

October 2006

# The Last Few American Indian Treaties – An Extension of the Charles J. Kappler Indian Affairs: Laws and Treaties Internet Site at the Oklahoma State University

Charles D. Bernholz

*University of Nebraska-Lincoln*, cbernholz2@unl.edu

Brian L. Pytlik Zillig

*University of Nebraska-Lincoln*, bzillig1@unl.edu

Laura K. Weakly

*University of Nebraska-Lincoln*, bzillig1@unl.edu

Zacharia A. Bajaber

*University of Nebraska-Lincoln*, bzillig1@unl.edu

Follow this and additional works at: <http://digitalcommons.unl.edu/libraryscience>

 Part of the [Library and Information Science Commons](#)

---

Bernholz, Charles D.; Pytlik Zillig, Brian L.; Weakly, Laura K.; and Bajaber, Zacharia A., "The Last Few American Indian Treaties – An Extension of the Charles J. Kappler Indian Affairs: Laws and Treaties Internet Site at the Oklahoma State University" (2006). *Faculty Publications, UNL Libraries*. 57.

<http://digitalcommons.unl.edu/libraryscience/57>

This Article is brought to you for free and open access by the Libraries at University of Nebraska-Lincoln at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Faculty Publications, UNL Libraries by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

## The last few American Indian treaties – An extension of the Charles J. Kappler *Indian Affairs: Laws and Treaties* Internet site at the Oklahoma State University

Charles D. Bernholz,<sup>1</sup>  
Brian L. Pytlik Zillig,<sup>2</sup>  
Laura K. Weakly,<sup>2</sup>  
Zacharia A. Bajaber<sup>2</sup>

<sup>1</sup>Love Memorial Library, University of Nebraska–Lincoln, Lincoln, NE 68588, USA

<sup>2</sup>Electronic Text Center, Love Memorial Library, University of Nebraska–Lincoln,  
Lincoln, NE 68588, USA; email: [etcenter@unl.edu](mailto:etcenter@unl.edu)

*Corresponding author* – C. Bernholz, email [cbernholz2@unl.edu](mailto:cbernholz2@unl.edu), fax 402 472-5131.

### **Abstract**

In a previous discussion [Bernholz, C. D., & Holcombe, S. L. (2005). "The Charles J. Kappler *Indian Affairs: Laws and Treaties* Internet Site at the Oklahoma State University," *Library Collections, Acquisitions, and Technical Services* 29 (2005), pp. 82–89], an electronic collation of documents (URL: <http://0-www.digital.library.okstate.edu.library.unl.edu/kappler/>) created by American Indian tribes and the federal government was presented as an effective collection development resource. That digital work provides the final text of 366 of the 375 American Indian treaties recognized by the United States Department of State. The present research note describes an electronic suite that supplies access to the texts of the remaining nine treaties, so that its use – in combination with the Oklahoma State University materials – will furnish an avenue to all of these historical instruments. Research examples, for this document set and in comparison to the Kappler collation, are provided.

**Keywords:** Collection development, electronic resources, American Indian treaties

## 1. Introduction

The Oklahoma State University Library Electronic Publishing Center (OSU) has made available, on the World Wide Web, Charles J. Kappler's *Indian Affairs: Laws and Treaties*. This multi-volume digital asset has been described in an earlier article in *Library Collections, Acquisitions, and Technical Services* [1]. Of particular importance in this suite is volume 2 that contains the final texts of almost every recognized American Indian treaty [2].

In total, there are 375 acknowledged Indian treaties – 374 documents accepted and given individual ratified treaty numbers by the United States Department of State, plus one additional treaty that is deemed valid by the Courts. Kappler's second volume holds only 366 of these 375 items, beginning with ratified treaty number 8 in 1778 and continuing until the final instrument fashioned in 1868 [3], but these materials do not provide their assigned ratified treaty numbers [4]. As a result of his selection process, the prior seven texts, plus two other established documents, are not part of his collation, nor of the OSU Kappler electronic ensemble.

This research note reports on the development, by the University of Nebraska-Lincoln Libraries' Electronic Text Center, of a digital resource that furnishes these last few instruments. This document array is fully searchable, just as the OSU one is, and in combination with the items in the previous collection, it now affords World Wide Web access to all 375 federally recognized American Indian treaties. The URL for this supplement is <http://earlytreaties.unl.edu/index.html>.

## 2. The nine treaty titles

The first seven of those items that are not part of Kappler's work were negotiated by the British between the years 1722 and 1768. These documents are recognized now by the United States as ratified treaty number 1 through 7 [4]. They are interesting demonstrations of the negotiation process employed by the British to deal with the Indian Nations, and many report the entire sequence of events that took place between these sovereigns at each of their council meetings. Fenton has noted that the format of treaty construction at that time was based upon creating a kinship relationship, and that "[k]inship terms of address permeate the treaty literature" ([5]; p. 21). This bond may be seen within the context of each of the first seven gatherings. He also stated that differences existed between a conference and a treaty, where "large conferences leading to a definite result – extending the [Covenant] Chain, fixing boundaries, land cessions, and formal alliances for peace and war – are what we know as Indian treaties" ([5]; p. 27).

Fenton also countered Wroth's 1928 statement that early treaty documents were a specific, neglected literary type "that arose without conscious artistic design from the conflict of two distinct civilizations on the same soil" ([6]; p. 766). These materials are neglected no longer, and the newer, drama-laden perspective [7] of the interaction of these societies does not diminish the legal implications ad-

hering to these instruments. They have been living contracts: ratified treaty number 7 was referenced in an opinion of the United States Supreme Court [8], while treaty number 1, 3, and 7 were cited in state courts [9].

Two additional American treaties, created during the years 1798 and 1805, never appeared in the *Statutes at Large*, but were published solely in volume 1 of the *American State Papers: Indian Affairs*. These follow the more contract-like, less ritualized, and rather undramatic design of the other United States treaties with the tribes that appear in Kappler's volume [10]. Neither of these two documents has been cited in an opinion at the federal [11] or at the state court level [9].

The nine items are listed and accompanied by a citation to each textual source that was digitized for this collection. The seven recognized British treaties are:

- Ratified treaty # 1: *The Great Treaty of 1722 Between the Five Nations, the Mahicans, and the Colonies of New York, Virginia, and Pennsylvania* [12].
- Ratified treaty # 2: *Deed in Trust from Three of the Five Nations of Indians to the King, 1726* [13].
- Ratified treaty # 3: *A Treaty Held at the Town of Lancaster, By the Honourable the Lieutenant Governor of the Province, and the Honourable the Commissioners for the Province of Virginia and Maryland, with the Indians of the Six Nations in June, 1744* [14].
- Ratified treaty # 4: *Treaty of Logstown, 1752* [15].
- Ratified treaty # 5: *The Albany Congress, and Treaty of 1754* [16].
- Ratified treaty # 6: *At a Conference Held By The Honourable Brigadier General Moncton with the Western Nations of Indians, at the Camp before Pittsburgh, 12th Day of August 1760* [17].
- Ratified treaty # 7: *Treaty of Fort Stanwix, or The Grant from the Six Nations to the King and Agreement of Boundary Line – Six Nations, Shawnee, Delaware, Mingoes of Ohio, 1768* [18].

The two United States treaties that were published only in the *American State Papers* are:

- Ratified treaty # 28: *Convention Between the State of New York and the Oneida Indians, June 1, 1798* [19].
- Ratified treaty # 44: *A Treaty Between the United States of America and the sachems, chiefs, and warriors, of the Wyandot, Ottawa, Chippewa, Munsee, and Delaware, Shawnee, and Pattawatamy nations, holden at fort Industry, on the Miami of the lake, on the 4th day of July, A.D. one thousand eight hundred and five* [20].

### 3. The digitization process

All nine texts were digitally photographed or scanned and saved as 24-bit color TIFF image files. The TIFFs were reprocessed as JPEG derivatives for Web display and subsequently converted to ASCII text using optical character recogni-

tion (OCR) software. The ASCII texts were encoded in eXtensible Markup Language (XML) following Text Encoding Initiative (TEI) standards. All original spellings and abbreviations were preserved, with modern equivalents also encoded. The XML files were then placed in an XML database where the appropriate fields were indexed for keyword searching. Data are queried from the database using the XQuery standard language. Wildcard searches add flexibility and allow for easy location of words whose spelling is not standard [21].

All files were loaded into Apache Cocoon, an excellent framework for dynamically converting XML to HTML for browser display. Extensible Stylesheet Language for Transformations (XSLT) was employed for the XML to HTML conversion, including all aspects of the Web design and navigation.

#### 4. Research applications

The fully searchable digitized text and the page images provide useful access to this important collection. The early negotiations linking the British and the tribes set the stage for later dialogues between the Indian Nations and the future United States by providing a diplomatic model or process. Treaty number 2, 3, 5, and 7 involve land cessions and/or boundary adjustments.

One important aspect of British diplomatic attempts at that time was the development and maintenance of the so-called Covenant Chain between the Iroquois Confederacy [22] and the resident government. Jennings has provided the history of such alliances, beginning in 1677, and notes that the Covenant Chain “was a multiparty alliance of two groupings of members: tribes, under the general leadership of the Iroquois, and English colonies, under the general supervi-



**Figure 1.** Sir William Johnson, Superintendent of Indian Affairs for the Northern Department between 1756 and 1774 (Source: Library and Archives Canada/Claus family portraits/C-083497).

sion of New York" ([23]; pp. 38–39). These coalitions evolved, especially under the guidance of the Superintendent of Indian Affairs for the Northern Department, Sir William Johnson (Figure 1). His interactions, above all with the Mohawk, solidified the British position [24] against the French and their "French Indian" allies [25].

These three reference terms may serve as searchable targets within this treaty set. The string *covenant chain* may be employed to recover those documents that include this phrase. This term appears in treaty number 1, 3, 5, and 7. None of the later American treaties, i.e., those collated by Kappler, contains this element. In the same way, a search for *William Johnson* yields results in treaty number 4, 5, and 7. Finally, the *French Indian*\* example turns up in treaty number 1, 4, and 5 [26]. None of these three expressions is found in either of the two later United States treaties in this suite [27].

## 5. Conclusions

As noted in the earlier article on the OSU Kappler collection [1], these negotiations between the tribes and the federal government are an important segment of United States and of North American history. Digital accessibility to the first seven recognized treaties with the American Indians illuminates earlier British undertakings with the tribes. This is particularly relevant, since it is likely that many legal and scholarly investigations have failed to materialize because these documents have only been available to those patrons with access to a published version of O'Callaghan's *Documents Relative to the Colonial History of the State of New York*, or to the necessary volumes of the *Early American Indian Documents* collection [28]. Large academic libraries may have these volumes, but many smaller libraries – particularly public ones – in all likelihood do not.

The availability of searchable electronic resources like OSU's *Indian Affairs: Laws and Treaties* provides all libraries with a convenient and cost-effective method of collection development for such materials [29]. In one special case, the American Indian Higher Education Consortium's Virtual Library [30] furnishes a centralized, digital repository for libraries within the tribal college system and the *Indian Affairs: Laws and Treaties* database is a relevant part of that collection. Other endeavors have afforded a similar expanded view of American history: Texas Tech University's *Vietnam Project* [31] and the University of Houston's *Digital History* Web site [32] are two such examples. These efforts capture the same enthusiasm for information, and they endow all of our patrons with useful library means. The nine American Indian treaties, reported here, were gathered together as a small step towards achieving that goal [33].

## References

- [1] C. D. Bernholz and S. L. Holcombe, The Charles J. Kappler *Indian Affairs: Laws and Treaties* Internet site at the Oklahoma State University [The url for this resource is <http://0-www-digital.library.okstate.edu.library.unl.edu/kappler/> ], *Library Collections, Acquisitions, and Techni-*

- cal Services* 29 (2005), pp. 82–89. [2] See Holcombe, S. L. (2000). Bringing *Indian Affairs: Laws and Treaties* to the World Wide Web for a description of this digitization project ([http://0-www.access.gpo.gov.library.unl.edu/su\\_docs/fdlp/pubs/proceedings/00pro11.html](http://0-www.access.gpo.gov.library.unl.edu/su_docs/fdlp/pubs/proceedings/00pro11.html)).
- [3] These two documents are the *Treaty with the Delawares, 1778* (<http://0-digital.library.okstate.edu.library.unl.edu/kappler/Vol2/treaties/del0003.htm>) and the *Treaty with the Nez Percés, 1868* (<http://0-digital.library.okstate.edu.library.unl.edu/kappler/Vol2/treaties/nez1024.htm>).
- [4] *Ratified Indian Treaties, 1722–1869*. (1966). Washington, DC: National Archives and Records Service. The full sequence of ratified treaty numbers, tribal participants, and text page numbers in Kappler’s second volume or elsewhere is presented for all 375 treaties in the first table of Bernholz, C. D. (2003). *Kappler Revisited: An Index and Bibliographic Guide to American Indian Treaties* (pp. 73–113). Kenmore, NY: Epoch Books.
- [5] W. N. Fenton, Structure, continuity, and change in the process of Iroquois treaty making. In: F. Jennings, W. N. Fenton, M. A. Druke, and D. R. Miller, editors, *The History and Culture of Iroquois Diplomacy: An Interdisciplinary Guide to the Treaties of the Six Nations and their League*, Syracuse University Press, Syracuse, NY (1985), pp. 3–36. Additional Iroquois political material may be found in Fenton, W. N. (1998). *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy*. Norman, OK: University of Oklahoma Press.
- [6] L. C. Wroth, The Indian treaty as literature, *Yale Review* 17 (1926), pp. 749–766.
- [7] Drummond, A. M., & Moody, R. (1953). Indian treaties: The first American dramas. *Quarterly Journal of Speech*, 39, 15–24 talk at length about the “theatre-in-life” aspect of Indian treaties. They make particular note of Benjamin Franklin’s interest in these as literary documents. Ratified treaty number 3, *A Treaty Held at the Town of Lancaster, By the Honourable the Lieutenant Governor of the Province, and the Honourable the Commissioners for the Province of Virginia and Maryland, with the Indians of the Six Nations in June, 1744*, printed by Franklin, is one of their primary examples.
- [8] C. D. Bernholz, American Indian treaties and the Supreme Court: A guide to treaty citations from opinions of the United States Supreme Court, *Journal of Government Information* 30 (2004), pp. 318–431 The specific case was *Sims v. Irvine* (3 U.S. 425 [1799]).
- [9] C. D. Bernholz and R. J. Weiner, American Indian treaties in the state courts: A guide to treaty citations from opinions of state court systems, *Government Information Quarterly* 22 (2005), pp. 440–488 Treaty number 1 and 3 have each been referenced once in a case before the Supreme Court of Virginia (*Gregory v. Baugh*, 25 Va. 611 [1827]) and of Oklahoma (*In re Baby Boy D*, 742 P.2d 1059 [1985]), respectively. Treaty number 7 has been cited twice before the Supreme Court of Pennsylvania (*Commonwealth v. Cox*, 4 U.S. 170 [1800] and *Poor v. McClure*, 77 Pa. 214 [1874]).
- [10] Statements such as “I shall conclude by telling you as long as you keep firm to your duty at all times to come, as you have in times past, you may rest assured not only of Protection but of all other good offices in the Power of those that are in Authority under the King our common Father and Protector,” that appeared in ratified treaty number 1, *The Great Treaty of 1722 Between the Five Nations, the Mahicans, and the Colonies of New York, Virginia, and Pennsylvania*, are not evident in these two shorter documents.
- [11] C. D. Bernholz, The absent American Indian treaties: A guide to treaties never referenced at the federal court level, *Journal of Government Information* 28 (2001), pp. 171–178.
- [12] In: E. B. O’Callaghan, editor, *Documents Relative to the Colonial History of the State of New York* vol. 5, Weed, Parsons, and Co, Albany, NY (1855), pp. 657–681.
- [13] In: E. B. O’Callaghan, editor, *Documents Relative to the Colonial History of the State of New York* vol. 5, Weed, Parsons, and Co, Albany, NY (1855), pp. 800–801.
- [14] In: C. Van Doren and J.P. Boyd, editors, *Indian Treaties Printed by Benjamin Franklin, 1736–1762*, The Historical Society of Pennsylvania, Philadelphia, PA (1938), pp. 41–79.

- [15] The treaty of Logg's Town, 1752, *Virginia Magazine of History and Biography* 13 (1906), pp. 154-174.
- [16] In: E. B. O'Callaghan, editor, *Documents Relative to the Colonial History of the State of New York* vol. 6, Weed, Parsons, and Co, Albany, NY (1855), pp. 853-892.
- [17] In: S. Hazard, editor, *Pennsylvania Archives (1st Series)* vol. 3, Joseph Severns, Philadelphia, PA (1852), pp. 744-751.
- [18] In: E. B. O'Callaghan, editor, *Documents Relative to the Colonial History of the State of New York* vol. 8, Weed, Parsons, and Co, Albany, NY (1857), pp. 111-137.
- [19] *American State Papers: Indian Affairs* (vol. 1, p. 641). (1832). Washington, DC: Gales and Seaton. This and ratified treaty number 44 have been digitized by the Library of Congress, as part of their *A Century of Lawmaking for a New Nation* Web site. See <http://0-memory.loc.gov.library.unl.edu/ammem/amlaw/lwsp.html>.
- [20] *American State Papers: Indian Affairs* vol. 1, Gales and Seaton, Washington, DC (1832), p. 696.
- [21] Wildcard searching can be particularly fruitful with these documents. The search string *on\*d\** yields, for example, Onandago, Onandagoes, Ondaghsighte (a sachim of the Oneida noted in ratified treaty # 1), Oneida, Oneidas, Oneido, Onejda, Oneyde, Oneydes, Onnondage, Onnondages, Onnondagues, Onnaudague, Onondaga, Onondagas, Onondages, and Onondago. The tribe name spellings were gathered together and listed under the Oneida and the Onondaga entries in O'Callaghan's *General Index to the Documents Relative to the Colonial History of the State of New York* (Albany, NY: Weed, Parsons, and Co. [1861]).
- [22] See a summary of the Iroquois Confederacy by E. Tooker, "The League of the Iroquois: Its history, politics, and ritual," in W. C. Sturtevant and B.G. Trigger (eds.). (1978). *Handbook of North American Indians, vol. 15: Northeast* (pp. 418-441). Washington, DC: Smithsonian Institution. L. H. Morgan's *League of the Ho-de-no-sau-nee or Iroquois* (New York: Dodd, Mead and Co. [1901]) provides a much more inclusive examination, particularly in terms of kinship and structure.
- [23] Jennings, F. Iroquois alliances in American history. In F. Jennings, W. N. Fenton, M. A. Druke, & D. R. Miller (eds.). (1985). *The History and Culture of Iroquois Diplomacy: An Interdisciplinary Guide to the Treaties of the Six Nations and Their League* (pp. 37-65). Syracuse, NY: Syracuse University Press. See his earlier article, "The constitutional evolution of the Covenant Chain. (1971). [*Proceedings of the American Philosophical Society*, 115, 88-96], for an analysis and description of the Chain.
- [24] See an account of Johnson's influence with the tribes in Jones, D. V. (1982). *License for Empire: Colonialism by Treaty in Early America* (pp. 58-92). Chicago, IL: University of Chicago Press. Daniel K. Richter fashioned a solid biographical entry for Johnson in Matthew, H. C. G. & Harrison, B. (eds.). (2004). *Oxford Dictionary of National Biography* (vol. 30, pp. 329-331). New York: Oxford University Press.
- [25] L. M. Stone and D. Chaput, History of the upper Great Lakes area. In: W. C. Sturtevant and B. G. Trigger, editors, *Handbook of North American Indians* vol. 15, Smithsonian Institution, Northeast. Washington, DC (1978), pp. 602-606.
- [26] *Covenant chain* appears 29, 6, 12, and 4 times, respectively, in treaty number 1, 3, 5, and 7. *William Johnson* is found 1, 7, and 14 times within treaty number 4, 5, and 7. *French Indian\** emerges 5, 1, and 4 times from treaty number 1, 4, and 5.
- [27] An inquiry for a later, but equally important, figure in Indian policy, *Thomas Jefferson*, yields only one occurrence, in ratified treaty number 44. The same target appears eight times in volume 2 of OSU's digitized *Indian Affairs: Laws and Treaties*.
- [28] Treaty number 1 and 2 appear in Vaughan, A. T. & Graymont, B. (eds.). (1996). *Early American Indian Documents: Treaties and Laws, 1607-1789, vol. 9: New York and New Jersey Treaties, 1714-1753* (pp. 103-127 and 178-179). Bethesda, MD: University Publications of America. Treaty number 3 is in Vaughan, A. T. & Kent, D. H. (eds.). (1984). *Early American Indian Documents:*

- Treaties and Laws, 1607–1789, vol. 2: Pennsylvania Treaties, 1737–1756* (pp. 77–110). Washington, DC: University Publications of America. Treaty number 4 occurs in Vaughan, A. T. & Robinson, W. S. (eds.). (1983). *Early American Indian Documents: Treaties and Laws, 1607–1789, vol. 5: Virginia Treaties, 1723–1775* (pp. 133–146). Frederick, MD: University Publications of America. Treaty number 5 and 7 are presented in Vaughan, A. T. & Graymont, B. (eds.). (2001). *Early American Indian Documents: Treaties and Laws, 1607–1789, vol. 10: New York and New Jersey Treaties, 1754–1775* (pp. 14–57 and 541–566). Bethesda, MD: University Publications of America. Treaty number 6 is printed in Vaughan, A. T. & Hirsch, A. D. (Eds.). (2004). *Early American Indian Documents: Treaties and Laws, 1607–1789, vol. 3: Pennsylvania Treaties, 1756–1775* (pp. 554–561). Bethesda, MD: University Publications of America.
- [29] See Matesic, G. (2004). Indigenous nations: Sites of interest. *College and Research Libraries News*, 65, 16–19 for additional digital resources.
- [30] The library is accessible at <http://www.aihecvl.org/> .
- [31] The *Vietnam Project* page retrieved from <http://www.vietnam.ttu.edu/index.htm> . A description of the project may be found in Rogers, M. (2005). Texas Tech University digitizing massive Vietnam archive. *Library Journal*, 130, 27–28.
- [32] *Digital History* may be found at <http://www.digitalhistory.uh.edu/> . This site supports a section on American Indian history ([http://www.digitalhistory.uh.edu/native\\_voices/native\\_voices.cfm](http://www.digitalhistory.uh.edu/native_voices/native_voices.cfm)). See Bartosz, K., Roberts, J. R., & Drost, C. A. (2005). Digital history: Using new technologies to enhance teaching and research. *College and Research Libraries News*, 66, 400.
- [33] This collection's description has been added to the Registry of U.S. Government Publication Digitization Projects (<http://0-www.gpoaccess.gov.library.unl.edu/legacy/registry/>) that identifies numerous other publicly accessible collections of digitized federal publications (The Web site has also been cataloged through OCLC WorldCat; the accession number is 70172136).