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Full Faith and Credit: Are Oklahoma Tribal Courts Finally Getting the Respect They Deserve

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FULL FAITH AND CREDIT: ARE OKLAHOMA TRIBAL COURTS FINALLY GETTING THE RESPECT THEY DESERVE?

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INTRODUCTION AND BACKGROUND

When the United States Constitution was being formulated and debated during the Constitutional Convention, the Founding Fathers had a vision of a "more perfect union" and a strong nation well into the future.[1] The Founding Fathers were not only working on the Supreme Law of the Land, but were also framing the way the nation would be run for hundreds of years to come whether they realized it or not.[2] When the 13 original colonies agreed that the Articles of Confederation were no longer enough to sustain the new United States of America[3] something more was needed, and in May of 1787, the Constitutional Convention began.[4] The fifty-five original delegates; representing 12 of the original 13 states,[5] task was to change the original Articles of Confederation. Instead, the delegates created a completely new document: The Constitution of the United States.[6] The Constitution departed from the Articles of Confederation that had been adopted 11 years earlier in that it established a strong central (or federal) government that had broad powers to regulate relations among the states.[7] Relations among existing and future states of the union were so important to the Framers that after penning the first three articles to the Constitution establishing the three main branches of government,[8] they added a fourth article

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1. *See* PAULINE MAIER, THE DECLARATION OF INDEPENDENCE AND THE CONSTITUTION OF THE UNITED STATES (Mass Market Publishing August 1998).

2. *See id.*

3. *See id.*

4. *See* CATHERINE DRINKER BOWEN, MIRACLE AT PHILADELPHIA: THE STORY OF THE CONSTITUTIONAL CONVENTION, MAY TO SEPTEMBER, 1787 (Little Brown and Company 1986).

5. *See id.* (Rhode Island was not represented by a delegate at the convention).

6. *See* Maier, *supra* note 1.

7. *See* ERIC BLACK, OUR CONSTITUTION: THE MYTH THAT BINDS US (WestView Press 1988).

8. *See* Bowen, *supra* note 4. The Constitution was officially adopted when New Hampshire ratified it on June 21, 1788. The first Government under the Constitution came into being on the 4th of March, 1789, and all three branches of the new government were organized on Feb 2, 1790.

that dealt with interstate relations.[9]

Unfortunately, the Framers did not address how states would interact with Indian Nations,[10] nor how the Supreme Law of the Land would affect any such dealings. However, Federal law has evolved in regards to Indian Nations through treaties, congressional legislation, and compacts. Through Congressional acts[11] and treaties, Indian Nations have been afforded rights as "sovereign nations" which gives them the right to tribal self-governments.[12] The question then becomes how does legislation or Articles from the Constitution help (or sometimes hurt) Indian Nations?[13]

This paper specifically addresses the effect that the Full Faith and Credit clause has on Indian Nations. In striving to become and then maintain their sovereign status, most Indian Nations have developed tribal court systems that adjudicate tribal affairs between members, members and the Nation, and those choosing to interact with Indian Nations and its members. The Supreme Court has not directly dealt with whether the Full Faith and Credit Clause of the United States Constitution directly pertains to tribal court judgments. It has therefore been left up to the individual states to determine if and how Full Faith and Credit would apply to tribal court judgments in state courts.

Part I of this law review article will review the Full Faith and Credit clause under Article IV of the United States Constitution and how two schools of thought have evolved allowing for Tribal Court Judgments in state courts. Part I also looks at the innovative ways that states have interpreted language in congressional grants, effectively granting Tribal Court judgments comity, and how some states have accorded Full Faith and Credit to Tribal Court Judgments by defining Indian Nations as "territories" of the United States. This section concludes with a brief hypothetical addressing Public Law 280 and its inapplicability to this issue.

Part II addresses legislation enacted in 1992 by the Oklahoma legislature that allows Full Faith and Credit to Tribal Court judgments. This section looks at how the Oklahoma Supreme Court implemented Rule 30 – with a catch – Tribal Courts must grant reciprocity to Oklahoma state court judgments in order to receive Full Faith and Credit. The section also looks at the thirty-seven federally recognized Indian Nations in Oklahoma and which Nations have, in fact,

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9. U.S. CONST. art. IV.

10. When referring to Indian "Nations" in this article, Nation is used as a generic term for Nations, Bands, or Tribes.

11. *See, e.g.*, The Oklahoma Indian Welfare Act, ch. 831, 49 Stat. 1967 (1936) (codified at 25 U.S.C. §§ 501-510 (1994)).

12. *See, e.g.*, "Treaty of Washington, D.C. with the Creeks and Seminoles on August 7, 1856" 11. Stat. 699. Specifically Article 15 which states in part, "So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating trade and intercourse with the Indian Tribes, the Creeks and Seminoles shall be secured in the unrestricted right of self-government . . . ." 2 INDIAN AFFAIRS, LAWS AND TREATIES, at 25-29, 756-63, (Charles J. Kappler, ed., (1904)).

13. In discussing Indian nations throughout this article, the reader should assume unless otherwise told that "nation" or "tribe" is a generic term that means Indian nation, tribe, pueblo, band, or Alaska native village.

registered with the State of Oklahoma under Rule 30. The section concludes with a look at how both the Oklahoma state courts and the Federal Courts have applied Full Faith and Credit.

Part III looks at perceived problems with granting reciprocity between the State of Oklahoma and Indian Tribal Courts. Part III provides the author's conclusions and predictions of how the Full Faith and Credit Act under Oklahoma law might prospectively play out in the future concluding that some Indian Nations will want to grant reciprocity, and offers the reasons this might be so.

I. FULL FAITH AND CREDIT AND ITS INTERPRETATIONS AS APPLIED TO TRIBAL COURT JUDGMENTS

The Full Faith and Credit clause under Article IV of the United States Constitution Section 1 states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."[14]

Full Faith and Credit under the U.S. Constitution has been an issue in state courts for many years. The issue is not about granting Full Faith and Credit to sister states,[15] but to Indian Nations and whether to recognize their tribal judgments in state courts. The applicability of Full Faith and Credit becomes an issue because Indian Tribes are not considered "States" under Article IV's language, but Indian Nations are considered sovereign nations.[16]

Two schools of thought have developed on this issue. The first school of thought is that states should grant comity to Tribal Court judgments. Under this theory, courts of one state give full effect to any legislative, executive, or judicial acts of Tribal Court judgments, out of respect and deference but not as a matter of obligation.[17] Thus, for example, a Tribal Court judgment from the Muscogee (Creek) Nation District Court would receive the exact same treatment in Oklahoma state courts as a judgment obtained in a foreign nation. The second school of thought is that Indian Nations fall under the auspices of "territory" as defined in 28 U.S.C. § 1738 because they are in fact "territories" owned by the United States government.[18] This theory as applied allows Indian Nation's Tribal Court judgments to be granted Full Faith and Credit under the Full Faith and Credit Clause of the United States Constitution.

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14. U.S. CONST. art. IV, § 1.

15. *See generally* Baker by Thomas v. General Motors Corp., 118 S. Ct. 657 (1998); Matsushita Electric Industry Co. v. Epstein, 116 S. Ct. 873 (1997) (The Full Faith and Credit Clause has been constantly upheld as a valid grant between states upholding the judgments of their sister states).

16. *See generally* Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

17. *See* Brown v. Babbitt Ford, Inc., 571 P.2d 689, 695 (Ariz. Ct. App.1977).

18. *See generally* Jim v. CIT Fin. Serv. Corp., 533 P.2d 751 (N.M. 1975).

A. Comity Cases and States that Allow Comity

In *In re Matter of Red Fox,*[19] a wife filed for divorce in the Tribal Court for the Confederated Tribes of the Warm Springs Reservation in Oregon. The husband was personally served with a summons and copy of the complaint on the Warm Springs Reservation. A date was set for a hearing before the Tribal Court, but was subsequently moved up because of alleged harassment by the husband against the wife and children. Two days before the new hearing date, the husband received notice of the new hearing and had his attorney contact the Tribal Court. The Tribal Court denied the attorney's request to cancel the hearing date and furthermore, denied the husband's counsel access to the Tribal Court.[20] Because the husband did not appear in Tribal Court, the court issued a default decree granting the divorce, dividing the property and giving custody of the minor children to the wife. The husband subsequently filed for divorce in state court, and the case was dismissed.[21] On appeal, the Oregon appellate court stated that:

> While the decisions of tribal courts are not, therefore, entitled to the same 'full faith and credit' accorded decrees rendered in sister states, the quasi-sovereign nature of the tribe does suggest that judgments rendered by tribal courts are entitled to the same deference shown decisions of foreign nations as a matter of comity.[22]

The court continued that "comity" in the legal sense is neither a matter of absolute obligation nor of mere courtesy and good will, but is a recognition which one nation allows within its territory to the legislative, executive or judicial acts of another having due regard both to international duty and convenience and to rights of its own citizens or of other persons who are under the protection of its laws.[23]

The Oregon court also addressed the husband's complaint that the tribal court denied him due process.[24] The Court held as a general rule, that as long as: 1) the foreign court actually had jurisdiction over both the subject matter and the parties; 2) the decree was not fraudulently obtained; 3) the decree was granted under a system of laws that reasonably assured impartiality in its administration of justice (i.e.: notice and opportunity to be heard); and, 4) the decree was granted under a system of laws reasonably assured of not contravening public policy of the jurisdiction in which it is relied on, then the decree would be valid.[25] Here, it was shown that not only did the Tribal Court offer the husband a "spokesman" for his appearance in Tribal Court, but that he was given ample notice and opportunity to appear.[26] Because it believed the procedures in the Tribal Court for the

19. 542 P.2d 918 (Or. Ct. App. 1975).
20. *Id.* at 920. The Tribal Court Rules for the Confederated Tribe of the Warm Springs Reservation limits representation to "spokesman" of the tribe and not to outside attorneys.
21. *Id.* at 397.
22. *Id.* at 398 (citing Hilton v. Guyot, 159 U.S. 113, 163-64 (1895)).
23. *Id.*
24. *Id.*
25. *In re Matter of Red Fox*, 542 P.2d at 398-99.
26. *Id.* at 401.

Confederated Tribes of the Warm Springs Reservation were fair to the husband, the Appellate Court upheld the dismissal of the husband's complaint in state court under the principles of comity.[27]

Another case, *Brown v. Babbitt Ford, Inc.*,[28] involved a repossession of a truck on the Navajo Reservation. The plaintiff in the case stated that because she was a tribal member and the truck was parked on reservation land when it was repossessed, the rules of the Navajo Tribal Resolutions applied and that Babbitt Ford could not, without the tribe's permission, repossess her truck.[29] The plaintiff had signed a security agreement that stated that she agreed to the contract to finance the truck and use the truck as collateral in the security agreement and that the contract was governed by the Arizona Uniform Commercial Code.[30]

The Arizona court stated that, generally the principles of comity only apply between independent sovereign jurisdictions, but that the Arizona Supreme Court had in the past fully recognized the validity of Navajo Tribal Resolutions and had upheld judgments regarding wills, probate and a divorce decree.[31] In an interesting twist, the Arizona Appellate Court provided a long history of Arizona law through treatises, legislative enactments and Supreme Court decisions and defended why this particular court did not agree with its sister state of New Mexico that Indian Nations were "territories," and therefore rules of comity would apply.[32] The Arizona court ultimately held that because the plaintiff signed the security agreement that had a choice of law provision and agreed to be bound by the Arizona Uniform Commercial Code in signing the security agreement, plaintiff's claim for relief under the Navajo Tribal Resolution would not be granted comity in this instance.[33]

Other states that practice comity include Minnesota,[34] Montana,[35] North Dakota,[36] South Dakota,[37] and Wisconsin.[38] Interestingly, North Dakota both is listed as a state that practices "comity" with Tribal Court judgments yet has a statute that is closer to Full Faith and Credit.[39]

B. 28 U.S.C. § 1738 and Tribes Recognized as "Territories"

While some courts use comity to grant full faith and credit to Indian Tribal Court judgments, other courts have gotten around this issue of Tribes not being "States" and have accommodated full faith and credit by citing 28 U.S.C. 1738

27. *Id.* at 402.
28. 571 P.2d 689 (Ariz. Ct. App. 1977).
29. *Id.* at 691.
30. *Id.*
31. *Id.* at 198.
32. *Id.* at 195-97. *See* discussion *infra* Part I.B.
33. *Id.* at 199.
34. *See, e.g.*, Desjarlait v. Desjarlait, 379 N.W. 2d 139 (Minn. Ct. App. 1985).
35. *See, e.g.*, Wippert v. Blackfeet Tribe, 654 P.2d 512 (Mont. 1982).
36. *See, e.g.*, Fredericks v. Eide Kirschmann Ford, 462 N.W. 2d 164 (N.D. 1990).
37. *See, e.g.*, One Feather v. O.S.T. Public Safety Comm'n, 482 N.W. 2d 48 (S.D. 1992)
38. *See, e.g.*, Sengstock v. San Carlos Apache Tribe, 477 N.W. 2d 310 (Wis. Ct. App. 1991).
39. *See generally*, N.D.CENT. CODE § 27-01-09 (1995).

and treating Indian Tribes as a "territory" of the United States. Most courts have relied on an early U.S. Supreme Court opinion *United States ex rel Mackey v. Cox,*[40] as the authority to do so. Discussing the differences between an "Indian Territory" and "Territory" that was intended for future statehood, the U.S. Supreme Court stated in *Mackey* that:

> This, however, is no reason why the laws and proceedings of the Cherokee territory, so far as relates to rights claimed under them, should not be placed upon the same footing as other territories in the Union. It is not a foreign, but a domestic territory,—a territory which originated under our constitution and laws.[41]

From the language of this case, courts have interpreted it to mean that Indian Tribes are considered "territories" of the United States and combining the language with 28 U.S.C. § 1738 have granted Indian Nations full faith and credit.

Section 1738 comes from Article IV's assertion that Congress may, "by general Laws, prescribe the Manner in which such Acts, Records and Proceedings shall be proved."[42] Section 1738 states in part: "Such . . . judicial proceedings . . . shall have the same full faith and credit in every court within the United States and its *Territories* and Possessions as they have by law or usage in the courts of such State, *Territory* or Possession from which they are taken."[43]

The New Mexico Supreme Court considered the issue in *Jim v. CIT Financial Service Corp.*[44] The *Jim* case was another case based on repossession of a vehicle on tribal grounds. The appellant failed to make the necessary truck payments and two officials from CIT Financial Group entered the reservation and quietly and peaceful repossessed the truck.[45] Jim filed suit in the District Court which granted CIT's motion to dismiss on the grounds that the appellant did not state a claim for which relief could be granted.[46] The Appellate Court affirmed.[47] The Supreme Court of New Mexico said, however, that the laws of the Navajo Tribe of Indians are entitled by federal statute to Full Faith and Credit in the courts of New Mexico because the Navajo Nation is a "territory" within the meaning of that statute [referring to 28 U.S.C. §1738].[48] The Court did go on to say, however, that full faith and credit is not an inexorable and unqualified command when a foreign legislative enactment or statute is sought to be enforced in the forum state.[49] Additionally, the New Mexico Supreme Court noted that a forum state need not subordinate its own statutory policy to a conflicting public

40. 59 U.S. 100 (1856). Mackey was a case involving whether or not a federal court in the District of Columbia needed to recognize estate letters of administration of a deceased Cherokee tribal member. The Supreme Court held that the District of Columbia was under an obligation to recognize the letters of administration and ruled for the Cherokee. *Cox*, 59 U.S. at 105.

41. *Id.* at 103.

42. U.S. CONST. art. IV.

43. 28 U.S.C. § 1738 (1994).

44. *CIT Fin. Serv. Corp.*, 533 P.2d 751.

45. *Id.* at 752.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

act of another state.[50] The New Mexico Supreme Court remanded the case to the appellate level to determine which law would apply, Navajo or New Mexico state law, under the ensuing contract's choice of law provision.[51] New Mexico courts have continued to uphold this ruling in other cases involving Navajo Tribal Court judgments.[52]

In *Sheppard v. Sheppard,*[53] the Idaho Supreme Court agreed with the New Mexico Court that Indian tribes are territories as used in 28 U.S.C. § 1738. *Sheppard* involved custody of a minor child that was adopted in the Shoshone-Bannock Tribal Court to an Indian wife and non-Indian husband.[54] After the adoption, the husband and wife subsequently divorced, and the husband, claiming that the adoption proceedings in the Shoshone-Bannock Tribal Court were not valid, asked the state courts to void the adoption.[55] In receiving the case, the Idaho Supreme Court stated that even though Tribal Court decrees are not exactly equivalent to decrees of sister states, they were nevertheless still entitled to full faith and credit.[56] The Court continued that the Full Faith and Credit clause of the United States Constitution does in fact give each state full faith and credit to the "judicial proceedings of every other state" and that Congress implemented this clause using 28 U.S.C. § 1738 in granting rights to all "territories or possessions" of the United States.[57] The Idaho Court agreed with its sister states[58] that territories as stated in the grant of Section 1738 included Indian tribes[59] and that granting full faith and credit would facilitate better relations between the Tribal Courts of Idaho and the state courts of Idaho.[60]

Interestingly, however, in *Brown v. Babbitt Ford* discussed *supra*, the Arizona court stated that "territory or possession" as it was used in 28 U.S.C. § 1738 was not intended to apply to Indian reservations contrary to what New Mexico courts had held.[61] Instead, the *Brown* court described why Indian tribes are not "states" or "territories" but something totally different: "home of the Indians."[62] The Arizona court explained that it felt that the United States Supreme Court's decision in *Mackey*[63] did not intend for "territories" to include Indian Tribes because *Mackey* was not dealing with a predecessor statute to 28 U.S.C. § 1738.[64] Instead, the *Brown* court agreed with the language of *Ex Parte*

50. *CIT Fin. Serv. Corp.*, 533 P.2d at 752.
51. *Id.* at 753.
52. *See, e.g.*, Halwood v. Cowboy Auto Sales, Inc., 946 P.2d 1088 (N.M. Ct. App. 1997).
53. 655 P.2d 895 (1982).
54. *Id.*
55. *Id.* at 901.
56. *Id.*
57. *Id.*
58. *Id.* at 902. The court specifically mentioned: *CIT Fin. Serv.*, 533 P.2d 751; In re Adoption of Buehl, 555 P.2d 1334 (Wash. 1976); Raymond v. Raymond, 83 F. 721 (8th Cir. 1897).
59. *Sheppard,* 655 P.2d at 895.
60. *Id.*
61. *Brown*, 571 P.2d at 693.
62. *Id.* at 694.
63. *Cox*, 59 U.S. at 100.
64. *Brown*, 571 P.2d at 694.

Morgan[65] that Indian tribes are not states or territories but Indian Country and with the movement of white settlers west to form new territories which became states, Indian Country became just that Indian Country which was "home of the Indians."[66] *Morgan* reasoned that since the United States government treated Indian Nations differently in that Indian Nations had their own relationship with the government (unlike the states or territories of the time) they were in fact separate and thus are not considered states or territories.[67]

Part C. Does Public Law 280 Affect the Analysis?

Public Law 280 was introduced and passed in Congress in 1953 and provides for certain states to have jurisdiction over offenses committed by or against Indians in the country known as Indian Country.[68] Public Law 280 provides in pertinent part that a list of certain states[69] were to assume mandatory jurisdiction (both criminal and civil) over Indian tribes.[70] Some states which were not on the original list of Public Law 280 were able to assume jurisdiction through a statutory enactment or a constitutional amendment to that particular state's constitution.[71]

Oklahoma was not on the original list of states that were mandated to assume jurisdiction over Indian Nations in its territory and neither amended its state constitution, nor follow any of the guidelines required in the legislative act to assume jurisdiction over Indian Nations in Oklahoma. Furthermore, Oklahoma will never be able to assume jurisdiction over Indian Nations as described under Public Law 280 because the federal statute that gave the original grant to the states to exercise jurisdiction over Indian Nations by implementing a statute or amending a states constitution was later repealed in 1968.[72] Thus, those states that were already Public Law 280 states were under the statute and continue to be so. Those states that did not opt to become a Public Law 280 state no longer have that opportunity without a specific approval of the Indian Nation in which the state is trying to obtain jurisdiction over.

Hypothetically, one could argue that states which have jurisdiction over Indian Nations from Public Law 280 do not even need to contend with whether or not to grant comity to Tribal Court judgments or to recognize the Indian Nations as "territories" under 28 U.S.C. § 1738 as was discussed *supra.*[73] Under a Public

65. Ex Parte Morgan, 20 F. 298 (D.C.Ark. 1883).

66. *Brown*, 571 P.2d at 693.

67. *See generally Morgan*, 20 F. 298.

68. 18 U.S.C. § 1162 (1953).

69. The following states listed under Section 1162 have jurisdiction over any offense (both civil and criminal) committed by or against Indians in the areas known as Indian Country in that state and that the jurisdiction had is to the same extent that State would have jurisdiction over offenses of any other area in the state. The states listed include: California, Minnesota, Nebraska, Oregon and Wisconsin. * Alaska was later added to this list. Pub. L. No. 280, 18 U.S.C. § 1162 (1953).

70. 18 U.S.C. § 1162(a) (1953).

71. 18 U.S.C. § 1162(6) (1953). The states that have in fact assumed jurisdiction either by a constitutional amendment or statutory amendment include Washington, Montana, and Idaho.

72. Pub. L. No. 90-284, 82 Stat. 73 (1968).

73. *See* discussion *infra* Part I (A) and (B) of this article.

Law 280, the plaintiff in a case already has state court jurisdiction and a plaintiff could file an action in state court. The case could be determined by the court on its own merits without being bound by a Tribal Court judgment. The issues of comity and full faith or credit would not be of concern in most instances because the courts would be able to hear any case brought before it by an Indian or non-Indian that concerned a civil or criminal complaint on or off Indian Tribal grounds.

The problem with this particular hypothetical, however, is that it does not consider the U.S. Supreme Courts decisions holding that before cases can be brought in Federal courts, the doctrine of Tribal Court exhaustion has to be met.[74] As stated earlier, Oklahoma would not be put in this position because Oklahoma is not a Public Law 280 state. This is issue has not be addressed in light of full faith and credit or comity principles for that matter and at this juncture is moot. However, the potential for problems is there and the reader should be made aware of this potential conflict.

II. OKLAHOMA AND FULL FAITH AND CREDIT

A. Title 12, § 728 and Rule 30

Oklahoma has one of the largest Indian populations in the United States at approximately 559,155.[75] There are currently 36[76] federally recognized tribes located throughout the state of Oklahoma, and two pending recognition.[77] So, where in the state mixtures of comity and grants of full faith and credit under the territory regime does that leave Oklahoma?

In 1992, Oklahoma's legislature enacted a statute that allowed the Oklahoma Supreme Court to establish standards to recognize judgments and

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74. *See* Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9 (1987); National Farmer's Union Ins. Co. v. Crow Tribe of Indians, 471 U.S. 845 (1985) (These cases discuss what has been known as "the exhaustion rule" where state and federal courts will not hear cases that have not been through the appropriate steps in Tribal Courts and the defendant has pursued all options including appealing to the highest court of the Indian Nation that they are before, before they are allowed to remove the action to another court outside the tribal arena).

75. Department of the Interior, Bureau of Indian Affairs *at* http://www.doi.gov/bia/tribes/telist00.html.

76. These include: Alabama Quassarte Tribal Town, Absentee Shawnee Tribe, Apache Tribe, Caddo Tribe, Cherokee Nation, Cheyenne-Arapaho Tribes, Choctaw Nation, Citizen Band Potawatomi Nation, Comanche Tribe, Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe, Ft. Sill Apache Tribe, Iowa Tribe of Oklahoma, Kaw Nation of Oklahoma, Kialegee Tribal Town, Kickapoo Tribe of Oklahoma, Kiowa Tribe, Miami Nation, Modoc Tribe, Muscogee (Creek) Nation, Osage Nation, Otoe-Missouria Tribe, Ottawa Tribe, Pawnee Nation of Oklahoma, Peoria Tribe of Indians of Oklahoma, Ponca Tribe, Quapaw Tribe, Sac & Fox Nation, Seminole Nation, Seneca-Cayuga Tribes, Thlopthlocco Tribal Town, Tonkawa Tribe, United Keetoowah Band of Cherokees, Wichita & Affiliated Tribes and Wyandotte Tribe. Currently, two historic tribes are in the process of acquiring federal recognition: Loyal Shawnee Tribe and Yuchi (Euchee) Tribe of Indians. The Oklahoma Indian Affairs Commission *at* http://www.state.ok.us/'oiac/enroll.html. (last modified Apr. 21, 2000).

77. Department of the Interior, Bureau of Indian Affairs *at* http://www.doi.gov/bia/tribes/telist00.html (last modified Mar. 17, 2000).

decrees of tribal courts.[78] The Oklahoma legislature passed Section 728 of Title 12 entitled "Standards for Recognizing Records and Proceedings of Tribal Courts—Reciprocity" The statute states:

> A. This act affirms the power of the Supreme Court of the State of Oklahoma to issue standards for extending full faith and credit to the records and judicial proceedings of any court of any federally recognized Indian nation, tribe, band or political subdivision thereof, including courts of Indian offenses.
>
> B. In issuing any such standard the Supreme Court of the State of Oklahoma may extend such recognition in whole or in part to such type or types of judgments of the tribal courts as it deems appropriate where tribal courts agree to grant reciprocity of judgments of the courts of the State of Oklahoma in such tribal courts.[79]

The law sat inactive on the books for nearly two years when finally in May of 1994, the Oklahoma Supreme Court adopted standards for extending full faith and credit to tribal court judgments. Rule 30 of the Rules for District Courts of Oklahoma - Standards for Recognition of Judicial Proceedings in Tribal Courts—Full Faith and Credit was adopted by the Oklahoma Supreme Court in 1994. The rule provides in part:

> B. Recognition of Tribal Judgments—Full Faith and Credit[.] The district courts of the State of Oklahoma shall grant full faith and credit and cause to be enforced any tribal judgment where the tribal court that issued the judgment grants reciprocity to judgments of the courts of the State of Oklahoma, provided, a tribal court judgment shall receive no greater effect or full faith and credit under this rule than would a similar or comparable judgment of a sister state.[80]

The Oklahoma Supreme Court has qualified this rule by stating that Rule 30 does not require Oklahoma courts to recognize judgments of other states, territories, or countries if the court that rendered the judgment is without jurisdiction or if the judgment is somehow obtained by fraud.[81] This holding was reiterated in *Barrett v. Barrett* discussed *infra* shortly.[82]

B. Which Federally Recognized Indian Tribes Fall Under Rule 30

Of the 36 federally recognized Indian nations in the State of Oklahoma, only 14 nations are self-governing.[83] This means they have their own court system,

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78. OKLA. STAT. tit. 12, § 728 (1992).

79. *Id.*

80. OKLA. STAT. tit. 12, Ch. 2, App., Rule 30 (2000).

81. *See* Britton v. Gannon, 285 P.2d 407, 409 (Okla. 1955). In this case the Oklahoma Supreme Court discussed the merits of upholding a state court judgment from Illinois that appeared to be obtained by fraud. The Oklahoma Supreme Court held that in recognizing Full Faith and Credit in this state, if a defendant could prove to the court circumstances that amounted to extrinsic fraud, the court would not have to uphold the judgment of the Illinois Court. *See Britton*, 285 P.2d at 409, 410.

82. Barrett v. Barrett, 878 P.2d 1051 (Okla. 1994).

83. Self-governing tribes include: Absentee Shawnee Tribe, Cherokee Nation, Chickasaw Nation, Choctow Nation, Citizen Band Potawatomi Nation, Eastern Shawnee Tribe, Kaw Nation, Kickapoo Tribe of Oklahoma, Miami Nation, Modoc Tribe, Muscogee (Creek) Nation, Ponca Tribe, Sac & Fox Nation and the Wyandotte Tribe. Take from the Oklahoma Indian Affairs Commission *at* http://www.state.ok.us/~oiac/enroll.html (last modified Apr. 21, 2000).

constitution, and promulgate their own rules. The other 23 nations avail themselves of the Court of Indian Offenses or "CFR (Code of Federal Regulations) Courts" as they are known.[84] These CFR courts act as tribal courts for members who wish to have their grievances redressed. Rule 30 specifically states that "Tribal Court" includes any court of any federally recognized Indian nation that has been established under federal or tribal law which includes Courts of Indian Offenses that are established according to the guidelines in 25 C.F.R. § 11.[85] Therefore, any federally recognized Oklahoma Indian nation that has a tribal court or any federally recognized tribe that utilizes CFR courts falls under the veil of Rule 30.

The catch to Rule 30 is that Indian nations must grant reciprocity to the State of Oklahoma in order to have its Tribal Court judgments enforced in Oklahoma state courts.[86] In order to receive reciprocity with the Oklahoma state courts, the Indian nations must register with the Administrative Office of the Courts.[87] To officially register, the Indian nation must produce a copy of a tribal ordinance, statute, or court rule that evidences that the Tribal Court will grant reciprocity to the courts of the State Oklahoma.[88] Once registered, a tribal judgment can then be filed in the district court office of any county in the state and the district court is to treat it as any other judgment from any district court across the state.[89]

It is interesting to note that, to date, only 15 nations have decided to grant reciprocity to the Oklahoma state courts in order to receive the same consideration in return.[90] Of the 15 registered nations, only five nations: Muscogee (Creek) Nation, Cherokee Nation, Ponca Tribe, Citizen's Band Potawatomi and the Chickasaw Nation are self-governing tribes. The remaining 10 tribes are not self-governing. The Muscogee (Creek) Nation was the first nation to register with the state of Oklahoma in June of 1994, shortly after the Oklahoma Supreme Court promulgated the rule.[91]

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84. Courts of Indian Offenses, their authority, jurisdiction and scope is found at 25 C.F.R. § 11. CFR courts were established to help govern Indian country as it is defined in 18 U.S.C. § 1151. CFR courts have authority in Oklahoma over Indian tribes who do not have tribal courts in place to which members of that tribe can redress grievances. 25 C.F.R. § 11.100. Additionally, each tribe, which utilizes CFR courts, can proscribe ordinances which if approved by the Assistant Secretary of Indian Affairs "shall be enforceable" in the Court of Indian Offenses having jurisdiction over that tribe. 25 C.F.R. § 11.100. CFR court's final decisions can be appealed to a three magistrate appellate division which reviews the case and makes a final decision which is not subject to appeal to the Department of the Interior. 25 C.F.R. § 11.200.

85. OKLA. STAT. tit. 12, Ch. 2, App., Rule 30 (2000).

86. *Id.* (Sub B).

87. *Id.* (Sub C).

88. *Id.*

89. *Id.* (Sub D).

90. Full Faith and Credit Tribal Courts include: Muscogee (Creek) Nation, Seminole Nation, Kiowa Tribe, Comanche Tribe, Apache Tribe, Wichita Tribe, Caddo Tribe, Delaware Tribe, Fort Sill Apache Tribe, Ponca Tribe, Tonkawa Tribe, Cherokee Nation, Osage Nation, Citizen Band Potawatomi Nation and the Chickasaw Nation. Information obtained from the Administrative Office of the Oklahoma Supreme Court.

91. Since Rule 30 was promulgated in May of 1994, the Indian Nations of Oklahoma have been slow to register with the State of Oklahoma to grant reciprocity. As stated, the Muscogee (Creek)

C. *How Rule 30 has been Implemented in Oklahoma Case Law*

The first case in which the Oklahoma Supreme Court determined whether or not judgments of Tribal Courts were entitled to receive the benefits of Full Faith and Credit was in *Barrett v. Barrett.*[92] *Barrett* involved the Tribal Court of the Citizen Band Potawatomi Indian Tribe[93] (the Tribe) granting a divorce to one of its members. The husband was an enrolled member of the Tribe and was also an elected business manager for the Tribe. The wife was not a Tribal member, but was an employee of the Tribe. The couple's marriage ceremony (which was not a traditional tribal ceremony) took place off of tribal property.[94] The couple maintained a residence off of tribal grounds and any business dealings that the couple had were also off tribal property. The husband sought a divorce in the Citizen Band Potawatomi Tribal Court. Both the husband and wife appeared for the divorce hearing unrepresented by counsel.[95] The divorce was granted under Section 1112 of the Codes and Ordinances of the Citizen Band Potawatomi Indian Tribe which gave the Tribal Court jurisdiction to hear the case if the plaintiff or defendant was either on tribal land for 3 (three) months preceding the filing of the petition, or if the petitioner was a tribal member.[96]

The wife subsequently petitioned the District Court of Cleveland to set aside the tribal court's divorce decree because she alleged duress, fraud and personal threats against her body if she did not consent to personal jurisdiction in the Tribal Court from the original divorce proceeding ten months earlier.[97] Two days later, the wife also filed in Tribal Court a motion to vacate the divorce decree and/or in the alternative to grant her a new trial based on the alleged fraud, coercion and personal threats.[98] The District Court dismissed the action before the Tribal Court ruled on her motion. The District Court dismissed the case stating that the Tribal Court's decree would be binding unless the wife could prove the fraud, duress, and coercion. The District Court further stated it was not the District Court's place to determine if the allegations happened but it was within the Tribal Court's jurisdiction to determine if the claims were true or not.[99]

Nation was the first to register with the state in June of 1994. The only other Indian nation to register shortly after the rule was promulgated was the Seminole Nation in December of 1994. The Kiowa Tribe, Comanche Tribe, Apache Tribe, Wichita Tribe, Caddo Tribe, Delaware Tribe, Fort Sill Apache Tribe, Ponca Tribe and Tonkawa Tribe all registered with the Administrative Office in April of 1995. The Cherokee Nation followed in May of 1995 and the Osage Nation in December of 1995. The Citizen Band Potawatomi Nation registered in November of 1996 with the most recent registeree being the Chickasaw Nation in September of 1999. Obtained from the Administrative Office of the Supreme Court of Oklahoma.

92. 878 P.2d 1051 (Okla. 1994).

93. The Citizen Band Potawatomi Nation, as it is currently known, used to be called the Citizen Band Potawatomi Tribe. For purposes of discussing the *Barrett* case, the author is using "Tribe" as it is the original language in the Oklahoma Supreme Court's decision.

94. *Barrett,* 878 P.2d at 1052.

95. *Id.*

96. *Id.* at 1055.

97. *Id.* at 1053.

98. *Id.*

99. *Id.*

Subsequently, the Tribal Court heard arguments on the wife's allegations and determined that the wife had in fact voluntarily submitted to personal jurisdiction of the Tribal Court and that the Tribal Court did in fact have subject matter jurisdiction because the husband was a tribal member.[100] The appeal to the Tribal Supreme Court only affirmed the Tribal Court's result.[101]

On Certiorari to the Oklahoma Supreme Court, the question the Court addressed was whether or not the divorce decree of the Tribal Court of the Citizen Band Potawatomi would be granted full faith and credit and be recognized as a valid divorce decree in Oklahoma.[102] The Court began by stating that it had long recognized marriages and divorces between tribal Indians in accordance with the tribal customs of each tribe even when those marriages would not be effective under the state laws of Oklahoma.[103] The Oklahoma Supreme Court then stated that this would be a case of first impression to determine whether or not Article IV of the U.S. Constitution would be available in the state to grant Full Faith and Credit under the theories discussed earlier: comity or the use of the word "territory" in 28 U.S.C. § 1738 to Tribal Court judgments under the theory that Indian Nations are territories.[104] Fortunately, the Oklahoma Supreme Court did not have to address the issue of comity, nor did it have to give its opinion as to whether or not an Indian Nation was a "territory" as laid out in 28 U.S.C. § 1738. Instead, the Oklahoma Supreme Court unveiled the legislative history behind Rule 30[105] and how reciprocity is the key issue to whether or not full faith and credit will be granted to Tribal Court judgments.[106]

The true issue presented by the case was whether or not the wife was fraudulently coerced into submitting to personal jurisdiction in the Potawatomi Tribal Court since she did not live on the reservation nor was she a member of the tribe. The Oklahoma Supreme Court held that the District Court would not need to recognize the decree of the Tribal Court if evidence of fraud was in fact determined.[107] The Oklahoma Supreme Court reversed the decision of the District Court and stated that the District Court was in fact the court that should determine if the allegations made by the wife where true.[108] The Court continued that the wife had the right to present evidence to the District Court to prove her allegations of fraud and coercion and if she did in fact prove these allegations, the District Court need not recognize the decree of the Tribal Court of the Citizen Band Potawatomi Tribe due to the fraud or duress, just as the Oklahoma state courts do not recognize other state's decrees if they are founded on fraud or

100. *Barrett*, 878 P.2d at 1053.
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.* at 1054.
105. *Id.*
106. *Barrett*, 878 P.2d at 1054.
107. *Id.*
108. *Id.* at 1055.

duress.[109]

Since *Barrett*, the Tenth Circuit in *Enlow v. Moore*[110] reiterated Oklahoma law that judgments of tribal courts will be granted full faith and credit by the Oklahoma courts if the tribal court grants reciprocity to state court judgments as long as the judgments are not founded on fraud.[111] *Enlow* involved a boundary dispute between a non-Indian (Enlow) and three members of the Muscogee (Creek) Nation. The Muscogee (Creek) Tribal Court heard the original complaint to quiet title to land that Enlow owned that adjoined Indian allotted land that is restricted against alienation.[112] Enlow sued in District Court which dismissed the case stating that Enlow had not exhausted his tribal remedies.[113] The Tenth Circuit asserted on remand, that the District Court for the Northern District of Oklahoma needed to determine if the findings of the Tribal Supreme Court of the Muscogee (Creek) Nation findings were clearly erroneous in that the disputed property was within Indian Country.[114]

Additionally, in *Cherokee Nation v. Nations Bank, N.A.*[115] from the Eastern District, the Court concluded that since the Cherokee Nation had adopted the rules and statutes of Oklahoma concerning enforcement of judgments, the Cherokee Nation had established a policy on the part of the Nation of allowing garnishments of tribal funds to satisfy valid judgments entered by the court of the State of Oklahoma.[116] The Court continued that such judgments were entitled to full faith and credit under Cherokee Nation law[117] and that reciprocity would be granted, thus any judgment entered by the Cherokee Nation would be granted full faith and credit by Oklahoma Courts.[118]

III. FULL FAITH AND CREDIT IN OKLAHOMA'S FUTURE

Even with the grant by the Supreme Court of Oklahoma to give Tribal Courts Full Faith and Credit as long as a Tribal Court has registered an ordinance, statute, court rule or other form of evidence granting reciprocity to state court judgments, very few tribes have agreed to grant reciprocity to state court judgments. As stated previously, to date, only 15 Indian Nations of the 37 federally recognized Indian Nations have opted to register with the Administrative Office of the Court.[119]

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109. *Id.*
110. Enlow v. Moore, 134 F.3d 993 (10th Cir. 1998).
111. *Id.* at 995.
112. *Id.* at 994.
113. *See supra* note 74 for a discussion of the "exhaustion rule."
114. *Enlow*, 134 F.3d at 997.
115. 67 F. Supp. 2d 1303 (E.D. Okla. 1999).
116. *Id.* at 1306.
117. *Id.* at 1306-07. The Cherokee Nation Judicial Appeals Tribunal Rule 45 states "The courts of the Cherokee Nation shall give full faith and credit to judgments entered by the State of Oklahoma. Likewise, the State of Oklahoma gives full faith and credit to judgments entered by the courts of the Cherokee Nation." *Id.*
118. *Id.*
119. *See supra* note 90.

One reason that 15 Indian Nations have registered with the State is that Indian Nations do not want to be obligated to enforce state court judgments against their tribal members. This could be true for two reasons: judicial economy and inherent sovereignty. First, the encumbrance of enforcing state court judgments on tribal members could burden the tribal courts of some of the smaller Indian Nations. The expense, time, and manpower that it might take to haul a tribal member into Tribal Court to make them comply could be too expensive and time consuming on a busy Tribal Court.

Second, there is still the sovereignty issue that would appear to the Tribal Courts as giving up some of their inherent power to the state. The Indian Nations of Oklahoma pride themselves on their sovereignty and the thought of turning over any control to the state could be daunting and perhaps demeaning.

Additionally, a second potential downside to full faith and credit for the Indian Nations is that they in effect become agents of the State of Oklahoma in enforcing state court judgments in their courts. Again, the burden on judicial branches to enforce these judgments can tax not only the personnel in the Tribal Courts but also the monetary budgets of the courts. For example, adding 100 cases a year to a Tribal Court's docket pertaining to enforcement of state court judgments would potentially require the Tribal Court to hire additional personnel and police officers to find and subpoena the defendant to appear in Tribal Court, and then fill out any paperwork that would be associated with the proceeding. Most Tribal Courts function perfectly with limited staffing but the increased burden of enforcement of state court judgments could be detrimental to the budget of the Nation's court system.

It is the author's conclusion that full faith and credit under Rule 30 promulgated by the Oklahoma Supreme Court is good for the Indian Nations in Oklahoma. As Oklahoma's economy, industries, and populations continue to increase and push the boundaries of many of the Indian Nations' lands, lawsuits are bound to follow. There are more and more contract disputes between businesses, land titles, employment disputes, and basic civil and criminal suits brought to the court systems every day in both Tribal Courts and State Courts. As the Indian Nations continue to grow and prosper, they are not immune to these same types of issues that the state courts face. It is, therefore, in the best interest of the Indian Nations to grant reciprocity to state court judgments in order to receive the reciprocal respect in the Oklahoma State courts that they so justly deserve.

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