

An Indigenous Constitution: The 1827

Cherokee Nation Constitution

*Formed by a Convention of Delegates from the several Districts, at New Echota, July 1827 Published
February, 21, 1828.*

WE THE REPRESENTATIVES of the people of the CHEROKEE NATION in Convention assembled, in order to establish justice, ensure tranquility, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty, acknowledging with humility and gratitude the goodness of the sovereign Ruler of the Universe, in offering as an opportunity so favorable to the design, and imploring his aid and direction in its accomplishment, do ordain and establish this Constitution for the Government of the Cherokee Nation.

ARTICLE I

Sec. 1. THE BOUNDARIES of this nation, embracing the lands solemnly guaranteed and reserved forever to the Cherokee Nation by the Treaties concluded with the United States, are as follows; and shall forever hereafter remain unalterably the same-.....

Sec. 2. The Sovereignty and Jurisdiction of this Government shall extend over the country within the boundaries above described, and the lands therein are, and shall remain the common property of the Nation; but the improvements made thereon, and in the possession of the citizens of the Nation, are the exclusive and indefeasible property of the citizens respectively who made, or may rightfully be in possession of them; *Provided*, That the citizens of the Nation, possessing exclusive and indefeasible right to their respective improvements, as expressed in this article, shall possess no right nor power to dispose of their improvements in any manner whatever to the United States, individual states, nor to individual citizens hereof; and that, whenever any such citizen or citizens shall remove with their effects out of the limits of this Nation, and become citizens of any other government, all their rights and privileges as citizens of this nation shall cease; *Provided nevertheless*, That the Legislature shall have power to re-admit by law to all the rights of citizenship any such person or persons, who may at any time desire to return to the Nation on their memorializing the General Council for such readmission.

Moreover, the Legislature shall have power to adopt such laws and regulations, as its wisdom may deem expedient and proper, to prevent the citizens from monopolizing improvements with the view of speculation.

ARTICLE II

Sec. 1. The Power of this Government, shall be divided into three distinct departments; the Legislative, the Executive, and the Judicial.

Sec. 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.

ARTICLE III

Sec. 1. THE LEGISLATIVE POWER shall be vested in two distinct branches; a Committee, and a Council; each to have a negative on the other, and both to be styled, the General Council of the Cherokee Nation; and the style of their acts and laws shall be,

'RESOLVED by the Committee and Council in General Council convened.'

Sec. 2. The Cherokee Nation, as laid off into eight Districts, shall so remain.

Sec. 3. The Committee shall consist of two members from each district, and the Council shall consist of three members from each District, to be chosen by the qualified electors of their respective Districts for two years; and the elections to be held in every District on the first Monday in August for the year 1828, and every succeeding two years thereafter; and the General Council shall be held once a year, to be convened on the second Monday of October in each year, at New Echota.

Sec. 4. No person shall be eligible to a seat on the General Council, but a free Cherokee Male citizen, who shall have attained to the age of twenty-five years. The descendants of Cherokee men by all free women, except the African race, whose parents may be or have been living together as man and wife, according to the customs and laws of this Nation, shall be entitled to all the rights and privileges of this Nation, as well as the posterity of Cherokee women by all free men. No person who is of negro or mulatto parentage, either by the father or mother side, shall be eligible to hold any office of profit, honor or trust, under this Government.

Sec. 5. The Electors, and members of the General Council shall, in all cases except those of treason, felony, or breach of peace, be privileged from arrest during their attendance at election, and at the General Council, and in going to, and returning from the same.

Sec. 6. In all elections by the people, the electors shall vote *viva voce*. The General Council shall have power.... to regulate by law the precincts and superintendents and clerks of elections in the several Districts.

Sec. 7. All free male citizens (except negroes, and descendants of white and Indian men by negro women, who may have been set free,) who shall have attained to the age of eighteen years, shall be equally entitled in vote at all public elections.

Sec. 8. Each House of the General Council shall judge of the qualifications, elections, and returns of its own members.

Sec. 9. Each House of the General Council may 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 cause.

Sec. 10. Each house of the General Council, when assembled, shall choose its own officers; 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 penalty, as each house may prescribe.

Sec. 11. The members of the committee shall each receive from the public Treasury a compensation for their services, which shall be *two dollars and fifty cents* per day during their attendance at the General Council; and the members of the Council shall each receive *two dollars* per day, for their services during their attendance at the General Councils *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 General Council, by whom such alteration shall have been made.

Sec. 12. The General Council shall regulate by law, by whom and in what manner, writs of elections shall be issued to fill the vacancies which may happen in either branch thereof.

Sec. 13. Each member of the General Council, before he takes his seat, shall take the following oath of affirmation; to wit:

'I A, B, do solemnly swear (or affirm as the case may be) that I have not obtained my election by Bribery, Treats, or any undue and unlawful means used by himself, or others by my desire or approbation, for that purpose; that I consider myself Constitutionally qualified as a member of _____; and that, on all questions and measures which may come before me, I will so give my vote, and so conduct myself, as may, in my judgment, appear most conducive to the interest and prosperity of this Nation; and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power observe conform to, support, and defend the Constitution thereof.'

Sec. 14. No person who may be convicted of felony before any court of this Nation shall be eligible to any office or appointment of honor, profit, or trust, within this Nation.

Sec. 15. The General Council shall have power to make all laws and regulations, which they shall deem necessary and proper for the good of the Nation, which shall not be contrary to this Constitution.

Sec. 16. It shall be the duty of the General Council to pass such laws as may be necessary and proper, to decide differences by arbitrators to be appointed by the parties; who may choose that summary mode of adjustment.

Sec. 17. No power of suspending the laws of this Nation shall be exercised unless by the Legislature or its authority.

Sec. 18. No respective law, nor any law impairing the obligations of contracts shall be passed.

Sec. 19. The Legislature shall have power to make laws for laying and collecting taxes, for the purpose of raising a revenue.

Sec. 20. All bills making appropriations shall originate in the Committee, but the Council may propose amendments or reject the same.

Sec. 21. All other bills may originate in either house, subject to the concurrence or rejection of the other.

Sec. 22. All acknowledged Treaties shall be the Supreme Law of the land.

Sec. 23. The General Council shall have the sole power of deciding on the construction of all Treaty stipulations.

Sec. 24. The Council shall have the sole power of impeaching.

Sec. 25. All impeachments shall be tried by the Committee; when sitting for that purpose, the members shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present.

Sec. 26. The Principal Chief, assistant principal Chief, and all civil officers, under this nation shall be liable to impeachment for any misdemeanor in office, but Judgment in such cases shall not extend further that removal from office, and disqualification to hold office of honor, trust or profit, under this Nation. The party, whether convicted or acquitted shall, *nevertheless*, be liable to indictment, trial, judgment and punishment according to law...

ARTICLE IV

Sec.1 . The Supreme Executive power of this Nation shall be vested in a Principal Chief, who shall be chosen by the General Council, and shall hold his office four years; to be elected as follows.- The General Council, by a joint vote, shall, at their second annual session, after the rising of this Convention, and at every fourth annual session thereafter, on the second day after the Houses shall be organized, and competent to proceed to business, elect a Principal Chief.

Sec. 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 to the age of thirtyfive years.

Sec. 3. There shall also be chosen at the same time, by the General Council, in the same manner, for four years, and assistant Principal Chief.

Sec. 4. In case of the removal of the Principal Chief from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Assistant Principal Chief, until the inability be removed or the vacancy filled by the General Council.

Sec. 5. The General Council may, by law, provide for the case of removal, death, resignation or inability of both the Principal and assistant Principal Chiefs, declaring what officer shall then act as Principal Chief, until the disability be removed, or a Principal Chief shall be elected.

Sec. 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.

Sec. 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 office 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.'

Sec. 8 He may, on extraordinary occasions, convene the General Council at the Seat of Government.

Sec. 9. He 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 think expedite.

Sec. 10. He shall take care that the laws be faithfully executed.

Sec. 11. It shall be his duty to visit the different districts, at least once in two years, to inform himself of the general condition of the Country.

Sec. 12. The Assistant Principal Chief shall, by virtue of his office, aid and advise the Principal Chief in the Administration of the Government, at all times during his continuance in office.

Sec. 13. Vacancies that may happen in offices, the appointment of which is vested in the General Council, shall be filled by the Principal Chief, during the recess of the General Council, by granting Commissions which shall expire at the end of the next Session.

Sec. 14. Every Bill which shall have passed both Houses of the General Council shall, before it becomes a law, be presented to the Principal Chief of the Cherokee Nation. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall 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 House shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. If any bill shall not be returned by the Principal Chief within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it; unless the General 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.

Sec.15. Members of the General 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.

Sec. 16. In case of disagreement between the two houses with respect to the time of adjournment, the Principal Chief shall have power to adjourn the General council to such a time as he thinks proper, *provided*, it be not to a period beyond the next Constitutional meeting of the same.

Sec. 17. The Principal Chief shall during the sitting of the General Council attend at the Seat of Government.

Sec. 18. There shall be a Council to consist of three men to be appointed by the joint vote of both Houses to advise the Principal Chief in the Executive part of the Government, whom the Principal Chief shall have full power, at his discretion, to assemble; and he, together with the assistant Principal Chief, and the Counsellors or a majority of them, may, from time to time, , hold and keep a Council for ordering and directing the affairs of the Nation according to law.,
Sec. 19. The members of the Council shall be chosen for the term of one year.

Sec. 20. The resolutions and advice of the Council shall be recorded in a register and signed by the members agreeing thereto, which may be called for by either house of the General Council; and any counsellor may enter his dissent to the resolution of the majority.

Sec. 21. The Treasurer of the Cherokee Nation shall be chosen by the joint vote of both Houses of the General Council for the term of two years.

Sec. 22. The Treasurer shall, before entering on the duties of his office, give bond to the Nation with sureties to the satisfaction of the Legislature, for the faithful discharge of his trust.

Sec. 23. No money shall be drawn from the Treasury, but by warrant from the Principal Chief, and in consequence of appropriations made by law.

Sec. 25 [sic]. It shall be the duty of the Treasurer to receive all public moneys, and to make a regular statement and account of the receipts and expenditures of all public moneys to the annual Session of the General Council

ARTICLE V

Sec. 1. The Judicial Powers shall be vested in the Supreme Court, and such Circuit and Inferior Courts, as the General Council may, from time to time, ordain and establish.

Sec. 2. The Supreme Court shall consist of three Judges, any two of whom shall be a quorum.

Sec. 3. The two Judges of each shall hold their Commissions four years, but any of them may be removed from office on the address of two thirds of each house of the General Council to the Principal Chief, for that purpose.

Sec. 4. The Judges of the Supreme and Circuit Courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust, under this Nation or any other power.

Sec. 5. No person shall be appointed a Judge of any of the Courts before he shall have attained to the age of thirty years, nor shall any person continue to execute the duties of any of the said offices after he shall have attained to the age of seventy years.

Sec. 6. The Judges of the Supreme and Circuit Courts shall be appointed by a joint vote of both houses of the General Council.

Sec. 7. There shall be appointed in each District, under the Legislative authority, as many Justices of the Peace as it may be deemed the public good requires, whose powers, duties, and duration in office, shall be clearly designated.

Sec. 8. The Judges of the Supreme Court and Circuit Courts shall have complete criminal Jurisdiction in such cases ' in such manner as may be pointed out by law.

Each Court shall choose its own Clerks for the term of four years; but such Clerks shall not be continued in office unless their qualifications shall be adjudged and approved of, by the Judges of the Supreme Court and they shall be removable for breach of good behavior at anytime, by the Judges of their respective courts.

Sec. 10. No Judge shall sit on trial of any cause, where the parties shall be connected with him by affinity or consanguinity, except by consent of the parties. In case all the Judges of the Supreme Court shall be interested in the event of any cause, or related to all, or either, of the parties, the Legislature may provide by law for the selection of three men of good character and knowledge, for the determination thereof, who shall be specially commissioned by the Principal Chief for the case.

Sec. 11. All writs and other process shall run, in the name of the Cherokee Nation, and bear test, and be signed by the respective clerks.

Sec. 12. Indictments shall conclude, 'against the peace ' dignity of the Cherokee Nation.'

Sec. 13. The Supreme Court shall hold its session annually at the Seat of Government to be convened on the second Monday of October in each year.

Sec. 14. In all criminal prosecutions, the accused shall have the right of being heard, of demanding the nature and cause of the accusation against him, of meeting the witnesses face to face, of having compulsory process for obtaining witness in his favor, and in prosecution by indictment or information, a speedy public trial by an impartial jury of the vicinage; nor shall he be compelled to give evidence against himself.

Sec. 15. 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 things, shall issue without describing them as nearly as may be, nor without good cause, supported by oath or affirmation. All prisoners shall beailable by sufficient securities, unless for capital offenses, where the proof is evident, or presumption great.

From the *Cherokee Phoenix*, issues 1 and 2:

<https://www.wcu.edu/library/DigitalCollections/CherokeePhoenix/Vol1/no01/constitution-ofthe-cherokee-nation-page-1-column-2a-page-2-column-3a.html>

<https://www.wcu.edu/library/DigitalCollections/CherokeePhoenix/Vol1/no02/continued-page-1column-2a.html>

[To learn about the current 2003 Constitution, see

https://www.cherokee.org/media/abbelmas/constitution_english.pdf]