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Richard Clemmer-Smith, George E. Tinker, Alan Gilbert, Nancy D. Wadsworth, David Fridtjof Halaas, Billy J. Stratton, and Steven Fisher

**REPORT OF THE JOHN EVANS
STUDY COMMITTEE
UNIVERSITY OF DENVER**



November, 2014
Denver, Colorado

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Executive Summary of Findings

This report is the outcome of a yearlong inquiry by the University of Denver John Evans Study Committee, a volunteer group of faculty, outside historians, descendant community representatives, and students and alumni representing the DU Native American community, into the role of the University of Denver's founder in the Sand Creek Massacre of November 29, 1864. The findings are offered, in part, as a supplement, but also a response to a similar inquiry conducted by Northwestern University, also founded by John Evans. We submit the present document not as an academic trial of Evans in absentia according to today's legal standards and conceptions of human rights, but rather in the spirit of an effort to assess a legacy that neither university has, until this year, made the effort to understand. Such a task requires that the decisions and actions that John Evans undertook be situated in the context of the ideas, policies, expectations, and principles of territorial leadership evident in the mid-nineteenth century American West.

In his role as territorial governor from 1862 until his forced resignation in the summer of 1865 John Evans held the position as the top civil and political official in Colorado Territory. This position was coterminous with the assignment as Ex Officio Superintendent of Indian Affairs. After a review of the roles and duties and responsibilities attendant to the superintendency, we compare the circumstances Evans faced and the leadership he evinced with that of contemporaneous officials in two adjacent territories, Nevada and Utah. This is followed by an analysis of Evans's leadership in the crucial period of late-1863 until the massacre in November 1864. We attend in particular to the nature and direct impact of the two proclamations

he issued as governor; his actions at the Camp Weld Council in September, wherein Native leaders attempted to broker a peace; and his decisions to surrender territorial authority to the military in the late summer of 1864.

We conclude that John Evans's pattern of neglect of his treaty-negotiating duties, his leadership failures, and his reckless decision-making in 1864 combine to clearly demonstrate a significant level of culpability for the Sand Creek Massacre. While not of the same character, Evans's culpability is comparable in degree to that of Colonel John Chivington, the military commander who personally planned and carried out the massacre. Evans's actions and influence, more than those of any other political official in Colorado Territory, created the conditions in which the massacre was highly likely. Evans abrogated his duties as superintendent, fanned the flames of war when he could have dampened them, cultivated an unusually interdependent relationship with the military, and rejected clear opportunities to engage in peaceful negotiations with the Native peoples under his jurisdiction. Furthermore, he successfully lobbied the War Department for the deployment of a federalized regiment, consisting largely of undertrained, undisciplined volunteer soldiers who executed the worst of the atrocities during the massacre.

It is certainly difficult for the University of Denver and the surrounding Colorado community to confront this history. John Evans was a man of many proud accomplishments, a visionary leader whose influence shaped the university, the city of Denver, and the state of Colorado. This committee's hope is that by understanding our founder's role in this catastrophic event we can

unite as a community and begin to forge a new relationship to the past for the benefit of the public good. We offer this report as an initial step to promote empathy and healing, not only for those of us who have inherited this complex legacy, but

also for the Arapaho and Cheyenne people, who have displayed an active sense of presence in the face of victimization and, lest we forget, on whose ancestral lands our campus sits.

Committee Charge and Context

John Evans (1814-1897) was a man of many talents and an important figure in the histories of Euro-American settlement in Illinois and Colorado. A physician by training, over the course of his lifetime he was also a professor of medicine, a founder of hospitals and medical societies, an innovative businessman, a tireless institution builder, and a passionate advocate of general public education and higher learning. He was a central figure in the founding of two private universities: Northwestern University in Evanston, Illinois (1851), and the Colorado Seminary, which later became the University of Denver (1864). He served as the first board president of both universities, and chaired the Colorado Seminary Board of Trustees until his death.

Evans devoted significant time and resources to public service, as an alderman in Chicago, a delegate to the 1860 Illinois state Republican convention, and an acquaintance and appointee of President Abraham Lincoln. In 1862, Evans was sworn in as the second Governor of Colorado Territory, which also came with the position of ex officio Superintendent of Indian Affairs. Evans's many achievements garnered him great respect and admiration—which is reflected by the honorary names of Evanston, Illinois, and Evans, Colorado, the 14,000-foot Mt. Evans in the Rocky Mountains, and the numerous streets and parks that also bear his name.

After his political career in Colorado, Evans became an influential figure in the development of Colorado's railroads. Envisioning Denver as the future hub of this new and speedy form of transportation, Evans secured the federal land grants and county bonds necessary to the creation of the Union Pacific railway line connecting

Cheyenne to Denver, a route that opened on June 24, 1870. Evans continued to be the main financier of Colorado's railroad empire, a project he was to which he was deeply devoted for the rest of his life. The Denver & South Park, Denver & New Orleans, Denver Texas & Gulf, Union Pacific, and Boulder Valley lines were all made possible by John Evans's vision and capital investments. Denver's claim to be the commercial capital of the Rocky Mountain Empire could finally be substantiated by the end of the nineteenth century, due in large part to the efforts of Evans.

Report Context

Although much has been written about the details noted above, this report concentrates instead on the fateful decisions and events that took place over a mere span of four years that mark some of the darkest moments in American frontier history. On November 29th, 1864, just two weeks after the Colorado Seminary opened its doors, an infamous event that became known as the Sand Creek Massacre occurred, resulting in the deaths of an estimated two hundred peaceful Cheyenne and Arapaho people who believed they were safely camped under protection of the American flag.¹ Many of the dead left strewn upon the land that day were women, children, and the infirm. As a direct result of the findings of a congressional inquiry into the leadership and decision making that preceded the massacre, Evans was forced to resign from his governorship less than eight months later. Although Evans went on to lead many successful business and civic initiatives, he

1 <http://www.nps.gov/sand/historyculture/index.htm>

was never able to revive his political career out of the pall cast by the massacre at Sand Creek.

John Evans's influence has long been maintained as a vital element of our institutional memory and sense of identity here at the University of Denver. Given that the information assembled in this report will necessitate a reevaluation, or at the least a more complex understanding, of Evans's legacy, it is incumbent upon us to contextualize the necessity and timing for such an inquiry.

Until last year neither of the universities John Evans was instrumental in founding had taken a systematic look at his role in the Sand Creek Massacre or his handling, as the appointed governor, of settler-Indian relations in the years leading to this horrific event. Nor had these events been the subject of much critical examination by historians. Beginning in 2013, on the eve of the 150th anniversary of this event, both universities finally decided that the time had come. The effort got its initial start in the fall of 2012 when students at Northwestern urged their university leaders to frankly and honestly address the role that John Evans had played in the Sand Creek Massacre and the process of Indian removal more broadly. (Such histories were understandably obscure as they were much further removed from the Northwestern community's public discourse than they have been in Colorado, where the events occurred.) In February of 2013, Northwestern University Provost Daniel Linzer appointed an interdisciplinary committee of senior scholars consisting of four from within Northwestern and three (initially; later four) from other universities, to examine in detail Evans's relationship to the massacre.² (At the time of this group's

constitution, Northwestern did not have any specialists in Native American history or culture.)

Shortly after the John Evans Study Committee at Northwestern was formed, a faculty member contacted a colleague at the University of Denver to see if a similar effort was planned at DU. None was at the time, but in February, 2013, Dr. Dean Saitta, Chair of the Department of Anthropology at DU, reached out to other faculty with interests and expertise in Native American culture and history. By early April, several faculty had met with Provost Gregg Kvistad and then-Chancellor Robert Coombe to discuss conducting a similar faculty-led inquiry at DU. The provost and chancellor met the proposal with somber enthusiasm. It was agreed that such an inquiry would be of significant value and interest to the University of Denver community as the institution's sesquicentennial celebration also coincided with this event. It was also suggested that others be invited, some of whom were able to join the committee. The University of Denver's John Evans Study Committee was not directly appointed by the provost, but rather comprised of faculty from departments across the university who offered to contribute research, scholarship, and time investigating Evans's role in the massacre, while also being charged with the responsibility to author a set of recommendations to the administration on how our community can respond this history in a positive, honest, and inclusive way. The provost and chancellor agreed to provide financial support for some of committee's activities, but as a whole the group has conducted its research and writing independently of administrative oversight. Consequently, this report represents the findings and critical insights of the committee itself, and not the University of Denver writ large, though we hope that our words will contribute to and encourage important intra- and cross-university conversations.

2 Report of the John Evans Study Committee, Northwestern University (RJESCNU), 10; Alan K. Cabbage, "John Evans Study Committee Formed," Northwestern University website, February 14, 2013, <http://www.northwestern.edu/newscenter/stories/2013/02/john-evans-study-committee-formed.html>.

Composition and Charge

Some differences in the organization and objectives of the university committees are worth noting.

At Northwestern, the eight appointed scholars were charged with conducting research and reporting their findings regarding Evans's role in the events surrounding and consequences of the massacre.³ The committee conducted research over the 2013-14 year and released their "Report of the John Evans Study Committee" in May 2014.

A second committee was originally to be appointed after the report came out, to make recommendations on the basis of the report's conclusions. However, a surge of campus and public interest in the report process and other issues of concern to Native American communities, students, and scholars led to an open forum at the university in October 2013. In the wake of that conversation, Northwestern's president decided to fast-track the "task force" committee, with the goal of "making recommendations for ways that Northwestern can define more clearly the University's relationships with Native Americans in the areas of academic programs, admissions, support services, and civic engagement and partnerships, as well as respond to the recommendations of the study committee."⁴ The Native American Outreach and Inclusion Task Force, comprised of 19 students, faculty, and members from other universities and organizations, is expected to release its recommendations in the fall of 2014.⁵

At the University of Denver, the sesquicentennial (150th) anniversary of the university occurs in the same year as the 150th anniversary of the Sand Creek Massacre. Therefore,

with less than eighteen months to research the role of Evans and prepare for commemoration of both events, the DU John Evans Study Committee created an organizational structure with the aim of addressing several simultaneous challenges related to commemorating our founding history. This resulted in three subcommittees, one to conduct research and report on Evans's role in the massacre; another to organize events and exhibits related to our institutional history, in preparation for the commemorations; and a third to review how other universities have engaged in similar efforts and consider how to productively address troubling historical events as part of an educational process within our community. As of today, the DU committee consists of eleven faculty members, two outside historians, six Sand Creek Massacre descendant community representatives, and a group of undergraduate, graduate, and alumni representatives of the DU Native American community. (See <http://portfolio.du.edu/evcomm>, as well as the John Evans Study Committee Recommendations document for members list.)

The interdisciplinary research subcommittee has produced this report. The umbrella group of faculty, students, and Sand Creek Massacre descendants has contributed to the recommendations. The recommendations are based on the findings of the report as well as the conversations our entire group had over the yearlong sequence of meetings from September 2013 to October 2014.

Aside from a shared visit to the Sand Creek Massacre National Historic Site and related historical sites in Denver in August 2013, as well as some mutual updates along the way, the two university committees conducted entirely separate investigations.

3 RJESCNU, 9.

4 President Martin Schapiro, "Second John Evans Committee to Be Formed," *The Daily Northwestern*, November 1, 2013.

5 Tyler Pager, "Task force to study Native American community, make recommendations," *The Daily Northwestern*, April 22, 2014.

Participation of Descendant Communities

Another unique feature of the University of Denver is its historical relationship with the United Methodist Church. John Evans, Colonel John Chivington, and many of the founding board members of the Colorado Seminary were ardent Methodists and lay leaders in the church in Denver. (Chivington was also a Methodist minister.) Since the mid-1990s, the Methodist Church has sponsored a series of initiatives aimed to increase understanding of the involvement of their members in events related to the Sand Creek Massacre and the Church's relationships with American Indians more broadly. These efforts have resulted in a number of formal actions, including an expression of regret at the United Methodist General Conference in 1996; a substantial monetary contribution to the National Park Service in 2011, earmarked for a research center at the Massacre National Historic Site; the commission in September 2013 of a comprehensive report on the role of the United Methodist Church in the Sand Creek Massacre, to be released in 2015;⁶ and a two-day spiritual pilgrimage and teach-in at the Sand Creek Massacre National Historic Site in July 2014. Furthermore, the Iliff School of Theology, a United Methodist Church education institution with several graduate programs and a seminary component, has also begun inquiries into its connection with Sand Creek Massacre history.

Through these substantial institutional initiatives, the administration and faculty of Iliff

and the University of Denver, as well as officials with the United Methodist Church, have been made aware of the importance of including the Cheyenne and Arapaho Sand Creek Massacre descendant communities in any efforts to address or represent this history. The nations of the Northern Cheyenne Tribe of Montana, the Northern Arapaho Tribe of Wyoming, and the Southern Cheyenne and Arapaho Tribes of Oklahoma each have formal representatives who are direct descendants of those who perished at or survived the massacre. As with any community that has survived genocidal campaigns against them, Arapaho and Cheyenne descendants have vital concerns about how their history, images, artifacts, and perspectives are represented by outsiders through inquiries, memorials, official commemorations, and the like.

When the John Evans Study Committee was established at DU, our members supported the direct input and involvement of descendant representatives in our discussions about how to address our institution's role in these historical events, and how to productively move forward. (NU's committee solicited input from the tribes in writing, but did not work directly with the massacre descendant representatives.) Chancellor Coombe and Provost Kvistad agreed that tribal consultation was important and provided travel funding to enable descendant representatives to attend one meeting per quarter during the 2013-14 academic year. While the tribes were not directly involved in the writing of the research report, their feedback has been solicited regarding the events, activities, and the process of developing recommendations for our campus community. In short, they have been consistently apprised of our efforts every step of the way and their perspectives on the process have been valued. The stories they have shared of their ancestors' experiences and their perspectives on memory, trauma, and cultural persistence have been indispensable to our work.

6 Chris Herlinger, "Methodists express repentance for massacre of Native Americans," *Ecumenical News International*, May 13, 2011, on PCUSA website. <https://www.pcusa.org/news/2011/5/13/methodists-express-repentance-massacre-native-amer/>. Accessed September 27, 2014; Colleen O'Connor, "Bishop Explores role of United Methodist Church in Sand Creek Massacre," *The Denver Post*, June 18, 2014. http://www.denverpost.com/news/ci_25983903/bishop-explores-role-united-methodist-church-massacre Accessed September 27, 2014.

The DU Report and its Contribution to Increased Dialogue and Inclusiveness

After the Northwestern committee released its findings in May, the John Evans Study Committee at DU decided that the most productive of all options was to design our report as a contribution that could function in dialogue with the NU report, such that interested readers could read the two documents side by side and come to their own conclusions. We hope that the totality of the two reports will generate courageous conversations between our two universities that are imperative for greater understanding about this chapter in our shared history. More importantly, however, we hope that from our modest efforts we can forge a new relationship with Arapaho and Cheyenne people, and Native people in general, that is based up on the principles of mutual respect, healing, and peace.

The Northwestern scholars produced a rigorous and systematic study of John Evans's actions as a government official during the time surrounding the Sand Creek Massacre. The report provides a robust analysis of Evans's responsibilities and failures during the critical period and, perhaps most significantly, contextualizes his leadership in light of the complex array of political and economic circumstances, shifting policies, relationships with diverse leaders, unpredictable events, and cultural factors facing him. In these ways the report offers a critical contribution to the academic knowledge not just of Colorado territorial history and the place of the Sand Creek Massacre within it, but also to our understanding of U.S.-Native relations⁷ in the mid-nineteenth

century. Contrary to many media accounts, the NU report does not "exonerate" Evans, but rather identifies many of the key errors, disastrous decisions, confusions, and moral lapses, which our committee agrees are crucial to understanding Evans's role in Sand Creek Massacre history. We are grateful for the hard efforts of our fellow scholars.

The DU committee members agree with much of the content of the Northwestern report; thus, there is no reason to produce a similar account of the events covered in their report. Instead, we decided to focus our analysis on the reasoning and conclusions with which we differ. All efforts to understand human history entail interpretations of complex information and thereby require humility before a task that will necessarily produce imperfect results. What matters most is whether the research and analysis were conducted responsibly and according to the highest standards of academic research and scholarly production. Even renowned experts can have profound disagreements about what the facts of a given event reveal. Our overall assessment is that while many of the NU report's major conclusions point to Evans's culpability in the massacre, they stop short of directly stating as much and, indeed, leave openings through which ambiguous conclusions are made possible. We believe that further close analysis of Evans's duties as Superintendent of Indian Affairs, of events in 1863-64 in which he was the primary decision maker, and a comparison of his and adjacent territorial executives' leadership reveal more distinctly the unfortunate nature of his failings and ultimate culpability.

As will be evident, we do not argue that Evans co-conspired with Colonel Chivington to massacre the Arapaho and Cheyenne bands camped outside Fort Lyon in 1864, nor that he anticipated what would eventually happen. No known evidence exists to suggest this. However, given the responsibilities, power, and influence Evans had in the offices and positions he held,

7 Indigenous people in what is now called the United States were not granted citizenship until The Indian Citizenship Act of 1924, so the term Native-American is not quite fitting for the nineteenth century context. We mostly use the term Native peoples, Cheyenne and Arapaho (for the specific tribes on which we focus), tribes, or nations.

culpability for the fact that the massacre occurred does not depend upon his having direct knowledge of the military plans or having had to order the assault directly. The federal investigations into the Sand Creek Massacre came to similar conclusions in 1865, less than a year following the event. After careful review of the archives, our assessment does not differ greatly from theirs, though hopefully we have provided a deeper degree of analysis and a more nuanced understanding of the cultural, social and historical contexts out of which the Sand Creek massacre materialized.

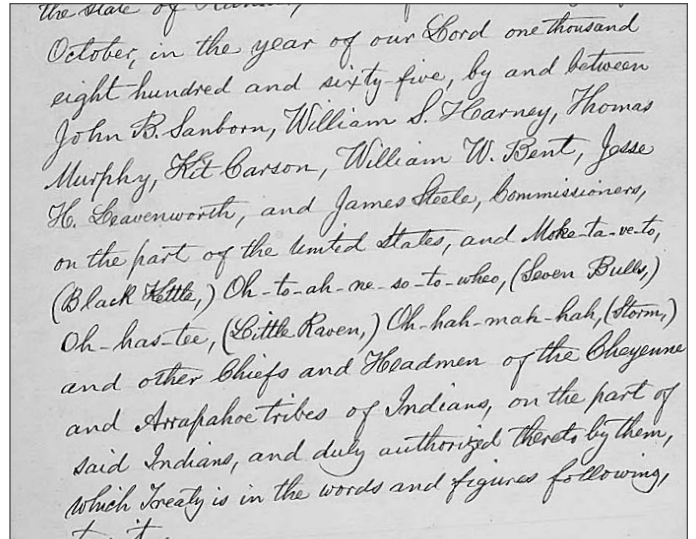
If both university committees accomplished their tasks, these reports will raise more questions for consideration than either can possibly hope to answer. The story of the Sand Creek Massacre goes far beyond any single individual or group who may be responsible in one way or another. Although the Sand Creek Massacre is unique in ways all of us must understand, it is only one among dozens of other massacres perpetrated against Native peoples by American settlers over the centuries, which were justified by many, according to the driving

imperatives of progress and civilization that took the form of Manifest Destiny. These events as well as less directly violent forms of attack, removal, and erasure of indigenous peoples in the United States and other nations settled by Europeans are reflective of a worldview and attendant policies that were systematically instituted to diminish the ways of life of another. In the context of this deeply fraught history—the larger history with which all Americans born of settler generations must contend, because we have benefitted directly and indirectly from it—John Evans was no more to blame than many other leaders who saw no place for Native people to be integrated in American culture. But as the leader who founded our universities and who played a pivotal role with regard to this massacre, we must face our responsibility to the past so that an understanding of the totality of our shared history (and not just the best and brightest of Evans’s contributions) can lead us to a better and more inclusive understanding of the past and present by which we can actualize a more just future.

Massacre At Sand Creek

The United States government has never denied responsibility for the massacre committed by U.S. Volunteer troops on peaceful Cheyenne and Arapaho encamped at Sand Creek, Colorado Territory, on November 29, 1864. By Article 6 of the Treaty of the Little Arkansas, negotiated on October 14, 1865, ratified May 22, 1866, and proclaimed February 2, 1867:

The United States being desirous to express its condemnation of, and, as far as may be, repudiate the gross and wanton out-rages perpetrated against certain Bands of Cheyenne and Arrapahoe Indians, on the twenty-ninth day of November, A.D. 1864, at Sand Creek, in Colorado Territory, while the said Indians were at peace with the United States, and under its flag, whose Protection they had by lawful authority been promised and induced to seek, and the Government being desirous to make some suitable reparation for the injuries then done, will grant three hundred and twenty acres of land by patent to each of the following-named chiefs of said bands, viz: Moke-ta-to, or Black Kettle; Oh-tah-ha-ne-so-weel, or Seven Bulls; Alik-ke-home-ma, or Little Robe; Moke-tah-vo-ve-hoe, or Black White Man; and will in like manner grant to each other person or said bands made a widow, or who lost a parent upon that occasion, one hundred and sixty acres of land, the names of such persons to be ascertained under the direction of the Secretary of the Interior; Provided, That said grants shall be conditioned that all devises, grants, alienations, leases, and contracts relative to said lands, made or entered into during the period of fifty years from the date of such patents, shall be unlawful and void. Said lands shall be selected under the direction of the Secretary of the Interior within the limits of country hereby set apart



Treaty of Little Arkansas River, October 14, 1865 (Ratified Indian Treaties #341, 14 STAT 703) between the U.S. and Arapahoe and Cheyenne Indians (Black Kettle Band) granting lands in reparation for the Sand Creek Massacre, November 29, 1864., 11/29/1864 - 10/14/1865 | [research.archives.gov](https://www.research.archives.gov)

as a reservation for the Indians parties to this treaty, and shall be free from assessment and taxation so long as they remain inalienable. The United States will also pay in United States securities, animals, goods, provisions, or such other useful articles as may, in the discretion of the Secretary of the Interior, be deemed best adapted to the respective wants and conditions of the persons named in the schedule hereto annexed, they being present and members of the bands who suffered at Sand Creek, upon the occasion aforesaid, the sums set opposite their names, respectively, as a compensation for property belonging to them, and then and there destroyed or taken from them by the United States troops aforesaid.¹

1 Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties, vol II, Treaties*, "Treaty with the Cheyenne and Arapaho, 1865" (Washington, D.C., Government Printing Office, 1904): 889.

At the treaty camp on the Little Arkansas, October 12, 1865, General J.B. Sanborn, president of the peace commission addressed the assembled chiefs in that condescending language that always infuriated Indian leaders:

Chiefs and headmen of the Cheyenne and Arapaho nations: I desire, as president of this commission, to express our gratification in meeting you in a friendly manner at this time. Your Great Father at Washington has heard bad rumors concerning your treatment. He has chosen and appointed us as his representatives to come and confer with you as to your condition in future. From rumors that have reached his ears, he has become satisfied that great wrongs have been committed without his knowledge at the time. He has heard that you have been attacked by his soldiers, while you have been at peace with his government; that by this you have met great losses in lives and property, and by this you have been forced to make war. All this he disapproves of, and the people of the whole nation agree with him. He has sent out his commissioners to make reparation as far as we can, to make good this bad treatment; also to establish terms of peace in future, by which you can live in the future in peace with all the whites. We wish, therefore, in the first instance, to agree that we may always live in peace. We are willing, as representatives of the President, to restore all the property lost at Sand Creek, or its value. So heartily do we repudiate the actions of our soldiers, that we are willing to give to the chiefs in their own right three hundred and twenty acres of land, to hold as his own forever, and to each of the children and squaws, who lost husbands or parents, we are also willing to give one hundred and sixty acres of land, as their own, to keep as long as they live. We are also willing that they receive all money and annuities that are due them, although they have been at war with the United States. We have come to do that which will result in their great good. Our nation has become great and our people are as numerous as the stars. We all feel disgraced and ashamed when we see our officers or soldiers

oppressing the weak, or making war on those that are at peace with us.²

In addition to the Treaty of the Little Arkansas, two congressional committees and a military commission investigated Sand Creek and pronounced it an unprovoked massacre of mostly women, children, babies, and the elderly.³ The powerful Joint Committee on the Conduct of the [Civil] War, chaired by Sen. Benjamin Wade, acknowledged that the Cheyennes and Arapahos gathered at Sand Creek were under the protection of the U.S. flag, and that when the soldiers attacked Cheyenne chief Black Kettle “ran up to the top of his lodge an American flag. . . with a small white flag under it, as he had been advised to in case he met with any troops on the prairie.”⁴

Yet the troops attacked: “From the sucking babe to the old warrior, all who were overtaken were deliberately murdered. Not content with killing women and children, who were incapable of offering any resistance, the soldiers indulged in acts of barbarity of the most revolting character; such, it is hoped, as never before disgraced the acts of men claiming to be civilized.”⁵ The committee concluded that “for the purpose of vindicating the cause of justice and upholding the honor of the nation, prompt and energetic measure should be at once taken to remove from office those who have thus disgraced the government by whom they are employed, and to punish, as their crimes deserve, those who have been guilty of these brutal and cowardly acts.”⁶

2 *Report of the Commissioner of Indian Affairs for the Year 1865* (Washington: Government Printing Office): 517.

3 For a convenient compilation of these investigations, see John M. Carroll, *The Sand Creek Massacre: A Documentary History* (New York: Sol Lewis, 1973).

4 Senate Report No. 142, “Massacre of Cheyenne Indians,” 38th Cong., 2nd Session, *Report of the Joint Committee on the Conduct of the War*, 3 vols, Washington D.C.: Government Printing Office, 1865 in Carroll, *The Sand Creek Massacre*, 5.

5 *Ibid.*, 5-6.

6 *Ibid.*, 8.



Following orders | Original painting, Brent Learned, Cheyenne and Arapaho descendant.

Most recently, in September 2014, in a decision rendered by Justice Philip A. Brimmer in the United States District Court For the District of Colorado, the United States, the Department of the Interior, and the Bureau of Indian Affairs acknowledged that “in all of American history there is no episode more contemptible nor more abhorrent than the depredations of the United States cavalry on the banks of Sand Creek in Colorado Territory during the early morning hours of November 29, 1864. The Sand Creek Massacre was a tragedy and a disgrace.”⁷

Strong words, certainly. Yet, the reparations promised by the Treaty of the Little Arkansas remain unpaid. Today, Sand Creek remains an open wound for the Cheyenne and Arapaho peoples. Since 1999, the Northern Cheyenne Tribe of Montana, the Northern Arapaho Tribe of Wyoming, and the Cheyenne and Arapaho Tribes of Oklahoma participate in the Sand Creek Massacre Spiritual Healing Run/Walk, a running relay from the Sand Creek Massacre National

⁷ *Civil Action No. 13-cv-01836-PAB-CBS in the United States District Court for the District of Colorado*, by Judge Philip A. Brimmer, September 4, 2014.

Historic Site, near Eads, Colorado, to the west capitol steps in Denver, a distance of 187 miles that approximates the route taken by the plunder-laden soldiers on their return to Denver following the massacre.

To fully understand the culpability of Territorial Governor John Evans it is necessary to know what happened on November 29, 1864.

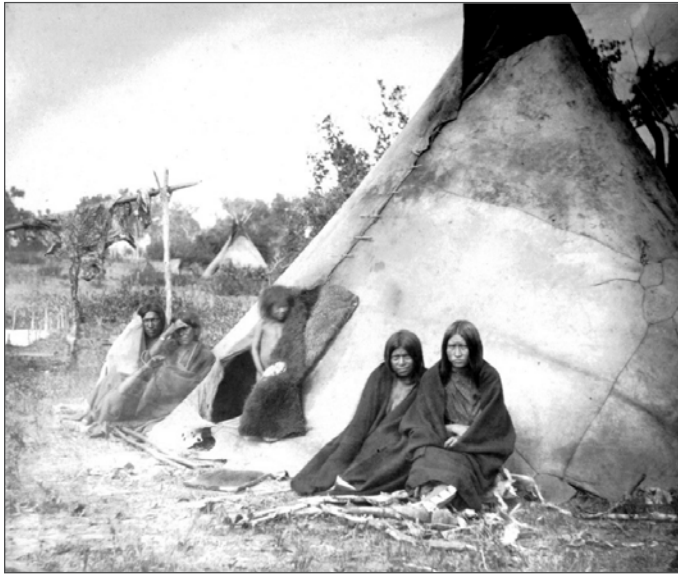
November 29, 1864

The day dawned clear and cold. The encampment of about 750 Cheyennes and Arapahos spread out in family and clan groups along the east bank of the Big Sandy—Sand Creek to history.⁸ This was a chiefs’ camp. Present were at least fourteen chiefs of the Cheyenne Council of Forty-Four, the governing body of the Cheyenne nation, but with sub-chiefs and society headmen, the total of Cheyenne leaders present in the village probably reached over thirty. In addition, two Arapaho chiefs with their bands had joined the Cheyennes. Because it was a chiefs’ camp, very few men of fighting age were in the village, certainly not over two hundred. Women and children, orphans and the elderly—these attached themselves to the chiefs, who, as chiefs always did, provided them food and protection.

The village was already alive. Women moved over cook-fires and fed their babies, boys tended the large pony herds grazing to the west and south of the village, girls sought fresh water and wood, men looked after their favored split-eared ponies hobbled near their lodges or busied themselves with daily ceremonial rituals, still others slept in their buffalo robes. Although attacks from traditional enemies always threatened, no one expected an attack from the U.S. army. Weeks earlier Cheyenne council chief Black Kettle and Arapaho chief Left Hand had negotiated a truce

⁸ George E. Hyde to George Bird Grinnell, 11/10/1914, 1/22/1915 [enclosure], Folder 51A, *George Bird Grinnell Papers*, Southwest Museum [now housed at the Autry Museum of Western History].

arrangement with Major Edward W. Wynkoop and his replacement, Major Scott J. Anthony, commanders at nearby Fort Lyon. Anthony told them “they might go back on Sand Creek...and remain there until I received instructions from the



A typical Arapaho campsite | Denver Public Library

department headquarters, from General Curtis... They went away with that understanding, that in case I received instructions from department headquarters I was to let them know it.”⁹ Sand Creek was a safe place.

Then, suddenly, between first light and daybreak, came a heavy rumbling sound. Some women joyously cried out, “Buffalo!”, for the camp badly needed fresh meat. Buffalo had not be sighted or hunted for weeks, not since the village had moved over from the Smoky Hill River to the bleak, sandy plains of Sand Creek; and the “prisoner rations,” issued by the army earlier, never more than moldy hardtack and wormy bacon, had long run out.

But quickly the people identified the sound as approaching horse soldiers. Rifle fire cracked. Panic erupted as women, children, mothers with babes in arms, the old and infirm began to flee northward upstream away from the charging

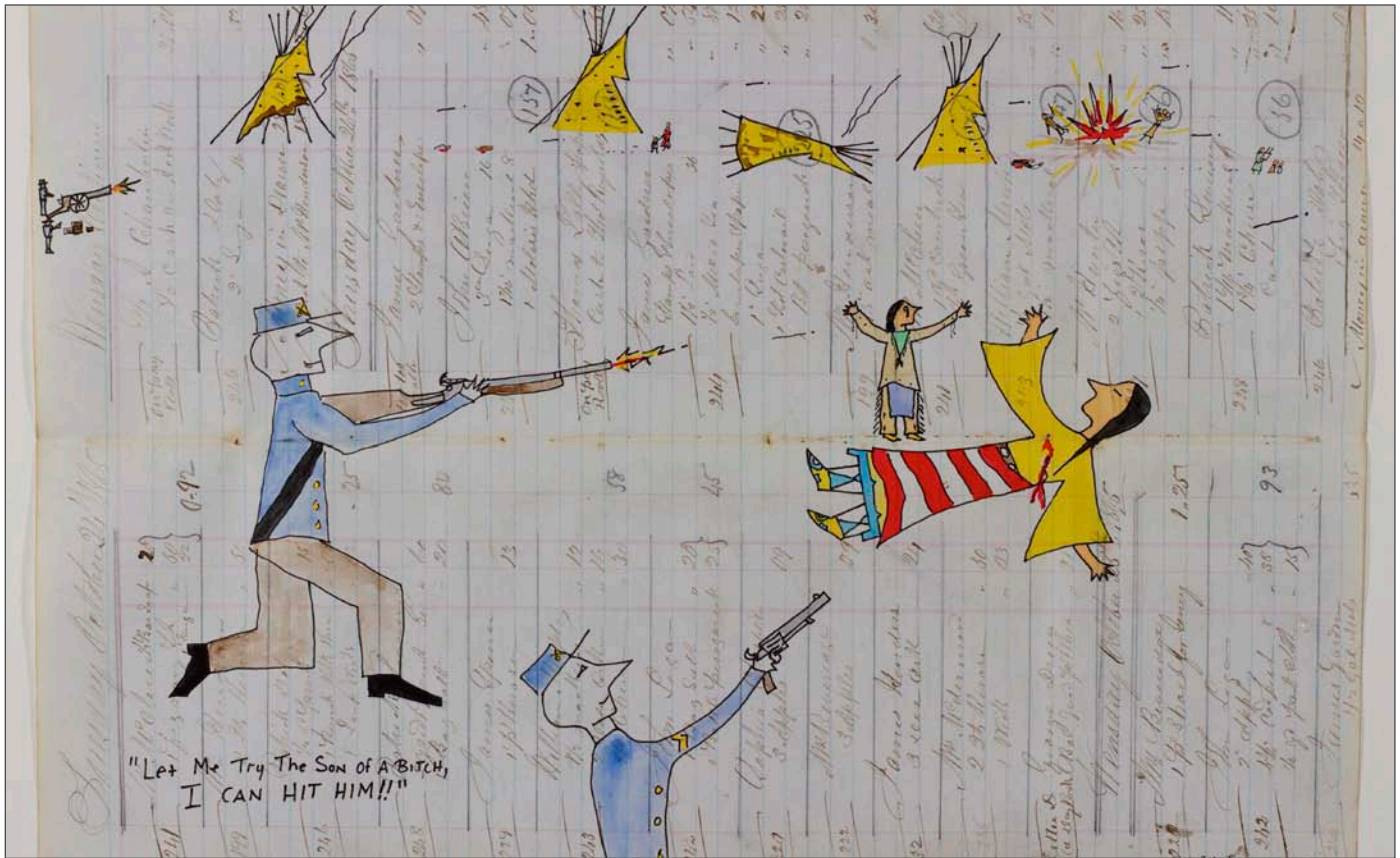
9 Carroll, *Massacre of Cheyenne Indians*, 4-5.

troopers. In the middle of the encampment, Chief Black Kettle raised an American flag, a white cloth beneath it, shouting for the people not to be afraid. A small group gathered around him, but as the firing increased it was plain the soldiers had come not in peace but to kill them. Men of fighting age scrambled for their weapons, a few rifles and pistols, but mostly bows and arrows, shields, and lances. Little Bear, a twenty-year-old Cheyenne, had been out to the herds looking for his horses when he heard the firing. As he ran back toward the village, he saw “a long black line” of soldiers. He heard women and children screaming, saw them running up the creek bed, saw many falling, some stopping and frantically digging pits into the banks and bed of Sand Creek. When he finally reached the encampment, bullets were striking all around him; those that hit against the buffalo-hide lodges sounded like “like hail stones.” He managed to reach his own lodge, where “I found my War Bonnet, shield and my quiver full of arrows.” Then he joined the crowds running up the creek, trying to run behind the lodges “as much as I could so the soldiers couldn’t shoot at me good.” But even so, “the feathers of my war bonnet were shot away and my shield was shot several times. As I was running I seen lots of women and children that had been killed [and] some were not dead yet.” Soldiers already had broken ranks, and some stood “over the dead, I suppose scalping them. I came across Owl Woman¹⁰ that had been scalped and was walking around but could not see. She had very long hair. The whole scalp had been taken.”¹¹

The troops then opened up with four 12-pounder mountain howitzers, fearful weapons that fired spherical case shot, hollow iron balls filled with lead musket balls and a bursting charge

10 Not to be confused with the first wife of trader William Bent, builder of Bent’s Fort.

11 George Bent to George E. Hyde, 4/14/1906, *George Bent Letters*, Coe Collection, Beinecke Library, Yale University.



Let Me Try The Son Of A Bitch, I CAN HIT HIM!! | Original artwork, George Curtis Levi, S. Cheyenne and Arapaho descendant.

of gunpowder.¹² Taking aim at the fleeing women and children, the artillerymen fired the balls directly above their targets, showering death below. Only the hastily dug pits against the banks and in the dry creek offered any semblance of protection. But these quickly became death traps. Women with babes and the elderly who could not run far began digging just yards from the village itself, easy targets for musketry and canister—tin cans filled with more than a hundred lead musket balls.

Meanwhile, seventeen of the thirty chiefs in the camp already had been gunned or shelled down. Cheyenne chief White Antelope, age seventy-five, was the first to fall. At opening fire, he advanced unarmed toward the troops making peace signs,

his arms outstretched, and then began singing his death song:

Nothing Lives forever,
Only the Earth and the Mountains¹³

Ignoring his obvious peaceful intent, a band of soldiers let loose a deafening volley. White Antelope, a chief who had visited Washington, D.C., in 1851, where he received a peace medal and ever after had sought accommodation with

¹² For a full description of the 12-pounder mountain howitzer see *Ordnance Manual for the Use of the Officers of the United States Army, 1860* (Philadelphia: J.B. Lippincott & Co., 1860), passim.

¹³ Translation by George Bent. Other translations are: “Nothing Lives Long Except the Mountains and the Earth”; and “Death is upon us and Nothing Exists but the Rocks and the Mountains.” See Jeff C. Campbell (Interpretive Division Sand Creek National Historic Site), “An Informational Pamphlet with Facts and Baseline Information about the Sand Creek Massacre National Historic Site for the 150th year of Commemoration,” May 4, 2014, Sand Creek Massacre National Historic Site Headquarters, Eads, Colorado.

encroaching settler colonists,¹⁴ fell dead. Troopers immediately set upon his body, stripping him, then slashing off his private parts.¹⁵

The attackers now resembled more a mob than an organized body of troops. They were in fact soldiers of the 1st and 3rd regiments of U.S. Colorado Volunteers. The 250 men of the 1st Regiment were seasoned veterans who had signed on for three-year enlistments. Most of them had fought at the decisive 1862 Battle of Glorieta Pass, just south of Santa Fe, New Mexico Territory, an engagement that halted a Confederate advance on the Colorado goldfields. These men were well trained and well equipped.

But the 425 men of the 3rd Regiment were not. The War Department had only authorized the unit on August 11, 1864, and it had done so only at the shrill urgings of Colorado territorial governor John Evans. As early as April 1863, Evans had convinced himself that the Cheyenne and Arapaho were conspiring with the Sioux and other plains tribes to open a general war against

Colorado settlers. Writing to William P. Dole, the Commissioner of Indian Affairs in Washington, D.C., Evans made plain his conviction—and hysteria: “I beseech you, in the name of humanity, and of our dearest interests, to give us authority to avert this threatened repetition of the Minnesota War, it may be, on a larger and more destructive scale.”¹⁶ Evans had continued to shotgun similar letters to army and civilian officials for well over a year, all proclaiming the existence of a general Indian war, and all calling for a military solution.¹⁷

Evans finally received his authorization for the 3rd Regiment, but the term of enlistment was only for 100 days, prompting the *Rocky Mountain News* to hail the 3rd as the “Hundredazers.”¹⁸ And some “Hundredazers” had received almost no training; instead, they lay about Denver and other places unsupervised, waiting for equipment and commanding officers to appear.¹⁹

Now they were in the field at Sand Creek, killing everyone they ran across, obeying the orders of their commanding officer Col. John M. Chivington to take no prisoners.²⁰ From the opening of the attack, all command and control had been lost. Men fought in groups, each on its own hook.²¹ Robert Bent, the mixed blood son of William Bent and his Cheyenne wife Owl Woman, had been forced to guide

14 A “settler-colonial society” describes a political order based on a particular (usually European) definition of sovereignty that serves a population of immigrants who plan to stay in the land they have entered. Within settler colonialism, immigrant values and rights are superimposed over those of existing indigenous communities. Settler colonial societies are distinct from colonialism in that they do not merely exploit the natural and human resources of an area under a territorial administration, but rather aim for the ultimate disappearance of indigenous cultures as part of the new immigrant political order. However, it may be intertwined with colonial administrations. Settler colonialism is a global phenomenon of both past and present. See Edward Cavanaugh and Lorenzo Veracini, “Editors Statement,” *Settler Colonial Studies* Vol. 3:1, 1.

15 George Bent to George E. Hyde, 4/25/1906, *George Bent Letters*, Coe Collection, Beinecke Library, Yale University; Robert Bent sworn statement [n.d.] Carroll, *Sand Creek Massacre*, 185. See also George E. Hyde, *Life of George Bent Written from his Letters*, Savoie Lotinville, ed. (Norman: University of Oklahoma Press, 1968), 55; and George Bird Grinnell, *The Fighting Cheyennes* (Norman: University of Oklahoma Press, 1956; originally published 1915), 172.

16 Evans released for publication his correspondence with various officials. See *Rocky Mountain News*, August 25, 1864.

17 See Gary L. Roberts, “Sand Creek: Tragedy and Symbol” (Ph.D. diss., University of Oklahoma, 1984), 173-298.

18 See for example, *Rocky Mountain News*, August 24, 1864.

19 Raymond G. Carey, “The ‘Bloodless Third’ Regiment, Colorado Volunteer Cavalry,” *Colorado Magazine*, 38 (October 1961), 275-300.

20 See Chivington’s second Sand Creek report dated 12/16/1864 in Carroll, *The Sand Creek Massacre*, 55.

21 Capt. Silas S. Soule sworn statement, 2/20/1865 in Carroll, *The Sand Creek Massacre*, 212, 214.



I Will See You Soon | Original painting, Brent Learned, Cheyenne and Arapaho descendant.

Chivington and his command to Sand Creek.²² Sitting his horse next to Chivington, Bent saw unspeakable atrocities everywhere he looked. When a gathering of Thirdsters approached five women who had taken shelter in a pit, the women “showed their persons to let the soldiers know they were women and begged for mercy, but the soldiers shot them all.”²³ He saw another group of thirty or forty women, who had collected in a pit, send out a six-year-old girl with a white flag. She had just climbed out of the pit when she was

22 F.W. Cragin to George Bent, 9/23/1910, *F.W. Cragin Notebooks*, Denver Public Library, Western History Department.

23 Robert Bent sworn statement, [n.d.], in Carroll, *The Sand Creek Massacre*, 185.

shot and killed. Then the troops advanced on the women—who were not armed—and killed them all. He saw a little girl about five years of age, whose mother had hidden her in the sand, discovered by two soldiers, who drew their pistols and shot her. He saw the body of Chief White Antelope with the privates cut off and heard a soldier say “he was going to make a tobacco-pouch out of them.”²⁴

The killing frenzy moved upstream, pit by pit, until the soldiers encountered larger pits against the high banks some two miles above the village. Here, determined warriors fought desperately to protect the women and children who had thus far managed to escape the carnage. But they fought with bows and arrows against an enemy armed with rifles and cannon. And they fought against impossible odds, ten to one in some instances. George Bent, another son of William Bent and Owl Woman, was in one of these pits with a family group of twenty Cheyennes. The father of one of the girls heard the cannon fire and warned that the pit was now a death trap and they should find a safer place. Bent agreed and

with two others jumped out, suffering a gunshot wound to his hip, but he managed to clamor over to a larger hole that offered better protection. As he looked back toward the pit he had just vacated, he saw those who remained killed by point-blank canister fire.²⁵

The killing went on for nine hours. When darkness fell, over two hundred Cheyennes and

24 Ibid.

25 George Bent to Samuel F. Tappan, 2/23/1889, *Samuel F. Tappan Papers*, History Colorado; Bent to George E. Hyde, 3/15/1905, 4/30/1913, *George Bent Letters*, Coe Collection, Beinecke Library, Yale. See also, David Fridtjof Halaas and Andrew E. Masich, *Halfbreed: The Remarkable True Story of George Bent* (Cambridge, Mass.: Da Capo Press, 2004), 143-153.

Arapahos lay dead, and a like number wounded.²⁶ The soldiers spent the night in the village, while the surviving Cheyennes and Arapahos suffered terribly from the cold as they moved toward the Smoky Hill villages some fifty miles away. Bent remembered that night as the worst night he ever went through. “Most of us were wounded and half naked; even those who had had time to dress when the attack came, had lost their buffalo robes and blankets during the fight. The men and women who were not wounded worked all through the night, trying to keep the children and the wounded from freezing to death.”²⁷ When the survivors reached the Smoky Hill and rode into camp, “everyone was crying, even the warriors and the women and children screaming and wailing. Nearly everyone present had lost some relations or friends, many of them in their grief were gashing themselves with their knives until the blood flowed in streams.”²⁸

Chivington and the troops returned to Denver on December 22, 1864, to a hero’s welcome. As the “bold sojer boys” paraded through the streets, tumultuous crowds jammed the sidewalks, cheering and saluting their boys in blue for their great victorious battle.²⁹ A week later, the Denver Theater presented a play in front of a “full and fashionable audience,” featuring “novel trappings, trophies of the big fight at Sand Creek.”³⁰ But on the same day, the Rocky Mountain News carried a small clip, dated Washington, D.C., December 28: “The affair at Fort Lyon, Colorado, in which Colonel Chivington destroyed a large Indian village, and all its inhabitants, is to be made the

26 <http://www.nps.gov/sand/historyculture/index.htm>

27 Hyde, *Life of George Bent*, 157-158; Grinnell, *Fighting Cheyennes*, 179-180; George Bent to George E. Hyde, 12/21/1905, *George Bent Letters*, Coe Collection, Beinecke Library, Yale.

28 Hyde, *The Life of George Bent*, 158-159; Bent to Hyde, 12/21/1905, *George Bent Letters*, Coe Collection, Beinecke Library, Yale.

29 *Rocky Mountain News*, December 22, 1864.

30 *Ibid.*, December 29, 1864.

subject of Congressional investigation. Letters received from high officials in Colorado say that the Indians were killed after surrendering, and that a large proportion of them were women and children.”³¹



Captain Silas Soule | Undated photograph. Anne E. Hemphill Collection

In fact, the letters from “high officials” were written by two company commanders of the 1st Regiment, Capt. Silas S. Soule and Lt. Joseph A. Cramer. Both officers were present at Sand Creek; both ordered their companies to stand down and not fire; and both were so outraged by what they witnessed that they wrote impassioned letters to their commanding officer, Maj. Edward E. Wynkoop, which described Sand Creek not as a battle, but as a massacre of defenseless women and children. They meant for Wynkoop to circulate their letters with officials in Washington, so they made copies. They wanted Chivington punished, and they wanted the nation to know that what actually occurred on November 29 at Sand Creek was murder. Soule wrote his letter only two weeks

31 *Ibid.*



Who's the Real Savage | Original painting, Brent Learned. Used with permission of the artist.

after the massacre. He said he refused to fire “and none but a coward would, for by this time hundreds of women and children were coming towards us, and getting on their knees for mercy.” He wrote that the “massacre lasted six or eight hours” and that it was hard “to see little children on their knees, have their brains beat out by men professing to be civilized.” He saw “two Indians [take] hold of one another’s hands, chased until they were exhausted, when they kneeled down, and clasped each other around the neck and were both shot together, they were all scalped, and as high as half a dozen taken from one head. They were all horribly mutilated. One woman was cut open, and a child taken out of her, and scalped.”³²

Cramer wrote his letter four days after Soule’s on December 19, 1864. He opened it by declaring that he was ashamed of being at Sand Creek, of being a part of it, for he witnessed atrocities there

32 Gary L. Roberts and David Fridtjof Halaas, “Written in Blood: The Soule-Cramer Sand Creek Massacre Letters,” in Steve Grinstead and Ben Fogelberg, eds., *Western Voices: 125 Years of Western Writing/Colorado Historical Society* (Golden, CO: Fulcrum Publishing, 2004), 325-326. The letters are reproduced in full.

that he hoped he would “never see again. [Men], women and children were scalped, fingers cut off to get the rings on them...a [woman] ripped open and a child taken from her, little children shot, while begging for their lives, women shot while on their knees, and with their arms around soldiers a begging for their lives...” He ended his letter by pleading with Wynkoop to keep Chivington from being promoted to brigadier general “which he [Chivington] expects.”³³

Wynkoop circulated the Soule-Cramer letters in Washington among leading political officials. They had immediate and decisive impact. As stated earlier, the powerful Joint Committee on the Conduct of the [Civil] War, the Joint Committee on the Conduct of the Tribes, and an army commission all initiated hearings, and all came to the same conclusion: Sand Creek was a massacre of Indians who were under the protection of the U.S. government. As we will see, the commissions did not have kind words for Evans and in the end he lost his governorship over it, though he was never prosecuted. Both Soule and Cramer testified at these hearings, repeating the descriptions of Sand Creek they had detailed in their letters. Soule appeared before the military commission as its first witness, followed by Cramer. On April 23, 1865, two months after his testimony while acting as Denver Provost Marshal, Capt. Silas Soule was gunned down by two blue-clad soldiers. Though known, his two killers were never brought to justice.

After the congressional committees and the Judge Advocate General’s Office released their reports, the Soule-Cramer letters, which had initiated the investigations, disappeared to history. Historians had no idea of their content.

But 136 years later, in the year 2000, just when the bill to create the Sand Creek Massacre National Historic Site was stalled in committee,

33 *Ibid.*, 329-330.



Sand Creek Massacre site overlook. | Original photograph by Paula Bard.

the letters reappeared. A Colorado citizen brought an old trunk found in her attic to the Colorado Historical Society, where the letters were discovered within a sheaf of nineteenth-century documents. U.S. Sen. Ben Nighthorse Campbell read portions of the letters before the Senate Committee on Energy and Natural Resources Subcommittee on National Parks, Historic Preservation, and Recreation and entered their full contents into the Congressional Record. The impact was immediate. Newspapers across the country, including *The Denver Post* and

Rocky Mountain News, ran front-page stories on the Sand Creek letters. On November 7, 2000, President William Jefferson Clinton signed Public Law 106-465 creating the Sand Creek Massacre National Historic Site.³⁴

The Sand Creek Massacre National Historic Site is the only unit of the National Park Service that commemorates a site of shame for the United States government. It unequivocally declares Sand Creek a massacre. It exists to teach the public the awful and lasting effects of genocide committed on peoples struggling to preserve their freedom and way of life.

³⁴ *Ibid.*, 336.

Introduction

John Evans was not a witness to the Sand Creek Massacre. When the Cheyenne and Arapaho men, women, and children camped at the bend of Big Sandy that November morning were murdered and then mutilated by Chivington's men, Evans was in Washington, D.C. on official business. Commenting to the editor of a Methodist journal a few days before the news of the massacre broke, the governor said he believed all Indians in Colorado were hostile to settlers, except "that one little band of friendlies down at Fort Lyon" which was "faithful to the government."¹ Evans personally knew that Black Kettle and White Antelope's people were acting in abidance of his instructions to all "peaceful Indians" to report to military outposts such as Fort Lyon; indeed he had directed them there after they and several others had attempted, unsuccessfully, to broker a peace agreement with him in late September of 1864.

Though he was well aware of Colonel John Chivington's tendencies toward free-lance campaigns and hair-trigger violence, from what we know Evans did not suspect Chivington would have turned his forces on that particular village. Chivington's stated plan, in consultation with other Colorado military officials, had been to lead a campaign against the villages of so-called "hostiles" on the Smoky Hill and Republican rivers further east. Instead, Chivington and his troops nearly disappeared two weeks prior to the massacre, and did not move on the village near



Territorial Governor John Evans, circa 1860-1870
| Colorado State Archives

Fort Lyon until the last possible moment. Working in utmost secrecy, Chivington concealed his intentions from the generals and other superior officers, and even deceived the outpost commander Major Scott Anthony on the details of his planned attack until the last moment. His own troops were not told whom they would be attacking until the night before.²

In these ways and others, the Sand Creek Massacre was a result of John Chivington's design and execution. It was a product of elaborate planning on the one hand, and his refusal to set any moral or ethical parameters on the comportment of the undertrained, undisciplined volunteer troops that made up the 3rd Regiment. While Evans never condemned the massacre—indeed, with decades of hindsight he explicitly

1 Gary Roberts, "Thoughts on Evans and Sand Creek," Appendix C, 31. Evans had also communicated to Agent Colley after the Camp Weld Council that these Indians had "surrendered," and noted in his superintendent's report that the leaders were "earnest in their peace." Northwestern Report, 86.

2 Roberts, Dissertation, 446.

defended it in 1889 as having had a “very great benefit” to Colorado in the long-run—he did try to maintain plausible deniability for “what they call Chivington’s massacre” for the remainder of his life.³

With an unrepentant Chivington as the admitted orchestrator of the massacre and Evans having been absent and unaware of the details, the story of Evans’s role in the events leading up to the attack has survived to the present primarily as a set of muted annotations, as if his leadership was only peripheral to this catastrophic episode of settler colonial violence. Even in the report on the topic by Northwestern University, based upon their careful contextual study of Evans’s decisions and actions, the governor emerges as inept, “simplistic,” “uncomprehending,” “hostile to Indians,” “reprehensibly obtuse and self-interested,” an official who committed deep “moral failure[s]” and who exhibited “deplorable” behavior, “even by the standards of his time.” While this is hardly an exoneration of Evans, they do not find him culpable for the massacre, at least not according to a narrowly-defined culpability (as knowing about, premeditating, or conspiring to execute a massacre).⁴

The research assembled here maintains that this evaluation is simply inadequate. We can only discharge the recognition of culpability if we fail to understand the specific responsibilities, power, and influence John Evans held as the highest-ranking civil authority in Colorado Territory in

3 “So the benefit to Colorado, of that massacre, as they call it, was very great, for it ridded the plains of the Indians, for there was a sentiment that the Indians ought not to be left in the midst of the community. It relieved us very much of the roaming tribes of Indians.” Bancroft Interview, 1884, 21-22.

4 The closest the Report comes is this statement in the third conclusion in Chapter Six: “Regardless of Evans’s degree of culpability in failing to make every possible effort to protect the Cheyennes and Arapahos when they were most vulnerable, his response to the Sand Creek Massacre was reprehensibly obtuse and self-interested. His recollections of the event displayed complete indifference to the suffering inflicted on Cheyennes and Arapahos.” Northwestern Report, 90.

1864. Certainly, there are aspects of this story for which John Evans cannot in fairness be accused: there is no evidence that he co-conspired with Chivington to carry out the attack; he cannot be attributed responsibility for the specific atrocities that occurred at the hands of Chivington’s troops; he was not the only powerful official that shared responsibility for the decisions and actions preceding the massacre; and he did not ascribe to what at the time was called an exterminationist policy in regards to the so-called “Indian problem” (to which Chivington, for all intents and purposes did ascribe)—that is, a willingness to systematically hunt down and murder Native peoples, “little and big” as Chivington said, wherever they were encountered.⁵ However, there are critical elements of this history anchored uniquely and directly in Evans’s positions, decisions, and actions as governor and Superintendent of Indian Affairs, and it would be imprudent and irresponsible not to address those facts squarely.

According to our analysis, Evans bears serious culpability for the Sand Creek Massacre having occurred. This is true for at least the following four reasons, which will be elaborated upon in the pages that follow. On their own, none of these amounts to culpability, but their combination under the conditions in Colorado Territory in 1863 and 1864 supports a strong case for a culpability different in character but equal in degree to that of John Chivington.

Abrogation of Duties as Superintendent

Whether as a product of his worldview or because he was simply ill equipped for the position, Evans did not respond seriously enough his mandate from Indian Commissioner Dole to negotiate a treaty of peace with the Cheyenne and Arapaho. As superintendent, he repeatedly made decisions or failed to resolve problems in ways that amounted to letting the Native people, whose rights he was

5 Roberts, “Thoughts,” p. 26.

legally obligated to protect, fend for themselves against settler-colonists and the military intruding on what was, by previous occupancy and American law, their land. Under dangerous conditions, Evans exerted grossly insufficient legal enforcement of claims on behalf of the tribes and largely ignored their complaints, thereby contributing to the acceleration in conflict. Compared with neighboring superintendents working under similar or even more challenging conditions, Evans delayed, evaded, and blamed his Native constituents, while his counterparts in Nevada and Utah successfully negotiated treaties with the Native populations and averted the escalation of violence. When faced with a last desperate attempt by leaders from those nations to make a peace that might have changed the trajectory of events, Evans blamed and rebuffed them, and arbitrarily, without sufficient cause, passed off his authority to the military. This pattern of irresponsible leadership amounted to dereliction of his duties as superintendent.

Advocacy of War over Peace

From late 1863 onward, when faced repeatedly with the opportunity to allay settler colonists' fears of Native people and agitations for war, Evans instead chose escalation and panic. His consistent conjectures of war and lobbying for the use of military force were far out of bounds with regard to his duties as superintendent, and irresponsible exercises of his civic influence as governor. Evans's two proclamations in June and August 1864 represent effective declarations of war (an authority he did not have), which acted to inflame settler passions and put peace-seeking Native leaders in a dangerously untenable position. Neither proclamation defined criteria for differentiating so-called "hostile Indians" from "friendly" ones; and the caveats provided, urging that attacks on "friendly Indians" be avoided, were grossly inadequate to the conditions that prevailed in the Territory by summer 1864. The second

proclamation explicitly endorsed and proposed to finance vigilante citizen violence against Native peoples without regard to gender or age. These proclamations were anomalous in comparison with the policies of other governors. Moreover, as directives issuing from the governor's office they cannot but have influenced the attitudes of the untrained volunteers who enlisted in the 3rd Regiment, a force raised explicitly to "kill Indians." Even early on and when there was evidence to the contrary, Evans was attached to the idea that a general Indian war was on its way, and his reactions to this terrifying specter created an environment in which it became likely.

Authorization for the 3rd Regiment

Evans singlehandedly agitated federal officials, primarily Secretary of War Edwin M. Stanton, for the authority to raise the federal one hundred-day unit, with the stated purpose of making war on Native peoples. Without the 3rd Regiment, John Chivington could not have attacked the Cheyenne and Arapaho camped at Sand Creek. Although Evans lacked the authority to authorize or command the 3rd, he was transparent about his intentions for it: he sought an attack on Native peoples in winter, when the tribes were most vulnerable. He looked to other winter massacres of Native peoples as exemplars, and urged General Connor, who had massacred over 400 Shoshone at Bear River in 1863 to "chastise" Native people. Even when given the clear opportunity to broker peace with the Cheyenne and Arapaho at the Camp Weld Council in September, Evans balked, saying, "What will I do with the 3rd Regiment if I make peace? The 3rd Regiment was raised to kill Indians, and kill Indians it must."⁶ Though Evans likely did not know precisely what Chivington would do with the 3rd, Evans was responsible for the creation of that force and ultimately the actions

⁶ Roberts, *Thoughts*, p. 12.

that then resulted.

Deferral of Authority to the Military

Given a clear mandate from Indian Commissioner Dole (and others at different points) to do everything he could to broker peace with the tribes who had not signed onto or did not support the Treaty of Fort Wise, and given his political authority and influence as territorial governor, John Evans was not obligated to surrender authority to the military. Although a military official instructed him not to make peace with Native Americans in the early fall of 1864, as Superintendent of Indian Affairs, Evans could have brokered an agreement even if it displeased military officials, as the military had no authority over the Indian affairs settlement process. Rather than pursuing the perhaps less popular path of peace, Evans allowed Colonel Chivington to declare martial law. In doing so, the governor-superintendent handed the fate of Colorado's Native inhabitants to a military hungry for war; to a commander dead set on achieving military glory before his commission expired (though technically it already had); and to a regiment populated with untrained settler colonists whose anti-Native fervor Evans had explicitly helped to incite.

In laying out the case for a fuller reading of Evans's culpability for the Sand Creek Massacre, our analysis pivot not upon Evans's personal prejudices, nor his character. Regarding whether it was possible for settler colonists in the Colorado Territory to share land and resources with the Native inhabitants who held title to the land when the settlers arrived, Evans shared the same (and in some cases more restrained) views in comparison to many of his settler compatriots. But, as the report also shows, Evans fundamentally disagreed with the principles upon which the treaty-making process was based and believed Native peoples needed to be "civilized," through relocation and force if necessary. These beliefs are relevant to his actions

and they can help explain his motivations, but they do not particularly distinguish him from other territorial leaders. His decisions and actions in his official capacities do. It is important to understand Evans's worldview with regard to civilization, progress, and the fate of Native peoples—and to understand how the effects of such a worldview have ultimately redounded to the material benefit of members of our Colorado community today. However, our evaluation is not based on Evans's personal philosophy.

This analysis allows a space for understanding the difficulties Evans faced as a leader charged with the seemingly impossible task of protecting settler interests and Native rights simultaneously. In some ways, his two posts were inherently in contradiction with one another. Moreover, Evans's deepest commitments were to the settler community and to bringing progress, as he understood it, to an area of the country he viewed as uncivilized. It is important to examine how a man who led so well in other respects and cared so much about the people of Colorado could have made such reckless decisions with regard to the Native people within his jurisdiction.

Our analysis proceeds as follows. We begin by explaining the office and duties of the Superintendent of Indian Affairs, describing how Colorado and the two adjacent territories of Nevada and Utah were organized. This allows for a comparison of the circumstances faced by the leaders in the three territories, and an understanding of how Evans's approach to Indian Affairs was different than those of comparable officials. We then review the cascade of events and decisions in 1863 that resulted in Evans's seeming acceleration toward war and away from treaty-making efforts. As conflict turns toward crisis in 1864, we take a closer look at critical events and decisions we believe were insufficiently addressed in the Northwestern Report. A review of our core conclusions and our specific disagreements with Northwestern Committee's final evaluation concludes the report.

Power in Office: The Coterminous Roles of Governor and Superintendent of Indian Affairs

Territorial governors such as John Evans were appointed by the U.S. President with the advice and consent of the Senate; Superintendents of Indian Affairs were appointed in the same way. Both positions carried enormous powers and responsibilities in their jurisdictions. Therefore, an individual who was appointed simultaneously Territorial Governor and Superintendent of Indian Affairs occupied the primary position of power and responsibility in his jurisdiction, albeit a jurisdiction that included two distinct populations—settler colonists and Native peoples. To understand the actions and decisions Evans made in the positions he held in the Colorado Territory, especially with regard to Native people, it is important to review how the Office of Indian Affairs worked in the mountain west of the 1860s. In the following section, then, we review the dual responsibilities of territorial governors who held the coterminous Indian superintendent position. This entails an explanation of the founding of the Office of Indian Affairs, its separation from the War Department, and the historical role of the territorial superintendencies. We also contextualize the importance of federal treaties, the “supreme law of the land” for the administration of federal Indian policies, and explain how those policies were heavily influenced by a series of Supreme Court precedent-setting decisions from the 1820s and 1830s. We begin with the history of how the territories of the mountain west were created.

Indian Superintendencies in Western Territories

The Mexican-American War and ratification of the Treaty of Guadalupe Hidalgo of 1848 brought extensive western territories into the jurisdiction of the United States. This, combined with the Oregon Treaty of 1846, demarcated the boundaries of the Oregon country and British Columbia, with a new American/British division set at the 49th parallel. In the period of Euro-American settlement that came after the expedition of Lewis and Clark, the Rocky Mountain region became known as the “mountain west,” displacing the frontier boundary of the old northwest.

This region initially became Oregon, New Mexico, Utah, and Washington territories. What is now Colorado was carved from New Mexico and Utah territories with a portion of western Kansas annexed to it. (“Jefferson Territory,” encompassing much of what became eastern Colorado, never gained legal status.) In 1861, Nevada was created out of Utah Territory and Colorado was formed out of land previously constituted as northern New Mexico, western Kansas, and eastern Utah. Idaho was carved out of Washington Territory in 1863 and initially included Montana.¹ Regardless of the change in place-names, however, vast portions of this land remained firmly under the control of Native nations of the region. The military prowess

1 What became Wyoming Territory were parts of Washington, Oregon, Idaho, Utah, and Dakota and Nebraska territories at various times until 1868.

of groups like the Lakota, Cheyenne, Osage, Kiowa, and Apache was seen as a major obstacle in what Richard Maxwell Brown called “the Western Civil War of Incorporation” and what traditional Western historians call the “Indian Wars.”²

Out of the desire to incorporate frontier lands, along with the Native peoples who occupied it, into the United States, the office of the Superintendent of Indian Affairs was founded by an ordinance of the Continental Congress in 1786. Divided into three districts, these superintendencies were given the authority to direct and supervise American Federal Indian policy as politically appointed administrators. Tracing back to the Royal Proclamation of 1763, and later extended by the nascent American government in the trade and intercourse acts of 1790, 1822, and 1834, this office served a vital diplomatic function, as the notion of nation-to-nation relationships with Native people had previously been codified into British colonial law, and then, after the revolution, American law. Although this relationship was grounded in the concept of federal supremacy, in its American form, it has been subjected to much alteration and revision. By the mid-nineteenth century it had become common practice in the western territories for individuals to be appointed coterminous offices of governor and ex officio superintendent. This was the case with Colorado territorial governor John Evans and a handful of others.

The Bureau of Indian Affairs was established within the War Department in 1824 by John C. Calhoun. It was stipulated that the position of Commissioner of Indian Affairs be chosen by the secretary and confirmed through Congress. This

arrangement prevailed in the years following the Indian Removal Act (1830).³ In 1849, with the establishment of the Department of the Interior, the administration of the position shifted to the Secretary of the Interior with the Commissioner of Indian Affairs, along with the superintendents of Indian Affairs, Indian agents, and sub-agents working under this newly established executive department. The Commissioner of Indian Affairs became a presidential appointment confirmed by the Senate. In both arrangements, due to the organization of the Bureau of Indian Affairs as a political office the stability and cohesion of Federal Indian policy was undermined with each change in administration and subsequent appointment and confirmation process. Within this political context, however, Indian agents assigned to particular tribal groups or reservations often remained in their positions, as they were typically appointed through the recommendations of the superintendents.

“The Supreme Law of the Land”: Treaty Recognition and Enforcement

There was no meaningful difference between the ex officio superintendencies held by territorial governors and those separately appointed. The job of a superintendent was to essentially “superintend the intercourse with the Indians, agreeably to law; and execute and perform such regulations and duties, not inconsistent with federal law, as may be prescribed by the president, the Secretary of the Interior, the Commissioner of Indian Affairs” and to “superintend” agents accordingly.⁴ Among

2 Richard Maxwell Brown, “Western Violence: Structure, Value, Myth” *The Western Historical Quarterly* 24:1 (1993): 6. Using Brown’s conception of these conflicts can be useful in moving away from the implicit binaries invoked by the phrase, “Indian Wars,” to more accurately characterize the political dynamics of the conflict between migrating settlers and the region’s indigenous inhabitants.

3 The effects of this law reached far beyond the Trail of Tears involving the Native Nations of the southeast. Removal actually continued through the 1850s and in some cases such as with the Navajo, Modocs, and Chiricahua Apaches, through to the 1870s & 80s.

4 Section 2058 24. *Duties*, Revised Statutes – June 30, 1834, 4 Stat L., 736; June 5, 1850, 9 Stat L., 437; February 27, 1851, 9 Stat. L., 587. Schmeckebier, *Office of Indian Affairs*, 410

the primary duties of a superintendent and his agents would be to supervise settler and Indian comportment with treaties, and negotiate new treaties when necessary.⁵ This last responsibility was especially germane in the western frontier where de facto settler land use was often in violation of existing Indian treaties. In such cases superintendents were granted with the authority to negotiate new treaties—an authority they were expected to exercise to protect settlers and defend national interests; however, stipulations in treaties that directed recurrent monetary payments and the supply of stock, seed and foodstuffs, as well as services such as medical care and education, while also demarcating new boundaries, however, had to be approved by the U.S. Senate and ratified by the president before they went into effect. In accordance with Article 6, Clause 2 of the U.S. Constitution—known commonly as the Supremacy Clause—the ratification of a treaty acted as an explicit and formal acknowledgement of a nation-to-nation relationship—in the case of Native people, a Native nation and the United States government.

As legal documents, then, Indian treaties have constitutionally privileged standing as “the supreme law of the land.” Furthermore, in accordance with the canons of construction, which extend from English common law, as legal documents treaties are to be interpreted as the signatory would have understood them and in favor of the party that did not draft the document

in question where ambiguity is an issue.⁶ However, as we will see, treaty recognition and enforcement also involved another relationship between Native nations and the United States government that was at odds with the “nation-to-nation” arrangement codified by the U.S. Constitution and through individual treaties. This bond became defined as one of dependence and tutelage as the inherent sovereignty of Native nations was eroded by the series of Supreme Court decisions that have come to be known as the Marshall Trilogy. Most explicitly, perhaps, this occurred in *Cherokee Nation v. Georgia* (1831), with Native nations politically defined as “denominated domestic, dependent nations” and viewed as wards under the charge of the federal government’s guardianship.

Given the relatively loose governing structures of territories so far removed from Washington, Indian superintendents had a great deal of latitude in interpreting and implementing policy and managing relations with Native peoples within their jurisdictions. To add to the inconsistency in the application of federal Indian policy, appointed superintendents and Indian agents also had widely varying qualifications—some with no experience with Native peoples at all. As one commentator cynically characterized it,

The Indian agents who are placed in trust of the honor and faith of the government are generally selected without any reference to their fitness for the place. The congressional delegation desire to reward John Doe for party work, and John Doe desires the

5 Between 1778 and 1868 the United States government signed 394 treaties with Native nations. This practice of treaty making was ended by an act of Congress in 1871, but in the years that followed another 17 agreements were made, though not all were ratified. See *U.S. Laws and Statutes*. “Indian Treaties,” Vol. 2. Washington, Government Printing Office, 1904.

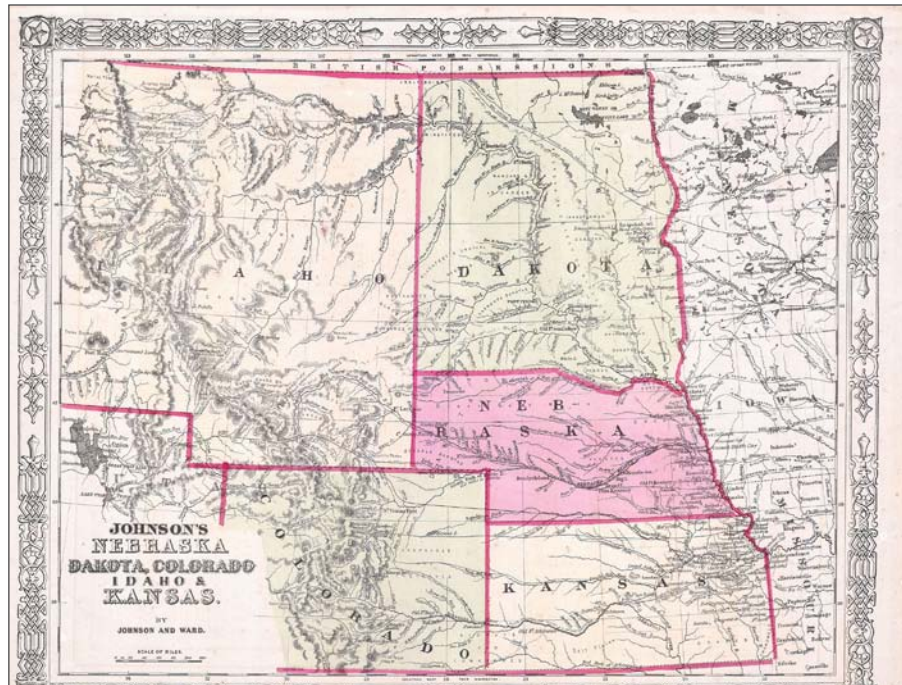
6 Cohen, Felix. *Handbook of Federal Indian Law*, 37; Cohen cites the *Winters* case (1908, water rights) and *Worcester v. Georgia* (1832). When it comes to Indian treaties, in *Uneven Ground: American Indian Sovereignty and American Law*, David E. Wilkins and Tsianina Lomawaima state that the canons of construction stipulate: “(1) resolve ambiguities expressed in treaties in favor of Indians; (2) interpret treaties as Indians themselves would have understood them; and (3) liberally construe treaties in favor of the tribe” (141). David E. Wilkins’ and K. Tsianina Lomawaima’s, *Uneven Ground: American Indian Sovereignty and Federal Indian Law*, Norman: University of Oklahoma Press, 2002.

place, because there is a tradition on the border that an Indian agent with fifteen hundred dollars a year can retire upon an ample fortune in four years. The Indian agent appoints his subordinates from the same motive, either to reward his friends' service, or to fulfill the bidding of his Congressional patron.⁷

Superintendents and the agents under their authority did receive guidance from the Commissioner of Indian Affairs, a position appointed by the president. In the period most relevant to this document, the superintendents and agents reported to the commissioner, who in turn reported to the Secretary of the Interior.

Treaties with Native nations were a well-accepted part of the political dynamics that territorial governors were obligated to acknowledge until 1871, when limits were placed on presidential authority to negotiate, as a result of a rider to the Indian appropriations bill. Up until that point, according to Vine Deloria Jr., over 250 treaties between the United States government and Native nations were ratified, with numerous agreements negotiated in the western frontier throughout the 1850s, although not all of these were signed into law.

In the case of the territories we will be examining, treaties with Utes were negotiated by Brigham Young out of Salt Lake City in the 1850s,



Johnson's Nebraska, Dakota, Colorado, Idaho, and Kansas, 1863 | Wikimedia

while similar treaties were negotiated with the Navajos, Apaches, Comanches, Utes, and Pueblo peoples by various agents as well as the New Mexico territorial governor and Superintendent of Indian Affairs, James Calhoun, out of Santa Fe in the 1840s and 1850s. Only one of the Ute treaties, the Treaty of Peace and Friendship negotiated with the Moache and Capota in Abiquiu in 1849, was ratified. U.S. Government agent Garland Hurt negotiated treaties with Utes, Shoshones and Goshutes in 1855 in what was then Utah; however, like many of the treaties drafted during the period these were never ratified. In addition to enmities related to ongoing cycles of war, the lack of ratification was, perhaps, also due to Hurt's dubious status in having been appointed Utah's Superintendent of Indian Affairs by Brigham Young.

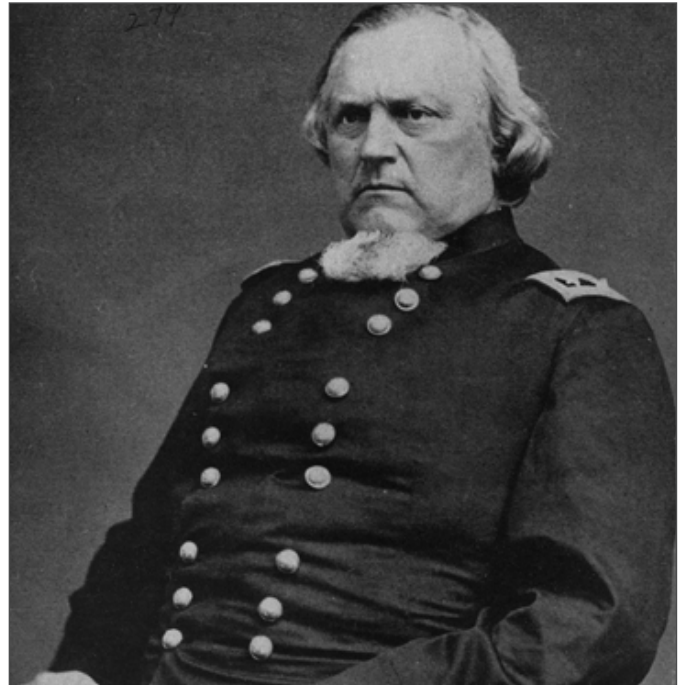
⁷ Laurence F. Schmeckebier, *The Office of Indian Affairs: Its History, Activities and Organization*, Institute for Government Research, Service monographs of the United States Government No. 48 (Baltimore: Johns Hopkins University Press, 1927), 47

Between Native and Settler: A Fraught Position

By the mid-nineteenth century, the organization of Indian superintendencies in the western territories had become something of a shifting patchwork of territories, reservations, and jurisdictions. Although initially the governorships of New Mexico, Oregon, and Utah were coterminous with the Indian superintendencies for those territories, separate superintendencies were established for New Mexico and Utah in 1857. Idaho briefly had a superintendency that was separate from the governorship, but in 1864, the two posts were merged and remained so until Idaho was granted statehood in 1869.

The Colorado and Nevada territories were created in 1861. President Lincoln appointed territorial governors James W. Nye to Nevada and John Evans to Colorado in March of 1862 (with Evans succeeding William Gilpin). After first offering the Washington Territory governorship to Evans, who declined, Lincoln appointed William H. Wallace who later moved on to the governorship of Idaho Territory after Idaho was created from Washington in 1863. Up to this time, Utah had had a succession of territorial governors following the removal of Brigham Young from his post in 1858. His replacement, Alfred Cumming, had formerly headed the Upper Missouri Indian superintendency. During Lincoln's tenure in office, of the six territories of the mountain west, Colorado and Nevada (and, briefly, Idaho and Utah as well) had governors who were also Indian superintendents.

In this dual capacity, such officers had to decide how to divide their energies and responsibilities: should they expend efforts more toward the Native inhabitants who still held rights to resources,



James Nye, governor of the Nevada Territory 1861-1864 | Nevada Historical Society

residency, and “Indian title” to the land,⁸ or more toward the growing numbers of frontier settlers? Until the territories were organized with recognition from the U.S. government, most settlers were little more than immigrating intruders with no legal rights in Indian country, and held no titles to the land. Even after these territories were recognized, as the Supreme Court in the first of the Marshall trilogy decisions held in *Johnson v. McIntosh*, ownership of any land under U.S. federal jurisdiction could not be legally transferred from Indian peoples to private individuals. This decision asserted ownership rights of Native nations, while limiting their rights of negotiation with parties other than the federal government. At its core this decision was a confirmation of federal

8 Under the doctrine of discovery “Indian title” denotes rights to use and occupancy and is distinguished from aboriginal title, or fee simple ownership. According to Wilkins and Lomawaima’s analysis of European interactions with indigenous peoples it is clear that discovery was simply viewed as granting to European nations “an exclusive preemptive right to be the first purchaser of Indian land;” it did not void the aboriginal title of Native nations and tribes (20-21).

supremacy, and the limitations on Indian title must be viewed within this broader political context.

The challenge of balancing the interests of Native people ...with the desires of settler populations...made the territorial governorship a deeply fraught position from the onset.

Given the common misrepresentation of Native culture as purported in American literary and historical discourse, as well as in the popular art of the period, settlers often possessed (in addition to no initial land title) little to no accurate knowledge or appreciation for the cultures and socio-political organization of the Native peoples among whom they were living. The challenge of balancing the interests of Native people who had ceded lands while retaining denominated reserved rights⁹ with the desires of settler populations who often failed to understand or care anything about the stipulations contained in treaties, made the territorial governorship a deeply fraught position from the onset. For obvious reasons, territorial governors tended to favor settler interests while often failing to safeguard the rights of Native peoples, which they were legally bound to uphold. And while some territorial executives possessed a greater understanding of these responsibilities and the legal hurdles requisite to supervising the activities of two distinct populations, Native people often came out for the worse whenever conflict did arise.

In this context, comparison of leadership in the three territories in the period is valuable.

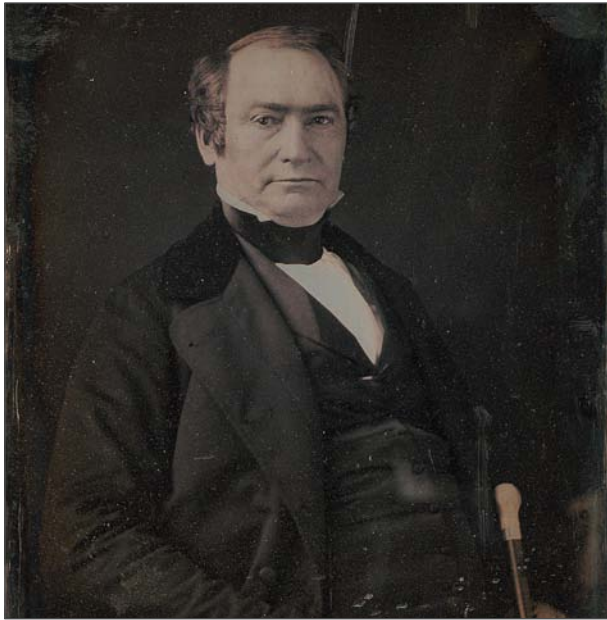
9 Simply stated, reserved rights are those that Native nations never explicitly surrender in treaties. As Lomawaima and Wilkins, note, “*all rights* are reserved except those specifically given up in a treaty or similar agreement” (14). This principle has been confirmed and codified by the U.S. Supreme Court in *United States v. Winans* (1905) and in *Winters v. United States* (1908).

Territorial Organization in Historical Context

A brief summary of how the three territorial superintendencies were organized enables us to better understand the mandates facing superintendents in Nevada, Utah, and Colorado.

In Colorado Territory, the Upper Platte Agency, which had no permanent headquarters, was established from the Central Superintendency in 1851 to serve specifically the Cheyenne, Arapaho, Kiowa, Kiowa-Apache, Comanche and Lakota/Dakota/Nakota peoples within the territorial boundaries. In 1854 the Upper Arkansas Agency replaced the Upper Platte, with the headquarters assigned to Bent’s Fort, with the Lakota/Dakota/Nakota and Kiowa remaining under the jurisdiction of the Upper Platte agency. John Loree, with whom John Evans was in regular contact, was the agent in charge of this agency, but Evans had no authority over him, his agency, or the Native peoples it was created to oversee. In 1861 the Lakota/Dakota/Nakota were transferred to the new Dakota Superintendency and the Upper Arkansas Agency was transferred to the new Colorado Superintendency with Governor John Evans appointed as territorial Governor and ex officio Superintendent of Indian Affairs in March of 1862.

Utah, although administered by the Church of Jesus Christ of Latter Day Saints as the independent “State of Deseret” between 1846 and 1857, had been brought under federal jurisdiction by the middle of 1858 through martial law and the imposition of U.S. troops. This coincided with the ouster of Brigham Young as governor. In mid-1860 J.C. Stambaugh was the first of Utah’s Indian superintendents to be appointed directly from Washington. Stambaugh was specifically sent out by the Commissioner of the General Land Office and appointed Surveyor General of Utah Territory, though his primary duties were to survey Utah Territory. Stambaugh enforced the tenets of the Trade and Intercourse Acts and the



James Duane Doty, 5th Governor of Utah Territory | Mathew Brady/Public Domain

subsequent decision in *Johnson v. McIntosh* that settler colonists could not gain title to Native lands until legally ceded by Native occupants via treaties and then opened up to homesteading by the U.S. government.¹⁰ In 1861 James Duane Doty was appointed Utah's Superintendent of Indian Affairs, then put in charge of a special treaty commission. In 1863, Doty was promoted to territorial governor.

Due to the competing interests of various settlers there was some overlap in the boundaries of the Nevada and Utah territories throughout the mid-nineteenth century. Migrating Mormons, for example, often considered "Nevada" to be part of the "Deseret" lands after the town of Genoa was established in the eastern foothills of the Sierra Nevadas in 1851. Consequently, this area was administered by the Utah Superintendency through most of 1861 (although not really dealt with until 1854).

All three territorial entities (Colorado, Nevada, and the part of Utah that became Idaho in 1863)

10 Letters Received by the Office of Indian Affairs, Stambaugh to Greenwood, 6-21-1860, M(icrofilm)-234, (Roll) 899, National Archives and Records Center.

experienced the same political economic urgencies that fueled rapid, excessive and intense

immigration and boom-bust social cycles driven by wildcat gold "discoveries." Native peoples in these territories witnessed a huge influx of settler colonists, which was accompanied by outbreaks of conflict and violence between incoming miners and homesteaders and the region's Native inhabitants. In all three territories Native nations soon became perceived as the primary threat to immigrating settlers and a serious impediment to further expansionism.

At the same time, however, Native land title, including reserved rights to occupy, hunt, fish, forage, and travel freely within these lands as denominated in various treaties, was being constantly reinforced by the U.S. government. With the exception of John Evans, the leaders in these territories were participants in a series of successful treaty negotiations and agreements (some with provisions for land cessions and reservations) with ostensibly "hostile" groups of Shoshones, Goshutes, Bannocks, and Northern Paiutes in what is now Wyoming, Idaho, Utah, and

Native land title, including reserved rights to occupy, hunt, fish, forage, and travel freely within these lands as denominated in various treaties, was being constantly reinforced by the U.S. government.

Nevada. Most were negotiated by the previously noted treaty commission headed by James Duane Doty in his role as governor.¹¹

Political ambitions were also part of the calculus of appointment to all three territorial governorships. Both Nye and Evans aspired to be elected to the U.S. Senate, while Wallace ran as a

11 Five treaties Doty brokered were Fort Bridger, Box Elder, Ruby Valley, Tuilla Valley, Soda Springs—though the latter was never ratified.

territorial delegate to Congress. Nye and Wallace were successful in their campaigns; Evans was not. Evans and Doty are comparable in terms of their esteem in the national Republican political establishment: Evans knew and supported Lincoln and was an accomplished promoter of higher education in Illinois, while Doty proved to be a skilled politician in his activities in steering the separation of Wisconsin from Michigan as a territory. He then helped lead it to statehood, first as governor and finally as its congressional delegate.

Like Evans, Doty was also a land speculator. A crucial difference between the two, however, was that Doty had an impressive career in not only negotiating with Native American groups, but also, as a lawyer, at times acting as an advocate for Native American sovereignty.

Before proceeding with our comparison, we must review the legal framework for Indian policy under which governors and superintendents were expected to operate.

The Marshall Foundation and Federal Indian Law and Policy

John Marshall served as Secretary of State under John Adams, 1800-1801, and was appointed Chief Justice of the United States Supreme Court by Thomas Jefferson in 1801, serving until his death in 1835. He authored the majority decisions in three of the foundational cases in federal Indian law, which together are commonly known as the Marshall Trilogy: *Johnson v. McIntosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832). Each decision was critical in shaping U.S. Indian policy in the nineteenth century and beyond, with two of the cases directly related to Cherokee efforts to retain the ancestral lands in Georgia and resist Indian removal, which culminated in the infamous Trail of Tears. In addition, these cases codified precedent-setting concepts regarding political status of Native nations that remain relevant today. Together, they defined the political relationship of Native nations in relation to the federal government and states and established new legal concepts for administering the U.S.-Native relationship. The cases also reinforced American cultural, social, and political hegemony on the basis of colonial ideologies, which included Christian missionary imperatives and European notions of civilization and progress.

Based on the analyses of legal scholars Steven T. Newcomb (Indigenous Law Institute), Peter d'Errico (University of Massachusetts, Amherst), and Eric Kades (William and Mary), as well as David Wilkins (University of Minnesota) and Tsianina Lomawaima (Arizona State University) the main points of the Marshall Trilogy can be

summarized as follows:¹

1. Native nations or tribes have official recognition that is distinct from the U.S. government. (The correlate of this is that Native people who are not members of a recognized nation or tribe are neither Indians nor tribes.)
2. These tribes are domestic dependent nations, with no international status.
3. Each nation or tribe has territorial integrity.
4. No nation or tribe has the power to sell land to private individuals, as the power to broker such exchanges is reserved to the federal government, who owns the lands on which Indians are wards.
5. The people of each tribe or nation have beneficial use of the territory they occupy only until the United States decides to buy it, or seizes it in a war of conquest. Once the U.S. has it, Native title to that land is extinguished.
6. Because the United States is a Christian nation under god (emphasis added) and because the United States is an industrial society of agriculturists, merchants, and manufacturers, it therefore has a right, on abstract principles, to expel hunters like the

1 See Steven T. Newcomb, *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery* (Golden: Fulcrum Publishing, 2008), xxvii, 142, 73-87; Peter D'Errico "American Indian Sovereignty: Now You See it, Now You Don't" in Adolfo de Oliveira, ed. *Decolonising Indigenous Rights* (New York: Routledge, 2009), 105-121; Eric Kades, "History and interpretation of the Grand Case of *Johnson v. McIntosh*, *Law and History Review* 19 (1), (2001). William and Mary Faculty Publications. Paper 50. <http://scholarship.law.wm.edu/facpubs/50>

Indians from the territory they possess, or to contract their limits (The first corollary here is that United States has the power to do this, unilaterally, any time it wants; the second is that all Indians are categorized as hunters even if they are not.)

7. The U.S. inherited the exclusive right to acquire Indian land from the colonial powers that discovered the Indians. (The corollary is that if the colonial powers had not discovered Indians, they would not exist.)
8. International law does not apply to Indians.

The Worcester case invoked the 1790 Indian Non-intercourse Act, as well as the constitutional provision that congress has the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes” (Art. 1, Sec. 8, Clause 3). However, the first case of the trilogy, *Johnson v. McIntosh* (1823), never mentions the U.S. Constitution. Instead it relies heavily on European colonial practice and the claims of the British “whose rights,” Marshall asserted, “have passed to the United States...”² Through this case Marshall expressly invalidated laws in some of the thirteen colonies that permitted private citizens to purchase land from Native peoples. At the same time, however, the Court implicitly recognized that Native people did indeed have legal claims to the land, since the central question was “who has the authority to buy any lands the tribes might choose to sell.”³ The main result of this decision, unfortunately for tribes, was that the medieval doctrine of discovery was endorsed as the “root of all land titles under U.S. laws in contravention of “natural law.”⁴ *Johnson* dealt a blow to the status of Native nations by legitimizing martial force as a means

of territorial acquisition, as “conquest gives a title which the Courts of the conqueror cannot deny...”⁵

In making this declaration, Marshall effectively consolidated the ideology of cultural superiority with John Locke’s utilitarian notions of property ownership. The language is striking:

But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country was to leave the country a wilderness; to govern them as a distinct people was impossible, since they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.

What was the inevitable consequence of this state of things? The Europeans were under the necessity either of abandoning the country and relinquishing their pompous claims to it or of enforcing those claims by the sword, and by the adoption of principles adapted to the condition of a people with whom it was impossible to mix and who could not be governed as a distinct society, or of remaining in their neighborhood, and exposing themselves and their families to the perpetual hazard of being massacred.⁶

Consequently, as Marshall states, “However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it, it becomes the law of the land.”⁷

In *Cherokee v. Georgia* (1831), redress was sought from Georgia laws that acted to “annihilate the Cherokees as a political society” and “seize”

2 21 U.S. (8 Wheat.) 543, 5 L.Ed. 681.

3 Lomawaima and Wilkins, 53-54.

4 David H. Getches, Charles F. Wilkinson, and Robert A. Williams, “Notes” in *Cases and Materials on Federal Indian Law*. St. Paul: West Group, 1998, 4th edition, 69.

5 21 U.S. (8 Wheat.) 543, 5 L.Ed. 681.

6 Ibid.

7 Getches, et al., 68. Add info on previous recognition of Native sovereign rights in Europe here.

their land.⁸ This case further eroded the legitimacy of sovereign Native American land rights after the arrival of European settlers based upon the doctrine of discovery, and called into question whether or not the U.S. government had any obligation to recognize originary land rights at all. Writing for the majority, Marshall states,

[A]t the time the constitution was framed, the idea of appealing to an American court of justice for an assertion of right or a redress of wrong, had perhaps never entered the mind of an Indian or of his tribe. Their appeal was to the tomahawk, or to the government...If...the Cherokee nation have rights, this is not the tribunal in which those rights are to be asserted...⁹

Through such reasoning Marshall extended the fiction that the “discovery” of the “Indians” necessitated “absolute appropriation” because what was “discovered” was “only ‘a race of hunters connected in society by scarcely a semblance of organized government.’” Ultimately, however, in a highly politicized atmosphere driven by zealous states’ right sentiment, the court chose to avoid the central issue and held that, as “wards” of the American government and not a “foreign state,” the Cherokee simply had no standing to bring their case to the court. In claiming that the court did have jurisdiction to review the merits of the Cherokee complaint in this decision the fate of Native nations was effectively discharged to Congress, with legal recognition tied to Senate-approved treaties affirming Native reserved rights as the only thing standing between their political sovereignty and the “absolute appropriation” of

their lands.¹⁰

It was in *Worcester v. Georgia* (1832) that the court was forced to address the imposition of Georgia law on the Cherokee nation, as the plaintiff was a missionary from Vermont who had been arrested for defying Georgia law relating to travel on Cherokee land. Here, Marshall drew reference to Great Britain’s policy “towards the Indian Nations,” characterizing them “as nations capable of maintaining the relations of peace and war; of governing themselves, under her protection” and making treaties with them. Such an acknowledgement represented a modification of the views Marshall had previously expressed in *Johnson*, in which Native people were characterized as a group of “fierce savages whose occupation was war, and whose subsistence was drawn chiefly from the forest.” And as with *Johnson*, the real question came down to the issue of federal supremacy. That the court endorsed the political sovereignty and rights to occupancy (within the bounds established in *Johnson*) of the Cherokee Nation, and by extension all Native nations within the United States, was simply an effect of this position that could not be avoided.¹¹ *Worcester v. Georgia* harshly condemned the state of Georgia’s extension of its laws into the Cherokee Nation as being “repugnant to the constitution, treaties, and laws of the United States,” and thus “reversed and annulled.”¹² Thus, the holding of the court affirmed Native sovereignty as far as relations with states were concerned. The federal government, however, in its guardian/ward relationship with Native nations, retained the authority to impose and enforce similar laws. The Indian Removal Act was one result of this.

8 30 U.S. (5 Pet.) 1, 8 L.Ed. 25.

9 Monroe E. Price and Robert N. Clinton, *Law and the American Indian: Readings, Notes and Cases*, 2nd Edition (Charlottesville, Virginia: The Michie Company Law Publishers, 1983), 76, 540.

10 Monroe E. Price and Robert N. Clinton, *Law and the American Indian: Readings, Notes and Cases*, 2nd Edition (Charlottesville, Virginia: The Michie Company Law Publishers, 1983), 76, 540.

11 Felix S. Cohen’s *Handbook of Federal Indian Law* [1942] (Albuquerque: University of New Mexico Press, nd), 305

12 31 U.S. (6 Pet.) 515, 8 L.Ed. 483.

Indigenous scholar Steve Newcomb assesses the Johnson decision as “truly ingenious and, from an indigenous perspective, quite diabolical. Marshall used the Christian religion and Christian nationalism, combined with the cognitive powers of imagination and assumption, to construct a subjugating reality for American Indians. More than 180 years after Marshall set feathered pen and ink to write the Johnson ruling for a unanimous Supreme Court, this subjugating reality still serves as the cornerstone of federal Indian law and policy.”¹³

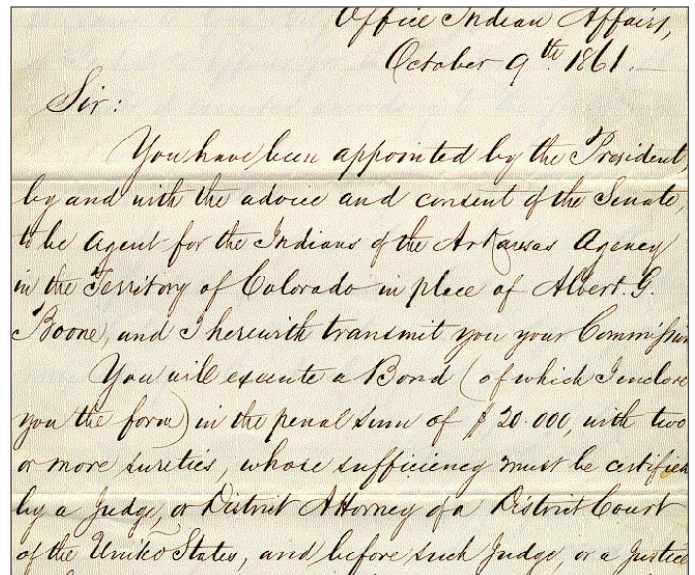
The Marshall Trilogy, then, not only produced a new legal doctrine, but also encapsulated the settler colonial worldview with regard to land acquisition, conquest, settlement, and the attendant rights. Until 1871 when the practice was ended, treaty making was the main vehicle through which American presidents negotiated with Native nations.¹⁴ Working in a chain of command under the president, territorial superintendents were expected to either abide by existing treaties with the tribes; broker new treaties to reallocate land title, overland passage, or the location of tribes and white settlements, as the cases demanded; or facilitate the negotiation of new treaties by commissioners of Indian Affairs, when they did not have the power to negotiate treaties themselves. Given this context, we can examine the situations faced by leaders in the three adjacent territories, beginning with John Evans.

The Office of Indian Affairs and the Post-1861 Treaty Making

In April of 1861 President Lincoln appointed William P. Dole to the post of Commissioner of Indian Affairs. Like most of Lincoln’s governor

¹³ Newcomb, *Pagans*, 102.

¹⁴ Philip J. Prygoski, From “Marshall to Marshall: The Supreme Court’s Changing Stance on Tribal Sovereignty,” http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/marshall.html



Letter from William P. Dole, Commissioner of Indian Affairs, Oct. 9, 1861. Concerns Colley’s appointment as Agent for the Indians of Arkansas Agency | Special Collections, Tutt Library, Colorado College, Colorado Springs, Colorado

appointments, Dole was a staunch abolitionist and Lincoln supporter in the 1860 Republic convention. He served from April 14, 1861 until Lincoln’s death in 1865. Dole continued a policy initiated by previous Commissioner James Denver, the city’s namesake. Although Denver served as Commissioner for only eighteen months—between April and December 1857 and again from October 1858 to mid-1859—his influence appears to have been substantial. He initiated a policy that would be continued by the two other predecessors to Evans, superintendents A.B. Greenwood (May 13, 1859, to April 13, 1861) and Charles Mix (who served in two non-consecutive periods.

James Denver articulated the paradoxical but ultimately insidious and destructive policy that eventually would be enacted by Congress as the Dawes Act or General Allotment Act of 1887. This policy rejected the standard practice up to that time of recognizing Native conceptions of communal land ownership, as well as segregated areas such as Indian Territory, with Native people relocated to these places. Instead, Denver advocated for a policy whereby Indians’ “destiny

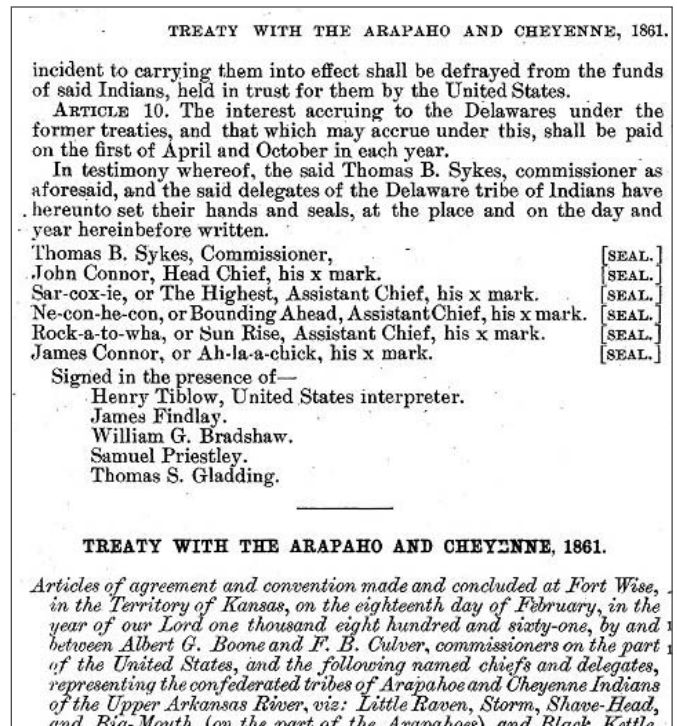
must be determined and worked out where they are,” on reservations so “restricted as to contain only sufficient land to afford them a comfortable support by actual cultivation, and should be properly divided and assigned to them.”¹⁵ This meant that in the territories west of the Mississippi, including those acquired through the war with Mexico and the Treaty with Great Britain in 1846, the Indian Office would attempt to establish “reservations,” rather than attempting relocations to Indian Territory.

The 1861 Treaty of Fort Wise, establishing the Upper Arkansas Reservation (which is discussed in more detail below), clearly reflected this policy. Denver insisted that “no white person should be permitted...even to enter” one of these reservations, and seemingly in response to Denver’s policy, Congress enacted a statute authorizing the Commissioner to exercise the power to “remove... any person found therein without authority of law, or whose presence within...the reservation may, in his judgment, be detrimental to the peace and welfare of the Indians.”¹⁶ What this meant, practically, was that it was the superintendents and the Indian agents serving under them that were ultimately granted this power and responsibility to prepare reservations and secure tribes in the territory onto them.

Under this vision of enforcing “civilizing principles” on Native people in designated tracts, Congress acted on the Indian Bureau’s recommendation for funds and treaties for buying Indian land and for establishing reservations. Utah’s adjacent Superintendent of Indian Affairs James Doty was appointed to head a Treaty

15 George C. Barns, *Denver, The Man The Life, Letters and Public Papers of the Lawyer, Soldier and Statesman* (Wilmington, Ohio: George Barns, 1949), 141

16 Barns, *Ibid.*, 136, 140-42; 11 Stat 329 (1858), Sec 2. Stephen Cornell, *The Return of the Native: American Indian Political Resurgence* (Oxford University Press, 1988), 49, 229. At several points in his dissertation (Sand Creek), Gary Roberts refers to the Upper Arkansas reservation as the “Sand Creek reservation”.



Treaty of Fort Wise, 1861 | <http://digital.library.okstate.edu/>

Commission in late August 1862, although he would not get to work on the negotiation process until 1863. It seems to have been generally accepted that Native nations held title to all lands in Utah, New Mexico, and what would soon become Nevada and Colorado, until that title was legally extinguished by treaty. In a letter to the Commissioner of the General Land Office, S.C. Stambaugh, Utah’s Surveyor General, “endeavored to show that the Indians left in the occupancy of this country under the Treaty of Guadalupe Hidalgo described in the 11th article of that Treaty, held the same title of occupancy, recognized as being in those who were left in occupancy of the lands ceded by treaties with England, France and Spain.”¹⁷

17 Stambaugh to Samuel Smith, Commissioner, General Land Office, Washington, DC., 1-25-1860,899. (For discussion of the Treaty of Guadalupe-Hidalgo, see Felix S. Cohen, *Handbook of Federal Indian Law* (Albuquerque: University of New Mexico Press, 1970 [1941]), 303, 385, 387.

Treaty-Making with the Utes, Arapaho, and Cheyenne in Colorado Territory

Given the parameters of the Ft. Laramie treaty, the Cheyennes and Arapahos understood that they still held title to their lands in Colorado Territory. Thus, when an avalanche of miners came to Colorado in the Pike's Peak gold rush of 1858 and 1859, they responded peacefully to this serious encroachment. In 1860, however, the U.S. Government renegotiated a new Treaty of Fort Wise (soon to be renamed Fort Lyon), which was signed on February 15, 1861. It was conceived to cordon the Cheyennes and Arapahos onto a subdivided, roughly triangular reservation in the area near Sand Creek (bounded by the Arkansas near the Northern border of what is now New Mexico and the Big Sandy). However, only ten chiefs signed the treaty: six Cheyennes, including Black Kettle (Motevato o), and four Arapahos. These leaders were given to understand that their peoples had reserved the right to hunt buffalo throughout the larger territory, for the reservation had no buffalo and was not easily arable. This treaty was a treaty of cession. The "said chiefs and delegates" ceded "all lands now owned, possessed, or claimed by them wherever situated" except for a tract "reserved for them" bounded by the Purgatoire, Huerfano, Arkansas, and Big Sandy Rivers. The cession enabled the former Cheyenne and Arapaho lands to be annexed into the Territory of Colorado, but because the Treaty of Fort Wise was not ratified until August 1861 and proclaimed in December 1861, it did not go into practical effect until early 1862.

It is important to note that this treaty did not alter the rights the Cheyenne and Arapaho retained to "hunting, fishing, or passing over any of the tracts of country" described as theirs in the 1851 Treaty of Fort Laramie. Although the

Northwestern University Report presents John Evans as hoping that this treaty "would resolve land disputes between settlers and Native people in Colorado," Evans had nothing to do with negotiating the treaty, nor is there evidence that Evans understood that the basis for "land disputes" that subsequently ensued in the territory were primarily due to the settler colonists' and miners' illegal trespass on Native lands.¹

Another crucial, complicating factor for Colorado's Indian-settler relations is that the Indian Office considered the Treaty of Fort Wise to be applicable only to those bands whose leaders had agreed to it.² Therefore, the Indian Office considered the rights guaranteed in the 1851 Treaty of Fort Laramie as well as the treaty-making process that might modify those rights to be active with regard to all other Indigenous groups that had territorial rights in Utah (and by extension

1 In what is now eastern Colorado, the new reservation was less than one-thirteenth the size of the lands demarcated in the Ft. Laramie Treaty of 1851. The Cheyenne chiefs were, in addition to Black Kettle, were White Antelope, Lean Bear, Little Wolf, Tall Bear, and Left Hand; the Arapaho chiefs were Little Raven, Storm, Shave-Head, and Big Mouth. See Charles J. Kappler, *Indian Affairs: Laws and Treaties. Volume II, Treaties* (Washington: U.S. Government Printing Office, 1904), 807-811; *Report of the John Evans Study Committee*, Northwestern University, May, 2014, 58

2 Even in a newspaper article from 1864 comparing this treaty to the Conejos Treaty with the Ute, the problem of representation is rendered through the demeaning binaries of the time: "The Ute treaty... we trust, will not be found to be incomplete, at least, for want of a barbarous signature or two, as was the case with the Arapahoe treaty, though we are aware that the tribe was not fully represented at the council where it was made." "Colorado," *The Mining Journal*, Blackhawk, Colorado, January 16, 1864.



U.S. Indian Commission treaty party led by William P. Dole in camp at Big Lake, Sherburne County | Minnesota Historical Society

as of 1863, Idaho), Nevada, and Colorado that were under the jurisdiction of those superintendencies. Emphasizing this point, on July 16, 1863, Commissioner Dole wrote to Evans: “I hope you will find it possible to arrange with the Cheyennes and Arapahos that have not signed the Treaty to do so and put them together, or make some other arrangement that will be just to them, and satisfactory to the whites.”³ In short, Superintendent Evans’s top priority from the Indian Office was to secure the rest of the Indian signatories to the Treaty of Fort Wise, or negotiate a new and “just” arrangement.

Initially, Evans responded favorably to Dole’s instructions to continue the treaty process with the Cheyenne and Arapaho that had been begun at Fort Wise in 1861. He set about preparing reservation facilities at the Upper Arkansas Agency, secured an interpreter, William Bent, and was granted two agents for the Upper Arkansas Agency: his cousin, “Major” Samuel G. Colley, who replaced the pro-slavery agent, Albert Boone, grandson of “pioneer” Daniel Boone, who had negotiated the Fort Wise Treaty; and Simeon Whiteley, another devotee of Lincoln appointed to the Middle Park Agency for the Grand River,

3 Letter of William P. Dole to John Evans 07-16-1863, Governor’s Papers, Transcript of original Letter Press Book Record. Governor John Evans. Colorado State Archives, History Colorado. MSS Evans 226.

Uinta, and Yampa Utes shortly after it was created in 1863. Based upon available records, however, it appears that Whiteley never had any contact with the Utes and Dole refused to pay his salary because he “was not at the agency to which he was appointed,” although doing so would have been difficult, since the agency had no physical location.⁴

Whiteley stayed in Denver and Evans directed him to serve as agent to two Arapaho bands that Evans induced to camp on the Cache La Poudre River north of Denver. Lafayette Head, appointed agent to the Southern Utes at Conejos by the Superintendent of Indian Affairs at Santa Fe in 1859, stayed on as agent, continuing to report to New Mexico’s Superintendent, but reporting officially to Evans. Michael Steck, served as agent under the previous New Mexico Superintendent, James Collins.⁵

Evans’s ability to govern the Territory depended on negotiating an agreement with the remaining tribes: the Cheyenne and Arapaho. Competing pressures between the two positions—governor and Indian superintendent—seemed to consistently lead to a minimal investment in his duties as in the later position and to favor settler security, without understanding or appreciation for the reserved rights that Cheyenne, Arapaho, and Kiowa had retained to hunt, dwell, move freely, and assert stewardship in their country. He seemed unaware or unconcerned that settlers in Colorado, the majority of whom had arrived between 1859 (after the discovery of gold at Pikes Peak), and 1861 (just as the territory was being organized) had done so illegally, and did not hold legal title to the farms and ranches that they so tenaciously regarded as their own private property. It was actually

4 Letter of John Evans to William P. Dole, June 22, 1864 and Evans to Whiteley, June 22, 1864, #s 276 & 282, Governor’s Papers.

5 Application for Supt. of Indian Affairs. N.M. Center for Southwest Research University Libraries, University of New Mexico, 30 April, 1861, Steck to Dole. <http://elibrary.unm.edu.cswr/> accessed July 19, 2014

Stephen A. Douglas, although known as a populist and a Lincoln antagonist, who pointed out on the Senate floor that “every man in Pike’s Peak is there in violation of law; every man of them has incurred the penalty of \$1,000 fine and six months’ imprisonment for going in violation of the Indian intercourse law, and claiming land which was under Indian title”.⁶

Commissioner Dole wrote to Evans: “I hope you will find it possible to arrange with the Cheyennes and Arapahos that have not signed the Treaty to do so...or make some other arrangement that will be just to them, and satisfactory to the whites.”

Whether Evans knew of Douglas’s observation and chose not to take it seriously, or distracted by his involvement in land speculation and institution building in Illinois, simply did not pay attention to Senate proceedings, is unknown. According to Evans’s future son-in-law, the Territorial Secretary Samuel Elbert and fellow University of Denver trustee, as stated in an interview with historian Hubert Howe Bancroft in 1884 (published in 1889), the “provisional government” of 1860 never went into successful operation. Law was ad hoc, in the hands of a “provisional Court” and a “Vigilance Committee” that, as he put it, “would get hold of a criminal case,... panel a jury, elect a judge, try him and generally hang him; and they run right together for a year or two....I don’t think there was anything done by any department of the government.”⁷

As we will see, a state of semi-lawlessness was not unique to Evans’s Colorado Territory. Similar situations obtained in Nevada, also newly created,

and in the vast territory of “Washington,” some of which was temporarily added to the territory of Utah.⁸ But different solutions were proffered, at least concerning the Native nations that occupied the region.

Western Lands and the Titans of Transportation

If the interests of settler colonists was Evans’s first priority, economics and trade, as well as the overland routes that brought supplies and communication to and from Colorado, may well have loomed as a parallel concern. The Cheyenne, Arapaho, Kiowa and other signatories to the 1851 Treaty of Fort Laramie had given permission for establishment and garrisoning of forts and construction and maintenance of roads through their territories. In fact, travelers had been coming through since 1846 and, with discovery of gold in California in 1848, by the thousands every year. From St. Joseph or Independence, Missouri, westward bound travelers proceeded either by the Missouri River to Omaha, Nebraska, where they linked up with the Platte River Road, or by the more direct land route across the great plains, picking up the road at Fort Kearney. At the confluence with the South Platte at Julesburg, one road led to Denver, while the main road continued west past Fort Laramie to South Pass where the trail again split into northern and southern branches. From Salt Lake City, beginning in 1859, a government-constructed wagon road and a privately forged horse trail led directly west through Utah and Nevada. The horse trail would become the route of the “Pony Express” by 1860.

In that year, a single firm, the Russell, Majors, and Waddell partnership, wrested the mail contract away from another transportation titan, George Chorpennig, at the same time that the Pony

6 E. Adamson Hoebel, *The Cheyenne*, 2nd Edition (New York: Holt, Rinehart and Winston, 1978), 110, quoting Leroy Hafen, Historical Background and Development of the Arapaho-Cheyenne Land Area in D.L. Horr, editor, *Arapaho-Cheyenne Indians*, 97-225 (New York: Garland Publishing), 141, quoted in Douglas.

7 Bancroft interviewing Elbert, 1.

8 Samuel H. Elbert collection. Photocopy of transcript of an 1884 interview with Elbert, a portion of the Hubert Howe Bancroft Collection. The State Historical Society of Colorado, Mss. XA. Bancroft, 449

Express was being implemented. It continued running passenger stages carrying the U.S. mail over the Central Route until the Waddell-Russell-Majors partnership went bankrupt in 1862. Ben Holladay's Overland Stage Company, which had begun running coach routes in California in the 1850s, secured a practical monopoly on the transportation of mail and freight from St. Joseph to Denver, as well as to Salt Lake City in 1861, and took over the route from Salt Lake City after the Russell, Majors, and Waddell partnership went bankrupt in 1862.

From the very start, the Pony Express was a capitalist boondoggle, a 19th-century Ponzi scheme. It was intended as a spectacular demonstration of pioneer resiliency intended to attract investors, rather than to operate practically. It was therefore in the best interests of the operators of stage lines and the Pony Express organized by Holladay and the Russell, Majors, and Waddell groups to impress investors with the U.S. Government's diligence and effectiveness in eliminating "thieving Indians" immediately in order to make the route "safe" for the Pony Express.⁹ Once he had the transportation monopoly from Missouri to California, Ben Holladay pursued the same goal.¹⁰ The Overland Company also secured a land freight contract from the Army and the weekly mail contract between Salt Lake City and Sacramento. Over thirteen days, riders for the "Horse Express" would hand off saddle bags in relays, twice a week, winter and summer, fifty-two weeks a year. Russell, Majors and Waddell hoped to build a financial empire

9 On May 2, 1862, three months following the Bear River Massacre, mail stage operator Ben Holladay sent a telegram to Utah Governor Brigham Young congratulating him for resumption of mail delivery. Edward W. Tullidge, *History of Salt Lake City* (Salt Lake City: By Authority of the City Council, Star Printing, 1886), 256.

10 The partnership took over the Central Overland California and Pike's Peak Express Company in 1858. Raymond W. Settle and Mary Lund Settle, *Empire on Wheels* (1949 Stanford: Stanford University Press), 59-63.

by implying to investors that a lucrative subsidy from Congress for their "Special Delivery Horse Express" as a special service of the U.S. mail was imminent.¹¹

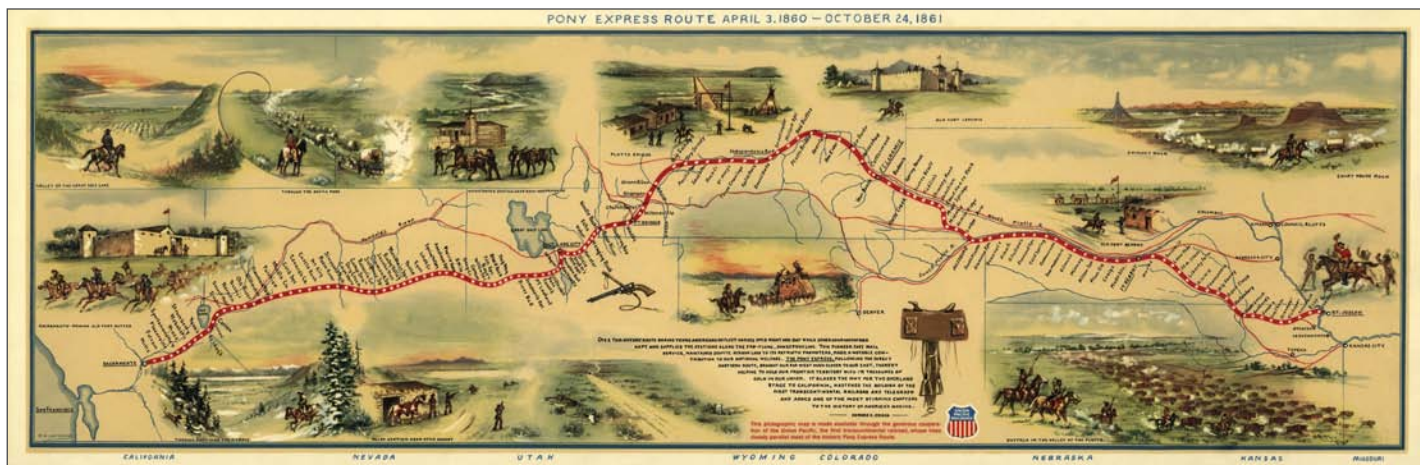
Right out of the gate, these transportation titans knew that the Pony Express would be a losing operation. Some years later, Majors estimated that the "Pony" lost several hundred thousand dollars. By 1862 the Russell, Majors, and Waddell partnership turned out to have a total indebtedness of \$1,331,526.¹² The partnership's web of schemes had been developed with a goal of staving off creditors, issuing junk bonds, and on the hope that it could eventually recoup losses by billing the government for purported losses and charging interest at the rate of 12 percent. The Pony Express had not been a spectacular feat of heroic daring and patriotic entrepreneurship in forging rapid communication for the western portion of the burgeoning Union as it fought the Confederacy. Rather, it had been a brazen effort to swindle Congress for subsidies and to defraud investors.

Preceding the gold rush to Pike's Peak in 1859 and the Pony Express in 1860-61, in the years between 1846 and 1854 more than 150,000 settler colonists and freighters had traveled the overland route from Missouri to Sacramento, killing game as they went. In 1853 the Commissioner of Indian Affairs reported that the Cheyenne, Arapaho, and western Sioux were "in a starving state...Their women are pinched with want, and their children constantly crying out with hunger."¹³ The Pony Express only made this situation worse. While they lasted only from 1859 to 1861, the Pony Express

11 Leroy R. Hafen, *The Overland Mail, 1849-1869* (1926, Cleveland: The Arthur H. Clark Co.), 189.

12 Settle and Settle, *Empire*, 75-7; Arthur Chapman, *Arthur The Pony Express* (New York: A.L. Burt, 1932), 304; Settle and Settle, *Empire*, 95-117; Chapman, *Pony*, 248-55; Raymond W. Settle and Mary Lund Settle, *Saddles and Spurs: The Pony Express Saga* (1955, Harrisburg: The Stackpole Co.), 171-76.

13 Hoebel, *The Cheyenne*, 109.



Map of the 1860 Pony Express Route by William Henry Jackson | US Library of Congress

and the freight and passenger wagons that traversed the trail to and from Julesburg and beyond, in both directions—east and west—wrought much havoc and disrupted Native lifeways and society, which in many ways signaled irrevocable cultural decline and instability. Mule teams pulling wagons loaded with supplies pounded the roadways, while teams of four to six horses pulled the weekly stagecoaches. A minimum of two express horses at any one time thundered along any particular stretch of trail twice a week at breakneck speed. Stations, their masters and stock-tenders with horses at the ready were established every ten to twelve miles. Roving mechanics and traveling agents plied the roads to keep the stages rolling. Additionally, thousands of travelers on horses and in wagons continued to crowd the road. Stock watering and the overuse of pasturage despoiled many of the very best springs, the deepest and most reliable, as well as the most fertile parts of the broad valley floors. Horses and mules were turned loose to graze native grasses. Streams were diverted for irrigating pastures consisting of newly planted non-native grasses including invasive varieties of hay, wheat grass, and oats. Pony Express riders seeking firm footing through miles of “putty-like mud” in spring and autumn rains guided their horses across wide swaths that skirted the increasingly muddied and impassable roads. In summer, these same iron-shod

horses compressed the silt-covered roadway into a thick carpet of fine alkaline powder that swirled in clouds of gritty dust with the gusting winds.¹⁴

The impact of these preferred transportation routes and their promoters’ interests bears on our inquiry for three reasons. First, the invasion of a country in which Native peoples had retained the rights to hunt and gather disrupted migrations of animals such as the bison and antelope, and offers some explanation for reports of economic privation all along the Overland Route, from Scotts Bluff to Hangtown (now Fallon, Nevada). This is the context within which the impetus for the policy of negotiating with Native groups perceived as “hostile” and/or accused of committing “depredations” became paramount.¹⁵ Agents and superintendents mentioned incidents

14 Egan, *Pioneering the West*, 197-8; Richard F. Burton, *The City of The Saints*, Second edition (London: Longman, Green, Longman, and Roberts, 1862), 548, 550-51, 556, 561-6, 572-4, 572, 583-4, 590-91. Elliott West, *The Contested Plains: Indians, Goldseekers, and the Rush to Colorado* (Lawrence, Kansas: University Press of Kansas, 1998), chapter 9.

15 On depredations along the road, see Letters, Forney to Mix 8-27-1858, 898; Annual Reports of the Commissioner of Indian Affairs (ARCIA) for 1859 (Washington: George W. Bowman, 1859) #175; Letters, Forney to Mix 9-16-1858, 898; Letters, Forney to Greenwood 8-10-1859, 899; ARCIA 1862#41).

of “depredations” along the Humboldt River road, but they also mentioned the destitution of Native populations encountered along the route. For example, in 1859 the Commissioner of Indian Affairs reported to the Secretary of the Interior that “the reports of the condition of the Indians in Utah present a melancholy picture. The whites are in possession of most of the comparatively good country there is, and the game has become so scarce as no longer to afford the Indians an adequate subsistence. They are often reduced to the greatest straits, particularly in the winter, which is severe in that region; and when it is no uncommon thing for them to perish of cold and hunger. Even at other seasons, numbers of them are compelled to sustain life by using for food reptiles, insects, grass seed, and roots.”¹⁶

Secondly, the perceived economic effects of attacks upon road stations (which were often targeted because they were perceived as the cachements for the destruction of resources upon which Native peoples depended) may well have loomed larger than the casualties to human life, and may have provided a more compelling context not only for negotiation of treaties along the Overland Road, but also the gradual shift in context from conciliation to incendiary conflict. By the time Ben Holladay took over the bankrupt Overland in 1862, effectively gaining control of thousands of miles of road, hundreds of coaches and horses, and the U.S. mail contract, he was in a position to exert major, if not primary influence over military and civilian authorities, especially in Colorado and Utah.

As Gary Roberts writes of Holladay, “Heartily despised by many who saw his control of the U.S. mails and the overland stage route as a stranglehold on the region...his power was unmistakable...He

16 ARCIA 1859, Commissioner to Secretary of the Interior, ARCIA, 21-22.

brought tremendous pressure to bear on General Curtis to keep the stage route open. This task tied down most of Curtis’s troops in the district of Nebraska.”¹⁷ On September 30, 1864, two days after Evans had met with leaders including White Antelope, Black Kettle, and Neva at Camp Weld (a meeting discussed in further detail below), Colonel John Chivington, commander of the U.S. troops in Colorado, and Samuel Elbert, Evans’s son-in-law and the territorial secretary, perhaps as Acting

The Pony Express and the freight and passenger wagons that traversed the trail to and from Julesburg and beyond...wrought much havoc and disrupted Native lifeways and society, which signaled irrevocable cultural decline and instability.

Governor, met with Holladay in order to persuade him to shift his route further south so that it could be more easily defended. Holladay refused to do so and “upbraided Chivington in the severest terms,” convinced that Chivington could not protect the road. Whether in response to this disparagement or not, Chivington’s troops carried out the first of its concerted assaults against Cheyennes and Arapahos. According to reports, they killed four or five men, three or four women and two children, taking the scalp of one man.¹⁸

It is from this context that we now turn to actions of the Indian agents and superintendents, and to two U.S. Army actions, in a comparative framework, in order to achieve an evaluation of John Evans’s work as Superintendent of Indian Affairs, focusing especially on 1863 and 1864.

17 Gary L. Roberts, *Sand Creek: Tragedy and Symbol*. Ph.D. Thesis. (Norman: Department of History, University of Oklahoma, 1984) 385-6.

18 Roberts, *Sand Creek*, *Ibid.*, 385-7.

Federal Leadership in Neighboring Territories

In all three territories and elsewhere in the West it was the Native American groups through whose territory the transportation routes wrought destruction that became the objects of the most intense scrutiny and activity on the part of the Indian Office. The same held for the U.S. Army when not diverted to the Civil War. The Native groups along the route from St. Joseph through Julesburg, Salt Lake City, South Pass and Fort Hall and on into Nevada are glossed in historical accounts as Sioux, Cheyenne, Arapaho, Eastern Shoshone, Northwestern Shoshone, Gosiute, Western Shoshone, Bannock, and Northern Paiute. The eastern part of this area was also the ancestral home of the Oto, Missouri, Pawnee, and Omaha, but these groups had been induced to cede their territorial rights and in the case of the Oto and Missouri, to relocate. Despite a long-current impression that for travelers coming from the eastern United States, the greatest threat of death lay on the Great Plains—the territory of the Sioux, Cheyenne, and Arapaho—in fact, according to historian John Unruh, “an analysis of the geographic regions where nearly 400 overlanders were killed between 1840 and 1860 indicates that approximately 90 percent of all emigrant killings took place west of South Pass, principally along the Snake and Humboldt Rivers and on the Applegate (Lassen) Trail,” in the territory of the Shoshones, Bannock and Northern Paiute, not in the territory of the Sioux, Cheyenne and Arapaho.¹

A further observation must be made here: even though by far the most dangerous part of the trail for emigrants was along its Snake and Humboldt

sections, the trail was even more dangerous for Native people. Between 1850 and 1857, 305 emigrants were killed. The number of Native Americans killed by emigrants was 416. Only in 1859 and 1860 do the numbers for emigrants killed eclipse that of Native people, totaling fifty-seven, as opposed to 20 Indians killed, according to official records. An additional thirteen emigrants were killed by whites disguised as Indians in 1859.² Along the Snake River road, attackers in one incident in 1862 were identified as “Indian warriors...led by white men”.³ In Utah James Doty confronted a major challenge: a fifteen-year-long legacy of conflict along the “overland” route and a recent history of especially intense conflicts from 1861 to 1863 when Native warriors attempted to drive the destructive Pony Express out of their homeland.

But Doty’s earlier experience in Michigan provided him with a perspective that enabled him to meet this challenge. In 1821 two Native Americans were arrested and charged with murder. One, a Menominee, was remanded to the Michigan Supreme Court because his alleged crime had been committed in an area that was under the jurisdiction of the “organized territorial government,” that is, on land that had been ceded to the United States in a series of treaties dating from 1817, 1819, and 1820. The second, an Anishinaabe (Chippewa) man by the name of Ke-taw-kah, was remanded to the same court with jurisdiction given to the U.S. circuit and district court, as his crime had been committed on land

1 John W. Unruh, *The Plains Across* (Urbana: University of Illinois Press, 1979), 144 (Unruh gives no figures for 1858).

2 *Ibid.*, 144.

3 Brigham Madsen, *The Shoshoni Frontier and the Bear River Massacre* (Salt Lake City: University of Utah Press, 1985), 159-160.



United States after the Idaho Organic Act in 1863 | Wikimedia

that had not been ceded.

The young lawyer assigned as Ke-taw-kah's public defender was none other than James Doty. Part of the defense that Doty put forth was that the murder had been committed on lands that were not yet owned or consolidated under the legal jurisdiction of the United States, but which that remained under the control of Native nations. He argued that international law, not U.S. law should apply because the United States had, in fact, recognized the international status of Native nations by negotiating treaties with them, just as it did with foreign nations, and that Native nations exercised "every act an independent nation did."⁴ The court did not accept this argument and although Doty did not prevail on behalf of Ke-taw-ka, he nonetheless demonstrated some important and salient principles, including the recognition of the international status of Native nations, appreciation for the legal parity between the United States and Native nations, acknowledgement that Native nations maintained independence and jurisdiction over their lands until it was relinquished through treaty-making, and a perspective on Native rights that would not enter international political diplomacy until the

4 Alice Elizabeth Smith, *James Duane Doty, Frontier Promoter* (Madison: State Historical Society of Wisconsin, 1954), 24

United Nations' adoption of the Declaration on the Rights of Indigenous Peoples in 2007.

Three years later, in his capacity as an appointed federal judge for western Michigan, Doty once again asserted his adherence to these principles. In this case a Menominee person was accused of having bitten off the thumb of a white trader in a dispute that took place in a similarly unceded area some fifty miles northeast of Detroit. The lawyer for the defense employed the same defense that Doty had used for Ke-taw-kah. Similarly, the jury did not accept the argument. But Doty was now the judge. He ruled that indeed, the event had happened in Indian country where Michigan Territorial law had no standing, and because "[t]he act for the punishment of crimes adopted by the Governor and Judges does not extend to the Indian country... There being no statute of the United States for the punishment of crime of maiming within the Indian country, the prisoner [was] discharged..."⁵ Despite the precedent that Doty's decision as United States judge should have established for Native nations as subject to international law, two years later, in 1823, Chief Justice John Marshall made sure that it did not do so.

Negotiation and Accommodation: Nevada and Utah

Nearly forty years later, as Treaty Commissioner, Doty had willing assistance from Nevada Territorial Governor and Superintendent of Indian Affairs James Nye, as well as agents Lockhart, Martin, Hatch, Wasson, and Mann and interpreters Butterfield and Huntington. Martin had already brought up the idea of a treaty with leaders of the Eastern and Western Shoshone in 1861 and had reported them "unanimously in favor of a treaty,"

5 Alice Elizabeth Smith, *James Duane Doty, Frontier Promoter* (Madison: State Historical Society of Wisconsin, 1954), 23-24, 62.

as long as it included “annual presents” [goods to exchange as part of the council process], and agreed “to hold themselves responsible for any depredations committed by any of their bands...” Later, one of the chiefs, Shokub, traveled to Salt Lake City from his home 200 miles to the west to tell Martin that “. . . his bands were much in need of provisions and blankets; on account of the monopoly of the grass in their country by the mail company to feed their stock, which deprived them of the seed which they have heretofore used as an article of food.”⁶

Nye in Nevada

In Nevada territory, Nye was very much in agreement with the proactive approach anticipated by the Indian Office. One of the first things he did upon arriving in Nevada from New York in early spring, 1861, was to “go among the Indians” living on Nevada’s two reservations “and distribute such presents as had arrived.” Each reservation was about fifty miles distant from Carson City. One of the most important Northern Paiute leaders was Winnemucca, who lived at Honey Lake, and Nye had to wait a couple of days for him to arrive. But wait he did. Nye “entered into a more minute and detailed conversation” with him “than with any of the other [leaders] and explained more particularly the fact of an existing government, its nature, and power,” and also of the overland stage route and the telegraph. Winnemucca “said he would tell all his people not in anyway to interfere with either; and further that if any one interfered with either,

6 Indians complained that whites depleted the game and that they were forced to beg for food or starve. Martin responded to these concerns claiming there was too little money to satisfy their needs and that “the only manner in which this can be effected...is by a treaty with all the tribes in this superintendency.” AR- CIA 1861, Letter #50, Henry Martin, Superintendent of Indian Affairs, Salt Lake City to Dole, 134- 136.

7 James W. Nye, Territorial Governor and Superintendent of Indian Affairs, Nevada to Caleb Smith, Secretary of the Interior, August 14, 1861, Letters Received by the Office of Indian Affairs. National Archives. M(icrofilm)-538

he would let [Nye] know it.”⁷

Nye also advised the Indians to let the agent know “of any depredations committed upon their rights...” Nye found five trespassing settler colonists attempting to establish ranches on the reservation; they were warned off. In late November 1861, the Army notified Governor Nye that it was going to station troops along the mail route but also considered it absolutely imperative that provisions be supplied to the “starving Indians” along the route and even offered to sell military stores to the Indian Office if it did not have any, perhaps in response to agent Martin’s frantic plea to Dole, by telegram, that “Indians should have provisions on mail line at once to keep them quiet. I have no funds what shall I do answer at once [sic].”⁸

Although skeptical of the idea to station 500 “volunteer soldiers” along the stage route, Nye recommended a treaty that would extinguish Indian title, and also noted that pursuing a peace policy would require that the government provide food for the Native people and furnish them with blankets. He regarded the rumors of the danger of imminent attacks on the overland Mail to be “greatly magnified by ungrounded fears of many of the Station keepers...” In pursuit of the peace policy, Nye again met with Northern Paiute leaders Winnemucca and his son, Numaga, in May of 1862, and went on to the Reese River, near Austin, where he met with Western Shoshone leader Tutuwa (To-toa). He arranged for Tutuwa to

8 AR- CIA 1861, Utah Superintendency, Paper #50; Letters, Nye to Caleb B. Smith, Secretary of the Interior, August 14, 1861, M-538; Letters, Telegram from Henry Martin, Supt. of Indian Affairs, Utah to CIA Dole, November 21, 1861, 900; Letter from “G. Wright, Brigadier General, Commanding...Headquarters Department of the Pacific, San Francisco to “His Excellency J.W. Nye, Governor” November 22, 1861, AR- CIA for 1861 Washington: U.S. Government Printing Office, 1862), 216-217. Just a year earlier, in 1860, eighty Indians were reported as having “bullied” the two men at the Overland Mail’s Egan’s station, demanding flour, bacon and sugar. The men baked all the bread they could. Meanwhile, soldiers arrived with guns blazing, killing eighteen Indians; Madsen, Shoshoni Frontier, 126.

receive gifts as a show of respect and friendship.⁹ As will be evident, these perceptions and actions differed markedly from those of his counterpart, territorial Governor and Superintendent of Indian Affairs Dr. John Evans.

Doty in Utah

Governor Albert Cumming, who replaced Brigham Young after the “Mormon War” of 1857 and served Utah territory until 1860, had insisted that along with surveying the land, the government must also secure title to all lands that were surveyed, and it could only do so by negotiating treaties that compensated the Native owners for the usurpation of such resources. Along with other officials, in 1860 Cumming urged the Commissioner of Indian Affairs to negotiate treaties as soon as possible. They cited the fact that this had not yet been done as a primary reason for “depredations,” that is, the securing of economic resources, largely livestock, from immigrants and settler colonists:

The undersigned actuated by a sense of duty, would respectfully call your attention, and through you the attention of Congress to the pressing necessity of taking immediate steps towards bringing the Indians of the Territory of Utah under treaty obligation. It is believed that this Territory presents the only instance of the organization of a Territorial government by Congress, the country thrown open to settlement, without measures being first adopted to extinguish Indian title.¹⁰

Of course, once Nevada and Colorado were organized as territories in 1861, this would become true of them as well. If the government had brought the Native population under normalized treaty stipulations, argued the Governor Cumming, depredations would not have occurred.

9 Letters, Nye to Smith, August 14, 1861, 538; Nye to Dole, ARCIA for #46, 359.

10 Letters, Cumming, Rogers et al to Greenwood 11-1-1860, 899.

Accordingly, the Native people of the region “fully realize the effect produced by settlement, taking possession of their most valuable hunting ground, driving off their game consuming their grass, and begging and plunder, seem to them not only justifiable but their only alternative.”¹¹ Therefore, the case was presented for treaty negotiations quite ironically as driven by considerations for justice; as a humanitarian duty; as a legal necessity; and in the service of pragmatic American diplomatic strategy.

Utah Superintendent of Indian Affairs James Doty’s authorization to negotiate a treaty with the Shoshone came through in the waning days of August 1862. Commissioner of Indian Affairs Dole “saw the treaty system as the best guarantor of Indian rights...Only when the tribes were

Nye recommended a treaty that would extinguish Indian title, and also noted that pursuing a peace policy would require that the government provide food for the Native people and furnish them with blankets. He regarded the rumors of the danger of imminent attacks on the overland Mail to be “greatly magnified by ungrounded fears of many of the Station keepers...”

protected in this way, he believed, could the federal government withdraw from Indian management. The treaty system would settle the question of land title once and for all and would allow the Indians a voice in their own future.”¹² But Doty doubted he could do it that year because many bands were out hunting on the tributaries of the Missouri River, and also because “Indians have committed so many outrageous murders and depredations this season it’s doubtful they will venture into council with us.” In other words, the Native people of the

11 Ibid, 899.

12 Roberts, *Sand Creek*, 209.

region were growing increasingly alarmed by the incursions of settlers onto their lands, which made the negotiation of treaties an uncertain endeavor.¹³

But persist he did, along with Henry Martin, who had succeeded Doty as Superintendent of Indian Affairs after Doty had taken the position of Treaty Commissioner. In December of 1862, Martin “assembled Shoshones in Ruby Valley with regard to instructions to do so for the treaty.” He found them “more hostile” than he had anticipated, but assured the Commissioner of Indian Affairs that there was “nothing to fear.” James Nye subsequently prepared a list of goods necessary to the making of the Treaty at Ruby Valley.¹⁴ In November 1862 Doty wrote to Dole, “If, according to your Instructions, cessions of territory, so as to include the white settlements and thus relieve the settlers from the tribute constantly demanded of them by individuals of these Tribes, are not to be made in the Treaty, provision I think ought to be made by which the discoverers of gold, silver, and other minerals are permitted to explore and occupy any portion of the country for mining purposes”.¹⁵ Indeed, all the treaties contained such provisions.

13 Letters, Doty to Dole, 8-29-1862, 900; Doty to Dole, 11-26-1862, Doty to Nye, 11-29-1862, NSLABx-TERR-0108FdC-11. He also insisted on including the “Banucks” because the “Banucks” were now “mixed” with the Shoshones; “they live and hunt together, ranging through Nevada, Utah and Washington Territories ... and therefore ... it is not possible that a Council can be held without many Banuncks and Utahs being present.” By “Utahs” Doty meant a group known as “Weber Utes” in popular parlance, living just west of Salt Lake. They were in fact Shoshones, with Little Soldier as their chief. How they came to be labeled “Utes” is unknown. See Julian Steward, *BasinPlateau Aboriginal SocioPolitical Groups*. Bulletin Number 120. Bureau of American Ethnology (Washington: Government Printing Office, 1938), 133-4.

14 Letters, Martin to Dole, 12-9-1862, M-234,901; Letters, Nye to Dole 6-6-1863,901.

15 Doty to Dole 11-26-1862, NSLABxTERR-0108,C-11. It is perhaps instructive that Nye does not question the legitimacy of the “tribute”.

Six months later, Doty reported that the Native people who had “been hostile, and [had] committed depredations upon the persons and property of emigrants and settlers” now expressed “a strong desire for peace.” Doty saw the primary purpose of the treaties as threefold: (1) making “some arrangement...by which they can with satisfaction return to their hunting grounds,” (2) to do so “upon terms which shall secure peace hereafter, safety to the Emigrants & travelers, and (3) relieve the Department [of the Interior] from the expense now being incurred...”¹⁶

The Massacre at Bear River

The hostility that Martin encountered at Ruby Valley was undoubtedly occasioned by the deadly pursuit and killings of Native people, largely unacknowledged in the historical record that preceded the Bear River Massacre of more than 400 Shoshone in Utah in January 1863. Colonel Patrick Connor marched his 1,121-man 3rd Infantry of California Volunteers out from Fort Churchill, Nevada in August 1862. Ostensibly acting on a report that “Indians” had recently killed twenty-three emigrants (this figure was later reduced to twelve) on the Humboldt River branch of the Overland Trail, Connor ordered Major Edward McGarry to find the perpetrators. Connor’s offer of fifty dollars for every Shoshone responsible for the attack to be delivered to him got no takers. McGarry was then ordered to “immediately hang” any “perpetrators” that could be located and captured. He was unsuccessful in this regard, but he did report the killing of twenty-four Shoshone who refused to cooperate, or tried to escape.¹⁷

It is difficult to know just how many unreported incidents occurred that would push the actual figure of Shoshone casualties higher. A Shoshone woman who died in 1949, at well over

16 Letters, Doty to Dole, June 20, 1863, 901.

17 Madsen, *Shoshoni Frontier*, 167-8.

a hundred years, related her story of the killings at a camp near present-day Austin, which occurred when she was a small girl. The troops had captured a Shoshone man and made him scout for them. The scout attempted to escape, but the troops followed him. When the troops attacked, her aunt hid her in a crevice in a rock outcrop above the camp. The troops shot an undetermined number of Shoshone people, but this small girl witnessed the attack and killings and escaped to tell the story of her band.¹⁸ These were most likely the troops commanded by Major McGarry that spent several weeks during September and October hunting Shoshones and trying to force them into leading them to those allegedly responsible for the killing of the twelve emigrants.¹⁹ Anthropologist Julian Steward noted in 1938 that at Basonip Village, in Spring Valley, “about seven families...were killed by white soldiers.”²⁰ Shoshone oral history attributes several additional killing incidents by troops. Altogether, there may have been half a dozen other incidents involving the killing of Shoshone people in September and October of 1862, resulting in upwards of 100 dead.²¹

Having established Camp Douglas outside of Salt Lake City in October, 1862, in January 1863, Connor marched 300 troops out of Camp Douglas and attacked the Shoshone camp on Bear River,

in what was then Washington Territory. “Being satisfied,” he later wrote in his report, “that ...[the] body of Indians, on Bear River ...were the same band who had been murdering emigrants on the overland mail route for the past fifteen years, I determined to chastise them.” The plan was put into motion initially as a ruse “to deceive the Indians by sending a small force in advance, judging, and rightly, that they would not fear a small number.”²² “Feeling that secrecy was the surest way to success,” Connor led the rest of his troops to Bear River a week later.

His strategy worked; even though he attacked in the early morning hours of January 29, 1863, Sagwitch, one of three chiefs in the camp, thought Connor might have come to talk and negotiate.²³ Connor, with no intention to negotiate, made no attempt to find Sagwitch. Connor’s troops came to kill, not to parley; they suffered eighteen casualties and forty-nine wounded, and Connor claimed to have personally killed Sagwitch. Connor counted “224 [Indian] bodies in the field...How many more were killed than stated I am unable to say,” Connor later wrote in his report because he “was unable to examine the field.” After the assault had been completed he also testified to the release of 160

18 Richard O. Clemmer, *Field Notes*, 1989, 87-8, 200, in Richard O. Clemmer’s possession.

19 Madsen, *Shoshoni Frontier*, 168.

20 Steward, *Basin-Plateau*, 127. The date is uncertain. The incident could have occurred in 1861 in connection with retaliation for destruction of the Spring Valley stage and express station.

21 Richard O. Clemmer, *Field Notes*, 1989, 15, 17, 56, 87-8, 200, 277, 303-4; Sylvester L. Lahren, Jr., Ph.D., Tribal Ethnographer/Principal Investigator, Confederated Tribes of the Goshute Reservation. *A Shoshone/Goshute Traditional Cultural Property and Cultural Landscape. Spring Valley, Nevada*. Prepared at the Request of the Confederated Tribes of the Goshute Reservation. Cooperating Tribes: Ely Shoshone Tribe; Duckwater Shoshone Tribe, 17-22. Lahren’s interpretations attribute an undetermined number of killings to U.S. troops between 1858 and 1863.

22 He sent 69 infantrymen with thirteen wagons and two howitzer guns on January 22. Scott R. Christensen, *Sagwitch, Shoshone Chieftain, Mormon Elder 1822-1887* (1999, Logan: Utah State University Press), 47; Report of Patrick Connor, Colonel, 3rd California Volunteers, to Colonel P.C. Dunn, Assistant Adjutant General, Department of the Pacific, in Edward W. Tullidge, *History of Salt Lake City*, 286.

23 Madsen, *Shoshoni Frontier* 169; Mae T. Parry, a granddaughter of Chief Sagwitch, in “Massacre at Boa Ogai” (1976, 231-8 in Madsen; *Shoshoni Frontier*, 233) states that Sagwitch would have turned over the “guilty” in an incident in which three miners recently had been killed. The other two chiefs, Lehi and Bear Hunter, were also killed.



Painting of the Bear River Massacre in the Preston Post Office. | Preston Chamber of Commerce

captured children and “squaws” in the field.²⁴

Several hours after the end of the massacre, a visitor to the killing field noted many instances of rape on the soldiers’ part and that “squaws were killed because they would not submit to lie down and be ravished.”²⁵ Another reporter noted soldiers massacring women and children as well as men, and of troops holding infants by their heels and beating their brains out against “any hard substance they could find.”²⁶ One soldier found “a dead squaw...with a little infant still alive...The soldiers killed it.”²⁷ Local Salt Lake City historian, Edward Tullidge, some years later discovered a “historical note” in the Logan Branch of the Church of Latter Day Saints records from an “eye-witness from Franklin” [Utah] who counted 368 dead, “besides many wounded who afterward died.”²⁸

If documented and probable killings by U.S. troops were summed, including an additional

unknown number from those at Bear River who were wounded and later died, the totals would top 500 for 1862 and 1863. Historian Brigham Madsen characterizes “Connor’s destruction of a peaceful village of Shoshoni” as having few parallels “for rapine and human atrocity.”²⁹ His assessment was that “Connor’s efforts to punish the Northern Shoshone and subdue them proved ineffective.” “Instead of cowing the Northwestern Shoshone into submission...there is overwhelming evidence that the reverse happened.” Rumors were circulated that Indians were now so angry with the soldiers that they intended to “steal and kill every white man they could find.” The surviving bands, “enraged at the slaughter of their neighbors, friends, and relatives, mounted new hostilities” against settler colonists.³⁰ Three hundred and seventy-five miles away in Denver, the massacre was given ample press.³¹

So the fact that Doty was able to accomplish treaty negotiations in the Summer and Autumn of 1863 is remarkable in the context of the anger and resentment that Shoshone must have felt in the wake of the killings and massacre. Later that

24 “Report of Patrick Connor, Colonel, 3rd California Volunteers, to Colonel P.C. Dunn, Assistant Adjutant General, Department of the Pacific,” in Edward W. Tullidge, *History of Salt Lake City* (Salt Lake City: By Authority of the City Council, Star Printing, 1886), 283-6.

25 Verso of a drawing prepared by Cache County surveyor James H. Martineau. Christensen, *Sagwitch*, 49, 52.

26 Madsen, *Shoshoni Frontier*, 200.

27 Tullidge, *History of Salt Lake City*, 290.

28 *Ibid.*, 290.

29 Madsen, *Shoshoni Frontier*, 222.

30 Brigham Madsen, *The Northern Shoshone* (Caldwell: Caxton Printers, 1980), 36; Madsen, *Shoshoni Frontier*, 201.

31 *Northwestern Report*, 58.

Spring, following the Bear River Massacre in January of 1863, Doty spent six weeks on the road, travelling over nine hundred miles, meeting with Bannocks and Shoshone, under escort from some of Connor's troops. Doty noted that the only bands that appeared "determined to continue hostilities are those of Pokatello, Sagowitz and Sanpitz." The latter two groups were decimated by Connor's assault at Bear River. At that time Doty could "obtain no communication" with them. When meeting with Bannock and Shoshone at Kamas Prairie, they told him about an attack by drunken white men when they were in Bannock City (now Idaho City, a gold rush town northeast of Boise). They told him they did not intend to revenge "this wanton act." Doty decided to not only see if he could find more Indians along the road, but also to try to verify the incident. He did so, "with regret."³²

A scant few days after returning from his Spring trip, he set out again, concluding the Treaty of Fort Bridger on July 2 and the Treaty

32 Letters, Doty to Dole, July 20, 1863, 901.

of Box Elder on July 30. At Fort Bridger, the bands of Bear Hunter, Ashingodimah, Sagowitz, and Sanpitz, whom Doty duly noted as "nearly exterminated" in what he called "the battle on Bear River" were present. Within the intervening month, the bands led by Pokatello, Sagowitz,

Instead of cowing the Northwestern Shoshone into submission...there is overwhelming evidence that [the massacre caused] the reverse to happen.

and Sanpitz, which took up a posture of armed resistance early in the conflict, were eventually persuaded to agree to a Treaty.³³ Doty negotiated five treaties altogether, including one with "mixed bands of Shoshone and Banucks of the Shoshone or Snake River in Idaho Territory," although the treaty (Soda Springs, October 14, 1863) was not ratified at the time.³⁴

33 Letters, Doty to Dole, Nov. 10, 1863, 901.

34 Letters, Doty to Dole, 12-30-1863 in ARCIA1864#64; Cross reference sheets, M-234, 901.

John Evans and the 1863 Mandate: Make Treaties and Ensure Peace

A central point of comparison between the Colorado Superintendency and Superintendent Nye and Commissioner Doty is the degree of close attention and success in negotiating treaties of peace and friendship with Native nations that had been involved in “depredations” along the western branches of the Great Platte River. Here it is worthwhile to reiterate, as above, that on July 16, 1863, Commissioner of Indian Affairs Doty wrote to Evans: “I hope you will find it possible to arrange with the Cheyennes and Arapahos that have not signed the Treaty to do so and put them together, or make some other arrangement that will be just to them, and satisfactory to the whites.”¹

Evans seems to have been overwhelmed by the tasks for which he was responsible. In addition to the charge of negotiating with the Cheyenne and Arapaho, Evans had another treaty to manage with the southern Utes. This treaty was actually in the process of being settled, although apparently Evans was unaware of this fact. He complained to Dole on July 16, 1863, that on the one hand he feared failure with the Utes because “they [were] scattered over 400 by 150 miles of mountains,” but noted on the other hand that it was necessary to have all the Utes at the treaty signing because “a treaty made with a small part of the tribe [was] worse than no treaty.”² The same dictum, of course, would apply to the Fort Wise Treaty

with the Cheyenne and Arapaho, which should have underscored the urgency of securing more representation and support for that treaty. On August 24, 1863, Evans again wrote to Dole, this time to apologize for being “disrespectful” in a misunderstanding he did not create regarding the surveying of the Upper Arkansas Reservation created by the Treaty of Fort Wise. Again his correspondence is deeply ambivalent. On the one hand, he declares himself “ready and anxious to carry out the wishes of the Dept. when made known to [him]” and goes on to embrace the task of making “the two treaties you have honored me by a commission to aid in making.” On the other hand, he complained that this was going to make for him “a very hard summer... The Utes have been fighting the soldiers that they seem averse to treating,” he noted, and the Arapaho and Cheyenne were “divided among themselves.”³ In fact, these conditions were very similar to those faced by Doty at almost the same time, but where Doty was successful, Evans was not. Moreover, as we will see, it was the New Mexico superintendency that could count the Ute Treaty of Conejos (October 7, 1863) as its achievement, one not attributable to Evans’s leadership.

It is nevertheless noteworthy that as of August, 1863, Evans clearly regarded himself as mandated with two treaty commissions: one concerning

1 Evans to Dole, July 29, 1863, 226 Evans Box 6, FF 64, Governor’s Papers, History Colorado, Hart Library.

2 Evans to Dole, July 16, 1863, Governor’s papers.

3 Dole to Evans 07-16-1863; Evans to Dole, 07-29-1863; Evans to Dole, 08-24, 1863, Box 6, FF 64, Governor’s Papers. This latter letter has “Private” written across the top, and in places the handwriting is difficult to decipher.

the Utes, which, as he wrote, was being handily facilitated by agent Lafayette Head, out of New Mexico, who would do what Evans did not think he himself could do: get the “Scattered” Utes together. The other Treaty Commission was directed at the Cheyenne and Arapaho. Despite anticipating an accurately predicted failure with regard to the Cheyenne and Arapaho, Evans willingly took on a responsibility of treaty commissioner like James Doty.

Other points of contrast between Evans and Nye and Doty are as follows: (1) the degree to which “Indian title” was or was not acknowledged in the correspondence of John Evans and the agents under his authority; (2) the degree of recognition of the damage to Indians’ resources done by settlement and travel along the transcontinental roads; and (3) the use of pacifying, conciliatory language of the Utah and Nevada correspondence, compared to the increasing use of inflammatory, vehement exasperation and paroxysms of fear and impotency in correspondence coming from Colorado. Another striking difference is (4) the very high frequency of communication that Evans, as Superintendent, maintained with Army personnel. Such a high volume of correspondence is simply not evident in the exchanges between superintendents Martin and Doty between 1861 and 1863, or of Nye between 1861 and 1864.⁴ These points of contrast and comparison will be

4 Based on a comprehensive examination of all correspondence between Indian agents and superintendents and the Indian Office for the territory/state of Nevada between 1861 and 1864; the territory of Idaho between 1861 and 1866; and for the territory of Utah between 1855 and 1863, deposited in the San Bruno branch of the Federal Archives and Records Center; on relevant Federal Archives and Records Center microfilm reels in the 234 series; and in the Territorial Papers of the Nevada and Idaho state Archives, in Carson City and Boise respectively; and between John Evans and the Indian Office between 1861 and 1864 reproduced in the “Evans Papers” in the Colorado State Archives at History Colorado.

taken up in turn.

In 1862, conditions were ripe for negotiating a new treaty to replace the deeply flawed Fort Wise Treaty.⁵ Evans set about preparing reservation facilities at the Upper Arkansas Agency and secured an interpreter, William Bent, who was married to a Cheyenne woman, as well as an agent for the Upper Arkansas Agency, “Major” S.G. Colley, who replaced the pro-slavery agent, Albert Boone, who had negotiated the Fort Wise Treaty. He initiated diplomatic efforts that resulted in agreement to a treaty council, confirming the Council with Arapaho and Cheyenne representatives.⁶ However, Neva, a probable participant in the council and one of the three delegates from the Cheyenne and Arapaho nations of Colorado, who had recently returned from Washington, D.C., as part of a delegation that met with Commissioner Dole and President Lincoln, accused agent Colley of blocking the participation of Little Raven and Left Hand in the delegation, as they wanted to bring matters about corruption at the Upper Arkansas River reservation directly to Lincoln’s attention.⁷ Evans ignored Neva’s complaint. This error may have been one factor contributing to the refusal of the Cheyenne and Arapaho to attend Evans’s scheduled council.

A second factor, although similar to the above circumstance but certainly not the only determining one, may have been Evans’s refusal to acknowledge the inherent sovereign rights of Cheyenne and Arapaho people. Although representatives of each Native nation seem to have tried to make authorities in the Colorado Territory aware of their rights, Evans did not seem to have understood them or considered them with

5 Northwestern Report, 59.

6 Evans to Dole, July 29, 1863, Governor’s Papers.

7 As noted above, the agent Colley was appointed, as were all agents, officially by the President, but most likely in this case on Commissioner Dole’s recommendation as Colley was Dole’s cousin. (The *Northwestern Report* mentions this situation on pp. 59-60, citing a letter from Evans to Dole dated 21 May 1863.)

any seriousness. In his annual report for 1863, Evans noted a conversation between a Lieutenant Hawkins and a small band of Cheyenne at Bijou Creek in Weld County, following an incident in which settler colonists reported Indians entering their homesteads and robbing them. He used an extract from Hawkins' report to show "the feeling of the Indians at that time: 'The Indians talk very bitterly of the whites—they say they have stolen their ponies and abused their women, taking their hunting grounds, and that they expected they would have to fight for their rights.'"⁸

Although Evans was well aware that "a portion of the tribes...[had] not yet accepted the provisions of the [Fort Wise] treaty," he did not seem to connect the "rights" alluded to in this report and the acceptance of the Fort Wise Treaty cession by only a small portion of Cheyennes and Arapahos. In Evans's own words, if we recall, "a treaty made with a small part of the tribe...is worse than no treaty." These contradictions aside, the fact of the matter is that the provisions of the 1851 Treaty of Fort Laramie were still in force, and thus, the devastating actions of settlers in seizing resources and arrogantly disregarding Cheyenne and Arapaho territorial boundaries was an affront to established American law.⁹

In addition, the spring of 1863 had been particularly distressful for Native populations of the region: "racked with disease, unable to find sufficient game and forced north by hostilities in Texas and the Indian Territory, the Comanches, Kiowas, Caddoes, and Wichitas spread whooping cough, smallpox, erysipelas, and other diseases to the Cheyennes and Arapahos." And it was not just "natural" disasters that were befalling them, but also the acts of settlers who "encroached upon hunting grounds which were already failing to fill the needs of the Cheyennes and Arapahos. White buffalo hunters on the buffalo grounds east of Fort Larned, Kansas exacerbated the situation. As the

summer wore on, the prolonged absence of rain brought a drought that threatened to dry up the Arkansas River."¹⁰ The situation was so desperate that Cheyenne and Arapaho were reported to have come to Fort Larned to beg for food,¹¹ and then "lay around the military posts" in hopes of receiving help.¹²

It was under these circumstances that John Evans proposed his Treaty Council, in accordance with Dole's instructions, to induce all the Cheyenne and Arapaho to move from the territories that they occupied and re-settle on the Upper Arkansas reservation. He decided to distribute annual annuities that were due under the 1851 Treaty of Fort Laramie—further reinforcing the treaty's validity—at the council. By the time Evans's emissaries "departed from Denver to invite the tribes to the governor's conference" however, the Cheyenne and Arapaho "had scattered to hunt and to prepare for the coming winter. In that hot, dry summer, the task was especially critical, for game was scarce, water was sparse, and grass was spotty. Only disease seemed to flourish." Agent Colley "reported that the Southern groups would not be able to make the journey" to the rendezvous point on the Republican River "because they are making their lodges...Their horses are poor, and ...from where they are it is impossible for them to go for want of water." Nonetheless, a group of Northern Arapahos with whom Evans met in the summer of 1863 did agree to meet in council, but not necessarily to settle on the Upper Arkansas reservation. Driven, perhaps, by fear and paranoia, Evans thought the Cheyenne, in contrast were "meditating war" and would refuse to council.¹³

In fact, some Cheyenne did agree to council. In August, along with Arapaho leaders Friday,

10 Ibid., 175.

11 Ibid., 175.

12 Evans to Chivington, Sept. 21, 1863, Governor's papers.

13 All quotes in this section from Roberts, *Sand Creek*, 168.

8 ARCIA, Colorado Superintendency, 122.

9 Roberts, *Sand Creek*, 164



Portrait of Arapaho chief Friday | Charles Milton Bell, 1873

Roman Nose, and Black Bear, along with Cheyenne leaders Spotted Horse and Shield, this delegation signed an agreement with John Loree, agent for the Upper Platte Agency (which was not under Evans's jurisdiction) stating that they would "abide by any treaty that has been made by our people with the United States."¹⁴ Despite this agreement, Evans "found only four lodges of Cheyennes waiting for him" at the designated rendezvous point on August 27, 1863. Evans used the knowledge and experience of a trader, Elbridge Gerry, throughout 1863 and 1864, to liaise with Cheyenne and Arapaho. When Indians did not arrive at the Arickaree fork of the Republican, as Evans thought he had arranged, he enlisted the help of the trader, Elbridge Gerry to seek them out. Gerry was eventually successful in locating an encampment of 240 lodges, or "roughly two thirds of the southern Cheyenne people".¹⁵ Cheyenne representing this large group told Gerry they were willing to meet with Evans, but that they could not move at that time because of a widespread sickness that was circulating among them. In contrast to those who had signed the agreement with John Loree, however, they told Gerry they rejected the Fort Wise Treaty because

14 Ibid., 169.

15 Ibid., 170.

the reservation had no game, and they were not willing to give up their lands near the confluence of the Upper Republican River and Smoky Hill Creek, and those who had done so had acted without the authority of the people. This included the entire Cheyenne representative assembly, the Tribal Council of all forty-four designated Peace Chiefs,¹⁶ as well as White Antelope and Black Kettle, who had indeed signed the agreement, but denied having done so.¹⁷ Gerry talked with Bull Bear who is reported to have asked, "he [Evans] wants us to come in and settle down like white men?" When Gerry answered in the affirmative, Bull Bear continued, "You tell white chief, Indian maybe not so low yet."¹⁸ To add yet another dimension of texture to the narrative of these events, the Cheyenne were also incensed at the murder of Little Heart at Fort Larned, stating, "The white man's hands were dripping with their blood."¹⁹ Evans did not seem to take any of these objections seriously.

It is not clear whether, at this point, it would have been feasible for Evans to have traveled to the diphtheria- and whooping cough-infested encampment on Beaver Creek, which was located approximately twenty-five miles distant from the Republican River council site. But it does seem that, in the spirit of the kind of pre-treaty reconnaissance that Superintendents Martin and Doty and Governor Nye had pursued in 1861 and 1862, a follow-up effort might have been attempted and resulted in some success. On October 16, 1863, Evans requested \$30,000 to meet treaty obligations owed to the Arapaho and Cheyenne for 1864-5, presumably adding the \$15,000 from 1863 that had apparently never been provided.²⁰

16 See Hoebel, *The Cheyennes*, 43-53.

17 Roberts, *Sand Creek*, 169-171.

18 Roberts, *Sand Creek*, 157.

19 Idem, n. 27.

20 Evans to Dole, Oct. 16, 1863, Governor's papers.

However, the requested funds were also apparently never delivered. If they had been, Evans might well have had some leverage in re-scheduling the treaty council. Just why he never followed up on these requests is not clear. Even less clear is why he did not pursue a rescheduling of the August 27 council, when he received news of the reasons for the Cheyenne's absence. At any rate, after late 1863, Evans made no effort to seek a fair and reasonable settlement with the Cheyenne and Arapaho, and acted as though the settlers were already at war with them.

In October 1863, the Treaty of Conejos negotiated with the Tabeguache Utes brought about the cession of a large portion of Ute land in Colorado Territory.²¹ The Northwestern University report credits the "impressive progress" Evans made in helping to negotiate this treaty, while offering the claim "that the Utes' more remote location attracted fewer settlers" at the time the agreement was signed.²² Neither is accurate. The Tabeguache cession included an area that had experienced settlement from the Taos area of New Mexico beginning in 1851 due to its being included in portions of the Tierra Amarilla, Sangre

de Cristo, and Conejos Mexican land grants made between 1832 and 1843; and although the Northwestern University report mistakenly credits Evans with undertaking an "arduous trip" to negotiate this treaty, it was in fact negotiated by Lafayette Head, the Conejos agent, and Michael Steck, New Mexico's Superintendent of Indian Affairs. Johann Georg Nicolay, President Lincoln's personal secretary whom he sent out to attend this meeting, specifically credited Head with bringing in the 1,500 Tabeguache (Umcompaghre) Utes for the treaty signing. Nicolay and Evans were there simply as honorifics.²³ The arrangements for this treaty signing were made without Evans's participation. Although he was expected to attend, the originally scheduled signing date of September 1 conflicted with the date of Evans's scheduled council with the Cheyenne and Arapaho.²⁴ The Tabeguache Treaty signing was duly postponed. Any effort to contrast Evans's relationships with the Utes as evidencing "important progress" is clearly mislaid as the Colorado Superintendency virtually ignored the Grand River, Uinta and Yampa Utes, making Evans's name on the Tabeguache Treaty inconsequential.²⁵

21 As Richard Keith Young, notes in *The Ute Indians of Colorado in the Twentieth Century*, however, this treaty, also known as the Tabegauche Treaty, was intensely unpopular as it was signed by only one band of Utes, the Tabegauche, but ceded a large portions of the "hunting lands of other Ute bands," 25.

22 Northwestern Report, 61.

23 Nicolay, Report, 148.

24 Roberts, *Sand Creek*, 167.

25 Northwestern Report, 61.

Negotiating Peace in the Mountain West: A Comparative Study

Two new territories had been created by 1861 through which the western portion of the Overland Road led, requiring the appointment of three new Superintendents of Indian Affairs. These developments were accompanied by the development of government policies to address issues relating to Native peoples. These issues include the inescapable recognition that large portions of the new territories consisted of Indian land; the necessity of territorial officials to negotiate treaties of peace and friendship with Native people, thereby recognizing the implicit validity of Native title; the recognition that the intrusion of settlers into these territories; and the associated effects of the use and destruction of resources, particularly in the case of the buffalo, had a disproportionately negative impact on Native communities; and that, as a result, regular and substantial compensation must be made to the Native people. Due to these exigencies, the eventual goal of termination of title and the designation of Native populations to confining reservations, were a secondary feature of this policy, although the Treaty of Fort Wise (1861) and Treaty of Conejos (1863) both included such stipulations.

These propositions were only reinforced within the context of escalating conflict between members of Native nations and intruding American immigrants, whether settling in the territories or traveling through to California or other destinations. In the previous two decades, conflict in the region west of South Pass in the Rocky Mountains of present day Wyoming had resulted in the deaths of more than four hundred travelers and settlers, with double the number of Native people estimated to have been also killed.

South and east of South Pass, the conflicts and casualties were much lower, amounting to a figure of several hundred, based on a limited number of available records, in comparison to more than a thousand farther west. The 1861 Treaty of Fort Wise with the Cheyenne and Arapaho was a treaty of land cession that established boundaries for reservation lands. This treaty was a departure from the design of the 1851 Treaty of Fort Laramie, which also involved the Lakota and Dakota, and recognized the validity of Cheyenne and Arapaho claims to lands in Wyoming from the north fork of the Platte to its source, through the Rockies, and to the headwaters of the Arkansas River, which also included much of the northeastern portions of Colorado, western Kansas, and southwestern Nebraska. The Indian Office regarded this latter treaty as still in effect, with several years' worth of treaty annuities still owed. At the same time, the Indian Office regarded the Treaty of Fort Wise as applying only to those Cheyenne and Arapaho who had expressly agreed to it, and not to those who had not been parties to it. As a result of this clearly untenable situation, negotiation of a new treaty was anticipated.

After late 1863, Evans made no effort to seek a fair and reasonable settlement with the Cheyenne and Arapaho, and acted as though the settlers were already at war with them.

Moreover, the Cheyenne and Arapaho retained reserved rights to hunting and gathering resources, as well as to unimpeded travel throughout the territory described in the 1851 Treaty of Fort

Laramie,¹ even though some Cheyenne and Arapaho had ostensibly relinquished their claims to the land itself. In light of these developments, the newly appointed Governor and Superintendent of Indian Affairs, John Evans, was instructed to continue with the treaty process that would bring the majority, if not all, of Cheyenne and Arapaho into agreement with the Fort Wise Treaty. If this goal could not be achieved, the next step would be to enter into negotiations with the Cheyenne and Arapaho to produce a new treaty.²

If the contrast in the levels of violence between the western and eastern portions of the Overland Route were taken into consideration, it would seem that the Indian Office might have considered the eastern area as more safe, secure, and peaceful. Evans was well aware of the intrusive nature of settler colonists on the Cheyenne and Arapaho who had not yet made an agreement with the Indian Office, but did not seem to care about what “Indian title” entailed, instead characterizing their assertion of rights as a mere expression of Native “feeling.” Evans’s consequent actions demonstrate that he also did not hold the rights and claims of Cheyenne and Arapaho people in high regard, although the treaty on which these were founded remained legally binding. When Samuel Browne, District Attorney for Colorado, complained to the Secretary of the Interior Caleb B. Smith on December 9, 1862 that the Treaty of Fort Wise did not define the boundaries of the ceded land, which had generated problems in the

Courts,³ Indian Commissioner William P. Dole advised Browne On February 22 1863, that the ceded land extended from the South Platte to the Arkansas. The fact that the Fort Wise Treaty did, indeed, define the boundaries of Cheyenne and Arapaho land is revealing of the attitudes officials harbored about their duties to safeguard Native land rights.⁴ This left many white settlers in the area between Sand Creek to Bent’s Old Fort and north to Big Sandy Creek (near present day Limon, Colorado) in occupancy of land that was identified by treaty as belonging to the Cheyenne and Arapaho peoples. Proceeding in a similar pattern of behavior after gold was discovered at several locations in the front range of the Rocky Mountains in response to the Fort Laramie Treaty of 1851, growing discontent was expressed about the terms of the Fort Wise treaty. In response to these factors, Browne acted to suspend land surveys north of the South Platte River and publicized the limits of the treaty boundaries in the territory’s newspapers.⁵ Consequently, one of

1 This is conveyed in the treaty in the stipulation that “the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described.” See *Indian Affairs: Laws and Treaties*, 1904, compiled and edited by Charles J. Kappler, vol. 2, 595. <http://digital.library.okstate.edu/kappler/vol2/treaties/sio0594.htm#mn5>

2 Dole to Evans, January 15, 1864, quoted by Gary Roberts, *Sand Creek*, 210

3 Forced to interpret the land clauses of the Treaty of Fort Wise, the Federal Courts could find no basis for claims that the Cheyenne and Arapaho had ceded the lands north of the South Platte. This region, however, contained most of the settlements and became an ever larger point of contention as time passed. Browne to (Secretary of the Interior) John Palmer Usher. December 9, 1862. Roberts, *Sand Creek*, 149.

4 Article 1 of the treaty ends with this statement: “According to the understanding among themselves, it is hereby agreed between the United States and the said tribes that the said reservation shall be surveyed and divided by a line to be run due north from a point on the northern boundary of New Mexico, fifteen miles west of Purgatory River, and extending to the Sandy Fork of the Arkansas River, which said line shall establish the eastern boundary of that portion of the reservation, to be hereafter occupied by the Cheyennes, and the western boundary of portion of said reservation to be hereafter occupied by the Arapahoes” (Kappler, vol. 2, 808). <http://digital.library.okstate.edu/kappler/Vol2/treaties/ara0807.htm#mn2>

5 Roberts, *Sand Creek*, 150 and n. 26 and 27. Dole to Edmunds, May 13, 1861. Browne to the Editor of the Rocky Mountain News, March 31, 1863.

the primary functions of the Indian Office was to ensure the integrity of treaty boundaries and mediate between the competing interests of settlers to maintain peace in the Colorado territory.

In this regard, the Indian office seems to have failed miserably. That large portions of Colorado territory remained unceded Native land, and still designated as belonging to the Utes, Cheyenne, and Arapaho, to say nothing of the volatile situation created by the fact that the leadership of a large portion of Cheyenne and Arapaho disputed the terms of the Fort Wise Treaty because they had been left out of the negotiations, only increased tensions as settlers continued to flood into the territory and across the unceded lands.⁶ Perhaps influenced by what he considered the inevitable course of westward expansionism, Evans challenged Dole's interpretation, warning in April 1863 that if the boundaries were not changed, they were "liable to have an Indian war on [their] hands."⁷

The contradictions apparent in Evans's position make his broader motivations ambiguous, although he seems to have anticipated that settlers would continue to launch assaults against the region's Native people in a concerted attempt to drive them out. Whereas the Indian Office advocated for the negotiation of an entirely new treaty, Evans's position on this matter is unclear. "While the situation demanded bold action", notes Gary Roberts, "and while Evans had the authority to move...John Evans made no effort to pursue it. He never contacted any tribal leader. In fact, no further mention was ever made of the idea in official correspondence."⁸ When a local newspaper

expressed perplexity about "whether the Utes, the Arapahos, or Uncle Sam [owned] the ground on which the improvements of Colorado [had been] made,"⁹ Evans could have responded with a statement on Native treaty rights similar to what Governors Cumming, Dawson and Doty of Utah, and Nye of Nevada had expressed concerning active Indian title and related rights.¹⁰ The fact that Evans made no such statement leads us to two possible conclusions: either Evans did not know what to make of the notion of Indian treaty rights, or he simply did not accept their validity.

Farther west, treaties had ensured that Indian title to much of Nevada, Utah, and parts of what would become Wyoming Territories remained intact, with the further acknowledgement that the resources of these areas remained in Native control.¹¹ At the same time, the ostensibly well-announced treaty council that Evans hosted in Colorado Territory went unattended. A little more than a year later Evans attributed its failure solely to Cheyenne and Arapaho opposition. Despite these claims, however, the situation was much more complex and it is clear that multiple factors contributed to its failure. Because Evans took no further action to negotiate a new treaty it is impossible to know whether or not a follow-up effort might have achieved success. Nevertheless, it bears noting that there is no evidence that supports the claim of opposition on the part of the Cheyenne and Arapaho to participate in negotiations with the territorial government. It is quite clear that Cheyenne and Arapaho people had much to gain by agreements that ensured peace

6 A newspaper report from January 1864 announced a settler population of 50,000, with 6,000 living in Denver City and 15,000 new immigrants arriving during the previous year. "Colorado," *The Mining Journal*, Blackhawk, Colorado, January 16, 1864.

7 Roberts, *Sand Creek*, 303 and n. 28. Evans to Dole, April 10, 1863, Governor's Papers.

8 Gary Roberts, "Thoughts on Evans and Sand Creek," ms., December 2013, 2.

9 A clear reference to the notion of private property first promulgated by John Locke and then taken up later by the Puritans in colonial New England.

10 Roberts, *Sand Creek*, 211.

11 A map of "Indian Land Cessions in the United States by Region and Date" shows most of Nevada, much of eastern Oregon, and most of western Idaho as "never formally ceded." Carl Waldman and Molly Braun, *Atlas of the North American Indians* (New York: Facts on File, 1985), 176.

on the borders of an increasingly violent frontier. A different understanding of events is apparent in settler accounts from the period of 1863, in which there is no mention of conflict along the Platte River road.¹²

The information conveyed about the tribes' need to continue their traditional hunting practices should have prompted Evans to see what could be done to ensure peace and make time to accommodate these priorities, as Doty had done in the late summer of 1862.

There were, however, violent incidents occurring within other parts of the Colorado superintendency at this time. It is possible that the Colorado superintendency's dereliction of duty in its refusal to take seriously, let alone investigate, Native complaints of incursions and abuses perpetrated by the settler population played a significant role in the dismal failure of Evan's 1863 treaty council. It is difficult to know how much Cheyenne and Arapaho people might have known about the prevailing sentiment among personnel of the Colorado superintendency, but there was also, according to Gary Roberts, a great deal of resentment against those leaders who had signed the Fort Wise Treaty of cession. Even so, "John Evans," Roberts notes, "was oblivious" to these internal dynamics within the two tribes "and he probably would not have understood" the resentment anyway.¹³ The information conveyed about the tribes' need to continue their traditional hunting practices should have prompted Evans to see what could be done to ensure peace and make time to accommodate these priorities, just as Doty

had done in the late summer of 1862. For reasons that are unclear, however, Evans chose not to follow Doty's example. Instead, "Evans returned to Denver convinced that reports of Indian duplicity were accurate and determined to prove that the Plains Indians were hostile."¹⁴ He therefore forged ahead with an agenda that was in direct contrast to that of Nye and Doty. Furthermore, there was an inexplicable lack of explanation for the muddled situation that attended the Upper Arkansas Agency, including illegal emigrant settlement and confusion over which Native peoples were supposed to be there. Complaints of corruption at the Arkansas River reservations by Arapaho leaders Little Raven and Left Hand were effectively silenced by Colley who deliberately left them off of the "delegation who met with [President] Abraham Lincoln" in March of 1863.¹⁵

Although he made three trips in his capacity as Superintendent of Indian Affairs, only two—one to the Upper Arkansas Agency and one to the failed treaty council—could be said to have been in the service of Native peoples. In total, these two trips amounted to only a few weeks in terms of time and less than 500 miles of travel distance. Evans did make an annual eastern journey while governor, each trip lasting several weeks and requiring an arduous 400-mile ride via coach to the nearest railroad station.¹⁶ Negotiations with the Shoshone resulting in the Ruby Valley Treaty of 1863, by contrast, required Nevada Governor James Nye to travel more than 500 miles over four weeks. Utah Governor James Doty covered a remarkable 3,000 miles over a period of approximately twelve weeks.¹⁷

12 E.g., Report of John G. Nicolay, Special Agent and Secretary to the (Treaty) Commission to Commissioner of Indian Affairs Wm. Dole, Nov. 10, 1863, ARCIA, paper No. 66½, 143-151; Burton, Richard F. Burton, *The City of The Saints*, Second edition. (London: Longman, Green, Longman, and Roberts, 1862), 106-160.

13 Roberts, *Sand Creek*, 169.

14 *Ibid.*, 169, 172.

15 *Northwestern Report*, 59.

16 *Northwestern Report*, 58.

17 Smith, *James Duane Doty*, 379.

1864: A Timeline



Cheyenne Chief often identified as Lean Bear photographed in 1863, Washington, D.C.
PictureHistory.com, Cedar Knolls NJ.



Third Regiment roster of the Colorado Cavalry. *Need credit for this pic.*

May 16, 1864
Killing of Chief Lean Bear

June 27, 1864
First Proclamation

August 12, 1864
Stanton approves requests for Third Cavalry Regiment

June 11, 1864
Hungate murders

August 11, 1864
Second Proclamation



U.S. soldiers burn a Cheyenne Village in Kansas, 1867. *Courtesy of the Kansas State Historical Society.*



John M. Chivington in his military uniform. *Courtesy of History Colorado.*

November 14, 1864
Chivington leads troops toward Arkansas River



Fort Lyon in southeast Colorado. *Courtesy of Denver Public Library, Western History Collection. X-19267, Scan # 10019367.*

November 20, 1864
Chivington leads troops toward Ft. Lyon

September 28, 1864
The Camp Weld Council



Black Kettle and Chiefs at Camp Weld, September, 1864. *Photographed by Maj. Wynkoop's step-father-in-law, George D. Wakely.*

November 16, 1864
Evans leaves for Washington



Territorial Governor John Evans. *Courtesy of History Colorado.*

November 29, 1864
Sand Creek Massacre



1864 elk hide painting by Eagle Robe, Eugene J. Ridgely, Senior (N. Arapaho), Descendant of Little Raven, Great-Grandson of Lame Man, Survivor of Sand Creek

Native Peoples and the “Hostiles”: The Road to Catastrophe

Close attention to the correspondence that John Evans maintained as Superintendent reflects (1) increasingly inflammatory language connoting an increasingly bellicose attitude toward Indians; and (2) an unusual degree of intimacy, initiated entirely by Evans, with military personnel. This correspondence began just a few months after Evans accepted the governorship. On September 11, 1862, Evans wrote to Secretary of War Stanton asking for “that part of the territory of Nebraska, south of the Platte river, and west of the East line of Colorado...” to “be restored to the Department of Kansas” because “supplies for the winter subsistence of about 30,000 people must pass over this route this fall to Colorado, or people will be subject to the horrors of starvation, in addition to those of an impending Indian war.”¹ Colorado and western Kansas had been part of the Military Department of New Mexico, with headquarters at Fort Union, thirty miles northeast of Las Vegas. Fort Union was intended to provide protection for the western part of the Santa Fe Trail and also lines of communication north to Colorado and east to Texas, Oklahoma, and Kansas. After the routing of Confederate troops at the Battle of Glorietta Pass in March 1862 by Brig. Gen. Edward Canby and Colonel John Chivington, Confederate forces were confined to Texas, and the Kansas-Missouri border became a major military focus. While Evans was not asking for troops in this request, he was asking for a redistricting that would give him closer contact with the military command structure of the Kansas Department, and did so on the basis of the idea that there was about to be an “Indian war.”

1 Evans to Stanton, Sept. 11, 1862, “Chicago,” Hart Library, History Colorado, Governor’s Papers, Box 5, FF 59.

His request was granted.

“An alliance of several thousand warriors beginning in the sparse settlements at various points along an extended frontier, as these wild savages propose to do, might sweep off our settlers by thousands.”

Evans renewed his insistence that an “Indian war” was pending just over a year later. Therefore, perhaps it is not surprising that an atmosphere of seriously deteriorating relations between Native peoples and settlers marked the opening of 1864. He renewed his alarming predictions on November 10, 1863. Dismissing views that were skeptical of such reports, he did so on the word of one spy Robert North, who falsely reported that Comanches, Apaches, Kiowas, Northern Arapahos and all Cheyennes with the Sioux had held a “big medicine dance” 55 miles below Fort Lyon on the Arkansas. Mr. North said as soon as they could get ammunition, they wanted him to join them in the war in which they would take a great many white women and children prisoners and get a heap of property. Mr. North was “connected with [Arapahoes (sic)] by marriage and live[d] with them.”² Without checking further, Evans forwarded this allegation to Secretary of War Stanton on December 14, 1863, stating that, “an alliance of several thousand warriors beginning in the sparse settlements at various points along an extended frontier, as these wild savages propose to do, might sweep off our settlers by thousands.”³

2 Evans to P. Dole, Nov 10th [1863] (Governor’s Papers, History Colorado); see Annual Report of the Commissioner of Indian Affairs for 1864, pp. 252-3.

3 Evans to E.M. Stanton, Secretary of War, Dec. 14, 1863, Governor’s Papers #115.



Southern Plains Indian delegation with President Lincoln in the White House Conservatory on March 27, 1863 | Library of Congress

Did such claims reflect reality?

Here is where Evans's dependence on and willingness to accommodate the perspectives of local military commanders and dubiously reliable informants, regardless of his duties as superintendent, bears consideration. In the spring of 1864, for instance, the U.S. army, led by Major Jacob Downing, Lieutenants Clarke Dunn, George S. Eayre, and Captain Joseph C. Davidson, all under the command of Colonel John Chivington, had gone in search of Native combatants. U.S. law gave broad powers to Indian superintendents to utilize the military and other federal forces to "procure the arrest and trial of...Indians accused of committing any crime," though only the president could authorize the military to be employed in such campaigns. Superintendents did not have the authority to issue blanket commands for vigilantes to pursue and kill Native peoples on the basis of purported sentiments of hostility.⁴ Moreover, even military commanders lacked the authority to execute Native people, even alleged "hostile Indians"⁵ without the façade of a trial and accompanying conviction.

Nevertheless, 330 miles east of Denver, troops

4 Schmeckebier, *The Office of Indian Affairs*, 422.

under the command of Lieutenant George S. Eayre, part of Chivington's command, scouting for presumed "hostiles", carried out attack on a camp of "friendly" Cheyennes under the leadership of Black Kettle and Lean Bear. Both were elected members of the Cheyenne's Council of Forty-Four—the Cheyenne legislative delegation—which served as the judicial and executive body and was composed of chiefs who had pledged peace. Lean Bear had been one of the leaders who traveled to Washington D.C. to meet with President Lincoln and Indian Commissioner Dole in 1863.⁶ When the soldiers were seen advancing in formation as if to attack, Lean Bear went out to meet them peacefully, with a number of Indians following him. He wore the medallion presented to him in Washington and carried official papers underlining his friendliness to the United States. As the small group neared the soldiers, Lieutenant Eayre gave the order to fire. Lean Bear and another leader, Star, fell to the ground. The soldiers then rode over to them and shot them again to make sure that they were dead.

The attack at Cedar Bluffs was one of three fights that Chivington's troops had with Cheyennes in a little over a month's time and inaugurated a pattern of army murder of peace leaders, culminating at Sand Creek and instigating the "general war" which Evans feared. Even so, at the site of Lean Bear's killing, Black Kettle had told the warriors at the time that "they must not fight

5 Such a term is inextricably tied up to the same representational binaries that give concepts such as savage and barbarian meaning. Such terms, then, could operate as alibis for policies of preemptive warfare and as a retroactive justification for attacks against Native American populations.

6 George Bent refers to them, sarcastically, as "big friend(s) of the whites." Hyde, *Life of George Bent*, 131. Lean Bear had also lived with Black Kettle, and from all reports was said to admire him greatly. David Fridtjof Halaas and Andrew E. Masich, *Halfbreed: The Remarkable True Story of George Bent*, 109-11. See Hoebel, *The Cheyennes*, "The Council of Forty-Four," 43-53

with the whites”.⁷ This incident indicates that Black Kettle was convinced that Native people would have to make a peaceful settlement with an overwhelming number of better-armed whites and acted on this conviction throughout.

Wars—Or Rumors of Wars

As for whether a general condition of Indian warfare existed by mid-1864 (or more precisely, whether such a work existed in Colorado Territory), there is reason to believe that such was a matter of interpretation. Some were skeptical. Even the *Weekly Rocky Mountain News*, edited by William N. Byers, a frequent supporter of Evans and Chivington and often a vehicle for Indian hatred, published an editorial on May 4, stating, “This Indian war was ‘a heap of talk for a little cider.’ White men have undoubtedly been the aggressors.”⁸ Nathaniel Hill, a mine chemist visiting Colorado wrote, “Rumors are floating around every day of some Indian depredation; but when you resolve it all down to simple fact, it amounts to a few soldiers killed in April, one family murdered a few days ago...and numerous little thefts.” Of John Evans, Hill said, “The Governor is a very fine man, but very timid, and he is unfortunately smitten with the belief that they are to have an Indian war. He encourages sending all reports of Indian troubles to the States, to enable him to get arms and soldiers.”⁹

Hill’s murdered family refers to the Hungate family, whose members were killed on June 12th at a small colonist settlement on Box Elder Creek, thirty miles southeast of Denver. Nathan Hungate was foreman for a rancher named Van Wormer. He

and another ranch hand noticed smoke billowing above one of the ranch buildings. The other ranch hand rushed off for help; Hungate rode off to his own house, where his family was at home. When neighbors arrived, they found Hungate, his wife and his two daughters dead. Because Mrs. Hungate and the two daughters had been scalped and mutilated, it was decided that Indians had been responsible for the murders. Moccasins and arrows were reportedly found nearby. The bodies were eventually carried to Denver in a couple of crates. They were placed on display and an eyewitness thought that nearly all of Denver’s population went to see them.¹⁰

“The Governor is a very fine man, but very timid, and he is unfortunately smitten with the belief that they are to have an Indian war.”

Evans made full use of the hysteria surrounding these murders. He telegraphed Dole on June 14, 1864, stating, “the war I reported last fall begun in earnest. Spies report large numbers in alliance.” Seeming to advance the standard military strategy of dividing “hostile Indians” from the “friendly” ones so as to avoid a larger war, he requested “authority to rendezvous the friendly Indians at different points ... so that we may avoid placing all of them in the ranks of the enemy,” as their hunting grounds were “in the hostile region,”¹¹ Evans did not specify who the “friendly” Indians were. He also specifically requested of Dole, “Please ask the War Department to strengthen our defenses and also to authorize me by telegraph to call out militia.”¹² The next day he followed up his telegram with a long letter

7 George Bird Grinnell, *The Fighting Cheyennes* (Norman: University of Oklahoma Press, 1955 (1915)), 145-6, quoting Wolf Chief, an eye-witness member of Black Kettle’s band at Oak Creek. See also Stan Hoig, *The Sand Creek Massacre* (Norman: University of Oklahoma Press, 1961), 51-53.

8 Roberts, “Thoughts,” 5.

9 Roberts, *Sand Creek*, 252 and n.76. Hill to his wife, June 19, 1864 in Hill, “Letters,” 249.

10 Kelman, *Misplaced Massacre*, 147-148; Jeff Broome, 2003, “Indian Massacres in Elbert County Colorado: New Information on the 1864 Hungate and 1868 Dietemann Murders.” kcloenwolf.com/History/SndCreek/Guest/broome-hungate

11 (Telegram) Evans to Dole, June 14, 1864, Governor’s Papers

12 Ibid.

to Dole, June 15, 1864, ticking off a number of alleged incidents in support of his assertion, among them those instigated by Eayre's, Dunn's, Davidson's, and Downing's aggressions: Indians ran off 175 head from Government herd; troops recaptured 75; 400 Cheyenne charged 100 troops at Smoky Hill; 25-30 Indians killed including Black Kettle (which turned out not to be true); Major Downing surprised a camp of 100, killed 25 Indians, captured 100 horses, with 1 soldier killed. He lastly notes the Hungate murders: "the scalped and horribly mangled bodies" having been "brought into the city yesterday." He asked for aid to "subsist" them and ended the letter with a seemingly reasonable conclusion: "They cannot live in peace unless subsistence is furnished. I believe this the only way to bring about a peace and keep peace with those who do not want to fight."¹³

On June 16th, Evans informed General Curtis that he wanted to raise a militia of 100: "It is very important that Col Chivington operate with his command on these infernal Indians."¹⁴ Evans wrote to a "Captain S. P. Ashcroft" on June 21, less than a week later again expressing his desire to raise a company for home defense so that he could distribute arms to settlers.¹⁵ He sent another letter to Arapaho Chief Roman Nose requesting him to direct "all of [his] band to come to the Cache La Poudre at once to meet [him]," and stating further that he did indeed have the "authority to treat" with him as he had "promised last fall." The invitation, he told Roman Nose, extended to "any Band of Cheyennes belonging on the North Platte who are friendly to the Whites and wish to keep peace." As a contrast to the growing atmosphere of fear and rumor taking shape during this time, "while prepared for the worst," Roman Nose responded to the invitation and established his

camp on the Cache La Poudre, near Camp (Fort) Collins. "Friday's Band" also did so. Upon their arrival these groups were described as "destitute" and hardly represented any threat to the military or settlers of the area. Evans requested military requisitions for them, and directed the Upper Arkansas agent Samuel Colley to collect, feed and support the friendly Indians at Fort Lyon, and direct Comanche and Kiowa to Fort Larned and other locations where they could all be fed.¹⁶

John Evans and the Call for Arms

Aside from Colonel Chivington, few military officials agreed that pursuing a policy of war was the best option. Also in June, Curtis's inspector general, Major T. I. McKenny advised headquarters, "It should be our policy to try and conciliate them [the Cheyenne and Arapaho], guard our mails and trains well to prevent theft, and stop these scouting parties that are roaming over the country who do not know one tribe from another, and who will kill anything in the shape of an Indian [an apparent reference to Chivington's attacks in Colorado]. It will require but few murders on the part of our troops to unite all of these warlike tribes on the plains."¹⁷ And as a further contrast, Major General Curtis insisted in a letter to Evans dated July: "We may not exert ourselves in pursuit of rumors...however much we may have reason to apprehend a general Indian war we should not conclude that such a thing in actual existence before doing all in our power to prevent such a disaster."¹⁸ In deference to Evans's authority,

13 Evans to Dole, June 15, 1864, Governor's papers

14 Evans to Curtis June 16, 1864. Governor's papers. These murders are also discussed in the Northwestern Report, 64.

15 Evans to Dole, June 14; Evans to Dole, June 15, Governor's Papers; Evans to Ashcroft, June 21, #271, Governor's Papers.

16 Evans to Colley June 16; Evans to General Curtis June 16; Evans to Colley September 31, 1864 (sic), Governor's Papers

17 Roberts, "Thoughts," 7.

18 Curtis to Evans, July 5, 1864, in Scott, *The War of the Rebellion*, serial 084, page 0053. <http://ehistory.osu.edu/books/official-records/084/0053> This letter is also cited in Ronald Becher's *Massacre Along the Medicine Road: A Social History of the Indian War of 1864 in Nebraska Territory* (Caldwell, ID: Caxton Press, 1999), 104-105, with Curtis described as "sharply rebuking" Evans.

however, Curtis concluded his letter, stating, “I assure you, Governor, that I shall do all in my power to aid in suppressing Indian hostilities.”¹⁹

Again, from military officials’ point of view, the objective was to contain hostilities where possible and negotiate with the identified friendly Indians so as to avoid provocation for Native people to join forces against the settlers. With so much manpower and dollars still tied up in managing the Civil War, few had interest in straining limited resources to engage a colonial war against Natives simultaneously.

In his desperation to quickly raise a military force, Evans had also reached out on June 16 to Brigadier General James Carleton. Like Connor, Carleton headed up a contingent of “California volunteers” and decided on his own to pursue Native peoples after chasing Confederate troops routed by Chivington into Texas following the Battle of Glorieta Pass in March, 1862. No known copy of Evans’s letter exists, but on June 26, Carleton gave an interesting response. He first described how the entire force of his operations was currently occupied against “the numerous hordes of Apaches in Arizona,” a deeply intense conflict which spanned more than fifty years and is marked by the issuance of scalp bounties against the Apache in both Mexico and Arizona Territory.

19 Ibid, 084:0053.

Following this warning, Carleton continues ominously, “be of good cheer, the winter time is the most favorable for operations against Indians... they soon become exhausted of supplies.”²⁰ This advice was offered, however, with a pointed caution to the governor:

When [war] is commenced, **it should be commenced because they have been the aggressors, and are clearly in the wrong.** In this case the punishment should be very severe. I mention these matters to your excellency, so that **all efforts for peace may be resorted to before war is resorted to;** then, if we must have war in spite of our efforts, Colorado and New Mexico united may make it a war which they will remember.²¹ (Emphasis added)

Thus, in the midst of his own military campaign with the Apache and well-versed in the strategy of winter attack, Carleton nonetheless conveys to Evans that pursuit of peace should be the governor’s first priority, while a military campaign requires clear justification and should come only as a last resort.

20 Brigadier General James H. Carleton to John Evans, June 26, 1864, U.S. Congress, Condition of the Indian Tribes (Doolittle Report): Joint Special Committee Report; Appointed under Joint Resolution of March 3, 1865, Appendix, 186. Washington: Government Printing Office, 1867.

21 Ibid.

The June Proclamation

Evans's last attempt to secure an alliance with the Cheyenne and Arapaho seems to have occurred in June 1864. He sent Spotted Horse and Little Horse, along with their families to Fort Lyon, granted with a supply of flour, meat, coffee and sugar, and accompanied by an escort of soldiers "in the hope that they may be instrumental in bringing about a Peace and to serve as guides..."¹ It is difficult to see how Evans, having opted for a halfhearted and indifferent approach to negotiate a peaceful agreement with the remaining groups of Arapaho and Cheyenne who were not parties to any treaty in the aftermath of his failed council, could have managed such an undertaking. Beginning on June 14, 1864, over the following five months the correspondence from the Colorado Superintendency announced a total of twelve incidents of attacks by cavalry troops upon Native peoples or alleged depredations by Native aggressors between April and September. Yet between June 11 and July 17, 1864, "there were no confirmed reports of Indian hostilities" within Colorado Territory and the overarching superintendency.² Classifying Native peoples into the diametric categories of "hostiles" and "friendlies" was not an unusual practice for territorial administrations, but in contrast to Doty in Utah and what would become Idaho and Wyoming, who made efforts to reform "hostiles" into "friendlies," Evans's impatience and propensity for panic exacerbated conflict and may have actually had the effect of encouraging fear and suspicion on both sides, which led inevitably to further hostility.

1 Evans to Elbridge Gerry June 10, 1864, Governor's Papers

2 Roberts, "Thoughts," 6.

After a month of instituting stopgap measures with "friendly" bands while seeking military resources to augment the perceived ongoing battle with "hostiles," Evans issued the fateful June 27th Proclamation [see insert for full text].

³ The brief treatment of this statement in the Northwestern report is, in our view, inadequate.⁴ This document is significant because it reflects not simply a kind overture toward "friendlies" as the Northwestern report characterizes it, but it also reflects a clearly articulated policy decision—from the superintendent's office, no less—to move toward, rather than away from war with many of the Native peoples residing within his jurisdiction. Indeed, it comes close to being an official declaration of war, albeit through the use of curious and obfuscating phrasing. For these and other reasons we see it as a harbinger for a major shift in the trajectory of events culminating in Chivington's assault on the Cheyenne and Arapaho encampment at Sand Creek that occurred on November 29, 1864.

As we have indicated, events on the ground in spring and early summer point not to an unambiguous picture of "Indian war," but rather to a variety of possibilities—a cycle of military oversteps and reprisals, Native retaliations, and intermittent attempts at peaceful negotiation. Given the complexity of the unfolding events, and Evans's ability in his position as governor and superintendent to influence relevant parties'—and the public's—interpretation of potentially but not necessarily escalating events, it is noteworthy that in this document, circulated by Indian agents,

3 Evans to Colley, June 16; "To the Friendly Indians of the Plains...", June 27, Governor's Papers

4 Northwestern Report, 65.

COLORADO SUPERINTENDENCY INDIAN AFFAIRS,
Denver, June 27, 1864.

TO THE FRIENDLY INDIANS OF THE PLAINS:

Agents, interpreters, and traders will inform the friendly Indians of the plains that some members of their tribes have gone to war with the white people. They steal stock and run it off, hoping to escape detection and punishment. In some instances they have attacked and killed soldiers and murdered peaceable citizens. For this the Great Father is angry, and will certainly hunt them out and punish them, but he does not want to injure those who remain friendly to the whites. He desires to protect and take care of them. For this purpose I direct that all friendly Indians keep away from those who are at war, and go to places of safety. Friendly Arapahoes and Cheyennes belonging on the Arkansas River will go to Major Colley, U. S. Indian agent at Fort Lyon, who will give them provisions, and show them a place of safety. Friendly Kiowas and Comanches will go to Fort Larned, where they will be cared for in the same way. Friendly Sioux will go to their agent at Fort Laramie for directions. Friendly Arapahoes and Cheyennes of the Upper Platte will go to Camp Collins on the Cache la Poudre, where they will be assigned a place of safety and provisions will be given them.

The object of this is to prevent friendly Indians from being killed through mistake. None but those who intend to be friendly with the whites must come to these places. The families of those who have gone to war with the whites must be kept away from among the friendly Indians. The war on hostile Indians will be continued until they are all effectually subdued.

JOHN EVANS,
Governor of Colorado and Superintendent of Indian Affairs.

interpreters, and traders to tribes, Evans seems to up the ante.

Evans's June Proclamation is at once a warning, a set of instructions, and a public vehicle for representing his personal interpretation of the state of affairs in Colorado Territory. It begins by explaining to the "friendly Indians" (and to anyone reading) that some Cheyenne/Arapaho have "gone to war with the white people" as indicated by incidents of stealing stock, attacking soldiers, and even "murder." This description overlooks the fact that many such incidents were responses

to trespasses and deadly assaults on so-called "friendly Indians" by the military, as in the case of Cheyenne Chief Lean Bear's murder less than a month prior, which deeply upset the Plains bands. Then, borrowing the condescending language long used by federal officials and recently employed by President Lincoln in his 1863 speech to the gathering of Plains Indians (at which, ironically in retrospect, Lean Bear was present) the proclamation mentions the "Great Father" and invokes the notion of an impending righteous retribution in which specific groups are targeted. This rhetorical angry father "will certainly hunt them out and punish them, but he does not want to injure those who remain friendly to the whites. He wants to protect and take care of them." Shifting to first person narration, Evans,

as Governor, directs such Native peoples to "places of safety" at designated military outposts, where they are promised security and provisions. The proclamation fails to provide a timeline for willing parties to come to the outposts, which is significant since many bands were located in remote areas where they were pursuing game into late June. The lack of clear instruction regarding this distinction becomes crucial in the subsequent months.

The second paragraph reiterates the hostiles/

friendlies distinction standard in Indian policy, under the aegis of avoiding unintentional killings: However, it also draws another distinction whereby not only warriors but also their family members, which would necessarily include women, children,

Evans threatens war despite his duty, and indeed the primary responsibility as superintendent to pursue negotiations, which he had ample opportunity to do, so as to avoid war, and despite his official lack of authority to declare war.

other male non-warriors, and elders, were explicitly barred from approaching the designated refuges. In contrast to Doty's strategy of limiting the number of "hostiles," by excluding family members from this calculus, Evans's Proclamation casts as wide a net as possible. Indeed it explicitly puts women and children at risk. This language is also decidedly less restrained than General Samuel Curtis's Field Order 1 just a month later, in which he stated, "Indians at war with us will be the object of our pursuit and destruction, but women and children must be spared."⁵ Ultimately, it seems that this logic was given over to immortal infamy in Chivington's expression that "nits make lice."

The Northwestern Report refers to the June 27th Proclamation as Evans's "safe haven plan for the southern bands," and notes that it produced "very limited results." At least two major obstacles relevant to these events are referenced, the first being that the Indian Office refused to provide the necessary provisions to support the camps at the designated outposts, and the second being that, as peace-seeking Indians including Black Kettle and Left Hand later reported, sentries at many of the outposts would not let them approach and sometimes fired on them. The plan seems to have been more successful with the bands camped at Camp Collins with whom, according to the Northwestern report, Evans was still counting on a

5 Roberts, Thoughts, 9.

treaty council.

What the Report fails to adequately address, as it relates to Evans's culpability for subsequent events up to and including Sand Creek, is that the proclamation's last sentence clearly articulates a threat of a full-scale war as endorsed by territorial leadership—indeed by the Indian superintendent himself: "The war on hostile Indians will be continued until they are all effectively subdued." Based upon such evidence it is a difficult proposition to deny that the proclamation commits the territorial administration to war, despite the fact that a similar posture of war was never proclaimed by Cheyenne, Arapaho, or any other Native people within the boundaries of Colorado territory. Evans threatens war despite his duty, and indeed the primary responsibility as superintendent to pursue negotiations, which he had ample opportunity to do, so as to avoid war, and despite his official lack of authority to declare war. Moreover, wouldn't Evans's threat of redoubled hostilities by the military be a great obstacle to the Proclamation's effectiveness in bringing the "friendly Indians" into the outposts?

A "General Indian War"

Despite the cautions from Curtis's office in June, Evans seemed to interpret every event on the plains as a sign of a general Indian war.⁶ Much of Evans's information in early August seems to have come from agent Colley who was transmitting Chivington's view that "all the tribes were involved in attacks and the governor's efforts to promote peace had come to naught."⁷ Yet as the Northwestern report documents, General Curtis and his force of 400 men scouting for raiding Indians in Arapaho and Cheyenne country throughout July, ultimately came up empty handed.⁸ In early August the cross-tribal raiding parties did resume and in Nebraska and Kansas

6 Evans to General Curtis, June 16

7 NU Report, 66.

8 NU Report, 66.

killed “several” soldiers, while also taking “several” captives. Closer to Fort Lyon, Kiowas had led attacks that resulted in the killing of several settlers. By August, supplies to Denver were even being threatened. One result of the fear generated from these developments was that the price of flour, and other goods, tripled.⁹ Exactly what led to such a drastic escalation in price is unclear, but it is presumed that Holladay raised his rates to pay for the rebuilding of burnt stage stations.

On August 8, Evans wrote Commissioner Dole to plead for the “speedy reinforcement of [his] troops,” because, as he noted with now-typical fervor, “the tribes of the plains [were] nearly all combined in this terrible war.” Three days later, Evans demanded a return of the Colorado regiment fighting in the Civil War 600 miles away in Kansas. He also asked General Curtis to deploy an additional 5,000 soldiers along the Platte and the Arkansas. Curtis balked, demanding evidence of Native attacks from Evans, writing, “I wish you would give me facts, so I would know of your disasters.”¹⁰ On August 20, Curtis concluded, expressing exasperation to his secretary, that every report from Colorado is “censational [sic].”¹¹ Although it has been said that neither Evans nor Dole, as civilian officials, had the authority to direct troops against Native peoples, in letters to Evans, Major General Curtis referred to the Denver militia as “your militia” and speaks of them as if Evans was, indeed, commander with the

ability to direct them to “aid...Federal troops.”¹² Further, Evans was relentless in his lobbying of Curtis and scores of other military officials to carry out operations to that end.

Gary Roberts confirms Evans’s assessment that by late July it was “too late to salvage the peace” and “[t]he frequency and the distribution of Indian attacks in August confirmed a general Indian war...It was bloody and cruel and terrifying. No place between the Kansas settlements and the Rockies [was] truly safe. Cheyennes, Arapahos, Sioux, Kiowas, and Comanches were involved.”¹³ A series of deadly attacks on settler colonists by Cheyenne and Arapaho warriors in August confirmed this. In the same period Cheyenne bands led by Black Kettle and White Antelope headed off toward Northern Kansas with the majority of the Southern Arapaho joining them, concerned that Evans’s call for them to come in the June Proclamation may have been a ruse.

¹⁴ By the time of the reported attacks, however, the peace-seeking tribes had reversed course and led about five hundred people toward Fort Lyon, leaving only the Dog Soldiers to travel on toward the Solomon River.¹⁵ The Dog Soldiers by 1864 were a separate division of the Cheyenne nation, along with the Southern Cheyenne and Northern Cheyenne. They were also a fusion of Cheyenne and Sioux, even some Arapahos and Kiowas.¹⁶

9 Hyde, *Life of George Bent*, 139, 141-42.

10 Evans to Dole, August 10, 1864; Proclamation, August 11, 1864; Evans to Charles Autibeas, Esq, Boonville, CT, Aug. 16, 1864, Governor’s Papers.

11 Thoughts,” 10 See also Roberts, *Sand Creek*, 236.

12 Curtis to Evans, July 5, 1864, in Scott, *The War of the Rebellion*, serial 084, page 0053. <http://ehistory.osu.edu/books/official-records/084/0053>

13 Roberts Dissertation.

14 Roberts, *Sand Creek*, 267.

15 Roberts, *Sand Creek*, 396, 398

16 Jean Afton, David Fridtjof Halaas, and Andy Masich, *Cheyenne Dog Soldiers: A Ledgerbook History of Coups and Combat* (Niwot, Colo., and Denver: University Press of Colorado and the Colorado Historical Society, 1997), passim.

The Second Proclamation

In the grip of his rising panic, on August 11, Evans attempted to press his influence as the top political official in the territory by issuing his second proclamation. Scantly discussed in the Northwestern Report, presumably because it is characterized as “having little effect,” we believe that this document merits much more serious and careful review as it marks another critical step in John Evans’s decision-making, while revealing much about his mindset toward the Cheyenne and Arapaho by mid-August. [See insert for full text.]

The first paragraph gives Evans’s account of his call for tribes to come to the four forts designated in the June 27th Proclamation. It claims that the evidence is now “conclusive” that the “tribes of the plains are at war and hostile to the whites,” and asserts that Evans has done his “utmost” to induce the tribes to these places of “subsistence and protection.” The extent of Evans’s efforts is highly debatable. Evans had sent out messengers, but aside from contact with the Arapaho leader, Roman Nose, Friday, and a few other of the deemed “friendly Indians,” he made little effort to induce others to come in. Although, as previously noted, most people who attempted to approach Fort Lyon were turned away at gunpoint by sentries as Curtis had ordered, Evans characterizes these Native people as having “refused” to come in.¹ It strains credulity that Evans had no knowledge that military directives at some of the forts undermined his own instructions given the frequency with which he corresponded with fort officials.

Nonetheless, the claims in the proclamation’s first paragraph set up the governor’s

“authorization”—one whose legality is nowhere to be found in the realm of federal Indian law—directing Colorado citizens to take up arms against so-called hostile Indians on the plains. Evans explicitly authorized settlers to organize killing parties targeting Indians perceived as a threat to territorial consolidation; to take captives; to hold “for their private use and benefit” any property they capture; and to receive “proper and just” reward for any property acquired. Evans then offers to furnish arms and ammunition and to pay any parties that will organize under the militia law of the territory to seek out and kill Indians, a promise Evans makes prior to martial law having been declared. The latter was an effort to recruit citizens to the federal regiment of hundred-day volunteers for which Evans had been lobbying Secretary of War Stanton.

Under these enormously broad parameters, the caution to “scrupulously [avoid] those who have responded to [his] said call to rendezvous at the points indicated” cannot be understood as anything but an impotent caveat. No criteria are offered for violence-hungry settlers, who have been bombarded with anti-Indian sentiment from the state, the military, and local newspapers, and who would be outfitted and paid by the state, to differentiate hostile from friendly Indians. The proclamation does not merely carry a “vigilante tone” as the Northwestern report notes and for which critics have condemned it; it is a blanket endorsement of citizen violence against Native people in partnership with territorial civil leadership. Concluding that, “few citizens appear to have taken up arms against threatening Cheyennes and Arapahos” is not a basis for evaluating the potential impact

1 Northwestern Report, 66 and footnote 31.

of the proclamation.

The document puts forth a clearly articulated framework of encouragement from the top political official in the territory for widespread, undisciplined, and preemptive warfare against Native occupants of the region.²

As for issuing such a proclamation as superintendent of Indian Affairs, not in any stretch of the imagination could the laws that were in place at the time be interpreted as permitting a superintendent to send cadres of armed citizens to exterminate and loot unidentified Native people. As ambivalent as federal Indian law and policy may have been at this time, the authorization of superintendents to send enforcement forces into Indian country to arrest suspected wrong doers could only be done with the approval of the president. The law of 1858, however, did authorize superintendents to bar potential or identified troublemakers or questionable individuals (rogue settlers) from entering Native lands. Given his role as superintendent, even

² Northwestern Report, 67.

BY ORDER OF HON. JOHN EVANS
GOVERNOR, TERRITORY OF COLORADO
AUGUST 11, 1864

PROCLAMATION.

Having sent special messengers to the Indians of the plains, directing the friendly to rendezvous at Fort Lyon, Fort Larned, Fort Laramie, and Camp Collins for safety and protection, warning them that all hostile Indians would be pursued and destroyed, and the last of said messengers having now returned, and the evidence being conclusive that most of the Indian tribes of the plains are at war and hostile to the whites, and having to the utmost of my ability endeavored to induce all of the Indians of the plains to come to said places of rendezvous, promising them subsistence and protection, which, with a few exceptions, they have refused to do:

Now, therefore, I, John Evans, governor of Colorado Territory, do issue this my proclamation, authorizing all citizens of Colorado, either individually or in such parties as they may organize, to go in pursuit of all hostile Indians on the plains, scrupulously avoiding those who have responded to my said call to rendezvous at the points indicated; also, to kill and destroy, as enemies of the country, wherever they may be found, all such hostile Indians. And further, as the only reward I am authorized to offer for such services, I hereby empower such citizens, or parties of citizens, to take captive, and hold to their own private use and benefit, all the property of said hostile Indians that they may capture, and to receive for all stolen property recovered from said Indians such reward as may be deemed proper and just therefor.

I further offer to all such parties as will organize under the militia law of the Territory for the purpose to furnish them arms and ammunition, and to present their accounts for pay as regular soldiers for themselves, their horses, their subsistence, and transportation, to Congress, under the assurance of the department commander that they will be paid.

The conflict is upon us, and all good citizens are called upon to do their duty for the defence of their homes and families.

In testimony whereof, I have hereunto set my hand and caused the great seal of the Territory of Colorado to be affixed this 11th day of August, A. D. 1864.

JOHN EVANS

under conditions of crisis (which he had reason to perceive by August), Evans nonetheless still had the responsibility as both superintendent and governor to ensure that irresponsible individuals—which the vast majority of the 3rd Regiment of Colorado volunteers led by Chivington at Sand Creek proved to be—not be given license to kill and plunder as they wished. The August 11 Proclamation, however, did exactly that.

The document puts forth a clearly articulated framework of encouragement from the top political official in the territory for widespread, undisciplined, and preemptive warfare against Native occupants of the region.

So although Evans may not have explicitly authorized Chivington and his troops to attack the peaceful Cheyenne and Arapaho camped on the boundary of their promised reservation at Sand Creek in late November, the August Proclamation certainly emboldened settlers inclined to war. It must have seemed as if Chivington and not Evans was “in charge” of Indian policy from August 11 forward. The policy laid out in this fateful document was tantamount to a declaration of war, and it was one which Evans had no legal authority to make.

The rationale for Evans’s August Proclamation was the perception of a general state of Indian war. In light of this, it is worth pausing to consider whether the escalating conflict was at least in part due to the fact that the Colorado Indian superintendency had by August become a hand-in-glove abettor to the plans and obsessions of local military commanders poised to carry out the wars of extermination that were clamored for in venues such as William Byers and John Dailey’s Rocky Mountain News. The Northwestern report cites

the “inflammatory” tone of the correspondence among military personnel in April and May 1864 as indicative of a readiness for war; but it is also noteworthy that between June 14 and November 14, 1864, these letters are awash with exasperated, frantic, and inflammatory language directed towards the idea of a general Indian war, even during months when there were little to no active hostilities.³ By late summer 1864 this hoped-for war had become a reality, though how “general” or widespread it was remains debatable. The conflict that was taking place can be more fruitfully viewed as the culmination of a long and consistent claim from Evans to his federal superiors that a coalition of Native nations was already waging a general war against white settlers on the Plains—a kind of self-fulfilling prophesy cultivated more than anyone else (besides Chivington) by John Evans. Evans’s panic over a general Indian war seemed to have found its original expression in letters from late 1862 and accelerated from late 1863 through all of 1864, all we must recall, on the words of a single spy, Robert North, and in the skeptical reports of military leaders such as General Curtis. The situation only grew worse after the Second Proclamation.

3 Examples of this phrasing include: “Indian murders,” “burning houses,” “Cheyenne charged 100 troops,” “killed 25 Indians,” “destroyed a village,” “chastising the hostile ones,” “infernal Indians,” “this Indian War is no myth,” “put forces after the hostile Indians,” “hostile Indians on the Overland Route,” “Utes preparing to attack Conejos,” “Indians have nearly all joined in the hostilities,” “largest Indian war this country ever had,” “hostile disposition of the Indians in the vicinity (sic) of Ft. Lyon,” “go in pursuit of all hostile Indians on the plains,” “gigantic Indian war,” “one thousand warriors in camp to strike our frontier settlements,” and Evans’s August 11 proclamation authorizing anybody and everybody who wanted to do so to hunt down “hostile Indians” and “hold to their own private use and benefit all the property of said hostile Indians that they may capture.”

The Declaration of Martial Law

In the direct aftermath of these events Col. John Chivington declared martial law on August 23, at the request of Denver businessmen who “hoped to promote enlistments of 100-day men to rid our territory of all hostile Indians”.¹ One definition of martial law would simply be “the exercise of government and control by military authorities over the civilian population of a designated territory.” But such a state of affairs “carries no precise meaning.”² Most declarations of martial law do, however, share some common features. Generally, the institution of martial law contemplates some degree of military force. To a varying extent, depending on how a declaration of martial law is expressed, federal military personnel have the authority to make and enforce civil and criminal laws. Certain civil liberties may be suspended, such as the right to be free from unreasonable searches and seizures, freedom of association, and freedom of movement.”³ Utah Territorial Governor Brigham Young declared martial law on September 11, 1857, authorizing Utah’s citizens to arm themselves to resist federal troops on their way to Utah. Again, there is no indication of when martial law may have been lifted; but apparently a distinct change in the authority structure whereby the person who declared martial law and no longer in authority could be taken as the ultimate determinate. Young’s appointed replacement, Albert Cumming, arrived in Salt Lake City on April 5, 1858 and

assumed leadership of the government on April 6. President Buchanan’s proclamation offering amnesty to any Mormons who submitted to federal authority was accepted by Mormon leaders. Thus, Utah martial law seems to have begun on September 11, 1857 and ended on April 6, 1858.

In Colorado, particularly Denver, businesses were closed, and travel out of the city was shut off.⁴ These measures probably reinforced the Governor’s proclamation urging formation of vigilante posses. However, in fact, the military justification for martial law was quite specific: to fill out enlistments for the 3rd regiment. But the most important aspect of this series of incidents seems to be that General Curtis accepted the declaration of martial law as a fait accompli and part and parcel of the military’s complete takeover of civilian affairs, including the Indian superintendency. Therefore, it seems that it may have been assumed, at least by Denver residents, that martial law was in effect from late August until the early days of January, 1865, after Chivington’s commission had expired and he was replaced by Colonel Thomas Moonlight. It seems that Dole also assumed, as of October 15, that martial law was indeed in force and therefore Chivington, not Evans, was in charge of Colorado’s civil and military structure.

In his October 15 letter to Evans of, Dole unequivocally says that his directive to Evans—to negotiate peace—is still very much in effect: “... As superintending of Indian affairs, it is your duty to hold yourself in readiness to encourage and receive the first intimations of a desire on the part of the Indians for a permanent peace, and to

1 Rocky Mountain News, August 23, 1864. Roberts, Dissertation, 301-304 also discusses the enlistment priority of the declaration of martial law.

2 *Duncan v. Kahanamoku*, 327 U.S. 304, 66 S. Ct. 606, 90 L. Ed. 688 [1946].

3 TheFreeDictionary. “Martial Law.” Accessed Sept. 01, 2014

4 <http://www.kclonewolf.com/History/SandCreek/> Accessed Aug. 31, 2014

cooperate with the military in securing a treaty of peace and amity..." He directs Evans to cooperate with the military only because the civil authority was "in abeyance"—because Evans had declared it so! Evans's Proclamation of August 11 essentially created an unregulated vigilante force, and Chivington's declaration of martial law on August 23 placed that vigilante force into service as regulated U.S. Army troops, the Colorado 3rd Regiment, which Evans had requested be formed.

Here is how it might have looked to outside observers: First there were the Hungate murders, the bodies of a family discovered by a posse of ranchers, freighters and soldiers searching for Indian war parties that were stealing livestock in the area" on June 11, and the subsequent display of their bodies in Denver on June 14, accompanied by wild rumors of a massive Dog Soldier attack on the ranch where the Hungate family was murdered. Then came the subsequent panic, with Denver residents taking refuge in barricaded Denver buildings and ransacking the armory for guns. Then rancher William Shortridge, followed by dozens of settlers from the eastern plains who abandoned their homes at the news Shortridge carried, frantically rode into town with the news that a large band of warriors were headed straight for Denver. (As it turns out, the large cloud of dust that Shortridge saw billowing in the distance and assumed was Indians was simply a bunch of cattle that stampeded when Mexican cattle drivers lost control of them.) To anyone witnessing such hysteria, it must have seemed that only the military could keep order and therefore the total authority of the military, under martial law, would be assumed.

In abdicating civilian authority, Evans made an unprecedented, and improper abandonment of his responsibilities as superintendent of Indian affairs to that of the military. Evans appears to have lost the ability to negotiate peace when, on the same day as the Sept. 28 council, Curtis telegraphs Chivington that "he alone could make peace," and characterized the Indian Office as too eager to come to terms. "I want no peace until the

Indians suffer more." Although the Northwestern University Report infers from this statement that only Curtis had authority to negotiate peace, military command trumped the Indian office only temporarily and locally in unmistakable battle situations.⁵ There was really no precedent for Evans's apparent total abandonment of the Colorado superintendency. Most usually, if military procedures were undertaken, military personnel would report to the Indian superintendency.

Again here is where a comparison is useful. Between May, 1860 and May, 1863 – when Doty started his peace negotiations – there were 18 recorded (and probably another 3-4 unrecorded) altercations between whites and Native people along the Overland Road in Nevada and Utah, not counting the Bear River massacre. In that three-year period, it could be said that there was considerable antagonism between settler colonists and the Indigenous inhabitants. Yet none of the correspondence from the Indian Bureau representatives ever uses the term "war". It's always "depredations" by the Indians or if Indians are killed, then "battle". The Indian superintendents of both territories never yielded responsibility to the military. Colonel Patrick Connor went marching off on his search-and-destroy mission in October, 1862 (possibly taking advantage of the uncertainty in superintendency authority due to the uncertainty of boundaries between Nevada and Utah and Utah and Washington Territories at the time), with neither advice nor input from Superintendents/ Governors Nye, Doty, and Martin or from agents Lockhart, Hatch, Wasson, and Mann. Although Connor was present at two treaty signings (Fort Bridger and Ruby Valley) he was not in charge of either. Following the Bear River massacre, he was clearly at Doty's direction at the Treaty signings of Fort Bridger and Ruby Valley.⁶

5 Northwestern Report, 72.

6 Letters, Doty to Dole, July 18, 1863, M-901. Connor even offered his troops at Doty's disposal to build housing for Indians on the new reservations that would be established.

The Camp Weld Conference

A pivotal opportunity for Evans to pull away from the apparent free fall into war arrived in early September through the initiative of some Native leaders. Learning of Evans's June 27th Proclamation late in the summer, Black Kettle and other Cheyenne and Southern Arapaho leaders had been appealing to members of various tribal military societies to end the raids and restore peace.¹ On September 6, One Eye, his wife, and another Cheyenne arrived outside of Ft. Lyon waving a white flag. They carried a note dictated by Black Kettle and drafted by George Bent, the mixed-race son of trader William Bent and Owl Woman, who spoke English. The note, addressed to agent Samuel Colley, was a direct response to Evans's Proclamation. It reported that a recent council of chiefs had agreed to "make peace with you providing you make peace with the Kiowas, Comanches, Arapahoes [sic] and Apaches, and Sioux."² Referencing Indian prisoners in Denver, Black Kettle offered to return seven settler prisoners captured in recent raids

Suspicious of the arrival of the three Cheyenne, Wynkoop was initially furious at his men for letting the leaders through and worried that Black Kettle's proposal might be a trap.³ But to free the prisoners in question, which included children, Wynkoop gathered 127 cavalry and some weapons and rode to Smoky Hill, where over

2,000 Cheyenne and 200 Arapaho were camped.⁴ Wynkoop recovered four captive children and conferenced with the groups' leaders. Seeing an opportunity to broker a larger peace settlement for the region, Wynkoop promised safety for a peace delegation to travel to Denver to meet with Evans. The Native leaders accepted his offer. In retrospect, Wynkoop regretted his failure to ask superiors for their approval of this mission, an oversight he paid for a few months later when he was replaced at the Ft. Lyon post.⁵



The arrival of the Cheyenne and Arapaho Chiefs and white prisoners in Denver, September 28, 1864.

Evans learned about Black Kettle's letter through agent Colley and Wynkoop's subsequent notification that he was en route to Denver with the delegation of Cheyenne and Arapaho leaders. In preparation for the meeting Wynkoop met with

1 NU Report, 68

2 Black Kettle & 7 Other Chieives to Major Colley, 29 August 1864, RCIA 1864, 377. This is online at <http://www2.coloradocollege.edu/library/specialcollections/Manuscript/SandCreek/Kettle1.html>

3 Halaas and Masich, *Halfbreed*, 134; NU Report, 68.

4 Edward W. Wynkoop to "FORT LYON, COLO, TER., September 18, 1864. Lieut. J. E. Tappan, Acting Assistant Adjutant-General, Dist. of Upper Arkansas." Most historians give the number as 127.

5 NU Report, 69.

Evans and seemed to have had some difficulty convincing him to speak with the tribal leaders. According to Gary Roberts, Evans chillingly “told Wynkoop matters were out of his hand, and that the Indians needed to be punished more to insure peace. More than once Evans asked, ‘What will I do with the 3rd Regiment if I make peace?’ He told Wynkoop, ‘The 3rd Regiment was raised to kill Indians, and kill Indians it must.’”⁶ Evans asserted that his credibility in Washington would be lost if, having agitated so stridently for war, he now made peace. Given Evans’s insistence to Washington that the defense of Colorado required the recruitment of 100-day volunteers, the Governor seemed more concerned about his reputation than the consequences of an open war.

Even Evans’s firm ally, William Byers of the Rocky Mountain News, seemed to differ with Evans about the value of pursuing peace negotiations. As Roberts notes, “The following day the News reported that Byers had met with Wynkoop as well, concluding ‘we believe it is the part of prudence to compromise with the tribes named upon the terms which they propose. They have unquestionably had great provocation for hostilities, and were not the first to violate friendly relations.’”⁷

Despite the tribal leaders having travelled some 400 miles at great personal risk after learning of Evans’s June 27th Proclamation, Wynkoop had difficulty in even getting Evans to meet with them. Still under the mandate of the Treaty commission, Evans’s actions indicated he had no interest in this fresh chance to address concerns and broker new agreements with key leaders. This refusal would seem to be in direct defiance of Indian Commissioner Dole, who had only recently (in 1862) supervised Doty’s successful efforts at obtaining peace with the Shoshone and Bannocs, who were blamed for far more clashes with settlers than the Cheyenne and Arapaho. Clearly, Dole did

6 Roberts, Thoughts, 12.

7 Roberts, Thoughts,” 12-13. See also The NU Report, 70.

not want another Indian war and he undertook sufficient efforts to avoid it.

More than once Evans asked, “What will I do with the 3rd Regiment if I make peace?” He told Wynkoop, “The 3rd Regiment was raised to kill Indians, and kill Indians it must.”

In the end, however, Evans decided that he could not avoid speaking with the Native representatives and finally did so on September 28 at Camp Weld. It is instructive to examine in detail the official published report of the meeting, which included the Cheyenne and Arapaho chiefs, Governor Evans, Colonel John Chivington, and Major Edward Wynkoop. The report reflects perspectives on the issues of the Upper Arkansas reservation, the issue of subsistence, “depredations,” and the role of the military in Indian-settler relations. More importantly, it demonstrates a critical moment in which Evans effectively violates the military “divide and rule” strategy of separating “hostile” (by colonial definitions) from “friendly” Indians. By refusing to make peace with the chiefs who came into Denver to council, the governor-superintendent effectively treats the most avowedly friendly Cheyenne and Arapaho chiefs as if they were enemies, using the martial law scenario he has helped put into place as his rationale for doing so.

Pleas and Rebuffs

When they were finally gathered, Black Kettle was first to speak and eloquently appealed for conciliation, even deferring to Evans via the language of the territorial “father”:⁸

8 Halaas and Malich, *Halfbreed*, 138; all following quotations and dialogue are from the *Report of Council with Cheyenne and Arapahoe Chiefs and Warriors, Brought to Denver by Major Wynkoop, Taken Down by U.S. Indian Agent Simeon Whiteley as it Progressed, Camp Weld, Denver, Wednesday, Sept. 28, 1864*, The State Historical Society of Colorado, 226 Evans Box 6/17, Folder FF64.

We have come with our eyes shut, following [Major Wynkoop's] handful of men like coming through the fire. All we ask is that we have peace with the whites. We want to hold you by the hand. You are our father. We have been traveling thro' a cloud. The sky has been dark ever since the war began. These braves who are with me are all willing to do what I say. We want to take good tidings home to our people, that they may sleep in peace. I want you to give all the chiefs of these soldiers to understand that we are for peace, and that we have made peace, that we may not be mistaken by them for enemies. I have not come here with a little wolf bark, but have come to talk plain with you. We must live near the buffalo or starve. When we came here we came free, without any apprehension to see you, and when I go home and tell my people that I have taken your hand, and the hand of all the chiefs here in Denver, they will feel well, and so will all the different tribes of Indians on the Plains, after we have eaten and drank with them.

Evans responded, "I am sorry you did not respond to my appeal at once. I wish you had done this when I issued my Proclamation." But as noted above, Evans's Proclamation had not given the Cheyenne or Arapaho any set or reasonable timetable to appear for negotiations. Black Kettle had made every effort to comply, and as he and Left Hand conveyed to both Wynkoop and Joseph Cramer, many peace-seeking Native people had in fact been turned away by soldiers when attempting to approach the outposts. Moreover, as the Northwestern Report notes, the proclamation and related messages had not explained how particular Indians were to be categorized as friendly or hostile.⁹ This ambiguity was a result of Evans's leadership failures as manifest in his imprecise and erroneous directives.

White Antelope was one leader who expressed worry, stating, "I fear that these new soldiers who

have gone out, may kill some of my people while I am here."

Governor Evans, seemingly aware of the threat, replied, "There is great danger of it."

Evans then continued to direct the conversation to the supposed state of general Indian warfare, the existence of which he had been declaring since late 1862. Carrying a grudge for more than a year following the failed council, Evans accused the leaders—men who had already signed the Fort Wise Treaty and who had now come to him at great personal risk—of being allied with the Lakota and having committed depredations: "I was under the necessity, after all my trouble, and all the expense [of coming out with "gifts" for the meeting he tried to set up on September 1, 1863], of returning home without seeing them," he complained. "Instead of this...You have gone into an alliance with the Sioux, who were at war with us." Evans then reiterated this accusatory refrain, drawn almost exclusively from the words of the spy, Robert North.

The leaders denied the allegation. "I don't know who could have told you this," the transcript records Black Kettle as saying in reference to Evans's assumption that going into country controlled by the Lakota was indicative of an alliance with them. In reality they were simply searching for buffalo. Evans refused to be convinced, stating, "No matter who said this but your conduct has proved to my satisfaction that was the case." Several of the Natives in attendance responded, asserting, "This is a mistake. We have made no alliance with the Sioux, or any one else." As the meeting report shows, the Cheyenne and Arapahos also pointed out that they did not know the reasons for the fighting launched by Chivington's forces in the three battles of the spring, with White Antelope raising this question to Evans, who simply ignored it:

9 Northwestern Report, 67.

Gov. Evans: Who took the stock from Fremont's Orchard, and had the first fight with the soldiers this spring, north of there?

White Antelope: Before answering this question I would like for you to know that this was the beginning of war and I should like to know what it was for, as a soldier fired first.

Gov. Evans: The Indians had stolen about forty horses, the soldiers went to recover them, and the Indians fired a volley into their ranks.

White Antelope: This is all a mistake. They were coming down the Bijou, and found one horse and one mule. They returned one horse before they got to Geary's to a man, then went to Geary's, expecting to turn the other one over to some one. They then heard that the soldiers and Indians were fighting somewhere down the Platte; then they took fright, and all fled.

The fact of the matter was that the fighting broke out because Colonel Chivington had declared war on them.

Evans also took the opportunity to further castigate these peace-seeking representatives during this council for not settling on the Upper Arkansas reservation. But Evans's claims about the reservation merit close scrutiny. "We have been spending thousands of dollars in opening farms for you, and making preparations to feed, protect, and make you comfortable," he told the Indians. This statement was, if not an unequivocal lie, at best an optimistic self-delusion. Evans had indeed inspected construction of reservation buildings, writing about it to Commissioner Dole on April 11, 1864: "I just returned from a visit to the Upper Arkansas Agency...The new line of ditch I should judge to be well laid. It will irrigate a very large track of land in addition to the Agency and school lands principally [sic] on the Arapahoe portion of the Reservation...No finer building stone can be found anywhere than one on the

grounds in great abundance and easily quarried. If this suggestion is approved please telegraph."¹⁰ Evans had indeed requested money from Dole on June 3 for improvements to the reservation, but on June 7 he referred to conflict between claimants to (Mexican) land grants and Native peoples as already having "been productive of trouble."¹¹ In fact, however, the grants in question were located to the east of the reservation's western boundary, and colonists had no rights to settle there either under Mexican or U.S. land tenure rules. The grant, as congressionally confirmed, had as its northeast boundary the Arkansas and Purgatoire Rivers.¹² The Upper Arkansas Reservation was east of the grant.

The upshot is that Evans's description at Camp Weld of having made the Upper Arkansas reservation "comfortable" for the Indians was hardly plausible, especially given that settlers had invaded the reservation, a fact of which Evans was well aware. It is not quite clear whether the invasion occurred prior to negotiation of the 1861 treaty, but it seems that it likely occurred in 1862 and 1863. Evans's idea for solving this conflict of title on the Upper Arkansas reservation was "to get The Indians to release title to the invaders!"¹³ Even the portion that had not been claim-jumped by the settlers was leased out to "tenants" and "Major" S.G. Colley, the agent, was farming the rest "on Government account."¹⁴ Given these facts, where, one might ask, was there any room for the Cheyenne and Arapaho? Could they be expected to settle among hostile settler colonists?

Additionally, there was bureaucratic confusion concerning just for whom the reservation was

10 Evans to Dole, April 11, 1864, Governor's Papers.

11 Evans to Dole, June 03, 1864; see also Evans to Craig, May 16th (186), 4 #196, Governor's Papers.

12 Bonnie J. Clark, *Amache Ochinee Powers: An Archaeobiography of a Cheyenne Indian*. Masters Thesis, Department of Anthropology, 1996, 46.

13 Evans to Dole June 07, 1864, Governor's Papers

14 Evans to Chivington, Sept. 12, 1864, Governor's Papers

being prepared. Acting Commissioner of Indian Affairs Charles Mix, a career bureaucrat who filled in whenever the commissioner was unavailable, had instructed “Major” Colley, just a year earlier, that a “Mr. Wright” was in the process of purchasing supplies for the Caddoes, for whom the reservation had been designated.¹⁵ Only if the Caddoes turned out not to be interested in settling there would the reservation be exclusively for the Cheyenne and Arapaho, Wright implied in August 1863.¹⁶ Wright was also supposed to survey the reservation. This was the problem about which Evans apologized to Dole a week later. (See above.) The most important aspect of the situation is that Evans insisted to Wright that “treaty negotiations would be necessary before plans for dividing the land could be carried out,” presumably to get additional Indians to agree to settle there, but perhaps to negotiate different or additional reservation sites.¹⁷ If Evans placed so much importance on his obligations as Treaty commissioner, why did he not take the opportunity to renew negotiations when given the clearest possible chance a year later?¹⁸

It is also deeply ironic, given Evans’s Camp Weld references to the reservation, that the Sand

Creek encampment which Chivington was to viciously attack on November 29 was either right on the reservation’s northwestern boundary or perhaps just within it. Since the surveying for this track had not been completed it would have been nearly impossible for either the superintendency or the Cheyenne and Arapaho to know if they were within its boundaries when they were sent there after arriving in Ft. Lyon, as directed at the end of the Camp Weld conference. Cheyennes and Arapahos were legitimately within their rights to be in residence, where they were camped, undisturbed, at the Upper Arkansas Reservation. Given their close relationship with Major Wynkoop, who had escorted them and co-arranged with them the council with Evans on September 28, it would take a deliberate rendition of interpretation to put a construction on the situation to construe the residents of this camp as appropriate for attack. There is no way that any reasonable interpretation other than “coming into Fort Lyon” and as “friendly” could be accommodated.

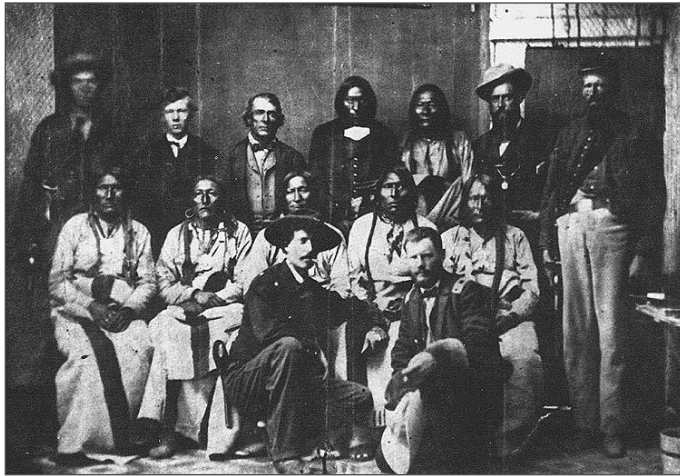
Toward the end of the meeting, Evans claimed that he was obligated to turn the Cheyenne and Arapaho over to the Army, given his claim that the settlers and Native peoples were at war: “Another reason that I am not in a condition to make a treaty, is that war is begun, and the power to make a treaty of peace has passed from me to the Great War Chief,” he asserted. This statement is particularly startling as it clearly indicates an abdication of his responsibility under Dole’s instruction, as well as in his role of Indian commissioner, to negotiate for peace at every opportunity. Instead, it seems clear that Evans felt he could avoid such by telling the Cheyenne and Arapaho representatives in the council—who were there in good faith in response to his orders that all “friendly Indians” come in and seek peace—instead that a war was already in progress and that he anticipated the launch of a winter campaign that would “drive all the Indians off the

15 Evans to Dole June 07, 1864, Governor’s Papers.

16 (Acting Commissioner of Indian Affairs) Mix to Colley, August 14, 1863, No. 65, 140-42 in ARCIA for 1863

17 Roberts, *Sand Creek*, 165

18 Other pieces of correspondence reinforced the reservation’s problematic status. On Sept. 12 1864, Evans wrote to Chivington, in reply to a letter from him on the 11th, stating enigmatically that he was “not able to state positively the amount of damage [the buildings on the property] are liable to from fire” but presumes they “had been finished” and would be seriously damaged or destroyed if fired.” Was Evans anticipating an additional threat from Indians? Had the settler colonists threatened to burn the buildings on the reservation? Was Chivington thinking of burning them? The exact meaning of this enigmatic piece of communication is impossible to interpret, but at the very least it suggests the at best fragile state of this purported haven for the Cheyenne and Arapaho.



Front row, kneeling, left to right: Major Edward W. Wynkoop, commander at Fort Lyon and later agent for the Cheyennes and Arapahoes; Captain Silas S. Soule, provost marshal, later murdered in Denver. Middle row, seated, left to right: White Antelope (or perhaps White Wolf), Bull Bear, Black Kettle, One Eye, Natame (Arapaho). Back row, standing, left to right: Colorado militiaman, unknown civilian, John H. Smith (interpreter), Heap of Buffalo (Arapaho), Neva (Arapaho), unknown civilian, sentry. Another identification states that Neva is seated on the left and the Indian next to Smith is White Wolf (Cheyenne). | Colorado Historical Society

plains,” despite this not being his charge in either of his official capacities. As a consequence, Evans rebuffed the perilous efforts that were made on the part of Cheyenne and Arapaho leaders in an attempt to ensure peace. “All we ask is that we have peace with the whites”, said Black Kettle, on behalf of conciliation. “We want to hold you by the hand...”¹⁹ Evans clearly rejected this opportunity to parlay the meeting into an agreement that could have set events on a new trajectory and likely averted the massacre.

When considering what might have motivated Evans’s reasoning, the language Evans employed the following day in a one-paragraph message to Indian agent Colley is illuminating:

SIR: The chiefs brought in by Major Wynkoop have been heard. **I have declined** to make any peace with them, lest it might embarrass the military operations

¹⁹ Halaas and Malich, *Halfbreed*, 138.

against the hostile Indians of the plains. **The Arapaho and Cheyenne Indians being now at war with the United States government**, must make peace with the military authorities. **Of course this arrangement relieves the Indian bureau of their care until peace is declared with them**; and as these tribes are yet scattered, and all except Friday’s band are at war, it is not probable that it will be done immediately. You will be particular to impress upon these chiefs the fact that **my talk with them was for the purpose of ascertaining their views, and not to offer them anything whatever**. They must deal with the military authorities until peace, in which case, alone, they will be in proper position to treat with the government in relation to the future.²⁰ (Emphasis added)

Likely dashed off as a quick recap to ensure Colley understands the plan, much is conveyed in this message. Evans does not explain that he is operating on military instruction or protocol; instead he “declines,” chooses, not to make peace, because it will “embarrass military operations.” The logic is clear: he has rejected the offer because the military campaign has priority. In so doing, he has exercised his authority as superintendent. Too, in his phrasing all Cheyenne and Arapaho are at war (even these bands, apparently) and, to spell it out to Colley in no uncertain terms, “this arrangement relieves the Indian bureau of their care until peace is declared,” despite the reality that the military’s instructions are certainly not to make peace. The superintendent instructs Colley to reiterate to the chiefs when they return that he only wanted to gather information from them, not to give them anything. Evans has relieved the Colorado superintendency of the matter.

Following his stated inability to make peace, Evans’s next words are particularly striking, especially coming from the highest ranking

²⁰ John Evans to Maj. S.G. Colley, September 29, 1864, in “Condition of the Tribes,” Report of the Joint Special Committee, Government Printing Office, 1867, 82.

official appointed to negotiate with the tribes of the Colorado territory: “The time when you can make war best, is in the summer time; when I can make war best, is in the winter. You, so far have had the advantage; my time is just coming.”²¹ Evans explicitly articulates a desire to attack entire Native camps—not just engage in battles with groups of warriors—when they would be at their most vulnerable. Indeed, as Evans well knew, even having expressed admiration for the event, Colonel Connor’s massacre at the Shoshone winter camp at Bear River in January 1863 had also resulted in the deaths of many women and children. As General Carleton had also mentioned in late June, the advantage of a winter attack was that the normally mobile and elusive tribes would be camped, and, thus, have a difficult time mounting a defense as their first priority would be to protect the women and children. Therefore, winter campaigns led, intentionally and inevitably, to substantial casualties among populations of innocents. Did Evans have the Bear River massacre in mind when he spoke so menacingly and in the first person? Or had he remembered General Carleton’s description of military strategy against the Navajo and other native nations of the southwest, but then forgotten about his urging to do everything he could for peace?

“Another reason that I am not in a condition to make a treaty, is that war is begun, and the power to make a treaty of peace has passed from me to the Great War Chief. ”

We cannot know his thoughts, of course, but the strategy Evans employed at the Camp Weld conference seems intended to redefine all Cheyenne and all Arapaho as enemies, with the

21 *Report of Council with Cheyenne and Arapahoe Chiefs and Warriors, Brought to Denver by Major Wynkoop, Taken Down by U.S. Indian Agent Simeon Whiteley as it Progressed, Camp Weld, Denver, Wednesday, Sept. 28, 1864, The State Historical Society of Colorado, 226 Evans Box 6/17, Folder FF64*

only exclusion being the two bands at Camp Collins. Again, this refusal to increase the ranks of “friendlies” though this very obvious opportunity is a departure from the standard military policy. Evans initially seems to leave a door open in this wall of refusal and conflict escalation, telling the Cheyenne and Arapaho at the meeting that the only way they could be on the side of the territorial government would be to help the soldiers—in other words, to fight Evans’s enemies, “all Indians who are fighting us.”

Black Kettle was amenable to this idea. He thought he could get his young men to help the soldiers, as long as it was assured that “that we may have peace with the whites.” This statement would seem to indicate the urgency felt by the chiefs in their negotiations with Evans. Bull Bear reinforced Black Kettle’s proposal, noting that assistance to the troops along with a peace agreement should be accompanied by “presents.” But despite these overtures, Evans seemed to reject the strategy just as Black Kettle and Bull Bear agreed to it, and began a prosecutorial interrogation on the subject of who was responsible for a litany of seven incidents of “depredation.” When queried by White Antelope about the idea of helping the soldiers in return for peace and presents, Evans reversed himself, saying that he could “not say anything about those things.”

Altogether, the Cheyenne and Arapaho had difficulty in keeping Evans focused on the topic they had come to discuss: peace and partnership with the settlers. The available evidence indicates that Evans had little desire to discuss the idea, but that he was also determined to use the opportunity to redefine the peaceful Native groups as hostiles, accusing those who had come to him at great risk as responsible for the reported depredations. “It is utterly out of the question,” Evans accused, “for you to be at peace with us, while living with our enemies, and being on friendly terms with them.” Statements such as these eliminate any doubt that Evans believed “friendly” Indians could live

anywhere but on the military outposts to which he had assigned him—and from which many of which many of them had already been aggressively turned away.

When asked in several variations by both Black Kettle and White Antelope how they could make peace, Evans deferred, arguing that his authority—apparently in both political offices—had expired: “I am not in a condition to make a treaty,” he asserted, claiming again, “war has begun, and the power to make a treaty of peace has passed from me to the Great War Chief.” Native people must “turn on the side of the government and show, by your acts, that friendly disposition you profess to me.” Yet it is not the government to which he turns them, but the military acting as in the capacity of the government, which was due more than anything else to Evans’s own lobbying. “I hand you over to the military, one of the chiefs of which is here today, and can speak for himself, to them, if he chooses,” he says, affirming at the very least his own authority as it relates to Native people. Black Kettle, perhaps seeing the danger of the situation nonetheless agrees to return to Fort Lyon with Major Wynkoop. Expressing his own worry about this arrangement, White Antelope asks, “How can we be protected from the soldiers on the plains?” Evans’s reply was as simple as it was cold, given what we know of the context: “You must make that arrangement with the Military Chief.” Although Wynkoop commanded the troops at Fort Lyon, Colonel John Chivington announced at Camp Weld, “all the soldiers in this country are at my command.” Still, Chivington reiterated that the Indians should go to Major Wynkoop when they got ready to make arrangements.²²

In sum, the Indians at Camp Weld asked for peace and protection in response to Evans’s June Proclamation calling for tribes to do exactly that. In direct reply to their face-to-face inquiries, Evans told them to report to the military authorities at

Ft. Lyon, where they had already tried, without success, to come in. Disregarding this, Evans clearly implied they would now receive at least temporary peace and protection under designated parameters. But throughout the conference, Evans’s comportment could only have been deeply confusing to the chiefs as he had effectively accused them, repeatedly, of being enemies because they had contact with the territorial and military leadership’s enemies, yet he made it clear that going with the military would be regarded as a “friendly” effort. Within this context, the options of the Arapaho and Cheyenne were quickly being reduced to zero.

The available evidence indicates that Evans ... was determined to use the opportunity to redefine the peaceful Native groups as hostiles, accusing those who had come to him at great risk as responsible for the reported depredations.

Evans’s subsequent comments betray the same contradictions. In the telegram to Curtis immediately after the meeting, Evans described the group as “the most reliable Chiefs of the Cheyenne and Arapahoe tribes,” and “earnest in their desire for peace.”²³ But in the Bancroft interviews two decades later makes this comment: “[W]hile I was in Washington, the people got evidence and the military authorities got evidence that that camp was a refuge for Indian warriors, etc. that were at war with us, and this terrible massacre, as it was called, of Chivington, was perpetrated during that year.”²⁴ The Bancroft comment sounds very much like a justification for the massacre because if military officials learned that the Natives camped at Sand Creek were actually “at war with us,” then the massacre would have been entirely in line with Evans’s plans to use the 3rd Regiment to thoroughly prosecute “hostiles” in Colorado

22 *Report of Council with Cheyenne and Arapahoe Chiefs and Warriors*

23 Northwestern Report, 85.

24 Bancroft Interview [double-check date; 1889], 21-22.

Territory. But it flies in the face of what Evans assured Curtis directly after Camp Weld, and we have no indication that any new, clear “evidence” emerged for either “the people” or the “military authorities” to interpret as cause for massacre.

It is important to recall that the camp at Sand Creek to which Major Anthony directed the Cheyenne and Arapaho, on the border of the “reservation” much touted by Evans, was just about as close as the tribes could get to Fort Lyon without actually living on top of the troops. Gary Roberts points out that there would have been a problem if the camp had been any closer: “the Army never recognized these locations as refuges, and, indeed, General Curtis explicitly forbade Indians from entering military reservations.”

Wynkoop Reassigned

On November 2, Major Scott Anthony replaced Major Edward Wynkoop as the commander of Fort Lyon. The ostensible reason for the replacement was attributed to “unofficial rumors... that certain officers [had] issued stores, goods, or supplies to hostile Indians, in direct violation of orders from the general commanding the department.” In fact, Wynkoop had been doing so, using rations allocated for supporting prisoners.²⁵

²⁵ Roberts, *Sand Creek*, 397.

Yet two years previously just exactly this kind of emergency action on the part of the Army in Nevada had probably gone a long way toward keeping the peace there. When Major Scott Anthony replaced Wynkoop, he commanded the prisoners to surrender their weapons. He lied to them, trying to convince them that they were at peace, and that he would warn them first if he heard from higher military authority that they were not. Instead, Anthony asked for reinforcements from Denver to wage an attack, but he may also have contemplated attacking “hostiles,” something that, he reported later, Chivington had told him they would do.

It is difficult to know just what Evans’s involvement in this replacement was. However, it must be remembered that this replacement was made two-and-a-half months after Chivington had declared martial law and three weeks after Commissioner Dole had reluctantly acknowledged Evans’s abdication of civilian authority to the military. If this action was not done specifically at Evans’s invitation, then it was certainly done at least without any objection from him. Given Evans’s knowledge of Wynkoop’s pivotal and effective response to Cheyenne’s conciliation efforts, the significance of this replacement should not have escaped him.

Aftermath: Federal Investigations

It took one long day for Colonel John Chivington and his 3rd Regiment to deliver on Chivington's vision of "chastisement" for Colorado Native people. But the bloody deeds committed at the Sand Creek encampment would generate hundreds of hours of inquiry and reams of interview transcriptions in subsequent years, as federal agencies launched investigations into an event that even a westward-expanding national government quickly saw as anomalous and deplorable. Gary Roberts reviews the context of each investigation and the popular reactions each new commission generated in Colorado Territory.¹ Here we focus primarily on the conclusions that remain consistent across the investigations, on Evans's efforts to defend his performance as a territorial leader, and on how each committee seemed to weigh Evans's responsibility.

In the wake of Chivington's massacre, news reports of the "Sand Creek affair" covered most of the basics: that the Cheyenne and Arapaho at the encampment were peaceful and under the temporary protection of the military until a peace settlement could be arranged; that the battle itself was chaotic and without any clear command or control under a commander intent on "stirring up the Indians"; that most of the dead were women and children; and that the bodies of the dead were scalped and mutilated. By winter of 1864-65 it was clear to federal officials that the event demanded attention—though, as Roberts notes, settlers in Colorado were puzzled by the charges, as Colorado press had generally supported Chivington's campaign at Sand Creek (and in general for the previous two years) and kept critical

voices out of the news.²

Three separate investigations were eventually conducted, one military and two congressional. The "Military Investigation of the Sand Creek Massacre" was ordered through the army chief of staff and will be referred to as the Tappan investigation after its president, Lieut. Colonel Samuel F. Tappan. The commission did not interview Evans. A second inquiry came out of "Bluff" Ben Wade's Joint Committee on the Conduct of War, an important investigative body that attempted to apply congressional strength to control the president's prosecution of the Civil War; in Roberts' words, this committee "served as a kind of national grand jury."³ The Wade Commission conducted its investigations in spring of 1865 and issued a scathing report in early May, effectively condemning the "Chivington affair" as a case study in how not to prosecute a military attack. Finally, the Senate's Joint Special Committee on the Condition of the Indian Tribes, known as the Doolittle Committee after its chairman James Doolittle, included an investigation of the Sand Creek Massacre in its 1867 report, "Conditions of the Indian Tribes."

Most of the Doolittle report consists of a review of the dire conditions facing Native peoples in the United States in the 1860s, of the role of the Indian Bureau and related agencies, and of the question whether the Bureau should be moved back to the Department of War or kept in the Department of the Interior. It does not provide a formal account of the Sand Creek Massacre per se, though it includes an enormous appendix

1 Dissertation, Chapter XV.

2 *Ibid.*, 479.

3 *Ibid.*, 499.

under the title “The Chivington Massacre.” A brief section in the report itself does refer to the massacre to exemplify how a “war of extermination” was being waged by white men in the frontiers. Chivington’s “wholesale massacre of Arrapahoes [sic] and Cheyennes” is described as uniquely deserving of condemnation not because of the “indiscriminate slaughter” conducted there (that was not unique) but because “those Indians were there camped under the direction of our own officers, and believed themselves to be under the protection of the flag.”⁴

Together the evidence in the reports supported highly critical and even damning conclusions, not only with regard to the massacre itself, but also the political and military policies that created the conditions for it, and the leaders who acted or failed to act in the events that preceded Chivington’s attack. The investigations did not rest solely on the damning accounts of witnesses like Silas Soule, Joseph Cramer and John Smith who had already spoken out about the massacre, but delivered detailed accounts of the atrocities that occurred at the hands of federalized troops through interviews with soldiers who fully supported annihilationist policies.

The military commission was ordered in January 1865, and established on February 1. In an irony of history, Lieutenant Colonel S.F. Tappan, a veteran of the first Colorado cavalry who had not been at Sand Creek but had been an outspoken critic of what transpired there and of Chivington in particular, was appointed by Colonel Moonlight to preside over the commission. Although some interpreted Tappan’s participation as evidence of partisanship, the commission’s instructions were explicitly not to try any one person “but simply to investigate and accumulate facts called for by the government, to fix the responsibility, if any, and to insure

justice to all parties.”⁵ The committee had a broad mandate, as Roberts summarizes it, “to determine whether the Indians at Sand Creek were under the protection of the government, by whose authority they were there, whether Col. Chivington knew their condition, whether the Indians were hostile, whether Chivington took prisoners or not, whether steps ‘to prevent unnatural outrages: or to punish them if they occurred, and whether or not the property captured was turned over to the quartermaster corps as required by military law.’”⁶

The Tappan commission traveled to Fort Lyon and Camp Weld in Denver in the spring of 1865, interviewing three-dozen witnesses and generating some 800 pages of testimony. In the middle of its work, on April 23, Silas Soule was murdered on Lawrence Street in downtown Denver by two Second Colorado Calvary soldiers who claimed he had incarcerated one of them—although some, including Tappan and Ned Wynkoop, suspected Chivington of being behind the killing. When the commission reconvened, Chivington delivered a dramatic self-defense, introducing a long line of witnesses and deposing three others in an attempt to discredit Soule and others. Procedurally, the commission was flawed for a number of reasons, but the transcripts represented the most detailed inquiry among the three committees.⁷ Following the instructions of the War Department, the commissioners issued no formal report of their own, and the transcript was boxed and sent to Washington, where eventually the Judge Advocate General Joseph Holt composed a strongly-worded review of the testimony, which represented the official military review. However, the report wasn’t published until 1868, and never appeared in the Colorado press.⁸

4 Doolittle, 6.

5 Moonlight to Lt. Col. Tappan, February 12, 1865, Military Investigation of the Sand Creek Massacre, 3-4. <http://www.kclonewolf.com/History/SandCreek/sc-documents/sc-01hearing.html>

6 Roberts, Dissertation, 483.

7 Roberts, 495.

8 Ibid., 497-8; 516.

The report worked carefully through the lead-up events in 1864, especially Evans's two proclamations and the Camp Weld council. He noted the conversation with Wynkoop prior to the council, in which, in Holt's paraphrasing, "If peace were now made there would be nothing for these troops to do, and it might be thought at Washington that he had misrepresented the necessity for raising them."⁹ Holt was clearly convinced by the testimony that the Sand Creek affair was a massacre; a "cowardly and coldblooded slaughter" of friendly Indians, filled with "shocking and demoniac barbarities" that would merit punishment if Chivington were not beyond the reach of military trial, by virtue of his commission having expired. He recommended that the government "manifest not only its disapproval, but its utter abhorrence of the savage crimes thus committed in its name, and that it would so rebuke and brand the authors of these crimes by name, and their infamy shall cling to them, and that they shall thus become a warning to others, in all time to come."¹⁰

Congressman Wade's Joint Committee investigations overlapped with the army commission inquiries and publicly overshadowed the latter's work, to the dismay of many apologists in Colorado. Composed mostly of Radical Republicans critical of the new administration and therefore considered partisan by critics, the group had investigated major campaigns of the Civil War and took its job seriously. With Missouri Congressman Benjamin Franklin Loan leading the proceedings, all the major military officials and several civilians appeared in the hearings, including John Evans on March 15. Evans was bombarded with questions about his knowledge of the Indians in his jurisdiction; the spring 1864 depredations and whether Black Kettle's band was connected

with him; his perceptions of plans for a general Indian war; the Camp Weld meeting and the decision to send the Arapaho and Cheyenne bands to Fort Lyon; his lobbying for the regiment to kill Indians; and finally his sense of whether Chivington was justified in attacking the bands at Sand Creek.

Evans emerges in this interview as a figure with surprisingly vague knowledge of the Native peoples, distances, and landscapes within his superintendency. He has trouble distinguishing between different bands and leaders, explaining his imprecise knowledge according to the "roaming" and "nomadic" nature of the plains bands, which seem to him somewhat interchangeable. For example, he names four of the chiefs brought to Denver by Wynkoop, but can't identify the others.

His testimony also seems to illuminate the intentions and mindset he brought to the Camp Weld council. He emphasizes, as he does in a later interview with the Doolittle commission, that he approached the Camp Weld meeting primarily as a chance to (to use a modern phrasing) cull intel from the chiefs: "I took occasion to gather as much information as I could in regard to the extent of hostile feelings among the Indians, and especially in regard to what bands had been committing the depredations along the line and through the settlements, which had been very extensive."¹¹ (What information he actually gathered is unclear.) The governor betrays no indication that he took seriously the opportunity to negotiate peace. Indeed, he conveys an overriding suspicion of the chiefs' intentions and a determination to characterize even these known peace leaders as war-makers while denying his own authority to make negotiate anything. In the end, he did not cull any significant information and treated the meeting more like an aggressive police interrogation.

The way Evans phrases the discussions of peace in the interviews is interesting. First he implies

9 Judge Advocate General J. Holt to the Secretary of War, 16th October, 1868 (copy from files of Gary Roberts provided week of October 27, 2014), 4.

10 Roberts, 498; Holt to War Department, 13.

11 Joint Committee on the Conduct of War, 35.

that the chiefs saw the onus as being on Evans, as the governor-superintendent, to broker peace. (If so, this would have been a logical inference based on Evans's instructions in the June Proclamation for "friendly" bands to present themselves to him.) As Evans describes it:

The Indians made their statement, that they had come in through great fear and tribulation to see me, **and proposed that I should make peace with them; or they said to me that they desired me to make peace.** To which I replied that I was not the proper authority, as they were at war and had been fighting, and had made an alliance with the Sioux, Kiowas, and Comanches to go to war; that they should make their terms of peace with the military authorities. (Emphasis added)¹²

Later in the interview, Evans is pressed on whether the chiefs were responding to his instructions as superintendent. He evades the question:

Question. Did these Indians propose to do anything that you, as their superintendent, directed them to do in this matter, for the purpose of keeping peace?

Answer. They did not suggest about keeping peace; they proposed to make peace. They acknowledged that they were at war, and had been at war during the spring.¹³

In this exchange Evans has reversed a bit—now the chiefs have proposed making peace, not that he make peace with them. This framing is consistent with his notion that they, not the military, were the ones at war. At the same time he insists on a distinction between the chiefs wanting to "make peace," as opposed to "keeping peace"—a distinction that underscores his determination to believe that the tribes had been at war throughout the spring (which was disputed, at least with regard to these bands), that they were at war in September (which the chiefs admitted, though

they said they were working to prevent war and no depredations had occurred for several weeks), and that even though they were the most respected peace leaders and had come to Denver at great risk to broker peace, such a negotiation was out of his hands. In the committee interviews he categorically rejects the possibility that the chiefs initiated a sincere peace effort.

Throughout both the Wade and the Doolittle interviews, and again in the "Reply" he publishes in response to the Wade Commission report, Evans insists that he had lost the authority to make peace, citing Curtis's dispatch the day after Camp Weld, ordering that, "no peace should be made with the Indians, without his assent and authority." The Reply (also included in the Doolittle Appendix) employs Evans's September 29, 1864 letter to Indian agent Colley as evidence of Evans having acted at Camp Weld in accordance with the policy of military authorities.¹⁴ However, as we noted in our section on the Camp Weld council, in that letter Evans told Colley that he "declined to make peace with them, lest it might embarrass the military operations against the hostile Indians of the plains"—not because of protocol or instruction from the military. Evans had been transparent with Colley that he understood this decision to effectively "[relieve] the Indian bureau of their care until peace[was] declared with them"—a peace that a regiment that had been raised to kill Indians could not soon make. In the Reply, he sticks to his position that "the status of these Indians was in no respect within [his] jurisdiction or under [his] official inspection"—leaving out Commissioner Dole's urging after the Camp Weld debacle that he "hold [him]self in readiness to encourage and receive the first intimations of a desire on the part of the Indians for a permanent peace."¹⁵

Before both congressional commissions and in his Reply Evans was adamant that he knew

12 Ibid., 35.

13 Ibid., 37.

14 John Evans to Maj. S.G. Colley, September 29, 1864, in "Condition of the Tribes," Report of the Joint Special Committee, Government Printing Office, 1867, 82.

15 Evans to Dole, August 10, 1864, Governor's Papers.

nothing of the facts connected with the massacre, that he had no power with regard to it, and that being out of Colorado Territory when it took place, his name should never have been associated with “this battle.”¹⁶ Yet despite his repeated assertions that he believed the bands he turned over to military authority at Ft. Lyon were under the protection of the U.S. government, he offers no expression of disappointment that it happened, nor criticism of it or decisions leading up to the massacre. His refusal to offer an opinion on Chivington’s actions is appropriate to expectations of a commission hearing, yet he seems to continue the same campaign he had been asserting in Colorado throughout his tenure: that the Native people had been conspiring for a war against settlers, that hostilities were abundant (but not because Cheyenne and Arapaho had any legitimate complaints), and that no Indians, even those who approached him for peace, could really be trusted. The superintendent seems to have abandoned all pretense of interest.

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Pressed by the Wade committee’s Congressman Gooch on whether any circumstances at all could justify Chivington’s attack, Evans seems unable to look through anything other than the lens of suspicion through which he approached Cheyenne and Arapaho all along. Again, he conflates hostilities he claimed were happening in November 1864 with the bands at Sand Creek. (These hostilities don’t appear in the historical record, but if they happened were surely fueled by Evans’s and the military’s declarations of war by late summer, and not authored by the bands at

Fort Lyon who had no incentive to commit hostilities.) In so doing, he avoids the question Gooch poses at least three times:

Question. But from all the circumstances which you know, all the facts in relation to that matter, do you deem that Colonel Chivington had any justification for that attack?

Answer. So far as giving an opinion is concerned, I would say this: That the reports that have been made here, a great many of them, have come through persons whom I know to be personal enemies of Colonel Chivington for a long time. And I would rather not give an opinion on the subject until I have heard the other side of the question, which I have not heard yet.

Question. I do not ask for an opinion. Do you know of any circumstance which would justify that attack?

Answer. I do not know of any circumstance connected with it subsequent to the time those Indians left me and I started for another part of the country. It is proper for me to say, that these attacks during the summer, and up to the time I came away, were of very frequent occurrence. The destruction of property was very great. Our people suffered wonderfully, especially in their property, and in their loss of life. They murdered a family some twenty-odd miles east of Denver. The attacks by hostile Indians, about the time I came away, were very numerous along the Platte. There was an attack as I came in, about the month of November. It was in the evening, about sundown, and I passed over the ground in the night in the stage with my family, and a few days afterwards a party of emigrants, returning from Colorado, were murdered near the same ground, which was near Plum creek; and for a considerable length of time, immediately after I came in, the attacks were very numerous and very violent, until the stage was interrupted so that it has not been

¹⁶ John Evans, “Reply of Governor Evans of the Territory of Colorado” in Doolittle Commission Report, 78-87.

running since, until within a few days¹⁷ I started home and could not get there because there was no transportation. I came back here and shall return in a few days again. I mention this in order to do away with the impression that might exist that hostilities had ceased, and that this attack of Colonel Chivington had excited the recent hostilities. These Indians told me, when they were there, that the Sioux were in large force on the head of the Republican, and would make an attack about the time I expected to come in. I delayed my coming in a short time on account of what they told me, and when I did come in I found some Indians commencing their depredations, which they continued about the month following, both before and after the attack made by Colonel Chivington. General Curtis wrote to me that he did not think Chivington's attack was the instigation of the hostilities perpetrated along the Platte.

Such tortured statements surely influenced the Joint Committee on the Conduct of War to accuse John Evans (with Major Anthony) of being "willing to convey to your committee a false impression of the character of those Indians."¹⁸ At any rate, the committee, which utterly condemned the Sand Creek Massacre and Colonel Chivington,¹⁹ also came down hard on Evans. Indeed the report stands out for its recognition of the interwoven relationship between civilian and

17 None of these attacks were reported at the time. Conversation with Gary Roberts, October 27, 2014.

18 Wade Commission, I.

19 "As to Colonel Chivington, your committee can hardly find fitting terms to describe his conduct. Wearing the uniform of the United States, which should be the emblem of justice and humanity; holding the important position of commander of a military district, and therefore having the honor of the government to that extent in his keeping, he deliberately planned and executed a foul and dastardly massacre which would have disgraced the veriest savage among those who were the victims of his cruelty. Having full knowledge of their friendly character, having himself been instrumental to some extent in placing them in their position of fancied security, he took advantage of their inapprehension and defenceless condition to gratify the worst passions that ever cursed the heart of man.

military authorities in the events leading up to the massacre. It begins by noting that Evans issued his June Proclamation "as acting Superintendent of Indian Affairs" and from there keeps Evans's major leadership decisions in view. Mentioning Evans's claim of no peace-making authority, the committee quotes his testimony about sending Black Kettle, White Antelope, Left Hand and their bands to Sand Creek with the understanding that they could stay there until he received instructions from department headquarters.

At midpoint, as the massacre is described, the repudiations become especially forceful:

From the sucking babe to the old warrior, all who were overtaken were deliberately murdered. Not content with killing women and children, who were incapable of offering any resistance, the soldiers indulged in acts of barbarity of the most revolting character; such, it is to be hoped, as never before disgraced the acts of men claiming to be civilized. No attempt was made by the officers to restrain the savage cruelty of the men under their command, but they stood by and witnessed these acts without one word of reproof if they did not incite their commission.²⁰

While the atrocities are front and center, the committee nonetheless seems to appreciate the larger state of affairs with regard to Indian-settler relations in the Territory. Acknowledging that some Natives had "committed acts of hostility

It is thought by some that desire for political preferment prompted him to this cowardly act; that he supposed that by pandering to the inflamed passions of an excited population he could recommend himself to their regard and consideration. Others think it was to avoid the being sent where there was more of danger and hard service to be performed; that he was willing to get up a show of hostility on the part of the Indians by committing himself acts which savages themselves would never premeditate. Whatever may have been his motive, it is to be hoped that the authority of this government will never again be disgraced by acts such as he and those acting with him have been guilty of committing." (Ibid., V).

20 Ibid., III-IV.

toward the whites,” it also recognizes that “there seems to have existed among the people inhabiting that region of country a hostile feeling toward the Indians.” However, this is not assumed to be a normal state of territorial affairs over which officials should have been impotent. Rather, “no effort seems to have been made by the authorities there to prevent these hostilities, other than by the commission of even worse acts. The hatred of the whites to the Indians would seem to have been inflamed and excited to the utmost.” Describing how the body parts of massacre victims were brought to the capital for display, the committee rebukes Evans, specifically noting the dangerous implications of his August Proclamation for inciting precisely such kinds of violence in the Territory:

[Settlers’] cupidity was appealed to, for the governor in a proclamation calls upon all, “either individually or in such parties as they may organize,” “to kill and destroy as enemies of the country, wherever they may be found, all such hostile Indians,” authorizing them to “hold to their own private use and benefit all the property of said hostile Indians that they may capture.” What Indians he would ever term friendly it is impossible to tell. His testimony before your committee was characterized by such prevarication and shuffling as has been shown by no witness they have examined during the four years they have been engaged in their investigations; and for the evident purpose of avoiding the admission that he was fully aware that the Indians massacred so brutally at Sand creek were then, and had been, actuated by the most friendly feelings towards the whites, and had done all in their power to restrain those less friendly disposed.

While the Wade commission did not explicitly characterize Evans’s decisions at Camp Weld as a leadership failure, it recognized his role in exacerbating anti-Indian sentiment in Colorado during a delicate period, and identified the second proclamation as a pivotal action by civil authorities that created the conditions under which the deeds

committed at the massacre were conceivable to ordinary soldiers. It also appreciated that Evans had provided no criteria by which settlers might differentiate between so-called hostile and friendly Indians, nor any way for peace-seeking bands to meet the requirements of his proclamations, other than what they had done. Concluding, the authors

“No effort seems to have been made by the authorities there to prevent these hostilities, other than by the commission of even worse acts. The hatred of the whites to the Indians would seem to have been inflamed and excited to the utmost.”

wrote, “Your committee most sincerely trust that the result of their inquiry will be the adoption of measures which will render impossible the employment of officers, civil and military, such as have heretofore made the administration of Indian affairs in this country a byword and reproach.”

On the Resignation of Evans

By the time the Joint Committee on the Conduct of War submitted its report, few military officials in Colorado had been spared denunciation. Representative Benjamin Franklin Loan, a Radical Republican who dominated the hearings, moved on May 4, 1865, that a copy of the committee report and the testimony be submitted to President Johnson. He recommended that

Governor Evans...be immediately removed from office, and that Colonel Chivington and Major Anthony...be at once arrested and brought before a military commission for trial for acts unbecoming officers of the United States military service, and violating the usages of civilized warfare.²¹

The reality was that Chivington and Anthony could not be tried because they were out of the military. On May 15, John Palmer Usher, the lame duck Secretary of the Interior advised Andrew

²¹ Roberts, Dissertation, 502.

Johnson that “the conclusion of the Committee is evidently just, and [Usher] join[s] in asking that their recommendations be carried out”—but Evans was the only official who could reasonably take the hit.²²

On May 22, Colorado delegate elect Allen A. Bradford sent a letter to President Johnson advocating for the immediate removal of Evans. Reputedly elected with some assistance from Copperhead money, Bradford’s critics considered him a “bolter”—a Republican who disagreed with the current party line. His appeal to Johnson is clearly not even-handed. It is a six-point broadside on Evans: he failed to carry out any good policy for the territory; engaged in private speculation to the neglect of the public interest; was too often away from the territory; lost the people’s confidence; and even (according to Bradford) interfered with elections in the territory for his own interest. But Bradford’s sixth charge is specific as to a clear pattern of actions, in a way the others aren’t. It reads:

In his mismanagement of the Indian affairs in the territory [Evans] has pursued a policy that has intensified the hostility of the Indians and provoked their attacks upon the citizens of the Territory and the routes of travel, thus preventing emigration and destroying business and trade. He has given countenance and encouragement to a Massacre [sic] of peaceable Indians and destroyed their faith and confidence in the sincerity and obligations of Government Treaties.²³

Here again is a repudiation of Evans’s actions in the governor-superintendent role, in the terms of nineteenth century western settlement. While Bradford’s is hardly the eye of a neutral observer, the letter makes the connection between mismanagement of Indian affairs, the troubles in the Territory, and the massacre. And Bradford, with several others, kept up the pressure on

22 Ibid., 504.

23 Allen A. Bradford to President Andrew Johnson, May 22, 1865. Photocopy of original provided by Gary Roberts.

Johnson to initiate Evans’s removal.

Evans had his defenders in Washington, notably Ohio Congressman and friend of Evans, James M. Ashley, who wrote an appeal to Secretary of State William H. Seward on the same day Bradford sent his letter to Johnson. Ashley denounced the Wade report as unjust, recounting a meeting Evans had with Lincoln before his assassination in which “this whole matter was talked over and satisfactorily.”²⁴ Ashley argued that the charges against Evans were orchestrated by Copperheads and a few “bolters” from the Republican party; moreover, the whole affair was unjust because “Gov Evans was not in the Territory at the time and could not be responsible for the acts of any military officer acting under the direction of a Major Genl [sic] of the United States army.”²⁵ Ashley’s account of the meeting with Lincoln provides an indication that Evans believed the administration would protect him. It also provides a window into mid-nineteenth century patronage dynamics:

The Governor was the personal friend of Mr. Lincoln and in my presence the whole matter was talked over and satisfactorily [sic] explained, at least to Mr. Lincoln [,] and Gov Evans was requested by Mr Lincoln to go back to the Territory, with the assurance that he would not be disturbed by any efforts which might be made by the ‘bolting’ delegate elect [Bradford], and not only so, but the Governor was assured that his recommendations, when endorsed by the Chairman of the Committee on the Territories for any new appointments or changes in the Territorial officers, should be recognized. It was also agreed the opposition Delegate for any of the Territories--or Delegates elected by the entire copperhead votes and a few bolters--against the ‘regular’ union nominees should not control the patronage of the administration, but that the Governors representing the administration and its policy and the

24 Ibid., 504.

25 J. M. Ashley to Seward, May 22, 1865, Provided by Dr. Gary Roberts.

Chairman of the Committee on Territories when united should controll [sic] all such appointments.

By the end of May, news of the committee's interpretations had reached Denver, and was met with a sense of shock and outrage. Partly, citizens were angry that the Wade commission had not waited until the military commission (the Tappan committee) had finished its work. In general, the public was defensive about Easterners, who settlers felt didn't know a thing about Indian conflicts and made the region appear callous and uncivilized. One can also imagine how a public that had been angry with Governor Evans for being *weak* on Indians might be befuddled that he was now being connected with an event many could not recognize as a massacre. Ned Byers from the *Rocky Mountain News* chalked up attacks on Evans to a conspiracy among his political enemies.²⁶

By mid-June dispatches were telegraphed to Denver that Evans had been removed and that General John Slough had been named to succeed him. (Slough had been the first commander of the 1st Colorado Cavalry and fought at Glorieta Pass with Chivington, and partly as a result of that had become a personal enemy of Chivington.) Initially, Evans asked that the transition take place as soon as possible, but as Roberts notes, his capitulation was premature. Cyrus Kingsley, the leading Methodist clergyman in Denver, and a few others tried to save him. But by the end of the summer of

26 Roberts, Dissertation, 505-6

1865 all three investigations had been completed, and on August 1, 1865, Evans resigned his post under protest. In an ironic twist, he requested that the actual transfer of power be delayed until he could complete negotiations with the Utes. "Though a better man may be my successor," he wrote, "it will be dangerous to the peace with these Indians to make the contemplated change until after the proposed council as no one can gain the confidence of the Indians in a day."²⁷ Though, as we have shown, Evans was an adjunct to more than a leader of negotiations with the Utes, these words connote a newfound solemnity with regard to peace.

At the same time, Evans remained determined to clear his name of association with the Sand Creek affair. He submitted his rebuttal to the Wade report, asserting that his "vindication shall be full, clear and triumphant." The local papers continued to issue irate editorials condemning the findings of the Wade Commission, and other American papers that had seemed to support it. Only the *Denver Gazette*, edited by Fred J. Stanton and long critical of the Evans administration, seemed to relish the plight Evans faced. Evans published his Reply in September, and most Colorado papers supported him. The Reply got a bit more of a hearing before the Doolittle Commission, but in the end, it couldn't save Evans from the pressure to resign.

27 Roberts, Dissertation, 507.

1884 Interview with H. H. Bancroft

Did John Evans ever have second thoughts about the Sand Creek Massacre or his role in the events leading to it? We have seen that when facing the federal investigation committees he had trouble recognizing the massacre as especially out of bounds, and could not understand why his name would have been connected with it at all. But after the dust settled on his resignation, and his influence in Colorado proved sufficiently resilient to survive political catastrophe, did the situation ever begin to look different to the Methodist citizen and physician, who saw himself as a humanitarian and who left Colorado settler-colonists a profound legacy of economic and educational institution-building? On this question, the interview conducted in 1884 by the famous American historian and ethnologist Hubert Howe Bancroft, who in the late-1800s gathered statements from scores of figures involved in the settlement of the West, is telling.

“I never saw the ridiculous nature of it until I got to see the consequence of teaching [Indians] that the country belonged to them and then robbing them of it.”

This interview includes a biographical arc of Evans’s origins in Ohio, his careers in medicine, his founding of Northwestern, and his many successful business enterprises. Evans is then asked about his role as governor and superintendent in Colorado Territory during the events surrounding the Sand Creek Massacre. In those sections Evans reiterates his insistence that an “Indian war” had been planned for the spring of 1864, detailing the ostensible attacks Natives committed and the sources of his information about them.

He interprets his August 11 Proclamation as organizing settler-colonists “into a company for defense ... right in front of my house here,” and speaks approvingly of his ability to get his “company of cavalry” authorized, with Chivington as “commander.” He notes that some “Indians that wanted to remain friendly,” and had decided to “come in and surrender.” Yet strikingly, given the intervening two decades of hindsight, he insists that the camp at Sand Creek “was a refuge for Indian warriors who were at war with us.”

After disclaiming any connection with the massacre, Bancroft noted, Evans “cited the fact that this war resulted in the removal of all the Indians from Colorado, except the Utes...” “Concluding,” noted the interviewer, [Evans] said, “so the benefit to Colorado of that massacre, as they call it, was very great, for it ridded the plains of the Indians (sic), for there was a sentiment that the indians (sic) ought not to be left in the midst of the community. It relieved us very much of the roaming tribes of Indians.” Here we see a second, more profound rationalization of the long-term outcomes that began at Sand Creek.¹

In another typescript of this interview dated 1889, Evans reminisces about the Indian population he met in Colorado when he arrived in 1862: “Indians were considered friendly, their disposition being to big and pilfer; they had up to that time maintained peaceable relations.” Witnessing a congregation that he believed was a “war dance” (in fact, the dance was a celebration of an expedition in which hand-to-hand combat took place, but without Cheyenne casualties), he is “impressed...with the savagery of the Indians.”²

1 “John Evans,” Bancroft Interview, 1884, 89.

2 “John Evans,” Bancroft Interview, 1889 typescript, 16.

He presents himself as coming up with the idea of getting Indians “to raise sheep and cattle as well as horses and herd them on the plains until they accumulated something to live on instead of living hand to mouth as they did...” In fact, this idea was not new, and some Indian groups had been breeding and raising horses for decades.

When Evans reviews the failed council of 1863 his views about Indians seem to flow easily from his mouth. This section is worth quoting at length, as it perhaps sheds the greatest light on the worldview that seems to have motivated Evans’s reasoning during his years as governor and superintendent. Speaking of his failed council attempt with the Cheyenne and Arapaho in late-1863, he says:

They refused to go [to make a treaty]; said they did not want to have anything to do with the government. This was their country, and by the way, **let me remark that the idea that this country belonged to them in fee gets its most ridiculous aspect from the proposition that a country a thousand miles long and five hundred miles wide, one of the most fertile in the world (sic), should belong to a few bands of roving Indians, nomadic tribes (sic) in fee as their own property.**³ (Emphasis added)

Here we see that Evans thought the idea of Native land ownership anathema, despite this being the legal reality he faced as superintendent, and the reason he was mandated to negotiate treaties. Attributing the idea of Indian land title (erroneously) to William Penn, he declares, “I never saw the ridiculous nature of it until I got to see the consequence of teaching people that the country belonged to them and then robbing them of it.”

Plainly, Evans regarded the idea of Native

peoples as original owners as “a mistake.” From Evans’ point of view, this mistake resulted in “nearly all the Indian wars,” because “the Indians took in the doctrine which was acknowledge (sic) by the U.S. government that the country belong to the Indians and that we had to buy it of them by treaty or purchase.” He erroneously presented “the British government’s” “doctrine” as one that “they had a right to hunt on the land, but that that right must be subject to the higher occupation of the land, for a larger population and for civilization. Their wildness been impressed upon them from the beginning.” Evans admitted, on the one hand, being “strongly impressed with the injustice that the Indians suffered and with a desire to civilize them,” but asserted on the other that they had no right to defend themselves and their land. Rather, only Evans’s settler-colonists had “the right to defend ourselves.” This attitude was a step back from even Chief Justice Marshall’s decision that creation of the United States did, in fact, come with an acknowledgement, conveyed from the colonial British, that Native peoples whose existence is recognized by the U.S. Government also have rights to territory.

Evans’s attitude, expressed most clearly in these two interview transcripts, does indeed anchor his defense of the Sand Creek massacre and his unrelenting insistence on an “Indian war” in a philosophy that did not accommodate cultural diversity, indigenous rights, or even the most rudimentary tolerance of ways of life that are “not us”, and denigrates them with the commonest epithet of the time: savage. For all that we have argued in this report, we must remember that Evans’s way of thinking was—despite some mid-nineteenth century challenges to it—common to the settler mindset in the American West, and indeed most of the continent.

3 Ibid., 21-2.

Reassessing Culpability: Departures from the Northwestern Report

En route to Washington, a few days before the massacre, Evans wrote to Secretary of War Edwin M. Stanton, “A portion of the tribes of the Arapahos & Cheyenne Indians want peace and have gone to Fort Lyon under an armistice or some arrangement of the kind with Maj Wynkoop.” As mentioned in our introduction, this statement indicates it was unlikely that Evans anticipated the attack. It is interesting, though, that he does not name these Indians by band leaders, in contrast to other points in his correspondence at which time he does so consistently as, for example, in his reference to “Spotted Horse” and “Little Horse”.¹ The Northwestern report concluded that he could not have possibly known about Chivington’s plans for the massacre, and evaluates Evans as “small-minded,” preoccupied with his personal reputation, but also “consistently honest and hard-working,” if also “condescending and sometimes uncomprehending.” They imply that his condescension and incomprehension resulted in his not acting “in a manner that befitted an official with a federal duty to look out for the tribes,” but that such a failure may be excusable.²

This is a critical point. Even though the idea that the head of a largely disorganized population with a barely working, raw governing structure might actually have some legal responsibility for a different group of people with a history of organized politics and law seems somewhat parochial, this was, nonetheless, the attitude of U.S. authorities. A fiduciary relationship is one of trust and responsibility. The fiduciary “is held to a standard of conduct and trust above that of

a stranger or of a casual business person.” The fiduciary has the power and obligation to act for another, the beneficiary, and “extends to every possible case in which one side places confidence in the other and such confidence is accepted.”³ If looking out for the tribes was indeed a fiduciary relationship, Evans clearly violated it.

Nearly every situation involving Native people in Colorado—from the confused and neglected situation at the Upper Arkansas Agency; to the failed treaty council of September, 1863; to the orchestration of the only successful treaty signing during Evans’s tenure as superintendent, which occurred without his involvement; to the inability to scale back suspicion and hostility toward the Cheyennes and Arapahos in order to ensure their security and rights; to the outright rejection of conciliation—reflects Evans’s superintendency, as a function of his governorship, as a failed undertaking. In utilizing Republican Party loyalty and commitment to abolitionism as the primary indicators of suitability for appointment to high office, Abraham Lincoln erred substantially in the case of Dr. Evans. When compared with Nye and Doty, it is clear that Evans never should have been appointed Colorado’s Superintendent of Indian Affairs.

In 2013, Gary Roberts characterized Evans as “well-intentioned at the beginning of his tenure as governor,” but with little concern for

1 Roberts, “Thoughts,” 15; Evans to Gerry, June 10, 1864

2 Northwestern Report, 89, 86

3 This idea of the United States as “guardian” over its Indian “wards” is traceable to Chief Justice John Marshall’s ruling in *Johnson & Graham’s Lessee v. M’Intosh*, 1823, covered above. Gerald Hill and Katherine Hill, *The Peoples’ Legal Dictionary*, 1981-2005, Fine Publications, accessed July 30, 2014; *West’s Encyclopedia of American Law*, edition 2. Copyright 2008 The Gale Group, Inc. Accessed July 30, 2014.

Indian affairs, while also regarding him as “not in lock step” with Chivington.⁴ The Northwestern Report goes even further and implies that Chivington wanted to kill Indians just for the sake of killing Indians, whereas Evans had no such desire, claiming that Evans neither knew about the impending Sand Creek massacre in November 1864, nor by extension, did he approve of it.⁵ Roberts concludes that Evans lacked an understanding of the importance of his position as Superintendent of Indian Affairs, abrogating the responsibilities to seek peace as a specification of that position, and incapable of balancing his responsibilities to both settlers and Native peoples which were necessarily at odds. He further evaluates Evans as being not a cold and calculating official, but as nonetheless promoting “a climate of fear and hatred,” in which he routinely blamed others “for every misstep.”

In the three federal hearings conducted that called Evans to account, he consistently denied knowing anything of Chivington’s plans and intentions. Although Roberts concedes that Evans may have known that Chivington was going to march on Fort Lyon, he does not assess the possibility of that knowledge as a conspiracy between Evans and Chivington, noting that Evans could not have possibly condoned the killing of women and children, nor could he have anticipated “the extremes to which Chivington and his troops would go.” Despite these concessions, Roberts concludes that Evans was nonetheless “responsible more than any other, for creating the atmosphere for Sand Creek, and therefore being, “by design or by weakness...deeply culpable for the Sand Creek massacre,” through the role in which he “promoted the inevitability of an Indian war...” On this crucial point, the authors of this report agree.

In a statement “To the Public” issued from the Executive Departments, Area Superintendent of Indian Affairs, CT, Denver” on August 6,

4 Roberts, “Thoughts,” 13
5 Northwestern Report, 86

1865, just prior to the end of his term, Evans noted, “...[I]t will appear in evidence that I had no intimation of the direction in which the campaign against the hostile Indians was to move, or against what bands it was to be made...” and further insisted, “by every means within my power, I endeavored to preserve peace and protect the interests of the people of the Territory.”⁶ For Evans, neither the words “people” nor “community” could include Indians. Twenty years later, in an interview with historian H. H. Bancroft, he averred, “...the benefit to Colorado, of that massacre, as they call it, was very great, for it ridded the plains of the Indians, for there was a sentiment that Indians ought not to be in the midst of the community. It relieved us very much the roaming tribes of Indians.”⁷ The clarity of expression in which this idea was offered ran directly counter to Government policy of the time—that the “destiny” of Native people “must be determined and worked out where they are.” This is to say nothing of the obvious disunity such a statement has in relation to the testimony and public statements Evans made concerning Sand Creek in the immediate aftermath of the event.

We are left with the question, then: What did Evans do that he thought would excise Indians from “the community;” rid the settler colonists of the roaming Indians; and make the Sand Creek massacre merely the culmination of a series of actions that would have made it a logical conclusion to his vision as Superintendent of Indian Affairs for the Territory of Colorado? There, between the idea and the reality, the motion and the act, is the shadow that seems to appear as a resolutely logical progression of events that lead inexorably to the answer we seek.

6 “To the Public,” Aug. 6th, 1865, 226 Evans Box 6/17 FF 64, Governor’s Papers
7 Quoted by Ned Blackhawk, *Violence Over the Land* (Cambridge: Harvard University Press, 2006), 215

Our review of the evidence and our comparative analysis of Evans's leadership with adjacent leaders Nye and Doty, suggests the following core conclusions regarding culpability.

- 1. As Superintendent of Indian Affairs, Evans abrogated his duties.** He did not take seriously his mandate to negotiate a new, viable treaty of peace to which the Cheyenne and Arapaho who did not support the Treaty of Fort Wise could agree. A comparison with contemporary governors and superintendents of Indian Affairs in Utah and Nevada suggests that Evans began his tenure with a stance that distinctly did not acknowledge Indians' territorial and subsistence rights. Evans did not expend the same kind of effort that his contemporaries did on fulfilling his obligation, communicated by Commissioner Dole, to continue efforts at conciliation and peace. His efforts were desultory and at his convenience. He made few efforts to understand, and he rarely reported the tribes' viable concerns about settler and military trespasses to his superiors. In not exerting a greater effort, he left Native people in Colorado to fend for themselves in trying to deal with settler colonists who had intruded, disrupted bison and antelope movements, taken springs and camping spots, and sometimes even appropriated ponies. He let matters drift and thereby allowed conflicts to go unaddressed, and even to escalate. Close attention to the correspondence he maintained as Superintendent reflects increasingly inflammatory language connoting an increasingly bellicose attitude toward Indians; and an unusual degree of intimacy, initiated entirely by Evans, with military personnel. In not acting on the complaints of the Native people in

his jurisdiction—who were instructed to address serious complaints to him—he added to the probability that Indians as well as settlers would take matters into their own hands. The subsequent aggressive actions he took in 1864 were beyond the pale for any superintendent of Indian affairs.

Related to this, Dole did not send “unclear and sometimes contradictory instructions,” as the Northwestern Report asserts.⁸

Dole's October 15, 1864, letter to Evans is neither a mixed message nor ambiguous. It is as a reprimand and a last-ditch effort to get Evans to do things differently. Dole lays Evans's “terrible Indian war,” “the largest Indian war this country ever had”⁹ straight on Evans's head; clearly criticizes Evans's deliberate placing of civil authority “in abeyance” as a dereliction of duty; and will not let him off the hook in his presidential appointment as Superintendent of Indian Affairs. By the time Evans had deferred to the Army, he had already trumped up all the reasons he had done so and left Dole no choice but to accept the runaway, renegade unfolding of events that Evans communicated to him.

- 2. Evans used his position of territorial leadership to accelerate war, rather than to apply every effort to promote peace.** By claiming from December 1863 on that a coalition of tribes was either planning to wage war on white settlers on the plains, or was already doing so, Evans directly influenced the conditions in which virtually any and all military attacks on Indians could be launched and justified. The attacks in April and May by Downing,

8 Northwestern Report, 88.

9 Evans to Dole, August 10, 1864, Governor's Papers

Davidson and Eayre, and the killings of Lean Bear are examples. He acted oblivious to Natives' rationale for retaliations against egregious attacks on their respected, peace-seeking leaders and made no effort to address their concerns. Moreover, from late December 1863 forward Evans interpreted every strike on the plains as a sign of a general Indian war and he campaigned aggressively for troops to fight that war. His June 27 Proclamation ends with a threat of war, and his August 11 Proclamation not only announces war but endorses a vigilante campaign of aggression against all Native people in the territory not designated (by some mysterious, unnamed criteria) as "friendly." His rejection of the conciliation efforts at Camp Weld, his remarks that winter was his time, and his insistence, confirmed in Dole's October 15 letter to Evans, that his own civilian authority over Native people had somehow been handed over to the military all reflect a desire on Evans's part to announce to the tribes, to the military, and to the citizens that these Indians were "hostile."

- 3. In his role as governor (but without the legal authority to do so), Evans authorized the kind of indiscriminate violence against Native people that would invariably lead to the slaughter of noncombatants.** The Northwestern report argues that Evans "never favored killing Indians for its own sake or regardless of age or gender." Even his most aggressive comments, the report asserts, "should be read in the context of his statements about the larger purpose of waging war."¹⁰ We see this as a flawed assessment. Evans's notions of a just war

do not excuse actions that amounted to dereliction of his duties as superintendent. Nor do such ideas relieve him of having far exceeded his authority as governor in giving citizens the widest possible berth to attack indiscriminately. Evans deliberately and specifically distinguished between "hostile" and "friendly" Indians, not only in his two proclamations, but also in his correspondence with the Indian office in Washington D.C. on June 14 and 15. This was not an unusual move to the military and its nearly 100-year history with Native Americans, but it was not in accord with the Indian Office's instructions to him. This indicates that Evans did not take those instructions to negotiate peace very conscientiously; and what he did was just the opposite of what Doty did, which was to persuade openly declared hostile Indians to join the peace-seeking ones.

Evans never specified criteria for distinguishing between "hostile" and "friendly" Indians except that he wanted to "subsist" the friendly ones. His decisions thereby threw all except a few Native people into the "hostile" category. It goes without saying that in barring the families of hostiles from coming in, according to the June Proclamation, Evans gave carte blanche for no distinction to be made between engaging warriors and massacring innocents. Once he issued his August 11 Proclamation all except the bands under Roman Nose, Friday, and the families of Spotted Horse and Little Horse became fair game for attack and robbery by vigilantes, at the endorsement of the governor. Given that the 3rd Regiment was formed late in the summer, it was highly unlikely that any of those volunteer soldiers would not be aware of the proclamation and may

¹⁰ Northwestern Report, 86.

well have considered themselves to be fulfilling its mandate when they attacked on November 29. After all, the regiment had been formed at Evans's behest and urging; why would its members not consider themselves obligated to fulfill the vigilante mandate? With all women and children never having been designated as protected and effectively, by the language of the proclamation, lumped with warriors as "hostile," why would the soldiers of the 3rd not consider slaughtering women and children to have been pre-approved? *In effect, through his lobbying, receipt of, and support for the 3rd Regiment, Evans did the equivalent of handing Colonel Chivington a loaded gun.*

Again, the comparison in this report is instructive: Evans did indeed handle Indians the way some of his predecessors in other territories had done in the 1850s; but as of 1858 things had changed, and the way authority figures Doty and Nye, not to mention Dole, handled Indians marks Evans not as a moderate, or even consistently in step with Indian Office policy as established by Denver and by Congress and continued by Greenwood and Dole. Rather, he presents as favoring whatever approach the military (Chivington) favored, and he allows the military to be charge from August 11 forward. He endorsed the Bear River massacre and was thrilled when (he thought) Connor might get to lead the 3rd. Evans wrote to Brig. Gen. Connor on October 24, 1864, saying "I am glad that you are coming. I have no doubt the Indians may be chastised during the winter, which they very much need. Bring all the forces you can; then pursue, kill and destroy them, until which we will have no

permanent peace on the plains."¹¹¹⁴⁸We believe this letter must be understood in the context of Evans's escalating fever for war, and that such comments cannot be dismissed under some putative theory of "Just War," for the latter prohibits the slaughter of innocent civilians.

4. Related to the above, we strongly disagree with this conclusion from the Northwestern report: "The extant evidence suggests that he did not consider the Indians at Sand Creek to be a threat and that he would have opposed the attack that took place."¹² The first clause is true according to two pieces of evidence: Evans's ostensible efforts to prevent vigilantes from attacking the Arapaho camp at Camp Collins; and his telegram to Stanton while he was en route to Washington, D.C.. **That he would have opposed the attack at Sand Creek if there had been any suggestion of "hostiles" in the camp is belied by Evans's entire pattern of actions in 1864.** His histrionic and inflammatory verbiage in correspondence with just about everybody he wrote to indicate a keen enthusiasm for a ruthless, "punishing" winter attack on Indians, under conditions in which they would precisely be gathered as family groups. His aggressive responses to the overtures made by the Cheyennes in the Camp Weld meeting indicate that he was not in the habit of opposing attacks on Indians; indeed, he made clear to them that he planned to attack. There were also numerous attacks between mid-1863 and mid-1864 that included killings of women and children. Did Evans ever step in or take a stand against them? Finally, as

11 Evans to Connor, October 24, 1864, Governor's Papers

12 Northwestern report, 85.

pointed out earlier, even after decades to consider it, Evans defended “what they call a massacre” as having had a “very great benefit” to Colorado in the long run, for “it relieved us very much of the roaming tribes of Indians.”

5. **Evans was not just “one of several individuals who, in serving a flawed and poorly implemented federal Indian policy, helped create a situation that made the Sand Creek Massacre possible.”¹³ Rather, he was the top political authority in the Territory and central to creating the conditions in which the massacre was possible and even likely.** While we agree with the rest of the finding on page 87, we conclude differently that this is an unnecessarily muddled framing of culpability given Evans’s coterminous position as governor and superintendent of Indian Affairs. The “Several” NU mentions include Colley, Curtis, officials in the Indian Office (such as Dole and Usher). Usher was pitched into the Secretary of Interior post by happenstance. Curtis, after winning a stunning victory against Confederates in Missouri, had nothing more to do except pursue Indians. The accusation by Indians that Colley was corrupt (see above) was never investigated. There is no indication that Dole did anything to help the situation that made the massacre possible, and in fact, Dole’s position was consistently in favor of conciliation and peace, until Evans basically hamstrung him by de facto giving civil authority over to Chivington.

We agree with the NU Report that Curtis certainly seems to give Chivington carte

blanche to conduct search-and-destroy campaigns against Indians. His dictum that he “want no peace with the Indians” must be taken in context. Curtis had command of the Department of Kansas, including Kansas, the Territories of Colorado and Nebraska, and Indian Territory. There had already been altercations involving Kiowas, possibly Sioux and probably Comanche in Kansas, Nebraska, and the boundary separating Texas, Kansas, and Indian Territory. He was also pursuing Confederate troops in Missouri and actually, in October, 1864 led an army of Kansans to victory over the Confederates in what was the largest battle in Missouri, which saw the largest number of battles of the Civil War. So what is interpreted as a command to have no peace with the Indians until he declared it may well have been an off-hand comment that a fail-safe position had to be maintained on the western front while he concerned himself with Confederates in the eastern part of his command, and also an assumption that he, Curtis, was now in charge because in fact Evans had given over civilian authority to Chivington.

6. It is not clear how Northwestern’s conclusions about Evans’s deliberate abandonment of responsibilities and deserving of blame can be attributed merely to his small-minded preoccupation with his personal reputation.¹⁴ These conclusions do not square with Northwestern University’s speculation that Evans may have believed he was negotiating a limited truce in a cycle of recurrent warfare. There WAS no cycle of recurrent warfare; here were far fewer skirmishes in Colorado Territory

13 Northwestern report, 85.

14 Northwestern Report, 89.

than had occurred west of South Pass in Washington, Utah, and Nevada Territories. Not only does his conduct “after the Sand Creek Massacre” reveal “a deep moral failure”¹⁵; it is his conduct *before* the massacre that does so. It is not his *response* to the Sand Creek Massacre that was “reprehensibly obtuse and self-

interested,” reflecting “indifference to the suffering inflicted on Cheyennes and Arapahos,” it is all the actions he undertook and the attitude that he maintained *before* the massacre that not only reflected “indifference to the suffering inflicted on Cheyennes and Arapahos,” but *promoted* the suffering.

15 Northwestern Report, 90.

Conclusion to the Main Body of the Report

John Evans surely came to Colorado hopeful that he could make a positive impact. He was a man of recognized intelligence, ambition, inventiveness, and will; many of his close contemporaries regarded him as deeply humanitarian and a true miracle-maker when he put his mind to something. Evans never imagined he would become embroiled in a massacre that would live in infamy as one of the worst atrocities in United States history—no small distinction in a settler colonial society that often prefers to “forget” the human and environmental costs of its achievements.

The Sand Creek Massacre is unique in American history, but not because it was a massacre of Native people. Sadly, there are scores of assaults that follow a similar pattern of brutality, and there are other massacres of non-Natives (such as Colorado’s Ludlow Massacre) in our record books. The Sand Creek Massacre was a criminal attack on a people who had made every effort for peace when they lacked any political power, a people whose leaders entrusted civil officials and then a military that had done very little for Native people, because they felt they had no viable options left. That military turned on even their children in the most vicious ways imaginable—but even that does not set it apart.

The massacre is unique in that three federal investigations found the deeds committed at Sand Creek to be profound violations of nineteenth-century standards of diplomacy and warfare. These inquiries led to the ouster of a standing territorial governor. Finally, this massacre is distinguished by being the lone military campaign against Native

people at the hands of American soldiers that the United States government officially recognizes as a massacre.¹

Evans could not have anticipated such dreadful infamy, and he certainly cannot be held responsible for it from the grave. Nor has the intention of this committee been to defame his reputation. We do believe the evidence amply supports finding Evans seriously culpability for helping creating the circumstances that led to the Sand Creek Massacre. But we must never invest so much in the question of culpability that we lose sight of the broad, complex picture that surrounds both Evans’s decisions in the 1860s, and our conditions as today’s occupants of what had been Cheyenne and Arapaho homelands.

A century and a half later, as an educational community that has inherited Evans’s positive legacies along with his deadly decisions, we have the opportunity to face this history honestly. It is impossible now to celebrate the founder with the amnesia we have shown in the past, but we can see him—and perhaps ourselves—more accurately situated in the complexity of history. The Massacre changed the course of existence for Arapahos, Cheyennes, and many other people who lived in what we self-referentially call Colorado, but which was just one part of a beloved landscape that stretched from New Mexico all the way to southern Canada, that other human beings knew as home. Even so, these are resilient people, today part of dynamic, persistent cultures despite all

1 Ari Kelman, *A Misplaced Massacre: Struggling Over the Memory of Sand Creek* (Harvard University Press, February 2013).



Tokens of remembrance at the Sand Creek Massacre National Historical Site | Original photograph by Paula Bard.

they've endured. Understanding the story of John Evans and the Sand Creek Massacre offers a rare opportunity to call upon our moral, intellectual, and spiritual resources to understand how ordinary leaders can, under the influence of exclusionist, supremacist worldviews, and wielding the tools of conquerors, justify horrendous atrocities.

We urge wide-ranging, substantive, and serious discussions of these findings and our committee's recommendations, within and beyond the University of Denver Community.

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