


Chapter One

THE END OF LIMITED WAR

 Today, there is a tendency to romanticize both the chivalric era and the early years of the European state system as more humane times, when soldiers were governed by codes of honor and civilians were not targeted for wanton destruction.¹ However, what is often overlooked is that the gentlemanly rules of war outlined by both Christian scholars and the Heralds applied only to warriors of the same race and class. When invasive “others” like Norsemen and Muslims descended on early European states, the only law of war was survival. The roots of this duality can be traced to Christianity and its paradoxical and incongruous relationship with armed violence.² In order to protect and spread their pacific faith, early Christian leaders were forced to condone and justify violence. As military historian Michael Howard points out, neither the laws of nations nor “warriors’ honor” applied “when Norsemen were raging through the land like devouring flames.”³ In wars against pagans, no holds were barred, no prisoners were taken; and this was in keeping with the *guerre mortale* doctrine.

Although America had no Norsemen or Magyars, it did have an

indigenous population of at least five million scattered across the continent.⁴ The Seneca, Sioux (or Lakota, as they call themselves and are now commonly known), Iroquois, Cheyenne, Arapaho, Apache, Chippewa, Nez Perce, and numerous others had lived free, according to their own rules, for thousands of years. However, even in America there was freedom only for some, and this was consistent with Jefferson's original vision. According to nineteenth-century American historian Frederick Jackson Turner, the first period of U.S. history was spent clearing and pacifying the western frontier—no small feat, and one that required equal parts determination and brutality.⁵

What were the moral implications of forcibly uprooting America's native inhabitants for the "Citty upon a Hill," the republic founded upon the principles of "liberty and justice for all"? As Walter McDougall notes in *Promised Land, Crusader State*, "The evidence that the colonists believed that America was a holy land (that is 'set apart') is so abundant as to be trite. Governor John Winthrop: 'to Consider that wee shall be as a Citty upon a Hill, the eies of all people are uppon us.'"⁶ A previous generation of European leaders had been content to invoke the divine right of God or king to justify war and territorial acquisition, but American leaders outwardly scorned the European model of power politics. However, from the beginning, the United States was founded and built upon a contradiction. As Edmund Morgan observes in *American Slavery, American Freedom*, the simultaneous development of both slavery and freedom on the American continent is the "central paradox" of sixteenth- to nineteenth-century American history.⁷ As with the slaves, if American leaders denied the Indians their humanity, they could deny them their natural rights. Before there were "war criminals," there were "barbarians," "heathens," and "savages" who did not qualify as equals in the arena of "civilized warfare."

From the beginning, America's founding fathers considered the American Indians barbarians. The second President of the United States, John Adams, described Indian warfare in a 1775 letter: "The Indians are known to conduct their Wars so entirely without Faith and Humanity, that it will bring eternal infamy. . . . To let loose these blood Hounds to scalp Men and to butcher Women and Children is horrid."⁸ "Humanity," or in this case, a lack thereof, provided the justification that allowed European and U.S. armies to occupy territory and exploit it unhindered by the restraints of the traditional European rules of statecraft. The early Amer-

ican settlers granted their continent's native inhabitants no natural rights; Puritan leader Reverend Cotton Mather put it very bluntly: "To think of raising these hideous creatures into our holy religion! . . . All was diabolical among them."⁹

The American frontier and especially the northern plains were inhabited by fierce and seasoned Indian warriors whom military historian John Keegan counts "among the most remarkable of all the world's warrior peoples." By the end of the eighteenth century they possessed horses and guns and "combined their use into terrifyingly effective military practice. . . . It is difficult to think of any other pre-literate ethnic group which has made so rapid and complete a transition from primitive to sophisticated warriorhood in so short a space of time."¹⁰ Stephen Longstreet makes a similar point in *Indian Wars of the Great Plains*. "The Indian, long before napalm, made total war. It was his ritual right, his sense of tribal sportsmanship to take horses and women—in key with his vision of the world, his guiding spirits."¹¹

Many of the American tribes lived in "hard primitive" societies in which war played an important role. "War had, of course, also been central to the way of life of many of the Indian tribes since time immemorial. Indian warfare, however, generally took forms quite different from those known to Europeans," writes John Keegan, describing the significance of war in Sioux Indian culture. He points to the role of hostage taking: "A dominant motive in their style of their warfare, however, was the taking of captives, to be adopted into the tribe as a replacement for a casualty if thought worthy, to be tortured to death if not; it was bravery under torture that usually determined the captive's fitness for adoption." Keegan goes so far as to say that of all the opponents it faced in the eighteenth and nineteenth centuries, the U.S. Army had the most difficult job in the American plains: "the enemies of the British and French . . . cunning, tough, and brave though they were—did not approach the Plains Indians in qualities of harsh individual warriorhood."¹²

American settlers faced fearsome foes who shared none of their ethical assumptions about life and death, much less war. Because the customary laws of war forbade guerrilla warfare, the taking of hostages, and the massacre of civilians, the early colonists and the U.S. government never recognized the legitimacy of the American Indian resistance. Historian William Fowell remarks on the differing perceptions of war: to the American mind, the so-called Indian raids "amounted simply to massacre, an

atrocious and utterly unjustifiable butchery of unoffending citizens.” However, says Dr. Fowell, the Sioux were fighting for national survival according to their own time-honored customs: “The Indian, however, saw himself engaged in war, the most honorable of all pursuits, against men who, as he believed, had robbed him of his country and his freedom.”¹³

Colonial leaders had no qualms about slaughtering those tribes that resisted the colonists’ “civilizing” influence. As early as 1675, colonists nearly wiped out the Algonquin Indians for attacking and destroying colonial settlements in what would come to be known as King Philip’s War.¹⁴ In the end, King Philip, the Algonquin Indian leader, was captured and killed. His head was exhibited in Plymouth for the next twenty years, and his wife and children were sold as slaves in the West Indies.¹⁵ Reprisal would become the key word in America’s emerging Indian policy. Tribes that refused American demands were subjected to harsh punitive measures.

America’s first President, George Washington, ordered Major General John Sullivan to “chastize” hostile Iroquois in a May 31, 1779 letter. President Washington wanted the Indian villages “not merely overrun but destroyed. But you will not by any means, listen to any overture of peace before the total ruin of their settlements is effected.” Washington wanted to establish a precedent of terror and believed that American national security demanded it: “Our future security will be in their inability to injure us . . . and in the terror with which the severity of the chastizement they receive will inspire them.”¹⁶ Major General Sullivan shared his commander-in-chief’s view that “the Indians shall see that there is malice enough in our hearts to destroy everything that contributes to their support.”¹⁷

In 1792, George Hammond, the first British ambassador to the United States, asked Thomas Jefferson what he “understood as the right of the United States in Indian soil?” Jefferson responded, “We consider it as established by the usage of different nations into a kind of *jus gentium* (Law of Nations) for America,” arguing that while the United States would treat the invasion of Indian territory by “any other white nation” as an act of war, America assumed “no right of soil against the native possessors.” Hammond was utterly unconvinced by Jefferson’s earnest claims and told him that the British believed the United States planned “to exterminate the Indians and take their lands.” Jefferson replied

defensively, “On the contrary, our system was to protect them, even against our own citizens: that we wish to get lines established with all of them, and have no views even of purchasing any more land of them for a long time.”¹⁸ However, the U.S. government’s actions would tell another story.

When Thomas Jefferson became President in 1801, the duality of American frontier policy became clear for all to see. Contradicting the position he had presented to the British diplomat in 1792, the United States began to undergo a massive territorial expansion during his presidency. The precedent for America’s nineteenth-century Indian policy can be found in an 1803 letter from President Jefferson to Indiana Territory Governor William Henry Harrison. It outlined a uniquely American form of conquest—credit and debt: “To promote this disposition to exchange lands, which they have to spare and we want, we shall push our trading uses, and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what individuals can pay, they become willing to lop them off by a cessation of lands.”¹⁹ The American plans for conquest were passive-aggressive and indirect by design. The President noted the importance of appearances and encouraged Governor Harrison to soothe the Indians “by liberalities and sincere assurances of friendship.” Jefferson’s objective was to “finally consolidate our whole country to one nation only.” However, he realized that time was running out: “The crisis is pressing; what ever can now be obtained must be obtained quickly.”²⁰ By 1812, less than two decades after Jefferson’s pledge to the British ambassador, the United States had acquired 109,884,000 acres of former Indian territory, and its slave population had grown to more than 1.2 million.²¹ As Alexis de Toqueville observed in the 1830s, “The Americans are already able to make their flag respected; in a few years, they will make it feared.”²²

To early American leaders, owning land was a question of establishing “dominion” over it; because most of America’s native tribes were hunters, their relationship with the land did not qualify as ownership. In a September 23, 1818 letter to Judge William Tudor, John Adams described the American expansion in these terms: “Shall we say that a few handfulls of scattering tribes of savages have a right of dominion and property over a quarter of this globe capable of nourishing hundreds of millions of happy human beings? Why had not the Europeans a right to come and hunt and fish with them?”²³ However, was sustenance all that the Ameri-

can settlers sought? What were the implications of this massive territorial expansion for the American Indians?

Senator Benjamin Leigh of Virginia was more candid than most when he described the significance of America's westward spread in 1824:

It is peculiar to the character of this Anglo-Saxon race of men to which we belong, that it has never been contented to live in the same country with any other distinct race, upon terms of equality; it has invariably, when placed in that situation, proceeded to exterminate or enslave the other race in some form or other, or, failing that, to abandon the country.²⁴

James Madison seemed to recognize the American paradox in an 1826 letter: "Next to the case of the black race within our bosom, that of the red on our borders is the problem most baffling to the policy of our country."²⁵ Even as late as 1831, the legal status of the American Indians was unclear. Supreme Court Chief Justice Marshall called the various tribes "domestic dependent nations" in *Cherokee Nation v. Georgia* (1831):

The Indians are acknowledged to have unquestionable and heretofore an unquestioned right to the lands they occupy until that right shall be extinguished by a voluntary cessation to the Government. It may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can with strict accuracy be denominated domestic dependent nations. They occupy territory to which we assert a title, independent of their will, which must take effect in point of possession when their right of possession ceases; meanwhile they are in a state of pupilage. The relations with the United States resemble that of a ward to his guardian. They look to our Government for protection; rely upon its kindness and its power; appeal to it for relief to their wants, and address the President as their great father.²⁶

American Indian historian Vine Deloria Jr. best describes the Indians' ambiguous international legal status: "Marshall, building on this foundation of domestic dependency, interposed a limited sovereignty enjoyed by the Indian nations to prevent the state of Georgia from extending its power over the Cherokee Nation's lands." However, Indians' legal rights meant little if the federal government was unwilling to uphold the court's

decisions. "Andrew Jackson's refusal to enforce Marshall's decision gave mute testimony that, if the tribes had legal rights affirmed by the highest court in the land, their political status made it easy to void such rights."²⁷

After a successful war against Mexico, the United States took possession of Texas and California. With the discovery of gold in California in 1848, wagon trains filled with hopeful settlers streamed west onto "the permanent Indian frontier." What the U.S. government did not take by treaty, the settlers simply occupied. The American Indians would soon learn that under the white man's law, possession by squatting could be translated into ownership. Not surprisingly, many native tribes were unwilling to give up their land without a fight. By the time Minnesota became a state in 1860, the various bands of Sioux had sold more than 24,000,000 acres of their territory to the U.S. government.²⁸ Two treaties signed by Sioux leaders in 1837 and 1851 relieved them of 90 percent of their property in exchange for annuity payments from the American government. The 1851 treaty promised a lump-sum payment that the Sioux had still not received by 1862.²⁹

The situation in Minnesota was exacerbated during the 1850s by more than 150,000 settlers who moved into the state and, in many cases, pushed onto land reserved for the Sioux as "permanent Indian frontier."³⁰ Often the government's annuity payments went straight to frontier traders for supplies already purchased on credit. When the Sioux chiefs demanded to be paid directly, the traders refused to extend them further credit. In the summer of 1862, the situation reached a point of crisis.

Due to crop failure and the drastically reduced hunting grounds, many Santee Sioux were going hungry and turned to their chief Little Crow for help. This leader was in a very precarious position because he had a foot in each world. Although he was the son and grandson of Santee chiefs, Little Crow decided that resisting the white expansion would be futile. After a tour of American cities, he returned to Minnesota, joined the Episcopal church, built a house, and even started to farm. Little Crow not only signed the two treaties surrendering Sioux territory but had even been to Washington to meet "the Great Father," President Buchanan.³¹

Although Little Crow had become a "model Indian" in the eyes of the white men, as the summer of 1862 dragged on and no payments arrived, even he began to lose faith in the American government. In July, he led several thousand Santee to Upper Agency to collect their government annuity payments and to purchase food and other supplies.

However, when the payments did not arrive, a rumor began to circulate that the U.S. government had spent all their gold in the Civil War.³² Little Crow approached the U.S. Indian Agent, Thomas Galbraith, and asked why his people could not be issued food instead of gold if the storehouses were full and they were starving. Galbraith refused the Santee chief's request and called in one hundred U.S. soldiers to guard the storehouses. On August 4, more than five hundred Santee surrounded the soldiers in Upper Agency.³³ Overwhelmingly outnumbered, the U.S. soldiers watched as the Indians took flour and other basic supplies. Little Crow was still not satisfied and demanded on August 13 that Galbraith distribute more supplies in the neighboring settlement, Lower Agency.³⁴

Two days later, on August 15, Little Crow and several hundred of his followers arrived in Lower Agency. However, this time the Indian Agent refused to distribute goods.³⁵ Little Crow tried to reason with Agent Galbraith: "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." The Indian Agent said nothing; however, storekeeper Andrew Myrick responded derisively, "So far as I am concerned, if they are hungry let them eat grass or their own dung."³⁶ This public insult, coupled with Little Crow's failure to obtain food, cost the Santee leader the trust of his own people.

On August 17, 1862, four Sioux braves attacked and killed a group of settlers near Acton, Minnesota.³⁷ Late that night, Little Crow was awakened and informed of the massacre. He warned of harsh reprisals for the killings. "No Santee's life would be safe, not after these killings. . . . It was the white man's way to punish all Indians for the crimes of one or a few." The braves called for a preemptive strike before the settlers' reinforcements could arrive: "The Santees might as well strike first instead of waiting for the soldiers to come and kill them. It would be better to fight the white men now while they are fighting among themselves far to the south."³⁸

Little Crow did not want to go to war and mocked the braves: "You are full of the white man's devil water. You are like dogs in the Hot Moon when they run mad and snap at their own shadows." He warned his militant followers that the whites were "like the locusts when they fly so thick

that the whole sky is a snowstorm. . . . Kill one—two—ten, and ten times ten will come to kill you. Count your fingers all day long and white men with guns in their hands will come faster than you can count.”³⁹ When the warriors began to question their leader’s bravery, Little Crow quieted them with a grim prophecy: “Braves, you are like little children—you are fools. You will die like rabbits when the hungry wolves hunt them in the Hard Moon of January.”⁴⁰

The war council continued through the night; although chiefs Little Crow and Big Eagle called for peace, they were shouted down by a firm majority set on vengeance. Finally, Little Crow reluctantly agreed to wage war and drive the settlers out of Sioux territory once and for all. However, the seventy-year-old chief realized that the war would soon escalate and issued another stern warning: “Blood has been shed, the payments will be stopped and the whites will exact a terrible revenge because women have been killed, but I will lead you.”⁴¹ That night Little Crow sent word to neighboring tribes that there would be an early morning surprise attack on Lower Agency.⁴² The Santee would settle the score with the traders first.

The next morning at 6:00, Little Crow and other Santee gathered near the stores that would not extend them credit and waited for their signal. At 6:30, a young warrior named Wasu-ota ran toward Andrew Myrick’s, shouting, “Now, I will kill the dog who would not give me credit.”⁴³ Myrick ran into his store and up the stairs to the second floor. When the Indians set fire to the building, he jumped from a window. The shopkeeper’s body was later found shot and scalped. Big Eagle entered Lower Agency after the massacre and saw him “lying on the ground dead, with his mouth stuffed full of grass, and the Indians were saying tauntingly: ‘Myrick is eating grass himself.’”⁴⁴

Very quickly, Minnesota settlers were forced to realize that the Sioux did not recognize the most basic distinction between soldier and civilian. In fact, torture and terror had deep precedents in native American military history. Settler Justina Kreiger was captured by the Sioux and recalled her ordeal in a book written at the time: “One of these inhuman savages seized . . . my niece, yet alive, held her up by the foot . . . while holding her there by one hand . . . he hastily cut the flesh around one of the legs . . . and then, by twisting and wrenching, broke the ligaments and bone, until the limb was entirely severed from the body, the child was screaming frantically, ‘O God! O God!’”⁴⁵ Mary Schwandt

was fourteen when the Sioux killed her family and took her prisoner: "When I screamed . . . one of the fiends struck me on the mouth with his hand, causing the blood to flow very freely. They then took me out by force, to an unoccupied tepee . . . and perpetrated the most horrible and nameless outrages upon my person. These outrages were repeated, at different times during my captivity."⁴⁶

When settlers from the nearby Beaver Creek settlement loaded their wagons and fled, they had barely traveled a mile before they were surrounded by painted Santee warriors. After they surrendered their wagons and livestock, the Indians opened fire on them. Two settlers tried to surrender under a white flag; according to a witness, "Wedge and Henderson held up a white cloth, but it was not regarded, and Wedge was shot dead, and Henderson lost the fingers off one hand. The Indians then came up and pulling the bed with Mrs. Henderson on it to the ground, set fire to it. One of the infant children was beaten to death over the wagon wheel, and thrown in the fire, the other was cut to pieces and thrown in piecemeal."⁴⁷

If the American Indians employed these methods against one another, why should the American settlers be exempt? Historian William Fowell observes, "He [Sioux] was making war on the white people in the same fashion in which he would have gone against the Chippewa or the Foxes."⁴⁸ As the Lower Agency massacre was in progress, the Santee leader rode into town and became angry because his men were too busy looting and not intent enough on killing. According to Minnesota historian Marion Satterlee, Little Crow entered the settlement and ordered his men to shoot the remaining survivors.⁴⁹ While generally critical of the Sioux, Satterlee, writing in 1921, described their decision to wage war thus: "With true Indian sagacity they made certain that no trouble was expected, and that there was no probability of their plans miscarrying. It is but just to state, that very many of these Indians were unwilling attendants. But the orders of the Soldiers Lodge were imperative and absolute, disobedience meant dishonor, heavy penalty even instant death, if enforced."⁵⁰

Forty-seven settlers managed to escape the slaughter at Lower Agency thanks to the heroic efforts of a ferryman named Herbert Millier.⁵¹ The survivors traveled thirteen miles downstream toward the federal garrison at Fort Ridgely, where Company B of the Fifth Minnesota Voluntary Infantry Regiment was stationed. Captain John Marsh and forty-six

mounted U.S. soldiers intercepted the fleeing settlers and rode for Acton. The relief party was ambushed long before it reached its destination. Captain Marsh tried to escape by crossing a river, but he was struck by cramps and drowned.⁵² Sergeant John Bishop managed to straggle back to Fort Ridgely with twenty-four survivors. The Santee made a key strategic error at this point by not pressing their advantage and capturing the American fort. Little Crow was in favor of attacking and argued that as warriors, they had to engage and defeat the soldiers. However, the young braves wanted to attack the undefended town of New Ulm, loot the storehouses, and capture more civilians. Once again, Little Crow was overruled.⁵³

The Sioux rampage in Minnesota came as an especially unwelcome distraction to President Abraham Lincoln. The President was trying to rally the Union Army after poor initial outings against the Confederacy when Minnesota exploded into open warfare. A short front-page story in the August 22 edition of *The New York Times* announced, TROUBLE WITH THE INDIANS IN MINNESOTA. ATTACK ON THE WHITES—MEN, WOMEN, AND CHILDREN MASSACRED, ETC.⁵⁴ The story described the massacres at Acton and Lower Agency and said that four companies under the command of former Minnesota Governor Colonel Henry H. Sibley were on the way to relieve the embattled settlers.

Henry “Long Trader” Sibley and the Santee had a long history that went back to the governor’s days as a trader on the Minnesota frontier. According to historian Dee Brown, “Of the \$475,000 promised the Santee in their first treaty, Long Trader Sibley claimed \$145,000 for his American Fur Company as money due for overpayments to the Santees.” At the time, Santee leaders argued that Sibley’s company had underpaid them. However, when they complained to their Indian Agent, Alexander Ramsey, he sided with Sibley.⁵⁵ In 1862, Ramsey was the Governor of Minnesota, and “Long Trader” Sibley was in charge of the Sixth Minnesota Regiment.

On August 23, nearly 600 painted Santee warriors descended on the settlement of New Ulm. During the next 30 hours, 34 settlers died; 60 were wounded in the valiant defense of their town.⁵⁶ Although the Sioux succeeded in burning 190 buildings, they were unable to capture or destroy the settlement. On August 24, New Ulm was evacuated as 2,000 settlers set out in a convoy of 153 wagons for Manakato, nearly 30 miles away.⁵⁷ The August 24, 1862 *New York Times* described the conflict: THE

INDIAN MASSACRES—TERRIBLE SCENES OF DEATH AND MISERY IN MINNESOTA—FIVE HUNDRED WHITES SUPPOSED TO BE MURDERED—THE SIOUX BANDS UNITED AGAINST THE WHITES.⁵⁸

The Minnesota Indian War would be headed by Army Major General John Pope, who had suffered an embarrassing defeat at the second Battle of Bull Run on August 6. On August 30 he received orders from President Lincoln to go to the northwest territories to put down the uprising.⁵⁹ General Pope was outraged by the Santee attacks on civilians, particularly the raping and killing of women and children. He informed Colonel Sibley that the Sioux needed to be “badly punished” and ordered him to carry out reprisals before any surrender was accepted or any settlement was made: “The horrible massacres of women and children and the outrageous abuse of female prisoners, still alive, call for punishment beyond human power to inflict. There will be no peace in this region by virtue of treaties and Indian faith.” General Pope was very explicit about his intentions. “It is my purpose to utterly exterminate the Sioux if I have the power to do so and even if it requires a campaign lasting the whole of next year. Destroy everything belonging to them and force them out to the plains, unless, as I suggest, you can capture them.” He considered the Indians outside the circle of humanity: “They are to be treated as maniacs or wild beasts, and by no means as people with whom treaties of compromises can be made.”⁶⁰ Colonel Sibley seems to have been emboldened by General Pope’s aggressive orders: “I am glad to perceive that you have so just an appreciation of the magnitude of the war in which we are engaged with the Sioux or Dakota, the most warlike and powerful of the tribes on this continent.”⁶¹

Once advance troops from the Sixth Minnesota Regiment began to arrive, the Santee retreated up the Minnesota Valley with more than 100 prisoners and set up a camp 40 miles north of Upper Agency.⁶² With 1,450 men and two cannons, Colonel Sibley set out for Little Crow’s camp on September 19. The wagon train was ambushed near the Yellow Medicine River, and although Little Crow succeeded in drawing the soldiers into his trap, he was unable to overrun Colonel Sibley’s forces. When the U.S. troops opened fire with their cannon, six Santee were killed instantly by a direct hit and 15 were wounded.⁶³ Overwhelmed by the American soldiers’ firepower, the Indians began to retreat into the woods. Colonel Sibley was horrified when he arrived at the battlefield and found his soldiers scalping dead Santee warriors and issued an immediate order: “The

bodies of the dead, even of a savage enemy, shall not be subjected to indignities by civilized and Christian men.”⁶⁴

Not only did Colonel Sibley win a victory on the battlefield, he began surrender negotiations with Sioux leaders. On September 7, 1862, Little Crow left this message for him:

For what reason we have commenced this war I will tell you. It is on account of Major Galbraith. We made a treaty with the government, and beg for what we do get, and can't get that till our children are dying with hunger. It is the traders who commenced it. Mr. A. J. Myrick told the Indians that they could eat grass or dirt. Then Mr. Forbes told the Lower Sioux that they were not men.

Colonel Sibley offered this response: “LITTLE CROW—You have murdered many of our people without a sufficient cause. Return me the prisoners under a flag of truce, and I will talk with you then like a man.”⁶⁵

Although many Santee would surrender in the coming months, Little Crow would not be among them. He wanted to continue the war and fled deep into the wilderness of northern Minnesota. His son-in-law, Rda-in-yan-ka, delivered his message: “I am for continuing the war, and am opposed to the delivery of the prisoners. I have no confidence that the whites will stand by any agreement they make if we give them up.”⁶⁶ Little Crow pointed to the Santee’s sad history of relations with the U.S. government and the American settlers. “Ever since we treated with them, their agents and traders have robbed and cheated us. Some of our people have been shot, some hung; others placed upon floating ice and drowned.” Little Crow claimed that the war had been avoidable, but due to the unpopularity of the treaties he had negotiated and signed, he had lost much of his standing among his own people. “The older ones would have prevented it if they could, but since the treaties they have lost all their influence.”⁶⁷ By early September, Little Crow realized that events had gained too much momentum and was resigned to his fate. “We may regret what has happened, but the matter has gone too far to be remedied. We have got to die. Let us, then, kill as many of the whites as possible, and let the prisoners die with us.”⁶⁸

By the end of September 1862, hundreds of Santee had surrendered to Colonel Sibley, who in turn promised that he only sought to punish

those who had committed atrocities against civilians.⁶⁹ Once 1,200 Sioux were in government custody, Sibley established a five-man Court of Inquiry to “try summarily the Mulatto, and Indians, or mixed bloods, now prisoners . . . and pass judgment upon them, if found guilty of murders or other outrages upon Whites, during the present State of hostilities of the Indians.” The colonel planned to execute the guilty immediately to create a spectacle of vengeance that would serve as a deterrent against future attacks: “An example is . . . imperatively necessary and I trust you will approve the act, should it happen that some real criminals have been seized and promptly disposed of.”⁷⁰ The Sioux were not charged with violations of the customary laws of war because the U.S. government did not consider them lawful combatants. To grant them the status of legitimate belligerents would have been to recognize their sovereignty and their inherent right to wage war.

The chairman of the Court of Inquiry was a missionary named Stephen Riggs who had worked with the Sioux since 1837.⁷¹ These “trials” were so summary that it is difficult to even describe them as such. The court offered a plea bargain to a mulatto named Godfrey who was married to a Sioux woman and had fought with the Indians, earning the sobriquet, “he who kills many.” Godfrey would testify in fifty-five cases, and even though he was known to have killed many settlers at Upper Agency, his sentence was commuted in exchange for his testimony.⁷² On the first day, the Military Commission sentenced ten to death and acquitted six. The Court of Inquiry would try as many as forty-two Santee in a single day!⁷³

General Pope approved of the speedy trials, but warned that he would sanction no treaties with the Indians. He now had sufficient troops at his disposal to “exterminate them all, if they furnish the least occasion for it.”⁷⁴ Because some of the Sioux had not yet given themselves up, Colonel Sibley postponed the executions so as not to discourage their surrender.⁷⁵ General Pope wrote General Henry Halleck to find out if he needed further authorization before proceeding with the executions. On October 10, Minnesota Governor Ramsey wrote to President Lincoln requesting “nothing less than the removal of the whole body of Indians to remote districts, far beyond our borders.”⁷⁶ On October 17, Colonel Sibley received a dispatch from Lincoln that stated in no uncertain terms that no executions would take place until the President personally had reviewed the death sentences.

After the Santee surrendered, Lincoln faced problems commonly found when war, law, and politics converge. His most immediate concern was the need for an immediate postwar show of vengeance against the Indians in order to prevent vigilante retribution on a much larger scale. By early November, public opinion was divided over the fate of the Santee. The mood in Minnesota was best summarized by an article in the *St. Paul Press*: "The business has been dispatched with celerity, as many as forty cases having been tried per day in some instances. . . . Besides, no individual injustice is probably done, as ninety-nine hundredths of these devils are guilty, and witnesses in their favor would be as useless as teats on a boar."⁷⁷ However, in the cities of the northeast, far from the threat of Indian invasion, *The New York Times* editorial page urged the government to show "mercy" to the Sioux. Now that the war was over, the paper opined that "the whole thing seems to have been but a burst of rage on the part of the redskins, incited by the atrocious injustice to which they had been subjected." The indiscriminate killings were "the work of a few bad men among them."⁷⁸ The *Times* urged the U.S. government to move the Sioux out of Minnesota, away from irate settlers seeking revenge. In the end, the Court of Inquiry tried 394 Santee, and found 303 guilty and sentenced them to death.

It appeared that nothing short of a mass execution would satisfy the citizens of Minnesota. DEATH TO BARBARIANS IS THE SENTIMENT OF OUR PEOPLE read the *Minnesota Messenger* on November 11. Minnesota Senator Morton Wilkinson wrote President Lincoln and warned him that "the Outraged people of Minnesota will dispose of these wretches without law. These two people cannot live together. We do not want to see mob law inaugurated in Minnesota."⁷⁹ A few weeks later, when a wagon train of Indian prisoners passed, a group of settlers attacked them with pitchforks, scalding water, and rocks. An army bayonet charge finally dispersed the crowd, but not before a Santee baby was torn from the arms of his mother and killed by the mob.⁸⁰ Late on the night of December 4, several hundred settlers gathered to attack the prison camp, but were quickly surrounded and disarmed by soldiers.⁸¹

President Lincoln was in a very difficult position. He was clearly torn between the need to maintain the most minimal standards of justice and the demands of contemporary politics. Would he be able to satisfy all of his constituencies? If the Indians were not punished, what message would that send the settlers? If the U.S. government were to execute all 303 San-

tee, what message would that send the rest of America's Indian population? The U.S. Commissioner of Indian Affairs, William Dole, visited Minnesota and characterized the sentences as "more of the character of revenge than of punishment."⁸² The interrogator, Reverend Riggs, urged the President to draw a distinction between those braves who were involved in combat and those who murdered and tortured civilians.⁸³

On December 6, President Lincoln announced his final decision. "Anxious to not act with so much clemency as to encourage another outbreak on the one hand, nor with so much severity as to be real cruelty on the other, I caused a careful examination of the records of the trials to be made." He ordered the execution of only those Santee "proved guilty of violating females" and those "who were proven to have participated in massacres as distinguished from participation in battles."⁸⁴ This reduced the number of death sentences from 303 to 38.⁸⁵

On December 22, Reverend Riggs translated President Lincoln's decision to the prisoners: "Their Great Father at Washington . . . has come to the conclusion that they have each been guilty of wantonly and wickedly murdering his white children. And for this reason he has directed that they each be hanged by the neck until they are dead, on next Friday." Riggs went on to urge the Indians "to seek their salvation in God," and he "put Protestant and Catholic priests at their disposal."⁸⁶ According to the *St. Paul Daily Press*, the captive Santee did not react to the news of their impending executions with surprise: "Several Indians smoked their pipes composedly during the reading, and we observed one in particular who, when the time of the execution was designated, quietly knocked the ashes from his pipe and filled it afresh with his favorite Kinnekinnick."⁸⁷ When one reporter spoke with the Indians, he found them a rather stoic bunch. "When the condemned are talked to on that subject they say, 'Kill me, kill me. I would kill you if I had you.' " The reporter recognized that to the Sioux brave, war was a calling, a *raison d'être*: "He would prefer death by the slow, lingering torture, such as none but an Indian can devise and execute, to a death on the gallows."⁸⁸ On the day before the executions the condemned sang, danced, and met with male relatives.⁸⁹

A crowd of settlers began to gather as a small army of carpenters worked around the clock constructing a giant, 4-sided scaffold, custom designed to hang all 38 men at once. This was a late example of the old style of corporal punishment. Under the traditional model, as French philosopher Michel Foucault points out so graphically in *Discipline and*

Punishment, “public torture and execution must be spectacular; it must be seen by all as its triumph.”⁹⁰ On December 25, 1862, the sale of all intoxicants was banned for 48 hours and martial law was imposed. Early on the morning of December 26, the condemned Santee began their haunting death chants as 1,400 soldiers kept the crowd of 3,000 spectators at bay.⁹¹ At 10:00 a.m., the convicts were unshackled, hooded, and led up the stairs of the hanging platform. Some continued to sing death hymns and held hands with their neighbors. The army drummer signaled the moment of execution with three beats and William Duley, a man whose family had been killed in the massacre, cut the rope. At that moment a cheer came from the soldiers and settlers who had come to witness this spectacle of punishment.⁹² More than nine years later, it was admitted that two of the men hanged were not on President Lincoln’s list. However, this mattered little: by 1863 the State of Minnesota was offering a \$25 bounty for the scalp of any Sioux. Although Little Crow escaped the hangman’s noose, he was shot and mortally wounded on July 3, 1863 by two settlers out hunting deer.⁹³ His killers were given a \$500 bounty for the Santee chief’s remains. His skull and scalp were preserved and put on display in St. Paul.⁹⁴

This early attempt to apply law to war (even though the U.S. government did not consider the ongoing battles with the Indians a war) produced a primitive form of political justice. Guilty convictions were based on rumor and hearsay. Individuals were singled out for punishment in order to quench the domestic population’s thirst for vengeance. The alternative would have been mob violence. Although he presided over the largest mass execution in American history, Abraham Lincoln probably averted a larger bloodbath. This was by far the simplest form of political justice because there was no presumption of fairness or impartiality. A few especially odious and well-deserving felons were singled out for public prosecution and punishment, after which the rest were given formal or informal amnesties for wartime atrocities. The outcome was largely known before the trial began, so the “legal” proceedings became part of the spectacle—hence the term “show trial.” German legal theorist Otto Kirchheimer describes primitive forms of political justice like the *U.S.-Dakota War Trials* case as “a spectacle with prearranged results.” However, Kirchheimer makes a subtle and often overlooked point, warning that any trial “presupposes an element of irreducible risk for those involved” and “even in the administration of injustice there are gradations.” Above all, Kirch-

heimer warns that “justice in political matters is more tenuous than in any other field of jurisprudence, because it can so easily become a mere farce.”⁹⁵

The questions in the *U.S.-Dakota* trials were less about guilt and innocence than about the manner of punishment and the spectacle of public execution. At the same time as the Indian wars, the U.S. Army was engaged in another war against a different foe, fought according to a different, significantly more formal set of rules. During the time of the 1862 Indian War in Minnesota, Union General Henry Halleck read excerpts from a lecture on the laws of war in *The New York Times*. The author was Francis Lieber, a professor of history, political science, and law at Columbia College. It was ironic that the United States, at the beginning of one of the world’s first modern wars, was turning to an old Prussian soldier for advice. A veteran of the Battle of Waterloo, the Battle of Namur, and the Greek War of Independence, Lieber was well schooled in the traditional rules of war.⁹⁶ How would its laws apply to a new form of war that was fast erasing the distinction between soldier and civilian? General Halleck wrote Professor Lieber in December 1862, requesting a definition of guerrilla war; Lieber replied with two essays, one on guerrilla warfare and another that would form the basis for the Lieber Code. As Geoffrey Best observes, “What could be got away with in wars against ‘Red Indians’ and Mexicans would not wash in a contest with Southern gentlemen.”⁹⁷

The War Department’s board had decided to revise and update the rules of land warfare and appointed Lieber to prepare a draft. The Lieber Code, known as General Order No. 100, was approved by President Lincoln on April 24, 1863. Lieber’s 159 articles covered very traditional and practical subjects like guerrilla warfare, captured enemy property, and the treatment of prisoners.⁹⁸ The code was significant because it marked the first time in Western history that the government of a sovereign nation established formal guidelines for the conduct of its army in the field. However, the rules were really a codification of long-standing Western military customs.⁹⁹

Most significantly, the Lieber Code drew a sharp line between civilian and soldier. Article 22 states: “Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself.”¹⁰⁰ However, like all warrior’s codes, the Lieber Code contained significant loopholes. Francis

Lieber's experience as a soldier probably informed his decision to define "military necessity" very broadly. For example, a commander was not obliged to give quarter to enemy soldiers if the lives of his men were in danger. Article 27 left a key gray area that granted broad and vague powers under the doctrine of retaliation: "The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch. Yet civilized nations acknowledge retaliation as the sternest feature of war."¹⁰¹ Article 24 distinguished between "barbaric" and "civilized" military practices: "The almost universal rule in remote times was, and continues to be with barbarous armies, that the private individual of the hostile country is destined to suffer every privation of liberty and protection and every disruption of family ties. Protection was, and still is with uncivilized people, the exception."¹⁰²

Because the federal government refused to recognize the sovereignty of the Confederacy, it did not consider the Rebel Army lawful combatants. However, given the Confederates' early battlefield successes, the Union had no choice but to grant them *de facto* recognition by largely observing the laws of war on the battlefield. Even though the United States considered the Confederates rebels, they were not "others" who stood outside the circle and so not considered barbaric. This distinction was reserved for racial and cultural others who flouted the military customs of the West. The Confederates were both white and American.

Although the Lieber Code was a clear outline of European norms, it already appeared to be outdated in comparison to contemporary military practices. Ironically, this effort to limit the ravages of war came at a time when armed conflict was growing increasingly destructive and unlimited. The Civil War was nothing less than a preview of the bloody "total" wars of the coming century. None of the prudent restraint of the old European warlords was shown by American generals at Shiloh, Antietam, Gettysburg, and dozens of other bloody battles that left more than 600,000 Americans dead.¹⁰³ Writing in 1867, John DeForest captured America's fratricidal spirit in his novel, *Miss Ravenel's Conversion from Secession to Loyalty*: "The excitement of Germany at the opening of the Thirty Years' War, of England previous to the Cromwellian struggle, was torpid and partial in comparison with this outburst of a modern, reading, and swiftly informed free democracy." DeForest conveyed the notion that this conflict was unique and that "from the St. Lawrence to the Gulf there was a spiritual preparedness for slaughter which was to end in such a

murderous contest as should make ensanguined Europe rise from its thousand battlefields to stare and wonder.”¹⁰⁴

Above all, what the Civil War demonstrated was that the military was no longer the praetorian guard of the political elite. Instead, it was an instrument of democracy, and democratic political leaders could not be content to win a limited military victory and strike an advantageous diplomatic solution. Instead, President Lincoln sought an unconditional surrender and an overthrow of the preexisting political and social structure in the South.¹⁰⁵ Military historian J.F.C. Fuller blames democracy and conscription for a return to tribal warfare: “Primitive tribes are armed hordes, in which every man is a warrior, and because the entire tribe engages in war, warfare is total.”¹⁰⁶ The losers were not simply defeated on the battlefield; their entire social structure was overturned.

The two generals who finally secured victory for the Union did not only defeat the Rebel Army. They also waged war against southern society, civilians included. Cities were destroyed and infrastructure demolished. As George Nichols, Sherman’s aide-de-camp, noted, “the only possible way to end this unhappy and dreadful conflict . . . is to make it terrible beyond endurance.”¹⁰⁷ General Sherman, on the eve of his invasion of South Carolina, mentioned the Union Army’s desire not only to win but also to settle the score. “The whole army is burning,” he wrote, “with an insatiable desire to wreak vengeance upon South Carolina. I almost tremble at her fate, but feel that she deserves all that seems in store for her.”¹⁰⁸ In Sherman’s mind, the rebels deserved to suffer for starting the war.

As Charleston went up in flames, Sherman remarked: “They have brought it on themselves.” When Confederate General John Bell Hood warned his adversary of the implications of his actions, Sherman informed him that “war is cruelty and you cannot refine it. Those who brought war into our country deserve all the curses and maledictions a people can pour out.”¹⁰⁹ Until then, though, “we are not only fighting hostile armies, but a hostile people, and must make old and young, rich and poor, feel the hard hand of war.”¹¹⁰ General Sherman was among the first of his generation to realize that modern war could not be waged without the support of the domestic population. They needed to be beaten and demoralized before their army would collapse. His “war is hell” dictum was a harbinger of things to come. J.F.C. Fuller attaches great importance to Sherman’s march on Atlanta: “Nothing like this march had been seen in the West since the maraudings of Tilly and Wallenstein

in the Thirty Years War. . . . Terror was the basic factor in Sherman's policy, he openly says so."¹¹¹

However, William T. Sherman did not believe in punitive peace treaties. He wrote: "When peace does come, you may call on me for anything. Then I will share with you the last cracker."¹¹² The defeat of the Confederacy was followed by a costly and hugely ambitious social engineering plan known as Reconstruction. Again, northern troops did more than defeat the Confederate Army on the battlefield; they toppled the government and social institutions that lay at the root of the entire southern belief system as well.¹¹³ Punishment for wartime atrocities was swift and sure and, like the *U.S.-Dakota War Trials*, provides an excellent example of primitive political justice.

When the war ended and photographs of skeletal-looking Union POWs appeared in northern newspapers, there was a resounding cry for vengeance. On August 23, 1865, a Union Military Commission charged the commandant of Andersonville Prison in Georgia under a thirteen-count indictment.¹¹⁴ Henry Wirz was a Swiss immigrant who had married a woman from Kentucky and fought for the Louisiana volunteers. He was severely wounded in the Battle of Seven Pines and lost the use of his right arm. After the battle he was promoted to captain for "bravery on the field of battle." In 1862, Wirz commanded a prison camp in Richmond. Later that year he served as a diplomatic emissary for Jefferson Davis in Berlin and Paris. Wirz returned to the Confederacy in 1864 and was ordered to serve as commandant of Andersonville Prison.¹¹⁵

Andersonville was designed to hold a maximum of 10,000 men, but by August 1864, captives from Sherman's army and the Eastern Theater pushed the prison's population to 33,000. An average inmate's daily rations were down to a few tablespoons of salt, beans, and a half pint of unsifted cornmeal.¹¹⁶ The only source of water was a brackish stream fouled by human excrement and corpses. A southern woman who surveyed the camp from an observation tower was horrified: "My heart aches for these poor wretches. Yankees though they are, I am afraid God will suffer some terrible retribution to fall upon us for letting such things happen. If the Yankees should ever come . . . and go to Anderson and see the graves there, God have mercy on the land."¹¹⁷ By the summer of 1864, Union soldiers in Confederate camps were dying by the thousands of gangrene, scurvy, dysentery, and starvation. When intelligence reports filtered back to the North about the conditions in the Confederate prison camps,

Secretary of War Stanton condemned the Confederacy in the strongest terms: "The enormity of the crime committed by the rebels cannot but fill with horror the civilized world. . . . There appears to have been a deliberate system of savage and barbarous treatment."¹¹⁸

The majority of the counts in *The Trial of Captain Henry Wirz* charged the camp commandant with personally murdering or abusing inmates. The most far-reaching count of the indictment accused Wirz of having been part of a conspiracy led by Confederate President Jefferson Davis that sought

to impair and injure the health and to destroy the lives, by subjecting to great torture, and suffering, by confining in unhealthy and unwholesome quarters, by exposing to the inclemency of winter and to the dews and burning sun of summer, by compelling the use of impure water, and by furnishing insufficient and unwholesome food, of a large number of federal prisoners . . . to the end, that the armies of the United States might be weakened and impaired.¹¹⁹

Due to the lack of evidence, the conspiracy charge was not easily proven. Although the government presented 160 witnesses, none of the alleged victims were named. This made it impossible for witnesses to substantiate their claims.¹²⁰

Like the *U.S.-Dakota* trials, *The Trial of Captain Henry Wirz* provided a dramatic spectacle of vengeance. Unlike the Indian braves who taunted death, Henry Wirz proved a pathetic sight in the courtroom. Due to gangrenous wounds, he was unable to sit in a chair and viewed the proceedings lying on a couch.¹²¹ The witnesses painted a Hieronymus Bosch-like portrait of a squalid, overcrowded, and lawless camp. Dr. John C. Bates, a surgeon at Andersonville, described "20,000 or 25,000 prisoners crowded together; some had made holes and burrows in the earth; . . . found them suffering with scurvy, dropsy, diahorea, gangrene, pneumonia and other diseases." The strain of gangrene at the camp was so potent that "if a person should perchance stump a toe or scratch the hand, the next report to me was gangrene."¹²² Bates "saw men lying partially naked, dirty and lousy in the sand; others were crowded together in small tents. . . . Clothing we had none; the living were supplied with the clothing of those who had died. Of vermin and lice there was a prolific crop." The prisoners lived in a Hobbesian state of nature and did little to

help one another: "There was much stealing among them. All lived for himself."¹²³ Another surgeon at Andersonville described the prisoners as "the most horrible specimens of humanity I ever saw."¹²⁴

Prison guard Nazareth Allen and Captain John Heath testified to Wirz's use of stocks, the deadline, and whippings. Wirz took special delight in unleashing his vicious pack of hounds on escaped prisoners. According to Captain Heath, "one of them got away and the hounds were put upon his scent; the man was discovered up a tree, and a pistol was fired at him; Wirz commanded him to come down; the man asked that the dogs might not be permitted to bite him; however, he was attacked when he descended, biting at his legs; Wirz did not call the hounds off."¹²⁵ Union prisoner Abner Kellog described a prisoner in August of 1864 standing at the Andersonville gate with a "sore on him as large as the crown of my hat, filled with maggots, fly-blown; the sergeant asked Capt. Wirz to have the man carried to the hospital; No, said Wirz; let him stay there and die. The man was afterward carried as a corpse."¹²⁶

On October 18, Henry Wirz attacked the government's murder charges: "In no instances were the name, date, regiment, or circumstances stated in the specifications, and in the whole mass of testimony."¹²⁷ His second defense strategy would be employed by Germans nearly a century later: Wirz argued that he was only following orders. "I now bear the odium, and men who were prisoners there seem disposed to wreak their vengeance upon me for what they have suffered, who was only the medium, or I may better say, the tool in the hands of my superiors."¹²⁸ Wirz pleaded not guilty to all charges on the ground that he had merely "followed the orders" of General John Winder: "I think I may also claim as a self-evident proposition that if I, a subaltern officer, merely obeyed the legal orders of my superiors in the discharge of my official duties, I cannot be held responsible for the motives that dictated such orders."¹²⁹ The prosecution countered that "superior orders" was no excuse and in no way mitigated Henry Wirz's guilt: "General Winder could no more command the prisoners to violate the laws of war than could the prisoners do so without orders. The conclusion is plain, that where such orders exist both are guilty."¹³⁰

On October 24, the court ruled that Captain Henry Wirz was guilty of "conspiring . . . against the United States, against the laws of war, to impair and injure the health, and to destroy large numbers of Federal prisoners" and sentenced him to death. There are unconfirmed reports

that Wirz was offered a plea bargain—if he had agreed to name Confederate President Jefferson Davis in the conspiracy to kill Union soldiers, his life would be spared. The death sentence was confirmed by President Andrew Johnson on November 3, 1865.¹³¹ Once again an especially odious war criminal was singled out for summary “justice” and the victors were able to vent their wartime passions in a powerful public display.

The *U.S.-Dakota War Trials* (1862) and the trial of Captain Henry Wirz (1865) provide excellent examples of traditional, limited, and punitive political settlements. Both cases were tried by victor regimes with monopolies on political and military power. The expression *vae victis* or “woe to the conquered” best describes this type of primitive and punitive settlement. Traditionally there had never been a presumption of fairness or impartiality, only a very public spectacle of vengeance followed by an amnesty for wartime acts. American leaders would attempt to give legitimacy to this type of proceeding by adding legal trappings to something that had traditionally only been about revenge. On November 11, 1865, the spectacle was completed as Henry Wirz walked to gallows constructed just outside Washington’s Old Capital Prison. Union soldiers lined the walls and chanted, “Wirz, remember Andersonville!”¹³² Henry Wirz was portrayed in southern accounts as a hero and a martyr. But as James McPherson points out in *The Battle Cry of Freedom*, “These defenders of the South doth protest too much. . . . As for the comparison of Andersonville with Johnson’s Island, the mortality of southern prisoners at the latter was 2 percent—and at Andersonville, 29 percent.”¹³³

Probably more important than the trial of Captain Henry Wirz was the fact that the Lieber Code was fast providing the foundation for a body of treaty law codifying the customary rules of war.¹³⁴ Francis Lieber’s prediction that General Order No. 100 “will be adopted as a basis for similar works for the English, French, and Germans” soon came true.¹³⁵ Although it was heartening that Prussia adopted the Lieber Code in 1870 to govern its forces in the Franco-Prussian War, the American Civil War had shown a new, horrible face of conflict—industrial total war. Sherman had blurred the all-important line between soldier and civilian to win the war for the Union. It was ironic that the new international humanitarian laws came at a time when America’s Indian wars were entering their most brutal phase.

In November 1864, about six hundred Cheyenne and Arapaho Indians established a winter camp at an elbow-shaped bend at Sand Creek. The

Indians had enjoyed good relations with the American army commander, Wyn Koop, at the nearby fort, and he had granted them permission to camp at the Creek.¹³⁶ In late November, Koop was replaced by Major Anthony, who immediately ordered the Indians to surrender all of their weapons. Anthony told the Cheyenne and Arapaho chiefs that they would be safe at Sand Creek as long as they flew the American flag.¹³⁷ He also informed the Indian leaders that their rations would be cut in half and gave them permission to leave the area to hunt buffalo. Many of the braves departed for the hunting grounds and some of the Arapaho headed south, as they did not trust “the red-eyed soldier.”¹³⁸ On November 27, reinforcements arrived from the Third Colorado Regiment under the command of a Methodist minister named Colonel J. M. Chivington. The six-hundred-man cavalry force had been formed specifically to fight Indians.¹³⁹

Colonel Chivington had barely gotten off his horse before he informed Major Anthony that the time for “wading in the gore” had come.¹⁴⁰ Although Chivington wanted to attack the Indian camp at Sand Creek, there was dissent to the brash newcomer’s bloodlust. Captain Silas Soule, Captain Joseph Cramer, and Lieutenant James Conner reminded their commanders of their promises to the Indians. The dissenting officers argued that an attack on the Sand Creek camp “would be murder in every sense of the word.”¹⁴¹ Colonel Chivington cursed the officers—“Damn any man who sympathizes with Indians”—stating, “I have come to kill Indians, and believe it is right and honorable to use any means under God’s heavens to kill Indians.”¹⁴²

On November 28, at 8:00 P.M., seven hundred mounted American soldiers moved out in four columns under Colonel Chivington’s command. He was reported to have ordered them “to kill and scalp all, big and little; nits make lice.”¹⁴³ In addition to their rifles, the Colorado Regiment had four mountain howitzers.¹⁴⁴ Colonel Chivington grew impatient with his Indian guide and roused a rancher named Robert Bent from bed to lead the Third Colorado Regiment to the Indian camp. Bent was married to a Cheyenne woman, and his three sons were camped with their Indian relatives at Sand Creek.¹⁴⁵ Of the six hundred or so Indians at the camp, two thirds were women and children. Most of the warriors were away hunting buffalo according to Major Anthony’s instructions.¹⁴⁶

The Cheyenne and Arapaho felt and heard the hoofbeats before they saw the mounted soldiers approaching at a full gallop. The Indians all began to run to an American flag and a white flag that were flying promi-

nently on a lodgepole in front of Chief Black Kettle's encampment. The rancher noted the presence of the flags, "in so conspicuous a position that they must have been seen."¹⁴⁷ Bent's son watched the mounted American soldiers descend upon the camp. "I looked towards the chief's lodge, holding the pole, with the flag fluttering. . . . I heard him call to his people not to be afraid, that the soldiers would not hurt them; then troops opened fire from two sides of the camp."¹⁴⁸

This was a full-scale massacre in which no quarter was given and no prisoners were taken. When twenty or thirty women were found hiding in a hole, they sent out a young girl with a white flag on a stick; "she had not proceeded ten steps when she was shot and killed. All the squaws in that hole were afterwards killed."¹⁴⁹ Not content with simply killing the Indians, many soldiers dismounted and set about mutilating the bodies in what would become one of the darkest episodes in the annals of American military history. The bodies were not just scalped in a number of instances; female genitals were cut off and worn as hatbands or stretched over saddlebows.¹⁵⁰ One soldier bragged that he planned to make a tobacco pouch out of the penis and testicles of the leader White Antelope. Another recalled, "I saw one squaw cut open with an unborn child, as I thought, lying by her side. Captain Soule after told me that such was a fact. . . . I heard one man say that he had cut out a woman's private parts and had them for exhibit on a stick."¹⁵¹

Colonel Chivington would later claim that his forces had killed 400 to 500 Indian warriors at Sand Creek. In truth the Third Colorado Regiment killed only 28 men; the other 105 dead were women and children.¹⁵² No matter, the former Methodist minister returned to Denver a hero, and the 100 Indian scalps collected by Chivington's forces were put on display in a Denver theater. British historian Hugh Brogan makes a telling observation about nineteenth-century U.S.-Indian relations: "The records of the American past re-echo with denunciations of the fiendishness of the savages, just as the Negroes were accused of insatiable lust, bloodlust and criminal propensities of all kinds . . . but the Christians themselves raped, scalped, looted, murdered, burned, and tortured, the very deeds by which they justified their contempt and loathing for the Indian."¹⁵³ After the Sand Creek Massacre, the Cheyenne, Arapaho, and Sioux tribes called for a war of revenge on the white men. This would speed the destruction of traditional American Indian life because attacks on frontier outposts were followed by increasingly brutal reprisals by the U.S. Army. One of

Geronimo's U.S. army captors remarked candidly, "His crimes were retail, ours wholesale."¹⁵⁴

The Sioux got some revenge in 1866, when they lured an entire regiment of American soldiers into a canyon and killed and scalped all eighty members of the Twenty-Seventh Infantry (Captain William Fetterman's).¹⁵⁵ When the news reached Washington, General William T. Sherman outlined the final phase of America's Indian policy in a letter to his trusted comrade in arms, General Ulysses S. Grant. Sherman wanted to take his total war strategy one step further on the American plains: "We must act with vindictive earnestness against the Sioux, even to their extermination, men, women, and children. Nothing else will reach the root of this case."¹⁵⁶ After General Custer's defeat at Little Big Horn in 1876, General Sherman received presidential authority to assume control of the Sioux reservations and treat the inhabitants as prisoners of war.¹⁵⁷

The U.S. government maintained that the Sioux had violated the treaty of 1868, which had granted them reservations in the Black Hills of South Dakota and on the Powder River. A new Indian Commission led by Newton Edwards, Bishop Henry Whipple, and Reverend Samuel Hinman traveled to the reservation to meet with Indian leaders. The Commission wanted them to sign over their rights to the Black Hills in exchange for a piece of arid land on the Missouri River. Chief Red Dog reminded the Americans that "it is only six years since we came to live on this stream where we are living now and nothing that has been promised us has been done."¹⁵⁸ One of the chiefs pointed out that he had been moved by the Great Father in Washington five times, and each time he had been promised that he would never be moved again: "I think that you had better put the Indians on wheels and you can run them about whenever you wish."¹⁵⁹ According to the terms of the 1868 treaty, any changes in Sioux reservation boundaries required the signatures of three quarters of the tribe's males. This vote would be impossible to obtain because more than half of the warriors were off the reservation with the more militant leaders, Sitting Bull and Crazy Horse.¹⁶⁰

The Commission gave the chiefs a week to discuss their proposal and called all Indians off the reservation "hostile." Now, "only friendly Indians were covered by the treaty."¹⁶¹ When the Sioux refused to sign over the Black Hills and their hunting grounds on the Powder River, the American delegation threatened to cut all their government rations. Faced with the

starvation of their women and children, chiefs Red Cloud and Spotted Tail signed the new additions to the 1868 treaty.¹⁶²

Historian Hermann Hagedorn, author of *Roosevelt in the Badlands*, wrote in 1921, "In the conflict between white and red, the Indians were not always the ones who were most at fault." Hagedorn described the Indian wars of the 1880s as "a peculiarly atrocious warfare. Many white men shot whatever Indians they came upon like coyotes, on sight; others captured them, when they could, and, stripping them of their clothes, whipped them till they bled."¹⁶³ Future American President Theodore Roosevelt had an even less forgiving view of the American Indians he encountered during his travels in the west. In 1886, he wrote: "I suppose I should be ashamed to say that I take the Western view of the Indian. I don't go so far as to think that the only good Indians are dead Indians, but I believe nine out of ten are, and I shouldn't like to inquire too closely in the case of the tenth." Roosevelt drew what in his mind was a telling parallel. "Turn three hundred low families of New York into New Jersey, support them for fifty years in vicious idleness, and you will have some idea of what the Indians are. Reckless, revengeful; fiendishly cruel, they rob and murder . . . the defenseless, lone settlers on the plains."¹⁶⁴

The Indian wars reached their sad and inevitable apogee at Wounded Knee on December 29, 1890 when Colonel James Forsythe, leading the late George Armstrong Custer's Seventh Cavalry Regiment, opened fire with rifles and four Hotchkiss guns firing a shell a second on the four hundred Sioux camped at Wounded Knee Creek.¹⁶⁵ When the smoke had cleared and a three-day blizzard passed, at least three hundred Sioux were dead from wounds and exposure. Black Elk best summarized the significance of the Wounded Knee Massacre for his people: "I can see that something else died there in the bloody mud, and was buried in the blizzard. A people's dream died there. It was a beautiful dream."¹⁶⁶ Twenty-six Congressional Medals of Honor were awarded to members of the reconstituted Seventh Cavalry for their actions at Wounded Knee.¹⁶⁷