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American Indian Treaties in the Territorial Courts: A Guide to Treaty Citations from Opinions of the United States Territorial Court Systems

Charles D. Bernholz

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Abstract

Before statehood, the Territorial courts—empowered by the legislation that created each Territory—had the responsibility of adjudicating many questions, including those arising over the interpretation of American Indian treaties. This article identifies 150 citations, to 79 ratified Indian treaties or supplementary articles, in 55 opinions between the years 1846 and 1909 before 12 Territorial court systems. The cases listed here mark the significance of these documents before these and later courts; many of these proceedings foreshadowed some of today’s dilemmas between the tribes and others.

The vast majority of the 375 American Indian treaties created between the tribes and the federal government that are recognized by the Department of State (*Ratified Indian Treaties, 1722-1869*, 1966) has been cited in the opinions of the United States Supreme Court (Bernholz, 2004a and 2007) and in the lower level of the federal court system, i.e., below the Supreme Court (Bernholz, 2007). Only a small number—80 instruments—has never been referenced in the opinions of any federal court (Bernholz, 2001 and 2002; Bernholz and Weiner, 2005).

The presence of 428 citations to 131 ratified Indian treaties or supplementary treaties found in 246 State court opinions for the years 1800 to 2004 (Bernholz and

Weiner, 2005) signals a vast array of litigation that frequently demonstrated unending gathering rights encounters at the State as opposed to the federal level. Fishing, hunting, and/or gathering rights have yet to be clearly determined for a number of tribes, and the treaties that these groups co-signed with the federal government in the eighteenth and the nineteenth centuries have begun, within the last half century, to appear more frequently before all jurisdictions.

Yet, before statehood, the Territorial courts—initially created by the Northwest Ordinance (Carter, 1934b, pp. 39-50) and subsequently empowered by the organic act for each Territory¹—had the responsibility of adjudicat-

¹ Farrand (1896, pp. 3-8) has a history of the propositions to transfer western lands to the federal government that predated the Northwest Ordinance. The following list—adapted from Carter (1934a)—identifies the initial date, territorial legislation, and final statehood date for each Territory in the Table.

Territory	Territorial Date	Statutes at Large	Statehood Date
Arizona	24-Feb-1863	12 Stat. 664	14-Feb-1912
Dakota	2-Mar-1861	12 Stat. 239	2-Nov-1889
Idaho	3-Mar-1863	12 Stat. 808	3-Jul-1890
Indian/ Oklahoma	30-Jun-1834 2-May-1890	4 Stat. 729 26 Stat. 81	16-Nov-1907
Iowa	12-Jun-1838	5 Stat. 235	28-Dec-1846
Kansas	30-May-1854	10 Stat. 277	29-Jan-1861
Montana	26-May-1864	13 Stat. 85	8-Nov-1889
New Mexico	9-Sep-1850	9 Stat. 446	6-Jan-1912
Utah	9-Sep-1850	9 Stat. 453	4-Jan-1896
Washington	2-Mar-1853	10 Stat. 172	11-Nov-1889
Wyoming	25-Jul-1868	15 Stat. 178	10-Jul-1890

The search results for North Dakota and for South Dakota were identical, since these two States were created from the same Dakota Territory on 2 November 1889. The State of Oklahoma was formed from the Indian Territory, the Unassigned Lands, and the Public Land Strip or “No Man’s Land” (34 Stat. 267). See Jackson and Adams (1978) for the locations of these and other Territories. Gannett (1900) supplies boundary data. Carter (1945a), the first Editor of *The Territorial Papers of the United States*, offers a useful summary for the overall territorial system. A later paper (Carter, 1955) speaks more to the *Territorial Papers* project itself and remarked about its organization: “Papers relating to the public lands and to Indian

ing questions arising over the interpretations of treaty parameters. It is important to note that the *Revised Statutes of the United States*, in volume 18 of the *Statutes at Large*, include sections devoted specifically to “The Territories” that define the general structure of the judicial systems, as well as, through Chapter 2, the specific provisions applicable to individual Territorial jurisdictions. Of particular value for the current analysis, however, is section 1839—the very first in Chapter 1 of Title XXIII—that states (18 *Stat.* 325): “Nothing in this Title shall be construed to impair the rights of person or property pertaining to the Indians in any Territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any Territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any Territory now or hereafter organized until such tribe signifies its assent to the President to be embraced within a particular Territory.” This commitment to previous treaty making with the tribes was in turn reinforced by section 1840 (18 *Stat.* 326): “Nor shall anything in this Title be construed to affect the authority of the United States to make any regulations respecting Indians of any Territory, their lands, property, or rights, by treaty, law, or otherwise, in the same manner as might be made if no temporary government existed, or is hereby established, in any such Ter-

ritory.” The resulting standards for this array of court systems created, according to Blume and Brown (1962a, p. 51), the “third judicial system” that “differed significantly from both the state judicial systems and the federal judicial systems in that it served all the purposes of state courts, and at the same time handled all federal matters requiring judicial attention in the territories.”²

The cases listed in the Table point out the significance of these documents in these courts, before the creation of a dozen new States. Guice, for example, describes the Supreme Courts in the Territories of Colorado, Montana, and Wyoming between 1861 and 1890, and shows that justices in Wyoming and Montana “found themselves involved in nearly every aspect of Indian relations” (1972, p. 139). In a later publication, Guice (1973) spoke more generally to the issue of the creation—and of the difficulties in the operations—of Territorial Supreme Courts. The Table contains three cases from 1872, 1881, and 1888 that appeared before the Supreme Court of Montana Territory, and two cases dated 1878 and 1888 from the Supreme Court of Wyoming Territory. Together, the opinions of these five cases contain 18 citations to 16 treaties signed between 1784 and 1868, virtually the entire period of these transactions with the tribes after the Revolutionary War.³

Lamar conveyed the history of Dakota Territory between 1861 and 1889 (1956) and for the territories of Arizona, Colorado, New Mexico, and Utah for the interval 1846 to 1912 (1966). With respect to the court system

affairs were materially reduced by selection, but documents from these groups were chosen whenever they seemed to contribute to the main theme” (p. 514). More succinctly, Carter (1945b, p. 129) declared: “The principal explanation for this lesser relative emphasis is that Indian affairs transcended territorial boundaries; an Indian problem would have existed and there would have been documents relating to it if no territorial organizations had ever been established.” This absence is quite clear upon the examination of the index for the volume on the Northwest Territory and its comparison to that found in the Alabama Territory publication: there are many entries under the subject headings of “Indian treaties” and “Indians” in the former (Carter, 1934b, p. 673), but relatively few examples for these two topics in the latter (Carter, 1952, pp. 807-808). The latter, though, has a section on “Indian trading factories,” because this system was highly developed only after about 1800 (Way, 1919).

2 Surrency (2002, pp. 445-467) has a chapter on the territorial courts. Their legal development was diverse. Spence (1963), for example, describes the court in Montana Territory; Bintliff (1994) offers a complete history of the Colorado Territory system; Hoffheimer (1995) remarks upon the arrangement in Mississippi Territory; Creel (2002) speaks of the United States Court for the Indian Territory; and Vandervest (2003) comments on law within Wisconsin Territory. Wisconsin is particularly important because the standardized model for future territories started with An Act establishing the territorial government of Wisconsin (1836); these principles are reflected in the *Revised Statutes of the United States*. The index for the *Territorial Papers of the United States* volume on the early years in Wisconsin (Bloom, 1969, p. 1332) has a rich list of entries for “Indian treaties.” Farrand (1900), in a discussion of the operational difference between a “territory” and a “district” that pivoted on the attainment of statehood by the former, noted that “twenty-eight territories have been organized, all but three of which have become states and members of the Union.” A footnote to his comment indicated that the exceptions were, at that time, “New Mexico, Arizona and Oklahoma, all of which seem likely to be allowed to organize as states in the near future” (p. 677). Besides New Mexico and Oklahoma, Blume and Brown (1962a, p. 51) identified thirteen other territories that followed the Wisconsin model. They were, in the order of their establishment: Iowa, Oregon, Minnesota, Utah, Washington, Kansas, Nebraska, Colorado, Nevada, Dakota, Idaho, Montana, and Wyoming. Nine court systems were formed in a manner different from that of the Wisconsin format – Arizona, Alaska, Indian Territory, Hawaii, Puerto Rico, the Philippines, the Canal Zone, the Virgin Islands, and Guam. Blume and Brown (1962b, pp. 468-469) also spoke of the unifying influences within these territorial systems. Besides the original states, only California, Kentucky, Maine, Texas, and Vermont never had a territorial government (Carter, 1945a, p. 1110); Blume and Brown (1962b) add West Virginia to, and exclude Maine from, this list. In terms of sheer years of operations, Smurr (1970, p. 10), in his analysis of this array of courts, noted that “[b]y 1900, the twenty-eight continental Territories had accumulated a total of more than five-hundred years of governmental experience. A system which lasted so many years had to leave some trace in public law.” Carter (1934a) provides a list of territorial officials for the years 1789 to 1872.

3 The first of these cited instruments is ratified treaty number 9, the *Treaty with the Six Nations, 1784* (Kappler, 1904, pp. 5-6), while the last is ratified treaty number 373, the *Treaty with the Eastern Band of Shoshoni and Bannock, 1868* (pp. 1020-1024). There is only one United States treaty with the tribes that predates the *Six Nations* document (the *Treaty with the Delawares, 1778*; pp. 3-5), and one that postdates *Shoshoni and Bannock* (the *Treaty with the Nez Percés, 1868*; pp. 1024-1025).

of the former, he noted that the *Dakota Herald* had declared, in January 1873, “the courts of the Territory are recognized as the most inferior in the entire Northwest” (1956; pp. 138-139). Nonetheless, there are ten cases in the Table for the Supreme Court for the Dakota Territory. A total of seventeen cases in the Table appeared in the territorial Supreme Courts of Arizona, New Mexico, and Utah during the time interval reported in Lamar’s second publication, even though “[m]ore often than not, territorial appointees after 1865 were political hacks, defeated congressmen, or jobless relatives of congressmen and cabinet members. These appointees owed their loyalty neither to the territory nor to the branch of government they represented. Thus a territorial judge whose appointment came through a powerful senator could thumb his nose at the Justice Department, which theoretically had jurisdiction over his actions” (1966; p. 13).

Pomeroy’s 1947 monograph served for decades as virtually the only analysis of territorial administration, particularly for the years between 1861 and 1890, but his chapter entitled “Territorial Justice” describes the very unique character of each judicial system as “one of the weakest parts of the territorial situation” (p. 61). Part of the blame for this was the difficulty of applying legal processes, developed in the eastern United States, to courts in the West.⁴ Another aspect of difficulty was the result of the opinion of Chief Justice Marshall, in an ad-

miralty case from Florida—*American Insurance Company v. Canter* (1828)—that territorial courts were legislative courts rather than constitutional ones.⁵ Further, increasing populations required that territorial courts address larger jurisdictions, and this meant that local, as opposed to federal, interests held more sway in the eyes of the court.⁶ These components were not fixed, however, and there was an ebb and flow of the actual power of justices of the peace and, particularly, of probate judges when compared to that of federally appointed district judges (pp. 58-59).

Indian affairs were affected by these developments in the territorial courts. The creation of the Department of the Interior in 1849 transferred Indian administration from the War Department to this new agency.⁷ As a way to both save money and handle, in a local manner, a federal issue, a Territorial Governor frequently served as Superintendent of Indian Affairs in his territory. Isaac I. Stevens was one example; he arrived in Washington Territory in 1853, after a career as a military engineer and his responsibilities included those of the Territorial Governor as well as his *ex officio* role as Superintendent of Indian Affairs (Hill, 1974, pp.193-200).⁸ Pomeroy noted that, for governors without this combined task—such as John C. Fremont in the Arizona Territory—the task of Indian administration was impossible (1947, p. 17). Independent agents began, in the early 1870s, to re-

4 The task before the courts of the “wild West” perplexed those in the east. The United States Attorney General, in his Annual Report for 1889, pleaded for more appropriations – to the tune of \$1 million for payment to witnesses – for the Territorial courts in Indian Territory and as just one indication of “the vast criminal business of that district” (*Annual Report of the Attorney-General of the United States for the Year 1889*, 1889, p. xxii). An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety, and for other purposes (1889, p. 978) had allocated \$900,000 for this specific expense. The fee rates for witnesses had been established in 1853 by An Act to regulate the fees and costs of the allowed Clerks, Marshals, and Attorneys of the Circuit and District Courts of the United States, and for other purposes (1853, p. 167): “For each day’s attendance in court, or before any officer pursuant to law, one dollar and fifty cents, and five cents per mile traveling from his place of residence to said place of trial or hearing, and five cents per mile for returning.”

5 This case is known as well under the name of *American Insurance Company v. 356 Bales of Cotton*. Chief Justice Marshall declared that “These Courts, then, are not constitutional Courts, in which the judicial power conferred by the Constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative Courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3d article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States” (1828, p. 545). In general, this structural question within the federal court system has yet to be solved (Redish, 1983; Saphire and Solimine, 1988; Lawson, 1990). Farris (1941) addressed the rather complicated history of the territorial court system in Florida.

6 See Wade (1879) for an interesting, territorial citizen’s perspective of territorial government and governance. Wade served for sixteen years as Chief Justice of the Montana Territorial Supreme Court (Malone, 1943, vol. 19, pp. 305-306 has a brief biography). Neil (1964) created a very complete summary of post-Civil War territories. With regard to the issue of population changes within a territory, Gittinger (1917, pp. 176-177) reported on the flood of whites into Indian Territory: “In 1881, those with permits from the Indian authorities were said to number fifteen thousand... In 1884 the number of outlanders living among the Indians of the Five Civilized Tribes was estimated to be thirty-five thousand, many of whom were intruders.”

7 An Act to establish the Home Department, and to provide for the Treasury Department an Assistant Secretary of the Treasury, and a Commissioner of the Customs (1849, p. 395) states, in section 5, that “the Secretary of the Interior shall exercise the supervisory and appellate powers now exercised by the Secretary of War, in relation to all acts of the Commissioner of Indian Affairs.”

8 The treaty making capabilities of Stevens and of the Superintendents of Indian Affairs in the Territories of Oregon, Utah, and New Mexico were suspended in 1857 (An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth eighteen hundred and fifty-eight, 1857). The entire superintendency program was phased out – on 3 March 1871 – and this was echoed in the same Act by the termination of treaty making with the tribes: “hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty” (An Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirty eighteen hundred and seventy-two, and for other purposes, 1871, p. 566).

port directly to the Commissioner of Indian Affairs and the opportunity to coordinate more closely the needs of the tribes and of the territories and of the federal government was lost (p. 18). Nevertheless, the territorial courts were left to address questions arising from treaties previously signed with the tribes.⁹

An Exemplar

Jordan v. Goldman (1893), before the Supreme Court of Oklahoma Territory, is of particular note in demonstrating the scope of treaty making with the tribes. *Twenty-five* treaties or supplemental articles¹⁰ were referenced in this suit, including 17 individual Cherokee treaties from the years between 1785 and 1866. The case concerned the rights of the Cherokee nation in the Cherokee Outlet, in light of its use as more than solely an “outlet” as defined in the treaties between the Cherokee and the federal government.¹¹ Jordan and the other plaintiffs from the Outlet had operated a quarry and had farmed within the Outlet, and were to be ejected by the Army. Plaintiffs sought an injunction against Goldman, the commanding officer of the Army unit. His counsel cited *United States v. Cook* (1873, p. 594), a case concerning the cutting of timber for sale by the Oneida Indians in Wisconsin, to demonstrate that “Indians [have] only a right of occupancy in the lands” and could not harvest the timber. In addition to referring to the complete history of treaty negotiations between the Cherokee and the federal government, the defense reinforced its argument with §2116 of the *Revised Statutes* (18 Stat. 369) that forbade such leases of Indian lands for whatever reason without the consent of the federal government. Edward B. Green, the Chief Justice of the Supreme Court of Oklahoma Territory, noted in the *Jordan* opinion that the *Treaty with the Cherokee, 1835* (Kappler, 1904, pp. 439-

448; ratified treaty number 199 in the Table) had been quite clear in adding 800,000 acres “as part of the permanent home” of 7 million acres allocated for this purpose. He added that “[i]f the six million acres in the Cherokee Outlet could have been used for the purpose of a home, there would have been no necessity for the purpose of the additional lands” (p. 449). Thus, usage of the Outlet lands for anything other than as a permanent outlet west would have violated the distinction between it and a permanent home for the Cherokee. Further, a later punitive treaty with the Cherokee following the Civil War required the tribe to allow the federal government to “settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96^o” (Kappler, 1904, p. 946).¹² Green considered this as “effectively destroying the use of the outlet as an outlet to the Cherokee Nation” (p. 452; emphasis original), and thus the lands reverted to the United States. The requested injunction was denied, but this case illuminates the careful and extensive use of treaties in such proceedings, even at the Territorial level.¹³

The Table and Case Selection

Each State’s database in the *LexisNexis* option of *Academic Universe* was searched for the two words “treaty” and “Indian,” and the search was bound with the date of statehood. For example, a search within the “Oklahoma” resource would have a terminal date of “11/16/1907,” the date on which Oklahoma was admitted into the Union upon the proclamation of President Theodore Roosevelt (Peery, 1934). In addition, those cases from any State court system that cited any recognized Indian treaty were retrieved by using each treaty’s *Statutes at Large* reference¹⁴ to identify case entries

9 Each of the acts of Territorial legislation denoted in the *Statutes at Large* column in the footnote table above contains specifications for the judicial systems to be created in each Territory. The lone exception is for the creation of United States courts in Indian Territory. The establishment of this judicial system occurred in 1889 (25 Stat. 783), half a century after the *Indian Intercourse Act* of 1834 (4 Stat. 729) initially created the Territory. The Public Land Strip was appended to Indian Territory by this act and jurisdiction for it was assigned to the Eastern District of the State of Texas (25 Stat. 783, 786). See Williams (1911) for a discussion of the judicial history of Oklahoma.

10 Supplemental articles were adjustments to the parameters of a treaty, frequently made as quickly as the same or the next day. These components were not assigned ratified treaty numbers by the Department of State, but each has a *Statutes at Large* entry. In the *Statutes at Large* and in Kappler, most of the supplemental articles have been appended to the original treaty entry (Bernholz, 2008). In the Table, two supplemental articles to two Cherokee treaties – the 1792 *Additional Article To the Treaty made between the United States and the Cherokees on the second day of July, one thousand seven hundred and ninety-one* (Kappler, 1904, pp. 32-33; supplemental article 18.1 in the Table) and the 1807 *Elucidation of a convention with the Cherokee Nation* (pp. 91-92; supplemental article 53.1 in the Table) – were cited in the opinion for *Jordan v. Goldman* (1893). The paired treaty-supplemental article texts are also available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/che0029.htm> and at <http://digital.library.okstate.edu/kappler/Vol2/treaties/che0090.htm>, respectively.

11 “The United States, further guarantee to the Cherokee nation, a perpetual outlet west and a free and unmolested use of all the country lying west, of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend” (*Treaty with the Western Cherokee, 1833*; Kappler, 1904, p.387; ratified treaty number 182 in the Table).

12 The *Treaty with the Cherokee, 1866* (Kappler, 1904, pp. 942-950; ratified treaty number 358 in the Table). This treaty also commented upon the “United States court to be created in the Indian Territory” (p. 944).

13 Two of the Territorial suits listed in the Table went on to appear before the United States Supreme Court. *Fackler v. Ford* (1858; Kansas Territory) was heard as *Fackler v. Ford* (1861), and *United States v. Crow Dog* (1882; Dakota Territory) formed the basis of *Ex parte Crow Dog* (1883).

14 Volumes of the *Statutes at Large* are now available on the Library of Congress’s *Century of Lawmaking for a New Nation* page at <http://memory.loc.gov/ammem/amlaw/lwsl.html>. The texts of all treaties, cited in the Table, are available at this site.

in the “Federal & State Cases” option of the full *Lexis-Nexis* online database. The Web-based *Westlaw Campus* suite was interrogated for all *Statutes at Large* references as well. Each of the returned opinions was examined for reference to recognized Indian treaties. In this manner, the following Table identifies 55 opinions in 12 Territorial court systems¹⁵ for the years 1846 to 1909 that made 150 references to 79 ratified Indian treaties or supplemental articles.¹⁶

The Table is an aggregate of the following data:

- The ratified treaty number, assigned by the Department of State,¹⁷ of each of the relevant treaties that has been cited in the opinion of any Territorial court. Supplemental articles that affected the parameters of previous instruments are identified by decimal additions to the affected treaty’s ratified treaty number;
- 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 23 is the *Treaty with the Wyandot, etc., 1795* (Kappler, 1904, pp. 39-45) and the entry for this document in the Table identifies as signatories the Wyandot as well as the Delaware, Shawnee, Ottawa, Chippewa, Potawatomi, Miami, Eel River, Wea, Kickapoo, Piankashaw, and Kaskaskia. Similarly, ratified treaty number 9 is the *Treaty with the Six Nations, 1784* (Kappler, 1904, pp. 5-6) and the complete entry for this instrument lists the Cayuga, Mohawk, Oneida, Onondaga, Seneca, and Tuscarora;
- The signing date of the treaty or supplemental article, taken from each document’s entry in volume 2 of Kappler’s *Indian Affairs: Laws and Treaties* (1904);
- The instrument’s page number in *Indian Affairs: Laws and Treaties*;
- The *Statutes at Large* citation for the treaty or supplemental article;
- The case title and year of the citing Territorial court case;
- The reporter citation for this case;¹⁸ and
- The Territorial court in which the citation appeared.

Conclusions

These cases were very much a harbinger of later actions taken before the State judicial systems created from each of these territories. Pomeroy, in his analyses of the territories within a federal system (1944 and 1947), commented that “After the men to whom territories meant Kansas and Nebraska, and before those to whom they meant Hawaii and Puerto Rico, there came a generation to which territories meant Indian wars and mines, future congressmen and present patronage, but not a great constitutional and administrative problem” (1947, pp. 1-2). Within this climate, “[t]he organization of the judicial system in the territories was simple” (p. 51), with territorial judges serving as district and as Territorial Supreme Court members. Opinions were liable to appeal before the United States Supreme Court, but Farrand (1896, p. 45) considered that “[t]he greatest uniformity...always existed in the judicial systems of the various Territories, owing to their common subordination to the Supreme Court of the United States.”

Indeed, Ward (1888) conveyed, in the very midst of the transition of many Territories to statehood, that territorial citizens harbored many local complaints precisely because of federal control of their pre-statehood lives. One of his remarks will suffice: “They are not allowed to make their own Constitutions, but Congress provides an Organic Act, which may or may not be always suited to local needs” (p. 52). He advocated for the Territories “the same power that States within the Union now have to elect all their own officers, and *make and execute their own laws*” (p. 57; emphasis added). As the Territory/Statehood list at footnote 1 illustrates, there were many such areas of the country struggling under these difficult federal directives. Two examples will demonstrate the difficulties that faced the Territorial courts systems.

Cases within the Territory of Oklahoma were particularly numerous. The Table shows that proceedings before the Supreme Court of Oklahoma Territory and the United States Court of Appeals for the Indian Territory accounted for 92, or over 60%, of the entries.¹⁹ A total of 50 different treaties or treaty adjustments were ref-

15 The United States Court of Appeals for the Indian Territory was created in 1895 (28 Stat. 693), and the first case reported in *Indian Territory Reports* was *Severs v. Northern Trust Co.*, decided on 15 February 1896. Other than those instances (Ncases = 17) in this venue, each of the other cases in the Table appeared before a Territorial Supreme Court. The Territories, and number of cases heard, were Arizona (N = 2); Dakota (N = 9); Idaho (N = 4); Iowa (N = 1); Kansas (N = 1); Montana (N = 3); New Mexico (N = 3); Oklahoma (N = 10); Utah (N = 2); Washington (N = 1); and Wyoming (N = 2).

16 Three of the eleven early cases in the Table were cited in Rapalje’s *Digest of Federal Decisions and Statutes* (1880) that identifies cases before Territorial courts for the years prior to 1880. Two of these proceedings – *United States v. 196 Buffalo Robes* (1872) and *Clark v. Bates* (1874) – appear under his “Indians” heading (pp. 292-293), while the third case (*Webster v. Reid* [1846]) is in the “Treaties with Indians” section.

17 See *Ratified Indian Treaties, 1722-1869* (1966).

18 There are some very specialized Territorial reporters in this list: the *Dakota Reports* (1867-1889, 6 volumes); the *Indian Territory Reports* (1896-1907, 7 volumes); *McCahon’s Reports* (Kansas Territory, 1858-1868, 1 volume); the *Morris Reports* (Iowa Territory, 1839-1846, 1 volume); and the *Washington Territory Reports* (1854-1888, 3 volumes).

19 See Bernholz (2004b) for access to these specific cases. They were reported in *Indian Territory Reports*, a seven-volume compilation of opinions, between February 1896 and September 1907, of the United States Court of Appeals for the Indian Territory.

erenced during the 14 years between the first instance before the Supreme Court of Oklahoma Territory—*Jordan v. Goldman* (1893)—and the final one prior to statehood, *De Graffenreid v. Iowa Land & Trust Co.* (1907). Interwoven with the other cases before this jurisdiction, the United States Court of Appeals for the Indian Territory heard roughly half the total number of cases between 1896 (*McCurtain v. Grady*) and 1905 (*Dick v. Ross*). In a direct comparison with the post-statehood proceedings before the Oklahoma Supreme Court, Bernholz and Weiner (2005) found 47 cases citing 34 treaties or supplements between the years 1908 and 2004.

Blume and Brown (1962a, p. 43) observed that Indian Territory was, along with Alaska and the Canal Zone, one of few territories for which Congress “served[d] as the sole or principal legislative agency.” This did not disorient judicial administration, because the 1890 organic act for the Territory of Oklahoma (26 *Stat.* 81, 93) provided that “the Constitution and all the laws of the United States not locally inapplicable shall, except so far as modified by this act, have the same force and effect as elsewhere within the United States.” Indian rights were also assured: “nothing in this act shall be construed to impair any right now pertaining to any Indians or Indian tribe in said territory under the laws, agreements, and treaties of the United States” (26 *Stat.* 81, 82; emphasis added). However, with the intersection of settlers and the numerous tribes that had been removed to Indian Territory, the courts were required to address many treaty-based questions.

Indian affairs was an issue in Idaho Territory too, and Jackson (1945) began his article, covering the years 1863 to 1870 there, by citing ratified treaty number 323, the *Treaty with the Nez Perces, 1863* (Kappler, 1904, pp. 843-848) and the subsequent difficulties for both the Indians and the Territorial citizens. Annuity funds earmarked for the Nez Perce were under constant danger; accusations flew between the Governor, David W. Ballard, and the legislature; local agents learned of potential outbreaks with the Indians over their missing monies, but the federal Indian Office was kept in the dark. As Jackson remarked (p. 325): “Misappropriation of funds, political factionalism, and administrative chaos were the result. The economic and political development of Idaho was greatly retarded by federal maladministration during these years.”

The Table indicates, for ratified treaty number 323, two cases before the territorial Supreme Court of Idaho. In *Langford v. Monteith* (1876), the Court confirmed that the lower territorial court had jurisdiction in a dispute between two white citizens over trespass and contracts on land reserved to the Indians by this treaty, and that the courts “were bound to protect them in the same in the proceedings” (p. 617). In an appeal before the United States Supreme Court (*Langford v. Monteith*, 1880), these findings were affirmed, thereby supporting the findings—and jurisdiction—of the territorial court.

The earlier *Pickett v. United States* (1874) action before the Supreme Court of Idaho Territory concerned plaintiff’s allegations that his murder conviction in a lower court was in error and he believed that he should have been tried under Territorial, and not under federal, laws. The Court concluded that “district courts of the territory are not United States courts, but territorial courts, having the jurisdiction of the circuit and district courts of the United States conferred upon them” (p. 525). The conviction was affirmed.

Thus, the transition from Territorial administration to one under statehood was relatively straightforward for these judicial systems, even with all the attendant problems of patronage, political influence peddling among cronies from back East, lack of sensitivity by them to local issues, and the fundamental credential as “one of the weakest parts of the territorial administration” (Pomeroy, 1947, p. 61). Pomeroy noted further that these judiciaries were “tolerable and lasted only because [they] fitted loosely though badly, and because the prospect of early statehood lay always before westerner and easterner alike” (p. 61). The questions adhering to the contents of the treaties drawn between the Indian Nations and the federal government that were adjudicated in these territorial fora later became local questions for the courts of these States formed from these Territories. In their Table, Bernholz and Weiner (2005) identify, for example, two cases that cited the same *Treaty with the Nez Perces, 1863*; both of these actions concerned gathering rights assured by treaties signed by Isaac I. Stevens, as Territorial Governor of Washington, prior to 3 March 1863 when Idaho was created as a Territory from this larger area. The numerous citations to ratified Indian treaties or supplementary treaties, which appear in that article, demonstrate that these instruments continued to appear before the courts, as valid covenants with the federal government, after all the Territories had disappeared.

References

- American Insurance Company v. Canter.* (1828). 26 U.S. 511.
- An Act establishing the territorial government of Wisconsin. (1836). 5 *Stat.* 10.
- An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety, and for other purposes. (1889). 25 *Stat.* 939.
- An Act making appropriations for the current and contingent expenses of the Indian department and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth eighteen hundred and fifty-eight. (1857). 11 *Stat.* 169.
- An Act making appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty

- stipulations with various Indian tribes, for the year ending June thirty eighteen hundred and seventy-two, and for other purposes. (1871). 16 *Stat.* 544.
- An Act to establish the Home Department, and to provide for the Treasury Department an assistant Secretary of the Treasury, and a Commissioner of the Customs. (1849). 9 *Stat.* 395.
- An Act to regulate the fees and costs of the allowed clerks, marshals, and attorneys of the circuit and district courts of the United States, and for other purposes. (1853). 10 *Stat.* 161.
- Annual Report of the Attorney-General of the United States for the Year 1889.* (1890). House of Representatives. 51st Congress, 1st session. House Executive Document No. 7 (Serial Set 2733). Washington, DC: Government Printing Office.
- Bernholz, C. D. (2001). The absent American Indian treaties: A guide to treaties never referenced at the federal court level. *Journal of Government Information* 28, 171-178.
- Bernholz, C. D. (2002). The absent American Indian treaties: An update. *Journal of Government Information* 29, 39-41.
- Bernholz, C. D. (2004a). 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, 318-431.
- Bernholz, C. D. (2004b). Federal Indian law Internet tools: *Indian Territory Cases* at the Oklahoma state courts network and *Kappler's Indian Affairs: Laws and Treaties* at the Oklahoma State University. *Journal of Government Information* 30, 637-647.
- Bernholz, C. D. (2007). American Indian Treaties and the Lower Federal Courts: A Guide to Treaty Citations from Opinions of the Lower United States Federal Court System. *Government Information Quarterly* 24, 443-469.
- Bernholz, C. D. (2008). Adjusting American Indian Treaties: A Guide to Supplemental Article and Supplementary Treaty Citations from Opinions of the Federal, State, and Territorial Court Systems. *Government Information Quarterly* 25, 541-552.
- Bernholz, C. D. and Weiner, R. J. (2005). **American Indian treaties** in the state courts: A guide to treaty citations from opinions of the state court systems. *Government Information Quarterly* 22, 440-488.
- Bintliff, B. (1994). A jurisdictional history of the Colorado courts. *University of Colorado Law Review* 65, 577-630.
- Bloom, J. P. (1969). *The Territorial Papers of the United States: Volume XXVII – The Territory of Wisconsin: Executive Journal, 1836-1848; Papers, 1836-1839.* Washington, DC: National Archives and Records Service.
- Blume, W. W. and Brown, E. G. (1962a). Territorial courts and law: Unifying factors in the development of American legal institutions. Part I. Establishment of a standardized judicial system. *Michigan Law Review* 61, 39-106.
- Blume, W. W. and Brown, E. G. (1962b). Territorial courts and law: Unifying factors in the development of American legal institutions. Part II. Influences tending to unify territorial law. *Michigan Law Review* 61, 467-538.
- Carter, C. E. (1934a). *The Territorial Papers of the United States: Volume I – General: Preliminary Printing.* Washington, DC: Government Printing Office.
- Carter, C. E. (1934b). *The Territorial Papers of the United States: Volume II – The Territory Northwest of the River Ohio, 1787-1803.* Washington, DC: Government Printing Office.
- Carter, C. E. (1945a). Apprenticeship for American statehood. *Department of State Bulletin* 12, 1109-1114.
- Carter, C. E. (1945b). The territorial papers of the United States. *American Archivist* 8, 122-135.
- Carter, C. E. (1952). *The Territorial Papers of the United States: Volume XVIII – The Territory of Alabama, 1817-1819.* Washington, DC: Government Printing Office.
- Carter, C. E. (1955). The territorial papers of the United States: A review and a commentary. *Mississippi Valley Historical Review* 42, 510-524.
- Clark v. Bates*, 1 Dak. 42 (1874).
- Creel, V. (2002). A court of its own: The establishment of the United States court for the Indian Territory. *Oklahoma City University Law Review* 27, 231-244.
- De Graffenreid v. Iowa Land & Trust Co.*, 20 Okla. 687 (1907).
- Dick v. Ross*, 6 Indian Terr. 85 (1905).
- Ex parte Crow Dog*, 109 U.S. 556 (1883).
- Fackler v. Ford*, McCahon 21 (1858).
- Fackler v. Ford*, 65 U.S. 322 (1861).
- Farrand, M. (1896). *The Legislation of Congress for the Government of the Organized Territories of the United States, 1789-1895.* Newark, NJ: William A. Baker.
- Farrand, M. (1900). Territory and district. *American Historical Review* 5, 676-681.
- Farris, C. D. (1941). The courts of territorial Florida. *Florida Historical Quarterly* 19, 346-367.
- Gannett, H. (1900). *Boundaries of the United States and of the Several States and Territories, with an Outline of the History of All Important Changes of Territory.* Washington, DC: Government Printing Office.
- Gittinger, R. (1917). *The Formation of the State of Oklahoma (1803-1906).* Berkeley, CA: University of California Press.
- Guice, J. D. W. (1972). *The Rocky Mountain Bench: The Territorial Supreme Courts of Colorado, Montana, and Wyoming, 1861-1890.* New Haven, CT: Yale University Press.
- Guice, J. D. W. (1973). The role of the territorial supreme courts: The historian's view. In J. P. Bloom (Ed.). *The American Territorial System* (pp. 105-113). Athens, OH: Ohio University Press.
- Hill, E. E. (1974). *The Office of Indian Affairs, 1824-1880: Historical Sketches.* New York: Clearwater Publishing.
- Hoffheimer, M. H. (1995). Mississippi courts: 1790-1868. *Mississippi Law Journal* 65, 99-170.
- Jackson, K. T. and Adams, J. T. (Eds.) (1978). *Atlas of American History* (rev. ed.). New York: Scribner's.
- Jackson, W. T. (1945). Indian affairs and politics in Idaho territory, 1863-1870. *Pacific Historical Review* 14, 311-325.
- Jordan v. Goldman*, 1 Okla. 406 (1893).
- Kappler, C. J. (1904). *Indian Affairs: Laws and Treaties: Vol. 2, Treaties.* Washington, DC: Government Printing Office.
- Lamar, H. R. (1956). *Dakota Territory, 1861-1889: A Study of Frontier Politics.* New Haven, CT: Yale University Press.

- Lamar, H. R. (1966). *The Far Southwest, 1846-1912: A Territorial History*. New Haven, CT: Yale University Press.
- Langford v. Monteith*, 1 Idaho 612 (1876).
- Langford v. Monteith*, 102 U.S. 145 (1880).
- Lawson, G. (1990). Territorial governments and the limits of formalism. *California Law Review* 78, 853-911.
- Malone, D. (Ed.). (1943). *Dictionary of American Biography*. New York: Charles Scribner's Sons.
- McCurtain v. Grady*, 1 Indian Terr. 107 (1896).
- Neil, W. M. (1964). The American territorial system since the Civil War: A summary analysis. *Indiana Magazine of History* 60, 219-240.
- Peery, D. W. (1934). Twenty-seven years a state. *Chronicles of Oklahoma* 12, 393-401.
- Pickett v. United States*, 1 Idaho 523 (1874).
- Pomeroy, E. S. (1944). The territory as a frontier institution. *The Historian* 7 (Autumn), 29-41.
- Pomeroy, E. S. (1947). *The Territories and the United States, 1861-1890: Studies in Colonial Administration*. Philadelphia, PA: University of Pennsylvania Press.
- Rapalje, S. (1880). *A Digest of Federal Decisions and Statutes, from the Earliest Period to the Year 1880: Comprising the Reports of the Supreme, Circuit and District Courts of the United States, the Territorial Courts, such Federal Cases as are Scattered through the Various State Reports and Legal Periodicals, and those Provisions of the Statutes at Large and the Revised Statutes which are of Practical Utility, Together with a Table of Cases Affirmed, Reversed, Overruled, and Otherwise Criticised, Covering the Same Period*. Jersey City, NJ: F.D. Linn.
- Ratified Indian Treaties, 1722-1869*. (1966). Washington, DC: National Archives and Records Service.
- Redish, M. H. (1983). Legislative courts, administrative agencies, and the *Northern Pipeline* decision. *Duke Law Journal* 1983, 197-223.
- Saphire, R. B. and Solimine, M. E. (1988). Shoring up article III: Legislative court doctrine in the post *CFTC v. Schor* era. *Boston University Law Review* 68, 85-152.
- Smurr, J. W. (1970). *Territorial Jurisprudence: What the Judges Said About Frontier Government in the United States of America During the Years 1787-1900*. Ann Arbor, MI: University Microfilms.
- Spence, C. C. (1963). The territorial bench in Montana: 1864-1889. *Montana: The Magazine of Western History* 13, 25-32, 57-65.
- Surrency, E. C. (2002). *History of the Federal Courts* (2nd ed.). Dobbs Ferry, NY: Oceana Publications.
- United States v. Cook*, 86 U.S. 591 (1873).
- United States v. Crow Dog*, 3 Dakota 58 (1882).
- United States v. 196 Buffalo Robes*, 1 Mont. 489 (1872).
- Vandervest, B. (2003). The Wisconsin state legal system and Indian affairs in the nineteenth century: A lost chapter in Wisconsin's legal history. *Marquette Law Review* 87, 357-385.
- Wade, D. (1879). Self-government in the territories. *The International Review* 6, 299-308.
- Ward, J. (1888). The territorial system of the United States. *Andover Review* 10, 51-62.
- Way, R. B. (1919). The United States factory system for trading with the Indians, 1796-1822. *Mississippi Valley Historical Review* 6, 220-235.
- Webster v. Reid*, Morris 467 (1846).
- Williams, R. L. (1911). The judicial history of Oklahoma. In *Proceedings of the Fifth Annual Meeting of the Oklahoma State Bar Association* (pp. 107-162). Oklahoma City, OK: Oklahoma State Bar Association.

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Table 1: Indian Treaties, listed by Department of State Ratified Treaty Number, that were Referenced in the Opinions of United States Territorial Courts.

Ratified Treaty Number	Signatory tribe(s)	Treaty Signing Date	Kappler Page Number	Statutes at Large	Case Title	Citation	Court
9	Cayuga; Mohawk; Oneida; Onondaga; Seneca; Tuscarora	22-Oct-1784	5	7 Stat. 15	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
11	Cherokee	28-Nov-1785	8	7 Stat. 18	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
11		28-Nov-1785	8	7 Stat. 18	Labadie v. United States (1897)	6 Okla. 400	Sup. Ct., Okla.
11		28-Nov-1785	8	7 Stat. 18	Maxey v. Wright (1900)	3 Indian Terr. 243	Ct. App., Indian Terr.
16	Cayuga; Oneida; Onondaga; Seneca; Tuscarora	9-Jan-1789	23	7 Stat. 33	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
18	Cherokee	2-Jul-1791	29	7 Stat. 39	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
18		2-Jul-1791	29	7 Stat. 39	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
18.1	Cherokee	17-Feb-1792	32	7 Stat. 42	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
20	Cherokee	26-Jun-1794	33	7 Stat. 43	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
21	Cayuga; Oneida; Onondaga; Seneca; Tuscarora	11-Nov-1794	34	7 Stat. 44	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
23	Wyandot; Delaware; Shawnee; Ottawa; Chippewa; Potawatomi; Miami; Eel River; Wea; Kickapoo; Piankashaw; Kaskaskia	3-Aug-1795	39	7 Stat. 49	Renfrow v. United States (1895)	3 Okla. 161	Sup. Ct., Okla.

Ratioed Treaty Number	Signatory tribe(s)	Treaty Signing Date	Kappler Page Number	Statutes at Large	Case Title	Citation	Court
27	Seneca	15-Sep-1797	1027	7 Stat. 601	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
29	Cherokee	2-Oct-1798	51	7 Stat. 62	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
33	Seneca	30-Jun-1802	60	7 Stat. 70	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
42	Cherokee	24-Oct-1804	73	7 Stat. 228	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
48	Cherokee	25-Oct-1805	82	7 Stat. 93	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
49	Cherokee	27-Oct-1805	84	7 Stat. 95	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
53	Cherokee	7-Jan-1806	90	7 Stat. 101	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
53.1	Cherokee	11-Sep-1807	91	7 Stat. 103	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
55	Osage:Grand and Little Cherokee	10-Nov-1808	95	7 Stat. 107	Labadie v. United States (1897)	6 Okla. 400	Sup. Ct., Okla.
76	Cherokee	22-Mar-1816	124	7 Stat. 138	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
77	Cherokee	22-Mar-1816	125	7 Stat. 139	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
89	Cherokee	8-Jul-1817	140	7 Stat. 156	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
96	Quapaw	24-Aug-1818	160	7 Stat. 176	Zevely v. Weimer (1904)	5 Indian Terr. 646	Ct. App., Indian Terr.
103	Delaware	3-Oct-1818	170	7 Stat. 188	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
106	Cherokee	27-Feb-1819	177	7 Stat. 195	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
115	Choctaw	18-Oct-1820	191	7 Stat. 210	Ansley v. Ainsworth (1902)	4 Indian Terr. 308	Ct. App., Indian Terr.
121	Sac and Fox	4-Aug-1824	207	7 Stat. 229	Webster v. Reid (1846)	Morris 467	Sup. Ct., Iowa
123	Quapaw	15-Nov-1824	210	7 Stat. 232	Moore v. Girtten (1904)	5 Indian Terr. 384	Ct. App., Indian Terr.
124	Choctaw	20-Jan-1825	211	7 Stat. 234	Zevely v. Weimer (1904)	5 Indian Terr. 646	Ct. App., Indian Terr.
126	Osage:Grand and Little	2-Jun-1825	217	7 Stat. 240	Maxey v. Wright (1900)	3 Indian Terr. 243	Ct. App., Indian Terr.
126	Creek	2-Jun-1825	217	7 Stat. 240	Zevely v. Weimer (1904)	5 Indian Terr. 646	Ct. App., Indian Terr.
144	Cherokee:Western	24-Jan-1826	264	7 Stat. 286	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
152	Cherokee:Western	6-May-1828	288	7 Stat. 311	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
152	Sac and Fox; Sioux:	6-May-1828	288	7 Stat. 311	Hanks v. Hendricks (1900)	3 Indian Terr. 415	Ct. App., Indian Terr.
159	Mdewakanton, Wahpeton, Wahpekute and Sisseton; Omaha; Iowa; Oto; Missouri	15-Jul-1830	305	7 Stat. 328	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
159		15-Jul-1830	305	7 Stat. 328	De Graffenreid v. Iowa Land & Trust Co. (1907)	20 Okla. 687	Sup. Ct., Okla.

Ratiofied Treaty Number	Signatory tribe(s)	Treaty Signing Date	Kappler Page Number	Statutes at Large	Case Title	Citation	Court
160	Choctaw	27-Sep-1830	310	7 Stat. 333	Territory v. Yarberry (1883)	2 N.M. 391	Sup. Ct., N.M.
160		27-Sep-1830	310	7 Stat. 333	Ikard v. Minter (1902)	4 Indian Terr. 214	Ct. App., Indian Terr.
160		27-Sep-1830	310	7 Stat. 333	Ansley v. Ainsworth (1902)	4 Indian Terr. 308	Ct. App., Indian Terr.
160		27-Sep-1830	310	7 Stat. 333	Zevely v. Weimer (1904)	5 Indian Terr. 646	Ct. App., Indian Terr.
164	Shawnee	8-Aug-1831	331	7 Stat. 355	Utah & Northern Railway v. Fisher (1884)	2 Idaho 53	Sup. Ct., Idaho
164		8-Aug-1831	331	7 Stat. 355	Territory v. Delinquent Tax-List (1891)	3 Ariz. 302	Sup. Ct., Ariz.
167	Creek	24-Mar-1832	341	7 Stat. 366	Territory v. Yarberry (1883)	2 N.M. 391	Sup. Ct., N.M.
168	Seminole	9-May-1832	344	7 Stat. 368	United States ex rel. Search v. Choctaw (1895)	3 Okla. 404	Sup. Ct., Okla.
170	Sac and Fox	21-Sep-1832	349	7 Stat. 374	Webster v. Reid (1846)	Morris 467	Sup. Ct., Iowa
182	Cherokee: Western	14-Feb-1833	385	7 Stat. 414	Jordan v. Goldiman (1893)	1 Okla. 406	Sup. Ct., Okla.
182		14-Feb-1833	385	7 Stat. 414	Hanks v. Hendricks (1900)	3 Indian Terr. 415	Ct. App., Indian Terr.
182		14-Feb-1833	385	7 Stat. 414	Incorporated Town of Tahlequah v. Guinn (1904)	5 Indian Terr. 497	Ct. App., Indian Terr.
183	Creek	14-Feb-1833	388	7 Stat. 417	Jordan v. Goldiman (1893)	1 Okla. 406	Sup. Ct., Okla.
183		14-Feb-1833	388	7 Stat. 417	De Graffenreid v. Iowa Land & Trust Co. (1907)	20 Okla. 687	Sup. Ct., Okla.
185	Seminole	28-Mar-1833	394	7 Stat. 423	United States ex rel. Search v. Choctaw (1895)	3 Okla. 404	Sup. Ct., Okla.
186	Quapaw	13-May-1833	395	7 Stat. 424	Moore v. Girten (1904)	5 Indian Terr. 384	Ct. App., Indian Terr.
199	Cherokee	29-Dec-1835	439	7 Stat. 478	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
199		29-Dec-1835	439	7 Stat. 478	Utah Mining & Manufacturing Co. v. Dickert & Myers 6 Utah Sulphur Co. (1889)	6 Utah 183	Sup. Ct., Utah
199		29-Dec-1835	439	7 Stat. 478	Jordan v. Goldiman (1893)	1 Okla. 406	Sup. Ct., Okla.
199		29-Dec-1835	439	7 Stat. 478	Labadie v. United States (1897)	6 Okla. 400	Sup. Ct., Okla.
199		29-Dec-1835	439	7 Stat. 478	Hanks v. Hendricks (1900)	3 Indian Terr. 415	Ct. App., Indian Terr.
199		29-Dec-1835	439	7 Stat. 478	Ansley v. Ainsworth (1902)	4 Indian Terr. 308	Ct. App., Indian Terr.
199		29-Dec-1835	439	7 Stat. 478	Glenn-Tucker v. Clayton (1902)	4 Indian Terr. 511	Ct. App., Indian Terr.
199		29-Dec-1835	439	7 Stat. 478	Incorporated Town of Tahlequah v. Guinn (1904)	5 Indian Terr. 497	Ct. App., Indian Terr.
220	Choctaw;	17-Jan-1837	486	11 Stat. 573	Ansley v. Ainsworth (1902)	4 Indian Terr. 308	Ct. App., Indian Terr.
220	Chickasaw	17-Jan-1837	486	11 Stat. 573	Zevely v. Weimer (1904)	5 Indian Terr. 646	Ct. App., Indian Terr.
230	Cayuga; Oneida; Onondaga; Mohawk:St. Regis; Seneca; Tuscarora	15-Jan-1838	502	7 Stat. 550	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
240	Wyandot	17-Mar-1842	534	11 Stat. 581	Utah Mining & Manufacturing Co. v. Dickert & Myers 6 Utah Sulphur Co. (1889)	6 Utah 183	Sup. Ct., Utah

Ratiofied Treaty Number	Signatory tribe(s)	Treaty Signing Date	Kappler Page Number	Statutes at Large	Case Title	Citation	Court
241	Seneca	20-May-1842	537	7 Stat. 586	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
248	Cherokee: Western	6-Aug-1846	561	9 Stat. 871	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
248		6-Aug-1846	561	9 Stat. 871	Hanks v. Hendricks (1900)	3 Indian Terr. 415	Ct. App., Indian Terr.
248		6-Aug-1846	561	9 Stat. 871	Ansley v. Ainsworth (1902)	4 Indian Terr. 308	Ct. App., Indian Terr.
248		6-Aug-1846	561	9 Stat. 871	Incorporated Town of Tahlequah v. Guinn (1904)	5 Indian Terr. 497	Ct. App., Indian Terr.
248		6-Aug-1846	561	9 Stat. 871	Dick v. Ross (1905)	6 Indian Terr. 85	Ct. App., Indian Terr.
255	Navajo	9-Sep-1849	583	9 Stat. 974	United States v. Lucero (1859)	1 N.M. 422	Sup. Ct., N.M.
261	Apache	1-Jul-1852	598	10 Stat. 979	United States v. Monte (1884)	3 N.M. 173	Sup. Ct., N.M.
267	Delaware	6-May-1854	614	10 Stat. 1048	Fackler v. Ford (1858)	McCahon 21	Sup. Ct., Kan.
267		6-May-1854	614	10 Stat. 1048	Utah & Northern Railway v. Fisher (1884)	2 Idaho 53	Sup. Ct., Idaho
267		6-May-1854	614	10 Stat. 1048	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
268	Shawnee	10-May-1854	618	10 Stat. 1053	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
273	Kaskaskia; Peoria; Piankashaw; Wea	30-May-1854	636	10 Stat. 1082	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
274	Miami	5-Jun-1854	641	10 Stat. 1093	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
275	Chippewa: Mississippi	30-Sep-1854	648	10 Stat. 1109	Utah Mining & Manufacturing Co. v. Dickert & Myers 6 Utah Sulphur Co. (1889)	6 Utah 183	Sup. Ct., Utah
285	Chippewa: Lake Superior	31-Jan-1855	677	10 Stat. 1159	Utah Mining & Manufacturing Co. v. Dickert & Myers 6 Utah Sulphur Co. (1889)	6 Utah 183	Sup. Ct., Utah
290	Wyandot	9-Jun-1855	698	12 Stat. 951	United States v. Taylor (1887)	3 Wash. Terr. 88	Sup. Ct., Terr. Wash.
290	Yakima; Palouse; Pisquouse; Wenatchee; Klikitat; Klimquit; Kowwassayee; Liaywas; Skin; Wishram; Shyriks; Ochechotes; Kahmiltpah; Seapcat						
291	Nez Perce	11-Jun-1855	702	12 Stat. 957	Pickett v. United States (1874)	1 Idaho 523	Sup. Ct., Idaho

Ratioed Treaty Number	Signatory tribe(s)	Treaty Signing Date	Kappler Page Number	Statutes at Large	Case Title	Citation	Court
291		11-Jun-1855	702	12 Stat. 957	Langford v. Monteith (1876)	1 Idaho 612	Sup. Ct., Idaho
292	Choctaw;	22-Jun-1855	706	11 Stat. 611	Maxey v. Wright (1900)	3 Indian Terr. 243	Ct. App., Indian Terr.
292	Chickasaw	22-Jun-1855	706	11 Stat. 611	Dukes v. McKenna (1902)	4 Indian Terr. 156	Ct. App., Indian Terr.
292		22-Jun-1855	706	11 Stat. 611	Ansley v. Ainsworth (1902)	4 Indian Terr. 308	Ct. App., Indian Terr.
292		22-Jun-1855	706	11 Stat. 611	Glenn-Tucker v. Clayton (1902)	4 Indian Terr. 511	Ct. App., Indian Terr.
292		22-Jun-1855	706	11 Stat. 611	Dukes v. Goodall (1904)	5 Indian Terr. 145	Ct. App., Indian Terr.
292		22-Jun-1855	706	11 Stat. 611	Buster & Jones v. Wright (1904)	5 Indian Terr. 404	Ct. App., Indian Terr.
292		22-Jun-1855	706	11 Stat. 611	Ansley v. McLoud (1904)	5 Indian Terr. 563	Ct. App., Indian Terr.
292		22-Jun-1855	706	11 Stat. 611	Zevely v. Weimer (1904)	5 Indian Terr. 646	Ct. App., Indian Terr.
299	Blackfeet; Piegan and Blood; Gros Ventre; Flathead; Upper Pend d'Oreille; Kutenai; Nez Perce	17-Oct-1855	736	11 Stat. 657	United States v. 196 Buffalo Robes (1872)	1 Mont. 489	Sup. Ct., Mont.
303	Creek;	7-Aug-1856	756	11 Stat. 699	Maxey v. Wright (1900)	3 Indian Terr. 243	Ct. App., Indian Terr.
303	Seminole	7-Aug-1856	756	11 Stat. 699	Muskogee National Telephone Co. v. Hall (1901)	4 Indian Terr. 18	Ct. App., Indian Terr.
303		7-Aug-1856	756	11 Stat. 699	Buster & Jones v. Wright (1904)	5 Indian Terr. 404	Ct. App., Indian Terr.
307	Stoux:Yankton	19-Apr-1858	776	11 Stat. 743	Ferry v. Street (1886)	4 Utah 521	Sup. Ct., Utah
312	Sac and Fox	1-Oct-1859	796	15 Stat. 467	Keokuk v. Uiam (1895)	4 Okla. 5	Sup. Ct., Okla.
313	Kansa	5-Oct-1859	800	12 Stat. 1111	Territory v. Delinquent Tax-List (1891)	3 Ariz. 302	Sup. Ct., Ariz.
313		5-Oct-1859	800	12 Stat. 1111	Utah & Northern Railway v. Fisher (1884)	2 Idaho 53	Sup. Ct., Idaho
314	Delaware	30-May-1860	803	12 Stat. 1129	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
316	Sac:Missouri; Fox:Missouri; Iowa	6-Mar-1861	811	12 Stat. 1171	Keokuk v. Uiam (1895)	4 Okla. 5	Sup. Ct., Okla.
317	Delaware	2-Jul-1861	814	12 Stat. 1177	Board of Commissioners v. Jones (1896)	4 Okla. 341	Sup. Ct., Okla.
323	Nez Perce	9-Jun-1863	843	14 Stat. 647	Pickett v. United States (1874)	1 Idaho 523	Sup. Ct., Idaho
323		9-Jun-1863	843	14 Stat. 647	Langford v. Monteith (1876)	1 Idaho 612	Sup. Ct., Idaho
352	Seminole	21-Mar-1866	910	14 Stat. 755	United States ex rel. Search v. Choctaw (1895)	3 Okla. 404	Sup. Ct., Okla.
355	Choctaw; Chickasaw	28-Apr-1866	918	14 Stat. 769	McCurtain v. Grady (1896)	1 Indian Terr. 107	Ct. App., Indian Terr.
355		28-Apr-1866	918	14 Stat. 769	Ansley v. Ainsworth (1902)	4 Indian Terr. 308	Ct. App., Indian Terr.

Ratiofied Treaty Number	Signatory tribe(s)	Treaty Signing Date	Kappler Page Number	Statutes at Large	Case Title	Citation	Court
355		28-Apr-1866	918	14 Stat. 769	Glenn-Tucker v. Clayton (1902)	4 Indian Terr. 511	Ct. App., Indian Terr.
355		28-Apr-1866	918	14 Stat. 769	Dukes v. Goodall (1904)	5 Indian Terr. 145	Ct. App., Indian Terr.
355		28-Apr-1866	918	14 Stat. 769	Ansley v. McLoud (1904)	5 Indian Terr. 563	Ct. App., Indian Terr.
355		28-Apr-1866	918	14 Stat. 769	Zevely v. Weimer (1904)	5 Indian Terr. 646	Ct. App., Indian Terr.
356	Creek	14-Jun-1866	931	14 Stat. 785	United States ex rel. Search v. Choctaw (1895)	3 Okla. 404	Sup. Ct., Okla.
356		14-Jun-1866	931	14 Stat. 785	Tuttle v. Moore (1901)	3 Indian Terr. 712	Ct. App., Indian Terr.
356		14-Jun-1866	931	14 Stat. 785	Muskogee National Telephone Co. v. Hall (1901)	4 Indian Terr. 18	Ct. App., Indian Terr.
358	Cherokee	19-Jul-1866	942	14 Stat. 799	Jordan v. Goldman (1893)	1 Okla. 406	Sup. Ct., Okla.
358		19-Jul-1866	942	14 Stat. 799	Labadie v. United States (1897)	6 Okla. 400	Sup. Ct., Okla.
358		19-Jul-1866	942	14 Stat. 799	United States v. Cohn (1899)	2 Indian Terr. 474	Ct. App., Indian Terr.
358		19-Jul-1866	942	14 Stat. 799	Ansley v. Ainsworth (1902)	4 Indian Terr. 308	Ct. App., Indian Terr.
358		19-Jul-1866	942	14 Stat. 799	Glenn-Tucker v. Clayton (1902)	4 Indian Terr. 511	Ct. App., Indian Terr.
358		19-Jul-1866	942	14 Stat. 799	Dick v. Ross (1905)	6 Indian Terr. 85	Ct. App., Indian Terr.
359	Sac:Mississippi; Fox:Mississippi	18-Feb-1867	951	15 Stat. 495	Keokuk v. Uiam (1895)	4 Okla. 5	Sup. Ct., Okla.
360	Sioux: Sisseton and Wahpeton	19-Feb-1867	956	15 Stat. 505	United States v. Knowlton (1882)	3 Dak. 58	Sup. Ct., Dakota
360		19-Feb-1867	956	15 Stat. 505	Northern Pacific Railway v. Peronto (1882)	3 Dak. 217	Sup. Ct., Dakota
362	Potawatomi	27-Feb-1867	970	15 Stat. 531	Renfrow v. United States (1895)	3 Okla. 161	Sup. Ct., Okla.
364	Kiowa;	21-Oct-1867	977	15 Stat. 581	Wilbourne v. Baldwin (1897)	5 Okla. 265	Sup. Ct., Okla.
364	Comanche	21-Oct-1867	977	15 Stat. 581	Zevely v. Weimer (1904)	5 Indian Terr. 646	Ct. App., Indian Terr.
366	Cheyenne; Arapaho	28-Oct-1867	984	15 Stat. 593	Baldwin v. Keith (1904)	13 Okla. 624	Sup. Ct., Okla.
367	Ute: Tabeguache, Muache, Capote, Wimminuche, Yampa, Grand River and Uintah	2-Mar-1868	990	15 Stat. 619	Territory of Montana v. Burgess (1888)	8 Mont. 57	Sup. Ct., Mont.
367		2-Mar-1868	990	15 Stat. 619	Territory v. Delinquent Tax-List (1891)	3 Ariz. 302	Sup. Ct., Ariz.

Ratified Treaty Number	Signatory tribe(s)	Treaty Signing Date	Kappler Page Number	Statutes at Large	Case Title	Citation	Court
369	Sioux: Brule, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs and Santee; Arapaho	29-Apr-1868	998	15 Stat. 635	Clark v. Bates (1874)	1 Dak. 42	Sup. Ct., Dakota
369		29-Apr-1868	998	15 Stat. 635	McCall v. United States (1876)	1 Dak. 307	Sup. Ct., Dakota
369		29-Apr-1868	998	15 Stat. 635	Uhlig v. Garrison (1878)	2 Dak. 71	Sup. Ct., Dakota
369		29-Apr-1868	998	15 Stat. 635	United States v. Beebe (1880)	2 Dak. 292	Sup. Ct., Dakota
369		29-Apr-1868	998	15 Stat. 635	Golden Terra Mining Co. v. Smith (1881)	2 Dak. 377	Sup. Ct., Dakota
369		29-Apr-1868	998	15 Stat. 635	United States ex rel. Young v. Imoda (1881)	4 Mont. 38	Sup. Ct., Mont.
369		29-Apr-1868	998	15 Stat. 635	United States v. Knowlton (1882)	3 Dak. 58	Sup. Ct., Dakota
369		29-Apr-1868	998	15 Stat. 635	United States v. Crow Dog (1882)	3 Dak. 106	Sup. Ct., Dakota
369		29-Apr-1868	998	15 Stat. 635	United States v. Monte (1884)	3 N.M. 173	Sup. Ct., N.M.
369		29-Apr-1868	998	15 Stat. 635	Territory ex rel. French v. Cox (1889)	6 Dak. 501	Sup. Ct., Dakota
372	Navajo	1-Jun-1868	1015	15 Stat. 667	United States v. Lucero (1859)	1 N.M. 422	Sup. Ct., N.M.
372		1-Jun-1868	1015	15 Stat. 667	United States v. Monte (1884)	3 N.M. 173	Sup. Ct., N.M.
372		1-Jun-1868	1015	15 Stat. 667	In re By-a-lil-le (1909)	12 Ariz. 150	Sup. Ct., Ariz.
373	Shoshone: Eastern; Bannock	3-Jul-1868	1020	15 Stat. 673	Hyde v. Harkness (1874)	1 Idaho 536	Sup. Ct., Idaho
373		3-Jul-1868	1020	15 Stat. 673	Moore v. Board of County Commissioners (1878)	2 Wyo. 8	Sup. Ct., Wyo.
373		3-Jul-1868	1020	15 Stat. 673	Utah & Northern Railway v. Fisher (1884)	2 Idaho 53	Sup. Ct., Idaho
373		3-Jul-1868	1020	15 Stat. 673	Fremont County v. Moore (1888)	3 Wyo. 200	Sup. Ct., Wyo.
373		3-Jul-1868	1020	15 Stat. 673	Territory of Montana v. Burgess (1888)	8 Mont. 57	Sup. Ct., Mont.
373		3-Jul-1868	1020	15 Stat. 673	Territory v. Delinquent Tax-List (1891)	3 Ariz. 302	Sup. Ct., Ariz.
373		3-Jul-1868	1020	15 Stat. 673	Gay v. Thomas (1896)	5 Okla. 1	Sup. Ct., Okla.