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American Indian Civil War treaties: The instruments formed by the Confederate States of America in Indian Territory

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Abstract

The creation of nine treaties between the Confederate States of America (CSA) and the tribes residing in Indian Territory in 1861 formed a significant historical perspective to the understanding of the relationships between governments and indigenous peoples of the United States. This research note describes a Web page — “So Long as Grass Shall Grow and Water Run: The Treaties Formed By the Confederate States of America and the Tribes in Indian Territory, 1861” — that provides access to paired *CSA Statutes at Large* page images and their text for each of these instruments.

Keywords: American Indian treaties, Confederate States of America, Civil War, Indian Territory

1. Introduction

Since the reign of Ramesses II, Pharaoh of Egypt, and his alliance with the Hittites in 1259 BC, the universe of diplomacy between sovereigns has been documented through the implementation of treaties. In this ancient instance, aspects of nonaggression, peace, and extradition were negotiated (Menu, 1998, pp. 96–97) and published on a silver tablet in Akkadian, the useful cuneiform language (Marcus, 1978). Models of international relations such as this prevailed and slowly evolved into concepts of international law, beginning with the termination of the Thirty Years’ War under the conditions of the *Treaty of Osnabrück* (Parry, 1969, pp. 198–269). The rules and protocols applied in this transaction of 1648 formed the basis for subsequent global agreements over the next three and a half centuries. Aust noted that if “law derives its strength from acceptance by society that its rules are binding, not from its enforceability, then international law is law. The *raison d’être* of international law is that relations between states should be governed by common principles and rules” (Aust, 2005, pp. 2–3).

Pushing the bounds of exploration, however, led to a variety of processes to rationalize such behavior. Whenever there was a need for permission, say, to initiate an invasion of Ireland, or to allocate title and a trading monopoly in Africa, or to partition the geography of the New World, papal bulls were employed to expedite such activities and to endow an official air to them (Williams, 1983). Thus, in the New World, the range of new endeavors invoked the creation of its own suite of treaties, conventions, and agreements to formulate a new order.

This was particularly the case for dealings with the indigenous peoples of North America. Indeed, as the result of a series of transactions made prior to American Independence, and then completed during several decades thereafter, 375 treaties acknowledged by the United States Department of State now relay the history of such interactions between the tribes and the newcomers. Charles J. Kappler, in the second volume of his *Indian Affairs: Laws and Treaties* compiled at the request of Congress (Kappler, 1904), assembled most of these contracts carried out with the tribes. These materials have been digitized by the Oklahoma State University Library Electronic Publishing Center (OSU). The OSU project began modestly, by targeting “all of the pre-removal treaties of the Five Tribes: Cherokee, Chickasaw, Choctaw, Creek, and Seminole. These tribes were chosen because of their significance to the state of Oklahoma,” but

the remaining instruments and Kappler volumes were digitized subsequently (Holcombe, 2000, and Bernholz & Holcombe, 2005).

Two early American documents from 1798 and 1805, however, were not included in Kappler's second volume of recognized treaty texts, nor were those seven contracts formed by the British government during its tenure. A supplemental Web site now furnishes access to all 375 American Indian treaties (Bernholz, Pylik Zillig, Weakly, & Bajaber, 2006; <http://earlytreaties.unl.edu/index.html>).

2. American Civil War treaties created by the Confederate States of America

Following their removal to Indian Territory in the first few decades of the nineteenth century, the Five Civilized Tribes held almost all of the land that makes up today's Oklahoma (The map on p. 70 of Prucha's *Atlas* volume [1990] shows this area). At the onset of the Civil War, the CSA sent Albert Pike to negotiate and secure treaties with these tribes. Pike offered a vast array of opportunities in order to attract and seal the allegiance of these groups, including proposals of annuities based on previous negotiations with the federal government, of statehood for the Territory under the government of the CSA, and of representation in the CSA's Congress. At the end of the conflict, the federal government initiated a new series of punitive treaties with the Five Civilized Tribes that simultaneously reduced their land holdings and opened up the Territory to receive other tribes that were displaced under the same forced relocation policies.

The nine instruments created by Pike during July, August, and October of 1861 are now offered in digital format at a new Web site entitled "So Long as Grass Shall Grow and Water Run: The Treaties Formed By the Confederate States of America and the Tribes in Indian Territory, 1861." The site's URL is <http://csaindiantreaties.unl.edu>. *The Statutes at Large of the Provisional Government of the Confederate States of America* (Matthews, 1864/1988) now serves as the primary source for these items, and this publication has been digitized by the University of North Carolina as part of their Web project Documenting the American South (<http://docsouth.unc.edu/index.html>). The treaties' texts appear in a segment devoted to a "List of the Public Acts and Resolutions of the Provisional Congress, and of the Proclamations and Treaties Contained in this Volume." This particular content was copied from the American South site and then rechecked against that found in the paper version of the Statutes. Images of the appropriate pages were taken from this latter resource as well. The resulting Statutes pairs – image plus text – for each of the nine instruments form the presentation for these materials.

3. Research applications and conclusions

These digitized texts occupy a single file that furnishes the entire range of 123 pages for the American Indian treaties in the CSA *Statutes*. Browser text searching of any of the nine documents may therefore be initiated. As an example, many of the tribes in Indian Territory had a tradition of slavery and shared this history with the South. The CSA treaties provided specific articles validating this activity, so the use of the browser search term *slavery* within the treaty file will yield the seven occurrences contained in these instruments. Similarly, federal annuities were a major interest to these groups and the CSA assured the tribes that this income stream would be maintained under their administration. Searching these documents with the pseudo-term *annuit* will identify all forty-two relevant instances of *annuity* and *annuities*. Required military service was also a provision, and the employment of the term *troop* will unveil twenty-seven examples of *troops*, but these results include the identification of *Texan troops* that were to be withdrawn as a condition in the two transactions with the Comanches.

A major reason for offering this suite of CSA treaties was to present the remaining instruments that are missing from a complete collection of all such recognized American Indian transactions (Deloria & DeMallie, 1999). The fact that the federal government cited these accords in their new post-Civil War dealings with the Indian Territory tribes is an implicit statement of their validity as a full-fledged binding contract. These outcomes may be unfamiliar, but they served as the foundation for a new and different federal policy within Indian Territory after the War. Their importance as historical exemplars endures.

The CSA document group thus supplements the materials available at the American Indian Treaties Portal of the University of Nebraska-Lincoln's Center for Digital Research in the Humanities. This assembly now includes those

noted early American and British treaties; a biography of Charles J. Kappler, the compiler of *Indian Affairs: Laws and Treaties*; an analysis of the full lexicon for all 375 recognized treaties; and access to published articles on those treaties cited before a variety of federal and state courts (see <http://treatiesportal.unl.edu/>).

Finally, the opportunity to provide these nine CSA treaties complements the initiative founded upon OSU's bold development of the *Indian Affairs: Laws and Treaties* site a decade and a half ago, an endeavor that commenced by focusing on the pre-removal instruments of the Five Civilized Tribes. This group was pivotal in the evolution of Indian Territory into the state of Oklahoma, and it was enmeshed in these dialogues with the CSA during, and with the federal government both before and after, the Civil War. This path—through eight decades of negotiations with one government or another—offers a significant chapter in American history and mirrors how this nation went about setting its course following Independence.

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