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DUE PROCESS: *Delaware Tribal Business Committee v. Weeks*: THE PARTICIPATION OF KANSAS DELAWARES IN TRIBAL AWARDS

Steven Haught

The purpose of creating the Indian Claims Commission¹ was "to erase certain evils of long standing."² These "evils" include numerous breaches of treaty agreements. One such treaty agreement was the Treaty of 1854³ between the United States and the Delaware Nation. This note will explore the unsuccessful effort of one band of Delawares, the Kansas Delawares, to participate in an award made by the Indian Claims Commission to redress the harm caused by the breach of the 1854 Treaty.⁴ The purpose of this note is to discuss the decision by the United States Supreme Court, in *Delaware Tribal Business Committee v. Weeks*,⁵ in which the Court denied the Kansas Delawares the right to participate in the award. This case illustrates the constitutional problems related to participation in tribal awards, and, in addition, is a significant example of the failure of Congress and the United States Supreme Court to fulfill the promise of the Indian Claims Commission Act.⁶

History of Delawares

In order to understand the relationship of the Kansas Delawares to the Delaware Nation as a whole, it is necessary to briefly review the history of the Delaware Nation.⁷ Originally the Delaware Indians lived in the northeastern region of the United States.⁸ Under pressure from white settlers, the Delawares were forced to migrate to the north and west, and the Delaware Nation was geographically scattered by the early nineteenth century.⁹ The Munsee Indians, of Delaware ancestry, settled in Canada and New York.¹⁰ A number of Delawares moved to Missouri in 1793 to occupy a grant of land made to them by the Spanish government.¹¹ Gradually, some Delawares moved west to Arkansas, Oklahoma, and Texas, but the main body of Delawares resided in Indiana and Ohio until 1818.¹² The Delaware Nation ceded to the United States all of its claims to land in the state of Indiana in the St. Mary's Treaty of 1818.¹³ In return, the United States agreed to provide the Delawares with land west of the Mississippi River and guarantee them peaceable possession of that land.¹⁴ Subsequent to the signing of the treaty, the Delawares moved to Missouri, where they remained until 1829, when, under the terms of a supplemental trea-

ty, they moved to Kansas.¹⁵ A number of Delawares who had settled in Missouri, Arkansas, Oklahoma, and Texas joined the main body of Delawares in Kansas,¹⁶ but one group of Delawares, moving from Texas to Kansas, obtained permission in 1853 from the Choctaw Nation to reside on Choctaw lands as tenants at will.¹⁷ The descendants of this group of Delawares now live in southwestern Oklahoma and are known as the Absentee Delaware Tribe of Western Oklahoma or as the Absentee Delawares.¹⁸

In 1854, the Delawares living in Kansas signed a treaty with the United States in which they ceded their land in Kansas to the United States,¹⁹ with the exception of certain lands to be reserved to the Delaware Nation as a permanent home,²⁰ four sections to be conveyed to the Christian Indians,²¹ and the remaining segment of the residence lands were ceded to the United States with a provision in the treaty that this land was to be sold at public auction, with the proceeds to be contributed solely to the Delaware tribal fund.²²

In 1856 and 1857, the United States government sold the aforementioned lands without holding a public auction, in violation of the Treaty of 1854. As a result of the wrongful sale of these lands, the Delawares were awarded just compensation in 1969.²³

The Delawares entered into another treaty with the United States in 1866,²⁴ whereby the Delawares were to move to the Indian Territory and live with the Cherokees.²⁵ The Treaty of 1866 provided that the United States would guarantee payment for Kansas lands sold by the Delawares to the Leavenworth, Pawnee & Western Railroad Company by the Treaty of 1860.²⁶ The treaty further provided that the Delawares authorized the United States government to sell the remainder of the land in Kansas to the Missouri River Railroad Company, with the exception of land reserved to Delawares who elected to become citizens of the United States.²⁷ The proceeds of this sale were to be used to purchase land for the Delawares in Indian Territory.²⁸ All adult Delawares were given the opportunity to move to Indian Territory or dissolve all relations with the Delaware Nation and become citizens of the United States.²⁹ Each adult Delaware who chose to become a citizen of the United States was to receive fee simple title to an 80-acre tract of land allotted under the 1860 treaty, a just proportion of the credits of the Delaware Nation held in trust, and also his just proportion of the proceeds of the sale of the Kansas reservation lands.³⁰ A registry was to be made of all Delawares who elected to become citizens of the United States, and such Delawares were precluded by the treaty from sharing

further in Delaware property or annuities.³¹ The descendants of this group of Delawares are now known as Kansas Delawares.

Each Delaware who moved to Indian Territory, pursuant to an agreement made between the Cherokee Nation and the United States in 1866,³² enrolled upon a register³³ and acquired a life estate of 160 acres of land from the Cherokees.³⁴ The descendants of this group reside today in northeastern Oklahoma and are known as the Cherokee Delawares.³⁵

Weeks v. United States

Members of the Kansas Delawares brought suit against the United States, the Cherokee Delawares, the Absentee Delawares, and the Secretary of the Interior in the District Court for the Western District of Oklahoma in 1975,³⁶ challenging the constitutionality of two federal statutes. The first statute, Sections 1181-86 of Title 25 of the United States Code (1970), determined the distribution of Indian Claims Commission award, Docket No. 337, redressing a wrong committed by the United States against the Delaware Indians under the Treaty of 1818.³⁷ The effect of this statute was to distribute the award among the Cherokee Delawares, the Absentee Delawares, and the Kansas Delawares.³⁸ The Kansas Delawares challenged the inclusion of the Cherokee Delawares in this award on the basis that it was violative of the fifth amendment's due process and just compensation clauses,³⁹ but the district court held that the inclusion of the Cherokee Delawares in the award was valid.⁴⁰

The second statute challenged, Sections 1291-97 of Title 25 of the United States Code (Supp. IV 1974), determined the distribution of Indian Claims Commission award, Dockets Nos. 72 and 298, redressing a breach by the United States of a treaty made with the Delaware Nation in 1854.⁴¹ The effect of this statute was to distribute the award among the Cherokee Delawares and the Absentee Delawares, excluding the Kansas Delawares.⁴² The Kansas Delawares challenged their exclusion from Section 1292 "as an invidious classification in violation of the Due Process Clause of the Fifth Amendment and equal protection principles applied under the Amendment."⁴³ The district court upheld this constitutional claim, but denied the claim that the exclusion of the Kansas Delawares and the inclusion of the Absentee Delawares and Cherokee Delawares in the distribution of the award constituted a deprivation of property without just compensation in violation of the fifth amendment.⁴⁴ In holding the exclusion of Kansas Delawares from distribution of the award under Sections 1291-97

to be violative of due process, the district court enjoined the distribution of funds under said statute as written.⁴⁵

Delaware Tribal Business Committee v. Weeks

The Secretary of the Interior, the Cherokee Delawares, and the Absentee Delawares appealed the decision in *Weeks v. United States*⁴⁶ to the United States Supreme Court and obtained a reversal of the lower court's decision.⁴⁷ In an opinion written by Justice Brennan, the Court held that the exclusion of the Kansas Delawares from distribution of the Indian Claims Commission award, pursuant to Sections 1291-97, did not offend the due process clause of the fifth amendment because such exclusion was "tied rationally to the fulfillment of Congress' unique obligation toward the Indians."⁴⁸ The Court then explained three reasons for its decision.

First, the Court noted that "the Kansas Delawares are not a recognized tribal entity, but are simply individual Indians with no vested rights in any tribal property."⁴⁹ They are therefore ineligible to receive an award designed to redress a breach with a tribal entity, the Delaware Nation. Second, the Court explained that the Kansas Delawares must be excluded from the present award as they had previously been excluded from participation in tribal assets.⁵⁰ Finally, the Court stated that the exclusion of the Kansas Delawares from distribution of the award was a deliberate act by Congress.⁵¹

It is necessary to discuss each of these three reasons for exclusion of the Kansas Delawares in order to understand the ramifications of the holding in *Delaware Tribal Business Committee v. Weeks* on Indian claims in the future. A closer examination of the reasons given by the Court reveals that the reasons are not sufficient.

Delawares as Tribal Entity

The Court stated that the Kansas Delawares were properly excluded from the award because they terminated their membership in the Delaware Nation in 1866,⁵² when they became citizens of the United States.⁵³ The Court reasoned that due to the severance from the Delaware Nation, the descendants of the Kansas Delawares have no vested rights in any tribal property. Thus, because the award in question was designed to compensate a wrong done to the tribal entity, the Delaware Nation, the Kansas Delawares did not qualify.⁵⁴

The Court's reasoning in this regard is faulty. First, it is undisputed that the Kansas Delawares are lineal descendants of members of the Delaware Nation as constituted when the Treaty of 1854⁵⁵ was signed, and in 1856 and 1857 when the treaty was breached by the United States.⁵⁶ Given the fact that the purpose of the Indian Claims Commission award⁵⁷ was to redress the harm suffered by the Delawares as a result of the breach of the Treaty of 1854 by the United States, it is illogical to hold that the Kansas Delawares should not benefit from this award. In fact, when the Indian Claims Commission first determined that the United States breached the Treaty of 1854, it noted that any recovery for such a breach "must be for the benefit of all the descendants of the Delaware Nation as constituted in 1829 and 1854."⁵⁸ Even though it had previously been decided, in regard to the breach of the Treaty of 1818 and the supplemental Treaty of 1829, that the Absentee Delawares and Cherokee Delawares could jointly represent the entire Delaware Tribe,⁵⁹ it has been the position of the Court of Claims⁶⁰ that the representatives of a particular Indian group do not own a claim in themselves, but they are representatives of the ancestral group which owns the claim.⁶¹ As Justice Stevens observed in his dissenting opinion in *Delaware Tribal Business Committee v. Weeks*,⁶² it is inconsistent to exclude the Kansas Delawares from sharing in the award because they severed ties with the Delaware Tribe and to include the Cherokee Delawares, who "ceased being members of the Delaware Tribe in 1867, when they joined the Cherokee Nation."⁶³ Justice Stevens also noted that "some of those who would share in the distribution on behalf of the Absentee Delawares are not members of that tribe."⁶⁴

In summary, the Court's reasoning to the effect that the Kansas Delawares should be excluded from the award because they severed their relationship with the Delaware Nation in 1866 is contrary to the purpose of the award and contrary to the fact that the ancestors of the Kansas Delawares were included in the Delaware Nation at the time that the breach of the Treaty of 1854 occurred. As the United States District Court stated in *Weeks*:

Had the United States fulfilled its obligations in good faith under the 1854 Treaty, the Kansas Delawares on electing citizenship would each have received their just proportion of the land sales in 1856 and 1857. The award in Dockets Nos. 72 and 298 was clearly intended to redress the injury and diminution of proceeds from those sales.⁶⁵

Clearly, the first reason given by the Court to exclude the Kansas Delawares is not supported by equitable considerations.

Prior Exclusion of Kansas Delawares

The second reason given by the Supreme Court for the exclusion is that the Kansas Delawares had previously been excluded from sharing in an award. The award referred to by the Court was an award made in 1904⁶⁶ to the Cherokee Delawares to compensate them for a wrong committed under the Treaty of 1854, which was unrelated to the breach of treaty obligations at issue in the instant case.⁶⁷ It is interesting to note that the Absentee Delawares did not share in the 1904 award, yet they were not excluded in the most recent award. The reason that the Kansas Delawares were excluded from the 1904 award was that the 1904 claim was asserted pursuant to a Cherokee allotment statute, which applied only to Cherokees. Therefore, this prior exclusion clearly lacks precedential value insofar as the instant case is concerned. There was no reason for the Kansas Delawares to be included in the 1904 award, and it is certainly erroneous for the Court to conclude that this earlier exclusion of the Kansas Delawares "indicates that Congress has historically distinguished them from the Cherokee Delawares in distributing an award . . ."⁶⁸ It is important to note that the more recent manifestation of congressional intent in this regard is the 1968 statute⁶⁹ which distributed the proceeds of an award, based on a violation of the Treaty of 1818,⁷⁰ to all Delawares, including Kansas Delawares, who could trace their ancestry to members of the Delaware Tribe as constituted in 1818.⁷¹

In conclusion, it is obvious that the precedent cited by the Court for excluding the Kansas Delawares from the award is not applicable, and the recent award based on the breach of the Treaty of 1818 supports the inclusion of the Kansas Delawares in the distribution of the award to redress the harm caused by the breach of the Treaty of 1854.

Congressional Intent

The third reason given by the Supreme Court for denying participation by the Kansas Delawares in the award is that "Congress deliberately limited the distribution under Pub. L. 92 -456⁷² to the Cherokee and Absentee Delawares because of substantial problems it apprehended might attend a wider distribution."⁷³ The "substantial problems" referred to by the Court were problems

caused by the fact that the Munsee Indians claimed eligibility under the distribution formula used to redress the breach of the Treaty of 1818, and the processing of the Munsee claims created administrative burdens and delay.⁷⁴ It is significant that the original legislation introduced in Congress for the purpose of distributing the funds awarded in Dockets Nos. 72 and 298, and appropriated by Congress, would have included the Kansas Delawares, as the distribution formula included all lineal descendants of the Delaware Tribe as constituted in 1854.⁷⁵ However, the legislation ultimately passed by Congress did not include the provision that would have allowed the Kansas Delawares to share in the award as lineal descendants of the Delaware Tribe.⁷⁶ The deletion of this important provision was made after representatives of the Cherokee Delawares and Absentee Delawares objected to it on the grounds that the Munsee Indians should not be permitted to participate in the award and that they would attempt to participate under such a provision.⁷⁷ The Supreme Court admitted that Congress was not even made aware that the Kansas Delawares would be excluded by eliminating the provision.⁷⁸ Therefore, it is difficult to find a congressional intent to exclude the Kansas Delawares from the award when Congress was ignorant of the fact that the Kansas Delawares would be affected by this act. If it were the congressional intent to exclude the Munsees, then it was not necessary also to exclude the Kansas Delawares. The Kansas Delawares are lineal descendants of the victims of the wrong committed in regard to the 1854 treaty, but the ancestors of the Munsees were not members of the Delaware Nation at that time.⁷⁹

Justice Stevens, in his dissenting opinion, poignantly expressed the irony of excluding the Kansas Delawares on the grounds of administrative difficulty:

They [Kansas Delawares] are admittedly lineal descendants of victims of the wrong and they had shared in the 1968 award in such an orderly manner that Congress was not even aware of their separate status. It is thus ironic—perhaps even perverse—to justify the special treatment of the Kansas Delawares by including them in a class whose other members were properly excluded from the award for reasons which have no application whatsoever to the Kansas Delawares. Because the Kansas Delawares were so administratively inoffensive that they literally became invisible they will fail to share in the distribution as a result of a decision to avoid administrative difficulty.⁸⁰

Thus, the third reason given by the Supreme Court for excluding the Kansas Delawares fails to qualify as a justification for the decision.

Due Process, Equal Protection, and the Kansas Delawares

In holding that the exclusion of the Kansas Delawares from sharing in the distribution of the award under Public Law 92 -456 was constitutional,⁸¹ the United States Supreme Court stated that the standard to be used in reviewing the legislative act was expressed in *Morton v. Mancari*.⁸² The standard set forth in *Morton* was that "as long as the special treatment of Indians can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed."⁸³ This standard was applied in *Morton* to justify a preference for Indians as opposed to non-Indians in regard to employment.⁸⁴ The Supreme Court misapplied this standard in *Delaware Tribal Business Committee v. Weeks*,⁸⁵ as that case involved a preference for one Indian group (Cherokee Delawares and Absentee Delawares) over another similarly situated Indian group (Kansas Delawares). Therefore, this type of discrimination must be evaluated and judged with the aid of a more appropriate standard.

The Kansas Delawares challenged the distribution of the award on the basis that their exclusion "constituted a denial of the equal protection of the laws guaranteed by the Due Process Clause of the Fifth Amendment."⁸⁶ It is well settled that the fifth amendment prohibits discrimination that is so unjustifiable that it violates due process.⁸⁷ The proper test in this case is whether the discrimination against the Kansas Delawares was rationally related to a legitimate governmental interest or whether it was invidious and irrational.⁸⁸

A review of the facts and reasons given by the Supreme Court for its decision reveals that no legitimate governmental interest was served by excluding the Kansas Delawares from participation in the award. The governmental interest was to redress the wrongs committed by the United States against the Delaware Nation when it breached the Treaty of 1854. Given the fact that the Kansas Delawares are lineal descendants of the injured group of Indians, there is no valid reason for excluding them from the award. The truth of the matter is, as Justice Stevens concluded, that the Kansas Delawares were excluded as a result of a "malfunction of the legislative process rather than a deliberate choice by Congress."⁸⁹ This type of discrimination, although unknowing, is clearly irrational and constitutes a denial of equal protection as guaranteed by the due process clause of the fifth amendment.

Conclusion

The *Weeks*⁹⁰ case is an example of what happens when Congress makes a mistake in regard to Indian claims policy, and the United States Supreme Court ratifies that error with a statement about Congress' unique obligation toward the Indians.⁹¹ Surely this obligation "includes a special responsibility to deal fairly with similarly situated Indians."⁹² This "special responsibility" was not met in the instant case, as the Indians who were wronged were prevented from recovering an award to redress that wrong.

NOTES

1. 25 U.S.C. § 70 (1970).
2. *United States v. Seminole Nation*, 173 F. Supp. 784, 788 (1959).
3. Delaware Treaty of 1854, 10 Stat. 1048.
4. 21 Ind. Cl. Comm. 344, 369-70 (1969).
5. —U.S.—, 97 S.Ct. 911 (1977).
6. 25 U.S.C. § 70 (1970).
7. For a good discussion of the history of the Delaware Nation, see *Delaware Tribe v. United States*, 2 Ind. Cl. Comm. 253, 255-61 (1952). See also M. WRIGHT, A GUIDE TO THE INDIAN TRIBES OF OKLAHOMA, 145-55 (1976) [hereinafter cited as WRIGHT.]
8. WRIGHT, *supra* note 7, at 147.
9. *Weeks v. United States*, 406 F. Supp. 1309, 1317 (1975).
10. *Id.* See also S. REP. No. 1518, 90th Cong., 2d Sess., 1, 8, for a discussion of the Stockbridge-Munsee group.
11. WRIGHT *supra* note 7, at 148-49.
12. *Weeks v. United States*, 406 F. Supp. 1309, 1317 (1975).
13. Delaware Treaty of 1818, 7 Stat. 188.
14. *Id.*
15. Delaware Treaty of 1829, 7 Stat. 327. This treaty was supplemental to the St. Mary's Treaty of 1818. The treaty provided that the Delawares ceded all claims to land in Missouri, and the United States conveyed a reservation of land in Kansas in order to fulfill its obligation under the St. Mary's Treaty of 1818 to provide land for the Delawares west of the Mississippi. There was a notable disparity between the value of the Indiana land ceded by the Delawares in 1818 and the Kansas land acquired through the Treaty of 1829. This was the basis for the judgment of \$1,627,244.64 rendered on behalf of the Delaware Tribe by the Indian Claims Commission in Docket No. 337. See 25 U.S.C. §§ 1181-86 (1970), for information regarding distribution of this award.
16. *Weeks v. United States*, 406 F. Supp. 1309, 1318 (1975).
17. S. REP. No. 1518, 90th Cong., 2d Sess. 10-11 (1968).
18. *Weeks v. United States*, 406 F. Supp. 1309, 1318 (1975). The Absentee Delaware Tribe of Western Oklahoma is a federally recognized tribe.
19. Delaware Treaty of 1854. 10 Stat. 1048.
20. *Id.*
21. *Id.* at 1051. The Christian Indians were also known as Munsee Indians. See WRIGHT *supra* note 7, at 188; S. REP. No. 1518, 90th Cong., 2d Sess. 10-11 (1968).
22. Delaware Treaty of 1854, 10 Stat. 1048-50.
23. The Indian Claims Commission awarded the Delaware Nation the sum of \$9,168,171.13 (as of Aug. 31, 1969, plus five per cent per annum simple interest on the principal sum of \$1,385,617.81 until date of payment) to compensate for the breach of the treaty. 21 Ind. Cl. Comm. 344, 369-70 (1969). The distribution of this award was made pursuant to 25 U.S.C. §§ 1291-97 (Supp. IV 1974), which distributed the award to the Absentee Delawares and Cherokee Delawares, but excluded the Kansas Delawares.
24. Delaware Treaty of 1866, 14 Stat. 793 (1854).

25. This area is now the state of Oklahoma.
26. Delaware Treaty of 1860, 12 Stat. 1129, 1130.
27. Delaware Treaty of 1866, 14 Stat. 793, 794.
28. *Id.* at 794.
29. *Id.*
30. *Id.* The minor children of the adult Delawares who elected to become citizens of the United States were considered temporarily severed from the tribe until they were twenty-one years old, at which time they could elect to live with the Cherokee Delawares in the Indian Territory or become citizens of the United States. *Id.* at 796. All such minors were declared citizens of the United States in 1874, 18 Stat. 146, and paid their proportional share of funds and stocks held in trust by the United States for the Delaware Nation.
31. Delaware Treaty of 1866, 14 Stat. 796.
32. Cherokee Treaty of 1866, 14 Stat. 799.
33. This group of Indians is often referred to as "Registered Delawares."
34. Delaware Indians v. Cherokee Nation, 193 U.S. 127 (1904).
35. Weeks v. United States, 406 F. Supp. 1309, 1320 (1975). The Cherokee Delawares or Delaware Tribe of Indians is a federally recognized tribe.
36. *Id.* at 1309.
37. Delaware Treaty of 1818, 7 Stat. 188. See discussion at note 15, *supra*.
38. 25 U.S.C. §§ 1181-86 (1970). The distribution formula was as follows: "The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements for eligibility: (a) They were born on or prior to and living on September 21, 1968; (b) their name or the name of a lineal ancestor appears on the Delaware Indian per capita payroll approved by the Secretary on April 20, 1906, or (c) their name or the name of a lineal ancestor is on or is eligible to be on the constructed base census roll as of 1940 of the Absentee Delaware Tribe of Western Oklahoma, approved by the Secretary of the Interior, or (d) they are lineal descendants of Delaware Indians who were members of the Delaware Nation of Indians as constituted at the time of the Treaty of October 3, 1818, 7 Stat. 188, and their name or the name of a lineal ancestor appears on any available census roll or any other records acceptable to the Secretary. No person shall be eligible to be enrolled under this section who is not a citizen of the United States . . ." 25 U.S.C. § 1181.
39. 406 F. Supp. 1309, 1322 (1975).
40. *Id.* at 1340.
41. Delaware Treaty of 1854, 10 Stat. 1048.
42. 25 U.S.C. § 1292 (Supp. IV 1974), provides: "The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements: (a) they were born on or prior to and were living on October 3, 1972; and (b) they are citizens of the United States; and (c) (1) their name or the name of a lineal ancestor appears on the Delaware Indian per capita payroll approved by the Secretary on April 20, 1906, or (2) their name or the name of a lineal ancestor is on or is eligible to be on the constructed base census roll as of 1940 of the Absentee Delaware Tribe of Western Oklahoma, approved by the Secretary."
43. 406 F. Supp. 1309, 1323 (1975).
44. *Id.* at 1329.
45. *Id.* at 1347.
46. *Id.* at 1309.
47. Delaware Tribal Business Comm. v. Weeks, —U.S.—, 97 S.Ct. 911 (1977). The appellees, Kansas Delawares, also appealed from the district court's decision, whereby it denied the claim that the inclusion of the Cherokee Delawares and Absentee Delawares in the distribution of funds under 25 U.S.C. §§ 1291-97 (Supp. IV 1974), and the exclusion of the Kansas Delawares from such distribution violated the due process and just compensation clauses of the fifth amendment. The appellee also appealed from the district court's holding that the inclusion of the Cherokee Delawares in the distribution of funds under 25 U.S.C. §§ 1181-86 (1970), did not violate the fifth amendment's due process and just compensation clauses. The Supreme Court of the United States affirmed the judgment of the district court in respect to these claims. —U.S.—, 97 S.Ct. at 918 n.16.
48. *Id.*, 97 S.Ct. at 919, quoting from Morton v. Mancari, 417 U.S. 535, 555 (1974).
49. *Id.* 97 S.Ct. at 919.
50. *Id.* at 920.

51. *Id.*
52. Delaware Treaty of 1866, 14 Stat. 793, 796, provides, in pertinent part, that: "There shall be granted to each of the Delawares who have thus become citizens, a patent in fee simple for the lands heretofore allotted to them, and, if they do not remove with the nation, their pro rata share of all annuities and trust property held by the United States for them, the division to be made under the direction of the President of the United States, after which such persons shall cease to be members of the Delaware Tribe, and shall not further participate in their councils, nor share in their property or annuities."
53. —U.S.—, 97 S.Ct. 911, 919 (1977).
54. *Id.*
55. Delaware Treaty of 1854, 14 Stat. 793.
56. —U.S.—, 97 S.Ct. 911, 923 (1977).
57. 21 Ind. Cl. Comm. 344 (1969).
58. Delaware Tribe v. United States, 2 Ind. Cl. Comm. 253, 270-71 (1952).
59. *Id.*
60. The Court of Claims is charged with the duty to review the actions of the Indian Claims Commission. 25 U.S.C. § 70s (1970).
61. See Turtle Mountain Band of Chippewa Indians v. United States, 490 F.2d 935, 203 Ct. Cl. 426 (1974); McGhee v. Creek Nation, 122 Ct. Cl. 380, *cert. denied*, 344 U.S. 856 (1952).
62. —U.S.—, 97 S.Ct. 911, 922-26 (1977).
63. *Id.* at 923-24. See Cherokee Nation v. Journeycake, 155 U.S. 196 (1894), for a discussion of the relationship between the Delawares who went to live with the Cherokees and the Cherokees. It is interesting to note that the Cherokee Delawares did not reconstitute themselves as a recognized Indian tribe until 1974. Delaware Tribal Business Comm. v. Weeks, —U.S.—, 97 S.Ct. 911, 924 n.4 (1977).
64. *Id.*, 97 S.Ct. at 924. See also 25 U.S.C. § 1292(c)(2) (Supp. IV 1974).
65. 406 F. Supp. 1309, 1337 (1975).
66. 33 Stat. 189, 222.
67. *Id.* See United States v. Delaware Tribe, 427 F.2d 1218, 1229, 192 Ct. Cl. 385 (1970), for a discussion of this \$150,000 payment to the Cherokee Delawares.
68. Delaware Tribal Business Comm. v. Weeks, —U.S.—, 97 S.Ct. 911, 920 (1977).
69. 25 U.S.C. §§ 1181-86 (1970).
70. Delaware Treaty of 1818, 7 Stat. 188.
71. 25 U.S.C. § 1181(d) (1970).
72. See 25 U.S.C. §§ 1291-97 (Supp. IV 1974).
73. Delaware Tribal Business Comm. v. Weeks, —U.S.—, 97 S.Ct. 911, 920 (1977).
74. *Id.* at 921.
75. H.R. 5200, 92d Cong., 1st Sess. § 2 (Mar. 1, 1971); S. 1067, 92d Cong., 1st Sess. § 2 (Mar. 2, 1971).
76. 25 U.S.C. §§ 1291-97 (Supp. IV 1974).
77. Delaware Tribal Business Comm. v. Weeks, —U.S.—, 97 S.Ct. 911, 921 (1977).
78. *Id.* See Weeks v. United States, 406 F. Supp. 1309, 1330-32 (1975), for a complete discussion of the legislative history of this case.
79. Delaware Tribal Business Comm. v. Weeks, —U.S.—, 97 S.Ct. 911, 925 (1977).
80. *Id.*
81. *Id.* at 919.
82. 417 U.S. 535 (1974). The Supreme Court held that because of the unique obligation Congress has toward Indians, a policy of Indian employment preference at the Bureau of Indian Affairs did not constitute an invidious racial discrimination in violation of the due process clause of the fifth amendment.
83. *Id.* at 555.
84. *Id.*
85. —U.S.—, 97 S.Ct. 911 (1977).
86. *Id.* at 918.
87. See Weinberger v. Wiesenfeld, 420 U.S. 636 (1975); Johnson v. Robison, 415 U.S. 361 (1974); Department of Agriculture v. Moreno, 413 U.S. 528 (1973).

88. See *Weinberger v. Salfi*, 422 U.S. 749 (1975); *Jimenez v. Weinberger*, 417 U.S. 628 (1974).
89. *Delaware Tribal Business Comm. v. Weeks*, —U.S.—, 97 S.Ct. 911, 923 (1977).
90. *Id.* at 911.
91. *Id.* at 919.
92. *Id.* at 925, n.8.