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# Abraham Lincoln and the Dakota War in Academic and Popular Literature

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## **Cover Page Footnote**

The author acknowledges Dr. Kyle G. Volk, Dr. Anya Jabour, and Jeremy Smith for their guidance and assistance in preparing this article.

## Abraham Lincoln and the Dakota War in Academic and Popular Literature

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The author wishes to acknowledge Dr. Kyle G. Volk, Dr. Anya Jabour, and Jeremy Smith for their guidance and assistance in preparing this article

While the Civil War all but consumed Abraham Lincoln's presidency, it did not account for all United States military action in those years. The 1860s also witnessed the beginning of the Indian Wars on the western frontier. Of these military engagements, Lincoln had the most direct involvement with the Minnesota Dakota War (sometimes called the Great Sioux Uprising or Little Crow's War). By the summer of 1862, the Santee Sioux of Minnesota (hereinafter "Dakota") had ceded most of their land to the United States in exchange for a narrow strip of land along the Minnesota River and the promise of annuity payments. But several years of drought and crop failures, corrupt Indian agents who cheated them out of their annuities, and mounting frustration over their vanishing way of life, became too much for many Dakota. On August 17, 1862, a group of teenaged Dakota boys murdered five settlers just outside of Acton, Minnesota. Fearful of white retaliation, the Dakota Council voted for war, and the next morning several bands of Dakota warriors,

led by Little Crow, attacked white settlement towns, killing, raping, and plundering indiscriminately.<sup>1</sup>

Lincoln assigned General John Pope, fresh from a startling defeat at the Second Battle of Bull Run, to put down the uprising. Pope saw the assignment as an opportunity to regain his reputation and vowed to “utterly exterminate the Sioux... They are to be treated as maniacs and wild beasts.”<sup>2</sup> Assisted by Minnesota Governor Alexander Ramsey and militia Colonel Henry H. Sibley, the campaign against the Dakota was concluded in thirty-seven days of fighting. But the cost was high: approximately 358 settlers were killed, along with 106 soldiers and militia members, and twenty-nine Dakota warriors.<sup>3</sup> Hundreds of Dakota were taken captive and placed in prisoner camps.

A military commission of five officers was established to summarily try the Indians who had participated in the uprising. Working at breakneck speed, in just five weeks the commission conducted 392 trials, sometimes as many as forty per day. A presumption of guilt applied at the trials; that is, it was assumed that each warrior had participated in the uprising and would be punished. No legal counsel was provided for the accused. While each defendant was allowed to make a statement on his own behalf, he was not permitted to call witnesses. Then prosecution witnesses were called—usually eyewitnesses who testified that they had seen the defendant fire a weapon, kill a settler, or commit an atrocity. One key witness, a mixed-blood man named Godfrey, testified against over fifty individuals, and for his cooperation

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<sup>1</sup> For two of the most complete accounts of the Dakota War, see: Scott W. Berg, *38 Nooses: Lincoln, Little Crow, and the Beginning of the Frontier's End* (New York: Pantheon Books, 2012), and Kenneth Carley, *The Sioux Uprising of 1862* (St. Paul, Minnesota: Minnesota Historical Society, 1976).

<sup>2</sup> “Letter from General Pope Declaring his Goal of Exterminating the Sioux.” In *Their Own Words: Excerpts from Speeches & Letters Concerning the Dakota Conflict*. University of Missouri-Kansas City School of Law, accessed April 9, 2016.  
[http://law2.umkc.edu/faculty/projects/ftrials/dakota/Dakota\\_excerpts.html](http://law2.umkc.edu/faculty/projects/ftrials/dakota/Dakota_excerpts.html).

<sup>3</sup> Estimates of the war's casualties vary. The figures used here are from Carol Chomsky, “The United States-Dakota War Trials: A Study in Military Injustice,” *Stanford Law Review* 43, no. 1 (November 1990): 21-22.

received a life sentence rather than the death penalty. A total of 303 Dakota men were found guilty and sentenced to hang. Public sentiment in Minnesota overwhelmingly approved the verdicts, and most residents demanded that the executions quickly take place.

Before the death sentences could be carried out, however, President Lincoln had to review the trial records, as mandated by federal law. Lincoln sought to balance a sense of justice against the public insistence for revenge. He said, “Anxious to not act with so much clemency as to encourage another outbreak on one hand, nor with so much severity as to be real cruelty on the other, I ordered a careful examination of the records of the trials to be made...”<sup>4</sup> Lincoln further refined the basis for his decision by differentiating between those “who were proven to have participated in *massacres*, as distinguished from participation in *battles*.” In short, unlike the military commission, Lincoln distinguished between “individual acts and group warfare.” This was an important distinction to Lincoln. He “did not propose to...declare to the world that he had agreed to the execution of three hundred prisoners of war.”<sup>5</sup> Using these standards, Lincoln pared the list of condemned men to thirty-eight after two months of analysis. The Dakota militants were executed on December 26, 1862 in Mankato, Minnesota, the largest single mass execution in American history.

Because the vast majority of scholars, historians, and authors who have examined Lincoln’s presidency have focused on the Civil War, many have completely ignored the events in Minnesota or have, at best, given them only summary treatment. Stephen B. Oates’ brief treatment of the subject in his *With Malice Toward None: A Life of Abraham Lincoln* is typical. Addressing the treaties that the Lincoln Administration had negotiated with various Indian tribes, Oates writes only that “Lincoln had himself

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<sup>4</sup> David A. Nichols, *Lincoln and the Indians: Civil War Policy and Politics* (Columbia, Missouri: University of Missouri Press, 1978), 95.

<sup>5</sup> Carol Chomsky, “Unites States-Dakota War Trials,” 21, and William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008), 124.

intervened in the Minnesota Indian War of 1862 and had prevented vengeful whites from executing a number of innocent Sioux.”<sup>6</sup>

There are, however, exceptions to these summary treatments, and a notable divergence in how different categories of authors have treated Lincoln’s role in the Dakota War. Writers of mainstream books and articles, on the whole, have approved of Lincoln’s actions. Law review article writers and authors offering Native perspectives have been much more likely to be critical. The purpose of this paper is to examine all sides of the debate, and suggest new avenues of primary research to deepen our understanding of this crucial moment in Lincoln’s presidency.

### **Mainstream Books and Articles**

There are thousands of books written about the life and times of Abraham Lincoln, and the limited scope of this paper cannot review more than a small fraction of them. Important categories of Lincoln books can be established and examined, however. The first category includes those biographies so well-received and respected that they were awarded the Gilder Lehrman Lincoln Prize, the most coveted and prestigious honor in the field of Lincoln studies over the past two decades. Of the twenty

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<sup>6</sup> Stephen B. Oates, *With Malice Toward None: A Life of Abraham Lincoln* (New York: Harper Perennial, 2009), 368. Recent books on Lincoln that do not mention the Dakota War or Lincoln’s role include: Kenneth L. Deutsch and Joseph R. Fornieri, eds., *Lincoln’s American Dream: Clashing Political Perspectives* (Sterling, Virginia: Potomac Books, 2005); William E. Gienapp, *Abraham Lincoln and Civil War America* (New York: Oxford University Press, 2002); Thomas Keneally, *Abraham Lincoln* (New York: Viking, 2003); George McGovern, *Abraham Lincoln* (New York: Times Books, 2009); Geoffrey Perret, *Lincoln’s War: The Untold Story of America’s Greatest President as Commander in Chief* (New York: Random House, 2004); Ronald C. White, Jr., *A. Lincoln: A Biography* (New York: Random House, 2009). Recent books that give the topic only brief mention include: James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1999); William Lee Miller, *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008); and Mark E. Neely, Jr., *The Last Best Hope of Earth: Abraham Lincoln and the Promise of America* (Cambridge, Massachusetts: Harvard University Press, 2009).

Lincoln Prize winning books, only two deal directly with Lincoln's role in the Dakota War. The most recent of which approves of Lincoln's intentions, if not his actions. The other applauds both.<sup>7</sup>

Michael Burlingame's multi-volume *Abraham Lincoln: A Life* won the Lincoln Prize in 2010.<sup>8</sup> Burlingame's ten page analysis of Lincoln and the Dakota War is easily the most comprehensive of all the works in this category. Burlingame emphasizes the intense public and political pressure that Lincoln faced in his handling of the events. In addition to providing Minnesota newspaper editorial quotes calling for quick action, and the congressional outrage expressed in Washington, other more-obscure sources are noted. For example, Burlingame quotes feminist and abolitionist Jane Grey Swisshelm, who condemned the Indians as "crocodiles," asserting that they had "just as much right to life as hyenas," and urged Lincoln's administration to "exterminate the wild beasts and make peace with the devil and all his hosts sooner than with these red-jawed tigers whose fangs are dripping with the blood of innocents."<sup>9</sup> Another example comes from a St. Paul resident who wrote to Lincoln and "painted a lurid picture" of the atrocities that had occurred. The writer asked the President to imagine:

The shape of a human, but with that shape horribly disfigured with paint & feathers to make its presence more horrible, should enter your home in the dead hours of night, & approach your pillow with a glittering tomahawk in one hand, & a scalping knife in the other, his eyes gleaming with a thirst for bold, you would spring from your bed in terror, and flee for your life;...there you would see

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<sup>7</sup> For a complete list of past winners of the Gilder Lehrman Lincoln Prize, see: "Previous Winners," Gettysburg College, accessed April 9, 2016. <https://www.gettysburg.edu/lincolnprize/previous-winners.dot>.

<sup>8</sup> Michael Burlingame, *Abraham Lincoln: A Life* (Baltimore: Johns Hopkins University Press, 2008).

<sup>9</sup> Burlingame, *Abraham Lincoln*, 3271, citing Jane Grey Swisshelm, *Half a Century* (Chicago: Jansen, McClurg, 1880), 223.

the torch applied to the house your hands had built...your wife, or your daughter, though she might not yet have seen twelve sweet summers...ravished before your eyes, & carried into a captivity worse than death.<sup>10</sup>

In addition to these sources, Burlingame raises a point not found elsewhere. Lincoln, he writes, considered “order[ing] thousands of paroled [Confederate] prisoners-of-war” to Minnesota” to fight against the Dakota.<sup>11</sup> Ultimately the plan was scrapped out of concerns that it would violate the prisoner exchange cartel that was being negotiated with the Confederacy. Burlingame’s mention of this fascinating military maneuver is rarely found in other works.

Burlingame concludes his section on the Dakota War on an unexpected note. Rather than judge Lincoln’s actions as just or vengeful, Burlingame instead writes that the entire episode caused Lincoln to pledge to reexamine the methods in which the national government was dealing with Indian issues. Privately to friends, and publicly as part of his 1863 message to Congress, Lincoln vowed that “this Indian system shall be reformed.”<sup>12</sup> The implication is that Lincoln would have replaced his own *ad hoc* executive measures with a just and humane policy to Indians. But, Burlingame notes, he did not live to see this happen.

David Donald’s seminal *Lincoln*, the 1996 Lincoln Prize winner, offers a brief but sympathetic view of Lincoln’s actions during the Dakota War. Acknowledging that Lincoln was not well-informed on Indian affairs and, like most whites at the time, considered them to be a people who needed paternalistic guidance and protection, Donald writes that Lincoln “refused to be stampeded” by those who called for vengeance against the Minnesota Indians.<sup>13</sup> He notes correctly that Lincoln “deliberately

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<sup>10</sup> Burlingame, *Abraham Lincoln*, 3272.

<sup>11</sup> Burlingame, *Abraham Lincoln*, 3269.

<sup>12</sup> Burlingame, *Abraham Lincoln*, 3276.

<sup>13</sup> David Herbert Donald, *Lincoln* (New York: Simon & Schuster Paperbacks, 1996), 394.

went through the records of each convicted man, seeking to identify those who had been guilty of the most atrocious crimes, especially murders of innocent farmers and rape.” Lincoln’s actions, Donald concludes, “ignited a brief firestorm of protest of Minnesota,” but it quickly passed.<sup>14</sup> This assessment is only partially correct. The Republican Party did not do well in Minnesota in the 1862 elections, reflecting the outrage over the massacres and Lincoln’s contemplated clemency actions. Further, the fact that U.S. troops were used to combat the Dakota weakened the Union war effort, both in terms of active duty soldiers and draft-eligible men, many of whom joined the Minnesota militia under Ramsay, thus avoiding the national draft. Finally, while the Dakota uprising in Minnesota was indeed quashed relatively quickly, Indian troubles in the West only increased.

The number of Lincoln Prize winners that do *not* include any mention of the Dakota War is surprising. The 2012 winner, Elizabeth D. Leonard’s *Lincoln’s Forgotten Ally: Judge Advocate General Joseph Holt of Kentucky*, provides a good example.<sup>15</sup> Although Holt became Lincoln’s Judge Advocate General in September 1862 and advised Lincoln that he could not delegate his responsibility to review the legal proceedings involving the condemned Dakota prisoners, Leonard does not mention the specific events in her otherwise excellent and thorough biography. Similarly, Doris Kearns Goodwin, who won both the 2006 Lincoln Prize and the Pulitzer Prize for *Team of Rivals: The Political Genius of Abraham Lincoln*, does not mention the Minnesota episode.<sup>16</sup> Other notable works that exclude the Dakota War include James McPherson’s *Tried by War: Abraham Lincoln as Commander in Chief* and Allen C. Guelzo’s *Abraham Lincoln: Redeemer President*.<sup>17</sup>

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<sup>14</sup> Donald, *Lincoln*, 393-395.

<sup>15</sup> Elizabeth D. Leonard, *Lincoln’s Forgotten Ally: Judge Advocate General Joseph Holt of Kentucky* (Chapel Hill, North Carolina: The University of North Carolina Press, 2011).

<sup>16</sup> Doris Kearns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon & Schuster, 2005).

<sup>17</sup> James M. McPherson, *Tried by War: Abraham Lincoln as*

A second category of books includes three that deal more specifically with Lincoln and Native Americans. The standard work in this category is David Nichols' *Lincoln and the Indians: Civil War Politics and Policies*.<sup>18</sup> Nichols, the former dean of the faculty at Southwestern College in Kansas, first published this book in 1978. (It was reissued in 2012, the 150<sup>th</sup> anniversary of the Dakota War.) It remains the only full-length book on the Lincoln Administration's policies regarding Native Americans and is regularly cited by other writers. The first, entitled "Indian Affairs in Minnesota: 'A System of Wholesale Robberies,'" examines the failures and corruption surrounding the treatment of Indians in the state. The second chapter, "Rebellion in Minnesota: 'A Most Terrible and Exciting Indian War,'" describes the events of the uprising, and the third chapter, "Lincoln and the Sioux Execution: 'I Could Not Afford to Hang Men for Votes,'" examines Lincoln's review of the trials and his decision regarding the appropriate punishment.

In this third chapter Nichols, like Burlingame, focuses on the intense political pressure Lincoln faced to uphold the executions of all those Dakota found guilty. Nichols argues, however, that Indian missionary Stephen Riggs and Episcopal Bishop Henry Whipple influenced Lincoln to act with compassion rather than vengeance. Riggs, Nichols writes, was particularly persuasive in his pleas for flexibility and mercy. In reaching his final determination, Nichols describes Lincoln as "haunted," "troubled," "reluctant," and finally "pragmatic."<sup>19</sup> He concludes that Lincoln's actions, in balancing public sentiment against a sense of justice and equity, "were relatively humanitarian."<sup>20</sup> While Nichols' conclusion is almost entirely sympathetic to Lincoln, he does offer one refreshing perspective not found in

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*Commander in Chief* (New York: Penguin Group, 2008); Allen C. Guelzo, *Abraham Lincoln: Redeemer President* (Grand Rapids, Michigan: Wm. B. Eerdmans Publishing, 1999).

<sup>18</sup> David A. Nichols, *Lincoln and the Indians: Civil War Politics and Policies* (Columbia, Missouri: University of Missouri Press, 1978).

<sup>19</sup> Nichols, *Lincoln and the Indians*, 107-112.

<sup>20</sup> Nichols, *Lincoln and the Indians*, 114.

other sources: while Lincoln did not satisfy the demands of outraged Minnesotans, he did not completely ignore them, either. Lincoln supported, and then signed, legislation that removed the Dakota from Minnesota, and approved the payment of \$2 million in reparations to the uprising's victims as "reasonable compensation for the depredations committed."<sup>21</sup>

In 2012, Minnesota native and historian Scott W. Berg published *38 Nooses: Lincoln, Little Crow, and the Beginning of the Frontier's End*.<sup>22</sup> This lively, well-researched book will likely become the definitive work on the Dakota War for years to come. It analyzes in great detail the causes of the uprising, the deplorable conditions on the reservation, and the settlers' attempts to make homes on the northern Minnesota prairies. The book pays particular attention to the plight of the victims of the war, telling the family stories before, during, and after the events of August 1862. The book sets forth the pressures Lincoln felt to uphold the convictions and approve the executions, but does not, however, shed new light on his struggle to reach a just decision. Berg concludes that Lincoln - ever the lawyer - acted in a cool and detached manner in sanctioning the thirty-eight executions. Berg's Lincoln wisely distanced himself from emotion. He approved executions "where he felt reasonable moral standards had been violated and reasonable legal standards, according to the strictures of the day, upheld." Berg downplays any empathy or compassion Lincoln may have felt; rather, he writes that "on the question of war and emancipation, Lincoln lost sleep, but not so on the many death sentences he commuted or confirmed."<sup>23</sup>

The most recent book devoted to the Dakota War is Gustav Niebuhr's *Lincoln's Bishop: A President, a Priest, and the Fate of 300 Dakota Sioux Warriors*.<sup>24</sup> Niebuhr, a professor of journalism at Syracuse University who specializes in religious commentary,

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<sup>21</sup> Nichols, *Lincoln and the Indians*, 117.

<sup>22</sup> Scott W. Berg, *38 Nooses: Lincoln, Little Crow, and the Beginning of the Frontier's End* (New York: Pantheon Books, 2012).

<sup>23</sup> Berg, *38 Nooses*, 222.

<sup>24</sup> Gustav Niebuhr, *Lincoln's Bishop: A President, A Priest, and the Fate of 300 Dakota Sioux Warriors* (New York: HarperCollins, 2014).

examines the life and work of Henry Whipple, Bishop of Minnesota's Episcopal Church in the 1860s, who worked tirelessly to convince Lincoln – and Congress – that the Indian system was unfair and badly in need of reform. Niebuhr is sympathetic to Whipple's task. He offers a unique, and welcome, perspective in regards to Whipple's relentless lobbying efforts on behalf of the Minnesota Dakota, a people with whom he had spent three years evangelizing and converting to Christianity.

Whipple was never comfortable in Washington, Niebuhr writes, but his unending devotion to moral authority drove him when lesser men would have given up. Along with Henry Riggs, Whipple met personally with Lincoln on several occasions and wrote a series of essays, published in Minnesota newspapers, urging fair treatment for the Dakota. In the end, Niebuhr convincingly argues that Whipple's personal pleas to Lincoln to act out of compassion and mercy for an oppressed people had the desired effect. Niebuhr notes that Whipple was, like Lincoln, strongly pro-Union and anti-slavery. Perhaps more important, the bishop and the President shared a firm "appreciation of God's sovereignty." Mistreatment of Native Americans, Whipple argued, was akin to slavery, and as such was subject to God's terrible judgment.<sup>25</sup> In Niebuhr's examination, Lincoln's actions represent the combination of the godly and the good.

A third category that can be examined includes books and articles specifically devoted to the Dakota War. Four books fall into this category: Kenneth Carley's *The Sioux Uprising of 1862*; Michael Clodfelter's *The Dakota War: The United States Army Versus the Sioux, 1862-1865*; Hank Cox's *Lincoln and the Sioux Uprising of 1862*; and Duane Schultz's *Over the Earth I Come: The Great Sioux Uprising of 1862*.<sup>26</sup> All of these books essentially

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<sup>25</sup> Niebuhr, *Lincoln's Bishop*, 169.

<sup>26</sup> Kenneth Carley, *The Sioux Uprising of 1862* (St. Paul, Minnesota: Minnesota Historical Society, 1976); Michael Clodfelter, *The Dakota War: The United States Army Versus the Sioux, 1862-1865* (Jefferson, North Carolina: McFarland, 1998); Hank H Cox, *Lincoln and the Sioux Uprising of 1862* (Nashville, Tennessee: Cumberland House, 2005); Duane Schultz, *Over the Earth I Come: The Great Sioux Uprising of 1862* (New York: St. Martin's Press,

cover the same ground. Each work discusses the corruption of the Indian system in Minnesota that led to the uprising, the atrocities committed against defenseless settlers, and the military actions that ended the war. Each book presents the dilemma Lincoln faced: should he yield to public and political pressure and uphold the executions of 300 Dakota, or should he follow his conscience and personal sense of justice? Each author concludes that Lincoln reached a fair compromise, and each expresses admiration that Lincoln managed to take time out from the overwhelming complexities of the Civil War to personally attend to the situation in Minnesota. None of these books are scholarly; that is, they are not thoroughly researched and utilize only a few basic sources.<sup>27</sup>

Several mainstream articles address Lincoln's actions in the Dakota War. Almost all portray Lincoln in a sensitive, almost heroic light, as a fair-minded man who saw through the politics and acted not with vengeance, but with compassion. Typical of this vanilla-flavored writing is Daniel W. Homstad's "Lincoln's Agonizing Decision," published in the December 2001 issue of *American History*.<sup>28</sup> More nuanced, but ultimately just as approving, is historian Ron Soodalter's article "Lincoln and the Sioux," which appeared in *The New York Times* in August 2012. Soodalter's article explores no new ground, but places the Indian uprising in Minnesota squarely in a Civil War context. Soodalter writes that "given the mood of the country" in 1862, the wonder of the event is that Lincoln "took the time away from a war that was going badly – and threatened the very existence of our nation – to

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1992).

<sup>27</sup> Reviewers were particularly critical of Cox's book. Gary Clayton Anderson, professor of history at the University of Oklahoma, called it "terribly flawed" and "outdated," and concluded that "such books as this, which appear to be history, do more harm than good." Gary Clayton Anderson, review of *Lincoln and the Sioux Uprising of 1862*, by Hank H. Cox, *Minnesota History* 60, no. 2 (Summer 2006): 179.

<sup>28</sup> Daniel W. Homstad, "Lincoln's Agonizing Decision," *American History* 36 (December 2001): 28-36. Decades earlier, historian Walter N. Trennery weighed in on the subject with a markedly similar approach. Walter N. Trennery, "The Minnesota Rebellion Act of 1862: A Legal Dilemma of the Civil War," *Minnesota History* 35, no. 1 (March 1956): 1-10.

examine one at a time the cases of more than 300 Sioux, and to spare the lives of all but 38 of them.”<sup>29</sup>

### Law Review Articles

Three law review articles, spanning twenty-three years, reach very different conclusions than the above works regarding the propriety of Lincoln’s actions in the Dakota War. In 1990, University of Minnesota law professor Carol Chomsky published “The United States-Dakota War Trials: A Study in Military Injustice.”<sup>30</sup> In this exhaustive article Chomsky analyzes the causes and events of the war, the legitimacy of the subsequent trial and executions, and Lincoln’s review of the legal proceedings. She concludes that because the Dakota were a sovereign nation at war with the United States, the warriors should have been tried only for possible war crime violations, and not for the civilian crimes of murder, rape, and robbery. With these standards in mind, Chomsky writes, “few of the convictions are supportable.” She argues that while “Lincoln’s commutation of all but thirty-eight death sentences may have been an effort to correct the trial verdicts to reflect the proper standard of responsibility,” the illegality of the trials cannot be overlooked. “The flaws in the proceedings,” Chomsky writes, “make even [Lincoln’s] judgments questionable.”<sup>31</sup>

Aside from Lincoln’s assignment of Pope to Minnesota, Chomsky notes that Lincoln’s involvement in the war began on October 14, when he and his cabinet first heard of the ongoing military trials and planned executions. Disturbed by this news, Lincoln directed that no executions take place without his sanction. One month later, upon learning that 303 men had been sentenced to hang, and having become aware that federal statute required

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<sup>29</sup> Ron Soodalter, “Lincoln and the Sioux,” *The New York Times*, August 20, 2012, accessed April 9, 2016, <http://opinionator.blogs.nytimes.com/2012/08/20/lincoln-and-the-sioux/>.

<sup>30</sup> Carol Chomsky, “The United States-Dakota War Trials: A Study in Military Injustice,” *Stanford Law Review* 43, no. 1(November 1990):13-98.

<sup>31</sup> Chomsky, “United States-Dakota War Trials,” 15.

presidential approval before sentences of death could be carried out, Lincoln requested “the full and complete record of their convictions” and “a careful statement” indicating “the more guilty and influential of the culprits.”<sup>32</sup>

Chomsky notes that Lincoln was under intense pressure to approve all of the executions. Upon forwarding the requested transcripts, Pope urged the president to quickly approve the sentences, claiming that “the only distinction between the culprits is as to which of them murdered most people or violated most young girls.”<sup>33</sup> Minnesota Governor Ramsey also wrote to Lincoln, urging that he approve the death sentences for the condemned. Chomsky also summarizes the “great public outcry” that existed in Minnesota. Several state newspapers expressed outrage that Lincoln would even consider leniency in the matter.<sup>34</sup> Relatives of the war’s victims wrote directly to Lincoln, describing the horror and cruelties that had been inflicted upon their family members by rampaging “savages.” Colonel Stephen Miller, commander of the regiment holding the Dakota men, advised Lincoln that there would be a “fearful and bloody demonstration” by the citizenry against the condemned if Lincoln pardoned any of them (some 400 citizens signed a letter threatening to kill the prisoners if they were not executed). Even Miller’s own soldiers were anxious for “prompt and universal execution of the guilty savages.”<sup>35</sup> Further, Minnesota’s congressional delegation contacted Lincoln, outlining the stories of rape and mutilation “well known to our people,” urging that Lincoln approve the executions. If he did not, they warned, “the outraged people of Minnesota would dispose of these wretches without law.”<sup>36</sup> They also demanded that Lincoln provide a full report to the Senate that described the war actions and government response.<sup>37</sup> Curiously, Chomsky does not address the

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<sup>32</sup> Chomsky, “United States-Dakota War Trials,” 29.

<sup>33</sup> Chomsky, “United States-Dakota War Trials,” 29.

<sup>34</sup> Chomsky, “United States-Dakota War Trials,” 29. One such headline read: “DEATH TO THE BARBARIANS!”

<sup>35</sup> Chomsky, “United States-Dakota War Trials,” 31-32.

<sup>36</sup> Chomsky, “United States-Dakota War Trials,” 30.

<sup>37</sup> Chomsky, “United States-Dakota War Trials,” 30.

fact that Lincoln needed full support from Minnesota in the war effort against the Confederacy; presidential clemency would have jeopardized that support.

Chomsky minimizes the pleas for leniency that Lincoln also received. She notes that William P. Dole, Commissioner of Indian Affairs, suggested that a mass execution would appear to be more of an act of “revenge than of punishment,” and that Bishop Henry Whipple urged clemency for those found guilty of lesser crimes than rape or murder.<sup>38</sup> These pleas, however, receive barely more than a mention in Chomsky’s review.

In the end, writes Chomsky, Lincoln attempted to strike a balance: he would not bow to the overwhelming public, military, and political demand for vengeance, and would exercise at least some of the humanity that his conscience called for. He would carefully examine the records of each of the condemned men (Chomsky ignores the fact that Lincoln had two attorneys review the records for him and provide detailed findings), and “draw the kind of line that would have been legitimate had the Dakota been acknowledged as sovereign and tried for violations of the laws of war.”<sup>39</sup>

Chomsky then summarizes Lincoln’s findings and conclusions. She does not review the trial records for each of the Dakota; rather, she highlights several individual cases that support her position that Lincoln’s actions were of compromise and balance. She concludes that “the two convictions for rape were undeniable cases of violations of the laws of war.”<sup>40</sup> And although the underlying trials were flawed, Chomsky writes that Lincoln appropriately approved execution for many Dakota who had killed “men, women, and children in what appeared to be attacks on individuals in their homes or wagons, not as part of larger battles.”<sup>41</sup> However, some of Lincoln’s conclusions, writes Chomsky, “are harder to understand.” She names several warriors

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<sup>38</sup> Chomsky, “United States-Dakota War Trials,” 30.

<sup>39</sup> Chomsky, “United States-Dakota War Trials,” 89.

<sup>40</sup> Chomsky, “United States-Dakota War Trials,” 90.

<sup>41</sup> Chomsky, “United States-Dakota War Trials,” 89.

who were convicted, despite having been engaged in legitimate warfare, or whose roles cannot be adequately determined from trial testimony.<sup>42</sup>

Ultimately, Chomsky, like Lincoln, tries to strike a logical balance. She concludes that while the trials were unfairly conducted, and that while Lincoln (and the military commission) did not recognize the sovereignty of the Dakota or the defined proper bounds of warfare, he “constructed an imperfect line.” She argues that he acted rationally with respect to the imperfect records available, and was successful, to some degree. However, because of those imperfections, it cannot be determined whether the condemned Dakota “committed acts for which they might legitimately have been punished.”<sup>43</sup>

The second law review article that examines Lincoln’s role in the Dakota War appeared in 2013. In “Remembering the Thirty-Eight: Abraham Lincoln, the Dakota, and the U.S. War on Barbarism,” David Martinez, an associate professor of American Indian Studies at Arizona State University, acknowledges Chomsky’s work but reaches far harsher conclusions regarding Lincoln’s actions.<sup>44</sup> Martinez argues that Lincoln’s mythological reputation as a kind and compassionate seeker of justice obscures his ruthless and misguided actions towards the Indians. To Martinez, Lincoln was in reality a “cold and insensitive politician,” who acted not out of a sense of morality, but rather political expedience.<sup>45</sup> Further, although Martinez believes that Lincoln was “poorly informed regarding Indian policies,” Lincoln was generally aware of the deplorable conditions on Dakota land in Minnesota, and knew of the corrupt agents who operated there.

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<sup>42</sup> Chomsky, “United States-Dakota War Trials,” 89. For instance, one man, Hydainyanka, was convicted for leading warriors into battle and opposing a hostage exchange.

<sup>43</sup> Chomsky, “United States-Dakota War Trials,” 90.

<sup>44</sup> David Martinez, “Remembering the Thirty-Eight: Abraham Lincoln, the Dakota, and the U.S. War on Barbarism,” *Wicazo Sa Review* 28, no. 2 (Fall 2013): 5-29.

<sup>45</sup> Martinez, “Remembering the Thirty-Eight,” 6.

Primarily concerned with the Civil War, Lincoln never acted to improve government relations with Indians.<sup>46</sup>

Martinez finds fault with Lincoln's actions at each stage of the war and the subsequent trials. Lincoln's decision to dispatch General Pope to Minnesota was disastrous, he argues, as Pope desired nothing less than a "final settlement" with the Dakota.<sup>47</sup> More significantly, Martinez argues that Lincoln's renowned legal skills and acumen were absent in the Minnesota outbreak. Lincoln overlooked the fact that the military tribunals that tried the Dakota men were likely illegal, and that, as prisoners of war and members of an enemy sovereign nation, the 1806 Articles of War applied to the combatants. Therefore, Martinez argues, the accused were entitled to legal counsel, to fair and impartial trials, and to adequate time to prepare.<sup>48</sup> By ignoring the fundamental injustice that occurred throughout the military commission process, Lincoln proved to be far more concerned with finding a solution to the "Indian problem" than in acting in a humane and just manner. When confronted with evidence of the Minnesota public's unhappiness and outrage over the deaths of fellow white citizens, Lincoln, according to Martinez, "did not know what to do."<sup>49</sup> He sought the advice of Judge Advocate General Joseph Holt in the hopes that his responsibility to review the cases could be delegated. After wavering, Lincoln decided to approve the executions for those who had "proved guilty of violating females," but "never once showed any concern for violations against Dakota women, or any other Dakota slain by American forces."<sup>50</sup>

According to Martinez, Lincoln's finding that only two warriors could be convicted of rape was "obviously too few to quench the bloodlust of settler Minnesotans." Lincoln then opted to reassess the matter, and search for any men who had participated in a "massacre" as opposed to legitimate battle or warfare. This brought the number of condemnations up to thirty-eight, a figure

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<sup>46</sup> Martinez, "Remembering the Thirty-Eight," 19.

<sup>47</sup> Martinez, "Remembering the Thirty-Eight," 16.

<sup>48</sup> Martinez, "Remembering the Thirty-Eight," 10.

<sup>49</sup> Martinez, "Remembering the Thirty-Eight," 17.

<sup>50</sup> Martinez, "Remembering the Thirty-Eight," 18.

that, to Martinez, Lincoln could abide. Lincoln had the power, notes Martinez, indeed the responsibility, to pardon the men that he instead condemned. Instead, he chose to bow to public and political pressure and approved the executions.<sup>51</sup>

Martinez also finds fault with Lincoln's public statements on the matter. Lincoln produced "great speeches and correspondence" throughout the Civil War, writes Martinez, but was "disturbingly silent with the respect to the Dakota."<sup>52</sup> He "never demonstrated any remorse" for approving the deaths of thirty-eight men who were wrongfully convicted.<sup>53</sup> He did not appear to appreciate Dakota sovereignty, and perhaps "may have been biased against Indians" because of the fact that his own grandfather had been killed by Indians in 1786, and because he had participated in the Black Hawk War of 1832.<sup>54</sup>

Lincoln apologists, notes Martinez, buy into the mythical perception that Lincoln always acted as a good and just man. They stress that Lincoln the humanitarian saved the lives of 265 Dakota warriors, but minimize the fact that he approved the conviction and execution of thirty-eight others. The real Lincoln, Martinez concludes, was a moral coward. He was at best an "accomplice to murder," and at worst "unequivocally guilty of mass murder."<sup>55</sup>

A third law review article also appeared in 2013. Paul Finkelman, a professor of law at the Albany Law School, wrote "Lincoln the Lawyer, Humanitarian Concerns, and the Dakota Pardons," published in the *William Mitchell Law Review*.<sup>56</sup> Finkelman's work strongly supports Lincoln's actions, including on legal grounds, adding a diversity of views to the legal literature. Unlike Chomsky and Martinez, Finkelman argues that the Indian militants did not represent the entire Dakota nation, and therefore should not have been considered a sovereign entity. Martinez

<sup>51</sup> Martinez, "Remembering the Thirty-Eight," 18.

<sup>52</sup> Martinez, "Remembering the Thirty-Eight," 19.

<sup>53</sup> Martinez, "Remembering the Thirty-Eight," 23.

<sup>54</sup> Martinez, "Remembering the Thirty-Eight," 24.

<sup>55</sup> Martinez, "Remembering the Thirty-Eight," 25.

<sup>56</sup> Paul Finkelman, "Lincoln the Lawyer, Humanitarian Concerns, and the Dakota Pardons," *William Mitchell Law Review* 39, no. 2 (2013): 405-449.

would no doubt consider Finkelman a “Lincoln apologist.” Finkelman concludes that Lincoln “had no stomach” for granting the large-scale executions that the military, politicians, and public clamored for. In fact, he writes, Lincoln was skeptical about the idea” of mass executions from the very beginning.<sup>57</sup> Lincoln’s decision to pardon the vast majority of those condemned to death, continues Finkelman, “dovetailed with his own persistent opposition to needless killing and his lifelong commitment to due process of law.”<sup>58</sup>

Finkelman makes two interesting arguments not found elsewhere. First, he writes that Lincoln feared that if he approved mass executions of Indians, the Confederacy might then approve the same for Union prisoners.<sup>59</sup> Rather than saving lives, Finkelman argues, a mass execution in Minnesota could have cost lives in the Civil War. Next, Finkelman disagrees with Chomsky’s conclusion that Lincoln’s judgment was “questionable” because all the trials were flawed. Finkelman writes that Chomsky “ignores the fact that some of those executed had openly bragged about killing civilians, and that some of the evidence for what amounted to war crimes was persuasive and compelling.”<sup>60</sup> Unfortunately, Finkelman offers no sources or documentation for his arguments, and thus they lack credibility. Finkelman concludes that “Lincoln tried to balance justice with military concerns, issues involving the ongoing War of the Rebellion, and fear of renewed violence in Minnesota.”<sup>61</sup> Perhaps Lincoln should have pardoned more men, Finkelman concedes, but after all, the President had “a myriad of other demands” that took most of his time and attention.<sup>62</sup>

While not technically a law review article, attorney Robert B. Norris’s “Lincoln’s Dilemma,” published in the *Washington Lawyer*, an online publication of the District of Columbia Bar,

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<sup>57</sup> Finkelman, “Lincoln the Lawyer,” 443.

<sup>58</sup> Finkelman, “Lincoln the Lawyer,” 445.

<sup>59</sup> Finkelman, “Lincoln the Lawyer,” 441.

<sup>60</sup> Finkelman, “Lincoln the Lawyer,” 447.

<sup>61</sup> Finkelman, “Lincoln the Lawyer,” 447.

<sup>62</sup> Finkelman, “Lincoln the Lawyer,” 448.

further adds to the lively legal debate about Lincoln's actions.<sup>63</sup> Like Finkelman, Norris strongly supports Lincoln. Lincoln made the decisions he did, concludes Norris, "partly to satisfy the thirst for revenge in Minnesota and partly because there was enough evidence that at least some of the Dakota were involved in the willful and wanton murder of innocent civilians." While Norris admits that Lincoln did not recognize the sovereignty of the Dakota, he concludes that "Lincoln's ruling was consistent with the laws of war prevailing at that time. Those who participated in battles should be treated as legitimate belligerents, while those who killed innocent civilians had violated the rules of warfare for which they were liable for the consequences."<sup>64</sup>

### Articles from Native Perspectives

One unique subset of Lincoln/Dakota War articles includes those written by Native American scholars, or from a Native perspective. As is true of law review articles, some are critical of Lincoln, while others fall into the "apologist" category. Ryan Winn is an English professor at Wisconsin's College of Menominee Nation. In 2013 and 2014 he wrote a two-part article for the *Tribal College Journal of American Indian Higher Education* entitled "Abraham Lincoln's Dakota Legacy."<sup>65</sup> These articles are sharply critical of Lincoln, his policies toward Indians, and his mythical status. "Like most tragic figures," writes Winn, "Lincoln's flaws are often ignored by those who prefer to romanticize his triumphs." Winn notes that Lincoln's many admirers "cite Lincoln's

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<sup>63</sup> Robert B. Norris, "Lincoln's Dilemma," *Washington Lawyer* 28, no. 9 (May 2014). Accessed April 9, 2016, <https://www.dcb.org/bar-resources/publications/washington-lawyer/articles/may-2014-lincoln.cfm>.

<sup>64</sup> Norris, "Lincoln's Dilemma."

<sup>65</sup> Ryan Winn, "Abraham Lincoln's Dakota Legacy: Part One," *Tribal College Journal of American Indian Higher Education* (November 2013). Accessed April 9, 2016, <http://www.tribalcollegejournal.org/archives/27878>; Ryan Winn, "Abraham Lincoln's Dakota Legacy: Part Two," *Tribal College Journal of American Indian Higher Education* (January 2014). Accessed April 9, 2016, <http://www.tribalcollegejournal.org/archives/27929>.

compassion in pardoning so many Indians,” but historians have ignored “the repercussion of the mass execution that he sanctioned.”<sup>66</sup> Winn argues that Lincoln’s actions must be viewed in a larger context than most historians consider, for by sanctioning the mass execution Lincoln “endorsed a policy with ramifications that ended Dakota life as they knew it.” Further, “Lincoln’s failure to condemn the atrocities that non-Natives inflicted upon the Dakota people...propagated the long-standing belief that the mistreatment of America’s First Peoples was justified as a means to achieve Manifest Destiny.”<sup>67</sup>

Two years earlier, historian Patrick S. Johnston also touched on this theme in “American Forgetting: Abraham Lincoln, the Conquest of the West and the Removal of Indians.”<sup>68</sup> Johnston writes:

While we can be glad Lincoln didn’t allow mass murder of Indians in Minnesota following the uprising, we have to remember that removal caused far more deaths than occurred at the gallows where the 38 Sioux were hung...His view of Indian humanity differed from those who carried out the massacre in that he did not hate Indians. Yet it was that view of the Indian as savage that was inescapable for Lincoln. They were not equals. They had no civilization...The Indians were unfortunately in the way of civilization. The wounds of the nation to be bound up that Lincoln spoke of did not include those injuries inflicted on Indians. The Indians who did end up fighting for the Union did not see their situation improve after the Civil War was over.<sup>69</sup>

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<sup>66</sup> Winn, “Lincoln’s Dakota Legacy: Part One.”

<sup>67</sup> Winn, “Lincoln’s Dakota Legacy: Part Two.”

<sup>68</sup> Patrick S. Johnston, “American Forgetting: Abraham Lincoln, the Conquest of the West and the Removal of Indians” (paper presented at the annual international meeting of the Eric Voegelin Society, Seattle, Washington, September 1, 2011).

<sup>69</sup> Johnston, “American Forgetting,” 15.

Johnston concludes that Lincoln's actions as regards the Dakota "led down the path which symbolically closed the American frontier at Wounded Knee."<sup>70</sup>

Earlier still, in 2002, Indian activist Michael Gaddy wrote an article titled, "United Native America: The American Indian and the 'Great Emancipator'" for *Sierra Times*, an online magazine.<sup>71</sup> He sets out to correct the "veneer of lies and historical distortions that surround Abraham Lincoln" and the "false sainthood and adulation afforded Lincoln." Gaddy offers a unique perspective, believing that Lincoln decided to spare thirty-eight Dakota men as a "compromise to the politicians of Minnesota." In return for this mercy, "Lincoln promised to kill or remove every Indian from the state and provide Minnesota with 2 million dollars in federal funds."<sup>72</sup> There is no evidence to support this contention.

Two more-recent articles show that Lincoln's role is by no means settled within the community of Native writers. In her short 2013 article for *Washington Monthly*, "Lincoln: No Hero to Native Americans," Sherry Salway Black, Director of the Partnership for Tribal Governance at the National Congress of American Indians, argues that Lincoln "is not seen as much of a hero at all among many American Indians tribes and Native peoples, as the majority of his policies proved to be detrimental to them."<sup>73</sup> While she does not go into detail, Black summarily refers to the execution of thirty-eight Dakota as a "massacre," comparable to the 1864 Sand Creek slaughter by the U.S. Army that left hundreds of Cheyenne and Arapaho dead. While the two events were distinguishable - Lincoln's action was to review a military record and make a decision, while Sand Creek was the murder of peaceful and

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<sup>70</sup> Johnston, "American Forgetting," 16.

<sup>71</sup> The original website is no longer available. A copy of the article can be found at: Michael Gaddy, "United Native America: The American Indian and the 'Great Emancipator,'" United Native America, accessed April 9, 2016, <http://www.unitednativeamerica.com/issues/lincoln.html>.

<sup>72</sup> Gaddy, "United Native America."

<sup>73</sup> Sherry Salway Black, "Lincoln: No Hero to Native Americans," *Washington Monthly* 45 (January/February 2013): 17.

innocent Native Americans by a misguided cavalry commander who ignored the white flag of peace – both took place under Lincoln’s watch. Black correctly writes that “the Emancipation Proclamation, while a tremendous step forward for human rights...did not end discrimination against Native Americans.”<sup>74</sup>

A much more positive view of Lincoln’s role is found in a September 2014 article by journalist Tristan Ahtone.<sup>75</sup> Ahtone relates the Dakota story from the viewpoint of John LaVelle, a law professor at the University of New Mexico. LaVelle’s great-great-grandfather, a Santee spiritual leader named Ehanamani, was one of the Indians originally convicted and condemned, but whose life was spared because of Lincoln’s review. LaVelle believes that Lincoln:

Recognized these were men, that these were not devils or animals or blood-thirsty savages. He knew they were being dehumanized in how they were described, and used the word ‘men’ to show they were human beings. Some say Lincoln ordered the largest mass execution in U.S. history, but he also facilitated the greatest mass pardon in U.S. history, and it was a pardon of Indians.<sup>76</sup>

### **Avenues for Further Research**

Abraham Lincoln remains a fascinating figure and a popular research subject. Mainstream writers often write adoringly of Lincoln. Legal writers, perhaps because they are used to examining issues and arguments from both sides, are more varied. Native authors can share a unique perspective on Lincoln’s legacy that is considerably more nuanced than that of “the Great

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<sup>74</sup> Black, “Lincoln: No Hero,” 17.

<sup>75</sup> Tristan Ahtone, “Lincoln: A Native Narrative,” Tristan Ahtone: Writer, Reporter, Rabble-Rouser, accessed April 9, 2016, <https://tristanahtone.net/2014/09/01/native-peoples-magazine-lincoln-a-native-narrative/>.

<sup>76</sup> Ahtone, “Lincoln: A Native Narrative.”

Emancipator.” This debate is welcome, not because one side can be proven “right,” but because all sides illuminate a Lincoln – and a critical moment in American history – little before examined.

In view of the above, what remains to explore in regards to Lincoln and his actions in the Dakota War? There are several possibilities. First, Lincoln’s relationship with the three lawyers who helped him review the trial records needs to be examined. David Holt served as the Judge Advocate General and gave Lincoln legal advice when news of the atrocities in Minnesota reached Washington. It was Holt who advised Lincoln that the duty to review the trials of each of the convicted men could not be delegated, but had to be completed by Lincoln or, at the very least, under Lincoln’s direct supervision. Was this the correct interpretation of the governing statute? Had it ever been utilized before? Did Lincoln review all other military-commission trials as he reviewed the Dakota trials? Was the Dakota matter the most important event in the Lincoln-Holt relationship? Elizabeth D. Leonard’s biography *Lincoln’s Forgotten Ally: Judge Advocate General Joseph Holt of Kentucky*, is a good starting point for this research, but fails to answer these questions.

The other two lawyers who assisted Lincoln in reviewing the trial records were Washingtonians George C. Whiting and Francis H. Ruggles.<sup>77</sup> Who were these men? What was their relationship with Lincoln? Why did he trust them to review the records? Were they paid? What did they have to say about their work? To my knowledge, no author or historian has researched the life and times of these men. They played key roles, however, in the Lincoln-Dakota story.

Second, while Carol Chomsky evaluated several of the thirty-eight Dakota men who were convicted, the other trial records need to be examined, as well. Were Lincoln’s findings supported by the records? Did he make mistakes? We know, for example, that at least one man was hanged by mistake simply because his name was similar to another warrior’s.<sup>78</sup> Was Lincoln truly fair?

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<sup>77</sup> Berg, 38 *Nooses*, 206 and 220.

<sup>78</sup> Berg, 38 *Nooses*, 227-228.

Was he lenient? What will the trial records tell us, not only about the actions of the accused, but of Lincoln's character and sense of fairness? Is his popular reputation deserved?

Third, Lincoln's attitudes and viewpoints regarding Native Americans, and his administration's policies toward them, warrant a fresh look. David Nichols' *Lincoln and the Indians* is somewhat dated. It is also limited in its scope. An examination of Lincoln's role in legislation that proved to be devastating for Native Americans is called for. Under his watch the First Transcontinental Railroad was started. The 1862 Homestead Act opened up millions of acres for white settlement at the expense of traditional Indian lands. The Department of Agriculture was created, which worked to regulate the very lands that so suddenly became available for settlement. And in 1864, the Sand Creek Massacre, one of the most atrocious examples of butchery in U.S. military history, occurred in Colorado. What were Lincoln's reactions? Was he involved, or even interested, in the Congressional investigation that subsequently took place? What can be learned from the legal records of those proceedings?

Finally, Lincoln utilized political patronage to fill top offices in the government. For example, he rewarded Caleb B. Smith and William P. Dole with the positions of Secretary of the Interior and Commissioner of Indian Affairs, respectively, in exchange for Indiana's twenty-six nomination votes in 1860.<sup>79</sup> What were the politics behind such legislation and maneuvering? What were Lincoln's roles? Did Smith or Dole have any experience in dealing with Indians or Indian issues? Did Lincoln care? We know much about Lincoln as commander-in-chief, but what can be learned about his political skills while serving as Chief Executive? The answers to all these questions, and more, are waiting to be explored.

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<sup>79</sup> Nicols, *Lincoln and the Indians*, 5.