peaceful relations with each other, with Indians in the territory, and with the United States.¹⁰⁶

the two Houses of Congress, at the commencement of the first session of the Thirty-ninth Congress, 1866, p. 481).

One illustration of these purported “new treaties” may be seen in the brief [Agreement with the Cherokee and Other Tribes in the Indian Territory, 1865](#) (Kappler, 1904b, pp. 1050-1052). A footnote in Kappler’s pages stated that “[t]his document is claimed by the Indian Office not to be a treaty, but simply an agreement which formed the bases for the treaty with the Seminole of May 21, 1866... and of the treaty with the Creeks of June 14, 1866.... It is not on file in the Indian Office and is found only in the Report of the Commissioner of Indian Affairs for 1865” (p. 1051).

¹⁰⁶ In response to the first two demands of this list, Article 1 of the [Treaty with the Choctaw and Chickasaw, 1866](#) (Kappler, 1904b, pp. 918-931) began with the phrase: “Permanent peace and friendship are hereby established between the United States and said nations; and the Choctaws

3. The institution of slavery which has existed among several of the tribes must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and for their incorporation into the tribes on an equal footing with the original members, or suitably provided for.¹⁰⁷
4. A stipulation in the treaties that slavery, or involuntary servitude, shall never exist in the tribe or nation, except in punishment of crime.¹⁰⁸
5. A portion of the lands hitherto owned and occupied by you must be set apart for the friendly tribes now in Kansas, and elsewhere, on such terms as may be agreed upon by the parties, and approved by the government, or such as may be fixed by the government.¹⁰⁹

and Chickasaws do hereby bind themselves respectively to use their influence and to make every exertion to induce Indians of the plains to maintain peaceful relations with each other, with other Indians, and with the United States” (p. 918).

¹⁰⁷ Billington (1982) described work carried out between 1936 and 1938 by the Federal Writers Project of the Works Progress Administration that conducted more than 2,000 interviews with ex-slaves of the Indian Territory.

¹⁰⁸ The [Treaty with the Seminole, 1866](#) (Kappler, 1904b, pp. 910-915) answered this stipulation and the previous one by confirming in Article 2 that

[t]he Seminole Nation covenant that henceforth in said nation slavery shall not exist, nor involuntary servitude, except for and in punishment of crime, whereof the offending party shall first have been duly convicted in accordance with law, applicable to all the members of said nation. And inasmuch as there are among the Seminoles many persons of African descent and blood, who have no interest or property in the soil, and no recognized civil rights it is stipulated that hereafter these persons and their descendants, and such other of the same race as shall be permitted by said nation to settle there, shall have and enjoy all the rights of native citizens, and the laws of said nation shall be equally binding upon all persons of whatever race or color, who may be adopted as citizens or members of said tribe (p. 911).

¹⁰⁹ Hammond (1978, p. 162) alluded to the socioeconomic reconstruction following the Civil War in the Cherokee Nation by stating that this specific stipulation from Fort Smith resurfaced in the [Treaty with the Cherokee, 1866](#) (Kappler, 1904b, pp. 942-950) and that it “provided an opportunity to other friendly tribes to become citizens of the Cherokee nation. Among those taking advantage were the Delawares, the Munsies and the Shawnees, who fulfilled the necessary requirements and began moving from Kansas in 1867.” Article 15 of *Cherokee* (pp.

6. It is the policy of the government, unless other arrangements be made, that all the nations and tribes in Indian territory be formed into one consolidated government, after the plan proposed by the Senate of the United States, in a bill for organizing the Indian territory.

7. No white person, except officers, agents, and employees of the government, or of any internal improvement authorized by the government, will be permitted to reside in the territory, unless formally incorporated with some tribe, according to the usages of the band (Message of the President of the United States, and accompanying documents, to the two Houses of Congress, at the commencement of the first session of the Thirty-ninth Congress, 1866, pp. 502-503).

The “one consolidated government” proviso in stipulation 6 referred to Senate bill number 459, proposed by Senator James Harlan (R-IA; see Simpson, 1999) on 20 February 1865 and amended two days later (A bill to provide for the Consolidation of the Indian tribes, and to establish civil government in the Indian territory, 1865). The discussions regarding Harlan’s bill were substantial, as may be seen in the *Congressional Globe* (Consolidation of Indian tribes, 1865), and it was further debated in the protest lodged by the Cherokee (Consolidation of the

946-947; emphasis added) designated that “[t]he United States may settle any *civilized* Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States....” Similar provisions may be found in Article 30 of the [Treaty with the Choctaw and Chickasaw, 1866](#) (Kappler, 1904b, pp. 918-931) that allowed up to 10,000 “civilized” members of tribes in Kansas to occupy Choctaw and Chickasaw lands (p. 927), and in Article 3 of the [Treaty with the Creeks, 1866](#) (pp. 931-937) that spoke of “such other civilized Indians as the United States may choose to settle thereon” (p. 933). The Seminole were punished for their allegiance to the Confederate States as well: Article 3 demanded that “[i]n compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain,” an area of 2,169,080 acres for which they received in compensation \$335,362, or roughly 15¢ per acre ([Treaty with the Seminole, 1866](#); Kappler, 1904b, pp. 910-915).

Indian tribes. Protest of the Cherokee Nation against Senate bill 459, entitled “A bill to provide for the Consolidation of the Indian tribes, and to establish civil government in the Indian territory,” 1865).

Prucha (1978, p. 247) encapsulated how such circumstances were supposed to evolve – “The goal of the United States government after the Civil War was to establish in the Indian Territory a new political arrangement, looking toward a confederation of the Indian nations into a single territorial government that would eventually become a state of the Union” – but the tribes were shocked by the depth of these demands. In particular, potential misrepresentations or misunderstandings between the Indian Territory tribes and the federal government after the Civil War threatened to impair a secure future for the former, especially when coupled with the political pressure induced by popular press commentary centered on the memories of the tribes’ treaties with the Confederate States of America (The rebels and the Indians, 1861) and with rampant railroad development demands (The Indians – Lawrence and Galveston Railroad, 1867; Washington, 1870; Miner, 1969; Self, 1971; Merrill, 1981).¹¹⁰ Even the growth of local newspapers was affected by all these interfering machinations. Karolevitz (1965, p. 121) cautioned that “to understand the development of journalism in Oklahoma [sic], it is necessary to have at least a casual knowledge of that state’s unusual history. During the exciting years when other areas were experiencing gold rushes, the advent of the railroads, boomerism and the high tide of homesteading, the land that is now Oklahoma was Indian Territory.”

¹¹⁰ The post-Civil War treaties were quite clear in terms of the development of railroads in the Indian Territory. Each instrument with the Five Civilized Tribes included an article devoted to that important issue: [Article 5](#) in the *Treaty with the Seminole, 1866*; [Article 6](#) in the *Treaty with the Choctaw and Chickasaw, 1866*; [Article 5](#) in the *Treaty with the Creeks, 1866*; and [Article 11](#) in the *Treaty with the Cherokee, 1866*.

A renewed call for solutions to the “Indian problem” was further stimulated as progressively more land was required by settlers moving west of the Mississippi River (Indian problems, 1873), but this issue was particularly amplified by the developing concerted push for statehood. Statehood for the Indian Territory demanded serious attention, because it was perceived that full economic development throughout the entire United States following the Civil War first necessitated the elimination of impediments like remaining tribal lands. If no one else was discussing this barrier in the halls of Congress, the railroad companies certainly were. An 1872 House Report entitled Territory of Oklahoma (1872, p. 2) expressed the thoughts of the minority of the Committee on the Territories, i.e., by those Congressmen who were against the proposal to establish an acknowledged Indian Territory of Oklahoma. They declared, inter alia, that

[t]he real root of this movement springs from the fact that Congress, in an unwise moment, granted many millions of acres belonging to these Indians to railroad corporations, contingent upon the extinction of the Indian title. And now these soulless corporations hover like greedy cormorants over this Territory, and incite Congress to remove all restraint, and allow them to swoop down and swallow over twenty-three million acres of the land of this Territory, destroying alike the last hope of the Indian and the honor of the Government.¹¹¹

In the next Congress, the Committee on Indian Affairs concluded that treaties with the tribes already in force “expressly forbids” the proposed legislation for the territorial organization of the Indian Territory (Oklahoma, 1872, p. 1) and that

¹¹¹ Prucha (1984, p. 742, n. 11) calculated that this acreage estimate was 117% of the total amount computed by the Dawes Commission (Brown, 1931) when they assessed the holdings of the Five Civilized Tribes.

[i]f there is lawlessness in the Territory or a want of proper administration of justice, as claimed by some, the remedy is not to be sought in the establishment of a territorial government over it, in opposition to the unanimous wishes of the tribes to be affected, and in violation of the treaties with them, but it is to be sought in proper amendments to the “acts regulating trade and intercourse with the Indian tribes,” &c., and in the establishment of United States courts, with such jurisdiction as will accord with the wants and wishes of those chiefly to be affected and protected by them, and with the spirit of the treaties that provide for their organization (p. 5).

Post-Civil War reconstruction, however, truly needed those railroads, so individual tribes led a precarious existence. Hauptman, in his assessment of the [*Treaty with the Seneca, Mixed Seneca and Shawnee, Quapaw, etc., 1867*](#) (Kappler, 1904b, pp. 960-969), commented (1993, p. 100; emphasis added) that

[a]lthough the treaty reaffirmed Seneca possession of approximately sixty-five thousand acres of land, the underlying federal message to the Indians was clear: Indians would be removed at will and the Indian Territory would continue to shrink to satisfy the immediate political and economic needs of the *dominant society*. The opening up of Indian Territory in 1889 and the Dawes Commission were several decades off, but the road to these political policies was already being built in the Civil War and Reconstruction.

The views of that *dominant society* were very much expressed by those who saw the Indian Territory as a path to business and to transportation opportunities, and not as one to an Indian state.¹¹²

This creation of a new dominant non-Indian class in the Indian Territory was presented in the work of Hoxie (1977, p. 157), who has stated a different perspective on the history of Indian relations in the last two decades of the nineteenth century. He had counseled that many historical “accounts of the period often simplified the motives of American whites. Economic

¹¹² Efforts designed with the tribes in mind were also underway. Hoxie (1977, p. 157) explained an alternative perspective on the history of Indian relations in the last two decades of the nineteenth century. He warned that many historical “accounts of the period often simplified the motives of American whites. Economic interests – the desire for land – certainly was basic to the dispossession of the natives, and yet other factors – racial attitudes, pressure from reform groups, bureaucratic activity and the actions of the Indian themselves – were also important.” The machinations of the United States Senate, Hoxie concluded, “might well begin to correct some of these shortcomings” (p. 158). The viewpoint that the tribes might be an “exceptional” minority was part of President Grant’s Peace Policy, formed after years of ineffective Indian management, and further exacerbated by the continuation of treaty making – under the guise and term *agreements* – following the cessation of this activity with the tribes in March 1871. In the meantime, bills to implement this cavalcade of changes were numerous and systematically streamed through Congress. Gittinger (1917, pp. 221-223) identified dozens of such bills – and supporting *House* and *Senate Journal* entries – to organize first the Indian Territory, and then the Territory of Oklahoma; Congressional activities for “[b]ills to ratify the Okmulgee Constitution” were included (p. 222). This approach was based upon a relatively newfound enthusiasm for the lands within the Indian Territory that in turn signaled a major change in geographic perspective. Previous interpretations incorporated those of Alfred Cumming, the Superintendent of Indian Affairs for the Central Superintendency at St. Louis from April 1853 to August 1857 (Hill, 1974, pp. 28-31), who bluntly determined in 1856 that “[t]he country inhabited by the various tribes of this superintendency may be characterized as unsuited to agricultural purposes, with the exception of a narrow belt, beginning in the southern extremity of Kansas Territory” (Message from the President of the United States to the two Houses of Congress, at the commencement of the third session of the Thirty-fourth Congress, 1857, p. 617). Trennert (1975, pp. 1-15) reiterated the desire for a so-called “permanent Indian barrier” that was initially advocated by President Thomas Jefferson at the time of the Louisiana Purchase. Prucha (1963, p. 322) decided that the original federal policy had not been intentionally designed “to dump the Indians into the desolate wastes of the Great American Desert,” that overwhelming area specified by Maj. Stephen H. Long (see Dillon [1967] for more on Long, whose work occurred between that of Lewis and Clark and John Fremont’s adventures).

interests – the desire for land – certainly were basic to the dispossession of the natives, and yet other factors – racial attitudes, pressure from reform groups, bureaucratic activity and the actions of the Indian themselves – were also important.” At that time, a consideration of United States Senate behavior, Hoxie concluded, might have begun “to correct some of these shortcomings” (p. 158). The perspective that the tribes could be an “exceptional” minority was a fundamental part of President Ulysses S. Grant’s Peace Policy, formed after years of ineffective Indian management yet still part of the overall Reconstruction process (Rushmore, 1914; Fritz, 1959). At the conclusion of An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and seventy (1869, p. 40), Congress

appropriated the further sum of two millions of dollars, or so much thereof as may be necessary, to enable the President to maintain the peace among and with the various tribes, bands, and parties of Indians, and to promote civilization among said Indians, bring them, where practicable, upon reservations, relieve their necessities, and encourage their efforts at self-support.¹¹³

¹¹³ Darling (1985) exhibited an interesting document that described a parallel political attempt initiated by President Abraham Lincoln. A “Pardon and Amnesty Proclamation,” translated into Cherokee and distributed in 1864, was an opportunity for the Cherokee within the Indian Territory to return to the federal fold after their collaborations with the Confederate States of America. John Ross, the Principal Chief of the tribe, had spent time with Lincoln during the former’s exile in Washington, and he must have had a significant effect upon the development of the President’s letter. Clearly, to propose that “[f]or each and everyone I have given pardon. What was theirs in the past, I have made it theirs the second time” (p. 190), delivered by the President to a war torn Indian Territory, must have had a substantial effect, but with Lincoln’s untimely death, the endeavor to reconcile with the tribes vanished. The new punitive measures stipulating additional tribal removals to the Territory, and the inexhaustible demands by railroads for even more land and rights, diminished these chances for peace.

The resulting Board of Indian Commissioners was populated by laymen from diverse religious organizations that, in turn, crafted significant input through a climate of missionary work among these tribes, accelerated in part by “[t]he government’s policy of removal [that] concentrated more Christian Indians in Indian Territory than anywhere else in the country, in fact more than in the entire remainder of the United States and its territories” (Beaver, 1988, pp. 441-454).¹¹⁴ This was not the first time that religious groups were stimulated to invade Indian Country – Roman Catholic missions had arrived in North America at the beginning of the seventeenth century, and worked throughout Indian areas in both New France and the vast area of Louisiana¹¹⁵ – but the stakes were so much higher after the Civil War and the Indian Territory was destined to be the experimental setting for Reconstruction activities.

¹¹⁴ Lawrie Tatum was a Quaker farmer from Iowa who served under the Peace Policy as an agent for the Kiowa and Comanche tribes. He was stationed for four years, beginning in 1869, at Cache Creek near Fort Sill (see Hill, 1974, pp. 85-86 in which his name is spelled “Laurie Tatum,” and Hannings, 2006, pp. 386-387 for an historical description of Fort Sill). Tatum’s experiences were recounted in *Our Red Brothers and the Peace Policy of President Ulysses S. Grant* (1899). The Kiowa had a difficult time following the Civil War, as explained by Monahan (1967 and 1971) and by Levy (2001, pp. 915-918). Life was no less thorny for the Comanche (Kavanagh, 2001, pp. 888-889), especially after submitting in August 1861 to the Confederate States’ [Treaty with the Comanches and Other Tribes and Bands](#) and the [Treaty with the Comanches of the Prairies and Staked Plain](#) (Matthews, 1864/1988, pp. 347-353 and 354-362, respectively).

¹¹⁵ In particular, Father Jacques Marquette of the Jesuits carefully worked down the Mississippi, along the western edge of present day Illinois, in part because he had heard stories from Illinois Indians about this powerful river. Marquette and Louis Joliet were credited with its discovery (see the map presented by Campeau, 1988, p. 466). Among the communities visited by Marquette were the Quapaw (Calloway, 2006, p. 159) who, on 16 July 1673, made their first contact with Europeans (Young and Hoffman, 2001, p. 497). Their original lands were later confiscated as part of the removal process and they were placed on a reservation in the northeastern corner of the Indian Territory in 1834 (p. 505). Note too that French Jesuits and those of other orders “combined catechism, pictures, baptism, and presents in a successful manner.... Church and State worked together as agents in the distribution of gifts to the Indians” (Jacobs, 1950, pp. 31-32).

In the (1871, p. 1), President Grant declared his views on establishing for the tribes “forms of territorial government compatible with the Constitution of the United States and with previous custom toward communities lying outside of State limits.” The supporting documents in that Senate Executive Report substantiated the efforts expended at the Okmulgee Council meeting, but the President’s initial remark quickly indicated difficulties of situational perception. As Applen correctly titled his article – An attempted Indian *state* government: The Okmulgee Constitution in Indian territory, 1870-1876 (1971; emphasis added) – the tribes were under the distinct impression (both psychological *and* legal) that there was to be a *direct* transition between the current Indian Territory and a full-scale state reserved to the tribes.

The tribes had never wavered on this target nor on the mechanics necessary to attain this goal. In the 1870 Letter of the Cherokee delegation of Indians transmitting an address of the Grand International Council of Indians inhabiting the Indian Territory, the Principal Chief of the Cherokee as well as by five members of the Cherokee delegation asked the federal government to consider the tribes’ fears (p. 1; emphasis original):

We transmit herewith for your information and for the information of the Senate, an address to the government and people of the United States from the “Grand or Internal Council” of the Indian nations inhabiting the Indian Territory, which met at Okmulgee, the capital of the Muskogee nation, on the first of the present month [June], earnestly setting forth the *anxiety*, the *dissatisfaction*, and the *discouragement* in their efforts at improvement, produced among all their peoples by the continued agitation in Congress of a threatening and aggressive policy toward them, in the form of territorial bills and other legislation, understood by all to be but entering wedges to disrupt their present political status and relations in order to render it practicable to speculate in their lands.

We beg leave, in this connection, to say further, that nobody, either in the Indian country or in Washington, is deceived by the sophistry of those who urge these territorial bills. All know the welfare of the Indians is not the motive, but the acquisition of his lands. These measures, whenever there is an apparent chance of success, are urged without regard to the oft-repeated fact that those people are doing well, and are the only nations of Indians in the United States whose situation is now, or has heretofore been, so propitious as to result in rapid advancement, and cruelly urged, too, contempt of the protests and pleadings of the Indians to spare them, and in disregard of the repeated pledges of the United States that this Territory shall be to the Indian “a home that shall never in all future time be embarrassed by having extended around it the lines, or placed over it the jurisdiction of a Territory or State.”

The letter was accompanied by a general declaration from the Council meeting itself, signed by the Cherokee, Creek, Seminole, and Osage representatives, that ended with the statement that

[t]he constant agitation of questions which vitally affect our welfare are full of evil influences upon our progress. We want a consciousness of protection and security. It is in your power to give both. You have promised them. Grant these, and we shall fear no evil; we shall apprehend for our race neither extinction nor degradation, but progress and civilization will follow, and a brighter page on Indian affairs will be found in the history of the United States than has yet been recorded (p. 3).

The phrase used in the first section – “a home that shall never in all future time be embarrassed by having extended around it the lines, or placed over it the jurisdiction of a Territory or State” – was taken directly from the preamble of the [*Treaty with the Western Cherokee, 1828*](#) (Kappler,

1904b, pp. 288-292).¹¹⁶ Undoubtedly, *from this beginning*, the tribes operated under the idea that the federal government wanted them to fashion first a reserve and then a state devoted to the needs of the tribes, and that their council meetings – specified in no uncertain terms by the federal government after the Civil War and commencing with the June 1870 session – were to culminate in that achievement. There had been previous fears regarding this shortfall: Champagne (1992, p. 188) perceived that during discussions pertaining to the construction of the 1857 *Choctaw Constitution*, the majority of the tribes “feared that the new constitution would create a government that could be incorporated easily into the American government as a territory; they did not wish to surrender their independent national status and their right to self-government, and they did not wish to be forced to assimilate socially, politically, and economically into American society.”

Yet, no one seemed to be listening in Washington. A year after the *Okmulgee Constitution* was published, Representative William Hepburn Armstrong (R-PA), on 27 February 1871, addressed the issue raised by the bill H. R. 3043 (Indian territorial government, 1871) for “the consolidation of the Indian titles and the establishment of a system of government in the Indian Territory.” He declared that “[t]he necessity for bringing them under civilizing and Christianizing influences is manifest and pressing; and it can scarcely be doubted that in a future not very distant *they must be either civilized or exterminated*” (The Indians – Their Lands – Settlement, 1871, p. 257; emphasis added).¹¹⁷ The reapplication of earlier cooperative tribal

¹¹⁶ This preamble declaration appeared over two dozen times in federal documents over a one hundred year period, and specifically as part of a 1926 opinion of the Attorney General (Official opinions of the Attorneys General of the United States advising the President and heads of departments in relation to their official duties, 1926, p. 276).

¹¹⁷ Armstrong had introduced a joint resolution (H. R. 502) two weeks earlier, on 11 February 1871, to end all treaty making with the tribes (see *Treaties with Indian tribes*, 1871). This

experiences during the period of the 1830s through the 1850s – and exhibited especially by the Creek – and with the original “wild” tribes should have been, according to Denson (2004, p. 123), the means by which “the architects of the Okmulgee Council... buil[t] on that legacy by investing the internationalism of the Creeks and Cherokees in a permanent governmental structure.”¹¹⁸ President Grant, on the other hand, had been immediately cautioned by members of his administration, and particularly by the Secretary of the Interior, that the proposed transfer of any decision-making control to the tribes, that might affect the future use of these lands, was fundamentally unacceptable.

However, one of first authorized remarks made by the Board of Indian Commissioners was contained in a letter included in the 1869 Report of the Secretary of the Interior, being part of the message and documents communicated to the two Houses of Congress at the beginning of

resolution was passed and incorporated the following month into the appropriations bill for the subsequent year (An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirty, eighteen hundred and seventy-two, and for other purposes, 1871, p. 566). From 3 March 1871 forward, transactions between the federal government and the tribes were through *agreements* rather than treaties. The change permitted the House of Representatives to become part of the process with the tribes, a responsibility only the Senate held with regard to treaty making.

¹¹⁸ This “internationalism” was sustained in subsequent Indian International Fairs held almost every year between 1874 and the start of the 1890s. These events were organized predominately by non-Indians and were designed to “increase trade and attract capital from the border states into the Indian country” (Denson, 2004, p. 152). Nevertheless, the displays of “Indian life” were a means for the tribes to accumulate of political currency, especially if such events provided evidence that they were well organized, effective at self-government, and confident in administering their lands and affairs. During the preparations for the Centennial Exhibition in Philadelphia in 1876, the Council responded to a request from the Exhibition (*Journal of the Adjourned Session of the Sixth General Council of the Indian Territory*, 1875, p. 21) by promising to provide for that event an ample demonstration of Indian interests. Ultimately, these celebrations were affected by the news of Custer’s demise in June at Little Big Horn: Donovan (2008, p. 321) admitted that “[t]he official confirmation of the disaster hit the centennial – and the rest of the country – like a thunderbolt.... Not since Lincoln’s assassination eleven years earlier had such a shocking story gripped the country.”

the second session of the Forty-first Congress (1870, p. 492). In that statement, the Commissioners proposed that “[t]he treaty system should be abandoned, and as soon as any just method can be devised to accomplish it, existing treaties should be abrogated.” That correspondence – dated 23 November 1869 – took place between the first session of the General Council and its adjourned sitting in December at which the initial *Okmulgee Constitution* was completed. The tribal representatives saw trouble on the horizon after such a disclosure and, in particular, when the Commissioners took part at that latter gathering. As time passed, the religious groups that composed the Board generated their own difficulties among themselves (Prucha, 1976, pp. 30-71; Beaver, 1988); treaty making was replaced under the guise of (and under the collective term) *agreements* in March 1871; and the indecisive and directionless Department of the Interior policies for tribal lands all combined to make obvious a waning federal desire to protect the tribes in the Indian Territory. Further, the Board returned in 1872 with a pronouncement that, even with all these modifications, “[t]he convictions of the Board that it is the imperative duty of the Government to adhere to its treaty stipulations with the civilized tribes of the Indian Territory, and to protect them against the attempts being made upon their country for the settlement of the whites, have undergone no change” (Investigation of Indian Frauds, 1873, p. 325). The evolution of these federal antics, the concomitant turbulence inculcated by the incessant pressure of both railroad companies and settlers demanding access to the Territory (Miner, 1976), and religious groups flooding into the same arena surrounded and affected the tribal entities during the half decade of Okmulgee Council meetings that were mandated by those very post-Civil War treaties that the Board of Indian Commissioners had proposed to abrogate just a few years earlier. This swirling political climate became a considerable debilitating variable during the creation of the *Okmulgee Constitution*: a chapter

title used by Francis Paul Prucha (1984, p. 737) – “Liquidating the Indian Territory” – denoted the exact fears of those Council delegates during their sessions, and then thereafter, on their trek towards Oklahoma statehood (Brown, 1940; Debo, 1940).¹¹⁹

The Okmulgee Council and its documents

Regardless of this commotion and disorientation, the Council meetings created an atmosphere in which the Indian Territory tribes could prepare for a potential future; they were well equipped for this opportunity. Denson (2004, pp. 121-147), in his report of the struggle that challenged Cherokee sovereignty between removal and the beginning of the twentieth century, allocated a chapter to the Okmulgee Council. He made special use of the so-called “International Council File” kept at the Oklahoma Historical Society to depict the outcomes obtained from those sessions. The author identified these archival materials as “typescripts of the original published proceedings (sometimes called ‘journals’) of the Okmulgee Council meetings” (p. 277, n. 1). These items consisted of photocopies of handwritten material and of typescripts, both of unknown origin. Further, they were incomplete: the text of the December 1870 Council at which the *Okmulgee Constitution* was prepared, for example, did not supply that instrument.¹²⁰

Article 12 of the [*Treaty with the Cherokee, 1866*](#) (Kappler, 1904b, pp. 942-950) provided the impetus for these proceedings. It stated: “The Cherokees agree that a general council, consisting of delegates elected by each nation or tribe lawfully residing within the Indian

¹¹⁹ The intermediate leap to territorial government would have been punitive as well, since loss of tribal independence would have expedited the transfer of lands to the railroads, transactions that had been contingent upon the loss of tribal control of those granted areas.

¹²⁰ This is an unfortunate loss, from the point of view of text analysis and its concomitant desire for provenance data, since the first page of that handwritten Council document had George Washington Grayson’s name misspelled as *Greyson*, as it appeared in the publication of the journal from that first Council (*Journal of the General Council of the Indian Territory*, 1871, p. 3).

Territory, may be annually convened in said Territory, which council shall be organized in such manner and possess such powers as hereinafter prescribed.” Six separate provisions followed this initial statement:

First. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said council, a census or enumeration of each tribe lawfully resident in said Territory shall be taken under the direction of the Commissioner of Indian Affairs, who for that purpose is hereby authorized to designate and appoint competent persons, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

Second. The first general council shall consist of one member from each tribe, and an additional member for each one thousand Indians, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory, and shall be selected by said tribes respectively, who may assent to the establishment of said general council; and if none should be thus formally selected by any nation or tribe so assenting, the said nation or tribe shall be represented in said general council by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank as recognized in tribal usage, in the same number and proportion as above indicated. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe assenting to the establishment of such council the number of members of such council to which they shall be entitled under the provisions of this article, and the persons entitled to represent said tribes shall meet at such time and place as he shall approve; but thereafter the time and place of the sessions of said council shall be determined by its action: *Provided*, That no session in any one year shall exceed

the term of thirty days: *And provided*, That special sessions of said council may be called by the Secretary of the Interior whenever in his judgment the interest of said tribes shall require such special session.

Third. Said general council shall have power to legislate upon matters pertaining to the intercourse and relations of the Indian tribes and nations and colonies of freedmen resident in said Territory; the arrest and extradition of criminals and offenders escaping from one tribe to another, or into any community of freedmen; the administration of justice between members of different tribes of said Territory and persons other than Indians and members of said tribes or nations; and the common defence and safety of the nations of said Territory.

All laws enacted by such council shall take effect at such time as may therein be provided, unless suspended by direction of the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States. Nor shall said council legislate upon matters other than those above indicated: *Provided, however*, That the legislative power of such general council may be enlarged by the consent of the national council of each nation or tribe assenting to its establishment, with the approval of the President of the United States.

Fourth. Said council shall be presided over by such person as may be designated by the Secretary of the Interior.

Fifth. The council shall elect a secretary, whose duty it shall be to keep an accurate record of all the proceedings of said council, and who shall transmit a true copy of all such proceedings, duly certified by the presiding officer of such council, to the Secretary

of the Interior, and to each tribe or nation represented in said council, immediately after the sessions of said council shall terminate. He shall be paid out of the Treasury of the United States an annual salary of five hundred dollars.

Sixth. The members of said council shall be paid by the United States the sum of four dollars per diem during the term actually in attendance on the sessions of said council, and at the rate of four dollars for every twenty miles necessarily traveled by them in going from and returning to their homes, respectively, from said council, to be certified by the secretary and president of the said council” (Kappler, 1904b, pp. 945-946).

Funding for Council sessions was supplied by Congress, in a series of six modest appropriations bills between July 1870 and March 1875 totaling \$61,500:

- \$10,000 (An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirty, eighteen hundred and seventy-one, and for other purposes, 1870, p. 359);
- \$13,500 (An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirty, eighteen hundred and seventy-two, and for other purposes, 1871, p. 569);
- \$14,000 (An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirty, eighteen hundred and seventy-three, and for other purposes, 1872, pp. 189-190);

- \$14,000 (An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes, 1873, p. 461);
- \$7,000 (An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes, 1874, pp. 172-173); and
- \$3,000 (An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes, 1875, p. 447).

At the conclusion of the adjourned session of the sixth Council meeting in September 1875, the next gathering was scheduled for the following Spring and placed in the log: “Adjourned to May, 1876” (*Journal of the Adjourned Session of the Sixth General Council of the Indian Territory*, 1875, p. 30). However, an announcement in the 26 April 1876 issue of *The Vindicator* (Okmulgee Council, 1876) stated that “[b]y an order of the Commissioner of Indian Affairs, Maj. Upham, U. S. A., in charge of the Union Agency, has notified the Principal Chiefs of the different tribes that the Okmulgee Council will not convene again until further authorized by Congress.” Nevertheless, Congress set aside an additional \$5,000 to finance a potential follow-up event (An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes, 1876, p. 197). Much

debate attended the negotiations during these last appropriations and the conversation on 3 June 1876 promptly began with the amount requested for the Council. Representative Erastus Wells (D-MO) wanted the amount set at \$1,000, instead of at \$5,000, but the House did not support this reduction (Indian appropriations bill, 1876).

As noted, stipulation 5 of Article 12 of the [*Treaty with the Cherokee, 1866*](#) (Kappler, 1904b, p. 946) required that the Council elect a secretary who had the responsibility to “keep an accurate record of all the proceedings of said council, and who shall transmit a true copy of all such proceedings, duly certified by the presiding officer of such council, to the Secretary of the Interior.” The Council proceedings were also recorded in a series of privately published accounts, where the first issue was entitled the *Journal of the General Council of the Indian Territory* (1871). Subsequent reports included the council session number within the title, e.g., the *Journal of the Third Annual Session of the General Council of the Indian Territory* (1872) or the *Journal of the Adjourned Session of the Sixth General Council of the Indian Territory* (1875).

In the preamble of the completed *Okmulgee Constitution*, reference was made to the groundwork implemented by those six sections of Article 12: “Whereas the people of the nations of Indians inhabiting the Indian Territory have agreed by treaty with the Government of the United States, and been by its agents invited to meet in General Council under the formes [sic] prescribed by the Treaties of 1866 and the action thereon of the Government of the United States” (*Journal of the General Council of the Indian Territory*, 1871, p. 44). The various *Journal* publications between 1871 and 1875 became vehicles for chronicling the progress made by the General Council of the Indian Territory and they were important – and almost the sole –

memoirs of those events.¹²¹ Their titles, though, did not communicate an accurate chronology of events. The *Journal of the General Council of the Indian Territory* (1871), for example, held entries reflecting both the initial meeting in September 1870 as well as the adjourned meeting in December of that year. It was at the latter assembly that the final version of the *Okmulgee Constitution* was prepared and presented in its entirety for the first time. Among the statistics for each bibliographic record, it is regrettable that Hargrett did not furnish the number of copies ordered for the preliminary *Journal of the General Council of the Indian Territory* (1871), but the number must have been relatively small and no more than the 500 copies that were produced for the second and third annual meetings' publications in 1871 and 1872 (Hargrett, pp. 92-93). This hypothesis may be supported by a later observation regarding existing prints of the *Okmulgee Constitution*. At the turn of the twentieth century, Hill's narration of the new state of Oklahoma (1909, pp. 129-130) revealed that "the copies of this instrument, if in existence, are rare, and it has been impossible to secure one for publication in this history."

Additional confusion with the proceedings logs was caused by the release of two documents under the same title. The *Journal of the Fourth Annual Session of the General Council of the Indian Territory* appeared twice – once in 1873 and then again in 1874. Hargrett declared that the latter "was an adjourned session" (p. 93). However, he failed to disclose the true importance of this specific pamphlet: it is the only publication in the series that compiled the number of votes returned by the various Indian nations in response to the mandatory ratification referendum of the *Okmulgee Constitution* (*Journal of the [Adjourned Session of the] Fourth*

¹²¹ Hargrett, in his bibliographic review of constitutional and legal materials created by the tribes, made note of these few items, with an explanation of the contents and printing histories of each (1947, pp. 91-95). These documents now appear on reel 7 of *The Constitutions and Laws of the American Indians* microfilm product (1976), under item numbers 195 through 202.

Annual Session of the General Council of the Indian Territory, 1874, p. 21). More recent research has also hindered a clear understanding of the provenance of the *Okmulgee Constitution*. Applen (1971) relied on the 1925 Okmulgee materials from the *Chronicles of Oklahoma* to substantiate his remarks (see his footnotes; 1971, p. 98, and his references to three articles entitled *Journal of the General Council of the Indian Territory* [1925]; *Journal of the adjourned session of the first general council of the Indian territory* [1925]; and *Okmulgee Constitution* [1925]). Nolen (1980), on the other hand, imputed chronology by modifying the *Journal* titles. His so-called *Journal of the Adjourned First Session of the General Council of the Indian Territory* (see his footnotes 23 through 36; pp. 280-281) did not exist, other than as a portion of the *Journal of the General Council of the Indian Territory* (1871, pp. 15-38). Similarly, Nolen used the designation *Journal of the Adjourned Fourth Session of the General Council of the Indian Territory* (and misassigned the publication date to 1873) in his footnote 49 when he must have intended the item listed by Hargrett as the 1874 *Journal of the Fourth Annual Session of the General Council of the Indian Territory*. In other words, there was an “adjourned” *Journal* in this series, but that term was originally reserved exclusively for the *Journal of the Adjourned Session of the Sixth Annual General Council of the Indian Territory* (1875). In this presentation, that useful information is now placed in brackets: the full title thus becomes *Journal of the [Adjourned Session of the] Fourth Annual Session of the General Council of the Indian Territory, Composed of Delegates Duly Elected from the Indian Tribes Legally Resident Therein, Assembled in Council, at Okmulgee, Indian Territory, Dec. 1st, 1873, Under the Provisions of the Twelfth Article of the Treaty Made and Concluded at the City of Washington in the Year 1866, Between the United States and the Cherokee Nation, and Similar Treaties*

Between the United States and the Choctaw and Chickasaw, Muscogee, and Seminole Tribes of Indians, of Same Date (1874).

Comparing text variants – underlying rationale

The universe of text analysis frequently relies quite heavily upon the ability to discern differences among versions of selected text. For some writers, constant tinkering with their material yields an abundance of evolving prototypes that propel such later analyses; the work of Walt Whitman may serve as an appropriate model of this behavior.¹²² Higgins (1997) selected the term *isotope* during his study of the medieval publication *The Book of John Mandeville* to describe the alterity or perspectives that may be forthcoming from multiple texts cast to describe the same material. Both intratextual as well as intertextual variability were clues to the development of these passages and Higgins considered their investigation one which might be applied “to any attempt to make sense of a distant and different past through its texts” (p. viii). Indeed, the very last sentence in his publication condensed the entire focus of his process when he stated:

If a careful scrutiny of the *Commedia* or the *Canterbury Tales* reveals what breathtaking artistic heights later medieval culture was capable of, a careful look at *The Book of John Mandeville* gives us a fascinating portrait of the lay of the ordinary written landscape – a landscape inhabited and also defined by the ever-growing number of people from various social groups who had access to books, and whose tastes ran to a historically specific mixture of the pious, the informative, and the diverting, as well as the popular and the learned (p. 268).

¹²² Folsom and Price spoke of Whitman’s “meticulous revision” and that “*Leaves of Grass* was Whitman’s title for a process more than a product: every change in his life and in his nation made him reopen his book to revision” (2005, pp. 29 and ix, respectively).

Succinctly – and as cited by Higgins as pertinent to his *Mandeville* study – Bernard Cerquiglini’s remark that “medieval writing does not produce variants; it *is* variance” (1999, pp. 77-78; emphasis original) should be declared the motto underlying all text analysis examinations that wish to ferret out the alleged isotopes of literature. Variability is not reserved exclusively to medieval texts, but rather it acts as an incentive, as well as a cause, for sustained mining among all literatures. While *Mandeville* itself may to a certain extent be an encumbered “mixture of the pious, the informative, and the diverting,” that expanse furnishes subtle routes into the text that instantly validate the need to comb through these isotopic forms. Further, even more mundane manuscripts – for treaties between sovereigns or for constitutions destined to guide such entities – will yield their own unique rewards, if tested. It is the variance, not the rigidity, which gives the texts a life of their own. Additionally, this hidden richness – manifest in an initial product from what most United States citizens in the 1870s would have called “people from various social groups” – makes an examination of the *Okmulgee Constitution* isotopes so much more attractive. The forces of legal strictness; unknown futures; and social diversity all combined to saturate this instrument with its own special mix of components.

Comparing variants – tool selection

There exists a particularly useful tool with which to address these kinds of text situations. Vladimir Levenshtein, the 2006 Institute of Electrical and Electronics Engineers Richard W. Hamming Medal winner “for contributions to the theory of error-correcting codes and information theory,” proposed in 1966 an algorithm to assess information transfer, where the three operations of deletion, insertion, and substitution may be engaged to correct errors contained in a transmitted string (Levenshtein, 1966). Soukoreff and MacKenzie (2001) used the two string models *quick brown fox* and *quixck brwn fox* as prototypic examples of presented and

transcribed texts in such a task. While as many as six individual errors may be present in this communication – established by the failure of the *xck br* substring to accurately convey the initial *ck bro* material – the two most likely errors were the insertion of the character *x* and the omission of the character *o*. As a result, these discrepancies yield a computed Levenshtein’s edit distance (LED) score of 2 for this test, or for the total number of remedial operations required to first delete the *x*, and then to accomplish the insertion of the *o*. Identical strings – *quick brown fox* and *quick brown fox* – would require no corrective operations and would thereby produce a computed LED score of zero. Further, any observed LED must be less than or equal to the maximum length of the two strings, since replacing an entirely missing sequence with one of length *n* would require no more than *n* operations: here, *quick brown fox* vs. _____.

The Levenshtein algorithm is very adaptable and has served in many diverse applications, including vehicle travel time measurement scenarios (Takahashi and Izumi, 2006) and the development of ontologies (Ginsca and Iftene, 2010), as well as the foundation of spell checking (Kukich, 1992) and plagiarism software (Zini, Fabbri, Moneglia, and Panunzi, 2006). However, in text analyses, these LED scores are particularly intuitive, since any string comparison that supports an LED of zero means complete similarity between the elements in question, while any non-zero returned value immediately identifies disparities *and* the magnitude of such differences.

These LED calculations may be made at two levels. First, they may be computed at the token or element level. Two relevant examples are apparent in the test involving the terms *dog* and *dig* with its LED score of 1, and in the cumulative score of 14 that is generated in an evaluation of just the first line of Walt Whitman’s 1855 original and of his later 1891 revision of *I Sing the Body Electric*, i.e., for an assessment that evaluates the variability between “[The](#)

bodies of men and women engirth me and I engirth them” and “*The armies of those I love engirth me and I engirth them.*” In this last scenario, the italicized words mark the four pairs of tokens that induce that LED score of 14 across these twelve elements.

A second option may be administered to ascertain disparities between entire documents. In theory, this latter approach might facilitate an examination of various editions of a specific author’s work, or of a collation of statutes, or of similar ensembles. One advantage of such multiple comparisons occurs whenever the computed cumulative LED amount increases, decreases, or remains the same for later copies of the same material. Hypotheses relative to these three possible outcomes may stimulate the formation of a simple set of assumptions of the provenance of the test materials. Three possible suppositions for these theoretical LED amounts suggest that they could be due to a) a lack of editing expertise across the suite of documents that grew worse over time, as evidenced by the accumulation of errors evidenced by an increasing cumulative LED value; b) there might have been some degree of editorial intervention that corrected some resident errors and so the LED number automatically diminished over versions; or c) the constant LED quantity simply signaled that no apparent intercession occurred between the text of the first and the creation of the second (and/or later) rendition(s) and the latter was/were a mere (yet true) facsimile of the initial form.

The flexibility found within the realm of Whitman’s poetry, however, is absent – or is nearly so – from legal contracts and treaties. Expressions of variability among alleged replications of these formats have led to endless bouts of litigation.¹²³ Indeed, in the previous

¹²³ As one representative of these actions, the *New Zealand Maori Council v. Attorney-General* case before the New Zealand Court of Appeal (1987, p. 642; emphasis added) discussed in particular the variance between the English and the Maori texts of the 1840 *Treaty of Waitangi*, as published in the *Treaty of Waitangi Act, 1975*: “The choice by Parliament of the expression

analysis of the *Treaty of Fort Laramie with Sioux, etc., 1851* (Bernholz and Pytlik Zillig, 2009 and 2011), the published federal texts for that instrument were interrogated in order to produce a final, correct version of the transaction, incorporating both the original document’s material and an amendment made by the Senate to one of its articles. As one consequence of that study, it was concluded that *Fort Laramie* had never been published in an error-free state.¹²⁴

LED score sensitivity and the *Okmulgee Constitution* test suite

Just as in the *Fort Laramie* study, the test data in this *Okmulgee Constitution* examination consisted of a vertically aligned joint set of the various published texts, stripped of delimiters and constructed to a uniform length, where any single document’s alignment was augmented if needed by blank pad elements to fill in any absent subsection(s) of that version. As an example of this adaptation, two parallel texts might consist of the terms *two-thirds* vs. *two thirds* which, when placed in these vertical arrays, would require that their element sequences occupy in the first instance just one location, but then two places for the second. A blank pad in the former corresponds to the latter’s *thirds* term and thereby aligns the two text segments. The fundamental, or base, document – the *two-thirds* one here – may require padding in order to incorporate text styles from later interpretations, or vice versa:

two-thirds	two
	thirds

‘inconsistent with the principles of the Treaty of Waitangi,’ in s 9 of the Act, was deliberate. *It reflects that the English and Maori texts in the first schedule to the Treaty of Waitangi Act 1975 are not translations the one of the other and do not necessarily convey precisely the same meaning.*” See Ward (1991) and the two treaty versions in the now adjusted Schedule 1 of the [Treaty of Waitangi Act, 1975](#).

¹²⁴ This instrument is more fully discussed at the Web site [The Treaty of Fort Laramie with Sioux, etc., 1851: Revisiting the document found in Kappler’s Indian Affairs: Laws and Treaties](#).

The application of the LED algorithm to these data would compute two edit distance scores, one for each of the *two-thirds* vs. *two* and of the [*blank*] vs. *thirds* rows, and would return individual values of 7 and 6, respectively, for a cumulative LED of 13. Similarly, two variants with the terms *to wit* and *to-wit* would initiate an LED score composed of 4 plus 3 changes, or a cumulative score of 7. Note that a contrast between *two-thirds* and *two thirds* (or *to wit* vs. *to-wit*) as two strings instead of two pairs of elements would generate in each instance a cumulative LED of just 1, i.e., for the single character insertion cost of the hyphen separating the two words in each of the target pairs. The vertical text distribution format employed here thus maximized these potential cumulative LED scores; the process was thus very sensitive to disparities. In addition, Levenshtein's process as designed returns evidence of *all* text differences, including those of capitalization, but since the main objective of that earlier study was concerned with the contents of the *Fort Laramie* treaty rather than with their presentation or format, all materials were first normalized to lower case prior to similarity testing in order to reduce unnecessary background noise in these calculations. These assessment conditions were replicated for the *Okmulgee* constitutional data. Document titles were included as part of each file's data.

For the assessment conducted here, fourteen documents – contained in thirteen publications – were considered. These consisted of three primary documents, i.e., the *Okmulgee Constitution* created by the General Council in December 1870 and two versions of the revised instrument from September 1875; one Senate bill text that cited the material; five additional federal representations, three popular press reports, and one compendium example of the original *Constitution*; plus one other federal rendition of the revision. They are listed below, and the bracketed names were used as brief identifiers within the remaining text and Tables.

Texts providing the original December 1870 document (N = 11)

See the “1870 Constitution” worksheet in Table IIA for these data.

- *Journal of the General Council of the Indian Territory* (1871) – 20 December 1870 – [Council];
- Indian Territory, Oklahoma (1871) – 19 January 1871 – [Territory];
- A bill to ratify and carry into effect the constitution and form of government for the Indian Territory adopted December twenty, anno Domini eighteen hundred and seventy, at Okmulgee, by the general council of said Territory, held by authority of the Government of the United States [20 and 25 January 1871] (1871c) – 25 January 1871 – [HarlanB]. Note that this is the *amended* version of Senate bill number 1237 that was introduced on 20 January 1871 by Senator James Harlan (R-IA).¹²⁵ That earlier document is denoted as *HarlanA* (A bill to ratify and carry into effect the constitution and form of government for the Indian Territory adopted December twenty, anno Domini eighteen hundred and seventy, at Okmulgee, by the general council of said Territory, held by authority of the Government of the United States [20 January 1871], 1871b). A third bill was created on 9 March 1871 as Senate bill number 80 and is named *HarlanC* in a series of subtests within this analysis (A bill to ratify and carry into effect the constitution and form of government for the Indian Territory adopted December twentieth, anno Domini eighteen hundred and seventy, at Okmulgee, by the general council of said Territory, held by authority of the

¹²⁵ Harlan was very active in Indian Affairs and served with the Committee on Indian Affairs during the Forty-first and Forty-second Congresses. Besides these pieces of legislation, he introduced A bill to authorize the election of a delegate in Congress from Indian Territory (1870) in the weeks preceding the initial publication of the *Okmulgee Constitution*. Between May 1865 and July 1866, he served as Secretary of the Interior.

- Government of the United States, 1871a). The text of *HarlanC* is not presented with the other variants, but is used in a small inquiry comparing these legislative materials;
- Message of the President of the United States, communicating a copy of the proceedings of the council of Indian tribes held at Ocmulgee, in December, 1870 (1871) – 30 January 1871 – [*Ocmulgee*];
 - Message of the President of the United States, communicating the second annual report of the Board of Indian Commissioners (1871) – 10 February 1871 – [*Commissioners*];
 - Investigation of Indian Frauds (1873) – 3 March 1873 – [*Frauds*];
 - Constitution of the Indian Territory (1873a and b) – 21 and 28 June 1873 – [*Vindicator*];
 - In the Senate of the United States (1879, pp. 613-620) – 11 February 1879 – [*SenateA*];
 - Okmulgee Constitution (1925) – September 1925 – [*Chronicles*]. This [text](#) is available on the World Wide Web, through the Oklahoma State University Library’s Electronic Publishing Center. The document is prefaced by a useful introduction, but the deployment in the Oklahoma State version of the error notation [*sic*], used to identify twelve alleged misspellings, was not implemented in this study;¹²⁶

¹²⁶ In their attempt to identify errors in the original *Chronicles* presentation, the Electronic Publishing Center (OSU) selected twelve items to mark, but not every one of these was a spelling error. The seven incorrect terms consisted of *praticable* in the preamble; *qualifid* and *appropriations* in §5 and in §14, respectively, of Article III (Okmulgee Constitution, 1925, pp. 218, 220, and 221; data table line number 132, 737, and 1291); *posessions*, *comitted*, *jeopary*, and *redresss* in §§ 5, 6, 9, and 11 of the Declaration of Rights (p. 227; line number 3249, 3318, 3473, and 3531). However, the tokens *milage* and *travelled* in §10 of Article III, and *bailable* in §7 of the Declaration (p. 221; line number 1115, 1123, and 3393), are not necessarily unsuitable:

- Beckett (1930) – 1930 – [Beckett]; and
- Wilkins (2009) – 2009 – [Wilkins].

milage is an acceptable variant of *mileage*, according to *The Oxford English Dictionary* (1989, vol. 9, p. 760); *travelled* is correct (vol. 18, p. 445); and *bailable* is accurate (vol. 1, p. 887). The two remaining possibilities – *impeachments* in §15 of Article III and *disqualifications* in §4 of Article IV (pp. 222-223; line number 1340 and 1744) – may be inappropriate plurals, at most. Four additional problems, however, were missed in the OSU analysis. The term *recommended* is inappropriately employed in Article IV, §6 of the *Chronicles of Oklahoma* text (p. 223; line number 1858), and three misspellings found in the article were either transcribed incorrectly, or a token in the original was incorrect yet undetected. The first instance of misspelling was located in Article IV, §10 for the last word of the phrase *but in such case the votes of both houses shall be determined by yeas and nays* (line number 2121). Legislative materials of the era that spoke of the federal *Constitution* used the term *nays* (see the title of Elliot, 1827-1830), but the word was also used in such diverse matters as a patent application for a recording device (Monaghan, 1848), “designed for taking the *Yeas* and *Nays* and other votes in Congress, the State Legislatures, and other deliberative assemblies” (Monaghan, 1849, p. 1; emphasis added). This specific element appears just once within the *Okmulgee Constitution*; the *Chronicles* included the tokens *aye* and *ayes*, and *nay* and *nays* in the note’s introduction (pp. 217-218); the use of *yeas* and *nays* was reserved for the *Chronicles* replication of Article IV, §10 (p. 224, and line number 2119 and 2121, respectively). *The Oxford English Dictionary* defines *aye* and *yea* as well as *yes* (vol. 1, p. 841; vol. 20, pp. 732-733 and 708-709) and *nay* and *no* (vol. 10, pp. 261-262 and 447-448), but the expression *nayes* never appears in those rules. Interestingly, one of The Oxford English Dictionary citations employed to illuminate the use of *nay* referred to Edward Lane’s 1841 translation of *The Thousand and One Nights*, specifically to “The Story of the Fisherman” in Chapter 2 and the truncated sentence: “The Efreet exclaimed, Nay, Nay! – to which the fisherman answered, Yea.” The second difficulty arose in the final sentence of Article V, §3 that should read, according to the *Chronicles* manuscript, “in such cases as *my* be prescribed by law” (p. 225; emphasis added; line number 2619), but this is properly spelled as *may* on the OSU Web page. The third case may be illustrated by the term *trail* in the phrase *a speedy public trail* from §6 of the Declaration that obviously should read *a speedy public trial* (p. 227; line number 3304). Finally, in the process of transcription, OSU induced three of its own faults. Article IV, §12 contained the phrase *signed by the Governor and attested **bar** the Secretary of the Territory*, instead of *attested **by** the Secretary of the Territory*; Article V, §5 has the elements *all cases arising under the legislation of **the** government as may be prescribed by law*, rather than *under the legislation of **this** government*; and the Declaration of Rights states *having compulsory process to **procure a witnesses** in his favor* for the *Chronicles* text *having compulsory process to **procure witnesses** in his favor* (pp. 224, 225, and 227; line number 2382, 2687, and 3344 to 3345). To be complete, OSU also marked a misspelling in the second paragraph of the *Chronicles* introduction; the word *reing* instead of *being* in the phrase *the bill **reing** referred back to a special committee consisting of the members of both committees* (p. 216). These new observations do not in any way form a critique of the *Chronicles of Oklahoma* or of the OSU efforts. They rather demonstrate the unfortunate ease of cumulative error creation in successive renditions, even under the best of intentions.

Texts presenting the revised September 1875 document (N = 3)

See the “1875 Revision” worksheet in Table IIB for these data.

- *Journal of the Sixth Annual Session of the General Council of the Indian Territory* (1875) – 15 May 1875 – [Sixth];
- *Journal of the Adjourned Session of the Sixth General Council of the Indian Territory* (1875) – 9 September 1875 – [Adjourned]; and
- In the Senate of the United States (1879, pp. 620-627) – 11 February 1879 – [SenateB].

The chronological order of these materials is indicated, with the following provisos. First, for the *Journal of the General Council of the Indian Territory*, the *Journal of the Sixth Annual Session of the General Council of the Indian Territory*, and the *Journal of the Adjourned Session of the Sixth General Council of the Indian Territory* publications, the final meeting date was selected for these conferences. Second, there is no way to confirm that the initial *Okmulgee Constitution*, presented in the *Journal of the General Council of the Indian Territory* (1871), was printed prior to any of the 1871 federal materials. The same concern affected the three sources of the revised, September 1875 instrument (i.e., found in the *Journal of the Sixth Annual Session of the General Council of the Indian Territory*, the *Journal of the Adjourned Session of the Sixth General Council of the Indian Territory*, and the In the Senate of the United States materials), but in this case, the question of publishing order was mitigated by the range of dates. Third, the *Constitution* article from the *Chronicles of Oklahoma* was assigned the publication date of the journal’s issue that featured this piece. Fourth, both the *Beckett* and the *Wilkins* entries were marked with their respective year of publication. Finally, *Wilkins* was a special case that was purposely published in a shortened version. LED analyses of this specific rendition will be

discussed separately, since a clear provenance course may be proposed from the available text even though a portion of its full text is absent. Each of the *Wilkins* element cells in the “1870 Constitution” sheet of Table IIA beyond line number 3597 has an em dash (—) to indicate that no physical data – and therefore no potential error – existed at this point. David Wilkins also included the apparent source for his *Okmulgee Constitution* rendition (2009, p. 134): the Message of the President of the United States, communicating a copy of the proceedings of the council of Indian tribes held at Ocmulgee, in December, 1870 (1871), i.e., the document that was identified in this study as *Ocmulgee*.

The first variant list for the 1870 *Okmulgee Constitution* immediately highlighted a substantial chronological break between the nineteenth century materials and those full texts created in the twentieth century: both *Chronicles* and *Beckett* were, respectively, popular press items from a journal and a book dedicated to the history of Oklahoma.¹²⁷ The *Wilkins* entry stood as an abbreviated entry in a recent compilation of pertinent documents that have affected the overall history of the tribes. All three of these versions were included in this analysis because, in many ways, they are probably the most easily accessible and, therefore, most frequently read accounts of the *Okmulgee Constitution* since its initial publication, either as an official document within the federal government (see *SenateA* and *SenateB* for both the original and the revised *Constitution* texts), or within local Indian Territory media (see *Vindicator*,

¹²⁷ The [editorial policy of *The Chronicles of Oklahoma*](#) today states that “[t]he Editor... actively seeks manuscripts that deal with the broad sweep of Oklahoma’s rich heritage.” This is a perpetuation of the original intent of the Oklahoma Historical Society’s Board of Directors. The Board concluded in their [first editorial](#) that “[i]f the people in the state will co-operate with the management in contributing what they can collect in their locality we can make the *Chronicles* a valuable instrument for collecting and transmitting to others our important history” (1921, p. 4).

published in the Choctaw Nation's newspaper of that name).¹²⁸ These subsequent renditions signaled a sustained interest in these affairs, not only in terms of the evolution of the Indian Territory into the current state of Oklahoma, but also as a representative instrument that helped form the history of American Indians. Wilkins' Introduction statement made a particularly relevant observation regarding his overall compilation of these diverse documents. He said that

[t]he startling diversity evident in native governing structures, along with the value systems that underlay them, indicates that native peoples were more than willing to embrace new legal traditions and institutions in an effort to adjust to the shifting political, economic, legal, cultural, and vastly changed territorial conditions. At the same time, varying segments of many nations strove to maintain precontact sociocultural norms, institutions, and ceremonial traditions to distinguish themselves from other native nations and the inexorable tide of intruding powers (2009, p. 2).

Thus, this single tribal constitution may be thought to distribute more than just the words describing a vision for Indian independence on the Plains. It can reveal, as Wilkins proposed, the willingness of a number of tribes to adapt – almost without limits – and to form a meaningful

¹²⁸ Such newspapers as *The Vindicator* kept the tribes informed. Hodge (1907, p. 233), in a section allocated to Indian periodicals, classified *The Vindicator* as “[a] weekly newspaper... ‘devoted to the interests of the Choctaws and Chickasaws,’ printed mostly in English, with occasional articles in Choctaw, [which] was started at Atoka, Ind. T., in 1872.” In a similar enterprise, the Cherokee *Advocate* was a very vocal participant in the land allotment proceedings in the Indian Territory at the end of the nineteenth century. The editorial position between 1898 and 1906 was that “resistance to allotment accomplished nothing while cooperation prevented the Cherokees from completely losing their lands” (Miller, 2010, p. 25). Miller's use of a 1904 map of the claimed Cherokee allotments (p. 36) lends an immediate perception of the outcome of that position. This image is available as Map No. 4 in the *Serial Set* (Department of the Interior. Commission to the Five Civilized Tribes. Map showing progress of allotment in Cherokee Nation. 1904, 1904), with comparable images created for the allotment profile of other Civilized Tribes.

confederation out of the chaos of removal, the Civil War, and the prospect of losing their lands, so that they as sovereign entities would not vanish.

Levenshtein edit distance calculations for the *Okmulgee Constitution* variants

The perpendicular arrangement of the variants induced alignment across individual elements within these texts. Introduced blank pads aided the rectangularization of the versions, since all of the presentations had disparate lengths (see the “Data characteristics” worksheet of Table IB); these blank pads are purposely highlighted in Table IIA and IIB for all alternative texts. The use of such additions may be observed immediately in line number 1 of Table IIA, where all renditions but *Beckett* required this intervention to address the sole appearance of the first element *the* in the latter’s title. Similarly, the insertion of blank elements in line number 50 through 52 in each variant except *HarlanB* balanced the almost complete utilization of the term *1866* with *HarlanB*’s lone substitute application of *eighteen hundred sixty-six*. This inclusive standardization was the first step towards uniformly calculating the LED scores required to index the inherent dissimilarities among these texts.

Comparisons between pairs of columns – where *Council* served as the exemplar – yielded 3,866 individual token LED scores for each set of evaluations. The sum of these LEDs gave a cumulative score that expressed the magnitude of textual changes – here, calculated in bytes – necessary to bring each specified pair of vertical text arrays into register. Two identical texts would return zero errors and, therefore, set the lower bound of any cumulative LED at zero. The top two lines reported in Table IIIA provide the number of errors observed and their cumulative byte value for such comparisons against *Council*. This Table, for example, specified that there were 52 pairs of non-matching elements consisting of 216 bytes in the comparison of the *Okmulgee Constitution* as published in *Council* and in *Territory*, but only 18 differences totaling

73 bytes in a test of the terms found in *Council* and in *HarlanB*. The rectangular nature of these data allowed direct comparisons among the returned cumulative LED values, unencumbered by the need to readjust the findings based upon unequal text element totals. Thus, the observed error counts of 18 for the *Council-HarlanB* and 15 for the *Council-Commissioners* trials suggested similar accuracy in reproducing the original *Council* text by each of *HarlanB* and *Commissioners*. The cumulative LED score of 73 vs. 46 bytes additionally proposed that, even with approximately the same number of faults, *Commissioners* was a marginally more accurate copy of *Council* than was *HarlanB*, based on byte accuracy.

The expected cost and expected benefit values assembled in Table IIIA will be discussed below, but they may be understood as indicators of known textual problems and of known acceptable remedies, respectfully, that may be legitimately applied to diminish the overall net noise tally to create a true index of disparity between text arrays. The initial results from these *Council* comparisons stimulated other tests, e.g., an examination of the *HarlanA* vs. *HarlanB* was calculated to study the *Okmulgee Constitution* text presented in Congress within a few days (i.e., on 20 and 25 January 1871, respectively) as part of an initial and then as an amended bill, and published on each occurrence by presumably the same federal printers. These special test outcomes were a window into that publishing domain.

The concatenation of all errors indicated that 299 individual text elements varied between one and ten times each across all 1870 *Okmulgee Constitution* variants, including the truncated *Wilkins* one. Table IIIB shows the number of inaccuracies and the frequency of their occurrences. It also presents all individual discrepancies which, when multiplied by their error state counts, provides a grand total of 582 errors.

Initial observations

The *Fort Laramie* study indisputably set the foundation for this *Okmulgee Constitution* endeavor. It was not only a test bed for an evaluation of the Levenshtein metric, but provided insight regarding outcome possibilities. In general, two “families” of errors were observed in that analysis that may be considered of major and of minor importance.

In the major category, comparison errors appeared either as text incursions or as text exclusions. In the *Fort Laramie* tests, the former shortfall was revealed in Kappler’s 1929 version of the treaty, with a redundant section in Article 5 of the sixteen words *thence up the north fork of the Platte River to the forks of the Platte River*. The latter, omission fault was evident by passages absent from the 1873, 1903, 1904, and 1929 versions of the treaty that failed to include a nine-word phrase in the Article 5’s boundary description for the Gros Ventre, Mandan, and Arikara territory that had been a part of the 1851 original text. The original document read *thence up the Yellow Stone river to the mouth of Powder River; **thence from the mouth of Powder River** in a South-easterly direction to the head waters of the Little Missouri river*, where the seven bold words were not replicated in any of those later 1873, 1903, 1904, or 1929 compilations. The surplus Platte River section may be seen in line number 353 through 368 of the 1929 rendition of the instrument, and the nonappearance of the Powder River sequence at line number 471 to 477 in the 1873, 1903, 1904, and 1929 documents in the [composite *Fort Laramie* data](#). These significant departures from similarity provided guidance in determining the provenance of these various *Fort Laramie* presentations: the exclusion strongly tied together the 1873, 1903, 1904, and 1929 texts, while it simultaneously separated them from the set of 1851, 1852, and 1884 productions. The historical sequence was thus reinforced by these observations. The binding together of the 1903, 1904, and 1929 examples through these data was, in part, a reflection of their sequential production by Charles J. Kappler for successive

second volumes in 1903 and 1904 of his *Indian Affairs: Laws and Treaties* ensemble that must have used as its primary source the material found in *A Compilation of All the Treaties Between the United States and the Indian Tribes Now in Force as Laws* (1873). The apparent linkage of the 1851, 1852, and 1884 texts was due to a certain extent by the Senate itself, which created the 1852 document as it considered the original, 1851 treaty transaction, while the 1884 became a relevant element in the third edition of a federal collection entitled *Laws of the United States Relating to Indian Affairs: Compiled from the Revised Statutes of the United States enacted June 22, 1874, and from Statutes at Large from that date to March 4, 1883: Also, Special Acts and Resolutions Previous to the Enactment of the Revised Statutes, not Embraced in or Repealed by the Revision: Also, List of all Ratified Treaties and Agreements Made with the Several Indian Tribes* (1884, pp. 317-319).

The second, minor class of errors included spelling discrepancies and the replacement of words. In *Fort Laramie*, the terms *head chiefs*, *head men*, *fifty one*, *north westerly*, *south-easterly* and *south easterly*, *south-westerly*, and *Yellow Stone* were part of the original treaty lexicon, while post-1851 documents delivered *headmen*, *fifty-one*, *northwesterly*, *southeasterly*, *southwesterly*, and *Yellowstone*. As noted above, the vertical arrangement of the data maximized the LED for these comparisons. In addition, the term *alonge* emerged in the 1873 reproduction (see line number 492 of the [data set](#)), but in no other example. Here, the concept of the Levenshtein edit distance score as a *benefit* indicator prevailed: it would require one byte to delete that terminal *e* from *alonge* to make the necessary adjustment to align the 1871 version with the original treaty text. Such demonstrations were valuable for the more complete *Okmulgee* analysis.

Assignable costs in the *Okmulgee Constitution*

There were four major textual problems within the comparisons of variants of the December 1870 *Council*. Two had to do with individual nine word exclusions, one was the misspelling of the Council Secretary's surname, and the last was an instance of the complete absence of the text of the Schedule to the Constitution.

- The first thirty byte omission – *and on the south by the state of Texas* – was defined here as the nine item, Texas boundary exclusion, and it was absent from the first sentence of Article 1, §1 in the *Commissioners*, *Frauds*, and *Wilkins* versions.¹²⁹
- The second oversight was forty-two bytes and nine elements in length – *of having the witnesses to testify in his presence* – and is referred to as the witness exclusion. It was missing from §6 of the Declaration of Rights in the *Territory* and the *SenateA* accounts.
- At the end of the *Council* document, the surname for its Secretary, George Washington Grayson, appeared as *Greyson*. Four later *Okmulgee* publications corrected this error – i.e., in the *Ocmulgee*, *Frauds*, *Chronicles*, and *Beckett* alternatives – and even though this was but a single-byte disparity, its presence in the last name of such a prominent General Council participant was unfortunate.

¹²⁹ The evolution of physical boundaries has always been a major issue within the United States (Gannett, 1900), as mirrored by this Texas boundary exclusion in these three versions of the *Okmulgee Constitution*; by the Gros Ventre exclusion from variants of the *Treaty of Fort Laramie with Sioux, etc., 1851* (Bernholz and Pytlik Zillig, 2009); by the turbulent history of land encroachment by settlers in the Northeast that required the intervention of Sir William Johnson, the Superintendent of Indian Affairs for the Northern Department under British rule (Jarvis, 2010, pp. 13-57); by the development of the fluctuating demarcations separating the colonies (Schwartz, 1979), such as for Pennsylvania and Virginia (Potter, 1914); and by bouts of contemporary litigation between, for example, Pennsylvania and Delaware (see Joint resolution ratifying the reestablishment of the boundary line between the states of Pennsylvania and Delaware, 1921) and between New Jersey and Delaware (*New Jersey v. Delaware*, 1934 and 1935). With regard to Oklahoma, Clark analyzed the history of its eastern (1933) and its northern (1937) boundaries.

- Finally, the *Wilkins* rendition of the *Okmulgee Constitution* did not include the 270 term (including three pad elements) 1,309 byte Schedule to the Constitution.¹³⁰ This absence was similar to one observed in Kappler's 1903 version of the *Treaty of Fort Laramie with Sioux, etc., 1851* (1903, pp. 440-42), in which the testimonium was removed as part of an effort to save space.¹³¹

Table IB identifies the presence of these four specific text elements within the ten versions of the *Okmulgee Constitution* that were created subsequent to the initial General Council presentation; the latter is presented for reference.

Assignable benefits in the *Okmulgee Constitution*

This *Okmulgee Constitution* examination was founded in part upon a desire to learn the provenance of the original 1870 instrument, and the contents of the underlying text and its variants. This meant that observed discrepancies were considered as valuable data. Their occurrences were not blindly defined as a fault or an error but rather as a manifestation of some difference among the versions. Such a perspective returned two series of observations: those that may be classified as denoting assignable costs, as mentioned above, and those that may be construed as assignable benefits. These latter were, in general, unexpected but their presence was an aid to the understanding of the condition of the base *Council* material. Here, the original 1870 instrument contained the terms *formes*, *agains*, *thist*, *cammission*, and *organized* (see line

¹³⁰ Note that the *Council* text subtends 270 rows in Table IIA, but consists of only 267 elements plus three blanks. The latter are due to interleaving the other versions within the Table. Here, line number 3712 and 3713 hold the single term *two-thirds* in all versions except *Territory* for which the word is broken into two terms; the insertion of the term *general* at line number 3748 in *Chronicles* and *Beckett*; and the insertion of the term *of* at line number 3859 in *Territory*, *Commissioners*, and *SenateA*.

¹³¹ Wilkins also cited space issues for his collection (David Wilkins, personal communication, 24 June 2010). See Bernholz and Pytlik Zillig (2009) for more on Kappler's decision to exclude the testimonium and the signatures from the text of this treaty in his 1903 compilation.

number 43, 1970, 1974, 1978, and 3604, respectively, in Table IIA), instead of the likely elements *forms*, *against*, *this*, *commission*, and *organize* in the other ten renditions. A comparative test between that 1870 *Council* base document and any other account thus created an LED score that was amplified by a total of five bytes that, through their service, would induce these corrections. Indeed, the *Territory* text – written less than a month after the *Constitution* was created at the Council gathering at the Creek capital – appeared in the *Congressional Globe* with these five corrections already in place (Indian Territory, Oklahoma, 1871). These findings suggested that textual interrogation through the LED metric may be a potential calculator of benefit as well as cost in such studies, and an avenue towards a better understanding of editorial/printer intervention(s).

More specifically, these five spelling errors were distributed throughout all major portions of *Council*. The term *formes* (line number 43) appeared in the preamble (*Whereas the people of the nations of Indians inhabiting the Indian Territory have agreed by treaty with the Government of the United States, and been by its agents invited to meet in General Council under the formes prescribed by the Treaties of 1866 and the action thereon of the Government of the United States....*).¹³² The *formes* incompatibility was reminiscent of the usage of *Supintent* in

¹³² The element *formes* is in fact a legitimate term, especially so perhaps in the final product of a firm named Excelsior Book and Job Printing. *The Oxford English Dictionary* (1989, vol. 6, p. 80) contributed this definition as a usage of the term *form*: “Printing. A body of type, secured in a chase, for printing at one impression. (Often spelt *forme*).” As one application of the *formes* token, Bowers (2004, p. 271; emphasis added) considered the effect of compositor intervention in the printing process of Shakespearean variants and proposed that “if we can explain various anomalies in a text as being the result of the casting-off of the copy and the typesetting by *formes*, we are helping to restore the shape of the original manuscript as we strip away some of the veil of print.” It seems reasonable to postulate that its use in the *Okmulgee Constitution* phrase *under the formes prescribed by the Treaties of 1866* was an occupational incursion. However, it is further assumed that the intended word was indeed *forms* – as implied by the

the same document portion of the *Treaty of Fort Laramie with Sioux, etc., 1851*.¹³³ The three terms *against*, *this*, and *commission* (line number 1970, 1974, and 1978) were detected in §9 of Article 4 (*The Governor may grant pardons, and respites and remit fines for offenses **against** the laws of **this** Territory, and shall **commission** all officers who shall be appointed or elected to office under the laws of the Territory*). Finally, the element *organized* was inappropriate for the first line of the original Schedule to the Constitution (line number 3604): *In order to **organized** the Government of the Indian Territory, and secure practical operation for the same, it is hereby ordained....*

These five bytes stand alongside the absence of three bytes in *SenateB*, the text of the 1875 revised *Constitution*, when the entire specification for impeachment in §15 of Article 3 (see line number R-1451; emphasis added) was impaired by the phrase *no person shall be convicted **with** the concurrence of two-thirds of the members present*. Certainly, *without* was the required term in this declaration. The few spelling error bytes contained in *formes*, *against*, *this*, *commission*, and *organized* of the original 1870 *Okmulgee Constitution* were repaired in later versions, while its revised 1875 rendition, seen in *SenateB*, was weakened during preparations for inclusion in the *Serial Set*. The manipulation of those initial but incorrect terms ultimately served the desired outcome that is very much in line with Levenshtein's approach. The title of his paper – Binary codes capable of *correcting* deletions, insertions, and reversals (1966; emphasis added) – proclaimed that the ultimate goal must be corrective in nature, and not just an enumeration of element differences or, specifically, of severe textual errors, as found in the impeachment phrase of *SenateB*.

context and the use of *forms* by all other variants – and so this term is collected, and considered, with other misspellings.

¹³³ See the discussion under the *Superintendent* paragraph at the Web site for [Laramie](#).

A question of document order

The document order found in the federal variant *Ocmulgee* was a unique situation among the materials from the 1870s, because the original textual sequence of sections for the Constitution (composed of a preamble and articles), followed by the Declaration of Rights, and ending with the Schedule to the Constitution did not appear in this publication, as it did in all other examples other than in *Wilkins*, which failed to include the Schedule. Rather, in *Ocmulgee* the Constitution and the Declaration of Rights components were preceded by the Schedule to the Constitution (see pp. 8-11 and 7, respectively, of Message of the President of the United States, communicating a copy of the proceedings of the council of Indian tribes held at Ocmulgee, in December, 1870, 1871).¹³⁴ This Senate Executive Document entry in the *Serial Set*, published in late January 1871, was a critical report because it was supplied by the Committee of the Board of Indian Commissioners whose members – Robert Campbell, John D. Lang, and John V. Farwell – attended the Council meetings as representatives of the federal government.¹³⁵ Their extensive session minutes for 12 December 1870 incorporated two “additional rules for the government of the council in the order and transaction of business” (p. 20), identified as Rule 11 and Rule 12 in their copy, that were not present in the published text of the *Journal of the General Council of the Indian Territory* (1871; the absence occurred on p. 27). The *Ocmulgee* text expressed this parameter deficiency by the parenthetical statement “(said rules not reported)” (p. 20). Since the remainder of their federal notes followed the order of the entries of the *Journal of the General Council of the Indian Territory* (even if their presentation sequence might have been somewhat

¹³⁴ As a point of interest, the same Declaration of Rights section was presented alone, six days earlier, as part of another federal document (Indian confederacy. Papers relative to the confederacy of Indian tribes, 1871, pp. 3-4).

¹³⁵ Lang’s name was misspelled as *Lord* in a *New York Times* report (The Indian Council, 1870, p. 1).

inexact), *Ocmulgee* may be taken as evidence that there was at least a second account of the official *Journal* daily records available: one description as reported – in whole or in part – in *Ocmulgee* by these three Commissioners, and another day-to-day narrative that was ultimately published as the *Journal of the General Council of the Indian Territory* sometime during 1871.¹³⁶

The identical Schedule-Constitution-Declaration order was repeated two years later in *Frauds*, as part of a 793 page House Report produced “to do something to rid the Indians and the Indian Service of those heartless scoundrels who infest it, and who do so much damage to the Indian, the settler, and the government” (Investigation of Indian Frauds, 1873, p. 1). In addition, the main portion of the *Serial Set* Senate Executive Report that contained the *Commissioners* text and published on 10 February 1871 presented the second annual report of the Board of Indian Commissioners. That account, in Appendix 35 (Message of the President of the United States, communicating the second annual report of the Board of Indian Commissioners, 1871, pp. 113-125), spoke extensively of the “Ockmulgee Council – Indian Territory” in far more detail than was present in *Ocmulgee*. In that exhibit, two important remarks were made that shed light on the possibility that there might have been at least two ordered *Constitution* texts.

First, for 12 December 1870, the Commissioners disclosed that “[o]n the adjournment of to-day of the council the commissioners made preparations to leave for home early next day [i.e., on 13 December]; but the arrival of General Parker from Washington decided them to postpone

¹³⁶ There are reasons to believe that the 1870 Council meeting *Journal* may have been published quickly. Enoch Hoag was the Superintendent of Indian Affairs at the Central Superintendency between 22 April 1869 and 19 January 1876 and his office was in Lawrence, Kansas (Hill, 1974, pp. 28-31). Hoag thus “probably made the arrangements for the printing of the council journals” in that city after his return from each Okmulgee session (Hargrett, 1947, p. 91). All *Journals*, except the one for the adjourned fourth gathering, were printed there.

their departure until after the next forenoon session of the council” (p. 121). The *Journal of the General Council of the Indian Territory* (1871, pp. 26-29) denoted the Council resolution in the afternoon of 12 December to thank those Commissioners for their presence¹³⁷ and then described the introduction by Enoch Hoag of

the Hon. Eli S. Parker, Commissioner of Indian Affairs, who delivered an address setting forth his views as to the wishes and expectations of the government of the United States, and of the friends of the Indians throughout the same, from this General Council of the Indian Territory, with suggestions as to the best mode of legislation to meet those expectations: and also words of cheer and encouragement in this great and important undertaking.¹³⁸

These observations were corroborated by the Commissioners’ own report, with their statement that “a lively sensation among the delegates of the different tribes and nations” was created upon Parker’s arrival (Message of the President of the United States, communicating the second annual report of the Board of Indian Commissioners, 1871, p. 121), and through 14 December, the *Journal* made no statement regarding the departure of the Commissioners.

Second, the 13 December entry in the Commissioners’ account terminated with the statement that “[w]e left Okmulgee at half past 11 o’clock a. m. and passed the night twelve miles distant at ‘Cow Tom’s,’ a noted stopping place” (Message of the President of the United

¹³⁷ Note that this is the same *Journal* entry that failed to include the section devoted to Rules 11 and 12.

¹³⁸ Parker, a Seneca, was the first Indian director of the Bureau of Indian Affairs (Waltmann, 1979).

States, communicating the second annual report of the Board of Indian Commissioners, 1871, p. 123).¹³⁹

Two days after the Commissioners had departed for Washington – i.e., on 15 December – the *Journal* enumerated two proposals offered by Sanford W. Perryman and John R. Moore: “S. W. Perryman of the Creek Nation, introduced a resolution providing for a committee of three persons, whose duties will be to revise and *rearrange* the minutes and proceedings of the Council preparatory to printing and publishing the same” and “Mr. Moore of the same nation, moved to amend the resolution so as to provide for the re-reading of the same before the adjournment of the present Council” (*Journal of the General Council of the Indian Territory*, 1871, p. 30; emphasis added). The amended resolution was adopted, and a three-person committee was promptly formed. Thus, these events raise the possibility that textual adjustments might have been made to the *Ocmulgee Constitution* subsequent to the departure of the members of the Board of Indian Commissioners.

Two further pieces of evidence require discussion. Each of *Ocmulgee* and *Frauds* contained two passages interposed between the texts of the Schedule to the Constitution and the

¹³⁹ Cow Tom was a famous black slave, and later a member, of the Creek tribe who served as an interpreter following the Civil War. His name appeared in Kappler’s *Indian Affairs: Laws and Treaties* volume (1904b, pp. 1050-1052) as one of the “[d]elegates for the black population living among the Creeks and Euchees” in the unratified [*Agreement with the Cherokee and Other Tribes in the Indian Territory, 1865*](#). As noted earlier, a footnote to this instrument observed that “[t]his document is claimed by the Indian Office not to be a treaty, but simply an agreement which formed the bases for the treaty with the Seminole of May 21, 1866, (ante p. 910) and of the treaty with the Creeks of June 14, 1866, (ante p. 931). It is not on file in the Indian Office and is found only in the Report of the Commissioner of Indian Affairs for 1865” (Kappler, 1904b, p. 1051). The mentioned treaties are the [*Treaty with the Seminole, 1866*](#) and the [*Treaty with the Creeks, 1866*](#) (pp. 910-915 and 931-937, respectively), two instruments from the new instrument series created with the federal government after the Civil War. Before removal, the “Euchees” (now Yuchi) lived over time in various locales of the Southeast. Once in Indian Territory, they resided in a small settlement within the Creek Nation and “[d]uring much of their later history... used Creek as a lingua franca” (Jackson, 2004, p. 415).

Constitution itself. The first addition was a statement, signed by “Allen Ross, Chairman,” that reported “[y]our committee, to whom was referred the resolution in regard to the various tribes of the Plains, respectfully state that they have carefully considered said subject, and beg leave to submit the following resolution, and recommend that it be adopted by general council,” and the second supplement was the resolution itself (Message of the President of the United States, communicating a copy of the proceedings of the council of Indian tribes held at Ocmulgee, in December, 1870, 1871, p. 8 and Investigation of Indian Frauds, 1873, p. 276, respectively).¹⁴⁰ These two segments appeared in the *Journal* (pp. 31-32) for Council activities in the afternoon of 15 December, just hours after the Perryman-Moore “revise and rearrange” resolution and the

¹⁴⁰ This “Resolution in regard to the tribes of the plains” read:

Resolved by the general council of the Indian Territory, That the superintendent of Indian Affairs be, and he is hereby, requested to convey through his respective agents or otherwise, to the Comanches, Kiowas, Cheyennes, Arapahoes, and other tribes of the Plains, the fact that the Choctaws, Chickasaws, Cherokees, Muskokees, Seminoles, Osages, Senecas, Shawnees, Ottawas, Peorias, Wyandotts, Quapaws, and Sac and Foxes have met in general council and confederated; that the object of this confederation is to preserve peace and friendship among themselves, with all other red men, and with the people of the United States; to promote the general welfare of all Indians and to establish friendly relations with them; to secure our lands exclusively to ourselves, and to transmit them to our children after us; that the nations above named extend to them the hand of friendship; that they earnestly recommend them to refrain from acts of hostility among themselves and with the people of the United States, and that we offer them our aid and counsel in establishing permanently friendly relations with the Government of the same, and will meet them in council whenever practicable and desired by the superintendent of Indian Affairs (Investigation of Indian Frauds, 1873, p. 276).

A future Levenshtein examination is warranted for assessing just this resolution’s content in each of *Council*, *Frauds*, and the *Chronicles of Oklahoma*’s republication of the adjourned session (Journal of the adjourned session of the first general council of the Indian territory, 1925, p. 131). The title of the proposal; the capitalization; the punctuation; and the wording itself (*his* *respective agents* vs. *their* *respective agents*, for example) vary across variants of this single sliver of *Ocmulgee Constitution* history.

appointment of the same Allen Ross as a member of the three-person committee to effect those possible modifications.¹⁴¹

Finally, the *Ocmulgee* and *Frauds* texts possessed a Schedule to the Constitution that was signed only by “G. W. Grayson, Secretary,” unaccompanied by the mark of Enoch Hoag that was present in the Schedule of all other contemporary variants. Even though Grayson’s surname was spelled correctly in both of these federal documents, it was misspelled in the final version of the *Constitution* as published in the *Journal of the General Council of the Indian Territory* in 1871 (see line number 3865 in Table IIA and Warde, 1999, for more on Grayson).¹⁴² Further, commencing with the *Journal* and followed by all other federal variants of the nineteenth century besides *Ocmulgee* and *Frauds*, the President of the Council, Enoch Hoag, signed the Schedule to the Constitution prior to Grayson, as might be a reasonable expectation for a final legal manuscript of this caliber. In the twentieth century, the *Chronicles* and *Beckett* versions exhibited only the Secretary’s name at the conclusion of the Schedule, and – like *Ocmulgee* and *Frauds* – its spelling was correct, thereby advising that *Chronicles* and *Beckett* were derived directly from *Ocmulgee* and/or *Frauds*.

¹⁴¹ The Plains resolution submitted by Ross had nothing to do with the decision to reexamine the final version of the Council minutes and proceedings.

¹⁴² The long delayed publication of Grayson’s autobiography (1988, p. 7; emphasis added) contained an Introduction by W. David Baird that stated that “[p]erpetuation of the Creeks as a sovereign government was [Grayson’s] primary objective as a public official, especially on the many occasions he acted as a delegate to the federal government in Washington after the Civil War. The same goal *induced him to serve as secretary after 1870 to the Okmulgee Council*, an intertribal group envisioned by federal officials as a precursor to territorial government for the Indians.” Baird purposely supplemented the text of Grayson’s original manuscript with useful notations that helped to build a more robust view of the man. Grayson was known later for his involvement in the Creek newspaper, the *Indian Journal* (Riley, 1982; Littlefield and Parins, 1984, vol. 1, pp. 189-196).

All these data point to the possibility that the three Commissioners might have left the Council meeting with an unrevised version of the *Constitution* that was only later solidified, in response to the Perryman-Moore resolution, after their departure. Such speculation would help support contentions concerning five specific differences observed in:

- the segment order of the documents;
- the spelling of Secretary Grayson’s surname;
- the absence of President Hoag from the Schedule to the Constitution in the *Ocmulgee* and *Frauds* documents;
- the Texas boundary text exclusion from the first sentence of Article 1, §1 of only *Ocmulgee* and *Frauds* during this time period (see below); and
- the apparent use of the word *schedule* – in the sense denoted by *The Oxford English Dictionary* (1989, vol. 14, p. 613) as a term of United States origin that signifies “a timetable” – deployed to describe for the future application of the *Constitution*, “in extended sense, a programme or plan of events, operations, etc.” Phrases in the Schedule convey this potential temporal nature: *In order to organize the Government of the Indian Territory...*; *Upon receiving from such authority...*; and *It shall be the duty of the General Council when so assembled to adopt such measures...* are three such emphasized indicators.

However, there was evidence in the *Journal of the General Council of the Indian Territory* that certain revisions, initiated by the Perryman-Moore resolution and implemented during the previous afternoon Council sessions and during the final morning, i.e., on 19 and 20 December, were included in the text submitted by the Commissioners in their report. Perhaps the most critical amendment was that proposed for the Schedule and revealed by the inserted phrase

Provided, that this constitution shall be obligatory and binding only upon such nations and tribes as may hereafter duly approve and adopt the same (*Journal of the General Council of the Indian Territory*, 1871, pp. 35-36). This proviso appeared within both the Schedule submitted by the three members of the Board of Indian Commissioners and, subsequently, *Frauds* (Message of the President of the United States, communicating a copy of the proceedings of the council of Indian tribes held at Ocmulgee, in December, 1870, 1871, p. 7 and *Investigation of Indian Frauds*, 1873, p. 276, respectively). For testing purposes in this study, these three major subcomponents were rearranged to create new *Ocmulgee* and *Frauds* texts that conformed to the “normal” sequence presented by *Council* from the *Journal of the General Council of the Indian Territory* (1871) and these were then assessed along with the other variants of this instrument. Further, this finding supported the conclusion that all of the variants used here were derived from the same fundamental document, and that the presentation found in the *Journal of the General Council of the Indian Territory* may serve as an appropriate base or seed document for comparative purposes.

Implications of the exclusion table

Exclusions, by their very nature, make bold statements, especially in materials that are considered as, or are candidates to become, the law of the land. The *Ocmulgee Constitution* was much more than a rough draft for the future. It was conceived as the basis of a tribal application to convince the federal government that the people of the Indian Territory were both prepared and adamant about an Indian state within the Union. There are, thus, a number of possible yet pertinent implications that may be derived from the exclusions posted in Table IIA. In this consideration, *HarlanB* – an internal working document of Congress – was excluded from consideration:

- It was immediately clear that the official copy of the *Okmulgee Constitution* in the *Congressional Globe*, i.e., the one called here the *Territory* version, was unable to convey the complete document, given the witness exclusion (line number 3330 to 3338) from the Declaration of Rights portion;
- The *Ocmulgee* document published in *Serial Set* volume 1440 excluded the Texas boundary definition (line number 206 to 214) and thereby created an instrument with an ill-defined geographic range;
- The first reliable reproduction of the original *Okmulgee Constitution* occurred in the 1871 *Commissioners* document of the same *Serial Set* volume, since *Territory* and *Ocmulgee* from earlier in that year had previously suffered from the witness and the Texas exclusions, respectively;
- The Texas boundary exclusion found in the 1873 *Frauds* was apparently replicated directly from 1871 *Ocmulgee*, since these two publications were the only nineteenth century reproductions sharing this shortfall;
- In 1879, the errors within the *SenateA* material directly announced that it was reproduced from the 1871 *Territory* account; these two alone share the witness exclusion; and
- The 2009 *Wilkins* account was the most divergent from the original instrument, with both the Texas boundary specification and the entire Schedule of the Constitution missing, regardless of the editorial rationale for the latter.

LED testing and results

Table IIIA tallied the discrepancies found in the comparisons between *Council* and each of the ten renditions of the 1870 *Constitution*, and of the match between *Sixth* and the two parallel versions of the revised document from 1875. In this display, *WilkinsF* is the name

associated with a full-length test between all elements of *Council* and this variant, while *WilkinsT* identifies the results with the truncated text, i.e., for the analysis that excluded any LED calculations for the Schedule to the Constitution segment. There are, in total, 849 disparities in the original document tests and 59 in the revision tests (see the original data sets of Table IIA and IIB). However, since the analysis between *Council* and *Wilkins* was affected by the absence of the Schedule to the Constitution subdivision, which accounted for 267 tokens and three pads in the composite data table, its removal reduced the total number of true errors across all ten assessments to 582 elements. Further, duplicate faults among texts existed that inflated the error list by their multiple occurrences – the term *formes*, at line number 43 in *Council*, was the prototypic case that induced ten observed errors in LED assessments performed across the remaining renditions. A list of unique errors in all ten comparisons was therefore 299 elements long. Of these, 176 items (or almost 59%) were single-event mistakes: these may be seen in the misspelling of *guarantied* in *Territory* (line number 221) and in the incursion of *[that are]* in *Wilkins* at line number 3008 and 3009.

Revelations from *Okmulgee* variant data

Comparative text analysis thrives on inconsistency. If variants do not emerge, the entire endeavor almost ceases to exist. The reasons for the observed nests of dissimilarity may be simple or complex, yet no single document ever seems to pivot exclusively upon a “simple” explanation. The effects of translation and editorial license, seen in *Description of the World*, presented readers with an immense array of Marco Polo’s alleged perceptions of the world in the East. *The Canterbury Tales* material was, according to Spencer and his colleagues,

a series of loosely-connected stories... [that] show many different orderings of the tales and linking passages... largely due to rearrangements of items (tales and links) by

scribes, who found it difficult to establish an appropriate order even in the earliest manuscripts (Spencer, Bordalejo, Wang, Barbrook, Mooney, Robinson, Warnow, and Howe, 2003, pp. 97-98).¹⁴³

Interventions of this magnitude make an orderly assessment extremely difficult. Far more rigid instruments, like treaties, have less potential flexibility because, as Aust (2007, p. 16) has observed, these pronouncements “are drafted according to standard forms and processed according to long-established procedures.” Their status as the law of the land should instantly further insulate them from adjustment, cosmetic or otherwise. Nevertheless, even renditions of legal materials reveal inconsistencies, as documented by the recent *Treaty of Fort Laramie with Sioux, etc., 1851 results* (Bernholz and Pytlik Zillig, 2009). It was quickly apparent that the situation would be no different with the *Okmulgee Constitution*: the *Okmulgee* data tables mimicked all error formats found in the *Laramie* study.

It is critical to keep in mind that all faults are not created equal, and that their distinct level of severity has a range that almost mirrors that of their collective richness of divergence. The *thence up the north fork of the Platte River to the forks of the Platte River* incursion in the 1929 *Laramie* account was not a stream of sixteen randomly selected terms that was fortuitously deposited into a contract among sovereigns. Rather, it was an utterance that was very highly correlated with the surrounding document syntax, even in its unwarranted state. Thus, errors embedded in compared texts may be difficult to observe easily, other than through mechanical processes like those employed in the *Laramie* and *Okmulgee* studies that maximize their visibility. Indeed, the course of making such measurements in this precise manner amplified

¹⁴³ See Caxton and Greg (1924, p. 737) for earlier observations on the *Tales* acquired “by subjecting to critical analysis the first 116 line of the Knight’s Tale as they stand in... six editions.”

minute alterations: testing *Yellow Stone* and *Yellowstone* in *Laramie* in this manner – through allocation to an LED table as a pair of two terms, *Yellow* and *Yellowstone*, and *Stone* vs. [blank] – turned a single-byte incongruity into two trial scores of five and five, or ten total bytes. On occasion, an editorial decision to make clearer a variant of the *Okmulgee Constitution* induced new calculated Levenshtein debt. David Wilkins established bracketed terms to expedite this clarification effort, but his use of [to] at line number 438; of the suffix to create *process[es]* at line number 2643; and of two occurrences of [that are] at line number 3008 and 3009 and at 3574 and 3575, accounted for four, four, nine, and nine LED bytes, respectively, within this exercise. Note too, though, that an analogous editorial influence led to the correction of the four familiar elements *formes*, *agains*, *thist*, *cammission*, and *organized* from the initial publication of the *Constitution*. These now valid spellings cannot be blamed on subsequent inattentive or error prone printers, as many subsequent textual blunders appear to be. Thus, squeezing a large LED calculation from the almost invisible shortfall evident in the contrast between *Yellow Stone* and *Yellowstone* demands that such known expected costs are balanced, at least in part if possible, by any recognized expected benefits attending, say, later more appropriate spelling(s). Subtracting the total byte count of both the expected cost(s) and the expected benefit(s) from the overall cumulative LED from a pair of instruments means that the final net noise value linked to that comparison is a more valid index of the actual magnitude of the inaccuracies rooted in those passages. This maneuver – the acceptance of the quantification of *benefits* observed through the application of the Levenshtein metric – was a step forward in the assessment technique employed during this *Okmulgee* project. The *Laramie* study was designed primarily to return a more accurate final treaty text, based on the original 1851 transaction and modified solely as stipulated in the later Congressional annuity adjustment. The *Okmulgee* endeavor looked more to the

fluctuations, more to the cumulative effect of the mistakes, yet simultaneously desired to give credit when due for instances of ensuing smart textual modifications.

The perception that this examination of the *Okmulgee Constitution* pivoted upon a similar series of discrepancies as found for *Laramie* was assisted by the imposed data formatting. These more rigid alignment conditions were far removed from the implications of Spencer and Howe (2004, p. 265) that “the text [of *The Canterbury Tales*] produced by scribes might not necessarily be grammatically correct, especially if they were not particularly familiar with the language they were writing.”¹⁴⁴ Among the fifty-six variants studied, the imposed elasticity resulting from this scribal language deficit further confounded the *Canterbury* examination, as evidenced by a plethora of token orders (Spencer et al, 2004, p. 106). Neither of these restrictions – or opportunities for contamination – existed for the studied renditions of *Okmulgee*. Each text was written in English; the expected legal formality or protocol was sustained during reproduction; and the overall relative orderliness minimized textual instability and eliminated the wild incongruities that manuscripts in the study of *Canterbury* displayed.

There is an additional endowment from this approach. In the universe of textual analysis, feature representation is paramount, so that contrasts made across genres may be secured in a more analogous way. The Text Encoding Initiative (TEI) was formed in part to formulate such guidelines; one specific area of concern was “historical analysis and interpretation” of texts (Sperberg-McQueen and Burnard, 1999, pp. 10-11). The so-called “parallel segmentation” method employed to assess the harmony of texts is especially applicable to materials like the variants of *Okmulgee*, precisely because of the anticipated fixed format and wording (pp. 480-

¹⁴⁴ Certainly, the earlier remarks on *Description of the World* would incorporate such potential hazards.

481). Sperberg-McQueen and Burnard observed that an arrangement of this sort “permits direct comparison of any span of text in any witness with that in any other witness” (p. 480). The mandatory word placement and synchrony of this model leads directly to the capability of computing Levenshtein edit distances for all content elements, or for any subset thereof, and to furnish thereby an effective and intuitive index of similarity for the entire coordinated instrument.

Error forms

In text reproduction undertakings that sidestep translation and editorial intercession – and especially for those attempts in which the document possesses some legal or official weight and for which style or subjective interpretation is absent – the forms that errors may take are limited. These may include one or more faults resulting from misspelling, juxtaposition, replacement, exclusion, and/or incursion. Further, successive editions carry the opportunity to introduce more inaccuracies, so that later renditions should show, in general and regardless of the source(s), increasing numbers of divergences from the original. The variants of the *Okmulgee Constitution* in this study contained examples from these five classes of difficulties and they support the prediction of increasing fault creation over time. Of the 299 unique errors distributed throughout the *Okmulgee* variants, there were 103 identified as spelling mistakes; six determined to be juxtapositions; 111 replacements of the original 1870 material; 53 occasions of exclusion; and 26 intrusions of new text.

- **Misspelling (N = 103)**

Misspellings are perhaps the most dominant and expected toll in the reproduction of texts. Plurals may be formed or missed (e.g., *session* vs. *sessions* and *powers* vs. *power* at *Wilkins* data line number 1607 and 3527, respectively); hyphenated words may be presented as

separate terms absent the dash (*two-thirds* vs. *two thirds* at line number 879 and 880 in *Territory*); style differences may emerge (*defense* vs. *defence* at line number 961 and *offenses* vs. *offences* at line number 1969 of *Vindicator*); and/or general errors may prevail (*appropriations* at line number 1291 of *Chronicles* and *whjch* at line number 2040 of *Vindicator*).

- **Juxtaposition (N = 6)**

In these rare instances, original word order was compromised and rearranged: see line number 347 and 348 for the phrase *are hereinafter* vs. *herein after* in *Wilkins*; the expression *not have* vs. *have not* at line number 1690 and 1691 for *SenateA*; and the terminology *be twice* vs. *twice be* residing at line number 3468 and 3469 of *Chronicles* and *Beckett*. This last error pair, in fact, served as one piece of evidence to recommend that *Beckett* was taken directly from *Chronicles*.

- **Replacement (N = 111)**

Replacement involved the physical substitution of one word for another. For this study, errors were placed in this category if the new word was beyond a clear case of misspelling. The most extreme example in these *Ocmulgee* data was the conversion of the year *1866* to the string *eighteen hundred and sixty-six* at line number 49 to 52 and 2440 to 2443 of *HarlanB*. Many of these adjustments made use of abbreviations for the terms *article* or *section*; there are six such paired transitions for *article* in *Chronicles* and *Beckett* at line number 162, 460, 523, 1497, 2388, and 2943. Similarly, the element *sec* in *Council* was changed to *section* 78 times in *Territory*, *Ocmulgee*, *Commissioners*, *Frauds*, *SenateA*, and *Wilkins*. More hidden adaptations included the deployment of *being* instead of *been*; of *&* instead of *and*; of *office* in place of *service*; and of *the* rather than *a* at line number 31, 649, 1527, and 2603, respectively, in *Chronicles* and *Beckett* exclusively. These findings too supplement the conviction that *Beckett* was derived from

Chronicles. *SenateA* used Arabic, and not Roman, numerals to identify *Okmulgee*'s six articles (see line number 163, 461, 524, 1498, 2389, and 2944), so there are shades to the absolute impact of replacements.

- **Exclusion (N = 53)**

Exclusions addressed text segments that have disappeared, relative to the original 1870 *Okmulgee* declaration. Thus, an exclusion was revealed whenever gaps emerged in the composite data table; these voids signaled some sort of inability during reproduction to replicate faithfully the original. Their presence was especially useful to postulate links connecting text cousins, or between subsequent documents that might have shared a true, common predecessor.

The main exclusion in these data took place in *Ocmulgee*, *Frauds*, and *Wilkins* at line number 206 to 214, where the nine term Texas boundary definition *and on the south by the state of Texas* was absent. This deficiency was extremely strong proof that *Frauds* was derived from *Ocmulgee*, in a manner similar to that for *Wilkins*; David Wilkins actually included *Ocmulgee* in his bibliography as the source for that transaction. An additional reinforcement for this conjecture may be derived from the noted printed position of the Schedule to the Constitution that *preceded* the instrument text and Declaration of Rights in *Ocmulgee* and was reproduced in the same manner for *Frauds*. Wilkins remarked that he had not included the Schedule in *Wilkins* because of page restraints imposed by his publisher (David Wilkins, personal communication, 24 June 2010), but there remains the possibility that the Schedule was either skipped or deemed unimportant during the *Okmulgee Constitution* text accumulation phase of his writing.

- **Incursion (N = 26)**

Incursions were represented by new material introduced into the primary text, in a complementary process to exclusion. These effects differ from replacement, since incursions are

nested within the initial text, while replacements change the current wording. In the former case, the LED vertical arrangement of the primary (and possible other) material must be padded to make room for the new incursive element(s). The replacement process simply exchanged tokens, such as the substitution of *office* for *service* evident in this study at line number 1527.

Any injection of new matter into the mass of original elements was viewed as an instance of incursion. The first specimen of this occurred in the *Beckett* rendition at line number 1, with the immediate use of the definite article *the* to precede the recognized general title of the *Constitution*, but there was also the word *that* placed at line number 605 only in *Commissioners*, and *Wilkins* added the bracketed terms [*to*] at line number 438 and [*that are*] at line number 3008 and 3009 as well as at line number 3574 and 3575. These modifications may have affected the readability to some positive degree, but they were incursions nonetheless. Overall, there was no substantive equivalent in *Okmulgee* to the sixteen word incursion *thence up the north fork of the Platte River to the forks of the Platte River* from Article 5 of the *Treaty of Fort Laramie with Sioux, etc., 1851*.

Leverage from the *Okmulgee* error table

Table IIIB identifies the 299 unique token differences found in the comparisons of the *Okmulgee* variants, grouped by error occurrence count. These reflect all classes of faults – i.e., those based on misspelling (marked as S), juxtaposition (J), replacement (R), exclusion (E), and incursion (I). In addition, one mistake was highlighted at line number 1829 of the three-error count group; three at line number 3860 to 3862 in the five problem set; and one for the eight occurrence group at line number 3858. These five special cases exhibit multiple difficulties for a specific token: *emolument* was misspelled as *emoluments* as well as replaced by *employment*; *Indian affairs president* was either excluded or abbreviated as *Ind affs pres*; and *supt* was either

replaced by *superintendent* or excluded. In the first instance, the mistake was assessed as a replacement, while the others were identified as exclusions, since replacement and exclusion were deemed more severe processes than misspelling and replacement, respectively.

Reflection upon these and on the rest of the ensemble of error elements created opportunities to develop a better understanding of the provenance of presentations made subsequent to the initial *Constitution* in December 1870. After all, these variants were created to be considered as identical, or nearly identical, representatives. This assessment formed a necessary second and parallel endeavor to the survey of earlier tribal constitutions that was originally undertaken to develop a more formal understanding of the basis for the legal underpinnings of this 1870 instrument, and of whether textual identicalness was sustained. Just as segments of older constitutional expressions were carried forward into the post-Civil War instruments created by the same tribes in the Indian Territory, the substance of those documents was reproduced (albeit, with errors) in later copies. This *Okmulgee* investigation, however, included newspaper and popular press items that, while not immune to the influence of federal documents, were produced nevertheless at a much greater geographical distance from those resources than the other related governmental items. The text found in *Vindicator*, *Chronicles*, and *Beckett* deserved special attention, since these were purveyors of more local historical description. The linkage between *Chronicles* and *Beckett* has already been mentioned: the *Chronicles* and *Beckett* versions provided only the Secretary's name – and expelled the seven elements of Enoch Hoag's name and position – at the conclusion of the Schedule to the Constitution (see line number 3856 to 3862); there were six paired transitions of *article* into *art* only in *Chronicles* and *Beckett*; there was the presence of the term *being* for *been*; of *&* instead of *and*; of *office* in place of *service*; and of *the* rather than *a* within *Chronicles* and *Beckett*

exclusively. The correct spelling of George Washington Grayson's name in *Ocmulgee*, *Frauds*, *Chronicles*, and *Beckett* augmented the probability that *Chronicles* was a derivative of *Ocmulgee* and/or *Frauds*.

Frauds was produced two years after *Ocmulgee*, so the provenance of Grayson's correctly spelled name may have originated in *Ocmulgee*, the report that directly recounted the events as observed by three members of the Board of Indian Commissioners. Slight spelling differences – *two-thirds* vs. *two thirds* at line number 879 and 880, 1379 and 1380, and 2059 and 2060; and *three-fourths* vs. *three fourths* at line number 2958 and 2959 – suggested that *Ocmulgee* was closer to *Council* than *Territory*, but the presence of the plural *punishments* and of *Grayson* coupled with the absence of the phrase *Indian affairs president* (at line number 3430, 3865, and 3860 to 3862, respectively) were indications of a more independent creation, as discussed earlier for *Ocmulgee*.

Territory, *HarlanB*, and *Ocmulgee* were all created during the month following the signing of the *Okmulgee Constitution*, within a span of just eleven days according to the documents' dates. There may have been two fundamental versions of the *Constitution* used to address later needs: the first should have been the initial *Council* variant, taken directly from the *Constitution* printed by Excelsior Book and Job Printing in Lawrence, Kansas, and a second from *Ocmulgee*, the federal document recollecting the visit to the Council session by the Board of Indian Commissioners.¹⁴⁵ The almost unfathomable difficulty with *Greyson* vs. *Grayson* was especially blatant and this lent credence to the chance of two textual options: a collection of *Council*, *Territory*, *Commissioners*, *Vindicator*, and *SenateA* that displayed the first, incorrectly

¹⁴⁵ There is apparently no way to confirm the delivery of any required Council session texts to the Secretary of the Interior, as specified in Article 12 of the [Treaty with the Cherokee, 1866](#) (Kappler, 1904b, pp. 942-950).

spelled surname of the Secretary that were thereby divergent as a group from a document set consisting of *Ocmulgee*, *Frauds*, *Chronicles*, and *Beckett* in which the name was spelled appropriately.

An extra advantage of the Levenshtein edit distance metric was that the number of observed mismatch errors gave an immediate indication of the strength of such document clusters. Table IIIA revealed that the Levenshtein tests between *Council* and each of *Commissioners*, *Frauds*, *Vindicator*, *SenateA*, *Chronicles*, and *Beckett* generated 15, 57, 33, 50, 80, and 81 errors. Comparisons between *Ocmulgee* and these six yielded mistake counts of 46, 9, 70, 81, 78, and 79. Thus, only the results linking *Ocmulgee* with *Frauds* would recommend that *Ocmulgee*, instead of *Council*, was the source for *Frauds*.¹⁴⁶ The accompanying, supplemental material for the resolution pertaining to the Plains tribes, found in the *Serial Set* volume, may also be considered as verification of this union.

These returns provide more insight, however. It is apparent that misspellings occur with some frequency among these variants, but that exclusions are quite rare: the Texas boundary, witness, and Hoag exclusions are the prime examples in this survey. Their existence offered far more strength to a declaration of document similarity than did any series of single word faults. In the case of *Council* vs. *Ocmulgee*, there was an occasion to demonstrate this effect. Even though *Ocmulgee*, *Frauds*, *Chronicles*, and *Beckett* shared the Hoag exclusion at line number

¹⁴⁶ The postulated replication of *Ocmulgee* by *Frauds* was rather remarkable. The nine errors consisted of four pairs of hyphenated words (*bona fide* vs. *bona-fide* at line number 670 and 671; *to wit* vs. *to-wit* at line number 1041 and 1042; *per diem* vs. *per-diem* at line number 1148 and 1149; and *attorney general* vs. *attorney-general* at line number 2335 and 2336) and one typographical error (*practica|*, differentiated here by a terminal vertical line vs. the *Ocmulgee* element *practical* at line number 3613). The cumulative LED for this evaluation was a mere 41 bytes, even with the severe restrictions imposed upon assessments made with perpendicular data. Examining the individual shortfalls showed that there were actually only five bytes of dissimilarity across these four pairs of words and that single typesetting error.

3856 to 3862, only the first two renditions additionally suffered the Texas boundary exclusion at line number 206 to 214. Thus, *Chronicles* and *Beckett* must have been formed from a combination of previous editions and not just from a single foundation. The obvious downside to that combination was the very high error count and cumulative LED scores for each of the *Chronicles* and *Beckett* tests against *Council*.

Much like the *Ocmulgee-Frauds* pairing, an LED test for *Chronicles-Beckett* discovered only 29 errors and a total of 44 bytes of dissimilarity. A parallel situation arose with *Territory* and *SenateA*. These two exhibited the nine element witness exclusion at line number 3330 to 3338 – *of having the witnesses to testify in his presence* – from §6 of the Declaration of Rights. Here, the tests between *Council* and these two other editions of the *Okmulgee Constitution* caused 52 and 50 errors, respectively, but in a test between the *Territory* and *SenateA*, only 44 errors composed of 197 bytes were obtained. A tighter fit might have been expected if the exclusion hypothesis had been in effect for this set of texts, but twelve of the 44 errors were due to six pairs of changes to article notations (i.e., Roman numerals were used to replace Arabic ones) and to the conversion of *section* to *sec*; the latter accounting for 24 bytes, or about an eighth, of the cumulative LED. Thus, even in the event where a single source is under reproduction, editorial intervention and/or style modifications can overwhelm a clear view back to that original document. The relatively abundant noise in the *Chronicles* and the *Beckett* variants was a strong index of this impediment.

Secondary tests and the revised *Okmulgee Constitution*

- **The Harlan Senate bills**

The possibility that *Ocmulgee* might have served as a secondary source for ensuing publications led to the discovery that the *Frauds* variant was almost a perfect reproduction of

that earlier material. LED scores confirmed this unequivocally, but such tests did not do so for a pairing of *Chronicles* with *Beckett*, even though these two are the only variants with the Hoag exclusion. Blaming this latter shortfall on overall poor editing of the two texts may be considered a more appropriate conclusion.

There were instances of potentially more fruitful appraisals among other forms of the initial *Constitution*. One of these targeted the bill sponsored by Senator James Harlan (R-IA) – A bill to ratify and carry into effect the constitution and form of government for the Indian Territory adopted December twenty, anno Domini eighteen hundred and seventy, at Okmulgee, by the general council of said Territory, held by authority of the Government of the United States [20 January 1871] (1871b) – that came before the Senate as Senate bill number 1237 on 20 January 1871 (here, designated *HarlanA*) and later amended on the twenty-fifth (*HarlanB*; 1871c). Among other aspects, a test of the similarity of these two Congressional submissions provided a view of government printing skills, not over a span of years, but rather just five days apart. The former supplied amendment stipulations to the *Okmulgee Constitution* through two sections (pp. 18-19), but it did not otherwise disturb the tribes' text. These changes declared:

Sec. 2. And be it further enacted, That until the Indian Territory shall be admitted into the Union as a State on an equal footing with the other States, the governor, secretary, marshal, district attorney, and assistants, and the judges of the supreme and district courts, provided for in the preceding constitution, *shall be appointed by the President*, by and with the advice and consent of the Senate, for a period of four years respectively, unless sooner removed, and shall be entitled to receive from the United States such compensation as is now authorized by law to be paid to the said officers for the Territory of New Mexico. And the per diem and mileage of the members of the general assembly

provide for in said constitution, and reasonable compensation for officers and interpreters of the two houses, with reasonable and necessary contingent expenses of the sessions thereof, shall in like manner be paid from the Treasury of the United States.

Sec. 3. And be it further enacted, That the jurisdiction over cases originating under the laws of the United States in said Indian Territory now lawfully exercised by the district court of the United States for the [blank] district of Arkansas be, and the same is hereby, transferred to the district courts of the said Indian Territory (emphasis added).

The amended bill on 25 January attached an additional three segments (pp. 19-20):

Sec. 4. And be it further enacted, That all laws enacted by the general assembly of said Territory not inconsistent with the provisions of this act, or the Constitution or laws of the United States, shall be binding on the inhabitants thereof, unless repealed or modified by Congress.

Sec. 5. And be it further enacted, That the qualified electors residing in said Territory shall have the right to elect a Delegate to the House of Representatives of the United States, in such manner as said general assembly shall direct, to serve for two years, who shall be entitled to the same rights and privileges as have been granted to the Delegates from the several Territories of the United States to the said House of Representatives. And no person shall be eligible to said office of delegate from said Territory who has not been from his birth a member of some one of said tribes or nations lawfully residing in said Territory, who is not twenty-five years of age, and who has not been a legal resident in said Territory for at least one year next preceding his election.

Sec. 6. And be it further enacted, That the members of said general assembly shall have the right, at any session legally organized, to fill any vacancy which may occur in the

office of Delegate to the House of Representatives of the United States, as provided in the foregoing section.

This bill preceded by ten days President Ulysses S. Grant's note to Congress that recommended, inter alia, that even with the creativity of the *Ocmulgee Constitution* "it would not be advisable to receive the new territory with the constitution precisely as it is now framed." Further, the President determined that "Congress should hold the power of approving or disapproving of all legislative action of the territory; and the Executive should, with the 'advice and consent of the Senate' have the power to appoint the governor and judicial offices (and possibly some others) of the Territory" (Message of the President of the United States, communicating a copy of the proceedings of the council of Indian tribes held at Ocmulgee, in December, 1870, 1871, p. 1; see also Simon [1998, pp. 152-156] for Grant's working text of this message). The emphasized portion of §2 above – *shall be appointed by the President* – was in concordance with President Grant's perceptions of the territorial proposal, regardless of the subsequent outcries of the resident tribes that argued that they had been assigned the task to create a state, not a territory, and a self-governing one at that. Article IV, §9 of the *Okmulgee Constitution* stressed that "the Governor... shall cammission [sic] all officers who shall be appointed or elected to office under the laws of the Territory" (*Journal of the General Council of the Indian Territory*, 1871, p. 50). Senator Harlan endeavored once more on 9 March 1871 with a bill (S. 80) of almost the same name (A bill to ratify and carry into effect the constitution and form of government for the Indian Territory adopted December twenty, anno Domini eighteen hundred and seventy, at Okmulgee, by the general council of said Territory, held by authority of the Government of the United States, 1871a; Bills introduced, 1871b, p. 21), but it was returned to the Committee on Indian Affairs on 14 March 1871 (Bills referred, 1871, p. 85; this bill is identified as *HarlanC* in this

analysis). The Committee on Indian Affairs in due course indefinitely postponed the bill, along with a number of others related to Indian affairs, on 20 February 1873 (Reports of committees, 1873, p. 1522). Assembling this suite of three legislative texts containing the *Ocmulgee Constitution* permitted an analysis of whether the printing of that material found in *HarlanC* was actually derived from its predecessor *HarlanB*, as would be expected for a stream of Senate actions of submission, debate, and amendment.

The computed cumulative Levenshtein edit distance score in a contrast of the initial bill (*HarlanA*) and the amended version (*HarlanB*) recognized a mere eight byte disagreement due to eight individual errors. These few distinctions were produced by the correction of a misspelling at line number 213 (*af* vs. *of*) and of one at line number 2026 (*retnun* vs. *return*); of a typesetting error that changed *genera|* (shown here with a vertical line, i.e., Unicode character code 007C) to *general* at line number 535; of a modified tribal name spelling of *Wyandotts* rather than the original *Wyandottes* at line number 640; of a numeric printing for §15 that was first published as §1_5 at line number 1327; and of the elements *court* instead of *courts*, of *council* rather than *councils*, and *amendments* instead of *amendment* at line number 2715, 3004, and 3029, respectively. Note that the *af*, *retnun*, *genera|*, and *1_5* adjustments may be construed as beneficial changes within the full view of the Levenshtein metric as a *correcting* tool.

All three of the *court*, *council*, and *amendments* alterations to *HarlanB* – plus the conversion to *Wyandotts* – moved away from those text elements provided by *Council*; this suggested that the original bill from 20 January 1871 had only four slight mistakes when it was originally produced a month after the *Ocmulgee Constitution* was completed in the Indian Territory. These specific induced errors illuminated the immediate deterioration of a federal text: 50% of the errors of *HarlanB* were established during this replication, whether this

rendition was based upon *Council* or *HarlanA*. Later reproductions, in turn based on *HarlanB*, would accordingly tend to create yet another variant of *Council*.

In the same manner, a test between *HarlanA* and the reintroduced *HarlanB* bill that ultimately provided the *HarlanC* text unveiled fourteen errors totaling sixteen bytes, almost doubling the counts found for *HarlanA* vs. *HarlanB*. The faults were, for the most part, very similar and consisted of the same rectifications of a misspelling at line number 213 (*af* vs. *of*) and of one at line number 2026 (*retnun* vs. *return*); of the transition from *genera|* to *general* at line number 535; of the use of *Wyandotts* instead of *Wyandottes* at line number 640; of §15 to replace §1_5 at line number 1327; and of *court*, *council*, and *amendments* at line number 2715, 3004, and 3029, plus new mistakes, evident from the introduction of *Sacs* for *Sac* at line number 648; *further* in place of *farther* at line number 1411; the loss of separation between the two elements *office of* at line number 1703 and 1704; and the typesetting issues of *resignatiou* and *receivc* at line number 1711 and 1824. These extra half dozen inconsistencies instilled new drift into the integrity of the original *Okmulgee* text contained in *Council* and that in *HarlanA*, and the sum of the LED cumulative scores directly reflected this deterioration: eight errors/eight bytes of difference between *HarlanA* and *HarlanB* plus six errors/eight bytes of dissimilarity between *HarlanB* and *HarlanC* generated fourteen errors/sixteen bytes of disparity in the *HarlanA-HarlanC* examination. The term *deterioration* in describing the creation of these three Congressional bills seemed quite appropriate here, because the new errors from *HarlanC* were needless misspellings (e.g., *Sacs* and *further*) coupled with poor typesetting (*officeof*, *resignatiou*, and *receivc*), all of which should have been recognized during document production. The closeness of *HarlanB* and *HarlanC* supplied weight to the hypothesis that *HarlanC* was taken from *HarlanB*, as would be expected when an amended Congressional bill was

reintroduced without modification. With a view of the entire bill, and not just the portion devoted to the *Constitution*, there were between *HarlanB* and *HarlanC* only slight dissimilarities in spelling and in the introduction to the bill, and of the unchanged number of amendment sections, but all of these aspects merely confirmed that *HarlanC* was an independent typesetting production, just as *HarlanB* had been.

The revised *Okmulgee Constitution* of September 1875

Delving into an inquiry of the revised *Okmulgee Constitution* was a procedure for understanding the demise of the entire constitutional effort. Between Senator Harlan's proposals and the remarks of President Grant, the tribes of the Indian Territory were left in a precarious situation. Six months after the creation of the *Constitution*, and at the second annual conference, it was revealed that the Creek had stormed ahead and already ratified the proposal, but other tribes had not (*Journal of the Second Annual Session of the General Council of the Indian Territory*, 1871, p. 7). A provisional government was therefore proposed, in order to get a functional administration underway by mid-1872, even if forced elections to determine officials was considered the only viable alternative to reach these goals (pp. 11-12). This collapsing conviction was evident a year later at the third annual Council session in 1872, when it was announced on 6 June that just the Choctaw, Creek, Eastern Shawnee, Ottawa, Peoria, Quapaw, Sac and Fox, Seneca, and Wyandot had ratified the 1870 *Constitution* (*Journal of the Third Annual Session of the General Council of the Indian Territory*, 1872, p. 7). This was some progress in the desired direction, but the news was accompanied by the remark that "[t]he action of some of the tribes has not yet be ascertained," which made it even more obvious to all delegates that the two-thirds voting threshold required to confirm ratification of the *Constitution*

had not been reached during the previous year and a half.¹⁴⁷ Rather, dissention was already present at this meeting in 1872, illustrated by the formation of a quorum fully *eight* days after the planned onset of the conference (p. 9), and by a resolution that “a committee of five be appointed by the acting President, to report what measures, if any, are necessary *to compel the attendance of absent members*” (p. 8; emphasis added). Appendix II lists the twenty-two tribes present during the second session in June 1871. By the time of this resolution to compel attendance, the number of participating tribes had been reduced by half, to just 12 (see those nations in Appendix III) and by May 1873, the number had fallen to ten (Appendix IV). The Cherokee were blatantly unenthusiastic about certifying *Okmulgee* because of the future place within the organizational structure allocated to them under the proposed constitution; the Chickasaw had met immediately after the end of the 1872 session and had “rejected overwhelmingly” the ratification proposal because of a perceived problem with equal representation;¹⁴⁸ the Choctaw were adamantly against accepting land in severalty and only confirmed the instrument as a mode of insurance to protect their future interests; and the Seminole balked at committing to the

¹⁴⁷ The Schedule to the Constitution had determined that:

[i]n order to organized the Government of the Indian Territory, and secure practical operation for the same, it is hereby ordained and the provisions of this schedule shall be of the same binding force as the Constitution, of which it is a part, that it shall be the duty of the Secretary of this General Council to transmit a duly authenticated copy of this Constitution to the executive authority of each nation represented in the General Council and to ask the acceptance and ratification of the same by the Councils or people of the respective Nations. Upon receiving from such authority notification of its *acceptance and ratification by National Councils representing two-thirds of the population of the nations represented in the General Council*, it shall be his duty to promulgate such fact, and to call a session of the General Council from the nations ratifying this Constitution at such place as the present session may designate for its next meeting (*Journal of the General Council of the Indian Territory*, 1871, p. 56; emphasis added).

¹⁴⁸ See also the earlier *New York Times* article with more dialogue on the representation issue (The Indian council, 1871, p. 2).

contents of a document and its listed processes that they did not fully understand (Nolen, 1980, pp. 274-275).

While each of the tribes was struggling to calculate its prospects under the anticipated Indian administration, responses were required to counteract ongoing federal actions. A memorial was prepared for the President (Protest of Creek, Cherokee, and Choctaw nations. Protest of Creek, Cherokee, and Choctaw nations against propositions pending in Congress to frame territorial governments, 1872, p. 1) that argued that bills before Congress “propose[d] to destroy governments of our own, to admit white settlers, to revolutionize Indian policy, and to defeat the humane purposes of saving and elevating that remnant of the Indian people.” These fears fueled the reiteration that “[t]he treaties of 1866 did not authorize a territorial government such as the bills we refer to contemplate” (p. 2) and the pertinent segments of Article 12 of the [*Treaty with the Cherokee, 1866*](#) were appended to that memorial to bolster the tribes’ claim. The penultimate paragraph of the protest began with an interpretation of Article 12 that acknowledged the possibility of “an internal council of the tribes, with certain powers” (p. 3), a position taken by the tribes that was quite distant from one pronouncing self-government in a new state of the Union.

An additional objection was lodged against the survey proposed by the Secretary of the Interior that was included in the appropriations bill for 1873 (Protest of the Indian delegates to the survey of their lands in the Indian Territory, as proposed in the Indian appropriations bill, 1872). As Applen (1971, p. 97) interpreted the situation facing these nations in the Indian Territory, “[i]f it was true that these tribes had decided to settle for an ‘internal council’ when this letter was written, the Okmulgee constitution had become a dead issue less than a year after it was first submitted to the tribes for ratification.” A follow-up memorial was sent in December

1873 that returned to the concept of “an international ‘council’ and government” for the tribes (Protest against Indian territorial government. Protest of the General Indian Council of the Indian Territory, organized under the treaties of 1866, to the President and Congress of the United States, protesting against a territorial government being established over the Indians without their consent, 1874, p. 2), but the tide had already turned in Washington and the prospect of an Indian state evolving from Indian Territory was truly slipping away. In 1873, the Commissioner of Indian Affairs, Edward P. Smith, brusquely declared that:

If the inhabitants of the Territory would adopt the Okmulgee constitution with the amendments suggested by the President, upon this a satisfactory government could be created for this country. Then if the Indians would have their lands surveyed and allotted to them in severalty, the first steps toward citizenship would be fairly taken. Every consideration of justice seems to require that the treaty obligation which the Government has assumed toward these nations shall be observed. No circumstances can be supposed to exist that will justify the nullification of these obligations, but if it is found, on careful examination, that the highest interests of both the United States and the Indian nations of this Territory require a change in their relations which is not provided for by the different treaties, then the question is fairly raised whether the Government may not assume the responsibility of making the changes in such form as shall secure every right which these Indians can reasonably ask for themselves, and as will also commend itself to the moral sense of the country. The attempt to administer justice for all the Territory through the United States courts at Fort Smith has been largely a failure, and sometimes worse. If the adoption of a territorial constitution by the Indians does not provide a remedy, then a United States court should be established, at some convenient point in the Territory, to

take cognizance of all cases of complaint arising between the citizens of the United States and inhabitants of the Territory, and between members of the different tribes and nations in the Territory (Report of the Secretary of the Interior, being part of the message and documents communicated to the two Houses of Congress at the beginning of the first session of the Forty-third Congress, 1873, p. 79).

Even under these punishing circumstances, there were several more Okmulgee Council sessions and at the fourth such event in May 1873, a brief resolution was submitted to revisit the *Constitution (Journal of the Fourth Annual Session of the General Council of the Indian Territory, 1873, pp. 10-11)*:

Whereas, The councils of the several tribes of the Indian Territory have failed to adopt the constitution framed by the General Council, at Okmulgee, in December, 1870; and

Whereas, Additional reasons have appeared which render it all-important that the several tribes of this Territory unite under one General Government, for their mutual improvement and protection;

Therefore, be it resolved by the General Council of the Indian Territory, That the President be and is hereby authorized to appoint a special committee to consider the propriety of revising the Constitution, and submit the result of their deliberations to this Council for its actions.

The committee specifically assigned this revision task offered its own modified preamble and accompanying resolution that might finally resolve the impediment caused by the lack of tribal responses to the ratification request. It was, in part, a desperate attempt to stimulate all those involved to move forward as the situation progressively deteriorated:

Whereas, That it appears from the report of the Secretary of the General Council of the Indian Territory, that certain nations have failed to report their action on the Constitution submitted to them by this Council in December, 1870, for their adoption or rejection; and whereas, That the crisis now upon us is such that the further delay of their action thereon may endanger the prosperity and happiness of the people inhabiting the Indian Territory, is obvious to all; now therefore

Be it resolved by the General Council of the Indian Territory assembled, That the nations to whom the Constitution was submitted by this Council in December, 1870, for their adoption or rejection, are hereby most respectfully, yet earnestly requested to act on that Constitution, and report the result of their action thereon as the schedule thereof requires.

Be it further resolved, That all nations and tribes above referred to, failing or refusing to report finally their action on said Constitution at or before the adjourned meeting of this Council to be hereinafter provided for, shall be deemed and held to refuse to ratify the same, and this Council shall be governed accordingly.

Be it further resolved, That whenever this Council adjourns, it shall be to meet on the 1st Monday of December, 1873, and at which time, the General Council when convened, shall take such other steps as shall be deemed wise and best for the advancement and protection of the people of the Indian Territory, as well as for the perpetuation of peace and friendship now so happily existing between ourselves and the nations of the plains, and for the promotion and maintainance [sic] of peace among the nations, with themselves and the citizens of the United States.

Resolved further, That the Secretary of this Council forward without delay, an authenticated copy of the preamble and resolutions to the executive of each nation above

referred to, with a request that they shall submit the same to their respective national councils, with the least possible delay (pp. 26-27).

At that general meeting convened in December 1873, the final blow was struck: the Clerk of the meeting “reported that none of the nations to whom the Constitution has been submitted, had reported action thereon” (*Journal of the [Adjourned Session of the] Fourth Annual Session of the General Council of the Indian Territory*, 1873, p. 9). In actuality, only 48% of the Indian Territory participants had cast their lot in favor of ratification; Appendix B of the *Journal* enumerated the individual tribal tallies (p. 21) and made apparent that a minority – just 32,065 of 66,461 voters – had supported the proposed *Constitution*.

Yet another memorial from the Five Civilized Tribes was delivered to the President at the beginning of 1874 (see *In the Senate of the United States*, 1879, pp. 375-377), while at home questions arose regarding appropriate representation within the Senate of an Indian confederation that caused more intertribal difficulties; Indian newspapers were awash with finger pointing statements about the latter (Nolen, 1980, pp. 277-278).

At the fifth convention in May 1874, virtually nothing was said about the *Constitution* and the *Journal* for that year served as nothing more than a statement repository of the spokesmen from the Cherokee, Creek, Seminole, Eastern Shawnee, Confederated Peoria, Seneca, Wyandot, Ottawa, Sac and Fox, Delaware, Osage, Absent Shawnee, Wichita, Comanche, Waco, Caddo, Ionie (today, the Hainai), Pawnee, Keechie (Kichai), and Towoccanie (Tawakoni) (*Journal of the Fifth Annual Session of the General Council of the Indian Territory*, 1874, pp. 8-33). The appendices held committee reports on agriculture (pp. 43-45), on education (pp. 45-51), and on a weak rationale for the rejection of a resolution to submit one or more future complaints to Washington that would have targeted federal land grants to the railroads, transfers

that were ultimately contingent upon tribal sessions: it feebly determined that "... there is no particular necessity for such memorial at this time" (p. 52).

The sixth session began on 3 May 1875 and there was an immediate resolution passed for "re-submitting the Okmulgee Constitution to the president of the United States for his action" (*Journal of the Sixth Annual Session of the General Council of the Indian Territory*, 1875, p. 9),¹⁴⁹ but Nolen (1980, p. 278) reemployed the phrase "a dead issue" to describe the delegates' perception of the 1870 *Constitution* at that moment. Another remonstrance for Washington was debated, wherein the tribes' Committee on Relations with the United States was empowered "to prepare a protest against all measures which may be introduced or brought up in the next Congress of the United States having a tendency to injure or impair in any manner the treaty guarantees of the several nations in this Council represented" (*Journal of the Sixth Annual Session of the General Council of the Indian Territory*, 1875, p. 16). Various tribal representatives spoke on the record again, including Joe Sells of the Creek, who reiterated that "[w]e, the colored of the Muscogee Nation, wish to abide by all the rules of the Territory. We wish, in feelings, to live near the brethren of the Plains" (p. 32). An adjourned special session, exclusively for the appointed instrument committee, was set for 15 June 1875 "to draft a constitution," with the full Council destined to reconvene on 15 September (p. 72). A footnote on the very last page of that sixth annual session's *Journal* was initialed by "E. H." or Enoch Hoag, the President of the Okmulgee Council, and it stated: "The foregoing draft of Constitution, prepared by a Special Committee of the General council, is here published for the information of

¹⁴⁹ Frazier (1996, p. 41) has an image of the title page of the *Journal of the Sixth Annual Session of the General Council of the Indian Territory*.

the delegates to said Council, who adjourned to meet in September next to act upon the same” (p. 114).

In September, Hoag announced upon the acquisition of a quorum that “the business [sic] first in order would be the consideration of the report of the committee appointed to draft a constitution, by the previous session of the Council” (*Journal of the Adjourned Session of the Sixth Annual General Council of the Indian Territory*, 1875, p. 6). That report was provided by J. P. Folsom of the Choctaw: “We, your special committee, who were appointed pursuant to the recommendation made to and adopted by this Council in May 12th, 1875, whose duty was to prepare and perfect a draft of constitution to be submitted to the General Council of the Indian Territory for its consideration and action at this adjourned session, would beg leave to submit the following draft of constitution and ask for its adoption” (p. 7). His presentation was complemented by the panel’s fresh constitutional attempt (pp. 8-20; titled here as *Adjourned*). The document was thereafter discussed; special rules for subsequent consideration were created if adoption of the material was indeed successful; the meeting was interrupted “on account of excessive warm weather” (p. 24); additional dialogue took place; and then – on the morning of the final day of the council – a motion was adopted “to postpone further action on the Constitution to the next session of the Council,” i.e., to the first Wednesday in May 1876 (pp. 29-30).

That 1876 meeting never occurred, because the federal Indian Office terminated funding for such activities (Debo, 1934, p. 216, n. 122). Locally, *The Vindicator* newspaper announced on 26 April that “the Okmulgee Council will not convene again until further authorized by

Congress” (Okmulgee Council, 1876).¹⁵⁰ The dreams of, and the struggles for, a true Indian state within the Union were, for all intents and purposes, over by that Spring. Based on this outcome, Applen (1971, p. 97) concluded that

[i]t is futile to speculate on what the future of the Indian territory might have been had the General Council succeeded in establishing an Indian government. When one considers the tenor of Congress during those years, and looks at the aggressiveness of the railroads, land speculators, and Kansas farmers, it seems unlikely that the Territory’s later history could have been much different. The reason most often given for the failure of the proposed Indian government is that most of the Indians felt that their own intertribal government would eventually lead to United States territorial government. However, these same Indians apparently realized that an Indian “state” was their only real hope for protection from further advances by the white men. Thus, their reasons for establishing an Indian government seem to have been just as strong as their reasons for not establishing one. In view of this, it is apparent that the old problem of representation was a significant, and probably a major, factor in the General Council’s failure.

In a parallel vein, Nolen (1980, p. 279) determined that “[i]t was the federal government which had urged the Indians to meet in general council, but it was the self-determination of the Indians that kept them from according to the government’s wishes.”

¹⁵⁰ Subsequent meetings were convened by the Indian Territory tribes, but the extent of these activities is unclear. Applen (1971, p. 97; emphasis added) confirmed that “[t]he General Council continued to meet every year until 1876,” while Nolen (1980, p. 278; emphasis added) said that “[t]he Indians continued meeting at Okmulgee until 1878.” In either case, Nolen’s further observation that “a viable constitutional movement did not resurface” underscores the reason(s) behind the termination and the demise of these activities.

Those two texts of that revised *Okmulgee Constitution* – named here the *Sixth* and *Adjourned* – were joined three and a half years later by the document’s republication in a Senate report (In the Senate of the United States, 1879, pp. 620-627; called now *SenateB*).¹⁵¹ These three variants of the revised document – collected from privately published pamphlets of the two Council meetings, and from a Senate survey of railroad and Indian issues issued by the federal government – defined the suite for the next Levenshtein assessment. The instruments’ tokens were assembled in the manner employed for the 1870 tests and renumbered with a unique line number prefix; here, “R-” for the revised documents. These data appear on the “1875 Revision” worksheet of Table IIB. The final length of the array, including seven blank pads, was 4066 elements. LED scores were computed for contrasts of the *Sixth-Adjourned* and the *Sixth-SenateB* relationships. Table IIIA furnishes summary statistics that divulge that these trials revealed just 28 and 31 errors, and 106 and 78 bytes of dissimilarity, respectively. The measurements of likeness among the revised *Constitution* renditions were thus better than all comparable tests between *Council* and the reproductions of that earlier and shorter instrument, save for those with *Commissioners* and *HarlanB*.

As would be expected, the observed difficulties were nearly identical in format to those obtained in the *Council* contrasts. In the *Sixth-Adjourned* study, misspellings (such as *o* at line number R-1672 of *Sixth* in Table IIB, the phrase *the members* vs. *them embers* at line number R-2131 and R-2132, or *convction* vs. *conviction* at line number R-3526); juxtaposition (*be neither* vs. *neither be* at line number R-1873 and R-1874); style (*offences* vs. *offenses* at line number R-

¹⁵¹ In this gigantic Senate Report of the Committee on Territories totaling 1,143 pages, the *SenateB* material for the 1875 revised *Okmulgee Constitution* was published along with that of *SenateA* (i.e., a variant of the original 1870 *Constitution*). The 1874 Five Civilized Tribes memorial to the President was also included as pertinent material for consideration by this investigation.

2039 and *three-fourths* vs. *three fourths* at line number R-3080 and R-3081); replacement (*is* vs. *be* at line number R-2918); and incursion (the elements *at* and *is* at line number R-3128 and R-3543, respectively, of *Adjourned*) were observed. *Sixth-SenateB* had parallel issues: misspellings (*assented* vs. *assented* at line number R-50, *criminal* vs. *crimina* at line number R-2769, or *convction* vs. *conviction* at line number R-3526); style (*first* vs. *1st* at line number R-150, *section* vs. *sec* at R-241, *bona fide* vs. *bona-fide* at line number R-783 and R-784, and *defence* vs. *defense* at line number R-1040); replacement (*for* vs. *of* at line number R-104); and exclusion (the elements *also* and *ever* at line number R-2436 and R-3769, respectively, are absent from *SenateB*).

Potentially catastrophic errors

Among the collection of detected faults throughout all the texts involved in this study, the true meaning of the *Okmulgee Constitution* was never violated by any of these types of problems, other than through the difficulties imposed by the Texas boundary and the witness text exclusions. In those two situations, the boundary definition was absent from the first sentence of Article 1, §1 of *Commissioners, Frauds, and Wilkins*, and the witness specification did not appear in §6 of the Declaration of Rights of the *Territory* and the *SenateA* accounts. Other misspellings were unfortunate occurrences, but the use of *two-thirds* instead of *two thirds*, or of *members* instead of *member*, did not destroy the essential meaning of the passages. In *SenateB*, however, the situation changed drastically, based upon the misuse of a single word. The substance of Article III, §15 was written to provide guidance on impeachment proceedings before the House of Representatives and the Senate of the proposed Indian state. *SenateB*, one of the federal presentations reporting the 1875 revised *Constitution*, contained the following three sentences in its rendering of that section:

The House of Representatives shall have the sole power of impeaching. All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be on oath or affirmation and shall be presided over by the Chief Justice; and no person shall be convicted *with* the concurrence of two-thirds of the members present (In the Senate of the United States, 1879, p. 622; emphasis added).

SenateA, within the same publication (p. 615; emphasis added), supplied the original 1870 *Constitution* text for the same Article II, §15 – “no person shall be convicted *without* the concurrence of two-thirds of the members present” – a condition that might be more predictable for the adjudication of such measures. Appendix IX below, apropos the provenance of this section text, lists relevant sections taken from the earlier 1839 Cherokee, the 1860 Choctaw, and the 1867 Chickasaw constitutions that all spoke of *without the concurrence of two-thirds of the members present*. Thus, on the one hand, the LED calculations indicated a very successful attempt by *Adjourned* and *SenateB* to reproduce the *Sixth*’s text of the revised *Constitution*. On the other hand, the Levenshtein quantification of mistakes between *Sixth* and *SenateB* disclosed in the latter a far more serious error in the content than had previously been observed with these materials.

Differences between the 1870 *Okmulgee Constitution* and the revised version of 1875

The final investigation examined the transformations induced by the revisions made to the original *Constitution*, especially in light of the *without-with* revelation in Article II, §15 of the redrafted proposal. Unfortunately, there are no working notes available from the Council meetings that would expose the route taken by the constitutional committees to create either rendition. As discussed earlier, the 1870 instrument was formed very quickly, primarily through the redeployment of subcomponents from previous tribal constitutions. The production of the

1875 material did not take long either, and the need arose to understand precisely what aspects of the document had been affected during its alteration; Nolen (1980, p. 278) reported that “[t]he new constitution was similar to the 1870 version, as only minor changes were introduced.”

The Levenshtein edit distance algorithm has been shown to be a useful implement to distinguish among such variations (regardless of their magnitudes), but in this scenario the tool may be engaged to investigate a more pertinent editorial question: how did the *Constitution*’s wording change between the 1870 and 1875 models, rather than to what degree was the latter document able to perfectly replicate the original, as had been the task of the other federal and popular press renderings. In this setting, the detection of substantial disparity between the two instances would advocate a more substantial modification of the initial presentation than recounted by Nolen, and since the text lengths of the two were unlike – 3,826 elements in *Council* vs. 4,060 in *Sixth* – the necessity to make this inquiry was even more pressing: at a bare minimum, there were those additional 234 tokens to consider in the enhanced account.¹⁵²

Under these unequal length circumstances, it might be speculated that an initial side-by-side test for similarity with the raw data would be almost meaningless. However, such an appraisal would afford an upper limit to the number of potential errors present and this test would likewise compute the maximum number of bytes of dissimilarity. These initial steps were therefore performed to learn these worst case conditions; the analysis outcome with these two unaligned files of 4,060 pairs of elements uncovered just 71 identical items, 3,989 dissimilar

¹⁵² This comparative approach may be seen in Jefferson Davis’ writings on the CSA government. He presented the federal Constitution – Article for Article – alongside the permanent instrument of the Confederate States in his Appendix K entitled “The Constitutions” (1881, pp. 640-675). At the beginning of that appraisal, Davis noted that the United States rendition was “an exact copy of the original in punctuation, spelling, capitals, etc.” (p. 648). The initial version of the CSA *Constitution* is also available in the CSA *Statutes at Large* (Matthews, 1864/1988), pp. 11-23).

ones, and 21,813 cumulative bytes of difference. Five of those 71 identical tokens were obtained from the shared title of the documents. The observed number of unrelated elements was almost ten times larger than was apparent in the comparison of *Council* with *WilkinsF* – Table IIIA records 411 errors, at a cost of 1,769 cumulative bytes, in an LED test of these two renditions of the original *Okmulgee Constitution*, even though the *Wilkins* description failed to include the 267 word, 1,309 byte Schedule to the Constitution.

From an uninformed perspective, these results convey the incorrect impression that the *Council* and *Sixth* documents were not parallel productions. A more adequate understanding could be acquired if the goal was shifted away from one solely focused on textual reproducibility and towards the identification and reconstruction of a shared fundamental content. The presence of any comparable multi-word subsections – no matter where they might be among the renditions – would signal that this objective was possible. Conversely, the inability to edit these texts in a meaningful manner to improve apparent similarity would serve as an indication that there was little beyond random element intersections, an outcome that the initial side-by-side test with the raw texts of *Council* and *Sixth* seemingly corroborated.

Upon inspection, there are many articles and sections in these two statements that do contain analogous text and, through an examination with *Council* and *Sixth*, a number of relevant discrepancies emerged:

- The *Sixth* preamble contained 80 additional tokens and it lacked general similarity to the material found in *Council*;
- In a comparison between the two Article III subdivisions, the sequential order of the section numbers of similarly worded passages failed: the first four sections of *Council* run in the order §1, 2, 4, and 3 relative to the segments in *Sixth*;

- Article IV, §11 in *Sixth* contained a sequence of statements that departed significantly from that of the original portion displayed by *Council*;
- Article V of *Sixth* held an extra section, i.e., it had a supplementary §13 affecting the actions of judges with juries;
- The Declaration of Rights in the later instrument had been amended by §14 that expressed a proviso touching upon religious convictions;
- The 1875 Schedule to the Constitution appended §2 to define the interim mechanics of the administration of oaths of office; and
- The revised 1875 *Okmulgee Constitution* did not include the signature section of Enoch Hoag and G. W. Grayson.

This list of discrepancies presented more than just a description of the misalignment of these two arrangements. It provided clues to a sequence of actions to reassemble the shared sub-contents that formed the foundation for these materials.

Two lateral inquiries expressed this proposed intervention. First, the two raw preambles, plus their titles, were aligned vertically but no shifting or adjustment through padding was made in this first check. The maximum number of tokens was 237, based on the total word length of the larger, *Sixth* preamble, due to its 80 extra elements. This contrast test exposed just nine identical tokens, 228 dissimilar items, and a cumulative LED score of 1,227 bytes. The second test consisted of this pair of the same preamble passages, but now shifted vertically as needed to link meaningful parallel elements to mirror more closely their shared contents. The total length of this assembly was increased by only 14 tokens, due to auxiliary introduced padding. Through these two tests, the metric flagged 98 identical elements, 153 different ones, and a cumulative byte disparity of 770 bytes, thereby providing substantial evidence that the preamble of the 1875

revision had made abundant use of the original 1870 *Council* text. In addition, the relatively small amount of nondestructive rearrangement of the documents resulted in more than ten times as many meaningful element pairs – the number of coordinated items rose from just 9 identical ones out of 237 total tokens (3.8%) under the raw side-by-side conditions to 98 similar ones from an array of 251 edited objects (39%). These vastly different effects strengthened the conclusion that there was a demonstrable underlying influence of the 1870 *Okmulgee Constitution* in the revised work created in 1875. This conviction stimulated three further tests:

- Test 3 employed the repositioned preamble tokens and interposed padding in *Council* to accommodate the addition of new §§13, 14, and 2 of *Sixth's* Article V, its Declaration of Rights, and its Schedule to the Constitution, respectively. The generated cumulative LED score was 2,768 bytes for this file of 4,104 elements, of which 3,533 were identical and 571 were unlike.
- Test 4 revised the Test 3 material by juxtaposing §§3 and 4 of Article III in *Council* to match the content arrangement in *Sixth*. Under this scenario, the length of the file was identical at 4,104 tokens, but the modification to the sequencing of *Council's* Article III reduced the total number of errors to 510, accounting for 2,440 bytes of dissimilarity. Thus, the modest editorial correction to the flow of the text lowered the number of errors by 61 elements and 328 bytes.
- Finally, Test 5 attempted to realign both editions, where possible, to address the dissimilarities evident in §11 of *Sixth's* Article IV. The number of errors found in the 4,104 element array was reduced further to 441, or just 11% of the entire text. These relative few faults were accompanied by 3,663 equivalent tokens, i.e., by almost the same

number of identical items as the initial error count observed in the raw, side-by-side comparison.

Under this series of editorial experiments, the length of the document grew by 44 new elements – by just 1.1% of *Sixth*'s overall length – to 4,104 total tokens in a process that maximized the efficacious use of padding to create appropriate alignment and to separate portions, and that involved judicious text shifting of the two disparate arrangements. These tests confirmed not only the provenance of the 1875 revised *Constitution*, but also the use of the LED algorithm to assist examinations of this sort.

Conclusions

This study used the Levenshtein edit distance (LED) metric to interrogate variants of the 1870 *Okmulgee Constitution* and it was rewarded in the process by a better understanding of the initial document and its ensuing text reproductions, and by an opportunity to explore further applications of the LED approach in an interrogation of the 1870 instrument and its related 1875 revision.

Overall, the assortment of *Okmulgee Constitution* variants suffered from the kinds of spelling errors that interfere with all attempts to publish pristinely, but the repercussions of contaminated text carries more significance in legislative materials than it does in popular press products. In particular, the preamble of the *Council* version contained the term *formes* – *under the formes prescribed by the treaties of 1866 (Journal of the General Council of the Indian Territory, 1871, p. 44)* – that echoed the presence of the term *Supintent* in the identical document section of the *Treaty of Fort Laramie with Sioux, etc., 1851* (Bernholz and Pytlik Zillig, 2009). This kind of syntax error has saturated other international documents, including the original *United States Constitution*. In that instrument, the state name *Pennsylvania* was published as

Pensylvania; contemporary spellings – *chuse* vs. *choose* – were present; and an unnecessary possessive emerged in Article 1, §10: *except what may be absolutely necessary for executing it's inspection Laws*. Aust remarked on the correction of errors that surface in today's diplomatic documents by suggesting that these are frequently induced by “time pressure” (2005, pp. 110-111). Such problems faced our own Constitutional Convention in 1787, the events leading up to the Constitution of the Confederate States, and perhaps the General Council of the Indian Territory as well, let alone the printers of *Okmulgee*.¹⁵³

The additional typographical errors of *agains*, *thist*, and *cammission* were signs of printing incongruities that have existed even after the development in the nineteenth century of advanced mechanical typesetting options (Huss, 1973). While it is unknown how Excelsior Book and Job Printing might have struggled to set the original *Okmulgee Constitution* for the *Journal of the General Council of the Indian Territory*, the invert error of *assembled* in *Beckett* emerged sixty years later at Harlow Publishing in Oklahoma City. Comparable imperfections were created in the publishing sphere long before these General Council meetings. The *Thou shalt commit adultery* blunder in the 1631 King James Bible rendition is prototypic (see Gimcrack, 1833, p. 103), but syntax difficulties also surfaced in works from the fields of astronomy (Talcott and Walker, 1839, p. 249n) and chemistry (Hofmann, 1860, p. 586). In the succeeding century, errors in journal articles describing Virginia state statutes (Editorial, 1912),

¹⁵³ Hull (1905) collected the writings of Thomas R. R. Cobb, who participated as a member of the Committee on the Constitution during the formation of the CSA's *Constitution*. He was a prominent lawyer who believed in slavery and secession, but was frustrated by some of the steps taken toward that instrument (See the *New Georgia Encyclopedia* [digital entry for Cobb](#)). Cobb nevertheless concluded that “[t]he personnel of the Committee on the Constitution comprised the highest order of intellect, legal ability and statesmanship in the South, in no way inferior to the framers of the Constitution of 1789, with the advantage of seventy years experience under that Constitution; and the instrument which they reported was perhaps as near perfect for its purpose as the wisdom of man could make it” (Hull, 1905, p. 292).

and in the areas of music (Martino, 1962), mathematics (see the “printer’s error” in Douglas [1951]), and history (Jeffrey, 1990) were noted. With regard to specific titles, inquiries into reports of copies of Christopher Columbus’ letter announcing his discovery of the New World (Jane, 1930), of the three hundred editions of *The Compleat Angler* (Oliver, 1947), and of the spelling in Milton’s works (Shawcross, 1963) demonstrated the broad variety of problematic interpretations. The declaration in the impeachment parameters of Article II, §15 of *SenateB* – *no person shall be convicted **with** the concurrence of two-thirds of the members present* – seems almost insignificant in comparison to the adultery directive contained in that 1631 Bible, but then again, the *Okmulgee Constitution* was a political document whose concepts were neither ratified nor implemented; these proposed impeachment processes remained as hypothetical constructs only.

Neavill (1975, pp. 29-30) spoke directly to these perils of publishing that stain virtually any manuscript when he remarked that

[k]nowledge is affected at the stage of reproduction by the errors that seem inevitably to creep in whenever a text is reproduced. From the hand copyists of the ancient world to the latest computer composition techniques of today, the reproduction of texts has always involved the introduction of error. It is the responsibility of the publisher (and the printer and author) to eliminate as many of these errors as possible. Conscientious proofreading can greatly reduce the number of errors introduced at this stage, yet almost always some errors remain. Usually they are not as serious as in the so-called Wicked Bible of 1631, in which the “not” was omitted from the Seventh Commandment. But with a work of any length, the totally error-free text seems to be an ideal which can perhaps be approached but rarely achieved.

It is the “almost always some errors remain” setting that makes text analysis such a critical matter, because the errors individually guide a way through the various renditions to help construct a more substantial understanding of the primary material itself. While the spirit and the letter of the law was not violated by the exclusions or incursions in the *Treaty of Fort Laramie with Sioux, etc., 1851*, their presence produced an insight into the thoughts of the creators and of the reproducers of that instrument. The same may be said now for the *Okmulgee Constitution*: the inaccuracies supplied not only an initial notion of the perceptions and the workmanship of the tribes in the Indian Territory and of the federal government in the 1870s, but also of the purveyors of subsequent popular press exemplars, such as those found in *Chronicles* and *Beckett*, that were released to inform greater numbers of subsequent readers.

An editorial comment, concerning Virginia state laws affected by error in 1912, may be a relevant model for consideration. In that statement, the *Virginia Law Register* observed that “the County of *Albemarle* has vanished and the County of *Albermarle* now stands in its place all through the printed Acts of 1912.... If an error so palpable and so inexcusable should be repeated more than once in the volume bearing the stamp of the State’s official, may there not be others of greater moment?” (Editorial, 1912, p. 225; emphasis added). A century after this observation, variants still occur, but in many cases, their ultimate effects are still unknown. Hill concluded that:

a critical text is an instrument for communicating certain data to a particular audience. That the process of transmission transforms the data [is taken] as axiomatic. So defined, a text will be critical to the degree to which it faithfully transmits those data determined to be of significance to the audience anticipated, making it clear what is transmitted, what suppressed, in full detail, as well as the principles on which this has proceeded. All three

terms in this equation – evidence, medium, audience – serve to determine the nature of the final text.... The writing of specifications for an edition and their realization in the texts actually printed are distinct, though related, operations. Specifications are prescriptive and absolute; actual texts rarely are. The best one can hope for is a careful and judicious weighing of the demands of evidence, medium, and audience (1978, pp. 259-260).

To complement the assertion made at the beginning of this study – that the variant is the lifeblood of text analysis – one must consider Hill’s corollary that “[t]he lifeblood of proofreading is the perception of error” (p. 248). This is particularly so for the transmission of legal content, where the demand for textual fidelity is unequivocal, yet the *Okmulgee Constitution* specimens seen in this study were profound reminders that such materials too suffer from inaccuracies, just as do the works in other genres that permit far more interpretive flexibility.

One bright spot in this sea of misprinting was the execution offered by the Choctaw newspaper, *The Vindicator*, on 21 and 28 June 1873. Table IIIA reports just 33 errors encompassing 96 total bytes in that presentation, where 23 bytes (24%) of that cumulative LED were due to the incidence of *three fourths* instead of *three-fourths* and of *for ever* rather than *forever* at line number 2958 and 2959, and 3132 and 3133, respectively. An additional five bytes of benefit were derived from the appropriate use of *forms*, *this*, *against*, *commission*, and *organize*, as delivered in the other, non-*Council* variants. This high degree of fidelity for this instrument – relative to that observed in federal attempts – seems especially fitting for a tribal newspaper published in the wilds of the Indian Territory.

Suppleness was evident, however, in the use of the LED approach for comparative testing of the original with the revised *Constitution*, where the demands to assess identicalness in repetitive 1870 or 1875 companion editions gave way to a need for an effective editorial tool to traverse and align two related yet nevertheless modified documents. Just as the federal *Constitution* was altered during its evolution during the Constitutional Convention in 1787, so too was the later *Okmulgee Constitution* by Council representatives, as evidenced by a longer more expressive preamble and by internal amendments. The dissimilar unpadded text lengths – 3,826 vs. 4,060 tokens – announced immediately that an LED test concerning *Council* and *Sixth* would herald abundant dissimilarity, but LED scores have now been shown to furnish an index of beneficial change as well.

In the trial for the *Council* and *Sixth* accounts, successive small steps of realignment, taken as part of a reasonable approach to coordinating the two forms, produced diminishing cumulative LED values that confirmed convergence. This editorial advantage – in which a *quantitative*, instead of a qualitative, measurement of textual linkage was the gauge – was not only simple to employ but was intuitive as well. The quest to bring all those *Canterbury Tales* into register has always been impeded by the disturbing knowledge that the scribes created their descriptions without regard for absolute replication of text order (Spencer, Bordalejo, Wang, Barbrook, Mooney, Robinson, Warnow, and Howe, 2003, pp. 97-98). Today, assessment allows for the resorting of material segments as one judicious way to acquire a final grasp on content. In a recent article, Schmidt and Colomb (2009, p. 498) tracked the controversy of administering representations of such assorted materials that have been placed online. In that endeavor, they re-raised the old question of “What exactly is the text of a work that exists in multiple versions?” and concluded that “[t]he problem of how to represent overlapping hierarchies in markup

systems... is simply a subset of the larger problem of how to represent different versions of a work in digital form.” They recommended a “model [that] can be visualized... more simply and practically as a list or array of ordered pairs, each consisting of a set of versions and a fragment of text or data... which can be searched, compared, displayed, and *edited*” (p. 512; emphasis added). This latter activity was realized when the LED tool was used to converge, in a progressively tighter manner, these texts of the *Council* and the *Sixth* renditions. Perhaps the future will bring an opportunity for investigators to make simultaneous measurements across these dozen or so renderings of *Okmulgee* through an online application employing Schmidt and Colomb’s scheme. In the interlude, Levenshtein’s forty-five year old metric may be a useful tool to serve as a text comparison process that is effective, simple yet robust, and intuitive, whether for editorial purposes – such as tuning the linkage between *Council* and *Sixth* – or not.

A final word is required to strengthen the perception of the accomplishments of the *Okmulgee Constitution* creators. The Five Civilized Tribes were removed to the Indian Territory before this instrument was developed, yet they had been identified as a unique assembly of American Indians as early as 1775 by James Adair (Williams, 1930). Their sophistication – in virtually all matters – placed them in a special and critical role during interactions between other tribes and the federal government as exemplary models for potential Indian citizens. They developed remarkable social systems in the Southeast long before removal; they created informed treaties with the United States and the Confederate States (and they were always prepared to defend their position in the courts, if necessary); they were employed by both of these governments – in an appropriate acknowledgement of their unique status – to serve as the cajolers of the “wild” tribes; they were directed to create along with other Indian Territory nations the legal groundwork for the development of an Indian state that would be on an equal

footing with the rest of the members of the Union; and they responded to that last occasion with a document that came to serve as the constitutional model for the State of Oklahoma, the state that took their lands and their political seat in the United States. These were *not* the crazed Indians that *Harper's* peddled to readers, but a gathering of predominately well-organized communities demanding a sound future for their peoples: fully *thirty-two* different entities participated in at least one of those Council sessions, a number that was almost one-half of all the Indian groups ever resident in the Indian Territory (Wright, 1951, p. 4).

Aspects of the *Okmulgee Constitution* served as archetypal proposals for the *Sequoyah Constitution*, and suggestions from both instruments contributed to Oklahoma's final *Constitution*. Many ideas were harvested and revitalized for the twentieth century, even though the road to statehood had been a difficult one for all.¹⁵⁴ John R. Swanton, the anthropologist and linguist who wrote extensively on the tribes of the Southeast, ended his Introduction to Hargrett's bibliography (1947, p. xv) by stating that "[t]he extent to which the experiments of the Indians of the Five Civilized Tribes prepared them for wiser collective thinking is illustrated by their efforts to set up a union government for the tribes of the Indian Territory in 1870-1875, their later efforts in 1905 in favor of the all-Indian State of Sequoyah, and finally in the number of eminent men they have contributed to our national life." Fittingly, one need only examine [Article VI, §35](#) of the State's *Constitution* to learn of the continuing presence in everyday life of those five tribes:

Description of seal.

¹⁵⁴ See Nesbitt (1936) for a view of the Sequoyah and the Oklahoma conventions, and for the two approaches to prohibition for the new entity.

In the center shall be a five pointed star, with one ray directed upward. The center of the star shall contain the central device of the seal of the Territory of Oklahoma, including the words, 'Labor Omnia Vincit.' The upper left hand ray shall contain the symbol of the ancient seal of the Cherokee Nation, namely: A seven pointed star partially surrounded by a wreath of oak leaves. The ray directed upward shall contain the symbol of the ancient seal of the Chickasaw Nation, namely: An Indian warrior standing upright with bow and shield. The lower left hand ray shall contain the symbol of the ancient seal of the Creek Nation, namely: A sheaf of wheat and a plow. The upper right hand ray shall contain the symbol of the ancient seal of the Choctaw Nation, namely: A tomahawk, bow, and three crossed arrows. The lower right hand ray shall contain the symbol of the ancient seal of the Seminole Nation, namely: A village with houses and a factory beside a lake upon which an Indian is paddling a canoe. Surrounding the central star and grouped between its rays shall be forty-five small stars, divided into five clusters of nine stars each, representing the forty-five states of the Union, to which the forty-sixth is now added. In a circular band surrounding the whole device shall be inscribed, "GREAT SEAL OF THE STATE OF OKLAHOMA 1907" (The great seal of the state of Oklahoma, 1957, p. 250; see also Constitution of the state of Oklahoma, 1908, p. 30).

This description was taken in large part from the *Sequoyah Constitution* of 1905, in which section 1 of Article XVI stated:

In the center shall be a five-pointed star, with one ray pointing downward. The star shall be divided into five diamond-shaped rays by lines connecting the angles between the rays with the center. The upper left-hand ray shall contain the symbol from the ancient seal of the Cherokee Nation, viz., a seven-pointed star surrounded by a wreath of oak leaves.

The upper right-hand ray shall contain the symbol from the ancient seal of the Creek Nation, viz., a sheaf of wheat and a plow. The lower left-hand ray shall contain the symbol from the ancient seal of the Choctaw Nation, viz., a tomahawk, bow, and three crossed arrows. The lower right-hand ray shall contain the symbol from the ancient seal of the Seminole Nation, viz., a village with houses and factory beside a lake upon which an Indian is paddling a canoe. The lowest ray shall contain the symbol from the ancient seal of the Chickasaw Nation, viz. an Indian warrior standing upright with bow in his hand. Surmounting, the star between the two upper rays shall be a half-length figure of Sequoyah holding a tablet upon which are inscribed the letters A J J Q C in the alphabet invented by Sequoyah, and forming the Cherokee words meaning “We are brethren.” Surrounding the central star and grouped between its rays, shall be forty-five small stars, representing the forty-five States of the Union to which the forty-sixth is now added. In a circular band surrounding the whole device shall be inscribed “Great Seal of the State of Sequoyah, 1905” (Proposed state of Sequoyah, 1906, p. 82).¹⁵⁵

This latter seal and the other strategies contained in the *Sequoyah Constitution* were ratified in the Indian Territory by a vote of 56,279 to 9,073 in November 1905. This majority position and the foundation for a strong Indian state were fully presented in a memorial to Congress in 1906 – everything was in place: the eastern segment of what had been the Indian Territory was known to be large in area, well populated, and blessed with resources. Further, it was argued, the tribes

¹⁵⁵ The *Chronicles of Oklahoma* published a series of notes on the seals of the Indian nations and on the state: see The great seal of the Choctaw Nation (1955); The great seal of the Muscogee Nation (1955); The great seal of the Chickasaw Nation (1956); Milam (1943) and Seal of the Cherokee Nation (1956); Seal of the Seminole Nation (1956); and Wright (1940) for all Five Civilized Tribes. There was even one for the short-lived Cimarron experiment in No-Man’s Land of today’s northwestern Oklahoma (*Seal of Cimarron territory*, 1957).

“constitute[d] a separate and distinct community from any other on earth, with a different history, associations, ideals, and hopes” (Proposed state of Sequoyah, 1906, p. 1), but the political climate had nevertheless swung towards another path to statehood. The tribes were not forgotten or re-removed. Rather, their thoughts and experiences were accumulated from those constitutional meetings and their pasts were used in part to contribute to an alternative instrument that has given direction to a more traditional state within the United States. Oklahoma certainly embraced its Indian past, but the Indian Territory never became the unique Indian state that had been promised to the tribes during the century before.

Joseph P. Folsom, a Choctaw member of the committee assigned to write the *Okmulgee Constitution*, was a Dartmouth College graduate, as was Albert Barnes who represented the Cherokee (Garrett, 1954); Campbell Leflore was a noted Choctaw attorney (Hefley, 1934, p. 477); Riley Keys served as Chief Justice of the courts of the Cherokee Nation for a quarter century (Meserve, 1931, p. 324); and William P. Ross was a Cherokee with a degree from Princeton (Meserve, 1937). Education was a major force in the lives and in the visions of these nations and their neighbors. These men knew first hand – and more than half a century before the findings of the Meriam Report – that formal training was critical; this drive for knowledge continues today in Oklahoma through the [College of the Muscogee Nation](#) in Okmulgee and the [Comanche Nation College](#) at Lawton. The words and the concepts of the *Okmulgee Constitution*, no matter how jumbled or misrepresented in print on occasion, were the sincere effort of these Indian Territory occupants during the last few decades of the nineteenth century. These expressions were of sound integrity and truly mattered, because their contents were to help acquire a true, federally promised Indian domain. The Cherokee, Choctaw, Creek, and Seminole (the Chickasaw did not re-appear after the second annual meeting) carried these proceedings

from the beginning to the end. They were aided by other tribes such as the Absent Shawnee, Osage, Ottawa, Peoria, Quapaw, Seneca, and Wyandot whose representatives only missed one or two assemblies and who verified through this unison the true sense of internationalism envisioned by these societies drawn from all parts of the United States. Efficacious *internationalism*, within a single state, would have been a meaningful exemplar for the United States and its ensuing immigration chaos. Wright had already perceived this when she wrote in 1936 “[t]oday the future of the Oklahoma Indian is in education and in the continued progress of Christian civilization, together with the preservation of the best in native traditions and customs that produced strong leaders and a great art. It is through such forces as these that the Indian has contributed and will continue to contribute to real American culture which will flourish and blossom for ages to come” (p. 161), but with ratification and a chance to be implemented, the *Okmulgee Constitution* might have contributed more to this prosperity than it did.

Epilogue

The *Okmulgee Constitution* was a concerted effort by the Indian Territory tribes to acquire a final homeland after decades of sorrow. This now long forgotten document was simultaneously a futile exercise and a harbinger of Tomorrow: portions of its contents were components of the constitution for the state of Oklahoma that arose from that Territory. *No* constitution through – regardless of its perception, purposes, provenance, or performance – could ever hope to insulate any of America’s indigenous peoples from the endless, utter greed that was recalled by George Washington Grayson.

Grayson – the Secretary during these Okmulgee Constitution council meetings – had experienced innumerable changes and challenges during his life in the Territory. He collected, in the final few sentences of his autobiography, a germane perspective on the demands and costs of

statehood. In those words, he skillfully framed the fundamental issue facing *all* tribes, then and now – their ultimate loss of lands and of sovereignty:

Here was a proposal which paralyzed the Indians for a time with its bold effrontery. Here we, a people who had been a self-governing people for hundreds and possibly a thousand years, who had a government and administered its affairs ages before an entity as the United States was ever dreamed of, are asked and admonished that we must give up all idea of local government. Change our system of land holding to that which we confidently believed had pauperized thousands of white people – all for why; not because we had violated any treaties with the United States which guaranteed in solemn terms our undisturbed possession of these; not because of any respectable number of intelligent Indians were clamoring for a change of conditions; not because any non-enforcement of law prevailed to a greater extent in the Indian territory than elsewhere; but simply because regardless of the plain dictates of justice and Christian conscience, the ruthless restless white man demanded it. Demanded it because in the general upheaval that would follow the change he, the white man, hoped and expected to obtain for a song, lands from ignorant Indians as others had done in other older states (1988, pp. 163-164).

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Acknowledgements

The world of academic research is a shadowy one, populated by both punitive pitfalls and propitious payoffs; this is especially so during a sabbatical when bounds need to be challenged and risks taken. At the University of Nebraska-Lincoln, where football success is perceived by many as the paramount institutional realization of achievement, it is astute to keep in mind the perspective of Vince Lombardi when requesting sabbatical leave. Lombardi – famed coach of the Green Bay Packers – said “the greatest accomplishment is not in never falling, but in rising again after you fall.” From a less sports-oriented viewpoint, Nelson Mandela – the former President of South Africa – penned a parallel observation: “The greatest glory in living lies not in never falling, but in rising every time we fall.” It seems that both men, whose lives were replete with disappointments as well as satisfactions while living in two entirely different universes, reached the same conclusion. Others apparently did so as well, including Confucius and Oliver Goldsmith, the 18th century Anglo-English writer, poet, and playwright who used “true magnanimity” as the goal.

The required task before us in life, though, is not to parrot what these men might have said but rather to implement and live their proposed scenario. Academic leave, in particular, offers an appropriate crucible in which to seek an outcome of personal “accomplishment” and/or of academic “glory.” Simultaneously, it provides a haven wherein one may learn and, on occasion, recover from attendant failures (note the plural) experienced during the trial, all the while safely insulated from the rest of the world. In a phrase and at a very much more personal level, Virgil’s *Aeneid* had it right – *Fortes fortuna adiuvat* – Fortune favors the bold – absent, of course, the forgotten fact that King Turnus, the man who avowed this maxim, was promptly

killed by the hero, Aeneas. Timidity, though, leads to paralysis; it is in the long run always far more fruitful to take a shot than it is just to stand there in the glare of the oncoming headlights.

I thank Joan Giesecke, Dean of Libraries, for permitting me to work on this project. Simply put, without her consent, the research that underlies this document would not have occurred and these pages would not exist. Kay Logan-Peters was my supervisor when I applied for this leave; she encouraged me then to chase the answers to my questions, just as she always has. Thanks, Kay.

Linda Novotny, Ana Gomez, and our Government Documents students kept the department humming during my absence. They have blessed my years at UNL and have allowed me to traverse this endless maze of my own making. I owe them all more than I will ever be able to express or to repay.

Friends and colleagues both in the United States and in Canada supported me in this endeavor, much as they have in the past – I thank them all. In addition:

- Tara Lavy and Brian O’Grady of the University of Nebraska-Lincoln Libraries yet again accepted and met the challenge of addressing my barrage of interlibrary loan requests;
- Brian Pytlik Zillig’s software – created for our previous study on the *Treaty of Fort Laramie with Sioux, etc., 1851* – was redeployed in an enhanced form to calculate more than a million Levenshtein edit distance scores during this project;
- Laura K. Weakly and Karin Dalziel applied their considerable skills to create the Web site entitled [“In order to organize the Government of the Indian Territory...”: Comparing variants of the 1870 Okmulgee Constitution](#). This resource furnishes a stand alone presentation of the complete Levenshtein edit distance analysis found in this report;

- Steve Beleu of the Oklahoma Department of Libraries, and the law librarians at the Jan Eric Cartwright Memorial Library of the ODL, chased down obscure and long forgotten Indian Territory and Oklahoma materials at the drop of an email;
- Jennifer Day, Manuscript Archivist at the Oklahoma Historical Society in Oklahoma City, helped in assessing typescripts of the original published proceedings at Okmulgee;
- Katie Papas, at the Rush Rhees Library of the University of Rochester, kindly made available all seven reels of *The Constitutions and Laws of the American Indians*; without these, the attached provenance of the *Okmulgee Constitution's* Articles would have been impossible;
- Nick Levinson generously provided materials regarding his text analysis of the *Constitution of the United States*, which in turn spurred me to interrogate more deeply the *Okmulgee Constitution*;
- Clayton Lewis, at the William L. Clements Library of the University of Michigan, expedited the use of the Andrew Jackson image in this work; and
- Brett Barney, at the Center for Digital Research in the Humanities at the University of Nebraska-Lincoln, suggested pertinent demonstrations of Walt Whitman's endless reluctance to finish a single poem.

Dedication

I dedicate this presentation to Anita, and to my friends in Indian Country. Without her and lacking them, my life would have been an empty one.

Appendix I – Journal of the General Council of the Indian Territory

Journal of the General Council of the Indian Territory, Composed of Delegates Duly Elected from the Indian Tribes Legally Resident Thereof, Assembled in Council at Okmulgee, in the Indian Territory, Under the Provisions of the Twelfth Article of the Treaty Made and Concluded at the City of Washington, in the Year 1866, Between the United States and the Cherokee Nation, and Similar Treaties Between the United States and the Choctaw and Chickasaw, Muskokee, and Seminole Tribes of Indians, of the Same Date (1871). Date of meeting: 27 to 30 September 1870, and 6 to 20 December 1870.

This publication is unique in that it contains both the initial and the adjourned first sessions that initiated the series of council meetings.

- Date of initial meeting: 27 to 30 September 1870.
- Tribes represented:

Absent Shawnee	Osage	Sac and Fox
Cherokee	Ottawa	Seminole
Creek	Peoria	Seneca
Eastern Shawnee	Quapaw	Wyandot

- At the first gathering, the Committee on Rules defined the twelfth article of the [*Treaty with the Cherokee, 1866*](#) (Kappler, 1904b, pp. 942-950) “as the present basis of the power and duties of [the] General Council of the Indian Territory.” A presiding officer (Enoch Hoag) and a secretary (J. G. Vore) are assigned, according to §5 of that Article (p. 6).
- Six other Committees were formed: Relations with the United States; International Relations; Judiciary; Finance; Education and Agriculture; and Enrolled Bills (p. 7).
- Rules Committee fashioned nine regulations for Council conduct (pp. 9-11).

- Relations with the United States Committee ordered to send a memorial to make the President aware of the Council's relationship with the federal government; to protest "especially against the creation of any government over the Indian Territory, other than that of the General Council;" and to request that land transfers to railroad companies be terminated (p. 11).
- Announcements were received stating that – due to short notice – no Choctaw or Chickasaw delegates would be attending the session, which stimulated the adoption of a resolution stating "[t]hat it is the sense of this Council that any nation, party to the treaties referred to, or included within the provisions, *are and ought to be* bound by the authority and action of this Council, whether they send delegates to, or participate in its deliberations or not" (pp. 11-12; emphasis original).
- A note developed to convey to "the Comanche, Kiowa, Arapaho, Cheyenne, Coddoo [Caddo], Wichita, and other tribes of Indians living on the Plains, assurances of friendship and kind feelings of the nations represented in this General Council, and an expression of their earnest wish that relations of peace may be established between them and all men, of whatever race or color" (p. 13). A delegate from the Creek was asked to extend this message to those tribes and to invite them to the next meeting.
- Bailey (1972, p. 144) indicated that the Choctaw and Chickasaw did not send delegates because they "were opposed to a consolidated territorial government." The Choctaw in particular were resistant, based on their "determination not to accept land in severalty with an unwillingness to join in union with the tribes that had adopted their freedman" at the end of the Civil War. All, in fact, were against the concept of a territorial government, so the Choctaw and Chickasaw sent delegates to later sessions: the Choctaw

to all subsequent ones, but the Chickasaw only attended the adjourned first and the second annual meeting (see Table IA of tribal representation at these Council gatherings).

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- Date of adjourned meeting: 6 to 20 December 1870.
- Tribes represented:

Absent Shawnee	Creek	Sac and Fox
Cherokee	Osage	Seminole
Chickasaw	Ottawa	Seneca
Choctaw	Peoria	Wyandot

- Delegates from Choctaw and Chickasaw Nations present (p. 16).
- Confirmation of note sent to Comanche and other tribes as requested in September meeting, but “no response had as yet been received” (p. 18).
- Tenth procedural rule added (p. 18); Special Committee on Permanent Organization formed (p. 19); report submitted by that group expressed “opposition of all Indians to any form of territorial government that has been proposed by the Congress of the United States, is too notorious to require any comment” (p. 23), stated that any new entity “should be a government of their *own choice*” (p. 24; emphasis original), and concluded that the required constitution “shall be obligatory and binding only upon such nations and tribes as may hereafter duly approve and adopt the same” (p. 24). Adoption of this report was confirmed by delegates, on a vote of 48 to 5, all the latter cast by Cherokee delegates.
- Committee on the Constitution formed, to begin preparation of a viable instrument, established with twelve members (p. 25).

- The federal presence through the attendance of Robert Campbell, John D. Lang, and John V. Farwell of the Board of Indian Commissioners and of Eli S. Parker, the Commissioner of Indian Affairs, was acknowledged (pp. 26-27). All four spoke before the Council.
- George Washington Grayson assigned as General Council Secretary by Enoch Hoag; name appears as *Greyson* in text (p. 28).
- Follow-up resolution of peace and friendship sent “to the Comanches, Kiowas, Cheyennes, Arapahos, and other tribes of the plains” by the “Choctaws, Chickasaws, Cherokees, Muskokees, Seminoles, Osages, Senecas, Shawnees, Ottawas, Peorias, Wyandottes, Quapaws, and Sac and Foxes” (pp. 31-32).
- Proposed constitution submitted to Council; amendments made to text; and a final acceptance confirmed by a General Council vote of 53 to 3; the “no” votes were submitted by two Cherokee and one Creek representatives (pp. 34-37). The adopted *Okmulgee Constitution* – the text rendition identified in this study and its Tables as *Council* – formed Appendix B (pp. 44-57).
- Reports on agriculture and on education filled Appendix A and C (pp. 39-43 and 58-64, respectively).

Appendix II – Journal of the Second Annual Session of the General Council of the Indian Territory

Journal of the Second Annual Session of the General Council of the Indian Territory, Composed of Delegates Duly Elected from the Indian Tribes Legally Resident Therein, Assembled in Council at Okmulgee, Indian Territory, From the 5th to the 14th (Inclusive) of June, 1871, Under the Provisions of the Twelfth Article of the Treaty Made and Concluded at the City of Washington in the Year 1866, Between the United States and the Cherokee Nation, and Similar Treaties Between the United States and the Choctaw and Chickasaw, Muscookee, and Seminole Tribes of Indians, of Same Date (1871).

- Date of meeting: 5 to 14 June 1871.
- Tribes represented:

Absent Shawnee	Creek	Sac and Fox
Absentee Delaware	Eastern Shawnee	Seminole
Arapaho	Ionies	Seneca
Caddo	Keechie	Towoccanie
Cherokee	Osage	Wichita
Cheyenne	Ottawa	Wyandot
Chickasaw	Peoria	
Choctaw	Quapaw	

- Secretary of the General Council announced that Creek Nation ratified *Okmulgee Constitution* from previous December meeting (p. 7).
- Provisional government committee formed to prepare for future in anticipation of final ratification by the required number of tribes of the Indian Territory (pp. 8 and 10-12).
- Attempted modification to *Constitution* to provide for equal Senatorial representation of the Cherokee, Creek, Choctaw, Chickasaw, and Seminole failed by a vote of 7 to 39 (pp. 12-13).

- “Memorial of the General Council to Congress, In Case of E. C. Boudinot, et al” adopted and placed in *Journal’s* Appendix (pp. 19-20). This was in response to the United States Supreme Court decision in *The Cherokee Tobacco* (1870) proceedings, that centered upon the tax implications described in Article 10 of the [*Treaty with the Cherokee, 1866*](#) (Kappler, 1904b, pp. 942-950).¹⁵⁶
- Five hundred copies of proceedings ordered to be printed, with a committee designated “to revise and *condense* the same for publication” (p. 15; emphasis added).
- Additional invitation sent to “the Tribes of the Plains” to engage in more Council activities (p. 16).

¹⁵⁶ “E. C. Boudinot” was Elias Cornelius Boudinot, who was one of three Indian representatives to the Confederate House of Representatives, a political opportunity that was promised in the 1861 treaties with the Confederate States of America (Wilson, 1975, p. 353).

**Appendix III – *Journal of the Third Annual Session of the
General Council of the Indian Territory***

*Journal of the Third Annual Session of the General Council of the Indian Territory,
Composed of Delegates Duly Elected from the Indian Tribes Legally Resident Therein,
Assembled in Council at Okmulgee, Indian Territory, From the 3d to the 18th (Inclusive) of June,
1872, Under the Provisions of the Twelfth Article of the Treaty Made and Concluded at the City
of Washington in the Year 1866, Between the United States and the Cherokee Nation, and
Similar Treaties Between the United States and the Choctaw and Chickasaw, Muscokee, and
Seminole Tribes of Indians, of the Same Date (1872).*

- Date of meeting: 3 to 18 June 1872.

- Tribes represented:

Absent Shawnee	Cheyenne	Ionies
Absentee Delaware	Choctaw	Sac and Fox
Caddo	Comanche	Seminole
Cherokee	Creek	Wichita

- Report that “said constitution had been ratified by the Creeks, Choctaws, Sacs and Foxes, Senecas, Eastern Shawnees, Wyandottes, Peorias, Ottawas and Quapaws” (p. 7).
- Committee of five formed to study “what measures, if any, are necessary to compel the attendance of absent members” (p. 8).
- Rules for conducting Council business reiterated (pp. 9-10).
- President Enoch Hoag remarked upon the “very many new members in this Council;” observed that “[t]he people of the Indian Territory were threatened by varied but combined interests with ruinous encroachments;” and reminded the delegates that “[t]he objects and purposes of this Council are indicated in the several treaties of 1866. *No*

interference with the particular organization of individual tribes is intended, but a confederation for purposes which shall benefit all the tribes” (pp. 11-12; emphasis added).

- Resolution adopted to request, from unresponsive nations, the outcome of constitution ratification processes (pp. 17-18).
- Report by Committee of Education and Agriculture placed in Appendix A (pp. 23-30).
- Memorial to President written to combat present Congressional actions regarding the formation of “a Territorial form of government repugnant to their interests” designed to aid the railroads; text of memorial placed in Appendix B (pp. 12-13 and 30-34).

**Appendix IV – Journal of the Fourth Annual Session of the
General Council of the Indian Territory**

*Journal of the Fourth Annual Session of the General Council of the Indian Territory,
Composed of Delegates Duly Elected from the Indian Tribes Legally Resident Therein,
Assembled in Council at Okmulgee, Indian Territory, From the 5th to the 15th (Inclusive) of
May, 1873, Under the Provisions of the Twelfth Article of the Treaty Made and Concluded at the
City of Washington in the Year 1866, Between the United States and the Cherokee Nation, and
Similar Treaties Between the United States and the Choctaw and Chickasaw, Muscookee, and
Seminole Tribes of Indians, of Same Date (1873).*

- Date of meeting: 5 to 15 May 1873.

- Tribes represented:

Absent Shawnee
Cherokee
Choctaw
Creek

Eastern Shawnee
Peoria
Quapaw
Sac and Fox

Seneca
Wyandot

- Resolution for a memorial to the President regarding the release of Satanta and Big Tree, two Kiowa chiefs accused of murder (pp. 7, 12, and 23-26).¹⁵⁷
- Committee on Education and Agriculture divided into two separate Committees (p. 9).
- Note of friendship again sent to Kiowa, Cheyenne, and other tribes of the plains (pp. 9 and 12).
- With the apparent absence of ratification by the tribes, the Council President was “authorized to appoint a special committee to consider the propriety of revising the Constitution” (pp. 10-11).

¹⁵⁷ See the *New York Times* report on this issue: Satanta and Big Tree: Memorial of the council of the Indian territory – The present situation (1873).

- Consideration given to “the best method of inducing the Cheyennes to confederate with the nations and tribes composing the General Council” (p. 13).
- “Exorbitant and discriminating charges for transportation imposed by the M. K. & T. R. R. Company [i.e., the Missouri, Kansas, and Texas Railroad Company] upon the people of the Indian Territory” were assigned for consideration by the Committee on Relations with the United States (p. 19).
- A “literary and industrial international college” was proposed (p. 19).
- Plans for “organizing an Annual International Agricultural, Horticultural, Mechanical and Stock Fair, within the Indian Territory” proposed (p. 20). Denson (2004, pp. 135 and 150-151) indicated that this was the onset of a series of four day events that lasted between 1874 and “the early 1890s.” Further, the development of such activities was well accepted throughout the rest of the country; Denson also reported that “[a]t the first world’s fair held in the United States, Philadelphia’s 1876 Centennial Exhibition, the Smithsonian used one-third of its allowed space for an Indian display” (p. 165).
- Appendix A contained the Satanta and Big Tree memorial (pp. 23-26).
- Appendix B contained the proposal to revise the Constitution, with the stipulation that “all nations and tribes above referred to, failing or refusing to report finally their action on said Constitution at or before the adjourned meeting of this Council to be hereafter provided for, shall be deemed and held to refuse to ratify the same, and this Council shall be governed accordingly” (pp. 26-27).
- In Appendix C, the report of Chairman of the Committee on Agriculture, Joshua Ross, proposed activities centered on agriculture: “To awaken the love of agriculture, we have the honor to name labor on the farm, raising fine stock, reading and writing for

agricultural papers and journals, international fairs, institutions of agriculture for the education of boys and girls and young men of the Indian nations and tribes, in the rudiments and knowledge of husbandry” (p. 33).

- Appendix D contained a report on education (pp. 34-38).

Appendix V – Journal of the [Adjourned Session of the] Fourth Annual Session of the General Council of the Indian Territory

Journal of the [Adjourned Session of the] Fourth Annual Session of the General Council of the Indian Territory, Composed of Delegates Duly Elected from the Indian Tribes Legally Resident Therein, Assembled in Council, at Okmulgee, Indian Territory, Dec. 1st, 1873, Under the Provisions of the Twelfth Article of the Treaty Made and Concluded at the City of Washington in the Year 1866, Between the United States and the Cherokee Nation, and Similar Treaties Between the United States and the Choctaw and Chickasaw, Muscokee, and Seminole Tribes of Indians, of Same Date (1874).

- Date of meeting: 1 to 6 December 1873.

- Tribes represented:

Caddo	Keechie	Seminole
Cherokee	Osage	Seneca
Choctaw	Ottawa	Towoccanie
Creek	Peoria	Waco
Delaware	Quapaw	Wichita
Eastern Shawnee	Sac and Fox	Wyandot

- Note that the supplied title has been modified in order to identify more specifically its contents.
- Instructions for memorial to be prepared for President to rescind three land grants from July 1866, i.e., An act granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley Railroad and its extension to Red River; An act granting lands to the State of Kansas to aid in the construction of a southern branch of Union Pacific Railway and Telegraph from Fort Riley, Kansas, to Fort Smith, Arkansas; and An act granting lands to aid in the construction of a railroad and telegraph line from the

States of Missouri and Arkansas to the Pacific coast (p. 9). Memorial presented in Appendix C (pp. 22-24).

- Instructions for memorial to be prepared for President “respectfully remonstrating against the formation of a territorial government for the country known as the Indian Territory contrary to the wishes of the Indians residing therein and in violation of positive pledges of the U.S. to several of the Indian Nations interested” (p. 10).
- Committee on International Relations instructed “to ascertain whether or not the constitution known as the Okmulgee Constitution has been accepted by a sufficient number of inhabitants of the Territory, to organize and operate the government therein contemplated” (p. 11).
- In response to that instruction, the Committee on International Affairs provided the following day perhaps the most important information contained in the fourth annual session’s *Journal*: the ratification vote counts in Appendix B (p. 21). It had been three years since a draft of the Okmulgee Constitution had been submitted to the participating tribes. Stephen Foreman, the Chairman of the Committee authored the report and reported the failure to acquire the required two-thirds vote to ratify the instrument:

“Your committee to whom was assigned the duty of ascertaining whether or not the constitution known as the Okmulgee Constitution has been accepted by a sufficient number of the inhabitants party to the same, to carry it into operation, beg leave to submit the following report.

After careful examination of all available records, statistics, &c., your committee has ascertained that the following named nations and tribes have adopted the said constitution, to-wit:

Creeks	No.	13,500	Cherokees	No.	17,000
Sac & Fox	"	440	Seneca	"	203
Quapaws	"	237	Wyandotts	"	275
Peorias	"	165	Ottowas	"	150
Eastern Shawnees		95	Total		32,065

Whole population, 66,461; $\frac{2}{3}$ thereof, 44,307 $\frac{1}{3}$. Deduct from 44,307 $\frac{1}{3}$, 32,065, those adopting, and we find the constitution to be a failure by 12,242 $\frac{1}{3}$."

- Letter of friendship and offer to participate in future Council meetings conveyed to the Modoc, who had recently been removed to the Indian Territory (p. 13).
- Appendix A contained text of memorial to the President regarding measures taken against the Comanche (pp. 12 and 19-20).
- Appendix D contained text of memorial to the President "against the formation of a Territorial government" (pp. 25-3).
- Appendix D contained text of memorial to the President regarding the treatment of the Comanche by the Indian Bureau (pp. 31-34).
- Appendix F contained a "letter of sympathy and condolences" (pp. 16-17) to the Kickapoo, inviting them to the May 1874 Council meeting (p. 34). In October 1873, removal of the Kickapoo from Mexico to the Indian Territory commenced; they spent the winter on the Wichita reservation; and then selected their own temporary reservation near McCloud during the following Spring and Summer (Buntin, 1933). On 15 August 1883, "a reservation of some 100,000 acres was assigned to the Kickapoos in what are now parts of Lincoln, Pottawatomie and Oklahoma Counties," through an Executive Order (Withington, 1952, p. 1751).

**Appendix VI – *Journal of the Fifth Annual Session of the
General Council of the Indian Territory***

*Journal of the Fifth Annual Session of the General Council of the Indian Territory,
Composed of Delegates Duly Elected from the Indian Tribes Legally Resident Therein,
Assembled in Council at Okmulgee, Indian Territory, From the 4th to the 14th (Inclusive) of
May, 1874, Under the Provisions of the Twelfth Article of the Treaty Made and Concluded at the
City of Washington in the Year 1866, Between the United States and the Cherokee Nation, and
Similar Treaties Between the United States and the Choctaw and Chickasaw, Muscogee, and
Seminole Tribes of Indians, of Same Date (1874).*

- Date of meeting: 4 to 14 May 1874.
- Tribes represented:

Absent Shawnee	Ionies	Sac and Fox
Caddo	Keechie	Seminole
Cherokee	Modoc	Seneca
Choctaw	Osage	Towoccanie
Comanche	Ottawa	Waco
Creek	Pawnee	Wichita
Delaware	Peoria	Wyandot
Eastern Shawnee	Quapaw	

- For the first time, texts of testimony by Cherokee, Creek, Seminole, Eastern Shawnee, Peoria, Seneca, Wyandot, Ottawa, Sac and Fox, Delaware, Osage, Absent Shawnee, Wichita, Comanche, Waco, Caddo, Ionie (= Hainai), Pawnee, Keechie (= Kichai), and Towoccanie (= Tawakoni) delegates (pp. 8-33).
- Proposal for a memorial to President for the “repeal of those clauses providing for contingent land grants” in federal legislation pertaining to railroads in the Territory (pp. 34-35). See adjourned fourth session notes above and Appendix C (pp. 52-53).

- Appendix A contained a report by the Committee on Agriculture (pp. 43-45).
- Appendix B contained a report by the Committee on Education, broken out by tribe (pp. 45-51).
- Appendix D contained remarks by Stephen Foreman of the Cherokee (pp. 54-58).

**Appendix VII – Journal of the Sixth Annual Session of the
General Council of the Indian Territory**

*Journal of the Sixth Annual Session of the General Council of the Indian Territory,
Composed of Delegates Duly Elected from the Indian Tribes Legally Resident Therein,
Assembled in Council at Okmulgee, Indian Territory, From the 3d to the 15th (Inclusive) of May,
1875, Under the Provisions of the Twelfth Article of the Treaty Made and Concluded at the City
of Washington in the Year 1866, Between the United States and the Cherokee Nation, and
Similar Treaties Between the United States and the Choctaw and Chickasaw, Muscogee, and
Seminole Tribes of Indians, of Same Date (1875).*

- Date of meeting: 3 to 15 May 1875.
- Tribes represented:

Absent Shawnee	Delaware	Peoria
Anadarko	Eastern Shawnee	Pottawatomie
Arapaho	Ionies	Quapaw
Black Bob Shawnee	Kaws	Sac and Fox
Caddo	Keechie	Seminole
Cherokee	Mexican Kickapoo	Seneca
Cheyenne	Modoc	Towoccanie
Choctaw	Osage	Waco
Comanche	Ottawa	Wichita
Creek	Pawnee	Wyandot

- Resolution proposed “providing for re-submitting the Okmulgee Constitution to the president of the United States for his action” (p. 9).
- With reference to the encouragement for agriculture presented at the fourth annual session in 1873, a report on the idea of Indian International Fair was made by Joshua Ross, who suggested that “we will use our influence, and recommend to our nations and tribes to encourage mechanics, farmers and stock raisers to be represented at the said

Indian International Fair, on the 14th, 15th, 16th and 17th days of September, A. D. 1875.” An additional suggestion was made to participate in the Centennial celebrations in Philadelphia in 1876 (pp. 15-16). While the Council’s bid was well received by the Centennial’s organizing committee, no funding offers accompanied the official invitation. The Council’s resources were quite limited by this time – and the individual tribes in the Territory did not respond to Council’s funding requests – so the proposed Centennial exhibit was never completed. Denson concluded that “when the Okmulgee Council failed to mount its exhibit at the Centennial, it surrendered one of the few chances that Native Americans ever possessed to speak formally for themselves at America’s international expositions. Instead, the Indian displays, and the images of ‘the Indians’ that they broadcast, remained European American creations. The fair at Muskogee was a different matter. It provided nowhere near as grand a platform as the Centennial, but it offered a forum for discussion of the Indian question that, unlike most, was amenable to Indian influence” (2004, pp. 169-171).

- Testimony transcripts from a number of delegates were included in the *Journal*. These statements were in response to various resolutions or proposals. The tribes represented in those presentations were the Caddo, Osage, Pawnee, Arapaho, Modoc, Kaws (= Kansas), Senecas, Peoria, Ottawa, Wichita, Creek, Anadarko, Cherokee, Choctaw, Cheyenne, Sac and Fox, and Comanche (pp. 17-74). This inclusion made the *Journal of the Sixth Annual Session of the General Council of the Indian Territory*, at 114 pages, the longest of all summaries, exceeding by fifty pages the next longest report for both the 1870 initial session and its adjourned meeting.

- These remarks were, in many cases, quite personal and reflective of a marked sociological diversity. Bogus Charley of the Modoc began his remarks by stating “[t]he Government brought us here in irons about two years ago” (p. 21) as part of the process that had removed the Modoc from northern California (see Prucha, 1984, pp. 536-539; Stern, 1998). They lived with the Quapaw; Charley related that “[w]e send our children to the Quapaw Mission school” (p. 21). Joe Sells, of the Creek, remarked “I hear from you the complaints of your own people; now I am one who is known by you as one of a different color, and I will proceed to state to you the condition and progress of my people. We, the colored of the Muscogee Nation, wish to abide by all the rules of the Territory. We wish, in feelings, to live near the brethren of the Plains” (p. 32).
- The establishment of a newspaper was proposed (pp. 63-64).
- Constitutional Committee set to meet on 15 June 1875 in Okmulgee (p. 72).
- Appendix A and B held reports from the Committee on Agriculture (pp. 73-89) and on Education (pp. 90-97), broken out by tribe.
- The amended *Constitution of the Indian Territory* appeared in Appendix C (pp. 99-114).

**Appendix VIII – Journal of the Adjourned Session of the Sixth Annual
General Council of the Indian Territory**

Journal of the Adjourned Session of the Sixth Annual General Council of the Indian Territory, Composed of Delegates Duly Elected from the Indian Tribes Legally Resident Therein, Assembled in Council at Okmulgee, Indian Territory, From the 1st to the 9th (Inclusive) of Sept., 1875, Under the Provisions of the Twelfth Article of the Treaty Made and Concluded at the City of Washington in the Year 1866, Between the United States and the Cherokee Nation, and Similar Treaties Between the United States and the Choctaw and Chickasaw, Muscogee, and Seminole Tribes of Indians, of Same Date (1875).

- Date of meeting: 1 to 9 September 1875.
- Tribes represented:

Absent Shawnee	Comanche	Penetethka Comanche
Anadarko	Creek	Peoria
Apache	Ionies	Pottawatomie
Apache with Cheyenne	Keechie	Quapaw
Arapaho	Kiowa	Sac and Fox
Black Bob Shawnee	Miami	Seminole
Caddo	Modoc	Towoccanie
Cherokee	Osage	Waco
Cheyenne	Ottawa	Wichita
Choctaw	Pawnee	Wyandot

- A draft of the amended *Constitution* was included in the daily *Journal* entries as a report of the Special Committee (pp. 7-20).
- Message from the Centennial Commission in Philadelphia “inviting representation from the Indian Territory” read by Secretary (p. 21). A resolution was proposed to address this invitation recommending “to each nation embraced in the invitation of the Centennial

Board the importance and propriety of a full and creditable representation at the Centennial Exhibition” (pp. 26-27).

- Following days were used to discuss the text of the *Constitution*, with “special rules for the government of the consideration of the constitution” submitted to aid adoption (pp. 21-22). As a meteorological note, the afternoon session on 7 September 1875 was “soon adjourned, on account of excessive warm weather” (p. 24). The *Chicago Daily Tribune* reported on 16 September that in Muskogee “[t]he International Indian Fair is a success. The attendance is large, but the weather being *so excessively hot* the show of stock was not as large as would otherwise have been” (Indian territory: Grand international fair, 1875; emphasis added).¹⁵⁸ This was the International Fair discussed at the sixth annual meeting.
- The Council closed by planning for the following year’s session, but there was “some discussion” as to the proposed site, with Eufaula, Okmulgee, and Fort Gibson (see Foreman, 1924) as possibilities. A vote between the latter two led to a proposed meeting in Okmulgee in May 1876 (p. 30).
- In the event, the federal government canceled the May 1876 meeting. The 26 April 1876 issue of *The Vindicator* stated that “[b]y an order of the Commissioner of Indian Affairs, Maj. Upham, U. S. A., in charge of the Union Agency, has notified the Principal Chiefs of the different tribes that the Okmulgee Council will not convene again until further authorized by Congress” (Okmulgee Council, 1876).

¹⁵⁸ See Denson (2004, pp. 149-171) for more on the International Fairs initiated by the tribes.

Appendix IX – Okmulgee Constitution: Provenance Paths

Relevant document text from previous Cherokee, Chickasaw, Choctaw, and Creek constitutions – and on occasion, from federal treaties – was coupled to the *Okmulgee Constitution* text published in the *Journal of the General Council of the Indian Territory, Composed of Delegates Duly Elected from the Indian Tribes Legally Resident Thereof, Assembled in Council at Okmulgee, in the Indian Territory, Under the Provisions of the Twelfth Article of the Treaty Made and Concluded at the City of Washington, in the Year 1866, Between the United States and the Cherokee Nation, and Similar Treaties Between the United States and the Choctaw and Chickasaw, Muskokee, and Seminole Tribes of Indians, of the Same Date* (1871), i.e., to the *Council* variant of this study.

The very structure of *Okmulgee* clearly indicated that the *United States Constitution* (The Constitution of the United States of America: Analysis and Interpretation, 2004) was consulted as a model, either directly in 1870 or through previous Indian instruments. The articles and sections of the *Okmulgee Constitution* thus revealed parallels – and sometimes the vocabulary – of that fundamental federal document, but the goal here was to demonstrate the development of the *Okmulgee Constitution* from previous *Indian* endeavors to create national constitutions.

Preamble

Whereas the people of the nations of Indians inhabiting the Indian Territory have agreed by treaty with the Government of the United States, and been by its agents invited to meet in General Council under the formes prescribed by the Treaties of 1866 and the action thereon of the Government of the United States, having thus met to frame the laws and arrange the machinery of a government for the country occupied and owned by them, in order to draw themselves together in a closer bond of union, for the better protection of their rights, the

improvement of themselves, and the preservation of their race and relying on the guidance and favor of Almighty God to carry out in a consistent and practicable form the provisions of said treaties at the earliest practicable day, do hereby enact and promulgate the following as the Constitution or organic law of the said Indian Territory.

Article I, §1

All that portion of country bounded on the east by the states of Arkansas and Missouri, on the north by the state of Kansas, on the west by the Territory of New Mexico and the state of Texas, and on the south by the state of Texas, which has been set apart and guaranteed by the Treaties and laws of the United States as a permanent home for the Indians therein lawfully resident or such as may be in like manner settled therein hereafter for the purposes of this Constitution shall be known and styled as “The Indian Territory.”

- 1839 *Cherokee Constitution*:
 - Article I, §1 – The boundary of the Cherokee Nation shall be that described in the treaty of 1833 between the United States and Western Cherokees, subject to such extension as may be made in the adjustment of the unfinished business with the United States.
- 1860 *Choctaw Constitution*:
 - Preamble – We, the representatives of the people inhabiting the Choctaw Nation contained within the following limits, to-wit: Beginning at a point on the Arkansas river, one hundred paces east of the Old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red river; thence, up Red river to a point where the meridian of one hundred degrees west longitude crosses the same; thence, north along said

meridian to the main Canadian river; thence, down said river to its junction with the Arkansas river; thence down said river to the place of beginning, except the territory bounded as follows, to-wit: Beginning on the north bank of Red river, at the mouth of island bayou, where it empties into Red river, about twenty-six miles on a straight line, below the mouth of the Washita; thence running a northwesterly course along the main channel of said Bayou, to the junction of the three prongs of said Bayou, nearest the dividing ridge between Washita and Low Blue rivers, as laid down on Capt. R. L. Hunter's map; thence; northerly along the eastern prong of island Bayou to its source; thence, due north to the Canadian river; thence, west along the main Canadian to the ninety-eighth degree of west longitude; thence, south to Red river; and thence down Red river to the place of beginning; Provided, however, if the line running due north from the eastern source of island Bayou, to the main Canadian, shall not include Allen's or Wa-pa-nucka Academy within the Chickasaw District, then an off-set shall be made from said line, so as to leave said Academy two miles within the Chickasaw District; north, west, and south from the boundary, said boundaries being the limits of the Chickasaw District assembled in Convention at the Town of Doaksville, on Wednesday, the eleventh day of January, one thousand eight hundred and sixty, in pursuance of an act of the General Council approved October 24, 1859, in order to secure to the citizens thereof the rights of life, liberty and property, do ordain and establish the following Constitution and form of government, and do mutually agree with each other to form ourselves into a free and independent Nation, not

inconsistent with the Constitution, Treaties and Laws of the United States, by the name of the Choctaw Nation.

- 1867 *Chickasaw Constitution*:
 - Preamble – We, the people of the Chickasaw Nation, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of our own form, of government, do, in accordance with the first, second, fourth and seventh articles of the Treaty between the United States, the Choctaws and Chickasaws, made and concluded at Washington City, June 22, A. D., 1855, and the treaty of April 28, A. D., 1866, ordain and establish this Constitution for our government, within the following limits, to-wit: Beginning on the north bank of the Red river, at the mouth of island Bayou, where it empties into Red river, about twenty-six miles on a straight line below the mouth of False Washita; thence running a northwesterly course along the main channel of said bayou to the junction of the three prongs of said bayou nearest the dividing ridge, between Washita and Low Blue rivers, as laid down on Captain R. L. Hunter's map; thence northerly along the eastern prong of said island bayou to its source; thence due north to the Canadian river; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to the Red river, and thence down Red river to the beginning: Provided, however, if a line running due north from the eastern source of island bayou to the main Canadian, shall not include Allen's or Wapanucka Academy within the Chickasaw District, then an offset shall be made from said line, so as to leave said academy two miles within the Chickasaw District, north, west and south from the lines of boundary.

- Other sources:
 - [*Treaty with the Western Cherokee, 1833*](#) (Kappler, 1904b, pp. 385-388). The preamble stated: Whereas articles of convention were concluded at the city of Washington, on the sixth day of May one thousand eight hundred and twenty-eight, between James Barbour Secretary of War, being specially authorized therefor by the President of the United States and the chiefs and head men of the Cherokee nation of Indians west of the Mississippi, which articles of convention were duly ratified. And whereas it was agreed by the second article of said convention as follows “That the United States agree to possess the Cheerokees, and to guarantee it to them forever, and that guarantee is solemnly pledged, of seven millions of acres of land, said land to be bounded as follows; viz, commencing at a point on Arkansas river, where the eastern Choctaw boundary line strikes said river, and running thence with the western line of Arkansas Territory to the southwest corner of Missouri, and thence with the western boundary line of Missouri till it crosses the waters of Neasho, generally called Grand river, thence due west, to a point from which a due south course will strike the present northwest corner of Arkansas Territory, thence continuing due south on and with the present boundary line on the west of said Territory, to the main branch of Arkansas river, thence down said river to its junction with the Canadian, and thence up, and between said rivers Arkansas and Canadian to a point at which a line, running north and south, from river to river, will give the aforesaid seven millions of acres, thus provided for and bounded. The United States further guarantee to the Cherokee nation a perpetual outlet west, and a free

and unmolested use of all the country lying west of the Western boundary of the above-described limits; and as far west, as the sovereignty of the United States and their right of soil extend. And whereas there was to said articles of convention and agreement, the following proviso viz. Provided nevertheless, that said convention, shall not be so construed, as to extend the northern boundary of said perpetual outlet west, provided for and guaranteed in the second article of said convention, north of the thirty-sixth degree of north latitude, or so as to interfere with the lands assigned, or to be assigned, west of the Mississippi river, to the Creek Indians who have emigrated, or may emigrate, from the States of Georgia and Alabama, under the provision of any treaty, or treaties, heretofore concluded, between the United States, and the Creek tribe of Indians – and provided further, that nothing in said convention, shall be construed, to cede, or assign, to the Cheerokees any lands heretofore ceded, or assigned, to any tribe, or tribes of Indians, by any treaty now existing and in force, with any such tribe or tribes.” – And whereas, it appears from the Creek treaty, made with the United States, by the Creek nation, dated twenty-fourth day of January eighteen hundred and twenty-six, at the city of Washington; that they had the right to select, and did select, a part of the country described within the boundaries mentioned above in said Cherokee articles of agreement – and whereas, both the Cheerokee and Creek nations of Indians west of the Mississippi, anxious to have their boundaries settled in an amicable manner, have met each other in council, and, after full deliberation mutually agreed upon the boundary lines between them – Now therefore, the

United States on one part, and the chiefs and head-men of the Cherokee nation of Indians west of the Mississippi on the other part, agree as follows:

- Article I. The United States agree to possess the Cheerokees, and to guarantee it to them forever, and that guarantee, is hereby pledged, of seven millions of acres of land, to be bounded as follows viz: Beginning at a point on the old western territorial line of Arkansas Territory, being twenty-five miles north from the point, where the Territorial line crosses Arkansas river – thence running from said north point, south, on the said Territorial line, to the place where said Territorial line crosses the Verdigris river – thence down said Verdigris river, to the Arkansas river – thence down said Arkansas to a point, where a stone is placed opposite to the east or lower bank of Grand river at its junction with the Arkansas – thence running south, forty-four degrees west, one mile – thence in a straight line to a point four miles northerly from the mouth of the north fork of the Canadian – thence along the said four miles line to the Canadian – thence down the Canadian to the Arkansas – thence, down the Arkansas, to that point on the Arkansas, where the eastern Choctaw boundary strikes, said river; and running thence with the western line of Arkansas Territory as now defined, to the southwest corner of Missouri – thence along the western Missouri line, to the land assigned the Senecas; thence, on the south line of the Senecas to Grand river; thence, up said Grand river, as far as the south line of the Osage reservation, extended if necessary – thence up and between said south Osage line, extended west if necessary and a line drawn due west, from the point of beginning, to a certain distance west, at which, a line running north and south, from said Osage

line, to said due west line, will make seven millions of acres within the whole described boundaries. In addition to the seven millions of acres of land, thus provided for, and bounded, the United States, further guarantee to the Cheerokee nation, a perpetual outlet west and a free and unmolested use of all the country lying west, of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend – Provided however, that if the saline, or salt plain, on the great western prairie, shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men, to get salt on said plain in common with the Cheerokees [sic] – and letters patent shall be issued by the United States as soon as practicable for the land hereby guaranteed.

- [*Treaty with the Choctaw and Chickasaw, 1855*](#) (Kappler, 1904b, pp. 706-714). Article I stated: The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz: Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary-line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of one hundred degrees west longitude crossed the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning. And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits, to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common;

so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however,* No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

- Article II stated: A district for the Chickasaws is hereby established, bounded as follows, to wit: Beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles in a straight line, below the mouth of False Wachitta; thence running a northwesterly course, along the main channel of said bayou, to the junction of the three prongs of said bayou, nearest the dividing ridge between Wachitta and Low Blue Rivers, as laid down on Capt. R. L. Hunter's map; thence northerly along the eastern prong of Island Bayou to its source; thence due north to the Canadian River; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to Red River; and thence down Red River to the beginning: *Provided, however,* If the line running due north, from the eastern source of Island Bayou, to the main Canadian shall not include Allen's or Wa-pa-nacka Academy, within the Chickasaw District, then, an offset shall be made from said line, so as to leave said academy two miles within the Chickasaw district, north, west and south from the lines of boundary.
- Article III stated: The remainder of the country held in common by the Choctaws and Chickasaws, shall constitute the Choctaw district, and their officers and people shall at all times have the right of safe conduct and free passage through the Chickasaw district.

- [*Treaty with the Choctaw and Chickasaw, 1866*](#) (Kappler, 1904b, pp. 918-931).
Article XI stated: Whereas the land occupied by the Choctaw and Chickasaw Nations, and described in the treaty between the United States and said nations, of June twenty-second, eighteen hundred and fifty-five, is now held by the members of said nations in common, under the provisions of the said treaty; and whereas it is believed that the holding of said land in severalty will promote the general civilization of said nations, and tend to advance their permanent welfare and the best interests of their individual members, it is hereby agreed that, should the Choctaw and the Chickasaw people, through their respective legislative councils, agree to the survey and dividing their land on the system of the United States, the land aforesaid east of the ninety-eighth degree of west longitude shall be, in view of the arrangements herein-after mentioned, surveyed and laid off in ranges, townships, sections, and parts of sections; and that for the purpose of facilitating such surveys and for the settlement and distribution of said land as hereinafter provided, there shall be established at Boggy Depot, in the Choctaw Territory, a land-office; and that, in making the said surveys and conducting the business of the said office, including the appointment of all necessary agents and surveyors, the same system shall be pursued which has heretofore governed in respect to the public lands of the United States, it being understood that the said surveys shall be made at the cost of the United States and by their agents and surveyors, as in the case of their own public lands, and that the officers and employés shall receive the same compensation as is paid to officers and employés in the land-offices of the United States in Kansas.

Article I, §2

Each of the nations of Indians who by themselves, or through their representatives may enter this confederacy, do agree that the citizens of each and every one of said nations shall have the same rights of transit, commerce, trade, or exchange in any of said nations as he has in his own, subject only to consistency with existing treaty stipulations with the United States and the laws regulating trade and intercourse, and under such judicial regulations as are hereinafter provided. But no right of property or lands, or funds owned by any one nation shall be in any manner invaded by citizens of another nation; and it is hereby distinctly affirmed that the rights of each of these nations to its lands, funds and all other property shall remain the sole and distinct property of such nation. Any Indian nation now represented in this General Council or which may hereafter enter in a legal manner, or be now in said Indian Territory, may be admitted to representation and all the privileges of this joint government by accepting and agreeing through their proper authorities to the provisions of this Constitution.

Article II, §1

The powers of this Government shall be divided into three distinct departments, to be called the Legislative, the Executive and the Judicial Departments of the Indian Territory.

- 1839 *Cherokee Constitution*:
 - Article II, §1 – The power of the Government shall be divided into three distinct departments – the Legislative, the Executive, and the Judicial.
- 1860 *Choctaw Constitution*:
 - Article II, §1 – The powers of government of the Choctaw Nation shall be divided into three distinct departments, and each of them confined to a separate body of

magistracy, to-wit: Those which are Legislative to one, and those which are Executive to another, and those which are Judicial to another.

- 1867 *Chickasaw Constitution*:
 - Article III, §1 – The powers of the government of the Chickasaw Nation shall be divided into three district departments, and each of them confided to a separate body of magistracy, to-wit: Those which are legislative to one; those which are executive to another, and those which are judicial to another. And no person or collection of persons being one of those departments, shall exercise any power properly attached to either of the others.

Article II, §2

No person belonging to one of these departments shall exercise any of the powers properly belonging to either of the others except in cases hereinafter expressly directed or permitted.

- 1839 *Cherokee Constitution*:
 - Article II, §2 – No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.
- 1860 *Choctaw Constitution*:
 - Article II, §2 – No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereafter expressly directed or permitted by the General Council.
- 1867 *Chickasaw Constitution*:

- Article III, §1 – The powers of the government of the Chickasaw Nation shall be divided into three district departments, and each of them confided to a separate body of magistracy, to-wit: Those which are legislative to one; those which are executive to another, and those which are judicial to another. And no person or collection of persons being one of those departments, shall exercise any power properly attached to either of the others.

Article III, §1

The Legislative power shall be vested in a General Assembly which shall consist of a Senate and House of Representatives; and the style of their acts shall be, —“Be it enacted,” or “Be it resolved by the General Assembly of the Indian Territory.”

- *1839 Cherokee Constitution:*
 - Article III, §1 – The legislative power shall be vested in two distinct branches – a National Committee, and Council; and the style of their acts shall be – Be it enacted by the National Council.
- *1860 Choctaw Constitution:*
 - Article III, §1 – The legislative power of this Nation shall be vested in a General Council which shall consist of a Senate and House of Representatives, and the style of their laws shall be, “Be it enacted by the General Council of the Choctaw Nation assembled.”
- *1867 Creek Constitution:*
 - Article I, §1 – The law making power of this nation shall be lodged in a Council to consist of two houses, namely: a house of Kings and a House of Warriors.

- Article XIII – The style of the action of the Council shall be: “Be it enacted by the National Council of the Muskokee Nation.”
- *1867 Chickasaw Constitution:*
 - Article IV, §1 – The legislative powers of this Nation shall be vested in two distinct branches; the one to be styled the Senate, and the other the House of Representatives, and both together, the Legislature of the Chickasaw Nation. The style of the laws shall be: “Be it enacted by the Legislature of the Chickasaw Nation.”

Article III, §2

The Senate shall consist of one member from each nation whose population is two thousand citizens, and one member for every additional two thousand citizens, or fraction greater than one thousand. Provided, nations with populations less than two thousand may unite and be represented in the same ratio, and provided further, that the Ottawas, Peorias and Quapaws shall be entitled to one senator, and the Senecas, Wyandottes and Shawnees to one senator, and the Sac and Foxes to one senator.

- *1860 Choctaw Constitution:*
 - Article III, §2 – The Senate of the Choctaw Nation shall be composed of four Senators from each District, chosen by the qualified electors thereof, for the term of two years.
- *1867 Creek Constitution:*
 - Article I, §3 – Each town shall be entitled to one member for the house of Kings, who shall be elected for the term of four years, by the vote of their respective towns.

Article III, §3

No person shall be eligible to a seat in the General Assembly, but a bona fide citizen of the nation which he represents and who shall have attained to the age of twenty-five years.

- 1839 *Cherokee Constitution*:
 - Article III, §5 – No person shall be eligible to a seat in the National Council but a free Cherokee Male citizen who shall have attained the age of twenty-five years.
- 1860 *Choctaw Constitution*:
 - Article III, §3 – No person shall be a Senator who shall not have attained the age of thirty years and been one year a citizen of this Nation, and who shall not, when elected, be an inhabitant of that District at least six months preceding his election for which he shall be chosen.
 - Article III, §6 – No person shall be a Representative unless he be a citizen of this Nation, and shall have been an inhabitant thereof six months next preceding his election, and the last month thereof a resident of the county for which he shall be chosen, and shall have attained the age of twenty-one years.

Article III, §4

The House of Representatives shall consist of one member from each nation and an additional member for each one thousand citizens or fraction thereof greater than five hundred.

- 1860 *Choctaw Constitution*:
 - Article I, §4 – The House of Representatives shall be composed of members chosen every year by the qualified electors in the several counties of each District, at the ratio of one representative to every thousand citizens; nevertheless when there is a fractional number of five hundred or more citizens in any county, they

shall be entitled to one additional representative; but when the population of any one of the counties shall not reach the ratio of one thousand, they shall still be allowed one representative.

- 1867 *Creek Constitution*:
 - Article I, §2 – Each town shall be entitled to one member for the house of Warriors, and an additional member for every two hundred persons, who shall be elected for the term of four years, by the vote of their respective towns.
- Other sources:
 - Confederate States of America [*Treaty with the Creek Nation*](#) (Matthews, 1864/1988, pp. 289-310). Article XL stated: In order to enable the Creek and Seminole Nations to claim their rights and secure their interests without the intervention of counsel or agents, and as they were originally one and the same people and are now entitled to reside in the country of each other, they shall be jointly entitled to a delegate to the House of Representatives of the Confederate States of America, who shall serve for the term of two years, and be a member of one of the said nations, over twenty-one years of age, and labouring under no legal disability by the law of either nation; and each delegate shall be entitled to the same rights and privileges as may be enjoyed by delegates from any territories of the Confederate States to the said House of Representatives. Each shall receive such pay and mileage as shall be fixed by the Congress of the Confederate States. The first election for delegate shall be held at such time and places, and be conducted in such manner as shall be prescribed by the agent of the Confederate States, to whom returns of such election shall be made, and he shall declare the

person having the greatest number of votes to be duly elected, and give him a certificate of election accordingly, which shall entitle him to his seat. For all subsequent elections, the times, places, and manner of holding them and ascertaining and certifying the result, shall be prescribed by law of the Confederate States.

- Confederate States of America [*Treaty with the Choctaws and Chickasaws*](#) (pp. 311-331). Article XXVII stated: In order to enable the Choctaw and Chickasaw Nations to claim their rights and secure their interests without intervention of agents or counsel, and as they are now entitled to reside in the country of each other, they shall be jointly entitled to a delegate to the House of Representatives of the Confederate States of America, who shall serve for the term of two years, and be a member, by birth or blood, on either the father's or mother's side, of one of said nations, over twenty-one years of age, and laboring under no legal disability by the laws of either nation: and such delegate shall be entitled to the same rights and privileges as may be enjoyed by delegate from any Territory of the Confederate States. The first election for delegate shall be held at such time and places, and be conducted in such manner as shall be prescribed by the agent of the Confederate States, to whom returns of such election shall be made, and he shall declare the person having the greatest number of votes to be duly elected, and give him a certificate of election accordingly, which shall entitle him to his seat. For all subsequent elections, the times, places and manner of holding them, ascertaining and certifying the result shall be prescribed by law of the Confederate States. The delegates shall be elected alternately from each nation, the first being

a Choctaw, by blood, on either the father's or mother's side, and resident in the Choctaw country; and the second a Chickasaw, by blood, on either the father's or mother's side, and resident in the Chickasaw country, and so on alternately. At the respective elections, such persons only as fulfill the foregoing requisites shall be eligible, and when one is elected to fill a vacancy and serve out an unexpired term, he must belong to, and be resident in, the same nation as the person whose vacancy he fills.

- Confederate States of America [*Treaty with the Seminole Nation*](#) (pp. 332-346). Article XXXVII stated: In order to enable the Creek and Seminole Nations to claim their rights and secure their interests without the intervention of counsel or agents, and as they were originally one and the same people and are now entitled to reside in the country of each other, they shall be jointly entitled to a delegate to the House of Representatives of the Confederate States of America, who shall serve for the term of two years, and be a member of one of said nations, over twenty-one years of age, and laboring under no legal disability by the law of either nation; and each delegate shall be entitled to the same rights and privileges as may be enjoyed by the delegate from any Territory of the Confederate States to the said House of Representatives. Each shall receive such pay and mileage as shall be fixed by the Congress of the Confederate States. The first election for delegate shall be held at such time and places, and be conducted in such manner as shall be prescribed by the agent of the Confederate States for the Creeks, to whom returns of such election shall be made, and he shall declare the person having the greatest number of votes to be duly elected, and give him a certificate

of election accordingly, which shall entitle him to his seat. For all subsequent elections, the times, places and manner of holding them and ascertaining and certifying the result shall be prescribed by law of the Confederate States.

- Confederate States of America [*Treaty with the Cherokees*](#) (pp. 394-411). Article XLIV stated: In order to enable the Cherokee Nation to claim its rights and secure its interests without the intervention of counsel or agents, it shall be entitled to a delegate to the House of Representatives of the Confederate States of America, who shall serve for the term of two years, and be a native born citizen of the Cherokee Nation, over twenty-one years of age, and laboring under no legal disability by the law of the said nation; and each delegate shall be entitled to the same rights and privileges as may be enjoyed by delegates from any territories of the Confederate States to the said House of Representatives. Each shall receive such pay and mileage as shall be fixed by the Congress of the Confederate States. The first election for delegate shall be held at such time and places, and shall be conducted in such manner as shall be prescribed by the Principal Chief of the Cherokee Nation, to whom returns of such elections shall be made, and who shall declare the person having the greatest number of votes to be duly elected, and give him a certificate of election accordingly, which shall entitle him to his seat. For all subsequent elections, the time, places and manner of holding them, and ascertaining and certifying the result, shall be prescribed by the Confederate States.

Article III, §5

The members of the Senate and House of Representatives shall be elected by the qualified voters of their respective nations according to their laws or customs and shall hold their office for the term of two years. Vacancies that may occur shall be filled in like manner.

- *1867 Creek Constitution:*

- Article I, §2 – Each town shall be entitled to one member for the house of Warriors, and an additional member for every two hundred persons, who shall be elected for the term of four years, by the vote of their respective towns.
- Article I, §3 – Each town shall be entitled to one member for the house of Kings, who shall be elected for the term of four years, by the vote of their respective towns.

- *1867 Chickasaw Constitution:*

- Article IV, §4 – The senators shall be chosen by the qualified electors for the term of two years, at the same time and place as representatives. And no person shall be a senator unless he be a Chickasaw by birth or adoption, and has been a citizen of the Chickasaw Nation one year next preceding his election, and the last six months a citizen of the Senatorial District for which he shall be chosen, and shall have attained the age of thirty years at the time of his election.
- Article IV, §2 – The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be one year from the day of the general election. And the session of the Legislature shall be annual, at Tishomingo, commencing on the first Monday in September, in each and every year.

- Article IV, §3 – No person shall be a representative unless he be a Chickasaw by birth or adoption, and shall have been an inhabitant of the Chickasaw Nation one year next preceding his election, and the last six months thereof a citizen of the county for which he shall be chosen, and shall have attained to the age of twenty-one years at the time of his election.

Article III, §6

The Senate when assembled shall choose a President and its other officers, and the House of Representatives a Speaker and other officers; and each shall judge of the qualifications and returns of its own members. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as each house may provide.

- *1839 Cherokee Constitution:*
 - Article III, §8 – Each branch of the National Council, when assembled, shall judge of the qualifications and returns of its own members; and determine the rules of its proceedings; punish a member for disorderly behavior, and with the concurrence of two thirds, expel a member; but not a second time for the same offense.
 - Article III, §9 – Each branch of the National Council, when assembled, shall choose its own officers; a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalty as each branch may prescribe.
- *1860 Choctaw Constitution:*

- Article III, §7 – The House of Representatives, when assembled, shall choose a Speaker and its other officers, and the Senate shall choose a President and its officers, and each shall judge the qualifications and election of its own members, but a contested election shall be determined in such manner as shall be directed by law. A majority of each house shall constitute a quorum to do business, but a small number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.
- *1867 Creek Constitution:*
 - Article I, §5 – A majority of each house shall constitute a quorum to do business, and a less number may adjourn from day to day and compel the presence of absentees.
 - Article I, §6 – Each house shall judge of the returns and qualifications of its members, impeach a member for disorderly conduct, and by the concurrence of the two-thirds of both houses expel a member. Neither house shall adjourn for a longer period than two days without the consent of both houses.
 - Article I, §7 – The house of Warriors shall elect its own Speaker.
 - Article I, §8 – The house of Kings shall elect its own President.
- *1867 Chickasaw Constitution:*
 - Article IV, §8 – The House of Representatives when assembled, shall choose a Speaker and its other officers, and the Senate shall choose a President and its other officers. And each house shall judge of the qualifications and elections of its own members; but contested elections shall be determined in such manner as

shall be directed by law. And a majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

- Article IV, §9 – Each house may determine the rules of its own proceedings; punish members for disorderly conduct; and, with the consent of two-thirds, expel a member, but not a second time for the same offense.

Article III, §7

Each branch of the General Assembly shall keep a journal and determine the rules of its proceedings, punish a member for disorderly behavior and with the concurrence of two-thirds, expel a member, but not a second time for the same offense.

- *1839 Cherokee Constitution:*
 - Article III, §8 – Each branch of the National Council, when assembled, shall judge of the qualifications and returns of its own members; and determine the rules of its proceedings; punish a member for disorderly behavior, and with the concurrence of two thirds, expel a member; but not a second time for the same offense.
- *1860 Choctaw Constitution:*
 - Article III, §9 – Each house may determine the rules of its own proceedings, punish members for disorderly behavior, and with the consent of two-thirds expel a member, but not a second time for the same offense.
- *1867 Chickasaw Constitution:*

- Article IV, §10 – Each house shall keep a journal of its proceedings and shall publish the same. And the yeas and nays of the members of either house on any question, shall, at the desire of any three members present, be entered on the journal.

Article III, §8

The General Assembly shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the nations of the Indian Territory, the arrest and extradition of criminals escaping from one nation to another; the administration of justice between members of the several nations of the said Territory and persons other than Indians and members of said nations; and the common defense and safety of the nations of said Territory. But the said General Assembly shall not legislate upon matters other than those above indicated. The General Assembly shall meet annually on the first Monday in June at such place as may be fixed upon at their regular session.

Article III, §9

Members of the General Assembly and other officers, both Executive and Judicial, before they enter upon the duties of their respective offices, shall take the following oath or affirmation, to wit: “I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the Indian Territory and that I will faithfully and impartially discharge to the best of my ability, the duties of the office of [blank] according to law. So help me God.”

- 1839 *Cherokee Constitution*:

- Article IV, §7 – Before the Principal Chief enters on the execution of his office, he shall take the following oath or affirmation: “I do solemnly swear, or affirm, that I will faithfully execute the duties of Principal Chief of the Cherokee Nation,

and will, to the best of my ability, preserve, protect, and defend the Constitution of the Cherokee Nation.”

- 1860 *Choctaw Constitution*:
 - Article VII, §4 – Members of the General Council and others officers both executive and judicial, before they enter upon the duties of their respective offices shall take the following oath or affirmation, to-wit: I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the Choctaw Nation, and that I will faithfully and impartially discharge, to the best of my abilities, the duties of the office of according to law. So help me God.

Article III, §10

The members of the General Assembly shall be paid four dollars per day while in actual attendance thereon and four dollars mileage for every twenty miles going to and returning therefrom on the most direct traveled route, to be certified by the presiding officer of each house. Provided, no member shall be allowed per diem compensation for more than thirty days at any annual session.

- 1839 *Cherokee Constitution*:
 - Article III, §10 – The members of the National Council, shall each receive from the public Treasury a compensation for their services which shall be three dollars per day during their attendance at the National Council; and the members of the Council shall each receive three dollars per day for their services during their attendance at the National Council, provided that the same may be increased or diminished by law, but no alteration shall take effect during the period of service

of the members of the National Council by whom such alteration may have been made.

- 1867 *Chickasaw Constitution*:
 - Article IV, §21 – The members of the legislature shall receive for their services, Three Dollars per day, until otherwise fixed by law; and be paid out of the Public Treasury
- Other sources:
 - [*Treaty with the Choctaw and Chickasaw, 1866*](#) (Kappler, 1904b, pp. 918-931). Article VIII, §7 stated: The members of the said council shall be paid by the United States four dollars per diem while in actual attendance thereon, and four dollars mileage for every twenty miles going and returning therefrom by the most direct route, to be certified by the secretary of said council and the presiding officer (p. 922).

Article III, §11

Members of the General Assembly shall in all cases except of treason, felony, or breach of the peace, be privileged from arrest during the session of the General Assembly and in going to and returning from the same.

- 1839 *Cherokee Constitution*:
 - Article III, §6 – The electors and members of the National Council shall in all cases, except those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and at the National Council, in going to and returning.
- 1860 *Choctaw Constitution*:

- Article III, §17 – Senators and Representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during session of the General Council, and in going to and returning from the same.
- *1867 Chickasaw Constitution:*
 - Article IV, §12 – Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same.

Article III, §12

No power of suspending the laws of this Territory shall be exercised unless by the General Assembly or its authority. No retrospective law nor any law impairing the obligation of contracts shall be passed.

- *1839 Cherokee Constitution:*
 - Article III, §17 – No retrospective law, nor any law impairing the obligation of contracts, shall be passed.
- *1860 Choctaw Constitution:*
 - Article I, §21 – No conviction for any offense shall work corruption of blood and forfeiture of estate. The General Council shall pass no bill of attainder, retrospective law, nor law impairing the obligation of contracts.
- *1867 Creek Constitution:*
 - Article X – No laws impairing contracts shall be passed, nor laws taking effect upon things
- *1867 Chickasaw Constitution:*

- Article I, §14 – The Legislature shall pass no retrospective law, or any law impairing the obligations of contracts.

Article III, §13

Whenever the General Assembly shall deem it necessary to provide means to support the Government of the Indian Territory, it shall have power to do so; but no revenue shall be raised not actually necessary and in accordance with law, uniform in its operations throughout the Territory.

Article III, §14

All bills making appropriations shall originate in the House of Representatives; but the Senate may propose amendments or reject the same. All other bills may originate in either branch subject to the concurrence or rejection of the other.

- *1839 Cherokee Constitution:*
 - Article III, §19 – All bills making appropriations shall originate in the National Committee, but the Council may propose amendments or reject the same; all other bills may originate in either branch, subject to the concurrence or rejection of the other.
- *1867 Chickasaw Constitution:*
 - Article IV, §15 – Bills may originate in either house, and amended, altered, or rejected by the other; but no bill shall have the force of a law until it be read in each house two several days, and free discussion allowed thereon, unless two-thirds of the house in which the same shall be pending may deem it expedient to dispense with this rule. And every bill having passed both houses, shall be signed by the Speaker and President of their respective bodies.

- Article IV, §16 – All bills for raising revenue, and all appropriation bills for the support of the government of the Chickasaw Nation, shall originate in the House of Representatives; but the Senate may amend or reject them as other bills.

Article III, §15

The House of Representatives shall have the sole power of impeaching. All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be on oath or affirmation and shall be presided over by the Chief Justice; and no person shall be convicted without the concurrence of two-thirds of the members present.

- 1839 *Cherokee Constitution*:
 - Article III, §21 – The Council shall have the sole power of impeachment. All impeachments shall be tried by the National Committee. When setting for that purpose the member shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.
 - Article IV, §15 – Members of the National Council, and all officers, executive and judicial, shall be bound by oath to support the Constitution of this Nation, and to perform the duties of their respective offices with fidelity.
- 1860 *Choctaw Constitution*:
 - Article VI, §1 – The House of Representatives shall have the sole power of impeaching.
 - Article VI, §2 – All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be on oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.
- 1867 *Creek Constitution*:

- All bills of impeachment shall originate in the house of Warriors.
- *1867 Chickasaw Constitution:*
 - Article IV, §22 – The House of Representatives shall have the sole power of impeachments; and all impeachments shall be tried by the Senate. When sitting for that purpose, the senators shall be upon oath, or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend only to removal from office, and disqualification from holding any office of honor, trust or profit, under this Nation. But the parties convicted shall, nevertheless, be subject to indictment, trial, and punishment, according to law.

Article III, §16

The Governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend farther than removal from office and disqualification to hold any office of honor, trust or profit under this Government; but the party whether convicted or acquitted, shall nevertheless be liable to indictment, trial and punishment according to law as in other cases.

- *1839 Cherokee Constitution:*
 - Article III, §22 – The Principal Chief, assistant Principal Chief, and all civil officers shall be liable to impeachment for misdemeanor in office; but judgment in such cases shall not be extended further than removal from office and disqualification to hold office of honor, trust, or profit under the Government of this Nation. The party, whether convicted or acquitted, shall nevertheless, be liable to indictment, trial, judgment and punishment according to law.

- 1860 *Choctaw Constitution*:
 - Article VI, §3 – The Chiefs and all Civil Officers shall be liable to impeachment for and misdemeanor in office, but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, trust or profit under this Nation, but the party convicted shall nevertheless be liable and subject to indictment, trial, and punishment, according to law as in other cases.

- 1867 *Creek Constitution*:
 - Article XVI – All officers of this Government shall be liable to impeachment, trial, and removal from office for neglect of duty.
 - Article VII, §6 – Every person shall be disqualified from holding any office of honor or profit, under the authority of this Nation, who shall be convicted of having given or offered any bribe to procure his election or appointment. Laws shall be made to exclude from office and from suffrage, and provide for the mode and manner of punishing those who may hereafter be convicted of bribery, perjury or other high Crimea and misdemeanors.

Article III, §17

The salaries of all officers created under this Constitution, not otherwise provided shall be regulated by law, but no increase or diminution shall be made in the same during the term for which said officers may have been elected or appointed.

- 1867 *Chickasaw Constitution*:
 - Article IV, §17 – Each member of the legislature shall receive from the public treasury a compensation for his services, which may be increased or diminished

by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

Article IV, §1

The Executive power of this Territory shall be vested in a Governor who shall be styled the Governor of the Indian Territory, and whose term of service shall be two years, and until his successor shall have been elected and qualified. He shall be elected by the qualified electors of each nation on the first Wednesday in April at the usual places of holding elections of the several nations. The returns of the election of Governor shall be sealed up and directed to the Secretary of the Territory who shall open and publish them in the presence of the Senate and House of Representatives in joint session assembled. The person having the highest number of votes shall be declared Governor by the president of the Senate; but if two or more shall be equal and highest in votes, then one of them shall be chosen by the majority of votes by joint ballot of both Houses of the General Assembly.

- 1839 *Cherokee Constitution*:
 - Article IV, §1 – The Supreme Executive Power of this Nation shall be vested in a Principal Chief, who shall be styled the Principal Chief of the Cherokee Nation. The Principal Chief shall hold office for the term of four years; and shall be elected by the qualified electors on the same day and at the places where they shall respectively vote for members of the National Council. The returns of the election for Principal Chief shall be sealed up and directed to the President of the National Committee, who shall open and publish them in the presence of the National Council assembled. The person having the highest number of votes shall be Principal Chief; but if two or more shall be equal and highest in votes, one of

them shall be chosen by joint vote of both branches of the Council. The manner of determining contested elections shall be directed by law.

- 1860 *Choctaw Constitution*:
 - Article V, §1 – The Supreme Executive power of the Choctaw Nation shall be vested in the Principal Chief, assisted by three subordinate District Chiefs, who shall hold their respective offices for the term of two years from the time of their installation. But they shall not be eligible for the same office for more than two terms in succession.
 - Article V, §3 – The returns for every election for Principal Chief shall be made out, sealed up and transmitted to the Supreme Judges of each District, to be forwarded by him to the National Secretary, who shall deliver them to the Speaker of the House of Representatives during the first week of its organization, who shall proceed to open and count the votes in the presence of both Houses of the General Council, and the person having the highest number of votes shall be declared Principal Chief by the Speaker. But if two or more shall be equal or highest in votes, then one of them shall be chosen Principal Chief by the joint ballot of both Houses of the General Council; but the returns of every election for District and County officers shall be made out, sealed and transmitted to the Supreme Judge of each District who shall proceed to open, take an abstract, and declare what candidates for District and County officers are elected, and forward a true copy of the same to the National Secretary who shall file them in his office for safe keeping.
- 1867 *Creek Constitution*:

- Article II, §1 – There shall be a Principal Chief, to be styled the “Principal Chief of the Muskogee Nation,” who shall be elected for the term of four years, by a majority of the votes of the male citizens of the Muskogee Nation who shall have attained the age of eighteen years. There shall also be a Second Chief, who shall be chosen for the same terms. In the same manner as that prescribed for the election of the Principal Chief, and in case of death, resignation, or removal from office of the Principal Chief, he shall perform all the duties of that officer.
- *1867 Chickasaw Constitution:*
 - Article V, §1 – The supreme executive power of this Nation shall be vested in a Chief Magistrate, who shall be styled “The Governor of the Chickasaw Nation.”
 - Article V, §2 – The Governor shall be elected by the qualified electors of Nation, at the time and place of elections for members of the legislature, and shall hold office for two years from the time of installation, and until his successor shall be qualified; but shall not be eligible for more than four years in any term of six years.
 - Article V, §4 – The returns for every election of Governor shall be made out, sealed up and transmitter to the National Secretary, at the seat of Government, who shall deliver it to the Speaker of the House of Representatives, during the first day of its organization, who shall proceed immediately to open and count the votes in the presence of both Houses of the Legislature. The person having a majority of the whole number of said votes shall be declared by the Speaker to be Governor. But if no person shall have a majority of said votes, or if two or more shall have an equal and the greatest number of said votes, then the said legislature,

on the second day of its organization, by joint vote of both houses, shall proceed without debate, to choose a Governor from the list of names of the two persons having the greatest number of votes so returned, as aforesaid.

- Article VII, §15 – All general elections by the people for officers under this Constitution shall be held on the second Wednesday in August, in each year. The Legislature shall prescribe the manner of conducting said elections.

Article IV, §2

The manner of conducting and determining contested elections shall be directed by law.

- *1860 Choctaw Constitution:*
 - Article VII, §15 – All contested elections for Principal Chief and other officers shall be determined as the law may prescribe.

Article IV, §3

No person shall be eligible to the office of Governor who shall not have attained to the age of thirty years.

- *1839 Cherokee Constitution:*
 - Article IV, §2 – No person except a natural born citizen shall be eligible to the office of Principal Chief; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years.
- *1860 Choctaw Constitution:*
 - Article V, §6 – No person shall be eligible to the office of Principal or District Chief unless he shall have attained the age of thirty years, and have been an inhabitant of the Choctaw Nation at least five years next preceding his election.

- *1867 Creek Constitution:*

- Article II, §2 – No person shall be eligible to the office of Principal Chief or Second Chief of the Muskogee Nation, who is not a recognized citizen of the same and who shall not have attained the age of thirty years.
- *1867 Chickasaw Constitution:*
 - Article V, §3 – No person shall be eligible to the office of Governor unless he shall have attained the age of thirty years, and shall have been a resident of the Nation for one year next preceding his election. Neither shall any person, except a Chickasaw by birth, or an adopted member of the tribe, at the time of the adoption of this Constitution be eligible to the office of Governor.

Article IV, §4

Whenever the office of Governor shall become vacant by death, resignation, removal from office or otherwise, the President of the Senate shall exercise the office, until another Governor shall be duly qualified. In case of the death, resignation, removal from office or other disqualification of the President of the Senate so exercising the office of Governor, the Speaker of the House of Representatives shall fill the office until the President of the Senate shall have been chosen and qualified to act as Governor.

- *1839 Cherokee Constitution:*
 - Article IV, §4 – In case of the removal of the Principal Chief from office, or of his death or resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the assistant Principal Chief until the disability be removed or a Principal Chief shall be elected.
 - Article IV, §5 – The National Council may by law provide for the case of removal, death, resignation, or disability of both the Principal Chief and assistant

Principal Chief, declaring what officer shall then act as Principal Chief until the disability be removed or a Principal Chief shall be elected.

- 1860 *Choctaw Constitution*:
 - Article V, §4 – In case of death, resignation or removal of the Principal Chief, the President of the Senate shall exercise the duties of Principal Chief, until the next regular election for that office; but should the vacancy be on account of the inability of the Principal Chief to discharge his duties, the President of the Senate shall exercise such of the said duties until inability shall be removed.

- 1867 *Chickasaw Constitution*:
 - Article V, §14 – Whenever the office of Governor shall become vacant by death, resignation, removal from office or otherwise, the president of the Senate shall exercise the office of Governor until another Governor shall be duly qualified; and in case of death resignation, removal from office, or other disqualification of the President of the Senate, so exercising the office of Governor, the Speaker of the House of Representatives shall exercise the office until the President of the Senate shall have been chosen. And when the office of Governor, President of Senate, and Speaker of the house, shall become vacant, in the recess of the senate, the person acting as National Secretary for the time being shall, by proclamation, convene the senate, that a President may be chosen to exercise the office of Governor. When either the President or Speaker of the House of Representatives shall so exercise the duties of said office, he shall receive the compensation of the Governor only; and his duties as President or Speaker shall be suspended: and the

Senate or House of Representatives, as the case may be, shall fill the vacancy until his duties as Governor shall cease.

Article IV, §5

The Governor shall receive at stated times for his services a compensation to be fixed by law which shall be neither increased nor diminished during the period for which he shall have been elected, nor shall he receive within that period other emolument from the Indian Territory.

- 1839 *Cherokee Constitution*:
 - Article IV, §6 – The Principal Chief and assistant Principal Chief shall, at stated times, receive for their services a compensation which shall neither be increased nor diminished during the period for which they shall have been elected; and they shall not receive within that period any other emolument from the Cherokee Nation or any other Government.
- 1867 *Chickasaw Constitution*:
 - Article V, §5 – The Governor shall receive, for his services, a compensation Three Dollars per day, changed to Four Dollars per day, by law to be fixed by law, which shall neither be increased nor diminished during his continuance in office.

Article IV, §6

The Governor shall from time to time give to the General Assembly information in writing of the state of the Government and recommend to its consideration such measures as he may deem expedient, and shall take care that the laws be faithfully executed.

- 1839 *Cherokee Constitution*:

- Article IV, §9 – He shall from time to time, give to the National Council information of the state of government, and recommend to their consideration such measures as he may deem expedient.
- Article IV, §10 – He shall take care that the laws be faithfully executed.
- 1860 *Choctaw Constitution*:
 - Article V, §7 – The Principal Chief shall from time to time give to the General Council information of the state of the Government, and recommend to their consideration such measures as he may deem expedient.
 - Article V, §8 – The Principal Chief shall take care that the laws be faithfully executed.
- 1867 *Chickasaw Constitution*:
 - Article V, §7 – He may, by proclamation, on extraordinary occasions, convene the legislature; and shall state to both houses, when assembled the purpose for which they have been convened. He shall, from time to time, give to the legislature information, in writing, of the state of the government; and recommend to their consideration such measures as he may deem expedient.

Article IV, §7

The Governor, on extraordinary occasions may by proclamation convene the General Assembly at the seat of Government to legislate upon such matters only as he may recommend.

- 1839 *Cherokee Constitution*:
 - Article IV, §8 – He may, on extraordinary occasions, convene the National Council at the seat of government.
- 1860 *Choctaw Constitution*:

- Article V, §9 – The Principal Chief, may by proclamation, on extraordinary occasions convene the General Council at the Seat of Government, or at a different place if that have become since their last adjournment, dangerous from an enemy or from contagious disease.
- *1867 Chickasaw Constitution:*
 - Article V, §7 – He may, by proclamation, on extraordinary occasions, convene the legislature; and shall state to both houses, when assembled the purpose for which they have been convened. He shall, from time to time, give to the legislature information, in writing, of the state of the government; and recommend to their consideration such measures as he may deem expedient.

Article IV, §8

When vacancies occur in offices the appointment of which is vested in the Governor by and with the consent of the Senate, he shall have power to fill such vacancies by commission which shall expire at the end of the next session of the General Assembly.

- *1839 Cherokee Constitution:*
 - Article IV, §13 – Vacancies that may occur in offices, the appointment of which is vested in the National Council, shall be filled by the Principal Chief during the recess of the National Council by granting commissions which shall expire at the end of the next session thereof.
- *1860 Choctaw Constitution:*
 - Article V, §11 – All vacancies which may occur in offices that are elective by the people or General Council, the Principal Chief shall have power to fill such vacancies by appointment until the next regular election.

- *1867 Chickasaw Constitution:*

- Article IV, §11 – When vacancies happen in either house, the Governor, or the person exercising the power of Governor, shall issue writs of election to fill such vacancy.
- Article V, §17 – When any office shall from any cause, become vacant, and no mode is provided by the Constitution and Laws for filling such vacancy, by granting a commission, which shall expire at the end of the legislature, or at the next election by the people.

Article IV, §9

The Governor may grant pardons, and respites and remit fines for offenses against the laws of this Territory, and shall commission all officers who shall be appointed or elected to office under the laws of the Territory.

- *1867 Creek Constitution:*

- Article II, §3 – The principal Chief is hereby invested with the relieving and pardoning power. He shall see that all the laws of this Nation are faithfully executed and enforced: shall make the annual report to the National Council of the condition of affairs in the Nation; and shall recommend such measures as he may deem necessary for the welfare of the Nation.

Article IV, §10

Every bill which shall have passed both houses of the General Assembly shall be presented to the Governor; if he approve, he shall sign it; if not he shall return it, with his objections, to the house in which it may have originated, which shall enter the objections at large upon the journal and proceed to reconsider it. If after such reconsideration two-thirds of the members present shall

agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of the members present of that house, it shall become a law; but in such case the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it unless the General Assembly by their adjournment prevent its return, in which case it shall be a law unless sent back within three days after their next meeting.

- 1839 *Cherokee Constitution*:
 - Article IV, §14 – Every bill which shall pass both branches of the National Council shall, before it becomes a law, be presented to the Principal Chief; if he approves, he shall sign it; but if not, he shall return it, with his objections to that branch in which it may have originated, who shall enter the objections at large on their journals and proceed to reconsider it; if, after such reconsideration, two-thirds of that branch shall agree to pass the bill, it shall be sent, together with the objections, to the other branch, by which it shall likewise be reconsidered, and, if approved by two-thirds of that branch, it shall become law. If any bill shall not be returned by the Principal Chief within five days (Sundays excepted), after the same has been presented to him, it shall become a law in like manner as if he had signed it, unless the National Council, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.
- 1860 *Choctaw Constitution*:

- Article III, §8 – Every bill which shall have passed both houses of the legislature shall be presented to the Principal Chief; if he approve, he shall sign it, but if not he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large upon a journal and proceed to reconsider it; if, after such reconsiderations, two-thirds of the members present shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of the members present, of that house, it shall become a law, but in such case the vote of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill be entered on the journals of each house respectively; if any bill shall not be returned by the Principal Chief within three days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it. Every bill presented to the Principal Chief one day previous to the adjournment of the Legislature, and not returned to the house in which it originated before its adjournment, shall become a law, and have the same force and effect as if signed by the Principal Chief.
- *1867 Creek Constitution:*
 - Article II, §4 – Whenever any bill or measure shall pass both houses, before it becomes law it shall be submitted to the Principal Chief for his approval or rejection. If he shall approve it, it shall become a law. If, however, he shall object to it, he shall return the bill to the house in which it originated, within five days, accompanied by his objections; but if not returned within five days it shall

become a law. If, however, any bill shall be passed over this veto a two-third vote of both houses, it shall become a law.

- Article II, §5 – When any bill shall pass both houses, and is submitted to the Principal Chief for approval or rejection, and he not having time to return the same within five days on account of adjournment, he shall be allowed three days in the next council within which to return the same.
- 1867 *Chickasaw Constitution*:
 - Article V, §12 – Every bill which shall have passed both Houses of the Legislature, shall be presented to the Governor; if he approve he shall sign it; but if not, he shall return it to the house in which it shall have originated, which shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration two-third of the members present shall agree to pass the bill, it shall be sent, with the objections to the other house, by which it shall likewise be considered. If approved by two-third of the members present at that house, it shall become a law. But in each case the votes of both houses shall be determined by yeas and nays. And the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the Governor within three days, (Sundays excepted) after it shall have been presented to him, that same shall be a law, in like manner as if he had signed it. Every bill presented to the Governor one day previous to the adjournment of the legislature, and not returned to the house in which it originated, before its adjournment, shall become a law, and have the same effect as if signed by the Governor.

Article IV, §11

There shall be a Secretary of said Territory who shall be appointed by the Governor with the advice and consent of the Senate and who shall hold his office for two years, and whose duties shall be prescribed by law. He shall also act as Treasurer of the Territory until otherwise provided. Before entering upon his duties as Treasurer, he shall give bond with such sureties as may be required by law. No money shall be drawn from the Treasury but by warrant from the Governor, and in consequence of appropriations made by law. There shall also be appointed in like manner one Marshal who shall have power to appoint such deputies as may be authorized. There shall likewise be appointed one Attorney General and two District Attorneys, whose duties and terms of office shall be defined by law.

- *1839 Cherokee Constitution:*
 - Article IV, §22 – The Treasurer shall, before entering on the duties of his office, give bond to the Nation, with sureties, to the satisfaction of the National Council, for the faithful discharge of his trust.
 - Article IV, §23 – No money shall be drawn from the Treasury but by warrant from the Principal Chief, and in consequence of appropriations made by law.
- *1860 Choctaw Constitution:*
 - Article VII, §22 – No money shall be drawn from the Treasury but in consequence of an appropriation made by law; an accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws, at every regular session of the General Council.
- *1867 Creek Constitution:*

- Article IV, §16 – There shall be one District Attorney elected, by the qualified electors of this Nation, who shall hold his office for two years, and his duties, salary and prerequisites shall be prescribed by law. He shall also act as Attorney General for the Nation.
 - Article IV, §17 – There shall be elected, by the qualified electors of each county, one Sheriff and a sufficient number of constables, who shall hold their office for two years; and the duties and prerequisites shall be prescribed by law. The Sheriff shall not be eligible more than four years in every six.
 - Article XI – There shall be a private secretary allowed the Principal Chief, who shall be compensated out of the National Treasury, as shall be provided for by law – said officer to be selected by the Principal Chief.
 - Article XIV – There shall be a National Treasurer for the term of four years, whose duty shall be to receive and receipt for all National funds, and to disburse the same as shall be provided for by law. He shall report the condition of the National finances to the National Council at least once every year. He shall be required to bind himself in a bond of five thousand (\$5,000) dollars with good security for the faithful performance of his duty.
 - Article XV – No moneys shall be drawn from the National Treasury except to carry out appropriations made by the National Council, and when such appropriation is provided for by law, the Principal Chief shall issue a draft upon the treasury to meet the provision.
- 1867 *Chickasaw Constitution*:

- Article V, §15 – There shall be a National Secretary, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall continue in office during the term of service of the Governor elect. He shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers and minutes, and vouchers relative thereto, before the legislature, or either house thereof; and shall perform such other duties as may be required of him by law. And for neglect of duty, or other misdemeanor in office, shall be subject to removal from office by the Governor.
- Article IV, §20 – No money shall be drawn from the treasury but in consequence of an appropriation made by law. An accurate statement of the receipts and expenditures of public monies shall be attached to, and published with the laws, at every regular session of the legislature.

Article IV, §12

All commissions shall be in the name and by the authority of the Indian Territory, and be sealed with the Seal and signed by the Governor and attested by the Secretary of the Territory.

- 1839 *Cherokee Constitution*:
 - Article VI, §4 – All commissions shall be “In the name and by the Authority of the Cherokee Nation,” and be sealed with the seal of the Nation, and signed by the Principal Chief. The Principal Chief shall make use of his private seal until a National seal shall be provided.
- 1867 *Chickasaw Constitution*:

- Article V, §11 – All commissions shall be in the name and by the authority of the Chickasaw Nation, and be sealed with the Great Seal, signed by the Governor, and attested by the National Secretary.

Article V, §1

The Judicial Department of the Indian Territory shall be vested in a Supreme Court, three District Courts, and such inferior courts as may be provided by law; but their jurisdiction shall not interfere with the civil and criminal jurisdiction retained to each separate nation by the treaties of 1866.

- 1839 Cherokee Constitution:
 - Article V, §1 – The Judicial Powers shall be vested in a Supreme Court, and such circuit and inferior courts as the National Council may, from time to time, ordain and establish.
- 1860 *Choctaw Constitution*:
 - Article IV, §1 – The Judicial power of this Nation shall be vested in one Supreme Court, in Circuit and County Courts.
- 1867 *Chickasaw Constitution*:
 - Article VI, §1 – The Judicial powers of this Nation shall be vested in one Supreme Court, in District Courts, and in such County Courts as the legislature, may from time to time, ordain and establish, and as may be deemed necessary and be directed by law.

Article V, §2

The Supreme Court shall be composed of the three Judges who shall be appointed by the Governor with the approval of the Senate as District Judges. Two of said judges shall form a

quorum of the Supreme Court for the transaction of business. Their terms of office shall be six years, provided that the office of one of said judges shall be vacated in two years, of one in four years, and of one in six years, so that at the expiration of each two years one of said judges shall be appointed as aforesaid. The judge appointed for six years shall be the first Chief Justice of the Supreme Court and upon the expiration of his term the senior judge in office shall be thereafter the Chief Justice.

- 1839 *Cherokee Constitution*:
 - Article V, §2 – The judges of the Supreme and Circuit courts shall hold their commissions for the term of four years, but any of them may be removed from office on the address of two-thirds of each branch of the National Council to the Principal Chief for that purpose.
- 1867 *Creek Constitution*:
 - Article III, §1 – The supreme law defining power in this Nation shall be lodged in a high court, to be composed of five competent persons, who shall be chosen by the National Council for the term of four years.
- 1867 *Chickasaw Constitution*:
 - Article VI, §2 – The Supreme Court shall consist of a Chief Justice and two Associates, any two of whom shall form a quorum.
 - Article VI, §6 – The legislature shall, by joint vote of both houses elect the Judges of the Supreme and Circuit Courts, a majority of the whole number in joint vote being necessary to a choice. The judges of the Supreme and Circuit Courts shall be at least 30 years of age. They shall hold their office during the term of four years from the date of their commission.

Article V, §3

The Supreme Court shall meet at the Capital commencing on the first Mondays in June and December in each year. The Supreme Court shall be a court of appellate jurisdiction from the district courts and original jurisdiction in such cases as may be prescribed by law.

- 1839 *Cherokee Constitution*:
 - Article V, §10 – The Supreme Court shall, after the present year, hold its session annually at the seat of government, to convened on the first Monday of October in each year.
- 1867 *Creek Constitution*:
 - Article III, §2 – This court shall meet on the first Monday in October of each year, and shall have power to try all cases where the issue is for more than one hundred dollars.
- 1867 *Chickasaw Constitution*:
 - Article VI, §3 – The Supreme Court shall have appellate jurisdiction only, which shall be co-extensive with the limits of the Nation under such restrictions and regulations, not repugnant to this Constitution, as may from time to time, be prescribed by law; provided, nothing in this article shall be construed to prevent the legislature from giving the Supreme Court original jurisdiction in capital cases, when the Judge of the District Court may be interested or prejudiced.

Article V, §4

The Supreme and District judges shall have power to issue writs of *habeas corpus* and other process necessary to the exercise of their appellate or original jurisdiction.

- 1860 *Choctaw Constitution*:

- Article IV, §4 – The Supreme Judges shall have power to issue writs and other process necessary to the exercise of their appellate jurisdiction and shall have original jurisdiction only in such cases as may hereafter be provided by law, and shall be conservators of the peace throughout the Nation.
- *1867 Chickasaw Constitution:*
 - Article VI, §4 – The Supreme Court shall have power to issue such writs as shall be necessary to enforce its own jurisdiction; and also compel a judge of the District Court to proceed to trial and judgment in a cause; and shall hold its session twice in each and every year at the seat of Government, commencing on the first Mondays of the months of April and October.

Article V, §5

The District Courts shall have original jurisdiction of all cases civil and criminal arising from the trade or intercourse between the several nations and all cases arising under the legislation of this government as may be prescribed by law.

- *1860 Choctaw Constitution:*
 - Article IV, §5 – The Circuit Courts shall be composed of one Circuit Judge in each District, and shall have original jurisdiction in all criminal cases which shall not be otherwise provided for by law, and exclusive original jurisdiction of all crimes amounting to felony, and original jurisdiction of all civil cases which shall be cognizable before the Judges of the county, until otherwise directed by law, and original jurisdiction in all matters of contracts, and in all matters of controversy where the same is over Fifty Dollars. It shall hold its term at such

time and places in each district as are now specified by law or may hereafter be provided.

Article V, §6

Writs of error, bills of exceptions, and appeals may be allowed from the final decisions of the District Courts in such cases as shall be prescribed by law.

Article V, §7

It shall be the duty of the General Assembly to divide the Indian Territory into three districts which shall be as nearly equal in territory and population as may be practicable, assign one of the three judges to each district and provide for the holding of terms of the district court in each at such times and places as may be deemed expedient.

Article V, §8

No person shall be appointed a judge of any of the Courts until he shall have attained to the age of thirty years and be a person of good character and suitable qualifications.

- 1839 *Cherokee Constitution*:
 - Article V, §4 – No person shall be appointed a judge of any of the courts until he shall have attained the age of thirty years.
- 1860 *Choctaw constitution*:
 - Article IV, §8– The Judges of the Supreme Court shall be at least thirty years of age, and Circuit Judges of the Circuit Courts shall be at least twenty-five years of age before they shall be eligible to hold the office, and when elected they shall serve for the term of four years from the date of their commission; they shall appoint their own clerks under such provisions as the law may provide.
- 1867 *Creek Constitution*:

- Article III, §3 – No one shall be eligible to a position in this court but a recognized citizen of the Muskokee Nation who shall have attained to the age of twenty-five years, and a majority of these officers being present, shall form a quorum to do business, whose pay shall be provided by law.

Article V, §9

No judge shall sit on a trial of any cause in which he may be interested, or in which he is connected to either of the parties by affinity or consanguinity, except by consent of the parties; and in case of disqualification of any judge, the vacancy shall be filled as may be prescribed by law.

- 1839 *Cherokee Constitution*:
 - Article V, §7 – No Judge shall sit on trial of any cause when the parties are connected by affinity or consanguinity, except by consent of the parties. In case all the Judges of the Supreme Courts shall be interested in the issue of any case, or related to all or either of the parties, the National Council may provide by law for the selection of a suitable number of persons of good character and knowledge, for the determination thereof, and who shall be specially commissioned for the adjudication of such cases by the Principal Chief.
- 1860 *Choctaw Constitution*:
 - Article IV, §13 – No Judge shall preside on the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected to him by affinity or consanguinity, within such degree as may be prescribed by law, or in which he may have been of counsel, or have presided in any Circuit or County Courts, except by consent of all parties. In case any or all the Judges of

the Supreme Court shall be thus disqualified from presiding on any cause or causes, the Court of Judges thereof shall certify the same to the Principal Chief of the Nation, who shall immediately commission the requisite number of men learned in law for the trial and determination thereof. But in case such disqualification shall take place in any of the Circuit or County Judges, the Circuit or County Judge shall have the power to appoint a substitute for that particular case for which he may be disqualified.

- *1867 Creek Constitution:*
 - Article VI, §15 – No Judge shall sit in any case wherein he may be interested or where either of the parties may be connected with him by affinity or consanguinity within such degrees as may be prescribed by law, or where he shall have been of counsel in the cause. When the Supreme Court, or any two of its members, shall be thus disqualified to hear and determine any cause or causes in said Court, by reason of the equal division of opinion of said judges, the same shall be certified to the Governor of the Nation, who shall immediately commission the requisite number of persons for the trial and determination of said case or cases. When the Judges of the District Court are thus disqualified, the parties in controversy may, by consent, appoint a proper person to try the case, but in case of disagreement to appoint a proper person by the parties, the same shall be certified to the Governor, to be proceeded with as in the case of Supreme Judges. The disqualification of Judges of County Courts shall be remedied as may hereafter be by law prescribed.

Article V, §10

All writs and other process shall run in the name of the Indian Territory and bear test and be signed by the Clerk issuing the same.

- 1839 *Cherokee Constitution*:
 - Article V, §8 – All writs and other process shall run “In the Name of the Cherokee Nation,” and bear test and be signed by the respective clerks.
- 1860 *Choctaw Constitution*:
 - Article IV, §18 – Writs and other process shall run in the name of the “Choctaw Nation,” and be attest and signed by the Clerks of their respective courts from which they issue, and all indictments shall conclude against the peace and dignity of the Choctaw Nation.

Article V, §11

Indictments shall conclude “Against the peace and dignity of the Indian Territory.”

- 1839 *Cherokee Constitution*:
 - Article V, §9 – Indictments shall conclude – “Against the Peace and Dignity of the Cherokee Nation.”
- 1867 *Chickasaw Constitution*:
 - Article VI, §18 – All Judges of the several courts of this Nation shall, by virtue of their offices, be conservators of the peace throughout the Nation. The style of all writs and process shall be “The Chickasaw Nation,” and concluded “Against the peace and dignity of the Nation.”

Article V, §12

Each court shall appoint its own Clerk whose duty and compensation shall be fixed by law.

- 1867 *Chickasaw Constitution*:

- Article VI, §5 – The Supreme Court shall appoint its own clerk, who shall hold his office for four years, and be subject to removal by the said Court for neglect of duty, misdemeanor in office, and such other causes as may be prescribed by law.

Article VI, §1

The General Assembly may propose such amendments to this Constitution as three-fourths of each branch may deem expedient; and the Governor shall issue a proclamation directing all civil officers of the Territory to promulgate the same as extensively as possible within their respective districts, at least six months previous to the annual sessions of the National Councils of the nations parties hereto; and if three-fourths of such National Councils at such next annual sessions shall ratify such proposed amendment they shall be valid to all intents and purposes as part of this Constitution.

- *1839 Cherokee Constitution:*

- Article VI, §10 – The National Council may propose such amendments to this Constitution as two-thirds of each branch may deem expedient, and the Principal Chief shall issue a proclamation, directing all civil officers of the several districts to promulgate the same as extensively as possible within their respective districts at least six months previous to the next general election. And if, at the first session of the National Council, after such general election, two-thirds of each branch shall, by ayes and noes, ratify such proposed amendments, they shall be valid to all intent and purposes, as parts of this Constitution; provided that such proposed amendments shall be read on three several days in each branch, as well when the same are proposed, as when they are ratified.

- *1860 Choctaw Constitution:*

- Article IX, §1 – Whenever a majority of the members of the General Council assembled shall deem it necessary, they may propose an amendment or amendments to this Constitution; which amendments shall be submitted by the National Secretary, at least four months preceding the next regular election, at which the qualified voters shall vote directly for and against such proposed amendment, or amendments; and if it shall appear that a majority of the qualified voters shall have voted in favor of such amendment or amendments, then the same may be incorporated as a part of this Constitution at the next succeeding General Council.
- Article IX, §2 – And if at any time, two-thirds of the Senate and the House of Representatives shall think necessary to revise and change this entire Constitution, they shall recommend to the electors, at the next election or members of the General Council, to vote for or against the convention, and it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, to be holden within six months after the passage of such law; and such convention shall consist of delegates equal to the number of members in the House of Representatives of the General Council.
- *1867 Chickasaw Constitution:*
 - Article VII, §11 – Whenever two-thirds of both branches of the Legislature deem it necessary, they may propose amendments to this Constitution; and if two-thirds of both branches of the succeeding Legislature approve such amendments, they shall be engrafted to, and form a part of this Constitution.

Declaration of Rights, preamble

That the general, great and essential principles of liberty and free government may be recognized and established we declare –

- *1867 Chickasaw Constitution:*
 - Preamble to Article I – That the general, great and essential principles of liberty and free government may be recognized, and established, we declare

Declaration of Rights, §1

That all political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit; and they shall have at all times the inalienable right to alter, reform or abolish their form of government as may be lawfully provided for.

- *1860 Choctaw Constitution:*
 - Article I, §2 – That all political power is inherent in the people, and all free governments are founded on their authority and establishment for their benefit, and therefore they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper or expedient.
- *1867 Chickasaw Constitution:*
 - Article I, §1 – All political power is inherent in the people and all free governments are founded on their authority, and instituted for their benefit; and they have at all times the inalienable right to alter, reform or abolish their form of government in such manner as they may think expedient.

Declaration of Rights, §2

The free exercise of religious worship and serving God without distinction of creed shall forever be enjoyed within the limits of this Territory. Provided that the liberty of conscience shall not be

so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace, safety and good morals of this Territory.

- 1839 *Cherokee Constitution*:
 - Article VI, §2 – The free exercise of religious worship, and serving God without distinction, shall forever be enjoyed within the limits of this Nation; provided, that this liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this Nation.

Declaration of Rights, §3

No religious test shall ever be required as a qualification to any office of public trust in this Territory.

- 1860 *Choctaw Constitution*:
 - Article I, §3 – There shall be no establishment of religion by law. No preference shall ever be given by law to any religious sects, society denomination or mode of worship. And no religious test shall ever be allowed as a qualification to any public trust under this government.
- 1867 *Chickasaw Constitution*:
 - Article I, §3 – No religious test shall ever be required as a qualification to any office of public trust in this Nation.

Declaration of Rights, §4

Every citizen shall be at liberty to speak, write or publish his opinions on any subject being responsible for the abuse of this privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.

- 1860 *Choctaw Constitution*:
 - Article I, §9 – That the printing press shall be free to every person, and no law shall ever be made to restrain the rights thereof. The free communication of opinion is one of the inviolable rights of man, and every citizen may speak freely, write, and print on any subject, being responsible for the abuse of that liberty.
- 1867 *Chickasaw Constitution*:
 - Article I, §5 – Every citizen shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege, and no law shall ever be passed curtailing the liberty of speech, or of the press.

Declaration of Rights, §5

The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches, seizures, and intrusions; and no warrant to search any place or to seize any person or thing shall be issued without describing them as nearly as may be, nor without good cause supported by oath or affirmation.

- 1839 *Cherokee Constitution*:
 - Article V, §12 – The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place, or to seize any person or thing, shall issue, without describing them as nearly as may be, nor without good cause, supported by oath or affirmation.
- 1860 *Choctaw Constitution*:
 - Article I, §10 – That the people shall be secure in their persons, houses, papers and possessions from unreasonable seizures and searches, and that no warrant to search any place or to seize any person or thing shall issue, without describing the

place to be searched and the person or thing to be seized as nearly as may be, nor without probable cause supported by oath or affirmation. But in all cases where suspicion rests on any person or persons of conveying or secreting whiskey or other intoxicating liquors, the same shall be liable to search or seizure as may be hereafter provided by law.

- *1867 Chickasaw Constitution:*
 - Article I, §6 – The people shall be secure in their persons, houses, papers, possessions, from all unreasonable searches or seizures; and no warrant to search any place, or to seize anything, shall issue without describing them, as near as may be, nor without probable cause, supported by oath or affirmation; provided, however, that searches for and seizures of intoxicating liquors, are not to be considered unreasonable searches or seizures.

Declaration of Rights, §6

In all criminal prosecutions the accused shall have a speedy trial by an impartial jury, of the district wherein the crime shall have been committed; the right of demanding the nature and cause of the accusation, of having the witnesses to testify in his presence, of having compulsory process to procure witnesses in his favor, of having the right to be heard by himself and counsel, of not being compelled to testify against himself, nor to be held to answer to any criminal charge but on information or indictment by a grand jury.

- *1839 Cherokee Constitution:*
 - Article V, §11 – In all criminal prosecutions the accused shall have the right of being heard; of demanding the nature and cause of the accusation; of meeting the witnesses face to face; of having compulsory process for obtaining witnesses in

his or their favor; and in prosecutions by indictment or information, a speedy public trial, by an impartial jury of the vicinage; nor shall the accused be compelled to give evidence against himself.

- 1860 *Choctaw Constitution*:
 - Article I, §17 – That in all criminal prosecutions, the accused hath a right to be heard by himself or counsel, or both, to demand the nature and cause of accusation, to be confronted by the witnesses against him, to have a compulsory process for obtaining witnesses in his favor; and in all prosecutions by indictment or information, a speedy and public trial by an impartial jury of the county or district where the offense was committed; that he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, but by the due course of law.
- 1867 *Creek Constitution*:
 - Article VII – All persons shall be allowed the right of counsel.
- 1867 *Chickasaw Constitution*:
 - Article I, §7 – In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall not be compelled to give evidence against himself. He shall be confronted with the witness against him, and shall have compulsory process for obtaining witnesses in his favor. And no person shall be held to answer for any criminal charge, but on indictment or information.

Declaration of Rights, §7

All prisoners shall be bailable before conviction by sufficient surety except for a capital offense where the proof is evident or the presumption great.

- 1839 *Cherokee Constitution*:
 - Article V, §13 – All persons shall be bailable by sufficient securities, unless for capital offenses, where the proof is evident or presumption great.
- 1860 *Choctaw Constitution*:
 - Article I, §18 – That all prisoners shall, before conviction, be bailable by sufficient securities, except for capital offenses, where the proof is evident, or the assumption great, and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion, the public safety may require it.
- 1867 *Chickasaw Constitution*:
 - Article I, §8 – All persons shall be bailable by sufficient sureties except such as may, in the opinion of the Judge of the examining court, be guilty of willful murder.

Declaration of Rights, §8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, and all courts shall be open and every person for an injury done him in his person, reputation or property, shall have remedy as the law directs.

- 1839 *Cherokee Constitution*:
 - Article VI, §7 – The right of trial by jury shall remain inviolate, and every person, for injury sustained in person, property, or reputation, shall have remedy by due process of law.
- 1860 *Choctaw Constitution*:

- Article I, §13 – That excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.
- *1867 Chickasaw Constitution:*
 - Article I, §9 – Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. All courts shall be open; and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by course of law.

Declaration of Rights, §9

No person for the same offense shall be twice put in jeopardy of life or limb and the right of trial by jury shall remain inviolate.

- *1839 Cherokee Constitution:*
 - Article VI, §6 – No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall the property of any person be taken and applied to public use without a just and fair compensation; provided, that nothing in this clause shall be construed as to impair the right and power of the National Council to lay and collect taxes.
 - Article VI, §7 – The right of trial by jury shall remain inviolate, and every person, for injury sustained in person, property, or reputation, shall have remedy by due process of law.
- *1860 Choctaw Constitution:*
 - Article I, §5 – No person shall for the same offense be twice put in jeopardy of life or limb, nor shall any person's property be taken from or applied to public use

without the consent of the General Council, and without just compensation being first made therefor.

- Article I, §7 – The right of trial by jury shall remain inviolate.
- 1867 *Chickasaw Constitution*:
 - Article I, §10 – No person, for the same offense, shall be twice put in jeopardy of life and limb; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty. And the right of trial by jury shall remain inviolate.

Declaration of Rights, §10

No person shall be imprisoned for debt.

- 1860 *Choctaw Constitution*:
 - Article I, §12 – No person shall ever be imprisoned for debt.
- 1867 *Chickasaw Constitution*:
 - Article I, §12 – No person shall ever be imprisoned for debt.

Declaration of Rights, §11

The citizens shall have the right in a peaceable manner to assemble for their common good, to instruct their representatives and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

- 1860 *Choctaw Constitution*:
 - Article I, §15 – That the citizens have a right in a peaceable manner to assemble together for their common good, to instruct their representatives, and apply to those invested with the powers of the government for redress of grievances, or other proper purposes, by petition, address or remonstrance.
- 1867 *Chickasaw Constitution*:

- Article I, §13 – The citizens shall have the right in a peaceable manner to assemble together for their common good, and to apply to those invested with powers of government for redress of grievances, or other purposes, by address or remonstrance.

Declaration of Rights, §12

The privilege of the writ of *habeas corpus* shall not be suspended unless the public safety should require it.

Declaration of Rights, §13

All power not herein expressly granted by the nations parties to this constitution are reserved by them respectively according to the provisions of their several treaties with the United States.

Schedule to the Constitution

In order to organized the Government of the Indian Territory, and secure practical operation for the same, it is hereby ordained and the provisions of this schedule shall be of the same binding force as the Constitution, of which it is a part, that it shall be the duty of the Secretary of this General Council to transmit a duly authenticated copy of this Constitution to the executive authority of each nation represented in the General Council and to ask the acceptance and ratification of the same by the Councils or people of the respective Nations.

Upon receiving from such authority notification of its acceptance and ratification by National Councils representing two-thirds of the population of the nations represented in the General Council, it shall be his duty to promulgate such fact, and to call a session of the General Council from the nations ratifying this Constitution at such place as the present session may designate for its next meeting. It shall be the duty of the General Council when so assembled to adopt such measures as may be necessary to secure the election of a Governor and members of

the General Assembly, and to fix the time of the first meeting of said assembly, whose duty it shall be to perfect the organization of the Government of the Indian Territory under the provisions of the foregoing Constitution.

Provided, that this Constitution shall be obligatory and binding only upon such nations and tribes as may hereafter duly approve and adopt the same.

Enoch Hoag,

Supt. Indian Affairs, President

G. W. Greyson, Secretary