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Colonial Calibrations: The Expendability of Minnesota's Original People

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**COLONIAL CALIBRATIONS: THE EXPENDABILITY OF
MINNESOTA'S ORIGINAL PEOPLE**

Waziyatawin, Ph.D.[†]

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“If we get in your way, will you kill us again?” These were the words written in magic marker on signs carried by two of my children, Autumn and Talon, on May 10, 2008, as we blockaded the route of a wagon train arriving at the Replica Fort Snelling. Minnesota was celebrating 150 years of statehood, and the wagon train, led by white Minnesotans dressed in nineteenth-century pioneer garb, had traced its way from Cannon Falls, Minnesota, on a trek intended to bring wagons and riders to the state capitol in St. Paul for the sesquicentennial kick-off festivities. My children,

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experienced protestors despite their youth, had participated in the previous day's protest on the Mendota Bridge to raise awareness about Dakota objections to the state's celebration. But, to challenge the wagon train, they decided they needed their own special signs for the occasion, signs that reflected the sense of expendability they were feeling, but had not yet articulated. They decided they would each carry a portion of a joint message: "If we get in your way," said one sign, "will you kill us again?" said the other.

The experience raised many troubling issues. Though not reflecting a historical past, the wagon train may be seen more accurately as a symbol of Minnesotans' investment in the Manifest Destiny narrative.¹ It did not matter that white settlers typically arrived in Dakota homeland via boat rather than covered wagon; the participants in this colonial drama were re-enacting the iconic American story of courageous westward expansion and the settlement of a savage wilderness. These Minnesotans did not care what their families' settlement meant for Indigenous people. Nor was this something they had to consider in their day-to-day lives. For a few hours on that day at the fort, however, they had to confront Indigenous opposition to their celebration of settlement, and the response left us with a palpable sense of not just indifference, but callousness. While we spoke of genocide, mass hangings, bounties, broken treaties, land theft, concentration camps, and ethnic cleansing, they chuckled and chatted with one another. When seven of us, including my two children, were arrested and hauled off to squad cars, they checked their cell phones and their watches. And, of course, the armed and mounted police were there to defend the wagon train against Indian attack, though we were unarmed and peaceful protestors. It was clear that if we posed any real obstacle to their enjoyment of freedom within

1. This narrative affirms the basic story of Euro-American divinely-ordained and divinely-sanctioned settlement of Indigenous lands from the eastern seaboard to the West Coast of what is now the United States. It suggests that white Americans not only have a divine right to Indigenous lands, but also a responsibility to settle those lands. The term was first popularized by journalist John O'Sullivan who, in reference to United States' claims to Oregon, wrote on December 27, 1845, in his newspaper, the *New York Morning News*: "And that claim is by the right of our manifest destiny to overspread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federated self-government entrusted to us." *John L. O'Sullivan*, WIKIPEDIA, http://en.wikipedia.org/wiki/John_L._O'Sullivan (last modified Nov. 13, 2012).

our homeland, at least some white Minnesotans would not hesitate to use lethal force to eradicate the Indian problem once again. The answer to the question, “If we get in your way, will you kill us again?” was an unmistakable yes.

This article, written in the sesquicentennial year since the U.S.-Dakota War of 1862, will investigate this issue of Indigenous expendability by exploring not just the historic examples of genocide within the framework of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, but also the meaning of this in light of the 2007 United Nations Declaration on the Rights of Indigenous Peoples. While other scholars have provided detailed accounts of the war—its causes, its battles, its aftermath—this article will draw on specific aspects of the war to make the case for genocide and other major crimes worthy of redress or reparations according to the 2007 U.N. Declaration. Because Minnesotans and the U.S. government have never offered redress for its genocidal policies perpetrated against Dakota people, I argue that Dakota people remain expendable in the eyes of Americans who still benefit from our dispossession, yet refuse to work toward justice. Dakota people remain in the dark shadow of the 1862 War.

Indigenous scholarship in the last few decades has increasingly shifted parochial discussions of Indian wars, uprisings, and Indian-white relations to broader frameworks of analysis that consider issues of empire, imperialism, colonialism, patriarchy, and capitalism. Events are not viewed in a vacuum, but as part of larger historical processes. Furthermore, Indigenous scholarship has recognized the similarities amongst Indigenous peoples globally who have faced displacement, land theft, and the horrors of settler occupation.² For example, Susan A. Smith and James Riding In, in their edited collection *Native Historians Write Back: Decolonizing American Indian History*, discuss six principles found in Indigenous thought that present a “discursive challenge to academic

2. For example, the classic anti-colonial literature coming out of Africa in the mid-twentieth century, particularly the works of FRANTZ FANON, *THE WRETCHED OF THE EARTH* (Richard Philcox trans., Grover Press 2004) (1963), and ALBERT MEMMI, *THE COLONIZER AND THE COLONIZED* (Howard Greenfeld trans., Beacon Press 1967) (1957), continue to resonate with Indigenous peoples experiencing colonization throughout the world. Many of us feel affinity not just with other Indigenous people in the Western Hemisphere, but also with peoples such as the Maoris of Aotearoa, the Indigenous of Australia and Africa, the Saamis of Scandinavia, the Ainu of Japan, and the Palestinians.

hegemony.”³ They are worth repeating here in order to distinguish Indigenous, decolonizing historical analysis from what we might call the colonizers’ analysis. As the editors explain:

First, Indian sovereignty derives from inherent powers that predate the US Constitution. Second, the lands and resources in what now constitutes the United States passed from Indian to non-Indian hands through serial acts of duplicity, violence, deceit, and coercion. Third, European claims to lands belonging to others by virtue of discovery are rooted in racially based assumptions and articulated in a language that characterizes Indians as inferior, savages who lack fundamental rights accorded to “civilized” peoples. Fourth, the invaders used this language of racism to rationalize their aggression against unoffending Indians. Fifth, those nineteenth-century discourses of colonialism are entrenched in contemporary academic and legal thought. Sixth, colonialism must be seen for what it is: a crime against humanity.⁴

These principles warrant consideration in the context of the 1862 War as they explain a fundamental difference in the way this historical event has been interpreted between Indigenous people (or our non-Indigenous allies) writing on the subject, and non-Indigenous people, particularly white Minnesotans, who refuse to examine the war in anything but the most constrained terms. In limiting the scope of their analysis, they can pretend that settler claims to Dakota homeland are on equal par with Dakota claims. This difference creates a deep tension in which mutual respect is virtually impossible to attain. As Ward Churchill has written:

We hear only of “Indian wars,” never of “settlers’ wars.” It is as if the natives, always “warlike” and “aggressive,” had invaded and laid waste to London or Castile rather than engaging in desperate and always futile efforts to repel the hordes of “pioneers” and “peaceful settlers” overrunning their homelands—often quite illegally, even in their own terms—from sea to shining sea.⁵

3. NATIVE HISTORIANS WRITE BACK: DECOLONIZING AMERICAN INDIAN HISTORY 2 (Susan A. Miller & James Riding In eds., 2011). In addition to the editors, contributors to this collection include Donna L. Akers, Myla Vicenti Carpio, Elizabeth Cook-Lynn, Steven J. Crum, Vine Deloria, Jr., Jennifer Nez Denetdale, Lomayumtewa C. Ishii, Matthew L. Jones, Leanne Simpson, Winona Stevenson, and Waziyatawin Angela Wilson.

4. *Id.*

5. WARD CHURCHILL, A LITTLE MATTER OF GENOCIDE: HOLOCAUST AND

Those who view the war within a narrow historical scope often do not recognize colonial processes at work or may even deny the United States as a colonial power, and those who view colonial processes as essential to understanding this historical event inevitably view narrow interpretations as a way to maintain colonial hegemony.

This article begins from the premise that Dakota people experienced a colonial invasion of our homeland. That invasion came in the form of deceitful treaties and treaty-making processes by the U.S. government that reveal it never intended to deal fairly with Dakota people; traders who sought their wealth by encouraging the exploitation of our homeland and the indebtedness of our people; missionaries whose religious imperialism sought to destroy Dakota spirituality and culture; soldiers who sought to establish military dominance in Dakota homeland; and settlers who flooded into Dakota lands with their belief in Manifest Destiny. In the context of this colonial narrative, the Dakota were expendable human beings. After too many wrongs, warriors among our people decided it was time to start fighting back. From this vantage point, the war may be interpreted as a defensive war, a war for Indigenous land and Indigenous life. It may be interpreted as a story of a patriotic armed stand by resisters to white invasion and conquest.

This war over interpretation is not the only challenge, however. Even if we understand that the United States is a colonial power and colonialism is a crime against humanity, justice for Indigenous people seems an implausible prospect within the U.S. legal framework. In fact, any population living under colonial occupation is unlikely to find justice within their occupier's legal system. Thus, the United Nations continues to provide an avenue for Indigenous populations seeking justice, albeit with some serious limitations. For example, even assuming the United States offered unconditional support for U.N. conventions and declarations and agreed to be held to U.N. standards, what country or countries would enforce sanctions or punishments against the most powerful nation in the world in defense of Indigenous interests? Still, internationally agreed upon standards provide Indigenous people with the externally-defined criteria to help raise international support for our struggles, even if it is only the support of other

DENIAL IN THE AMERICAS 1492 TO THE PRESENT 3 (1997).

disempowered nations and Indigenous people living under colonial occupation. Perhaps more importantly, they allow Indigenous people to escape the parochial and colonial interpretations of our history that place blame squarely on us for our past and present suffering so that we will recognize a need for justice today.

Certainly, this has been the case in the Dakota context. Our entire nation was brutally punished for our decision to go to war against the U.S. government and its citizens. The United States unilaterally abrogated our treaties, stole our Minnesota homeland, imprisoned our people in concentration camps, force-marched our women and children, mass-lynched our warriors, mass-incarcerated our able-bodied men, ethnically-cleansed us from Minnesota, and then instituted further policies of genocide, including a bounty system on Dakota scalps. The United States crushed our resistance so thoroughly that our people began to believe we were to blame for this chain of events. Rather than viewing the United States as perpetrators of crimes in a colonial context in which the ultimate goal was to acquire our lands and resources, many of our people began to blame the very people who attempted to protect our people, our culture, and our homeland from harm by going to war against the invaders. In this sad context, using international criteria to assess the events of 1862 provides some much needed clarity.

The U.N. Convention details agreed-upon international standards for determining what constitutes genocide in Article II, which states:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.⁶

Any one of these criteria met singly constitutes genocide. In the nineteenth and twentieth centuries, the U.S. government and its citizens violated all of these criteria in multiple ways. As I will explain below, whites in Minnesota also perpetrated these crimes against Dakota people in multiple ways and there has yet to be any accountability or redress for them.

Among the whites, a sense of superiority and anti-Indian sentiments were the norm in nineteenth-century Dakota homeland. White sentiments rooted in this sense of superiority are foundational to the ideology of Indigenous expendability, which might be considered a prerequisite to the perpetration of genocide. Lieutenant Timothy Sheehan, for example, who would help defend Fort Ridgely against Dakota attack during the war, summed up this view when he said: “Went out to see the country along the Minnesota River. A beautiful country—too good for Indians to inhabit.”⁷ His comment is classic Manifest Destiny speak—it exemplifies that American belief in the necessity of dispossessing and displacing Indians based on white supremacy.

Sheehan’s comment, however, is also illustrative of colonial ambition. The one “resource” that all Indigenous peoples in North America possessed and that was coveted by first Europeans, and then Americans, was land. The U.S. government owes its existence to Indigenous lands and, in the nineteenth century, its expansion was absolutely dependent on acquiring additional Indigenous lands. Every corps of discovery, every fort, every land-cession treaty, and every new wave of white settlement was carried out with the ultimate goal of subjugating Indigenous life and establishing U.S. dominance in a region. In the case of Dakota homeland, few whites could claim ignorance about who held the original land title. What nineteenth century American, or recent immigrant, had not heard of Indians and did not understand that Indians

6. Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260 (III) A, U.N. Doc. A/RES/260(III) (Jan. 12, 1951) [hereinafter United Nations Convention]. I discussed these criteria in the context of the U.S.-Dakota War of 1862 in my volume, *WAZIYATAWIN, WHAT DOES JUSTICE LOOK LIKE?: THE STRUGGLE FOR LIBERATION IN DAKOTA HOMELAND* 37–70 (Cathy Broberg ed., 2008).

7. *The Dakota Conflict* (KTCA: St. Paul/Minneapolis & Twin Cities Public Television broadcast Jan. 27, 1993), available at <http://ondemand.tpt.org/video/2259997177/>.

occupied the continent? Indeed, efforts to recruit white settlers often centered on discussions of subduing the “Indian threat” or eliminating Indian land possession.

For example, historian Mary Lethert Wingerd describes how early Minnesota territorial and state residents advertised Minnesota’s suitability for white settlement by hiring immigration agents, publishing recruitment pamphlets, and creating an “immigrant aid bureau” in New York to lure European immigrants fresh off the boats to Minnesota.⁸ Ignatius Donnelly, who would become Minnesota’s Lieutenant Governor in 1859, even encouraged settlement on reservation lands. In 1857, he wrote in the *Emigrant Aid Journal*, “[T]here are very populous towns that have been built on some of these reservations, as they are called, and the districts around have been thickly settled, long before any title, save that of the squatter’s can be had for the land.”⁹ Whites arriving in Minnesota did not question their superior right to Dakota lands, and our eventual displacement was considered a given. Hundreds of thousands of other Indigenous people in the eastern United States had already faced land theft and ethnic cleansing, and by the mid-nineteenth century, an increasing number of Americans turned their covetous eyes upon Dakota lands.¹⁰ Our population was already considered expendable within the U.S. expansionist project.

The righteousness of white settlement of Indigenous lands was assumed, and calls for extermination and Dakota expulsion erupted in the wake of conflict. For example, in 1857 when Inkpaduta retaliated against white settlers for the murder and rape of his family members, killing thirty-two people in what became known as the Spirit Lake Massacre, settlers began calling for extermination.¹¹ This mutual distrust and dislike became

8. MARY LETHERT WINGERD, NORTH COUNTY: THE MAKING OF MINNESOTA 281 (2010).

9. *Id.*

10. The removal of Indigenous peoples to lands elsewhere was first conceived as U.S. policy by President Thomas Jefferson in 1803, though it was not enacted as policy by Congress until the Andrew Jackson administration in 1830. Jackson and his successor, Martin Van Buren, established over 100 removal treaties with Indigenous nations. For further information, see CHURCHILL, *supra* note 5; RUSSELL THORNTON, AMERICAN INDIAN HOLOCAUST AND SURVIVAL (1987); CLIFFORD E. TRAFZER, AS LONG AS THE GRASS SHALL GROW AND RIVERS FLOW: A HISTORY OF NATIVE AMERICANS (2000); S. LYMAN TYLER, A HISTORY OF INDIAN POLICY 54–69 (1973).

11. ROY W. MEYER, HISTORY OF THE SANTEE SIOUX: UNITED STATES INDIAN

progressively worse leading up to 1862, and the war unleashed unparalleled vitriol.

Even in the rare case that our physical expendability was not the objective—as among Christian missionaries and Indian agents, for example—Dakota cultural and spiritual annihilation was still the end-goal. For example, Episcopal Bishop Henry Whipple, while trying to temper white thirst for Dakota extermination after the war, wrote:

As a Christian I take issue with anyone who claims that God has created any human being who is incapable of civilization or who cannot receive the gospel of Jesus Christ. . . . The North American Indian is a savage and like all other heathen men fierce, vindictive cruel and his animal passions are unrestrained by civilization & Christianity.¹²

He was not opposed to the killing of those he considered guilty believing, to use his words, “that the savages who committed these deeds of violence must meet their doom,”¹³ but he believed mass extermination was unjust. He wanted the rest of the population alive so that he could pursue his own imperialistic path by converting heathen souls to Christianity. This was aligned with the government’s civilizing mission designed for the eradication of Indigenous cultural practices. For example, the Commissioner of Indian Affairs in 1862, William P. Dole, described his philosophy regarding the “advance[s] made by them in civilization,” writing:

Another year has but served to strengthen my conviction that the policy, recently adopted, of confining the Indians to reservations, and, from time to time, as they are gradually taught and become accustomed to the idea of individual property, allotting to them lands to be held in severalty, is the best method yet devised for their reclamation and advancement in civilization.¹⁴

From the perspective of the “savages,” this cultural extermination is simply the other side of the genocidal coin.

POLICY ON TRIAL 101–02 (1967).

12. Henry B. Whipple, *The Duty of Citizens Concerning the Indian Massacre 1* (Sept. 1862) (unpublished manuscript) (on file with the Minnesota Historical Society).

13. *Id.* at 6.

14. COMM’R OF INDIAN AFFAIRS, ANNUAL REPORT 11 (1862), *available at* <http://digicoll.library.wisc.edu/cgi-bin/History/History-idx?type=header&id=History.AnnRep62>.

I. CALLS FOR EXTERMINATION AND GENOCIDAL INTENT

White supremacist notions of Indigenous expendability ascended the continuum of intolerance when the war broke out and the public conversation quickly shifted to one of Indigenous extermination. The most cited call for extermination came from Governor Alexander Ramsey when he appeared before the Minnesota State Legislature on September 9, 1862, just a few weeks after the start of the war, and proclaimed: “The Sioux Indians . . . must be exterminated or driven forever beyond the borders of the State. The public safety imperatively requires it. Justice calls for it. . . . The blood of the murdered cries out to heaven for vengeance”¹⁵ Given his political power and his capacity to put those words into effect, Ramsey may be viewed as the architect of Minnesota’s official genocidal policies that would follow.

He was not the first, or the only one to call for Dakota extermination, however. Lieutenant Governor Donnelly, having already determined that Dakota people would be removed even from their remaining reservation lands, wrote a remarkably similar statement in his August 29, 1862 report to Governor Ramsey about the war:

With prompt action they can be exterminated or driven beyond the State line, and the State once more placed upon such a footing that she can, with some prospect of success, invite emigration. There should be no restoring of the Sioux to their old status; their presence on our frontier would be a perpetual barrier to the growth of the State; they must disappear or be exterminated.¹⁶

Always concerned about the growth and economic viability of the state, Donnelly’s comments suggest that Minnesotans were eager to use the war to eliminate the last obstacles to their settlement of Indigenous lands.

Another strong proponent of extermination, Major General John Pope, the Commander of the Military Department of the Northwest headquartered out of St. Paul, encouraged Henry Sibley, the leader of the expedition against the Dakota, toward extermination. In a letter to Sibley dated September 17, he wrote:

15. Alexander Ramsey, Message of Governor Ramsey to the Legislature of Minnesota: Delivered at the Extra Session, at 19 (Sept. 9, 1862).

16. COMM’R OF INDIAN AFFAIRS, *supra* note 14, at 68.

It is my purpose utterly to exterminate the Sioux if I have the power to do so and even if it requires a campaign lasting the whole of next year. . . . They are to be treated as maniacs or wild beasts, and by no means as people with whom treaties or compromises can be made.¹⁷

Ironically, the Dakota are characterized by Pope as inhuman beings, unworthy of treaty-making, when it was the federal government that did not uphold its end of Dakota treaties, even when its obligations were meager due to all sorts of fraudulent and unethical negotiations.¹⁸ Even so, as the Dakota moved to a defensive position when Sibley's army advanced, the fighting at this stage would not be characterized as genocidal.¹⁹ Sibley's army did not kill all Dakota people, but instead took 1200 Dakota people into custody when he took over the friendly camp.²⁰ Officially, Sibley had been charged with defeating the Dakota and securing the release of the white captives. When he accomplished that, he sought to be relieved of his command because he believed, as historian Kenneth Carley noted, that "a strictly military commander' would be better fitted for the task of exterminating those Indians who had escaped."²¹ Had Sibley stopped there, he might be viewed more favorably for his role in the war. Instead, Sibley's request was denied and he became another perpetrator in Ramsey's war of extermination.

Others contributed their public clamoring as a way to incite violence among the civilian population. Jane Grey Swisshelm, editor of the *St. Cloud Democrat*, used her newspaper to incite genocide writing:

Let our present Legislature offer a bounty of \$10 for every Sioux scalp, outlaw the tribe and so let the matter rest. It will cost five times that much to exterminate them by

17. David A. Nichols, *The Other Civil War: Lincoln and the Indians*, 44 MINN. HIST. 1, 7 (1974), available at <http://collections.mnhs.org/MNHHistoryMagazine/articles/44/v44i01p002-015.pdf>.

18. Many scholars have written about the United States' duplicitous dealings with Dakota people, especially regarding treaties. For the most comprehensive account, see MEYER, *supra* note 11.

19. Most of the engagements by Sibley's army may be characterized as "battles," though through family oral history we know of at least one instance of a violation of rules of warfare: white soldiers shot my ancestor, Chief Mazomani, at the Battle of Wood Lake while he was carrying a white flag of truce. Mazomani sought to help negotiate peace, but that did not prevent his death at the hands of Americans.

20. KENNETH CARLEY, *THE SIOUX UPRISING OF 1862*, at 62 (1961).

21. *Id.*

regular modes of warfare and they should be got rid of in the cheapest and quickest manner.²²

In a later editorial she urged:

Our people will hunt them, shoot them, set traps for them, put out poisoned bait for them. . . . Every Minnesota man, who has a soul and can get a rifle will go shooting Indians; and he who hesitates will be black-balled by every Minnesota woman and posted as a coward in every Minnesota home.²³

Historian Roy Meyer, in his research, provided a sampling of other newspapers that published calls for extermination. A Red Wing editor proclaimed: “They must be exterminated, and now is a good time to commence doing it.”²⁴ On August 30, a Mankato newspaper declared, “The cruelties perpetrated by the Sioux nation in the past two weeks demand that our Government shall treat them for all time to come as outlaws, who have forfeited all right to property and life.”²⁵ The other Mankato paper reported to its readers that if the newspaper columns were shorter it was because its editor “had joined one of the volunteer companies formed ‘for the extermination of Indians.’”²⁶ In February 1863, the echoes of extermination were still ringing as a Faribault newspaper printed a letter declaring: “Extermination, swift, sure, and terrible is the only thing that can give the people of Minnesota satisfaction, or a sense of security.”²⁷ Meyer goes on to observe that although Minnesotans may not have initiated the war for the purpose of seizing Dakota lands, Minnesotans could not be blind to the silver lining in the cloud that was the war: “And what better way was there to mask this greed than to wave the bloody shirt and call righteously for the extermination of the ‘inhuman fiends’ who had heretofore stood in the way of Manifest Destiny, Minnesota brand?”²⁸ By the winter of 1862–1863, a genocidal culture had rooted itself in Dakota homeland. The following section will discuss the criteria for genocide under the United Nations Convention, offering specific examples that might be included

22. Jane Grey Swisshelm, ST. CLOUD DEMOCRAT, September 11, 1862, *quoted in* WINGERD, *supra* note 8, at 301.

23. WINGERD, *supra* note 8, at 328.

24. MEYER, *supra* note 11, at 124.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 125.

under each section. In no way is this list complete; rather, it may be viewed as a sampling.

II. CRITERION (A): KILLING MEMBERS OF THE GROUP

Numerous examples of criterion “(a) Killing members of the group” may be found in the weeks, months, and years following the surrender at Camp Release in September 1862.²⁹ Once white blood was spilled and white supremacist attitudes quickly evolved into explicit calls for Dakota extermination, those virulent anti-Indian sentiments that were both public and commonplace provide evidence of clear genocidal intent. The actions based on those genocidal prescriptions quickly followed.

When Dakota people declared war in 1862, they did so not just against the U.S. government, but also against all its citizens. While Dakota people desired to drive the whites out of our homeland, they did not do so because of a general hatred of all white people everywhere, but because they were opposed to the white people who had invaded and occupied Dakota homeland. That is, Dakota people were against settler occupation and interference in the Dakota way of life. Still, the war effort was not supported by all Dakota people. In the midst of the war, as conversations proceeded between the anti-war and pro-war factions of the Dakota about whether to continue it, Bdewakantunwan men committed to its continuation spoke in defense of their actions. Rattling Runner, a leader of the Soldiers’ Lodge and son-in-law of Wabasha, responded to efforts to stop the war saying:

I have no confidence that the whites will stand by any agreement they make if we give [the captives] up. 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; and many have been starved in their prisons.³⁰

From his perspective, there was no other avenue for pursuing justice. Little Crow, the leader of Dakota resistance, also was not swayed by the anti-war contingent led by Little Paul, speaker of the Upper Dakota. Understanding the depth of white hatred for Dakota people and the previous severe punishments by white

29. United Nations Convention, *supra* note 6, at art. II(a).

30. MARK DIEDRICH, DAKOTA ORATORY: GREAT MOMENTS IN THE RECORDED SPEECH OF THE EASTERN SIOUX, 1695–1874, at 75 (1989).

people for even trivial transgressions, Little Crow knew there would be no fair treatment for Dakota men who had chosen the path of war: “Now we have been killing them by the hundreds in Dakota, Minnesota, and Iowa, and I know that if they get us into their power they will hang every one of us.”³¹ He was correct. By the next month, Americans began sentencing Dakota warriors to death by hanging.³²

Once Sibley had accomplished his task of quelling Dakota resistance and freeing the white and mixed-blood captives, he then worked to execute plans that shifted from standard war practices to practices that may be deemed genocidal. This is not to suggest that the warfare against the Dakota was not brutal or part of the colonial project, but it is necessary to distinguish between leading an army against an enemy during wartime, and treating enemy combatants and civilians as subjects in need of elimination by any means necessary. With surrendered Dakota people in custody, the troops separated the men from the women and children. To deceive the Dakota men into submission, the army told them they needed to be counted separately for disbursement of the long-overdue treaty annuities.³³ Once separated, the army shackled them and tried them in an ad hoc military tribunal that remains one of the most egregious acts of injustice in the American legal system.³⁴

As legal scholar Carol Chomsky has demonstrated in her meticulous research on the 1862 trials, “the Dakota were a sovereign nation at war with the United States, and the men who fought the war were entitled to be treated as legitimate belligerents” rather than as criminals.³⁵ When the tribunal had finished its dirty work, 303 Dakota men were sentenced to execution and another twenty sentenced to prison terms.³⁶ As many as forty-two cases were tried in a single day, some taking as little as five minutes before condemning another Dakota man to

31. *Id.* at 76.

32. See CARLEY, *supra* note 20, at 68–69; MEYER, *supra* note 11, at 126–27; Carol Chomsky, *The United States-Dakota War Trials: A Study in Military Injustice*, 43 STAN. L. REV. 13, 28 (1990). The military tribunal convened to try the surrendered and captured warriors first on September 28, 1862, though most of the trials were conducted during the month of October. MEYER, *supra* note 11, at 126–27. By the time the military commission completed its work on November 5, 1862, over 300 Dakota men were sentenced to execution by hanging. *Id.*

33. MEYER, *supra* note 11, at 126.

34. *Id.*

35. Chomsky, *supra* note 32, at 15.

36. *Id.* at 28.

death.³⁷ Had the findings of Sibley's tribunal been carried out as intended, it would have meant the immediate elimination of an estimated one-tenth of the total male population estimated to be in Minnesota at the time of the war, and probably a third of the able-bodied men.³⁸ As it was, when the thirty-eight were hanged on December 26, 1862, in what remains the largest, simultaneous mass hanging from one gallows in world history, this was a spectacular way to implement an extermination policy under the guise of legality.³⁹

This genocidal campaign may be seen as intimately intertwined with the desire for the remaining Dakota resources. As Chomsky observed, the "settlers' response to the war may also have been motivated by greed: Treating the Dakota as war criminals allowed the United States summarily to remove all the Dakota from the state, thereby opening to settlement land that the Minnesotans had coveted for years."⁴⁰

Certainly, other examples of direct killing occurred in the fall and winter of 1862–1863 as the army force-marched or forcibly removed our ancestors (the women and children to Fort Snelling and the condemned men to Mankato) and imprisoned them in concentration camps. Through the Dakota oral tradition, we have accounts of grandmothers stabbed in the stomach or shot by white soldiers, babies ripped out of mothers' arms and their heads bashed on the ground, and shackled men beaten to death by angry mobs.⁴¹ Furthermore, as will be discussed later, there were thousands more that were killed indirectly.

In this section, however, one more example of genocidal killing that must be mentioned is the bounty system implemented

37. *Id.* at 27.

38. Dakota population in Minnesota at the time of the war is generally estimated at about six thousand. See Robert J. Werner, *The Dakota Diaspora After 1862*, 6 MINNESOTA'S HERITAGE 38, 58 n.3 (2012). If half of those were men, then killing over 300 would amount to ten percent.

39. See Michael Yellow Bird, *Cowboys and Indians: Toys of Genocide, Icons of American Colonialism*, 19 WICAZO SA REV. 33, 37 (2004) (citing THE GUINNESS BOOK OF RECORDS (1993)). In addition, the History Channel debuted a program entitled *Wild West Tech: The Biggest Machines in the West* (History Channel television broadcast Dec. 14 2004) that detailed and celebrated the technological accomplishment embodied in the Mankato hangings.

40. Chomsky, *supra* note 32, at 92–93.

41. For further information about the forced removals, see ANGELA CAVENDER WILSON, IN THE FOOTSTEPS OF OUR ANCESTORS: THE DAKOTA COMMEMORATIVE MARCHES OF THE 21ST CENTURY (Waziyatawin Angela Wilson ed., 2006).

in 1863. That summer, Minnesota's Adjutant General Oscar Malmros answered the call of Swisshelm and other Minnesotans who wanted to use such a system to hasten Dakota extermination. The system he devised included payment to white civilians for combing the woods in search of Dakota people to exterminate and an additional payment for each scalp those Indian-hunters could provide to the state; the corps of scouts earned \$1.50 per day for their searching and an additional \$25 for each scalp.⁴² By the end of the summer, the price of bounty payment had reached \$200, enough to buy a 160-acre homestead in 1862.⁴³

III. CRITERION (B): CAUSING SERIOUS BODILY OR MENTAL HARM TO MEMBERS OF THE GROUP

The second criterion is "(b) Causing serious bodily or mental harm to members of the group."⁴⁴ While bodily harm is most readily apparent in all of the examples used in criteria (a) and (c) in which people are killed outright or conditions are created to cause their destruction, the "mental harm" component of this criterion is more difficult to assess. Rather than focus on bodily harm in the discussion of criterion (b), I will emphasize the mental harm, considering both historic and contemporary perspectives of Dakota people and also bearing in mind how I have observed and experienced the mental harm that is the legacy of this traumatic period in our history, including the mental harm of colonization.

A statement from resistance leader Sakpe, or Little Six, offers a poignant metaphor for the shackles of colonization. Sakpe fled to Canada after the Battle of Wood Lake, but along with Medicine Bottle, was kidnapped, drugged, bound, and dragged across the border and handed over to Major Hatch and brought to Fort Snelling for trial.⁴⁵ Like hundreds of other Dakota men, Sakpe was sentenced to death by hanging, as was Medicine Bottle.⁴⁶ As he was awaiting execution, he observed a train passing near the fort and exclaimed to Colonel Robert McLaren:

"Look there—see that—that settles our fate; over these lands my father was once undisputed chief, and over those hills I once rode free upon my horse, and now," pointing

42. WINGERD, *supra* note 8, at 329.

43. *Id.* at 330.

44. United Nations Convention, *supra* note 6, at art. II(b).

45. DIEDRICH, *supra* note 30, at 94.

46. *Id.*

to the chain about his waist, “look at this,” and pointing to the chain running from his waist to his foot, “and this”—and scanning himself all over, “and these rags.”⁴⁷

His shackles represented the transformation from a state of freedom, to a state of unfreedom, or bondage. Sakpe and Medicine Bottle were lynched in front of the round-tower at Fort Snelling on November 11, 1865.⁴⁸ Afterwards, Sakpe’s body was shipped to a medical college in Philadelphia for display.⁴⁹

The shackles of colonization were manifest in a myriad of ways. The sense of superiority combined with growing military might meant that the U.S. government had the power to exert its will over Indigenous people and lands, leaving few options or recourse for Indigenous populations whose lands were the objects of desire.⁵⁰ Thomas Galbraith, the Indian Agent at the time of the war, believed himself to be carrying out benevolent work, though his position itself is a colonial offspring and driven entirely by a colonial agenda. In his 1863 report, for example, he wrote:

By my predecessor a new and radical system was inaugurated practically, and in its inauguration he was aided by the Christian missionaries and by the government. . . .

The theory, in substance, was to break up the community system which obtained among the Sioux; weaken and destroy their tribal relations; individualize them by giving each a separate home, and having them subsist by industry—the sweat of their brows; till the soil; to make labor honorable and idleness dishonorable; or, as it was expressed in short, “*make white men of them*,” and have them adopt the habits and customs of white men. This system, once inaugurated, it is self-evident, was at war with their “ancient customs.” To be clear “*the habits and*

47. *Id.*

48. *Id.*

49. *Id.*

50. For example, historian Roy Meyer describes how otherwise respectable white men “saw nothing reprehensible about resorting to all manner of chicanery and equivocation when dealing with Indians,” and offers a scathing indictment of the treaty process. MEYER, *supra* note 11, at 77. See especially his chapter, “The Monstrous Conspiracy.” *Id.* at 72–87. Bishop Whipple expressed a similar sentiment when he wrote: “There have been noble instances of men who have tried to do their duty but no one man could withstand the tide of corruption which pervaded every department of Indian affairs.” Whipple, *supra* note 12, at 4.

*customs of white men are at war with the habits and customs of the Indians.*⁵¹

By his own admission, in implementing the government's civilization program, missionaries, agents, and government worked hand-in-hand to wage war against Dakota culture and ways of life.

Big Eagle, in describing factors contributing to Dakota dislike of the whites, outlined concerns about the treaty negotiations and terms unfulfilled by the government, the traders' corruption and thievery, the abuse dispensed to Dakota women, and the attempt to force Dakota people to live as white men.⁵² While all of these are just causes for dissatisfaction and anger, for this discussion I am particularly interested in the "civilizing" efforts. Big Eagle explained:

If the Indians had tried to make the whites live like them, the whites would have resisted, and it was the same way with many Indians. The Indians wanted to live as they did before the treaty of Traverse des Sioux—go where they pleased and when they pleased; hunt game wherever they could find it, sell their furs to the traders and live as they could.⁵³

The kind of cultural loss stemming from the government's systematic efforts at eradication is still reverberating in our communities.

In his letters attempting to quiet calls for mass extermination, Bishop Henry Whipple suggested that the government's mistake in dealing with Dakota people from the start was by treating with them as sovereign nations rather than as the "heathen wards" we were in his eyes. He blames the government for leaving Dakota people "without a government," since our "rude patriarchal government" was "weakened and often destroyed by the new treaty relations," and "[n]othing was given to supply the place of this defective tribal government."⁵⁴ In other words, the government's

51. ABRAHAM LINCOLN, MESSAGE FROM THE PRESIDENT OF THE UNITED STATES IN ANSWER TO RESOLUTION OF THE HOUSE OF THE 18TH DECEMBER LAST, RESPECTING THE CAUSE OF THE RECENT OUTBREAKS OF THE INDIAN TRIBES IN THE NORTHWEST, H.R. EXEC. DOC. NO. 37-68, at 25-26 (3d Sess. 1863) [hereinafter LINCOLN MESSAGE RESPECTING OUTBREAKS] (citing THOMAS GALBRAITH, INDIAN AGENT, REPORT TO CLARK W. THOMPSON, SUPERINTENDENT OF INDIAN AFFAIRS (1863)).

52. Big Eagle's Account, *in* THROUGH DAKOTA EYES: NARRATIVE ACCOUNTS OF THE MINNESOTA INDIAN WAR OF 1862, at 23-27 (Gary Clayton Anderson & Alan R. Woolworth eds., 1988).

53. *Id.* at 23.

54. Whipple, *supra* note 12, at 2; *see also* Letter from Bishop Henry Whipple

civilizing campaign either did not institute an American-style government quickly enough or, more likely, did not bring Dakota people more forcefully into the folds of the existing U.S. system. Just as other white Minnesotans could not escape their own colonizing lenses, Whipple was brimming with his own ecclesiastical brand of white supremacy. This allowed him to maintain blindness to the anguish caused from white attacks on what Dakota people perceived to be a beautiful culture. Today as we struggle desperately to pull our language back from the edge of extinction and recover our land-based knowledge, many of us feel nothing but fury toward those who, with such success, have diminished our culture and way of life.

The constant cultural attacks before, during, and after the war were exacerbated by the very real, physical losses suffered over and over again as the war moved from a military engagement to one of genocide. Traveling Hail, chief speaker for the Bdewakantunwan at the time of the war, described how the soldiers facilitated the breakdown of the people, saying:

At Redwood [October–November 1862] they took all the young and smart men and put them in prison, and they took all the chiefs and women and children and put them in Fort Snelling. They done with us as they would grain, shaking it to get out the best, and then brought our bodies over here; that is, took everything from us and brought us over here [Crow Creek] with nothing.⁵⁵

Common among the people is still a sense that the government took everything from us, leaving us with nothing. Furthermore, the “by any means” attitude of the government meant that white Minnesotans would perpetrate horrendous crimes against humanity to eliminate our population. For Dakota people, that means that we possess distressing memories from every site of genocide—moments when the horror of loss was so great as to seemingly scar the people permanently. Inevitably, when I write or think about 1862, it becomes overwhelming, as each aspect of the war has its own particular horror and heartache.

Imagine the sense of disempowerment felt by the women who could not feed their children and the men who could not find justice with a government immune to Dakota suffering.

to Governor Ramsey (Nov. 8, 1862) (on file with the Minnesota Historical Society).

55. DIEDRICH, *supra* note 30, at 92.

Imagine the uncertainty and confusion felt by whole communities as the government sought to break them apart, eradicating the culture that held the people together.

Imagine the sense of fear and exhaustion felt by the grandmothers and mothers wearily carrying the littlest children as they marched under gun and bayonet point toward Fort Snelling in November 1862.

Imagine the anxiety felt by Dakota men condemned to die who must have thought each day might be the day they would hang.

Imagine the sense of crushing disappointment felt by the women and children at Fort Snelling when they saw their beloved men passing by on steamboats on their way to Davenport, but were unable to reach out to them. Imagine the women wailing, flinging themselves to the ground, and pulling their hair in grief.⁵⁶

Imagine the sense of vulnerability and violation felt by a whole generation of Dakota women subject to the most demeaning forms of sexual violence by white soldiers—soldiers who used their control of food to force our women with hungry families into sexual servitude.⁵⁷

Imagine the shame felt by the men who were powerless to stop this rape of Dakota women and girls.

Imagine the sense of hopelessness felt by children raised in concentration camps.

56. Rushing to the shore of the river on Thursday, April 23, 1863, the women saw steamboats carrying the remaining condemned men approaching the shore. The women believed they might at last be reunited with their loved ones, but their expectations were crushed when the steamer pulled away after putting only forty-eight of the unconvicted men ashore. One account describes the sadness as a “pitiable” scene:

[T]he whole vast crowd of savage forms writhed in the agony of disappointment, and a wail of grief went up from hundreds of shrill, wild voices which it was heart-rending to hear. The poor creatures flung themselves on the ground, and pulled their hair, and beat their breasts with the anguish of the sudden revulsion from hope to despair.

CORINNE L. MONJEAU-MARZ, *THE DAKOTA INDIAN INTERNMENT AT FORT SNELLING, 1862–1864*, at 106 (2006).

57. DIEDRICH, *supra* note 30, at 92. For a more thorough discussion of the sexual violence against Dakota women, see COLETTE A. HYMAN, *DAKOTA WOMEN’S WORK: CREATIVITY, CULTURE, & EXILE* 105–06 (2012). The obscenity of white men withholding food and clothing from a starving and suffering population under their control in order to sexually exploit them cannot be overstated. Compare this with Traveling Hail’s account of women getting whipped and jailed for trying to salvage beef parts to eat described in *infra* text accompanying note 78, and this suggests a strategic use of power to force Dakota women into sexual slavery.

Imagine hunger so intense—an outcome from the punitive expeditions that left thousands of Dakota people without stores of winter food—that parents sold their children to families in Canada so they might live.⁵⁸

And, imagine the inconsolable grief caused by the loss of a homeland where our people had lived since the beginning of time.

The sense of loss and grief is still so palpable in Dakota communities—as are the accompanying reactions of anger and rage—that even 150 years later, it feels like many of these events occurred in the recent past. The crimes perpetrated against Dakota people in the aftermath of the war are still with us, our land is still under occupation, our people still live in exile, and our culture is still under threat. Every day we live the legacy of this history. And we continue to remember. For example, for more than twenty-five years, men, women, and children have gathered at midnight on Christmas night to run through the winter cold for the thirty-eight lynched in Mankato in 1862. Since 2002, Dakota people have walked 150 miles in honor of the women and children force-marched to Fort Snelling. Every generation continues to pass on the stories of 1862 in our oral traditions. Something in our hearts compels us continuously not just to remember, but also to memorialize these crimes against humanity.

IV. CRITERION (C): DELIBERATELY INFLICTING ON THE GROUP CONDITIONS OF LIFE CALCULATED TO BRING ABOUT ITS PHYSICAL DESTRUCTION IN WHOLE OR PART

The third criterion in the U.N. Genocide Convention—“(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or part”⁵⁹—also applies to the Dakota experience in Minnesota and the subsequent treatment of Dakota people following the ethnic cleansing. In this section, I will discuss the conditions of the various concentration camps to which Dakota people were confined beginning in the fall of 1862, and the effects of the punitive expeditions into Dakota Territory from 1863–1865, particularly General Sully’s efforts to hunt down the Dakota who fled Minnesota at the war’s end.

58. This is in reference to Dakota parents who sold their children to families in the area around Fort Garry. See MONJEAU-MARZ, *supra* note 56, at 112.

59. United Nations Convention, *supra* note 6, at art. II(c).

This criterion may, perhaps, be the most contested because it requires the acknowledgement of genocidal intent (deliberation), something rarely conceded by the colonizers in a colonial context. Unlike Ramsey's call for extermination and forced removal, which is so blatant it is virtually impossible to deny as genocidal, the actions following that declaration, which were designed to carry out his vision of a Dakota-free Minnesota, are subject to more interpretation. A parochial view might, again, allow one to argue for the most benign interpretations of events that would discount the deliberate nature of this criterion, while a broader historical view and understanding of a colonial context make the deliberate nature appear obvious.

For example, by 1862, the U.S. government already had nearly a century of experience addressing the "Indian problem" in other regions.⁶⁰ Phases of warfare, burning towns and villages, destroying food sources, driving populations into flight, and forcing marches—all combined with disease, sickness, and starvation—to severely weaken and undermine whole nations of people. Perhaps the best-known example of expulsion was perpetrated against the Tsalagi (Cherokee) in what became known as the Trail of Tears. After rounding up the Tsalagi and confining them in oppressive conditions, the Americans then sent them on the overland route to Indian Territory. Historian David Stannard describes their Trail of Tears:

Like other government-sponsored Indian death marches, this one intentionally took native men, women, and children through areas where it was known that cholera and other epidemic diseases were raging; the government sponsors of this march, again as with the others, fed the Indians spoiled flour and rancid meat, and they drove the native people on through freezing rain and cold. Not a day passed without numerous deaths from the unbearable conditions under which they were forced to travel. . . . [B]y the time it was over, more than 8000 Cherokee men, women, and children died as a result of their expulsion

60. For example, George Washington waged a war of extermination against his Haudenosaunee enemies. See DAVID E. STANNARD, AMERICAN HOLOCAUST: COLUMBUS AND THE CONQUEST OF THE NEW WORLD 119–20, 240–41 (1992); Yellow Bird, *supra* note 39, at 37. In 1779, for example, he instructed Major General John Sullivan to affect the total ruin of their settlements. *Id.* The campaign was so brutal that the Seneca named America's first president Caunotaucus, or Town Destroyer. *Id.*

from their homeland.⁶¹

The purpose of detailing this example is to demonstrate that by 1862, the federal government already understood that forced confinement and forced removal would have devastating consequences for the victims of such policies.

That Dakota people would die from such actions, and that this was seen as a benefit by those in power, cannot be denied. Even those who did not advocate outright extermination, such as Indian Agent Thomas Galbraith, still suggested consigning Dakota people to a future that meant a slower death. As questions arose about what to do with the prisoner population, Agent Galbraith proposed:

The power of the government must be brought to bear upon them. They must be whipped, coerced into obedience. After this is accomplished, few will be left to put upon a reservation; many will be killed; more must perish from famine and exposure, and the more desperate will flee and seek refuge on the plains or in the mountains. Few, except women and children, can be captured, and if they should be, they should never be allowed to cause trouble again. A very small reservation should suffice for them.⁶²

No more was there any talk of civilization and assimilation from this Indian Agent. In his mind it was, instead, essential to eliminate the Indian problem and threat to white Minnesotans, no matter the form death would take for the Dakota who were not killed outright.

The contestation over interpretation also affects terminology. For example, the use of the term concentration camp is still surprisingly contentious. Other than the Department of Natural Resources' interpretation at Fort Snelling State Park, which has employed the term concentration camp since 1998, most institutions, historians, and reporters refrain from using this accurate terminology to describe the place where Dakota people were imprisoned in the winter of 1862–1863. Researcher Corinne Monjeau-Marz, for example, in her volume entitled *The Dakota Indian Internment at Fort Snelling, 1862–1864*, rejects the term “concentration camp” and argues that the “enclosure” at Fort

61. STANNARD, *supra* note 60, at 124. Stannard also points out here that their death rate was equivalent to that of “Jews in Germany, Hungary, and Romania between 1939 and 1945.” *Id.*

62. LINCOLN MESSAGE RESPECTING OUTBREAKS, *supra* note 51.

Snelling helped preserve the population: “Placing innocent people in a ghetto was a terrible decision but it kept them alive,” she tells us.⁶³ This is a troubling perspective as it denies the violence perpetrated there by white soldiers, as well as American knowledge of the resulting deaths that undoubtedly accompanied the mass confinement of large populations without adequate food, clothing, and sanitation.⁶⁴ In 1828 when the House of Representatives was debating the removal of Indians west of the Mississippi, John Woods of Ohio argued against it, especially the way it was portrayed as a benevolent act ensuring Indian preservation, saying: “[T]his measure would effect more rapidly their extinction. Instead of being entitled ‘An act for the preservation and civilization of the Indian tribes with the United States,’ it should be called a scheme for their speedy extermination.”⁶⁵ Similarly, the concentration camp at Fort Snelling was not erected for the safety of Dakota people, but to help maintain American dominance and Indigenous subjugation while the government made plans for the next phase of ethnic cleansing.⁶⁶ When our populations died because of the horrendous conditions, including cold, disease, and starvation, it simply saved the government the cost of relocating another Indian out of Minnesota.

Furthermore, if we perceive these deaths as anything other than part of the genocide, we are denying the standards used in other genocidal contexts. For example, in reference to the American Indian holocaust, historian Robert Venables asks the questions: “Does it matter that millions of the Indians who perished died of disease and malnutrition rather than by the sword? Are we not to count the Jews who died of disease and starvation, and only those gassed or shot?”⁶⁷ Similarly, historian David Stannard describes how various factors contributed to genocide:

Although at times operating independently, for most of the long centuries of devastation that followed 1492, disease and genocide were interdependent forces acting dynamically—whipsawing their victims between plague and violence, each one feeding upon the other, and

63. MONJEAU-MARZ, *supra* note 56, at 69.

64. In fact, Monjeau-Marz actually argues that in the camp “[s]helter, food, and protection were guaranteed.” *Id.*

65. Robert W. Venables, *The Cost of Columbus: Was There a Holocaust?*, 7 NORTHEAST INDIAN Q. 29, 34 (1990).

66. WAZIYATAWIN, *supra* note 6, at 97–118.

67. *Id.* at 31.

together driving countless numbers of entire ancient societies to the brink—and often over the brink—of total extermination.⁶⁸

In the Dakota context, we see how forced removals, concentration camp imprisonment, punitive expeditions, and destruction of food sources all worked in concert to effect a devastating reduction of the population.

Because Fort Snelling was connected to this larger policy of ethnic cleansing, in the Dakota oral tradition as relayed by my grandmother, Elsie Two Bear Cavender, the concentration camp was just one more devastating part of the long death march of our people out of our homeland—just one stop on our way to Crow Creek. In hearing the stories or reading the accounts from the camp, never have I looked upon Fort Snelling as a place of preservation, nor have I heard Dakota people describe it that way. On the contrary, Dakota people have made efforts to assert the term “concentration camp” precisely because we understand the horrors experienced there. We know cannons from the fort above were aimed at the concentration camp below, and that it was a place filled with so much death that, according to Barbara Feezor’s family, they were burying people from sun-up to sun-down every day.⁶⁹ In January 1863, the missionary Stephen Riggs wrote to his brother: “It is a very sad place now. The crying hardly ever stops.”⁷⁰ Gabrielle Renville reported:

We were so crowded and confined that an epidemic broke out among us and children were dying day and night. . . . The news then came of the hanging at Mankato. Amid all this sickness and these great trials, it seemed doubtful at night whether a person would be alive in the morning.⁷¹

Good Star Woman relayed, “Sometimes 20 to 50 died in a day and were buried in a long trench, the old, large people underneath and the children on top.”⁷² Author Corinne Monjeau-Marz documented some of these horrendous conditions for Dakota people, including assaults on Dakota women and girls, though she

68. STANNARD, *supra* note 60, at xii.

69. *The Dakota Conflict*, *supra* note 7 (providing Barbara Feezor’s oral account from her grandfather, John Bluestone).

70. MONJEAU-MARZ, *supra* note 56, at 60.

71. *The Dakota Conflict*, *supra* note 7.

72. Good Star Woman’s Recollections, in *THROUGH DAKOTA EYES*, *supra* note 52, at 264.

treats the accounts with skepticism.⁷³ She relates how women gathering firewood ran the risk of being seized by soldiers, “brutally outraged,” and killed, and how the daughter of Orrin Densmore wrote in a letter:

There are a few squaws killed up at the Fort every week, . . . [The Third Regiment] always cut their throats by running against a knife. The Third buries them in a hole, face downwards. Four or five have suddenly died since they went down there, and folks hope the Third will stay up here and take care of them. It is thought they would be spared the trouble of living through winter.⁷⁴

While Monjeau-Marz relays this account, she also calls into question its veracity because she cannot believe such high figures at the beginning of Dakota imprisonment and believes family and friends would have reported this to the captors.⁷⁵ Monjeau-Marz clearly has more faith in the integrity of the colonizers than do most Dakota people.

Unfortunately, when Dakota people were sent into exile, it was under equally horrific conditions. The missionary John Williamson, in a letter to his mother, compared the boat trip to Crow Creek to the Middle Passage of slaves stating, “[W]hen 1300 Indians were crowded like slaves on the boiler and hurricane decks of a single boat, and fed musty hardtack and briny pork, which they had not half a chance to cook, diseases were bred which made fearful havoc during the hot months.”⁷⁶ When they landed, Dakota people were imprisoned in another concentration camp where conditions were, if anything, worse than Fort Snelling. Traveling Hail described conditions there, making links between the grave-covered hills and the treatment Dakota people received from the Indian Agent and soldiers.⁷⁷ In September 1865, Traveling Hail described the food prepared for Dakota consumption:

They brought beef and piled it up here; they built a box and put the beef in it and steamed it and made soup; they put salt and pepper in it, and that is the reason these hills about here are filled with children’s graves; it seemed as

73. MONJEAU-MARZ, *supra* note 56, at 40.

74. *Id.* at 39.

75. *Id.* at 40.

76. MEYER, *supra* note 11, at 146.

77. Traveling Hail, Remarks at U.S. Cong. Joint Special Comm. to Inquire into the Condition of the Indian Tribes (Sept. 1865), *reprinted in* DIEDRICH, *supra* note 30, at 92.

though they wanted to kill us. We have grown up among white folks, and we know the ways of white folks. White folks do not eat animals that die themselves; but the animals that died here were piled up with the beef here and were fed out to us; and when the women and children, on account of their great hunger, tried to get the heads, blood, and entrails, when the butchering was done, they were whipped and put in the guardhouse⁷⁸

By the end of the first summer at Crow Creek, another 300 Dakota people—mostly children—were dead.⁷⁹

That was the summer that punitive expeditions, ordered by General Pope, were sent into Dakota Territory to hunt down the fleeing Dakota, and when successes were measured by how many Dakota were killed and how many supplies were destroyed. For example, Brigadier General Alfred Sully's "success" in 1863 was the perpetration of the Whitestone Hill Massacre when, on September 3, Sully and his men attacked a village of 4000 mostly Ihankunwan and Hunkpapa people, massacring 100 to 300 people and capturing another 156.⁸⁰ While these were devastating population losses, it was just the beginning. White troops destroyed and burned "[t]ipis, buffalo hides, wagons, travois, blankets, and perhaps as much as half million pounds of buffalo meat."⁸¹ In destroying the homes, supplies, and food storage that people relied on to make it through the winter season, Sully ensured many more deaths would follow. So close to winter, his acts of destruction might better be viewed as a prolonged death sentence. According to one source, the supplies were "burned for two-days by about 100 men, causing the melted tallow to run down the valley like a stream."⁸² Samuel Brown, who was then nineteen and an interpreter at the Crow Creek concentration camp (and no

78. *Id.*

79. MEYER, *supra* note 11, at 145–48.

80. KURT D. BERGEMANN, BRACKETT'S BATTALION: MINNESOTA CAVALRY IN THE CIVIL WAR AND DAKOTA WAR 97 (2004); *Whitestone Hill State Historic Site*, ST. HIST. SOC'Y N.D., <http://history.nd.gov/historicsites/whitestone/index.html> (last visited Nov. 8, 2012); *Whitestone Hill—History*, ST. HIST. SOC'Y N.D., <http://history.nd.gov/historicsites/whitestone/whitestonehistory2.html> (last visited Nov. 8, 2012).

81. *Whitestone Hill—History*, *supra* note 80.

82. *White Stone Hill Massacre September 3, 1863*, STANDING ROCK SIOUX TRIBE, http://thpo.standingrock.org/programs/display.asp?program_id=THPO&pg=White%20Stone%20Hill (last visited Nov. 12, 2012) (quoting Matthew Von Pinnon's address at the Fargo Forum (Sept. 2, 2001)).

supporter of Dakota resistance), described Sully's actions in a letter to his father Joseph R. Brown:

I don't think he ought to brag of it at all . . . because it was, what no decent man would have done, he pitched into their camp and just slaughtered them, worse a great deal than what the Indians did in 1862, he killed very few men and took no hostile ones prisoners, he took some but they were friendly Yanktons, and he let them go again . . . it is lamentable to hear how those women and children were slaughtered it was a perfect massacre, and now he returns saying that we need fear no more, for he has "wiped out all hostile Indians from Dakota," if he had killed men instead of women & children, then it would have been a success, and the worse of it, they had no hostile intention whatever . . .⁸³

On July 28, 1864, General Sully led another attack on a camp of Lakota, Nakota, and Dakota people at Killdeer Mountain in North Dakota—no matter that, just as at Whitestone Hill, most of the people at this trading village had not participated in the 1862 War.⁸⁴ With 2200 soldiers,⁸⁵ Sully's troops killed an estimated 150 of our people, but the final effect of his attack would ultimately be much higher. Sully ordered the village destroyed and the supplies burned.

Colonel Robert McLaren of the Second Minnesota Cavalry, in charge of the detail, listed in his report the extent of the destruction: "The men gathered into heaps and burned tons of dried buffalo meat packed in buffalo-skin cases, great quantities of dried berries, buffalo robes, tanned buffalo, elk, and antelope skins, household utensils, such as brass and copper kettles, mess pans, etc., riding saddles, dray poles for ponies and dogs."⁸⁶

In the end, more than 200 tons of supplies were destroyed, including somewhere between 1500 and 1800 lodges.⁸⁷ Items that wouldn't burn, they rendered useless. "With bayonets, they punctured camp kettles, buckets, and pails. They also shot

83. KENNETH CARLEY, *DAKOTA WAR OF 1862: MINNESOTA'S OTHER CIVIL WAR* 91 (1961) (emphasis omitted).

84. *Killdeer Mountain Battlefield*, ST. HIST. SOC'Y N.D., <http://history.nd.gov/historicsites/kmb/index.html> (last visited Oct. 25, 2012).

85. *Id.*

86. BERGEMANN, *supra* note 80, at 117.

87. *Killdeer Mountain Battlefield*, *supra* note 84.

abandoned dogs.”⁸⁸ In doing so, they would serve to inflict more death on the entire population than could likely have been achieved through engaging in acts of standard warfare.

A wagon train heading from Minnesota to the Idaho goldfields offers another telling example. The wagon train was accompanied by U.S. cavalry under the leadership of Captain James L. Fisk.⁸⁹ Fisk started his military career in the Third Minnesota Infantry in 1861, but beginning in 1862, as one historian put it, “[h]is real assignment was to organize overland migration to the gold region in Idaho Territory” because the federal government sought “to acquire the precious metal to help finance the war against the South.”⁹⁰ By 1864, he was leading his third expedition and following Sully’s army, “[b]elieving Sully had swept all hostile Sioux in his path away from the trail.”⁹¹ In spite of this, the wagon train continued to encounter resistance to their invasion through Dakota Territory.⁹² To help eliminate the remaining Indian threats, as Fisk’s train moved on, they left behind a box of poisoned hardtack for hungry Lakota to consume.⁹³ It did not matter that it might be men, women, or children.⁹⁴ This act of chemical warfare, as well as the practice of destroying people’s food, clothing, and shelter—essentials to anyone trying to survive our northern winters—demonstrate not just a total war strategy in which entire nations of people are expendable, but also a willingness to inflict upon “the group conditions of life calculated to bring about its physical destruction in whole or part.”⁹⁵

V. CRITERION (D) IMPOSING MEASURES INTENDED TO PREVENT BIRTHS WITHIN THE GROUP

As I have argued in previously published works, during the 1860s, “Dakota people were experiencing enforced subfecundity (a diminished ability to reproduce) as a direct consequence of gender segregation.”⁹⁶ This practice warrants consideration under criterion (d) of the Genocide Convention, “Imposing measures

88. *Id.*

89. BERGEMANN, *supra* note 80, at 132.

90. *Id.*

91. *Id.* at 133.

92. *Id.* at 135.

93. *Id.* at 137.

94. *See id.*

95. United Nations Convention, *supra* note 6, at art. II(c).

96. WAZIYATAWIN, *supra* note 6, at 57.

intended to prevent births within the group.”⁹⁷

From the time of Dakota surrender or capture at the end of the war, the army systematically separated the men from the women and children.⁹⁸ This gender segregation was not just enforced through the trials, nor was it merely enforced through the President’s review of the trials, but it was enforced for approximately four years following the 1862 War.⁹⁹ While sixteen women accompanied the Dakota men as they served prison sentences in Davenport (to work as cooks and laundresses),¹⁰⁰ the vast majority of Dakota women in custody faced long-term or permanent separation from their husbands.¹⁰¹ For example, when James Stone became Indian Agent for the “Sioux of the Mississippi” in 1865, of the 1043 Indians he counted at Crow Creek, only about 100 were men.¹⁰² And, women at both Crow Creek and Davenport were victims of rape and other forms of sexual violence perpetrated by white soldiers.¹⁰³ All these factors served to make normal family life impossible for Dakota people and to prevent reproduction. The forced gender segregation combined with the death, disease, and starvation that characterized life in exile all served to severely and effectively diminish the Dakota population.¹⁰⁴

VI. CRITERION (E) FORCIBLY TRANSFERRING CHILDREN OF THE GROUP TO ANOTHER GROUP

The last criterion delineated in the U.N. Genocide Convention involves “[f]orcibly transferring children of the group to another group.”¹⁰⁵ While this was not apparent in the immediate aftermath of the 1862 War, Indigenous children throughout the United States were subject to federally mandated boarding schools by the end of the nineteenth century.¹⁰⁶ The boarding schools were a continuation of the kind of civilizing campaigns implemented by

97. United Nations Convention, *supra* note 6, at art. II(d).

98. WAZIYATAWIN, *supra* note 6, at 57.

99. *Id.*

100. HYMAN, *supra* note 57, at 98.

101. WAZIYATAWIN, *supra* note 6, at 57.

102. Meyer says, “more than 900 of them women.” MEYER, *supra* note 11, at 153. While Hyman says, “more than nine hundred were women and children.” HYMAN, *supra* note 57, at 106.

103. HYMAN, *supra* note 57, at 107; WAZIYATAWIN, *supra* note 6, at 57.

104. WAZIYATAWIN, *supra* note 6, at 57.

105. United Nations Convention, *supra* note 6, at art. II(e).

106. WAZIYATAWIN, *supra* note 6, at 51–52.

Indian agents and missionaries, but on a massive scale. This time, however, the children were specifically targeted. Proponents believed that inculcating children in American culture and Christian values would produce more success since, unlike their parents who were firmly anchored in Indigenous ways, children could be more easily compelled to abandon those ways and embrace the teachings that would make them good American citizens.¹⁰⁷ Thus, the schools worked to erase all vestiges of indigeneity, transforming the way the children spoke, ate, prayed, worked, dressed, and played, and to supplant those ways with white ways.¹⁰⁸ Children were forced to cut their hair, speak English, attend Christian church services, and adopt the worldview and ways of the colonizers. No longer would children be raised according to Indigenous cosmologies or with the same connection to land. To compound the assaults, boarding schools were also places where physical and sexual abuse of children was rampant, setting into motion cycles of abuse within our communities from which we have not yet recovered.¹⁰⁹

While cultural eradication was not specifically adopted as one of the internationally agreed upon criteria of genocide, Raphael Lemkin, who coined the term in his 1944 volume *Axis Rule in Occupied Europe*,¹¹⁰ certainly intended otherwise. While he clearly articulated a definition of the term that included the physical annihilation of a national, religious, or racial group, his definition also included cultural annihilation.¹¹¹ The way he conceived the term, the “destruction of the specific character of a persecuted ‘group’ by a forced transfer of children, forced exile [i.e., mass expulsion], prohibition of the use of the national language, destruction of books, documents, monuments, and objects of historical, artistic or religious value,” would all constitute genocide.¹¹² Under his criteria, the boarding schools would constitute genocide not just because they involved the forcible

107. See DAVID WALLACE ADAMS, *EDUCATION FOR EXTINCTION: AMERICAN INDIANS AND THE BOARDING SCHOOL EXPERIENCE 1875–1928* (1995); HAROLD FEY & D’ARCY MCNICKLE, *INDIANS AND OTHER AMERICANS: TWO WAYS OF LIFE MEET* 110 (1959); Jorge Noriega, *American Indian Education in the United States: Indoctrination for Subordination to Colonialism*, in M. ANNETTE JAIMES, *THE STATE OF NATIVE AMERICA: GENOCIDE, COLONIZATION, AND RESISTANCE* 371–402 (1992).

108. WAZIYATAWIN, *supra* note 6, at 52.

109. *Id.*

110. CHURCHILL, *supra* note 5, at 407.

111. *Id.* at 411.

112. *Id.* (quoting NEHEMIAH ROBINSON, *THE GENOCIDE CONVENTION* (1960)).

transfer of children to another group, but also because the goal was cultural eradication.

The boarding school solution to the “Indian problem” was advocated fiercely by Carlisle Indian School founder Richard Pratt. His comments demonstrate the close connection between physical and cultural forms of genocide:

A great general has said that the only good Indian is a dead one, and that high sanction of his destruction has been an enormous factor in promoting Indian massacres. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him, and save the man.¹¹³

This genocidal philosophy has done seemingly irreparable harm to Indigenous people and communities for generations. If the harm created is reparable, over a century later, we have not yet discovered how.

For the Dakota this meant that after years of experiencing governmental assaults on land and life, by the end of the nineteenth century, a full-blown effort was underway to eradicate Dakota cultural traditions for good. To complete this genocidal task, the government worked to transfer all the children into the hands of American institutions run by the federal government.¹¹⁴ Two major boarding schools serviced Dakota students: Flandreau Indian School in South Dakota and Pipestone Indian School in southern Minnesota.¹¹⁵ Both schools opened in 1893.¹¹⁶ Tellingly, the Flandreau Indian School was originally named the Riggs Institute after the prominent missionary among the Dakota.¹¹⁷

Unfortunately, missionaries such as Stephen Riggs never escaped their white supremacism, even after spending decades among Dakota people. Instead of being the strongest advocates for justice for our people, they preached the Christian turn-the-other-cheek doctrine to pacify potential resistance in the face of

113. Richard H. Pratt, *The Advantages of Mingling Indians with Whites* (1892), in OFFICIAL REP. NINETEENTH ANN. CONF. CHARITIES AND CORRECTION 46–59 (1892), reprinted in AMERICANIZING THE AMERICAN INDIANS: WRITINGS BY THE “FRIENDS OF THE INDIAN,” 1880–1900, at 260–61 (Francis Paul Prucha ed., 1973).

114. WARD CHURCHILL, *KILL THE INDIAN, SAVE THE MAN: THE GENOCIDAL IMPACT OF AMERICAN INDIAN RESIDENTIAL SCHOOLS* (2004).

115. See BRENDA CHILD, *BOARDING SCHOOL SEASONS: AMERICAN INDIAN FAMILIES, 1900–1940*, at 7 (1998).

116. See *Chronology of Events—Flandreau Indian School*, FLANDREAU INDIAN SCH., <http://www.fis.bie.edu/ChronologyOfEvents.pdf> (last visited October 25, 2012).

117. *Id.*

America's cruelest crimes. For example, amidst the suffering at Fort Snelling, on April 21, 1863, the Reverend Riggs wrote to his brother as the military was preparing for Dakota removal out of our homeland:

On Sabbath afternoon I preached to a mass meeting in the camp—the largest I ever preached to—on the benefits to be derived from suffering. I told them that we had been for several years thinking of how we could get the Gospel to the Yankton Dakotas. Now the Lord was opening the way in a manner none of us had thought of.¹¹⁸

In his mind, the ethnic cleansing of Dakota people was God's work, as it would afford the missionaries a new population to convert and bring to the light of civilization. In light of such thinking, it is imperative to understand the connections between physical and cultural eradication.

VII. THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

On September 13, 2007, the General Assembly of the United Nations adopted the Declaration on the Rights of Indigenous Peoples with an overwhelming majority.¹¹⁹ Not surprisingly, settler-colonial countries with subjugated Indigenous populations still struggling for self-determination were the only ones to initially vote against the declaration.¹²⁰ This included the United States, Canada, New Zealand, and Australia, though all have since rescinded their previous positions.¹²¹ The declaration affirms both the individual and collective rights of Indigenous peoples for the world's 370

118. Letter from Reverend Riggs to S.B. Treat (Apr. 21, 1863), *in* MONJEAU-MARZ, *supra* note 56, at 104.

119. United Nations Declaration on the Rights of Indigenous People G.A. Res. 61/295, U.N. Doc. A/RES/295 (Sept. 17, 2007) [hereinafter United Nations Declaration]; WAZIYATAWIN, *supra* note 6, at 4.

120. See Valerie Taliman, *United Nations Approves Indigenous Declaration*, INDIAN COUNTRY (Sept. 14, 2007), <http://indiancountrytodaymedianetwork.com/2007/09/14/united-nations-approves-indigenous-declaration-27372> ("The main objections of these countries centered on indigenous peoples' control over land and resources, their right to self-determination, and that the declaration might give indigenous peoples veto authority over development on their lands and territories.")

121. See Valerie Taliman, *Obama Adopts U.N. Manifesto on Rights of Indigenous Peoples*, WASH. TIMES (Dec. 16, 2010), <http://www.washingtontimes.com/news/2010/dec/16/obama-adopts-un-manifesto-on-rights-of-indigenous-/?page=all>.

million Indigenous people and has been viewed as a means to help prevent human rights violations and combat discrimination. Article 8 of the Declaration is particularly relevant to the discussion of Minnesota history.¹²² It states:

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.¹²³

All of these actions were conducted by the U.S. government and its citizens against Dakota people in the nineteenth century. White Minnesotans perpetrated actions that sought to destroy our culture, deprive us of integrity, dispossess us of our lands, and incite racial discrimination against us. As I have written previously, “Article 8 of the Declaration directly challenges Minnesota’s right to establish itself at the expense of Indigenous Peoples. It dictates that the United States (as the State) and Minnesota have an obligation to acknowledge and ensure some kind of reparative justice for these harms.”¹²⁴ The Declaration argues against the expendability of Dakota people.¹²⁵

122. United Nations Declaration, *supra* note 119, at 5; WAZIYATAWIN, *supra* note 6, at 5.

123. United Nations Declaration, *supra* note 119, at 5; WAZIYATAWIN, *supra* note 6, at 4–5.

124. WAZIYATAWIN, *supra* note 6, at 5.

125. *See id.*

VIII. BUT WHERE ARE THE TEETH?

In the colonial context of the mid-nineteenth century when America was still in its expansionist frenzy, how were Dakota people supposed to find justice for all the wrongs that continued to be perpetrated by the U.S. government and its citizens? How were they to hold the United States accountable for violation of its treaties? How were they to hold the swindling traitors accountable for their fraudulent accounting practices? How were they to feed their families amidst depleting game and encroaching settlers? How were they to live side-by-side with a people who would advise them, "If they are hungry, let them eat grass or their own dung?" How were they supposed to contest the theft of our homeland? In a colonial context, there is no justice for the colonized. The choice was to accept subjugation, the eradication of everything Dakota, and a status as a racially inferior human being, or to seek freedom and perhaps die trying.

From the Dakota perspective, people who risk their lives in the name of justice and freedom are the most righteous. My *unkanna* Eli Taylor relayed this about the Dakota men who were hanged:

Wicahcadakiya oke wicayapi, hena maka tehindapi.

They hanged some old men, those who cherished the earth.

Tokatakiya takozakpaku cincap hena tak sanpa hena makak tehindapi.

Their future grandchildren's children will cherish the earth even more.

Hena oke wicayapi.

They hanged them.

Etanhan tokatakiya wanna hena wowaste ecunpi hena.

They have blessed the future now.

Hena tak sica ecunpa oke wicayapi sni.

They were not hanged for doing anything bad.

Hena taku wowaste un t'api he wowastek he tuweda kapeya sni.

They died for doing good, no one can compare to what they died for.

Wowaste un hena otkewicayapi.

For that righteousness they were hanged.

Okicize ekta yek hena wowastek un hena wicaktepi.

They killed the ones who went to war for that
righteousness.¹²⁶

The righteousness of fighting for our people and our land in the context of the colonial project was also expressed by at least one of the men who would swing from the gallows. Sometime before he was hanged in 1865, Little Six told Colonel Robert N. McLaren: “I am not afraid to die. When I go into the spirit world, I will look the Great Spirit in the face and I will tell him what the whites did to my people before we went to war. He will do right. I am not afraid.”¹²⁷

In the twenty-first century, Dakota people are still asking the same questions about how to achieve justice and, at least some of us, still maintain a firm sense that our struggle is just and that our struggle is righteous. But, what must we do to achieve it? In spite of the passage of this U.N. Declaration and, theoretically, international support for the case that Dakota people would have against the U.S. government, in many ways we are faced with the same dismal prospect for justice because the colonial context has not changed. Our land is still stolen, the bulk of our population still lives in exile, we are still fighting against cultural eradication, and colonizer interests are always given precedence over Indigenous interests. As Dakota people today, how do we seek justice any more effectively than our ancestors did in 1862? Because none of the injustices have been righted, 150 years after the U.S.-Dakota War that launched Minnesota’s campaign of genocide against Dakota people, we are still treated as an expendable population within our homeland of *Minisota Makoce* (Land Where the Waters Reflect the Skies).

126. WAZIYATAWIN ANGELA WILSON, REMEMBER THIS! THE DAKOTA DECOLONIZATION AND THE ELI TAYLOR NARRATIVES 186 (Wahpetunwin Carolyn Schommer trans., 2005).

127. DIEDRICH, *supra* note 30, at 94.