The Evolution of the Law of Interstate Water Disputes

Swift v. Tyson to *Oklahoma v. Tyson*

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Crowe & Dunlevy

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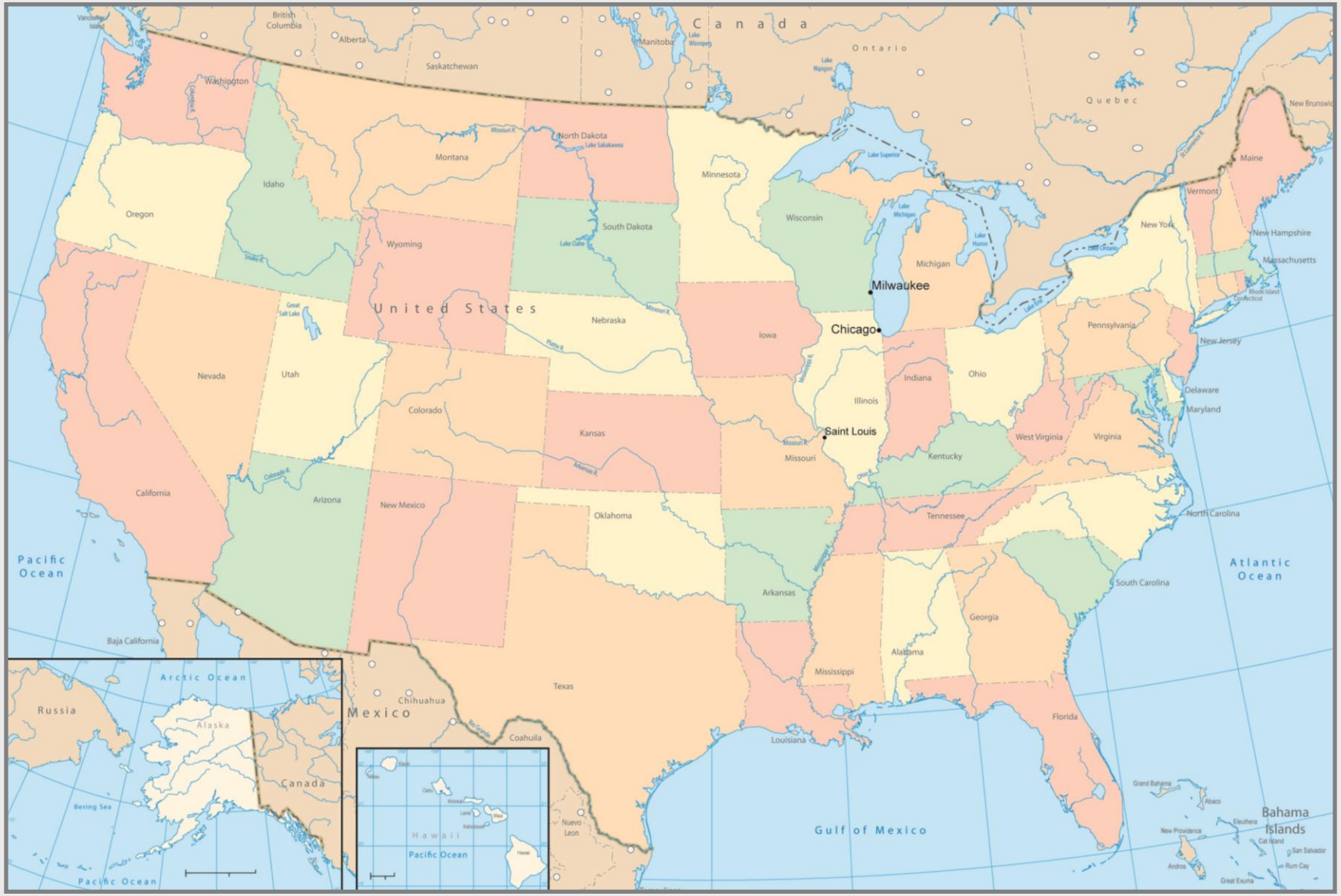
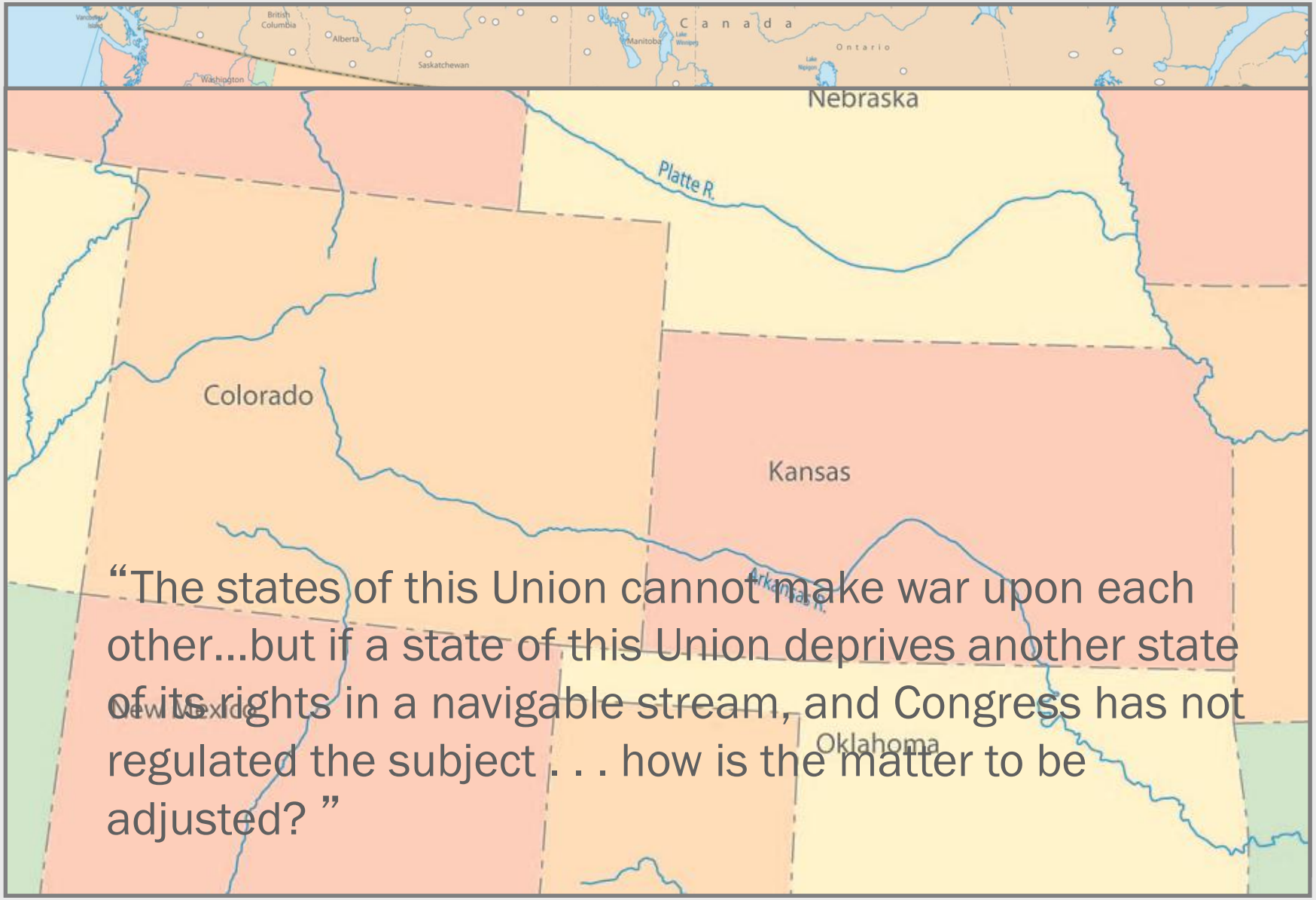


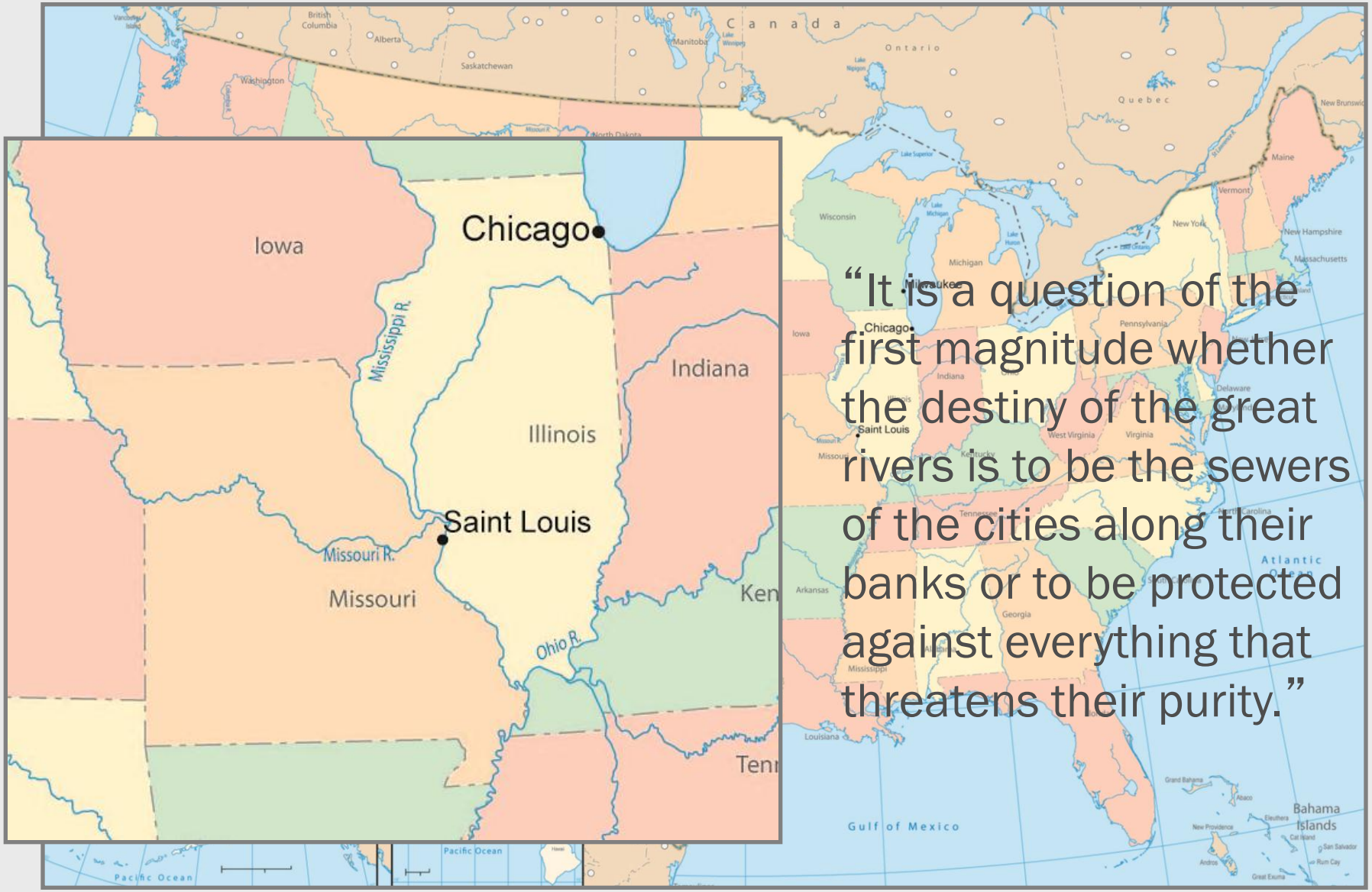
The United States



"The states of this Union cannot make war upon each other…but if a state of this Union deprives another state of its rights in a navigable stream, and Congress has not regulated the subject . . . how is the matter to be adjusted? "

Kansas v. Colorado

185 U.S. 125 (1902)



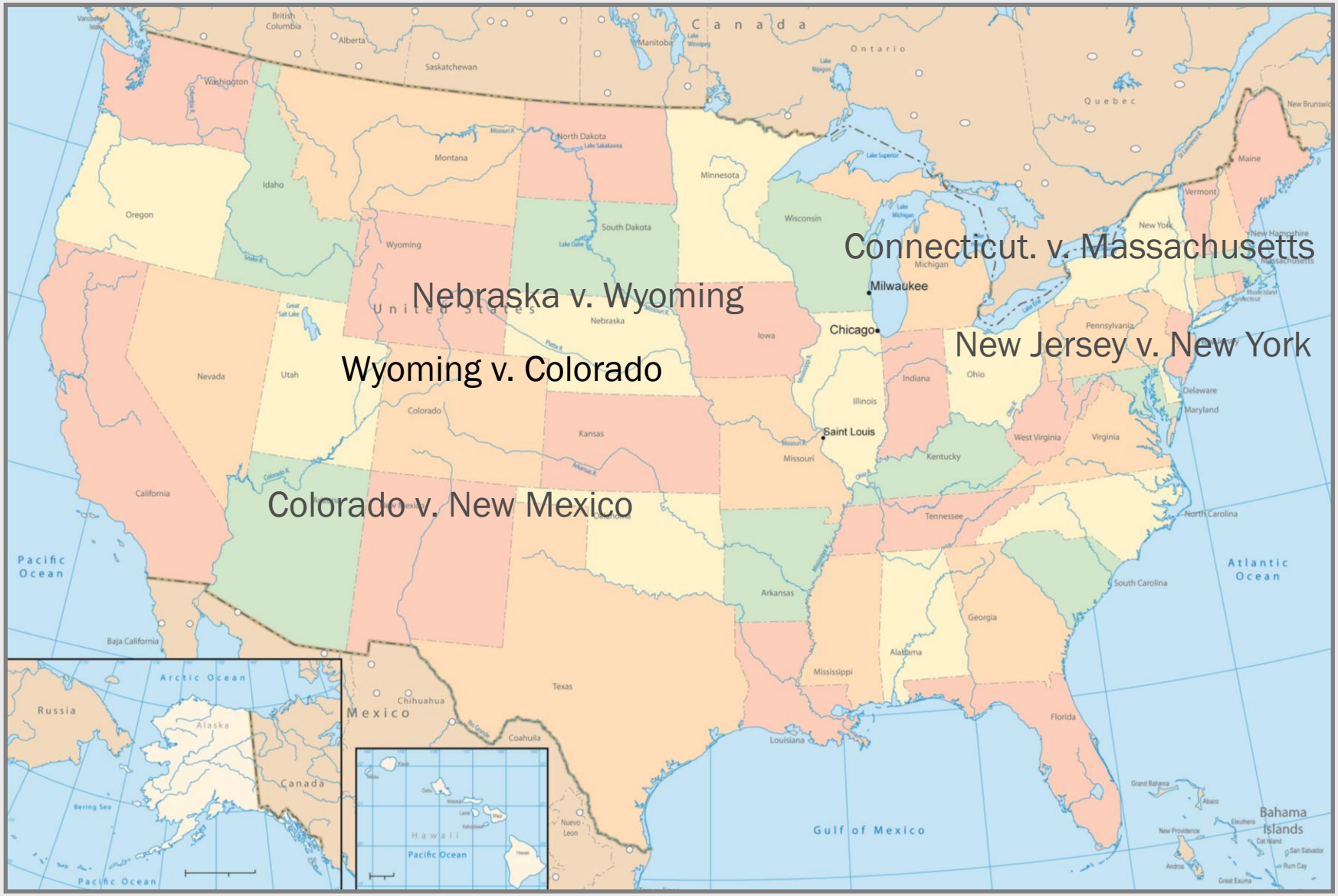
"It is a question of the first magnitude whether the destiny of the great rivers is to be the sewers of the cities along their banks or to be protected against everything that threatens their purity."

Missouri v. Illinois

200 U.S. 496 (1906)

Golden Age of Federal Common Law

Interstate Pollution Disputes



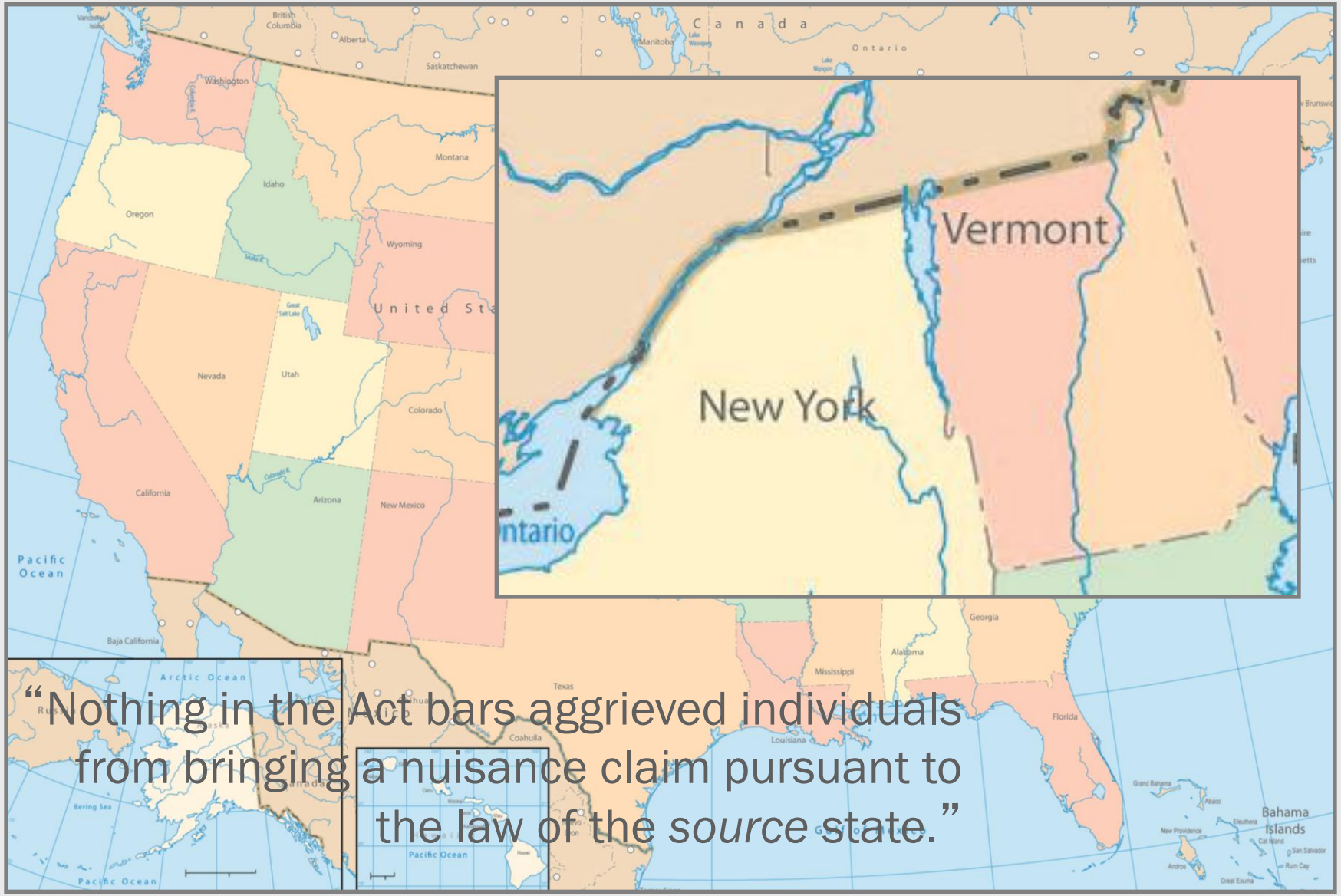
Golden Age of Federal Common Law

Interstate Water Quantity Disputes

"It may happen that new federal laws and new federal regulations may in time pre-empt the federal common law of nuisance. But until that comes to pass, federal courts will be empowered to appraise the equities of the suits alleging creation of a public nuisance by water pollution."

Illinois v. Milwaukee

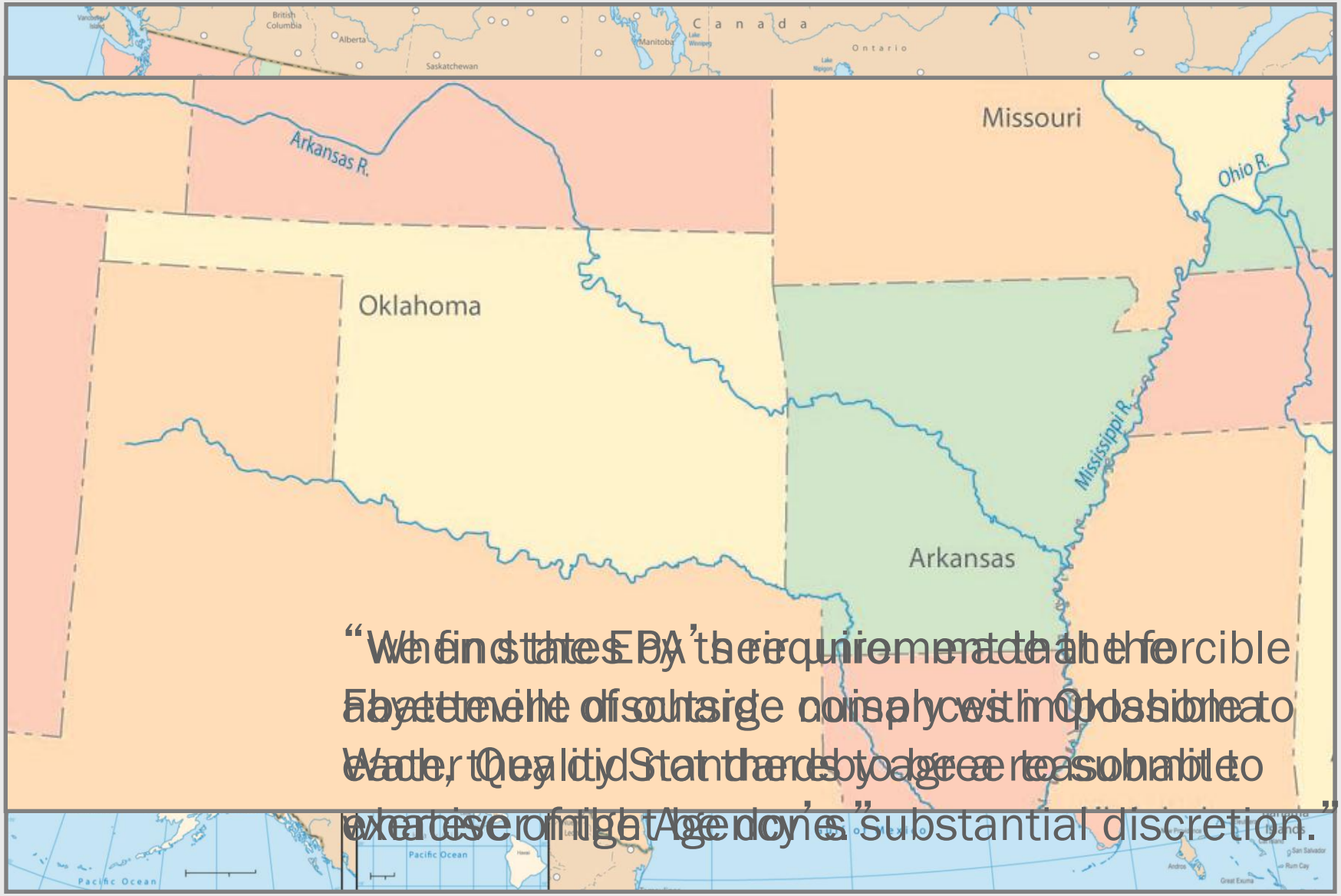
406 U.S. 91 (1972)



"Nothing in the Act bars aggrieved individuals from bringing a nuisance claim pursuant to the law of the *source* state."

International Paper v. Ouellette

479 U.S. 481 (1987)



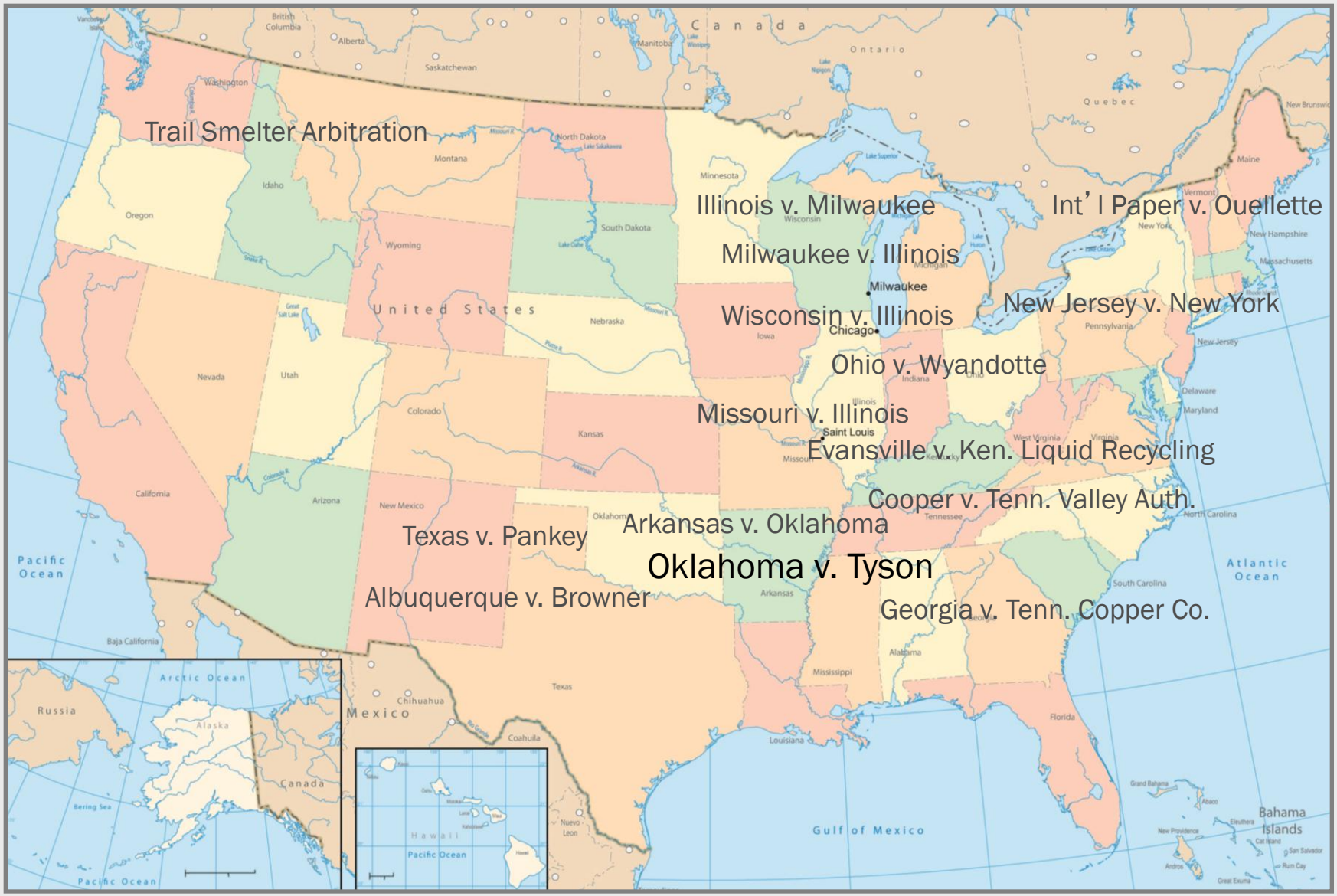
"We find that EPA's requirement that the Fayetteville discharge comply with Oklahoma Water Quality Standards is a reasonable exercise of the Agency's substantial discretion."

Arkansas v. Oklahoma

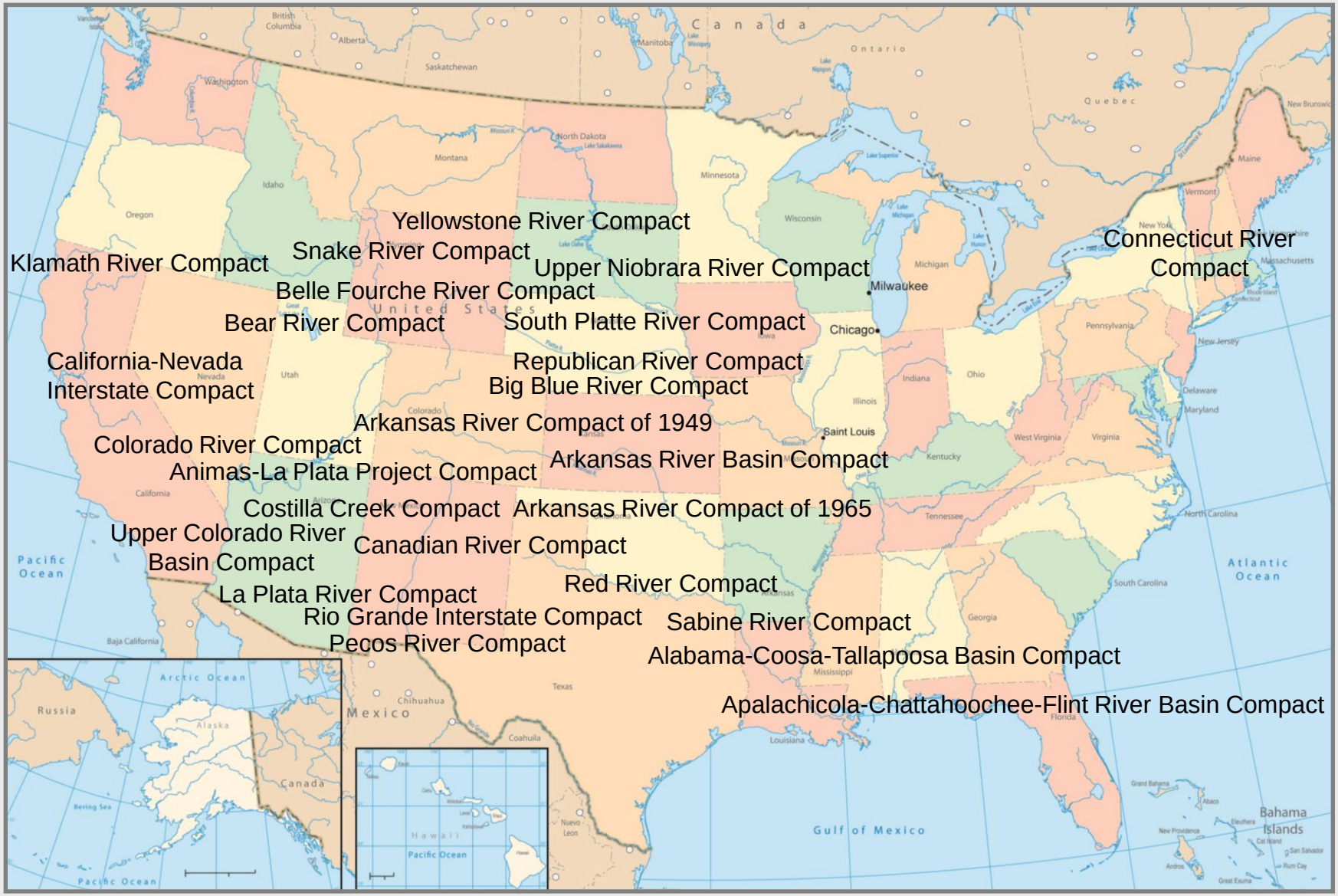
503 U.S. 91 (1992)

Oklahoma v. Tyson

4:05-Civ-00329 (N.D. Okla.)



Interstate Pollution Cases



Interstate Water Compacts

Thank You.

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