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1-1-2012

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Bernholz, Charles D., "An Analysis of the Variants of the Okmulgee Constitution" (2012). *Faculty Publications, UNL Libraries.* Paper 266.
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THE CHRONICLES OF OKLAHOMA 89:4 (Winter 2011-12), pp. 496-498.
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## ✯ NOTES AND DOCUMENTS

# An Analysis of the Variants of the Okmulgee Constitution

*By Charles D. Bernholz**

The creation of the Okmulgee Constitution was a significant chapter in the history of Indian Territory and Oklahoma, but it is less well-known beyond those boundaries. This instrument was initially fashioned in 1870 and later contemplated at joint tribal meetings mandated by the federal government following the Civil War. The Five Civilized Tribes had been removed from the southeastern United States to lands obtained through the Louisiana Purchase in the first half of the nineteenth century, and at the beginning of the Civil War these and other tribes of Indian Territory consummated nine treaties with the Confederate States of America.[1] Following that conflict and those alliances, the tribes found themselves in desperate straits with the federal government. In seven stipulations presented at Fort Smith in September 1865 and through a series of new treaties formed the following year, federal authorities dictated future prospects. Significantly, proviso number six from the Fort Smith assembly declared that "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."[2]

A model to expedite the development of such a formalized administration was outlined in the parameters of Article 12 of the Treaty with the Cherokee (1866), which stated that "the Cherokees agree that a general council, consisting of delegates elected by each nation

or tribe lawfully residing within the Indian Territory, may be annually convened in said Territory, which council shall be organized in such manner and possess such powers as hereinafter prescribed."[3] The six separate provisions of that single article defined the organizational expectations of the federal government, and in a series of modest appropriations bills $61,500 was allocated to fund these undertakings.

Nine council meetings were convened in Okmulgee, the Creek capital of the territory, between September 1870 and September 1875. The critical task was to build a framework for a single federal state from the array of sovereign Indian nations within the territory, an unprecedented opportunity. The tribes were motivated by their desire to acquire a secure final homeland and by parallel federal enthusiasm for them to create a constitution for a new "Territory of Oklahoma," as announced in Article 8, §10 of the Treaty with the Choctaw and Chickasaw (1866).[4] During the December 1870 event an instrument was promptly established, with only slight revisions to its text implemented at the May 1875 gathering. The document was crafted primarily along the lines of other tribal manifestos, leaning heavily in particular upon the 1839 Cherokee, 1860 Choctaw, 1867 Creek, and 1867 Chickasaw declarations. Ultimately, the Okmulgee Constitution went unratified among the tribes, and calls for more traditional statehood grew louder as time passed. At the turn of the twentieth century Luther Hill called this Okmulgee creation "the first practical plan for the government of the Indian Territory," and this vision of an Indian state influenced the contents of both the Constitution of the State of Sequoyah (1905) and the Constitution of the State of Oklahoma (1907).[5]

During, and subsequent to, the conception of Okmulgee, fourteen variants were published consisting of the three primary texts created by the General Council in December 1870 and two accounts of the revised instrument from September 1875. One Senate bill contained text that cited the 1870 material, five additional federal representations, three popular press reports and a compendium example of the original description, plus one other federal rendition of the revision. These alternatives were examined for textual similarity as part of a study of the provenance of this political pronouncement and of the variability exhibited among them. The testing procedure was comparable to that executed for a previous study of the Treaty of Fort Laramie with Sioux, etc. (1851) that revealed that Laramie had never been published in a final and error-free state.[6] Misspellings and various text errors were found in the reproductions of the Okmulgee Constitution, just as they had been observed in the Laramie treaty consideration.

A full report examining this important nineteenth-century Indian Territory effort offers an in-depth view of the development of this multi-tribal document and provides provenance data for its articles.[7] In addition, a briefer Web page entitled "In order to organize the Government of the Indian Territory . . . : Comparing variants of the 1870 Okmulgee Constitution" (http://okmulgeeconstitution.unl.edu) furnishes access to the compiled data from all fourteen renditions used in this inquiry and to a description, derived from the larger investigation, of the comparative text analysis of these variants.[8] The latter is now a component of the American Indian Treaties Portal (http://treatiesportal.unl.edu/) created by the Center for Digital Research in the Humanities at the University of Nebraska-Lincoln.

## Endnotes

[*] Charles D. Bernholz is a professor and government documents librarian at the University of Nebraska-Lincoln.

[1] Charles D. Bernholz, Laura K. Weakly, Brian L. Pytlik Zillig, and Karin Dalziel, "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," http://csaindiantreaties.unl.edu/.

[2] *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*, 39th Cong., 1st sess. (1866), H. Ex. Doc. 1, pt. 2, 503.

[3] Charles J. Kappler, *Indian affairs: Laws and treaties*, vol. 2. 58th Cong., 2nd sess. (1904), S. Doc. 319, pt. 2, 945-46, http://digital.library.okstate.edu/kappler/Vol2/treaties/che0942.htm.

[4] Ibid., 922; http://digital.library.okstate.edu/kappler/Vol2/treaties/cho0918.htm.

[5] Luther B. Hill, *A History of the State of Oklahoma*, vol. 1 (Chicago: Lewis Publishing, 1909), 487; see, respectively, *Proposed State of Sequoyah*, 59th Cong., 1st sess. (1906), S. Doc. 143 and Roy Gittinger, *The Formation of the State of Oklahoma (1803-1906)* (Berkeley: University of California Press, 1917), 196-214.

[6] Charles D. Bernholz and Brian L. Pytlik Zillig, "The *Treaty of Fort Laramie with Sioux, etc., 1851*: Revisiting the document found in Kappler's *Indian Affairs: Laws and Treaties*," http://treatyoffortlaramie1851.unl.edu/; Charles D. Bernholz and Brian L. Pytlik Zillig, "Comparing nearly identical treaty texts: A note on the *Treaty of Fort Laramie with Sioux, etc., 1851* and Levenshtein's edit distance metric," *Literary and Linguistic Computing* 26 (April 2011): 5-16, http://digitalcommons.unl.edu/libraryscience/224/.

[7] This investigation, "Comparing texts of the Okmulgee Constitution: Fourteen instrument versions and Levenshtein's edit distance metric," is available at http://digitalcommons.unl.edu/libraryscience/231/.

[8] The author wishes to thank Laura K. Weakly and Karin Dalziel for creating this website from the results of my study of the constitution. This resource has been cataloged; its OCLC accession number is 741763784.