Indigenous Law in the U.S. Supreme Court, 1969-2010

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Abstract: The United States has a long infamous history with native indigenous peoples of North America. Indeed, the recent Dakota Pipeline controversy has reminded many of the longstanding relationship between indigenous rights and the federal government. Yet, the courts are often presumed to be the cornerstone of rights and the last defenders of the weak, of the oppressed, and of those whose rights have been violated. Yet how has the Supreme Court treated indigenous rights and treaties with tribes? We offer the first (to our knowledge) systematic, empirical evaluation of U.S. Supreme Court decisions from 1969-2010, on the treatment of indigenous treaties, tribes, and individuals. We examine issues of sovereignty and treaty law, the role of international law, justice and Court ideology, and party capability. As such, this analysis offers a broad empirical perspective on the role of courts as guardians of rights.

Indigenous Peoples often remain the 'forgotten minorities'—at least until they appear in national news. The political controversy regarding the Dakota Pipeline in 2016 reminded the nation of the existence and ongoing struggle of indigenous tribes and peoples.[1] Yet, this minority encompasses a significant proportion of the United State population. As of 2015, the United States includes 6.8 million Indigenous Peoples, including those of more than one race (or 2% of the nation's population).[2] Twenty-one states have 100,000 or more Indigenous Peoples, including: California, Oklahoma, Texas, Arizona, New York, New Mexico, Washington, North Carolina, Florida, Michigan, Colorado, Alaska, Illinois, Oregon, Minnesota, Georgia, Pennsylvania, Virginia, Ohio, Wisconsin and New Jersey. There are 326 federally recognized reservations in 2016, and 567 federally recognized indigenous tribes in 2016[3]. There are more than 370 treaties between the United States federal government and Indigenous Peoples[4] that recognize the inherent sovereignty of the tribe (Saul 2016). Hence, these stereotypes that indigenous tribes are relics of the past are far from truth. Rather, they are a significant population that continues to vigorously struggle to be recognized and enjoy their rights within a colonial power.

[1] However, once the news becomes old, Indigenous Peoples fade back into obscurity despite even occasional news and reports addressing their struggles with homelessness, poverty, crime, literacy, and education.

[2] https://www.census.gov/newsroom/facts-for-features/2016/cb16-ff22.htm

[3] States may also recognize tribes even when the federal government does not such as the Little Shell Tribe of Chippewa Indians of Montana. There are over 60 such tribes in the United States.

[4] We use Indigenous Peoples as common labels like "American Indian," Native American," and "Indian" are limiting as they do not recognize uniqueness of Alaskan and Hawaiian Natives. Furthermore, these common labels connote the power of colonizers to define these heterogeneous and diverse groups of people. Hence, while any universal label is inherently incomplete and Indigenous Peoples themselves differ in the labels they prefer, we opt for the least (implicitly) monolithic and the least institutionally oppressive labels that denote "colonized identities" (Bird 1999).

Yet, the United States has maintained an ambivalent relationship with Indigenous Tribes, where even Justice Thomas has bemoaned federal Indigenous policy as "schizophrenic" and "contradictory" (in his concurrence in *United States v. Lara,* 541 U.S. 193, (2004); see also Duthu 2008). For example, the U.S. Constitution explicitly recognizes Indigenous Tribes as sovereign bodies in its declaration of congressional commerce clause powers[5] and its establishment of treaties as the express means through which the federal government could conduct relations with foreign nations and tribes. This recognition extended to the Marshall Court, which affirmed the legally recognized sovereignty of tribes with inherent governmental powers that are subordinate only to the federal government (*Cherokee Nation v. Georgia*, 30 U.S. 1, 17, 1831) [6] and established a trust obligation on part of the federal government to protect tribes' political integrity and territorial possession (*Worchester v. Georgia*, 31 U.S. 515, 557, 1832). *Worchester* (1832) further established that tribes were distinct political communities, having territorial boundaries within which their authority is exclusive—which is not only acknowledged but guaranteed by the federal government. Yet, even as the Court affirms indigenous sovereignty rights, executive and legislative actions directly and simultaneously undermine this recognition through the Indian Removal Acts of 1830 authorizing the president to negotiate the removal of Indigenous Peoples from their native territories to federal lands west of the Mississippi River. The enforcement of this act lead to the infamous Trail of Tears where over 4,000 Cherokees died. Indeed, by 1837, Jackson's administration had removed 46,000

[5] Article 1, Section 8 states that Congress has to power to "regulate Commerce with foreign Nations, and among the several States, ad with the Indian Tribes".

[6] Georgia refused to comply with the Supreme Court judgment and Jackson refused to enforce it.

Indigenous Peoples from their homeland and opening over 22 million acres of land to white settlement. [7]

These Marshall era provisions and tribal sovereignty have since been dealt serious blows and confusion with the simultaneous federal policies providing protective attitudes as well as aggressive withdrawals of power. For instance, while the Supreme Court served as a protector of tribal sovereignty under Marshall, it aided in undermining indigenous treaty obligations in 1870 when it ruled against the Cherokee tobacco businesses being exempt from federal taxation by determining that later congressional statutes trump earlier treaties (*Cherokee Tobacco case,* 78 U.S. 11, 1870). By allowing for congressional statutes to supersede treaty law, the Court dealt a kill stroke to negotiating treaty policy making and, a year later, Congress unilaterally ended the practice of treaty making with Indigenous Peoples (Duthu 2008). In 1886, the Court ruled that the federal government could not write law governing internal affairs of tribes—but then upheld the Major Crimes Act of 1885 (which put certain criminal activities under federal jurisdiction even if committed by an indigenous individual on indigenous lands) as an appropriate exercise of congressional guardianship authority over Indigenous Peoples (*United States v. Kagama*, 118 U.S. 375, 1886). In 1896, the Court confirmed that tribal powers of self government are distinct and predate the federal Constitution so tribes were not subject to constitutional constraints—yet they were subject to general provisions and authority of Congress (*Talton v. Mayes*, 163 U.S.376, 1896).

Additionally, even when the Court ruled in favor of indigenous claims, the rest of the federal government was not always consistent in providing these protections (similar

[7] http://www.pbs.org/wgbh/aia/part4/4p2959.html

to the Marshall era). For instance, in 1973, the Court ruled in favor of indigenous sovereignty by rejecting state efforts to impose personal income tax on members and resident of the Navajo nation whose entire income came from reservation sources (*McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 1973). However, the Nixon administration was simultaneously implementing unilateral federal policies that severed the government's legal and political relationships with and obligations towards a large number of Indigenous Peoples—thereby leaving these tribes subject to state authority (Duthu 2008).

Hence, indigenous law within the framework of a constitutional democracy yet colonial power, as well as the Court's role as principle guardian of legal promises to tribes, remain uncertain and not fully resolved. However, with the rise of indigenous and civil rights movements, organizations, networks, and social awareness—particularly since the 1960s, the Supreme Court has moved to codify rights for several minority groups, thereby providing tangible results. For instance, the Court enshrined new rights in several landmark cases such as *Swann v. Charlotte-Mecklenburg Board of Education* (1971),[8] *Frontiero v. Richardson* (1973),[9] *Roe v. Wade* (1973),[10] *Planned Parenthood v. Casey* (1992),[11] *United States v. Virginia* (1996),[12] and *Lawrence v. Texas* (2003).[13] Similarly, the rapid

[8] 402 U.S. 1

[9] 411 U.S. 677

[10] 410 U.S. 113

[11] 505 U.S. 833

[12] 518 U.S. 515

[13] 539 U.S. 558

development of international human rights laws has provided several frameworks to protect tribal nations. Nonetheless, it remains unclear whether the advent and development of these domestic and international legal frameworks have aided indigenous rights domestically. Hence, we analyze United States Supreme Court decisions pertaining to indigenous laws from 1969 to 2010 to evaluate whether increased indigenous mobilization, social awareness, and international human rights standards have benefitted Indigenous Peoples.

Indigenous rights movement

In the late 1960s, congruent with the ongoing Civil Rights Movements,[14] there was rise in political activism among Indian groups around the country, including the work of the American Indian Movement (AIM)[15] and tribal demands for greater respect and accountability in federal tribal relations as well as protested racism, discrimination, police brutality, poverty, unemployment, and lack of housing. The American Indian Movement was established in 1968 to encourage self-determination, preservation of culture and traditions, and international recognition of indigenous treaties and their enforcement. The surge in mobilization was largely a response to the U.S. policy in the 1950s seeking to terminate federal treaty obligations and enforce relocation policies. While this movement lost much of its political momentum by 1978 due to controversial incidents of violence and

[14] AIM and indigenous rights organization were influenced and often marched alongside civil rights groups, including both Malcolm X and Martin Luther King, Jr., and shared similar strategies to influence public opinion through public events and publicity.

[15] For the sake of space we limit our discussion to AIM, but other noteworthy organization include Women of All Red Nations, National Tribal Chairman's Association, NATIVE, League of Indigenous Sovereign Nations, National Congress of American Indians, National Indian Youth Council, and the Indigenous Peoples Caucus, among others.

vandalism,[16] including the imprisonment of some of the main leaders, and divided into regional chapters, the movement appears to have been successful in creating the International Indian Treaty Council (1974), which gained consultative status at the UN Economic and Social Council in 1977, and garnering domestic legislation to aid indigenous rights. In 1978, Congress passed the American Indian Religious Freedom Act, which recognized and protected collective rights to traditional religious and cultural practices,[17] and the Indian Child Welfare Act, which recognized tribal court authority in adoption procedures and collective rights of cultural preservation (where indigenous children are placed into families within the same tribe). Furthermore, the Federal Acknowledgement Project was initiated in 1978 to create uniform rules regarding the procedure for federal recognition of tribes. Similarly in 1978, the Supreme Court determined that tribes are distinct and independent political communities that have the authority to determine their membership without the infringement of federal (antidiscrimination) policy (*Santa Clara v. Martinez*, 436 U.S. 49, 1978).[18] Since then, the federal government has passed the a) Indian Mineral Development Act (1982) to encourage tribes' economic self-sufficiency, b) Indian Gaming Regulatory Act (1988) affirming tribal rights to hunting on their lands (but subject to agreements with states as to certain types of game), c) Native American Languages Act (1990) to preserve and protect indigenous language and culture, d) Indian Arts and Crafts Act (1990) to promote and protect indigenous artwork and handcraft

[16] These instances include the occupation of Alcatraz Island (1969); the "Trail of Broken Treaties" march on Washington, D.C. (1972); occupation of Wounded Knee (1973); and the Pine Ridge shootout of 1975.

[17] However the AIRFA did not provide substantive rights or an enforcement mechanism.

[18] However, the Court also decided in *United States v. Wheeler* (435 U.S. 313, 1978) that tribes retain sovereignty not withdrawn by treaty or statute and that tribal sovereignty only exists at the sufferance of Congress and is subject to complete defeasance.

businesses, e) Native American Grave Protection and Repatriation Act (1990) which requires institutions receiving federal funds to inventory collections of indigenous remains and cultural artifacts (as well as make these list available tot tribes and return items requested by tribes), f) Indian Law Enforcement Act (1990) to create a unified approach to law enforcement services on reservations, g) Religious Freedom and Restoration Act (1993) which protects indigenous religious practices,[19] and the h) American Indian Religious Freedom Act amendments (1994). Hence, it seems plausible that these movements catalyzed or initiated significant federal policy across all three federal branches to improve indigenous rights and protections. However, no systematic, empirical analysis evaluates the possibility of change in indigenous rights protections. Thus, we offer preliminary, purely descriptive hypotheses:

> *H_1: After the indigenous rights movement (post 1978), increased litigation including indigenous claimants is observed on the Supreme Court docket.*

> *H_2: After the indigenous rights movement (post 1978), the Supreme Court was more likely to rule in favor of indigenous claims.*[20]

[19] But was declared unconstitutional as applied to the state in 1997.

[20] We use 1978 as a temporal marker because during the rights movement (before 1978), litigation was an effective tool by the federal government to suppress movement activities. In essence, particularly with violent movements, the government sought to engage organizations and individuals in costly and time-consuming litigation in order to absorb limited resources, force the movements to engage in fundraising rather forms of protest, deter activities (with fear of litigation), and eliminate movement leaders. In order to avoid, as best as possible, including these types of cases, we define cases after 1978 as after the movements (since AIM no longer had the political momentum or activity at that point).

Also note that these hypotheses are strictly descriptive and do not seek to evaluate whether the AIM movement caused these trends. Similarly, since our data do not extend to cases before 1969, we cannot evaluate or make substantial inferences as to how these trends compare to trends prior to 1969. The purposes are again strictly descriptive since these trends remain unknown due to the lack of empirical investigation (to out knowledge).

Development of international rights laws

Developments in international human rights laws offer a legal framework—often considered customary law—that can aid Indigenous Peoples. While these laws usually encompass the rights of minorities rather than indigenous rights specifically, the International Labor Organization Convention No 169 (1989) explicitly recognizes specific indigenous rights as binding law, including the right to internal autonomy, requiring consultation on development projects in order to secure indigenous consent (but not requiring actual consent), rights to traditional lands that are currently used or occupied by Indigenous Peoples (but not where they have been historically disposed), and a right to land though not necessarily a right to full ownership (Saul 2016; Anaya 1999; Suagee 1997). However, because the United States is not party to the ILO Convention, these laws remain part of customary law and binding treaty law for signatories. The United Nations Declaration of Rights of Indigenous Peoples in 2007 similarly reinforces ILO rights in customary law, including the right to self-determination, life, liberty, culture, identity, religion, language, history, security, education, non-discrimination, employment, health, land, resources, and environment, and participation in decision making and sustainable development through free, prior, and informed consent (Saul 2016; Anaya 1999). Furthermore, the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),

Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Convention Against Torture (CAT) all offer protections that have been used to protect indigenous populations around the world, particularly through the UN Human Rights Committee and regional systems like the Inter-American system (associated with the Organization of American States) and African system (associated with the African Union) (Saul 2016; Suagee 1997).

Several working groups and international organizations have increasingly addressed indigenous rights as well, such as the Council of Europe's European Convention on Human Rights 1950 and the Framework Convention on the Protection of National Minorities 1995, the Working Group on Indigenous Populations (WGIP) serving from 1982 until 2007 when it was replaced with the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the UN Permanent Forum on Indigenous Issues created in 2000, and the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples created 2001.

Finally, international environmental law, cultural heritage and property law, and international law concerning finance and development all address indigenous rights as well (Saul 2016). For example, international environmental law establishes binding treaty standards protecting a) indigenous sealing, whaling, and polar bear hunting via the Convention on the Conservation of North Pacific Fur Seals, International Convention for the Regulation of Whaling (amended by the International Whaling Commission Amendments to the Schedule)**,** and International Agreement for the Conservation of Polar Bears; b) indigenous and local communities' traditional knowledge by requiring consultation under the 1994 UN Convention to Combat Desertification; c) the role of

indigenous communities in conserving and sustainably using biological diversity via the Convention on Biological Diversity (1992) as well as protecting indigenous traditional knowledge via the 2010 Nagoya Protocol to the Convention on Biological Diversity to further regulate genetic resources and the fair and equitable sharing of benefits from their utilization where Article 12 addresses indigenous traditional knowledge so states must secure indigenous communities' prior informed consent and fair and equitable benefit-sharing in the light of community laws and procedures and customary use and exchange. These binding standards are reinforced by a) the Rio UN Conference on Environment and Development of 1992, which acknowledged certain indigenous interests including establishing processes to empower indigenous peoples, strengthen their participation in resource management sustainable development and conservation; b) the UN Forest Principles of 1992, which encourages national forest policies to recognize and protect Indigenous Peoples' rights, including economic rights in forest exploitation; and c) the International Union for Conservation of Nature and Natural Resources, which further offers their own policy guidelines to recognize and protect indigenous claims (Saul 2016).

International cultural heritage and property laws offer additional yet legally distinct protections, though they reinforce cultural rights protected by the ICESCR (Article 15) and ICCPR (Article 27). Protection of indigenous cultural heritage and property are established in binding treaty law through both the UN Educational, Scientific and Cultural Organization (UNESCO) and the Convention of the Protection and Promotion of the Diversity of Cultural Expression. UNESCO's 2003 Preamble to the Convention For the Safeguarding of the Intangible Cultural Heritage recognizes the role of Indigenous Peoples in the production, maintenance, safeguarding, and recreation of intangible cultural heritage,

thereby helping to enrich cultural diversity and human creativity. The 2005 Convention of the Protection and Promotion of the Diversity of Cultural Expression calls for equal respect for all cultures, including Indigenous Peoples. Hence, both treaties protect indigenous peoples explicitly.[21] These treaty obligations are similarly reinforced by several other international laws, like a) UNESCO's Universal Declaration on Cultural Diversity in 2002, which guarantees the cultural diversity of Indigenous Peoples, b) UNESCO and World Intellectual Property Organization's (WIPO) provisions protecting folklore, and c) WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IG) that seeks to prevent misappropriation, misuse, and unauthorized use of indigenous traditional knowledge and cultural expression.

Finally, international laws regarding finance and development generally require states to engage with Indigenous Peoples in a process of free, prior, and informed consent for any development projects. For example, the World Bank had adopted detailed operational safeguards to require borrowers to engage in a process of (free, prior, and informed) consultation to secure broad community support and avoid adverse effects on Indigenous Peoples or minimize, mitigate, and compensate for such effects. The International Finance Corporation (IFC) adopted a similar standard regarding Indigenous Peoples so that businesses involved in projects with social and environmental impacts would avoid or mitigate adverse effects through engaging Peoples in participation and consent where projects impact indigenous lands and resources or affect critical cultural property. Principle 5 of the Equator Principles adopted by other financial institutions

[21] Several other UNESCO instruments affect Indigenous Peoples as well though they are not explicitly identified. For example, standards on underwater cultural heritage, world cultural and natural heritage, illicit dealings on cultural property, the protection of cultural property in conflict, copyright and intellectual property, and cultural heritage and cultural property law (Saul 2016).

recognizes the vulnerability of Indigenous Peoples and required informed consultation and consent, as does the UN Guiding Principles on Business and Human Rights of 2011. In 2008, the UN Development Group adopted the Guidelines on Indigenous Peoples' Issues which advise on international human rights standards and practical program design, and several field agencies similarly have their own policies and guidelines, such as the UN Development Programme (UNDP), UN Children's Fund (UNICEF), and Food and Agricultural Organization (FAO). Even several multilateral and bilateral free trade agreements contain safeguard provisions to allow states to adopt special measures to protect Indigenous Peoples (without infringing on equal protection treatment for foreign investors).

The creation and development of these international laws thus offer a legal framework that can be used by Indigenous Peoples (and other minority groups) to advance and protect their interests.[22] These international standards have been particularly effective in the Inter-American and African regional systems in recognizing Indigenous rights. Yet, it remains unclear the extent to which these frameworks have aided Indigenous Peoples within the United States, particularly since the United States remains notorious for not ratifying binding treaty law and often hesitates to recognize customary law.[23] Hence, we evaluate the following hypotheses:

[22] However, one must note that these international law frameworks are only a beginning point for the recognition and effective protection of indigenous rights since the international law framework, lexicon, and organizations themselves maintain a Eurocentric or western conception that hold indigenous peoples (and Third World countries) in their marginalized status (Gordon 2006). International law still does not recognize Indigenous Peoples as legal persons or legitimate international actors, which leaves international policies that would affect them relegated to the same colonial states that continue to subjugate them.

[23] The United States has received some international attention and pressure regarding its treatment of Indigenous Peoples. For example the UN Committee on the Elimination of Racial Discrimination (CERD) was "concerned about irreparable harm to the Western Shoshone peoples in the United States, as a result of the accelerated exploitation of, and encroachment upon, their traditional lands, and the extinguishment of

H_3: References to international law have increased over time in judicial decisions.

H_4: International laws are increasingly have (positive) determinative weight in judicial decisions.

H_5: Liberal courts are more likely to reference and place determinative weight on international law than conservative courts (and justices).

H_6: Ratified international treaties are more likely to be cited and determinative than customary or unratified laws.

Treaties with Tribes

As noted previously, the United States has historically dealt with Indigenous Peoples through treaties. More than 370 treaties were 'agreed' between the federal government and federally recognized Indigenous Peoples, although some of these agreements remain controversial due to issues of coercion, fraud, and error (Saul 2016). These treaties, however, recognize the distinct legal personality of Indigenous Peoples—as well as their sovereignty. Furthermore, the Constitution explicitly upholds these treaties

tradition land and resource rights" [April 11, 2006 decision 1(68)]. More specifically, CERD was concerned about the privatization and transfer of ancestral lands to multinational extractive industries and energy developers, destructive activities in areas of spiritual and cultural significant, and underground nuclear testing. These activities occurred or were planned without consultation with, and against the protests of, the indigenous communities. The CERD Committee found that the United States was not respecting its ICERD obligations, in particular to guarantee equality before the law and the non-discriminatory enjoyment of civil, political, economic, social and cultural rights" [*Carrie & Mary Dann v. United States* Case 11.140, IACHR December 27, 2002] (Saul 2016, 107). However, the U.S. failed to comply with the ruling (Gordon 2006).

as binding treaty law. However, the practice of treaty making with Indigenous Peoples and tribes ended abruptly in 1871 through a unilateral congressional measure. Similarly, the treaties, originally enshrined in the Constitution (and upheld by the Marshall Court), have degraded into a 'grey' area where they are weighted neither as international treaty law nor as domestic law. Furthermore, federal termination of obligations to tribes and the Supreme Court's decisions placing indigenous authority at the sufferance of Congress have eroded the enforcement and legal weight of these treaties. Nonetheless, in the absence of systematic, empirical analysis, we evaluate the effectiveness (if any) of these treaties in protecting indigenous rights. In other words, we evaluate to what extent these treaties are determinative or influential in Supreme Court decisions and whether they improve the likelihood of the Court voting in favor of the indigenous claims.

H_7: Indigenous claims enshrined in treaties with the federal government are more likely to be upheld than claims not codified into treaties.

H_8: Indigenous claims codified into treaty law are just as likely to be upheld by the Court regardless of ideology.

The Predicament of Sovereignty

Obviously, indigenous claims cover a broad range of issue areas, including issues of sovereignty, land and territorial rights, protection and preservation of cultural and traditional knowledge, religious freedom, family law, economic and business issues, and criminal issues. We suspect that the U.S. Supreme Court would not treat each of these areas

equally. As implied previously, Indigenous Peoples do not appear to fit within the federalist systems, being treated as neither true foreign nation with inherent and broad sovereignty rights nor as a state. As such, Indigenous Peoples face an uncertain relationship even structurally to maintain their existence and authority while being simultaneously subsumed by the United States.[24] Because the United States includes distinct Indigenous Tribes and Nations living within its political boundaries, we suspect that the United States has most to lose in terms of granting wide sovereignty rights to Indigenous Peoples. After all, granting these rights directly limits U.S. authority and exercise of power at both the federal and state levels. Considering conflicts between Indigenous Peoples and U.S. actors are resolved by the federal courts of the colonial power itself, it seems unlikely that indigenous claims would receive much support on issues that would directly undermine U.S. power. Furthermore, placing additional land within Indigenous authority (or in trust) conflicts with state economic interests whereby the state would lose property, sales, and income tax revenues (Abramowicz et al. 1996). Hence, we hypothesize that the Court is less likely to uphold indigenous claims in cases pertaining to sovereignty (relative to other issue areas).

H_9: Indigenous claims for sovereignty are less likely to be supported by the Court than other issue areas.

H_{10}: Liberal Courts are more likely to uphold indigenous sovereignty claims than conservatives Courts.

[24] Even at the individual level, Indigenous Peoples are both citizens of distinct sovereign tribes and U.S. citizens. (The United States granted Indigenous Peoples citizenship in 1924, though many Indigenous Peoples were refused the right to vote for decades afterward (Collins 2013; McDonald 2010).)

Collective versus Individual Rights

A second issue-related source of tension is the difficult relationship between the legal system's prioritization of individual rights rather than collective rights.[25] Indigenous collective rights often do not fit into the western individual rights, and each type has the potential to undermine the other—though not necessarily (Newman 2006) and the absence of certain collective rights make individual rights meaningless (Suagee 1997). Nonetheless, the United States' stance on collective rights, or the rights possessed by a group per se rather than individuals, is that the recognition on collective rights "may open the door to the denial of the right to the individual" (Suagee 1997; Anaya 1999). [26] Instead, the United States has adopted an "intermediate concept" where "rights held by 'individuals in community with others' rather than by indigenous communities themselves" (Newman 2006). Yet, collective rights are important because certain collective rights cannot be reduced to individual rights (Newman 2006), and some collective rights are required to make individual rights meaningful, such as the collective right of a tribe to exist (Suagee 1997).[27] Further, the Court plays an important role in balancing individual versus collective rights. For example, the Supreme Court decided in *Santa Clara Pueblo v. Martinez* (436 U.S. 49, 1978) that tribes have the authority to determine tribal membership and that federal courts have no jurisdiction to hear equal protections claims beyond habeas corpus cases.

[25] Furthermore, the international legal system generally encompasses individual rights rather than collective rights (Anaya 1999; Suagee 1997).

[26] Quoted from the U.S. Department of State's Preliminary Statements to Draft of UN Declaration on the Rights of Indigenous Peoples (Nov. 1995).

[27] Furthermore, Anaya (1999) argues that this assumed conflict is a nonissue since all rights, collective and individual, may conflict with any other right and will need to be balanced in its application against any competing right.

By issuing this ruling, the Court prioritized the collective right of the tribe to determine its own membership at the expense of federal enforcement of individual rights, specifically the right to not be discriminated.

Another example is child adoption where the individual rights and interests of the child may conflict with collective rights of a tribe's cultural preservation. For instance, the U.S. Indian Child Welfare Act (ICWA) grants the placement of indigenous children under tribal court jurisdiction, which prioritizes the adoption of indigenous children to families within the tribe. In *Mississippi Band of Choctaw Indians v. Holyfield* (490 U.S. 30, 1989), the Supreme Court held that tribal courts retain exclusive jurisdiction over adoption proceedings involving children born to two Choctaw parents, both of whom were tribal members and residing in the reservation. While this holding upheld tribal sovereignty and jurisdiction, it was not desired by the parents who had attempted to avoid this outcome by selecting to give birth off of the reservation and voluntarily surrounding the child for adoption.[28]

Hence, in terms of protecting rights of Indigenous Peoples (on indigenous lands), we suspect that the Court will prioritize collective rights rather than individual rights because collective rights are the essence of most indigenous rights claims and the Court will uphold indigenous authority for decisions regarding internal governance.[29] In other

[28] This holding does not apply when the indigenous child resides with parents outside of indigenous lands. In these cases, the tribe would have to rely on state courts to determine custody (Duthu 2008). Additionally, under the ICWA, at the request of either parents, Indigenous custodian, or tribe itself, state courts can transfer an indigenous child custody proceeding to the tribe's jurisdiction unless either parent objects or there is 'good cause' to justify keeping the matter in state courts (Duthu 2008). The ICWA does not apply where the child involved has no demonstrable social and cultural links to an existing indigenous family.

[29] While this stance upholds indigenous sovereignty and authority, it similarly removes access to federal courts for individuals who have their rights violated. In essence, individuals have only the option of tribal court.

words, we hypothesize that the Court will uphold collective rights more so than individual rights because most indigenous rights primarily exist within a collective rights framework and because the Court will not have jurisdiction over individual rights issues, which would remain under the authority of tribal courts.

H_{11}: Indigenous collective rights are more likely to be upheld than individual rights.

Territory and Natural Resources

The significance of land and the environment for Indigenous Peoples cannot be overstated. Not only does the natural world influence identity, religious practices and beliefs, and provide resources for living and economic development, land rights and ownership allow a literal space within which Indigenous Peoples can exist and exert authority. Furthermore, territory and power are inextricably linked, where territory is a way to organize and exercise power, and the history of diminished Indigenous rights to their ancestral homelands worked in parallel with the history of diminished inherent tribal sovereign powers (Duthu 2008, 68).

For example, the first Supreme Court case pertaining to Indigenous Lands, which did not even include Indigenous litigants as the conflict was between two land speculators competing for superior title, upheld the 'doctrine of discovery' (*Johnson v. M'Intos*h, 21 U.S. 543, 1823). In an unanimous opinion, the Marshall Court upheld the European, colonial era doctrine by declaring that the discovery of lands occupied by Indigenous Peoples gave the discovering European (Christian) nation "an exclusive right to extinguish

the Indian title of occupancy, either by purchase or conquest" (*Johnson v. M'Intos*h, 21 U.S. 543, at 573; see also Duthu 2008; Williams 1990).[30]

Far from being relegated to past, *Johnson v. M'Intos*h continued to influence Supreme Court decisions in *Tee-Hit-Ton v. United States* (348 U.S. 272, 1955), which distinguished Indigenous land titles from 'recognized' titles to conclude that since the former was not 'property' under the Constitution that Congress could extinguish the Indigenous title without being considering a 'taking' (under the takings clause) and having to provide just compensation (Duthu 2008). Similarly, this precedent informed a 2005 Supreme Court decision in *City of Sherill, New York v. Oneida Indian Nation of New York* (544 U.S. 197), where the Court cited *Johnson* and the doctrine of discovery to hold that the repurchase of Indigenous lands does not restore tribal sovereignty to that land.

In 1903, the Supreme Court ruled in *Lone Wolf v. Hitchcock* (187 U.S. 553) that Congress had the power to unilaterally break treaty obligations with Indigenous Peoples and that tribal consent was no longer required as a factor in federal efforts to acquire more Indigenous lands (thus departing from *Cherokee Nation v. Georgia*, 1831, and *Worchester v. Georgia*, 1832). This precedent, aided by the allotment policies in the late 19th century reduced 138 million acres of Indigenous homelands in 1887 to 48 million acres by 1934 (Duthu 2008). As of 2016, there are 326 federally recognized reservations, encompassing 56.2 million acres of land held in trust by the U.S. for Indigenous tribes and individuals (U.S. Bureau of Internal Affairs).[31]

[30] It is not clear, however, if the Marshall Court's opinions were shared widely at the time or even consistent with the Framers' understanding and intent. Savage (1991) provides compelling arguments—based upon legal texts (the Constitution, international law, and a variety of treaties), the *Federalist Papers*, and records of the Continental Congress—that the Framers originally considered Indigenous Peoples sovereigns in power and territory rather than dependents (and that the Constitution never granted plenary power over Indigenous Peoples).

[31] https://www.bia.gov/FAQs/

Hence, the distribution of power and territory not only remain intertwined, but legal policies and precedent have consistently diminished these rights. We therefore hypothesize that the Court is less likely to uphold Indigenous claims that seek to expand their lands and territorial rights, for must of the same reasons as sovereignty issues where the United States seeks to maintain its power and authority.

H_{12}: The Court is less likely to uphold Indigenous claims regarding property and territorial rights

Party Capability

Because of the significant discrepancy of resources between (most) Indigenous Peoples and state and federal governments and corporations, we examine whether, and to what extent, party capability aids indigenous claims. According to the U.S. Census, as of 2015, 26.6% of Indigenous Peoples live in poverty (compared to 14.7% of the rest of the nation as a whole)—the highest rate of any racial group.[32] Furthermore, Indigenous unemployment rate as of 2015 was at 12% (compared to 6.3% of the nation as a whole).[33] This relative lack of financial resources can obviously hinder litigation strategies (and access), especially when conflicting with well-financed governments and businesses. Hence, we suspect that Indigenous litigants with less financial resources relative to their opponents are less likely to prevail in Court.

[32] https://www.census.gov/newsroom/facts-for-features/2016/cb16-ff22.html

[33] https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk

H_{13}: Indigenous litigants facing resource-rich opponents are less likely to enjoy support by the Court.

In the same manner, support by the federal government against a claimant can aid in Court support for Indigenous claims. Federal support where the U.S. government is party with Indigenous Peoples provide these litigants access to more resources than otherwise and serves as a strong indicator of executive policy preference (and treaty interpretation). Hence in terms of both a party capability and separation of powers framework, we expect federal support for Indigenous claimants to influence Court decision making.

H_{14}: Indigenous claims supported by the federal government are more likely to be protected by the Court, regardless of ideology.

In sum, due to (and reflective of) civil rights movement and the development of international legal frameworks, recent years have been marked by increased social justice awareness and prioritization. We ask if this awareness has translated into tangible protections experienced by Indigenous Peoples. While the majority of qualitative and legal studies observe that the Court has ruled against Indigenous interests the "vast majority" of the time (Pevar 2012), we offer the first empirical, systematic, and quantitative analysis of U.S. Supreme Court decisions from 1969- 2010.

Data and Methods

This data set is comprised of all the majority opinions in orally argued and formally decided by the United States Supreme Court from the 1969 term through the 2010 term.[34] We begin with the Supreme Court Database (SCDB) and removed cases that were not orally argued or were not issued a formal opinion. In the case of per curiam opinions, we took the average of the majority coalition.

The selected cases were batch downloaded and preprocessed using text cleaning/scouring python code. This process left us with 4575 raw majority opinions which we then ran through a Lexicoder script using a custom dictionary designed to indicate the presence of an indigenous law and litigants. Each of these identified majority opinions was then checked for the presence of indigenous law and coded for tribe, presence of indigenous treaty(s), presence of collective rights issue, issue areas,[35] opponent party capability,[36] state(s) of origin, federal support,[37] and case outcome (in favor of indigenous claims). We also included independent variables derived from the Supreme Court Database (SCDB) and Judicial Common Space Scores database (JCS), as mentioned above. These variables consist of the direction of case outcome (liberal or conservative, as coded by SCDB), the median justice ideology of the Court to take into account the conservativeness or

[34] This start date was chosen specifically so to examine trends across three different chief justices. We do not examine cases that the Court decided to dismiss as improvidently granted (DIG).

[35] Issue areas are coded for primary and secondary areas, including categories for sovereignty, property, environmental, criminal, family, and other.

[36] Opponent party capability is coded to represent increasing resources, where the baseline is the individual (coded '0'), business (coded '1'), local government (coded '2'), tribal government (coded '3'), state government (coded '4'), and federal government (coded '5'). Local government opponents include only two cases, and tribal government opponents represent a single case. The (majority of cases have state government (44.75% of cases), fed government (32.61% of cases), and business opponents (11.96% of cases), respectively. Cases with individual opponents represent 7.61% of sample cases.

[37] Federal support is a dichotomous variable where the federal government is party to the case in favor of the indigenous claim. In 38 cases, or 41.30%, the federal government supports indigenous claimants.

liberalness of the Court (from JCS), and the number of votes in the majority (provided by SCDB). From 1969-2010, we found 104 majority opinions that pertain to indigenous law.[38]

Results

As these data are preliminary, being the first to systematically and quantatively trace indigenous law as applied by the Supreme Court, we offer several descriptive statistics as well as present a logit and multinomial logit model examining Court application of indigenous law.

Descriptive Data

We find that, of the 4,536 case sample, only 104 cases pertain to indigenous law/issues (2.29% of sample). As shown in Figure 1, of these 104 cases, 37.50% case include the Supreme Court upholding indigenous law or rights (39 cases), and 11.54% (or 12 cases) include partial indigenous wins. Nearly 51% of Supreme Court cases reject indigenous claims entirely (53 cases).

<Insert Figure 1>

Looking at the number of cases decided at the Supreme Court per term, as shown in Figure 2, we find that the most litigation occurred in the 1970s and 1980s. Litigation similarly increased in 2001, but stayed relatively low throughout the 1990s and 2000s. The

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38 We also omitted from analyses cases where no Indigenous Peoples are party to the case in order to preserve only cases that directly pertain to indigenous affairs and present a conflict between a Indigenous Peoples and other entities. Hence, we exclude cases such as *Andrus, et al. v. Glover Construction Co.* (446 U.S. 608, 1980) and *Andrus v. Utah* (446 U.S. 500, 1980).

maximum number of indigenous cases decided by the Supreme Court in a given term is seven, and no indigenous cases were present in the 1974, 2006, and 2009 terms. Hence, at least descriptively, H_1 seems plausible that much of the litigation pertaining to indigenous rights followed or was concurrent with the mobilization of indigenous civil rights groups. Of course this plausibility cannot assert the degree to which these movements caused increased litigation directly.

<Insert Figure 2>

In terms of descriptive temporal trends regarding indigenous victories at the Supreme Court level (H_2), Figure 3 is striking. The most indigenous victories at the Supreme Court occurred in the late 1960s through 1980s. After 1986, the Court issued at most only a single decision in favor of indigenous claims per term year. Hence, while it appears that, at least descriptively, it is plausible that the indigenous rights movements helped to achieve legal victories at the Supreme Court level, but these legal victories did not continue. Much of the legal victories appear concurrent with the heyday of these movements, consistent with H_2, but few victories appear in more recent years (unlike our expectations).

<Insert Figure 3>

Notably, in none of these indigenous cases does international law appear. Hence, even descriptively we see that international law has not appeared in any Court opinion determining indigenous rights. This complete absence implies that these rights frameworks are not determinative or sufficiently influential to merit reference in U.S. Supreme Court decision making in this area—contrary to our expectations in H_3- H_6.

On the other hand, just under half of indigenous cases pertain to treaties between the federal government and Indigenous Peoples. The Court cites these treaties in 42.31% of cases. In terms of issue areas, treaties with tribes are most frequent in cases pertaining to sovereignty as a primary or secondary issue (33 cases). Treaties are cited in 26 property cases, 3 environmental cases, 4 criminal cases, and 9 "other" cases. Figure 4 depicts the breakdown of treaty citation by primary issue area. Yet, as shown in Figure 5, little difference appears in terms of case outcomes. While merely descriptive, it seems that the presence of treaties with Indigenous Peoples may not significantly determine Supreme Court decisions, showing preliminary (descriptive) evidence contrary to H_7.

<Insert Figures 4 and 5>

The majority of these cases pertain to sovereignty and property issues, with only a handful of cases pertaining to environmental, criminal, familial, or other issues.[39] Over 80% of indigenous cases pertain to sovereignty issues as either the primary or secondary issue area. Property issues encompass nearly 58% of cases. Environmental or natural resource issues reflect 14.42% of cases, and criminal adjudication reflects 11.54% of cases. Only a single case pertains to family law,[40] and other issues encompass 28.85% of cases.[41]

[39] Sovereignty related issues represent 85 cases (as either the primary or secondary issue), and property cases represent 60 cases. Environmental issues reflect 15 cases, criminal cases represent 12 cases, family issues reflect 1 case, and other issues are reflected in 30 cases.

[40] The family law case—which is a secondary issue—is *Santa Clara Pueblo v. Martinez* (436 U.S. 49, 1978), which pertained to tribal membership of children. The primary issue in this case is sovereignty as related to the authority of tribes to determine their own membership.

[41] Only three cases have a primary issue area of "other." In these cases, conflicts related to usufructuary rights to hunting fishing, and gathering on ceded lands (*Minnesota v. Mille Lacs Band of Chippewa Indians,* 526 U.S. 172, 1999), health care contract disputes (*Cherokee Nation of Oklahoma v. Leavitt,* 543 U.S. 631, 2005), general assistance benefits (*Morton v. Ruiz,* 415 U.S.199, 1974).

Figure 6 depicts the breakdown of primary issue areas across this sample of cases, where the family law category is omitted since no case has this issue as a primary concern.

<Insert Figure 6>

In this sample, 86.54% (90 cases) pertain to collective rights. This large proportion of collective rights cases is unsurprising since the vast majority of indigenous rights exist only within a collective rights framework. As shown in Figure 7, excluding the partial wins, 78 cases (84.78% of cases) pertain to collective rights, where 34 cases resulted in a victory for indigenous claims while 44 cases resulted in a loss. At least descriptively then, the rights framework does not appear to correlate with Court favor (contrary to H_{11}).

<Insert Figure 7>

Finally, in 44.23% of cases (46 cases) the federal government litigated on behalf of or was party with Indigenous Peoples. As shown in Figure 8, excluding partial wins, in only 16 cases (17.39% of cases) did the Court determine in favor of Indigenous Peoples even when supported by the federal government in their claim. Similarly, just as the Indigenous Peoples represented in these cases are fairly evenly distributed where no Indigenous tribe represents a bulk of the cases, the federal government does not appear to support any Indigenous group more so than others. Over thirty different Indigenous Peoples received federal support in their litigation at the Supreme Court.

<Insert Figure 8>

Finally, excluding partial wins, the Burger Court has the most number of cases, followed by Rehnquist and Roberts, respectively. As depicted in Figure 9, the Burger Court represents 53.26% of cases, while Rehnquist represents 40.22% of cases. The Roberts Court represents 6.52% of cases, due to the end of our time range. Under the Burger Court

57.14% of cases (28 cases) favored indigenous claims, while the Rehnquist Court favored indigenous claims 29.73% of the time (11 cases). For the six cases under the Roberts Court, indigenous claims none were successful.

<Insert Figure 9>

Logit Analysis

Because our dependent variable, case outcome in favor of indigenous claims, is dichotomous, we use a logit model. We exclude the partial wins (12 cases) from this preliminary analysis, leaving 92 cases for evaluation. Table 1 depicts the results from this analysis at the court level. Immediately apparent is that almost none of the variables achieve statistical significance. Hence, the vast majority of these legal and ideological factors appears to systematically influence Supreme Court decision making in terms of case outcome. While court ideology nears statistical significance (with a p of 0.075), the only variable to reach significance is the interaction between court ideology and sovereignty issue area—which contradicts H_{10}. In this case, as the Court becomes more conservative, the Court is more likely to uphold indigenous sovereignty claims.[42]

<Insert Table 1>

Substantively, these null results indicate that claims referring to treaties are not more likely to receive Court support, regardless of Court ideology, contrary to H_7 and H_8. Similarly, Court ideology does not appear to have an effect on case outcome in terms of favoring indigenous rights. Neither does the degree of agreement among the justices

[42] The baseline y = 0.419 and the marginal effect is 2.770.

influence case outcome. Our hypothesis that sovereignty related cases would be less likely to receive Court support relative to other issue areas (H_9) similarly fails to achieve systematic support. The type of rights framework does not systematically influence Court decisions, despite the prevalence of collective rights related cases (contrary to H_{11}). The Supreme Court is also no less likely to uphold indigenous claims in property disputes, which fails to provide systematic support for H_{12}. Party capability similarly fails to receive systematic empirical support, contrary to H_{13}, and federal support (H_{14}) appears to have no significant effect.

Mulinomial Logit Analysis

We turn to the multinomial logit analysis, shown in Table 2, to preserve the partial victories. These results are similar to those from the logit presented above in terms of predicting wins, though the interaction between Court median ideology and sovereignty rests on the cusp of significance with a p value of 0.058. Similarly, Court median ideology itself again fails to achieve significance with a p value of 0.065, and the rest of the variables show null results. However, in terms of partial wins, we find that dichotomous variables for collective rights, sovereignty cases, property cases, and environmental cases all achieve statistical significance in a positive direction. Hence, these types of issue areas are more likely to result in a partial win than a loss.[43]

Conclusion

[43] The baseline probability of a loss is 0.574.

In conclusion, we find that few legal and political variables systematically predict indigenous case outcomes at the Supreme Court level. Court ideology and sovereignty appear to have some influence, as well as case issue area in some instances. However, we find that as the Court becomes more conservative, the Court is more likely to uphold indigenous sovereignty claims.

Despite this paucity of results, we do find important descriptive information that had not be obtained previously through systematic and empirical analyses. For instance, we find that on 2.29% of the Supreme Court docket from 1969-2010 included indigenous cases, of which nearly 51% of cases consisted of losses. We similarly find that the majority of these cases occur concurrently with the pinnacle of indigenous rights movements. While we can make no causal claims, future research should identify the degree to which these movements had a direct effect on Supreme Court decision making. Disappointingly, Court support for indigenous rights have since faltered despite general increases in social awareness and rights focus. It appears that Indigenous Peoples remain forgotten in these social justice endeavors, at least at the Supreme Court level.

Also notable is the stark absence of international law and human rights frameworks in Supreme Court decision making. In this regard, the United States appears to be falling behind other countries—particularly in Europe, the Americas, and Africa—in adopting these legal frameworks. This absence is worrisome for advocates of Indigenous Peoples since it limits their legal recourse and litigation strategies in their efforts to protect their rights.

Furthermore, the presence of indigenous treaties with the federal government does not appear to systematically improve the likelihood of Court support. However, future

research will need to distinguish treaties in order to provide a more nuanced evolution of the law. One reason for the lack of systematic results, for instance, could be due to termination of treaty obligations by several administrations. In this preliminary analysis we did not distinguish between these abrogated treaties and non-abrogated treaties.

Furthermore, future analyses would benefit from the inclusion of additional Court terms to provide more variation and increased sample size. Our analyses are fairly limited on both accounts. Nonetheless, the lack of systematic influence in determining indigenous cases reflects the inconsistency in indigenous policy emphasized by virtually all the scholarship and justices themselves.

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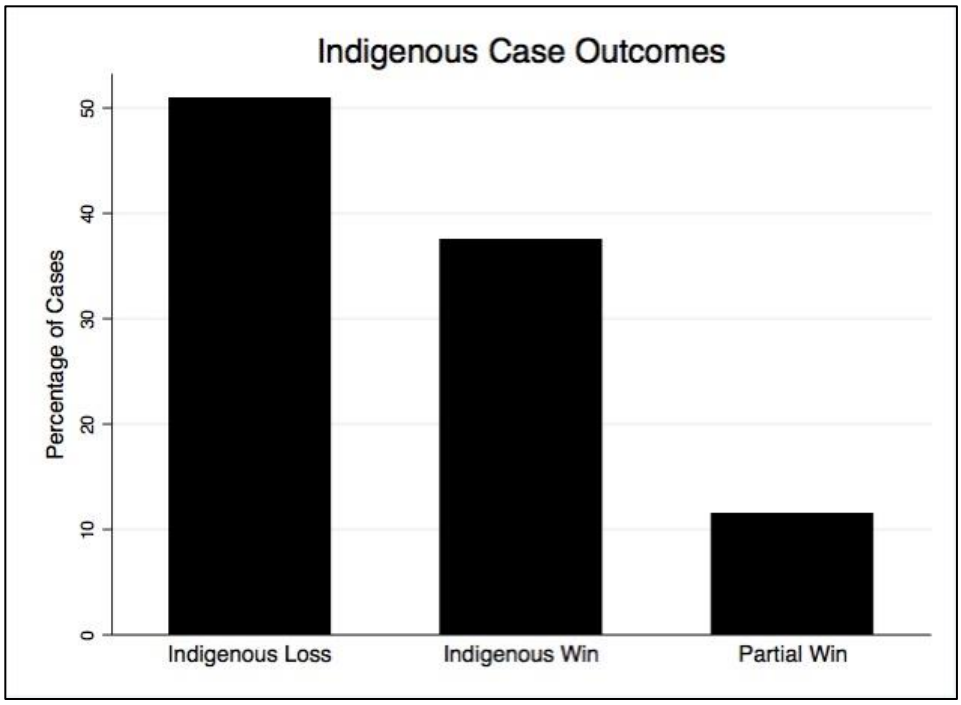

Figure 1: Indigenous Case Outcomes

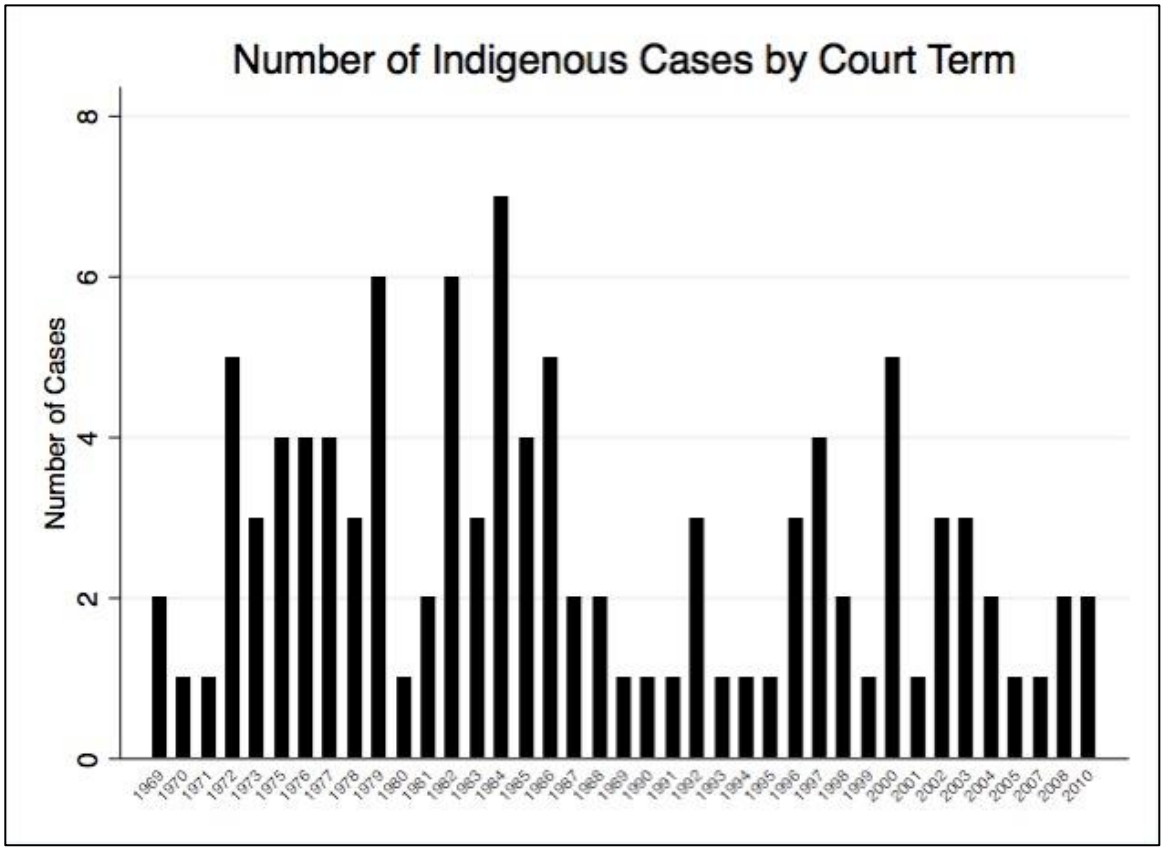

Figure 2: Number of Indigenous Cases Per Court Term

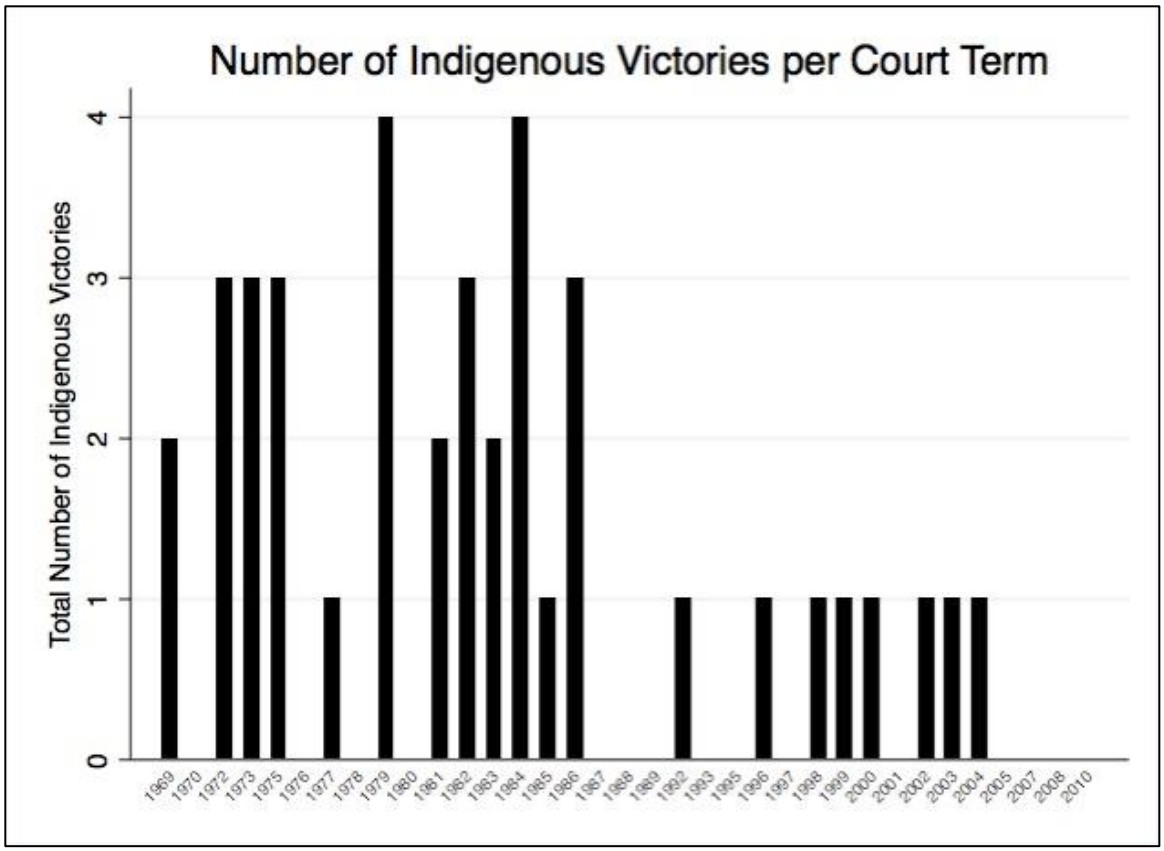

Figure 3: Number of Indigenous Victories Per Court Term

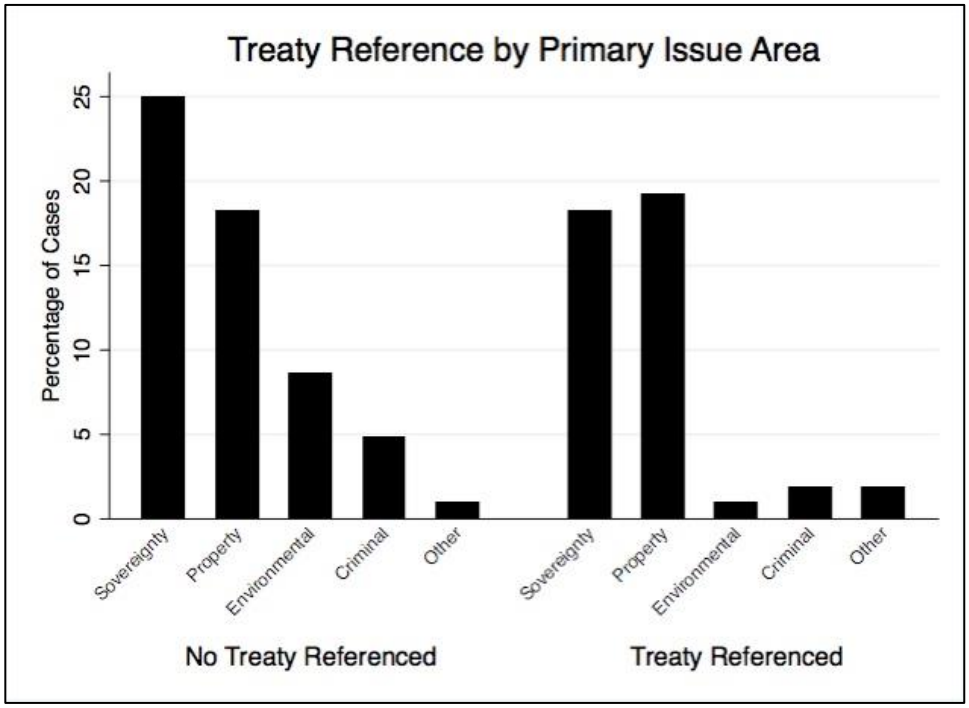

Figure 4: Treaty Reference by Primary Issue Area

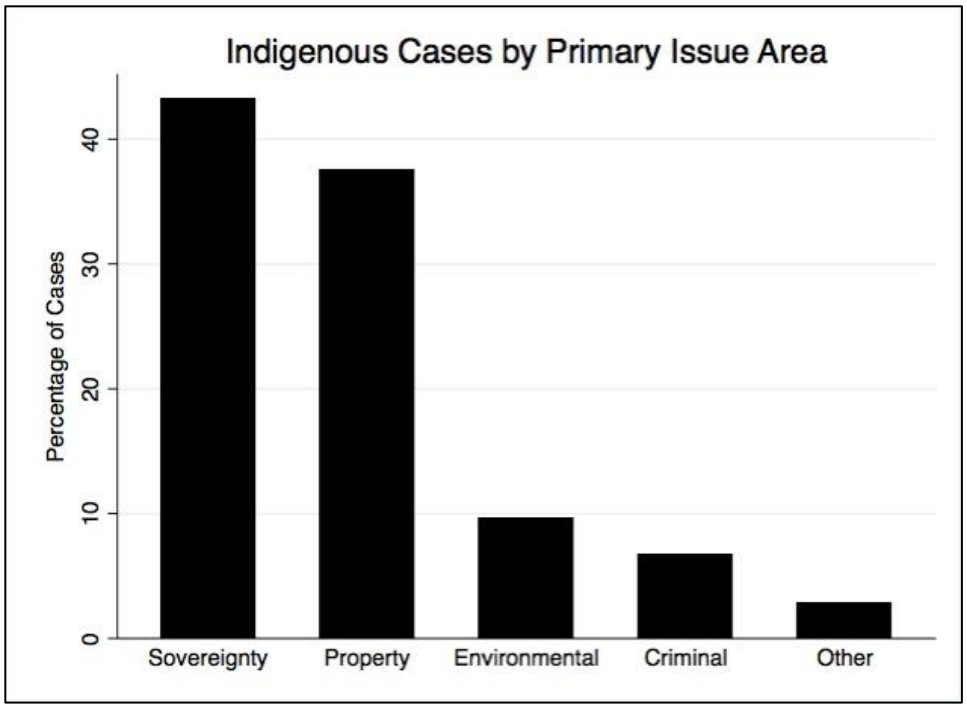

Figure 5: Indigenous Cases by Primary Issue Area

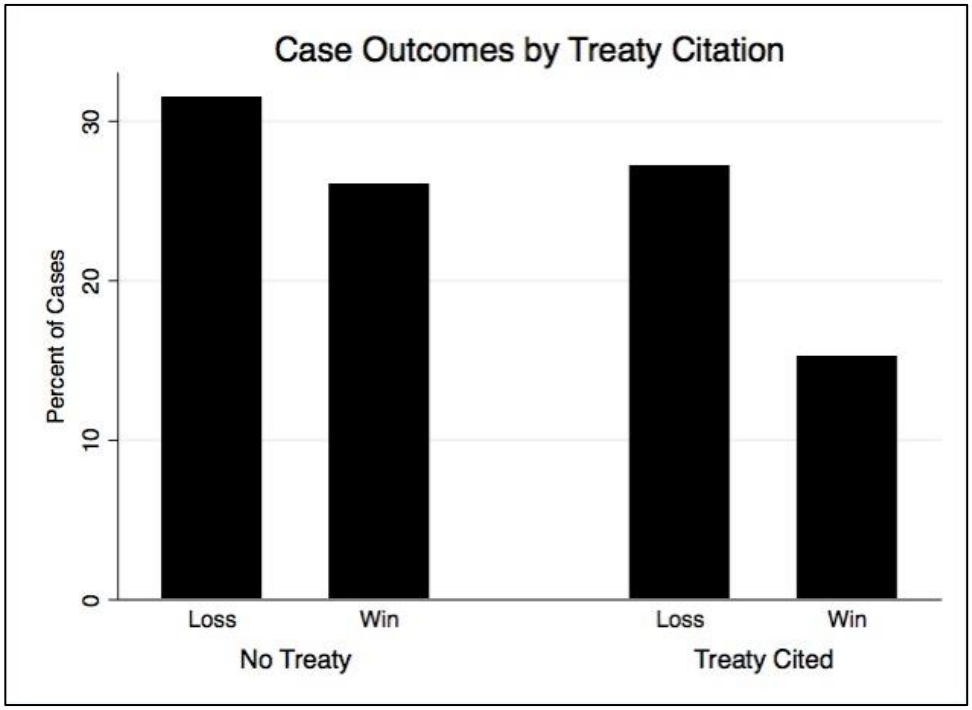

Figure 6: Case Outcomes by Treaty Citation

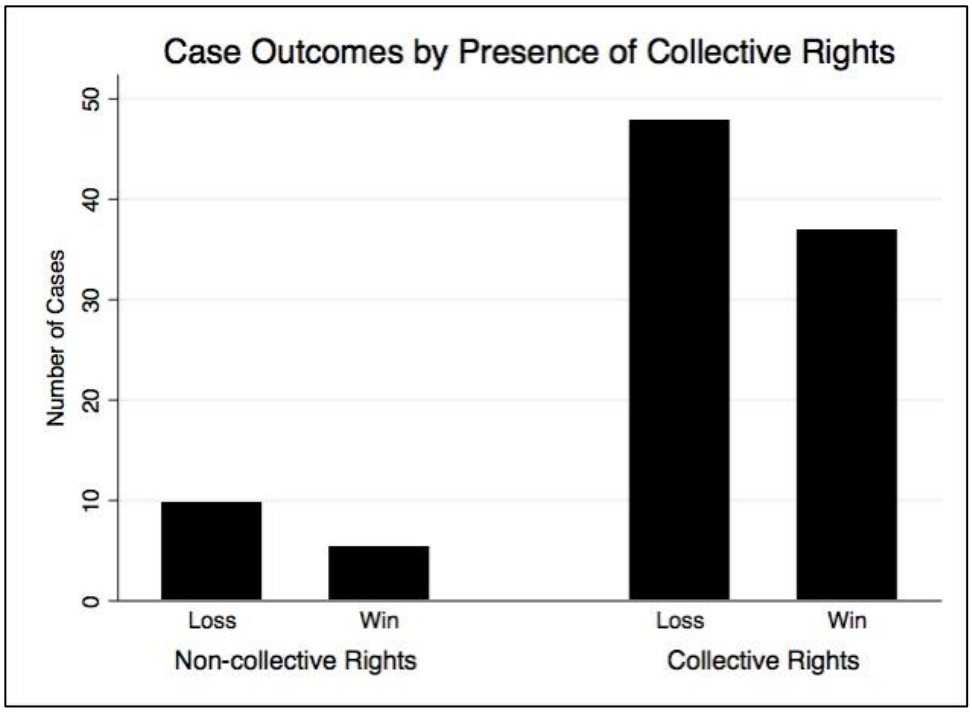

Figure 7: Case Outcomes by Presence of Collective Rights

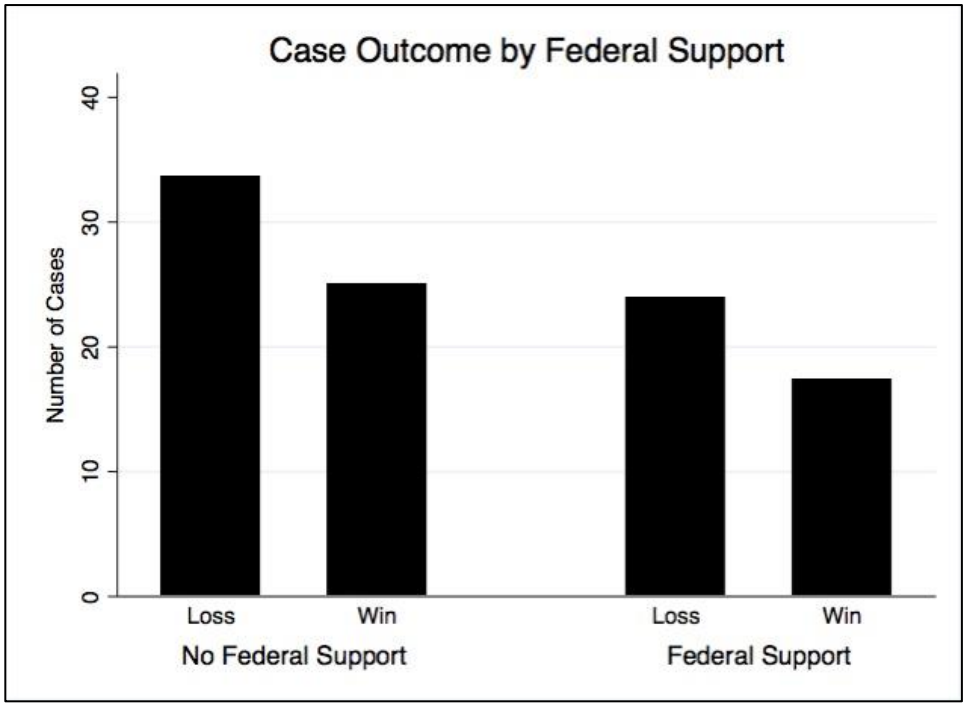

Figure 8: Case Outcomes by Federal Support

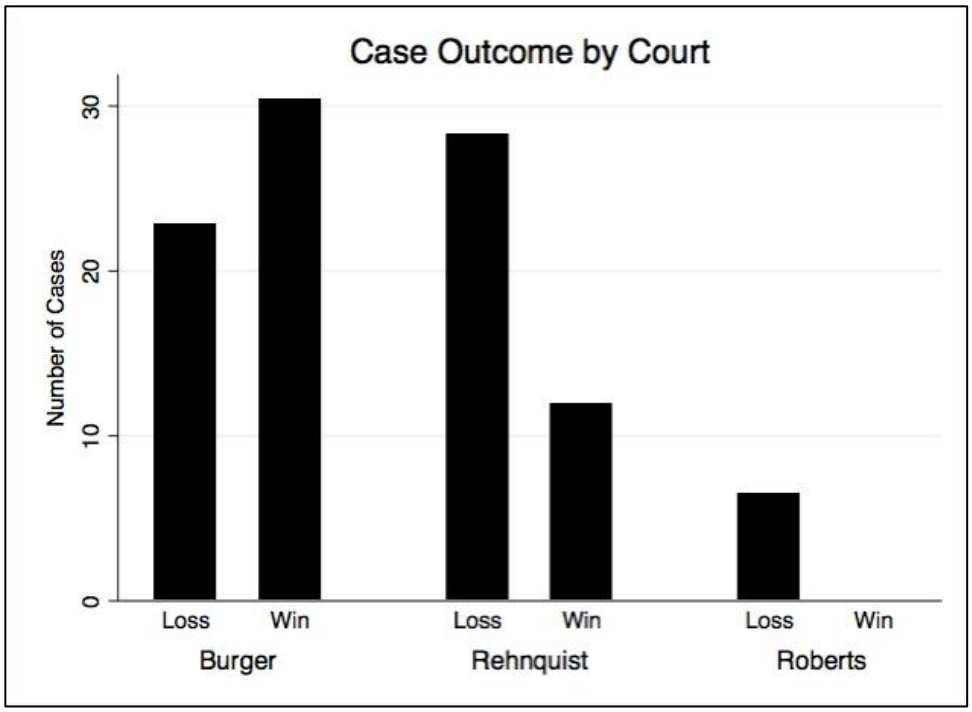

Figure 9: Case Outcome by Court

Table 1: Logit Predicting Indigenous Supreme Court Victory, 1969-2010

	Coefficient
Majority Vote	-0.154 (0.189)
Court Median Ideology	-7.805[t] (4.388)
Opponent Capability	-0.155 (0.168)
Treaty	-0.470 (0.938)
Court Ideology and Treaty Interaction	-0.546 (7.100)
Collective Rights	-0.078 (0.832)
Federal Support	-0.185 (0.661)
Sovereignty Issue Area	-0.239 (1.188)
Court Ideology and Sovereignty Interaction	11.380* (5.875)
Property Issue Area	0.385 (0.640)
Environmental Issue Area	0.317 (1.429)
Constant	1.820 (1.713)
Number of Observations	92
Wald chi2(11)	10.18
Prob > chi2	0.514
Pseudo R2	0.063
Log pseudolikelihood	-58.760
Correctly Classified	65.22%

* $p < 0.05$

Note: The dependent variable is case outcome, coded as indigenous win ('1') or loss ('0'). Partial wins are omitted from the data, and the baseline issue area is criminal cases. The three 'other' category cases were added to the secondary issue area category in order to preserve observations (which added one observation to sovereignty and two to property). The error terms are clustered by term (in 35 clusters). Standard errors are listed below the coefficients in parentheses. Court Median Ideology has a p value of .072.

Table 2: Multinomial Logit Predicting Indigenous Supreme Court Victory, 1969-2010

	Coefficients for Win	**Coefficients for Partial Win**
Majority Vote	-0.153 (0.186)	-0.106 (0.231)
Court Median Ideology	-7.988[t] (4.333)	-5.478 (9.000)
Opponent Capability	-0.151 (0.170)	-0.087 (0.286)
Treaty	-0.535 (0.918)	0.302 (1.591)
Court Ideology and Treaty Interaction	0.155 (6.600)	-2.070 (12.895)
Collective Rights	-0.065 (0.828)	13.728*** (0.857)
Federal Support	-0.138 (0.667)	0.871 (0.716)
Sovereignty Issue Area	-0.238 (1.222)	11.933*** (1.920)
Court Ideology and Sovereignty Interaction	10.758 [t] (5.682)	13.090 (9.612)
Property Issue Area	0.777 (1.278)	13.009*** (1.717)
Environmental Issue Area	0.186 (1.438)	13.614*** (1.898)
Constant	1.826 (1.680)	-27.109*** (2.629)
Number of Observations	104	
Wald chi2(22)	1781.85	
Prob > chi2	0.000	
Pseudo R2	0.077	
Log pseudolikelihood	-92.206	

* $p < 0.05$ **$p < 0.01$ *** $p < 0.001$

Note: The dependent variable is case outcome, coded as indigenous win ('1'), partial win ('2'), or loss ('0'). The baseline category is case loss ('0'), and the baseline issue area is criminal cases. The three 'other' category cases were added to the secondary issue area category in order to preserve observations (which added one observation to sovereignty and two to property). The error terms are clustered by term (in 39 clusters). Standard errors are listed below the coefficients in parentheses. Court median ideology for predicting wins is .065, and the p value for the interaction between ideology and sovereignty issues area is 0.058.

Appendix A: Cases involving Indigenous Peoples

AFFILIATED UTE CITIZENS OF UTAH et al. v. UNITED STATES et al.
ALASKA v. NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT et al.
AMOCO PRODUCTION CO. et al. v. VILLAGE OF GAMBELL et al.
AMOCO PRODUCTION COMPANY, ON BEHALF OF ITSELF AND THE CLASS IT REPRESENTS v. SOUTHERN UTE INDIAN TRIBE et al.
ARIZONA et al. v. SAN CARLOS APACHE TRIBE OF ARIZONA et al.
ARIZONA v. CALIFORNIA et al.
ATKINSON TRADING COMPANY, INC. v. JOE SHIRLEY, JR., et al.
BRUCE BABBITT, SECRETARY OF THE INTERIOR, et al. v. MARVIN K. YOUPEE, SR., et al.
BRYAN v. ITASCA COUNTY, MINNESOTA
C & L ENTERPRISES, INC. v. CITIZEN BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA
CALIFORNIA et al. v. CABAZON BAND OF MISSION INDIANS et al.
CASS COUNTY, MINNESOTA, et al. v. LEECH LAKE BAND OF CHIPPEWA INDIANS
CENTRAL MACHINERY CO. v. ARIZONA STATE TAX COMMISSION
CHEROKEE NATION OF OKLAHOMA AND SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION v. MICHAEL O. LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES, et al.
CHICKASAW NATION v. UNITED STATES
CHOCTAW NATION et al. v. OKLAHOMA et al.
CITY OF SHERRILL, NEW YORK v. ONEIDA INDIAN NATION OF NEW YORK, et al.
COLORADO RIVER WATER CONSERVATION DISTRICT et al. v. UNITED STATES
COUNTY OF ONEIDA, NEW YORK, et al. v. ONEIDA INDIAN NATION OF NEW YORK STATE et al.
COUNTY OF YAKIMA, et al. v. CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION
DELAWARE TRIBAL BUSINESS COMMITTEE et al. v. WEEKS et al.
DEPARTMENT OF GAME OF WASHINGTON v. PUYALLUP TRIBE et al.
DEPARTMENT OF THE INTERIOR AND BUREAU OF INDIAN AFFAIRS v. KLAMATH WATER USERS PROTECTIVE ASSOCIATION
DONALD L. CARCIERI, GOVERNOR OF RHODE ISLAND, et al. v. KEN L. SALAZAR, SECRETARY OF THE INTERIOR, et al.
DURO v. REINA, CHIEF OF POLICE, SALT RIVER DEPARTMENT OF PUBLIC SAFETY, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, et al.
EMERY L. NEGONSOTT v. HAROLD SAMUELS, WARDEN, et al.
EMPLOYMENT DIVISION, DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF OREGON, et al. v. SMITH
ESCONDIDO MUTUAL WATER CO. et al. v. LA JOLLA BAND OF MISSION INDIANS et al.
HODEL, SECRETARY OF THE INTERIOR v. IRVING et al.

IDAHO v. UNITED STATES et al.
IDAHO, et al. v. COEUR D'ALENE TRIBE OF IDAHO, ETC., et al.
INYO COUNTY, CALIFORNIA, et al. v. PAIUTE-SHOSHONE INDIANS OF THE BISHOP COMMUNITY OF THE BISHOP COLONY et al.
IOWA MUTUAL INSURANCE CO. v. LAPLANTE et al.
JOAN WAGNON, SECRETARY, KANSAS DEPARTMENT OF REVENUE v. PRAIRIE BAND POTAWATOMI NATION
KEEBLE v. UNITED STATES
KERR-MCGEE CORP. v. NAVAJO TRIBE OF INDIANS et al.
MATTZ v. ARNETT, DIRECTOR, DEPARTMENT OF FISH AND GAME
MCCLANAHAN v. ARIZONA STATE TAX COMMISSION
MERRION et al., DBA MERRION & BAYLESS, et al. v. JICARILLA APACHE TRIBE et al.
MESCALERO APACHE TRIBE v. JONES, COMMISSIONER, BUREAU OF REVENUE OF NEW MEXICO, et al.
MICHAEL E. LINCOLN, ACTING DIRECTOR OF THE INDIAN HEALTH SERVICE, et al. v. GROVER VIGIL et al.
MINNESOTA, et al. v. MILLE LACS BAND OF CHIPPEWA INDIANS et al.
MISSISSIPPI BAND OF CHOCTAW INDIANS v. HOLYFIELD et al.
MOE, SHERIFF, et al. v. CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION et al.
MONTANA et al. v. BLACKFEET TRIBE OF INDIANS
MONTANA et al. v. UNITED STATES et al.
MONTANA, et al. v. CROW TRIBE OF INDIANS et al.
MORTON, SECRETARY OF THE INTERIOR v. RUIZ ET UX.
MOUNTAIN STATES TELEPHONE & TELEGRAPH CO. v. PUEBLO OF SANTA ANA
NATIONAL FARMERS UNION INSURANCE COS. et al. v. CROW TRIBE OF INDIANS et al.
NEVADA v. UNITED STATES et al.
NEVADA, et al. v. FLOYD HICKS, et al.
NEW MEXICO et al. v. MESCALERO APACHE TRIBE
NORTHERN CHEYENNE TRIBE v. HOLLOWBREAST et al.
OKLAHOMA TAX COMMISSION v. CHICKASAW NATION
OKLAHOMA TAX COMMISSION v. CITIZEN BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA
OKLAHOMA TAX COMMISSION v. GRAHAM et al.
OKLAHOMA TAX COMMISSION v. SAC AND FOX NATION
OLIPHANT v. SUQUAMISH INDIAN TRIBE et al.
ONEIDA INDIAN NATION OF NEW YORK et al. v. COUNTY OF ONEIDA, NEW YORK, et al.
OREGON DEPARTMENT OF FISH AND WILDLIFE et al. v. KLAMATH INDIAN TRIBE
PLAINS COMMERCE BANK v. LONG FAMILY LAND & CATTLE CO.
PUYALLUP TRIBE, INC., et al. v. DEPARTMENT OF GAME OF WASHINGTON et al.

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