

## Indian Treaties: A Bibliography\*

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*This bibliography describes sources for research into treaties between the U.S. government and Indian tribes, focusing on primary sources. The sources are preceded by an overview of the treaty process and the termination of the government's power to enter into treaties with Indian nations.*

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¶1 This bibliography describes sources for research into treaties between the U.S. government and Indian tribes, focusing on primary sources. Treatises and journal articles on the topic of Indian treaties are excluded. In addition, while many of the printed sources described in this bibliography are also available online through commercial vendors, particularly HeinOnline's American Indian Law collection, only free online resources are listed here.

¶2 Most of the sources discussed are documents produced by U.S. government officials. "The historian of the American Indian faces a difficult task. He is attempting to reconstruct Indian history from sources which are almost exclusively the product of white soldiers, traders, missionaries, and government officials. These documents reflect the ethnocentricity one would expect."<sup>1</sup>

¶3 The bibliography is intended to be a resource both for scholars and for lawyers involved in litigation over treaty rights. Although the last treaty was signed in 1868, Indian treaties continue to be subjects of litigation today. The historical primary sources listed here can be useful in determining and proving the meaning of treaty terms.

¶4 Treaties were written and negotiated in English, so language often presented an obstacle to tribes' understanding of treaty terms.<sup>2</sup> Not only were words and concepts used in a treaty difficult or impossible to translate into the tribe's language, but, "[a]s linguistic anthropology has revealed, people who speak different languages may see the world differently or at least talk about it differently. Certain concepts may not translate perfectly between cultural groups."<sup>3</sup> When ambiguous language in an Indian treaty is at issue in a case, courts, as a general rule, will liberally construe the language in favor of the tribe and as the tribe would have understood the terms of the treaty at the time of the signing. Courts will seek to determine the meaning of the language at the time and the general historical context.<sup>4</sup>

1. William T. Hagan, *On Writing the History of the American Indian*, 2 J. INTERDISC. HIST. 149, 149 (1971) (reviewing four books on American Indian history).

2. See, e.g., *United States v. Bouchard*, 464 F. Supp. 1316, 1323 (W.D. Wis. 1978), *rev'd sub nom. Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341 (7th Cir. 1983) ("The accounts of what was said, of course, are only of what was understood by the white men. Van Antwerp commented after one particularly clumsy passage in his notes: 'This of course is nonsense but is given literally as rendered by the Intrepeters (sic) who are unfit to act in that capacity. I presume it to mean . . .'" (final ellipsis in original)); *United States v. Washington*, 384 F. Supp. 312, 330 (W.D. Wash. 1974), *aff'd & remanded*, 520 F.2d 676, 685 (9th Cir. 1975) ("The treaties were written in English, a language unknown to most of the tribal representatives, and translated for the Indians by an interpreter in the service of the United States using Chinook Jargon, which was also unknown to some tribal representatives. Having only about three hundred words in its vocabulary, the Jargon was capable of conveying only rudimentary concepts, but not the sophisticated or implied meaning of treaty provisions about which highly learned jurists and scholars differ.").

3. Kristen A. Carpenter, *Interpretive Sovereignty: A Research Agenda*, 33 AM. INDIAN L. REV. 111, 115 (2008–2009) (footnote omitted).

4. See, e.g., *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970) ("[T]reaties were imposed upon them and they had no choice but to consent. As a consequence, this Court has often held that treaties with the Indians must be interpreted as they would have understood them . . . and any doubtful expressions in them should be resolved in the Indians' favor.").

### Overview of the Indian Treaty Process

¶5 It is helpful to understand how negotiation and ratification of treaties occurred before looking for documents created during that process. Treaties were negotiated and signed by representatives of the tribe and U.S. treaty commissioners and then sent to the Secretary of War (until 1849) or the Secretary of Interior (after the Interior Department was created in 1849), accompanied by a letter of transmittal and sometimes a report on the negotiations and terms of the treaty, or even a journal of the treaty proceedings.<sup>5</sup>

¶6 The treaty was then forwarded to the President with a report by the Secretary of War or Interior. The President would send the treaty to the Senate for its consideration and approval. The Senate might approve the treaty as is, approve it with amendments, reject it, or table it.<sup>6</sup> The Senate's decision "was sent to the president in the form of [a Senate] resolution, with the original treaty attached." When the Senate approved a treaty, the President would sign a proclamation of ratification.<sup>7</sup> Without these actions by the Senate and the President, the treaty was not ratified and, thus, was not considered in force by the United States.<sup>8</sup> Once ratified, treaties were sent to the State Department for filing and safekeeping.<sup>9</sup>

¶7 The House of Representatives was not involved in the treaty ratification process. However, treaties involving the disbursement of government funds required appropriations legislation, which had to be approved by both the House and the Senate. Therefore, treaty ratification was often followed by appropriations legislation originating in the House of Representatives.<sup>10</sup>

### Congressional Termination of the Treaty Power

¶8 The President's power to enter into treaties with Indian nations was terminated by Congress in 1871. This was done by an appropriations bill originating in the House of Representatives, which provided:

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: Provided, further, That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe.<sup>11</sup>

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5. FRANCIS PAUL PRUCHA, *AMERICAN INDIAN TREATIES: THE HISTORY OF A POLITICAL ANOMALY* 432 (1994).

6. *Id.* at 434.

7. *Id.*

8. See Siegfried Wiessner, *American Indian Treaties and Modern International Law*, 7 ST. THOMAS L. REV. 567, 582–83 (1995).

9. See Prucha, *supra* note 5, at 521.

10. See William E. Mikell, *The Extent of the Treaty-Making Power of the President and Senate of the United States*, 57 U. PA. L. REV. 435, 449 (1909).

11. Act of Mar. 3, 1871, ch. 120, 16 Stat. 544, 566 (codified as amended at 25 U.S.C. § 71 (2012)).

¶9 The last Indian treaty entered into was the 1868 treaty with the Nez Perce tribe.<sup>12</sup> Although not included in this bibliography, it is worth noting that the U.S. government continued to enter into agreements with Indian tribes after 1871.<sup>13</sup>

### How Many Indian Treaties?

¶10 Treaties between the U.S. and Indian nations number between 367 and 375; scholars and compilers have not settled on a definitive number. “The actual number of treaties signed between the United States and the tribes will probably never be prepared on a final list to which everyone can agree.”<sup>14</sup>

¶11 The number 375 comes from the State Department, which filed and numbered ratified treaties as they were sent to them for safekeeping. Regarding the State Department’s number, Deloria and DeMallie write that “[w]e must assume that something more was involved than the uncritical filing of documents: that those documents having political and legal potency had a certain status in the department. Consequently, the State Department’s listing should receive serious consideration by scholars attempting to count or classify Indian treaties.”<sup>15</sup> In contrast, Charles J. Kappler compiled 369 treaties in his *Indian Affairs: Laws and Treaties*,<sup>16</sup> while Francis Paul Prucha, in his book *American Indian Treaties: The History of a Political Anomaly*, gives 367 as the number of ratified treaties, with 6 more treaties being of “questionable” status.<sup>17</sup>

¶12 The State Department’s count of 375 treaties is higher than that of the other compilers because its treaty numbering system begins with treaties that predate the formation of the U.S. government. Its treaty number 1 is the 1722 treaty “Between the Five Nations, the Mahicans, and the Colonies of New York, Virginia, and Pennsylvania.”<sup>18</sup> The treaties numbered 2 through 7 have dates from 1726 to 1768. Neither *Kappler’s* nor the *United States Statutes at Large* compilations, two of the most widely used collections of Indian treaties, include the State Department’s first seven treaties. Both *Kappler’s* and *Statutes at Large* begin their compilations with the State Department’s treaty number 8, the 1778 Treaty of Fort Pitt with the Delaware Nation, which was signed during the Revolutionary War.

¶13 Although both *Kappler’s* and the *Statutes at Large* begin their treaty compilations with the same treaty, *Kappler’s* compilation is not a duplication of the *Statutes at Large*. For example, the text of the 1851 Treaty of Fort Laramie with the Sioux is in *Kappler’s* but not *Statutes at Large*. In place of the text of the treaty, the *Statutes at Large* notes why the treaty is excluded:

12. PRUCHA, *supra* note 5, at 1.

13. For a useful discussion of these treaty substitutes, see *id.* at 311–33.

14. A CHRONOLOGICAL LIST OF TREATIES AND AGREEMENTS MADE BY INDIAN TRIBES WITH THE UNITED STATES 2 (1973).

15. 1 VINE DELORIA, JR. & RAYMOND J. DEMALLIE, DOCUMENTS OF AMERICAN INDIAN DIPLOMACY: TREATIES, AGREEMENTS, AND CONVENTIONS, 1775–1979, at 181 (1999).

16. INDIAN AFFAIRS: LAWS AND TREATIES (Charles J. Kappler comp. & ed., 1904) (generally referred to as *Kappler’s*).

17. PRUCHA, *supra* note 5, at 1.

18. *Early Recognized Treaties with American Indian Nations*, AMERICAN INDIAN TREATIES PORTAL, <http://earlytreaties.unl.edu/> (last visited May 8, 2015).

When it was before the Senate for ratification, certain amendments were made which require the assent of the Tribes, parties to it, before it can be considered a complete instrument. This assent of all the Tribes has not been obtained, and consequently, . . . it is not yet in a proper form for publication.<sup>19</sup>

By the time Kappler's treaty volume was published in 1904, the Fort Laramie treaty was considered a valid treaty and was published as such.<sup>20</sup> The Fort Laramie treaty is not included in the State Department's list of ratified treaties.

¶14 Another issue with respect to the numbering of treaties is that some compilers counted supplementary treaties as part of the treaty they modified, and some compilers considered the supplementary treaties as separate documents.<sup>21</sup>

### Ratified Versus Nonratified Treaties

¶15 In addition to ratified treaties, this bibliography includes sources for information about treaties that were signed but not ratified, which DeMallie states number "as many as 200."<sup>22</sup> These include, for example, the 18 treaties with California tribes negotiated and signed in 1851, which the Senate refused to ratify.<sup>23</sup>

### Oral Traditions

¶16 During the treaty years, tribes were nonliterate and thus did not produce written documentation, although their oral stories were sometimes memorialized in written accounts by outsiders such as missionaries and explorers. Tribes' stories and interpretations of their treaties may have been transmitted to present-day members of the tribes through their oral traditions. These intergenerational memories are one source that may assist in the interpretation of a treaty. However, "[a]lthough exceptions exist to hearsay rules, which allow oral history to be admitted as evidence and are common in multiple jurisdictions, fact finders are not comfortable placing conclusive weight on intergenerational memories."<sup>24</sup> In 1933, the U.S. Court of Claims discounted a tribe's oral history:

It is true that a number of the Assiniboines testified that the treaty was not signed by them or any of the tribe except possibly by one member and that there were protests made against taking the land away from them at the time. These witnesses were either Indians who

19. Treaty of Fort Laramie, 11 Stat. 749 (1851).

20. For more information, see Charles D. Bernholz & Brian L. Pytlík Zillig, *The Treaty of Fort Laramie with Sioux, etc., 1851: Revisiting the Document Found in Kappler's Indian Affairs: Laws and Treaties*, AMERICAN INDIAN TREATIES PORTAL, <http://treatyoffortlaramie1851.unl.edu/> (last visited Apr. 24, 2015).

21. See Charles D. Bernholz, *Adjusting American Indian Treaties: A Guide to Supplemental Article and Supplementary Treaty Citations from Opinions of the Federal, State, and Territorial Court Systems*, 25 GOV'T INFO. Q. 541, 543 (2008).

22. Raymond J. DeMallie, *American Indian Treaty Making: Motives and Meanings*, AM. INDIAN J., Jan. 1977, 2, 2.

23. PRUCHA, *supra* note 5, at 434.

24. Robert Alan Hershey et al., *Mapping Intergenerational Memories (Part I): Proving the Contemporary Truth of the Indigenous Past 1* (Ariz. Legal Studies Discussion Paper No. 1401, 2014), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2377486](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2377486).

were children at the time of the signing of the treaty or very old men at the time when they gave their testimony, and on account of age having at best a very incomplete recollection of matters that occurred fifty years prior thereto. The circumstances of the case make this testimony so unsatisfactory as to be unworthy of any credit.<sup>25</sup>

¶17 More recently, in 1997, the U.S. District Court for the Eastern District of Washington did allow oral tradition as evidence in the interpretation of a treaty:

[T]he court considers Mr. Yallup the ultimate expert in the proceeding. From his early childhood, Mr. Yallup was taught the meaning of the Treaty, as understood by the Yakamas, through oral history passed down through the generations. Further, Mr. Yallup has been entrusted with the role of preserving the cultural history of the Yakamas. Therefore, the court views his testimony with considerable respect.<sup>26</sup>

### Treaty Compilations

¶18 After ratification, original treaty documents were sent to the State Department for filing and safekeeping. The State Department treaty file is now in the National Archives, Record Group 11. The file contains the original texts of ratified and unratified treaties, official letters of treaty transmittal, the Senate's resolution of ratification, and the proclamation of the treaty by the President. Some treaties are accompanied by instructions to treaty commissioners, correspondence, journals of treaty proceedings, and other documents.

¶19 The Bureau of Indian Affairs also maintained a file of ratified and unratified treaties, separate from the State Department file. These documents are in the National Archives, Record Group 75.4.

*American Indian Treaties Series*. Washington, D.C.: Institute for the Development of Indian Law, 1973.

The set has eight volumes in which treaties are arranged as follows: the Sioux Nation, tribes of the Pacific Northwest, tribes of the northern plains, the Five Civilized Tribes, eastern Oklahoma tribes, tribes of the Southwest, the Chippewa, tribes of the Great Lakes.

*American State Papers: Indian Affairs*. Washington, D.C.: Gales & Seaton, 1832.

The two Indian Affairs volumes of *American State Papers* contain documents relating to U.S. Indian affairs from 1789 to 1827. These documents include the text of treaties, often accompanied by minutes of treaty proceedings and other related documents. Included in volume 1 is an 1813 document titled *Cessions of Land by Indians, 1789–1812*. In table format, this document lists treaties in which Indian tribes ceded lands to the United States, giving the dollar amount of the purchase, the name of commissioner, the location of the treaty negotiations, and the dates of signature and ratification. *American State Papers* is available online as part of the Library of Congress's American Memory Project (<http://memory.loc.gov/ammem/amlaw/lwsp.html>).

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25. *Assiniboine Indian Tribe v. United States*, 77 Ct. Cl. 347, 369 (1933).

26. *Yakama Indian Nation v. Flores*, 955 F. Supp. 1229, 1237 (E.D. Wash. 1997), *aff'd sub nom. Cree v. Flores*, 157 F.3d 762 (9th Cir. 1998).

Cohen, Felix S., ed. *Statutory Compilation of the Indian Law Survey: A Compendium of Federal Laws and Treaties Relating to Indians*. Washington, D.C.: Department of Interior, 1940.

This volume has 389 treaties, including some treaties with foreign nations that refer to Indian tribes.

*A Compilation of All the Treaties Between the United States and the Indian Tribes Now in Force as Laws*. Washington, D.C.: Government Printing Office, 1873.

Prepared at the direction of Congress, the treaties in this volume are arranged alphabetically by tribe. This volume is available online through the Internet Archive (<https://archive.org/index.php>).

*Congressional Serial Set*. Washington, D.C.: Government Printing Office, 1817– .

Indian treaties from 1817 until the last treaty of 1868 were published in the *Congressional Serial Set*, often accompanied by documents relating to the negotiation of the treaty. The *Congressional Serial Set* is covered in more detail in the section on “Collections of Congressional Documents.”

Deloria, Vine, Jr., and Raymond J. DeMallie, eds. *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775–1979*. Norman: University of Oklahoma Press, 1999.

As stated by the authors in their introduction, “[t]his study supplements Kappler’s by offering a new chronological list composed of the State Department list supplemented by those treaties that have or that we believe should have full status as ratified treaties. It offers an accurate list of ratified agreements made with Indian tribes, and it suggests deletion of certain treaties from the old list because they were legally defective from the beginning and should have been eliminated by Kappler” (p.3–4). The treaties are organized into categories, such as ratified treaties, treaties rejected by the Senate, and treaties rejected by the Indian nations.

*Early Recognized Treaties with American Indian Nations*. University of Nebraska Libraries—Electronic Text Center. <http://earlytreaties.unl.edu/>.

This website from the University of Nebraska has nine treaties that were not published in either *Kappler’s* or the *Statutes at Large*. These are State Department treaties numbered 1–7, 28 (1798 treaty between New York and the Oneida Indians), and 44 (1805 treaty with the Wyandot, Ottawa, Chippewa, Munsee, and Delaware, Shawnee, and Pattawatamy nations).

Fay, George Emory, ed. *Treaties, and Land Cessions, Between the Bands of the Sioux and the United States of America, 1805–1906*. Greeley: Museum of Anthropology, University of Northern Colorado, 1972.

Fay, George Emory, ed. *Treaties Between the Menominee Indians and the United States of America, 1817–1856*. Greeley: Museum of Anthropology, University of Northern Colorado, 1970.

Fay, George Emory, ed. *Treaties Between the Oneida Indians and the United States of America, 1784–1838*. Greeley: Museum of Anthropology, University of Northern Colorado, 1978.

Fay, George Emory, ed. *Treaties Between the Potawatomi Tribe of Indians and the United States of America, 1789–1867*. Greeley: Museum of Anthropology, University of Northern Colorado, 1971.

Fay, George Emory, ed. *Treaties Between the Stockbridge-Munsee Tribe(s) of Indians and the United States of America, 1805–1871*. Greeley: Museum of Anthropology, University of Northern Colorado, 1970.

Fay, George Emory, ed. *Treaties Between the Tribes of the Great Plains and the United States of America: Cheyenne and Arapaho, 1825–1900*. Greeley: Museum of Anthropology, University of Northern Colorado, 1977.

Fay, George Emory, ed. *Treaties Between the Tribes of the Great Plains and the United States of America: Comanche and Kiowa; Arikara, Gros Bentre and Mandan; 1835–1891*. Greeley: Museum of Anthropology, University of Northern Colorado, 1982.

Fay, George Emory, ed. *Treaties Between the Tribes of the Great Plains and the United States of America: The Crows, 1825–1912*. Greeley: Museum of Anthropology, University of Northern Colorado, 1982.

Fay, George Emory, ed. *Treaties Between the Winnebago Indians and the United States of America, 1817–1856*. Greeley: Museum of Anthropology, University of Northern Colorado, 1967.

*Indian Treaties, and Laws and Regulations Relating to Indian Affairs: To Which Is Added an Appendix, Containing the Proceedings of the Old Congress, and Other Important State Papers, in Relation to Indian Affairs*. Washington, D.C.: Way & Gideon, 1826.

Compiled at the request of the Secretary of War, this volume has ratified treaties from 1778 to 1826, arranged alphabetically by tribe. It is available through Google Books (<https://books.google.com>).

Kappler, Charles J., comp. *Indian Affairs: Laws and Treaties*. Washington, D.C.: Government Printing Office, 1904.

*Indian Affairs: Laws and Treaties* is commonly referred to as *Kappler's*. The treaty volume, volume II, has ratified and some unratified treaties from 1778 to 1883 in chronological order. Generally, the treaties were printed as amended. This volume of *Kappler's* was initially released in 1902 as Senate Document 452 and was revised and republished in 1904 as Senate Document 319. Charles J. Kappler was clerk to the Senate Committee on Indian Affairs at the time of this compilation.<sup>27</sup> The compilation was made at the request of the Commissioner of Indian Affairs. *Kappler's* is available as part of the Oklahoma State University Library's digital collection (<http://digital.library.okstate.edu/kappler/>).

Matthews, James Muscoe, ed. *The Statutes at Large of the Provisional Government of the Confederate States of America, from the Institution of the Government, February 8, 1861, to its Termination, February 18, 1862, Inclusive—Arranged in Chronological Order. Together with the Constitution for the Provisional Government, and the Permanent Constitution of the Confederate States, and the Treaties Concluded by the Confederate States with Indian Tribes*. Richmond, Va.: R.M. Smith, 1864.

This volume is available online through the Internet Archive (<https://archive.org/index.php>).

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27. For more information about Charles J. Kappler, see Charles D. Bernholz & Robert J. Weiner, Jr., *Charles J. Kappler: A Life Beyond Indian Affairs: Laws and Treaties*, AMERICAN INDIAN TREATIES PORTAL, <http://kappler.unl.edu/> (last visited Apr. 23, 2015).



*Treaties and Other Documents Having Operation and Respect to the Public Lands.* Washington, D.C.: Roger C. Weightman, 1811.

This volume, compiled at the request of Congress, has Indian treaties that relate to the extinguishment of Indian title to the public lands. It is available in full text through Google Books (<https://books.google.com>).

*Treaties Between the United States of America and the Several Indian Tribes, from 1778 to 1837.* Washington, D.C.: Langtree & O'Sullivan, 1837.

Compiled by direction of the Commissioner of Indian Affairs, this volume contains ratified treaties from 1778 to 1837 in chronological order. A table of contents, which is more like an index, lists the treaties alphabetically by tribe. This volume is available online through the Internet Archive (<https://archive.org/index.php>).

*United States Statutes at Large.* Washington, D.C.: Government Printing Office, 1845–.

Ratified Indian treaties were published in the *Statutes at Large*. Volume 7 of the *Statutes at Large*, published in 1846, has Indian treaties from 1778 to 1842, printed in chronological order. Thereafter, Indian treaties are intermingled with treaties with foreign nations. In these later volumes, volumes 9 through 18 (1845–1875), Indian treaties also appear in chronological order, with some exceptions. These volumes of the *Statutes at Large* are available online as part of the Library of Congress's American Memory Project (<http://memory.loc.gov/ammem/amlaw/lwsl.html>).

Vaughan, Alden T., ed. *Early American Indian Documents: Treaties and Laws, 1607–1789.* Washington, D.C.: University Publications of America, 1979–2004.

This twenty-volume set has the text of treaties between Indian tribes and British and early American governments from 1607 to 1789. In addition to the treaty text, it includes documents relating to the negotiation of the treaties such as council minutes, treaty commissioner reports, and the like.

### Lists of Treaties

Bernholz, Charles D. Kappler *Revisited: An Index and Bibliographic Guide to American Indian Treaties.* Kenmore, N.Y.: Epoch, 2003.

This volume has tables that are arranged by both State Department treaty number and alphabetically by the name of the tribe.

Deloria, Vine, Jr., comp. *A Chronological List of Treaties and Agreements Made by Indian Tribes with the United States.* Washington, D.C.: Institute for the Development of Indian Law, 1973.

This book, which is volume 1 of the American Indian Treaty Series, covers the years 1778 to 1909. In chronological order, it lists ratified treaties, treaties that were never ratified but are considered valid by the compiler, and treaty-like agreements signed after 1871.

De Puy, Henry Farr. *A Bibliography of the English Colonial Treaties with the American Indians including a Synopsis of Each Treaty.* New York: Lenox Club, 1917.

For treaties between Indian nations and American colonies from 1677 to 1768, this bibliography gives a synopsis of the treaty and a description of documents available regarding the negotiation of the treaty. This volume is available online through the Internet Archive (<https://archive.org/index.php>) and Google Books (<https://books.google.com>).

*Laws of the United States of a Local or Temporary Character, and Exhibiting the Entire Legislation of Congress upon which the Public Land Titles in Each State and Territory Have Depended.* Washington, D.C.: Government Printing Office, 1880.

These two volumes were published under the direction of the Commission on the Codification of Existing Laws Relating to the Survey and Disposition of the Public Domain. In volume 2, beginning on page 1185, is a list of Indian treaties affecting titles to public land, arranged alphabetically by tribe. It is available online through Google Books (<https://books.google.com>).

## Treaty Proceedings

¶20 Documents produced during a treaty negotiation may include minutes, journals, and letters. Many compilations of these documents are available, and some are discussed elsewhere in this bibliography, including in the State Department records (Record Group 11 in the National Archives), the Indian Affairs volumes of *American State Papers*, and the *Congressional Serial Set*. Documents may also be contained in the archives or published papers of those present at the treaty negotiation and signing. There are some compilations that relate to an individual treaty, an example of which is included here. Tribal leaders often made speeches during treaty negotiations. However, their speeches are difficult to find because “[m]ost remain unpublished or generally unavailable.”<sup>28</sup>

Martin, John H., comp. *List of Documents Concerning the Negotiation of Ratified Indian Treaties, 1801–1869.* Washington, D.C.: National Archives, 1949.

A useful finding aid to the documents from treaty proceedings in National Archives Record Groups 75 (Bureau of Indian Affairs) and 48 (Department of Interior). This volume is arranged chronologically by treaty. It is available online from the University of Wisconsin (<http://uwdc.library.wisc.edu/collections/History/IndianTreatiesMicro>).

Stevens, Isaac Ingalls. *A True Copy of the Record of the Official Proceedings of the Council in Walla Walla Valley, 1855* (edited from the original by Darrell Scott). Fairfield, Wash.: Ye Galleon Press, 1985.

## Congressional Documents

### Statements by Tribal Leaders

¶21 Some tribal leaders testified before or presented documents to Congress. These may be found in congressional documents, sources for which are listed elsewhere in this bibliography. Two examples of documents include:

- “Memorial of Sundry Chiefs and Headmen of the Oneida Indians, adverse to the treaty lately concluded with the New York Indians” (May 7, 1838). In *Journal of the Executive Proceedings of the Senate of the United States*. Washington, DC: Government Printing Office, 1887. Available online through Google Books (<https://books.google.com>).

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28. Raymond J. DeMallie, *Touching the Pen: Plains Indian Treaty Councils in Ethnohistorical Perspective*, in *ETHNICITY ON THE GREAT PLAINS* 38, 46 (Frederick C. Luebke ed., 1980).

- *Testimony Taken by a Select Committee of the Senate Concerning the Removal of the Northern Cheyenne Indians, Hearing of the Senate Select Committee on Removal of Northern Cheyennes*, Aug. 12, 19–21, 1879; Jan. 24, 28; Feb. 4; Mar. 12, 24; Apr. 26; May 15, 1880.

### National Archives

¶22 Congressional documents available in the National Archives include:

- Senate Record Group 46, specifically:
  - Record Group 46.2: general records of the U.S. Senate 1789–1988
  - Record Group 46.14: committee records relating to Interior and Insular Affairs, 1816–1988
  - Record Group 46.23: cartographic records
- U.S. House of Representatives Record Group 233, specifically:
  - Record Group 233.15: Interior and Insular Affairs Committee records

### Collections of Congressional Documents

*American State Papers*. Washington, D.C.: Gales & Seaton, 1832–1861.

*American State Papers* is comprised of thirty-eight volumes that compile congressional documents from 1789 to 1838. Documents are published chronologically, and an index is included at the end of each volume. Of particular interest are the two volumes devoted to Indian Affairs and the seven volumes covering Military Affairs. *American State Papers* is available online as part of the Library of Congress's American Memory Project (<http://memory.loc.gov/ammem/amlaw/lwsp.html>).

*CIS Index to U.S. Senate Executive Documents and Reports: Covering Documents and Reports Not Printed in the U.S. Serial Set, 1817–1969*. Washington, D.C.: Congressional Information Service, 1987.

*CIS U.S. Serial Set Index*. Washington, D.C.: Congressional Information Service, 1975–1997.

This index covers the *American State Papers* (1789–1816) as well as the *Congressional Serial Set*.

*Congressional Serial Set*. Washington, D.C.: Government Printing Office, 1817– .

The *Congressional Serial Set* is a U.S. government publication consisting of reports and documents of the U.S. House of Representatives and the Senate. It began publication with the 15th Congress (1817–1819) and consists of more than 15,000 volumes. Documents in the *Congressional Serial Set* relating to Indian treaties include documents submitted to the Senate for their consideration of a treaty; reports of the Senate Committee on Indian Affairs; annual reports from executive agencies, such as the Commissioner of Indian Affairs and the Secretary of War; maps; and many other useful documents.

Johnson, Steven L. *Guide to American Indian Documents in the Congressional Serial Set, 1817–1899*. New York: Clearwater, 1977.

In this volume, entries are arranged by year, and each entry gives the citation to the *Congressional Serial Set*. A subject index is available at the end of the volume. Appendix I is a chronological list of congressional documents relating to Indian Affairs that were not published in the *Congressional Serial Set*.

*New American State Papers*. Wilmington, Del.: Scholarly Resources, 1972.

The *New American State Papers* includes documents from *American State Papers*, the *Congressional Serial Set*, and the Legislative Records Section of the National Archives. The Indian Affairs section is comprised of thirteen volumes.

### Journal of the Executive Proceedings of the Senate

¶23 The Senate met in Executive Session when it considered Indian treaties. Each day's proceedings are summarized in the *Journal of the Executive Proceedings of the Senate*. The *Journal* is included in the *Congressional Serial Set*. Additionally, the volumes covering the treaty years (1789–1875) are part of the Library of Congress's American Memory Project (<http://lcweb2.loc.gov/ammem/amlaw/lweij.html>).

De Pauw, Linda Grand, ed. *Senate Executive Journal and Related Documents*. Baltimore: Johns Hopkins University Press, 1974.

This volume covers the years 1789 to 1791 and is volume 2 of the series titled *The Documentary History of the First Federal Congress of the United States of America, March 4, 1789–March 3, 1791*.

*Journals of the Continental Congress 1774–1789*. Washington, D.C.: Government Printing Office, 1904.

Ordway, Albert. *General Index of the Journals of Congress, from the First to the Tenth Congress Inclusive*. Washington, D.C.: Government Printing Office, 1880.

Ordway, Albert. *General Index of the Journals of Congress, from the Eleventh to the Sixteenth Congress Inclusive*. Washington, D.C.: Government Printing Office, 1883.

### Congressional Committee Hearings

¶24 The Senate Committee on Indian Affairs was established in 1820. Its documents are included in the *Congressional Serial Set*, as well as in National Archives Record Group 46.14: Records of Senate Committee on Indian Affairs, 1820–1946. Hearings by this and other congressional committees may contain testimony relevant to Indian treaties, including testimony from tribal members. Hearings after the treaty years may also be helpful.<sup>29</sup>

### Debates of Congress

¶25 Summaries of speeches made on the floor of the Senate and the House covering the treaty years are available in the predecessors of the *Congressional Record*. Unlike the *Congressional Record*, these are not verbatim transcriptions of congressional speeches. Sets covering the treaty years are the *Annals of Congress* (1789–1824), *Register of Debates* (1824–1837), and *Congressional Globe* (1833–1873). They are available as part of the Library of Congress American Memory Project (<http://memory.loc.gov/ammem/amlaw/lawhome.html>).

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29. See, e.g., *Indian Fishing Rights, Hearing Before the Subcomm. on Indian Affairs of the S. Comm. on Interior & Insular Affairs*, 88th Cong. (1964).

## Presidential Documents

¶26 Documents issued by the President relating to Indian treaties include, among others, executive orders, proclamations, and messages. The Library of Congress, Manuscript Division, has presidential papers from President Washington to President Coolidge, as well as papers of other government officials.<sup>30</sup> Some of these collections are available online:

- George Washington (<http://memory.loc.gov/ammem/gwhtml/gwhome.html>)
- Thomas Jefferson ([http://memory.loc.gov/ammem/collections/jefferson\\_papers/](http://memory.loc.gov/ammem/collections/jefferson_papers/))
- James Madison ([http://memory.loc.gov/ammem/collections/madison\\_papers/](http://memory.loc.gov/ammem/collections/madison_papers/))
- Abraham Lincoln (<http://memory.loc.gov/ammem/alhtml/malhome.html>)

¶27 The Illinois Historic Preservation Agency and the Abraham Lincoln Presidential Library and Museum have digitized papers of Abraham Lincoln (<http://www.papersofabrahamlincoln.org>). The Massachusetts Historical Society has digitized papers of John Adams and John Quincy Adams ([http://www.masshist.org/adams,Read\\_Documents](http://www.masshist.org/adams,Read_Documents)). Many presidential documents, from George Washington to the present, are available online as part of the American Presidency Project from the University of California, Santa Barbara (<http://www.presidency.ucsb.edu>).

Ashmore, Anne R. *Presidential Proclamations concerning Public Lands: January 24, 1791–March 19, 1936: Numerical List and Index*. Washington, D.C.: Law Library of Congress, 1981.

*Executive Orders Relating to Indian Reservations, 1855–1922*. Washington, D.C.: Government Printing Office, 1912–1922.

Kappler, Charles J., comp. *Indian Affairs: Laws and Treaties*. Washington, D.C.: Government Printing Office, 1904.

Includes executive orders and proclamations.

Lord, Clifford L., ed. *List and Index of Presidential Executive Orders: Unnumbered Series (1789–1941)*. Wilmington, Del.: Michael Glazier, 1979.

Lord, Clifford L., ed. *Presidential Executive Orders Numbered 1–8030, 1862–1938*. New York: Archives, 1944.

Richardson, James D., comp. *A Compilation of the Messages and Papers of the Presidents*. New York: Bureau of National Literature, 1897.

## War Department Records

¶28 Indian affairs were under the U.S. Department of War until 1849, when that responsibility was transferred to the newly created Department of Interior. Within the War Department, an Indian Office was created in 1824 and the position of Commissioner of Indian Affairs in 1832.<sup>31</sup>

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30. For information about this collection, see *Manuscript Reading Room*, LIBRARY OF CONGRESS, <http://www.lcweb.loc.gov/rtr/mss/> (last visited May 19, 2015).

31. 4 ENCYCLOPEDIA OF AMERICAN HISTORY 1418 (Bruce E. Joahnsen & Barry M. Pritzker eds., 2008).

¶29 Both the *Congressional Serial Set* and *American State Papers* include the Secretary of War's annual reports to Congress, their appropriations requests, and various letters and reports to Congress by the Secretary of War and military officers.

¶30 On November 8, 1800, many War Department records were destroyed by fire in the building housing the Department.<sup>32</sup> Some early War Department documents not destroyed by fire have been digitized and made available online by the Roy Rosenzweig Center for History and New Media, George Mason University.<sup>33</sup> Records available at the National Archives are in Record Group 75.2: Records of the Office of the Secretary of War Relating to Indian Affairs, 1794–1824.

### Office of Indian Affairs

¶31 The War Department's Office of Indian Affairs was created in 1824; it is sometimes referred to as the "Bureau" of Indian Affairs. The position of Commissioner of Indian Affairs was created in 1832 and was transferred from the War Department to the Interior Department in 1849.<sup>34</sup>

¶32 The annual reports of the Commissioner of Indian Affairs were published in the *Congressional Serial Set* and are available online as part of the University of Wisconsin Digital Collections (<http://uwdc.library.wisc.edu/collections/History/IndianTreatiesMicro>).<sup>35</sup> Within the Office of Indian Affairs were agents and superintendents. Their reports were published as an appendix to the annual reports of the Commissioner of Indian Affairs.

¶33 National Archives Record Group 75 contains records of the Office of Indian Affairs, and Record Group 48 contains records of the Department of Interior. Specifically,

- Record Group 75.4: letters sent and received by the Bureau (1824–1907), report books (1838–1885), ratified and unratified treaties, journals of commissions (1824–1839), and more
- Record Group 75.15: records of superintendencies (1813–1885)
- Record Group 75.19: records of Indian agencies (1794–1988)
- Record Group 48.5.4: records of the Indian Division of the Department of Interior, including letters sent and received, registers of Indian treaties, records relating to claims and negotiations, journals, and more

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32. *Books and Papers Destroyed by Fire in the War Office, in 1800, in 1 AMERICAN STATE PAPERS: MISCELLANEOUS 232 (1834).*

33. PAPERS OF THE WAR DEPARTMENT, 1784 TO 1800, <http://wardepartmentpapers.org/index.php> (last visited May 19, 2015).

34. EDWARD E. HILL, *THE OFFICE OF INDIAN AFFAIRS, 1824–1880: HISTORICAL SKETCHES 1 (1974).*

35. Charles D. Bernholz & Anthony G. Carr, *The Annual Reports of the Commissioner of Indian Affairs: Revisiting the Key to the United States Congressional Serial Set, 1824–1920*, 26 GOV'T INFO. Q. 540 (2009).

## Territorial Records

¶34 Territorial governors were at times involved in the negotiation of Indian treaties. Therefore, their papers may be relevant.

Carter, Clarence Edwin, comp. *The Territorial Papers of the United States, 1787–1848*. Washington, D.C.: Government Printing Office, 1934.

This set contains official records of areas of the United States that were governed by the federal government as territories or colonies and that eventually became states. Documents were taken from the archives of the State Department, War Department, Bureau of Indian Affairs, Post Office, General Land Office, and Congress. These twenty-eight volumes are arranged chronologically, with an index at the end of each volume.

## General Guides to U.S. Government Publications

*CIS Index to U.S. Executive Branch Documents, 1789–1909: Guide to Documents Listed in Checklist of U.S. Public Documents, 1789–1909, not Printed in the U.S. Serial Set*. Bethesda, Md.: Congressional Information Service, 1990–1997.

Poore, Benjamin, comp. *A Descriptive Catalogue of the Government Publications of the United States, September 5, 1774–March 4, 1881*. Washington, D.C.: Government Printing Office, 1885.

This is an alphabetical list by title of government documents issued by the legislative, executive, and judicial branches, with a subject index in the back of the volume.

## Court Records

¶35 Tribal members present at treaty negotiations may have testified at trials, and their statements may be available in court records. Background information about particular treaties may also be found in these sources.<sup>36</sup> Testimony of experts, such as historians and anthropologists, and exhibits introduced at trial may also be useful.

## Indian Claims Commission

¶36 The Indian Claims Commission was created by Congress in 1946<sup>37</sup> and disbanded in 1978.<sup>38</sup> The Commission had jurisdiction over claims by Indian tribes against the U.S. government, which included claims based on treaties. Approximately 850 claims were brought before the Commission.<sup>39</sup> Cases not resolved by

36. An example of a court opinion that contains background information about a treaty is *United States v. Washington*, 384 F. Supp. 312, 330 (W.D. Wash. 1974), *aff'd & remanded*, 520 F.2d 676, 685 (9th Cir. 1975).

37. Indian Claims Commission Act, ch. 959, 60 Stat. 1049 (1946).

38. H.D. ROSENTHAL, *THEIR DAY IN COURT: A HISTORY OF THE INDIAN CLAIMS COMMISSION* 234 (1990).

39. Nancy Oestreich Lurie, *The Indian Claims Commission*, 436 ANNALS AM. ACAD. POL. & SOC. SCI. 97, 100 (1978) (noting that there were approximately 615 dockets, many of which contained more than one claim).

1978 were transferred to the U.S. Court of Claims.<sup>40</sup> Records and opinions of the Indian Claims Commission are a good source of information about treaties. “Indian Land Areas Judicially Established 1978,” a map by the U.S. Geological Survey, shows the results of cases before the Indian Claims Commission.<sup>41</sup>

¶37 National Archives Record Group 279 contains records of the Indian Claims Commission, specifically:

- 279.2: opinions, findings of fact, orders, journal of the commission, correspondence, etc.
- 279.3: case files, including anthropological and ethnological reports
- 279.4: cartographic records

*Decisions of the Indian Claims Commission.* The Library of American Indian Affairs: Indian Claims Commission Series. New York: Clearwater, 1973.

*Expert Testimony Before the Indian Claims Commission.* The Library of American Indian Affairs: Indian Claims Commission Series. New York: Clearwater, 1973.

*Index to Indian Claims Commission Decisions.* Boulder, Colo.: Native American Rights Fund, 1976. [http://www.narf.org/nill/documents/ICC/index\\_to\\_icc.pdf](http://www.narf.org/nill/documents/ICC/index_to_icc.pdf).

*Indian Claims Commission Decisions.* Boulder, Colo.: Native American Rights Fund, 1973–.

*Legal Briefs Before the Indian Claims Commission.* The Library of American Indian Affairs: Indian Claims Commission Series. New York: Clearwater, 1973.

Ross, Norman A., ed. *Index to the Decisions of the Indian Claims Commission.* New York: Clearwater, 1973.

Ross, Norman A., ed. *Index to the Expert Testimony Before the Indian Claims Commission.* New York: Clearwater, 1973.

*Transcripts of Oral Expert Testimony before the Indian Claims Commission.* The Library of American Indian Affairs: Indian Claims Commission Series. New York: Clearwater, 1973.

*United States Indian Claims Commission, August 13, 1946–September 30, 1978: Final Report.* Washington, D.C.: Indian Claims Commission, 1979.

This document includes an alphabetical index to the cases filed and a map that shows the adjudicated areas.

## Digital Archives

¶38 Some digital archives have already been listed. Others include the following:

- *American Indian Histories and Culture.* Digitized material from the Newberry Library’s Edward E. Ayer Collection. <http://www.americanwest.amdigital.co.uk/>.

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40. ROSENTHAL, *supra* note 38, at 234–35.

41. *Indian Lands Judicially Established 1978*, NATIONAL NAGPRA, <http://www.nps.gov/history/nagpra/DOCUMENTS/ClaimsMAP.htm> (last visited Apr. 27, 2015).



- *American Indian History Online*. From Facts on File. <http://www.fofweb.com/NuHistory/>.
- *American Indians of the Pacific Northwest Collection*. University of Washington Libraries. <http://content.lib.washington.edu/aipnw/index.html>.
- *American Journeys: Eyewitness Accounts of Early American Exploration and Settlement: A Digital Library and Learning Center*. Wisconsin Historical Society. <http://www.americanjourneys.org/>.
- *First Nations Collection*. Southern Oregon Digital Archives. <http://soda.sou.edu/>.
- *Kansas Memory Project*. Kansas State Historical Society. <http://www.kansasmemory.org/category/1241>.
- *New England Indian Papers Series Database*. Yale Indian Papers Project. <http://jake.library.yale.edu:8080/neips/search>.
- *Oklahoma State University Library's Digital Collection*. <http://digital.library.okstate.edu/icc/>.
- *Southeastern Native American Documents, 1730–1842*. Documents from the collections of the University of Georgia Libraries, University of Tennessee and Knoxville Library, the Frank H. McClung Museum, the Tennessee State Library and Archives, the Tennessee State Museum, the Museum of the Cherokee Indian, and the LaFayette-Walker County Library. <http://www.galileo.usg.edu/express?link=zlna>.
- *Utah American Indian Digital Archive*. American West Center and Marriott Library at the University of Utah. <http://www.utahindians.org/>.

### Library of Congress

Frazier, Patrick, ed. *Many Nations: A Library of Congress Resource Guide for the Study of Indian and Alaska Native Peoples of the United States*. Washington, D.C.: Library of Congress, 1996.

A guide to the many useful collections at the Library of Congress.

### Maps

¶39 Because land was generally a component of treaties, maps are an important resource.<sup>42</sup> Many maps relating to Indian treaties were published in the *Congressional Serial Set*. Maps can also be found in the National Archives Record Group 46.23, cartographic records of the Senate, and Record Group 75, the Bureau of Indian Affairs. Maps are also available online through the Library of Congress (<http://www.loc.gov/maps/>).

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42. For more information about maps related to Indian affairs, see Daniel G. Cole & Imre Sutton, *A Cartographic History of Indian-White Government Relations During the Past 400 Years*, 37 AM. INDIAN CULTURE & RES. J. 5 (2013).

Kelsay, Laura E., comp. *Cartographic Records of the Bureau of Indian Affairs*. Washington, D.C.: National Archives, 1977. <http://www.archives.gov/publications/lists/special-list13.pdf>.

A finding guide to the BIA collection, arranged alphabetically by state.

Royce, Charles C., comp. *Indian Land Cessions in the United States, 1784–1894*. Washington, D.C.: Government Printing Office, 1900.

Published as part 2 of the Eighteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, 1896–1897, H. Doc. No. 736, 56th Cong., 1st Session, vol. 4015 of the *Congressional Serial Set*. This volume has sixty-seven maps of land cessions by treaty, statute, or executive order, and two tables organizing information by date and by tribal name. It is available online as part of the Library of Congress American Memory Project (<http://memory.loc.gov/ammem/amlaw/lwss-ilc.html>).

### National Archives

¶40 A list of National Archives locations and links to its websites is available online (<http://www.archives.gov/locations/>). The holdings of the National Archives can be searched using its catalog (<http://www.archives.gov/research/search/>). Guides to National Archives collections include:

Bouknight, Marie. *Guide to Records in the Military Archives Division Pertaining to Indian-White Relations*. Washington, D.C.: National Archives, 1972.

Hill, Edward E. *Guide to Records in the National Archives of the United States Relating to American Indians*. Washington, D.C.: National Archives, 1981.

Litton, Gaston. “The Resources of the National Archives for the Study of the American Indian.” *Ethnohistory* 2 (1955): 191–208.

National Archives and Records Administration. *American Indians: Select Catalog of National Archives Microfilm Publications*. 2nd ed. Washington, D.C.: National Archives and Records Administration, 1995.

Wehmann, Howard H. *Records Pertaining to Indians in Records of the Continental and Confederation Congresses and the Constitutional Convention (Record Group 360): A Preliminary Guide*. Washington, D.C.: National Archives, 1972.

### Tribal Records

¶41 Tribal libraries and archives can be valuable resources. The following may be helpful in locating relevant libraries, archives, and museums:

Peterson, Elizabeth. *Tribal Libraries in the United States: A Directory of American Indian and Alaska Native Facilities*. Jefferson, N.C.: McFarland, 2007.

*Reference Encyclopedia of the American Indian*. Rye, N.Y.: B. Klein, 1967–. Annual. *Tribal Archive, Library and Museum Directory*. Tucson: American Indian Program, Arizona State Museum, University of Arizona, 2005.