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American Indian treaties and the lower federal courts: A guide to treaty citations from opinions of the lower United States federal court system

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Abstract

In a previous study, it was found that 209 of 375 recognized American Indian treaties have been cited in opinions of the United States Supreme Court (Bernholz, 2004). This guide now identifies – through 246 citations from 142 cases between the years 1863 and 2005 – 85 treaties found only in opinions of the lower Federal Court system. In addition, this investigation uncovered another treaty referenced by the Supreme Court. The remaining 80 instruments have not appeared in opinions of the federal courts (Bernholz, 2001, 2002; Bernholz and Weiner, 2005).
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The United States Supreme Court has concluded that "[w]ith the adoption of the Constitution, Indian relations became the exclusive providence of federal law" (*County of Oneida v. Oneida Indian Nation*, 1985, p. 234). A particularly unique relationship exists as a result of the treaty process between the tribes and the federal government.[1] In three previous guides, 290 of the 375 Indian treaties created between these signatories were partitioned into two categories: those 210 instruments that were cited in the opinions of the United States

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[1] In 1942, Cohen brought together existing federal Indian law, and his chapter on "Indian Treaties" (1942, pp. 33–67) provides insight into these instruments.

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Supreme Court,[2] and those 80 treaties that never were referenced in the opinions of any federal court.[3] The remaining 85 documents are the basis of this guide, and are those recognized treaties that have appeared before *only* a lower level of the federal court system, i.e., below the Supreme Court.

Pursuant to the obligations associated with the parameters of negotiated treaties, the federal government has a trust responsibility to the tribes.[4] This accountability is tied to the tribes' unique status as "domestic dependent nations" (*Cherokee Nation v. Georgia*, 1831, p. 17). Under these trust obligations, the federal government has fiduciary duties that ultimately may require it to bring suit for the tribe, or for an individual tribe member. This task is expressed in the plaintiff case title in *United States v. Montana* (1978) that states in part: "The United States of America, in its own right and as fiduciary on behalf of the Crow Tribe of Indians...." In these proceedings, the court was asked to determine "whether the bed of the Big Horn River, within the exterior boundaries of the Crow Indian Reservation, is land *held by the United States in trust for the use and benefit of the Crow Tribe*, or whether it is land to which the title passed to the State of Montana upon its admission to the Union" (p. 605; emphasis added). In a similar manner, *United States v. Nez Perce County* (1936) sued for several individual "Indian *wards of the government*" (p. 268; emphasis added). The subsequent case, *United States v. Nez Perce County* (1938), appealed for one of them, an "Indian *ward* enrolled as a member of the Nez Perce Tribe" (p. 233; emphasis added). Each of these three cases is an example of action brought to the federal court system by the federal government as part of its trust obligations to the tribes.

However, difficulty – termed a "political anomaly" by Francis Paul Prucha (1994, p. 19) – arises from the intersection of tribal sovereignty and of the reliance upon the federal government for basic services, especially when both this autonomy and these forms of assistance have been assured by treaty parameters. Consequently, in numerous cases brought before the courts that relied upon these documents, the inconsistency of federal government trust relationship performance has been an issue. Wilkinson (1987, pp. 75–86) and Gold (2000) used the decision in *Nevada v. United States* (1983) to illustrate one scenario of a federal conflict of interest flowing from this predicament.

The use of the lower federal courts to address many Indian-federal government questions stems from the role of the "District Courts and, to some degree, the Courts of Appeal, [to] bring down to a local level the authority of the national law" (Early, 1977, p. 5). Specifically, the District Courts "may hear and decide, or otherwise dispose of, cases and controversies arising under the whole array of federal law stemming from the Constitution,

[2] Bernholz (2004) found 209 such instruments before the United States Supreme Court. As part of the *Westlaw Campus* subanalysis of *Statutes at Large* citations for this article, it was found that one other treaty was cited before the Court: ratified treaty number 336 – the *Treaty with the Ponca, 1865* (Kappler, 1904, pp. 875–876) – appeared in the opinion for *Rice v. Olson* (1945).

[3] In a similar manner to the investigation of treaties in the opinions of the United States Supreme Court, the number of treaties that have never appeared in federal court has diminished from 84 to the present 80 documents. See Bernholz (2001, 2002) and Bernholz and Weiner (2006) for this sequence.

[4] See Pevar (2002, pp. 32–45) and Canby (2004, pp. 34–61) for a summary of the government's trust relationship with the tribes.

from laws made in pursuance of it, or from *treaties* of the United States" (p. 40; emphasis added). As a result, the array of lower Federal Courts affords numerous legal venues. This opportunity is reflected also in Table 1 by 137 of 246 citations from 69 of 142 cases to 67 of 85 treaties contained in the opinions of the Court of Claims, the Claims Court, and the Court of Federal Claims, between the years 1897 and 1997.[5]

As a further indication of the significance of these lower federal court proceedings, many of the cases have been cited in one or more of the four major federal Indian law reference resources used over the last sixty-five years (Cohen, 1942; Strickland, 1982; Meyers & Smith, 2004; Newton, 2005).

1. Table 1 and case selection

Case selection in this guide was bound by two criteria: a citation, in the opinion of the court, to a specified treaty *and* the appearance of that citation only in a lower federal court. In a number of cases presented here, the United States Supreme Court denied petitions for writ of certiorari.[6] Some cases eventually went before the Supreme Court, but one or more of the corresponding treaties cited in the lower court were not cited at that level.[7]

Those cases from the lower federal court system that cited any recognized Indian treaty were selected by using each treaty's *Statutes at Large* reference[8] to identify case entries in the volumes of *Shepard's Federal Statute Citations* (1996, 2001, 2003, 2005).[9] In addition, each treaty's *Statutes at Large* notation was re-examined with the full LexisNexis online database to identify any case not reported in *Shepard's Federal Statute Citations*. The Web-based *Westlaw Campus* suite was interrogated for all these *Statutes* references as well. In this manner, the following table was constructed to identify, in total, the 246 citations to these 85 ratified Indian treaties found in 142 lower federal court opinions for the years 1863 to 2005. Sixteen of these instruments have never been part of a Court of Claims proceeding (Bernholz & Weiner, 2006). Further, fourteen treaties have never been before a State court (Bernholz & Weiner, 2005); only four of these specific

[5] These venues are denoted in the "Court" column of the Table as "Ct. Cl.," "Cl. Ct.," and "Ct. Fed. Cl."

[6] Examples from the Table of denied permission for writs of certiorari would include *Pawnee Indian Tribe of Oklahoma v. United States* (1953); *Miami Tribe of Oklahoma v. United States* (1960); *Creek Nation East of the Mississippi v. United States* (1964); and *Strong v. United States* (1975).

[7] A clear example of this citation absence in a later suit may be seen in the comparison of the *Alcea Band of Tillamooks v. United States* (1945) case before the Court of Claims, and the subsequent *United States v. Alcea* (1946) case before the United States Supreme Court. In the earlier case, the Alcea Band cited ratified treaty number 263, 264, 278, 279, and 300. Each of these five documents relates to negotiations with tribes from the Pacific Northwest, some of which were co-plaintiffs in this case. The latter case referred only to ratified treaty number 324 (see Bernholz, 2004), the *Treaty with the Eastern Shoshoni, 1863* (Kappler, 1904, pp. 848–850).

[8] The first eighteen volumes of *Statutes at Large* are now available on the Library of Congress's *Century of Lawmaking for a New Nation* page at http://lcweb2.loc.gov/ammem/amlaw/lwsl.html. The texts of all treaties in the Table are available at this site.

[9] Cumulative soft-covered issues that update the bound permanent volumes completed the examination.

Table 1
Indian treaties, listed by Department of State ratified treaty number, that have been referenced in the opinions of the lower federal courts

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
24	*Seven Nations of Canada*	31-May-1796	45	7 Stat. 55	Deere v. New York (1927)	22 F. 2d 851	Dist. Ct., N.D. N.Y.
24		31-May-1796	45	7 Stat. 55	Deere v. St. Lawrence River Power Co. (1929)	32 F. 2d 550	Cir. 2
24		31-May-1796	45	7 Stat. 55	United States v. Franklin County (1943)	50 F. Supp. 152	Dist. Ct., N.D. N.Y.
24		31-May-1796	45	7 Stat. 55	United States v. Michigan (1979)	471 F. Supp. 192	Dist. Ct., W.D. Mich.
24		31-May-1796	45	7 Stat. 55	Mohegan Tribe v. Connecticut (1980)	638 F. 2d 612	Cir. 2
24		31-May-1796	45	7 Stat. 55	Canadian St. Regis Band of Mohawk Indians v. New York (1983)	97 F.R.D. 453	Dist. Ct., N.D. N.Y.
24		31-May-1796	45	7 Stat. 55	Canadian St. Regis Band of Mohawk Indians v. New York (1983)	573 F. Supp. 1530	Cir. 2
24		31-May-1796	45	7 Stat. 55	Thompson v. County of Franklin (1992)	1992 U.S. Dist. LEXIS 18109	Dist. Ct., N.D. N.Y.
24		31-May-1796	45	7 Stat. 55	Thompson v. County of Franklin (1994)	15 F. 3d 245	Cir. 2
24		31-May-1796	45	7 Stat. 55	Thompson v. County of Franklin (1996)	1996 U.S. Dist. LEXIS 8647	Dist. Ct., N.D. N.Y.
24		31-May-1796	45	7 Stat. 55	Thompson v. County of Franklin (1997)	987 F. Supp. 111	Dist. Ct., N.D. N.Y.
24		31-May-1796	45	7 Stat. 55	Thompson v. County of Franklin (2000)	127 F. Supp. 2d 145	Dist. Ct., N.D. N.Y.
24		31-May-1796	45	7 Stat. 55	Canadian St. Regis Band of Mohawk Indians v. New York (2001)	146 F. Supp. 2d 170	Dist. Ct., N.D. N.Y.
24		31-May-1796	45	7 Stat. 55	Thompson v. County of Franklin (2002)	314 F. 3d 79	Cir. 2

Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
24	*Seven Nations of Canada*	31-May-1796	45	7 Stat. 55	Canadian St. Regis Band of Mohawk Indians v. New York (2003)	278 F. Supp.2d 313	Dist. Ct., N.D. N.Y.
24		31-May-1796	45	7 Stat. 55	Tarbell v. Department of Interior (2004)	307 F.Supp. 2d 409	Dist. Ct., N.D. N.Y.
24		31-May-1796	45	7 Stat. 55	Canadian St. Regis Band of Mohawk Indians v. New York (2005)	388 F.Supp. 2d 25	Dist. Ct., N.D. N.Y.
25	Creek	29-Jun-1796	46	7 Stat. 56	Yuchi (Euchee) Tribe of Indians v. United States (1956)	136 Ct. Cl. 433	Ct. Cl.
25		29-Jun-1796	46	7 Stat. 56	Creek Nation v. United States (1961)	152 Ct. Cl. 747	Ct. Cl.
25		29-Jun-1796	46	7 Stat. 56	Native Village of Noatak v. Hoffman (1990)	896 F.2d 1157	Cir. 9
26	Mohawk	29-Mar-1797	50	7 Stat. 61	Canadian St. Regis Band of Mohawk Indians ex rel. Francis v. New York (2003)	278 F.Supp. 2d 313	Dist. Ct., N.D. N.Y.
36	Delaware; Shawnee; Potawatomi; Miami; Eel River; Wea; Kickapoo; Piankashaw; Kaskaskia	7-Jun-1803	64	7 Stat. 74	United States ex rel. Marks v. Brooks (1940)	32 F. Supp. 422	Dist. Ct., N.D. Ind.
36		7-Jun-1803	64	7 Stat. 74	Miami Tribe of Oklahoma v. United States (1959)	146 Ct. Cl. 421	Ct. Cl.
36		7-Jun-1803	64	7 Stat. 74	Strong v. United States (1975)	207 Ct. Cl. 254	Ct. Cl.
36		7-Jun-1803	64	7 Stat. 74	Hannahville Indian Community v. United States (1983)	4 Cl. Ct. 445	Cl. Ct.

(continued on next page)

Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
41	Piankashaw	27-Aug-1804	72	7 Stat. 83	Miami Tribe of Oklahoma v. United States (1959)	146 Ct. Cl. 421	Ct. Cl.
47	Delaware; Potawatomi; Miami; Eel River; Wea	21-Aug-1805	80	7 Stat. 91	United States ex rel. Marks v. Brooks (1940)	32 F. Supp. 422	Dist. Ct., N.D. Ind.
47		21-Aug-1805	80	7 Stat. 91	Miami Tribe of Oklahoma v. United States (1959)	146 Ct. Cl. 421	Ct. Cl.
47		21-Aug-1805	80	7 Stat. 91	Miami Tribe of Oklahoma v. United States (1960)	150 Ct. Cl. 725	Ct. Cl.
47		21-Aug-1805	80	7 Stat. 91	United States v. Kickapoo Tribe of Kansas (1966)	174 Ct. Cl. 550	Ct. Cl.
47		21-Aug-1805	80	7 Stat. 91	Strong v. United States (1975)	207 Ct. Cl. 254	Ct. Cl.
47		21-Aug-1805	80	7 Stat. 91	Hannahville Indian Community v. United States (1983)	4 Cl. Ct. 445	Cl. Ct.
56	*Chippewa; Ottawa; Potawatomi; Wyandot; Shawnee*	25-Nov-1808	99	7 Stat. 112	Mole Lake Band v. United States (1953)	126 Ct. Cl. 596	Ct. Cl.
56		25-Nov-1808	99	7 Stat. 112	Mole Lake Band v. United States (1956)	134 Ct. Cl. 478	Ct. Cl.
58	Wea	26-Oct-1809	103	7 Stat. 116	Miami Tribe of Oklahoma v. United States (1959)	146 Ct. Cl. 421	Ct. Cl.
58		26-Oct-1809	103	7 Stat. 116	Strong v. United States (1975)	207 Ct. Cl. 254	Ct. Cl.
59	Kickapoo	9-Dec-1809	104	7 Stat. 117	Miami Tribe of Oklahoma v. United States (1959)	146 Ct. Cl. 421	Ct. Cl.

Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
60	*Wyandot; Delaware; Shawnee; Seneca; Miami; Potawatomi; Ottawa: Blanchard's Fork; Kickapoo*	22-Jul-1814	105	7 Stat. 118	Native Village of Noatak v. Hoffman (1990)	896 F. 2d 1157	Cir. 9
69	Kickapoo	2-Sep-1815	116	7 Stat. 130	Creek Nation East of the Mississippi v. United States (1964)	165 Ct. Cl. 479	Ct. Cl.
70	Wyandot; Delaware; Seneca; Shawnee; Miami; Chippewa; Ottawa; Potawatomi	8-Sep-1815	117	7 Stat. 131	Mole Lake Band v. United States (1953)	126 Ct. Cl. 596	Ct. Cl.
70		8-Sep-1815	117	7 Stat. 131	Green v. Commissioner (1993)	65T.C.M. (CCH) 2347	Tax Ct.
72	Sac	13-Sep-1815	120	7 Stat. 134	Sac and Fox Tribe of Indians of Oklahoma v. United States (1963)	161 Ct. Cl. 189	Ct. Cl.
73	Fox	14-Sep-1815	121	7 Stat. 135	Sac and Fox Tribe of Indians of Oklahoma v. United States (1963)	161 Ct. Cl. 189	Ct. Cl.
75	Kansa	28-Oct-1815	123	7 Stat. 137	Kansas or Kaw Tribe of Indians v. United States (1934)	80 Ct. Cl. 264	Ct. Cl.
75		28-Oct-1815	123	7 Stat. 137	Creek Nation East of the Mississippi v. United States (1964)	165 Ct. Cl. 479	Ct. Cl.
78	Sac: Rock River	13-May-1816	126	7 Stat. 141	Sac and Fox Tribe of Indians of Oklahoma v. United States (1963)	161 Ct. Cl. 189	Ct. Cl.
81	Wea; Kickapoo	4-Jun-1816	131	7 Stat. 145	Miami Tribe of Oklahoma v. United States (1959)	146 Ct. Cl. 421	Ct. Cl.

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Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
82	Ottawa; Chippewa; Potawatomi	24-Aug-1816	132	7 Stat. 146	Mole Lake Band v. United States (1953)	126 Ct. Cl. 596	Ct. Cl.
82		24-Aug-1816	132	7 Stat. 146	Mole Lake Band v. United States (1956)	134 Ct. Cl. 478	Ct. Cl.
82		24-Aug-1816	132	7 Stat. 146	Citizen Band of Potawatomi Indians v. United States (1967)	179 Ct. Cl. 473	Ct. Cl.
82		24-Aug-1816	132	7 Stat. 146	Hannahville Indian Community v. United States (1983)	4 Cl. Ct. 445	Cl. Ct.
84	Chickasaw	20-Sep-1816	135	7 Stat. 150	Chickasaw Nation of Indians v. United States (1945)	103 Ct. Cl. 1	Ct. Cl.
86	*Menominee*	30-Mar-1817	138	7 Stat. 153	Menominee Indian Tribe of Wisconsin v. United States (1967)	179 Ct. Cl. 496	Ct. Cl.
86		30-Mar-1817	138	7 Stat. 153	Menominee Tribe of Indians (1978)	1978 U.S. Ct. Cl. LEXIS 793	Ct. Cl.
86		30-Mar-1817	138	7 Stat. 153	Menominee Indian Tribe of Wisconsin v. United States (1979)	1979 U.S. Ct. Cl. LEXIS 799	Ct. Cl.
86		30-Mar-1817	138	7 Stat. 153	Menominee Indian Tribe of Wisconsin v. United States (1981)	1981 U.S. Ct. Cl. LEXIS 1313	Ct. Cl.
86		30-Mar-1817	138	7 Stat. 153	Menominee Indian Tribe of Wisconsin v. United States (1997)	39 Fed. Cl. 441	Ct. Fed. Cl.
91	Creek	22-Jan-1818	155	7 Stat. 171	Creek Nation v. United States (1961)	152 Ct. Cl. 747	Ct. Cl.
100	Osage: Grand and Little	25-Sep-1818	167	7 Stat. 183	Osage Tribe of Indians v. United States (1928)	66 Ct. Cl. 64	Ct. Cl.
100		25-Sep-1818	167	7 Stat. 183	Logan v. Andrus (1978)	457 F. Supp. 1318	Dist. Ct., N.D. Okla.
102	Wea	2-Oct-1818	169	7 Stat. 186	Miami Tribe of Oklahoma v. United States (1959)	146 Ct. Cl. 421	Ct. Cl.
102		2-Oct-1818	169	7 Stat. 186	Peoria Tribe of Indians v. United States (1965)	169 Ct. Cl. 1009	Ct. Cl.
102		2-Oct-1818	169	7 Stat. 186	Strong v. United States (1975)	207 Ct. Cl. 254	Ct. Cl.

Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
104	Miami	6-Oct-1818	171	7 Stat. 189	Wau-Pe-Man-Qua v. Aldrich (1886)	28 F. 489	C.C.D. Mont.
104		6-Oct-1818	171	7 Stat. 189	United States v. Higgins (1900)	103 F. 348	C.C.D. Mont.
104		6-Oct-1818	171	7 Stat. 189	United States ex rel. Marks v. Brooks (1940)	32 F. Supp. 422	Dist. Ct., N.D. Ind.
104		6-Oct-1818	171	7 Stat. 189	Miami Tribe of Oklahoma v. United States (1959)	146 Ct. Cl. 421	Ct. Cl.
104		6-Oct-1818	171	7 Stat. 189	Miami Tribe of Oklahoma v. United States (1960)	150 Ct. Cl. 725	Ct. Cl.
104		6-Oct-1818	171	7 Stat. 189	United States v. Miami Tribe of Oklahoma (1962)	159 Ct. Cl. 593	Ct. Cl.
104		6-Oct-1818	171	7 Stat. 189	Strong v. United States (1975)	207 Ct. Cl. 254	Ct. Cl.
118	Osage: Grand and Little	31-Aug-1822	201	7 Stat. 222	Logan v. Andrus (1978)	457 F. Supp. 1318	Dist. Ct., N.D. Okla.
120	Miccosukee; Tallahassee; Seminole	18-Sep-1823	203	7 Stat. 224	United States v. Seminole Indians (1967)	180 Ct. Cl. 375	Ct. Cl.
120		18-Sep-1823	203	7 Stat. 224	McGhee v. Williams (1971)	194 Ct. Cl. 86	Ct. Cl.
120		18-Sep-1823	203	7 Stat. 224	United States v. Michigan (1979)	471 F. Supp. 192	Dist. Ct., W.D. Mich.
122	Iowa	4-Aug-1824	208	7 Stat. 231	Sac and Fox Tribe of Indians of Oklahoma v. United States (1967)	179 Ct. Cl. 8	Ct. Cl.
130	Sioux: Sioune and Oglala	5-Jul-1825	230	7 Stat. 252	Greywater v. Joshua (1988)	846 F. 2d 486	Cir. 8
130		5-Jul-1825	230	7 Stat. 252	Oglala Sioux Tribe of Pine Ridge Indian Reservation v. United States (1990)	21 Cl. Ct. 176	Cl. Ct.
136	Crow	4-Aug-1825	244	7 Stat. 266	United States v. Montana (1978)	457 F. Supp. 599	Dist. Ct., D. Mont.
137	Osage: Grand and Little	10-Aug-1825	246	7 Stat. 268	Kansas or Kaw Tribe of Indians v. United States (1934)	80 Ct. Cl. 264	Ct. Cl.

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Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
137	Osage: Grand and Little	10-Aug-1825	246	7 Stat. 268	Logan v. Andrus (1978)	457 F. Supp. 1318	Dist. Ct., N.D. Okla.
138	Kansa	16-Aug-1825	248	7 Stat. 270	Kansas or Kaw Tribe of Indians v. United States (1934)	80 Ct. Cl. 264	Ct. Cl.
147	Miami	23-Oct-1826	278	7 Stat. 300	Wau-Pe-Man-Qua v. Aldrich (1886)	28 F. 489	C.C.D. Mont.
147		23-Oct-1826	278	7 Stat. 300	United States v. Higgins (1900)	103 F. 348	C.C.D. Mont.
147		23-Oct-1826	278	7 Stat. 300	United States ex rel. Marks v. Brooks (1940)	32 F. Supp. 422	Dist. Ct., N.D. Ind.
147		23-Oct-1826	278	7 Stat. 300	Miami Tribe of Oklahoma v. United States (1959)	146 Ct. Cl. 421	Ct. Cl.
147		23-Oct-1826	278	7 Stat. 300	Miami Tribe of Oklahoma v. United States (1960)	150 Ct. Cl. 725	Ct. Cl.
147		23-Oct-1826	278	7 Stat. 300	Godfroy ex rel. Miami Tribe of Indiana v. United States (1979)	1979 U.S. Ct. Cl. LEXIS 1001	Ct. Cl.
147		23-Oct-1826	278	7 Stat. 300	United States v. Michigan (1979)	471 F. Supp. 192	Dist. Ct., W.D. Mich.
153	Winnebago; Potawatomi; Chippewa; Ottawa	25-Aug-1828	292	7 Stat. 315	Mole Lake Band v. United States (1953)	126 Ct. Cl. 596	Ct. Cl.
153		25-Aug-1828	292	7 Stat. 315	Citizen Band of Potawatomi Indians v. United States (1967)	179 Ct. Cl. 473	Ct. Cl.
156	Winnebago	1-Aug-1829	300	7 Stat. 323	United States v. Higgins (1900)	103 F. 348	C.C. D. Mont.
163	*Seneca: Mixed; Shawnee*	20-Jul-1831	327	7 Stat. 351	United States v. Elliott (1942)	131 F. 2d 720	Cir. 10
163		20-Jul-1831	327	7 Stat. 351	Cherokee Nation or Tribe of Indians in Oklahoma v. Oklahoma (1968)	402 F. 2d 739	Cir. 10
165	Ottawa	30-Aug-1831	335	7 Stat. 359	United States v. Higgins (1900)	103 F. 348	C.C. D. Mont.
165		30-Aug-1831	335	7 Stat. 359	Ottawa Tribe v. United States (1964)	166 Ct. Cl. 373	Ct. Cl.

Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
165	Ottawa	30-Aug-1831	335	7 Stat. 359	Cherokee Nation or Tribe of Indians in Oklahoma v. Oklahoma (1968)	402 F. 2d 739	Cir. 10
170	Sac and Fox	21-Sep-1832	349	7 Stat. 374	United States v. Higgins (1900)	103 F. 348	C.C. D. Mont.
181	*Seneca; Seneca: Mixed; Shawnee*	29-Dec-1832	383	7 Stat. 411	United States v. Elliott (1942)	131 F. 2d 720	Cir. 10
181		29-Dec-1832	383	7 Stat. 411	Pawnee Indian Tribe of Oklahoma v. United States (1953)	124 Ct. Cl. 324	Ct. Cl.
184	Ottawa	18-Feb-1833	392	7 Stat. 420	Knaggs v. Cleveland-Cliffs Iron Co. (1923)	287 F. 314	Cir. 6
188	Oto and Missouri	21-Sep-1833	400	7 Stat. 429	Pawnee Indian Tribe of Oklahoma v. United States (1953)	124 Ct. Cl. 324	Ct. Cl.
188		21-Sep-1833	400	7 Stat. 429	Otoe and Missouria Tribe of Indians v. United States (1955)	131 Ct. Cl. 593	Ct. Cl.
190	Pawnee: Grand, Loups, Republicans and Tappage	9-Oct-1833	416	7 Stat. 448	Pawnee Tribe of Indians v. United States (1920)	56 Ct. Cl. 1	Ct. Cl.
190		9-Oct-1833	416	7 Stat. 448	Pawnee Indian Tribe of Oklahoma v. United States (1953)	124 Ct. Cl. 324	Ct. Cl.
190		9-Oct-1833	416	7 Stat. 448	Delaware Tribe of Indians v. United States (1955)	130 Ct. Cl. 782	Ct. Cl.
190		9-Oct-1833	416	7 Stat. 448	Pawnee Indian Tribe of Oklahoma v. United States (1962)	157 Ct. Cl. 134	Ct. Cl.
192	Miami	23-Oct-1834	425	7 Stat. 458; 7 Stat. 463	Wau-Pe-Man-Qua v. Aldrich (1886)	28 F. 489	C.C. D. Mont.
192		23-Oct-1834	425	7 Stat. 458; 7 Stat. 463	United States ex rel. Marks v. Brooks (1940)	32 F. Supp. 422	Dist. Ct., N.D. Ind.

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Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
192	Miami	23-Oct-1834	425	7 Stat. 458; 7 Stat. 463	Miami Tribe of Oklahoma v. United States (1960)	150 Ct. Cl. 725	Ct. Cl.
192		23-Oct-1834	425	7 Stat. 458; 7 Stat. 463	United States v. Michigan (1980)	505 F. Supp. 467	Dist. Ct., W.D. Mich.
193	Potawatomi	4-Dec-1834	428	7 Stat. 467	Prairie Band of Potawatomi Indians v. United States (1958)	143 Ct. Cl. 131	Ct. Cl.
196	Potawatomi	17-Dec-1834	431	7 Stat. 469	Prairie Band of Potawatomi Indians v. United States (1958)	143 Ct. Cl. 131	Ct. Cl.
200	Potawatomi	26-Mar-1836	450	7 Stat. 490	Prairie Band of Potawatomi Indians v. United States (1958)	143 Ct. Cl. 131	Ct. Cl.
203	Potawatomi	11-Apr-1836	457	7 Stat. 499	Prairie Band of Potawatomi Indians v. United States (1958)	143 Ct. Cl. 131	Ct. Cl.
208	Potawatomi	5-Aug-1836	462	7 Stat. 505	Prairie Band of Potawatomi Indians v. United States (1958)	143 Ct. Cl. 131	Ct. Cl.
209	Menominee	3-Sep-1836	463	7 Stat. 506	Menominee Tribe of Indians v. United States (1944)	101 Ct. Cl. 10	Ct. Cl.
209		3-Sep-1836	463	7 Stat. 506	Menominee Indian Tribe of Wisconsin v. United States (1967)	179 Ct. Cl. 496	Ct. Cl.
209		3-Sep-1836	463	7 Stat. 506	Menominee Tribe of Indians (1978)	1978 U.S. Ct. Cl. LEXIS 793	Ct. Cl.
209		3-Sep-1836	463	7 Stat. 506	Menominee Tribe of Indians (1981)	1981 U.S. Ct. Cl. LEXIS 1313	Ct. Cl.
209		3-Sep-1836	463	7 Stat. 506	Menominee Indian Tribe v. Thompson (1996)	943 F. Supp. 999	Dist. Ct., W.D. Wisc.
209		3-Sep-1836	463	7 Stat. 506	Menominee Indian Tribe v. Thompson (1996)	922 F. Supp. 184	Dist. Ct., W.D. Wisc.
209		3-Sep-1836	463	7 Stat. 506	Menominee Indian Tribe of Wisconsin v. United States (1997)	39 Fed. Cl. 441	Ct. Fed. Cl.

Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
209	Menominee	3-Sep-1836	463	7 Stat. 506	Menominee Indian Tribe v. Thompson (1998)	161 F. 3d 449	Cir. 7
213	Potawatomi	22-Sep-1836	471	7 Stat. 514	Hannahville Indian Community v. United States (1983)	4 Cl. Ct. 445	Cl. Ct.
214	Potawatomi	23-Sep-1836	471	7 Stat. 515	Prairie Band of Potawatomi Indians v. United States (1958)	143 Ct. Cl. 131	Ct. Cl.
214		23-Sep-1836	471	7 Stat. 515	Hannahville Indian Community v. United States (1983)	4 Cl. Ct. 445	Cl. Ct.
222	*Kiowa; Kataka; Tawakoni*	26-May-1837	489	7 Stat. 533	Logan v. Andrus (1978)	457 F. Supp. 1318	Dist. Ct., N.D. Okla.
224	*Sioux: Mdewakanton*	29-Sep-1837	493	7 Stat. 538	United States v. Higgins (1900)	103 F. 348	C.C. D. Mont.
224		29-Sep-1837	493	7 Stat. 538	Medawakanton & Wahpakoota Bands of Sioux Indians v. United States (1922)	57 Ct. Cl. 357	Ct. Cl.
224		29-Sep-1837	493	7 Stat. 538	Sioux Tribe of Indians v. United States (1941)	95 Ct. Cl. 72	Ct. Cl.
224		29-Sep-1837	493	7 Stat. 538	Lower Sioux Indian Community v. United States (1963)	163 Ct. Cl. 329	Ct. Cl.
224		29-Sep-1837	493	7 Stat. 538	Sioux Tribe v. United States (1974)	205 Ct. Cl. 148	Ct. Cl.
224		29-Sep-1837	493	7 Stat. 538	Lower Sioux Indian Community v. United States (1980)	224 Ct. Cl. 458	Ct. Cl.
224		29-Sep-1837	493	7 Stat. 538	Lower Sioux Indian Community in Minnesota v. United States (1981)	228 Ct. Cl. 927	Ct. Cl.
224		29-Sep-1837	493	7 Stat. 538	Lower Sioux Indian Community v. United States (1981)	1981 U.S. Ct. Cl. LEXIS 1334	Ct. Cl.
226	Sioux: Yankton	21-Oct-1837	496	7 Stat. 542	Yankton Sioux Tribe or Band of Indians v. United States (1966)	175 Ct. Cl. 564	Ct. Cl.

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Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
231	Chippewa: Saginaw	23-Jan-1838	516	7 Stat. 565	Shepard v. Northwestern Life Insurance Co. (1889)	40 F. 341	C.C. E.D. Mich.
231		23-Jan-1838	516	7 Stat. 565	United States v. Michigan (1978)	471 F. Supp. 192	Dist. Ct., W.D. Mich.
234	Miami	6-Nov-1838	519	7 Stat. 569	Wau-Pe-Man-Qua v. Aldrich (1886)	28 F. 489	C.C. D. Mont.
234		6-Nov-1838	519	7 Stat. 569	United States ex rel. Marks v. Brooks (1940)	32 F. Supp. 422	Dist. Ct., N.D. Ind.
234		6-Nov-1838	519	7 Stat. 569	United States ex rel. Marks v. Brooks (1940)	32 F. Supp. 422	Dist. Ct., N.D. Ind.
234		6-Nov-1838	519	7 Stat. 569	Miami Tribe of Oklahoma v. United States (1960)	150 Ct. Cl. 725	Ct. Cl.
234		6-Nov-1838	519	7 Stat. 569	Swimming Turtle v. Board of County Commissioners (1975)	441 F. Supp. 368	Dist. Ct., N.D. Ind.
234		6-Nov-1838	519	7 Stat. 569	Swimming Turtle v. Board of County Commissioners (1975)	441 F. Supp. 374	Dist. Ct., N.D. Ind.
234		6-Nov-1838	519	7 Stat. 569	Miami Nation of Indians of Indiana Inc. v. Lujan (1993)	832 F. Supp. 253	Dist. Ct., N.D. Ind.
234		6-Nov-1838	519	7 Stat. 569	Miami Tribe v. United States (1996)	927 F. Supp. 1419	Dist. Ct., D. Kan.
236	Osage: Grand and Little	11-Jan-1839	525	7 Stat. 576	Osage Tribe of Indians v. United States (1928)	66 Ct. Cl. 64	Ct. Cl.
236		11-Jan-1839	525	7 Stat. 576	Shore v. Shell Petroleum Corp. (1931)	55 F. 2d 696	Dist. Ct., D. Kan.
236		11-Jan-1839	525	7 Stat. 576	Logan v. Andrus (1978)	457 F. Supp. 1318	Dist. Ct., N.D. Okla.
239	Miami	28-Nov-1840	531	7 Stat. 582	Wau-Pe-Man-Qua v. Aldrich (1886)	28 F. 489	C.C. D. Mont.
239		28-Nov-1840	531	7 Stat. 582	United States ex rel. Marks v. Brooks (1940)	32 F. Supp. 422	Dist. Ct., N.D. Ind.
239		28-Nov-1840	531	7 Stat. 582	Miami Tribe of Oklahoma v. United States (1960)	150 Ct. Cl. 725	Ct. Cl.
239		28-Nov-1840	531	7 Stat. 582	Swimming Turtle v. Board of County Commissioners (1975)	441 F. Supp. 368	Dist. Ct., N.D. Ind.

Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
239	Miami	28-Nov-1840	531	7 Stat. 582	Swimming Turtle v. Board of County Commissioners (1975)	441 F. Supp. 374	Dist. Ct., N.D. Ind.
239		28-Nov-1840	531	7 Stat. 582	Miami Nation of Indians of Indiana Inc. v. Lujan (1993)	832 F. Supp. 253	Dist. Ct., N.D. Ind.
239		28-Nov-1840	531	7 Stat. 582	Kansas v. United States (2001)	249 F. 3d 1213	Cir. 10
239		28-Nov-1840	531	7 Stat. 582	Miami Tribe v. United States (1996)	927 F. Supp. 1419	Dist. Ct., D. Kan.
245	Kansa	14-Jan-1846	552	9 Stat. 842	Kansas or Kaw Tribe of Indians v. United States (1934)	80 Ct. Cl. 264	Ct. Cl.
245		14-Jan-1846	552	9 Stat. 842	Board of Commissioners v. United States (1938)	100 F. 2d 929	Cir. 10
246	Comanche; Hainai; Anadarko; Caddo; Apache: Lipan; Tonkawa; Kichai; Tawakoni; Wichita; Waco	15-May-1846	554	9 Stat. 844	McKee v. United States (1897)	33 Ct. Cl. 99	Ct. Cl.
246		15-May-1846	554	9 Stat. 844	Chocktaw and Chickasaw Nations v. United States (1899)	34 Ct. Cl. 17	Ct. Cl.
246		15-May-1846	554	9 Stat. 844	Wichita and Affiliated Bands of Indians v. United States (1939)	89 Ct. Cl. 378	Ct. Cl.
246		15-May-1846	554	9 Stat. 844	Lipan Apache Tribe v. United States (1967)	180 Ct. Cl. 487	Ct. Cl.
246		15-May-1846	554	9 Stat. 844	Caddo Tribe of Oklahoma v. United States (1979)	1979 U.S. Ct. Cl. LEXIS 761	Ct. Cl.
246		15-May-1846	554	9 Stat. 844	Caddo Tribe of Oklahoma v. United States (1980)	222 Ct. Cl. 306	Ct. Cl.

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Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
252	Pawnee: Grand, Loups, Republicans and Tappage	6-Aug-1848	571	9 Stat. 949	Pawnee Indian Tribe of Oklahoma v. United States (1953)	124 Ct. Cl. 324	Ct. Cl.
252		6-Aug-1848	571	9 Stat. 949	Pawnee Indian Tribe of Oklahoma v. United States (1962)	157 Ct. Cl. 134	Ct. Cl.
256	Ute	30-Dec-1849	585	9 Stat. 984	Ute Indians v. United States (1910)	45 Ct. Cl. 440	Ct. Cl.
256		30-Dec-1849	585	9 Stat. 984	Unitah Ute Indians of Utah v. United States (1993)	28 Fed. Cl. 768	Ct. Fed. Cl.
263	Rogue River	10-Sep-1853	603	10 Stat. 1018	Alcea Band of Tillamooks v. United States (1945)	103 Ct. Cl. 494	Ct. Cl.
263		10-Sep-1853	603	10 Stat. 1018	Rogue River Tribe of Indians v. United States (1946)	105 Ct. Cl. 495	Ct. Cl.
263		10-Sep-1853	603	10 Stat. 1018	Rogue River Tribe of Indians v. United States (1950)	116 Ct. Cl. 454	Ct. Cl.
264	Umpqua: Cow Creek	19-Sep-1853	606	10 Stat. 1027	Alcea Band of Tillamooks v. United States (1945)	103 Ct. Cl. 494	Ct. Cl.
264		19-Sep-1853	606	10 Stat. 1027	Rogue River Tribe of Indians v. United States (1946)	105 Ct. Cl. 495	Ct. Cl.
264		19-Sep-1853	606	10 Stat. 1027	Rogue River Tribe of Indians v. United States (1950)	116 Ct. Cl. 454	Ct. Cl.
270	Iowa	17-May-1854	628	10 Stat. 1069	Iowa Tribe of Indians v. United States (1929)	68 Ct. Cl. 585	Ct. Cl.
276	*Choctaw; Chickasaw*	4-Nov-1854	652	10 Stat. 1116	McBride v. Farrington (1904)	131 F. 797	C.C.W.D. N.Y.
276		4-Nov-1854	652	10 Stat. 1116	Choctaw Nation v. United States (1935)	81 Ct. Cl. 1	Ct. Cl.
276		4-Nov-1854	652	10 Stat. 1116	Choctaw Nation v. United States (1936)	83 Ct. Cl. 140	Ct. Cl.
277	Rogue River	15-Nov-1854	654	10 Stat. 1119	Rogue River Tribe of Indians v. United States (1946)	105 Ct. Cl. 495	Ct. Cl.

Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
278	Chasta; Scoton; Umpqua	18-Nov-1854	655	10 Stat. 1122	Alcea Band of Tillamooks v. United States (1945)	103 Ct. Cl. 494	Ct. Cl.
278		18-Nov-1854	655	10 Stat. 1122	Rogue River Tribe of Indians v. United States (1946)	105 Ct. Cl. 495	Ct. Cl.
278		18-Nov-1854	655	10 Stat. 1122	Rogue River Tribe of Indians v. United States (1950)	116 Ct. Cl. 454	Ct. Cl.
279	Umpqua; Kalapuya	29-Nov-1854	657	10 Stat. 1125	United States v. Sinnott (1886)	26 F. 84	C.C.D. Or.
279		29-Nov-1854	657	10 Stat. 1125	Alcea Band of Tillamooks v. United States (1945)	103 Ct. Cl. 494	Ct. Cl.
279		29-Nov-1854	657	10 Stat. 1125	Rogue River Tribe of Indians v. United States (1946)	105 Ct. Cl. 495	Ct. Cl.
279		29-Nov-1854	657	10 Stat. 1125	Rogue River Tribe of Indians v. United States (1950)	116 Ct. Cl. 454	Ct. Cl.
280	Oto and Missouri	9-Dec-1854	660	10 Stat. 1130; 11 Stat. 605	Otoe and Missouria Tribe of Indians v. United States (1955)	131 Ct. Cl. 593	Ct. Cl.
296	*Ottawa; Chippewa*	31-Jul-1855	725	11 Stat. 621	United States v. Grand Rapids and Indiana Railroad Co. (1907)	154 F. 131	C.C.W.D. Mich.
296		31-Jul-1855	725	11 Stat. 621	United States v. Grand Rapids and Indiana Railroad Co. (1908)	165 F. 297	Cir. 6
296		31-Jul-1855	725	11 Stat. 621	Grand Rapids and Indiana Railroad Co. v. Blanchard (1930)	38 F.2d 470	Cir. 6
296		31-Jul-1855	725	11 Stat. 621	Mole Lake Band v. United States (1953)	126 Ct. Cl. 596	Ct. Cl.
296		31-Jul-1855	725	11 Stat. 621	United States v. Michigan (1978)	460 F. Supp. 637	Dist. Ct., W.D. Mich.
296		31-Jul-1855	725	11 Stat. 621	United States v. Michigan (1979)	471 F. Supp. 192	Dist. Ct., W.D. Mich.

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Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
296	*Ottawa; Chippewa*	31-Jul-1855	725	11 Stat. 621	United States v. Michigan (1980)	623 F.2d 448	Cir. 6
296		31-Jul-1855	725	11 Stat. 621	United States v. Michigan (1980)	505 F. Supp. 467	Dist. Ct., W.D. Mich.
296		31-Jul-1855	725	11 Stat. 621	United States v. Michigan (1981)	520 F. Supp. 207	Dist. Ct., W.D. Mich.
296		31-Jul-1855	725	11 Stat. 621	Leelanau Transit Co. v. Grand Traverse Band of Ottawa and Chippewa Indians (1994)	1994 U.S. Dist. LEXIS 2220	Dist. Ct., W.D. Mich.
296		31-Jul-1855	725	11 Stat. 621	Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan Dept. of Natural Resources (1998)	141 F.3d 635	Cir. 6
296		31-Jul-1855	725	11 Stat. 621	Sault Ste. Marie v. United States (2001)	2001 U.S. App. LEXIS 10770	Cir. 6
300	Molala	21-Dec-1855	740	12 Stat. 981	United States v. Sinnott (1886)	26 F. 84	Dist. Ct., D. Oregon
300		21-Dec-1855	740	12 Stat. 981	Alcea Band of Tillamooks v. United States (1945)	103 Ct. Cl. 494	Ct. Cl.
300		21-Dec-1855	740	12 Stat. 981	Rogue River Tribe of Indians v. United States (1946)	105 Ct. Cl. 495	Ct. Cl.
300		21-Dec-1855	740	12 Stat. 981	Rogue River Tribe of Indians v. United States (1950)	116 Ct. Cl. 454	Ct. Cl.
304	Pawnee: Grand, Loups, Republicans and Tappage	24-Sep-1857	764	11 Stat. 729	United States v. Sa-Coo-Da-Cot (1870)	27 F. Cas. 923 (No. 16,212)	C.C. D. Neb.
304		24-Sep-1857	764	11 Stat. 729	United States v. Higgins (1900)	103 F. 348	C.C. D. Mont.
304		24-Sep-1857	764	11 Stat. 729	Pawnee Tribe of Indians v. United States (1920)	56 Ct. Cl. 1	Ct. Cl.

Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
304	Pawnee: Grand, Loups, Republicans and Tappage	24-Sep-1857	764	11 Stat. 729	Pawnee Indian Tribe of Oklahoma v. United States (1953)	124 Ct. Cl. 324	Ct. Cl.
304		24-Sep-1857	764	11 Stat. 729	Pawnee Indian Tribe of Oklahoma v. United States (1962)	157 Ct. Cl. 134	Ct. Cl.
306	Ponca	12-Mar-1858	772	12 Stat. 997	United States ex rel. Standing Bear v. Crook (1879)	25 F. Cas. 695 (No. 14,891)	C.C. D. Neb.
306		12-Mar-1858	772	12 Stat. 997	United States v. Higgins (1900)	103 F. 348	C.C. D. Mont.
306		12-Mar-1858	772	12 Stat. 997	Omaha Tribe of Indians v. United States (1918)	53 Ct. Cl. 549	Ct. Cl.
306		12-Mar-1858	772	12 Stat. 997	Yankton Sioux v. United States (1942)	97 Ct. Cl. 56	Ct. Cl.
306		12-Mar-1858	772	12 Stat. 997	Pawnee Indian Tribe of Oklahoma v. United States (1953)	124 Ct. Cl. 324	Ct. Cl.
306		12-Mar-1858	772	12 Stat. 997	Ponca Tribe of Indians v. United States (1968)	183 Ct. Cl. 673	Ct. Cl.
306		12-Mar-1858	772	12 Stat. 997	Sioux Tribe of Indians v. United States (1985)	7 Cl. Ct. 481	Cl. Ct.
310	Winnebago	15-Apr-1859	790	12 Stat. 1101	Winnebago Tribe of Indians v. United States (1942)	100 Ct. Cl. 1	Ct. Cl.
310		15-Apr-1859	790	12 Stat. 1101	County of Thurston v. Andrus (1978)	586 F. 2d 1212	Cir. 8
311	Chippewa: Swan Creek and Black River; Munsee	16-Jul-1859	792	12 Stat. 1105	Goodrum v. Buffalo (1908)	162 F. 817	Cir. 8
313	*Kansa*	5-Oct-1859	800	12 Stat. 1111	United States v. Ward (1863)	28 F. Cas. 397 (No. 16,639)	C.C. D. Kan.
313		5-Oct-1859	800	12 Stat. 1111	Kansas or Kaw Tribe of Indians v. United States (1934)	80 Ct. Cl. 264	Ct. Cl.

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Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
316	Sac: Missouri; Fox: Missouri; Iowa	6-Mar-1861	811	12 Stat. 1171	Iowa Tribe of Indians of Kansas and Nebraska v. Kansas (1984)	1984 U.S. Dist. LEXIS 16276	Dist. Ct., D. Kan.
319	Kansa	13-Mar-1862	829	12 Stat. 1221	Kansas or Kaw Tribe of Indians v. United States (1934)	80 Ct. Cl. 264	Ct. Cl.
323	*Nez Perce*	9-Jun-1863	843	14 Stat. 647	Caldwell v. Robinson (1894)	59 F. 653	C.C. D. Idaho
323		9-Jun-1863	843	14 Stat. 647	United States v. Nez Perce County (1936)	16 F. Supp. 267	Dist. Ct., D. Idaho
323		9-Jun-1863	843	14 Stat. 647	United States v. Nez Perce County (1938)	95 F. 2d 232	Cir. 9
323		9-Jun-1863	843	14 Stat. 647	Joseph's Band of Nez Perce Tribe of Indians v. United States (1941)	95 Ct. Cl. 11	Ct. Cl.
323		9-Jun-1863	843	14 Stat. 647	Nez Perce Tribe of Indians v. United States (1941)	95 Ct. Cl. 1	Ct. Cl.
323		9-Jun-1863	843	14 Stat. 647	National Advertising Co. v. United States (1974)	205 Ct. Cl. 728	Ct. Cl.
323		9-Jun-1863	843	14 Stat. 647	Navajo Tribe of Indians v. New Mexico (1987)	809 F. 2d 1455	Cir. 10
323		9-Jun-1863	843	14 Stat. 647	United States v. Oregon (1992)	787 F. Supp. 1557	Dist. Ct., D. Or.
323		9-Jun-1863	843	14 Stat. 647	United States v. Webb (1999)	1999 U.S. Dist. LEXIS 22039	Dist. Ct., D. Idaho
323		9-Jun-1863	843	14 Stat. 647	United States v. Webb (2000)	219 F. 3d 1127	Cir. 9
333	Chippewa: Saginaw and Swan Creek; Black River	18-Oct-1864	868	14 Stat. 657	Covelo Indian Community v. Watt (1982)	551 F. Supp. 366	Dist. Ct., D.C.
333		18-Oct-1864	868	14 Stat. 657	United States ex rel. Saginaw Chippewa Indian Tribe v. Michigan (1997)	106 F. 3d 130	Cir. 6
337	Paiute: Walpapi	12-Aug-1865	876	14 Stat. 683	Snake or Piute Indians of the Former Malheur Reservation in Oregon v. United States (1953)	125 Ct. Cl. 241	Ct. Cl.

Table 1 (*continued*)

Ratified treaty number	Signatory tribe(s)	Treaty signing date	Kappler page number	*Statutes at Large*	Case title	Citation	Court
340	Sioux: Lower Brule	14-Oct-1865	885	14 Stat. 699	Lower Brule Sioux Tribe v. South Dakota (1996)	917 F. Supp. 1434	Dist. Ct., D. S.D.
341	Cheyenne; Arapaho	14-Oct-1865	887	14 Stat. 703	United States v. Rogers (1885)	23 F. 658	Dist. Ct., W.D. Ark.
341		14-Oct-1865	887	14 Stat. 703	United States v. Higgins (1900)	103 F. 348	C.C.D. Mont.
341		14-Oct-1865	887	14 Stat. 703	Cheyenne-Arapaho Tribes of Oklahoma v. Oklahoma (1980)	618 F. 2d 665	Cir. 10
351	*Walla Walla; Wasco*	15-Nov-1865	908	14 Stat. 751	Warm Springs Tribe of Indians v. United States (1941)	95 Ct. Cl. 23	Ct. Cl.
351		15-Nov-1865	908	14 Stat. 751	Whitefoot v. United States (1961)	155 Ct. Cl. 127	Ct. Cl.
351		15-Nov-1865	908	14 Stat. 751	Confederated Tribes of Warm Springs Reservation v. United States (1966)	177 Ct. Cl. 184	Ct. Cl.
351		15-Nov-1865	908	14 Stat. 751	Mille Lacs Band of Chippewa Indians v. Minnesota Dept. of Natural Resources (1994)	861 F. Supp. 784	Dist. Ct., D. Minn.
351		15-Nov-1865	908	14 Stat. 751	Mille Lacs Band of Chippewa Indians v. Minnesota (1997)	124 F. 3d 904	Cir. 8
374	*Nez Perce*	13-Aug-1868	1024	15 Stat. 693	United States v. Oregon (1992)	787 F. Supp. 1557	Dist. Ct., D. Or.

documents (ratified treaty number 60, 163, 181, and 374) have been cited in an opinion of the Court of Claims (Bernholz & Weiner, 2006).

Table 1 is an aggregate of the following data:

- The ratified treaty number, assigned by the Department of State,[10] of each of the relevant treaties that has been cited in the selected opinion;
- The name(s) of the participating tribe(s), with an expansion of the "etc." found in the titles of many treaties in Kappler's work into a complete list of parties. For example, ratified treaty number 36 is the *Treaty with the Delawares, etc., 1803* (Kappler, 1904, pp. 64–65) and the entry for this document in Table 1 identifies as signatories the

[10] See *Ratified Indian Treaties, 1722–1869* (1966).

Delaware as well as the Shawnee, Potawatomi, Miami, Eel River, Wea, Kickapoo, Piankashaw, and Kaskaskia. Tribe names that are italicized, such as for ratified treaty number 24, identify treaties that have been cited in a State court ($N=14$);
- The signing date of the treaty, taken from each treaty's entry in volume 2 of Kappler's *Indian Affairs: Laws and Treaties* (1904);
- The treaty page number in *Indian Affairs: Laws and Treaties*;
- The *Statutes at Large* citation for the treaty;
- The case title and year of the citing case;
- The reporter citation for this case; and
- The court in which the case was heard. The venues are District Courts (e.g., "Dist. Ct." or "Dist. Ct., N.D. Okla."); Court of Claims ("Ct. Cl."); Claims Court ("Cl. Ct."); Court of Federal Claims ("Ct. Fed. Cl."); Circuit Courts (e.g., "C.C.D. Mont."); Courts of Appeals (e.g., "Cir. 9"); or Tax Court ("Tax Ct.").

2. Conclusions

These 85 treaties are a special subset of the 375 recognized documents, and the contents of many of the opinions provide a microcosm of the difficulties linked to some treaties between the Indian Nations and the federal government. Perhaps the most interesting example in Table 1 centers on ratified treaty number 24, the *Treaty with the Seven Nations of Canada, 1796* (Kappler, 1904, pp. 45–46). In these proceedings, particular importance rests upon the St. Regis Mohawk of the region. Flick, in his discussion of "The Settlement of the North Country" of New York State, noted that "[n]o Indians lived in Saint Lawrence or Franklin County before the colonies settled by French priests at Oswegathchie [now Ogdensburg] and Saint Regis about the middle of the eighteenth century" (1934, p. 184). Fenton and Tooker (1978) echo these findings; they offer 1747 as a possible initial settlement date, although 1755 has also been proposed. Migration took place between Caughnawaga, a settlement directly south of the Ile de Montreal, and the western end of Lake St. Francis. The 1783 *Definitive Treaty of Peace Between the United States of America and His Britannic Majesty* (8 *Stat*. 80) divided this newly occupied site. In 1791, Alexander Macomb purchased from New York State almost 4 million acres of its northern region, save for two islands[11] and a

[11] The two islands are Long Sault Island, in the St. Lawrence River across from Massena, and Buck, later Carleton, Island near Cape Vincent. This latter island was the site of the main British naval base in Lake Ontario–Fort Haldimand–until 1812. The *Decision of the Commissioners under the 6th Article of the Treaty of Ghent, done at Utica, in the State of New York, 18th June, 1822* (8 *Stat*. 274) confirmed that both islands belonged to the United States "in conformity with the true intent of the 2nd article of the said treaty of 1783, and of the 6th article of the Treaty of Ghent" (8 *Stat*. 274, 276). The former document was the *Definitive Treaty of Peace between the United States of America and His Britannic Majesty* (8 *Stat*. 80, 81), while the latter one was the *Treaty of Peace and Amity, between his Britannic Majesty and the United States of America* (8 *Stat*. 218, 221). See Macomb's application for these lands, and his agreement to exclude the islands and the reservation, in Hough (1853, pp. 253–254).

parcel six miles square reserved for the St. Regis village (Flick, 1934). This Macomb Purchase included almost all of Franklin County and thereby set the stage for the legal proceedings listed in Table 1 for the *Treaty with the Seven Nations of Canada, 1796*.

In the sequence of these cases citing this specific instrument, one may view the ongoing difficulties faced by the tribes and the federal government over parameters of treaties signed in 1796. In some of these cases, the St. Regis Mohawk Tribe – either collectively or through an individual tribe member – questioned the ability of Franklin County to tax lands reserved in the *Treaty with the Seven Nations of Canada, 1796*. Hough (1853) described the history of the County and especially that of the St. Regis Mohawks (pp. 110–203). He indicated that a number of conveyances occurred between 1816 and 1845 (pp. 159–172) that effectively transferred, or disposed of, much of the original reservation. It is upon these releases, by the tribe to the State, after the treaty in 1796 that these legal events pivot.

The *Thompson* series, between 1992 and 2002, entailed seven opinions, of which six are listed in Table 1.[12] The kernel of this action began with *United States v. Franklin County* (1943) in which the United States, "as guardian and trustee of the St. Regis tribe or band of Indians," sought to enjoin the County from taxing or placing tax liens against members. The County alleged that the transactions after 1796, specifically that of 14 December 1824 (Hough, 1853, pp. 164–165), conveyed the specified land to the State. The federal government challenged this transfer under the *Intercourse Act* of 1802.[13] The District Court agreed with the County, and the case to enjoin was dismissed.

The *Thompson* suite revolves around property – no longer within the original 1796 reservation boundaries – disposed of by the tribe as part of the conveyances and which was effectively taxed by the State since the 1870s. In *Thompson v. County of Franklin* (1992), the plaintiff sought a finding that the St. Regis reservation boundaries had never been adjusted or diminished by an act of Congress and so the land should not be subject to State or local taxes because it remained under tribal jurisdiction. Although the *Intercourse Act* was not referenced in the complaint, the court found that plaintiff's argument required this foundation. Previous findings had demonstrated that individual tribal members cannot assert a claim based on the *Intercourse Act*, and so the case was dismissed.

On appeal, the court found in *Thompson v. County of Franklin* (1994) that Ms. Thompson did have standing based upon the jurisdictional boundaries of the reservation and not upon the possibility of errors linked to the *Intercourse Act*. The question became one based on whether

[12] The seven cases are *Thompson v. County of Franklin* (1992, 1994, 1996, 1997, 1998, 2000, 2002). The absent 1998 opinion did not cite the *Treaty with the Seven Nations of Canada, 1796*. Rather, that case considered a motion by the County for relief under Rule 60(b)(2) of the *Federal Rules of Civil Procedures*, regarding new evidence and the ability to move for a new trial (see http://www.law.cornell.edu/rules/frcp/Rule60.htm).

[13] See An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers (1802).

the property was part of "Indian country," as defined in 18 U.S.C. § 1151.[14] The case was remanded.

The District Court in *Thompson v. County of Franklin* (1996) denied the County's motion to dismiss the case, pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedures*,[15] on grounds that the *res judicata* effect of *United States v. Franklin County* (1943) had barred this action. The subsequent *Thompson v. County of Franklin* (1997) case before the same court found that Ms. Thompson's property was immune from the County's taxation.

The question continued (*Thompson v. County of Franklin*, 1998), with a procedural appeal by the County in response to the revelation that Ms. Thompson had resigned from the tribe prior to the 1997 decision. The County asked that the court find that "Thompson is not immune from its *ad valorem* tax 'effective as of the date of her resignation from the St. Regis Tribe'" (*Thompson v. County of Franklin*, 1998, p. 218). The court found that "this case presents extraordinary or exceptional circumstances warranting the relief sought by the County herein; that is, modification of the December 8, 1997, judgment to reflect that plaintiff is liable to the County for *ad valorem* taxes after June 27, 1997" (p. 226).

In 2000, the opinion in *Thompson v. County of Franklin* (2000) opened with Senior Judge McCurn's remark that "The present case is *not* unfamiliar to this court. The deceptively simple issue of whether defendant, County of Franklin, may tax real property owned in fee simple by plaintiff Dana Leigh Thompson, who at least until June 27, 1997, was an enrolled member of the St. Regis Mohawk Tribe has engendered much litigation over the past eight years" (*Thompson v. County of Franklin*, 2000, p. 146). Tribal membership, and a newer perspective on the definition of "dependent tribal communities" suggested by *Alaska v. Native Village of Venetie* (1998) before the United States Supreme Court,[16] led the court to conclude that Ms. Thompson was liable for *all* County imposed taxes, dating back to the time of her initial possession in 1989. It was determined that her membership in the Tribe prior to 27 June 1997 did not protect her from this exposure, nor was the land under consideration within a recognized reservation, nor was St. Regis a dependent Indian community in the face of the findings in *Venetie*.

[14] Section 1151, "Indian country defined," states: "Except as otherwise provided in sections 1154 and 1156 of this title, the term 'Indian country,' as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." The *Thompson* opinion cited *Oklahoma Tax Commission v. Sac and Fox Nation* (1993, p. 123): "[C]ases make clear that a tribal member need not live on a formal reservation to be outside the State's taxing jurisdiction; it is enough that the member live in Indian country."

[15] See "Rule 12, Defenses and Objections – When and How Presented – By Pleading or Motion–Motion for Judgment on the Pleadings" at http://www.law.cornell.edu/rules/frcp/Rule12.htm.

[16] The new definition had two characteristics. *Alaska v. Venetie* (1998, p. 527) determined that "Since 18s U.S.C. § 1151 was enacted in 1948, we have not had an occasion to interpret the term 'dependent Indian communities.' We now hold that it refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements—first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence."

Finally, on appeal, *Thompson v. County of Franklin* (2002) concluded that "land made alienable by a conveyance governed by and in compliance with the [*Intercourse Act*] is land made alienable by Congress, and hence taxable" (*Thompson v. County of Franklin*, 2002, pp. 82–83), even though "the jurisdiction of the St. Regis Reservation over the real property in question remains intact" (p. 93). The court refused to accept the attempt by Ms. Thompson to decouple or separate her private title to the land while maintaining that the property was under tribal jurisdiction: "as with changes in the boundaries of a reservation, reservation land can become alienable – can become plots of privately owned property – only upon federal authority" (Winter, J., concurring, p. 85). The decision from 2000, in favor of the County, was affirmed.

Senior Judge McCurn's "deceptively simple issue" remark in *Thompson v. County of Franklin* (2000) speaks volumes about litigation entailing treaties between the Indian Nations and the federal government. In this single series of actions, seven cases were brought to solve this taxation issue. The *Intercourse Act* was a prevalent point regarding the tribe's conveyances to New York State, just as this issue was important in the array of *Canadian St. Regis Band of Mohawk Indian* cases[17] in Table 1. These latter proceedings were attempts to recover 12,000 acres of land alleged to have been lost through the same transfer processes with the State.[18]

As an added indication of the interconnection of these issues, the federal opinions for the 2001 *Canadian St. Regis* case cited the 1996 *Thompson* proceedings and the one for the 2003 *Canadian St. Regis* account referenced the 1994, 1997, and 2002 *Thompson* opinions. The *St. Regis Tribe of Mohawk Indians v. State* (1958) litigation before the Court of Appeals of New York had used *United States v. Franklin County* (1943) in a similar fashion. In addition, particular adjustments to federal Indian law, such as the specifications of "dependent tribal communities" brought down to the lower courts through the *Alaska v. Native Village of Venetie* (1998) findings before the United States Supreme Court, link today's decisions with these older, but still very contentious, tribal concerns.

The *Treaty with the Seven Nations of Canada, 1796* takes up less than 900 words and only a page and a half of the *Statutes at Large*, yet it supports these deeper investigations into the negotiations between the tribes and their interactions with the federal and state governments. Further, these cases – and here, the *Thompson* series–illustrate the use of the lower federal courts for adjudicating conflicts that have arisen from these dialogues initiated by federal processes. The fact that the St. Regis Mohawk have appeared in New York State, as well as federal, courts over fundamental sovereignty issues such as taxation of their land

[17] See *Canadian St. Regis Band of Mohawk Indians v. New York* (1983a, 1983b, 2001, 2003, 2005). The 1983a proceedings centered on Rule 23 for class actions of the *Federal Rules of Civil Procedures* (see http://www.law.cornell.edu/rules/frcp/Rule23.htm). In this instance, the Tribe filed a motion to certify the defendant class of 14 named defendants: the State and the Governor of New York; six individual counties and municipalities; five corporations; and the Canadian National Railways.

[18] Bernholz and Weiner (2005) found that the St. Regis Tribe of Mohawk Indians of New York State was involved in three out of four New York State Court cases (*St. Regis Tribe of Mohawk Indians v. State*, 1956, 1957, 1958) that had cited the *Treaty with the Seven Nations of Canada, 1796*. The fourth case–*Fischer v. Tebo* (1959)–involved the removal of an individual tribe member from the St. Regis Reservation.

is not a new event. The Mohawk, as well as other tribes, have asked many jurisdictions for treaty clarifications for many years, and the legal underpinnings of the taxation issue in this particular *Thompson/St. Regis Mohawk* suite date from a document created two centuries ago. This *Seven Nations of Canada* instrument was just one of 85 such treaties found in the opinions at this lower level of the federal judiciary. Questions concerning the parameters of other binding deliberations between the Indian Nations and the federal government remain to be addressed, and appropriate answers found. These legal fora, below the United States Supreme Court in the federal system, have served as a useful venue for such investigations.

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