tribal property, they were to receive in severalty allotments of lands that were to be nontaxable for a specified period, acquired vested rights of exemption from state taxation that were protected by the Fifth Amendment against abrogation by Congress.[416]

A regular staple of each Term's docket of the Court is one or two cases calling for an interpretation of the rights of Native Americans under some treaty arrangement vis-a-vis the Federal Government or the states. Thus, though no treaties have been negotiated for decades and none presumably ever will again, litigation concerning old treaties seemingly will go on.

INTERNATIONAL AGREEMENTS WITHOUT SENATE APPROVAL

The capacity of the United States to enter into agreements with other nations is not exhausted in the treaty-making power. The Constitution recognizes a distinction between "treaties" and "agreements" or "compacts" but does not indicate what the difference is.[417] The differences, which once may have been clearer, have been seriously blurred in practice within recent decades. Once a stepchild in the family in which treaties were the preferred offspring, the executive agreement has surpassed in number and perhaps in international influence the treaty formally signed, submitted for ratification to the Senate, and proclaimed upon ratification.

During the first half-century of its independence, the United States was party to sixty treaties but to only twenty-seven published executive agreements. By the beginning of World War II, there had been concluded approximately 800 treaties and 1,200 executive agreements. In the period 1940–1989, the Nation entered into 759 treaties and into 13,016 published executive agreements. Cumulatively, in 1989, the United States was a party to 890 treaties and 5,117 executive agreements. To phrase it comparatively, in the first 50 years of its history, the United States concluded twice as many treaties as executive agreements. In the 50-year period from 1839 to 1889, a few more executive agreements than treaties were entered into. From 1889 to 1939, almost twice as many executive agreements as

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[416] Choate v. Trapp, 224 U.S. 665, 677–78 (1912); Jones v. Meehan, 175 U.S. 1 (1899). *See also* Hodel v. Irving, 481 U.S. 704 (1987) (section of law providing for escheat to tribe of fractionated interests in land representing less than 2% of a tract's total acreage violates Fifth Amendment's taking clause by completely abrogating rights of intestacy and devise).

[417] *Compare* Article II, § 2, cl. 2, and Article VI, cl. 2, *with* Article I, 10, cls. 1 and 3. *Cf.* Holmes v. Jennison, 39 U.S. (14 Pet.) 540, 570–72 (1840). And note the discussion in Weinberger v. Rossi, 456 U.S. 25, 28–32 (1982).