



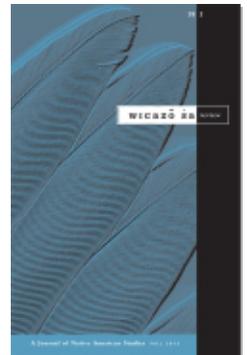
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Remembering the Thirty-Eight Abraham Lincoln, the Dakota, and the U.S. War on Barbarism

David Martínez

Because of Abraham Lincoln's intervention, on December 26, 1862, a day that will live in infamy in the hearts and minds of the Dakota Oyate, thirty-eight men were hanged for alleged crimes against white citizens during an armed conflict between the Dakota and the United States. Aside from the fact that this mass execution remains the largest in American history, what makes this travesty of justice all the more egregious is the vindictiveness with which it was carried out by a settler population that saw itself as above the Constitution and beyond any regard for human rights. Although there were some non-Indians, such as Bishop Henry Whipple, who understood that the Dakota were not without mitigating circumstances, the vast majority were like the Indian agent Thomas J. Galbraith, who condemned the Dakota in his 1863 report as inveterate savages, who were only good for complaining about their withheld annuities. Consequently, what Galbraith does not own up to is the fact that he regularly ignored the Dakota's cries of starvation, which had become in the summer of 1862 an imminent threat to their lives. In fact, in an outrageous attempt at exonerating himself and his office, Galbraith makes the following preposterous claim: "He knows little of the Sioux Indians who has not learned that to imagine, manufacture, and improvise *complaints* is characteristic of the entire Sioux nation." Moreover, "it is well to take their stories of hunger, privation, and wrongs *cum grano salis* [with a grain of salt]."¹ Galbraith does admit, however, that there was corruption on the

reservation. What he deliberately overlooks, though, is that the inhumanity the Dakota were forced to endure was perpetrated by dishonest traders who were in partnership with him in a scheme to defraud the Dakota of what few resources they had, namely, the cash annuities they annually received from the U.S. federal government in compliance with the treaties the two nations signed.² Indeed, what previous scholars have demonstrated is that the culpability for the unjust hanging of the thirty-eight Dakota men extends to all levels of American settler society, from ordinary Minnesota citizens to the governor's office, the commissioner of Indian affairs, and the U.S. Senate. But what about President Abraham Lincoln? This essay argues that hidden behind the myth of magnanimity—which Lincoln supposedly showed when he “spared” the lives of more than two hundred condemned Dakota prisoners of war—is a cold and insensitive politician who deliberately ordered a mass execution of thirty-eight men illegitimately tried in kangaroo courts. Further, Lincoln willfully ordered this mass hanging in order to appease a Minnesota settler populace threatening riots and anarchy, perhaps even secession, if he did not do as they demanded.

During the war trials that followed the 1862 conflict, President Lincoln was made aware of the conditions on the Dakota reservations, particularly at Lower Sioux, in addition to Minnesotans' clarion call for the Dakotas' extermination. With this in mind, the process through which Lincoln decided to reduce the number of condemned from three hundred and three to thirty-nine (with the thirty-ninth acquitted at the last moment) is seen by some as another example of this president's Solomon-like wisdom. In other words, Lincoln is credited with having drawn a difficult compromise between a vengeful populace and a defeated Indian nation reduced to being prisoners of war. Even Dakota writer and activist Charles Alexander Eastman, whose father and uncles fought against the United States in 1862, expressed his gratitude for Lincoln's magnanimity, when he stated in his 1915 book *The Indian To-Day* that a “new Indian policy” emerged when Lincoln refused “to order the execution of three hundred Sioux braves, whom a military court had, in less than two days, convicted of murder and condemned to be hung, in order to satisfy the clamor of the citizens of Minnesota.”³ Although Eastman was only a mere four years of age when hostilities erupted in the middle of August 1862, he was aware of the calamity that unfolded around him, which he wrote about in his two autobiographies, *Indian Boyhood* (1902) and *From the Deep Woods to Civilization* (1916), with references appearing in a variety of other writings. While Eastman refrains from exploiting the gruesome detail of what the Dakota endured during their forced exile—opting instead for validating the strength and communal values of his family and tribe—his resentment of what was done never ameliorated. In fact, he admits having had to overcome his hatred of Americans, even learning from one of his

uncles that he should "never . . . spare a citizen of the United States." Eastman's admiration for Lincoln, however, is mixed with the acrimony he feels toward his Minnesota neighbors. In fact, he states that the explanation for his acquired abhorrence for Americans, particularly Minnesotans, was simple: they were blind to the fact "that these Sioux had been defrauded of the finest country in the world, their home, their living, and even cheated out of the ten cents per acre agreed to be paid for millions of acres of the choicest land."⁴ Perhaps only in comparison to the atrocious behavior of settler Minnesotans could Lincoln's actions appear more equitable. However, while one may share in the relief that Eastman expresses that Lincoln prevented a much larger execution, implied in his estimation is the realization that none of the executions ought to have been carried out at all. So, what role did the president of the United States actually play in the execution of the Dakota prisoners and could he have done more on behalf of an oppressed and abused community?

Any answer has to take into account the role the president plays in Indian affairs, which is typically that of setting policy for the government agencies responsible for the different facets of Indian–white relations. As of 1860, Indian affairs was largely carried out by the Indian Bureau and the U.S. Army. Although the Indian Bureau had been transferred from the War Department to Interior back in 1849, the U.S. Army still served a vital role at handling the unrest that frequently occurred between Indian and settler communities. As for policy, the era preceding Lincoln's administration had been defined by the 1831 Indian Removal Act, which President Andrew Jackson had forced on Indians and non-Indians alike as a way of ridding the frontier of what he regarded as an obdurate Indian presence forestalling westward expansion. Consequently, thousands of individuals from dozens of tribes were compelled during the ensuing decades to relocate to "Indian Territory," an expanse in the middle of the American prairie, which would later become the states of Oklahoma and Kansas. Most of these tribes were forced out of their homelands under the auspices of what scholars labeled "removal treaties," which were instruments that ostensibly claimed the lands out of which Indian tribes were forcibly removed were, in fact, willingly "traded" for a claim in Indian Territory. Such treaties officially ceded land to the United States in exchange for a designated segment in the territory set aside for them.

Not all tribes were removed, though all of them lost a considerable amount of land at some point during the decades preceding Lincoln's 1860 election to office. Of particular relevance here is the 1851 Traverse des Sioux treaty, in which peace and friendship were established between the United States and the "Med-ay-wa-kan-toan and Wah-pay-koo-tay bands of Dakota or Sioux Indians," proclaiming in turn, "The said Med-ay-wa-kan-toan and Wah-pay-koo-tay bands of

Indians do hereby cede and relinquish all their lands and all their right, title and claim to any lands whatever, in the Territory of Minnesota, or in the State of Iowa."⁵ A separate treaty with the other Dakota bands in Minnesota was also signed the same year.⁶ The U.S. Senate and the Office of the President—which changed administrations during this critical juncture from Millard Fillmore to Franklin Pierce—vacillated on establishing a reservation for the Dakota, at first striking the treaty article acknowledging Dakota lands, then reaffirming these boundaries two years later in 1853. As Charles E. Flandrau summarized the treaty land situation in an 1891 report about the 1862 conflict:

These treaties set apart a reservation for these Indians composed of a strip of land ten miles wide on each side of the Minnesota river, extending from a short distance south of Fort Ridgley to the source of that river. The Lower Sioux to occupy it as far up as the Yellow Medicine River, and the Upper Sioux the northern part of the reservation. The senate made amendments to these treaties, and this postponed their final proclamation by the president until Feb. 24, 1853, and the Indians did not take possession of their reservations until 1854–55, and many not until some years later.⁷

Although Flandrau acknowledges that the Dakota were owed goods and annuities per annum, he does not hesitate to phrase the Dakota's discontent with the Indian agent's lack of proficiency in condescending language. Echoing Galbraith's attitude, cited above, Flandrau states in the tenor of the times, "The provisions of the treaties for periodical payments of monies and goods and other benefits, although carried out with substantial honesty, failed to fulfill the exaggerated expectations of the Indians."⁸ Obviously, swindling Indians out of monies and annuities legally due to them, and giving them scraps, counts as "substantial honesty" in the minds of some.

What must be underscored is that the situation at the Lower Sioux Agency was merely one example of a rising tide of discontent among reservations across the West during the 1850s, which continued for decades. In addition to Indian Bureau corruption and inefficiency, the Southwest and Great Basin saw a significant rise in emigrants crossing Indian lands in pursuit of the gold fields of California, where the state legislature virtually made it legal to hunt Indians without penalty.⁹ The conflicts that erupted as a result of this tidal wave of migration were legion and would have a lasting and devastating impact on the political and social status of dozens of American Indian tribes, such that the reservation system that was put in place basically institutionalized Indians in a constant humanitarian crisis. Carl Waldman summarized

the "Indian wars" chronologically in his epic *Atlas of the North American Indian*: "1) the Mariposa War in California (1850–51), involving Miwoks and Yokuts; 2) the Yuma and Mojave Uprising in Arizona and California (1851); 3) the Yakima War in Washington (1855–56); 4) the Rogue River War in Oregon (1855–56), involving Takelmas and Tututnis; 5) the Coeur d'Alenes War (or the Spokane War) in Washington (1858), involving Coeur d'Alenes, Spokanes, Palouses, Yakimas, and Northern Paiutes."¹⁰ Conflicts continued into the 1860s, including, relevant to the Lincoln administration, "the Paiute War (or the Pyramid Lake War) in Nevada (1860), involving Southern Paiutes," as well as "the Apache Uprising in Arizona and New Mexico (1861–63)," which set off ongoing skirmishes for approximately the next quarter century. In addition, "the Shoshoni War (or the Bear River Campaign" occurred "in Utah and Idaho (1863)," not to mention "the Navajo War in New Mexico and Arizona (1863–1866), culminating in the 'Long Walk' of Navajo prisoners to Bosque Redondo in 1864." Then, perhaps most tragically, there was "the Cheyenne–Arapaho War in Colorado and Kansas (1864–65), including the Sand Creek Massacre of Cheyenne innocents in 1864."¹¹

These conflicts have been enumerated to make two fundamental points: first, that the 1862 U.S.–Dakota War was one of several ongoing and recurrent incidents of warfare between the United States and Indigenous nations, and, second, that the Civil War and the Indian wars were not two separate epochs in American history, but rather were different aspects of the same era—both of which demanded an equal amount of attention from the Office of the President. With the latter in mind, we can evaluate and critique Lincoln's options and decisions the way we would any other president who's administration had a profound impact on the lives and well-being of Indigenous peoples.¹²

Insofar, then, as Lincoln played a major role in the outcome of the military trials held at Mankato, it is tempting to judge his reasoning and decisions in light of the concepts and principles that have emerged in the field of international law since World War II. Words like "genocide" and "war criminal" immediately come to mind, both of which are products of the 1945–46 Nuremberg Trials of German Nazi officials arraigned for Hitler's "final solution." These and other similar terms, such as holocaust, have entered the collective conscience as the names of highly organized, state-sponsored, modernized forms of evil, epitomized by the Nazi death camps. Indeed, these ideas have achieved such a deep level of defining how national and global acts of mass killing are perceived that it is nearly impossible to look at such events, even historically distant ones, without using these terms.

Yet it was undeniably the case that such concepts—at least as they have been defined in the Convention on the Prevention and Punishment of the Crime of Genocide, the Universal Declaration of Human Rights, and the Nuremberg Principles—were nonexistent in the legal and

political lexicon of the early 1860s United States. Does this therefore exonerate Lincoln—not to mention Minnesotans, such as Governor Alexander Ramsey, who called for the extermination of all Dakotas—from being held accountable for his actions during the trial reviews? While one may be precluded from constructing a cogent argument that Lincoln—not to mention Ramsey—was guilty of violating principles articulated in documents that did not exist during their time, one is not thereby prevented from evaluating and judging their actions. They can still be judged in light of the prevailing laws and moral principles, which were current in American society during the times in which they lived.

Because the 1862 conflict between the Americans and the Dakota was between two sovereign nations, one has to consider the actions involved as acts of war, in addition to recognizing that the persons participating were combatants in the field of battle. In which case, how the Dakota prisoners of war were treated during their imprisonment and subsequent trials can be analyzed with respect to the 1806 Articles of War, which was the law of the land regarding the “government of Armies of the United States.” According to the *Uniform Code of Military Justice*, the 1806 Articles of War was the prevailing criminal code until the start of the Civil War, at which point numerous changes were made to these articles, “principally related to the trial and review of cases during the Civil War.”¹³ More specifically, these articles outlined the ordering of courts-martial, their jurisdiction, and proper procedure.¹⁴ With regard to the prosecution of prisoners, the Articles are brief but state very clearly that a prisoner shall have legal representation under the auspices of the judge advocate “or some person deputed by him,” who, once the prisoner has made his plea, shall “object to any leading question to any of the witnesses, or any question to the prisoner, the answer to which might tend to criminate himself.”¹⁵ The Articles also provide for the challenging of members of courts-martial.¹⁶ As for the role of the president, Article 65 states:

Any general officer commanding an army, or colonel commanding a separate department, may appoint general courts martial, whenever necessary. But no sentence of a court martial shall be carried into execution until after the whole proceedings shall have been laid before the officer ordering the same, or the officer commanding the troops for the time being; neither shall any sentence of a general court martial, in time of peace, extending to the loss of life, or the dismissal of a commissioned officer, or which shall, either in time of peace or war, respect a general officer, be carried into execution, until after the whole proceedings shall have been transmitted to the Secretary of War, to be

laid before the President of the United States, for his confirmation or disapproval, and orders, in the case. All other sentences may be confirmed and executed by the officer ordering the court to assemble, or the commanding officer, for the time being, as the case may be.¹⁷

In other words, sentencing must follow a chain of command, and for cases in which capital punishment is determined justified, the final decision must go to the secretary of war, who will then present the case for the president's final approval or dismissal. Speaking of which, equally relevant is Article 89, which pertains specifically to the power to pardon or mitigate sentences handed down in courts-martial. Similar to Article 65, there is an ultimate role that the president fulfills when needed:

Every officer authorized to order a general court martial, shall have power to pardon or mitigate any punishment ordered by such court, except the sentence of death, or of cashiering an officer; which, in the cases where he has authority (by Article 65) to carry them into execution, he may suspend until the pleasure of the President of the United States can be known; which suspension, together with copies of the proceedings of the court martial, the said officer shall immediately transmit to the President, for his determination. And the colonel or commanding officer of the regiment or garrison, where any regimental or garrison court martial shall be held, may pardon or mitigate any punishment ordered by such court to be inflicted.¹⁸

The president, therefore, possesses the power not only to reduce a prisoner's sentence but also to acquit said prisoner and set him free. These articles, it should be noted, were written largely with American soldiers in mind, who were accused and convicted of violating the code of conduct expected from every enlisted man serving under orders from a commanding officer. The Dakota prisoners of war obviously did not fit into that category, in which case one can argue that the Dakota should not have been subjected to a court-martial in the first place. However, insofar as the Dakota prisoners were forced before a military commission, the process under which they were prosecuted can be evaluated in light of the Articles' stipulations. Such evaluation may include an assessment of the president's participation. Carol Chomsky, for example, does an outstanding job outlining the irregularities of the trials that resulted in the mass execution of thirty-eight Dakota men: "The Dakota were tried, not in a state or federal criminal court, but before a military commission. They were convicted, not for the crime of murder, but

for killings committed in warfare. The official review was conducted, not by an appellate court, but by the President of the United States. Many wars took place between Americans and members of the Indian nations, but in no others did the United States apply criminal sanctions to punish those defeated in war."¹⁹

Thus, what began as a court of inquiry, limited to gathering information but restricted from trying and sentencing, soon turned into a kangaroo court. The order that Colonel Henry H. Sibley issued on September 28, 1862, "appointed a five-member military commission and authorized it to 'try summarily the Mulatto, and Indians, or mixed bloods, now prisoners, or who may be brought before them . . . and pass judgement upon them, if found guilty of murders or other outrages upon the Whites, during the present State of hostilities of the Indians.'"²⁰ It was under such dubious auspices that hundreds of trials were prosecuted. Louis Fisher, for his part, corroborates the legal problems Chomsky articulates above, adding:

Counsel was not provided to the defendants, even for those who had little command of English. There is also a question whether Col. [Henry H.] Sibley possessed authority to convene the tribunal. Article of War 65 [cited above] provided that in cases of capital crimes, the officer who convened a court-martial could not also be the accuser. General [John] Pope and Judge Advocate General [Joseph] Holt concluded that Sibley was an accuser, "and Sibley did not disagree." Sibley's defense was that Article 65 applied only to the court-martial of an inferior soldier, not to a military tribunal of outsiders. Yet the army had determined, by January 1, 1862, that military tribunals should be conducted with the same procedures as courts-martial. Whether for soldiers or for outsiders, the purpose of Article 65 was to prevent actual or perceived bias.²¹

What has been thoroughly documented by other scholars, especially Chomsky, is the extent to which the Dakota war trials were a miscarriage of justice. Further, it has been abundantly documented that the treatment of the Dakota prisoners of war was inhumane, and that the forced expulsion of all Dakotas out of the state of Minnesota was an especially brutal act of retribution. With respect to the Dakota exile, Waziyatawin Angela Wilson even goes so far as to argue that the Dakota's forced removal from southern Minnesota was a clear example of what today is known as "genocide," as this term is defined in the UN convention mentioned above.²² Lincoln apologists, on the other hand, argue that, while the Dakota affair was a tragic episode in the history of Indian-white relations, Lincoln's decision, when weighed against the

mass extermination Minnesotans demanded and the epic problems endemic to the Civil War, was not only reasonable and ethical, but also legal. Certainly, there was the possibility that the consequences to this calamity could have been far worse. But how many men can a president allow to be unjustly executed before he is held accountable? Insofar as Lincoln apologists stipulate that one ought to comprehend the execution at Fort Snelling in the context of Lincoln's political and personal life, it seems only fair that this same episode be seen within the context of Dakota history and politics. The latter is relevant, not only for understanding the Dakota perspective on the mass execution of Dakota prisoners, but also for demonstrating the amount of pertinent information Lincoln ignored when weighing his decision to approve the fate of federal detainees.

For the Dakota, the story of the 1862 war begins with the making and breaking of treaties. Roy W. Meyer summarized the way in which local merchants began defrauding signatories of the 1851 Traverse des Sioux treaty almost immediately, thus sowing the seeds of open conflict: "Although treaty stipulations providing for direct payments for traders' debts had been outlawed by Congress, a way was found to evade the letter of the law at Traverse des Sioux. Each Indian, as he stepped away from the treaty table, was pulled to a barrel nearby and made to sign a document prepared by the traders. By its terms the signatories to the treaty acknowledged their debts to the traders and half-breeds and pledge themselves, as the representatives of their respective bands, to pay those obligations."

Francis Paul Prucha, in his epic history of Indian treaty-making, makes the disturbing observation that the 1851 Traverse des Sioux treaty was an example of "the many forces that focused on treaty negotiations in order to serve non-Indian interests." Henry H. Sibley is singled out for caring more about the debt owed him than any of the laws and policies governing treaties. Complicit with Sibley were an array of public officials and special interest groups: "There was adroit maneuvering by the conflicting groups of traders, missionaries, government agents, and the governor of Minnesota Territory, Alexander Ramsey, who (with Luke Lea, the newly appointed commissioner of Indian affairs) was United States commissioner for the treaties."²³ Unsurprisingly, the Dakota were not fully aware of what they were being asked to do. They mistakenly assumed, based on what the traders were telling them, that they were signing another copy of the treaty. However, when confronted with their deception, the traders claimed that they had discussed the situation of the Dakotas' debt before the treaty ceremony, further asserting that all parties involved knew "what they were signing." The traders were clearly indifferent to the disaster their actions set into motion: "The testimony later taken is voluminous and contradictory, but one thing is certain: the 'traders' paper' and the

manner in which the Indians were induced to sign it did more than any other single action on the part of the white men present at the treaty to engender bitterness among the Indians afterward."²⁴ Trade relations, of course, had been a major policy issue going back to the founding of the American republic, beginning with the 1790 Trade and Intercourse Act, which sought to mitigate the unrest occurring up and down "the frontier" by dictating what settlers and traders could and could not do with respect to Indian nations.²⁵ This is to say, regulating Indian trade was a federal responsibility, not subject to local or state jurisdiction. In fact, federal responsibility for Indian trade complemented the federal government's equally important duty for setting military policy for its officers and troops across the frontier, both of which would become relevant to the 1862 conflict between the United States and the Dakota.

On August 17, 1862, four Dakota men returning from a hunting expedition killed a homeowner and his family plus two other men at Acton township, which led—in anticipation of unavoidable retaliation from the settler community—to the Dakota organizing an assault on Fort Ridgely and the town of New Ulm, thus instigating what became known as the "Great Sioux Uprising."²⁶ As far as the white settlers were concerned, they were victims of an unprovoked and savage attack by a race of people who hated their "civilization." As Lincoln's commissioner of Indian affairs, William P. Dole, summarized events in his annual report dated November 26, 1862:

It is estimated that from eight hundred to one thousand quiet, inoffensive, and unarmed settlers fell victims to savage fury ere the bloody work of death was stayed. The thriving town of New Ulm, containing from 1,500 to 2,000 inhabitants, was almost destroyed. Fort Ridgely was attacked and closely besieged for several days and was only saved by the most heroic and unflinching bravery on the part of its little band of defenders until it was relieved by troops raised, armed, and sent forward to their relief. Meantime the utmost consternation and alarm prevailed throughout the entire community.²⁷

Indian agent Galbraith reported in the aftermath of the Dakota attacks that an approximate 644 civilians and 93 soldiers, totaling 737, were killed in the "uprising." Although estimates were given for Dakota casualties and prisoners held, they were regarded as inconsequential.²⁸ Minnesotans, as the historical record shows, were unanimous in their condemnation of the Dakota, even extending their rage and intolerance to the nearby Winnebago (Ho Chunk), irrespective of the fact that the latter had nothing to do with the attacks.²⁹ Nonetheless, it was under these chaotic conditions that the U.S. Army under Major General

John Pope compelled former governor Henry H. Sibley to establish a military commission, which would undertake the prosecution of hundreds of trials, convicting 303 Dakota men of capital crimes punishable by death.

Although tensions had been building for nearly a dozen years between the Dakota and the settler community, Minnesotans spoke of the attack as if they were caught completely unaware that hostilities were brewing nearby. Feigning innocence, Minnesotans acted as if they were the first settler community in history to be on the receiving end of Indigenous wrath, as though they never expected anyone to rise against the oppressive conditions imposed by the settlers. Galbraith was a tyrant who exploited the Dakota for personal gain, threatening them with punishment if they complained or sought retribution. The traders on the reservation, who were in collusion with Galbraith, functioned as a plutocracy, ignoring the laws governing Indian trade and the policies set forth by the Indian Bureau. In turn, of course, the Indian Bureau, the commissioner of Indian affairs, as well as the secretary of the interior and the president of the United States are also implicitly responsible for how their edicts were carried out by their subordinates.

In the storied and bloody history of Indian–white relations, replete with conflicts, treaties, and promises made and broken, Indian people have consistently been portrayed as the embodiment of all that was dangerous and foreboding for the settlers.³⁰ Even as George Washington ostensibly advocated a policy of peace and trade with the Indians, he did not hesitate to affirm the prejudices of the day when he wrote to New York state senator James Duane on September 7, 1783:

I am clear in my opinion, that policy and economy point very strongly to the expediency of being upon good terms with the Indians, and the propriety of purchasing their Lands in preference to attempting to drive them by force of arms out of their Country; which as we have already experienced is like driving the Wild Beasts of the Forest which will return as soon as the pursuit is at an end and fall perhaps on those that are left there; when the gradual extension of our Settlements will as certainly cause the Savage as the Wolf to retire; both being beasts of prey tho' they differ in shape.³¹

The word “savage” and its synonyms and euphemisms would recur throughout the history of Indian–white relations, including a plethora of federal documents defining relevant law and policy. In 1848, in fact, just prior to the 1851 Traverse des Sioux treaty was signed, William Medill spoke passionately as commissioner of Indian affairs about the irrefutable need for the Indians to make way for westward expansion

and the progress it was bringing to the continent: "Apathy, barbarism, and heathenism must give way to energy, civilization, and christianity [*sic*]."32 Not long after Medill's report, in which he proposed removing Indian nations into manageable "colonies," as opposed to individual reservations, Luke Lea assumed the commissioner's helm, arguing in 1850 that something needed to be done about the implacable hostilities between the "Sioux and Chippewas": "These two tribes are hereditary enemies, and scarcely a year passes without scenes of bloody strife between them. From their remoteness and scattered condition, it is difficult to exercise any effective restraint over them while their proximity to each other affords them frequent opportunities for indulging their vengeful and vindictive feelings." Lea goes on to bemoan the fact, as he sees it, that the Dakota and Ojibwe (i.e., Sioux and Chippewa) seem to live only for slaughtering one another, even at the expense of the lives of women and children. The implication is that these two tribes cannot ever be trusted to resolve their interminable conflict on their own, entailing that they are a constant threat to the nearby settler homesteads and fledgling townships. With respect to the interests of Minnesota citizens, Lea reports, "During the last spring mutual aggressions, of an aggravated character, threatened to involve these tribes in a general war, but the acting superintendent, Governor Ramsey, aided and assisted by the commanding officer at Fort Snelling, promptly interposed, and by timely and judicious efforts prevented such a catastrophe."33 Presumably, only American forces can bring lasting peace to the region—a myth that prevails to this day in other parts of the world.

Minnesota's cry for justice during the fall of 1862, which was really a call for revenge, was premised on the notion that Minnesotans had done nothing to warrant an attack on their lives and property. Minnesotans, moreover, thought they should be regarded as innocent victims regardless of how much they profited from the federal government's acquisition of Indian land and resources. Further, Minnesotans acted as if they were not complicit in any malfeasance committed by federal authorities, be it the local Indian agent, the Indian Bureau, or any elected federal office. Assuming, then, that one is willing to accommodate this much compartmentalization, then one will also accept the proposition that the citizens at New Ulm, for example, which was built on ceded Dakota land, were somehow unaware of how their colonial settlements deprived Dakotas of an adequate and sustainable livelihood. All that would matter in this context is the fact that supposedly law-abiding and hard-working Americans were assaulted.

Upon news of the "uprising," which included frantic pleas from Minnesota Governor Ramsey, Lincoln dispatched Major General John Pope, who wanted "a final settlement with all these Indians."34 In the spirit of Pope's "final settlement," Sibley's military commission sought to achieve through legal channels—however dubious the legality of the

means chosen might have been—what could not be attained militarily, which was the elimination of the Indian as a problem on the Minnesota frontier. After all, the “Indian problem,” as exemplified by the number of wars listed above, was still largely considered a matter for the army to settle. Thus, as Lincoln deliberated over the evidence sent to him by Major General Pope, what mattered more than the merits of the cases, as demonstrated below, was appeasing a Minnesota population that was threatening anarchy if he did not rule as they saw fit.

Throughout Chomsky's critical analysis, Lincoln is referred to numerous times in relation to the army's disconcerting marathon of trials. Similar to other critics of Minnesota state and local government officials, Chomsky focuses most of her acuity on the governor's office, the Indian agency, and the military officers overseeing the trials. With respect to Lincoln, Chomsky allows him latitude—even affirming his efforts at reducing the number of condemned—however, she does not completely absolve him: “President Lincoln's commutation of all but thirty-eight death sentences may have been an effort to correct the trial verdicts to reflect the proper standard of responsibility, but the flaws in the proceedings make even his judgments questionable.”³⁵ As Chomsky notes, Lincoln accedes to his connection to the key figures on the Minnesota side of the U.S.–Dakota war when he appoints Sibley on September 29, 1862, “to be Brigadier General of United States Volunteers in charge of the U.S. Military District of Minnesota.”³⁶ Little more than two weeks later, Lincoln convened a meeting of his cabinet in which they expressed alarm at the planned executions, to which Lincoln sends instructions via Pope to Sibley stating “the President directs that no executions be made without his sanction,” which was consistent with the Articles of War outlined above. By the time Sibley received this message in mid-October, the convictions were already mounting.³⁷ It would still be more than three weeks before Pope sent Lincoln a lengthy list of names. Lincoln then requested information on each, including “the full and complete record of their convictions,” in addition to “a careful statement” asserting “the more guilty and influential of the culprits.” Pope complied, adding a warning in which he asserted that if all convicted were not summarily executed, there would be serious repercussions.³⁸ Of course, when rumors spread that Lincoln might not execute as many as had been condemned at trial, the acrimony began to build quickly against both Lincoln and the Dakotas. Lincoln admits that he did not know what to do. So he sought help from Judge Advocate General Joseph Holt, who advised him that he could not delegate the decision to pardon, least of all, “to some officer on the ground.” The decision had to be Lincoln's alone. Meanwhile, as Lincoln pondered these convictions, Minnesota Senator Wilkinson introduced a resolution compelling Lincoln to report to the Senate on his actions regarding the Dakota prisoners and his deliberations on their death sentences.³⁹

Lincoln finally issued his decision on December 6. Postulating that he tried to navigate between the extremes of "clemency" and "cruelty," Lincoln determined to allow executions only for those who had "proved guilty of violating females."⁴⁰ While it is clear that violence against women is an especially heinous crime, even during wartime, it is nevertheless unclear how this was supposed to resolve the issue of the dubious nature of the convictions. All it seemed to accomplish was arbitrarily reducing the number to be hanged at Fort Snelling. Lincoln, it should be noted, never once showed any concern for violations against Dakota women, or any other Dakota slain by American forces. In any case, only two of the condemned Dakota men met Lincoln's proposed criterion, which was obviously too few to quench the bloodlust of settler Minnesotans. Instead, working with a suggestion from Reverend Stephen R. Riggs, Lincoln opted to reassess the list to be executed based on those guilty of having participated in "massacres," which expanded the number of condemned. According to Chomsky, "Riggs agreed that the execution of 'the great majority' of the condemned was necessary but suggested distinguishing 'grades of guilt from the man who butchered women and children to the man who simply followed with a party for the purpose of taking away spoils from the homes of settlers who had fled."⁴¹ In turn, Bishop Henry Whipple offered similar advice: "There is a broad distinction be[t]ween the guilt of men who went through the country committing fiendish violence, masscreing [*sic*] women & babes with the spirit of demons & the guilt of timid men who received a share of the plunder or who under threat of death engaged in some one battle where hundreds were engaged."⁴²

While a theological critique is in order, given that Riggs and Whipple were both ordained men of the cloth, such an analysis is well beyond the purview of this article. However, what is within the limits of this essay is the reference to "massacre" as a criterion for either pardoning or condemning the Dakota prisoners. By the time Lincoln issued his decision in early December, many settlers across Minnesota had been calling for the mass extermination of Indians for several weeks. In which case, anyone with the least amount of interest in the Dakota cannot fail to see the bitter irony in Lincoln using "massacre" to determine the final sentencing of the Dakota prisoners, as if only the white Minnesota settlers could possibly be the victims of indiscriminate carnage. What about the Dakota slaughtered, not to mention the mass slaughter that Governor Ramsey was calling for? Not once does Lincoln, his cabinet, close friends, or Riggs and Whipple raise the issue of Dakota casualties and whether any were victims of war crimes.

Unlike his concern for slavery and abolition and the ensuing "War between the States," we do not have from Lincoln any great speeches or correspondence about the Dakota displaying the kind of thoughtfulness and articulacy for which generations would honor him. In fact,

Lincoln is disturbingly silent with respect to the Dakota. Part of this was due to the fact that Indian affairs were a blind spot in Lincoln's presidency. As Miles A. Browne notes in his essay "Abraham Lincoln and the Great Sioux Uprising of 1862," "Lincoln admitted that he was poorly informed regarding Indian policies. He paid little attention to the Office of Indian Affairs."⁴³ One could say that in light of his ignorance, Lincoln was susceptible to the prejudices and stereotypes that both government and newspaper reports utilized without question in their description of events. The *New York Times*, for example, ran headlines that spoke of "atrocities," "barbarities," "massacre," and "murder" perpetrated against the white citizens of Minnesota. Newspaper headlines in Minnesota, unsurprisingly, were even more vicious.⁴⁴ At the same time, Browne emphasizes that Lincoln, unlike many in the Kentucky, Illinois, and Indiana region, never became known as an "Indian hater." In fact, Browne commends Lincoln for protecting an elderly Indian man from the vengefulness of his comrades, when he strayed into their camp during the Black Hawk War, allegedly demonstrating the future president's innate sympathy.⁴⁵ One can only assume that the latter anecdote is meant to suggest that Lincoln was somehow capable of rising above the dominant racial attitudes of the time. A moment of empathy for one Indian man, unfortunately, is not enough to substantiate Browne's claim that Lincoln was sensitive to all other Indians, let alone their interests as tribal nations. In fact, sparing the life of one Indian man in no way means that Lincoln did not believe in westward expansion and the inevitable passing away of all Indians from the continent.

It seems to be because of the popular mythology—hagiography might be the better word—of Lincoln as a good and honest man that those who have reflected on his handling of the Dakota cases have tended to be more protective than critical of his actions.⁴⁶ Similar to Browne, Daniel W. Homstad, in "Lincoln's Agonizing Decision," does not hesitate to exonerate Lincoln from any wrongdoing on the basis that the U.S.–Dakota War occurred at an inopportune time for any additional problems to be brought up with the president: "On a personal level, [Lincoln] and his wife, Mary, still grieved over the death, nine months earlier, of their 11-year-old son, Willie. On a political level, the administration faced one crisis after another. The war effort was in tatters." Major battles were either lost or failed to achieve their objectives. Moreover, as "the blunders mounted, Lincoln also faced a challenge to his leadership from disgruntled cabinet members." On top of it all, the issue of slavery loomed large. Nonetheless, as Homstad observes, "Somewhere between the bad tidings and bouts of depression the president managed to work on the final drafts of the Emancipation Proclamation," which was issued in two stages: first, September 22, 1862, which declared that the slaves would be freed if the rebels did not cease hostilities and rejoin the Union by January 1; and second,

on January 1, 1863, when the warning of the preliminary proclamation was carried out across eleven Southern states. In between these seminal dates, Lincoln was called on to handle the aftermath of the "Dakota Uprising."⁴⁷

What was at stake, as far as Minnesotans were concerned, was the war on barbarism that American settlers had been waging across Indian Country, ever since the first cabins were erected with the intention of colonizing the land.⁴⁸ Showing Indians clemency was like showing the wolf mercy after it had been caught rampaging through one's livestock. Thaddeus Williams, a doctor living in Saint Paul, who described himself as "an humble private citizen," sent a long letter to Lincoln, in which he gives graphic descriptions of heinous acts committed against unarmed and defenseless women and children, arguing that if the state of Minnesota is to see a future for itself, then it must be rid of the Indians that "kill & steal *all* our stock, murder & rape our mothers, wives & daughters, depopulate counties, burn towns, & turn thousands of acres of hay & wheat, oats & corn out to destruction." Like others, Williams vows vengeance if so-called justice is not delivered to the people of Minnesota. For clemency, Williams argues, would only embolden the Indians. "The Indians, if unpunished," Williams writes, "will not give the Great Father, as they term you, credit for magnanimity, or generosity; they will boast in their Wigwams, and as they dance around their war fires, decorated with scalps of our hardy pioneers & their daughters & wives, & children, that we dared not punish them; that we were afraid; & thus they will be emboldened to commit the same acts again, & can always find a pretence [*sic*] for a provocation." In the end, Williams beseeched Lincoln for "a just regard for the memory of our murdered citizens" by requiring "that these savages be executed." Otherwise the future of Minnesota, not to mention the United States, would suffer from the "painful sense of insecurity" that "pervades the frontier." Such terrorism, as Williams portrays it, was endangering the kind of progress on which the United States was built. For unless the Dakota were severely punished there would be "no more emigrant trains, loaded with hardy yeoman & the implements of industry" heading westward to settle new lands.⁴⁹

The call to arms came from official quarters as well. "We protest" the possibility of pardoning "these Indians," Senator Morton S. Wilkinson and Representatives Cyrus Aldrich and William Windom declared in their letter to Lincoln, "because, if the President does not permit these executions to take place under the forms of law, the outraged people of Minnesota will dispose of these wretches without law. These two peoples cannot live together. We do not wish to see mob law inaugurated in Minnesota, as it certainly will be, if you force the people to it."⁵⁰ Subsequently, a memorial was sent to Lincoln on behalf of the citizens of Saint Paul, who described the Dakota assault as unprovoked

and instigated without warning on an unsuspecting populace. "Without warning, in cold blood," the memorial reads, "beginning with the murder of their best friends, the whole body of the annuity Sioux commenced a deliberate scheme to exterminate every white person upon the land once occupied by them, and long since sold to the United States." As far as the state of Minnesota was concerned, the "savages" already had had their "fair trial" and were duly sentenced to death by a military commission. It did not matter to them that the commission in question did not have jurisdiction over the Dakota cases, the illegitimacy of which was exacerbated by seating judges who were severely biased against the defendants due to their having recently fought the accused on the battlefield.

Instead of throwing all the cases out as he was empowered to do according to the Articles of War, Lincoln determined to ascertain which prisoners were to be formally sentenced to death. As Lincoln states in his own words, which were published in a message from the president "in answer to a resolution of the Senate of the 5th instant in relation to the Indian barbarities in Minnesota," he was "anxious to not act with so much clemency as to encourage another outbreak, on the one hand, nor with so much severity as to be real cruelty, on the other." Consequently, Lincoln claims, he "caused a careful examination of the records of trials to be made, in view of first ordering the execution of such as had been proved guilty of violating females."⁵¹ As noted above, the criterion of "violating females" had to be replaced with participating in "massacres" in order to up the number of condemned. Insofar, then, as Lincoln made this adjustment in his deliberation on cases that he knew were wrongfully tried, it seems clear that he was less concerned with any of the victims of the 1862 war and more interested in quelling the unrest among belligerent Minnesotans threatening rebellion.

Rather than acknowledge that Lincoln may have been fearful of Minnesotans, Homstad points out that Lincoln was overwhelmingly reluctant to hand down death sentences, which came up regularly during the Civil War. Compelled by the Articles of War, Lincoln necessarily had to make these decisions. "In reviewing the death sentences," Homstad writes, "of civilians handed down by military commissions, Lincoln disagreed with 60 percent of the trial courts." Nonetheless, Lincoln made exceptions of cases involving "cruelty or sex offenses. Any death sentence for rape or murder, whether from courts martial or commission, stood a 50-to-80 percent chance of being upheld upon presidential review."⁵² However, when the Dakota cases were reviewed for instances in which women were "violated," as noted above, only two cases out of hundreds met this criterion; consequently, he "directed a further examination."⁵³ The number may have been "unexpected," more than likely, because Lincoln took at face value all the slanderous remarks made about Indian men as sexual predators that were common

throughout much of American history. In other words, the number of cases did not match the prevailing racial stereotype that presumed a proclivity in Indian men for sexual deviance, especially involving violence against women.⁵⁴ Thus Lincoln may have been reluctant about handing down death sentences, but based on Homstad's figures quoted above, he still ordered 40 percent of them to be carried out, so he definitely was not against the death penalty and did see it justified in particular types of cases. So, when the evidence did not corroborate his assumptions about Indian predation against women, he deliberately found a way to increase the number to be hanged. When a more acceptable number was achieved, Lincoln ordered the executions to take place on December 19, 1862; however, more time was requested in order to prepare for what was expected to be a large and potentially unruly crowd gathering at Fort Snelling.

On December 27, 1862, then, Sibley sent a telegram to Lincoln, which stated, "I have the honor to inform you that the thirty eight (38) indians & half breeds ordered by you for execution were hung yesterday at Mankato at ten (10) oclock am—Everything went off quietly and the other prisoners are well secured."⁵⁵ The casualness with which this travesty was announced is bone chilling, to say the least. Little more than a month later, on January 27, 1863, Galbraith, who oversaw the Dakota people's demise, had the audacity to assert in his annual report to the commissioner of Indian affairs, "The radical moving cause of the outbreak is, I am satisfied, the ingrained and fixed hostility of the savage barbarian to reform, change, and civilization." It was with this same mentality that Congressman William Aldrich, who was serving as chairman of the Committee on Indian Affairs, pushed forward a resolution introduced by Congressman William Windom for the "Removal of Dakota and Winnebago Indians" from the state of Minnesota. In typical bureaucratic whitewash, neither the mass execution nor the excruciating hardship that Dakota prisoners had undergone was mentioned in the resolution. On the contrary, Secretary of Interior Caleb Smith wrote as if removal was for the higher good of the Indians:

The time is now as [*sic*] hand when these tribes will perish if their habits of life are not changed. Their only hope of existence is in becoming agriculturalists, and it is to be considered whether sound policy in this respect does not require that all the efforts of the government shall be given in that direction. Money annuities should cease to be paid to them to any extent; the bounties of the government should be bestowed in clothing, food, and agricultural implements, the building of houses, the employment of instructors in all branches of labor in which they are capable

of being improved, and such system should be adopted as would necessarily compel them to labor.⁵⁶

Instead of seeing the U.S.–Dakota war as a profound failure in federal Indian policy, the attitude was one in which the principles of forced assimilation were reaffirmed as the proper solution to the “Indian problem.” Consequently, the United States felt justified in continuing its war on barbarism until it made the land safe for American settlement and economic progress from New York to California and all points in between.

Chomsky notes that in the aftermath of the Dakota executions Lincoln received occasional requests to pardon the remaining prisoners, who had been sent to a variety of prisons, such as David Faribault Jr. (a “mixed-blood”) Toonwanwakinyachatka, Tatememah, and Wambditanka.⁵⁷ In the end, Lincoln pardoned almost as many men as he had condemned. As for the nearly two hundred remaining prisoners, Chomsky summarizes:

Beginning as early as July 1865, after two years of imprisonment at Camp McClellan, there was discussion about releasing the remaining prisoners, in part “because of the expense of feeding them and guarding them.” General Pope expressed some reluctance about releasing the men and allowing them the freedom to join with what he termed other “hostile Indians” near the Crow Creek Reservation. Nevertheless, orders arrived in late September to transport the men as soon as spring navigation opened. Finally, on March 22, 1866, President [Andrew] Johnson ordered remission of the sentences of death and release of the 177 remaining prisoners. They, along with the community from Crow Creek, were transported to the Niobrara Reservation, newly appropriated for them in the northeast corner of the Nebraska Territory.⁵⁸

In the end, Lincoln limited himself to the cases put before him as a result of the hasty trials processed in the upshot of hostilities between the United States and the Dakota. Neither proposing any new developments in federal Indian policy nor showing any concern for the Dakota’s violently being forced out of their homeland, Lincoln by and large refocuses his attention to the Civil War. Indeed, the above-mentioned pardons notwithstanding, Lincoln never demonstrated any remorse for allowing thirty-eight Dakota men to be wrongfully executed.

Perhaps because Lincoln’s life story has been so thoroughly mythologized most are skittish about denouncing his decision on the

Dakota war trials. Even Chomsky hesitates, noting instead the tremendous political pressure he faced from a virtually riotous Minnesota population.⁵⁹ Moreover, while Chomsky provides substantial evidence for the illegality and copious faultiness of the trials, she does not devote much time to the impact of the war trials, the mass execution, and the subsequent exile of the Dakota people. While it is arguable that such concerns are not within the stated scope of her essay, it is still worth pointing out that even a work as thorough as Chomsky's is insufficient for appreciating the severity of Lincoln's violation of Dakota rights as human beings. Despite the oppressive conditions the Dakota were forced to endure, despite the mitigating circumstances in which the Dakota "uprising" ought to have been understood, Lincoln showed more interest in looking compassionate toward the Minnesotans clamoring for Indian blood: "Certainly it was the killing—and alleged mutilation—of civilians that provoked cries for revenge from the Minnesotans. It was also the killing of civilians that apparently persuaded President Lincoln to order execution of those who participated in 'massacres' rather than in battles."⁶⁰

Chomsky follows with her appraisal of Lincoln's decisions on individual cases, successfully showing inconsistencies in his reasoning from one case to the next, as well as making it clear that he did not adequately respect Dakota sovereignty.⁶¹ However, she refrains from denouncing Lincoln's actions, let alone suggesting that this horrendous injustice in any way tarnishes his political legacy at preserving the Union. The Dakota prisoners of war affair nonetheless shows Lincoln's true colors as a leader and politician. Lincoln apologists, though they never validate the racist fervor exhibited in the Minnesota capital and the state's news outlets, do not hesitate to make an array of excuses for him, referring to everything from the Civil War going poorly for the North to personal family tragedy as the reason why he was incapable of pardoning the Dakota prisoners en masse. One would be naive, though, to assume that Lincoln's Midwestern roots, including his service in the Black Hawk War, meant that he was knowledgeable about either Indian people or federal Indian affairs, let alone Dakota history and politics. If anything, Lincoln may have been biased toward Indians, not only because of the Black Hawk War, but also because of the personal loss Lincoln's family suffered when his grandfather and namesake was killed by Indians in 1786.⁶² Though the latter occurred before the younger Lincoln's birth in 1809, one should not underestimate the power of family lore and how it shapes one's identity, not to mention how it shapes one's perception of others. So, while there is no evidence prior to 1862 that Lincoln was an "Indian hater" like President Andrew Jackson, his perception of Indians is nonetheless shaped by instances of armed conflict. Apologists aver moreover that Lincoln somehow benefits from having freed the slaves, as if this gave him moral credit that

he could use to lessen his debt to the Dakota community for unjustly executing prisoners of war, not to mention the imprisonment of most Dakota and their subsequent exile. What Lincoln's defenders never acknowledge is the possibility that despite all the good that Lincoln may have done during his administration, he still can be held fully accountable for the acts of unequivocal wrong that he committed. In the final analysis, what Lincoln really benefited from was the prevailing assumption that the United States was entitled to Indian land and that any wars erupting between the United States and Indigenous nations were "just wars" by definition, which implicitly exonerates American forces from any wrongdoing.⁶³

Upon reflecting on the inhumane tragedy at Wounded Knee, South Dakota, where Eastman served as the government physician at Pine Ridge Agency, he states in his 1916 autobiography, "All this was a severe ordeal for one who had so lately put all his faith in the Christian love and lofty ideals of the white man. Yet I passed no hasty judgment, and was thankful that I might be of some service and relieve even a small part of the suffering."⁶⁴ Eastman's cautious attitude is made all the more remarkable when one considers that he was also a victim of the 1862 U.S.–Dakota War, albeit as a small boy. With respect to which, one wonders how Eastman was able to check his anger. Earlier he seemed so unforgiving of the Minnesotans who drove his family and tribe away from their homeland. Perhaps he sensed that history would be the final judge of events, such that even Lincoln must be held accountable. Rather than condemn Lincoln himself for his moral timidity, Eastman has left it to a later generation to reflect on the historical meaning and value of his decision to execute those thirty-eight Dakota men. In light of the one hundred and fiftieth anniversary of the execution date, I would say that that time is now. In the final analysis, whereas Lincoln was ultimately willing to rend the United States in two and go to war over the Southern states' secession from the Union, he could do little more than to illegally condemn thirty-eight Dakota men to death in order to appease the people of Minnesota, who actually wanted much more state-sanctioned revenge from him than he was willing to give. Still, merely arguing that things could have been worse is not justice by any means. It is cowardice. Lincoln feared his own people, giving in to the mob-rule mentality that shouted to him from across southern Minnesota. At best, one can say that Lincoln's decision—however agonizing, as Homstad claims—still made him an accomplice to murder, as perpetrated by the Minnesotans that even Eastman could not forgive. At worst, one can make the valid claim, as this author asserts, that Lincoln is unequivocally guilty of mass murder. For when Lincoln approved the order to execute, it was as though he personally put the noose around each of the thirty-eight men hanged on that cold December day.⁶⁵

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N O T E S

- 1 H.exdoc. 1/7, 38th Congress, 1st Session (1863): 288.
- 2 For more on this episode of treaty fraud, see Roy W. Meyer, *History of the Santee Sioux: United States Indian Policy on Trial* (Lincoln: University of Nebraska Press, 1993), 72–87.
- 3 Charles A. Eastman, *The Indian To-Day: The Past and Future of the First American* (Garden City, N.Y.: Doubleday, Page & Company, 1915), 49–50.
- 4 *Ibid.*, 50. Eastman is referring specifically to the 1851 Treaty of Traverse des Sioux. See Meyer, *History of the Santee Sioux*, 80. See also Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, vol. 2 (Washington, D.C.: Government Printing Office, 1904), 588–90.
- 5 “Treaty with the Sioux—Mdewakanton and Wahpakoota Bands, 1851,” in Kappler, *Indian Affairs*, 591.
- 6 *Ibid.*, 588–90.
- 7 Charles E. Flandrau, “The Indian War of 1862–1864, and Following Campaigns in Minnesota,” in *Minnesota in the Civil and Indian Wars, 1861–1865*, Minnesota Board of Commissioners on Publication of History of Minnesota in Civil and Indian Wars (Saint Paul: Printed for the state by the Pioneer Press Company, 1891), 728.
- 8 *Ibid.*, 728–29.
- 9 The most heinous and notorious example was the 1850 Act for the Government and Protection of Indians. See Selucius Garfield and F. A. Snyder, comps., *Compiled Laws of the State of California* (Boston: Press of the Franklin Printing House, 1853), 822–25.
- 10 Carl Waldman, *Atlas of the North American Indian* (New York: Facts on File Publications, 1985), 128.
- 11 *Ibid.*
- 12 A major development during Lincoln’s presidency that ought not be overlooked is his signing the 1862 Homestead Act into law, which opened up the public domain across the frontier to independent farmers, which eventually led to more states entering the federal union, meaning more conflict with Indian nations as their land bases rapidly shrank. See *Statutes at Large*, 37th Congress, 2nd Session (1862): 392–1443. See also Thomas LeDuc, “History and Appraisal of U.S. Land Policy to 1862,” *Agricultural History* 36, no. 4 (1962): 222–24; and John Hudson, “Two Dakota Homestead Frontiers,” *Annals of the Association of American Geographers* 63, no. 4 (1973): 442–62.
- 13 U.S. Army, *The Background of the Uniform Code of Military Justice* (Washington, D.C.: Judge Advocate General’s School, 1959), 4–5.
- 14 As for the treatment of prisoners while being held under guard, prior to 1863 there was little to no guidance, other than military custom. See Department of Defense, *The U.S. Fighting Man’s Code* (Washington, D.C.: Office of Armed Forces Information

- and Education, 1955), 5. On April 2, 1862, an order from the Adjutant General's Office stated, "A General Commanding in the field, or a Department, will make arrangements for the safe-keeping and reasonable comfort of his prisoners" (247). This was approximately eight months before the Mankato trials began. A subsequent order of the same year speaks to the general management of wartime prison camps (297–98). See Thomas M. O'Brien and Oliver Diefendorf, *General Orders of the War Department, Embracing the Years 1861, 1862, and 1863* (New York: Derby & Miller, 1864). See also Brig. Gen. Fred C. Ainsworth and Joseph W. Kirkley, *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* (Washington, D.C.: Government Printing Office, 1899), 78–79.
- 15 Act of April 10, 1806, Chapter 20, 69 Stat. 367–68. The Act was issued during the 9th Congress, Session 1.
 - 16 Act of April 10, 1806, Chapter 20, 71 Stat. 368.
 - 17 Act of April 10, 1806, Chapter 20, 65 Stat. 367.
 - 18 Act of April 10, 1806, Chapter 20, 89 Stat. 369–70.
 - 19 Carol Chomsky, "The United States–Dakota War Trials: A Study in Military Injustice," *Stanford Law Review* 43, no. 1 (1990): 14.
 - 20 *Ibid.*, 23.
 - 21 Louis Fisher, "Military Tribunals: Historical Patterns and Lessons," *CRS Report for Congress* (Washington, D.C.: Congressional Research Service, 2009), 21–22.
 - 22 See Waziyatawin, *What Does Justice Look Like? The Struggle for Liberation in Dakota Homeland* (Saint Paul: Living Justice Press, 2008).
 - 23 Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 199.
 - 24 Meyer, *History of the Santee Sioux*, 80–81.
 - 25 The 1790 Act was followed by others, all of which were efforts at recognizing Indian commercial and property rights, in addition to mitigating tensions that kept worsening between American settlers and Indian communities. See Francis Paul Prucha, *American Indian Policy during the Formative Years: The Indian Trade and Intercourse Acts, 1780–1834* (Lincoln: University of Nebraska Press, 1970), 14–15.
 - 26 For an account of the consternation, heated discussions, and complex response the Dakota community made in response to the Acton killings, see Gary Clayton Anderson, *Little Crow: Spokesman for the Sioux* (Saint Paul: Minnesota Historical Society Press, 1986).
 - 27 H.exdoc. 1/5, 37th Congress, 3d session (1862): 171.
 - 28 H.exdoc. 1/7, 38th Congress, 1st session (1863): 294.
 - 29 See William E. Lass, "The Removal from Minnesota of the Sioux and Winnebago Indians," *Minnesota History* 38, no. 8 (1963): 353–64.
 - 30 For a groundbreaking study of the Indian as savage in the American imagination, see Roy Harvey Pearce, *Savagism and Civilization: A Study of the Indian and the American Mind* (Berkeley: University of California Press, 1988).
 - 31 George Washington, "George Washington to James Dean," in *Documents of United States Indian Policy*, ed. Francis Paul Prucha (Lincoln: University of Nebraska Press, 2000), 2.

- 32 William Medill, "Indian Commissioner Medill on Indian Colonies," in *ibid.*, 76.
- 33 Luke Lea, "Indian Commissioner Lea on Reservation Policy," in *ibid.*, 81.
- 34 David A. Nichols, *Lincoln and the Indians: Civil War Policy and Politics* (Columbia: University of Missouri Press, 1978), 95.
- 35 Chomsky, "United States–Dakota War Trials," 15.
- 36 *Ibid.*, 19.
- 37 *Ibid.*, 27.
- 38 *Ibid.*, 29.
- 39 *Ibid.*, 30.
- 40 *Ibid.*, 32.
- 41 *Ibid.*, 32n118.
- 42 *Ibid.*
- 43 Miles A. Browne, "Abraham Lincoln and the Great Sioux Uprising of 1862," in *Lincoln Then and Now* (Sioux Falls: Pine Hill Press, 2009), 27. According to Lincoln scholars, the sixteenth president was slow to make himself more enlightened about slavery and the abolitionist movement. Like many political leaders, Lincoln may be regarded as more pragmatist than idealist. For more on Lincoln's evolution as an abolitionist, see Allen C. Guelzo, "Abraham Lincoln and the Doctrine of Necessity," *Journal of the Abraham Lincoln Association* 18, no. 1 (1997): 57–81; see also Allen C. Guelzo, "Lincoln and the Abolitionists," *Wilson Quarterly* 24, no. 4 (2000): 58–70. For an analysis of how a major figure of ethical consciousness viewed Lincoln's slow assent to abolitionism, see Marjory M. Moody, "The Evolution of Emerson as an Abolitionist," *American Literature* 17, no. 1 (1945): 1–21.
- 44 Louis Harry Roddis, *The Indian Wars of Minnesota* (Cedar Rapids: Torch Press, 1956), 73.
- 45 Browne, "Abraham Lincoln and the Great Sioux Uprising," 25–27. Interestingly, in this regard Lincoln does far less on behalf of Indians than his predecessor Andrew Jackson, who has been documented as having adopted a Creek boy, Lyncoya, at infancy and raising him in his own home. Lyncoya is the subject of at least one known work of historical fiction, Margery Evernden's *Lyncoya* (n.p.: H. Z. Walck, 1973). For a historical reference, see Mark R. Cheatham, ed., *Jacksonian and Antebellum Age: People and Perspectives* (Santa Barbara: ABC–CLIO, 2008), 135–37.
- 46 Probably the most noteworthy work in establishing the Lincoln legend is Carl Sandburg's *Abraham Lincoln: The War Years* (New York: Harcourt, Brace and Company, 1939). More recently, William Lee Miller published *Lincoln's Virtues: An Ethical Biography* (New York: Borzoi Books, 2002), in which Lincoln's ethical reasoning, decisions, and moral example is thoroughly examined in light of his personal and political life. However, Miller completely omits any reference to Minnesota and the 1862 U.S.–Dakota War, let alone the military trials and the subsequent Dakota exile.
- 47 Daniel W. Homstad, "Lincoln's Agonizing Decision," *American History* 36, no. 5 (2001): 34.
- 48 See Minnesota Historical Society, Sibley House Historic Site, <http://www.mnhs.org/places/sites/shs/>.
- 49 "Thaddeus Williams to Abraham Lincoln, Saturday, November 22, 1862," in *Abraham Lincoln Papers at the Library of Congress*, trans. and ann. Lincoln Studies Center, Knox College, Galesburg, Illinois.

- 50 S. Exec. Doc. No. 7, 37th Congress, 3d Session 1 (1862).
- 51 Ibid.
- 52 Homstad, "Lincoln's Agonizing Decision," 35.
- 53 S. Exec. Doc. No. 7, 37th Congress, 3d Session 1 (1862).
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