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Westward Expansion — The Final Journey From Maine to California: An Illustrated Thesis

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Westward Expansion —
The Final Journey From Maine to California:
An Illustrated Thesis

by

James Schiele

A thesis presented to the
Graduate School of Arts and Sciences
of Washington University in
partial fulfillment of the
requirements for the degree
of Doctor of Liberal Arts

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ABSTRACT OF THE THESIS

Westward Expansion — The Final Journey From Maine to California:

An Illustrated Thesis

by

James Schiele

Doctor of Liberal Arts

Washington University in St. Louis, 2015

Professor Randall Calvert, Chair

This doctoral thesis shall examine how public policy changed with Westward Expansion during the late 19th century. Illustrations played a significant role in both educating readers to what was taking place out west, as well as bringing current events to the public eye in a timely fashion. Once newspapers received word of “Custer’s Massacre,” daily accounts were printed and pictures followed in Harper’s Weekly. Thus, public opinion rose to a peak following the battle, encouraging the federal government to move quickly to bring the Plains tribes under control and protect settlers moving west. Illustrations by Frederic Remington and others tended to show Indians in warfare mode. The impressions made by news accounts, fiction, and presentations such as the Buffalo Bill traveling troupe added to the public’s growing awareness of the West. The thesis contrasts the “hostiles” with George Catlin’s more researched books and pictures of tribes as a mature civilization in existence well before white Europeans arrived. Obstacles other than Indians, such as weather, barren landscapes, long distances, broken down wagons, and disease all made the movement hazardous. The sociological and civil rights impacts are the focal point of this study. The contrast between opposing points of view are brought out in visual form.
George Catlin described Four Bears, a chief of the Mandan tribe, as an “extraordinary man, though second in office, [he] is undoubtedly the first and most popular man in the nation. Free, generous, elegant and gentlemanly in his deportment — handsome, brave and valiant; wearing a robe on his back, with the history of his battles emblazoned on it; which would fill a book of themselves, if properly translated . . . Mah-to-toh-pa had agreed to stand before me for his portrait at an early hour of the next morning . . . I looked out of the door of the wigwam, and saw him approaching with a firm and elastic step, accompanied by a great crowd of women and children, who were gazing on him with admiration, and escorting him to my room. No tragedian ever trod the stage, nor gladiator ever entered the Roman Forum, with more grace and manly dignity than did Mah-to-toh-pa enter the wigwam, where I was in readiness to receive him.”

The artist painted this portrait at a Mandan village in 1832.

Mah-to-toh-pa, Four Bears
President Abraham Lincoln is pictured by the storied lithography company, Kellogg, of Hartford, Connecticut, as he prepared to issue the Emancipation Proclamation on January 1, 1863. This particular print is extremely rare, due to the errors that occurred in the first printing (note the date, January 1st 1853, instead of 1863). Kellogg was recognized as one of the foremost quality lithographers of the mid-19th century. Their published works seldom received less than marks of merit; the composure of Lincoln, the inclusion of his draft copy of the Proclamation, and the simple detail of background and foreground express the importance of the moment without overdramatizing, as Currier & Ives too often expressed their scenes.

Lincoln was never labeled as an abolitionist, because in the truest sense of the definition, he was not. Abraham Lincoln abhorred the practice of slavery because he had known of its cruelties and observed them since youth. But he also knew the limitations of abolishing it because of what the Constitution did not say. He took the country to war to hold the Union together; he issued the Proclamation to deal with an institution that was anathema to the United States.
ABRAHAM LINCOLN.
SIXTEENTH PRESIDENT OF THE UNITED STATES OF AMERICA.
Immortalized his name by the PROCLAMATION OF EMANCIPATION January 1, 1863
whereby more than THREE MILLIONS of HUMAN BEINGS were declared
FOREVER FREE.
Preface

The epic of Western Expansion in the United States during the 19th century is simply a tale of national purpose, the courage of the many who were willing to become a part of it, and the will of those who set forth to let neither geography, weather, nor the tribes of Indians that inhabited the western lands, deter their goals. It was a tale of a national dream that became a realized goal of the United States following the Civil War.

Westward Expansion was more than a steady stream of settlers directed toward a new life. It was more the result of the term most often applied to the epic event Manifest Destiny. Manifest Destiny took on a series of meanings best defined by Robert Hughes, author of *American Visions*. “The catchphrase of American expansion from the mid-nineteenth century on was ‘Manifest Destiny,’ always declaimed and usually written with capitals. Manifest Destiny was a rhetorical figure that became an ideology, and transfused itself through all policies. It was invoked as a *raison d'être* for the annexation of Texas in 1845 and the consequent Mexican-American War of 1846-48, the occupation of Oregon in 1846 and of California in 1848. Its quintessential utterance was written in 1846 and soon afterward read to the U.S. Senate, by a journalist named William Gilpin, who had traversed the Oregon Trail two years before.

(Gilpin spoke:) “The untransacted destiny of the American people is to subdue the continent — to rush over this vast field to the Pacific Ocean — to animate the many hundred millions of its people, and to cheer them upward . . . to teach old nations a new civilization . . . to confirm the destiny of the human race. . .

“Divine task! *Immortal mission!* Let us tread fast and joyfully the open trail before us! Let every American heart open wide for patriotism to glow undimmed, and confide with religious faith in the sublime and prodigious destiny of his well-loved country.”1
The First Reading of the Emancipation Proclamation
Before the Cabinet

by Francis Bicknell Carpenter
(Metal plate engraving)

July 1862 — William Seward, Secretary of State, is the central figure, advising the President and his Cabinet not to issue the Proclamation until the Union army had won a significant battle.

The Battle of Antietam, September 1862, provided that victory.
Manifest Destiny was looked upon as a divine mission, patriotic and immortal in its quest to occupy, colonize, and civilize the two-thirds of the country that lay beyond the Mississippi River. That land was the future of the nation. Visionaries spoke of it, wrote about it, and painted it, but it was yet to be fully explored and then exploited. America’s destiny west could never have been in doubt. The United States had acquired the lands west of the Mississippi: from France and Spain, by treaty with Great Britain, and by conquest from Mexico. How it was going to be colonized and by whom it would be governed were far more complex issues than the moves made to occupy those new lands.

Westward Expansion left some damaged lives in its wake. The black population that had been freed from slavery by the 13th Amendment to the United States Constitution, granted full citizenship by the 14th Amendment, and guaranteed the vote by the 15th Amendment, in reality, came away with few of those civil rights. Those events shall be covered in this thesis.

American Indians were not granted citizenship as explained in this thesis and were virtually decimated by the Plains Wars between 1865 and 1890. But federal policy was carried out through the 19th century, which secured the nation’s east and west borders.
On the Southern Plains in 1860

One of the most famous Remington paintings of mounted cavalry on the move is hung in the American Wing of the Metropolitan Museum of Art in New York. It is an oil-on-canvas picture of cavalry in a mass charge across the plains and is accordingly entitled On the Southern Plains in 1860. The troops are led by a scout in buckskin riding alongside the company commander. Colt .44 pistols are raised, clearly showing that the troopers are going into battle. Remington painted this 1860 picture in 1907 (and the colored print is prominent in the Schiele Collection at Olin Library), but the scene could well have taken place during the expanded Plains Wars which followed the Civil War. The fact that it was titled as pre-war lends the notion that plains wars with the Indians ran over a long period of time, at least 50 years, considering the broad expanse in which settlers, miners, and farm communities moved into Indian Territory. Therefore, time notwithstanding, both western conflict and westward expansion occupied a large part of the 19th century. Even the weapons shown, the uniforms worn and the leadership on horse, riding in the lead, stress the events that dotted the landscape for much of the 19th century in the United States and accounted for such a significant mark in American history. Manifest Destiny was far more than a catch phrase; it became a national goal that was helped along the way by artists like Remington, Charles Russell, and Emanuel Leutze.
Chapter 1: Introduction to Westward Expansion

“American Exceptionalism” became part of the spirit that rode with the settlers that formed the vanguard of the country that evolved into a nation during the 19th century. I believe that the experience of America, spread out over the 19th century, touched the hearts and minds of those who took the risk in leaving a distant homeland. Becoming an American justified that risk. Westward Expansion provided the road taken by those who dreamed of a better life.

In order for the country to become reborn, a great Civil War had to decide that the United States could not survive half slave and half free. The other element that necessarily played into the 19th century was the notion of Manifest Destiny, the watchword for expansion west. Consolidation of East, West, North, and South was finally centered on how Americans looked at themselves. If they were to live the role of American Exceptionalism, great ideas and the ability to carry them out had to be guided by men (and women) of vision, courage, and the wherewithal to move forward. The Second Great Awakening in America furnished the likes of Lincoln, Clay, and Seward who provided political energy; philosophical ideals came from the pens of Thoreau, Emerson, and Whitman. Creativity came from those who built the canals, steamships, and railroads. Visions guided the way through the wilderness.

Following the War for American Independence, the War of 1812, and the acquisition from France in 1803 of the western lands that would make up two-thirds of the United States, the country that was held together by loose governance and treaties became a nation. Abraham Lincoln, as president of the United States, had often heralded the “Union” as being inviolable as the great Civil War came on, but spoke more of a “nation” as the war began to wind down. In
his Second Inaugural Address on March 4, 1865, Lincoln began his speech by emphatically declaring that:

> On the occasion corresponding to this four years ago, all thoughts were anxiously directed to an impending civil war. All dreaded it — all sought to avert it. While the inaugural address was being delivered from this place, devoted altogether to saving the Union without war, insurgent agents were in the city seeking to destroy it without war — seeking to dissolve the Union . . .

Preservation of the union had been the goal; “and the war came on.” The sanctity of union had been everywhere present in Lincoln’s speeches and platforms dating back at least as far as his “house divided” speech during the Lincoln-Douglas debates in 1858 during the Illinois U.S. Senate election campaign. What became obvious in the second inaugural address toward the end of his masterpiece is the use of “nation” as an alternative to “union.”

Lincoln’s vision for the country extended beyond the established borders described by latitudes and longitudes. Lincoln speaks, in the address, “to bind the nation’s wounds” and to achieve “a just and lasting peace, among ourselves, and with all nations.” Lincoln now speaks of the United States as “a nation of the world, conceptually reaching beyond the ocean bound borders as a nation among the nations of the world.

The notion of a Manifest Destiny that fed an irreversible tide of wagons, animals, and humanity from Kansas to Oregon in the last half of the 19th century fulfilled both dream and reality. An American public, unaccustomed to reading current accounts and visually absorbing the news in pictures, became absorbed in the cause and effect of events on the western plains. As those events intensified, the public was heard. Public opinion became the cornerstone of public policy. If Manifest Destiny was not a phrase that captured the attention of the man-on-the-street in search of a better life, it surely attracted enough attention to become part of the daily
lives of those who sought a different way of life. “The catchphrase of American expansionism from the mid-19th century on was ‘Manifest Destiny.’ Manifest Destiny was a rhetorical figure that became an ideology, and transfused itself through all policies.” The final objective of Manifest Destiny was reaching the Pacific Ocean.

As the United States became reunited following the great Civil War in 1865, it lurched, at first instance, uncertainly toward a national goal of colonizing and then incorporating everything west of Kansas to the Pacific Ocean. This ambitious goal was variously called “Westward Expansion,” “Manifest Destiny,” or simply a fulfillment of joining east coast to west coast. Westward Expansion best expresses the movement of families, sometimes led by the United States Cavalry, including horses, mules, oxen, cattle, wagons often loaded to the breaking point with household possessions, farm implements, weapons, ammunition, food, and most important, the stubborn will to survive a perilous journey and succeed. This thesis, which includes an assortment of prints from the Schiele Collection at Olin Library, Washington University, will describe the hard road taken following the Civil war, of rebuilding the political and social attitudes and lifestyles of those who moved West and those who remained where they were, but who, by and large, supported this national goal.

Reconstruction followed the War with the idea of assisting that part of the nation that had been laid waste by the war. The South did not have the institutions that could restore fiscal stability and a workable government. The program of Reconstruction that was undertaken with high hopes ended at the conclusion of President Ulysses S. Grant’s second administration in 1877 with mixed results. But as reborn governmental institutions assumed control in the South and a wave of recovery seemed to be on the horizon following the fiscal panic in 1873, an event
took place out west that produced consequences far out of proportion to its intended military strategy; a minor military engagement occurred at the Little Bighorn River in Montana Territory. However, a large part of the 7th United States Cavalry, led by Lt. Colonel George Armstrong Custer, was annihilated by an alliance of Sioux and Cheyenne Indians on June 25, 1876 before the main body of cavalry arrived. What then became popularly known as Custer’s Last Stand created a firestorm of reaction fanned by political winds that moved political and national policy in directions as yet untested. What had been national policy wrapped in a loosely fitting cover gradually moving settlers west, now became national policy with a keen, sharp edge.

The nation as a whole was ready for a dramatic change in its social and political habits, because the question of slavery in the territories, or slavery at all, had been resolved by war’s end. With passage of the 13th, 14th, and 15th Amendments to the U.S. Constitution that followed between 1865 and 1870, a new direction in governance and civil rights had been charted. Preservation of the Union, a cornerstone of President Lincoln’s war strategy, was never to be challenged again. At war’s end, the largest issue at hand was the return of the eleven states of the Confederacy to the United States. The largest challenge was who would govern in the South. President Andrew Johnson had one set of ideas and the radical Republicans in Congress had opposing ideas. The status of freed African-Americans, even with guarantees of civil rights and liberties granted by the 13th, 14th, and 15th Amendments, was never fulfilled during the course of the 19th century. The rights of African-Americans were reversed, left in an antebellum condition by way of segregation laws in the South or simply not pushed ahead by the courts or the Congress.
African-Americans were theoretically protected under the law of the land. There were no such guarantees extended to American Indians. Their lot was thrown under Indian Law, an elusive term that was flexible enough to grant the privilege of land ownership according to treaty one day, and then under an unwritten provision known as “discovery,” that would negate that privilege the next, all under the banner of resolving the “Indian Question.” The status of American Indians was an ever-changing phenomenon, with no real solution in sight and a noticeable lack of incentive to find resolution. As a result, the Plains Wars of the last quarter of the 19th century became open warfare where Indian tribes not residing on assigned reservations were subject to a fight to the death on the prairies. The mass migration of white settlers driving west was considered a target by the Sioux, Cheyenne, and the other tribes whose ancestral lands were being overrun. The fate of American Indians and of African-Americans in America rolled along parallel paths as the 19th century headed towards the 20th century.

The third element of population that came significantly into play was the immigrants following the Scotch, English, and Scandinavians. Irish and German immigrants swelled the ranks of new citizens, adding significantly to the population and forming the spearhead of the long drive across the plains to a new life beyond the settled borders of America. The engraving by F.O.C. Darley (see Emigrants Crossing the Plains, p. 68) demonstrates the courage and the vital importance of moving settlers across the vast unknown. The picture accurately reflects the determination of the family shown moving across an uncharted sea with a sense of confidence, trust in the guide who leads them, and a confidence born of the spirit of the Republic: no goal is set too far ahead of what Americans can achieve. This family has staked everything on leaving a distant shore and migrating to a land unencumbered by set borders, but full of the opportunity
that lies ahead as President Thomas Jefferson conceived a brand new land without borders. The movement west following the Lewis and Clark expedition was an expression of Jefferson’s goal to colonize the lands beyond the Missouri River.

In appraising the sociological fallout from Westward Expansion, the three distinct groups of Americans must be studied and analyzed with the objective of making some meaningful conclusions related to the 19th century historical record. American Indians were the longest-term occupants of America who eventually wilted under the gunfire of the U.S. cavalry. In four different centuries of cohabitation with European whites, American Indians were left to subsist in an environment that was anathema to their lifestyle. Their lives without boundaries ended on reservations or in graveyards. Africans were brought to America to serve as slaves. A great Civil War was fought to decide whether slaves could be legally brought to the territories as slaves. The war determined that slavery was abolished and the 13th, 14th, and 15th Amendments to the Constitution provided legal framework for equal citizenship. But equal rights were not assured until well after mid-20th century. The most conspicuous waves of immigrants arrived in the United States at a time that coincided with the great western movement. The vast majority of those immigrants were white Europeans who were to greatly benefit from the national policy that promoted western settlement.

The American public in general was more interested in developments in the west, far west, and particularly on the western plains than they were with resolving “equal rights, equality for all races,” following the Civil War. The war had a devastating effect on the former eleven Confederate states in loss of life, property, and the ability to retain a Southern culture. That culture in the far reaching agricultural community was built on a well-developed labor system
that was based on black slave labor. The South had become the largest exporter of cotton in the world during the 19th century and slaves were the dominant asset which vanished with the abolition of slavery.

In the North, the war had a numbing, but not a disastrous, effect in terms of cultural shock or devastation to the economy. Increased war production expanded the industrial base of the North, but the loss of life on the battlefield in the North was just as grave as that in the South; the combined estimated death toll was 750,000 (see Appendix D). However, the Union had been preserved.

The immediate goals in an unreconstructed South were to find the means of governance and to rebuild a lost economy. The radical Republicans in the Congress appeared at times to be more interested in punishing the South than repairing it. Reparations and a military occupation to keep the peace and protect the rights of black Americans created some resentment. Most of the population in the North had their eyes fixed on more immediate goals. They were far more interested in repairing their lives and seeking their fortunes; some of those anticipated fortunes were visualized out west. In addition to the lure of gold, there was copper, cattle, and a vast new land open for conversion into farm lands. Expansion of the Plains Wars after 1876 became far more topical than the other issues at hand before Congress. Carrying out civil rights was always an issue, but not the one that would capture the hearts and souls of Congress or its constituents. Social equality and social justice had simply not merited the national attention necessary to fulfill those goals. Senator Charles Sumner of Massachusetts had earlier proclaimed “Equality for All.” In spite of a successful beginning, full equality remained unfulfilled for black Americans and American Indians.
Compromises led by Henry Clay, a Whig from Kentucky, Daniel Webster, a Republican from New England, and John C. Calhoun, a Democrat from South Carolina (who found the Compromise of 1850 objectionable), helped hold the country together through 1850. In that instance, entry of a new slave state was not offset by that of a free state, but a caveat permitted slave owners to enter Free states in order to reclaim runaway slaves. Expansion of the frontiers west and southwest removed the South’s majority in both House and Senate. The 1854 law known as the Kansas-Nebraska Act attempted to halt this trend by allowing popular sovereignty in each territory to determine elections. The Kansas-Nebraska Act proved unworkable and only succeeded in producing more friction. The war came on when compromise failed.

Most Indians had been excluded from citizenship by Article I, Section 8 of the United States Constitution, which initially placed them in the category of a foreign nation under the Commerce Clause (see Appendix A). Relocation was now a forced march to a diminished reservation under surveillance of the U.S. Army. After Lt. Col. George Custer’s defeat at the Little Bighorn River, any negotiating power the Sioux, Cheyenne, and several other tribes may have had vanished like a fast setting sun in the west. Based on public statements issued from the U. S. Senate, Indians were to be killed or, if necessary, forced to relocate to reservations. Indians were treated separately from the rules under which the traditional U.S. population is governed.

African-Americans were largely left behind as the nation moved forward. The lifestyle and improvements associated with the African American were not moving in a positive direction. Native Americans in the West were forced to reservations, cheated out of promises in treaties made with the federal government, and killed where slaughter appeared to be the only resolution. The effect of government policy toward both African Americans and American Indians was
Henry Clay was known as “The Great Compromiser.” He formed a troika in the U.S. Senate from 1830-1850 with John C. Calhoun, a South Carolina slaveholder, and Daniel Webster of Massachusetts, an abolitionist.

These three remarkable men managed to forge the Missouri Compromise of 1820 and the Compromise of 1850. But with the passage of the 1854 Kansas-Nebraska Act and the election of Lincoln in 1860, it was no longer possible to keep the country out of war.
vividly displayed by newspaper publications liberally accompanied by illustrations. Pictures published during Reconstruction and its aftermath grimly illustrate the life of African Americans south of the Mason-Dixon Line (see *This is a White Man’s Government*, p. 23).

The post-war culture in the South was not much different than it had been in the antebellum South. The significant difference was the degree to which it was known and accepted by those living in the North. It was almost as if acceptance of life in the South was another form of compromise, only this time it was not crafted by legislators but by citizens. The country was still regionally recognized by its differences, but acceptability had replaced either ignorance or hostility. Native Americans were the first Americans in the land that became the United States of America, but the relationship between the ruling class of Americans and the American Indian non-citizens that they ruled was never an easy one. June 25, 1876, the day that Lieutenant Colonel George Armstrong Custer’s Seventh Cavalry was partially wiped out (those 235 under his direct command were all killed) at the hands of the Sioux and Cheyenne, marked the beginning of the last furious phase of the Plains Wars and the beginning of the last great movement of settlers, railroads, mining, ranching, and industry westward. It was a grand movement west and carried out in a manner prescribed by the government with few restrictions on how this was going to affect the lives of the Plains Indians. “Custer’s Last Stand” created the blank check needed to make the moves against the Plains tribes without consideration of consequences. The battle was headlined as a massacre, although Sioux Indian historians today deny that description.

The entire drama and saga of Manifest Destiny has implanted an almost irreversible mode of thinking that has heavily influenced the American culture. Racism had largely keynoted
the 19th century relationship between whites and blacks in America and greatly influenced the way of life in the South, accepted by the North. A three century-long confrontation and accommodation with American Indians created the national policy that would set out the rules for how Indians would live their lives in the 19th century and how the majority of the population would view them as the “other culture” in America. The battle at the Little Bighorn became the watershed moment when all eyes turned west and public policy followed public opinion in confronting Indians in the Plains Wars. Quoting a passage in the 1994 publication, *War for the Plains*:

The war for the Great Plains, one of the epic tragedies of American history, was kindled in the mid-19th century by the intrusion of white migrants on the homelands and hunting grounds of the Indians. Within a few decades, the vast open range west of the Mississippi River was riven by thoroughfares for white emigrants. And by 1890, the region’s original inhabitants — tribes whose territories stretched from the Canadian wilderness to the deserts of northern Mexico — had suffered total military defeat and a devastating transformation from free hunters and warriors to impoverished wards of the burgeoning nation.⁵

The major objective of this thesis is to demonstrate how public opinion in the United States was often influenced by events, illustrated in local and national publications, and how those opinions, most specifically following Lt. Col. George Armstrong Custer's defeat at the Little Bighorn in June 1876, helped guide public policy. Public policy was not often drawn up in advance of events as they occurred. Public opinion influenced major decisions that were made in Washington. The final thrust of western expansion exemplified the power of public opinion. Colonel Custer's disaster in Montana, though minor in the U.S. Army’s military history, exerted overwhelming influence on decisions that were made in Washington. The massacre of an Indian village at Wounded Knee in 1890 completed an aggressive movement of U.S. military power westward in the name of Manifest Destiny.
This thesis, with the assistance of an assortment of prints from the Schiele Collection at Olin Library, will describe the hard road taken after the Civil War of reconstructing the attitudes, lifestyles, and political actions of the South. The goal of Reconstruction was to assist a part of the country left destroyed by war and devoid of institutions. The time of that revival began with high hopes in 1865 but ended with little to show in 1876, a year in which President Grant’s second term ended. Reconstruction was declared at an end, the federal army of occupation left the South with a new administration coming into power, and Lt. Colonel George Armstrong Custer lost his life at the Little Bighorn River in Montana. Of those three major categories, Custer’s Last Stand created a greater impact on public opinion and public policy to follow than either Grant’s last term in the White House or the end of the widely unpopular era known as Reconstruction.

The nation as a whole was ready for a dramatic change in its social and political habits, because the question of slavery in the territories, or slavery at all, for that matter, had been resolved by war’s end and with the passage of the 13th, 14th, and 15th Amendments to the U.S. Constitution that followed (see Appendix A, text of Amendments). Preservation of the Union, at play as the war came on, was never to be challenged again (see Union print). The largest issue at hand was the return of the eleven states of the Confederacy to the United States. The challenge that followed was who would govern in the South.

President Andrew Johnson had one set of ideas and the radical Republicans who exercised great influence in the U.S. Congress had different ideas. How states would come to restore their statehood could be carried forward. But how old citizens (whites) and young citizens (African-Americans) would come to terms with their new status presented a different
kind of challenge, one that was addressed, but during most of the remaining century, not resolved. With respect to status, African-Americans were eventually moved back to where they had been, in spite of rights granted to them by the Constitution. Part of the reason for this was the neglect of civil rights that followed and accompanied Reconstruction. Jim Crow laws, applied state by state in the former Confederacy, left nothing just short of the condition of slavery for former slaves living in the South. Presidents ignored those conditions, the courts, including the highest court, overlooked the legal status of black Americans and the Congress made little effort to confront injustice.

On July 20, 1876, following Custer’s fall, U.S. Senator Lewis Bogy (D-MO) responded to questions about treatment of Indians in the U.S. Congress in the following statement: “The Indian is not now what his forefathers were; he has no longer a vast and boundless unpeopled territory to roam over. The white race surrounds him on every side, and the time has come when he must cease to be a hunter or he must cease to exist . . . Hence he must retire to a reservation . . . and there be kept under surveillance . . .” (See Appendix B.)

The status of American Indians was an ever changing phenomenon, with no real resolution in sight and the lack of real incentive to find resolution. The oversized dramatic event of 1876 did nothing to enhance their position. The battle at the Little Bighorn River, which might have received scant treatment had it ended in a withdrawal by Indians and cavalry, created more excitement through the land than far more important military engagements. “More has been written, painted, drawn, carved and moulded to depict the Little Bighorn fight than has been done to explain Saratoga, Gettysburg, San Juan Hill, Chateau Thierry, D-Day, Iwo Jima, or the Inchon Landing, and very likely more than for all of them together.”

A strong engraving issued to commemorate the Compromise of 1850. This political consensus was seen as the resolution of the tempest over the issue of free and slave states that had been tearing the Union apart. The individuals involved in the compromise are shown seated in a formal setting. The two major protagonists, Daniel Webster and John C. Calhoun, and “The Great Compromiser,” Henry Clay are most prominent, shown around a bust of Washington, the former two with their hands on a copy of the United States Constitution. Arrayed around them are other important participants, including Lewis Cass, Winfield Scott, Sam Houston and Millard Fillmore. Liberty blesses the group from above, while in the background the curtains part to reveal the Utopia that the strengthened Union was seen as now proceeding towards. In the lower right corner Fillmore is shown holding an American shield above the ‘thrown down’ royal crown and scepter, a symbol of America’s struggles of the past. A wonderful document of this important agreement in American history. Alas, despite its hopeful prognosis, this compromise was ultimately a failure, and it was soon to be followed by much bloodshed.
More than 840 illustrations dramatically portray Custer standing amidst his troopers, heroically battling the hordes of savages who had surrounded the 7th Cavalry. The inaccuracies of that imagined scene are far greater than the realities; although there were no army witnesses, some of the attacking Sioux later testified that they had indeed surrounded the grounded cavalry, but picked them off one at a time. The encounter ended shortly after it began. Custer was likely killed by two bullets early in the fight. But the stories, printed by newspapers distributed nationwide, told of valor unseen by those reporting, as well as pictures only imagined by artists who kept the story alive for the next century and a quarter. Though recognized as an accidental encounter with disastrous results, Custer’s Last Stand did more to arouse a nation and influence public policy on the Indian question than any of the other issues that would bring about Manifest Destiny.
The Last Stand

by Frederic Remington

(Harper’s Weekly, January 10, 1891)

The image of Custer at the final moments of battle in June 1876 is purely fictional. Custer was probably already dead toward the end of the engagement according to Sioux Indian sources. The ring of troopers are defined by sabers forming a circle; Custer did not issue sabers for the attack because they were both heavy and they made noise, two good reasons that they were left behind. Also, he had not visualized them as being of any use. Symbolically, Custer knows the end is near; his eyes gaze toward the west, fixed on the future of his country.
Sioux Warriors Charge the Sun Pole

by Frederic Remington

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Frederic Remington was the polar opposite of George Catlin in the world view that he had of American Indians. Catlin wrote and drew pictures of Indians as a uniquely distinct race of Americans whose culture was cherished. Remington pictured Indians as those who were endowed with an indomitable spirit of the plains, worthy of great admiration and respect, but an obstacle to westward expansion. As described earlier, Remington’s commissions and successes were in illustrating novels, serials, and the works of such notables as Theodore Roosevelt.

Remington’s reputation as an artist rests on his inclusion in the American Wing of the Metropolitan Museum of Art in New York. His main recognition in the 19th century is based on his illustrations, such as those pictured in the next few pages. No 19th century western artist had mastered painting the horse as well as Remington. He had studied it, added a wing to his workspace in Ogdensburg, New York, to creating both sketches and sculptures, and successfully illustrated the movement of Indian and horse as shown in this illustration.

If Catlin chose to feature the Indian as a culture that was losing its place in North America, Remington illustrated the Indian as a fierce warrior, a worthy opponent, and one capable of overrunning a battalion of cavalry as the situation dictated.
Chapter 2: The Case for Civil Rights: Reconstruction and the Supreme Court Decisions

A storm rolled out over the Sea of Tranquility that was thought to be a new era of peace and equality in the years following the Civil War in the United States. An estimated 750,000 lay buried on fields of battle stretching from the rich landscape of Pennsylvania, through the cultural divide of the Old Dominion to the lands that rolled to the Southwest. The termination of slavery followed the national policy of preservation of the Union as Emancipation came on January 1, 1863. “Equality for All” had been the watchword of such abolitionists as Charles Sumner, the luminary and long-serving United States Senator from Massachusetts. Sumner had dedicated his soul to the cause of emancipation and almost his life.8

William Lloyd Garrison, the New York publisher of The Liberator, an abolitionist newspaper, was an outspoken opponent of the “peculiar institution”9 and an equally outspoken critic of a United States Constitution that permitted slavery to exist. Frederick Douglass, an ex-slave and publicly recognized opponent of slavery, had the ear of President Abraham Lincoln. Finally, Harriet Beecher Stowe, the reluctant author whose book Uncle Tom’s Cabin reached more homes and was read both in the North and South by more people than were reading the Holy Bible, made up the four that I have hypothesized had the largest impact on a population struggling to accept or reject the institution of slavery. These people were very important; they exerted a strong influence.

The North and South, in general, had different ideas about how the Constitution of the United States dealt with slavery. Slavery was not prohibited in the United States; the Constitution did not speak to the practice of slavery, which provided the major source of field labor in the South, including the border states of Missouri, Kentucky, Maryland, and Delaware.
Prints of all systems, wood engravings, metal plate engravings, and lithographs in particular, provided a pictorial window to the world that journals, newspapers, and books gave to people who could read and were eager to capture the current events that were beginning to affect the lives of all living in states and territories. The pictures told the stories at least in some measure to those who could not read and embellished the stories to those who could.

There were many luminaries that lit up the threatening skies that presaged the onslaught of civil strife at mid-century. In three distinct ways, the three whose images follow were most instrumental in their own fields of helping turn sometimes abstract notions of “abolition” and “equality” into words spoken or written that citizens both North and South could understand.

Charles Sumner, outspoken Republican senator from Massachusetts, worked the floor of the Senate chamber for half a decade, promoting abolition of slavery, denouncing slavery and its proponents in such a way that almost cost him his life and carrying his banner before him wherever he went that exclaimed, “Equal rights to all.” In this extremely rare print of Charles Sumner, he points to the phrase that became associated with him.
Harriet Beecher Stowe

by George Richmonds

Uncle Tom’s Cabin, Harriet Beecher Stowe’s masterpiece story of the trials of a slave family in the South, awakened an entire nation to the reality of the “peculiar institution.” Begun as a newspaper serial, published as a book in 1852, Uncle Tom’s Cabin was selling at a rate of 500,000 copies a year by 1855. Well before the turn of the century, more people were reading Stowe’s book than the Bible in all parts of the United States. It brought a high level of awareness to both north and south that resulted in the issue of slavery reaching its peak of national debate before the first shots were fired at Sumter. Uncle Tom’s Cabin reached every level of literate America, devoid of politics, without the trappings of socioeconomic oversight, but real enough in its depiction that the nation reached a level of awareness that heretofore had been lacking. If Sumner made a heavy political impact and Garrison reached new editorial heights, Stowe brought the crushing reality of slavery to the hearts, minds, and hearthstones of mid-century America. The following passage from “The Middle Passage” (Harriet Beecher Stowe, Uncle Tom’s Cabin, Chapter 31 (Boston: John B. Jewett & Co., 1852), p. 355) clearly illustrates the horrendous institution in the person of Simon Legree, synonymous with the cruel master stereotype.

Mr. Simon Legree, Tom’s Master, had purchased slaves at one place and another . . . and driven them, handcuffed . . . down to the good steamer Pirate . . . “Take off your boots,” said Mr. Legree . . . Tom did so. “There,” said the former, throwing him a pair of stout shoes . . . he now held up and turned over the Psalm book . . . “You belong to the church, eh?” “Yes, Mas’r,” said Tom firmly. “Well, I’ll soon have that out of you. I have none of your bawling, praying, singing niggers on my place; . . . now mind yourself.”

Legree’s introduction plainly illustrates the inhumanity of slavery, acted out by one of the prime slavers of all time; if fiction lapped over into reality, the Legree character brought the attention of Northern readers closer to the peculiar institution, while raising the ire of Southern gentry who preferred to refer to masters as benevolent managers of the black slaves.
Because of the growing influence of the abolition movement during the 1850s, a widening awareness of the inhumane side of slavery in the North created opposition that was supported by presidential candidate (1860) Abraham Lincoln, who admitted that he could find nothing unconstitutional about the practice. However, Lincoln fully deplored slavery on the grounds of injustice and inhumanity.

There were other influences that surfaced on the stage of this drama. There was the Dred Scott Supreme Court trial in 1857; the decision against Scott kept him a slave until given his freedom a year later by the Blow family of St. Louis. But the highest court in the land had legally upheld the institution until it was undone by the 13th Amendment to the Constitution in 1865. The Emancipation Proclamation had declared freedom for slaves in the states still in rebellion in 1863, but had not legally abolished slavery.

Therein lays the major theme of the tragedy that not only limited, but pushed back in time the real application of the 13th, 14th, and 15th Amendments to the Constitution. For even with the amendments that heralded the battlefield conquest of equality over slavery and of an opening of opportunity in the world’s land of opportunity, the gates never really opened. Non-citizenship had been the plight of blacks in America except for a handful of freedmen. When full citizenship arrived with the passage of the 14th Amendment in 1868, but what eventually resulted was second class citizenship.

Slavery was a relationship between master and slave. It was heinous, cruel, unjust, and unwarranted in the civilized world. In the South and in most of the (former) border states of Missouri, Kentucky, Maryland, and Delaware, opportunities for employment, admissions to institutions, equal treatment in public institutions, equal access to railroads, were denied to
African-Americans on the basis that something of equal value was available under the Jim Crow laws. The perception of separate but equal was almost totally a misperception up to and including the rights guaranteed in the 13th, 14th, and 15th Amendments which provided all United States citizens equal rights. Prevailing thought in the United States was the notion that inequalities had been swept away. The *modus operandi* held differently. “Separate but equal” reigned only in the mind of those who created and promoted this notion. In the South, a lifestyle among landowners that had seemingly vanished with the end of the war began to change so quickly that for many, time had only stood still.

Reconstruction had brought the promise of equality and many hopes of a better way of life for African-Americans. Reconstruction had also introduced U.S. Army troops to enforce equal rights and voting rights. Thomas Nast and others more clearly portrayed life during and after Reconstruction as shown in the following illustration, *This is a White Man’s Government.* The various state laws and customs quickly replaced what the Constitution of the United States could not prevent. What has been difficult to reconcile or explain is how the rules of engagement between blacks and whites, state laws and the customs of the land and the Constitution would conflict and allow injustice to prevail.

The Dred Scott case has served as a watershed in the history of civil rights in America because it heralded that time when attitudes toward slavery might have either leaned toward liberation or remained locked into the place where attitudes do not change. The case surely was not a harbinger of protest arising from its denial of civil rights; the press was relatively quiet for a while, but became more intense later. As the issue of slavery in the territories became more focused, Dred Scott became a more recognizable symbol of slavery. He became a leading
**This is a White Man’s Government**

The picture leaves little doubt about how Thomas Nast felt about the prejudices, hatred, and total disregard both South and some North leveled toward blacks. The victim is a young Union soldier who served his country and now lies under the heel of New York Irish, Tammany Hall, seat of the powerful New York Democratic Party, and, at center, an ex-Confederate soldier, who exhibits “The Lost Cause,” held high and indelibly displayed on the blade of his knife. The cruelest forms of racism are so explicit that the picture speaks louder than the thousand words that it replaces. However, the caption, written below the picture, is the slogan of the Democratic Platform:

> We regard the Reconstruction Acts (so called) of Congress as usurpations, and unconstitutional, revolutionary, and void.

Thomas Nast’s powerful political statement was made shortly after the war and as Reconstruction established itself as the operating governance of the South. Nast astutely observed that the system was not working. An unforeseeable alliance of New York politicians, influential New York population, and a powerful Confederate States of America element brought a barrier to “Equality.” Nast portrayed the New York Irish as a strong force in resisting anything resembling equal rights. The 1863 draft riots in New York were partially based on opposing any form of blacks entering the New York labor market. Immigrants, composed of a large force of Irish, feared blacks as replacing them in low wage employment. Nast despised the Irish. In many political illustrated statements, he portrayed Irish immigrants as sub-humans, far too Catholic for his taste, alcoholic (note the whiskey bottle), the raised club that opposes any notion that blacks might vote, and the boot on the head of the black soldier, a Union veteran of the Civil War. The politician on the right supports his constituency; he represents Tammany Hall, the Democratic Platform, and opposes Reconstruction. The caption reads: “We regard the Reconstruction Acts (so called) of Congress as usurpations, and unconstitutional, revolutionary, and void.”

The three threatening elements of Nast’s trilogy have spoken. The three have pronounced Reconstruction as unconstitutional, revolutionary (a reference to yet a further possible outbreak of hostilities) and thereby, void. The three shown in the illustration hated the federal government, Reconstruction, and above all, blacks. Nast detested the three; he considered New York Irish as the lowest form of humanity, barely higher than apes, Tammany Hall as corrupt to the core, and the entire concept of a “Lost Cause” as a vicious excuse for keeping freed slaves under the heel of their former masters.

The nation was still in the earliest stages of war recovery, both North and South. Repairing the wounds of four bloody years was neither quick nor easy for both sides. Nast’s series of political cartoons that carried well into Reconstruction were prescient and, unfortunately, accurate. A blurring over of racial conditions in the nation as a whole, particularly in the South, was made easier by the rush to move west, colonize new lands from the older territories, and let the old issues somehow wait for another time.
image of the abolition movement that began to receive higher recognition as rumor of secession took hold of the South and then the North.

Few printed illustrations spoke to the injustice of Dred Scott vs. Sandford until the abolition movement was able to find enough groundswell to carry it forward. By then, William Seward’s “irrepressible conflict” assessment had caught public attention and moved the oncoming war a good step closer. The slavery issue advanced to the first page of newspapers along with “Union preservation” as the North’s rallying cry called for denial of secession in any form. By the time that war became reality instead of a veiled threat, the names of Harriet Beecher Stowe of Uncle Tom’s Cabin fame, John Brown of Harper’s Ferry, and Dred Scott of St. Louis became legend. They had reached their pinnacles as a result of events rather than as the direct cause of them.

The Emancipation Proclamation intervened in the Civil War that dragged on for an interminable four years. Mr. Lincoln’s Emancipation Proclamation was authored, revised, approved, and issued by President Lincoln on January 1, 1863. European recognition of emancipation was vital because it became one reason why England and France backed off of recognizing the South for the purpose of reviving the cotton trade. Without that source of income and maintaining open ports at Charleston, South Carolina and Mobile, Alabama, the South was doomed. The Union army and its vast resources of industry, population and capital would not allow the Confederacy to survive in the South, let alone beyond its established boundaries. The immovable cornerstones of hard currency, manpower, and the ability to grow established industrial might as required gave the North all of the support required to defeat the South.
The 15th Amendment to the U.S. Constitution, adopted in 1870, guaranteed equal voting rights to all U.S. citizens except Indians, who were not citizens. The 15th assured the last measure of freedom and rights under the law of the land, backed by the courts and the bayonet. What followed over the ensuing 94 years provided contradiction to the law and unequal rights to blacks, mainly those living in the South.
Fifteenth Amendment, 1870

Here legislation takes symbolic form. The artist depicts African Americans’ hopes arising from the passage of the Fifteenth Amendment in 1870: education, family life, jobs, and the vote. Among the collage of images are portraits of Frederick Douglass, John Brown, and Abraham Lincoln. (Broadside published in New York, NY, 1870)

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This poster was made possible by the generosity of the John M. Alkek Trust.
Slave Sale, Charleston, South Carolina

The *Slave Sale* wood engraving produced by the *London Illustrated News* tells a graphic tale of the most traumatic side of slave auctions: families are going to be torn apart, possibly to never see each other again; those slaves headed south into the cotton fields will live a physically hard and often a cruel life under the harsh treatment of a hot sun and demanding overseer. Those bidding on the slaves give the appearance of harsh men, examining the merchandise as they would cattle at a cattle auction. A black overseer on the left front has whip in hand, as does his white counterpart who stands in front of him.

Plantation Songs

By contrast, a quarter of a century later, the *Plantation Songs* sheet pictures a time, post-emancipation, post-war, when perspectives have really not changed much, except that the blacks working on the fields appear to be content — but are they? The overseer rides in the background; he does not have a whip in hand, but he is directing the work. Or is it possibly simply a recollection of the day gone past when black slaves enjoyed their field work? Symbolically, in a quarter of a century, whites in the South and North seem to acknowledge that things were not too bad after all in the antebellum South. The country has moved forward, moving Westward, and all is well. For the black population in the South, all was not well.
SLAVE SALE, CHARLESTON, SOUTH CAROLINA. FROM A SKETCH BY EVER CROWE, SEE NEXT PAGE.
Massa's in the Cold Cold Ground
Lilly Dale

Dearest Mae
Darling Nelly Gray

Rosa Lee
The Old Folks at Home
Ole Shady

Published by Oliver Ditson & Co. 451 Washington St.
The case of *Plessy v. Ferguson*, heard by the United States Supreme Court in 1896, occurred at a watershed time in American history, as Westward Expansion was drawing to a close, the last great battle in the western plains had resulted in the Massacre at Wounded Knee in 1890, and the United States had entered the world stage after the destruction of the U.S. Battleship *Maine* in 1898, followed by the Spanish American War.

Passage of the 13th, 14th, and 15th amendments to the Constitution following the Civil War did little to further the cause of civil rights. The landmark case of *Plessy v. Ferguson* endorsed where public policy had drifted since the Civil War and where it was bound to go following *Plessy v. Ferguson*. “On May 18, 1896, the United States Supreme Court ruled that a Louisiana law mandating separate but equal accommodations for ‘whites’ and ‘coloreds’ on intrastate railroads did not violate the constitutional rights of Homer Plessy, who, with one-eighth African blood, was a ‘colored’ person under state law.”

Many laws in the South forbade African-Americans to sit in the same railroad accommodations as whites. State laws also forbid whites and blacks to attend the same schools, or receive medical treatment in the same hospitals. So far as everyday life was lived, racial segregation was the way of life. Equal treatment under the law did not exist in the South following the Civil War.

At this point, it is important to note that clear lines of slave states, free states, and border states did not always exist. Some parts of Southern states supported the Union before, during, and after the war: Edmund Davis (who became governor of Texas after the war) “raised the First Texas Cavalry for the Union Army; William Holden, whose unsuccessful 1864 peace campaign for governor of North Carolina became the backbone of white Republicanism in the state, and
William Brownlow . . . a Methodist preacher and Knoxville editor, who personified the bitter hatred for Rebels so pervasive in East Tennessee.”

But Southern values in most states in the South still held sway.

Though bitterly divided as the Civil War came on, the Union battle cry that was heard during the beginning of the war was for preservation of the Union. The Confederate reply was for the right to secede from the Union. The enormous issue that had brought opposing policies to an explosive head was slavery in the territories. Eric Foner elaborates on this condition by quoting an 1865 magazine, *The Nation*, as follows: “The prime issue of the war was nationality one and indivisible, and the loose and changeable federation of independent states.”

The North was not made up of white citizens who were ready to accept African-Americans on equal terms:

Barred in most states from the suffrage, schools, and public accommodations, confined, by and large to menial occupations, living in the poorest, unhealthiest quarters of cities like New York, Philadelphia, and Cincinnati, reminded daily of the racial prejudice that seemed as pervasive in the free states as in the slave, many northern blacks had by the 1850s all but despaired of ever finding a secure and equal place within American life.

Some Midwestern states after the Civil War either closed their borders or considered closing their borders to African-Americans migrating from the South. Whether the reason was fear of cheap labor or just fear of blacks, various degrees of racial prejudice were present in the North. Recognition of this attitude is one of the important points to understanding how public opinion in the North through the 1896 decision that denied Plessy a seat in the white section of the train was not unexpected. The North abhorred the outrageous atrocities committed in the South, but not enough to take sufficient action to stem these atrocities after Reconstruction.
After the rage of battle had quieted and smoke from the guns disappeared, the country drifted into an uneasy peace. Enactment of the 13th Amendment to the Constitution in December 1865, which outlawed slavery in the United States, had very little effect on lifestyles in the South. A way of life so thoroughly imbedded in the mindset of the prevailing state governments was not easily replaced. Although Union troops were stationed in the South to enforce Reconstruction, the transition did not go well; segregation laws preceded the 14th Amendment that dealt with “equal protection of the laws.”15 The ink was not dry on the 1868 endorsement of this amendment, when Mississippi and South Carolina were in violation through encouraging their segregation laws. “Mississippi required all blacks to possess, each January, written evidence of employment for the coming year. Laborers leaving their jobs before the contract expired would forfeit wages already earned, and, as under slavery, be subject to arrest by any white citizen.”16

How the new remade strata of society was to be set forth in real life was the awesome task of Reconstruction. The road to reconstructing the South was the challenge of the Johnson Administration in 1865 and the Grant administration until 1876. Eric Foner, the foremost scholar and historical author of the period of Reconstruction, has described it less as a work in progress and more as a process that failed to deliver.

Of the Civil War’s innumerable legacies, none proved so divisive as the series of questions that came to form the essence of Reconstruction. On what terms should the defeated Confederacy be reunited with the Union? Who should establish these terms, Congress or the President? What system of labor should replace plantation slavery? What should be the place of blacks in the political and social life of the South and of the nation at large? . . . One definitive conclusion emerged from the war: The reconstructed South would be a society without slavery. But even this raised as many questions as it answered.17
Eric Foner has offered the opinion that there was not just one obstacle to successfully rebuilding the South, but several issues that stood in the way of resolving issues that would never have simple solutions. If military rule presented one set of dynamics, the whole idea of how entire black families that had lived their lives as slaves could be converted to freed men, landholders, and independent individuals who could earn a living, was somewhat overwhelming. Thereby lies a leading question that Foner asks: “Doesn’t this raise more questions than can be answered?”

The failed transition from slavery to wage earner was the failed cornerstone of Reconstruction. The process of dealing with this matter had been openly discussed after the Emancipation Proclamation was issued January 1, 1863. In a January 1863 article, The New York Times had asked the question of how all this would work. Foner describes it as follows:

Of the many questions raised by emancipation, none was more crucial to the future place of both African-Americans and whites in Southern society than how the region’s economy would be henceforth organized. Slavery had been first and foremost a system of labor. And while all Republicans agreed that “free labor” must replace slave, few were certain how the transition should be accomplished.18

The transition into Reconstruction that began on a high note of good intent and optimism was never accomplished. What had been slave labor to a master who provided food, clothing, shelter, health care and even more limited bonus arrangements changed. It now moved to a freed man’s obligation to work the fields for low wages that could be sufficient to buy food, clothing, and shelter from a plantation owner. Foner points out that, “By 1865, hundreds of thousands of slaves in different parts of the South had become, under federal auspices, free workers.”19 For the most part, they became sharecroppers.
The resolution of transforming slaves, most of whom had little or no formal training in the skills required to earning a living, to productive wage earners, would be monumental. “[A]bolitionists like Wendell Phillips insisted that Reconstruction could never be complete until blacks had been guaranteed education, access to land, and most importantly, the ballot.”

Equality under the law had been a Republican goal since the days of Senator Charles Sumner of Massachusetts, but as flawed as that guarantee became, suffrage did not create equal opportunity for jobs, nor did it create equality of education. “In no realm of Southern life did blacks’ efforts to define the terms of their freedom have implications as explosive for the entire society as the economy. Blacks brought out of slavery a conception of themselves as a ‘Working Class of People.’”

Eric Foner has written that blacks equated economic freedom to owning land, rather than earning a living by sharecropping. “The desire to escape from white supervision and establish a modicum of economic independence profoundly shaped blacks’ economic choices during Reconstruction . . .”

Having been slaves to owners and to the land for nigh on two centuries, it is small wonder that ownership trumped every other ambition so firmly placed in a newly freed man’s mind. Foner echoes this assumption by citing one freedman’s words in post-bellum 1865:

In the most sophisticated form, the claim to land rested on an appreciation of the roles blacks had played in the evolution of the American economy. . . . freed man Bayley Wyat gave an impromptu speech protesting the injustice: “We has a right to the land where we are located. For why? I tell you. Our wives, our children, our husbands has been sold over and over again to purchase the lands we now locates upon, and for that reason we have a divine right to the land.”

This sentiment was expressed broadly through the agricultural South. The success of wealth throughout the South had been the fruits of agriculture for almost two centuries. Low
labor costs and the introduction of the cotton gin at the end of the 18th century had enabled cotton to become the nation’s leading export item. It was supported by deep harbors for ocean going cargo ships and Northern capital. Capital had vanished as quickly as Confederate dollars became a worthless, non-redeemable form of exchange after the war. Slave labor vanished and a wage labor system was in the works, following the war, but social issues were far from resolution. Controversy stirred the battle with greater vigor than resolving the labor issue. “Slavery, however, did not produce workers fully socialized to the virtues of economic accumulation. Despite the profits to be earned in early post-war cotton farming, many freedmen evinced a strong resistance to growing the ‘slave crop.’ ‘If old masser want to grow cotton,’ said one Georgia freedman, ‘let him plant it himself.’”

The evidence from a journal of direct statements makes it very plain— the old lifestyle was “gone” with the past prevailing culture, and a better way of life was on the horizon. For African-Americans living in the South with U.S. troops eventually stationed there to enforce the rules of Reconstruction, change was surely an eventuality. Part of the tragedy that became part of being black in the South, was that not much changed. The forces of a “White Man’s Government” and the sheer force of how a successful economy might go forward or fail, determined the fate of the black population.

Eric Foner points out that laws enacted after 1868 were written so that race could not be identified as an issue; the working rules on the ground made it perfectly clear for whom the laws were written. The era of Reconstruction in the United States was hardly a fixed time in which post-Civil War terms were neatly laid by which the former Confederacy should abide. (There were actually two reconstructions, Presidential Reconstruction followed by Congressional
Reconstruction.) It is vital in understanding those events that occurred between 1865 and 1876 that influenced *Plessy v. Ferguson*. Reconstruction, regardless of how it may be defined, neither *altogether* failed, nor was it an unmitigated success. Its failures are seen in illustrations that are included in this thesis. It succeeded only to the extent that it provided the rough groundwork over which the nation could move ahead both in terms of formulation of a public policy and the movement toward “Manifest Destiny.”

Eric Foner has written “that Reconstruction was not merely a specific time period, but the beginning of an extended historical process: the adjustment of American society to the end of slavery.” The adjustments that were anticipated never materialized. Foner goes on to say that “the issues central to Reconstruction are as old as the American republic, and as contemporary as the inequalities that afflict our society.”

Leading up to the first shot fired on Fort Sumter in April 1861, several events took place that caught the attention of citizens North and South and created fear in the South and a lost hope in the North that differences might be resolved. Southern political leadership spread fear that their sovereignty was being diluted by loss of control in the Congress, if slavery was outlawed in the new territories. That would happen if popular sovereignty was defeated and free soilers moved unrestricted into the territories and eventually new states. By the same token, the North saw the last hope of a revived union, vanishing, if popular sovereignty was allowed. William Seward’s 1858 campaign speech for the Republican presidential nomination declared that an “Irrepressible Conflict” would result if slavery was expanded into the new territories. Seward’s prediction proved to be accurate; it also cost him the nomination. Seward’s prediction, which carried an endorsement of abolition, did not suit the voting public. Seward increased the
intensity of both the abolition movement and of the notion of a war that would decide whether a state could secede.  

The Dred Scott case that went to the Supreme Court in 1857 produced a dynamic effect on citizens North and South by bringing in to sharp focus the definition of what rights slaves had on the one hand or what defined a condition of slavery on the other. The nation’s highest court denied slaves any of the rights guaranteed to United States citizens under the Bill of Rights of the Constitution of the United States. The law of the land had now written in stone the status of slaves as non-citizens with no more rights than the mules that they worked in the fields. The enforcement of the Fugitive Slave Act in 1850 made the law clear that allowed lawmen and bounty hunters from the South to enter free states, capture runaway slaves, and return them to their owners. The Dred Scott decision handed down by Supreme Court Chief Justice Taney raised the profile of the Abolition movement in the North to where it caught the attention of the population that had not dwelled on the slavery issue.

The drama created by John Brown’s raid on the armory at Harper’s Ferry, Virginia had sufficient media coverage and raised enough controversy to incite the popular imagination. If the slavery issue had been lacking in drama prior to the 1859 raid, it rose to fever pitch with the military trial in December 1859 that committed Brown to the gallows. His instant martyrdom incited the conscience of the North and satisfied the revenge motives of the Southern slave owners who felt vindicated as Brown was convicted for his crimes and then hung. It was no longer going to be acceptable for an individual to incite a slave revolt without paying the penalty; the peculiar institution had survived yet another assault on its practice. These events had the real
effect of defining not only the issues that lay behind slavery, but a wave of those differences that defined the culture in the North and the prevailing culture in the South.

William Seward had correctly defined the oncoming war as irrepressible, for Abraham Lincoln had foreseen during his debates with Senator Douglas in 1858 that “the house could not stand divided, half slave and half free.” The war to save the Union at a cost of some 750,000 lives would finally become the war to end slavery following the Emancipation Proclamation. The Proclamation that eventually led to the passage of the 13th, 14th, and 15th Amendments to the Constitution changed the course of history in the United States. Life in the South changed. What did it mean to be an ex-Confederate, living under the thumb of armed Union soldiers during Reconstruction? How did many in the defeated, desolate and sometimes despised South react to this post-war life? How did the culture south of the Mason-Dixon Line either change or materialize from 1865 to 1896 when Homer Plessy sued the railroad that denied him a first-class accommodation by virtue of a first-class ticket that he had presented to the conductor? These are very legitimate questions that arise when the laws that govern are in many ways influenced by the will of the people.

People create laws; they are not created without the hopes, aspirations, prejudices and experiences of those residing in a land of laws. Alexis de Tocqueville wrote about federal law in a democracy: “. . . the principle of union was kept alive by necessity . . . the common tie subsisted in spite of their imperfections . . . Each colony [following the War for Independence] became an independent republic and assumed an absolute sovereignty.”

Tocqueville presents a third person point of view in the 1830s of how the American Democracy functioned, what its strengths were, and what shortfalls might occur. He is quick to point out that, upon
independence, each colony was faced with challenges that could not always be overcome. But ratification of the Constitution brought the opportunity to gain the necessary federal power that could pay debts, raise an army to defend the frontiers, and establish a national identity.

Tocqueville presciently speaks of two governments, the federal government and the series of individual state governments. In this context, he describes accurately the interests of each state that may not necessarily tie in to the federal constituency.

The first question which awaited the Americans was so to divide the sovereignty that each of the different States which composed the Union should continue to govern itself in all that concerned its inner prosperity, whilst the entire nation, represented by the Union, should continue to form a compact body, and to provide for all general exigencies. The problem was a difficult and complex one. It was as impossible to determine beforehand, with any degree of accuracy, the share of authority which each of two governments was going to enjoy, as to foresee all the incidents in the life of a nation.  

Tocqueville, a Frenchman who studied the democratic system in America with great admiration and respect, forecast the conflict that would arise from the two interests that had defined North and South since the inception of the Union. His observations carry no preconceived ideas about what is right for America and what might be tainted, whether it was the dominance of financial strength in the North or the Slavocracy in the South. Tocqueville’s adversary to democracy was aristocracy. His observations were important in dissecting the causes of the inevitable and irreconcilable conflict that tore the nation apart and really did not bridge the cultural gap in April 1865 when the guns fell silent at Appomattox. Reconstruction, with initial intentions to help “re-construct” the physical damages heaped upon the South, failed to change the culture of the South that simply picked up where it had left off before the war. Tocqueville elaborates further.

The obligations and the claims of the Federal government were simple and easily definable, because the Union had been formed with the express purpose of meeting
certain great general wants; *but the claims and obligations of the individual States*, on the other hand, *were complicated and various, because their government* had penetrated into all the details of social life.\(^{31}\)

The Civil War was very much based on “claims and obligations” set forth by the eleven states that seceded from the Union and it followed that post-bellum United States was not going to settle down into a peaceful nation where a compliant South amicably agreed to alter a lifestyle that had been established well over a century before the war. *Plessy v. Ferguson* became a watershed in the long story of separate cultures. It legalized segregation without opposition from the North.

The year of *Plessy v. Ferguson*, 1896, was a watershed year because it was that perceived timeframe when the United States was poised to either recognize African-Americans as citizens with equal rights based on the 13th, 14th, and 15th Amendments, or carry out the role mandated by a number of states both North and South that would keep black Americans in a category as second-class citizens, equal under the law, but not treated as such.

Lincoln’s tragic assassination left a large gap in public policy, but Mr. Lincoln would not have been fully successful in carrying out the daunting task of piecing the South back together because there were too many elements and too many obstacles. Who would rule in the old states of the Confederacy was the primary concern. The almost immediate impact of the black vote followed the passage of the 15th Amendment in 1870. Economic issues arose revolving around a lack of a currency base in the former Confederacy after the collapse of its currency. All of the financing of farms and commercial industry would have to come from the North. Rehabilitation of small farms to feed the population, large plantations to revive the products of export, rebuilding of roads and especially railroads to move people and products, rebuilding commercial
buildings and banks, institutions, homes and entire infrastructures all presented an overwhelming task that only time, money, and labor could successfully achieve. Infrastructure had been destroyed; it was essential to rebuild it.

The sole result of the war that would emerge unchanged from the conflict’s announced policy was that all slaves would “henceforth and forever be free.” “The reconstructed South would be a society without slavery.”\textsuperscript{32} Initial programs of reconstruction of the South put forward by President Lincoln as early as December 1863 offered amnesty to whites who would take a loyalty oath to the Union; the proposal did not offer the same condition of citizenship to slaves. Three amendments to the Constitution, the 13th in 1865, the 14th in 1868, and the 15th in 1870, were passed to guarantee equal rights.

Reconstruction was fraught with problems and issues from its inception following the war. Anticipation of probable roadblocks to rebuilding the South to integrate and deal with freed blacks led to the creation of the Freedmen’s Bureau in March 1865. It was the result of the American Freedmen’s Inquiry Commission established in 1863 to seek out ways of working with newly freed slaves. “[T]he commission endorsed civil and political equality. . . . and a thorough ‘social reconstruction of the Southern states.’”\textsuperscript{33} Perhaps the greatest sociological challenge lay in the problem of how the South would integrate its four million African-Americans into a working society. Freed slaves, as it happened, stood little chance of becoming a positive working force. They remained a large part of the problem.

Uncertainty followed the war because the South was not only economically bankrupt, but it was practically void of any meaningful structure in governance except some sort of throwback to what had already been there. Following the war, control over governance was in the hands of
Vice President Andrew Johnson from Tennessee, an Army under the command of generals who had witnessed the death of tens of thousands under their watch, and a Republican Congress that became more vigilant and more radical than forgiving under their stewardship of the South. It is important to recognize this when the failures of Reconstruction are examined. Emotions and tensions ran high among the victors and leaders of the Union as well as among the conquered. Many in power chose to treat the former Confederacy as the conquered. The Freedmen’s Bureau was established to provide aid during the transition. The powers of the Bureau were ostensibly “to distribute clothing, food, and fuel to destitute freedmen and oversee all subjects relating to their condition in the South.”

Republican Charles Sumner, the leading abolitionist in the U.S. Senate, had wanted a permanent Cabinet status for the Freedmen’s Bureau, and although it failed to reach that threshold, the Bureau took on additional responsibilities including becoming a part of the 1866 Civil Rights Bill. Among other things, “one of the most important bills was presented to this House for its action’ . . . defined all persons born in the United States (except Indians) as national citizens and spelled out rights they were to enjoy equally without regard to race . . . making contracts, bringing lawsuits and enjoying” full and equal benefits of all laws and proceeding for the security of person and property. “. . . No state law or custom could deprive any citizen . . . (of) these fundamental rights belonging to every man as a free man.”

The Freedmen’s Bureau had extended its reach well beyond a temporary relief agency. The impact of the Freedmen’s Bureau was not just incidental to the governance of the South during Reconstruction; it became a force unto itself. “[B]y February 1866, Republicans had
united upon (Trumbull’s) Freedmen’s Bureau and Civil Rights bills as necessary amendments to Presidential Reconstruction.˜36

In a series of bizarre political maneuvers in which President Johnson chose to veto the Freedmen’s Bureau and Civil Rights bills, the Congress had been set to support the impact that the Bureau would have on the rights of black citizens in the South. The turbulence that followed between the White House and Congress over the power of the government to intervene into the lives of its citizens was symptomatic of the conflicts that would plague Reconstruction to its very termination in 1876.˜37 The fight between President Johnson and leaders in both the House and Senate could never be fully reconciled, and while Johnson’s impeachment fell short by a Senate vote, the rupture precluded any chance that a well-defined and effective Reconstruction policy could ever transpire.

Reconstruction was a creation of the Radical Republican Congress in power in 1866 following Appomattox. It was a necessary program for several reasons, but perhaps the leading reason was military policing of a land that had lost its way through four years of battle, deprivation, and civilian control. Reconstruction had other goals, but control of the civilian population was an immediate objective. Military management was never going to have a place in American life; British rule was still in the memory of those, South and North, who would always reject the notion of armed troops in occupation. The failure of Reconstruction would lay heavy on a public policy to achieve equality and opportunity to former slaves, now freed men.

The thrust of public policy that carried forward was conflicted about the importance of black equality or the sheer necessity of redirecting the country on the path to a full recovery following the War. A growing swarm of engravings that filled the pages of Harper’s Weekly and
Leslie’s Illustrated News tended to illustrate the wretched conditions of African-Americans but failed to hail the positive aspects of post-war recovery (see The Freed Slave print).

The inception of segregation laws was not a result of Reconstruction. The early laws were put in place soon after the surrender at Appomattox. With not either much fanfare or even a great amount of anticipation of what might happen, laws that would assure that African-Americans would be relegated to second-class citizenship appeared in the South. These laws should not have come as a shock to those observing their passage in the North let alone any of the citizenry in the South. More limited forms of segregation had existed in many parts of the North as well as in the South.

Within the [Union] army, black soldiers were anything but equal to whites. Organized into segregated regiments, they often found themselves subjected to abuse from white officers. Initially, black enlistment was intended to free whites for combat; accordingly, black recruits received less pay than white and were assigned largely to fatigue duty, construction work, and menial labor, with few opportunities to demonstrate their martial talents.38

It would have seemed more likely that Emancipation would have opened doors to equality in the nation that had largely remained closed. Attitudes do not change overnight, and cultural changes may take a century or two. That segregation laws almost instantaneously replaced slavery in the South was predictable, largely following the same trail that led to the Supreme Court’s 1896 decision. A way of life that had been in place for two hundred years was going to remain in place unless altered by the law of the land. Even with passage of the 14th Amendment to the Constitution that demanded equality and the 15th that guaranteed the right to vote, ways were discovered that would subvert the law and keep the rules of the road on winding curves rather than a straight path to compliance.
The Statue of the “Freed Slave” in Memorial Hall

by Fernando Miranda, *Frank Leslie's Illustrated Newspaper*, August 5, 1876.

A unique print on the Centennial Exposition in Philadelphia in 1876, depicting a range of black visitors gathered around a powerful visual symbol that commemorated their hard fought achievements. The statue of “The Freed Slave” was done by Austro-Italian sculptor Francesco Pezzicar.
Virtually from the moment the Civil War ended, the search began for legal means of subordinating a volatile black population that regarded economic independence as a corollary of freedom. . . . Many localities in the summer of 1865 adopted ordinances limiting black freedom of movement, prescribing severe penalties for vagrancy, and restricting blacks’ right to rent or purchase real estate and engage in skilled urban jobs. Opelousas, Louisiana, even established a pass system and curfew for blacks and barred them from living in town except as servants — regulations that attracted national attention . . .

Local planters in Louisiana petitioned the legislature for “a new labor system . . . prescribed and enforced by the state.” What had been intended in the opening phases of Reconstruction to be a system of stabilizing black labor in the South, became legislative sessions that would typically push the clock back to antebellum days, where as one individual amply described it: “[Louisiana’s legislature] whole thought and time will be given to plans for getting things back as near to slavery as possible.”

Mississippi and South Carolina followed Louisiana’s code with segregation laws that took the further step of requiring African-Americans to show written contract proof that they were employed. An African-American could be arrested by any white citizen if he was discovered leaving his job before the contract period was over, and “forfeit wages already earned.” It is not difficult to understand the plight placed upon the shoulders of men only recently freed from slavery with little or no prior experience in the workplace and now likely without the shelter and subsistence provided on the plantation. Freedom, indeed, shifted the burden from one shoulder to the other and left many in circumstances that could hardly be described as much of an uplift from servitude. What had been a life of service to a master became a life of independent poverty.

The South was determined to return to the fixed relationship of blacks and whites that had made up the antebellum way of life. The prevailing mood of the North following the war
was to forget the war, convert a wartime economy to the new industrial age and *push the frontier west to the Pacific Ocean*. Contending the rights to the western plains against the tribes of Indians that had occupied those lands was of far greater importance than interfering with life in the South. A continuum of segregation laws solidified the hold that the two-tier society had in the South and through benign neglect received no intervention in the North. “[S]pokesmen for a New South had no intention of seeing the finest land in the region fall into black hands.”

As President Andrew Johnson’s government took control of the country during the first period of Reconstruction, many loyal Unionists were not eager to open their ranks to recently enfranchised freedmen. This effort of real enfranchisement failed, but not under Johnson’s policy. On a parallel track, power remained with the planters because, in fact, freedmen did not become a recognized part of the Republican Party. Very early in the post-bellum restoration, Abraham Lincoln’s hopes for reunification along Republican lines of inclusiveness, fell well short of his goal. The failed policy of Johnson’s Presidential Reconstruction brought on the failed era of Radical Reconstruction. Eric Foner wrote “that the white South brought Radical Reconstruction upon itself.”

In Alabama, President Andrew Johnson’s provisional governor stated that “[t]he ‘great blunder’ was not to ‘have at once taken the negro right under the protection of the laws.’” Johnson’s Reconstruction had been an attempt to enforce the new amendments, but allow the plantation system to remain intact. Johnson has been roundly criticized for leaving too much power in the hands of the planters, even though he ordered the 13th Amendment to take its place as the law of the land. Initially, the North supported Johnson, but at the first sign of failure, radical Republicans in the House of Representatives forced the president’s hand and brought
about an era of governance backed up by the presence of the Union army. This was hardly an act of peaceful reunification. Some of the illustrations included within this thesis clearly show unintended consequences of Radical Reconstruction as the segregation laws demonstrate where rule in the South was headed. “Invocations of the [segregation laws] as a ‘disgrace to civilization’ quickly became a staple of black political rhetoric. ‘If you call this Freedom,’ wrote one black veteran, ‘what do you call Slavery?’”

It is inconceivable how President Johnson, a Tennessee Republican with Southern leanings, could have mastered the enormous challenges forced by any form of Reconstruction or could have satisfied all parts of the spectrum that made up the post-war stage. It is likely that a more adept and experienced politician like Abraham Lincoln or even possibly William Seward, might have carried out a somewhat more successful transition. Johnson was initially committed to be loyal to Lincoln’s ideas for Reconstruction following the war, but was unfit to successfully reunite North and South as his term began.

Andrew Johnson has been described as:

Largely illiterate until his wife taught him enough so he could pursue his political career, he was a firm believer in the limited government, states’ rights, and strict construction of the Constitution views of the Democratic Party. He also knew his (political) future did not lie with the Republicans. . . . Moving cautiously at first, then more boldly as he gained his footing, he began the rehabilitation of former Confederates largely while Congress was away on its long summer and fall break with his announcement in May of his version of Reconstruction.

Congressional Reconstruction incorporates some of the radical demands, but the program still was voted up by a majority of the House of Representatives and was not fully an instrument of a few radicals. Johnson’s Reconstruction included unwise decisions to pardon wealthy planters based mainly on old friendships. This was not an intolerable move when consideration
is given not just to governance in the post-bellum South, but who was going to govern. Who was really best suited to take over the task of administering a land that had been devastated by a war that left no building standing in many locations and no tools with which to rebuild?

The problems arose when the conditions under which the new government would govern were spelled out. For example, the benevolent work of the Freedmen’s Bureau was ordered to stop. Even in states such as Louisiana, where the Freedmen’s Bureau had helped to make great strides toward equality and equal opportunity, the new directive following the Freedmen’s Bureau did more toward reverting the state back to a condition of a somewhat more benevolent condition of slavery. Restrictions placed on ex-slaves would do nothing to enhance anything close to equality under the 14th Amendment. Opportunity for African-Americans was largely limited to squeezing out a living on farmland given over to sharecropping.

The 14th Amendment followed the reintroduction of organized racial prejudice in the South, but in order to gain passage both in the South and North, compromise was necessary, a “narrow scope” rather than broad powers to carry equality to the black population.

The negative construction of the amendment’s language reflected its narrow scope. Its authors had to make it narrow in order to gain approval outside of the South. Some Northern state legislatures were just as discriminating in their enactments as Southern states. Outside of New England, segregation and the denial of equal rights to African-Americans were common place. Even . . . Washington, DC, was segregated . . . a fact that would add to the arsenal of those arguing that the Fourteenth Amendment did not prohibit segregation by race.49

Discrimination and segregation were as common in parts of the North as in the South. As President Lincoln had modified the Emancipation Proclamation in order to not lose support from the border states, the framers of the 14th Amendment modified and narrowed the scope of that vital document in order to retain the necessary votes from the North. A modest amendment
Freedom to the Slaves

by Currier & Ives

In this dramatic illustration showing Abraham Lincoln with the slave family liberated by the Emancipation Proclamation, the artist has combined symbolism and the emotional lift that accompanied the Proclamation.

The broken shackles are in the foreground. I believe the river in the background may be the River Jordan, not the Potomac.
FREEDOM TO THE SLAVES

Proclaimed January 1st, 1863, by ABRAHAM LINCOLN, President of the United States.

"Proclaim liberty throughout All the land unto All the inhabitants thereof."  LEV XXV. 10
Reading the Emancipation Proclamation

James W. Watts, engraver; Henry Walker Herrick, delineator

The print shows a white Union soldier reading the Emancipation Proclamation to a slave family in their cabin. The family members surround the officer near their dining table. One of the boys holds a torch providing light, while other children are clinging to their mothers. The father is standing behind the soldier looking over his shoulder. Other members are praying or cheering.

Original painting by Herrick was exhibited at the National academy of Design in New York in 1865.
The Broken Shackles

This illustration represents one of the best of the Emancipation era. The freed slave approaches President Lincoln in a long awaited moment of gratitude. Significantly, the war still rages in the background, vividly announcing that there is a long way to go before black and white can see light at the end of the tunnel. In testimony to the times, the conflict has not yet reached its midpoint; 750,000 will have perished on the field before the last bugle blows retreat. The healing has yet to begin.
stood the only chance of acceptance; the terms of the 14th Amendment did not project a wholesale change in the way the U.S. Constitution was written. Perhaps that is one of the underlying reasons why, to this day, most sections are left open to interpretation.

Governor Reuben E. Fenton of New York recommended the amendment to his legislature by arguing that it would provide the basis for laws to “educate, improve, enlighten, and Christianize the negro; to make him an independent man; to teach him to think and to reason; to improve that principle which the great Author of all has implanted in every human breast, which is susceptible of the highest cultivation and destined to go on enlarging and expanding through the endless ages of eternity.”50

The extremely high illiteracy and innumeracy rates among the vast majority of the white population in the South went unnoticed. It was region, not race, that correlated with the need to “educate, improve, and enlighten” Americans.

An unenlightened South did not change because the Confederacy lost the war. The generally assumed notions and theories of racial inequalities dominated the thoughts of a great segment of whites in America. With these preconceived ideas in mind among many, it was going to take more than a war, constitutional amendments, or the more enlightened teachings from a few to bring about considerable change. It was not only conceivable, but inevitable that Homer Plessy would never ride the rails in a non-segregated railroad car some thirty years later.

The central theme of the Plessy v. Ferguson trial was the notion that however the newly “reconstructed” states of the South wished to be governed was made acceptable according to post-Civil War reasoning. That reasoning was prevalent in the South and not subject to enough criticism in the North to create a wave of protest. The high court based its decision on the majority decision by Justice Brown. The lone dissent was eloquently given by Justice Harlan, a former slave holder, but a sincerely “reconstructed” justice whose lines of reasoning not only appropriately stated the dissenting position, but that also became eerily prescient of what was to
follow into the 20th century. His dissent developed in the following manner: “In respect of civil rights, common to all citizens, the Constitution of the United States does not (I think) permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights.”

He positioned himself as a strict constructionist of the Constitution who was willing to defend the wording of the 14th Amendment. Harlan never wavered or equivocated in his dissent over the meaning of the 14th Amendment, which guaranteed the rights of all U.S. citizens. He declared that the Constitution was “color-blind.” “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . nor deny . . . equal protection of the laws.”

Harlan’s dissent, along with the 14th Amendment, seemingly should have been sufficient to persuade four other members of the Supreme Court to support his position. But landmark cases going back as far as the Dred Scott Case in 1857 seemed less decided by prevailing interpretation of the law as much as they were by the atmosphere of public opinion that would prevail at any particular time. Public opinion in the United States did not move with tidal force. It gathered momentum in one direction or the other by virtue of deliberately slow movements. Abolition of slavery did not come about suddenly nor did it occur until a wave of public opinion forced the hand of servitude, which reached its day of reckoning in the opening years of the Civil War. Abolition of slavery did not occur until the Emancipation Proclamation actually abolished slavery in the states that were in rebellion, but the door did not close on slavery until December
1865, when the 13th Amendment was ratified. It had taken about half a century to abolish slavery in the United States since the early arrival of abolition societies.

The question arises as to whether a decision to enforce railcar integration could have been enforced. Unenforceability of a new law that destroyed an old Jim Crow law would have created a problem unto itself. “On the one hand, . . . even if the Court had been disposed to jettison their post-Reconstruction, reconciliation views, the justices could not have stemmed the tide of racial segregation with a decision, even if it had been unanimous. The Congress and the president [and very likely the people (writer’s note)] were not with them.”

Enforcement could not have been carried out by a vastly reduced army; armed enforcement had not met with much success during Reconstruction. In fact, it created more problems than it solved. “The white supremacist South was as well armed and in control as it had been since before the Civil War. They would have segregated anyway, and the Court would have suffered a blow to its prestige from which it would not recover. . . . The Court was powerless against the Jim Crow tide.” The court of public opinion in the South was indeed unchanged since antebellum days.

The most demanding issue that would affect how Americans would react to the postwar civil rights movement was the “equality to all” mantra of Massachusetts Senator Charles Sumner that influenced the “equal protection of the laws,” Section I provision of the 14th Amendment. Reconstruction in the South had introduced armed U.S. troops in the name of carrying out all of the new civil rights provisions. Americans in the North had been largely incensed by the brutal treatments of slaves and had reacted positively to the passage of the 13th, 14th, and 15th Amendments. However, in the years following the end of Reconstruction, public opinion took a
decisive turn in the road. “Equality to ALL,” “due process of law,” and the provision in the 14th
Amendment that no state shall make or enforce any law “which shall abridge the privileges” of
any citizen of the United States became merely reminders of intent, but not of fulfillment. What
were the circumstances that sidetracked such noble intent into almost meaningless rhetoric?
There were several.

The end of the Civil War brought on a time of forgetting, of moving past the devastation
rather than one of remembrance. Remembering the past came later in the century in the form of
reunions and solemn services on Memorial Day. Putting the past aside for the years immediately
following the war also put aside some of the reasons that the war was fought. “Irrepressible
Conflict” had many sides to it, but the last reason that the Union gave its citizens and issued
orders distributed by the Army to all of its troops was the battle to end slavery in all of the
United States. Ending slavery was carried out, but extending equal rights was not. Voting rights
were extended by armed troops following the passage of the 15th Amendment, but when the
troops left the South in 1876, the right to vote became hazardous for African-Americans. Voting
rights all but vanished in the South as a result of outright threats, poll taxes, and qualifications
that were written to discourage black voters.

Perhaps the passivity by many whites, both in the North and South, is illustrated by the
Currier & Ives hand-colored lithographs showing African-Americans in unflattering situations,
demonstrating the comic display expected by white readership. The illustration shown here was
part of, or associated with, the Darktown Series, published by Currier & Ives in the latter part of
the 19th century.55 The Darktown Series provides direct evidence of cultural attitudes prevalent
among whites. African-Americans were considered an inferior subculture, as shown in these
Currier & Ives Lithography Co. in New York produced many of the 19th century’s most memorable scenes of America that included everything from the tall ships of the sea to the placid scenes of New England, middle America, and the South. Currier & Ives turned out hand-painted lithographs that sold because of their appeal rather than their content.

The advertisement for fire equipment shown opposite was popular because of the misapplied comic details of black Americans perceived by North and South of accurately representing the ineptitudes most commonly perceived. Kept in the role of underachievers for decades following their freedom, the road to respectability remained a long one. The picture speaks for itself in the same way that Nast’s portrayals of inequalities and unequal treatment tell his stories.
RUMSEY'S DARKTOWN HOOK AND LADDER CORPS.
Going to the Front.

RUMSEY & CO. (LIMITED)
prints. There were noticeable exceptions like Frederick Douglass, George Washington Carver, and W.E.B. Du Bois, who all came along during a half century from 1850 to 1900. A part of white America did not associate them with the black population, which was held as almost totally illiterate, incompetent, and surely not worthy of sitting next to or around whites in a railroad car. The advent of the Plains Wars against the Indians had provided the distraction necessary to keep the concept of “equality under the law” well in the background.

An illustration in the Schiele Collection is the cover of a piece of Stephen Foster sheet music published in the 1880s. The African-Americans are shown in their relegated roles as folk musicians, sharecroppers in the field — not being held to any higher standard. These are very nice, easygoing people, but not those with whom white middle class America wished to associate (see *Plantation Songs*, p. 27).

Among the noted political illustrators of the time, Thomas Nast made an interesting transition from stereotypical drawings of African-Americans displayed alongside his real nemesis, New York Irish, to sympathetic renderings of the real brutality poured on African-Americans in the South during Reconstruction. But the African-Americans are victims, not possessing the capabilities, shown by Nast, of making their own way (see *This is a White Man’s Government*, p. 23). There were few authors or artists promoting civil rights who made much of an impression on the white population during post-Reconstruction days. The more widely-publicized stories and pictures dealt with the West; Indian fights were of far greater fascination than old stories dealing with slavery or emancipation of African-Americans. Black culture was perceived to be inferior. The best publicists about black society were those in the South who
carried through the Stephen Foster theme that African-Americans were happy in their role and simply wanted to be left alone.

   I’m comin’, I’m comin’, for my head is bending low — I hear those gentle voices calling, “Old Black Joe.”\footnote{56}

   There may well have been advocates for equal treatment under the law, but they were not heard with the intensity of William Lloyd Garrison in his publication, \textit{The Liberator}, or through Charles Sumner’s voice in the United States Senate. All of this reinforces the picture of a black America still being held captive to the old rules of white society in America — not because the population, particularly in the North, was not concerned or not caring, but because other priorities lay ahead and took the spotlight. When it is considered that only one Supreme Court justice out of eight who heard \textit{Plessy v. Ferguson} voted for Homer Plessy. A heavily weighted political decision was made. Abraham Lincoln crafted a very well-constructed Proclamation of Emancipation, which he wrote three different times and brought to his Cabinet three times, over a six month period, before he finally released it as a presidential order on January 1, 1863. Even then, there were uncertainties as to whether this proclamation that would free the slaves of states still in rebellion, would even work, let alone be accepted by the states in the Union. There was no such groundswell to support the real meaning of the Constitution, as \textit{Plessy v. Ferguson} was being debated by the Court.

   Careful examination of two watershed trials convincingly shows that there was not much public enthusiasm about the outcome of either the Dred Scott case in 1857 or the Plessy case in 1896. Excerpts from two different newspapers follow.
The first excerpt, “Decision in the Dred Scott Case,” was published on March 7, 1857, one day after the decision was reached by the Supreme Court after three hours of deliberation, in *The Daily Journal*, Indianapolis, Indiana; the article was only one-third of a column length. The Dred Scott decision drew more negative reaction during the latter part of the 19th century. Based on contemporary news reports, it did not initially capture the public’s attention. The essence of the short article was: Dred Scott remained a slave.

The second article was actually printed on page 2 of the newspaper, *The Republic*. “Fremont for President” is the lead article. *Plessy v. Ferguson* was written up as follows. Neither article shows any bias; there is a notable lack of real interest, although the Dred Scott decision became a rallying cry for Frederick Douglass, William Lloyd Garrison, and the growing numbers of abolition supporters. Whatever reaction to the Plessy case existed did not become clearly evident in the weeks that followed. Justice Harlan’s dissent was not only a heroic effort to raise the conscience of the public, but it turned out to be a grim forecast of segregation in America. Jim Crow thrived in the South (particularly) until 1964. “Homer Plessy was no random passenger in a whites-only railroad car that a conductor spotted . . . it is unlikely that the conductor would have confronted him, reported him, and had him arrested without prompting . . . Plessy appeared to be just as white as anybody else in the train car.”

The move “to win a constitutional challenge to a legislative enactment” was not an unusual way of conducting this kind of battle for racial justice. A group in New Orleans of Afro-Creoles had “arranged to have Plessy arrested for violating Louisiana’s Separate Car Act” so that the case could indeed be tried in court. But the organization committed to bringing the Louisiana Separate Car Act to trial realized that they really had no other chance of exposure.
From the *Indianapolis Daily Journal*
March 7, 1857

**Decision in the Dred Scott Case**

The decision of the Supreme Court in the Dred Scott case was declared today by Chief Justice Taney.

1st. The negroes, whether slaves or not, are not citizens of the United States by the Constitution.

2nd. That the Ordinance of 1787 had no constitutional force . . . to confer citizenship or freedom . . . on negroes not citizens . . .

3rd. That . . . the Missouri Compromise was a legislative Act exceeding the powers of Congress, and void of no legal effect . . . Congress could not do directly what it could not do indirectly . . . and the Missouri Act of 1820 violated the leading features of the Constitution, it was therefore, void . . .

*Scott is a slave, and was so when the suit was brought.*

This article is excerpted for this thesis from an original copy of the *Indianapolis Daily Journal* from the James. E. and Joan Singer Schiele Collection in the Olin Library, Washington University in St. Louis.
The Supreme Court of the United States decided today in what is known as the Jim Crow Car Case of *Plessy v. Ferguson*, that the statute of the state of Louisiana requiring railroad companies to supply separate coaches for white and colored persons is constitutional, affirming the decision of the court below. Justice Brown delivered the opinion. Justice Harlan dissented.

“The U.S. Congress, along with much of the nation, had tired of Reconstruction, and the state courts in the South were hostile to a challenge to segregation.”

The state court in Louisiana had upheld the Separate Car Act, but the Supreme Court had “already shown its willingness to apply a stricter standard to review the constitutionality of state laws . . .” The fact that the high court had already reviewed the constitutionality of state laws gave reason to listen to this constitutional challenge involving the 14th Amendment. There had not been a host of segregation laws that the high court had heard; perhaps that is why this one faced long odds. Its overwhelming failure to achieve passage in the Supreme Court simply added a measure of assurance that Jim Crow laws in the South were well secured and that segregation by law would be the governing way of life for the foreseeable future. The future extended beyond *Brown v. the Board of Education* in 1954; segregation in the South remained
firmly in place until President Lyndon Johnson’s Civil Rights Act in 1964 became the law of the land. *Plessy v. Ferguson* moved the clock back by legitimizing segregation where it was found, but it also moved the segregation clock forward 68 years.

The results of *Plessy v. Ferguson* (May 18, 1896) are shown on the following page. Sections 1 and 2 of the Louisiana Separate Car Act have clearly stated the intent of the law. As Justice Harlan eloquently stated in his lone dissent: “. . . in view of the Constitution, in the eyes of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. *Our* Constitution is color-blind and neither knows nor tolerates classes among citizens.”

How could Justice Harlan’s well-constructed, magnificently crafted statement in defense of the Constitution and supportive of the plaintiff have been denied? Since 1954 it has not been denied; it has been raised to a standard in the United States last achieved with passage of the 14th Amendment that he labored so hard to define and defend. With the decision rendered in this case, Jim Crow would prevail well into the 20th century.

Slavery passed into history at the end of the Civil War — Jim Crow didn’t. The original Jim Crow was a slave in Louisville, KY. His antic song-and-dance routine inspired the creation of a black face minstrel act in 1828. . . . In symbolic form, Jim Crow traveled the railroads of the United States. He was a familiar passenger in states that sanctioned . . . slavery from the 1830s through the end of the Civil War.

Whereas Jim Crow laws originated on the rails, the law took flight and made itself explicitly perceptible in many other phases of life, notably in the South. After passage of *Plessy v. Ferguson*, segregation in schools, hospitals, hotels, restaurants, and just about every other place of public gathering became the way of life in the South. Segregation had claimed a legitimate basis for its own peculiar lifestyle; it had adequately replaced the peculiar institution
From West’s Encyclopedia of American Law

**Plessy v. Ferguson**

1. An act requiring white and colored persons to be furnished with separate accommodations on railway trains *does not violate Const. Amend. 13*, abolishing slavery and involuntary servitude.

2. A state statute requiring railway companies to provide separate accommodations for white and colored persons, and making a passenger insisting on occupying a coach or compartment other than the one set apart for his race liable to fine or imprisonment, *does not violate Const. Amend. 14*, by abridging the privileges or immunities of United States citizens, or depriving persons of liberty or property without due process of law, or by denying them the equal protection of the laws.

of slavery in almost all respects except the servitude attached to slavery. The rails had oddly enough supplied the basis that legitimized segregation in spite of the fact that railroads had played a large role in the spiritual life of African-Americans in America. Symbolically, even as rail segregation took over the seating of passengers, railroads had become a hard symbol of servitude and confinement. “One of the earliest descriptions of black railroader’s songs comes from . . . a traveler who observed a group of enslaved train hands singing in unison as they loaded a freight train in South Carolina in 1853. ‘Come brethren come . . .’ In a few moments they all had their shoulders to a bale of cotton and were rolling it up the embankment.”

Incorporation of music into the rails strengthened the connection between the power of the locomotive and a ride to freedom.
Train imagery quickly entered the spirituals, sometimes by simple substitution . . .
“Train comin’, let me ride. Oh low down the chariot and let me ride.”
This gospel was born from “Swing Low, Sweet Chariot.”

An abundance of gospel train imagery has defined the landscape over which African-Americans developed this kinship with the rails.

The gospel train is coming.
I hear it just at hand;
I hear the car wheels moving,
And rumbling through the land.

The irony of freedom trains and denial of passage in some form on some trains brings further intensity to the exploitation of one race by another due to color. The episodic journey of hope tied to freedom trains and then denial of rights granted by the law of the land is both difficult to comprehend and more difficult to accept.

The entire saga of the separate but equal concept is bound up in elements of rulemaking that had taken root in America long before there was a Bill of Rights, a Constitution, or even a Declaration of Independence. The long tortured road back to the origins of slavery had created the groundwork for those rules that never seem to have vanished. In 1909, the National Baptist Publishing Board put out its Legislative Enactments First Edition entitled, The Separate or “Jim Crow” Car Laws, by Richard H. Boyd. This first edition includes the laws of the fourteen states in the South that had published laws that enforced separate but equal facilities to accommodate intra-state travel. The introduction to this edition includes wording that is tangled. In part, it reads as follows:

The purpose of this little book is to be a constant companion in the pocket or hand of every self-respecting, law-abiding Negro who is compelled to travel by rail in any of the fourteen states of the Union that have passed separate or ‘jim crow’ car laws for the purpose of humiliating and degrading the Negro race in the eye of all the civilized world. It may be surprising to the reader if he or she will peruse and study carefully these so-
called ‘jim crow’ laws or legislative enactments to learn that according to the letter of the law there is no ‘jim crowism’ in these laws if properly and justly enforced or executed. One of the peculiar features of these enactments is that they have a sameness in each state and if they were properly enforced or executed by the courts, or obeyed by the railroad companies, they would truly promote the comfort in travel of all colored passengers, for each one of these legislative enactments requires the railroad companies to furnish separate but equal accommodations. Every accommodation on coaches or in waiting-rooms that is provided for white passengers is required by these enactments to be furnished to colored or Negro passengers paying the same fare. . . . It is, therefore, the imperative duty of every Negro to familiarize himself with the enactments of the fourteen states and when traveling in any state strictly obey every requirement . . . . If the traveler is an interstate passenger, complain to the Interstate Commerce Commission . . . if a state passenger, complain to the state commission . . .

I believe this was written as a tongue-in-cheek set of rules that satisfies local state laws.

Complaints may be raised if the Car Laws are not followed by the railroad. The fourteen states that enacted Jim Crow railroad laws were as follows: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. It, possibly, best explains why the entire Jim Crow legal system almost takes on a comic opera air if it did not represent such a tragic and long-lived period in American history, spanning parts of two centuries. Most of the car laws have very similar clauses that reach the same conclusion; blacks and whites shall be quartered in separate but equal accommodations.

In Louisiana, the 1890 Car Law was amended in 1894 to explicitly state that it:

Entitled an Act to promote the comfort of passengers on railway trains, requiring all railway companies carrying passengers on their trains, in this State, to provide equal but separate accommodations for the white and colored races, by providing separate coaches or compartments so as to secure separate accommodations, defining the duties of the officers of such railways; directing them to assign passengers to the coaches or compartments set aside for the use of the race to which such passengers belong; authorizing them to refuse to carry on their train such passengers such as may refuse to occupy the coaches or compartments to which he or she is assigned; to exonerate such railway companies from any and all such blame or damages . . . to prescribe penalties . . . to repeal all laws . . . contrary to the provisions of this act.
This was the act that set the stage for a trial that became the most notable failure of justice in America since the Dred Scott trial. Dred Scott gained his freedom in 1858. African-Americans in America did not gain theirs until 1964.

The winding, sometimes dark, road that led to the passage of the 1964 Civil Rights Act was 68 years from *Plessy v. Ferguson*. The Spanish American War, two World Wars, the Korean War, and the Vietnam War had covered the landscape with bodies of both black and white, who sacrificed their lives to freedom. But the hallmark of freedom does not necessarily include the rights of all those who have made the ultimate sacrifice. Injustice in the United States was not a matter of choice; after *Plessy v. Ferguson*, it was a creation of the law. What had been state law custom in denying equality to African-Americans became the law following *Plessy v. Ferguson*. The fate and lifestyles of American Indians rested on premises: unwanted removal, the shrinking size of Indian reservations, and outright plains warfare were at the root of the “Indian Problem.”

The eminent British military historian, John Keegan, has objectively written about phases in American history and has summarized some of his own ideas about Westward Expansion in *Fields of Battle: The Wars for North America*. The ill-fated “Ghost Dance” of the Sioux tribe had triggered the last full scale assault of overwhelming U.S. Army power against a far weaker adversary. The Ghost Dance was a last ditch effort to recall departed ancestors back to earth to help seek revenge, but it aroused the Army and destroyed 150 Sioux at the massacre at Wounded Knee.

Self-reliance and the sense of liberty bled back from the frontier to make all Americans innovators, democrats, and wanders, fiercely nationalistic as individuals but free of the particularistic attachment to a locality or homeland that divided Europeans against
themselves. If that were true, it would explain the pitiless relentlessness with which frontier Americans battled against Native Americans for possession of the continent.\textsuperscript{71}

The movement west in the last quarter of the 19th century represented not only opportunity, but with finality became the strongest link in a public policy chain that also included urbanization and industrialization in an expanding nation on the threshold of global power. Keegan has integrated his own thoughts into that relentless expansion West: “Little wonder that the European immigrants who made their way onto the Great Plains in the 19th century, Slavs of Eastern Europe, Russians from the Steppes . . . If the Indians’ fate was to meet head-on in battle [with] people as tough as themselves, veterans of a civil war . . . so be it.”

The Little Bighorn had ignited the flame of public opinion that sent the larger and better armies chasing the remnants of once proud tribes to their death or to Indian reservations. The entire movement west issue was vast and complex. The extraordinary number of wagons moving west after the Civil War had established a mobile population pattern that would not be denied, nor could it be easily controlled by the federal government, which always had maintained an interest, if not an obligation, to protect the rights of the Native Americans who lived on the plains. But political forces came even more strongly into play by mid-century as railroad interests created more pressure for transcontinental routes. “The agitation for a railroad to the Pacific . . . was an important force in clearing the central region of its Indian inhabitants. . . . by 1853 the need was so universally agreed upon that Congress authorized surveys to determine the most appropriate route.”\textsuperscript{72}

Westward Expansion became the locomotive that drove public opinion in the last quarter of the 19th century. The new wave of settlers included large segments of immigrants from Europe who became the emigrants pictured heroically making their way into the unknown, the
Caught in the Circle

The third part of the Remington trilogy in this study, *Caught in the Circle: The Last Stand of Three Troopers and a Scout Overtaken by a Band of Hostile Indians*. The Indians are circling this group of four plus three dead horses at a distance that will make it unlikely that the trooper’s carbines would be successful in bringing any of the enemy down. The Indians are more in numbers and are firing into a fixed target, so it is simply a matter of time before all troopers die. The odds of rescue are not favorable. The desperate scene is typical of what the western artists wished to portray to their national audience; manifest destiny does not come without sacrifice; the battles will not be easily won; it may take a long time to tame the West because the enemy is well armed, skilled, and desperate to hold on to their ancestral lands. That time only became glamorized by the novels, Wild West shows, and pictures that followed. The pictures described here were more the stuff of news, intending to both educate viewers and promote the policy of westward expansion. Pictures were an important part of the way people learned about current events.
Emigrants Crossing the Plains

Emigrants Crossing the Plains, by F.O.C. Darley, a talented artist of the Civil War and the era that followed, stands above the multitude of prints that depict a critical time in 19th century American history. Westward expansion had been an economic, sociological, and cultural phenomenon for a half century when this post-bellum engraving was created. As the population of the eastern and mid-western states grew, the lure of the largely unexplored west stood out as the part of the American experience that had only been lightly touched. Civilization beyond the reaches of the Mississippi River and the Rocky Mountains was a dream of many, but the claim of a very few.

The effect of wagon trains west, pictured in Darley’s print, was devastating to American Indian tribes that inhabited the western plains. Darley’s print is a marketing piece. It pictures a complete family consisting of husband, wife, children, elderly relatives, all belongings, oxen, dogs, cattle, taking up the trail behind the head scout. The trail leader eyes the trail beyond, rifle at the ready, a commander in buckskin who displays confidence, experience, and leadership. The head of family is the central figure in the print striking a classic Greek pose, indicating courage, forbearance, and responsibility for any consequences that may arise during the journey. The Mother and Child in the lead wagon give assurance to any of those that might find the journey intrusive; the placid scene depicts solid family values with deep religious overtones that cannot be overlooked. The length of the wagon train reminds the viewer that Westward Expansion is an endless procession, undeterred by losses that shall occur along the way and denotes the ultimate theme of “Manifest Destiny,” so richly displayed by pictures and live action that it became part of national policy.
**Indians Attacking a Wagon Train**

by Emanuel Leutze, Oil on canvas (3 ft. x 4-1/2 ft. before frame), 1863

Quoting from the Metropolitan Museum of Art description:
“Spotting two tiny mounted figures in the distance, a caravan of pioneers realize that they are about to be confronted by a band of hostile Indians, while a buckskin clad scout at the left (of the picture) signals the best escape route, the migrants prepare for impending attack. The man on a galloping horse at the right (of the picture) brandishes the stars and stripes emphasizing the mobility of the quest for National Expansion despite dangers . . .”

Comparing the oil on canvas by Emanuel Leutze and the hand-painted engraving by F.O.C. Darley, several observations easily tie the two illustrations together.

1) The scout in buckskin leading the wagon train in Darley’s print, rifle at the ready, gaze fixed on the landscape, now has moved ahead in the Leutze picture and has swung around in the saddle to direct the wagon train to safety. His rifle is now being held in an action mode.

2) The wagon train moves faster in the Leutze picture. The oxen are being pulled along by emigrants acting as teamsters.

3) The woman and infant pictured as “mother and child” in Darley’s print are shown in a more animated position, preparing for an Indian attack

4) The dog that had been drinking rainwater in Darley’s print is running ahead with a boy.

5) The only constant, significantly, in the two illustrations is the father, head of family, who moves along with the wagons, but strikes the same classical pose that would seem to indicate that this family is strong and will survive whatever dangers come along. *He is the constant.*

6) The red-clad scout on the right (of the picture) unfurls the stars and stripes and moves up the line quickly as if the pioneers are preparing to circle their wagon train and prepare for an outright assault. This man is in a battle mode. He has served in the Civil War or at least in the cavalry out west and knows how to defend against impending attack.

7) The landscape is the rough and tumble of the plains, alike in both illustrations. It is a moving picture. In the sequences, Darley’s print shows the long, stretched out movement of emigrants entering a new land and a new life, while Leutze’s picture clearly demonstrates the risks that abound. The outcome is not shown; it shall be determined later.

“Attacking wagon trains of settlers and taking captives was a way for Plains Indians to instill fear in settlers, who were moving westward, while also repopulating their own dwindling populations due to war and disease. Paintings such as Emanuel Leutze’s *Indians Attacking a wagon Train* of 1863 depicted the white settlers defending their women and children from the savage and cruel Indian attackers. The fear and anxiety of possible captivity was a prevalent part of the ‘Western experience’ . . .”

The Emigrant Wagon — On the Way to the Railway Station

*Harper’s Weekly*, October 15, 1873

Paul Frenzeny and Jules Tavernier, artists

“. . . a single-page illustration depicting the transportation of emigrants from the boarding house to the cars for western migration . . .”

Morning Mustering of the “Contrabands”

This scene from “The Soldier in our Civil War” was drawn a half generation after the surrender at Appomattox. Memories were still vivid of newly freed men enlisted for service repairing the broken rail lines in Mississippi, Alabama, and Louisiana. Freed blacks were still referred to as “Contrabands,” dating back to the war’s early days where they were considered contrabands of war.
Thomas Nast was the most outspoken and prolific cartoonist of the last half of the 19th century. He was a confirmed Unionist who despised the Confederacy, had little use for the New York Irish, whom he considered to be on the same intellectual level as uneducated whites and blacks living in rural America. He depicted all classes of less-educated Americans with a degree of contempt. He equally despised the return of white supremacy to the South following Reconstruction, when the army pulled out of the Confederacy. This not too subtle cartoon displays a changing of the guard at just this time.
The Next Army Bill

By the Democratic Caucus

Expression of:
1. That so-called Federal Government has no rights that stay at home to respect.

2. That the so-called U.S. Army must be submitted to the U.S. Army.

3. That all "black measures" in the statute book must be wiped out.

The so-called Select vote must be in my hands.

FRANK GRANGER

BAYONET GARBS

U.S.A. "Keep the Trousers on the Polls!"

U.S.A. "We'll keep it!"
land beyond the horizon. Hard terrain and foul weather possibly played as large a role in wagon train catastrophes as Indian raids, but Plains Indian warfare captured the public eye. A successful lifestyle of African-Americans in America was left in the wake of wagons moving west.
Chapter 3: Westward Expansion and Civil Rights: Enter George Armstrong Custer and Indian Culture

The great questions that arose after the guns fell silent at Appomattox were who should rule in the South and how would governance operate under the rules of Reconstruction? Reconstruction struggled under its own rules and provisions through 1876, but its greatest impact was on the lives of the black population and American Indians, especially after Lt. Colonel George Armstrong Custer’s defeat at the Little Bighorn River in Montana on June 25, 1876. Change in public policy following the Little Bighorn occurred as Reconstruction ended with the last year of President Ulysses S. Grant’s administration. Westward Expansion would triumph over every other social issue that might have stood in the way.

Since the colonial period, Westward Expansion had created its own sense of destiny; aspirations of seeking a fortune beyond the known frontier was almost coupled with the ability to carry out a dream of owning property, seeking a fortune and making a home in lands unexplored in a land “without borders.” The Civil War disrupted a society that had survived its first ninety years because the transition from an intended republic to what became “Jacksonian Democracy” strengthened the public’s relationship to the central government. Perhaps the Frenchman, Alexis de Tocqueville, described it best when he wrote Democracy in America in 1835-40.

Democracy does not give the people the most skillful government, but it produces what the ablest governments are frequently unable to create; namely, an all-pervading and restless activity, a superabundant force, and an energy. . . . These are the true advantages of democracy. The very essence of democratic government consists in the absolute sovereignty of the majority.73

Governance was not so easily determined because in many cases it had not been clearly spelled out who the governing party was and to what extent did that governing body have the power to
rule. Rule in the West developed as the tide of western expansion dictated the course that
government took to establish and then maintain control.

Indian Affairs is a peculiar province of the legislative branch of our government. Although the Constitution charges the president with the responsibility to deal with Indians through his power to make treaties, and Indians always seem to look to the president for direction, the Constitution allocates power to Congress under the Commerce Clause for all matters relating to Indian Tribes.\textsuperscript{74}

Congress has the power to regulate commerce with the tribes under Section 8, paragraph 3 of the Constitution. The Constitution specifically says that “The Congress shall have power to . . . regulate Commerce with foreign nations and among the several States and with the Indian Tribes.”

The Constitution did not make clear whether Congress had the power to deal with Indians as tribes, or on the same status as foreign nations or as a state. The president had the power to act. President Andrew Jackson chose to remove the Cherokee tribe from the Southeast in 1828. The president acted unilaterally.

Although both houses of Congress had formal Indian committees, Congress paid little attention to its role as the architect of Indian fortunes apart from providing legislative confirmation of presidential policies such as forced removal. By about 1850, however, Congress began to assume a more active role; it authorized various commissions to deal with Indians . . . in the Great Plains . . .\textsuperscript{75}

As the Grant Administration drew to a close and the hated occupation ended in the South, the entire nation focused more on what was ahead rather than what was left behind. \textit{Westward Expansion provided a fulfillment of America’s most promising dream, now more reality than fantasy.} The country’s relationship with American Indians had not held the nation in the grip of righteously conceived laws that governed the manner in which the country should be governed, relative to the wellbeing of its citizens. The Bill of Rights of the United States Constitution did
not apply to American Indians. Indian tribes were considered either hostile or friendly; even friendly tribes were at times seen as hostile, taking note of Chief Black Kettle’s tribe that was massacred in November of 1868 following an onslaught of U.S. cavalry that took an unwarranted course of intervention at the Washita River.

The parallel event taking place in the West was the saga of American Indian tribes that had lived on the plains and in the southwest of America for several centuries. These tribes, the Sioux, the Cheyenne, the Nez Perce, the Bannocks, the Ute, and the Apache, among others, had settled into lifestyles that well suited their ability to successfully adapt to the land around them. There was never much question about who belonged to the land or little concern about how they got there. As the borders of the United States moved ever westward, the only questions that ever arose in Washington, DC, were those that involved tighter and stricter controls over the tribes. As the passing of the great Civil War became more historical and the rough road to rebuilding and reconstructing the South became more topical, but less effective, Westward Expansion took its place as the headline news that caught the eye of the American public and began playing a larger role in fanning public opinion. The future of the young nation had always rested on its ability to expand and open new grounds for settlement.

Industrialization moved slower than the wagons west. Industry was still confined to major eastern and a few Midwestern cities with large railheads, like Chicago and St. Louis, but the United States was still an agricultural society, and the future laid where the grass was greener and where there was plenty of it. The copper and other ore mines were also in the West. The discovery of gold in California in 1848 and in South Dakota in 1874 excited further movement. But public opinion, which was so vital to the passage of Amendments 13, 14, and 15, was hardly
at work in the Supreme Court’s 7-1 decision in *Plessy v. Ferguson*. Public opinion had been far more interested in promoting Westward Expansion.

Written treaties and verbal guarantees were broken, modified, or restated to the convenience of the government, which many times was powerless to halt the movement of land speculators, mineral speculators, or wagon trains of settlers from crossing the western plains to the lands beyond. Just such a moment in time occurred in the winter and spring of 1874 when a discovery of gold in the Black Hills of South Dakota introduced a wave of settlers and speculators. The federal government and the army were unprepared to deal with the situation. Sioux lands had been encroached upon and the tribes did not have much recourse. Instead they retaliated by raids on civilian campsites and wagon trains. Response to these unfortunate misdeeds was a significant increase in United States cavalry under a federal master plan which included sending all tribes to permanent Indian reservations. Three U.S. army units planned to move on the Sioux and Cheyenne tribes camped somewhere near the Bighorn River.

The accounting of what has become known as the Plains Wars, headlined by Custer’s ill-fated fight with the Sioux, well illustrates the power of news stories illuminated by pictures, most of them wood engraved prints, some offset prints, that moved public opinion against American Indians from passive to provocative and from sympathetic to hostile. Military policy shifted to outright military troop movements against tribes that failed to relocate to reservations. In the final recorded military movement which took place in 1890, an entire village at the Wounded Knee River was wiped out by cavalry after the suspected Sioux tribe had been seen performing the Ghost Dance, forbidden by the Army. A Remington Ghost Dance print follows. Between
1876 and 1890, focus on non-white minorities shifted radically, not gradually, from African-Americans to Indians.

Social classes had been recognized as Southern whites divided into the ruling oligarchy, plantation owners, small farmers, a lower middle class, slaves, freed men, and white government officials. Northern classes included white farmers, a distinct small town white middle class, and a growing urban network of business owners, bankers, industrial workers, clerks, apprentices and craftsmen. African-Americans were either recently freed slaves or those largely employed in low-wage pursuits, none of whom held status as citizens. Local, state, and federal government roles were filled by white males. American Indians held no status at all. This is a broad brushstroke of the form the nation assumed as it exponentially expanded from a Jeffersonian concept of a dominant agricultural society, to a Jacksonian democracy to a nation split ethnically, culturally, and economically and headed for a cataclysmic trial by arms to determine whether a nation could survive “half slave and half free.”

Those clearly cut lines of social and economic classes became more clearly defined after the Civil War. Southern whites in 1866 could be described as a defeated nation searching desperately for economic redemption and a mode of governance. Slaves, now freed men, were clearly reclassified as citizens of the United States with full rights of citizenship including the right to vote. Northerners achieved a far more clear status, as Union veterans returned to established farms, established industry, and an established society that by and large chose to look beyond the devastation of the battlefield and toward their now unlimited horizons. The contrast between North and South, rich and poor, structured society as opposed to rebuilding, was remarkable. Four years had wrought changes unimagined in the prior five decades. The fallout
Frederic Remington has dramatically sketched the “Ghost Dance,” a symbolic ritual that would recall ancestors deceased many years ago, back to earth to help salvage a bad situation. The interpretation of the U.S. Army was that a series of raids on wagon trains or forts would follow the ritual, so that the ghost Dance was outlawed. The last Ghost Dance precipitated the Massacre at Wounded Knee, in which 150 Indians, included women and children, were shot down with Gatling guns that had been added to the cavalry’s weaponry.
from this nation now again united was a challenge that seemingly could only be met by the works of a broad space of rebuilding or reconstruction.

The expansion era that followed the Civil War almost, unknowingly, cast aside or ignored the black minority in the United States. The heavy emphasis on pushing the boundaries West defined public policy, not racial equality. The Indian of the western plains became the focus of federal policy and action, not the black minority whose slave status came to define the objective of the war during its final 28 months. The goal of freed African-Americans was to own land. The goal of American Indians was to have free access to the lands that had (almost) always been available to them, not necessarily ownership.

One must look back at the termination of hostilities in April of 1865 as a singular time in American history when time all but stood still. Life in the United States would never revert to where it had been for the past 89 years, nor would it take giant strides forward. Instead, it was in a period of reckoning where people in the southern states that had made up the late Confederacy, and those in the broad reaches of the North that had dominated the course of action during the late hostilities would be found to come to terms with their lives, their losses and their fortunes, or what remained of them. Most parts of the South had been devastated materially and spiritually. Life would not just go on, it would be reconstructed, but not in a way that would be manageable to those living in the Deep South. The population in the North counted their losses in terms of those buried in many gravesites and memorials that ran from the Commons in Boston, through Gettysburg, Pennsylvania, to towns and villages in Iowa and beyond. Lives could not be replaced, but the way of life in the North would be brought back.
The still young country, North and South, encountered Reconstruction, the federally mandated program designed to bring ex-slaves up to standards of equality entitled to all citizens residing in the United States. The minority left behind was the numerous tribes of American Indians, who lived under the governance and rules of the federal structure, but under tribal law, day to day. Blacks in America became American citizens. American Indians lived under those rules known as Indian Law, a condition that recognized Indians who were not citizens but as legitimate occupants of designated parts of the country under a different status. Tribal sovereignty has been a crucial part of how American Indians, as tribes, would choose to live their lives. The 14th Amendment that had conferred the full rights of citizenship on ex-slaves did not include Indians. “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.”

Frank Pommersheim, author of *Broken Landscape*, explains this amendment as well as Article I, Section 8 of the Constitution in the following manner: “This language is the only textual reference to individual Indians in the Constitution and sets the basic constitutional marker for considering issues of Indian citizenship.

Though inexact, this language was generally understood to mean that individual Indians who had left the reservation permanently (and presumably severed their bonds with the tribe) and were [thereby] subject to state taxes, would be counted for purposes of establishing a state-by-state census figure for ascertaining the number of representatives each state was entitled to in the House of Representatives. Indians who remained with their tribes would not be counted.

According to the Constitution, Indians living a tribal life on an Indian reservation were not United States citizens. Citizenship was clearly defined: “This power to confer citizenship
was understood to reside with Congress’s lawmaking authority and the president’s authority to enter into treaties with Indian tribes.”

Citizenship eluded American Indians until the 20th century. This was a remarkable stretch of time from the founding of the Republic until 1924 that citizenship would finally be conferred on the original inhabitants of the country. Individual tribal treaties that were made between a tribe and the U.S. government included possible provisions for citizenship, but those treaties would almost always include the provision that the individual or group of individuals separate themselves from the tribe. There were exceptions to the general rule of tribal affiliation and its effect on citizenship, but there was no blanket understanding that made it easy for American Indians to become American citizens.

Federal statutes revised conditions of citizenship, but, until 1924, no clear path to citizenship existed. The conflict between federal power, federal jurisdiction, and tribal sovereignty remained unresolved for such an unseemly long period of time because of the very nature of federal law that was bound to the United States Constitution, and tribal law, which had continued to exist among individual tribes. For the purpose of U.S. congressional seats assigned to each state, African-Americans counted as three-fifths of an individual in the census until 1866. Indians did not count in the census toward congressional allocation because they were excluded from any classification. This method of structuring a better union left a lot to be desired. There are several reasons why American Indians ran on one track outside of a recognized system of government, African-Americans were placed on a different track, and whites followed a path that would isolate them from minority interference. There was no simple path, because by mid-19th century, waves of immigrants upset the uneasy racial balance that had existed. That was an issue
that contributed significantly to the wave of factors that had influenced public opinion and public policy. Immigrants continued to add to the settlers moving west.

What came to make up the body of public opinion that influenced Westward Expansion was not always clearly defined. Indians were not equal under the Constitution. It was the political culture that resulted from the Constitution, the advent of Reconstruction and the blend of Indian Law that created an environment in which treatment of American Indians and African-Americans would fail to serve their best interests. At the beginnings of the new republic, the seeds of governance and the attitudes of those governing were born. Nothing changed much in the century that followed.

If the colonial goals were commerce and land acquisition and the Indian goals were commerce and the regulation of land usage, these goals were mediated through systems of governance. Systems of governance were often only dimly understood and were easily misunderstood on both sides. Such original misunderstanding and its contemporary legacy remain a significant cause of many ongoing issues within contemporary Indian Law.

Misunderstandings usually have, and in Pommersheim’s concept of the origin of governing practices, almost certainly have, many causes. Language was a barrier that often stood in the way of tribal understanding, and interpretation of American law. In the Office of Indian Affairs, or earlier, interpretations of the Indian Commerce Clause, how many personnel were capable of explaining laws, treaties, rulings of the courts in a multitude of tribal languages and dialects? A lot of misinterpretation occurred through language obstacles that included cultural misunderstanding. How many treaties over half a century were changed, slightly altered, or ignored at the convenience of the government? To what extent did cultural attitudes affect the basic relationship between government and Indians? According to Pommersheim, the
beginnings of prejudice took place early in the dealings between Native Americans and European Americans.

[What has been described so far in matters of commerce, land transactions, and governance was substantially influenced by cultural attitudes. . . . These attitudes were seriously distorted by the pernicious mix of ignorance and racism. Primary ingredients in this mix were the debilitating notions of civilization and Christianity. The metaphor of Native savagery was central to the process.]

The image of *savagery* was never too far from the conception that a majority of white Americans had about American Indians. Rather than the modified perception of Indians as the “noble savage” assuming a grip on the imagination of many, the picture of Indians willfully, and without mercy, murdering innocent families moving west overland, gripped the hearts and minds of those who almost daily could read an account of another massacre or attack on a wagon train or even a sighting of a supposed group of hostiles. Rather than an integration of two American cultures, the two became separated further. The defeat of Custer at the Little Bighorn in June 1876 did little to discourage the image of the bloodthirsty savage. It took a decade before the white American public began to understand that Custer’s defeat was based on a serious field blunder made by Colonel Custer, who had reckoned that his regiment of 235 troopers could send a village of 10,000, probably containing 2,000 warriors, in flight across the plains.

Analysis of this engagement and fascination with Custer’s encounter with Sitting Bull and Crazy Horse abound to this day. More accounts have been written, more pictures created, more discussions hold on that hot June day in 1876 than have been recorded on Château-Thierry, December 7, and D-Day rolled into one. Had that singular incident raised the ire of public opinion? So high was the tide of revenge, that the federal government openly took the final step left open to them in putting down the Indian threat. The government decided that all Indian
tribes in the West would move to Indian reservations or be killed. If there had been gray areas, they vanished, and the Western tribes all but vanished as survivors moved to reservations.

The tribes saw no boundaries until they were forced to occupy fixed landscapes that were anathema to their nomadic lives. They were no longer sovereigns. “The Constitution clearly recognized Indian tribes as sovereigns, but not as sovereigns who participated in its creation, its ratification, or its compact for governance. Indian tribes were recognized sovereigns, but largely as sovereigns outside and on the margins of the new republic and its Constitution.”

From the beginnings of the republic of the United States in 1787, following ratification of the Constitution, governance of the Indian tribes was never clear. The circumstances that altered the relationship between the Plains tribes in the West and the central government in Washington were the demands of Westward Expansion. As tribes were cast in their role of “reservation Indians,” identification with the culture, politics, and the economy of the United States seldom interfered with tribal culture. Tribal culture remained as it had been for centuries. Tribal culture was partially infused with the English language and teachings of the Christian faith. This somewhat explains why the Plains tribes never became fully integrated into the prevailing way of life in the United States, but remained heavily under the influence of their past.

Tribal culture is not an easy thing to comprehend. There were an astounding number of Indian tribes in the United States that inhabited every part of the North American continent as colonial life evolved into a united states comprised of the thirteen original colonies. Following the long era of Westward Expansion after the Louisiana Purchase from France that pushed American interest westward to the sea, many Indian tribes that either interfered with, or were thought to stand in the way of, the movement west were either promised compensation for their
lands or moved to a different part of the country, as were the Cherokee during President Andrew Jackson’s administration. Others were killed in battle, the fate of the many skirmishes and conflicts that were fought in the middle to latter part of the 19th century.

According to Frank Pommersheim, a mixed relationship has persisted between the American government and American Indian tribes for well over two centuries. On the one hand, natural law theory held that “indigenous peoples were indeed rational human beings with rights largely equivalent to those of non-Indian people.” Under natural law, Indian tribes had a right for “the attributes of exclusive jurisdiction, territorial integrity, and the right of non-interference by others.” On the other hand, in what became known as “The Marshall Trilogy,” the Supreme Court held that Indians did not have the power to transfer (or sell) their lands to individuals; that power was in the hands of the United States government. “Chief Justice Marshall, writing for the Court in Johnson v. McIntosh, held that Indians had no such power to convey titles of their land to private individuals.”

Justice Marshall rendered his opinion on the basis of a concept of European origin known as the “doctrine of discovery.” It had no basis in American law, but appeared to provide a path that courts could continue to take in removing land from Indians and delegating those lands to United States domain. Justification for acquiring Indian lands was that “the discoverer [could] claim title to Native lands because of the defects of indigenous people, who lacked two of the cardinal prerequisites to holding property, namely, ‘civilization’ and Christianity.”

Having done away with indigenous title in this manner, the question arose as to whether the Indians had any rights to title.

The rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be rightful
occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own direction; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principal, that discovery gave exclusive title to those who made it.  

This precedent made Indian policy clear. There would be no deviation to this law of discovery. Within the boundaries of his judgment, Chief Justice Marshall declared “that the Indian inhabitants are to be considered merely as occupants, to be protected, indeed, while in peace, in the possession of these lands, but to be deemed incapable of transferring the absolute title to others.”

After Chief Justice Marshall’s death in 1835, succeeding courts adapted “the doctrine of discovery that put title to Indian land in the federal government or even the states.” In attempting to resolve the concept of “Indian Law,” following Pommersheim’s line of reasoning, “Indian policy” could be a more accurate way of looking at the means of Indian governance. Carrying out Indian policy in respect to the tribes, the convenience of the government seems to guide policy more than a set of rules that a law might provide. Treaties were broken; the most egregious broken treaty occurred during 1876 and 1877 when the Fort Laramie Treaty of 1868 was violated. The Sioux Nation had occupied millions of acres in the Black Hills of South Dakota, their traditional hunting grounds. Westward Expansion and the lure of gold discovery sent the wagons west in such numbers that the Grant Administration had no way to control those movements. Realistically, the government did not have sufficient armed cavalry to slow down the inevitable push through the hills. The battle at the Little Bighorn River was the closest thing the Sioux, Cheyenne, and Arapaho could do to take on the cavalry and possibly negotiate another treaty.
As the Sioux wisely left that field of battle, victors on June 25, 1876, and eventually headed north to Canada, their ability to stage another fight or negotiate another treaty had come to an end because the cavalry grew to an overwhelming number. Pommersheim suggests that the federal government was “simply working out the particulars of Manifest Destiny . . .” Manifest Destiny was and had been public policy for decades. Slavery in these new territories of Kansas and Nebraska had raised the issue of whether those territories would eventually become slave states or free soil states. In the parade of governing decisions that brought the inevitability of war to the irrepressible conflict in 1861, the movement west to the sea inspired by Manifest Destiny, was the dynamic that drove public policy. But the flood of information that reached the public in the turmoil of the 1850s did not come close to the torrent of stories flooding out of Montana in 1876 when Custer fell. Publications such as Harper’s Weekly painted pictures of the Little Bighorn episode that brought on an unprecedented response from the public. Negotiations, treaties, new understandings became watchwords of the past when the army declared all out war on the Plains Indians.

In the summer of 1876, Harper’s Weekly was concentrating on two major events taking place simultaneously. The centennial of the country was being celebrated in most parts of the land and the 1876 presidential election was close at hand (see print, Freed Slave, p. 42). Democratic candidate Samuel Tilden was prominent in the news with black and white engravings to highlight his candidacy and numerous Harper’s editorial articles throughout the first two weeks of July that seemed to capture the attention of the readers. An article on Custer’s defeat did not show up prominently until some time after the event. The news report itself was titled, “The Montana Slaughter,” and did not aim to particularly capture the reader’s attention.
When Harper’s typically sought to print material of headline importance, full page illustrations would accompany the story. Custer’s head and shoulders portrait shows up four pages later at the bottom of the page. The story itself is straight line reporting, mostly devoid of anything that might create sensationalism or arouse the public.

This is a distinct contrast to The St. Louis Daily Times, where the battle turned to “massacre” and the details flowed from an impassioned pen as early as July 6. Harper’s Weekly breathes some life into its telling, but it clearly lacks the dynamics of the dailies. What follows are some excerpts: “Close upon the intelligence . . . of General Crook’s command . . . comes the news of a disaster so terrible . . . that at the first announcement . . . it was considered grossly exaggerated. . . . Later dispatches, however, confirmed the dreadful story in all of its particulars.”

A personal biography of General Custer, one paragraph in length and a paragraph with descriptive information about prior troop movements, concludes this rather pedestrian description of the most publicized battle in all of United States military history. The 1876 election and centennial had decidedly won the editorial day.

Public demand for information about the disaster at the Little Bighorn grew slowly, possibly due to the lack of definitive information that drifted from the battlefield. As a torrent of description flowed over the ensuing weeks, the public became better informed and Washington’s reaction formed a response rather than rhetoric. The St. Louis Daily Times published an article dated Tuesday, July 20, on the debate in the U.S. Senate regarding the transfer of the Bureau of Indian Affairs to the War Department for the purpose of finding a better way of dealing with “The Indian Question.” It may have been the first of several steps taken in the federal
government to address Indian policy following the battle at the Little Bighorn. Part of the by-
line read: “Some Practical Suggestions for the Civilization of the Savages.”

This piece alone alerts the reading public to the measures now needed to control the
Indian population on the plains. It further suggests that the isolation of Indians from the
mainstream was more pronounced and left little doubt that, with few exceptions, never would
tribes be admitted to citizenship and participation in American life. Perhaps this had never been
fully taken into account except by those few who would clamor for “equality” among all
inhabitants of the nation. The words of Senator Bogy (of Missouri) opposed “the amendment of
the Committee on Appropriations to strike from the Indian appropriation bill the section
transferring the Office of Indian Affairs to the War Department.”93

Committee debate was published in some detail with Senator Bogy maintaining a very
strong argument for the transfer of the Office of Indian Affairs to the War Department. His
position presaged a distinct and decided shift in federal government policy which can be seen in
his statement in answer to other members of the Committee on Appropriations. In debate,
Senator Logan (of Illinois) said that, “It only proves that since 1849 some of the wild, roving
savages that were thirsting for blood at that time, are now quiet, peaceable Indians.” “Why?”
asked Senator Bogy. “Because they have been taught to be peaceable,” replied Senator Logan.
Senator Bogy answered with a statement that typifies 19th century attitudes toward Indians:

Because the army is there in sight of them, and they dare not move for fear of the
bayonets being thrust in their side. That is the reason. . . . The Indians can be localized
and subjugated by force and be made to remain on a reservation; but this can only be
done by employing an army. No wild tribes of the plains would long remain on a
reservation if the army was not close by to chastise if he left . . .94

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A conclusive statement in the hearing further sums up federal government attitude on the so-called “Indian Question” that foreshadowed public policy that would prevail until well after the turn of the century. (See “The Indian Question.”)

The foremost constitutional question that arose about whether the federal government or the states could determine Indian policy began to develop in antebellum times when slavery in the territory became a national issue. Arthur Bestor, in a paper entitled, “The American Civil War as a Constitutional Crisis,” stated that Congress had the power “to legislate for the territories.” The problem was, simply stated, “what Congress should do with respect to slavery in the territories.” When that issue could not be resolved by interpretations of the laws or by the Constitution itself because the Constitution did not refer to slavery, the war came on. However, westward expansion had become more legitimized by the power assumed by the federal government as it dealt with the power of government in the territories. Slavery in the territories was a political issue, Westward Expansion was not politicized, but a precedent had been established that would make it far easier for Congress and the president to allow it.

The issues raised by territorial expansion were, however, not merely prospective ones. Expansion was a present fact, and from 1845 onward its problems were immediate ones. Population was moving so rapidly into various parts of the newly acquired West . . . that the establishment of civil governments within the region could hardly be postponed.

Whether the prevailing issue was slavery in the territories or forcing Indians into reservations or killing them, the federal government fell back on precedent earlier established, which was eminent domain, discovery, or Manifest Destiny. In 1871, Congress passed the Indian Appropriations Act, which said that no longer was any group of Indians in the United
THE INDIAN QUESTION

“I do not forget the duty resting upon us to protect this dependent people and to do all in our power for their well-being, and as far as possible to lead them on from the ignorance of barbarism and the darkness of paganism to civilization and Christianity. I am not unmindful of my duty in this respect, and if I believed that this transfer would in any way prevent us from discharging our entire duty in these respects I would oppose it. I am fully satisfied, on the contrary, that the well-being of this race, as well as its civilization and ultimately his becoming a Christian, will all be promoted by the change. We have had many Indian wars in this country, which have entailed very large expenses on the Government; but Indian wars should be a thing of the past, and with any wisdom on our part cannot again ever occur. The Indian is not now what his forefathers were; he has no longer a vast and boundless unpeopled territory to roam over. The white race surrounds him on every side, and the time has come when he must cease to be a hunter or he must cease to exist. The decision of this question is left with him. The law of necessity, growing out of the spread of population, makes it plain what he must expect hereafter. It cannot be permitted that a few thousand hunters will remain in possession of the interior of this continent as mere hunters. The earth was created for a better purpose, and it must be made to yield food for the human family. Hence he must retire to a reservation, and there be kept under the surveillance of intelligent army officers, where he will be taught to work for his living, and where the teacher of religion will impart to his mind the great lesson which leads to a happier life hereafter.”

From The St. Louis Daily Times, July 20, 1876. Remarks made by Senator Lewis Bogy (Democrat-Missouri).
States recognized as an independent nation by the federal government. As long as American Indian tribes were recognized as equivalent to foreign nations, several benefits, including the right to negotiate trade, treaties, or status were in force. When foreign-sovereign equivalency was taken away, Indian tribes, legally, became wards of the United States, existing at the pleasure of the government and ruled by the laws of the land without recourse. This political environment denied any semblance of power to the tribes. The federal government had established itself as the arbiter in all issues that might arise with no apparent process of appeal.

What followed was a series of treaties with individual tribes that assigned tribes to reservations in the form of land cessions. The inhabitants of such land cessions received the usual promise of livestock and supplies. Corruption, mishandling of government outlays and misappropriations followed. The government moved at will to acquire Indian lands and cleared the way for the great move West.

It was more than obvious to the Plains tribes that their last great hopes of holding onto ancestral lands had vanished. More federal troops began their movements to the plains, and the inevitability of some major engagements were only a mere arrow shot away.

Five years after passage of the Appropriations Act, which granted legal rights to the federal government and the army to proceed on their own, a formidable force of cavalry encountered a massive summer village of Sioux, Cheyenne, and Arapaho on the banks of the Little Bighorn River. The whole vision of western movement to the sea became a real possibility so rapidly, that other national priorities, such as proceeding with civil rights for all citizens as an actuality rather than as a law of the land (14th Amendment) without hope, became buried under the sands of the plains. National policy is difficult enough to carry out when more than one
major objective is at stake. The Civil War era provides a good example. President Lincoln recognized the problem when he led the Union to war with the single objective of preserving the Union. His focus and his national policy did not shift from Union to Emancipation until almost two years had passed. It took a bloody civil war that finally left 750,000 dead to achieve that final objective. There was no hope to do more with “equal rights for all” than proclaim it; the issue was simply put off for another century. Public policy is enacted in ways not always designed to benefit all of the people all of the time.

The story here told is an illustrated one that has dealt with the influence of the United States Constitution on the political culture of America in the mid-to-latter part of the 19th century. Inherent in any description of how the nation expanded west, legally justified its colonization of the vast plains and mountains of the west and managed to incorporate territories into a national framework, by necessity must include the numerous tribes of American Indians who had inhabited the region that stretched from Kansas to the sea. The question of how to deal with the tribes perplexed lawmakers, governors, the army, and presidents alike. How could “equality for all,” the banner carried by much respected Senator Charles Sumner of Massachusetts, be extended to tribes of savages that were not citizens of the United States? This question has never been fully answered because some tribes living on reservations in the 21st century still work under some local sets of guidelines and rules different from those governing citizens living in the 50 states. There were several significant issues that had influenced Westward Expansion from 1865 to 1876 and they surely were not all tied up in U.S. law as defined by the Constitution. Prominent in Westward Expansion were special interests that
included wagon trains carrying new settlers, a multitude of mining interests, discovery of gold, and most significantly, the development of the east-to-west railroads.

Although the land had been guaranteed as sacred to the Sioux Indians by the Fort Laramie Treaty of 1868, the confirmation of gold . . . in 1874 unleashed a tide of . . . prospectors. At first the army tried to enforce the Sioux Treaty of ejecting civilian trespassers. But the political and economic climate in the United States demanded that the Black Hills be opened, and by early 1876 the army was ordered to change roles. Rather than protect the Hills from invasion, they were now to wage war on the Sioux and Northern Cheyenne in an attempt to forcibly resolve what was being called the “Indian Problem.”

The Plains Wars reached their peak, culminated by the overwhelming defeat of Custer. The army had been stationed west to ensure safe passage for settlers, railroads, and mining interests. Wreckage was strewn in the wake of these battles, but the largest piece of wreckage was the broken treaties with Indian tribes. No other cumulative events equaled the shattered treaties that forced the occupants of their sacred lands to the warpath. Perhaps the most significant of those described earlier were the broken promises from the Fort Laramie Treaty of 1868 after gold was discovered in the Dakotas. With the Indians driven to desperate raids on army outposts and wagon trains, the army out west, largely cavalry, responded with attacks on Indian villages, which became indiscriminate killing fields as cavalry destroyed whole settlements that were off-reservation, including old men, women, and children. Custer’s attack on the Washita River village was significant. The singular Indian fight that installed him as a national hero was this destruction of Chief Black Kettle’s Southern Cheyenne village on November 27, 1868. Black Kettle had been considered an ally but was killed; most of the Indians killed were not warriors. In General George A. Custer’s autobiography, My Life on the Plains, republished in 1952, and originally published in the Galaxy in 1874, he gives reason for his actions at the Battle of the Washita. “We had achieved a great and important success over
the hostile tribes... The Indians had suffered a telling defeat involving great losses in life and valuable property.”

Further on in *My Life on the Plains*, Custer writes that after the main part of the battle was over, his command on the Washita was “still surrounded by a superior but badly defeated force of Indians.” M.M. Quaife, who served as editor for this publication in 1951, noted: “Relying upon Custer’s careless statements, many writers have greatly exaggerated the number of warriors. Custer himself stated... that [Major] Elliot’s party of twenty men had... been outnumbered 100 to 1... implying the presence of 2000 warriors... such statements as these are... preposterous.”

Lt. Col. Custer’s claims and reality are at odds; Custer became, on a somewhat false premise, one of the great Indian fighters of the Plains Wars, building a reputation from minor victories that would never match his real battlefield achievements during the Civil War. The irony, of course, is that this undeserved glory at Washita helped propel him to the posthumous rock star status that followed the Little Bighorn and helped create the wave of sentiment instrumental in altering the somewhat static status of Indian policy. Indian policy now became more directed toward Senator Bogy’s statement that “[the Indian] must retire to a reservation” or “he must cease to exist.”

The round of Indian fight had intensified following the Civil War, because two circumstances developed: (1) the nation could resume moving west following the most deadly war in all of American history, and (2) the army could spare its troopers to move west to protect the new wave of migration. The result of this action was an intensely new picture of American Indians, now more than ever, described as “savages” and pictured in periodicals as deadly
warriors intent on indiscriminately killing any whites who crossed their path. The peak of Indian battles occurred at the Little Bighorn and this singular episode fixed the Indian image in the mindset of the white population.

In the meantime, there was fallout from a different direction on another vital part of the U.S. population. Whereas the passage of the 13th, 14th, and 15th Amendments to the U.S. Constitution had been created to abolish slavery throughout the land, guarantee the sanctity of life, liberty, and property and guarantee the vote to all citizens (except most Indians), the real interest in assuring these rights to African-Americans failed. The focus on guaranteeing equal rights to African-Americans was overshadowed by the growing drama of Manifest Destiny, which had replaced the sanctity of maintaining Union, so vital in the first place, and then abolishing slavery. From the emotional high that followed Custer’s Last Stand, anti-Indian bias grew from the journalistic treatment of the Little Bighorn. It became the most significant and widely publicized event since Appomattox ended the war. General Lee’s surrender was anticipated; wiping out the vaunted 7th Cavalry of Civil War fame and its high-profile leader was not anticipated. Custer’s prominence in public discourse rose to a scale surely not anticipated. Whatever shortcomings attributed to Custer up to that time were quickly forgotten; Custer’s poor judgment in engaging the Sioux was largely overlooked, and, according to articles that followed his demise and that of the 235 troopers that perished with him, Custer would actually gain the lofty status of military folk hero. His mistake, though well-defined and published, would be largely ignored until well past the date of his blunder. Such were the results coming out from the west that day, that Custer’s role in taking the west from the Indians would be lauded as an act of aggressive devotion to his nation’s aspiration of Manifest Destiny rather
than as a foolhardy maneuver that provided his adversaries sweet revenge and won Sitting Bull, Red Cloud, and Crazy Horse their fleeting acclaim.¹⁰³

Left in the backwash were four million African-Americans with their claims to full citizenship along with the equal rights and opportunities that were guaranteed under the Constitution. Whatever might have moved ahead under Senator Sumner’s banner of equality and opportunity, died on that battlefield. What replaced rhetoric was the ghost of an antebellum South those many years ago, when African-Americans in the South were slaves and their status as such allowed no opportunity for change. In post-bellum times in the South, Southern writers and pitchmen won the day. “Old time days will ne’er be forgotten” were not forgotten. Stephen Foster’s tuneful memories of a gentle Southern lifestyle underwent post-bellum revisionism to create a land that blacks and whites could peacefully inhabit and northern citizens could live with and admire (see print of sheet music, p. 27). The North remained immune to Thomas Nast’s vivid graphics of pillaging and lynching (see *This is a White Man’s Government*). The Currier & Ives print of comically displayed underclass African-Americans seemed to make racial harmony into something that it was not (see *Hook and Ladder*, p. 55).

What more than likely left the plight of Southern African-Americans that was dealt with another day was the power of public pressure that became public policy — All Wagons West. What aroused national interest was the killing field at the Little Bighorn. It was the signature event that turned all eyes West and decidedly away from the South. As the century moved forward from 1876 until its end, the number of illustrations of that last stand grew disproportionately to any other event that took place until America’s entry into the World War in 1917. Nothing exceeded the popularity, intrigue, and public mindset of the Little Bighorn for the
remainder of the century. In its wake lay the ruins of Indian civilization and the chance for Indian rights to move forward from Indian Law. As to the neglected status of African-Americans in the South, had not the Constitution itself taken care of African-Americans with the passage of Amendments 13, 14, and 15? The period of time that followed these three amendments were not sufficiently empowered with either the will of Congress, the power of several presidents, or finally, even the judgments of the Supreme Court to alter political and socially motivated perceptions of justice and equality. *Plessy v. Ferguson* took care of that.\(^{104}\) The law of the land was either unfit or simply not up to the task of turning around a past century of political and social values that would take another century to rectify. The Custer influence on the progression of Westward Expansion during the last part of the 19th century had no equal.

The nation was stunned when the news of the disaster struck the front pages. GENERAL CUSTER AND 261 MEN MASSACRED! SQUAWS MUTILATE AND ROB THE DEAD! NO SURVIVORS TO TELL THE STORY! Why had it happened? Who was to blame? No correct answers could be given at so early a date, therefore, rumors grew thick and fast. Even grief stricken Monroe [Michigan], claiming five among the dead, had heard many ‘facts’ by route of rumor. Perhaps they were augmented by the fact that they would have to wait until the next issue of the local weekly papers for a more complete coverage of the appalling event. All rumors improve in the telling, time adding much to the luster of the story.\(^{105}\)

Frost’s point of view is one of many that have made up the theories of Custer’s defeat at the Little Bighorn. The lack of historical evidence through lack of witnesses fueled the fires of mystery and outrage that grew exponentially following the battle.

To understand the adulation that surrounded Lt. Col. Custer after his unexpected defeat at the Little Bighorn River, one must have a further understanding of the cult of loyalists that had followed him from his Civil War days. George Custer has been no ordinary cavalryman in blue. For example, on Gettysburg’s third day, he trumped the vaunted Confederate cavalry’s feats. On
that day, posted to the east of the main battle, newly brevetted Brigadier General Custer’s
regiments attacked at enough points to keep their adversaries out of the reach of the main battle
that was raging on. General Philip Sheridan would later declare Custer as his best cavalry
officer. Fame followed General Custer through the remainder of his Civil War career. However,
with little publicity to follow in the next eleven years, the Little Bighorn episode vaulted Custer
back into the headlines:

University presses and smaller private ones devoted to Western Americana produced a
steady stream of new books on Custer, the Little Bighorn, and the Seventh Cavalry.
Conventional wisdom — unproven — holds that among the battles fought in North
America, only Gettysburg is the subject of as much ink as the Little Bighorn.\textsuperscript{106}

Custer’s defeat at the Little Bighorn was an important ingredient of the final drive to
Manifest Destiny. In Appendix C, there is a series of articles that appeared in \textit{The St. Louis
Daily Times} from July 6, 1876 through July 9, 1876. The four reprinted articles display a
moving day-to-day reaction to the defeat of the 7th Cavalry on June 25. Readers of that series
can easily discover how the War Department dealt with the disaster that wiped out all of Lt.
Colonel Custer’s direct command and a considerable part of those troopers under the command
of Major Reno and Captain Benteen. The straight line newspaper reporting gives the reader the
sense of a major shift in government policy regarding the Indian wars on the plains. What this
series of newspaper articles regarding Custer’s defeat reveals to the public is that this military
confrontation on June 25 will not be taken lightly nor will it be tolerated in the future. Whatever
battles or skirmishes took place prior to June 25 pale in comparison to the “Slaughter. A
Disaster that Presents Things in a Serious Light.”\textsuperscript{107}

The progressive stories of the battle that emerged from Montana on July 7 in the \textit{Daily
Times} provide more insight into what likely occurred on the battleground. The battle continues
to be described as “The Custer Slaughter . . . the calamity is rendered more appalling by the
death of the gallant and favorite young officer in command.” The articles continue to build up
Custer’s persona while they modestly recognize a tactical error. “It surely seems to have been
the extreme of foolhardiness to lead five companies against such an overwhelming force; but
Custer, brave as he was, was never considered reckless . . .” Not quite an apologist for
Custer’s poor judgment, the Times begins a series of articles that parallels the nation’s adulation
of the U.S. cavalry’s most famous 19th century leader. In the last pages of this study, I have
compared the gravesites of Lt. Colonel Custer and General William Tecumseh Sherman,
acknowledged as the army’s most accomplished commander next to Ulysses S. Grant. Custer’s
gravestone is a monument in the U.S. military’s most exclusive cemetery, West Point.
Sherman’s gravestone is less than eight feet in height and bears the symbol of the infantryman as
its centerpiece. Custer became the symbol of the cavalry’s most famous hour, clouded but surely
not obscured by the disaster. That brief battle scene brought on pressure to complete the dream
of Westward Expansion without threat of Indian opportunity; it justified armed intervention on
the plains backed by the U.S. army. Further commentary in the July 7 Times follows: “Custer:
A sketch of Custer’s career — Indications of the Feeling Throughout the Country.”

Feelings throughout the country had been aroused about the bravery of the army and the
cunning of the savages. In the July 8 edition of The Daily Times, General Sheridan provided
some commentary on the

Custer massacre . . . . The Government, in its wisdom, directs the doing of certain things
in these regions. It directs an expedition like this of General Terry, an expedition
necessary for the development of that country . . . Our purpose is to drive these Indians,
who are of the very wildest and most savage sort, down on the reservation. You can say
that we will do it now or exterminate them.
In the same edition, the following short article appeared. “Utah to the Front. At a public meeting held here this evening it was resolved to offer the Government a regiment of 1,200 men from this territory in ten days to avenge the death of Custer and for the extermination of the Sioux Indians.” Further, it was reported that General Sherman planned to meet with the President and Secretary of War. A proposed bill offered by the United States that day would “accept the services of volunteers from the State of Nebraska and the Territories of Wyoming, Colorado, Dakotah (sic) and Utah . . . to be employed as part of the army of the United States against tribes of hostile Sioux in the Northwest, who have for years defied the authority of the Government . . .”

The July 9 Times confirms with more detail Custer’s defeat at the Little Bighorn. The article is titled “The Sioux” with the subtitle “No Way Out Now Except Through a Hot Indian War.” It did not take long for the American public to become apprised of the serious nature of conditions in the west, and what it would take to subdue the “hostiles.” What had been army responses to Indian confrontations now became public policy to settle the West and make it habitable for settlers. General Sheridan had said that it was necessary to expand operations “for the development of that country” and that it would be carried out with the intent of driving the Indians to the reservation or exterminating them. Illustrations created during the latter part of the century drove the point home to the multitudes of citizens nationwide who bought the pictures of the battle at the Little Bighorn; several of those appear in this thesis. The will of incensed citizens helped drive public policy.

The last, most noteworthy battle of the Plains Wars aroused an American public that had either lost interest in national expansion or who had assumed that America’s destiny would be
fulfilled. In *Custerology*, Michael Elliott writes, “The Battle of the Little Bighorn has long been regarded as one of the closing acts in the drama of Manifest Destiny — and Custer as a final star of the show in his willingness to sacrifice his own life for the progress of the United States over the last holdouts of renegades.”

Elliott also states:

[S]overeignty became a way for tribal peoples to assert that they possessed rights, powers, and autonomy beyond what the state, even the federal government, had recently recognized. Sovereignty . . . involves an insistence that American Indian tribes did not negotiate away all of their inherent power in their treaties with the United States and that they continue [to] exist in a nation-to-nation relationship with the United States. . . .

The idea of Indian sovereignty lies at the foundation of why these Plains Wars evolved as they did, resulting in the climactic clash at the Little Bighorn. Sovereignty would imply various Indian tribes co-existing with the federal government under the guidance of treaties that would ensure the sovereignty. “Sovereignty, crucially, turns on the organization of American Indian tribes as political entities.”

Interpretation by both Indian tribes and the federal government of the United States differed as to what status the tribes should have, relative to the powers of the government. Misinterpretation many times led to armed conflicts that defined the Plains Wars in the last quarter of the 19th century.

[T]he nineteenth-century Indian Wars were driven by the political questions of territorial governance — who would get to live on what land and how they would be governed. For the United States, these battles were fights to incorporate the territory that the Indians claimed. . . . for those Plains Indians who chose military resistance, the fighting was part of their long struggle against that colonial incorporation and for a degree of political autonomy.

The special relationship between tribal nations and the central government under whom they lived in an uneasy political environment was finally determined by armed conflict. It was at
this fateful juncture during the Plains Wars that Lt. Col. George Armstrong Custer entered the field as the unlikely revived national figure whose career was about to take an unusual turn.

On his final day, Custer was a thirty-six year old lieutenant colonel who was still, as was the custom, frequently addressed using the general’s rank that he had earned in the Civil War — a practice that historians and biographers have continued after his death. He was ambitious, which was hardly unusual for a career officer who had risen to glory at an early age. He almost certainly hoped that a major victory in the campaign against the Sioux and Cheyenne would lead to promotion — he was every bit as confident in his abilities as a leader of troops in combat. By all accounts, he was a bold, aggressive, and often inspiring field commander of cavalry. His trademark was not so much tactical brilliance as a combination of self-confidence, daring, and, at least until this day, luck.\textsuperscript{117}

His political ambitions remain unknown.
"The Buffalo Dancer"

By R.H. Dick

This watercolor painting of a Buffalo Dancer was done April of 2013. Periodically, I have turned to the Buffalo Dance as a subject for my artwork, whether it be in bronze, pastel or, in this case, watercolor. This dance is seen in many tribes and has been the subject of many artists from Charles Wimar, Gerald R. Cassidy, George Catlin and Frederic Remington. From my own experience I have seen it at San Ildefonso Pueblo, Santa Clara Pueblo and others. The costuming is basically the same, with some differences that seems to come with spiritual interpretations or available materials from town to town.

The buffalo is found deep in the world view of the Native American. Indeed, it was the commissary for the Indian and was his survival providing clothing, food and spiritual comfort. I would suggest that the European will never fully understand the Indian's view of land and forest, but this painting illustrates some of that outlook – The dancer becomes the buffalo, wearing a tanned buffalo cape, with other appropriate accoutrements that blur the differences between human and buffalo. In the larger scene, there will be singers, maidens, and the ever present drum (heart beat) of the universe all danced to careful choreography. I must say that the sounds of the dance; the throbbing drum, the chants, the rattles, the bells on the dancers – are absolutely hypnotic which, I guess, is the point!

R.H. Dick, artist

[Signature]
The Buffalo Dance

by Frederic Remington

I have chosen to select Remington’s period wood engraving side-by-side with a contemporary watercolor of the Buffalo Dance in order to bring out the vital importance of the buffalo herd in the Plains Indians livelihood. The tribes on the plains relied on the buffalo for food, especially sustenance during the winter, clothing, shelter, and implements. When the herds virtually vanished due to overhunting, the way of life diminished to a level that could no longer sustain life on the plains.
Cowboy Indian Meeting & Parley

by Frederic Remington

Reproduced with the permission of Special Collections, Olin Library,
Washington University in St. Louis

Remington’s Indian illustrations, more often than not, showed pictures of confrontation, conflict, and impending battle. This offset print is, for the most part, non-confrontational, although the trooper has his hand in his holster that carries a .44 caliber Colt pistol. The encounter is tentative, but likely friendly, because the Sioux on horseback holds up his right hand in the peace sign. The scene is beautifully crafted; the Black Hills are in the background. In its simplicity, the picture leaves itself open to interpretation.
Chapter 4: Westward Expansion and Indian Policy

In order to have an appreciation of the battleground that became the Plains Wars, it is helpful to visualize the landscape in southeastern Montana, where two significant battles took place. The battle at the Rosebud Creek was fought just days before Custer’s encounter with the Sioux, Cheyenne, and Arapaho. The landscape combines scrub trees, sagebrush, short hills, buttes, coulees, and open fields. The Rosebud Creek runs through the battleground contested on June 17th and the Bighorn River established the site of the Little Bighorn battle. Both places were points of engagement because they provided an adequate camping ground for the Sioux, Cheyenne, and Arapaho who were the tribes at war with the 7th Michigan Cavalry. The 7th Cavalry encountered a foe that was sometimes better trained, sometimes better led, and at the Little Bighorn, far better equipped to fight an opponent on that particular field. The gun toting Sioux had better rifles, automatic firing versus the cavalry’s single shot 1873 Springfield Carbines. But the Indians also were equipped with bows and arrows that many times found their targets in the clouds of dust that made moving targets almost impossible to hit. The Indians also had tomahawks and clubs that were effective in close combat; in effect, one warrior had commented that the end of the Little Bighorn battle was no different than hunting buffalo. Near the end, there was little or no resistance.

When considering the events of greatest impact that took place in the United States during the 19th century, there are two that stand out that would forever change the way Americans viewed themselves and the way the rest of the world would look at America. The concept of “Manifest Destiny” became impressed upon the image of America as a forward moving nation that recognized no boundaries that could not be crossed. Westward Expansion
resulted from this notion in a way that encouraged Americans to always look ahead and reach for goals mostly unachievable in other parts of the world.

The conquest of the West, geography, and weather taken into consideration, set a high bar. Overcoming the obstacle of American Indians, rightful inhabitants of those lands for centuries, presented a conflict of interests that journeymen, soldiers, emigrants, and presidents contended with in ways that yet today, in the 21st century, are not easy to understand. Westward Expansion was a movement starting from the eastern shores of America and culminating in the far west to the Pacific Ocean, which began as colonization under Great Britain ended, and reaching out to lands as yet unexplored, began. The quest for new lands to develop and new fields to furrow was not a drummed up idea that fell into the lap of the newly arrived. Immigrants from the old home lands in England, Ireland, Scotland, France, and Germany came pouring into the continental United States from the very beginnings of European colonization and kept arriving in droves that would test the ability of any new nation to absorb the foreign-born who wished to become U.S. citizens.

Whether the ongoing caravans of settlers led the parade of civilization through the unknown and sometime hostile lands or whether the well-organized, well-orchestrated dynamics of politics and railroads led the march, the movements of both came under the protection of the United States cavalry. The momentum west could never be slowed or halted. What had begun as a vision took on steam as a force to be reckoned with. There is little doubt that railroads and political considerations played an increasingly larger part of the whole movement. Protecting wagon trains, and weighing that against either maintaining old treaties or creating new treaties for the wellbeing of Plains Indian tribes, became overshadowed by transcontinental railroad
Connecting east coast to west coast was more than a vision; it was the means by which agriculture, industry, and new cities stood to be created from a vast wilderness. In a letter dated December 17, 1853, Senator Stephen Douglas of Illinois wrote:

How are we to develop, cherish, and protect our immense interests and possessions on the Pacific, with a vast wilderness fifteen hundred miles in breadth, filled with hostile savages, and cutting off all direct communications. The Indian barrier must be removed. The tide of emigration and civilization must be permitted to roll onward until it rushes through the passes of the mountains, and spreads over the plains, and mingles with the waters of the Pacific. Continuous lines of settlement with civil, political, and religious institutions all under protection of law, are imperiously demanded by the highest national considerations. These are essential, but they are not sufficient. No man can keep up with the spirit of this age who travels on anything slower than the locomotive, and fails to receive intelligence by lightning. We must therefore have Railroads and Telegraphs from the Atlantic to the Pacific, through our own territory. Not one line only, but many lines, for the valley of the Mississippi will require as many Railroads to the Pacific as to the Atlantic, and will not venture to limit the number. The removal of the Indian barrier and the extension of the laws of the United States in the form of territorial governments are the first steps toward the accomplishment of each and all of those objects.

This passage is valuable in understanding the oncoming wave of public sentiment that would in time become public policy. Stephen Douglas was not known as a visionary; he was a well-schooled politician who understood the Constitution of the United States and also could relate to the voters in Illinois who could benefit from a transcontinental line that either originated in Illinois or ran through Illinois. His letter spoke to the future of America, the settlement of lands beyond the Mississippi made not only likely, but possible by railroads and telegraph, advanced transportation and instant communication. The only real mention of Indians speaks to “The removal of the Indian barriers . . .” There is nothing said about what happens to the Indians when they are removed.

As the consummate politician who needed Senate votes from both North and South for passage, Douglas later supported the Kansas-Nebraska Act in 1854 which would bring Nebraska
into the Union with the provision that citizens of Nebraska could decide by “popular sovereignty” on the ballot whether the state might permit slavery or abolish it. The driving force behind his efforts was the promotion of railroads regardless of what the consequences were to be on the slavery issue or on the inevitable “Indian removal.” Stephen Douglas was not a voice in the wilderness. He expressed the point of view of the many who supported the expansion of the United States to the sea. The other national concept that drove the locomotive westward was “Manifest Destiny.”

It was an idea on which scholars, philosophers, and publishers had written well before the grand movement pushed ahead in earnest. James McPherson has quoted Timothy Dwight, president of Yale University, who belonged to the region and group least enthusiastic about Westward Expansion, in a poem entitled *Greenfield Hill* of 1794:

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All hail, thou western world! by heaven design’d  
Th’ example bright to renovate mankind.  
Soon shall thy sons across the mainland roam;  
And claim, on far Pacific shores, they home;  
Their rule, religion, manners, arts, convey,  
And spread their freedom to the Asian sea.  
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None of those who early visualized the long trek west could have also visualized all the motives nor all of the difficulties and tragedies that attended this great adventure. Henry David Thoreau had said, “but westward I go free, Mankind progresses from East to West.” Horace Greeley, noted publisher of the *New York Tribune*, wrote the phrase that seemed to capture the spirit of expansion: “Go West, young man.”

McPherson wrote:

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This was first a frontier of overland trails and of sailing routes around the horn; of trade in beaver skins from the mountains, silver from Santa Fe and cattle hides from California. By the 1840s it had also become a farming frontier as thousands of Americans sold their
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property at depression prices, hitched their oxen to Conestoga wagons, and headed west over the Oregon, California, and Mormon trails to a new future. Most Americans considered it their ‘manifest destiny’ to absorb these regions into the United States. Boundless prospects awaited settlers who would turn ‘those wild forests, trackless plains, untrodden valleys’ into ‘one grand scene of continuous improvements, universal enterprise, and unparalleled commerce.’

The first half of the 19th century provided all of the background and stage setting needed to set the westward parade in full motion following the Civil War. The consequences made it abundantly clear that the movement forever changed not only the landscape, but the lives of many. McPherson has stated unequivocally that, “The manifest destiny that represented hope for white Americans thus spelled doom for red Americans.”

It is clear that Westward Expansion was not a notion alone created by a national desire to link east and west by rail and telegraph. The process of pioneers moving west had been a work in progress for a hundred years; it is also abundantly clear that complications, displacements, wars, death and a large expenditure of national treasure would accompany Manifest Destiny as it took on the form of public policy during the last quarter of the 19th century.

The oncoming national issue about how to deal with Indian tribes was not long in coming nor pushed aside as something to be dealt with later. Solutions to the “Indian Problem” were never scarce, nor were they particularly practical. For a number of years, the Office of Indian Affairs was under the control of the War Department (in 1849, it was transferred to the Department of the Interior). In 1831, Secretary of War Lewis Cass outlined a plan in his annual report which included some of his recommendations that would stand the test of time or be buried in time:

1. A solemn declaration that the country assigned to the Indians would be theirs forever and a determination that white settlement should never encroach upon it.
2. A determination . . . to exclude all liquor from the Indians’ new territory.

3. The employment of adequate military force in the vicinity of the Indians in order to prevent hostility between the tribes.

4. Assistance to all who needed it for opening farms and procuring domestic animals and agricultural instruments.

5. Restraint as much as possible from involvement with the peculiar institutions and customs of the Indians.

6. Employment of persons to instruct the Indians, moving as far and as fast as they were capable.122

The definition of Indian Law may fall into several different categories, the first of which is the 19th century status of Indians in the U.S. legal system. Under the United States Constitution, American Indians are not United States citizens. With this in mind, there is not a clear path to understanding Indian Law. Indians are not citizens, therefore, how do the courts in the justice system deal with a separate law within that system of justice?123 Indian Law was federal law that applied to Indians. Tribal law was law within Indian tribes that did not equate to federal law.

What is the experience of Indians as the object of public policy? What have the courts decided? How does an Indian receive justice under a system that virtually excludes him? Indians administered justice in a manner different from the way American Law administers justice. If a red man kills a white man under U.S. law, and if the court finds him guilty, then he suffers the sentence under U.S. law; in other words, prison or execution. If a red man kills a white man under traditional, tribal Indian Law, he may offer compensation to the family of the
slain man in terms of cattle or other treasure. This is called “Covering the Dead.” To reconcile federal mandates with Indian tribal culture was never an easy task. There were many misunderstandings of treaties that were signed by tribal chiefs and U.S. authorities that led to consequences unforeseen by either party. The Laramie Treaty of 1868 serves as a good example. The bold attempt to reconcile tribal life to U.S. patterns of citizenship and law was an almost impossible task brought on by well-intentioned Indian Commissioners. “These treaties were a triumph of theory and faith over hard reality.”

The Fort Laramie Treaty of 1868 was born of a sense of “Christian sentiment demanding Christian justice for the Indians that would be proper to a Christian nation.” Following the Civil War, there was a wave of Christian evangelicalism that took hold of the process of implementing remedies to correcting the injustices that had dominated Indian relationships.

The Indian Office, officially charged with managing Indian affairs, seemed incapable of the task in the period of chaos and crisis. . . . The formal answer to the demands for reform came in the administration of Ulysses S. Grant. It has been called ‘Grant’s Peace Policy.’ . . . Basically it was a state of mind, a determination that since the old ways of dealing with the Indians had not succeeded, a new emphasis on kindness and justice was in order.

It did not take hold. The observation of Indian policy as a “state of mind” drives further to the truth than many theories on why Indian relations failed in the 19th century. Manifest Destiny carved a large part of Indian policy from the federal government’s role in creating domestic public policy.

How difficult would it be to return to the immense task of managing the frontier, a task that had to contend with hordes of settlers moving west at no predictable pace, the expansion of railroad service across the Great Plains, mining opportunities such as the discovery of gold, in particular, created yet another challenge, and finally the Indians? Most of the challenges were
met with a government grown used to contending with chaos and crisis, but the Indian Problem was not one with immediate solutions.

A well-conceived notion of where the country stood and what had transpired as the Civil War ended follows:

The Civil War was an economic conflict between competing agrarian and industrial societies and a great nationalistic drive on the part of the North to crush rising southern nationalism and thus preserve the Union. But it was also a great Christian crusade, a moral mandate fulfilled, a wiping away of the hideous blot of sinful slavery from the conscience of the nation. The emotional intensity of the northern endeavor was heightened still more by the religious dimensions of the struggle. It was God’s work: “Mine eyes have seen the glory of the coming of the Lord, He is trampling out the vintage where the grapes of wrath are stored.”

“The evil of chattel slavery . . . fired the abolitionists . . . no matter how much politicians might protest that they urged no moves against slavery where it was protected by the Constitution . . . the question of the ultimate morality of slavery could not be quieted.”

With the successes of settlement propelled by Westward Expansion after the war, the singular issue that the evangelical movement, the new Grant Administration in the White House, and Reconstruction could not resolve was Indian reform. It escaped the grasp of the best minds available to deal with it. Success in agriculture, industry, and mining were all overshadowed by the failure of a reform-minded government to deal with the Indians, in particular the Great Plains tribes.

Abraham Lincoln had considered the consequences of not developing a western policy well before he was president. Others, like Stephen Douglas of Illinois had long gazed westward, fully understanding the commerce and industry that lay well beyond the middle west of the United States. Lincoln and Douglas shared the notion that the vast territory that lay between Missouri, at the eastern edge of the land where the Mississippi flowed to the sea, and Oregon, made up over two million square miles of farm land, gold mines, copper mines, timber, and
cattle grazing land that almost escaped the imagination. They both also understood that railroads were an essential part of the area’s development, as important to the West as the Erie Canal had been to the eastern states several decades earlier. Stephen Douglas had no qualms about what it might take to open up this land; he was a Midwesterner and he wanted it opened.

Abraham Lincoln, ten years prior to the outbreak of war and seven or eight years prior to the Lincoln-Douglas debates of 1858, assumed an opposite political position to that of Douglas. The 1858 Democratic candidate for Senator from Illinois, Steven Douglas, promoted popular sovereignty in the territories, a law that was enacted as the Kansas-Nebraska Act in 1854. Abraham Lincoln led a spirited campaign that would oppose this act, because it would allow slavery in the territories, should each territory applying for statehood choose to leave the slavery issue in the hands of those who could vote the measure up or down. Lincoln opposed every attempt by the slaveholders, southern sympathizers in the South in favor of slavery, and those who for a number of reasons would simply oppose the movement of free soilers into the new undeveloped lands. Lincoln was no abolitionist, but he knew that the South could gain a stranglehold on the western territories if slavery was permitted.

Douglas was willing to compromise whatever his own feelings might have been about slavery, by allowing it in the territories, thereby keeping southern Democrats in line. By not developing a public policy that would determine who could rule in the territories, Lincoln could see the drift of slavery moving inexorably north; Lincoln kept his silence on slavery where it existed because the Constitution permitted slavery where it existed. But a policy had to be put in place that would make stable government possible, for as Lincoln declared in a Douglas debate, “A house divided against itself cannot stand.” Slavery in the territories became the national
issue that raised the banners of the newly-formed Republican Party in opposition to the Kansas-Nebraska Act. How the Indians in the territories would be treated or taken for granted was a side issue. But Lincoln was never the homespun, plain-looking western lawyer. He was a Whig who “proved himself heir to the ideas of Alexander Hamilton, John Quincy Adams, and Henry Clay. Like most Whigs then and in the next two decades, Lincoln also supported banks, protective tariffs and funding for educational measures.” These became Republican planks, along with antislavery at a later time.

Lincoln was eager to see those railroads being built with government subsidy on track to the sea. As president in 1862, he signed the Pacific Railroad Act which enabled extensive government subsidy.

Congress doubled the size of the land grants and added still further financial supports in a second act that Lincoln signed in 1864. Although the President . . . shied away from government ownership of the railroads, these two enactments in 1862 and 1864 proved the Republican Party favored establishing a sound marriage between government and business to link the East and West.

The Civil War raged on and domestic policy dealing with Indians became third-page newspaper copy except for an incident in Minnesota that raised the ire of the public when Sioux raiders killed a number of settlers. The entire event became known as the Mankato Massacre. President Lincoln had not established a clear Indian policy during his term in the White House because he was totally consumed with the Civil War. He was a fully involved wartime president who could only deal with other issues as low priority, secondary matters. The Mankato Massacre occurred during the first sixteen months of the war and could not be put aside or ignored, because over 300 Indians had been condemned to die. Mr. Lincoln was a compassionate man. He could have allowed all 303 Indians to hang, but reduced the number to
38. He thereby recognized the severity of the Indian attacks without allowing the full impact of an army court to transpire. His decision was a balance of civilian justice during a critical national wartime period. It was the only instance in which the President intervened in national Indian affairs.

In Lincoln’s presidency, even before his railroad and agricultural policies impacted Native Americans, he had to deal with several issues involving Indians. In late August of 1862, a few days before Lincoln announced his preliminary Emancipation Proclamation, . . . the president was informed about Mankato and that “Men, women and children were indiscriminately murdered” and that “panic among the people has depopulated whole counties.”

The number of Indians suspected of involvement was three hundred and three. Thirty-eight Indians were hung in Mankato as retribution (see The Execution). What is significant is the low priority given to Indian affairs and to the overall “Indian Problem” during Lincoln’s wartime presidency. It was justifiably argued that far more critical issues faced the nation well ahead of Indian policy, the state of the nation was directed toward war with the South, where slaughter was counted in the thousands and tens of thousands. There was no Indian policy nor would one emerge until Custer made his critical tactical blunder at the Little Bighorn in June of 1876.

“When the war came, Lincoln had no specific strategy in mind about how to assume or carry out his central role as commander-in-chief. Just as he lacked a design for national military affairs, so he had no strategy planned for the American West.”

Abraham Lincoln was a “Western Man.” Given different circumstances other than the inevitability of war with the Confederacy, he would have promoted Westward Expansion. His legal career in Illinois, not unlike his Democratic Party rival Stephen Douglas, contained a lot of railroad special interest proposals. Lincoln was raised in an environment that was not provincial.
The Mankato Incident was precipitated by a series of Indian raids on white settlements in Minnesota that brought on cavalry action and the capture of more than 300 warriors. A military court found those warriors guilty of participating in the raids and condemned them all to be hung. President Lincoln narrowed the guilty list to 38. They were hung together in the largest single execution in United States history.
His vision always centered on a nation that could reach out and move further rather than remain insular.

Indian policy was not an issue during his administration except for the Mankato incident. He resolved that by commuting the death sentences of those three hundred and three condemned to thirty-eight. Lincoln had served briefly in the Black Hawk War, but had no interest in destroying Indians or their culture. His vision, unlike his predecessor President James Buchanan, was to move the country to its outer limits, culturally, economically, and territorially. He was the model Western Man who was denied the opportunity to fulfill his dreams.

As a wartime president, Abraham Lincoln did not have the wherewithal to develop and even attempt to formulate a public policy regarding treatment and evenhanded dealings with the western tribes. Considering parallel minority issues of great consequence for the nation, Lincoln’s ambivalence toward resolving African-American issues never resulted in a clear cut plan until his conceiving and delivering the Emancipation Proclamation in the fall and winter of 1862. Possibly until the day that the Proclamation was issued, there was no guarantee that it might contain clauses allowing slave owners compensation for loss of their slaves; there was always a possibility that the president might encourage blacks in America to take free passage to Liberia or Haiti, as those suggestions were never completely shelved. Wartime pressure forced the final arrival on January 1, 1863 of the second most significant and powerful document in United States history. The short text and clear wording, “Forever Free,” backed by the United States Army and Navy left no question about the meaning and power of the Proclamation. That power reached over after the war to create the 13th, 14th, and 15th Amendments to the United States Constitution.
States Constitution, which would, forever, establish Senator Charles Sumner’s words, “Equality for All,” as the Law of the Land, except for American Indians.

Many historians . . . of our past view Lincoln’s actions in the West through different eyes. We realize that his support of the Pacific Railroad and the Homestead Act and the implementation of those expansionist measures led to tragic consequences for Native Americans, especially in the loss of their lands and rights. Also, . . . the huge federal financial outlays and land grants to the Union Pacific and Northern Pacific resulted in disastrous economic, political, and social consequences for the West.\textsuperscript{133}

Legally, land acquired by the process of discovery as determined in \textit{Johnson v. McIntosh} decided who the owners of the new lands were. Abraham Lincoln pondered this issue well before he occupied the White House. But a vision of the West as America’s future was never far from his thoughts.

From his early twenties into his mid-to-late thirties, he gradually defined himself as a “western man” and formulated a Whig political-economic credo that called for government support of internal improvements such as roads, canals, and railroads. . . . In the third and most complex stage of Lincoln’s ties to the West, he worked with sets of issues. He supported congressional legislation that shaped the fate of the West through the creation of a transcontinental railroad, a homestead act, the Department of Agriculture, and land grants for agricultural education.\textsuperscript{134}

Lincoln’s demeanor was that of a western man. Part of his legal reputation grew as a lawyer who successfully represented railroads. He recognized the important role played by the railroads in moving the country westward. Lincoln spent his four years in the White House as a wartime president, “[A]s time allowed, he also turned his attention to slavery issues, military decisions, Indian policies, and Reconstruction efforts impinging on the West.”\textsuperscript{135}

Historically and in literature, the “western man” in America had vision. He could see beyond the horizon. Thomas Jefferson had the vision to look ahead to colonizing and farming lands beyond the Mississippi River. He dispatched an exploratory team to map the territory. He may not have seen all the possibilities of transportation west and underground resources, but he
saw enough to get the process started. Daniel Boone was a real explorer who became a man who looked beyond moving his own family out of harm’s way. The artist, George Caleb Bingham, pictured him as a visionary leading America west. Lincoln saw the economic advantages of Westward Expansion even if they did not include a place for freed men to find new lives. He fully understood the use of armed power and intervention in the interest of fulfilling Westward Expansion. He had already demonstrated his ability to use it, as he successfully did in Mankato, Minnesota, in order to complete a mission. Even as the Civil War was the benchmark of his presidency, the battle that sometimes raged in the Midwest involved his attention. His interests were in settling the West and opening the gates to farming, mining, commerce and industry through the rail lines, waterways, and homesteading. Where Indians stood in the way, Lincoln dealt with them. Indian Law was never a real issue during Lincoln’s tenure. Lincoln’s ambitions for the western United States were made abundantly clear; how his skills as a moderate and one who respected human rights may have worked, shall always be a matter of conjecture.

Westward Expansion was an important part of the makeup of President Abraham Lincoln. He saw the future of the United States as Thomas Jefferson had seen the future. It was never a question of how the West might best be beneficially taken over, but when. Providing government subsidies in terms of land grants, eminent domain, were not the issues; the willingness of the emigrants to move, sometimes under the protection of the U.S. Cavalry, many times without it, would finally determine the success of Westward Expansion. Public opinion finally played a large role in moving those wagons west.
In summary, the Indian policy that slowly developed under President Abraham Lincoln was never guided in the direction of what was best for Indians. “Concentration” was just another term for removal of Indians to reservations.

Concentration was an updated removal policy, the logical next step when the continent no longer had uninhabited regions in the West. Concentration was really a form of racial segregation, justified to protect the Indians and make way for the advance of civilization. . . . Many reformers accepted concentration as inevitable, but they viewed it as an intermediate step toward the assimilation of the Indian into American life. Indian haters tended to view concentration as a step toward extinction.¹³⁶

Senator James Doolittle, who chaired the Senate Indian Committee, borrowed former Senator William Seward’s term, “irrepressible conflict” to describe the ongoing Indian wars. But, as author David Nichols describes the President in Lincoln Looks West: “Indian affairs show up the hard side of Lincoln’s nature, a side that bordered on militarism. It . . . surfaced in his message [to Governor Ramsey in Minnesota] to “attend to the Indians.” “This Lincoln, for all his caution and political manipulations, was obsessed with a goal and would use violence to resolve problems when Indians, or anyone else, forcibly got in the way of his highest priorities.”¹³⁷

Lincoln, indeed, had developed an Indian policy that simply foreshadowed what would eventually follow under President Grant and his successors. As it worked out, there was no magic formula that would govern the manner in which federal law could successfully accommodate Indian Law.

Indian land rights remained an unresolved element of the long and mostly unsettled relationship that existed between the United States federal government and their clients, the American Indian tribes. To what extent does the Indian law that reaches back well before European colonization have an effect on the way tribes are governed? That is the question that
must be addressed before any conclusion may be drawn on the very significance of Indian Law, or whether it had any relevancy at all. There were different ways of carrying out federal law, but the end usually resulted in ways that the needs and wills of white citizens were satisfied. Indians were more commonly removed, dislocated, or forced into different surroundings that were not to their liking or best advantage. Decisions were made at the convenience of the government.

The topic of the “Indian Problem” and the solutions to effective management of American Indian tribes under native Indian law, but governed under federal law, presented serious problems. During the last half of the 19th century, the Indian Problem was clear to legislators. There were a number of tribes on the plains that included the states or territories of Nebraska, Minnesota, Dakota, Colorado, Wyoming, Montana, Arizona, and Nevada; this broad expanse stood directly ahead of the wagon trains of settlers, miners, railroad workers, and cattle ranchers who sought their new livelihoods west of the Mississippi.

The tribes, consisting in large part of Sioux, Arapaho, Cheyenne, and Crow were an obstruction to the vast movement of white Americans crossing the plains. Those tribes were the major obstacle that stood in the path of a peaceful settlement of the West which, as it worked out, was neither peaceful nor particularly well planned. Until the last quarter of the century, there was no specific guideline or policy for settling the West.

Westward Expansion was not an idea born out of a vague hope for a better life for those Americans willing to take on the dangers of passage. Westward Expansion had been a large part of the nation-building in process since the purchase of the Louisiana territory from France in 1803. How building a nation beyond the Mississippi River could happen was never clearly understood by the promoters, but it was almost certainly understood by each tribe that lived
between the Mississippi and the lands beyond. They perceived that once the mass movement of wagons began their relentless pursuit of the open lands, Indian sovereignty was not a realistic goal. The wagons would not hold back. The question in the eye of a Plains Indian was how far he could be forced from his hunting ground and then what were his alternatives.

The U.S. government never intended to be the caretaker of Indians. The role of the government was to protect the settlers moving west as effectively as possible under prevailing hostile conditions. When the U.S. Cavalry was present, it took remedial action against hostile tribes of mounted Sioux or Cheyenne warriors. Plains Indians were severe impediments on the road to the settlement of the West. Each U.S. president beginning with Abraham Lincoln and continuing through the late 1800s contended with the Plains Indians whether there was an Indian policy in place or whether each action taken against a tribe was retaliatory or part of a military plan that was ready for activation. The military skills exhibited by Plains Indians were well known. As middle century entered its next phase, the cavalry knew exactly what it had to do to defeat their well-armed adversaries. Battles were decided on the field. The winner remained and the loser left the field.

Deloria’s analysis of the shift of power and responsibility in the management of Indian affairs is significant because it highlights the matter of governance. It describes which part of the federal government shall take charge. The president makes treaties and issues presidential orders. Congress makes laws based on the power granted to it in the Constitution. In understanding where federal law fits with Indian Law, it is important to understand the source of the federal law. In this case, the U. S. Constitution is the source. It was never completely clear in the 19th century where a treaty between government and Indian was valid and when it might
be subject to change. An 1871 amendment to an Interior Department house bill “declared that no tribe would thereafter be recognized as capable of making treaties with the United States, although it declared that existing treaties would be honored.”

Based on Indian relations with the government over the prior century, this amendment was meaningless because by the end of the 19th century, “the government made over 100 agreements with Indians that resembled treaties.” It is small wonder that tribal leaders of the era had little faith in the written word of agreements or treaties. “Indians as a subject of congressional debate were removed from the national agenda to an item on a committee agenda, and they were never again seen as having an important claim on the national government.”

In accepting this analysis at its face value, lowering the priority of Indian management from congressional oversight to committee action placed Indian relations and specific issues at a perilously close place to many other items that get thrown to a committee where they remained without much further consideration and many times “die in committee.” Summarizing the treatment of Indian tribes on the plains is not an objective way to fully understand the issue of Indian governance, and how conflicts were resolved. The Indian Rights Association had supported Indian rights in many cases, but as the allotment laws, proposed by Senator Henry Dawes (R-Mass.) moved closer to reducing the size of Indian lands, the Association insisted that Congress could not be trusted to consider fairly the interest of Indian communities. Further, “It is now distinctly understood that Congress has a right to do as it pleases; that it is under no obligation to respect any treaty, for Indians have no rights which command respect.”

Whether the association spoke for the Indians or whether individual tribes forcefully brought their own grievances, it was apparent that by the last two decades of the 19th century,
tribal laws had little value. Federal laws enacted by Congress or presidential mandates ruled tribes. The settlement of the size of Indian lands before a battle and after, or before an immigrant wave passed through what was known as an Indian territory, was always determined by government decree. Significantly, whatever negotiation took place, final settlement accommodated needs of the immigrants. Indian tribes received access to lands available at that time. Where the Indians were at any given time would invariably be subject to change.

Public policy dictated what interim schemes like land allotments failed to do. Reservations became the permanent home of tribes in the plains as the Plains Wars sputtered to an end at Wounded Knee. The Sioux, Cheyenne, and Arapaho were not victims of the Plains Wars as much as they became wards of the state under circumstances that developed where Indian policy had been either lacking or entirely unsuccessful in maintaining or seeking Indian rights. Policies that developed after the battle at the Little Bighorn served to terminate all vestiges of Indian law within the tribes and alter the treaties that had been in place. If notions were vague as to the exact meaning of what Indian rights consisted of under the terms of what Indian law meant, then the acts of Congress, carried out by the U.S. army where necessary, removed any last doubts at the end of the century. Indians were moved to where the government wanted them moved. The government’s dominant jurisdiction over the Indian tribes introduces the question of whether the goal of Western Expansion, driven by the waves of settlers moving across the plains, was the basis for removing Indians or whether the policy developed in moving west was based on the preconceived notion of Conquest, particularly Conquest of the West. Conquest was a changing policy based on the pressures of American society to push beyond the border long established by the Mississippi River. The lands west of the Mississippi River were
part of the 1803 lands acquired by the United States as part of the Louisiana Purchase. The territories had to be secured and made safe for settlement. The largest obstacles that stood in the way were the Plains tribes of Indians.

The government dealt with those tribes according to treaties and agreements that largely reflected circumstances at the time rather than legal precedence. The federal laws in effect at the time prevailed. State laws had no jurisdiction nor did individual tribal laws. Indian Law was not violated because it had no precedence. *Tribal law prevailed in each tribe, but the federal government prevailed whenever jurisdiction issues arose.* The United States was on a course designed to take over and govern lands occupied by Indian tribes regardless of what prevailing tribal laws had been in place.

As the Plains Wars escalated through mid-19th century, recognition of cultural differences between the United States and the tribes was far less significant than in earlier times. During the first third of the century, tribal cultures were studied as lifestyles unique to each tribe. George Catlin had written about those cultures and visually displayed them in his art. As relationships between whites and Indians deteriorated during the Plains Wars, the presence of the U.S. Cavalry that opposed armed warriors increased in the illustrations that appeared in the popular publications of the day.

Interpreting Indian/white relations . . . Euro-Americans seldom glimpsed the complexity and integrity of Indian cultures. This misunderstanding was certainly significant. Nevertheless, overstressed, it draws our attention away from the essential matter of property. All the cultural understanding and tolerance in the world would not have changed the crucial fact that Indians possessed the land and that Euro-Americans wanted it.\(^{142}\)

It had been debated whether Westward Expansion was primary or secondary to the goals of America’s long reach from its eastern borders to the ends of the frontier at the Pacific Ocean,
where battles were fought and the land was covered with blood in the interests of acquisition and
development or in the pure interest of colonization. Westward Expansion was the primary goal.

On the other hand, owning land, the ultimate desire of Europeans who had come to
America from the 17th to the 20th centuries, was in itself another primary goal. To own land
became not only a source of wealth through development, but it represented status. White
Americans who owned land, whether it was granted, homesteaded, or bought, achieved the kind
of recognition that was next to impossible to obtain in Europe, where property was handed down
by family or given by the king. In the western world, America represented something entirely
different — a crossroads where expatriate Europeans could settle.

Deemphasize the frontier and its supposed end, conceive of the West as a place and not a
process, and Western American history has a new look. First, the American West was an
important meeting ground, the point where Indian America, Latin America, Anglo-
America, Afro-America, and Asia-America intersected. . . . the workings of conquest tied
these diverse groups into the same story.143

The territories provided the ideal, possibly last, frontier for western civilization, as it was
then known, to absorb new population. Natural resources were abundant. Untilled lands for
farming, grazing grounds for cattle production, timber, waterways, underground properties of
unknown proportions, all represented incentives not known in any other part of the western
world. The obstacles were geographic because it was unknown what measures had to be
employed to move people and supplies long distances over a variety of rugged terrain. It was
somewhat better known that an organized military force could prevail over a less formidable
enemy. In either case, loss of life was not discounted. Heavy risk was a known element. As the
frontier moved west, “Western history has been an ongoing competition for legitimacy . . . for
the right to claim for oneself and sometimes for one’s group the status of legitimate beneficiary
of Western resources.” It took a long time to arrive at any appearance of legitimacy. Many battles ranged throughout the West before the U.S. Cavalry re-engaged following the Civil War in 1865. The Plains tribes were defeated at great cost of life to Indians and cavalry over the better part of the 19th century.

The settlements were drenched in the blood of the tribes from the Sand Creek in 1869 to the massacre at Wounded Knee in 1890. Two hundred and thirty five of the 7th Cavalry’s finest lost their lives with Lt. Colonel George Armstrong Custer at the Little Bighorn in 1876. Confrontation between Indians and the U.S. cavalry brought along heavy price tags at both ends of the battlefield. What was finally resolved beyond any further doubt was the supremacy of the U.S. cavalry against the overmatched Plains warriors. What remained in doubt was the dominance of a white Euro-American culture as opposed to Native American cultures. “The contest for property and profit has been accompanied by a contest for cultural dominance. Conquest also involved a struggle over languages, cultures, and religions; . . . this contest for cultural dominance remains a primary unresolved issue of conquest.”

The risk of travel west was easily overcome by the rewards offered by the land beyond the horizon. The Law of Discovery disallowed Indians the right to sell the lands on which they lived, thereby removing the only real power that a tribe might have had in claiming ownership. After this Supreme Court decision in 1823, “The Indigenous owners were converted into tenants” where they would forever be under the rule of the federal government. The laws of the tribes remained in effect in the tribes, but what power could the ruling chiefs assert if there were no property rights and, therefore, assets to back up what became a series of land disputes between Indians and settlers and Indians and government? The Supreme Court in Johnson v.
McIntosh ruled that many of these same lands could now be acquired from ownership by Indian tribes. The Supreme Court was bound to safeguard property rights but at the same time displace many thousands of original land holders. If the pattern that was set forth by Johnson v. McIntosh in 1823 established the legal beginnings of broad expansion to the West over the next 75 years, it clearly established who would govern among the pioneers, settlers, and Indians. Indian Law had no effect on ownership of land, the leading cause of friction and confrontation that grew with the intensity of a prairie fire between 1823 and 1890. There were cultural differences between the several hundred tribes and the Euro-Americans, but land ownership, displacement, allocation, removal and assignment to reservations created the havoc that spelled the end of the lifestyles that George Catlin had pictured and idolized in his art work. Catlin’s illustrations are prominently displayed in Chapter 7 with commentary.

The 1823 decision by the Marshall court has stood forever: “Indians had no right of soil.” The rights of tribes to live, roam, hunt, and finally claim land as their own came to an end. The idea of “sovereignty” ceased. The question, then, of who governs, and under which set of laws, became a legal matter that has taken decades to decide.

The wave of white public opinion and special interests dominated the decision that promoted expansion by pioneers and discouraged the rights of the indigenous people who had virtually no rights under the U.S. Constitution. In retrospect, the only clearly defined debates regarding the rights of minorities that took place in the 1850s were the Lincoln-Douglas debates, which would argue the benefits or the downside of the extension of slavery in the territories. The pawns were black slaves, not American Indians. No later major debates transpired that would have carried the high profile of Lincoln-Douglas. No such debate ever reached the conscience of
the American public than that accorded to Lincoln-Douglas. The impact on the public that reached a high emotional pitch was the defeat of Custer at the Little Bighorn in 1876. Prior to that time, the special interests of railroads, mining companies, and farmers drove Congress to enact treaties, acts, and laws that would displace Indians.

Developing the West was the driving force of each administration following the Civil War without regard to policies, race, economic consequences, armed forces actions or humanitarian consequences. The Plains Indians were a force to be reckoned with, not reasoned with, but surely not ignored. Their prowess as a fighting force was always known through the greater part of the 19th century as raids and skirmishes and sometimes pitched battles. The battle at Rosebud Creek in which General Crook retreated from the field just a week prior to the engagement at the Little Bighorn, illustrated the success attributed to a well-armed Indian foe.

Indian policy could be justified by non-recognition of Indians as citizens or as tribes recognized as foreign countries or states.\textsuperscript{148} Treaties were like quicksand. Meanings could be replaced at the convenience of the government.\textsuperscript{149} According to Frank Pommersheim, “... early Indian-colonial encounters were largely related to four separate but overlapping streams of engagement: trade and land acquisition, diplomacy and war, governance, and cultural attitudes.”\textsuperscript{150}

Land acquisition headed the list of priorities that was resolved following passage of the U.S. Constitution written in 1789. Land acquisition would be the only reason that war, treaties, and re-ordered treaties existed for 100 years following the newly formed republic. Cultural misunderstandings due to language differences made it more difficult for any reasonable way that armed conflict could be averted. In the eyes of many citizens, settlers represented the
advance of civilization to new lands occupied by savages. To Indians, Westward Expansion represented uprooting tribes from their homes and hunting grounds. Differences, cultural or not, were irreconcilable and irreversible. Pommersheim has described the transition from trade to land acquisition as follows:

There is no doubt that as trade was exhausted and receded in importance, land acquisition came more . . . to the fore. In the narrow sense, Indians were the producers of raw materials — furs and hides — that were processed into the finished products. . . . And when the demand for such finished products declined and prices plummeted, the economic and political clout of the Native producers of raw materials also declined. With this . . . there was a concomitant economic shift by colonists toward agriculture and increased land acquisition.¹⁵¹

As a direct result of the shift, more settlers, including immigrants, moved west. “. . . the pattern of accommodation began to shift more . . . to enmity and hostility that focused on the acquisition of Indian land.”¹⁵²

English law, lying at the foundation of discovery of lands not guaranteed any prior rights of ownership prevailed during the transition from the colonial to the new federal era.

The English . . . understood land transactions as essentially economic in nature, . . . involving the transfer of a valuable commodity known as land through a process identified as the right to alienate land. The legal frame of reference for interpreting the transaction was solely colonial-English law. Indian law or custom (i.e., sovereignty) was not recognized.¹⁵³

Indian rights and Indian Law, in particular, such as it was, were both conceptual rather than documented. As occupants of the soil on which they had lived for generations, American Indians gained few rights under American law. With passage of the 13th, 14th, and 15th Amendments to the Constitution, equal rights under the law were granted to all citizens except Indians. For a short period of time between 1789 and 1823, the federal government recognized Indian ownership of land but without the sovereignty that would supply the legal basis for
ownership. Long before Indians were removed from any recognized legitimate claim to land ownership, “there was the competing factor of colonial claims to ownership of land in New England based not on ‘purchase’ from Indians but on grants from the English Crown. These transfers were rooted in the fiction of ‘discovery’ . . .”

In reviewing the transition from the colonial period, which concluded somewhere between the end of hostilities with Great Britain and the introduction of the Constitution “to form a more perfect union,” and the federal era, there was little evidence of change in Indian policy. As Pommersheim continually reminds us, Indian law was bypassed by federal law and rights to what had been Indian lands were abrogated by states or settlers. “At the time leading up to the adoption of the Constitution, Indians and Indian tribes were often seen as the enemy. The ‘uncivilized,’ ‘the heathen,’ . . . but also the possessors of the land . . .”

The Indian is different, the Indian tribes form a sub-culture that can be tolerated by our culture, but not included in it. The American public had been educated throughout the 19th century through popular literature, newspapers, and especially illustrations, the extent to which the government should go to protect the citizens and, at the same time, occupy the territories. There were three different bodies of governing structure among Indian tribes that may well have had a hand in determining who should rule, and what their powers and limitations were. They were the federal government, a state government, and tribal rule, in which tribal law would be incorporated.

Since the beginning of the new republic following ratification of the Constitution in 1789, power progressively moved into the hands of the federal government. Opposition to federal incursion on Indian lands and invasion was expected where Indians hunted, whether by
negotiation or force of arms. By mid-19th century, it was no longer a question of whether Indian lands would be taken, but when, and by how much required force. Following Custer’s Last Stand, the only tribes capable of making a fight had, in effect, brought about their own last stand. The Sioux, Arapaho, and the Cheyenne would never again have the fighting power to oppose the U.S. Army. The last vestiges of any hope of Indian sovereignty vanished following the triumph of Sitting Bull and Crazy Horse on June 25, 1876. In the beginning, “The Constitution clearly recognized Indian tribes as sovereigns, but not as sovereigns who participated in its creation, its ratification, or its compact for governance. Indian tribes were recognized sovereigns but largely as sovereigns outside and on the margins of the new republic and its Constitution.”

The Indian Commerce Clause in the Constitution had supplied the basis of what became the defining policy of Indian governance. This subject has been reviewed earlier, but worth repetition; it was, in essence, “The Constitution did not include Indians or Indian tribes, but excluded them, hence the necessity of the Indian Commerce Clause as a means of dealing with them as outsiders to the Constitution and the constitutional process.”

There were several steps along the way that set a precedent for how Indian law or tribal law would be abrogated as the power of the federal government assumed additional power over the tribes. Federal law by virtue of taking more Indian lands reduced the power of tribal law. President Andrew Jackson’s action taken in 1830, known as the Removal Act, said:

That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States, west of the Mississippi River, not included in any state or organized territory and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside and remove there...
There are more questions in this excerpt from the Removal Act than answers. For example, what was the legality or recognition of the “Indian title” in the first place? Was there ever really any notion of ownership or sovereignty? Also, what rights would a tribe have to “exchange” something that the government had never recognized that they owned in the first place for lands over which they would never gain sovereignty? Federal treaties were far better intended than enforceable as written. Intended language was not strong enough to cut through the mass migrations that drove American public policy during the latter part of the 19th century. No interpretation of existing Indian Law in any of the tribes was powerful enough to satisfy the needs of indigenous inhabitants who were not citizens at the expense of settlers, many of whom were new citizens of the United States.
Chapter 5: Custer, the 7th Cavalry, the Plains Tribes and Public Opinion

The stunning event that captured the imagination of Americans from the east coast through the south and extending to the far reaches of the inhabited and yet unsettled west, was the defeat of the vaunted United States 7th cavalry under the leadership of Lt. Col. George Armstrong Custer. The battle took place on June 25, 1876, in what might have been carried on military records as simply one of a series of encounters that occurred on the western plains during the time of the Indian Wars. The unique thing about this encounter was that all of the troops, 235, as most commonly reckoned, under Custer’s direct command, were killed by warriors from the Oglala Sioux and Cheyenne tribes under the overall direction of Sioux Chief Sitting Bull. Custer was among those who lay scattered about the coulee on the banks of the Little Bighorn River on that hot summer day, but whose bodies were not discovered for almost two days before arrival of the main cavalry under the command of Brigadier General Alfred Terry. More articles, journals, books, and illustrations have been produced about this encounter than about any other full-fledged battle fought by United States military forces in all of its written history. What had seemingly inspired the outpouring of words, interviews with troops that first entered the field of combat and warriors who took the field on that day and were part of the engagement, was the total destruction of those under Custer’s direct command.

Questions that are still being raised today about tactics, anticipated results, use of or refusal to make use of intelligence information revolving around the strength of those Sioux and Cheyenne villages that were in evidence on the opposite shore of the Little Bighorn, remain unanswered. The mystique, the mystery, the motives all play a significant part in why the battle retains a sense of aura, importance, and holds a grip on our collective imaginations well beyond
its real military significance. Two hundred thirty-five deaths in one pitched battle that lasted very little time is not to be ignored or put aside. Relative to even minor battles in the late Civil War, the Little Bighorn episode would have hardly been classified as a battle, especially brought up alongside the bloodiest and most tragic single day of the Civil War, Antietam, where North and South could count around 27,000 casualties, dead and wounded. The Little Bighorn pales by comparison. But as important as the outcome of this battle has become in the American imagination and in the glory of the United States cavalry, its tragic result played a large role in the formation of national policy in the last quarter of the 19th century.

The entire episode of the Plains Wars played a very significant role in the momentum that had been building up for half a century that propelled the ambitions, desires, and vision of Americans who had always been looking beyond the next horizon. There was always a horizon in America, well before the idea of reaching the far west coast occurred to the restless. The courageous ventured west of the Alleghenies before the end of the 17th century. Settlements west of the Mississippi were born during the 18th century. St. Louis was settled in 1764 and the Louisiana Purchase brought exploration well beyond Missouri right to the very origins of the Missouri River. The gigantic lure of America was the seemingly endless boundaries that separated this great land from the landmass of Europe, where the boundaries had been established in many cases for centuries. Americans lived with the notion that there was no end to the frontier, and that it was available for those willing to take the risk. The frontier mentality would be encouraged by the United States government and backed up by the United States army.

When one closely examines Westward Expansion, especially following the Civil War where national resources could return to extending the frontier, developing it and moving waves
of emigrants to live there, dreams became reality. I refer back to a hand-painted metal plate engraving displayed earlier in this thesis. F.O.C. Darley has accurately identified most of what Americans believed about occupying the West. The eyes of the family patriarchs and the gaze of the chief scout focused ahead, beyond the next rise of the landscape toward the land of promise explains goals, determination, and courage. The father of the family grouped in the wagon has only acknowledged their presence by striking the classic bold pose of one who leads; the chief scout is armed, aware of danger that may lurk over the next hill and feels his full burden of responsibility for guiding this long procession of oxen, mules, and wagons to their destination. He has performed this task many times, but the challenge is never easy. I believe this spirit of moving ahead has so permeated the national psyche for so many years that is it any wonder that the goal of reaching the moon and setting foot on a lunar body was never too distant in the plans, hearts, and minds of Americans? All risk aside, the idea of reaching further and arriving first has become part of the American character, or perhaps better stated, what best characterizes Americans. These thoughts are a worthy addition to the notion of what it means and what it has meant to be an American.

President Ulysses Grant had not set a national goal of settling our western lands. In fact, in 1868, the United States government signed the Laramie Treaty with the northern Sioux that guaranteed that the Black Hills of South Dakota extending well into the eastern parts of Wyoming and Montana would remain Indian Country. Ulysses S. Grant had every intention of honoring the treaty; circumstances overran the terms and another broken treaty lay among the ashes known as Indian relations. Custer’s cavalry discovered gold in the Black Hills in 1872 and the power of government or the U.S. army was not sufficient to hold back the thousands who
made their way west. Intrusions upon Indian villages and hunting grounds were many times followed by Indian raids on settlers or isolated groups of soldiers. Incidents developed into causes for revenge.

An isolated incident was told about several Sioux boys who slaughtered a stray cow belonging to a rancher. The incident escalated into open warfare finally resolved under a white flag. The will of the settlers, miners, farmers, and ranchers was the way in which the government reacted to incidents that should have been handled by local authorities had there been local authorities. Federal troops became the authority that resolved local disputes between citizens and Indians, who were by and large not citizens and thereby had no rights. David Humphreys Miller, who conducted interviews with Little Bighorn veterans on tribal relations and then wrote the story of the Little Bighorn entitled, *Custer’s Fall*, gives numerous accounts of trivial events, hardly newsworthy, such as the stray cow incident, that led to confrontations well out of proportion to the intended outcomes. Plains Indian tribes knew no boundaries until forced on reservations. Years of free movement across those plains was at apparent risk and the series of interactions between tribes, notably the Sioux tribes and Cheyenne tribes, helped bring on the inevitability of a major engagement with the U.S. army, as the formidable western command under General Philip Sheridan developed a plan to surround the tribes convening on the Bighorn. President Ulysses Grant had not looked harshly at the tribes out west. It was surely not his policy that turned the army loose subduing Sioux, Cheyenne, and their allies at whatever cost and whatever the risk; his memoirs provide some insight into the president’s Indian policies.

“In a word, the old free life of the Plains Indian was at an end. The Sioux and Cheyenne would hereafter “walk the white man’s road” and “be lodged on reservations, where they would
be maintained at Government expense.” Messages were sent by indifferent agents to various chiefs in the dead of winter. Ill-timed and ill-advised from the start, the directive reached few, if any, Indians in the Montana wilderness. Those chiefs who did hear of it paid little heed to such nonsense. By age-old practices and tradition, they felt they had every right to roam unmolested in their ancient hunting grounds. Furthermore, their right to do so had been guaranteed by formal treaty with the white man’s government. The Fort Laramie Treaty of 1868 defined their permanent territory as all the land from the Platte River north to the Canadian border and west of the Missouri [River] to the Bighorn Mountains. This area was to belong to the tribes “as long as the grass shall grow.” In the Native American mind, this meant forever.159

Increased military action escalated almost immediately after the battle at the Little Bighorn, and it did not relent until the Sioux village at Wounded Knee was destroyed with over 200 lives taken down with it in 1890.

“Custer’s Last Stand” had assumed legendary proportions (sometimes) almost as soon as news of it reached the white man’s world. A myth nearly as imaginative as Homer’s Odyssey was in the making as fiction swiftly intertwined with fact. An adulatory press had already built Custer into such a heroic figure that earliest reports of his death were not generally believed.160

The word had been delivered to the river vessel Far West by Curley, a young Crow scout who was considered the last link to Custer’s command and who thereby became known as the last survivor. As it happened, Curley became the people’s choice as the last survivor of Custer’s command to have seen “Longhair” alive. Curley became the first of the “stuff” of which myths are made. The mystique of “Custer’s Last Stand,” “Custer’s Last Fight,” “Massacre at the Little Bighorn” has been at the very root of the fascination created by the press in July 1876. Indians remain, however, as the most reliable sources of either observation or speculation. The
immediate effects of Custer’s battle were embellished by the press, so that mystique, mystery, reaction grew well out of proportion to the event itself. It is important to remember that the U.S. Army, including the cavalry, had been bested by the Sioux in prior engagements (for example, General Crook’s defeat at the Rosebud just prior to the Little Bighorn). But the episode at the Little Bighorn held far more significant issues than had any of the many battles that made up the time frame of the “Plains Wars.” The most headline-worthy item of this battle was Lt. Col. George Armstrong Custer himself.

As the national focus shifted from the presidential election of 1876 to the “Indian Problem,” Westward Expansion, and the looming issue of national security that was now reaching far beyond the eastern part of the country to the west, a national policy evolved rapidly. The beginnings may have taken place something like this: “Acting as spokesman, Plain Bull, a Crow, made the startling statement: ‘Long Hair Custer, Son-of-the-Morning-Star, and all his soldiers, every one, were killed this morning on the Little Big Horn.’”¹⁶¹

How authentic this “first word” was, like every other part of the epic event, is lost in time and clouded over by lack of hard evidence relevant to who witnessed the last smoking gun. How Col. Custer was killed, and by whom, shall never be known. A vague rumor, of the many that circulated, claimed that he had taken his own life with a bullet through his head. His body (so it was reported by the discovering cavalry) was not mutilated. There was said to be reasons for that. Some Indians reported that Custer was not scalped out of respect for the reputation that followed him. As unlikely as this sounds, it was probably no more unreasonable than other reports that were cast about at random. Those random accounts added to the mystery which became mystique which in turn added to national interest and increasing hostility toward all
western Indian tribes. “Two Crow scouts other than Curley also carried word of the Custer battle to the whites. Neither was attached to Custer’s command. . . . Their garbled accounts contributed to one of the many dark mysteries surrounding Little Big Horn. . . .”162 More conjecture by more newspaper editors as the few facts known of the battle outside of the outcome grew in proportion to reality. “All along the line, various editors added fantastic embellishments to the original account until fact became indistinguishable from fiction.”163

President Grant issued his own public statement: “At Long Branch in September, published . . . in the Army and Navy Journal . . . ‘I regard Custer’s massacre as an unnecessary sacrifice of troops brought on by Custer himself.’”164

Articles appeared in The St. Louis Daily Times. The first real description of Custer’s last fight did not appear until eleven days later on July 6, 1876, and came from information posted in Salt Lake City, Utah, on July 5th. First reports were brief and sketchy:

“. . . General Custer and fifteen officers and every man belonging to the five companies (under Custer’s direct command — Writer’s note) were killed . . . . General Custer found the Indians’ camp, of about 2,000 lodges, on the Little Horn, and immediately attacked the camp.”165

On July 7, The Daily Times reported a more complete accounting of “The Custer Slaughter” and editorial material was written for the following July 7th excerpt:

The complete destruction of five companies of cavalry is shocking enough, but the calamity is rendered more appalling by the death of the gallant and favorite young officer in command. . . . It is idle to talk of subduing the Sioux with a few thousand men. The entire available force of the Government should be concentrated up the seat of the war . . . 166

Theories continue to surface on how the battle was really fought and what Custer’s strategy consisted of in light of the disastrous results. “The disparity among various Indian
versions of the battle made it all the easier for the hero-worshipers to perpetuate the Custer legend."\(^{167}\) Henry Wadsworth Longfellow pitched in with his epic poem, *The Revenge of Rain-In-The-Face:*

> “Revenge!” cried Rain-in-the-Face
> “Revenge upon all the race
> Of the White Chief with yellow hair!”

The essence of all of this speculation and emotion is the formation of a public opinion campaign that evolved into public policy formation. It is from public opinion pressure that policy many times is activated.

During the course of my study of Westward Expansion over the past four years, I have interviewed American and Canadian Indian members of the three tribes that were the most outstanding participants in the Battle of the Little Bighorn. The three tribes are the Sioux, Crow, and Cheyenne. The Sioux warriors, on that day, accounted for the largest number of combatants faced by the 7th Cavalry. The Cheyenne were present in smaller numbers and the Crow provided the chief scouting operations for the cavalry which amounted to the gathering of military intelligence on which the commanding officers would heavily rely and then make decisions.
Interview with Maxine Noel

Maxine Noel was interviewed twice. She is a full-blooded Dakota Sioux, a descendant of both Chief Red Cloud on her mother’s side of the family and Chief Sitting Bull on her father’s side. They were both important Dakota Sioux chiefs in the latter part of the 19th century in the western United States. Sitting Bull was the spiritual leader of the Sioux tribes that defeated Lt. Colonel Custer and the 7th U.S. Cavalry on June 25, 1876. Sitting Bull was reported to have had a vision of that battle only days before it happened in which the Sioux were victorious.

Maxine Noel, whose Native American name is Mahpiya Ioyan Mani, was born and educated in Manitoba, Canada. Parts of her family have always lived in Manitoba and reside there today. Following the Sioux victory at the Little Bighorn, Sitting Bull elected to lead several tribes of Sioux to western Canada, presuming that further encounters against a far larger U.S. cavalry would not achieve the same results as those produced in the June 25th battle.

With the opening phase of Sitting Bull’s diaspora, the beginning of the end of Sioux power in the West began. U.S. public policy would soon dictate a harsh course of action that would enforce movement of Plains tribes to reservations or force the tribes to leave their homeland and emigrate to Canada where the settlement atmosphere was typically more favorable than it was in the United States. The tribes soon discovered that provisions for emigrants were sparse in Canada at the outset. Maxine Noel’s family learned that five generations in Canada provided an essentially good life, but lacked the cultural and spiritual values that could only be fondly remembered in oral histories.

Maxine Noel worked as a legal secretary in Toronto until 1979 and then began a fulltime career as an artist, focusing on the Native Canadian culture. Her art clearly reflects those
spiritual values of a past era; explicitly, the transparency and mystical tone of *The Offering* reflects a bygone era.

Maxine Noel’s history of the 1876 battle at the Little Bighorn was conceived through the words of her grandfather, who related his account in the Old Sioux language. When I inquired about “the big battle,” she replied that it was incorrectly described as a massacre. The army fort, according to her grandfather, had sent out the soldiers. “The Sioux warriors lured the soldiers into a coulee.” A coulee resembles a foothill — a circular shaped landscape where the soldiers were surrounded by the Sioux warriors and where there was no escape. (see *The Coulee.*) According to legend, Custer’s regiment was not completely destroyed at the Little Bighorn. The warriors simply took the soldiers’ shoes, guns, and horses, and sent the soldiers (barefoot) back to the fort. That was the essence of Noel’s grandfather’s tale of what occurred on June 25, 1876. He also told that “counting coup” did not entail taking a scalp as commonly perceived by white people, but “holding an enemy to the ground and letting him go — no scalping.”

In a later interview in August 2014, Maxine Noel has been far more expressive about the spiritual values taught to generations by the Sioux and still reflecting the open spirit of life on the plains. Her own art, as seen toward the end of this passage, is “a vehicle to wake up people to the state of our planet. The influence of my heritage teaches that humans are the only creatures not in touch with the planet — but people have the strength to make the world a better place by helping each other. Humans overrate themselves” and thereby stand in the way of making the world a better place. *The Offering*, a major art work by Maxine, acknowledges the Earth — “We are all part of the Primordial Soup.” *Mother Earth* depicts that figure weeping because of the wasteland that follows settlement.
Maxine Noel’s grandfather taught her what he had learned verbally about the battle at the Little Bighorn River. He described the soldiers being surrounded in a coulee, where they were stripped of shoes, guns, and horses and then sent back on foot to Fort Abraham Lincoln.

Pictured is Maxine’s pencil sketch of the (type of) coulee in which the 7th Cavalry surrendered.
BATTLE OF THE LITTLE BIGHORN  June, 1876,
from a description given to Jim Schiefe
by Maxine Noel, August, 2010.
The land in the center of the sketch has
been described as a coulee in which the 7th
US Cavalry was surrounded by Sioux Warriors.

Makupiya Joyan Mani
Maxine Noel
Her entire family education was based on living with the Earth. Spiritually, the Sioux strongly believe in “The Natural Order of Things,” guided by the Great Spirit, Wakantonka. As Sitting Bull led his tribe to Canada in 1876 following the Little Bighorn victory, tribal beliefs became even more intense and have remained that way. It has become more important over time to retain those spiritual beliefs. Reservation life, whether in Canada or the United States, has made it more difficult to keep the bonds unbroken and avoid the “Broken Hoops or Broken Circle.”

I thought it might be appropriate to lend commentary from a book entitled *The Dakota Sioux in Canada*, authored by a Canadian missionary priest, Gontran Laviolette. Following that, I have written some results of an interview that I had in August 2010 with Maxine Noel. The following quotations from *The Dakota Sioux* provide a capsule of critique from the author followed by an eyewitness account from a 15-year-old Native American boy. *The Dakota Sioux* was recommended by Maxine Noel as an authentic Native American account of the episode at the Little Bighorn.

Sitting Bull led his Dakota Sioux tribe to Canada twice following the battle. The Indians never recognized a boundary between Canada and the United States. They considered a journey to Canada as simply an extension of the great northwest that knew no boundaries. “Though the 49th parallel divides Canada and the U.S. the Sioux traveled both sides of the line because the Queen Mother (Victoria) said that Sioux could live in peace in Canada.”

The oral history by the Sioux at the Little Bighorn is a different perspective than the one shown in the Anheuser-Busch sponsored print of savages swarming the 7th Cavalry circle and scalping their victims. A guiding principle that is encompassed by all three tribes I interviewed
— Sioux, Crow, and Cheyenne — is one that does not recognize boundaries. Though one has always existed, spiritually, the Sioux did not recognize the boundary between Canada and the United States.

Following the Civil War, the move west was renewed with vigor. How citizens both North and South look back on their historical roots is formed not only by those events written historically, but also by the memory of those times carried orally by generations. “People clung to the memory of what was gone.” 169 (See full quote in Appendix F.)

The Crow, Sioux, and Cheyenne tribes all connected their cultures and spiritual beliefs with the power of nature over their lives. A “Great Spirit,” known by different names in tribal languages, permeated the cultures of those three tribes that I visited and with whom I conducted interviews. Some of their tribal members have converted to Christianity but retained tribal religion. Some practice both Christianity and traditional Indian spiritual beliefs. Nature plays a large role. Plains Indians worshipped the buffalo because of the significant role buffalo played in providing food, clothing, and shelter. The buffalo dance illustrations demonstrate this. The horse has played a significant role among Plains tribes (see illustration after Appendices). Language remained separate and distinct to each tribe. Spiritual values intersected.
In 1874, Gen. Philip Henry Sheridan put George A. Custer in command of an expedition to the Black Hills . . . the agency Indians were ordered to return to their reservation . . . they were physically unable to do so for lack of food and fuel . . . they were accused of disobedience.

President Ulysses Grant, in Nov. 1875 . . . sent them an ultimatum . . . to disperse—or be treated as enemies of the State . . .

In the spring of 1876, three armed expeditions were sent against the Tetons—one under General George Crook, one from the west, under General John Gibbon and a third from Fort Abraham Lincoln, under Generals Alfred N. Terry and George A. Custer. (p. 185)

Heading the Hunkpapa warriors was Sitting Bull . . .

Sitting Bull was prominent as a chief and as a medicine man. Born in 1836, he was to become one of the great figures in American Indian history. He was elected as a Teton war chief at a council held in 1867 . . . in Dakota Territory.

Through his courage and spirit of independence, he exemplified the spirit of resistance to the white man’s oppression . . .

On June 17, 1876, Sitting Bull with his Hunkpapa warriors and Crazy Horse, with the Oglalas defeated Crook in Rosebud Valley, driving him and his men back to the Missouri River.

Unaware of Crook’s defeat, Generals Gibbon and Terry advanced to meet the fugitives. With Terry was Custer at the head of the Seventh United States Cavalry. Terry wanted Custer to sweep down on the Lakotas . . . while Crook attacked from the other end. (p. 186)

Such were the positions on June 24, 1876, the eve of the day the Tetons annihilated Custer’s men, an event wrongly called “massacre” instead of “Custer’s Battle” . . .
... Custer had witnessed many attacks on white trespassers by Sitting Bull ... On the eve of battle, nearly 6000 Tetons and allied tribes had gathered in the Little Bighorn Valley. ... Altogether, there were between 1900 and 2500 warriors. ... Custer moved with 225 men towards the large Indian encampment on the Little Bighorn River June 25, 1876 (Gen. Custer had dispatched part of his command to other positions) but disappeared into the hills following a long circuitous route to the rear of the Teton camp. ... Then he came over the top of the hill, flags flying—into a small tableland on one side of which were numerous ravines.

... Chief Gall moved in behind Custer’s troops while Crazy Horse hid under the tableland’s bank. Crazy Horse stormed the troops from the front while Chief Gall came in from the rear. Custer was shot and killed early in the battle which lasted about an hour. Sitting Bull did not take part in the battle but spent his time praying for victory. (pp. 186-7)

Charlie Cunwinyuksa (1861-1937) as a boy of 15, was an eyewitness to the battle in which Custer was slain. Here is his story.

“On the night before the battle, 5000 painted warriors gathered at the headwaters of the Little Bighorn waiting for General Custer to spring ... a surprise attack.

“It wasn’t so much a surprise to us as Custer intended it to be.

“Shortly before 9:00 as Custer and his men crossed the Little Bighorn, we were upon them before they knew it. (author’s italics) In the late afternoon we saw Custer fall. He was no coward. He fought to a finish. No one could take Custer’s scalp, for he, too, was just one of a butchered and bloody mass of dead soldiers ...” (end of recollection)

Maxine Noel is an artist who portrays members of her native Sioux tribe in spiritual scenes that reflect strong beliefs in the power and sanctity of Nature.

*The Offering* portrays an offering to the Great Spirit with the Black Hills (native home of the Sioux) in the background.
Mother Earth and Tears

Maxine Noel
(copyright obtained)

Mother Earth spreads tears in recognition of the destruction of some of Nature’s beauty.
Interview With Burton Pretty On Top

Burton Pretty On Top is a 7th generation Crow American Indian. He is the Cultural Crow Director of the Crow tribe that lives on 2.2 million acres of Crow land (a reservation) principally in Montana. Burton Pretty On Top is employed by the Crow Tribal Administration, which as explained to me by Burton, is not part of the Bureau of Indian Affairs, a department of the federal government officially authorized by Congress in 1832.

Observations on the relationship between the Tribal Administration and the Bureau of Indian Affairs (referred to as the BIA) shall follow later. I interviewed Burton Pretty On Top at the Crow Tribal Administration located in Crow Agency, Montana on May 29, 2012. The interview took place in the office of Burton for two hours with two other tribal employees in attendance. In this thesis, I shall integrate material that I have read (sources shown in the context) with Burton’s commentary and impressions that I gathered along the way.

Throughout the interview with Burton, he expressed a strong sense of spirituality which he said is reflected in the Crow culture going back hundreds of years. Whereas the white (European-American) culture separates church and state, Crow culture makes a point of keeping religion firmly in the conduct and teachings within the tribe. It remains in the 21st century as a guidepost to life on earth, which exists at the center of the Cosmos. God exists in the center of the universe and is called “First Maker.” The spiritual makeup of Crow religion “begins with prayer and ends with prayer.” The “Tree of God” is ecumenical, recognizing all religions; all religions on the Tree emanate from God and Man is created “in the image of God . . .” (First Maker).
An explicit wood engraving by Frederic Remington shows carbined-armed, mounted Crow Indians shooting up a Crow agency for reasons unknown because I have not uncovered the entire text. But the picture’s message is not difficult to understand. The Crow, mostly pictured as allies and trusted scouts to the U.S. cavalry out west, did not always share a mutual feeling of bonding, trust, and good will. Pretty-On-Top, contemporary cultural director of the Crow agency in Montana, expressed as much in the interview provided in this paper. It has also been written that the Crow killed two birds with one stone at the Little Bighorn; Sioux and cavalry were killing each other. The Crow shown in the engraving are intent on creating havoc, more than likely because their promised supplies have been reduced or because appropriated land has been transgressed. What is significant to the student of this latter 19th century incident is that even the tribes known to be the most friendly to the United States government were not always in line with those expectations. The West was largely unsettled and subject to the unexpected until the turn of the century. A degree of uncertainty and mistrust has followed throughout the 20th century. The Crow shown in the engraving are angry, bent on destruction and not to be denied one more time. Relationships between various segments of whites and various tribes on the plains were almost always uncertain, seldom predictable, and carried on at arm’s length in the most positive sense.

Although linked as allies who turned out a number of scouts to the U.S. cavalry, the Crow Rebellion, a minor conflict, erupted when a small gathering of young warriors left their reservation to pursue a group of Blackfoot warriors who had stolen Crow horses. What ensued was a series of encounters with U.S. cavalry, who brought the Crow warriors back to their reservation. Misunderstandings and miscommunication featured a lot of the confrontations on the plains. The Remington wood engraving from Harper’s more than likely occurred during the so-called Crow Rebellion.
Pony Tracks in the Buffalo Trails

The Frederic Remington colored print showing an Indian scout and a white scout in buckskin leading a company of U.S. cavalry across the plains is significant for the following reasons. It clearly shows a progression of cavalry pictures delivered by the renowned artist of the west, Frederic Remington, who unceasingly turned out a considerable number of cavalry pictures. In various situations, they were shown as “on the move,” an undated print here depicting scouts leading a company on the trail of a band of Indian warriors on ponies. Over the vast plains, the warriors would not have been on foot, and the prints on the desert turf appear to be pony hoofs; the Indian scout is pointing this out to the buckskin clad scout who is on foot, leading his mount. The officer that follows at the head of the column probably holds the rank of major, judging by his uniform with epaulets, his estimated age (white mustache), his bearing in the saddle, and the size of his command, which is kicking up a lot of dust in the background. The middle ground of the print reveals a fair sized collection of cavalry, while the foreground shows the leading figures as described. Without a known date, I would estimate this scene to be 1880s, when the pressure was on the U.S. Cavalry to locate Indian tribes, move them to reservations or confront them in battle. The print is a companion piece to On the Southern Plains in 1860.

On the Southern Plains is a timeless piece; although titled “1860,” it could well have been set in 1880. The later Remington print, Pony Tracks, is also timeless. The uniforms, weapons, collections of scouts and commanding officers span a period of time from 1840 to 1890. The “Plains Wars” lasted a long time and formed a significant part of national policy, particularly after the Civil War.
When Burton speaks to groups of people, he symbolically points the stem of his pipe up to recognize the “supreme being” and the stem of his pipe down to recognize “Mother Earth.” Burton also practices the Roman Catholic religion, but not exactly on a par with “First Maker.” He sees direct relationships between the book of Genesis and “Ichikbaahile,” the story of creation taught in the Crow religion where “the earth was covered with water before God formed the earth of mud brought to the surface on the beak of a bird . . . and then from which God created roots and trees and then breathed life into the first humans . . .”

With faith in God, the Crow tribes were given the choicest place on earth, the bountiful lands in the West filled with rich grasses and an abundance of game. Jealous of their proclaimed lands, their 18th and 19th century enemies, Arapahos, Sioux, and Cheyenne tried to chase the Crow out of their environment — though outnumbered 10 to 1, the Crow held fast until, by the latter part of the 19th century, the United States government, backed by the United States cavalry, succeeded in locating the Crow tribes onto the Reservation, where they reside into the 21st century. Emotionally and spiritually, the inter-tribal wars have fed tribal history as handed down verbally with more impact than what is widely accepted as betrayal by the United States federal government. The diminution of land allocated to the Crow tribes by various treaties dating from 1825 to the present is scorned but grudgingly accepted.

Language is sacred in Crow culture, because it was derived from God’s words. Language contains the culture advanced from early times into the 21st century. The Crow are known in their culture and in everyday tribal life as the Apsáalooke. Legends and folktales of the beginnings “are accounts of historic events and people and can be correctly identified as oral histories.” “. . . stories are part of the oral tradition, which has helped the Apsáalooke keep their
history alive over the centuries. There is more to the oral tradition than just telling stories or listening to them. This is a process that ensures that narratives are passed down through generations, so that people know their own culture and history.” My interview with Burton Pretty On Top has been punctuated in this thesis by citations from *The Apsáalooke (Crow Indians) of Montana, A Tribal Histories Teacher’s Guide*. It was written as part of the Apsáalooke Writing Tribal Histories Project at Little Bighorn College in Crow Agency, Montana. School materials such as this are presented as part of the Crow Agency, of which Burton is the Cultural Director, and does not necessarily reflect what may be published or directed by the Bureau of Indian Affairs.

I have extracted some events tied to dates from the *Teacher’s Guide* and shall add Burton’s commentaries. Commentaries that follow dates are Burton’s and are taken directly from the *Guide*. Therefore, I shall not footnote every line of information; they are all either direct quotes or direct interpretations from the interview.

1825 The first treaty between the Apsáalooke and the United States is signed by Apsáalooke leader Long Hair and Major O’Fallon of the United States. From this point in time on, the Crow tribe never went to war with the United States. The treaty of 1825 was a friendship treaty and has continued a relationship in which the Crow tribe has always been an ally of the United States. The tribe learned to live within the United States.

1851 The Apsáalooke participated in the first Ft. Laramie treaty. The treaty stated that the Apsáalooke controlled over 33 million acres of land in present-day Montana and Wyoming. Burton states that the government set aside 38 million acres.
1868 The Apsáalooke participated in the second Ft. Laramie treaty in which their land holdings were reduced to 8 million acres in present-day Montana. Burton Pretty On Top stated that the final treaty settlement placed Crow land holdings at 2.2 million acres. In 1882, the Apsáalooke agreed to the final land cession and the government agency moved to the present site at Crow Agency, Montana.

1876 The Apsáalooke continued to support the United States military by supplying the scouts to the columns of the Centennial Campaign. If it were not for the assistance of the Apsáalooke to General Crook’s Wyoming Column on Jun 17 at Rosebud Creek, he and his men would have met the same fate as General Custer’s command. (Author’s note: there may be some confusion on dates in this late statement; however, the meaning is clear — Crow scouts saved Crook’s command. In the next paragraph, all of the commentary is Burton’s. The Guide gives no storyline to Custer’s fight at the Little Bighorn on June 25, 1876. Burton Pretty On Top’s comments follow.)

June 25, 1876. When recruited for duty in the field, Crow scouts always served, because the Crow were always allies of the United States even though they did not necessarily like that long relationship. The Arapahos, Sioux, and Cheyenne were traditional enemies of the Crow. At what became the battle at the Little Bighorn, Sioux, Arapahos, and Cheyenne were aligned against Custer. The Crow scouts located the large encampment on the river and watched from the hillside as the battle unfolded on that day in which Custer’s entire command was annihilated. There were no Crow scouts killed. The Crow had (seen) two birds killed with one
stone — i.e., the hated Sioux, Arapahos, and Cheyenne as well as the U.S. cavalry. It was foolish for Custer to attack, but he had always been successful attacking the enemy. The scouts knew that Custer would be killed and they knew the other tribes would suffer serious losses. No tears were shed by the Crow. The battle at the Little Bighorn was not seen as a big deal. It was considered enemies versus enemies. Custer came here and was killed on Crow land in one day. But, everything around here is Custer. “We” have been here forever. Tourists have glamorized the Custer Last Stand. Custer killed men, women, and children. He angered Crow; Custer was no hero to the Crow. The resentment has lasted a long time, because treaties have been broken.

1877 The Apsáalooke maintain constant attacks against the invading Lakota Sioux, Cheyenne, and Arapahos with and without the assistance of the United States military, even pursuing the fleeing Lakota to Canada (after the Little Bighorn).

1881 Sitting Bull surrenders at Ft. Buford, North Dakota after being in Canada for four years. Sitting Bull stated that one of the reasons for his surrender was to seek protection from the harassment of Apsáalooke warriors.

1924 Apsáalooke who are not already citizens are granted citizenship and right to vote under the Indian Citizenship Act.

According to Burton, the Bureau of Indian Affairs (BIA) is supposed to mediate issues that arise between the Crow Agency and the white landholders that interact with the reservation. The Bureau supports the white ranchers 90 percent of the time on issues such as right-of-way and diverted water supplies. Recently, the Crow asked for compensation for a road that had been
used by white ranchers for years without permission. A Crow investigation had brought all of the information to the attention of the Bureau before there was any consideration of the violation made. No compensation has been made, so the issue remains in dispute. The Bureau maintains it had not been aware of the violation for all of those years. The Forest Service has given right-of-way to white land holders without compensating the tribe. Resentments have remained at levels that have not changed over the years, according to Burton. It is still them and us. Other tribes such as Sioux, Cheyenne, and Arapahos, no longer enemies, feel the same way about the government.

Burton Pretty On Top quotes President Reagan: “Great governments are judged on how they honor treaties with other governments.” But Indian treaties have not been honored. Some final thoughts on Westward Expansion as gleaned from the interview follow.

- Indian tribes are in the way of the nation’s destiny (Westward Movement).
- Hunger and greed for land prevalent.
- Indian tribes are barriers that have to be removed.
- The Louisiana Purchase expedition was carried forward without consideration given to the people who had always been there.
- “. . . less than human . . .”
- “. . . how dare you live here . . .”

Burton’s grandfather taught Burton through oral history as events really happened and not those written in American history books. Crow spiritual leaders are not political leaders. People are judged by their service and sacrifice and not by how much land they own. Leaders were servants of the tribe. They sacrificed much just as Jesus sacrificed.
Burton assumes the role of cultural Crow leader by assuming the teachings of both the “First Maker” and of Jesus. In this dual recognition of two great cultures, Burton has “gone to the mountain” several times to live in the bush for four days, fast, and have visions that brought him close to God. In 1986, Burton was one of two representatives of Indigenous People of the Western Hemisphere at the World Day of Prayer for Peace. He prayed with the Dalai Lama, Pope John Paul II, Mother Teresa, the Archbishop of the Church of England, and people of all faiths. Burton visualizes his role as a representative of Indigenous people of the West in a true Global Society.

The fact that “Westward Expansion has been glossed over” in curricula in white schools speaks volumes to the issues of how Indian integration and the dreadful black experience were left in the dust of Manifest Destiny. Burton and the Crow Indians tribal guides carry the notion of neglect forward through the 19th century.
The Sign of the Cheyenne

On September 24, 2014, a series of interviews was conducted by the author with five members of the Northern Cheyenne tribe located in Lame Deer, Montana. The interview was arranged in order to learn more about the Cheyenne culture, a retrospective that went back in time to the mid-1800s. I asked the following five questions:

1. Regarding the Plains Wars fought between 1865 and 1890, to what extent did the Cheyenne take part in these conflicts?

2. To what extent were the Cheyenne linked to the Sioux?

3. How was Cheyenne culture affected by the events that took place during this time span?

4. What phases of Cheyenne culture were shared with the Sioux, Crow, and Arapaho tribes?

5. What interactions with the federal government were generally favorable and which were unfavorable? Where does Indian Law fit in?

There was a common thread among these interviews that came across with conviction. The emotional and family ties to tribe were very strong. Though not expressed as such, the pride of being a Cheyenne was of the order that “I take in my being proud to be an American.” “Love of country is an emotion that we all share, because we are all Americans; some of us have simply been in our country longer and have arrived here at different times, from different places, and under different circumstances.” What it means to be an American is an underlying theme to this thesis as it is an underlying basis of being a Cheyenne. The Cheyenne, who were a farming tribe situated in Minnesota, became a Plains tribe with no particularly well-defined lines or
boundaries. Boundaries were understood on the plains, but they crossed traditional tribal lines which probably led to some of the intertribal warfare typical to the plains.

Understanding tribal movements and tribal organizations is often complex. Fitting the lifestyle of a native American tribe in the organization of the United States government was a task never successfully completed. Being a Cheyenne carries not only a strong sense of pride in heritage, but an unbroken link to a proud past. Retaining tribal values while living as loyal Americans carries a unique quality that is hard to describe and not readily found.

Dr. Richard Little Bear is president of Chief Dull Knife College on the Northern Cheyenne Indian Reservation. He is also dean of Cultural Affairs who speaks Cheyenne and Sioux in addition to English. Dr. Little Bear stated emphatically that the Sioux and Cheyenne have shared a lot of similar customs and have closely interacted since the mid-1800s, brought on by the westward movement. Westward Expansion had manifested itself in an inordinate amount of suffering, death, and loss of land. Westward Expansion “set the stage” for how the federal government would treat the Indians throughout the century. The pattern for this mode of treatment had already been in place; the government took whatever measure necessary to “run roughshod” over Indian tribes.

Dr. Little Bear referred to European precedent for the rule of discovery, where discovery determines right of ownership. He referred to a Papal Bull issued in the 1300s as the basis for Europeans to subjugate people in the interest of land acquisition, moving from Columbus to the Lewis and Clark expedition in 1804 that was called the “Voyage of Discovery.” The use of the word “discovery” referred to the rights of discovery in the Louisiana Purchase acquisition, so Dr. Little Bear believes the discovery reference led to justification of taking land from Indians. “We
can now take over what we wish to take over based on the law of Discovery.” At that point, Dr. Little Bear concluded, “Our fate was sealed.”

The Sioux and Cheyenne had many “commonalities” except for language. All Indian languages have a common beginning, explained Dr. Little Bear, but no two of the 2,000-some Indian languages are the same. However, sign language assists understanding between tribes. Dr. Little Bear and others interviewed said that the language barriers made negotiations with the federal government difficult; however, common wisdom among Indians and whites would make peaceful relations at their optimum appear doomed. According to Dr. Little Bear, the defeat of Custer at the Little Bighorn was a Pyrrhic victory. The results of that battle resonate to this day, where relationships with the federal government are not always the best. In his own words, in modest tones, he says that “subsequent events [following] were iconic in Cheyenne . . . [and] still influence what goes on today.”

Custer has never been received well by the Cheyenne. Custer massacred the inhabitants of a Cheyenne village on the Washita River in 1869 in the name of retaliation. Custer’s fame as an Indian fighter grew as a result of this ill-begotten campaign. The Little Bighorn was just retribution, but short lived.

The Cheyenne were allied with the Lakota Sioux. The association and strong alliance with the Lakota Sioux remains one of the strongest positive results of all of the miseries suffered at the hands of the whites a century and half ago. The common thread of horse culture, a similar war footing, and a nomadic lifestyle provided a bond between two tribes that have remained close. Along with the Arapaho, who share similar values, the three are known as “the three Nation Alliance.”
If the retention of tribal histories remains important today, as a direct link to the past, and serves almost as a restorative, the issue of governance has faded from view. There is no tribal law today that resembles what had been a type of self rule in the past as Indians became enrolled in reservation life. The reservations are governed by federal law, the reservation’s court system only accountable for misdemeanors. An Indian Council serves as a policymaking body, but its real power is negligible.

The most significant historical events that occurred as related by Dr. Little Bear was what was known as “The Breakout.” In 1877, the Department of Indian Affairs, under guidance from the federal government, issued an order sending the Cheyenne tribe to Oklahoma, where many other tribes had been quartered on large Indian reservations dating back to the Cherokee tragic journey from the Southeast. Many Cheyenne died after the relocation. Under the leadership of Chief Dull Knife and Chief Little Wolf, many surviving tribe members made an unauthorized escape from Oklahoma and headed back north pursued by the U.S. army. The tribe made it to Fort Robinson in northwest Nebraska, where today, a monument commemorates the breakout; that commemoration of the Breakout is carried out yet today. Chief Dull Knife, whose large portrait hangs in the Administrative Building at the Chief Dull Knife College, would be considered one of the patrons of the Cheyenne tribe. (Chief Dull Knife and other Cheyenne leaders were responsible for the tribe to still possess a homeland in their traditional territory.)

Cheyenne resentment of the federal government after the 7th Cavalry’s defeat at the Little Bighorn was caused, so some tribal members believe, by the tribe not always receiving the same favorable treatment as other tribes. The Indian victory at the Little Bighorn on June 25, 1876 was an outstanding feat of skill and battle tactics that will forever be closely studied as
military history. More importantly, it shall always be noted as the day that the tide of sentiment and resentment of the white population in the United States swung around to force a federal policy on the Plains tribes that would lead to a change of life style that would forever change their lives.

George Nightwalker teaches Cheyenne history at the Chief Dull Knife College. His beliefs regarding the battle at the Little Bighorn are centered more on the culmination of a clash of cultures rather than on the result on the battlefield that a battle of great impact would be fought was almost inevitable. But the result brought to light the conflicts of interest represented by two entirely different cultures. The Plains Indians wished to carry on their traditional way of life as keepers, but not owners of the broad expanse of land that extended from the Dakotas through Montana and Wyoming. Their economic system, successfully carried out over two centuries was a bartering system; the United States’ economic system depended on materialism, guided by a banking organization, industrial complexes, railroads, waterways and an agricultural layout, all under the guidance and watchful eye of the federal government backed by the army.

The government made some attempts to reach out to the western tribes with treaties and agreements. For the greater part of the western movement, the treaties were changed and the agreements were broken. For example, after the battle at the Washita River in 1869 when Black Kettle’s village was wiped out, Lt. Colonel Custer sat with the Cheyenne chiefs, smoked the pipe, and agreed to fight the Cheyenne no more. “But he (Custer) broke that trust and fought again after he said that the army would be at peace with the Cheyenne.” “Long Hair,” as Custer was known to the Cheyenne, was a brave man, admired by the tribe. However, “he was not truthful.”
If this was a typical incident that more or less described the outcome of many agreements, then it is not difficult to assess the inevitable failure of relationships that occurred along the trail of shifting circumstances. In retrospect, the federal government did not have control over the movement of the miners, settlers, railroads, that continued to penetrate the western frontier and drive it further west. There were general rules laid out (for all tribes) known as tribal law that would apply to each individual tribe. Indian Law was never quite clear to the Indians in particular, according to George Nightwalker, because of language barriers. If there were literally hundreds of Indian languages, not just dialects, but different languages, it is not difficult to see why the Department of Indian Affairs in Washington was ill-equipped to deal successfully with individual tribes. Reasons for failure aside, the language barrier set up a condition that would almost doom a treaty or a seemingly simple agreement from its beginning.

The understanding of individual ownership of property was never really comprehended by the Cheyenne, according to Nightwalker, because the precedence of “Discovery” was never made clear except to know that “if we don’t make it, we don’t own it.” The concept of “land ownership” had no real meaning to the Cheyenne. They, along with the Sioux and Arapaho, were nomadic tribes. They moved over vast prairies that had no boundaries. George Nightwalker described federal Indian Law as quicksand: it continues to move and change. Whatever the Indians thought a law meant, it meant something different. “There was always a difference between the Indian sense of the law and justice and the American meaning of that law.” The federal government creates and regulates a law and can change it at will. “How quick does the sand take you down.” George Nightwalker concluded his commentaries on 19th
The ability to correctly define “Indian Law” includes the challenge of to whom the question is being asked and what the purpose of the question might be. To the Indian, Indian Law essentially means the different ways in which broken 19th century treaties negatively affected the life of a particular tribe. Responses from two of the Northern Cheyenne tribe members were laced far more with feeling than fact, especially in George Nightwalker’s answer that graphically spoke of “quicksand.” Quicksand related to how easily the interpretation of federal treaties and agreements during the 19th century shifted from one position to another, likely, in most instances, to cover up for a treaty that was broken or an agreement that knowingly could not or would not be fulfilled. A matter of trust stands behind all of the treaties, agreements, and alliances that the United States has ever made; when trust is questioned, avoided or simply violated, suspicion fills a void. This was especially made clear in Nightwalker’s example of Lt. Colonel Custer’s declaration that following the 7th Cavalry victory at the Washita River, killing of Cheyenne would cease; it did not. Battles of the Rosebud and Little Bighorn were significant enough. Indian mistrust of federal policy had been the one consistent element of U.S. government-Indian relations during the 19th century.

A significant statement by Alvin Ziontz in *The Aggressions of Civilization* explains the longstanding “rule under which Indian land rights dwindled into mere rights of occupancy, subject to extinguishment by the federal government.” Although Indian Law reaches back throughout the 19th century, Ziontz considers that the great body of it, emanating from Supreme Court decisions, came out since the early 1880s: “By the latter part of the nineteenth century, the
reservation system was firmly established and the policy of detribalizing or Americanizing the Indian was in full swing.”\textsuperscript{174}

Because both the federal government and the states were involved in the management of Indian affairs, many rules and decisions were made based on court hearings. “Many of the issues arising from their survival have been decided by the courts, for as Tocqueville shrewdly observed, “Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question. Indeed, no other nation has evolved a more extensive body of jurisprudence devoted to its indigenous people.”\textsuperscript{175}

*Johnson v. McIntosh, Cherokee Nation v. Georgia,* and *Worcester v. Georgia* are generally considered to be the three cases that “set forth the fundamental principle of tribal sovereignty.”\textsuperscript{176} The opinions in these cases, heard between 1823 and 1832, were those of Chief Justice John Marshall of the U. S. Supreme Court. State law often conflicted with federal law regarding the governance in Indian Territory. In *Worcester v. Georgia,* “the Court had ruled that state laws were inoperative in Indian country. All matters occurring within Indian country were solely within the authority of the tribe or the federal government.”\textsuperscript{177} This set the precedent that clearly stated that federal law overrode state law in order to protect the sovereignty — the tribe in Indian country. But in *United States v. McBratney* in 1881, precedent was cast aside, fifty years later, and Colorado law prevailed in a murder trial involving two white men: “. . . the Court turned *Worcester* on its head with no explanation or even mention of this reversal.”\textsuperscript{178}

Possibly due to political reasons, as in the Dred Scott decision in 1857, or for commercial reasons, as in *Plessy v. Ferguson* in 1896, different influences played a role in court decisions. The Dred Scott decision revealed a strong political alliance between President James Buchanan,
a Democrat with strong leanings toward the South, and Chief Justice Roger Taney, a former slave holder. The separate but equal ruling that was the cornerstone of \textit{Plessy v. Ferguson} simply upheld a railroad’s right to seat black passengers and white passengers in separate railroad cars, as long as the facilities were equal. By that ruling, the railroads were relieved of their fear of losing southern passengers. As state authority became established in the 1880s, “. . . state authority proved to be almost totally incompatible with tribal sovereignty. Jealous of their authority and intolerant of Indian enclaves within their borders, the states fought to extend their power over Indians and their lands.”\(^{179}\) As Tocqueville had so insightfully observed, the courts in the United States were moving to determine who would govern in the new frontier, and how those decisions might be easily changed within the power of the judicial system to change them.

It is essential in a balance of power that all three branches of government exert their power when necessity arises. Congress saw that it was their duty in \textit{Ex Parte Crow Dog}, a murder trial in which Crow Dog, a Sioux, was sentenced to death, to honor a treaty that the Sioux had made with the federal government; the federal law, in this case, must prevail:

. . . Congress made major crimes involving Indians punishable by federal law. The Crow Dog episode contains an important lesson: litigation may produce only short-term results. If a court decision stirs strong feelings among influential groups or sufficiently offends the values of the dominant society, Congress may act to reverse the decision.\(^{180}\)

What is apparent here is not a power struggle between Congress and the High Court, but a balance of power between the two branches of government that seek to find a working solution of what had remained a perplexing on-going exercise — the ability of the United States to understand and administer all aspects of Indian Law. It is vital to see the overriding consequences of Indian Law, which, in essence, is acting to try and find a way to govern a subculture in American society that wishes to live a different way of life within the physical
boundaries of the nation, but outside of the commonly accepted way that life is supposed to be led in what was then known as a civilized white society based on European rules of government and English law.

The tale of two minority societies in the United States existed side by side, namely the black population, now theoretically having become equal to white citizenry by virtue of the 13th, 14th, and 15th Amendments to the Constitution, and Indian society, who were not made equal under the law, but who were still living as a society within a society. The tale of black America in the latter third of the 19th century has an unhappy ending, because Jim Crow laws in the South prevailed. The Indians had a bitter ending in the 19th century for totally different reasons; Westward Expansion and the convenient rulings of Court and Congress, nullified whatever goals the Western Plains tribes might have set for themselves. Self-determination was never a successful 19th century finish for either African-Americans or Indians. Western Expansion had ruled the way of life that Indian tribes on the plains would follow, while the lives of African-Americans living in the South were put on hold as the last frontier in the west was breached. Public policy, driven to a large extent by public opinion, trumped most efforts by white reformers in the Indian camp and south of the Mason-Dixon Line to improve the lifestyle and wellbeing of Indians and African-Americans. Both movements failed because the reformers had not either worked hard enough or were too politically weak to bring about equality and opportunity to the black minority and the Indian tribes, and also because the wave of wagons moving west was an eye-catching, dynamic, well-directed campaign to spread American culture and to send white settlers to the Pacific.
The campaign took on an extraordinary extended life that lasts to this day when Custer and the 7th Cavalry met their fate at the Little Bighorn. What followed was one of the most successful media blitzes in all of U.S. journal history. Samples of newspaper accounts are highlighted and headlined in Appendix C. If the high tide of the Confederacy had been reached at the stone wall on the third day of battle at Gettysburg on July 3, 1863, the high water mark of the Plains tribes to secure their sovereignty played out on the valleys at the Little Bighorn. The Sioux, Cheyenne, and Arapaho scattered in different directions as the power of the U.S. army closed in. By the end of the century, following the battle at Wounded Knee and on the heels of the exodus of Oglala Sioux to Canada with return to the United States uncertain, the life blood of the tribes was spent. The elusive influence of tribal law seemed to vanish with the Ghost Dance, one of the last acts of Sioux power to rekindle the fires of Indian independence and Indian sovereignty. The entire story of the Indian wars on the plains dealt with sovereignty and where the influence of Indian Law would guide the fortunes of the tribes and where the authority of the federal government would claim a decisive role in governance. The following observation by Deloria describes in a concise way how Indian Affairs evolved from a high priority part of government to a congressional committee item.

Indian Affairs is a peculiar province of the legislative branch of our government. Although the Constitution charges the president with the responsibility to deal with Indians through his power to make treaties, and Indians always seem to look to the president for direction, the Constitution allocates power to Congress under the Commerce Clause for all matters relating to Indian tribes. This constitutional power meant little during the formative years of the United States. Indians occupied the vast interior of the continent while non-Indians huddled in settlements on the Atlantic seaboard. Trade with Indians was conducted at important junctions on major rivers, and if Congress occasionally spoke about Indian matters, hardly anyone in direct contact with the Indians was listening.
Professor Peter Kastor (see footnote 124) has observed that intrusion by Great Britain or Spain into Indian affairs in the United States was a major national concern in the early years of the 19th century. These threats vanished over the next few decades as the nation grew stronger, developed a standing army and undertook expansion and settlement following those routes developed after the exploration of the Louisiana territory acquisition from France. The move from Congressional agenda item to committee seemed to coincide with the vast movement west; as public policy now dictated Westward Expansion, the way in which Indians were either allotted land on the one hand, or moved to reservations on the other, was at the convenience of the government. Methods of dealing with the Plains tribes were arbitrary; there was not a recognizable time frame when the federal government managed Indian Affairs consistently. The response of tribes during the latter years of the 19th century was escape, war, or submission to the policy in place accompanied by resentment that spilled over into the 20th century.

The prevailing question during the 19th century that has run over into the 20th century is who shall govern the tribes and to what extent does tribal law interact with federal law in the workings of governance. The matter of how governance was divided was attributed more to court of law decisions than to the congressional system of creating laws that would be followed to the letter.

The power of Congress over Indians was brought to the high court in United States v. Kagama (1886). Two Hoopa Valley Indians were charged with murder of another Indian on the reservation under the new federal Major Crimes Act. Their attorney challenged the legality of the indictment and argued that the Major Crimes Act was unconstitutional. The argument went to the very heart of federal authority over tribes and presented the Supreme Court with serious difficulties. What was the source of Congress’s power to govern the internal relationships of Indians within their own reservations? . . . The only clause that could remotely lend support to such a claim of power was Article I, Section 8, the Commerce Clause. [See Appendix A.] “The
Congress shall have power . . . to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes."

What is implicit in the *United States v. Kagama* is the power of Congress to make the rules regarding Indian governance, with the ultimate power of the high court to determine what the law may or may not mean when carried out. It is a good example of the separation of powers in the United States in managing, at best, a complex understanding of who rules Indians and under what authority. “The *Kagama* decision is interesting not as constitutional analysis, but as an exercise in the dialectic of power politics. . . . *Kagama* is one of the principal sources of what has come to be known as “the plenary power” doctrine, which in practice means that Congress has the power to do virtually as it pleases with the Indian tribes.”

Congress exerted its authority in the latter part of the 19th century because events in the westward movement were running at a faster pace than suitable governing could manage. It appears evident that circumstances created opportunities for the “plenary power” doctrine. The doctrine came about as a reaction to circumstances that followed Indian movement across the plains, especially in light of the 7th Cavalry’s disaster at the Little Bighorn.
Interview with Dr. Robert Smith  
(Conducted on November 26, 2014)

In order to balance the interviews with three Indian tribes, I also interviewed the historian and museum director at Fort Riley, Kansas. Robert J. Smith, Ph.D., is the Director of the 1st Infantry Division Museum, which houses the historical records of the U.S. Cavalry during the 19th century Indian Plains Wars. He revealed a somewhat different perspective on the mission of the U.S. Cavalry at mid-19th century.

Dr. Smith has accumulated a series of copies of Sick Call Reports, Quartermaster Reports, Personnel Reports — all designed to show the troop strength of the 7th Cavalry and the equipment issued to them as they engaged the Plains Indians in combat. They demonstrate, in many cases, why the cavalry units were undermanned much of the time. Custer’s 7th Cavalry was undermanned going into battle at the Little Bighorn on June 25, 1876; it was short of senior officers and non-commissioned officers. The Order of Battle was not up to the level it should have been, especially entering a major campaign.

The records show that the 7th Cavalry had been issued the Spencer Carbine in 1866, the Sharps in 1867, and finally the 1873 Springfield, carried by the troopers at the Little Bighorn. I examined an 1873 Springfield; it is a .45 caliber, single shot, breach loading rifle that weighs about ten pounds. It was accurate at considerably greater distance than the 7-shot Henrys and Spencers. But the Springfield tended to jam from an overheated barrel after about 10 rounds were loaded and fired in succession. Many of the Indians had 7-shot Henrys and Spencers, which could fire seven rounds without reloading but did not require range accuracy at close combat engagement, typical of the battle at the Little Bighorn.
The most important mission of the army in the West was to keep peace between the settlers and the Indians. Maintaining the peace had been a difficult and often tenuous requirement since the times well before the Civil War. After the Civil War, the mission evolved into a policy of forcing the tribes into reservations, first by treaty (Fort Laramie in 1868), and then by arms if necessary. That had not become federal policy until the aftermath of the Little Bighorn.

Protection of the advancing railroads west also became a mission; the government had an investment in the railroads. The government was also under political pressure from special interest groups. Illinois Senator Douglas in the 1850s represented both aspects of political pressure and special interests; Illinois had a large stake in the success of east-west railroads.

During Ulysses S. Grant’s administration, a humanitarian policy was developed that might have had successful results in less turbulent times. Dr. Smith has developed some of his own views on how Custer’s fight at the Little Bighorn developed and why it failed. He has had the benefit of access to the historic documents that are maintained at Fort Riley. Some of Dr. Smith’s keen observations follow.

Custer’s first glimpse of the Sioux encampment on June 25th was from the Crow’s Nest, an observation point that overlooks the Little Bighorn River and a location used by Crow Indians to observe the surrounding landscape. The landscape combines short hills, plateaus, steep valleys, coulees, open stretches of grass and scrub interwoven with creeks and rivers. From the Crow’s Nest vantage point, Custer could see a lot, but not enough of the Crow and Cheyenne encampment. *What Custer did not know*, explained Dr. Smith, *was far greater than what he did know*, as he reached his final battle plan decision.
When Custer sent Major Reno on a separate route to attack the Sioux village from a
different angle, Reno’s troops were thrown back across the river, but he could establish a
skirmish line and hold off the attacking warriors assisted by Captain Benteen. Custer was never
able to establish an effective skirmish line as he became quickly surrounded in a coulee and was
overwhelmed in less than an hour. The Sioux rode ponies that were faster than the cavalry
horses; “all of those troopers who attempted to escape were run down.” Evidence of where they
fell relative to the main body that perished in the Coulee was testimony to an adversary that were
more skilled riders on faster horses. The 7-shot Spencers vs. the single shot Springfields gave
further evidence of superior weaponry on a day when the 7th Cavalry had no advantage against
an adversary that outnumbered them.

As the 7th Cavalry’s commanding officer, Lt. Colonel George A. Custer’s lone asset
appeared to be his highly touted reputation, widely proclaimed in the Civil War. Dr. Smith
adheres to the theory that Custer was lucky in the Civil War. He had friends and connections
that pushed along his promotions; his field gambles paid off, although sometimes at considerable
sacrifice of lives. His Civil War tactics carried over successfully to the battle at the Washita
River, which Custer highlighted in his own account in his book entitled, On the Plains. But the
Washita stood out as his only major victory during his years on the plains. Custer’s tactics on
June 25, 1876 were “foolish”; he was “over his head.” The 7th lacked sufficient experienced
senior officers to be fighting a major battle on that day with troops that had not been altogether
well trained. In Dr. Smith’s perspective, Custer’s unknown political ambitions did not come into
play. Bad judgment resulting from a lack of good information brought on the debacle that would
eventually incite the American public to bring about a determined federal policy that would
forever settle the score on the plains and in the west at large as the wave of settlers moved to the sea.

Dr. Smith has substantiated his own theories of how the cavalry, after stalling in their assigned mission, eventually succeeded in overwhelming the Plains tribes by his careful analysis of what the field command structures were and what they had in reserve to strengthen their forces. Stable command of the increasing manpower available and a supply line that backed up the troopers played a large role in subduing a dwindling population of warriors who were long dependent on the open range to support their livelihood and U.S. arms to back up their war power. As the tribes’ ability to fight on even terms diminished, the cavalry’s strength grew and tactics that had heretofore been marginally successful became more successful. The permanent exhibit at the U.S. Cavalry Museum contains a progression of weapons that were used in battle following the Little Bighorn. For example, Custer had turned down the offer of including Gatling guns among his armaments as he departed Fort Abraham Lincoln in May of 1876; he remarked that they were too heavy and would slow the movement of his troopers. That was an accurate assessment, but they would have probably saved his command had he been able to form a skirmish line as Major Reno had been able to establish earlier that same day when his defense line was in danger of being overrun.

The Gatling gun proved successful thereafter in the great Plains Wars. They were the forerunner of the World War I machine guns and could fire hundreds of rounds per minute. I was astounded at the sheer size of those weapons; they were likely to slow the movement of a cavalry command but would have obviously more than compensated for that deficiency. Gatling
guns were present at the Battle of Wounded Knee in December 1890, the engagement that spelled the end of the Indian Wars on the plains.

Public opinion was never fully awakened to the grievous losses suffered by the Sioux at Wounded Knee. The public was fully apprised of the loss of 235 where Custer fell. Public opinion then helped formalize and justify the all-out warfare that was designed to drive all tribes to the reservations or kill them in the field.
Understanding Custer

Paul A. Hutton, who is an American history professor at the University of New Mexico, is quoted in Elliott’s book as follows:

I’m probably the least spiritual person on the planet, but I don’t think it was possible for Custer to make any right decisions that day. And the emotional power of what was going on in that village is what turned the tide, because they didn’t run . . . that was a different summer, and that was a different group of Native people than had ever existed at any place, at any time, and Custer . . . because he did embrace the West, he did embrace the romance of war . . . was the perfect soldier to go against them. And it results in the one Indian war battle that you can go on the field . . . and have a romantic notion of it . . . . Maybe it was all written in the stars. Maybe nothing could have saved him that day.

Professor Hutton has stated his case in a most profound but simple way of describing the romanticism that quickly grew out of the Little Bighorn. There is always the danger that romanticism can lead to misconceptions. The “Lost Cause,” following the Civil War, romanticized the South as a bold confederacy of eleven states that simply wanted to be left alone to carry out a pleasant way of life in which all citizens benefited. This was not an accurate picture of the way in which the black population was treated.

The defeat of the 7th Cavalry at the Little Bighorn presented a romantic picture of American expansion in the West.

The Civil War may have been the most crucial, national conflict of Custer’s generation, but what occurred west of the Mississippi became the cornerstone of America’s imagination of itself, for the century that followed, the West was the only stage large enough to supplant the drama of the Civil War, and Custer was as much an actor as a soldier.

George Custer became the embodiment of the Western hero that would dominate the American stage that was the West in the 19th century and then well into the 20th century. Possibly the culmination of all that had been written and much of what had been pictured on canvas reached the male public in 1896 when Anheuser-Busch “commissioned Otto Becker to
produce a lithograph of Cassily Adam’s painting, *Custer’s Last Fight*, and then proceeded to distribute the print to (tens of) thousands of barrooms across America as a decorative promotion.”¹⁸⁷

The Schiele Historical Print Collection at Washington University contains an original print in addition to a copy that shows all of the written description on the original. A full commentary on these prints accompanies them in this thesis. The prints demonstrate the full extent to which artists had reached in the two decades following the battle to put to paper the impact brought to the public at the Little Bighorn. Before the end of the first decade following the battle, the public had become significantly aroused by Custer to express opinions to their elected congressmen that would have immediate influence on public policy. “The spectacular last stand at the Battle of the Little Bighorn would offer an image of white America as a victim of the violence of the frontier that, while shocking, was also comforting because it offered the United States a stance of more righteousness in the face of a vicious foe.”¹⁸⁸

The number of publications that include books, journals, newspaper articles, and congressional testimony has far exceeded any other event that had occurred prior to 1876 and any event in American history that has taken place since. The mystery, conjecture, lack of tangible evidence that would clearly support a single conclusion to this battle all point to no U.S. army survivors present at the scene. As Hutton had pointed out, the mystique arose at a time when the nation was poised to accept a new hero, unencumbered by a complicated war, like the Civil War. Westward movement no longer had to be justified. The War Department could move ahead with their plans to clear the roads and trails westward with little regard to treaties present or past. The U.S. Army did not create this unusual circumstance; it created itself on one hot
Sunday afternoon in June of 1876 when poor battlefield judgment escalated into the most publicized event in all of U.S. military history.

Understanding George Armstrong Custer and his grip on the conscience of the American people following his disastrous expedition to the Little Bighorn River in pursuit of the Sioux helps explain the anguish and anger that resulted. Immediately following his desperate last stand against preposterous odds on June 25, 1876, a groundswell of sympathy emerged for those killed and a reaction of sheer bitterness developed against the savages that had swelled the ranks of Sioux, Cheyenne, and Arapaho on that day.

An account of Generals Crook’s, Gibbon’s, and Terry’s movements to converge on the Little Bighorn River follows.

According to the story of the scout who brought the intelligence of the disaster, Custer led his brave men in to a fearful slaughter pen. The Indians poured a murderous fire from all sides, and not one of the detachment escaped alive. The Indians are supposed to have numbered 2500 to 4000 . . . and all the courage and skills [of the troopers] . . . was of no avail . . . 189

Custer’s fame during the Civil War knew no bounds. Brevetted at age 23 as the youngest general in the war, his courage, bravado, and battlefield success substantiated the news press that followed Gettysburg, Yellow Tavern, and Appomattox. *Harper’s Weekly* headlined Custer leading a charge in their March 19, 1864 edition, displaying a full page engraving of Custer leading a charge, sword raised high, moving on Confederate ranks. The press followed Custer; Custer acknowledged their interest in him and the northern population became attached to a genuine cavalry hero. (*On the Southern Plains* appears in this thesis accompanied by commentary.) Custer is the subject of much attention in this thesis because of the personality cult that rebounded following the last stand. *The Last Stand* played a significant role in the
formation of public opinion that influenced public policy for the 15 years that followed the battle. Before he achieved public recognition, he thrived on an independent attitude that included his own signature style of uniform, complete with red kerchief and gold stripes.

Custer may have dressed like a fop and a dandy, but no one questioned his courage and audacity. Contemptuous of danger, his bravery could sometimes seem foolhardy or even reckless. He took chances that no one . . . should take, but he seemed to lead a charmed life on the battlefield. He pushed himself harder and longer than other men, going many hours at full tilt . . .

His reputation during the Civil War did not change; he received the Confederate Army’s flag of surrender at Appomattox and sat in the McLean House during the surrender talks conducted by Generals Ulysses S. Grant and Robert E. Lee. But fame evaporated quickly and reputations sometimes have a way of finding themselves fade like a slowly dying flame. Custer’s reputation was intact, but not lighting up the night until the last stand at the Little Bighorn.

“There had not been a national tragedy of such scale since the assassination of President Lincoln. To most people, it seemed impossible. How could Custer have been killed in battle? How could so much of his 7th Cavalry . . . have been wiped out by savages who had barely advanced, so it was thought, beyond the Stone Age? Custer was invincible . . . wasn’t he? But when reality and acceptance replaced rumor and disbelief, the public went into shock. The press fed the [anger] and the mourning and the shock.

Thousands of men declared themselves ready to join the army and march out west to kill every no-good Indian left, and settle the Indian problem once and for all. . . . Outrage and sensational tales of death and glory, often fabricated, filled the popular newspapers and magazines and seeped into the nation’s consciousness, until the inevitable question was asked: Who was to blame? Who was responsible for this catastrophe?"
To this eternal question, likely never to be answered satisfactorily to the public as well as to historians, remains the usual list of answers, some more speculative than others. At the head of the more responsible list in terms of what had taken place on that day is sketchy intelligence relevant to the size of the Indian encampment and the number of warriors. Thus follows Custer’s ordinary battle plan based on the attack under the Plains Indians guidelines that Indians would scatter rather than fight. The least likely reason for Custer’s attack was personal ambition and the possibility of an 1876 Democratic Party presidential nomination. Virtually nothing is known about Custer’s political ambitions. The spectrum of strategic or tactical reasons for the 7th Cavalry to attack a village against numerical odds of 5 to 1\(^{192}\) indeed leads to theories that keep the issue alive almost 140 years later. The catastrophe itself brought on the fear, hatred, and overwhelming desire to develop a policy and then a strategy to kill all the Plains Indians that were not placed on Indian reservations established at the direction of the federal government.

Though recognized as an accidental encounter with disastrous results, Custer’s Last Stand did more to arouse a nation and influence public policy on the Indian question than any of the other issues that would force Manifest Destiny. Public policy in the United States has often been driven by special interests that are always in play. It has become part of America’s past since the beginning of the republic, but rarely has policy been driven as hard, as was Manifest Destiny following the Civil War, by not just economic issues, but the emotional thrust of a population looking over the horizon. This national attitude, rising in a crescendo, might be best described as a genuine populist movement, the likes of which the country had not experienced before or since.
Louis Kurz was the artist, Allison the lithographer of the Kurz & Allison Lithograph Company in Chicago, Illinois. From 1881-1892, they produced thirty-six 17-1/2” x 27-3/4” chromolithographs of famous Civil War battles. The Schiele Collection at Washington University houses all thirty-six original prints. It is only one of two known complete collections.

*Battle of the Big Horn* is not one of the thirty-six; however, it is considered a somewhat rare print. It is not included in the Schiele Collection. Several other “Last Stand” prints of the thousand produced are included in the Schiele Collection.
Little Bighorn Battlefield National Monument

“Custer’s Seventh Cavalry prepared to make its last stand in artist J. K. Ralston’s painting.”

Custer’s Last Fight

Anheuser-Busch, the St. Louis brewery, commissioned the accompanying lithograph in 1889, by Otto Becker, possibly the most famous of over 840 pictures of the battle at the Little Bighorn. This painting by C. Adams was created in 1884, eight years following the encounter that raised George Armstrong Custer to heights that even he, as publicity aware as he was, could have never envisioned. The print was reproduced many times for display in the brewery owned or sponsored taverns that were in cities and towns across the middle states of the country. It was more than likely seen by more people over the four or five decades that followed its postings than the other 840.

The picture carried a message greater than the heroics and courage of Custer, Civil War hero and noble Indian fighter of vast acclaim during the Plains Wars. Custer’s bravery and valor are on display in the center of the print. The mythological man in buckskins, slashing sword in one hand, empty Colt .44 revolver in the other, gives credence to the story that the troopers fought until there was no ammunition remaining and hand to hand combat would take place until the last trooper was dropped. Mythology best describes that battle and the great stage on which it has been reproduced. No swords were present that day because Lt. Colonel Custer had forbidden them. Troopers, following weeks of movement across the hills, were most likely not attired in blue uniforms. Close combat never took place because the Sioux warriors so overwhelmed the 7th Cavalry that they could circle the remainder of Custer’s command and take them down at a safe distance, one by one. The battle did not last very long. But, significantly, the picture portrays warriors as ruthless savages, ready to kill with knives, spears, sharp-edged hatchets, carbines and revolvers. (I do not believe that warriors had revolvers.)

The image that struck the general population who viewed these lithographs had far greater impact than the truth of the encounter would ever reveal. The historic impact of this and the other eight hundred some-odd pictures ran deep in the hearts and minds of the viewing public:

The west must be conquered, the savages must be killed or removed, and the cost in treasure and lives after 1876 shall have little bearing on actions taken by the federal government. The wagons will move at will; emigrants will replace tribes. Public opinion was aroused by the battle and public opinion was heard.
Troopers Being Driven Across the River

by Amos Bad Heart Buffalo


*Troopers being driven across the river*, Custer’s defeat at the Little Bighorn by an Indian artist, Amos Bad Heart Buffalo (1869-1913).
Sitting Bull on Dominion Territory

A good copy of the print of Sitting Bull in exile in Canada was acquired as a donation from a friend in Ottawa, Ontario. The wood engraving appeared in the *Canadian Illustrated News* in 1877 following the Sioux’s move to Western Canada.
SITTING BULL ON DOMINION TERRITORY.

U. S. SOLDIER — Send him over to our side of the line and we'll take care of him.

S. W. Montreal Police Officers — So long as he behaves himself, the British right of asylum is as sacred for this poor Indian as for any royal refugee.
Chapter 6: Westward Expansion: Federal Interests and the Plains Indians

The Constitution of the United States dealt with “Indian tribes as sovereigns but not as sovereigns who participated in the creation, its ratification, or its compact for governance. Indian tribes were recognized sovereigns, but largely as sovereigns outside and on the margin of the new republic and its Constitution.” This particular interpretation of how the Constitution dealt with Indian sovereignty over the lands occupied by Indian tribes for generations defines ownership as outside the law of the land. Under such circumstances, it was never possible for the tribes to ever have a hand in controlling their own destiny. By the American victory at Yorktown over the British, by the transfer of land ownership that resulted from the Louisiana Purchase from France in 1803, by the conquest of Texas, by lands ceded to the United States following the War with Mexico, the United States assumed ownership of lands running from the original thirteen colonies to the Pacific Ocean.

If the sovereignty of lands occupied by American Indians ceased as the United States acquired those lands, then sovereignty by Indians indeed assumed a non-position. In retrospect, the “conquest of the West” was never a matter of defeating Indians in pitched battle, as some historic tradition spoke of conquering the hostiles. Successful Westward Expansion followed a wave of public pressures from railroad interests, mining and timber interests, a growing cattle industry, farmland to fuel new industry and the settlers, many of whom were immigrants, to supply labor. American Indians were an obstacle, but not more of one than a tough topography, disease, weather, and distance.

One of the tragedies that befell the Plains Indians was the reputation tacked onto them as well-publicized killers who took their toll and upon whom the U.S. Cavalry took revenge. Thus
The Indian War — Indians Attacking a Wagon Train

*Harper’s Weekly*

The *Harper’s* engraving shows a typical scene of Indians on the warpath, a story told many times as the American public grew more incensed about Indian savagery.
An Indian Foray

Harper’s Weekly

A Harper’s engraving describes an Indian raid on a settlement in the West. The objective, horses and livestock are shown being driven off.
was born the well-publicized myth that placed Lt. Col. Custer and the 7th Cavalry as heroic victims in June 1876. What followed during the next two decades was a tidal wave of public opinion that never left any doubt about the finality of public policy and the West. What is left in the wake of death on the plains is the rich history of the tribes that inhabited the plains for centuries. “From earliest contact, Plains Indians hold a significant place in European history, and the culture is fundamental to the heritage of North America. Indeed, for many people throughout the world, historical Plains Indians, both real and stereotypical, form the iconic image of all North American Indians.”

The United States marched forward with a national goal of fulfilling “Manifest Destiny.” This was an unwritten but well-understood part of antebellum ambition that became post-bellum policy. Dealing with the inhabitants of the plains was discretion of policy that was initiated in Washington but driven by circumstances of the moment. The federal government did not always have a sense of how to deal with new developments at mid-century, both antebellum and post-bellum America.

Between 1840 and 1890, the United States realized its “Manifest Destiny” to occupy the continent from the Atlantic to the Pacific. In particular, the discovery of gold in California in 1848 increased traffic across Indian lands. Emigrants on overland trails degraded the environment, killed buffalo, and carried cholera, measles, and scarlet fever. The American Civil War of 1861-1865 temporarily slowed migration and called troops away from the frontier, but conflicts continued with little respite and the United States clashed headlong with the Sioux and Cheyenne.

The broken Laramie Treaty was symbolic of the years of mistrust generated by the failure of the United States government to guarantee Indian rights. The entire story of the “Broken Landscape” so eloquently explained by Frank Pommersheim from the standpoint of Indian rights under the U.S. Constitution is one masked by the justification of land ownership and governance.
The Plains tribes lost ownership and governance of lands that they never owned but they did not lose the culture that had accompanied them to a different environment.

Life on the Great Plains has always required resilience in the face of diversity. It has required building anew as opportunities beckoned or disasters demanded, and it has been possible to weather the changes by drawing strength from core values. Native people have always had to find new ways of preserving traditions in times of change and upheaval.196

Western expansion interrupted the lives of Sioux and Cheyenne and altered a lifestyle built on centuries of living with the land, but not demonstrably changing it. Tradition of earth and sky, indelibly preserved on animal hides and artifacts, managed to survive. At greater issue has always been the justification of Indian removal and assignment to reservations.

The courts continued to interpret the laws, passed by Congress to fit into whatever decision seemed at any given time to justify actions taken at any given time. “The Court reasoned that Indians born within the territorial boundaries of the United States nevertheless owed immediate allegiance to their tribe and not the United States and were thus property analogized to such noncitizens as children of foreign ambassadors born within the United States.”197

Contradictions may be found throughout the latter half of the 19th century in which tribal law of the tribes may prevail, but federal law that establishes treaties may be made and then changed at will, or at the convenience of the government. It appears that when the Court wished to recognize Indians as noncitizens, it could refer to tribal law. When a major issue arose, such as those that involved tribal dances during the 1880s, federal jurisprudence moved in to create whatever action it took to control the actions of a tribe. Actions were “converted into practice, if not law, in Indian country without the benefit of congressional legislation. In 1883, the Secretary
of the Interior established courts on most reservations with express authority to prosecute Indians for engaging in tribal dances . . .” The “rules for these courts, known as Courts of Indian Offences, defined participation in the Sun Dance, Scalp Dance, and War Dance as criminal offences.”

In 1890, an increasingly popular ritual and accompanying dance known as the “Ghost Dance” was widely practiced by the Oglala Sioux on the plains. (See Remington’s *Ghost Dance*, p. 78.) The U.S. Army feared the consequences of this ritual because it was characterized by recalling long-deceased ancestors to reappear on earth and initiate acts of violence on white settlers or on the army; therefore, the U.S. cavalry attacked a Sioux village of Wounded Knee in December 1890.

The federal government and army moved to control Indian rituals, practices, and law as deemed necessary. As a subculture in the United States, Indians existed in a world somewhere in between the boundaries of Indian culture and lifestyle and the rules randomly put into practice to control the destiny of the tribes. Tribal law was never more, in the eyes of the federal government, than a layer of Indian culture that held no real power in governance.

Conquest of the Native American lands began as part of a roving policy early in the 19th century. It had existed since colonial days. Even prior to 1823, the landmark year of *Johnson v. McIntosh*, the stage was being set to push Native Americans into other places at the convenience of the government. “The Indian title . . . is a mere occupancy for the purpose of hunting. It is not like our tenures; they [the Indians] have no idea of a title to the soil itself. It is overrun by them, rather than inhabited. It is not a true and legal possession.”
The question, then, of who governs, and under which set of laws, becomes a legal matter that has taken decades to decide. In fact, was the question of governance really a question? Again, to what extent do the tribal laws that reach back well before European colonization have an effect on the way tribes are governed? That is the question that must be addressed before any conclusion may be drawn on the very significance of tribal law, or whether it had any relevancy at all. The historians who defined tribal law as the tribes were being removed, dislocated, forced into new lands not always to their liking or their best advantage, have concluded that there were no different ways of carrying out federal law, but the end results would always be to satisfy the needs and the will of the white citizens.

The Custer event replaced what had been the influence of special interest groups to the influence of a way of public opinion that swept through the land, ended in Congress, and created a policy that forever charged the federal government to carry out either removal of the Plains tribes to reservations or the alternative destruction of tribes in battle. There was no middle ground; whatever tribal law had been in place, became law in name only. Beginning with *Johnson v. McIntosh*, what was understood to be tribal law remained fixed throughout the 19th century.

The 7th Cavalry commanded by Custer was not caught unawares and lacking in arms and professional leadership. The 7th had initiated the fight. The Sioux, Cheyenne, and Arapaho responded in one of the nation’s most decisive defeats. That battle left scars on the U.S. cavalry while the emotional scars felt by the tribes still resonate today. The result from the battleground was a determination by the federal government to end all Indian wars with as much power as required and with whatever means it took to strike down Indian power, tribal law, and Indian
traces. A new Indian policy rose from the ashes of defeat, carried out through the next fifteen years and declared at an end with the massacre at Wounded Knee.

The point of this recapitulation is to lay out the final reckoning employed by the federal government in building an Indian policy. That policy could be justified by non-recognition of Indians as citizens or as tribes recognized as foreign countries or states. Tribes had almost always been treated as separate entities whose only recognitions were those granted by the federal government.\(^{200}\) It was thereby easy to alter acts of Congress and treaties because they had no solid legal foundation from the beginning. As the history teacher George Nightwalker from the Chief Dull Knife College had remarked, treaties were like quicksand; the meanings easily shifted and could be replaced at the convenience of the government to suit more immediate needs of the government. Tribal law did not unravel at any particular time in the 19th century; it was never solidly based on anything within the federal system after 1823 that would lend a notion of recognition or power. It is well at this point to digress briefly to the real origins of the federal-tribal law relationship that took root during the colonial era. According to Frank Pommersheim, “... early Indian-colonial encounters were largely related to four separate but overlapping streams of engagement: trade and land acquisition, diplomacy and war, governance, and cultural attitudes.”\(^{201}\)

Land acquisition would head the list of priorities that had to be resolved as the colonial era moved ahead into the federal period following passage of the U.S. Constitution in 1789. Land acquisition would be the only reason that war, treaties, and re-ordered treaties existed for 100 years following the newly formed republic. Cultural misunderstandings and differences virtually blocked any reasonable way that armed conflict could be averted. If cultural
differences had not been as pronounced, the drive to move the country westward would have stood in the way of peaceful relations between Indians and settlers. In the eyes of many citizens, settlers represented the advance of civilization to new lands occupied by savages. To Indians, Westward Expansion represented uprooting tribes from their homes and hunting grounds. Differences, cultural or not, were irreconcilable and irreversible.

As a direct result of the shift, more settlers, including immigrants, moved west. “. . . the pattern of accommodation began to shift more . . . to enmity and hostility that focused on the acquisition of Indian land.”

The early part of the 19th century was the beginning of the Indian tales and illustrations that would forever paint them as savages. George Catlin and a few others chose to live among the tribes during the first half of the 19th century. Even the “noble savage” who was set aside as a patrician was still a savage. The series of prints in this thesis that illustrate the Indian as either the bloodthirsty savage or the noble hunter of buffalo somehow almost always convey the same message: the Indian is different, the Indian tribes form a different culture that can be tolerated by our culture, but not included in it. The American public had been educated throughout the 19th century through popular literature, newspapers, and especially illustrations, the extent to which the government should go to protect the citizens and, at the same time, occupy the territories.

The Indian Commerce Clause in the Constitution had supplied the basis of what became the defining policy of Indian governance. This subject has been reviewed earlier, but worth repetition; it was, in essence, “The Constitution did not include Indians or Indian tribes, but excluded them, hence the necessity of the Indian Commerce Clause as a means of dealing with them as outsiders to the Constitution and the constitutional process.”
There were several steps along the way that set a precedent for how tribal law would be abrogated as the power of the federal government assumed additional power over the tribes. The Removal Act stated:

That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States, west of the Mississippi River, not included in any state or organized territory and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside and remove there . . .
This image appeared in Henry Howe, *Historical Collections of the Great West: Containing Narratives of Most Important and Interesting Events in Western History* (Cincinnati: Morgan & Co., 1854). It accompanied a tale of a 1791 attack on the John Merrill home in Kentucky in which Mrs. Merrill killed five Indians with her ax. The determination of this woman tells the tale of early life on the plains.

In fact, Indian raids on homesteaders were not infrequent and there were not nearly sufficient numbers of cavalry regiments to protect the frontier. As U.S. forces extended their reach following the Civil War, pitched battles became more frequent reaching its peak when Sioux and Cheyenne defeated Colonel Custer’s 7th Cavalry at the Little Bighorn. As those tribes voluntarily dispersed and the U.S. forces grew larger, the raids by Indians on settlers became less frequent.
HEROISM OF A PIONEER WOMAN.

"In the meantime his heroic wife was busily engaged in defending the door against the efforts of the only remaining Indian, whom she so severely wounded, with the ax, that he was soon glad to retire."
We-Har-Ka

by Captain Seth Eastman

Schiele Collection

The artist, Captain Seth Eastman, became commander at Fort Snelling, Minnesota in the 1840s. While stationed there, he and his wife learned the language and customs of the Indians. During this period, he studied and painted Indian life. Later, he was the illustrator for a book authorized by Congress that was to be a study of Indians, which included approximately 275 of his illustrations.

Although not familiar with the story, the action speaks for itself. The Indians have succeeded in disposing of their white victim either by drawn knife or executing a fall from the cliff on the left. In either instance, treachery is at hand, which is how the “red men” were brought to life in the literature of the time. The effects of this image have carried over well into the 20th century.
Mounted Indian attacks on United States personnel out west became more frequent following the Civil War.
Indian raids were a constant threat on the western plains. Following the Civil War, U.S. Cavalry was an increased presence. Based on the number of newspaper illustrations displayed on these pages, hostile activity was not infrequent.
Lt. Casey’s troop was cut down by mounted warriors in one of the more infamous and widely publicized conflicts of the time.
Karl Bodmer accompanied the German prince Maximilian of Wied on an expedition along the Missouri River in 1832. His engravings are considered among the most important representations of Native Americans in the Midwest.

This shows a Dakota woman with a captured Assiniboin girl. The Assiniboin was a tribe that lived in the Northern Plains of the United States and Canada. The artist used great detail in showing the dress, robes, beadwork and footwear. This lithograph was acquired December 2014 for the Schiele Collection at Olin Library, Washington University.
Two Tipis and Cart

Offset print by Frederic Remington. A charming western landscape painted from nature.
Number of Periodicals Published in the United States

This chart, created by Douglas Dowd, Professor of Communication Design at Washington University in St. Louis, clearly shows the increase in prints in the United States from the outset of the Civil War through the end of the 19th century. The war itself created demand; faster and more efficient means of printing wood engravings and of creating offset prints later on, by Harper’s Weekly and Leslie’s Illustrated News, helped provide current illustrations.
number of periodicals published in the United States

1820 – 1960
Chapter 7: Art and Public Opinion

Art during the last decades of the 1800s became more accessible to greater numbers of people as reproductive methods became more efficient and faster. The blue chart gives the reader an idea of how the number of illustrations available to the public grew with the onset of the Civil War. The demand for more information drove the printing industry to adopt new methods to allow a Civil War field artist/correspondent to sketch a scene and take it to his publisher (possibly Harper’s Weekly or Leslie’s Illustrated News) where several engravers could turn out a finished engraving in hours. While they worked, a master engraver tied the work of the several engravers together and produced newspaper copy for the weekly edition. Pictures proved to be a dominant way of getting war news to people who had no other means of receiving their information first hand. Illustrations brought the written news to life in a manner so that readers could more quickly absorb current information.

Art is created for many reasons. Sometimes the only one may be the expression of an artist’s innermost feelings without thought given to public emotional, political, national, or a statement related to the special environment surrounding the artist. What Catlin expressed in his works was the beauty of nature surrounding the tribes which had appeared to make an idyllic life for many and a peaceful life for most. Frederic Remington was a talented artist who studied Indian culture in the latter part of the 19th century.

People who read Harper’s Weekly and similar journals published in the United States were exposed to an increasing number of wood engravings that visually told the story of Indian life on the plains. The sensationalism increased as the Indian wars on the plains intensified and these scenes appeared more frequently in the publications.
In the latter part of the 19th century, the work of Frederic Remington, Charles Russell, and others became more available to the public as new and faster forms of printing, such as the offset print, arrived on the scene. The public, without benefit of available prints prior to the increase in production, had simply not been exposed to what one picture could teach them. Possibly the most startling example and the most widely publicized event showing savages “murdering” white men, was the flood of pictures depicting Custer’s last fight. Those pictures were made more vivid because the artist’s imagination prevailed. There were no white witnesses to the event and Indian scouts who may have had some insight that day were reluctant to talk about it. A few Indian pictures exist but do not reveal much.

The public was inclined to believe what they saw of the battle at the Little Bighorn, and the artists were only too happy to feed their imaginations. From such beginnings are public opinions formed. Those opinions helped promote and justify what became federal policy.

George Catlin was every bit the historian as he was the artist. His two volumes, written between 1832 and 1839, comprise the most detailed study available of Indian life on the plains as well as in the interior. “George Catlin’s paintings comprise the first important pictorial record of the Plains Indians and their then little-known homelands west of the Mississippi River. “‘Catlin’s Indian Gallery’ . . . consisted of hundreds of portraits of Indians, scenes of Indian life, and landscapes of a wilderness scarcely changed through millennia. In his notebooks and on canvas, the young Pennsylvania lawyer captured much of an America that was swept away . . . by the westward-pressing settler.”

Catlin’s own words in Appendix I are his firsthand impressions of Indians, their culture, their lifestyles, their relevancy to the North American continent, and their projected fate. Before
the Indians became condemned to death on the plains in pitched battle or outright massacre, or condemned to incarceration on reservations, George Catlin found them in transition before their final destination but well after the movement began. The 1830s were a perfect moment to capture the culture and the pictures of chiefs, Indian families, warriors, and scenes that gave many American citizens the only real source of contact they would have until Buffalo Bill took his traveling show on the road later in the century.

African-Americans were not permitted to become full citizens until passage of the 13th, 14th, and 15th Amendments. The vast majority of them had virtually few if any rights under existing laws, including the right to vote even after passage of the amendments. Indians had no rights.

As the other significant minority, the African-Americans in North America had advocates across the land including Charles Sumner of Massachusetts in the U.S. Senate, John Brown of Kansas who led the Harper’s Ferry raid, and Harriet Beecher Stowe, whose *Uncle Tom’s Cabin* was the quintessential novel of slavery in the South. American Indians had advocates, but none who had the power to attract national attention. It was left up to the writers of fiction, journalists, and artists to give the accounts of Indians that were best understood by white citizens. Indian tribes in the United States were a subculture.

There was a decided difference between African-Americans treated as sub-citizens in America and Indian tribes that existed as a subculture. African-Americans had high expectations for successful lives. Expectations for Indians dealt with their ability to lead successful lives outside of the boundaries of U. S. governance and law. In 1832, Catlin wrote about the dramatic changes of Indian tribal life over 230 years. After another 180 years have passed, the desire of
many tribes to maintain their independent lifestyles and identities has not considerably changed. Following is some of Catlin’s commentary:

I started out in the year 1832, and penetrated the vast and pathless wilds which are familiarly denominated the great ‘Far West’ of the North American continent, with a light heart, inspired with an enthusiastic hope and reliance that I could meet and overcome all the hazards and privations of a life devoted to the production of a literal and graphic delineation of the living manners, customs, and character of an interesting race of people, who are rapidly passing away from the face of the earth . . .

Catlin goes on in his prologue to *North American Indians*, referring to a “just monument, to the memory of a truly lofty and noble race.” Many times, especially in the early 19th century writings, the image of the “noble race” or “noble savage” is well illustrated by George Catlin. The prints that follow represent that part of Catlin’s cultural record that widely illustrates his deep understanding and admiration of the American Indian.

Indians are set aside by some 19th century writers as that race of people who may be intellectually and scientifically inferior to the white race, but noble in appearance, strong of heart, and true to the Great Spirit, the embodiment of the highest calling of nature and spirit of the deep wild wood. Catlin writes of being “immersed in the Indian country, mingling with red men . . . in order the better to familiarize myself with their superstitions and mysteries, which are the keys to Indian life and character.”

Superstition and mysteries became part of the Indian mystique portrayed by George Catlin. In the forward of his two volume study of *North American Indians*, he placed all the tribes that he visited in the most positive light. Many of his pictures clearly place the noble savage on his own pedestal, a figure so much to be admired, that the name “savage” shall not be confused with what came to be associated with Indians of the Plains — a vicious warrior on the warpath, to be greatly feared and grudgingly admired.
Catlin further expresses his distinct impressions as opposed to those of other contemporary writers: “Some writers, I have been grieved to see, have written down the character of the North American Indian as dark, relentless, cruel and murderous in the last degree; with scarce quality to stamp their existence of a higher order than that of the brutes . . .”\textsuperscript{207} Catlin goes on to describe Indians “as honorable and highly-intellectual beings . . . and others, both friends and foes to the red men, have spoken of them as an ‘anomaly in nature!'”\textsuperscript{208}

Catlin had long since recognized the prejudices built upon decades of armed conflict, “from a long familiarity with these people, that the Indian’s misfortune has consisted chiefly in our ignorance of their true character . . . which has always held us at a distrustful distance . . . inducing us to look upon them in no other light than that of a hostile foe, and worthy only of . . . continued warfare and abuse that has been ever waged against them.”\textsuperscript{209}

What George Catlin has so nobly expressed and summarized here in so few words are the attitudes that grew in time about the nature of the Indians that lived in the midst of an expanding white population, relentlessly moving west, in the national quest to populate all the lands between two oceans. It was never a question of right or wrong. National policy grew from the demands of a population swinging westward. Through the latter part of the 19th century to the massacre at Wounded Knee in 1890, it was the will of the people that drove national policy that finally decreed that “the only good Indian is a dead Indian.”\textsuperscript{210} The ongoing wars against the Indians were characterized by the raids, battles, and skirmishes initiated by both the U.S. Army and the various western tribes of Sioux, Cheyenne, and Arapaho. But the hostile environment
and the accompanying attitudes had been building for a hundred years or more and was neatly summarized by Catlin:

The very use of the word savage as it is applied in its general sense . . . I believe is an abuse of the word, and the people to whom it is applied. The word . . . means no more than wild, or wild man; and a wild man may have been endowed by his Maker with all the humane and noble traits that inhabit the heart of a time man. Our ignorance and dread or fear of these people, therefore, have given a new definition to the adjective, and nearly the whole civilized world apply the word savage, as expressive of the most cruel, and murderous character that can be described.211

Catlin leaned on his past experiences concerning the abject fears held by many of savage American Indians. He was also prescient, visualizing the future relationships that would develop and quickly deteriorate between American whites and the “red men.” He had written of the 12 million Indians who lay beneath the ground, of the estimated 14 million who had once inhabited America, to the 2 million who remained in 1832, 1.4 million of whom had been unceremoniously driven to reservations. The pictures displayed here speak of his life among the tribes and tell of his deep admiration of what he saw. Catlin seldom demonstrates the combat-ready aspect of warriors, but when he does, as in the dance, he leaves little doubt about a tribe’s war capability.

Frederic Remington presents a good counterpoint to Catlin. He spent periods among the tribes but he did not spend great stretches of time living with the Plains tribes as Catlin did between 1832 and 1839. In fact, Remington’s life among the tribes was probably limited to occasions rather than to entire events. Robert Hughes provides a worthy description of Frederic Remington in his well-crafted American Visions: The Epic History of Art in America: “In the visual arts, the man whose work most clearly stood for this nostalgic packaging of a bygone ‘real’ West . . . was Frederic Remington.”212
Crow Lodge

by George Catlin

A beautiful depiction of a large Indian tipi drawn from nature. Catlin was very impressed with the quality of detail and ornamentation used by the Crows on their tents.
20. Crow lodge.
Ah-kay-ee-pix-en, Woman Who Strikes Many
Chesh-oo-hong-ha, Man of Good Sense
Wa-hon-ga-shee, No Fool
Notch-ee-ning-a, No Heart
Wy-ee-yogh, Man of Sense

The following illustrations of Indians, drawn from nature by George Catlin, display Indians in domestic, hunting, and tribal ritual settings. Lacking in these pictures are the violent and hostile settings described by writers and artists of the latter parts of the 19th century as a groundswell of revenge erupted following Custer’s defeat at the Little Bighorn. The contrast in tone and temperament is stark. Public opinion generated by stories, articles, and especially illustrations had a lot to do with Indian Public Policy formulated by the government and carried out by the U.S. Army — go to reservations or die in battle on the plains.

These Catlin images are “from drawings and notes of the author made during eight years travel amongst forty-eight of the wildest and most remote tribes and savages of North America.”

The Snow-Shoe Dance

by George Catlin

Reproduced with the permission of Special Collections, Olin Library, Washington University in St. Louis

The Snow Shoe Dance was performed in winter when the snow across the Midwest and West must have presented real challenges to outdoor living. Note that the warriors in the dance wear no upper garments, but that they carry more than the usual number of symbols in hand. The snow shoe itself symbolizes how tribes manage to survive winter.
The Buffalo Dance was possibly the most important of the western tribes, when consideration is made of the role of the buffalo in Indian life and survival.

The buffalo, roaming the plains in the tens of thousands, provided meat, clothing, and body materials for making implements; they were the bond with nature and the Great Spirit that provided security on the home plains. All movement is clockwise in the rising and falling motion that symbolizes rhythm and homage. Tepees, not seen in many dance sequences, represent the importance of buffalo to home and tribe.

This scene is made the more powerful as buffalo herds diminished in mid-century and virtually vanished by end of the 19th century. This phenomenon played out well with policymakers bent on bringing tribes under control as they became more dependent on government subsidies as reservation life expanded. I do not believe that wholesale slaughter of buffalo by white hunters was encouraged for that reason.
The Bear Dance

by George Catlin

Reproduced with the permission of Special Collections, Olin Library, Washington University in St. Louis

The Bear Dance is unique insofar as there are no weapons or symbols present. The bear head and claws appear on five of the dancers but there is no rise and fall motion among the dancers, some are uncharacteristically smiling and the hands seem to simulate the motion of bear paws. Catlin points out that “The Sioux, like all the others of these western tribes, are fond of bear’s meat . . . and they all like the fine pleasure of a bear hunt . . .”

The urgency to hunt bear is not applied to the Bear Dance as to the Buffalo Dance. Catlin refers to the Bear Spirit, “which they think holds somewhere an invisible existence . . .” It would appear that there is something spiritual and mysterious involved with the Bear Dance. Communing with nature, something vital to tribal culture, was never fully taken into consideration by the white man; Indians as savages seemed to fit the role assigned to most Indians.
The War Dance by the Ojibbeway Indians

by George Catlin

Reproduced with the permission of Special Collections, Olin Library, Washington University in St. Louis

The War Dance is one of the very few Catlin prints that present a warlike image. It is the only one of the several hundred Catlin prints reviewed by me that show a tribal dance that would denote an on-coming battle. Indians fought among themselves; tribal wars, especially out west, were fought where territorial claims were not uncommon. Battles between mainly Sioux and Cheyenne tribes and the U.S. Cavalry became more frequent and of far greater intensity as the frontier moved west.
As George Catlin has pointed out describing “The Bear Dance,” bear meat was possibly considered a delicacy; the tribes surely did not depend on bear meat for survival. But the bear held some spiritual significance; perhaps it was their independent nature, admired by tribes who cherished their own independence. The picture clearly shows the risk involved in a bear hunt. Grizzlies are known killers and not easy to bring down.
Artists of the plains have often shown a mounted Indian assault on a buffalo. I chose to show this one because Catlin has given us a rare one-on-one picture of the instant before the arrow is released from the bow into the right shoulder of the pursued beast. Both horse and buffalo are in full stride and the intensity of the scene is highlighted by the only two opposing figures. This wonderfully poignant picture of survival tells us that the victor, likely the mounted Indian, will take a prize back to his tribe that has been an enabling force for generations of Plains tribes. As it tragically worked out, neither Sioux nor beast survived their way of life. Buffalo almost became extinct due to indiscriminate hunting and the tribal way of life vanished amidst Manifest Destiny.
The tribal way of life on the plains was as much dependent on the horse as on the buffalo. The horse provided fast transportation, a hunting mechanism, and a means of waging war. The warrior’s horse quietly waits on the sideline. This was probably not the case; inactive horses were ordinarily held by another individual. Perhaps Catlin is describing the close to nature approach to living of the Plains tribes. In that way of looking at the picture, note the balance struck between warrior and pony at center; there yet is no winner; each pulls at maximum strength and legs are set at the same angle. The mane of the pony trails behind him as the warrior’s hunting dress trails behind. Whether the independent pony breaks loose or the well-outfitted warrior reins in his quarry shall be determined in a short time. It is a fair fight.

Catching the Wild Horse

by George Catlin

Reproduced with the permission of Special Collections, Olin Library,
Washington University in St. Louis
The Indian dances and life on the plains has shown how tribal dress suited the active individual. Catlin has captured the beauty of the formal dress displayed by the three “North American Indians.” Catlin painted on easel and his subjects gave free time to him. (A sketch of Catlin painting still-portraits appears in Volume I of the book, *North American Indians.*) The dress detail and weapons are shown in their full color and splendor and even though the picture is somewhat universal, the appeal is apparent. The noble savage is shown here at his best.
Remington wanted to be known as a fine artist, not simply a good illustrator. Hughes points out that Remington was a good turn of the century illustrator, immersed in the legends of a glamorous West, and possibly just a little ahead of his time. His work became the material that helped fuel Hollywood’s portrayals of the West. This suggestion may exaggerate the influence of Remington’s works, but describes the action shown in many of the illustrations that will follow. Remington was not creating his pictures necessarily as a testimony to Indian life, Indian virtues, or Indian history. His were tales of action on the frontier; some of the original paintings, in particular, *On the Plains in 1860*, have gained enough value to hang on the wall in the American Wing of the Metropolitan Museum of Art in New York.

Frederic Remington very much considered himself a scholar. I visited his original studio in Ogdensburg, New York, where he had spent his early years prior to attending Yale. Part of his studio is devoted to recreating the anatomy of the horse. Remington was a storyteller in pictures; others did the narratives.

[President Theodore] Roosevelt, like Remington, believed wholeheartedly in the vanished West as the ground of American virtue. He hired Remington to illustrate one of his early books . . . and introduced him to magazine editors. The public’s appetite for Wild West stories was insatiable . . . and Remington swiftly became their top illustrator.

Stories of the West excited latter 19th century readers of fiction as well as well-illustrated news articles that played on a western theme where Indians were in pitched battle. The result of these illustrated encounters was the always growing theme that Indians were, indeed, murderous, savage, and bent on killing whites — including men, women, and children.

According to Hughes, Remington liked to sketch themes that centered on the “Last Stand.” In fact and fiction, Custer’s last fight at the Little Bighorn did become known and generally
recognized nationally as Custer’s Last Stand. Remington’s version of it appears among the
prints selected for this project. But then there are a series of “Last Stands,” including *Caught in
the Circle* (p. 67). The three troopers and their scout are not going to survive the warriors who
circle their stand. “Hence, one of his favorite themes was the Last Stand, the back-to-the-wall
defense of the white man’s values against all the odds.” 215

As most other artists’ images of General Custer and his last fight demonstrate,
Remington’s also displays a heroic picture of Custer surrounded by his faithful troops. There is
little to no evidence that gives any indication of how or when Custer actually fell. The heroic
image of his death did little to dissuade the general public that “The Last Stand” was other than a
massacre. It was not since the 7th Cavalry initiated the fight. (Sitting Bull’s great-
granddaughter carefully explained to me that Sioux verbal history has never spoken of a
massacre.) I am convinced that the tale of the Little Bighorn has been subject to exaggeration for
almost 140 years. If to the general public it largely remains a brutal massacre of a cavalry
regiment, one can imagine how results of the battle resonated 140 years ago.

Possibly more than any other armed encounter between Indians and whites during the
past three centuries, the Little Bighorn remains the one that stands out and had the largest impact
on public policy. Whatever turn policy was going to take in the latter part of the 19th century,
public sentiment against Indians was forever influenced after June 25, 1876. The contrast
between what Catlin carefully crafted around his life among the tribes in the 1830s and what the
cavalry in many encounters created forty years later, was stark.

If polarization in America during the last half of the 19th century centered on the slavery
issue that divided North and South, the so-called “Indian Problem” stirred up sentiments that
were not resolved in the 19th century and have really not completely worked themselves out in the 21st.

The entire American public was never collectively going to be in accord with public policy that came to regulate the lives of American Indians in the United States. There were several reasons for this, not the least of which was the independent lives led by the estimated 14 million who had inhabited the land from east to west coast, from what became Canada to what was Mexico.

The wish to be independent never changed. African-Americans in America could be classified as a race who were sub-citizens; in other words, a class of people who sought citizenship, but were denied that right until passage of the 13th, 14th, and 15th Amendments to the United States Constitution. Indians remained a different culture, a race of people who had no overall disposition toward citizenship, but wished to remain in a balance between their native state and the regency of the United States government. As amply expressed by George Catlin, their relationship with nature and the Great Spirit remained the most significant bond in their lives between the present, past, and future.

The passage of time and Westward Expansion of the white population would break the bonds of Indians to their past, but it would never fully change that desire to live an independent life at arm’s length from the government and the rule of the Great White Father in Washington. With an irresolvable and an irreversible problem at hand, western tribes on the plains turned to alternatives that made few advocates to their cause among the white population. The newspapers and journals carried tales of massacres, raids on white settlements, and stiff encounters with the U.S. cavalry out west. Stories of these events were accompanied by pictures, particularly as
novels of the west told tales of the confrontations that would forever put the Indians in an unfavorable light. The real life stories, such as the cavalry’s encounters, embellished by wood engravings, cast the western tribes in the roles of murderous intruders into the new white settlements, and savages who could outride, outnumber, and outshoot the army’s finest. The climax of these exchanges was the real-life rout of the 7th Cavalry at the Little Bighorn River in June 1876. The action there immortalized Lt. Colonel George Armstrong Custer and closed the door on what was left of peaceful negotiations between the government and the tribes. The tales that followed with an avalanche of pictures during the next twenty years after the battle had been long since fought, sealed off any hope of conciliatory feelings or relations.

*The Last Stand*, by Remington, gave a postmortem boost to Custer’s declining reputation; the two prints that follow graphically express the heroism of “The Last Stand” as well as the overwhelming odds against which the 7th Cavalry battled the Sioux in *Custer’s Last Fight*, commissioned by the Anheuser-Busch Brewing Company in 1894. The groundwork had been laid out well before the Little Bighorn; the last stand simply confirmed what contemporary Indian tales had manifested in the reading public’s mindset.

Catlin had long before visualized the future. His many pictures and sketches of Indian life, coupled with his written accounts, attempted to change the perception of life among the tribes; his Volumes I and II sold well, but failed to alter public opinion as Harriet Beecher Stowe’s *Uncle Tom’s Cabin* had aroused sentiments for the African-American. Nothing close to an impact of the abolitionist movement was developed in support of American Indians.

The illustrations of Frederic Remington did not invariably picture Indians as marauding savages; however, with few exceptions did they lend credibility to the more peaceful side of
Indian life on the plains as had been pictured by George Catlin. The lead picture of the west in the New York Metropolitan Art Museum, *On the Plains in 1860*, shows a cavalry charge that will encounter their warrior adversaries; most of the regular U.S. Army was posted out west before the Civil War to keep the peace on the plains, and discourage encroachment on white settlements.

Public opinion is not fickle in the United States; it usually slowly gravitates towards one side of an issue, although both sides are heard. Public opinion was almost solidly on the side of the public policy that ended tribal life in America as it had stood for centuries. National policy was both formed and reinforced by public opinion. Illustrations played a key role in that process.
Chapter 8: Conclusion

The illustrated story told here is one that has dealt with the influence of the United States Constitution on the political culture of America in the mid-to-latter part of the 19th century. Inherent in any description of how the nation expanded west, legally justified its colonization of the vast plains and mountains of the west and managed to incorporate territories into a national framework, by necessity must include the numerous tribes of American Indians who had inhabited the region that stretched from Kansas to the sea. The question of how to deal with tribes described in mid-19th century prints and oratory as “savages,” perplexed lawmakers, governors, the army, and presidents alike.

How could “equality for all,” the banner carried by much respected Senator Charles Sumner of Massachusetts, be extended to tribes of savages that were not citizens of the United States? This question has never been fully answered because some tribes living on reservations in the 21st century work under some different sets of guidelines and rules than citizens living in the 50 states. Indian citizenship was not more fully clarified until 1924. There were several significant issues that had influenced Westward Expansion from 1865 to 1876 and they surely were not all tied up in U.S. law as defined by the Constitution. Prominent in Westward Expansion were special interests that included wagon trains carrying new settlers, a multitude of mining interests, discovery of gold, and most significantly, the development of the east-to-west railroads.

Paul Hedren has brought this proposition into a practical solution to the often described “Indian Problem”: “Although the land had been guaranteed as sacred to the Sioux Indians by the Fort Laramie Treaty of 1868, the confirmation of gold . . . in 1874 unleashed a tide of . . .
prospectors. At first the army tried to enforce the Sioux Treaty of ejecting civilian trespassers.”

The Plains Wars reached their peak, as stated earlier, culminated by the overwhelming defeat of the U.S. 7th Cavalry under the command of Lt. Col. George Armstrong Custer at the Little Bighorn River in June 1876. The army had been stationed west to ensure safe passage for settlers, railroads, and mining interests. Wreckage was strewn in the wake of these battles, but the largest piece of wreckage was the broken treaties with Indian tribes.

Lt. Colonel Custer’s singular Indian fight that installed him as a national hero was his destruction of Chief Black Kettle’s Southern Cheyenne village on November 27, 1868. Black Kettle had been considered an ally; most of the Indians killed, including Black Kettle, were not warriors. In General George A. Custer’s autobiography, *My Life on the Plains*, republished in 1952 by Lakeside Classics, and originally published in the *Galaxy* in 1874, he gives reason for his actions at the Battle of the Washita. “We had achieved a great and important success over the hostile tribes . . . .” Further on in *My Life on the Plains*, Custer writes that after the main part of the battle was over, his command on the Washita was “still surrounded by a superior but badly defeated force of Indians.” M.M. Quaife, who served as editor for this publication in 1951, is quoted as follows: “Relying upon Custer’s careless statements, many writers have greatly exaggerated the number of warriors.”

The tale thus told at the Washita resonated from there to the Little Bighorn several years later and became American legend of outsized proportions. The tale continues to be told. The legend continues to capture the imagination of those who study 19th century American history. The round of Indian fights had intensified following the Civil War, because two circumstances
developed: (1) the nation could resume moving west following the most deadly war in all of American history, and (2) the army could spare its troopers to move west to protect the new wave of migration. The result of this action was an intensely new picture of American Indians, now more than ever, described as “savages” and pictured in periodicals as deadly warriors intent on indiscriminately killing any whites who crossed their path. The peak of Indian battles occurred at the Little Bighorn and this singular episode fixed the Indian image in the mindset of the white population beyond the 19th century.

In the meantime, there was fallout from a different direction on another vital part of the U.S. population. Whereas the passage of the 13th, 14th, and 15th Amendments to the U.S. Constitution had been created to abolish slavery throughout the land, guarantee the sanctity of life, liberty, and property and guarantee the vote to all citizens (except most Indians), the real interest in assuring these rights to African-Americans failed. In time, the “Old South” culture and lifestyle picked up where it had left off prior to the war. Guarantees to African-Americans mainly in the South meant virtually nothing.

Focus on guaranteeing equal rights to black Americans was overshadowed by the growing drama of Manifest Destiny, which had replaced the sanctity of maintaining Union, so vital in the first place, and then abolishing slavery. From the emotional high that followed Custer’s Last Stand, anti-Indian bias grew from the journalistic treatment of the Little Bighorn. It became the most significant and widely publicized event since Appomattox ended the war. General Lee’s surrender was anticipated; wiping out the vaunted 7th Cavalry of Civil War fame and its high-profile leader was not anticipated. Custer’s place in American history rose to a scale yet unheard of in American military history and military folklore. Whatever shortcomings
attributed to Custer up to that time were quickly forgotten; Custer’s poor judgment in engaging
the Sioux was largely overlooked, and, according to newer articles that followed his demise and
the 235 troopers that perished with him, Custer would gain the lofty status of military folk hero.
His mistake, though well-defined and published, would be largely ignored until well past the date
of his blunder. Such were the results coming out from the west that day, that Custer’s role in
taking the west from the Indians would be lauded as an act of aggressive devotion to his nation’s
aspiration of Manifest Destiny rather than as a foolhardy maneuver that provided his adversaries
sweet revenge that won Sitting Bull, Red Cloud, and Crazy Horse their fleeting acclaim.

Left in the backwash were four million black citizens with their claims to full citizenship
along with the equal rights and opportunities that were guaranteed under the Constitution.
Whatever might have moved ahead under Senator Sumner’s banner of equality and opportunity,
died on that battlefield. What replaced rhetoric was the ghost of an antebellum South those
many years ago, when African-Americans in the South were slaves and their status as such
allowed no opportunity for change. In post-bellum times in the South, Southern writers and
pitchmen won the day. “Old time days will ne’er be forgotten.” Stephen Foster’s tuneful
memories of a gentle Southern lifestyle underwent post-bellum revisionism to create a land that
African-Americans and whites could peacefully inhabit and northern citizens could live with and
admire (see print of sheet music, p. 27). The North remained immune to Thomas Nast’s vivid
graphics of pillaging and lynching (see Nast print, p. 23). The Currier & Ives print of comically
displayed underclass African-Americans seemed to make racial harmony into something that it
was not (see Currier & Ives print, p. 55).
What more than likely left the plight of Southern African-Americans that was to be dealt with another day was the power of public pressure that became public policy — All Wagons West. What aroused national interest was the killing field at the Little Bighorn. It was the signature event that turned all eyes West and decidedly away from the South. As the century moved forward from 1876 until its end, the number of illustrations of that last stand grew disproportionately to any other event that took place until America’s entry into the World War in 1917. Nothing exceeded the popularity, intrigue, and public mindset of the Little Bighorn for the remainder of the century. In its wake lay the ruins of Indian civilization and the chance for Indian rights to move forward. In the wake of Manifest Destiny lay any outside chance that the work of Congress would take up the neglected status of African-Americans in the South. Had not the Constitution itself taken care of black Americans with the passage of Amendments 13, 14, and 15? The period of time that followed these dynamic three amendments were not sufficiently empowered with either the will of Congress, the power of several presidents, or finally, even the judgments of the Supreme Court of the land to alter political and socially motivated perceptions of justice and equality. *Plessy v. Ferguson* took care of that. The law of the land was either unfit or not up to the task of turning around a past century of political and social values that would take another century to rectify.

In retrospect, Rex C Myers wrote:

General John Gibbon paused briefly on the bluffs overlooking the Valley of the Little Bighorn late in the afternoon of Wednesday, June 28, 1876. As his men fashioned litters for the remnants of Major Marcus Reno’s command and dug graves for the remains of Custer’s, the General took out his personal notebook and penciled a note to inform his superiors and the world of what had transpired in the Southern part of Montana Territory during the last three days. . .

From these hastily penciled beginnings, the written word on Custer’s battle swelled to astronomical proportions . . . historians have scrutinized . . . countless facets of George
Armstrong Custer, his last campaign, and the provocative legacy the two left behind . . .
the battle was irrelevant.
Herein lay the genesis of a century of public attention and debate.220

These final passages from a 1976 treatise in The Magazine of Western History best
explain, conclusively, the mystique, political implications, and what became public policy
that helped push the frontier west and forever raise George Armstrong Custer to heights
unimagined. As this movement in American history swept the Great Plains, it put aside the
cultural impact on American Indians that would remain unresolved in the 19th century and
directed attention away from the lives, fortunes, and liberties of the majority of the black
population. Manifest Destiny achieved its intended goal as Westward Expansion closed the
gap between the Atlantic and Pacific. What had been a vision became reality. The
unintended consequences rested on shoulders of the African-Americans and Indians.
George Armstrong Custer

Steel plate engraving made from a photograph by Mathew Brady

Custer has been the most widely discussed individual in this written saga of events that took place on the western plains in the latter half of the 19th century. An enigma to most, he became the lightning rod that helped drive public opinion following his defeat at the Little Bighorn in 1876. Never lacking in ego, carrying a confidence in himself that finally foiled his last campaign, George Armstrong Custer, in one sense, epitomized the aggressive spirit that followed the wagons and rode the rails west. His tale has already outlived accounts of battles on the continent that were likely of far more military consequence.
W.T. Sherman, Major General

by H.W. Smith (engraver)
General Sherman’s Tomb

Photograph taken by James Schiele

General William Tecumseh Sherman’s headstone is placed with his family’s headstones in a family plot in Cavalry Cemetery, St. Louis, MO.

The tombstone is elegant in its simplicity. The main piece at the top would be similar to the Infantryman’s Badge. The “40” represents rounds of ammunition carried by each soldier and the buckeye nut is the symbol of the state of Ohio.

Sherman’s grave is in sharp contrast to Custer’s.
Custer’s tomb is one of the most prominent at the West Point Cemetery. Lt. Col. Custer’s body was removed from the graveyard site at the Little Bighorn several years following the battle and moved to West Point. In addition to the importance given to Custer’s Last Fight, it overshadows the military feats of many leaders at West Point; it also stands in stark contrast to General Sherman’s gravesite in St. Louis.
Indian Women Moving Camp

by Charles Russell (1898)

Charles Russell combined the fighting spirit of his contemporary Frederic Remington and the compassion of George Catlin. Russell showed women proudly riding on horseback. He applied the same dignity to American Indian women as he did Indian warriors.
References


2 Abraham Lincoln’s Second Inaugural Address delivered on March 4, 1865 in Washington.


7 Estimates of Civil War deaths had traditionally ranged from 620,000 to 640,000 until 2012 when Professor J. David Hacker, Department of History at Binghamton University, recently concluded that there were considerably more killed by the war, particularly in the South, where accounting had been difficult (see Appendix D).

8 On May 22, 1856, Charles Sumner was caned senseless at his desk in the Senate Chamber by South Carolina Congressman Preston Brooks for allegedly insulting Brooks’ kinsman in a speech on the floor.

9 The “peculiar institution” was a common term applied to slavery.

10 The 13th Amendment stated in simple direct language that slavery was outlawed in the United States.


15 “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process; nor deny to any person within its jurisdiction the equal protection of the laws.” Amendment 14, Sec. 1, Constitution of the United States.

The practice of abolition was not a particularly popular position at mid-19th century. Abolitionists were largely centered in the eastern states where it did not gain support until the advent of the Civil War.

As William Seward assumed the role of Secretary of State in the Lincoln cabinet, he took a strong abolition position. However, Secretary of War Stanton and Treasury Secretary Chase were more ardent abolitionists.

It is the writer’s opinion that had President Lincoln lived, his ability to successfully reunite North and South would have hit the same roadblock as Johnson’s administration encountered. The Republican party of Lincoln was unified only to carry out the war. There were still factions that included Nativists, who would not embrace Negro equality, to Radical Republicans, who were insistent on driving the former Confederate states into as deep a pit as they could.

The writer notes with interest that Woodrow Wilson failed to carry the United States into the League of Nations. In a remarkable show of leadership, Harry S. Truman was successful in carrying out most of his own administration’s goals following the death of Franklin Roosevelt in 1945. The Armed Forces of the United States were segregated until 1948, when President Truman abolished segregation in the military.

Currier & Ives are best known for their high-minded illustrations of sailing vessels, rural landscapes, and recreation scenes. The publication house was active for 80 years and was known nationally.


Hoffer, Plessy v. Ferguson.

Ibid., p. 3.

Ibid.

Ibid.

Ibid., p. 4.

Ibid.


The underground railroad may have originated here.

Kornweibel, Railroads in the African American Experience.

Ibid.

Reproduction of The Car Laws from the original copy housed at the St. Louis Mercantile Library Association, Courtesy of Charles E. Brown, Assistant Director.


Ibid.


Tocqueville, Democracy in America, pp. 110-111.

Deloria, Jr., *ibid*.

The incident has become known as the “Massacre at Wounded Knee” and was best described by author Dee Brown, in a 1976 publication titled *Bury My Heart at Wounded Knee*.

Fourteenth Amendment to the Constitution of the United States, Section 2.


*Ibid*, p. 156.


*Ibid*.


*Ibid*.


*Harper’s Weekly*, July 22, 1876.

Writer’s note: It took about another 50 years for the battle to become the most publicized. After 1,000 pictures and many books surfaced, the battle took on a life of its own.
“The Indian Question,” *The St. Louis Daily Times*, July 10, 1876. A copy of the original news article was provided by Charles Brown, Chief Archivist at the Mercantile Library in St. Louis. This copy is included in the Appendix B.


Indian Appropriations Act of March 3, 1871, Sec. 71: “No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.”


*Ibid.*.

As a final note on the impact of Custer’s demise at the Little Bighorn, I quote from *A Nursery History of the United States*, by Lucy Lombardi Barber, published in 1916, forty years following the Last Stand: “For ten years he (Custer) led his horsemen against the Indians, but in his last charge he fell. He had crept . . . with his men close to a great Indian village on the Little Bighorn River. The cleverest and most cruel of the Indian chiefs were at its head: Sitting Bull . . . and Crazy Horse, who had led many a wicked raid against the whites . . .”

The tale thus told at the Washita resonated from there to the Little Bighorn several years later and became American legend of outsized proportions. As I read the well-illustrated *Nursery book* of the United States at age five, I too was captured by the glory of General George A. Custer in his heroic stand against a well-equipped army of *savages*.

Reports of the battle at the Little Bighorn are in Appendix C.

A separate section of this doctoral thesis details *Plessy v. Ferguson*.


107 Headline, *St. Louis Daily Times*, July 6, 1876.

108 *St. Louis Daily Times*, July 7, 1876.


110 *The St. Louis Daily Times*, July 8, 1876.


113 Elliott, *Custerology*, p. 5.


123 Personal conversation with Peter Kastor, Professor of History at Washington University in St. Louis.


129 *Lincoln Looks West*, pp. 5-6.


135 *Ibid*.


139 *Ibid*.

140 *Ibid*.


144 *Ibid*.


Pommersheim, *Broken Landscapes*, pp. 54-56. Pommersheim outlines the proposition that “. . . it is up to each state (and the federal government) to formulate its own rules with respect to enforcing tribal court judgments. The converse is also true with regard to the enforcement of state court judgments by tribal courts.

“The very existence of these specific federal statutory provisions would seem to indicate a congressional understanding that full faith and credit does not exist generally for tribal court judgments.”

I have chosen to cite Pommersheim because his work on “Federal-Tribal Relationship” explains the non-specific manner in which the government has dealt with Indian Law vs. law within the tribes monitored by the federal government.

Interview on September 24, 2014 with George Nightwalker, Chief Dull Knife College, Lame Deer, MT.


David Humphreys Miller, *Custer’s Fall* (New York: Meridian, 1992).


In May 1864, during General Ulysses S. Grant’s campaign to take Richmond, 7,500 Union troopers went down in 30 minutes during an assault on General Robert E. Lee’s entrenched Confederate army. This pitched battle is known in Civil War history as the Battle of Cold Harbor. It is not nearly as universally known as “Custer’s Last Stand.” As of the year 2012, books are still being published about Custer.

Miller, *Custer’s Fall*, p. 209.

Part of the interview with Maxine Noel was conducted in Stratford, Ontario in August 2010. That information has been recorded in a separate, prior study.


Chief Dull Knife College was founded in 1979. It is an Indian college with between 200 and 300 students.

Quotation marks in this section refer to direct quotes of Dr. Little Bear.

All quotations in this section are attributed to George Nightwalker.


A more complete discussion of the Ghost Dance, its origin and influence, may be found in Chapter 6.


187 *Ibid.*, p. 34. I believe “several thousand” was more accurate. Only bars serving Anheuser-Busch products were awarded “Custer’s Last Fight.” (Writer’s note)


192 The 5-1 odds are based on Custer’s troop strength of 650 vs. warriors’ strength of at least 3,000-4,000.

193 Pommersheim, *Broken Landscapes*.


200 Pommersheim, *Broken Landscapes*, pp. 54-56. Pommersheim outlines the proposition that “. . . it is up to each state (and the federal government) to formulate its own rules with respect to enforcing tribal court judgments. The converse is also true with regard to the enforcement of state court judgments by tribal courts.
“The very existence of these specific federal statutory provisions would seem to indicate a congressional understanding that full faith and credit does not exist generally for tribal court judgments.”

I have chosen to cite Pommersheim because his work on “Federal-Tribal Relationship” explains the non-specific manner in which the government has dealt with Indian Law vs. law within the tribes monitored by the federal government.

201 Ibid., p. 9.

202 Ibid., p. 17.

203 Ibid., p. 61.

204 Ibid., p. 102. In a conversation with Randall Calvert, Professor of Political Science at Washington University, he expanded on this: “The Removal Act was an act of Congress, authorizing transfer of lands in Oklahoma to Indians who agreed to voluntarily abandon their lands in the East. President Jackson violated the Removal Act by coercing Indians who did not want to leave voluntarily for such a deal.”


206 Ibid., p. 3.

207 Ibid., p. 8.

208 Ibid.

209 Ibid.

210 A phrase attributed to General Philip Sheridan, commander of the Missouri district in the 1870s.

211 Catlin, Manners, Customs, and Conditions of North American Indians, p. 9. Catlin’s use of “endowed by his Maker” takes a direct quotation from the Declaration of Independence, in which Thomas Jefferson has claimed in his powerful second paragraph “that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights . . .” This statement clearly is reflected by Catlin’s reference that Indians also possess unalienable rights.

212 Hughes, American Visions, pp. 203-205.

213 “[T]he good cowboy versus the traitorous and savage Indian . . . there are passages in John Ford’s Westerns, such as She Wore a Yellow Ribbon, based on Remington’ pictures . . .”

214 Hughes, American Visions, p. 203.

254
215 Ibid.


218 Ibid., p. 353.

219 Ibid.

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*The Car Laws*, from the original copy housed at the St. Louis Mercantile Library Association, Courtesy of Charles E. Brown, Assistant Director.


