
**WINTERTIME FOR THE SISSETON-WAHPETON
OYATE: OVER ONE HUNDRED FIFTY YEARS OF
HUMAN RIGHTS VIOLATIONS BY THE UNITED
STATES AND THE NEED FOR A RECONCILIATION
INVOLVING INTERNATIONAL INDIGENOUS
HUMAN RIGHTS NORMS**

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During the Dakota War of 1862, human rights violations were perpetrated against Dakota men, women, and children. In the winter at the end of the War, the largest mass execution in the history of the United States occurred when thirty-eight Dakota men were hung. Wintertime has continued on for the Sisseton-Wahpeton following the U.S.-Dakota War of 1862. In the aftermath of the War, the Sisseton-Wahpeton Dakota peoples responded in various ways and, as a result of the War, scattered to the four directions. The quality of life for the Sisseton-Wahpeton Oyate (SWO) continues to be far below the level enjoyed by the majority of citizens in the United States. The government of the SWO is under the plenary authority of the U.S. Congress according to the U.S. Supreme Court.¹ The human rights of cultural and economic self-determination, recognition of the ownership of a permanent homeland, and freedom to live in peaceful integrity have all been denied to the Sisseton-Wahpeton Dakota by the U.S. government and its component state governments.

I. THE NEED TO ADDRESS ONGOING HUMAN RIGHTS VIOLATIONS

This article will discuss the human rights violations perpetrated against the Sisseton-Wahpeton Dakota peoples leading up to the U.S.-Dakota War of 1862, during the War, and in the aftermath of the War continuing to the present day. In discussing these human rights violations, the role of the U.S. government and its component state governments as perpetrators of abuses on the Sisseton-Wahpeton peoples will be examined. Racial hatred by White U.S. citizens and officials will be examined as a primary

1. See U.S. v. Lara, 541 U.S. 193, 200 (2004).

motivation for the human rights abuses experienced by the Sisseton-Wahpeton peoples. Finally, the article will present the human rights outlined in the U.N. Declaration on the Rights of Indigenous Peoples (UN DRIP) as the proper standards to be accorded to the Sisseton-Wahpeton Oyate and its people. With the realization of the human rights outlined in the UN DRIP, the future for the SWO would be significantly brightened, as when spring arrives after a long winter.

Over time, the citizens of nation-states around the world have broadened their vision of human rights and developed a greater sense of compassion towards Indigenous peoples. This evolution in the recognition of collective human rights was embodied in the 2007 UN DRIP. After centuries of colonization and exploitation of Indigenous peoples, the world community has begun to rethink treatment towards Indigenous populations.

This article will bring these standards to bear on the relationship between the U.S. government and the Sisseton-Wahpeton Oyate. By comparing the historical and contemporary treatment of the SWO under U.S. law to the UN DRIP's standards, the need to reconcile historical and contemporary injustices will be highlighted. This reconciliation requires a more compassionate, mature, and wise application of human rights protections to the Sisseton-Wahpeton peoples in the aftermath of the U.S.-Dakota War.

II. HISTORICAL INTERACTION WITH THE WHITES FROM TRADING POSTS TO U.S. TREATIES

The Sisseton and Wahpeton are part of the *Oceti Sakowin*, or Seven Council Fires. The Seven Council Fires are composed of the Dakota-, Lakota-, and Nakota-speaking peoples. The Council Fires are formed from four that are Dakota—*Sissetonwan*, *Wahpetonwan*, *Wahpekute*, and *Mdewakantonwan*; two that are Nakota—*Ihanktonwan* (Yankton) and *Ihanktowana* (Little Yankton); and one that is Lakota—*Tetonwan*.² The name *Sissetonwan* is derived from the people who live near the fish or fish scales. The name refers to the mounds of fish scales that were seen upon the edge of the villages due to the large numbers of fish eaten by the people. *Wahpetonwan*

2. See ELIJAH BLACK THUNDER ET AL., EHANNA WOYAKAPI: HISTORY AND CULTURE OF THE SISSETON-WAHPETON SIOUX TRIBE OF SOUTH DAKOTA 98 (1975).

refers to the people who live among the trees and leaves, or forest-dwellers. Collectively, the Dakota peoples are known as the *Isanyati*, or dwellers at Knife Lake, which was further shortened to simply Santee in most historical records.³ The Sisseton-Wahpeton Oyate is the joining of two Dakota council fires into one government, eventually located on the Lake Traverse Reservation in present-day northeastern South Dakota and extending partially into present-day North Dakota.⁴

Over a vast area of abundant land, the Dakota lived in villages, usually along lakes and rivers as water resources were heavily relied upon. As late as 1776, the Dakota lands were extensive and described to extend over millions of resource-rich acres.

Reckoning from the independence of the United States in 1776, the Dakotas appear to have owned and possessed the country from the Falls of the Chippewa River down that stream to its mouth, thence down the Mississippi to about the north line of Iowa, thence across the northern part of Iowa to the mouth of the Sioux River, thence up the Missouri River to the Niobrara and west from there along the Niobrara and the Platte to the Black Hills. Beginning again at the falls of the Chippewa the north line of the Dakotas' territory ran in a generally north of west direction, passing about thirty miles north of St. Anthony Falls and striking the Red River of the North at the mouth of the Sheyenne, thence up the Sheyenne to Devils Lake, thence in a line to the Missouri at the mouth of Heart River, thence up the Heart and across to the Little Missouri and up this stream through the Black Hills to the Platte. This embraced all of South Dakota, more than half of Minnesota, a large portion of North Dakota and portions of Wisconsin and Iowa, a goodly heritage, such as no other tribe of Indians upon the continent was ever able to claim and by prowess make the claim good.⁵

Kinship trade networks stretched along the Great Plains with gatherings in the summers to renew relations with other Dakota/Lakota/Nakota peoples or those of other Tribes. Additionally, the Dakota were known to travel "anywhere from

3. *Id.*

4. *Id.* at 72.

5. DOANE ROBINSON, A HISTORY OF THE DAKOTA OR SIOUX INDIANS 27 (1967) (footnote omitted).

Hudson's Bay to the Gulf of Mexico and between the Alleghenies and the Rockies."⁶ Into this network, the French were the first Whites to enter these Dakota lands.

A. *Dakota Commerce with French and British Trading Posts*

Throughout the relations with the Europeans who came to Dakota lands, rivalries among the newcomers required political maneuvering on the part of tribal leadership to manage commerce, alliances, and territorial boundaries. As early as the 1660s, French missionaries and traders had received assistance and entered into friendly relations with the Dakota in the region now known as the Great Lakes.⁷ French-Canadians set up trading posts to engage in the fur trade with varying success up until the 1760s when the British became dominant. As the French and British trading posts spread into the lands of the Dakota, liquor soon followed.

The trader had a tremendous influence on the Dakota way of life. The Indians gradually became very dependent on such articles as blankets, steel knives, iron pots and many other articles of necessity. The firearm was probably the most desired product that the Indians could obtain from the trader. With this fantastic weapon, they could obtain many more skins and exchange these for desired products. Another new product for the Dakota was liquor. The traders made it available throughout the entire trading era. An act was passed that forbade this practice, but plenty of alcohol was smuggled into Dakota country and traded for valuable furs.⁸

The French and British continued their imperialistic aims in North America, seeking alliances with the Dakota in their ongoing war against each other. Eventually, the British overcame the French and asserted authority. Heavily in debt, the British taxed the east coast colonies and sought raw materials to bolster the British government. In addition to the British taxes, colonists resented the Royal Proclamation of 1763 upholding the land rights of Tribal Nations west of the Appalachian Mountains and requiring colonial land speculators to seek permission from the British

6. *Id.*

7. See ROY W. MEYER, HISTORY OF THE SANTEE SIOUX: UNITED STATES INDIAN POLICY ON TRIAL 5 (1967).

8. BLACK THUNDER ET AL., *supra* note 2, at 14.

Crown prior to purchasing tribal lands.⁹ Eventually, the resentment of the colonies led to a revolution against the British. In the aftermath, the United States of America was formed on North American soil with the U.S. Constitution adopted on June 21, 1788, when the ninth state, New Hampshire, ratified it.¹⁰

B. U.S. Treaties with the Dakota Peoples in 1805, 1825, 1830, 1836, and 1837

Unbeknownst to the Dakota on April 30, 1803, the country of France sold its interest in a vast area of land in central North America to the United States in a transaction commonly called the Louisiana Purchase.¹¹ The lands of the Dakota were included in the area purportedly sold to the United States. Following the Louisiana Purchase, the United States commissioned Lieutenant Zebulon Pike to report on the possible headwaters of the Mississippi River and to begin establishing forts in Dakota lands.¹² The U.S. government followed the British practice of entering into treaties and agreements with Tribal Nations to legitimize land transactions providing for expansion from the eastern seaboard westward. The first treaty negotiated by Pike with the Dakota was in 1805 for a nine-mile square tract to build Fort Snelling.¹³ The payment provision for this first land transaction was left blank and filled in three years later, when the U.S. Senate ratified the agreement with the payment as: “two thousand dollars, or deliver the value thereof in such goods and merchandise as they shall choose.”¹⁴ The open-ended payment term in this first treaty demonstrated a disregard for the property rights of the Dakota and the uneven bargain asserted by the United States by inserting the price term years later at a price the buyer chose.

9. See COHEN’S HANDBOOK OF FEDERAL INDIAN LAW 19–20 (Nell Jessup Newton et. al. eds., 2005).

10. See WILLIAM FUNK, INTRODUCTION TO AMERICAN CONSTITUTIONAL STRUCTURE 1 (2008).

11. See MARK DIEDRICH, MNI WAKAN OYATE (SPIRIT LAKE NATION): A HISTORY OF THE SISITUWAN, WAHPETON, PABAKSA, AND OTHER DAKOTA THAT SETTLED AT SPIRIT LAKE, NORTH DAKOTA 20 (2007).

12. See 1 WILLIAM WATTS FOLWELL, A HISTORY OF MINNESOTA 91 (1956).

13. See Treaty with the Sioux, Sept. 23, 1805 (ratified Apr. 16, 1808, never proclaimed by the President), reprinted in 2 INDIAN AFFAIRS: LAWS AND TREATIES 1031 (Charles J. Kappler ed., 1904) [hereinafter Kappler].

14. *Id.*

Pike was also given the assignment “to inform the British traders and the Santee Sioux that the government had supreme power over the entire territory.”¹⁵ The U.S. presence in Dakota lands was made permanent with the construction of Fort Snelling.

From the time of arrival of Colonel Leavenworth with a battalion of infantry in the late summer of 1819 to the establishment of the [Minnesota] territory thirty years later, Fort Snelling was the principal point of interest on the upper Mississippi above Prairie du Chien. The American Fur Company had its chief trading post under the guns of the fort. The Indian agent had his residence and council house a short walk from the main gateway of the inclosure.¹⁶

The presence of Fort Snelling within Dakota lands would become the site of a concentration camp for the Dakota men, women, and children as the tragic events in 1862 occurred.

In continuing efforts to assert dominion over the Great Plains region, a council of many Tribes was called in 1825, where U.S. government officials sought to set out territorial boundaries between the Tribes.¹⁷ Tribal leaders from “the Sioux, Chippewa, Menominee, Winnebago, Sac and Fox, Iowa, Potawatomi, and Ottawa [T]ribes” responded to the invitation to attend the council at Prairie du Chien.¹⁸ U.S. Colonel William Clark, Territorial Governor of Missouri, and Territorial Governor Lewis Cass of Michigan held the council for the purpose of keeping open fur trade routes and allowing for White settlement in the area.¹⁹

The speech of a Winnebago leader, Caramonee, has been preserved demonstrating that the property concepts of common ownership in the Tribes were explained to the U.S. representatives at the council, but to no avail.

The lands I claim are mine and the nations here know it is not only claimed by us but by our Brothers the Sacs and

15. BLACK THUNDER ET AL., *supra* note 2, at 14.

16. See I FOLWELL, *supra* note 12, at 422.

17. MEYER, *supra* note 7, at 40. An example of the boundaries included in the Treaty are as follows: “[A] dividing line was designated between the lands of the Sac and Fox tribe and those of the Sioux, running across northern Iowa, and another drawn on the map to separate the Sioux from the Chippewas.” *Id.*

18. *Id.* at 39.

19. See *The Treaty of Prairie du Chien, 1825*, WIS. HIST. SOC’Y, <http://www.wisconsinhistory.org/turningpoints/search.asp?id=1620> (last visited Nov. 10, 2012).

Foxes, Menominees, Iowas, Mahas, and Sioux. They have held it in common. It would be difficult to divide it. It belongs as much to one as the other. . . . My Fathers I did not know that any of my relations had any particular lands. It is true everyone owns his own lodge and the ground he may cultivate. I had thought the Rivers were the common property of all Red Skins and not used exclusively by any particular nation.²⁰

Rather, the Treaty of Prairie du Chien²¹ set up a new dividing line foreign to the tribal territorial understanding. The underlying purpose of dividing up tribal territories was to provide a means for future land transactions for each Tribe's portion of the area in separate agreements. Those attending the grand council were wined and dined by U.S. officials to gain approval for the boundary. Two of the Dakota leaders attending the council became gravely ill after enjoying the drinks provided by the U.S. officials, and one died on the trip back home.²² This led to rumors that the U.S. officials had sought to poison those gathered at the council.²³ In the aftermath of the grand council, the dividing line was not adopted by the Tribes.

The Indian agent, Lawrence Taliaferro, assigned to the Sioux of the Mississippi from 1819 to his resignation in 1839,²⁴ was a persistent advocate of assimilation and land cession to the Dakota.²⁵ During this span of years, the Treaties of 1830, 1836, and 1837 were entered into between the Sisseton-Wahpeton peoples and the United States, all involving the selling of Dakota lands. The Treaty of 1830 included in article 3 the following land cession:

The Medawah-Kanton, Wah-pa-coota, Wahpeton and Sisseton Bands of the Sioux cede and relinquish to the United States forever, a Tract of Country twenty miles in

20. MEYER, *supra* note 7, at 40 (citing Journal of Proceedings at Prairie du Chien (Aug. 6, 8–9, 1825) (photostatic copy) (on file with the Minnesota Historical Society)).

21. Treaty with the Sioux, Etc., Aug. 19, 1825, 7 Stat. 272, *reprinted in* 2 Kappler, *supra* note 13, at 250.

22. See DIEDRICH, *supra* note 11, at 25.

23. See MEYER, *supra* note 7, at 40–41. “A rumor spread that the white men had deliberately tried to poison them. Although scouting this report, the younger Snelling predicted that many of the Sioux would continue to believe it for the rest of their lives In the 1960’s elderly people were still telling this story” *Id.*

24. 1 FOLWELL, *supra* note 12, at 141–42.

25. See *id.* at 54, 56.

width, from the Mississippi to the Demoine River, situate north, and adjoining the line mentioned in the preceding article [referencing the dividing line in the Treaty of Prairie du Chien].²⁶

Article 4 of this treaty set the payment of two thousand dollars as an annuity for ten years to be divided among the four Dakota bands and included the posting of a blacksmith.²⁷

Next, the Treaty of 1836 was directly negotiated by Indian agent Taliaferro with the “Wahpaakootah, Susseton, and Upper Medawakanton tribes of Sioux Indians” for the purpose of modifying the boundaries set out in the Treaty of Prairie du Chien and extending the boundary of the state of Missouri into Dakota lands.²⁸ Under the 1836 Treaty, the lands between the boundary of Missouri and the Missouri River were the subject of the latest land transaction.²⁹ The payment for this purchase was set as “to cause said tribes to be furnished with presents to the amount of five hundred and fifty dollars *in goods*, the receipt of which is hereby acknowledged.”³⁰

Another treaty was entered into a year later, in 1837, by the Mdewakanton containing the cession of “all their land, east of the Mississippi river, and all their islands in the said river.”³¹ The annuities and payments promised under this treaty were late in arriving. The constant pressure from the failure of receiving payments for employees, the annuities promised the Dakota Tribes, and the lack of response from the Indian Office eventually led to Taliaferro’s resignation in 1839.³² With this land cession, “the east bank of the Mississippi was soon lined with whiskey sellers.”³³

26. Treaty with the Sauk and Foxes, Etc., art. 3, July 15, 1830, 7 Stat. 328, reprinted in 2 Kappler, *supra* note 13, at 306.

27. *Id.* at art. 4.

28. Treaty with the Sioux, Nov. 30, 1836, 7 Stat. 527, reprinted in 2 Kappler, *supra* note 13, at 481.

29. *Id.*

30. *Id.* (emphasis added).

31. Treaty with the Sioux, art. 1, Sept. 29, 1837, 7 Stat. 538, reprinted in 2 Kappler, *supra* note 13, at 493.

32. MEYER, *supra* note 7, at 61.

33. *Id.* at 60; see also DUANE SCHULTZ, OVER THE EARTH I COME 20 (1992) (“Whiskey was only one destructive legacy of the treaty of 1837. The white settlers also brought their diseases. Cholera and malaria swept the Sioux villages. Whooping cough killed uncounted numbers of children. The Indians had no resistance to these plagues, and the government provided little in the way of care or medicine.”)

This history of treaty making for a span of approximately thirty-five years with the United States was fraught with human rights violations. Negotiating the treaties with open-ended or less-than-value payment provisions, intentionally seeking to intoxicate tribal leadership prior to entering into a treaty for land cessions, failing to provide payments due under the treaties, and sanctioning the ability of the White traders to submit unverified claims to be deducted from the treaty payments were regular occurrences by U.S. officials.³⁴ Even in receiving payments due under the treaties, “[t]he Indians were frequently required to go a long distance, at a great inconvenience to themselves, to receive the money due them, in order that they might be convenient to the post of some of the traders, where they could spend it.”³⁵

The documented accounts that survive from this era also refer to abuses of Native women by White men that went unpunished.³⁶ The dehumanizing characterization of American Indians by White U.S. officials, traders, and settlers added to the justification for heaping human rights violations on the Dakota. The greatest human rights violations were a result of the secret policy of land dispossession and genocide that was the underlying U.S. government plan for American Indians. This secret policy would become overt with the events of 1862.

C. The Treaties of 1851 and the Washington D.C. Treaties of 1858: Conspiracy, Deception, and Refugee Status

For the next few years, the Dakota peoples engaged in the fur trade, fought in warriors’ battles with the Chippewa, and carried on their traditional lifeways as much as possible with Whites continuing to enter their lands. Trading posts were in full swing, stretching from the northern Lake Traverse to Big Stone Lake to Lower Sioux Agency on the Minnesota River.³⁷ Some Dakota, particularly those intermarried with Whites, chose to adopt Christianity at the behest of missionaries locating in the Dakota lands and urging assimilation to the White man’s ways.³⁸ Others

34. SCHULTZ, *supra* note 33, at 9.

35. ROBINSON, *supra* note 5, at 204.

36. See, e.g., GARY CLAYTON ANDERSON, *LITTLE CROW: SPOKESMAN FOR THE SIOUX* 101 (1986).

37. See BLACK THUNDER ET AL., *supra* note 2, at 11–18.

38. *Id.* at 20–24.

continued the seasonal lifestyle, but found it more difficult as deer, elk, and other animals relied on became scarcer with White encroachment.³⁹ The U.S. government's scheme to divide up the Indian lands pursuant to the 1825 Treaty of Prairie du Chien boundaries and then enter into treaties with individual Tribes to claim all of those lands remained on the backburner during this time.

By 1841, U.S. Secretary of War John Bell commissioned Wisconsin Territory Governor James Doty to enter into treaties with the Dakota as a way to direct emigrating Tribes from the east onto Dakota lands in a new Indian territory within the Treaty of Prairie du Chien boundaries.⁴⁰ Doty chose several local traders to assist him in the negotiations and promised jobs to the traders in the new Indian territory.⁴¹ Once the treaties were negotiated, the new Indian territory concept was openly opposed by both Indian agent Taliaferro and Senator Benton of Missouri.⁴² The latter viewed the treaties as contrary to the purpose of opening Indian lands to White settlement.⁴³ Although the Dakota leadership had entered into negotiations and formalized the treaties with Doty, once more the U.S. government appeared to deceive the Tribes over the real intentions towards them. The frequent call to meet with U.S. officials to enter into agreements, deliberate over boundaries, and then have nothing result increased the frustration of the tribal leadership over unfulfilled promises.

In 1849, the territory of Minnesota was established and the lands of the Dakota were put in further jeopardy. "Immediately, however upon the creation of the territory and the accession of Governor Ramsey as ex officio superintendent of Indian Affairs, the Indian department began to lay its plans to secure the opening of the great body of Indian lands."⁴⁴ Ramsey's first attempt to call a treaty council failed in the fall of 1849. In subsequent communications between Ramsey and Indian Commissioner Orlando Brown, terms of a proposed treaty were exchanged to move the Dakota from their lands.⁴⁵ Within these communications,

39. See MEYER, *supra* note 7, at 48.

40. *Id.* at 73.

41. *Id.* at 73-74.

42. *Id.* at 75.

43. *Id.*

44. ROBINSON, *supra* note 5, at 210.

45. *Id.* at 210-11.

it was acknowledged that the traders sold items to the Dakota at enormous profit and kept the Dakota in debt.⁴⁶ Although the U.S. Congress in 1843 had passed a law disallowing the payment of debts to traders in any treaty with an Indian Tribe, the local Indian agents and U.S. officials negotiating treaties found ways around the provision for the benefit of the trading companies.⁴⁷ Further, rather than stop the abuses of the traders, the advice was to limit the payments to the Dakota for land cessions or to distribute payment in agricultural implements, tools, or educational expenses as approved by the U.S. Indian department.⁴⁸

Against this backdrop, yet another call went out to the Sisseton and Wahpeton to meet in the summer of 1851 at Traverse des Sioux in Minnesota to hold council with the U.S. treaty commissioners.⁴⁹ The negotiations that followed were prime examples of the deliberate deception, bullying tactics, and outright swindling practices by U.S. treaty commissioners. One historian described this treaty negotiation, and the one following with the Mdewakanton at Mendota, as follows:

Many observers have noted the moral obliquity that seemingly afflicted white men in their dealings with Indians. Men justly respected for integrity and fairness in their relations with other white men saw nothing reprehensible about resorting to all manner of chicanery and equivocation when dealing with Indians. Starting from the axiom that the Indians were mere children and had a less enlightened view of what would serve their own best interests than the Great Father and his representatives did, government officials, especially treaty commissioners, felt themselves under no restraints in deceiving or bullying the Indians into acceptance of terms decided upon by higher authority. They knew—or thought they knew—what was best for the Indians, and the end justified the means. By a remarkable coincidence, what was deemed best for the Indians was invariably also to the advantage of the government, the traders, and, above all, the land-hungry settlers.

46. *Id.* at 211.

47. *Id.* at 210.

48. *Id.* at 211.

49. *Id.* at 212.

If one were seeking a treaty tailor-made to illustrate this phenomenon, he could not do better than to examine the treaties of Traverse des Sioux and Mendota, negotiated with the Sioux in the summer of 1851. All the standard techniques were employed by the commissioners. The carrot and the stick—and at least once the mailed fist—were alternately displayed, as the occasion seemed to demand. If the Indians asked for time to consider the terms offered them, they were chided for behaving like women and children rather than men. If they asked shrewd, businesslike questions, the commissioners uttered cries of injured innocence: surely the Indians did not think the Great Father would deceive them! If they wanted certain provisions changed, they were told that it was too late; the treaty had already been written down. The Indians were flattered and browbeaten by turns, wheedled and shamed, promised and threatened, praised for their wisdom and ridiculed for their folly. In such fashion was their “free consent” obtained.⁵⁰

The negotiations officially started on July 18, 1851, when a large gathering of the Sisseton and Wahpeton were present.⁵¹ In the texts documenting the negotiations, at least one witness to the council mentioned large quantities of champagne were present.⁵² “As the commissioners report, the Indians were ‘induced’ to agree to the terms which had been proposed to them and on Wednesday, July 23, the treaty was signed by thirty-five chiefs and thirteen witnesses.”⁵³ Following the negotiations, the sacred Pipe was shared by those present to serve as a spiritual compact with the completion of the Treaty with the Sisseton and Wahpeton.⁵⁴ As the signing was underway, one of the Sisseton men present made the request for the terms not to be changed in Washington.⁵⁵ U.S. Indian Commissioner Luke Lea who had traveled from Washington, D.C.

50. MEYER, *supra* note 7, at 77–78.

51. 1 FOLWELL, *supra* note 12, at 279.

52. *Id.* at 280.

53. *Id.* at 280–81.

54. MEYER, *supra* note 7, at 79; *see also* Treaty with the Sioux—Sisseton and Wahpeton Bands, July 23, 1851, 10 Stat. 949 (proclamation Feb. 24, 1853), *reprinted in* 2 Kappler, *supra* note 13, at 588.

55. MEYER, *supra* note 7, at 79.

for the treaty negotiations, provided an assurance that “everything we promise will be faithfully performed.”⁵⁶

At the conclusion of the signing, James Goodhue, the editor of the *Minnesota Pioneer* newspaper, reportedly stated: “Thus ended the sale of twenty one millions of acres of the finest land in the world.”⁵⁷ Another historian has described the treaty land cession as follows:

No other single Indian treaty conveyed so vast and noble an estate. It involved fully one-half, and the best half at that, of the great state of Minnesota. The price paid was about six cents per acre. In brief, the treaty provided that the tribes sold and relinquished to the United States all of their lands in Minnesota and Iowa, east of the Big Sioux River and a line from Lake Kampeska to Lake Traverse and the Sioux Woods Rivers. As a consideration for this sale and relinquishment they were to have first, a reservation running from the Yellow Medicine west to the treaty line, ten miles wide, on both sides of the Minnesota River. Second, \$275,000 cash in hand. Third, \$1,665,000, to remain in trust with the United States, and five per cent interest to be paid thereon for fifty years. The payment of the interest for this period to pay and satisfy the whole debt; that is, it was not intended that the original purchase price ever should be paid. The total interest payment, therefore, was to be \$83,300 annually. Of this the government was to expend annually \$12,000 for general agricultural improvement and civilization; \$6,000 for education, \$10,000 for goods and merchandise and the balance was to be paid in cash.⁵⁸

By the sharp dealing in the treaty purchase terms, the principal of \$1,665,000 was never intended to be the purchase price, but would revert to the U.S. government. From the negotiated price of ten cents per acre, the actual price, due to this provision, would amount to only about six cents per acre due to the misrepresented payment term to the Sisseton and Wahpeton. In the aftermath of the negotiation, Governor Ramsey sent a report to the Interior

56. *Id.*

57. *Id.* at 80.

58. ROBINSON, *supra* note 5, at 213–14 (footnote omitted).

Department stating “that the ‘actual cost to the Government of this magnificent purchase is only the sum paid in hand’ (\$575,000).”⁵⁹

As for the homeland reserved by the Sisseton and Wahpeton in the 1851 Treaty, the assurances of Indian Commissioner Lea would prove to be further lies on behalf of the U.S. government. In fact, upon ratification and proclamation in February of 1853, article 3 of the Treaty with the Sisseton and Wahpeton, reserving a permanent reservation in Minnesota on the north and south sides of the Minnesota River, was stricken by the Senate and replaced with the article, set forth below, to provide that some future homeland be set aside beyond the ceded lands.⁶⁰

It is further stipulated, that the President be authorized, with the assent of the said band of Indians, parties to this treaty, and as soon after they shall have given their assent to the foregoing *article*, as may be convenient, to cause to be set apart by appropriate landmarks and boundaries, such tracts of country without the limits of the cession made by the first [2d] article of the treaty as may be satisfactory for their future occupancy and home: *Provided*, That the President may, by the consent of these Indians, vary the conditions aforesaid if deemed expedient.⁶¹

Thus, not only did the terms of the 1851 Treaty change in 1853 in Washington, but the change resulted in the Sisseton-Wahpeton being placed in a refugee status as only temporarily located in their homelands, now claimed by the U.S. government. The same sleight of hand occurred in the 1851 Treaty, entered into with the Mdewakanton and Wahpekute tribal leaders, upon ratification and proclamation in 1853.⁶² The lack of humanity in such governmental action, and its consequences, constitute extraordinary human rights abuses.

As soon as the treaties were signed, Whites had swarmed into the Dakota lands supposedly guaranteed forever to the Dakota.⁶³ It must have seemed to the Dakota peoples that none of the promises

59. HELEN JACKSON, A CENTURY OF DISHONOR: A SKETCH OF THE UNITED STATES GOVERNMENT'S DEALINGS WITH SOME OF THE INDIAN TRIBES 153 (1995).

60. See 2 Kappler, *supra* note 13, at 590 (Supp.).

61. *Id.*

62. See Treaty with the Sioux-Mdewakanton and Wahpakoota Bands, Aug. 5, 1851, 10 Stat. 954, reprinted in 2 Kappler, *supra* note 13, at 591-93.

63. See ANDERSON, *supra* note 36, at 82; MEYER, *supra* note 7, at 106.

made by U.S. officials should be taken seriously. To add further injury to the Sisseton and Wahpeton, they were also informed that during the treaty signing tribal leaders had been deceived into signing a “traders’ paper” for treaty payments to be distributed to pay off debts presented by the local trading posts.⁶⁴

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 pledged themselves, as the representatives of their respective bands, to pay those obligations. No schedule of the sums owed was attached to the document, but after the ceremony was over the traders got together and scaled down their claims (originally estimated at \$431,735.78) to the round sum of \$210,000; the half-breeds were to get \$40,000.⁶⁵

When the 1853 amendments to the 1851 Treaties were communicated to Ramsey, he went to the Dakota leadership with two objectives: (1) to get the consent necessary for the supplemental articles to begin implementation of the 1851 land cessions and (2) to have tribal leaders sign off on receipts for the debts on the “traders’ paper.”⁶⁶ When one of the tribal leaders, Red Iron, refused to sign off on the receipt, Ramsey “appointed another chief in his stead and had the old man arrested and imprisoned.”⁶⁷

Following this and desperate to receive the annuities that Ramsey would not release without signing off on the receipts, a total of eleven others then signed the receipt.

They finally signed the receipt that allowed Ramsey to distribute \$210,000 of the Sisseton and Wahpeton removal and subsistence money to the traders. By mid-December, the entire process was over. The eastern Sioux had watched most of the \$495,000 designated for removal and subsistence go to traders and mixed-bloods. Later testimony showed that Ramsey and his secretary, Hugh

64. See DIEDRICH, *supra* note 11, at 30.

65. MEYER, *supra* note 7, at 80.

66. *Id.* at 85–86.

67. ROBINSON, *supra* note 5, at 259.

Tyler, deducted a 10 to 15 percent fee for handling the money.⁶⁸

Eventually, two White men, Willis A. Gorman and Richard M. Young, were authorized to investigate the charges brought against Governor Ramsey for distributing the treaty payments on the basis of the “traders’ papers.”⁶⁹ The investigation concluded that Governor Ramsey had “conspired with the traders to defraud the Indians out of the moneys due them,”⁷⁰ but the U.S. Senate then exonerated him in a resolution.⁷¹ One historian, Newton H. Winchell, has reportedly referred to the 1851 Treaties “as a ‘monstrous conspiracy.’”⁷² Through the lens of human rights, the U.S. government and its officials were practicing deliberate genocide on the Dakota peoples by depriving them of all means of survival and purposefully exacerbating the starvation conditions being experienced in the 1850s.

As Willis A. Gorman assumed the role of territorial Governor of Minnesota and as Indian superintendent, he attempted to persuade the Dakota leaders to move from their villages to the strips of land along the Minnesota River.⁷³ In 1853, a pledge of only five years had been given to the Dakota peoples for the reservation area.⁷⁴ The short duration of the pledge from a government that had not fulfilled past promises was not well received by Dakota peoples. With a shortage of annuities following the 1851 Treaties, the Dakota continued to hunt in the ceded area where there was better hunting than in the reservation area. In addition, Whites flooded the areas ceded and even sought to set up homesteads within the reservation area.⁷⁵ White aggression towards the Dakota peoples went unchecked by the U.S. military and eventually led to a group of Wahpekute, under the leadership of Inkpaduta, striking back against White settlers in the northeastern Iowa region.

The ‘Spirit Lake massacre,’ as whites later called it, came after considerable provocation by white settlers and

68. See ANDERSON, *supra* note 36, at 68–69.

69. ROBINSON, *supra* note 5, at 260.

70. *Id.*

71. *Id.* at 261.

72. MEYER, *supra* note 7, at 87.

73. *Id.* at 89–90.

74. See ANDERSON, *supra* note 36, at 69–70.

75. See MEYER, *supra* note 7, at 88, 103.

Indians alike and was part of a long-standing, interethnic feud. Three years before, a white man named Henry Lott and his son slaughtered nearly a dozen Wahpekutes—mostly women and children—in an isolated hunting lodge in retaliation for earlier Indian depredations. The army made only a half-hearted effort to bring the Lotts to justice. In addition, some evidence suggests that whites had taken most of the arms possessed by the Wahpekutes just before the outbreak in 1857. Although they found others, the confiscation of arms made it difficult to hunt during the winter. At least one of the causes for the massacre was the shortage of food in the camp of the Indians responsible for the deed.⁷⁶

In Minnesota, Whites panicked, organized into militia groups, and attacked Dakota villages to the southwest of the Minnesota River reservation.⁷⁷ By July 1, 1857, the new Indian commissioner, James W. Denver, sent word that the treaty annuities due would be “contingent upon the eastern Sioux tribes effecting the surrender or destruction of Inkpaduta and his band.”⁷⁸

Taoyateduta, referred to as “Little Crow” by White historians, assisted in organizing a party of Dakota men to follow Inkpaduta’s band with the goal of having the annuities released for the good of those who had entered into the 1851 Treaties.⁷⁹ After a few weeks, Taoyateduta’s party located part of the band and killed several of the men. Others were captured and brought back to the reservation areas. Upon his return Taoyateduta was informed by Commissioner Denver that the annuities would still not be released.⁸⁰ In late August, the acting commissioner, Charles Mix, authorized annuities to be released after Denver left Washington, D.C.⁸¹ As a result of this series of events, the Dakota peoples lost respect for U.S. officials who changed the terms of treaty payments whenever they wanted something more from the Dakota.⁸² In this situation, the U.S. military expected the Dakota to do what it could not—find and bring in Inkpaduta.

76. ANDERSON, *supra* note 36, at 82–83 (endnote omitted).

77. *Id.* at 83.

78. *Id.* at 83–84 (endnote omitted).

79. *Id.* at 85.

80. *Id.* at 86–87.

81. *Id.* at 87.

82. See MEYER, *supra* note 7, at 105.

Soon after this, White public sentiment turned to dividing up the Dakota reservation lands into farming plots and having the northern half opened to further White settlement.⁸³ Agreeing with the White public sentiment, U.S. officials devised a plan for a further land cession of the northern half of the temporary reservation. Immediately following an annuity distribution in the fall of 1857, the Indian superintendent, William J. Cullen, told the Dakota men that “their Great Father wished to see them and ‘readjust the treaty.’” Dakota chiefs assumed logically that their just complaints were finally going to be resolved.⁸⁴

The trip to Washington, D.C. spanned a period of four months in the spring and summer of 1858 and resulted in a pair of land cession treaties.⁸⁵ Upon arrival in D.C., Charles Mix, the Commissioner of Indian Affairs, began meeting in council with Dakota leaders in March of 1858, including Taoyateduta, to persuade them to effectuate another land cession.⁸⁶ He held several meetings in which Taoyateduta spoke on behalf of the Dakota peoples regarding the great injustices that had occurred, the failure to establish the reservation boundary as promised in 1852 and later in 1854 to him personally, and the constant deception by U.S. officials.⁸⁷

At a mid-April meeting, Taoyateduta also spoke about the abuses of White settlers and traders located near the Dakota. “He was particularly displeased with John Magner, who used his position in charge of the warehouse to exploit Dakota women.”⁸⁸ Charles Mix then switched tactics and sought to confuse Taoyateduta by demonstrating the text of the 1851 Treaty as not including the boundary and the area then settled by Germans and named New Ulm.⁸⁹ Mix intended to demonstrate that Taoyateduta had signed onto the 1851 Treaty and agreed to the more narrowly drawn boundary.⁹⁰ This disheartened the Dakota leader.

83. See ANDERSON, *supra* note 36, at 92–93.

84. *Id.* at 94.

85. Treaty with the Sioux, June 19, 1858, 12 Stat. 1031, *reprinted in* 2 Kappler, *supra* note 13, at 781 (Mendawakanton and Wahpahoota bands); Treaty with the Sioux, June 19, 1858, 12 Stat. 1037, *reprinted in* 2 Kappler, *supra* note 13, at 785 (Sisseton and Wahpaton bands).

86. ANDERSON, *supra* note 36, at 94, 103.

87. *Id.* at 101–03.

88. *Id.* at 101.

89. *Id.* at 82.

90. *Id.* at 102.

“Apparently at the end of the day’s debate, an employee of the Office of Indian Affairs wrote on the front page of the journal, ‘Little Crow is bluffed.’”⁹¹

In a series of meetings, Mix continued to badger Taoyateduta and warned that if the Dakota did not sign the new treaty, then all of their lands could be taken by the new state of Minnesota.⁹² When Taoyateduta brought up the injustices of the past at a meeting on June 4 and threatened not to sign, Mix ridiculed him and called him a child.⁹³

On June 18, Mix commenced what would be an all-night session to persuade the Dakota men to sign on to the land cession and finally received the Dakota signatures at 7 a.m. on June 19 to the so-called Mix treaties.⁹⁴ The next day, the Dakota men departed to return home. The result was a further land cession for the northern portion of the reservation along the Minnesota River with an open-ended payment term for the U.S. Senate to fill in.⁹⁵ Another outcome of the treaties was U.S. acknowledgement of Dakota ownership over the southern portion of the reservation and for this portion to be divided into eighty-acre allotments.⁹⁶ The same terms were pushed upon the nine Sisseton and Wahpeton present on the Washington, D.C. trip.⁹⁷ The recognized leadership of the Sisseton and Wahpeton were not invited on the trip and were out hunting buffalo during the spring and summer of 1858 to the west of the reservation areas.⁹⁸

Upon being informed of the 1858 Treaty provisions, the Sisseton, Wahpeton, Mdewakanton, and Wahpekute became disillusioned and bitter over the continuous deceptive acts of the U.S. government to take their lands and cheat them of any negotiated payments.

91. *Id.*

92. *Id.* at 103.

93. MEYER, *supra* note 7, at 104.

94. *Id.* at 103–04.

95. *See* 2 FOLWELL, *supra* note 12, at 218.

96. *See* Treaty with the Sioux, U.S.-Mdewakanton-Wahpahoota, art. 1, June 19, 1858, 12 Stat. 1031, *reprinted in* 2 Kappler, *supra* note 13, at 781; Treaty with the Sioux, U.S.-Sisseton-Wahpaton, art. 1, June 19, 1858, 12 Stat. 1037, *reprinted in* 2 Kappler, *supra* note 13, at 785.

97. Treaty with the Sioux, U.S.-Sisseton-Wahpaton, art. 1, June 19, 1858, 12 Stat. 1037, *reprinted in* 2 Kappler, *supra* note 13, at 788.

98. *See* ANDERSON, *supra* note 36, at 104.

Although the Senate ratified the treaties on March 9, 1859, and they were proclaimed at the end of that month, nothing was done toward determining the validity of the Indians' title to their reservation until 1860, more than two years after the signing of the treaty. Then the Senate confirmed the Indians' title and allowed them the sum of thirty cents an acre for the area relinquished. This was a better price than the Senate amendments to the 1851 treaties had allowed them—ten cents an acre—but the 1860 resolution also gave settlers on those lands the right of pre-emption at a price of \$1.25 an acre! Brown thought the lands worth five dollars an acre. There was still worse to follow. When Congress finally appropriated \$266,880 for the lands, nearly all payment to the lower Sioux and a large part of that to the upper bands went to pay the "just debts" of the traders, and the Indians saw little of the money. Thus the disillusionment and bitterness they had come to feel toward the government was compounded by this treaty, supposedly designed for their benefit.⁹⁹

The Dakota peoples could accurately state that from the mid-1820s to the end of the 1850s the only consistent actions of U.S. officials were to deceive the Dakota peoples through treaties written in the English language. Through the treaties, the United States carried out its policy of forcing the Dakota peoples into ever smaller portions of their homelands on which they could do little more than starve to death as refugees. U.S. officials appointed to carry out U.S. policies throughout this time period took an active role in allowing the enrichment of traders to the detriment of the Dakota peoples.

The Sioux had become economic prisoners, constantly being told that they owed more and more money to the storekeepers. As the buffalo, deer, and game birds on which they had once lived so well became scarce, because of the encroaching white settlements, the Indians were ever more dependent on the goodwill of the traders and the promises of the federal government. All too often, the merchants cheated them shamelessly, and

99. MEYER, *supra* note 7, at 104–05 (footnotes omitted).

the government willfully ignored its solemn treaty commitments.¹⁰⁰

In addition, armed White settlers moving into reserved Dakota lands were not repelled by the United States as guaranteed in treaties putting the Dakota in a no-win situation to either clear out the White settlers or allow their homelands to be taken in violation of U.S. governmental promises.

III. U.S.-DAKOTA WAR OF 1862—REACTION TO GREAT INJUSTICES

In summing up the viewpoint of the Dakota peoples by the early 1860s, one noted Dakota scholar, Charles Eastman, opined, “After one hundred and fifty years of friendly intercourse first with the French, then the English, and finally the Americans, they found themselves cut off from every natural resource, on a tract of land twenty miles by thirty, which to them was virtual imprisonment.”¹⁰¹ To be Dakota in this day and age is to have ancestors who were suffering and making difficult decisions prior to the U.S.-Dakota War of 1862. Prolonged human rights violations resulted in the eventual retaliation of the abused, and thus the majority of Dakota men would go to war.

The Dakota guiding values¹⁰² had been exhausted with the constant lies, unfulfilled promises, the strategic flow of liquor into Dakota hands, and trickery experienced in relations with the Whites. The breaking point for many was reached in the summer of 1862 when the treaty annuities were late in arriving, families were on the brink of starvation, and offensive comments were made by the Whites and local traders. At least one historian has suggested that there was a motive by the area White settlers and officials to deliberately provoke an Indian war as a pretext for seizing the reservation lands.¹⁰³

100. SCHULTZ, *supra* note 33, at 9.

101. CHARLES A. EASTMAN (OHIYESA), *INDIAN HEROES & GREAT CHIEFTAINS* 49 (1991).

102. The five Dakota values are: Ohoda (respect for all that lives), Okciya (generosity in thoughts and things), Tehinda (kindness and tenderness), Wicake (honesty and love of truthfulness), and Waunsida (demonstrating compassion and empathy to all). See *Dakota Values*, TIOSPA ZINA TRIBAL SCH., <http://www.tzts.us/index5.html> (last visited Nov. 10, 2012).

103. See MEYER, *supra* note 7, at 124.

A. *The Decision to Go to War*

In the words of Chief Big Eagle, the ongoing human rights violations of the Whites towards the Dakota were central to the decision to go to war.

Then many of the white men often abused the Indians and treated them unkindly. Perhaps they had excuse, but the Indians did not think so. Many of the whites always seemed to say by their manner when they saw an Indian, "I am much better than you," and the Indians did not like this. There was excuse for this, but the Dakotas did not believe there were better men in the world than they. Then some of the white men abused the Indian women in a certain way and disgraced them, and surely there was no excuse for that.¹⁰⁴

The conflict between the Whites moving into Dakota land areas and the failure of the United States to curb White lawlessness added to the Dakota peoples' feelings of oppression and injustice in their dealings with the Whites.

With the pressure by the Indian superintendent, the missionaries, and the intermarried Dakota people, Dakota families were in turn punished for not farming and rewarded for following the White system as farmers on allotments on the south side of the Minnesota River. This division between those acting in concert with the program of the Indian agent and those who chose to continue the Dakota lifeway led to divergent views in tribal leadership on the best path forward for the peoples.

When Tom Galbraith became the Indian agent to the Sioux in 1861, he worked hard to foster the farmer program. He issued provisions to the blanket Indians only once a year, adhering to regulations, but freely gave food and other goods to the farmer Indians whenever they demanded them, as often as once a month. He believed that Indians should not be paid and fed for maintaining what to him was a slothful way of living. They should be rewarded only when they farmed and behaved the way they were supposed to, like decent Christian white men.

104. THROUGH DAKOTA EYES: NARRATIVE ACCOUNTS OF THE MINNESOTA INDIAN WAR OF 1862, at 24 (Gary Clayton Anderson & Alan R. Woolworth eds., 1988) [hereinafter THROUGH DAKOTA EYES].

During the summer of 1862, when the majority of the people on the Sioux reservation were going hungry, the farmer Indians ate well and continued to receive food from the agency warehouse, sometimes within sight of their starving brothers.¹⁰⁵

In the summer of 1862, the annuities that usually arrived in June were very late. Going to the Indian agent, the Dakota peoples in the upper agency on the reservation were told that rumors that the annuities were not coming were false and to go hunt and feed themselves until late July.¹⁰⁶ By July 14, an assembly of 4000 Dakota and 1000 Yankton had gathered for the payment with little to nothing to eat.¹⁰⁷ Galbraith finally responded to the needs of those gathered by doling out just enough provisions to keep the Dakota and Yankton alive for the next three weeks.¹⁰⁸ During this time, the local traders cut off all credit accounts, which further impoverished the Dakota peoples.¹⁰⁹

As August rolled in, no annuities had arrived. Galbraith brought in soldiers to guard the warehouse and stores at the agency. With the assistance of the missionary, Dr. Riggs, a council was held on August 7 with the Dakota near the upper agency where Galbraith agreed to distribute some of the annuity goods and provisions if the Dakota peoples would return to their homes to await the annuity payment.¹¹⁰ For three days, the distribution occurred, and the Dakota families departed back to their homes.¹¹¹ Taoyateduta, in attendance at the upper agency, requested that

105. SCHULTZ, *supra* note 33, at 14. For a comparison of how the values of the Dakota were not in line with individual rights to food over the community sharing of food, see RUTH LANDES, *THE MYSTIC LAKE SIOUX: SOCIOLOGY OF THE MDEWAKANTONWAN SANTEE* 164 (1968).

It seemed that food and hides were distributed first to those of the party in most urgent need; then individuals were allowed private portions of meat and hide. Possibly all of each day's kill was piled into a great store from which families were supplied at the chief's order. No one in a party could have surfeit while others were in want; this was insured by actions of the camp police, cross-cousins, and siblings-in-law.

Id. at 164–65.

106. See SCHULTZ, *supra* note 33, at 12.

107. See 2 FOLWELL, *supra* note 12, at 228–29.

108. *Id.* at 229.

109. See THROUGH DAKOTA EYES, *supra* note 104, at 20.

110. See 2 FOLWELL, *supra* note 12, at 230.

111. *Id.*

Galbraith also issue provisions to those at the lower agency.¹¹² Galbraith promised he would and then did not.¹¹³ On August 15, Taoyateduta again requested from the agent and the local traders that provisions be distributed to those at the lower agency.¹¹⁴

After futile attempts to get definite information as to the time of payment, Little Crow, speaking for some hundreds of Indians present, said: "We have waited a long time. The money is ours, but we cannot get it. We have no food, but here are these stores, filled with food. We ask that you, the agent, make some arrangement by which we can get food from the stores, or else we may take our own way to keep ourselves from starving. When men are hungry they help themselves."¹¹⁵

In responding, the agent turned to the traders and asked them for a reply. The other storekeepers said they would follow whatever the trader, Andrew Myrick, thought in the matter. The statement from Myrick was translated by the Reverend John P. Williamson into the Dakota language. Myrick's statement was, "So far as I am concerned, if they are hungry, let them eat grass."¹¹⁶ In response, the Dakota peoples gathered left expressing their anger.¹¹⁷

During this August of 1862, young men out hunting had a hard time providing meat for their hungry families. So it was on August 17 when four young men went out hunting, argued over the courage to eat eggs found near a White family farm, and ended up killing three White men and two White women.¹¹⁸ When the young men returned to Rice Creek village, the elders and leaders met in council and considered the military retaliation that was expected. At this point, in reviewing the many injustices perpetrated on the Dakota, the annuities not arriving, the starvation conditions of the majority of the people, and the lack of any trust in dealing with the

112. *Id.* at 232.

113. *See* MEYER, *supra* note 7, at 114.

114. *See* 2 FOLWELL, *supra* note 12, at 232.

115. *Id.*

116. *Id.* at 233 ("Myrick was one of the first to be shot to death on the morning of the outbreak and when his body was found by a burial party from Sibley's column the mouth was stuffed with the grass commended to the Indians for food.")

117. *Id.*

118. *See* THROUGH DAKOTA EYES, *supra* note 104, at 36 (account of Big Eagle); *id.* at 38 (account of Good Star Woman).

Whites to resolve the situation,¹¹⁹ the decision was made to go to war against the Whites and clear them from Dakota lands.¹²⁰ Taoyateduta at first spoke out against declaring war, but accepted his leadership role in leading the warriors on the course of action that had garnered a consensus.¹²¹

B. The Dakota Forces Strike Out Against Whites in the Minnesota River Valley

When the Sisseton and Wahpeton at *Pejutazi* (Yellow Medicine) met in council on whether to join in the war, they were of many views with supposedly the Sisseton urging the killing of all the Whites and the Wahpeton in favor of merely plundering all the goods held by the Whites.¹²² In my own family history, my great-great-great-grandfather, *Mahpiya Hotanka*, fought in the Dakota War.¹²³ He joined the forces seeking to ambush the U.S. military gathered at Wood Lake and was killed in that battle.¹²⁴ From my grandmother's paternal side, we are related to the Renville family through her great-grandmother, Anna Renville.¹²⁵ For the most part, the Renvilles were considered Indians friendly to the Whites during the Dakota War. Two well-known Renvilles, the brothers, Gabriel and Michael Renville, served with General Sibley to bring in and punish the Dakota men involved in the War.

119. See MEYER, *supra* note 7, at 115–16.

120. *Id.* at 117.

121. See ANDERSON, *supra* note 36, at 132–34.

122. See 2 FOLWELL, *supra* note 12, at 118 n.11; see also THROUGH DAKOTA EYES, *supra* note 104, at 123–24 (account of John Otherday).

123. My paternal grandmother is Ramona Francine DeCoteau (1929–1996). My grandmother's mother was Violet DeMarrias (1899–1943). Violet's parents were Annie Shepherd (1876/8–1935) and Francis DeMarrias (1880–1966). Annie's father was Joshua (*Itehdugo* “Marks His Face”) Shepherd (1855–1878) and her mother was Sarah *Uncagetopawin* (known to be misspelled in the records) (born in 1859). Joshua's father was *Mahpiya Hotanka* “Big Voice Cloud,” and his mother was *Tasina Hotawin* “Her Grey Shawl Woman” (1829–1916), also known as Hannah Shepherd.

124. See AMOS E. ONEROAD & ALANSON B. SKINNER, BEING DAKOTA: TALES AND TRADITIONS OF THE SISSETON AND WAHPETON 18 (Laura L. Anderson ed., 2003).

125. My grandmother's father was Floyd “Louie” Louis DeCoteau (1901–1931). Louie's parents were Louis DeCoteau (1860–1916) and Mary V. DeCoteau-Omaha (1870–1946). In the probate records for Mary, her parents are listed as Anna Renville and William Hines.

Over the span of about a month, the U.S.-Dakota War raged on for thirty-eight days in August and September 1862.¹²⁶ White traders, Whites in towns near the reservation, and White soldiers were killed by Dakota men angered over the great injustices that had been brought to bear on their families. Battles occurred throughout the Minnesota River valley. For example, as many as 800 Dakota men took part in the charge against Fort Ridgely on August 20th.¹²⁷

While the main body of the Sioux warriors was alternatively attacking Fort Ridgely and New Ulm, smaller parties were carrying out raids all over southwestern Minnesota. Among the places where white casualties were heavy were Milford Township in Brown County, Lake Shetek in Murray County, and portions of Kandiyohi County. In most cases the men were killed, the women and children taken prisoner and held until the final defeat of the Indians at Wood Lake.¹²⁸

At the same time, many of the Dakota men who had chosen to take on White dress and be farmers opposed the war and sought to harbor Whites.¹²⁹ In addition, there were Sisseton and Wahpeton leaders who ignored the call to war, as they were more concerned with hunting buffalo than with being at the agencies.¹³⁰

C. *Dakota Efforts to End the War*

Dakota warfare had never had the goal of killing whole communities¹³¹ and many of those involved lost heart as the purpose of the war lost meaning to them. Dakota families were also aware of the statements made by Minnesota Governor Ramsey

126. See BLACK THUNDER ET AL., *supra* note 2, at 34–35.

127. See ROBINSON, *supra* note 5, at 281.

128. MEYER, *supra* note 7, at 120.

129. See ANDERSON, *supra* note 36, at 151.

130. See ROBINSON, *supra* note 5, at 288.

131. In fact, the Dakota engagement in the War has been misrepresented as less about a sense of injustice regarding those Whites, in particular White men, located near the reservation, and more as the European style of a campaign of war to conquer and kill men, women, and children until a surrender occurred. See, e.g., 2 FOLWELL, *supra* note 12, at 125; see also KENNETH CARLEY, THE SIOUX UPRISING OF 1862, at 28 (1961) (characterizing the relationships between the Germans as “on friendly terms with the Sioux, whom they knew as wandering, usually hungry beggars, and at first they could not believe that the Indians were bent on anything as serious as murder”).

about exterminating the Sioux or driving them forever from the state.¹³² In this charged atmosphere, the Dakota men involved in the war sought to bring it to a close. Captives were taken during the war and viewed by the leaders as bargaining chips to lead to eventual negotiations on concluding the war.

On September 12 Little Crow [Taoyateduta] gave the Long Trader [General Sibley] one last chance to end the war without further bloodshed. In his message he assured Sibley that the prisoners were being treated kindly. "I want to know from you as a friend," he added, "what way that I can make peace for my people."¹³³

Sibley sent a cold reply to Taoyateduta and offered no way to make peace.¹³⁴ A second Dakota leader, Wabasha, at the same time, had sent word to Sibley seeking a truce and promising delivery of the captives.¹³⁵ Following this exchange, another battle at Wood Lake occurred with the Dakota forces hoping to surprise the soldiers camped there. The ambush was disrupted by a group of soldiers going to dig potatoes that caused the battle to begin before the ambush was fully in place.¹³⁶ In the aftermath of the battle, White soldiers scalped and mutilated the bodies of the Dakota men killed at the site.¹³⁷

As the Battle of Wood Lake was concluding, some of the Dakota people who sought to end the war began to establish a temporary camp. They also gathered some of the captives to wait for Sibley at the camp.¹³⁸ Taoyateduta refused to fight against the Dakota in this temporary camp, called Camp Release.¹³⁹ Further, he agreed to the release of all captives to those in the camp as he gave orders for his people to depart to the westward plains on September 24, 1862.¹⁴⁰

At the conclusion of the U.S.-Dakota War of 1862, General Sibley did not immediately march into Camp Release. Instead, he slowly made his way over three days when he could have arrived in

132. DEE BROWN, *BURY MY HEART AT WOUNDED KNEE: AN INDIAN HISTORY OF THE AMERICAN WEST* 54 (1970).

133. *Id.* at 55.

134. *Id.* at 56.

135. *Id.*

136. See 2 FOLWELL, *supra* note 12, at 179–80.

137. See ANDERSON, *supra* note 36, at 159.

138. *Id.* at 160.

139. *Id.*

140. *Id.* at 161.

one afternoon.¹⁴¹ Upon his arrival, he demanded release of the captives, which numbered 107 Whites and 162 Mixed-Bloods. Sibley then announced in the subsequent council with those present that they “should consider themselves prisoners of war until he could discover and hang the guilty ones among them.”¹⁴² Also, he put a cordon of artillery around the temporary camp and sent out Dakota men as messengers to call in all Dakota people to voluntarily come to the camp.

Those who refused to come in voluntarily would be hunted down and captured or killed. While the Santees were being rounded up and disarmed, the soldiers cut down the trees and constructed a huge log building. Its purpose was soon made clear, when most of the male Santees—about 600 of the camp’s 2,000 Indians—were chained together in pairs and imprisoned there.¹⁴³

D. Minnesota Mob Mentality and Racial Vengeance

In reading many of the non-Indian narratives on the U.S.-Dakota War, the context and rationale for the Dakota men to go to war is completely missing and unanalyzed. The narratives start at the point of the assault on the four trading posts at the Lower Sioux Agency.¹⁴⁴ These narratives use the most derogatory adjectives and labels for the Dakota men and profess the peacefulness of the settlers surrounding the ten-mile strip of remaining reserved lands along the Minnesota River.¹⁴⁵ In actuality, many of the settlers in Minnesota and the Dakota Territory held views of White superiority and a racial hatred for the Dakota peoples.¹⁴⁶

Evidence of this racial animus was apparent in Minnesota newspapers. Special agent Kintzing Prichette sent from Washington and present in Minnesota in 1857 reported on the racism towards the Dakota peoples.

The attitude of those people toward the Indians was suggested by an item in a Red Wing newspaper noted by

141. See SCHULTZ, *supra* note 33, at 237.

142. See BROWN, *supra* note 132, at 58.

143. *Id.*

144. See 2 FOLWELL, *supra* note 12, at 109.

145. See CARLEY, *supra* note 131, at 21–24.

146. See MEYER, *supra* note 7, at 116.

Prichette: “We have plenty of young men who would like no better fun than a good Indian hunt.” In Minnesota he found that “but one sentiment appeared to inspire almost the entire population, and this was, the total annihilation of the Indian race within their borders.”¹⁴⁷

It should be no wonder, then, that no aid by Whites was provided to the Dakota peoples when they were starved and cheated as part of U.S. Indian policy.

In Minnesota, as the Dakota War ended, the newspapers were full of racial hatred for the Dakota peoples. A frequent slogan appearing in the editorials and newspaper stories was the extermination of the Indians. The views expressed extended to men, women, and children. “As late as February 1863, a Faribault newspaper published a letter that declared: ‘Extermination, swift, sure, and terrible is the only thing that can give the people of Minnesota satisfaction, or a sense of security.’”¹⁴⁸ Another historian described the Whites’ heated passion as a state-wide cry.

As the terrible news of the massacre of August 18 spread throughout the settled parts of the state, there rose everywhere the cry: “Death to the murderous Sioux. . . . Exterminate the fiends. . . . Let vengeance swift, sure, complete and unsparing teach the red-skinned demons the power of the white man.”¹⁴⁹

This racial hatred has motivated Whites to caricature, dehumanize, and misrepresent the Dakota peoples from first contact to the present. Further, this dehumanization has allowed the worst crimes to be committed against the Dakota peoples by all levels of the U.S. government and by U.S. citizens. In reading the summaries of historians, the racist-laden adjectives and descriptions of the Dakota peoples continue well into books published up through the 1970s.¹⁵⁰ The mainstream White historian has

147. *Id.* at 101–02.

148. *Id.* at 124. The author also draws an inference from “the remarks made in 1857 by Special Agent Prichette about the desire of the whites to use an Indian war as a pretext for seizing lands” that the newspapers were influenced by the motive of taking more Dakota lands as a result of the U.S.-Dakota War of 1862. *Id.*

149. See 2 FOLWELL, *supra* note 12, at 190 (alterations in original).

150. See e.g., CARLEY, *supra* note 131, at 11.

What caused the 1862 uprising on the Minnesota frontier? The answer lies in a complex of reasons, some stemming from past events and some immediate and peculiar to the time. In the broadest sense, the war of 1862 was a small segment of the Sioux’s long history of conflict, first with

participated in the dehumanization of the Dakota peoples by insisting that the Dakota are “warlike.”¹⁵¹ This characterization is further propagated in contemporary use of Dakota men as the sports mascots at primarily White state educational institutions, such as the University of North Dakota’s “Fighting Sioux” mascot¹⁵² and the Sisseton High School’s “Redman” mascot located at a public school on the Lake Traverse Reservation of the Sisseton-Wahpeton Oyate.¹⁵³

The treatment of the Dakota peoples following the surrender at Camp Release has been called “one of the blackest pages in the history of white injustice to the Indian.”¹⁵⁴ For the Dakota peoples who had either asserted allegiance to the Whites or who voluntarily turned themselves over to General Sibley, the punishment called for by the Minnesotans fell heavily upon them. With public sentiment seeking vengeance, a military commission was assembled and all Dakota men subjected to prove their innocence or be subject to death by hanging. “Thus the revered Anglo-Saxon principle of law that a person is considered innocent until proved guilty was reversed in the case of Indians.”¹⁵⁵ At the conclusion of the military commission’s interrogation, 303 Dakota men were convicted and condemned to death with sixteen others sentenced to long prison terms.¹⁵⁶ Sibley was denied the authority to

other Indian tribes and then with the white man. As far back as the seventeenth century, the Minnesota Sioux had been engaged in almost constant warfare with their traditional enemies, the Chippewa.

Id.

151. See generally 2 FOLWELL, *supra* note 12, at 109–211. In misunderstanding the Dakota men, this historian in particular failed to adequately portray the Dakota honor involved in the way in which warfare was conducted. For example, this historian reported on the deliberations among the Dakota prior to the battle at Wood Lake and failed to understand that the reason for rejecting a night attack on the White soldiers was based upon the men’s sense of honor in attacking during the light of day. *Id.* at 178.

152. See DIEDRICH, *supra* note 11, at 322.

153. See SISSETON SCH. DISTRICT 54-2, <http://sisseton.k12.sd.us/default.aspx> (last visited Aug. 28, 2012).

154. MEYER, *supra* note 7, at 123–24.

155. *Id.* at 125.

156. See BROWN, *supra* note 132, at 59.

immediately execute them¹⁵⁷ and ordered to return to Fort Snelling.¹⁵⁸

First, those Dakota who were not convicted were marched to Fort Snelling. They departed the camp on November 7 and arrived on November 13.¹⁵⁹ As they made the march in winter in Minnesota, they were attacked by a mob in the town of Henderson. “As the wretched prisoners traveled through Henderson, the people—men, women, and children—with guns, knives, clubs, and stones, rushed upon them and, before the guard could drive them back, maltreated many. One infant snatched from its mother, was so injured that it died a few hours later.”¹⁶⁰ For those who had been condemned to death, Sibley marched them to a camp west of Mankato. As they passed through the town of New Ulm, another angry mob attacked the Dakota traveling through. “While they were being escorted past New Ulm, a mob of citizens that included many women attempted ‘private revenge’ on the prisoners with pitchforks, scalding water, and hurled stones. Fifteen prisoners were injured, one with a broken jaw, before the soldiers could march them beyond the town.”¹⁶¹

The military commission’s request for execution of the 303 condemned men had been forwarded to General Pope, who held command over the northwest, and he in turn wired the list of names to U.S. President Lincoln with a request to authorize the executions.¹⁶² Lincoln requested the trial records for review, which led to outrage by the bloodthirsty Minnesotans set on exterminating the Dakota peoples.¹⁶³ During the review, the condemned Dakota men were held at a site known as Camp Lincoln. Then, “on the night of December 4 a mob of citizens stormed the prison camp intent upon lynching the Indians. The soldiers kept the mob at bay, and next day transferred the Indians to a stronger stockade near the town of Mankato.”¹⁶⁴ The Dakota

157. See Carol Chomsky, *The United States-Dakota War Trials: A Study in Military Injustice*, 43 STAN. L. REV. 13, 23 (1990) (noting that Sibley planned to immediately execute those the military commission convicted).

158. ROBINSON, *supra* note 5, at 299.

159. 2 FOLWELL, *supra* note 12, at 200.

160. *Id.*

161. BROWN, *supra* note 132, at 60.

162. ROBINSON, *supra* note 5, at 299–300.

163. 2 FOLWELL *supra* note 12, at 202–05.

164. BROWN, *supra* note 132, at 60; see also THROUGH DAKOTA EYES, *supra* note 104, at 261–62 (account of George Crook).

families being held at Fort Snelling in concentration camp conditions were “tormented by wild rumors concerning the fate of their menfolk and perpetually in danger of being killed by parties of whites who repeatedly threatened to break through the wooden fence erected for their protection.”¹⁶⁵ As many as twenty to fifty people died each day from starvation, the cold, and a plague of measles in the concentration camp at Fort Snelling.¹⁶⁶

On December 6, President Lincoln’s decision reached Sibley authorizing the execution of thirty-nine Dakota men; one would not be executed upon a later decision.¹⁶⁷ The other men were to be kept until further orders were received. The largest mass execution in the history of the United States took place on December 26, 1862 when the thirty-eight Dakota men who had sought protection at Camp Release were hanged at the same moment on a specially built scaffold for that purpose.¹⁶⁸ A Dakota hymn was sung by the men as they waited for death to ensue.

For those held as prisoners in the Fort Snelling and Mankato camps, the missionaries set about converting them to Christianity, and lessons were given in reading and writing.¹⁶⁹ Meanwhile the calls for extermination of the Dakota peoples by Whites in Minnesota were relentless.¹⁷⁰ “At Fort Snelling, thirteen hundred Sioux were still captive by the spring; three hundred had died over the winter.”¹⁷¹ The men sentenced to prison terms would be taken to Davenport, Iowa to serve their terms.¹⁷²

In response to the White public sentiment in Minnesota, the U.S. Congress enacted two pieces of legislation in 1863. The first act was titled, “An Act for the Relief of Persons for Damages Sustained by Reason of Depredations and Injuries by Certain Bands of Sioux Indians.”¹⁷³ In section one of the federal law, all treaties with the Dakota were declared to be annulled and abrogated, all lands and rights of occupancy forfeited, and all payments and

165. See MEYER, *supra* note 7, at 128.

166. THROUGH DAKTOA EYES, *supra* note 104, at 264.

167. See ROBINSON, *supra* note 5, at 300.

168. See MEYER, *supra* note 7, at 129–30.

169. 2 FOLWELL *supra* note 12, at 249, 252.

170. See MEYER, *supra* note 7, at 138–39.

171. SCHULTZ, *supra* note 33, at 281.

172. *Id.* at 280.

173. Act of Feb. 16, 1863, ch. 37, 12 Stat. 652.

claims due forfeited.¹⁷⁴ Further, a portion of the forfeited annuities were to be distributed by a U.S. commission to Whites in Minnesota claiming damages from the actions of any Dakota person.¹⁷⁵ The second federal law was enacted in March 1863 for the removal of the Dakota peoples.¹⁷⁶ The U.S. President was authorized to designate a reservation “outside the limits of any state” and divide it into eighty-acre allotments for those Dakota who wished to pursue farming.¹⁷⁷ Further, the law directed the U.S. Secretary of the Interior to sell the reservation lands in Minnesota and apply the proceeds to further agricultural efforts in the new homes.¹⁷⁸ An explicit provision was made in the law that no monies were to be directly paid to Indians.¹⁷⁹ A separate law was also passed to remove the Winnebago Tribe from Minnesota, although they had not been involved in the U.S.-Dakota War.¹⁸⁰

In April and in May, two groups of the Dakota peoples were taken in cramped quarters with meager provisions by steamboat to Dakota Territory and placed on a reservation at Crow Creek.

Nothing grew there. Nothing could grow there. It was a barren stretch of emptiness for as far as the eye could see—and beyond. There was not a house within fifty miles, no game, no berries, no edible roots. Weakened and diseased from their terrible journey, the Sioux began to die within days of their arrival, three or four every day. In a few weeks, 150 were dead, and by the end of the summer, the number had climbed to 300. “For a time,” Williamson said, “a [tipi] where no one was sick could scarcely be found, and it was a rare day when there was no funeral. So the hills were covered with graves.”¹⁸¹

As for many who had lived on the upper agency, they had fled as General Sibley sought to capture or kill all remaining Dakota following the surrender at Camp Release. A large body of the Sisseton and Wahpeton peoples had settled just west of the Lake Traverse-Big Stone Lake area.¹⁸² Dakota Territorial Governor and

174. *Id.*
 175. *Id.* § 2, at 652–53.
 176. Act of Mar. 3, 1863, ch. 119, 12 Stat. 819.
 177. *Id.* §§ 1, 4.
 178. *Id.* §§ 3, 4.
 179. *Id.* § 5.
 180. Act of Feb. 21, 1863, ch. 53, 12 Stat. 658.
 181. SCHULTZ, *supra* note 33, at 282.
 182. *See* MEYER, *supra* note 7, at 198.

ex-officio Superintendent of Indian Affairs Newton Edmunds eventually recommended that a reservation be set aside in that area for the Sisseton and Wahpeton Dakota.¹⁸³

IV. LIFE ON THE LAKE TRAVERSE RESERVATION OF THE SISSETON-WAHPETON DAKOTA

In the Lake Traverse area, Fort Wadsworth was built on August 1, 1864, and eventually renamed Fort Sisseton.¹⁸⁴ Some of the Sisseton and Wahpeton families had settled in the area after the men had been employed by General Sibley as scouts at Camp Release to assist in locating those deemed hostile.¹⁸⁵ Two treaty negotiations had been attempted in 1864 and 1866, before the commitment was made for a delegation of the Sisseton and Wahpeton of the area to travel to Washington, D.C.¹⁸⁶ to secure a reservation at Lake Traverse.¹⁸⁷ The Treaty of 1867 set apart two reservations—one at Lake Traverse¹⁸⁸ and one at Spirit Lake (called Devils Lake by the Whites) in what would become North Dakota.¹⁸⁹ “The Lake Traverse Reservation included 918,780 acres of land. This included an area from the head of the Lake Traverse, to Lake Kampeska, a straight line to the northeast point of the Coteau des Prairies, north to Lake Tiwakan, and a direct line back to Lake Traverse.”¹⁹⁰

183. See BLACK THUNDER ET AL., *supra* note 2, at 71.

184. See ROBINSON, *supra* note 5, at 336.

185. *Id.*

186. One of the Sisseton-Wahpeton delegates on the trip, Scarlet Raven, reportedly hung himself in Washington, D.C. The circumstances around his death make the cause of death questionable. See REBECCA BOGGS ROBERTS & SANDRA K. SCHMIDT, *IMAGES OF AMERICA: HISTORIC CONGRESSIONAL CEMETERY 111* (2012).

Scarlet Raven had served as a scout for the US army during the Dakota (Sioux) Uprising of 1862 and objected to the removal of his tribe from Minnesota to South Dakota. A few days before the final negotiations, Scarlet Raven was reported missing, and the treaty was signed without him. His death was ruled a suicide, but the circumstances remain suspicious. Neither the rope nor the tree branch he was meant to have used to hang himself would have supported the weight of anyone larger than a child. Despite evidence of foul play, the death was never investigated.

Id.

187. See MEYER, *supra* note 7, at 198–99.

188. Treaty with the Sioux, U.S.-Sisseton-Wahpaton, art. III, Feb. 19, 1867, 15 Stat. 505, *reprinted in* 2 Kappler, *supra* note 13, at 957.

189. *Id.* at art. IV.

190. BLACK THUNDER ET AL., *supra* note 2, at 44, 72.

In the decades following the establishment of the Lake Traverse Reservation (also commonly called the Sisseton Reservation), the tribal leadership was approached again to enter into an agreement disclaiming any title to the lands north of the reservation in the Red River Valley and to approve of allotments for those actively cultivating the reservation lands. The first agreement of 1872 failed to be ratified.¹⁹¹ In 1873, the agreement was amended and ratified, striking out the allotment sections.¹⁹² The land cession for the Red River valley area valued the acreage at ten cents per acre for eight million acres.¹⁹³ “This ridiculously low sum was supposed to help the Indians become entirely self-supporting by the end of ten years. The government hired a farmer, carpenter, blacksmith and miller to assist and train the Indians.”¹⁹⁴

A. *Losing Ground: Allotment and the U.S. Supreme Court 1975 DeCoteau Decision*

The pressure of land-hungry Whites followed the Sisseton and Wahpeton to their new reservation in Dakota Territory. In the late 1800s, Whites continued to encroach onto reservation lands repeating the situations that occurred in Minnesota.

Some cattle ranchers were using Indian land for grazing, although they were supposed to leave in the winter, they did not always and were actually living on reservation land. Because of non-Indians living illegally on a small strip at the eastern edge of the reservation, the boundary line was moved and this land was eliminated from the reservation.¹⁹⁵

191. Agreement with the Sisseton and Wahpeton Bands of Sioux Indians, U.S.-Sioux, Sept. 20, 1872, Unratified Indian Office, Sisseton S. 247, *reprinted in* 2 Kappler, *supra* note 13, at 1057.

192. Amended Agreement with Certain Sioux Indians, May 2, 1873, Ratified by Acts of Feb. 14, 1873 (17 Stat. 456) and June 24, 1874 (18 Stat. 167), *reprinted in* 2 Kappler, *supra* note 13, at 1059. It is worth noting that one of the sections stricken out, section 9, had required the U.S. President to “sell or dispose of all the remaining or unoccupied lands in the Lake Traverse reservation (excepting that which may hereafter be set apart for school purposes).” 2 Kappler, *supra* note 13, at 1061. This provision would have greatly decreased the land base of the Sisseton-Wahpeton.

193. See BLACK THUNDER ET AL., *supra* note 2, at 61.

194. *Id.*

195. *Id.* at 69.

On the national level, the U.S. Congress on February 8, 1887, passed significant legislation authorizing the U.S. President to determine the reserved lands of a Tribe available for allotment, and the sale of the “surplus lands” remaining after the allotments were divided up.¹⁹⁶ This was the General Allotment Act, commonly referred to as the Dawes Act.¹⁹⁷ Senator Henry Dawes was one of the architects of the allotment law and had led a prior effort in the House of Representatives to politically halt the ability of further treaties with Tribes. The 1871 rider to an appropriations bill provided: “That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty”¹⁹⁸ This national effort to divide up tribal lands and no longer enter into treaties with Tribal Nations would soon impact the Sisseton and Wahpeton on the Lake Traverse Reservation.

As White pressure from settlers, railroads, and government officials was exerted on the Sisseton-Wahpeton tribal leadership, the Indian legislature established on the reservation at first rejected all negotiations due to the unpaid amounts that the U.S. government still owed.¹⁹⁹ Further pressure resulted in a draft agreement to allot reservation lands in 1889 and value the sale of surplus lands at \$2.50 per acre, although the lands were actually worth \$5 to \$10 per acre.²⁰⁰ This negotiation included the payment of the old claim, which amounted to \$700,000 owed by the U.S. government, but this amount was later reduced.²⁰¹ The allotment agreement was delayed by those in opposition to the provisions, notably the recognized chief of the Sisseton-Wahpeton, TiWakan (Gabriel Renville).²⁰²

196. Act of Feb. 8, 1887, ch. 119, § 5, 24 Stat. 388, 389–90. “An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.” § 1, 24 Stat. at 388.

197. See Emily Greenwald, *General Allotment Act (Dawes Act) of 1887*, in 1 ENCYCLOPEDIA OF UNITED STATES INDIAN POLICY AND LAW 336–37 (Paul Finkelman & Tim Alan Garrison eds., 2009).

198. Act of Mar. 3, 1871, ch. 120, 16 Stat. 544, 566 (codified as amended at 25 U.S.C. § 71 (1988)).

199. See BLACK THUNDER ET AL., *supra* note 2, at 69.

200. *Id.*

201. *Id.*

202. *Id.* at 64, 69.

As crops failed and hunger conditions set in on the Lake Traverse Reservation, more consensus was gained to enter into an agreement with the U.S. government for the selling of surplus lands to bring in needed funds for families.²⁰³ In 1891, the agreement was ratified by the U.S. Congress and allotment began on the reservation.²⁰⁴ The preamble to the agreement began with a recitation of the provisions of the General Allotment and then stated a summary of the purpose of the Act intended by the Sisseton-Wahpeton as follows:

Whereas the Sisseton and Wahpeton bands of Dakota or Sioux Indians are desirous of disposing of a portion of the land set apart and reserved to them by the third article of the treaty of February nineteenth, eighteen hundred and sixty-seven, between them and the United States, and situated partly in the State of North Dakota and partly in the State of South Dakota²⁰⁵

Allotment parcels previously made were increased to reach 160 acres, which was the amount under the new agreement.²⁰⁶ Children under the age of twenty-one were to be allotted forty-acre parcels.²⁰⁷ A trust period of twenty-five years was imposed by the U.S. government and declared Indians incompetent under the law to stop land sales.²⁰⁸ After allotments, the remaining lands were to be purchased by the U.S. government at \$2.50 per acre,²⁰⁹ which would lead to opening the reservation to White settlers. The scouts' payments were included under the agreement as a per capita payment of \$376,578.37.²¹⁰

The flow of whiskey onto the reservation impacted the tribal members when the payments came in under the allotment agreement. "Whiskey was relatively easy to obtain now that white settlers were everywhere and towns had sprung up; the agent reported in the fall of 1891 that the agency jail had been well filled for a time after the payment of annuities."²¹¹ Whites were ready to

203. *Id.* at 70.

204. Act of Mar. 3, 1891, ch. 543, 26 Stat. 989, 1035–38.

205. *Id.* at 1036.

206. *Id.* at 1037.

207. BLACK THUNDER ET AL., *supra* note 2, at 70

208. See FRANCIS PAUL PRUCHA, DOCUMENTS OF UNITED STATES INDIAN POLICY 171 (2000).

209. Act of Mar. 3, 1891, ch. 543, 26 Stat. 989, 1036.

210. *Id.* at 1037.

211. MEYER, *supra* note 7, at 217–18.

flood the reservation as soon as the official announcement was made that lands were available.

The official opening of the reservation to Whites occurred on April 15, 1892. At noon “the opening shots were fired, and the people situated on each section and half section lines on each side of the reservation poured into the reservation lands to establish claims.”²¹² The town of Sisseton was set out as a township on the very same day.²¹³ Along with the loss of the unallotted lands, the Sisseton and Wahpeton often sold their allotments in times of hardship. An amendment was passed to the General Allotment Act in 1906 called the Burke Act,²¹⁴ which permitted Indian agents to declare allottees competent and, therefore, able to sell their allotments. This led to a further loss of lands on the reservation.

Between the passage of the act in May, 1906, and September 1, 1907, thirty-one applications for patents had been favorably acted upon, and the only reason there were not more was that the Sisseton agent and his clerks were so weighted down with paper work connected with farming and grazing leases and the sales of inherited and non-competent lands that they were unable to process the applications as fast as they were presented.²¹⁵

By the 1910s and 1920s, the Indian agents allowed large-scale leasing of the lands to Whites and approved the selling of thousands of acres every year. “By 1910, some 20,000 acres had been sold, usually bringing a price of about \$14 an acre. In the next few decades land continued to be sold at a fast rate; there were usually at least 3,000 acres a year sold.”²¹⁶

White racism continued to be a factor during this time as well on the Lake Traverse Reservation.

Except for their willingness to sell moonshine to the Indians, lease their lands (illegally if possible), and buy up the farms of those who had been issued patents, the white people on and around the Sisseton Reservation were not inclined to have much to do with their Indian neighbors. Although the Indians were permitted to vote and to sit on

212. BLACK THUNDER ET AL., *supra* note 2, at 70.

213. *Id.* at 76.

214. Burke Act, ch. 2348, 34 Stat. 182 (1906) (codified as amended at 25 U.S.C. § 349 (2006)).

215. MEYER, *supra* note 7, at 318.

216. *See* BLACK THUNDER ET AL., *supra* note 2, at 73.

juries, many whites were prejudiced against them as a race because of the laziness and shiftlessness of a few.²¹⁷

This racism even extended to the sentiment that the Sisseton-Wahpeton children not be admitted to area public schools and the inaction on the part of White local officials to prosecute crimes against or by Sisseton-Wahpeton people.²¹⁸ Racism, combined with lack of opportunity in tribal communities and continued Bureau of Indian Affairs control,²¹⁹ contributed further to poverty and social ills throughout the 1900s up through the 1960s and 1970s. “The decline continued over the years and in 1958 the tribe was listed as the poorest in the country with a per capita wealth of \$19.12.”²²⁰

In the 1970s, the Sisseton-Wahpeton were yet to experience an even greater sense of injustice at the hands of the Whites, this time regarding the homeland established at the Lake Traverse Reservation. South Dakota state public employees, particularly social workers and law enforcement, during this time aggressively dealt with Sisseton-Wahpeton families and peoples. Two separate court actions challenging the authority of state employees on the Lake Traverse Reservation would have devastating consequences for the Sisseton-Wahpeton peoples. *United States ex rel. Feather v. Erickson*²²¹ involved the claims of ten Sisseton-Wahpeton men who had been arrested on the Lake Traverse Reservation by state law enforcement, convicted in state courts, and sentenced to terms in state prisons. The Eighth Circuit ruled that the boundaries of the Lake Traverse Reservation had not changed since 1867, and the state courts lacked jurisdiction to prosecute crimes by tribal members on the reservation.²²² In holding that the U.S. Congress had not indicated a clear intent to disestablish the reservation, the Eighth Circuit reversed its prior ruling²²³ in the 1963 *DeMarrias v. State of South Dakota*²²⁴ case, which had held that the crime

217. MEYER, *supra* note 7, at 321.

218. *Id.*

219. But note that the Sisseton-Wahpeton peoples rejected the Indian Reorganization Act of 1934’s provisions to adopt a BIA-approved Tribal Constitution. See BLACK THUNDER ET AL., *supra* note 2, at 110.

220. *Id.* at 64.

221. 489 F.2d 99 (8th Cir. 1973).

222. *Id.* at 102–03.

223. *Id.* at 100.

224. 319 F.2d 845 (8th Cir. 1963).

committed within the reservation boundaries was subject to state jurisdiction and not Indian country.²²⁵

The second case involved a challenge to South Dakota's jurisdiction by a mother seeking to recover her two young boys who had been taken by state social workers from a relative's house.²²⁶ *DeCoteau v. District Country Court*²²⁷ progressed through the South Dakota state courts and upon reaching the U.S. Supreme Court was consolidated with the appeal by South Dakota of the Eighth Circuit's *Feather* decision. The U.S. Supreme Court in the *DeCoteau* decision held that the "1891 Act terminated the Lake Traverse Reservation, and that consequently the state courts have jurisdiction over conduct on non-Indian lands within the 1867 reservation borders."²²⁸ Thus, one hundred eight years after the creation of the reservation for the Sisseton-Wahpeton peoples, the land holding was reduced to whatever trust allotments still existed, and the reservation boundaries were held to be terminated. According to the tribal laws of the Sisseton-Wahpeton Oyate,²²⁹ tribal jurisdiction still exists to the full extent of the 1867 boundaries in both civil and criminal cases.²³⁰ The continued coercion for land cession agreements by the United States from the 1851 Treaty to the 1891 allotment agreement of the Lake Traverse Reservation are in violation of the basic recognition of the right of Indigenous peoples to live in and own their homelands. The 1975 *DeCoteau* decision by the U.S. Supreme Court is another branch of

225. *Id.* at 847.

226. See Angelique A. EagleWoman, *Re-Establishing the Sisseton-Wahpeton Oyate's Reservation Boundaries: Building a Legal Rationale from Current International Law*, 29 AM. INDIAN L. REV. 239, 248 (2004–2005); see also Patrice H. Kunesch, *Borders Beyond Borders—Protecting Essential Tribal Relations off Reservation Under the Indian Child Welfare Act*, 42 NEW ENG. L. REV. 15, 31–37 (2007).

227. 420 U.S. 425 (1975).

228. *Id.* at 428.

229. The Sisseton-Wahpeton Oyate officially dropped "Sioux Tribe" in a referendum vote in November of 2002. See JOHN HENRY GLOVER, TRIBAL SOVEREIGNS OF SOUTH DAKOTA: A DESCRIPTION OF CONTEMPORARY SIOUX GOVERNMENTS 77 (2005).

The word "Sioux" was given to all of them by the French who had corrupted the name "Natawesiwak" from the Chippewa. The Chippewa word referred to the Sioux as enemies and meant "enemy" or "snake." This name was given to them when they resided in the western Great Lakes region.

BLACK THUNDER ET AL., *supra* note 2, at 98.

230. See SISSETON-WAHPETON OYATE CODE §§ 20-01-02, -02-02, -02-07 (1996).

the U.S. government acting to further dispossess the Sisseton-Wahpeton peoples of their reserved homeland at Lake Traverse and subject them to the mercy of the state authorities who have exhibited racism throughout the history of White interaction in the area.

B. Poverty and Inadequate Quality of Life: Wintertime Continues

Turning to an examination of the quality of life experienced by the Sisseton-Wahpeton peoples, from the late 1800s, poverty and hunger have been constant factors in the lives of the peoples. This has been attributed to the refugee status imposed through the U.S. Indian policy of locating the Sisseton-Wahpeton peoples on small parcels of land not well suited to farming or other industry and depriving the peoples of the traditional ways of providing food for their families. Few inroads have been made to curb the poverty at the Lake Traverse Reservation or for other tribal communities across mid-North America.

1. Income Data and Poverty Indicators: Continued Refugee Status for Many

The quality of life for the Sisseton-Wahpeton peoples is difficult to detail because reliable data is next to nonexistent. In recent years, the U.S. Census Bureau issued a publication, *Tribal Governments Liaison Handbook*, which provided that from 1890 to 1950 “[c]ensus-takers mainly use[d] *observation* to identify American Indians and Alaska Natives.”²³¹ The U.S. Census Bureau statistics from an April 1995 report of the U.S. Census Bureau on *Housing of American Indians on Reservations—Equipment and Fuels*²³² demonstrated that American Indian households lacked full kitchen amenities and were without basic telephone services. On the Lake Traverse Reservation, 50.5% of American Indian households lacked basic telephone services and 0.9% lacked full kitchen amenities (refrigeration, sink with drain pipe, etc.).²³³

231. See U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, TRIBAL GOVERNMENTS LIAISON PROGRAM HANDBOOK 3 (1999), available at <http://www.census.gov/prod/cen2000/d-3288.pdf>.

232. *Statistical Brief: Housing of American Indians on Reservations—Equipment and Fuels*, U.S. CENSUS BUREAU (Apr. 1995), http://www.census.gov/apsd/www/statbrief/sb95_11.pdf.

233. *Id.*

On the Annie E. Casey Foundation website, census data is summarized in tables for the populations on the Lake Traverse Reservation based on the 2000 U.S. Census.²³⁴ This website indicated that 44.9% of the American Indian population under the age of eighteen on the Lake Traverse Reservation was living in poverty in 2000.²³⁵ In addition, the median family income in 1999, as reported in the 2000 census for American Indian families, was \$20,662 from a sample size of 727 families.²³⁶ This median was approximately \$17,500 below the median for White families with a sample size of 1908 families and approximately \$6000 below the median for families of two or more races with a sample size of 34.²³⁷ The 2010 Census Demographic Profile for the Lake Traverse Reservation reported 4393 American Indians out of a total population of 10,992 inhabitants.²³⁸ Thus, the American Indian population, logically composed of primarily Sisseton-Wahpeton peoples, is outnumbered by Whites and experiences a much lower annual income than Whites on their own reservation.

In 2003, the Bureau of Indian Affairs released a report on the American Indian Labor Force.²³⁹ According to this report, the number of Sisseton-Wahpeton peoples on or near the Lake Traverse Reservation available for work was 7135, and of that number, only 1250 were employed.²⁴⁰ Therefore, the unemployment rate in 2003 was 82%.²⁴¹ Additionally, the percentage of those employed who still remained below the poverty level was 33%.²⁴²

These statistics demonstrate that a sizeable portion of the Sisseton-Wahpeton peoples are living in poverty on the Lake

234. See *2000 Census Data—Income and Poverty Profile for Lake Traverse Reservation*, ANNIE E. CASEY FOUND., <http://www.kidscount.org/cgi-bin/aecensus.cgi?action=profileresults&area=4635640A&areaparent=00N&printerfriendly=0§ion=5> (last visited Oct. 7, 2012).

235. *Id.* (charted as a graph to demonstrate poverty levels by race).

236. *Id.* tbl.20.

237. *Id.*

238. See *Lake Traverse Indian Reservation*, S.D. DEP'T TRIBAL REL., 1, <http://www.sdtribalrelations.com/new/tribalstatprofiles/swostatprofile2011.pdf> (last visited Oct. 7, 2012).

239. See OFFICE OF TRIBAL SERVS., U.S. DEP'T OF THE INTERIOR, AMERICAN INDIAN POPULATION AND LABOR FORCE REPORT (2003), available at <http://www.bia.gov/cs/groups/public/documents/text/idc-001777.pdf>.

240. *Id.* at 6.

241. *Id.*

242. *Id.*

Traverse Reservation, a legacy that has continued for over 133 years since the reservation was established. On the national level, the U.S. Commission on Civil Rights released a report in July 2003 on the quality of life experienced by Native Americans.²⁴³

Native Americans have a lower life expectancy—nearly six years less—and higher disease occurrence than other racial/ethnic groups. Roughly 13 percent of Native American deaths occur among those under the age of 25, a rate three times more than that of the total U.S. population. Native American youth are more than twice as likely to commit suicide, and nearly 70 percent of all suicidal acts in Indian Country involve alcohol. Native Americans are 670 percent more likely to die from alcoholism, 650 percent more likely to die from tuberculosis, 318 percent more likely to die from diabetes, and 204 percent more likely to suffer accidental death when compared with other groups. These disparities exist because of disproportionate poverty, poor education, cultural differences, and the absence of adequate health service delivery in most Native communities.²⁴⁴

These dismal statistics demonstrate the inhumane treatment Indigenous peoples in the United States receive when they remain in their homelands and maintain their collective status. Health services are inadequate, economic opportunities are inadequate in tribal communities for a variety of reasons that are related to the government control still exerted, and the quality of life overall does not meet the standard experienced by others in the country.

2. *Poverty Consequences: Substance Abuse and Incarceration Rates*

In conjunction with poverty, there are attendant ills that people experience.²⁴⁵ For the Sisseton-Wahpeton peoples, a host of social ills continues to persist on the Lake Traverse Reservation. Many of the Dakota, Lakota, and Nakota peoples living on

243. See U.S. COMM'N ON CIVIL RIGHTS, *A QUIET CRISIS: FEDERAL FUNDING AND UNMET NEEDS IN INDIAN COUNTRY* (2003), available at <http://www.usccr.gov/pubs/na0703/na0204.pdf>.

244. *Id.* at 34–35 (footnotes omitted).

245. See Angelique EagleWoman, *Tribal Nations and Tribal Economics: The Historical and Contemporary Impacts of Intergenerational Material Poverty and Cultural Wealth Within the United States*, 49 WASHBURN L.J. 805, 825–30 (2010).

reservations in South Dakota have experienced this ongoing refugee status.

Several of these Indian reservations have experienced “persistent poverty”—a condition of longstanding and chronic economic distress meaning that poverty has become a way of life for generations of Indian families. When a child is born into a family that has been wretchedly deprived for generations, the child inherits a poverty of spirit as well. The family’s constant struggle to subsist has inherently changed the way he looks at the world. The physical and mental strain of poverty, as well as the constant and pervasive government presence in a person’s daily life, be it the tribe, the Bureau of Indian Affairs, or the state or county authorities, often trigger rebellious behavior, which in turn leads to confrontations with law enforcement and the courts.²⁴⁶

The confrontation with state law enforcement on the Lake Traverse Reservation and the criticism of officers of the local state courts has been a constant refrain by the Sisseton-Wahpeton peoples for decades. The Lake Traverse Reservation spans across five counties in South Dakota and two counties in North Dakota, leading to interactions with a variety of state officials in both states.²⁴⁷

In 1999, several high-profile homicide cases with Native American victims in South Dakota involving lack of prosecution by state and federal officials led to the state of South Dakota’s Advisory Committee to the U.S. Commission on Civil Rights holding a series of forums.²⁴⁸ The resulting report of the Advisory Committee contained testimony from tribal members from many of the nine reservations in the state, including the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.²⁴⁹ Concerns were raised in relation to the Roberts County court officials and law enforcement, a county in the middle of the upper portion of the Lake Traverse Reservation.²⁵⁰

246. Patrice H. Kunesch, *A Call for an Assessment of the Welfare of Indian Children in South Dakota*, 52 S.D. L. REV. 247, 260 (2007).

247. See GLOVER, *supra* note 229, at 77.

248. See S.D. ADVISORY COMM. TO THE U.S. COMM’N ON CIVIL RIGHTS, NATIVE AMERICANS IN SOUTH DAKOTA: AN EROSION OF CONFIDENCE IN THE JUSTICE SYSTEM (2000), available at <http://www.usccr.gov/pubs/sac/sd0300/main.htm>.

249. *Id.* at ch. 2.

250. *Id.*

In 1999 Roberts County South Dakota officials retained an outside firm to prepare a feasibility study of current and future needs of the county's jail. The firm's November 1999 report, *Justice Center Planning: Roberts County*, states that over the past 6 years, 75–85 percent of the county's inmates were Native American. According to the Sisseton-Wahpeton Sioux Tribe, tribal members make up only 23 percent of the Roberts County population.²⁵¹

Testimony from Sisseton-Wahpeton people included discussion of the disproportionate rates of being pulled over by state law enforcement,²⁵² and the higher likelihood of disproportion rates of arrest due to the patrolling routes of state law enforcement through areas frequented by tribal members. One Sisseton-Wahpeton mother spoke about her son's death after a pickup truck driven by a young, White man hit him. Even though a state grand jury indicted the driver on vehicular homicide, DUI, a probation violation, and underage consumption, the state prosecutor requested the judge throw out all charges except the DUI and probation violation. "The driver 'got absolutely nothing for the death of my son,' she told the Committee."²⁵³

Another parent, a Sisseton-Wahpeton father, spoke of the unfair sentencing of his daughter after she took responsibility for breaking the law.²⁵⁴ The young woman had just turned eighteen and was driving while intoxicated when she hit someone with her vehicle. Thereafter she pled guilty to vehicular homicide.²⁵⁵ The court sentenced her to fourteen years in the South Dakota State Penitentiary for Women; the maximum sentence permitted was fifteen years.²⁵⁶

Melanie's sentence was nearly 3 times more severe than any other sentence handed down in the circuit for a comparable offense, [Melanie's father] discovered. The harshest sentence for vehicular manslaughter or homicide was 5 years, and some defendants served no time at all, he said. The only female defendant among the 10 cases pled

251. *Id.* at ch. 1.

252. *Id.* at ch. 2.

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

guilty to vehicular homicide, like Melanie, but received a suspended sentence of 5 years, he added.²⁵⁷

Steps have been taken by tribal officials to assist with the high rates of substance abuse. In a 2007 Final Report on the SWO Indian Alcohol Substance Abuse Program (IASAP) demonstration project submitted by the Sisseton-Wahpeton Oyate to the U.S. Department of Justice, tribal officials and project researchers reported relevant tribal statistics as follows²⁵⁸:

The Sisseton Wahpeton Oyate Tribe

According to the U.S. Census, the SWO tribal population in 2000 was 12,063; median age was 24.5. Over 59 percent of the households reported youth living at home under 18 years of age. Data from a special tribal census conducted in 2003 indicate that over 60 percent of the tribe lived in poverty, and 40 percent are unemployed. Alcohol abuse, lack of jobs, lack of job skills, and lack of education are cited as major barriers to employment.²⁵⁹

An application for the project was motivated due to events from 2001 to 2003 when “the community became alarmed when ten young adults, ages 15–24, died (eight in a two week period) in alcohol-related motor vehicle accidents. The devastation spurred the SWO tribal government and programs to form a task force to explore ways to address this problem.”²⁶⁰ From the Sisseton-Wahpeton Oyate’s Health Care Center data from 2007, it was reported that “for 2000 and 2005, 32 SWO youth were hospitalized or treated for AOD [alcohol and other drug] problems, 50 children and youth (ages 5–18) were treated or hospitalized as a result of motor vehicle accidents” demonstrating a high rate of health issues from both substance use and motor vehicle collisions.²⁶¹

As the reports highlighted in this section illustrate, the Sisseton-Wahpeton peoples are not enjoying a high quality of life, for the most part. Income data indicated that unrelenting poverty

257. *Id.*

258. See JENNIE R. JOE ET AL., NATIVE AM. RESEARCH & TRAINING CTR., FINAL REPORT: PARTICIPATORY EVALUATION OF THE SISSETON WAHPETON OYATE IASAP DEMONSTRATION PROJECT (2007), available at www.ncjrs.gov/pdffiles1/nij/grants/222740.pdf.

259. *Id.* at iv.

260. *Id.* at 1.

261. *Id.* at 43.

plagues the tribal communities on the Lake Traverse Reservation. Unemployment rates are far beyond the national average. A sense of injustice continues to permeate Dakota-White relations and is perceived as having a contemporary impact on the incarceration and prosecution of Sisseton-Wahpeton peoples disproportionately. Alcohol and drug abuse has been passed from one generation to the next and jeopardizes the lives of tribal youth. Thus, human rights violations continue to be perpetrated against the Sisseton-Wahpeton peoples and documented, but no remedies have been offered.

V. INDIGENOUS HUMAN RIGHTS AND THE SWO IN RELATIONSHIP WITH THE U.S.: LOOKING FORWARD TO SPRINGTIME

On the international level, Indigenous peoples experiencing human rights violations have demanded that nation-states evolve their human rights standards to provide for collective rights.²⁶² At the 1977 Geneva Conference, where Indigenous peoples from the Western Hemisphere gathered, Indigenous leaders testified as to the legal oppression impacting the ability of Indigenous peoples to exist in their traditional forms.²⁶³

The tone of the testimony and related documentation is best expressed by those delegates who said: We have exhausted all legal means—the existing laws, courts, commissions of inquiry, etc.—on the national level, and that is why we have come to the international arena, to the non-governmental organizations of the United Nations, for urgent cooperation.

The legal systems and institutions of the various American States have never taken into account the indigenous peoples and nations, thus serving the interests of the dominant society exclusively.

Legal discrimination as a means of exploitation is institutionalized in all states, forcing indigenous peoples to participate in legal structures and systems of law which are most often detrimental to their interests. This form of

262. See Int'l Indian Treaty Council, *International NGO Conference on Discrimination Against Indigenous Populations in the Americas, September 20-23, 1977, Palais des Nations, Geneva, Switzerland*, TREATY COUNCIL NEWS (1977).

263. See Robert T. Coulter, *The U.N. Declaration on the Rights of Indigenous Peoples: A Historic Change in International Law*, 45 IDAHO L. REV. 539, 544-45 (2009).

discrimination is disguised variously in public policy as “assimilation,” “integration,” “incorporation,” etc.²⁶⁴

A thirty-year drafting process led to the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP), adopted by the U.N. General Assembly on September 13, 2007.²⁶⁵ The vote on the adoption was 144 in favor, eleven abstaining, and four opposed (Australia, Canada, New Zealand, and the United States of America).²⁶⁶ In 2010, U.S. President Barack Obama announced that the United States would support the UN DRIP²⁶⁷ and thus was the last nation-state casting a favoring vote to reverse its position.²⁶⁸

Applying the provisions of the UN DRIP to the relationship between the Sisseton-Wahpeton Oyate and the United States of America would significantly alleviate much of the oppression being experienced by the Sisseton-Wahpeton peoples. A first step would be to address the status of the final homelands of the Sisseton-Wahpeton Dakota, the Lake Traverse Reservation. From the Treaty of 1851 to the present, the land rights of the Sisseton-Wahpeton peoples have been uncertain and misrepresented. The U.N. Declaration sets forth in Article 26 a strong statement on the rights of Indigenous peoples to own their lands.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other

264. Int'l Indian Treaty Council, *supra* note 262, at 20–21.

265. See Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>.

266. See *History is Made for Indigenous Peoples at United Nations!*, INT'L INDIAN TREATY COUNCIL 1 (Sept. 16, 2007), http://treatycouncil.info/PDF/IITCPR_DRIP091607FINALcWEB.pdf.

267. See Barack Obama, President of the United States of America, Remarks at the White House Tribal Nations Conference (Dec. 16, 2010) (transcript available at <http://www.whitehouse.gov/the-press-office/2010/12/16/remarks-president-white-house-tribal-nations-conference>); see also Press Release, U.S. Dep't of State, Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples, No. 2010/1829 (Dec. 16, 2010), available at <http://www.state.gov/r/pa/prs/ps/2010/12/153027.htm>.

268. See Am. Soc'y of Int'l Law, *United States Endorses UN Indigenous Declaration*, 105 AM. J. INT'L. L. 354, 356 (2011).

traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.²⁶⁹

Applying the guidance of Article 26, the U.S. Congress should acknowledge and re-establish the reservation boundaries of the Lake Traverse Reservation, thus, connecting federal recognition to tribal recognition.²⁷⁰ With full tribal jurisdiction in the 1867 boundaries acknowledged by the U.S. government, the Sisseton-Wahpeton Oyate's government can begin a strengthened program of repurchasing lands within the boundaries and consolidating the land base for further economic development and as a homeland for future generations.

Another pertinent article of the UN DRIP is Article 28,²⁷¹ which provides that there should be established a just means to redress lands that have been taken from Indigenous peoples. This is another avenue that would benefit the Sisseton-Wahpeton Oyate in reclaiming the land within the 1867 boundaries and having the boundaries re-acknowledged. From the restoration of the boundaries, many positives would flow and assist in remedying the human rights injuries endured by the Sisseton-Wahpeton peoples.

The friction and racial hatred directed against the Sisseton-Wahpeton men, women, and children, noted throughout the past century, is an ongoing source of conflict that must be dealt with.²⁷² One of the best ways to deal with racial hatred is through providing humanitarian education and accurate historical information.²⁷³

269. G.A. Res. 61/295, *supra* note 265, at 8.

270. See EagleWoman, *supra* note 226, at 261.

271. See G.A. Res. 61/295, *supra* note 265, at 8.

272. See Bethany R. Berger, *Red: Racism and the American Indian*, 56 UCLA L. REV. 591, 654–55 (2009).

273. For example, the Lac du Flambeau Band of Lake Superior Chippewa filed for an injunction against an anti-tribal group called Stop Treaty Abuse—Wisconsin and its leadership after the group repeatedly sought to interfere with tribal treaty rights to spearfish. *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse—Wisconsin*, 843 F. Supp. 1284, 1285 (W.D. Wis. 1994). These incidents were held to be racially motivated and the court decision contained detailed accounts of the hateful slurs and actions aimed at the tribal citizens. *Id.* at 1288–89. With the district court granting an injunction against the group, behaviors were modified towards the tribal citizens. *Id.* at 1295.

Article 2 of the UN DRIP provides, “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.”²⁷⁴ The propaganda program that the United States has provided through U.S. history books, archives, judicial opinions,²⁷⁵ and national myths²⁷⁶ serves to keep tribal peoples silenced, disempowered,²⁷⁷ and a source of national ridicule.²⁷⁸

Articles 12, 13, 14, and 15 of the UN DRIP all speak to the right of Indigenous peoples to engage in culturally appropriate

In the author’s opinion, relevant public education on the treaty rights of Tribal Nations may have forestalled this type of group’s formation and interference.

274. G.A. Res. 61/295, *supra* note 265, at 3.

275. See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 209 (1978) (perpetuating the propaganda that American Indians have become incorporated into the United States); *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 289–91 (1955) (“Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but the conqueror’s will that deprived them of their land.”); *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543, 590 (1823) (describing all Native Americans as “fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest”).

276. See Robert Jensen, *No Thanks to Thanksgiving*, ALTERNET (Nov. 22, 2005), http://www.alternet.org/story/28584/no_thanks_to_thanksgiving (“Simply put: Thanksgiving is the day when the dominant white culture (and, sadly, most of the rest of the non-white but non-indigenous population) celebrates the beginning of a genocide that was, in fact, blessed by the men we hold up as our heroic founding fathers.”).

277. See PHILIP J. DELORIA, *PLAYING INDIAN* 64 (1998) (detailing the White public sentiment that Indians would vanish as part of their inherent destiny as if “foreordained”).

278. See John R. Wallace, *Discriminatory & Disparaging Team Names, Logos & Mascots: Workable Challenges & the Misapplication of the Doctrine of Laches*, 12 RUTGERS RACE & L. REV. 203, 209 (2011) (“The continued and pervasive use of Native American images and likenesses is a ‘painful legac[y] of an era in advertising that relied on the use of racial or ethnic minorities as the basis for logos, without much attention to the psychological harms such logos can cause.’ Yet, for Native Americans, these images are still quite common and generally socially acceptable in contemporary society. Prominent examples include the ‘cigar store Indian; sports team mascot; and the ubiquitous Halloween costume, complete with feathered headdress.’ All of this continues, despite what the American Psychological Association has documented as ‘a link between self-esteem and racially hostile mascots . . . that their use has [had] a negative effect on all students (not just Native [American] students).’” (quoting Sonia K. Katyal, *The Fight Over the Redskins Trademark and Other Racialized Symbols*, FINDLAW (Dec. 7, 2009), http://writ.news.findlaw.com/commentary/20091207_katyal.html)).

education,²⁷⁹ to transmit their knowledge to future generations,²⁸⁰ to establish culturally relevant educational institutions,²⁸¹ and to have their histories correctly provided publicly.²⁸² Article 31 also calls for Indigenous peoples to have the right to control their expressions and images, including in sports.²⁸³ In terms of the misrepresentation and propaganda causing negative impacts in tribal communities between Whites and Natives, Article 15 expressly provides:

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.²⁸⁴

The Sisseton-Wahpeton peoples and all Indigenous peoples in mid-North America would be greatly served by the United States following Article 15, Section 2. When there is just governmental action and policy by the United States, it will lead to just action and attitudes by U.S. citizens. As long as the institutions and agencies of the U.S. government fail to provide correct and accurate historical and contemporary information on the status and laws that control American Indians, U.S. citizens, and in particular White citizens, will continue to believe in their racial superiority based on the myths and propaganda currently being circulated.

One of the ways forward for the United States to begin to reconcile the U.N. Declaration and herald in a new springtime with the Sisseton-Wahpeton Oyate and all Tribal Nations would be to fulfill the solemn treaty promises entered into. Article 37 directly

279. G.A. Res. 61/295, *supra* note 265, at 5.

280. *Id.*

281. *Id.*

282. *Id.* at 6

283. *Id.* at 9. Article 31 of the UN Declaration addresses the empowerment of Indigenous peoples over their own public image and portrayal. *Id.* In some ways, this Dakota symposium is an avenue for this human right to be realized.

284. *Id.* at 6.

addresses the rights of Indigenous peoples to hold nation-states to those types of solemn promises.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.²⁸⁵

For springtime to return to the lives of the Sisseton-Wahpeton peoples, a reconciliation needs to occur with the United States of America. The U.N. Declaration on the Rights of Indigenous Peoples provides a path to that reconciliation. Article 37 is crucial to such a path as it would allow the Dakota to begin to trust in the U.S. government, if the United States honored and respected the treaties and agreements entered into.

With the United States honoring its word, the Sisseton-Wahpeton Oyate would be on a new footing with security in the Lake Traverse Reservation as the peoples' homeland. By the U.S. government demonstrating good faith towards the SWO, U.S. citizens would begin to follow suit as well. Truth telling and accurate historical materials in line with Article 15 of the U.N. Declaration would possibly provide greater understanding concerning the actions of the Dakota, the U.S. government, and White settlers. The SWO would have an opportunity to heal from the forced refugee status that began with the 1851 Treaty, set off the U.S.-Dakota War of 1862, and has continued in the poverty conditions experienced by the peoples on the Lake Traverse Reservation. The long wintertime of the Sisseton-Wahpeton peoples enduring ongoing human rights violations is overdue to give way to a fresh new springtime with the peoples of the United States. By righting past wrongs, the United States will allow the healing to begin.

285. *Id.* at 10.