



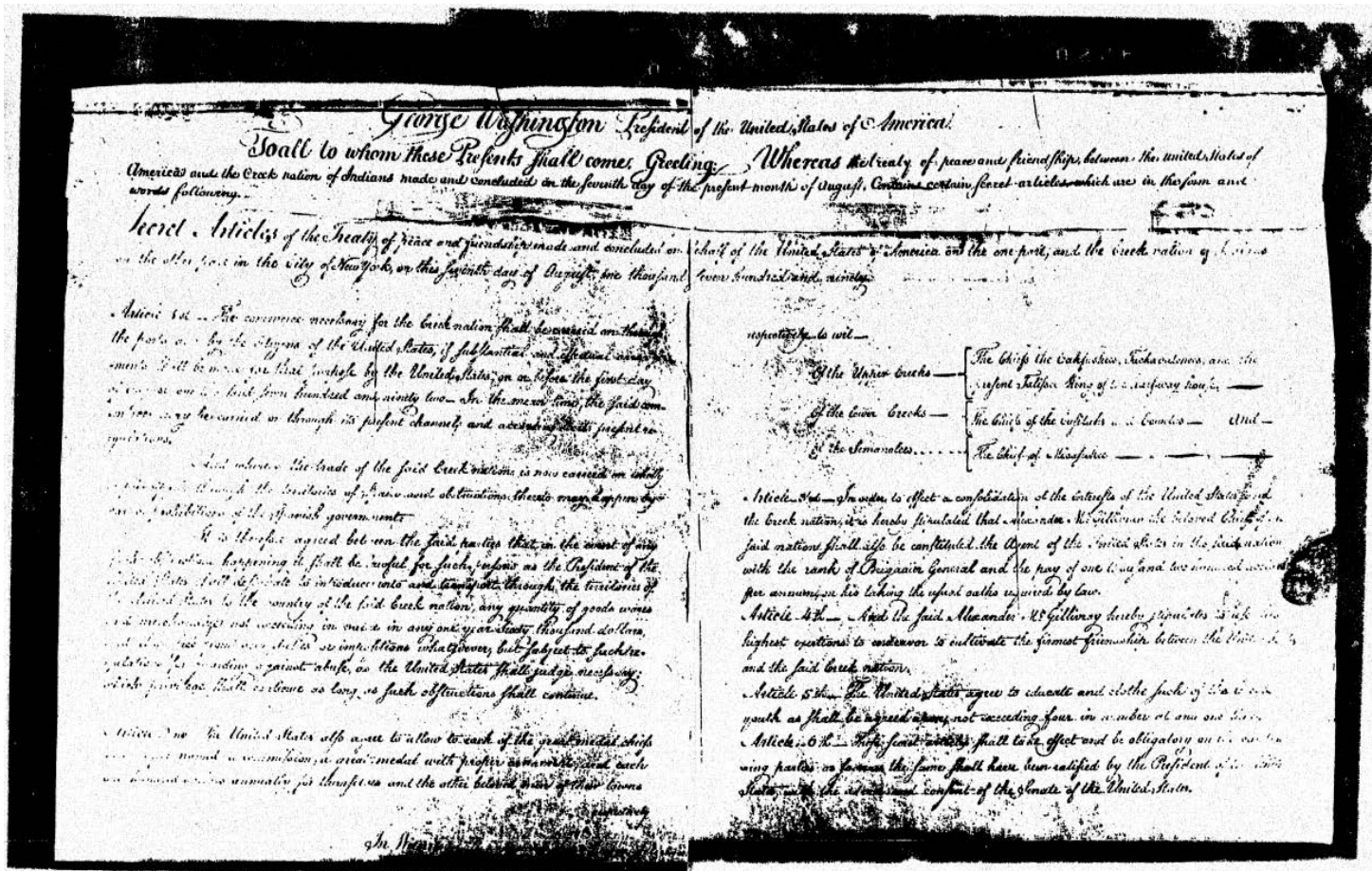
Historical Overview

The Constitution of the U.S. authorizes the President, with the advice and consent of the Senate, to make treaties. The removal of Indian Nations from American lands desired by white settlers was grounded in the treaty-making process. This practice continued a policy established in colonial times, under which white European settlers sought to usurp Native American lands through a process of negotiation rather than direct conquest. The Constitution expressly prohibits the States from entering into treaties or alliances and makes no distinction between treaty making involving foreign nations and treaty making with Native Americans, although it does make a distinction between foreign nations and Indian tribes in the language empowering Congress to regulate commerce. The earliest treaties refer to "Indian Nations" or "Indian tribes."

Of all the treaties signed, most involved Native American lands, Indian removal or resettlement, or clarification of boundaries between white settlements and Indian lands.

Despite the fact that treaty making process between the U.S. Government and the Indian Nations Tribes was overwhelmingly skewed to favor U.S. territorial expansion, Indian removal, and white settlement of lands previously occupied by Native Americans, it is the grounding of the territorial expansion in the treaty-making process that provided the only hope for Native Americans to seek redress.

The following timeline highlights major events impacting the history of Indian claims 1789-present.



Treaty Making Period 1789-1871

1817

On Dec. 2, 1817 in his annual address to Congress, President James Monroe provided examples of Government actions involving the purchase of Indian lands and the resettlement of the Native Americans. He declared that "the hunter state can only exist in the vast uncultivated desert. It yields to the more dense and compact form and greater force of civilized population; and, of right, it ought to yield, for the earth was given to mankind to support the greatest number of which it is capable, and no tribe or people have a right to withhold from the wants of others more than is necessary for their own support and comfort."

Source:

Message from the President of the United States to both Houses of Congress at the commencement of the first session of the Fifteenth Congress, Dec. 02, 1817

1830's

In the 1830's during the Administration of Andrew Jackson, the removal and resettlement of Native Americans accelerated. The Indian Removal Act of 1830, signed by President Jackson on May 28, 1830, provided the President with authority to negotiate the resettlement of Native Americans to lands west of the Mississippi River. When the State of Georgia passed a law making it illegal for Cherokees to remain in the State without a license, Cherokee Chief John Ross sought intervention from President Jackson and the Supreme

Treaty signed by George Washington

Secret articles of the Treaty of Peace and Friendship between the U.S. and the Creek Nation of Indians, concluded Aug. 7, and ratified Aug. 13, 1790

Court to prevent the State of Georgia from expelling his people. In *Cherokee Nation v. Georgia* (1831), the court stated that the Cherokee motion could not be ruled upon, as it was brought on the grounds that the Federal Government had jurisdiction over controversies between States and foreign nations. The court did not find that the Cherokee Nation was a nation in the sense meant by the use of the phrase "foreign nation" but rather a "domestic dependent nation." But the following year, the Supreme Court ruled in *Worcester v. Georgia* (1832) that the Georgia law was unconstitutional because the Federal Government had sole jurisdiction in dealing with Indian Nations.

In his 1834 request for redress, Chief John Ross wrote that when "we took the liberty to submit for the consideration of the President that some practical arrangements might be entered into between the United States and Georgia to relieve our nation of its present embarrassments, we had entertained no doubt that, with the corresponding desire of the General Government, such an arrangement could be affected; and that in that event Georgia would not be permitted to subject our people to the obedience of her laws, in as much as the Supreme Court of the United States had already pronounced the exercise of her jurisdiction over our territory to be unconstitutional and void."

President Jackson declined to pursue enforcement of the *Worcester v. Georgia* ruling, and the removal of the Cherokees began in 1838. Nonetheless, *Worcester v. Georgia* would provide a foundation for future Indian claims.

Sources:

Cherokee Nation v. Georgia, 30 U.S. 5 Pet. 1 1 (1831)

Worcester v. Georgia, 31 U.S. 515 (1832)

Memorial of John Ross and others, delegates from the Cherokee Indians, complaining of injuries done them and praying for redress, May 17, 1834

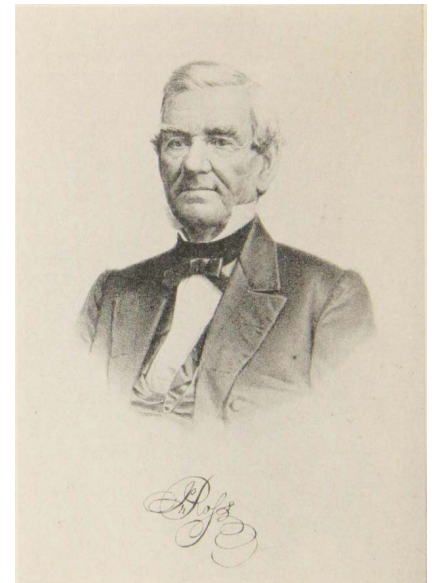
1855-1871

On February 4, 1855, the Court of Claims was established to hear and make determinations regarding claims brought against the United States. A number of Indian claims petitions were filed, but none had been decided by Mar. 3, 1863 when Congress amended the Court of Claims enabling act to specifically exclude Native Americans from bringing claims, by stating that the jurisdiction of the court should not extend to "any claim growing out of or dependent on any treaty stipulation entered into with foreign nations or the Indian tribes."

In 1868 the last treaty was concluded, although congressional and executive agreements continued to be made until 1871 when the treaty making process was officially ended. An amendment to the Indian appropriation act of 1871 stated that "hereafter, no Indian Nation or tribe within the territory of the United States shall be acknowledge or recognized as an independent nations, tribe, or power with whom the United States may contract by treaty". This act, however, explicitly stated that its provisions did not invalidate or impair previous treaties, a provision which would prove important in the later history of Indian claims.

Sources:

An Act to establish a Court for the Investigation of Claims against the United States (10 Stat. 612 chapter 122), Feb. 4, 1855



Chief John Ross

Indians of Southeastern United States, American Ethnology Bureau Bulletin 137, May 01, 1942

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authorities to protect the timber upon their reservation, and that none of the same shall be cut or removed without the consent of the head chief of the tribe, together with the consent of the agent and superintendent of Indian affairs first being given in writing, which written consent shall state the part of the reservation upon which the timber is to be cut, and also the quantity and the price to be paid therefor.

ARTICLE III.

It is further hereby stipulated and agreed that the amount due said tribe for school purposes, and for the support of teachers, that has not been expended for that purpose since the year 1864, but has been used for other purposes, shall be ascertained and the same shall be reimbursed to said tribe by appropriation by Congress, and shall be set apart and invested in United States bonds, and shall be held in trust by the United States, the interest on the same to be paid to said tribe annually for the support of teachers.

In testimony whereof the said Commissioner on the part of the United States, and the said chiefs representing said Nez Perce tribe of Indians, have hereto set their hands and seals this 13th day of August, in the year of our Lord one thousand eight hundred and sixty-eight, at the city of Washington, District of Columbia.

N. G. TAYLOR, [L. s.]
Commissioner Indian Affairs.

LAWYER, [L. s.]
Head Chief Nez Perce.

TIMOTHY, [L. s.]
his mark Chief.

JASON, [L. s.]
his mark Chief.

In presence of—
CHARLES E. MIX,
ROBERT NEWELL, U. S. Agent.
W. R. IRVIN.

The Last Treaty

Treaty with the Nez Perce Indians.
Message of the President, January
19, 1869

An Act to amend "An Act to establish a Court for the Investigation of Claims against the United States," approved February twenty-fourth, eighteen hundred and fifty-five (12 Stat. 765 chapter 92), Mar. 3, 1863

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 (16 Stat. 566 chapter 120), Mar. 3, 1871

Indian Claims and Citizenship 1879-1946

1879-1881

An 1879 landmark case and a related 1881 congressional investigation both proved important to the advancement of Indian claims. Standing Bear, a Ponca Chief, was arrested by General George Crook for having left the lands where he had been relocated and returned home. He sued for a writ of habeas corpus in the U.S. District Court, and on May 12, 1879 Judge Elmer Dundy ruled in *Standing Bear v. Crook* that "an Indian is a person within the meaning of the laws of the United States, and has, therefore, the right to sue out a writ of habeas corpus in a Federal court, or before a Federal judge." Dundy held that no one could be relocated by force to Indian Territory, and Standing Bear was released.

Testifying before Congress at an investigatory hearing Standing Bear gave his account of his ordeal. President Hays appointed a commission which included General Crook to investigate the matter. In January 1881, the investigators stated in their final report that it was "of the utmost importance to white and red men alike that all Indians should have the opportunity of appealing in the courts for the protection of their rights of person and property." President Hays promised to do all he could to redress the wrongs suffered by the Poncas, and expressed his opinion that the time had come to place the Indians on the same footing as other permanent inhabitants of the country.

In March of 1881, a special act of Congress provided the Court of Claims with authority to take jurisdiction and try all questions arising out of treaty stipulations with the Choctaw Nation, and to render judgment. From 1881 until the establishment of the Indian Claims Commission Native Americans were permitted to access the Court of Claims, but only after Congress passed a specific law authorizing access on a case by case basis.

Sources:

United States ex rel. *Standing Bear v. Crook* (1879) excerpt from *Red Man* 120.16-3.22, May-June, 1916

Testimony relating to the Removal of the Ponca Indians, Feb. 11, 1880

Message from the President of the United States, transmitting a report of the commission appointed December 18, 1880, to ascertain the fact in regard to the removal of the Ponca Indians, Feb. 01, 1881

An Act for the ascertainment of the amount due to the Choctaw Nation (21 Stat 504 Chap. 139), Mar. 3, 1881



Ponca Chief Standing Bear

The Ponca Tribe, American
Ethnology Bureau bulletin 195,
December 31, 1963

1924-1946

Following World War I, the contribution of Native Americans who had volunteered for military service during the War even though they were not subject to the draft undoubtedly did much to sway public opinion in their favor and in 1924 Indians were granted U.S. citizenship.

Despite the change in public attitudes towards the Native Americans, the increase in number of claims filed as Indian hopes increased, and the greater willingness of Congress to allow claims to be brought, the process continued to be slow, few claims resulted in awards, and the need for an improved system slowly began to gain favor.

Source:

An Act to authorize the Secretary of the Interior to certificates of citizenship of Indians (43 Stat. 253, Chap. 233; P.L. 68-175), June 2, 1924

1946-1978 Indian Claims Commission

The enabling act which established the Indian Claims Commission removed all impediments to Native Americans seeking redress through the Court of Claims, but it also established the Indian Claims Commission which was intended to resolve the backlog of Indian claims within 10 years and then terminate. The Commission was given jurisdiction over moral claims to prevent a claim from being denied on a legal technicality. Under this act any identifiable group of Indian claimants residing in the U.S. or Alaska were entitled to sue the government for specified types of claims, including claims arising under the Constitution, law, treaties of the U.S. and Executive orders of the President. The Government Accounting Office (GAO) gathered the fiscal info and data needed by both sides and presented it in a report. After Feb. 27, 1965 the General Services Administration (GSA) took over this function. The Commission was reauthorized through 1978, at which time the remaining open dockets were transferred over to the Court of Claims.

The ICC final report emphasizes that the Commission was a court, complete with appellate review, and that it was unique among courts in its jurisdiction over moral claims. But the report concluded that there is no easy solution to the problem of Indian claims, as the very presence of a tribal society within the borders of a highly individualistic society is a reminder that "we took away the lands where we found them. From which they were then making their living." The final report suggests that "it is time to appreciate that the triumphs of the frontier period were mitigated by our sordid dealings with the Indians" and offers hope that the future might offer remedies, in addition to the sums of money awarded by the Commission, to the unresolved problems between the Government and the Native Americans.

Sources:

An Act to create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes (60 Stat. 1049 Chap. 959; P.L. 79-726), Aug. 13, 1946

An Act To authorize appropriations for the Indian Claims Commission for fiscal year 1977, and for other purposes (90 Stat. 1990, P.L. 94-465), Oct. 8, 1976, including provisions to provide for the “dissolution of the Commission and disposition of pending claims”

An Act To authorize appropriations for the Indian Claims Commission for fiscal year 1978; to facilitate the transfer of cases from the Indian Claims Commission to the United States Court of Claims; and for other purposes (91 Stat. 273, P.L. 95-69), July 20, 1977

U.S. Indian Claims Commission, Final report, April 15, 1980

1978 to Present

When the Indian Claims Commission ended in September 1978, less than 68 dockets remained unsettled, and were transferred to the U.S. Court of Claims. In this Court (followed by the U.S. Claims Court in 1982, which would become the U.S. Court of Federal Claims in 1992) Native American tribes continue to pursue claims based on U.S. government treaty obligations, and through the Courts’ decisions, the development and settlement of these claims may be followed up through the present day.

To date, the largest settlement paid by the U.S. government to a single Native American tribe has been that in the U.S. Court of Federal Claims Docket No. 06-945. In this case, the Obama administration agreed in August 2014 to pay \$554,000,000 to the Navajo Nation based on claims that the U.S. government had committed accounting failures and had mismanaged trust funds and resources on the Navajo lands.

Source:
Settlement Agreement Between the Navajo Nation and the United States

View the Libguide
proquest.libguides.com/indianclaims

