



The Written Law of the United Cherokee Nation of Indians-Aniyvwiya

Revised 07/21/2020

Approved 07/28/2020

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PREFACE

The ancient Cherokee had no need for a written law since the statutes they observed were engraved on their hearts from an early age and everyone practiced them every day in all aspects of their lives. Because they were interwoven into the very fabric of the Cherokee existence, the various precepts by which those people lived could not be overlooked, they could not be ignored.

Sadly, if a law was broken, the punishments were quite severe. “An eye for an eye” was the rule of retribution for the old Cherokee culture. This seemed to mimic the ancient Israeli law, even to the point of a clan member legally avenging the death of one of their other clan members.

Today, in a more enlightened time, we no longer subscribe to the brutality of the old days. Unfortunately, we also do not subscribe to the idea of laws “written on our hearts”. In today’s world, laws must be codified and transcribed into many formats so anyone who looks at a nation can see that they are “civilized”. The truth is that written law is much more easily ignored or conveniently forgotten.

Still, this is the world in which we live. Therefore, we have endeavored herein to provide a framework of law. It will afford the necessary codification required of us by other nations and it will allow for additional legal enactments should they become necessary.

The Star Council of the United Cherokee Nation-Aniyvwiya

INTRODUCTION

The Supreme Court of the United States has ruled again and again that the guidelines contained in the U.S. Constitution were for the U.S. only and did not apply to the Cherokee. They ruled that Tribal governments had full authority to structure their governments, including their court systems, as they chose. The Supreme Court decisions underscored the fact that the Tribal governments that exist today are continuations of governments in existence for thousands of years. Unlike state governments, Tribal governments were not created by the U.S. Constitution. Rather, they sprang from a power, or sovereignty, in existence before the Constitution and the federal government existed.

American Indian Tribal Governments by Sharon O'Brien 1989

Technically, we do not need the United States' permission to create and operate our government since we predate them by thousands of years. However, as we begin our long climb to the top, we must use every handhold. A perusal of U.S. law as it applies to the Native contingent of this country will show an abundance of laws that benefit the Tribes. They only need to be brought to the light to become useful. That, then, is our purpose; indeed, it is our mandate. We must assist in bringing the light and this entire document is one way that we begin.

The Elders and Star Council of the United Cherokee Nation-Aniyvwiya

“Mercy triumphs over judgment” -NKJV version Judeo/Christian Bible

Section One:

(a) The United Cherokee Nation-Aniyvwiya (also known as the United Cherokee Nation, the Cherokee Nation, the Nation and the Tribe) is a sovereign entity whose sovereignty is from antiquity and, therefore, does not come from the United States of America or any other group or nation.

(b) All laws and practices of the United Cherokee Nation shall display and encourage that inherent sovereignty.

(c) Any nation, group or person outside the Cherokee Nation who disparages that sovereignty, by word or deed, shall be deemed guilty of ***Lese Majeste***. Lese Majeste means “injured majesty” and protection from it shall extend to any/all persons and properties of the Nation as well as ideas emanating from same. Offenses of this type shall bear the most serious punishments.

(d) Even though our law has been codified and externalized, the understanding of the idea of “right and wrong”, which shall be the guiding factor both in our laws and in the prosecution of those who break them, shall be expected of all participants in the fellowship of the United Cherokee Nation. This is more than just a mechanical “do this” and “don’t do that” system. What we require is a genuine respect for a Tribal member’s self, for his/her fellow members and for the world at large.

(e) Interpretation of the laws of any/every land change with time. The United Cherokee Nation-Aniyvwiya is no exception. Just as a human ages and acquires a different understanding of his/her situation with themselves and the world in general, so this Cherokee Nation will

continue to age and develop. As it does this, the Nation as a whole will gain perspectives it did not possess in an earlier time. Yet, no matter the age or levels of understanding of our Nation and its people, we must always be able to interpret Cherokee law in the light of truth and integrity and fairness, both to those of us in the Nation and to others as well. The idea of “right and wrong”, mentioned in paragraph (d) above, must be the guiding principle of the elucidation of our Cherokee mandates. We must, therefore, use only such concepts of law as our Nation knows and uses to best construe the meanings of our laws, now and at any future date. Using another nation’s statutes and/or interpretations will prove injurious to this Cherokee Nation, its sovereignty, its people, its vision.

Section Two:

(a) Pursuant to the wishes of the Elders and Star Council of the United Cherokee Nation-Aniyvwiya as representatives and guardians of the Tribe and its people and as expressed in the Constitution of same Nation, the courts of the United Cherokee Nation (both Grand and Circuit) shall have power to try cases and interpret laws, civil and criminal, brought before them. The jurisdiction of said Courts shall extend to all matters involving the Nation, whether of a personal or National interest.

(b) Rather than produce endless lists of punishments our Judges may prescribe, we will rely on the integrity and justice inherent within those Judges and also their compassion and understanding of the human condition. Therefore, this framework shall, primarily, give guidelines concerning the punishment of breaches of Our laws.

(c) The Magistrate presiding over a case shall have broad powers of discretion as it applies to sentencing, which shall include but not be limited to, capital punishment, corporal punishment, incarceration, removal of privileges, fines and any other disciplinary action and/or combinations of disciplinary actions thought appropriate by the overseeing Magistrate. If, in the case of civil matters, a Judge feels that a court ordered go-between will facilitate a satisfactory resolution, then that will be within the power of that Justice. Indeed, if the opinion from the Bench is that both sides of a case should simply go home and work the problem out themselves, then that will be within his/her discretion as well.

(d) In the most extreme cases or instances of repeated criminal activity by a person or persons, removal from the Tribe is a possibility. This would be approached in conjunction with the Star Council.

Section Three

(a) MURDER shall be considered a heinous crime in the United Cherokee Nation. Those accused of such crime shall have the protection of Our Constitution. They will be tried fairly. If said person(s) are found to be guilty of the act of murder, the Magistrate shall be constrained in his/her decisions concerning the punishment of said illegal act. As it currently stands, the only provision for capital punishment in our Cherokee law is for the crime of TREASON (SECTION 14). Incarceration, therefore, is the only avenue available at this time for those convicted of MURDER. Appeals shall be allowed if applicable.

(b) The forcing of sexual activity upon anyone above the age of consent (which is generally agreed to be 18 years of age) and/or the inflicting of

sexual activity upon anyone under the age of consent and/or the inflicting of sexual activity upon anyone whose mental or emotional situation prevents them from making good moral decisions shall be construed as the crime of RAPE. Any Cherokee Nation member accused of such activity shall be tried in accordance with Our Constitution. If a guilty verdict is delivered, the Magistrate shall be constrained from a decision of capital punishment. However, all other punishment forms would be acceptable.

(c) The taking of people for profit or position shall be construed as the crime of KIDNAPPING. As above, said accused shall be tried and, if found guilty, shall be sentenced by the Magistrate of the case. Said Magistrate shall be constrained from a decision of capital punishment in all but the most abhorrent and abominable cases. However, see Section Three, paragraph (a) above. Corporal punishment shall be an option as well as incarceration.

(d) THEFT shall always be considered a crime in the Nation. However, there are many different types of and reasons for theft. The Magistrate in charge of the case shall be responsible for considering all the types and reasons and rendering a decision based upon his/her careful deliberation. Obviously, capital punishment is not an option. Corporal punishment is an option except in extreme forms. Incarceration is also a possible course as are other forms of disciplinary action.

(e) RECEIVING STOLEN PROPERTY shall be considered a crime in the United Cherokee Nation. Punishment shall be as in section (d) above.

(f) Attacking a person for harm, not resulting in murder, shall be considered the crime of BATTERY, having both civil and criminal

ramifications. If the person(s) is found guilty, the Magistrate may use their discretion as to the suitable punishment.

(g) Threatening a person, either verbally or bodily, shall be considered the crime of ASSAULT, having both civil and criminal ramifications. If the person(s) is found guilty, the Magistrate may use their discretion as to the suitable punishment. Since assault is often combined with battery, see Section Two, paragraph (c) above.

(h) ABUSE OF THE ELDERLY AND OF MINORS shall not be tolerated in the Cherokee Nation. The presiding Magistrate shall have broad discretionary powers both in the interpretation of the crime and its seriousness and in the sentencing of individuals who are found guilty.

(i) The vocal defamation of a person, potentially causing harm to them and/or their reputation shall be considered SLANDER and is punishable in our Nation.

(j) The published defamation of a person, potentially causing harm to them or their reputation shall be considered LIBEL and is punishable in our Nation.

(k) BREACH OF CONTRACT, whether intentional or not, shall not be tolerated.

(l) Persons and businesses shall have the right to decide which parts of their properties are off limits to outsiders. Anyone guilty of ingress upon said off-limits parts, especially ones that are clearly marked, are committing TRESPASSING.

(m) Persons and businesses shall have the reasonable expectation of being able to pursue their interests without destruction and/or defacement of their properties. Anyone engaged in such destructive activities shall be deemed guilty of VANDALISM.

(n) At certain times and in certain places a situation may arise wherein one of our members needs protection from other of our members. In such a situation, an ORDER OF PROTECTION may be issued. Judges must look carefully at such cases to determine if protection is really warranted and, if so, the extent to which the protection may extend.

(o) THE SALE OF ANY KIND OF ILLICIT DRUG/SUBSTANCE, DESIGNER DRUG/SUBSTANCE OR THE RE-SALE OF PRESCRIPTION DRUGS by any member of the United Cherokee Nation-Aniyvwiya for any purpose shall be deemed inappropriate and absolutely illegal.

(o)(₁) The term “sale” is defined as “the exchange of a commodity for money”.

(o)(₂) “Illicit drugs” are substances that either stimulate (such as cocaine or amphetamines) or inhibit (such as heroine and other opiate derivatives or sedative-hypnotic drugs like valium or phenobarbital) the central nervous system or cause hallucinogenic effects (such as LSD) to the extent that their use has been prohibited by many countries.

(o)(₃) “Prescription drugs” are substances that can only be obtained legally by a prescription written by a licensed physician.

The Magistrate presiding over the case will be given broad powers to interpret the circumstances surrounding the case as well as the

potential effect of the substance in question. For instance, in the case of, so called, designer drugs, the Magistrate may determine that the sale of the substance is detrimental to other people and to the honor and integrity of our Nation. The fact that it is not, technically, illegal anywhere else would not be a consideration. Punishment for all these crimes will be left to the discretion of the Magistrate.

(p) THE SALE OF ALCOHOL, TOBACCO AND/OR ILLICIT DRUGS TO MINORS shall not be tolerated. The Justice in charge of the matter shall have broad discretionary powers in trying these cases.

(q) CRUELTY TO ANIMALS, in all its forms, is abominable and, therefore, not acceptable to the Tribe. Judges will be allowed wide discretionary powers but are cautioned to avoid extreme judgments. Justices unable to separate their personal feelings on the matter are advised to recuse themselves.

(r) Intentionally false or misleading testimony while under oath shall be deemed to be PERJURY. A separate trial shall be ordered for the accused. If found guilty, the Magistrate will weigh the circumstances to determine the appropriate sentencing.

(s) The practice of MARRIAGE is a part of life and shall always be acceptable in the United Cherokee Nation-Aniyvwiya. Regulations shall be created so that those choosing to be joined together may do so, both on a spiritual and a state level.

(t) At the same time, DIVORCE is also a part of life and must be dealt with the same way. Regulations shall be created that will allow the separation of those joined together in as fair and amicable a fashion as possible. These regulations must also deal with issues that are made necessary by the appearance of children. Judges dealing with this facet of Cherokee family law must use their humanity as well as their legal skill to ensure that all parties are treated with dignity, equality and compassion in such a difficult situation.

(u) RECKLESS ENDANGERMENT shall be considered an affront to the safety and dignity of the United Cherokee Nation. Public actions deemed careless, imprudent or otherwise dangerous will be treated with the level of severity said actions elicit. This will be especially true when dealing with the claims of breach of law submitted to the United Cherokee Nation by law enforcement from outside agencies (see Section Four). For instance, exceeding the posted speed limits of a given venue is prohibited in the United States. The United Cherokee Nation has no such “speeding” laws. Therefore, when the matter is submitted to the Tribe for consideration, the issue of RECKLESS ENDANGERMENT will be a prime factor. Speeding on an interstate highway is one thing. Speeding through a school zone is another.

(v) Disputes involving members of the United Cherokee Nation may be brought before the United Cherokee Court for adjudication. See Sections 1(d) and 2(c).

Once again, the Magistrate must use his/her experience and such inherent justice as they may possess when trying any case but, also,

they must use their compassion and understanding, remembering the ancient admonishment that “mercy triumphs over judgment”. They will be afforded full discretion to apply such punishments as are fitting to the offense.

Many other infractions are not yet listed. As they are nominated, they will be added to this framework to be brought before the United Cherokee Nation-Aniyvwiya Court.

Section Four

As Our Nation grows in size and strength and according to Section 1(b) above, we will begin to require the authorities of the United States, individual states, U.S. possessions, counties, parishes, cities, etc. to surrender any of Our Tribal members arrested for breaking their laws to Our jurisdiction immediately. Those individual cases will be considered by legal representatives of the United Cherokee Nation. If they are found to be of merit, the person(s) will be tried according to United Cherokee law. If the cases are not found to be of merit, they will be dismissed.

Section Five

Compliance with the Federal Rules of Civil Procedure, the Federal Rules of Evidence or any state’s Code of Civil Procedure is not required in Tribal Court proceedings. Federal or State rules and Federal or State

case law may be cited to as persuasive argument for purposes of analysis in areas where Federal or State rules are analogous to Tribal rules and Tribal case law, but will not be relied upon as precedent requiring that the Court adopt additional rules that are not a part of this Code. See Section one (e).

Section Six

(a) The complainant in a civil case shall have the burden of proving its case by the preponderance of the evidence, i.e., the greater weight of evidence, except in such cases where it is established by ordinance that the burden of proving his/her case is by clear and convincing evidence.

(b) In criminal or quasi-criminal actions, or if otherwise established by ordinance, the burden of proof shall be beyond reasonable doubt.

Section Seven

(a) The capacity of an individual, Tribal Entity or corporation to sue or be sued shall not be infringed upon except as provided in the Law of the United Cherokee Nation-Aniyvwiya. See Section 2 (c) above.

(b) Every action shall be prosecuted in the name of the Real Party in Interest. A "Real Party in Interest" refers to (1) the plaintiff that has standing to bring the action, i.e., the person who has been, or will be, harmed by an act of the defendant; (2) the party that can provide

the relief sought by the plaintiff; or (3) a party that can show that he/she will be harmed directly should the Court decide in favor of the plaintiff.

(c) A party asserting a claim to relief may join, either as independent or as alternate claims, as many claims, legal, or equitable, as the party has against the opposing party.

(d) A person shall be joined as a party in an action, if (1) complete relief cannot be accorded in his absence or, (2) if the person claims an interest that cannot be protected in his absence, or (3) if the persons who are already parties would be subject to incurring the obligations of a person not a party to the action.

(e) All persons may join in one action as plaintiffs if they assert any right of relief jointly.

(f) Persons having claims against the plaintiff may be joined as defendants and required to interplead if their claims may expose the plaintiff to double or multiple liability. Such claims do not have to be of common origin or identical, they may be adverse to and independent of other parties' claims. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim.

(g) Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(h) The Court may order substitution of parties if a party dies or if a party becomes incompetent. In a case of any transfer of interest, the action may be continued by or against the original party unless the court, upon motion, directs the person to whom the interest is transferred to be substituted or joined with the original party. Service of the motion shall be made with this motion.

(i) Misjoinder is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion by any party or of its own initiative at any stage of the action and on such terms as are just.

Section Eight

The unity and well-being of the family is a paramount issue with the United Cherokee Nation-Aniyvwiya. It is well understood that

(1) children need a caring, protective, wholesome mental, physical and spiritual atmosphere in which to develop and grow; (2) alcohol and substance abuse, both preventable conditions, are highly detrimental to a child's growth and development; (3) the best place for a child is its home and family. Removing a child from that preferable environment is only advisable in extreme instances; (4) children guilty of offenses need to be insulated from the adult legal consequences of criminal behavior and provided a substitute program of supervision, care and rehabilitation under the protection of the United Cherokee Nation Tribal community; (5) families sometimes need help. That assistance may manifest itself in the form of a continuum of services from prevention to residential treatment, with emphasis, whenever possible, on early intervention and community-based alternatives, where available.

Judges and extra-familial caregivers must use all of their experience and humanity to deal with these delicate and very important circumstances. Magistrates will be given broad powers to deal with the situations effectively.

Section Nine

No one, while doing business for the Tribe, shall be found to be in a state of impairment as regards the consumption of alcohol or the use of drugs. Those determined to be compromised by either alcohol or drugs shall be removed from that situation as quickly as possible. A hearing will be called to discuss the position of the Tribe, the extent of damage done and the possibility of punitive action.

Section Ten

The United Cherokee Nation-Aniyvwiya shall have power to create any Tribal Entities deemed necessary to promote the economic, healthcare, spiritual and any other aspects of the Tribe. Such Entities will possess all of the sovereign rights of the Tribe. Already existing Tribal Entities will be considered to be “grandfathered” into this ruling.

Section Eleven (IDs and licenses)

The United Cherokee Nation-Aniyvwiya, by virtue of the authority vested in it by the Constitution of said Nation, shall have sole power to create, edit, distribute, set standards and durations for and even revoke IDs and licenses of all types thought beneficial to the Tribe and its membership. This includes Tribal IDs, Tribal driver's licenses and all other IDs and licenses the Tribe may issue from time to time.

Section Twelve (the growing, handling and selling of Cannabis and Cannabis related products)

(a) The United Cherokee Nation-Aniyvwiya, being a sovereign Nation, vested in and clothed by the principles of Natural Law, may grow, house, handle, process and/or sell such herbs, roots, vegetables, seeds, flowers, fruits, juices and plant remedies as it deems necessary to provide for the spiritual, physical and medical needs of the Nation. Said growing, housing, handling, processing and/or selling of herbs, roots, vegetables, seeds, flowers, fruits, juices and plant remedies may also be used to provide economic development for the Tribe. Such rights are also supported by U.S. law in 25 USC Sections 13, 18 and 1601.

(b) The United Cherokee Nation may, for such purposes named above, pursue industrial hemp, the definition of which shall be differentiated from the definition of "marijuana." "Industrial hemp" shall refer to the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-nine tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. The Tribe shall deem *Cannabis sativa* L. to meet that concentration limit if a person or business grows

or processes it for purposes of making industrial hemp in accordance with United Cherokee Nation law.

(c) The Tribe may also become involved in the growing, processing, distribution and sales of medical marijuana for economic development as stated in Section 20 (a) above. The Tribe may or may not become directly associated with these processes and may decide to use various management companies in lieu of a “hands on” approach.

(d) The growing, processing, distribution and/or sales of recreational marijuana is deemed inappropriate at this time by the Elders and Star Council of the United Cherokee Nation. Therefore, the growing, processing, distribution and/or sales of recreational marijuana shall not be condoned in any form for anything having to do with the United Cherokee Nation.

SECTION Thirteen

The land of the United Cherokee Nation-Aniyvwiya is a sacred trust; at first given to us by the Great Spirit, then stolen by various greedy individuals of non-Native descent. Now, by the grace of that same Great Spirit, it is ours again. Therefore, any land redeemed by the United Cherokee Nation back to Indian title with said title now belonging to the United Cherokee Nation-Aniyvwiya, shall remain, entirely and in every way, within the purview of the Tribe, in perpetuity. It may never be sold, transferred, assigned, encumbered or subjected to any other action that would threaten to remove the land in question from Indian title and the absolute control of the Nation. Anyone found guilty of trying to sell, transfer, assign, encumber or

subject any part or parts of the land of the United Cherokee Nation to actions that would threaten to remove that land from Indian title and the absolute control of the United Cherokee Nation will be dealt with in the strictest of terms. Magistrates will be given broad discretion as concerns the punishment of this crime against the Nation. See Section one (c) above.

SECTION Fourteen

TREASON is such a heinous crime that it deserves to be considered by itself. For our purposes, it shall be defined as “Criminal disloyalty; the crime of betraying one's country, especially by attempting to kill the sovereign or overthrow the government.” It is similar to Lese Majeste (SECTION 1c above), only TREASON is instigated from inside the Nation. The very idea of some one or some group working to purposefully undermine the safety and tranquility of our sovereign Tribal community, especially after enjoying the benefits of Tribal membership, is difficult to understand and impossible to condone.

Therefore, the prosecution of the crime of TREASON shall be pursued in the most stringent of fashions and, upon a verdict of guilty, the punishment shall be the most severe that can be handed down, even including capital punishment. Our magistrates will be given broad powers to act on the Tribe's behalf.