Imperfect Justice: The Modoc War Crimes Trial of 1873

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Source: *Oregon Historical Quarterly* , Fall, 1999, Vol. 100, No. 3 (Fall, 1999), pp. 246-287

Published by: Oregon Historical Society

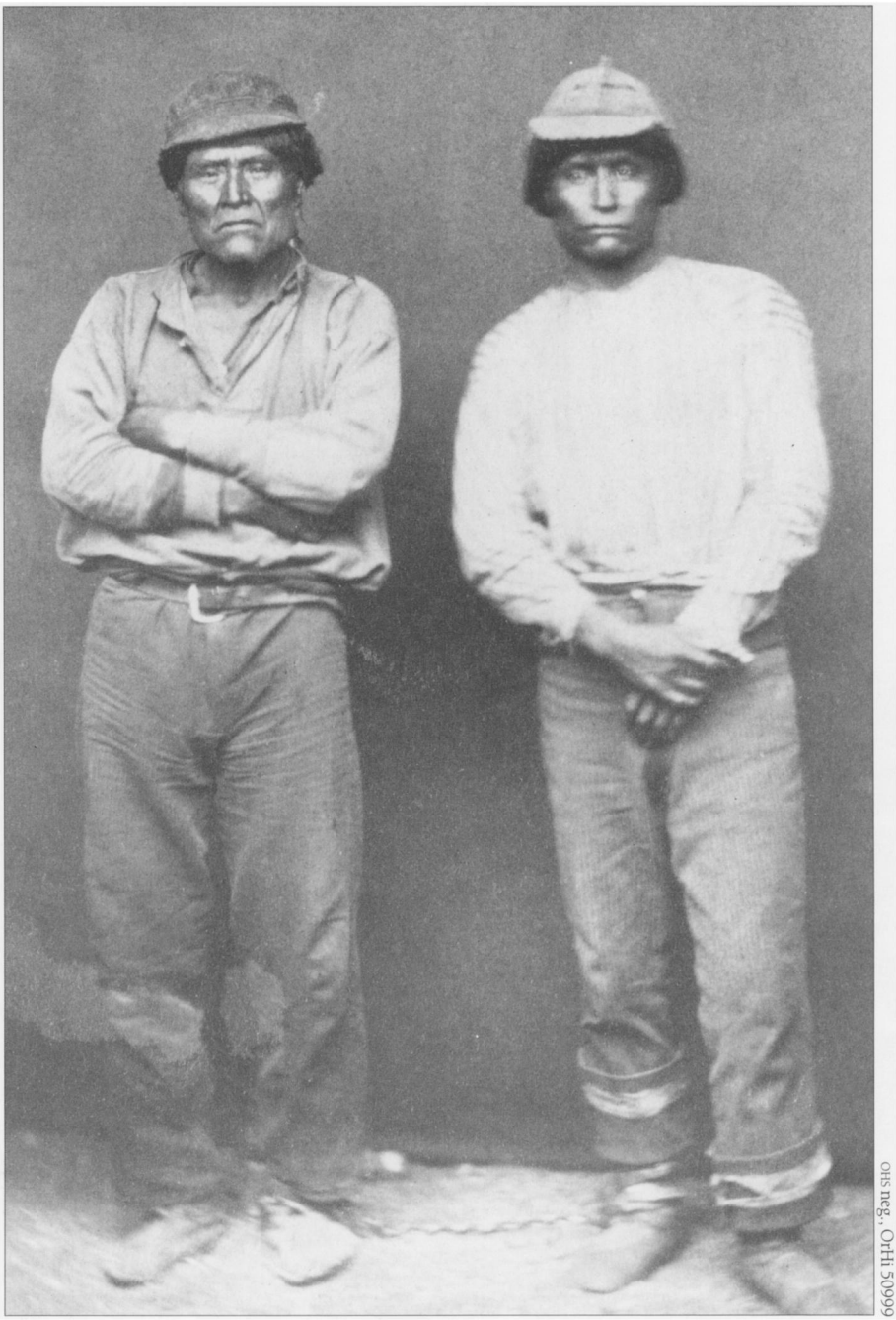
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THE DEFENDANTS

Schonchin John and Captain Jack pose for this photograph taken after they surrendered to the U.S. Army on June 1, 1873.

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IMPERFECT JUSTICE

The Modoc War Crimes Trial of 1873

by Doug Foster

In the summer of 1873, the United States Army convened a military commission at Fort Klamath, Oregon, to conduct a war crimes trial. A group of Modoc Indians and the army had been fighting for five months on the lava beds near Tule Lake–the government determined to move the Indians onto a reservation and the Modocs just as determined not to go. Now the military had charged Captain Jack, Schonchin John, and four other Modocs for killing Gen. Edward R. S. Canby and another member of a peace commission "under a flag of truce." It was to be the only time in this nation's history that Native Americans were tried for war crimes.[1]

The general's death gripped people like no event since the assassination of President Lincoln. Flags flew at half-mast in Jacksonville, Oregon. The national and international press vilified the Modocs for killing General Canby, who was the only commissioned general of the regular U.S. Army to be killed during the Indian Wars. The *Times* of London denounced the killings as a "dastardly outrage," and *Harper's Weekly* called the Modocs "wild beasts." The *San Francisco Chronicle* devoted its front page to a story that labeled Captain Jack "the red Judas" and called the killings "the most damnable plot that ever disgraced even the Indian character." The *Philadelphia Public Ledger* demanded an eye for an eye, while the *Chicago Tribune* and the *Inter-Ocean* demanded that the Modocs be exterminated.[2] Local citizens were even more outraged. They already bore a special hatred of Modocs because members of the tribe had attacked emigrant wagon trains that had passed through the tribe's country during the 1850s.[3] A Yreka, California, newspaper went so far as to call the killing of Canby the "most dastardly assassination yet known in either ancient or modern history."[4]

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The same Modoc leaders who were pilloried in the press are considered heroes by many in the Indian community today. Lynn Schonchin, former chairman of the Klamath Tribes, recently said, "I was always proud of my great-great-grandfather [Schonchin John]. He fought the U.S. Cavalry for his people. He and Captain Jack and the others laid down their lives for their land and for their freedom. They should be honored as patriots and heroes . . . like George Washington. They are by Indian people." Ken Tanner, chief of the Coquille Tribe, remembers that as a boy in Coos Bay, Oregon, he grew up on stories of Captain Jack. "Both my mother and my father looked up to Captain Jack and the Modoc people as real heroes," he said. "Captain Jack had the courage to stand against those who sought to take his homeland."[5]

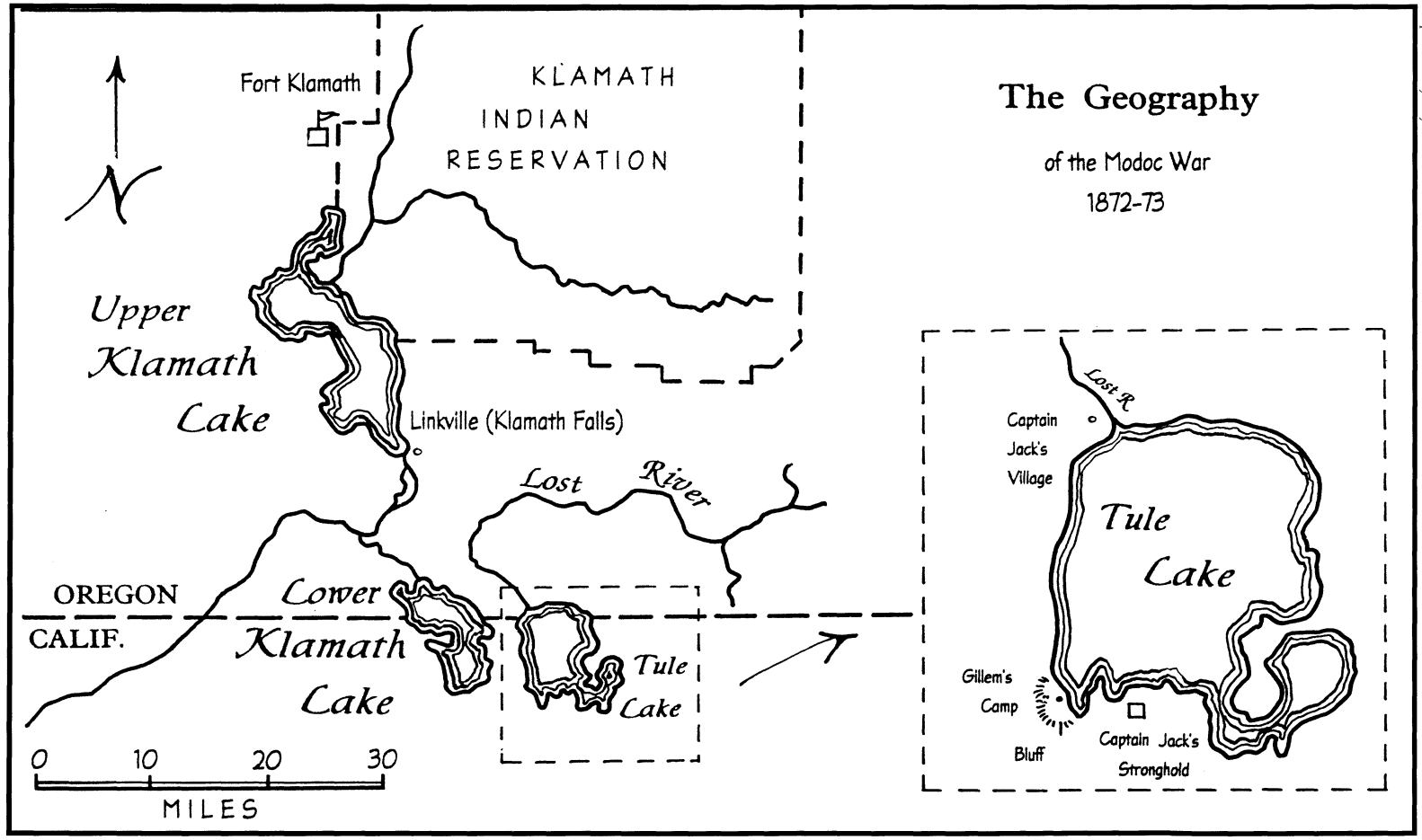
Some modern local travel brochures still label Captain Jack and Schonchin John as "renegades" and "savages." Lynn Schonchin said the brochures and their message anger him. "I'm not saying it was right to kill," he explained, but there was killing on both sides. "I don't know if I'd have the courage to do what my great-great-grandfather did: take on the whole U.S. Army, knowing he'd lose."[6] It was a mismatched war: fifty Modoc warriors in a lava-bed stronghold held off as many as a thousand soldiers for five months. Considering the number of Indians involved, it may have been the most costly war between the U.S. government and Native Americans in terms of lives lost and money spent.[7]

The two sides in the Modoc war crimes trial were also mismatched, for the Modoc defendants were not represented by counsel and the United States government held them to a higher standard than it did its own soldiers. The U.S. soldiers who violated the laws of war during the Modoc and other Indian wars were never tried and punished as war criminals. Ironically, to justify trying the Modocs for war crimes, the government had to acknowledge the tribe's sovereignty and formally recognize the Modocs as true belligerents on the battlefield. This was unprecedented. Other Indian belligerents tried in the United States were treated as common criminals, as murderers, not as soldiers of a nation at war against the United States.[8]

THE MODOC WAR

On October 14, 1864, the Modoc Tribe, under pressure from the government, signed a treaty that committed them to relinquishing their ancestral lands in the Tule Lake country on the Oregon-California border and moving onto the Klamath Indian Reservation near Fort Klamath in southern Oregon. In 1865, a few months after signing the

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THE GENERALS

Brig. Gen. Edward Canby (left) was fifty-six years old when he died. This illustration, taken from a Civil War photo of Canby, appeared in the April 26, 1873, edition of Harper's Weekly *shortly after his death. Col. and Brev. Maj. Gen. Jefferson Davis (right) replaced Canby as commanding officer. Davis had fought under General Sherman in the Civil War. When Canby was killed, Sherman rescued his old subordinate from obscurity, a remote post in the Washington Territory, and gave him another chance to command troops in the field.*



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U.S. ARMY CAMP ON THE LAVA BEDS

This view from Gillem Bluff to the southeast looks toward the lava beds from a location known as Schonschis Rock. Visible are some of the tents in the Tule Lake camp of army field commander Col. Alvan Gillem.

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treaty, Captain Jack led his band of Lost River Modocs off the reservation because the superintendent of Indian affairs for Oregon refused to recognize him as chief of all the Modocs. A few years later, in late 1869, he moved back onto the reservation, along with forty-three men, women, and children. When he left again a few months later, in early 1870, he was accompanied by the entire Modoc Tribe–371 men, women, and children. Once back in his homeland, Captain Jack steadfastly refused to budge. War broke out when white ranchers grew anxious at the Modocs' presence and the army tried to force Jack's band to return to the reservation.[9]

On January 29, 1873, after several months of fighting and two weeks after the first Battle of the Stronghold–when the Modocs defeated a vastly superior force of federal soldiers and state militia without sustaining any injuries–the secretary of the interior appointed a peace commission to try to negotiate a peaceful settlement to the war. Alfred B. Meacham, the chairman of the commission, worked out a temporary truce with Captain Jack, but two months of negotiations bore no fruit. The army wanted Captain Jack's band removed to the Klamath reservation, while Captain Jack wanted a reservation set aside for his band on their ancestral lands. In desperation, some members of the Modoc group, including Captain Jack, made plans to kill General Canby, the army field commander. When Toby Riddle, a Modoc interpreter for the peace commissioners, warned the army of the Modocs' plot, General Canby declared that negotiations should continue because the Modocs "dare not do it" with so many soldiers surrounding their position.[10]

On Good Friday, April 11, 1873, the four peace commissioners and two interpreters went to the council tent set up between the soldiers' camp and the Modocs' lava-bed stronghold for another meeting. All parties to the negotiations had already agreed they would come to the meeting unarmed. Soon after the men shook hands, negotiations again reached an impasse. At a designated signal, two armed Modocs sprang up from the rocks where they had been hiding and began firing. Captain Jack pulled out a pistol and shot and killed General Canby. In the fight, Modocs shot and killed Reverend Eleasar Thomas, fired at Commissioner L. S. Dyar as he fled back to the army's position, and wounded Alfred Meacham, leaving him for dead.[11]

When news of the slayings was reported, the public was outraged that such an important man had been killed while on a "mission of peace." General Canby was nationally known and extremely popular. A military academy graduate who had served with distinction and had been severely wounded during the Civil War, he had been responsible for restoring order in New York City following the draft riots of 1863.

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He had also commanded the Military Division of West Mississippi and troops in the Gulf states and the Southwest. When he died, Canby was acting commander of the Military Division of the Pacific and was responsible for the army on the West Coast. On learning of Canby's death, Gen. William Tecumseh Sherman ordered his troops to attack the Modocs, advising, "You will be fully justified in their utter extermination."[12]

THE LEGAL THEORY

Within short order, the army defeated the Modocs, took the leaders of the group into custody, and escorted the rest of Captain Jack's band to the stockade at Fort Klamath, Oregon. They then charged Captain Jack and five other Modocs with war crimes. The formal charges brought against the men stressed that the two peace commissioners had been killed at a meeting held during a "suspension of hostilities." The U.S. attorney general, to justify trying the Modocs for war crimes, wrote on June 7, 1873: "According to the laws of war there is nothing more sacred than a flag of truce dispatched in good faith, and there can be no greater act of perfidy and treachery than the assassination of its bearers after they have been acknowledged and received by those to whom they are sent."[13] Although army officials wanted to try the Modocs for war crimes, they were uncertain whether they had the necessary legal authority. A key issue was whether the conflict could rightfully be called a "war" so that the Modoc defendants would be subject to military rather than civil law. This was a troubling question, because only nations can engage in war and the Modoc Tribe did not fit the conventional notion of a sovereign nation.

Such issues of tribal sovereignty are complex and, by their nature, often controversial. In *Cherokee Nation v. Georgia* (1831), Chief Justice John Marshall recognized Indian tribes as distinct, independent political communities that had an unquestioned right to the land they occupied, but he did not consider them foreign nations that could bring suit before the Supreme Court. Instead, he called them "domestic dependent nations." Historian Francis Paul Prucha has characterized Indian treaties as a "political anomaly," because treaties are generally a formal agreement between two or more fully sovereign and recognized states operating in an international forum. Treaties between the United States and Indian tribes were initially negotiated by separate political powers dealing with each other on roughly equal grounds, but the tribes soon lost their bargaining leverage and the United States came to negotiate treaties from a position of overwhelming strength.[14]

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Maj. H. P. Curtis, the army judge advocate selected to prosecute the Modocs, wrote a twelve-page legal brief seeking to justify a war crimes trial. Characterizing Indian tribes as "domestic dependent nations," he argued that the Modocs were "in no sense citizens of the United States, and owe it no allegiance." He concluded that the Modoc War was indeed a war, so the successful termination of that war "confers on the U.S. all the rights which ordinarily attend upon the victory of one over the other of two contending peoples."[15] The U.S. attorney general wrote a formal opinion concluding that the Modoc prisoners could be tried by a military commission for war crimes. Because Indian tribes had been recognized as "independent communities" for treaty-making purposes and tribes frequently carried on "organized and protracted wars," he compared the Modocs to a foreign nation for purposes of waging war against the United States.[16]

American newspapers, reflecting common attitudes of the white population, frequently portrayed Indians as "savage brutes," and the attorney general's opinion prompted the *New York Tribune* to editorialize that the Modocs

> were mere outlaws and marauders, no more entitled to belligerent rights than so many ruffians escaped from Sing Sing. There can be no war except between independent nations, or a government and its revolted subjects. To recognize the sovereign character of a band of two-score Digger Indians is preposterous; to treat their plundering and scalping expeditions as a rebellion is not less so. We have never granted them the status of independence; therefore they cannot declare war against us as a foreign power. We have never looked upon them as component parts of our political system; therefore, they cannot rebel.[17]

The American Indian Aid Association, an East Coast humanitarian group, however, lauded the attorney general's opinion, believing that its tacit recognition of the Modocs as an independent nation would exempt tribes from state law. The association exclaimed: "We now call upon the friends of justice and humanity to see to it that this decision does for the red men substantially what President Lincoln's emancipation proclamation did for the black men."[18]

The attorney general's opinion was legally significant. The government's recognition of the Modocs as a nation and Modoc warriors as legitimate belligerents meant that the defendants could not be tried for murder in civilian courts for killing enemy soldiers on the battlefield.[19] The attorney general's opinion implicitly distinguished between isolated killings such as the Whitman massacre in 1850, which constituted the civilian crime of murder, and group warfare between legiti-

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mate belligerents, as in the Modoc War where killings on the battlefield were punishable only if they violated the laws of war.[20]

The laws of war, which considered some acts of violence too odious to be permitted, had been followed as an unwritten tradition until 1863, when President Lincoln approved the War Department's codification of the laws of war as General Order No. 100, the "Instructions for Government of Armies of the United States in the Field." This code, drafted by Francis Lieber and popularly known as the "Lieber Code," was cited by the U.S. attorney general when he accused the Modocs of war crimes. He wrote:

> All the laws and customs of civilized warfare may not be applicable to an armed conflict with the Indian tribes upon our western frontier; but the circumstances attending the assassination of Canby and Thomas are such as to make their murder



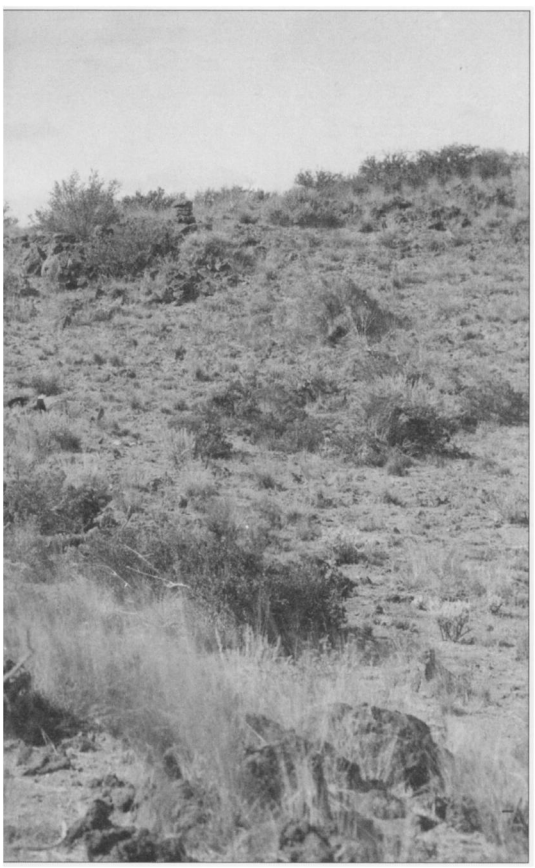
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as much a violation of the laws of savage as of civilized warfare, and the Indians concerned in it fully understood the baseness and treachery of their act.[21]

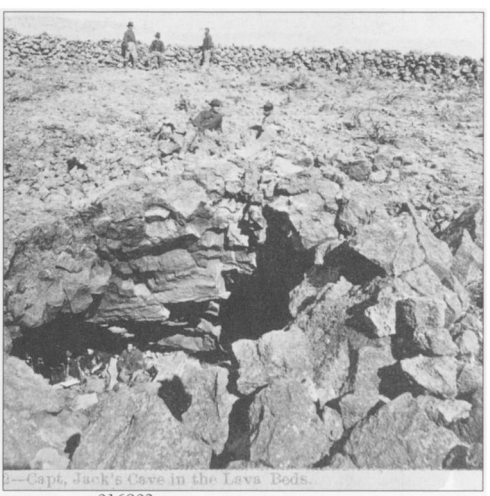
THE TRIAL

When the Modoc War ended, every surviving Modoc who had participated was marched north under heavy guard to Fort Klamath, a military post near the Klamath Indian Reservation, the reservation that Captain Jack's band had fought so hard to avoid. Thirteen Modocs were locked in cells in the post guardhouse, and another one hundred and forty men,women, and children–with the exception of four men granted amnesty for helping the army–were confined in a 150-by-50-foot stockade made of upright pine logs.[22]



THE LAVA BEDS

Captain Jack's Lost River band sought refuge in the lava beds near Tule Lake, a tortured terrain littered with lava rock and cut by ravines. Captain Jack's family lived in this cave (below), in the center of the lava-bed stronghold. The lava beds provided a natural fortification of jagged rock outcroppings and crevices where Jack's band withstood an army force nearly twenty times its size for five months. On the horizon is the fortification the Modocs built using lava rock.



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The trial was held in the Fort Klamath adjutant's office, where uniformed soldiers stood guard in the makeshift courtroom, holding rifles topped with bayonets. The six defendants sat at a bench at the side of the room. Their leader, Captain Jack–whose name in Modoc was Kientpoos–was a youthful-looking man with a handsome face and calm, intelligent eyes. Captain Jack's second-in-command, Schonchin John, was a dour-looking, square-jawed man (in Modoc, shonchis means "big chin"). The two men wore leg irons and were chained together, as were Black Jim and Boston Charley. The two younger Modoc defendants, Slolux and Barncho, who were not shackled, sometimes slumped to the floor and slept during the trial. All of the defendants wore old denim work pants or cast-off army pants, ragged shirts, and work shoes, the same kind of clothes they had worn during the war.

Five U.S. Army officers in new dress uniforms sat at a long, narrow table in the middle of the room. This was the military commission, the judges who would decide the Modocs' fate. Maj. H. P. Curtis, the judge advocate who acted as prosecutor, sat at the front table facing the commission. Next to him sat the court reporter and two interpreters, Frank Riddle and his Modoc wife, Toby. Because most of the Modocs spoke little English, everything had to be translated from English to Modoc and from Modoc to English. By law, and by order of General Sherman, the trial was to be conducted in accordance with the rules and forms of a military court-martial as set forth in the 1863 *Field Manual of Courts-Martial*.[23]

As the trial began, the judge advocate asked the defendants if they "had any objection" to any member of the military commission. If the Modocs had understood the significance of what was happening, they almost certainly would have objected. The *Manual of Courts-Martial* specifically provided that defendants could challenge a prospective member of a military commission for "just cause" if the officer "has been injured by the accused and may therefore cherish a desire for revenge." Even though there were ample grounds for challenging four of the five commission members for just cause, the trial record shows that this was not explained to the defendants, so the Modocs raised no objection and the trial was allowed to continue.[24]

While military commissions were often composed of individuals who had more at stake in the outcome of a trial than usually occurs in a civil trial, rarely were members so personally involved in the events leading to the charges being tried as was this commission. Four members of the commission had been involved in the Modoc War and, therefore, had to judge men accused of killing their commander. Of these, three had fought in battles and been under attack by the men on

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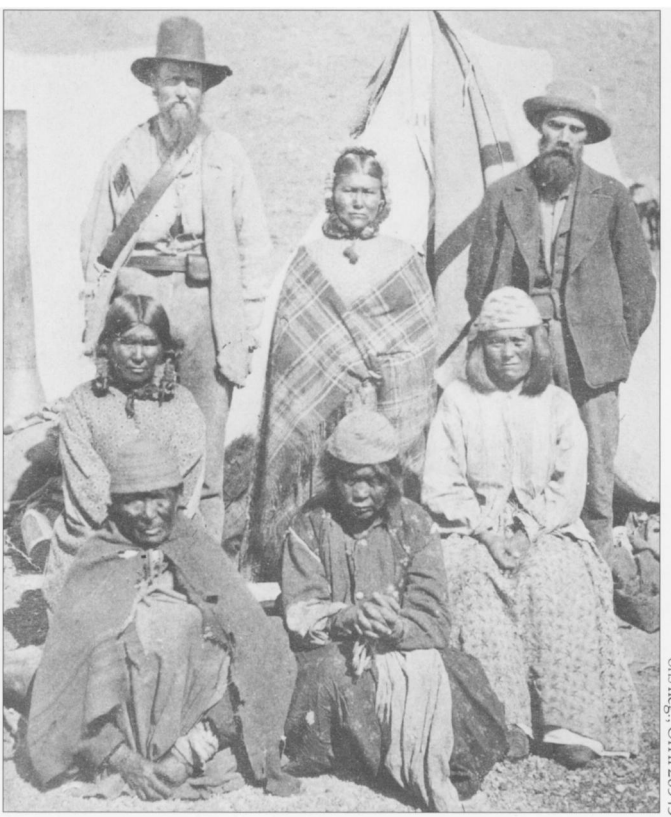
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THE FORT

Fort Klamath, Oregon, where the Modoc leaders were tried for war crimes, was built in 1863 in a forested area near the lush Wood River Valley. The fort was situated along the edge of the Klamath reservation, which Captain Jack's band had fought so hard to avoid.

THE INTERPRETERS

Frank and Toby Riddle, interpreters for both the peace commission and the army war crimes commission, pose near the battlefield with four Modoc prisoners. Standing, from left, are Frank Riddle, Toby Riddle, and Indian Agent Oliver Applegate. Sitting, from left, are Martha Mainstake, Sau-kaa-dush, Me-hu-no-lush, and Lac-el-es. Three of the women prisoners wear traditional Modoc basket hats.



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trial. Capt. John Mendenhall, a veteran of the Sioux expedition and the Ash Hollow massacre, had served as a field officer against the Modocs since April 1873. Capt. Henry C. Hasbrouck had led the successful army forces against the Modocs at the Battle of Dry Lake. When 1st Lt. Thomas Wright was killed in battle by the Modocs on April 26, 2d Lt. George W. Kingsbury had assumed the command of Company E, Twelfth Infantry. Capt. Robert Pollock, the field quartermaster and commissary officer for the Modoc expedition, had been involved in the war even though he had not fought in any battles.[25]

Emotions were still running high when the trial began on July 1, just a month after Captain Jack was captured. Gen. Jefferson Davis, Canby's successor as commanding officer in the field, initially planned to summarily execute several Modoc leaders. When the War Department advised Davis that the Modocs must first be tried, he told a newspaper reporter for the *Yreka Union* that any military commission convened to try the Modoc leaders should be staffed by officers of high rank "who have no immediate connection with the Modoc difficulty." He also predicted that each Modoc would probably get a separate trial, that the process would take six months, and that it would entail "immense expense to the Government."[26] Two weeks before the trial began, General Davis told a reporter:

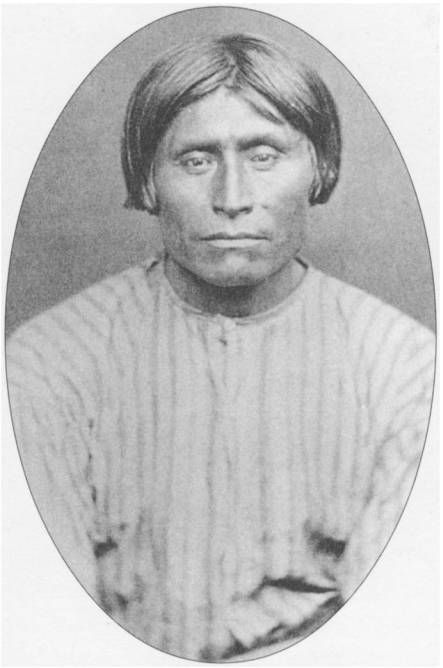
> The Indians do not recognize the jurisdiction of civil or military courts, because they are incapable of comprehending the workings of either. These Modocs cannot understand what is meant by a court. They have been interrogated on the subject. They would regard a court trial, with its technicalities, its testimony, etc. as a kind of jugglery, and if convicted and sentenced to death, could not be made to understand that justice figured in the business at all.[27]

When General Davis was allowed to select the members of the military commission a few weeks later, however, he chose several officers who had served under General Canby, and all six Modoc defendants were tried together in just four days. Alfred Meacham, the wounded peace commissioner and a star witness for the army, criticized the composition of the military commission, judging that their "love for the memory of Gen. Canby, together with hatred for the Modoc chief, disqualify them for impartial hearing."[28]

The Modocs' lack of understanding about United States trial procedures might have been overcome if counsel had represented or advised them. The defendants were granted the right to cross-examine government witnesses, which could have worked to their advantage had they been represented by counsel. Instead, when given the opportunity to

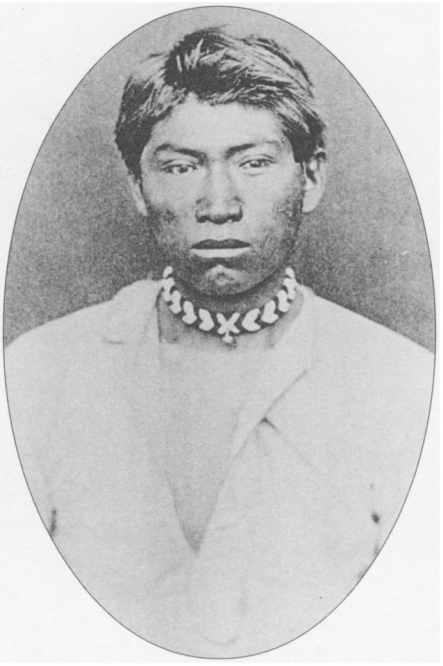
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CAPTAIN JACK

Kientpoos, or Captain Jack, led his band of Lost River followers in the fight against the U.S. Army to avoid being moved to a reservation. This photo was taken after he surrendered and the army cut short his long hair. Captain Jack never denied that he had killed General Candy. His defense was based on the argument that he had not started the war; the army had.



HOOKA JIM

Hooka Jim, or Hooker Jim, the warlike Modoc who won amnesty by switching sides, is shown in this photograph attached to an official certification card. His hair has been cut, but he still wears a traditional beaded necklace. Such portraits of Modoc prisoners were reproduced by a commercial studio and sold as souvenir "cabinet cards" for $1.50 per dozen.

cross-examine, the six men sat in glum silence. The right to challenge commission members, arguably, was rendered meaningless when there was no one who adequately explained to the defendants what it meant to issue a challenge. Denying the six men a meaningful opportunity to challenge was an error of substance, and there was precedent for treating it as such. In 1863, for example, a military commission's sentence in a capital case had been invalidated because the accused was not given an opportunity to challenge potential commission members.[29]

The U.S. Army, however, considered defense counsel a privilege, not a right. Although defense counsels were generally admitted in courts-

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martial proceedings, the army would not appoint counsel to represent the accused.[30] When the judge advocate asked the defendants if they "desired to introduce counsel," they replied that they were "unable to procure" anyone to represent them.[31] The prisoners had been shackled together and locked in a cell since their capture, so it is not surprising that they were not able to find their own counsel.

Captain Jack's old friend, Yreka attorney Elijah Steele, had asked attorney E. J. Lewis from Calusa, California, to represent the Modocs at the trial. Unfortunately, Lewis did not arrive at Fort Klamath until the last day of the trial. When he asked to represent the Modocs, the military commission refused to retry the case. According to historian Walter Palmberg, "It was reported that legal counsel was on the way from California, but so hurried was the court to get to the executions that no delay would be brooked." A reporter for the *Sacramento Record* who was present at the Modoc trial was convinced that the defendants were tried "before their counsel was aware that the day of trial had been named."[32]

In the absence of separate defense counsel, the *Manual of Courts-Martial* required the judge advocate to "take care" that each defendant's "case is fairly conducted," that his "rights are not infringed, and that he is not permitted to do anything ignorantly, to his own detriment." But the judge advocate did not challenge the composition of the military commission on behalf of the Modocs or formally advise them that most of the members had a conflict of interest. He did not help the defendants find counsel, and he did not object that four of them were in leg irons, even though the *Manual of Courts-Martial* urges that this be done only in "extraordinary cases." He also did not object to the armed guards in the courtroom, even though the *Manual* discouraged this practice and Meacham mocked it as unnecessary. In fact, the trial transcript does not reflect that the judge advocate provided any meaningful protection or assistance to the Modoc prisoners.[33]

Language was also a difficulty for the Modocs. They had to rely on translations by Frank and Toby Riddle, the translators used by the peace commissioners who had warned of the Modocs' attack. During the trial, Frank Riddle testified for the government about how Canby was killed, even though he was considered an officer of the court and was supposed to stay impartial. A newspaper reporter who covered the trial complained that Frank Riddle, who had received little formal schooling, "is illiterate; can neither read or write; cannot translate the idioms of our tongue, cannot even understand good English." Lynn Schonchin believes that not only did Riddle not understand complex ideas or military and legal jargon but that "many of those concepts may not have been translatable at all."[34]

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CAPTAIN JACK'S DEFENSE

On the fourth day of the trial, when the defendants were first allowed to testify, Captain Jack told the court: "I hardly know how to talk here. I don't know how white people talk in such a place as this; but I will do the best I can." He cited his reputation for good character:

> I considered myself as a white man; I didn't want to have an Indian heart any longer; I took passes from good white men who gave me good advice . . . I always thought [white men] my friends, and when I went to any one and asked him for a pass, he would always give it to me; all gave me passes. . . .[35]

The "passes" Jack spoke of were given to the Modocs by Elijah Steele and A. M. Rosborough, Yreka attorneys and judges. After the 1864 treaty, while Captain Jack's band lived off the reservation and continued to visit Yreka, it became customary for Modocs to carry a pass certifying their identity and good character. Passes usually took a form that looked something like this:

> April 6, 1868
>
> Charlie, the Indian to whom I give this paper makes a living for himself and family by farming, driving teams, etc., and wants me to give him this paper certifying to the fact that he is a civilian Indian and not a wild Indian–that he is an independent freeman entitled to the protection of life, liberty, and the pursuit of happiness by the laws of civilization.
>
> M. Rosborough,
> County Judge of the
> County of Siskiyou, and
> State of California[36]

It is both sad and ironic that the Modocs needed such passes to cross their own ancestral land, and Captain Jack's reliance on his passes to prove his innocence indicates just how naive he was about the American legal system. Still, Jack placed great value on the passes given him by Steele and Rosborough. Two years before the war, when Jack and Meacham first met at Lost River, Jack displayed his passes, and Meacham, mirroring Jack's respect for these documents, handled them as if they were "original copies of the Declaration of Independence."[37] It is also possible that because he could not read, Jack believed the written passes had some magical power. He also may have valued them simply because they were effective with the local settlers. Nevertheless, the military commission was not impressed.

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Captain Jack never denied that he had killed Canby. His defense was that he did not start the war; the army did. With Riddle translating, Jack reported:

> I have always told white men when they came to my country, that if they wanted a home to live there they could have it; and I never asked them for any pay for living there as my people lived. I liked to have them come there and live. I liked to be with white people. I didn't know anything about the war—when it was going to commence. Major Jackson came down there and commenced on me when I was in bed asleep.[38]

His explanation had no effect on the commission. After the trial, the judge advocate general of the U.S. Army characterized the testimony of the Modoc defendants as "wholly irrelevant."[39] Had Jack been represented by counsel, perhaps he could have presented his defense more persuasively.

To support the government's position that defendants were renegades who had escaped their rightful reservation, the judge advocate introduced the October 14, 1864, Treaty of Council Grove, in which the Modocs had relinquished title to their ancestral lands and had agreed to live on the Klamath reservation. Most historians agree that the Modocs signed the treaty "reluctantly," but those circumstances were not brought out at trial. There was also no mention of an earlier treaty agreement negotiated by Elijah Steele and signed on February 14, 1864. That treaty had obligated Steele to attempt to secure a reservation for the Modocs along Lost River. Steele had been appointed Indian agent in 1863 and was acting superintendent of Indian affairs in northern California when he signed the first treaty with the Modocs.[40] The government never submitted the treaty to the Senate because it was not authorized by the Indian Bureau. From the Modoc perspective, the government had unilaterally cancelled their treaty. In a similar fashion, Captain Jack had repudiated the Treaty of Council Grove by arguing against accepting the treaty and then leading the Lost River Modocs off the reservation within a few months of signing it.[41]

Later, Captain Jack claimed that he had not known what he was signing when he had marked his "X" on the Treaty of Council Grove. Elijah Steele, who had negotiated the first treaty, supported Jack's claim "of being swindled." Historian Francis Landrum agrees, concluding that Captain Jack's band "never knowingly yielded their beloved Lost River." Further, Captain Jack's band had fled the Klamath reservation long before the first distribution of treaty annuities in 1867. In March 1870, after having returned to the reservation for four months, the

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Modocs again fled to Lost River because the reservation Indian agent had cut off their rations, a violation of one of the government's treaty promises. Then, in 1871, Meacham, Oregon's superintendent of Indian affairs, agreed that Jack's band could live on Lost River as long as they did not bother nearby settlers while Meacham tried to secure for them a six-mile-square reservation there.[42]

When T. B. Odeneal replaced Meacham as superintendent and decided to force Captain Jack's band back to the Klamath reservation, his principal Indian advisor, Ivan Applegate, considered Meacham's agreement to still be in force.[43] Thus, a counsel for the Modocs could have argued that the U.S. Army had no right to surround the Modoc villages on Lost River and that the government, not Jack, started the war. While this would not have been considered a legal defense to killing Canby during an armistice, it at least might have generated more sympathy for the Modocs at trial.

THE BROKEN ARMISTICE

One defense not offered at the trial was that General Canby had already broken the armistice, so no armistice was in effect when he was killed. In the absence of an armistice, Canby was simply an enemy soldier killed in wartime on a field of battle between two armed camps. While the other three peace commissioners were not soldiers–and so would normally be considered noncombatants–two of them, Dyar and Meacham, carried derringers to the meeting in violation of the agreement to go unarmed. This argument, admittedly, skirts the underlying question of what actions are necessary to nullify an armistice. For example, is it necessary for the protagonists to give formal notice that they are once again at war? Although Captain Jack never gave such notice, he did complain about Canby's breaches of the armistice to Meacham and to the peace commissioners' interpreter. He also sent two emissaries to Canby to request that he rectify the situation.[44]

Alfred Meacham, as chairman of the peace commission, had been instructed to "cooperate" with General Canby, who was supposed to act as a "counsellor" to the commission. In "no event" was Meacham to interfere with the movement of troops. The truce between the Modocs and the federal government, as negotiated by Meacham, provided that "no hostile movements" were to be made by either party "while negotiations for peace were going on." At that time the military force was divided into two groups, one located thirteen to eighteen miles to the west of the Modoc position in the lava beds, the other thirteen miles around Tule Lake to the east.[45]

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Not long after the Modocs and the peace commissioners made this agreement, the army captured all of the Modocs' horses. Meacham told Canby that he considered this a "violation of the armistice." Captain Jack sent his wife and sister to Canby to request that the horses be returned, with Meacham joining in the request. Canby refused. On March 22, 1873, the secretary of the interior turned over entire control of the peace commission to the army and gave Canby the authority to replace any of the appointed members. General Sherman wrote Canby: "This actually devolves on you the entire management of the Modoc question." Control of the peace process had passed from the Department of the Interior to the Department of War.[46]

To pressure the Modocs to surrender, General Canby then ordered his men to move forward. Within ten days, the two groups of soldiers had repositioned themselves within two miles of the Modocs, one on each side of the Modoc position. The next day, Captain Jack told Toby Riddle that he considered these troop movements a "breach" of the compact for peace negotiations. Meacham also saw them as a violation. Continuing his policy of "gradual compression," however, Canby moved his headquarters to the base of Gillem Bluff, on the very edge of the Modocs' position, and had the cannons dragged forward. One of Canby's officers warned the Modocs that one hundred Indian scouts would arrive from Warm Springs to strengthen the soldiers' ranks, and General Canby telegraphed Washington that he had "the army in position to compel surrender."[47]

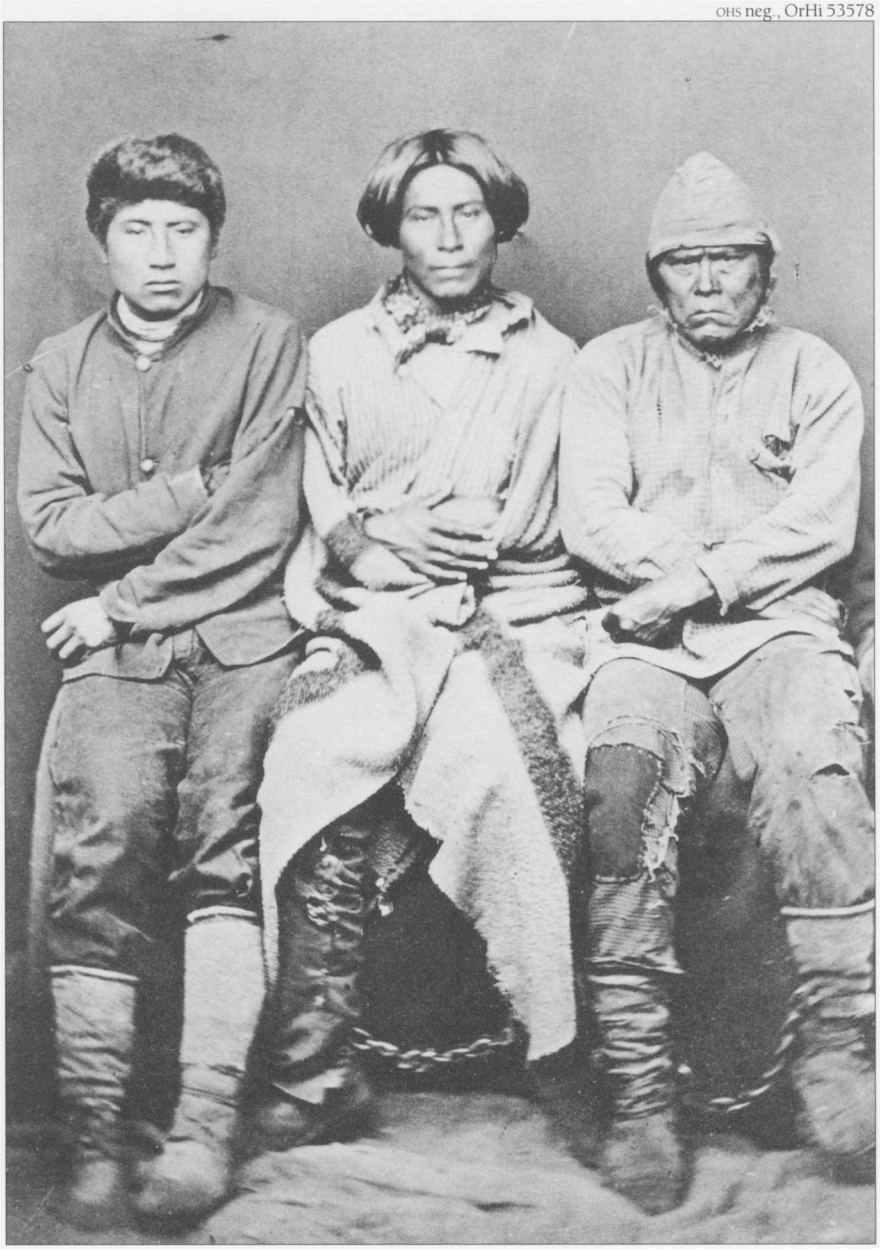
On April 5, 1872, one week before General Canby was killed, Captain Jack complained directly to Meacham that the general had broken their agreement that "no more preparations for war would be made" during the peace talks. "I have done nothing," Jack said, according to Meacham.

> I have seen your men passing through the country; I could have killed them; I did not . . . I have kept my promise–have you kept yours? Your soldiers stole my horses, you did not give them up; you say "you want peace"; why do you come with so many soldiers to make peace: I see your men coming every day with big guns; does that look like making peace?[48]

An attorney could have argued at the war crimes trial that the Modocs had no meaningful recourse when Canby violated the armistice. They could neither call up more warriors–for they had no more–nor could they appeal to a neutral, international tribunal. To announce that the parties were once again at war would have given the army a significant military advantage and rewarded Canby for breaking the rules.[49] Even if this argument had not been accepted by the court, knowing about

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THE PRISONERS

Three of the Modoc prisoners are photographed here in leg irons. From left are Curly Haired Jack, William Faithful, or Weuim, and Buckskin Doctor. The photograph's certification card was mislabeled in 1873. Of the three, only Buckskin Doctor participated in the Lost River killings. William Faithful was a peaceable Modoc who warned the army of the Modoc plan to attack the peace commissioners.

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Canby's violations should have generated more sympathy for the defendants and would have caused a sensation if Meacham had testified about Canby's actions. Two years later, Meacham published two lengthy books about the Modoc War in which he accused Canby of being the first to violate the armistice:

> . . . had not the soldiers of the army captured horses belonging to the Modocs, in violation of the armistice established by the Peace Commissioners, in March, 1873, the mission would have been successful; and, again, had the captured horses been returned upon the demand of Captain Jack, and the army remained as stationed at the beginning of the peace negotiation, or had it been withdrawn, as it should have been, no treachery would have been copied from the white man, and no assassination would have shocked the moral sense of mankind. [50]

THE LAWS OF WAR

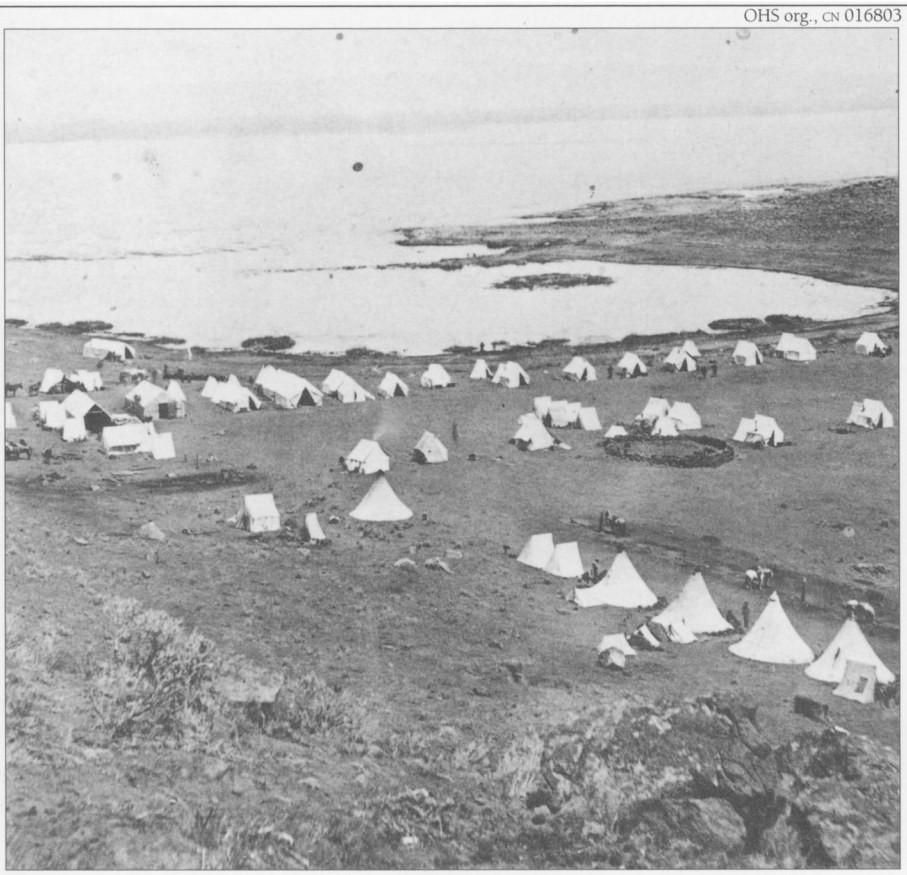
Another defense that might have been argued at the trial was that the laws of war set out in the Lieber Code should not have been strictly applied to the Modocs. The U.S. attorney general recognized this problem and the unprecedented nature of this case when he wrote: "All the laws and customs of civilized warfare may not be applicable to an armed conflict with the Indian tribes upon our western frontier. . . ." The rules of civilized warfare had evolved in Europe where powerful nation states with standing armies waged war on each other. The Modoc War was not a war between equals, and Captain Jack's band was fighting for its survival as a people. In 1873, the U.S. population numbered over 43 million, while the entire Modoc Tribe had fewer than 400 people. At the same time, the U.S. Army had over 28,000 active duty soldiers, while Captain Jack's band had but 50 warriors.[51]

The U.S. attorney concluded that the Modocs' killing of Canby was "as much a violation of the laws of savage as of civilized warfare, and the Indians concerned in it fully understood the baseness and treachery of their act." Historian Walter Palmberg disagrees, asserting that because the peace commissioners had been amply warned of what could be expected and knew that a state of war existed, "what followed could be interpreted as not necessarily against the laws of war and certainly not as far as the Indians were concerned." Recounting the many massacres of Indians by soldiers during the western Indian wars, Palmberg wryly notes that "laws of war, flags of truce, and suspensions of hostilities were only applicable at the army's discretion."[52]

The Modocs, like other Indians, traditionally fought using meth-

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TULE LAKE

In this view from Gillem Bluff to the northeast, Tule Lake stretches out to the horizon. This enormous, shallow lake sustained the Modocs by providing seemingly endless marshes filled with water lilies, the seeds of which formed a staple of the Modoc diet. At one Lost River fishing site, the Modocs annually harvested more than fifty tons of fish, mostly suckers on spawning runs from Tule Lake. After World War I, Tule Lake was drained, and now fields of grain grow next to what was once Captain Jack's stronghold.

ods substantially different from those used by U.S. and European soldiers. In intertribal wars, almost all members of the enemy nation were legitimate targets of attack and captives were rarely taken. These practices were largely dictated by circumstances; the Indians had no prison camps in which to confine captives. Furthermore, Indians engaged in ritualized warfare rather than wars of attrition. For them, the highest accomplishment in a battle was avoiding casualties on one's own side rather than inflicting casualties on the other side or taking territory.[53]

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For example, the Modocs refused to deliver the *coup de grace* to trapped U.S. soldiers. As the Modocs fled the lava-bed stronghold after the peace commissioners were killed, Scarfaced Charlie and twenty-four Modoc warriors circled back and ambushed over sixty pursuing soldiers. The Modocs, who held the high ground, had the soldiers pinned down and killed many without suffering a casualty. Instead of killing the rest, Meacham later reported, Scarfaced Charlie called out to the helpless soldiers below: "All you fellows that ain't dead had better go home. We don't want to kill you all in one day." The day before his execution, Boston Charley explained that the Modocs had hoped that when they killed the peace commissioners "the other white men would give up and go home." That is what the Modocs would have done. In intertribal wars, it was often the case that once a tribe's leaders were killed in battle the other warriors quit fighting. The military commission should at least have considered such differences in culture and military methods in arriving at its decision.[54]

A MITIGATING FACTOR

It is possible, as Lynn Schonchin believes, that the Modocs thought that "peace meetings" always ended violently and decided to "get them [the commissioners] first." Their prior experience with a peace meeting was in 1852 when Ben Wright killed more than forty Modocs. Schonchin John cited the Ben Wright massacre as his reason for initially refusing to meet the peace commissioners. His concern is understandable, since he was part of the group attacked by Wright and one of the few to survive.[55]

In 1852, twenty-one years before the Modocs killed the peace commissioners, Wright and a group of Yreka "volunteers" decided to punish Modocs for attacking and killing emigrants that had passed through Modoc country in wagon trains. Wright invited the Modocs to a feast. His posse later "quite freely admitted that they planned treachery" at the feast but claimed that they intended to shoot the Indians, not poison them. According to Meacham, however, witnesses claimed that Wright had purchased strychnine in Yreka "with the avowed intention of poisoning the Indians." He "made the attempt at poisoning" and resorted to "peace talk" only when the Modocs declined the feast.[56]

Later that night, Wright's posse surrounded the Modoc village. Wright entered the village the next morning wearing a long serape that concealed his pistol. He then shot the Modoc chief, which was the signal for Wright's men to begin shooting. The posse was armed with rifles, but the Modocs had only knives and bows and arrows. The fleeing

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PEACE COMMISSIONER

Alfred Meacham, superintendent of Indian affairs for Oregon before the Modoc Wars, poses here in this studio portrait. Meacham was the chairman of the peace commission in the spring of 1873 and was present at the meeting when General Canby was shot. Although he was wounded and partially scalped by Modocs on the day Canby was killed, Meacham continued to be an advocate for the rights of Modocs and other tribes.

Modocs "were searched out from among the sage brush and shot like rabbits. Long poles were taken from the wickiups and those taking refuge in the river were poked out and shot as they struggled in the water."[57]

Forty-one of the forty-six Modocs in the village were killed, including many women. None of Wright's group was injured. Wright's men scalped and mutilated the bodies of the dead Modocs, and Wright later "boasted" of the fingers and noses he had cut from the bodies of dead and wounded Indians. When the posse returned to Yreka with many Modoc scalps, they were proclaimed heroes. The state of California declared Wright and his men soldiers in the state militia and paid them for their services; Wright received $744 as the leader. Two years after the massacre, in 1854, Oregon Superintendent of Indian Affairs Joel Palmer appointed Wright to be Indian agent for all tribes south of Coos Bay.[58]

In February 1873, when emissaries from the peace commissioners first met the Modocs in their lava-bed stronghold, the Modocs recalled

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Photo courtesy of Klamath County Museum



KO-A-LAK-A, CAPTAIN JACK'S SISTER

Mary–whose name, Ko-a-lak-a, means "hard-working woman"–was Captain Jack's sister. Known as "Queen Mary" by white settlers who taught her English, Mary served as a tribal emissary to General Canby during the Modoc War. The camera angle of this expressive 1903 photograph emphasizes Mary's natural dignity and strength. Three years later, she died in exile in Oklahoma.

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Wright's earlier treachery and expressed caution. According to Meacham, the Modocs claimed that some settlers had told them that if General Canby and the peace commissioners "ever got them in their power they would all be hung." By the time of the attack on Canby, Jack's band was "badly frightened" and convinced that the commission was only a device to get them out of the lava beds so the soldiers could kill them all.[59]

At Captain Jack's and Meacham's last meeting before the peace commissioners were killed, Jack repeated how Wright had told the Modocs "he wanted to make peace," so the Modocs unstrung and laid down their bows, smoked the peace pipe, and were slaughtered. When Meacham reminded Jack about the emigrants who had been killed by Modocs, Jack replied: "Your people and mine were at war then; they were not making peace." Meacham admitted that Wright had done wrong, but Jack replied: "You say it is wrong; but your Government did not say it was wrong. It made him . . . an Indian agent."[60]

No evidence of the Wright massacre was introduced at the Modocs' trial. After the defendants were sentenced to death, however, East Coast humanitarians petitioned the government to treat the Modocs with leniency, citing the earlier wrong done them by Ben Wright. A Quaker group in Maryland asked President Grant to give the convicted Modocs executive clemency, arguing that they should not be held to a higher standard than Wright had been. One letter to the interior secretary questioned why Captain Jack should be executed for killing Canby, since Wright's treachery had been rewarded with an Indian agency.[61]

Local newspapers, however, sought to justify the Wright massacre as just retribution for Modoc attacks on emigrant wagon trains. A former editor of a Salem, Oregon, newspaper, ridiculed "Eastern sentimentalists" for "shedding crocodile tears in profusion" about Wright's actions, calling their version of the incident "rot." Long before the trial, the *Yreka Journal* ran a story about the "so-called" Ben Wright massacre, claiming that the Modocs had been planning treachery and Wright had just beat them to the punch.[62]

Whatever the interpretation of Wright's actions toward the Modocs, knowledge of this earlier atrocity did not persuade the president to grant clemency to the men who had been sentenced to die.

PLEAS FOR EQUAL TREATMENT

When Captain Jack's band was driven from the lava beds, the people broke into small groups and fled in different directions. Shortly after Captain Jack surrendered, when captured Modocs were being moved

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to a central location, a group of unarmed Modoc prisoners of war were killed. A group of East Coast humanitarians reacted by barraging President Grant with letters urging equal treatment for all who committed war crimes. One writer urged the president to use the same effort to secure the murderers of these Modoc prisoners as was used with the Modocs who had killed General Canby. This was the best way, the writer argued, to achieve "equal and exact justice to all men, whether white men or red men. . . ."[63] A Philadelphia newspaper made the case this way:

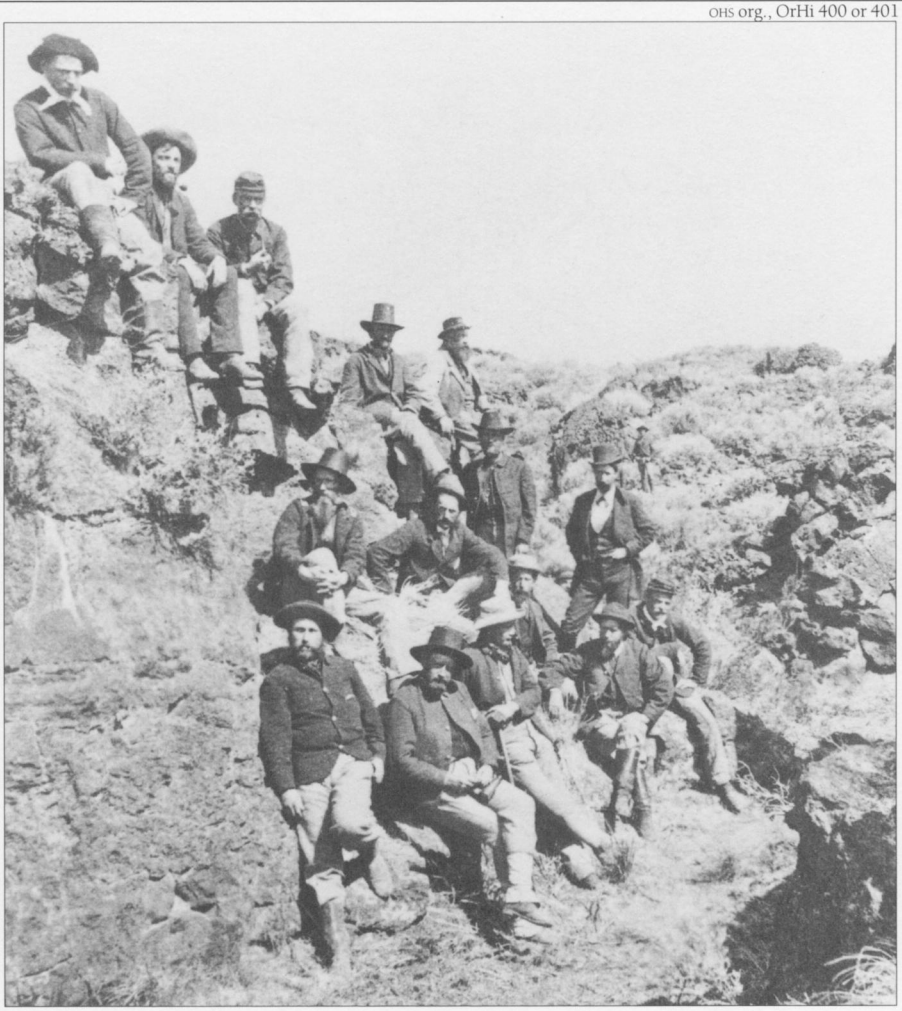
> As the victims were in the custody of the Government the crime assumes the character of an outrage directed against it, and we earnestly hope that the authorities will take measures to secure the arrest of the perpetrators. If they are caught, we trust they will not be tried by an Oregon jury, but by some tribunal which will [be] certain to deal out to them exact justice. . . . It is folly and madness to make war upon the Indians and to hold them to rigid accountability for their misconduct, and then to neglect to punish our own citizens for the same crimes.[64]

Two of the murdered Modoc prisoners had been employed by the peace commission and had never committed hostile acts against the government, according to U.S. Commissioner of Indian Affairs E. P. Smith. In a strongly worded letter to the secretary of the interior, Smith urged that "all practicable measures" be used to arrest the murderers and try them by the same military commission scheduled to try Captain Jack. The murder of the prisoners, he judged, "was as truly a violation of the laws of war as was the treachery of the Modocs in the assassination of General Canby." A note was typed at the top of Commissioner Smith's letter: "Letter held up at the suggestion of the Secy." The secretary of the interior evidently believed that the letter was too provocative for public viewing.[65]

What really happened to the Modoc prisoners of war? The historic record shows that in early June 1873, seventeen Modoc men, women, and children gave themselves up to the army near Fairchild's ranch, west of the Modoc stronghold in the lava beds. General Davis ordered that all Modoc prisoners be moved to the new army headquarters. Accordingly, on June 7, one of the Fairchild brothers loaded seventeen prisoners into a large ranch wagon and set out for Davis's headquarters without a military escort. When crossing Lost River, Lieutenant Hyzer and a group of state militia, the Oregon Volunteers, stopped the wagon to find out who the prisoners were. A few miles farther on, two masked men on horseback rode up to the wagon, ordered Fairchild to stop,

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THE VICTORY

Soldiers pose in the Modoc stronghold on the lava beds after capturing it from Captain Jack and his Lost River band.

cut the mules free, and then shot into the wagon, killing all four Modoc men and wounding a Modoc woman.[66]

The army made no effort to catch the killers. The Indian agent at the Klamath reservation, L. S. Dyar, advised the superintendent of Indian affairs for Oregon that "it will be a very difficult matter to fix the guilt upon the right parties, and an experienced detective should be put upon the track." He recommended that any investigation be con-

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ducted by "a stranger to the people of this section." Alfred Meacham suggested that the U.S. Secret Service conduct the investigation, but no official or unofficial investigation was ever undertaken. Captain Hyzer also made no effort to find who had killed the Modocs. Historian Keith Murray concludes that "it would probably have been too much to expect Oregon volunteers to arrest any white man for the killing of an Indian in early June, 1873, no matter how flagrant the murder."[67]

Captain Hyzer's troops may have had another reason not to conduct an investigation, since they were the most likely suspects and, at least initially, were generally thought to be responsible for the killings. On June 8, the day the prisoners were killed, a First Cavalry lieutenant in the field reported to his commanding officer that the Modoc captives "were fired into by Volunteers and four Bucks killed. . . ." Ten days later, Dyar wrote his superior that it "is generally believed to have been committed by some of the Oregon Volunteers–Capt. Heizer's [*sic*]–Company." Within a week of the killings, the *Yreka Journal* reported that a petition was being circulated asking the governor of Oregon to strike the name of Hyzer's company from the muster role, "to remove the stain as far as possible, of the butchery of unarmed Modoc prisoners." A Philadelphia newspaper reported: "It is generally supposed that the guilty parties are Oregon Volunteers. Fairchild is of that opinion himself." Three weeks after the killings, the *Yreka Journal* reported that a man named Marsh, who identified himself as a second lieutenant in Hyzer's company, admitted to E. H. Autenreith, a local guide for a *San Francisco Chronicle* reporter, that Hyzer's company had killed the four Modoc captives. Hyzer's commanding officer, the general of the Oregon Volunteers, was an old Indian fighter from Jacksonville, John E. Ross. Upon disbanding his troops, General Ross denied responsibility for the deaths of the Modoc prisoners of war. But Dyar reported it would take "much time and money" to work up a case against the guilty parties since the "Volunteers have been disbanded and are now scattered all over Jackson Co."[68]

Nonetheless, Captain Hyzer's later denial was accepted at face value, and he was absolved of all responsibility. The governor of Oregon never issued a statement condemning the killers of the Modoc prisoners of war, and the Jackson County grand jury never issued indictments. Meacham, who characterized the killers as "civilized butchers," later complained that "no effort has ever been made to discover the names of the perpetrators of this deed. True, there were those that claimed to know who the persons were, but they never tell; neither would they tell, if placed on the witness stand."[69]

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LOCAL OPINION AND STATE COURT

If the Modoc defendants had been tried for murder in an Oregon state court rather than a military court, then they would have had a slight procedural advantage. While they would not have had court-appointed counsel, the men would have had the right to separate trials. As a matter of substantive law, however, the defendants would have been worse off facing a charge of murder in state court simply because killing an enemy during a war is generally acceptable while the same killing during peacetime is a criminal act. Captain Jack never denied that he killed Canby. His claim of innocence rested on the circumstances of that killing.[70]

The defendants also would have been at a decided disadvantage if they had been tried in California. In 1850, the first California state legislature passed "An Act for the Government and Protection of Indians," a series of twenty laws similar to the Black Codes of the post-Civil War South. The laws curtailed the rights of California Indians and placed them in a subordinate legal, political, and social position in the state. Section six of the act, for example, provided that "in no case shall a white man be convicted of any offence [*sic*] upon the testimony of an Indian, or Indians."[71]

Regardless of the legal advantages or disadvantages of state court, the Modoc defendants would not have been able to avoid anti-Indian bias in either state. In Jacksonville, Oregon, for example, the court seemed to view all Modocs as interchangeable. In February 1873, a Jacksonville grand jury issued indictments for the November 1872 killing of settlers at Tule Lake, naming, among others, Schonchin John, Captain Jack, Scarfaced Charley, and "John Does." The grand jury had picked a few Modocs who were unlucky enough to be known by name in Jacksonville, even though no evidence ever surfaced that the three men were involved in the killings.[72]

In 1883, U.S. Supreme Court Justice Samuel F. Miller explained the predicament of all Indians in that era:

> It [the court system] tries them not by their peers, nor by the customs of their people, nor the law of their land, but by superiors of a different race, according to the law of a social state of which they have an imperfect conception, and which is opposed to the traditions of their history . . . one which measures the red man's revenge by the maxims of the white man's morality.[73]

The press also helped set the tone. Local newspapers reviled all Modocs, with no insult considered too malicious. Two weeks before the war crimes trial, the *Yreka Journal* urged that "every Modoc be treated the same as wild animals, by keeping them caged or well guarded on

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EXILE

The defeated Modocs were sent to Indian Territory, now Oklahoma, where many attended the school at Quapaw Agency. This class portrait of adults and children, taken in 1873, was titled "Modoc Indians in their new home." The formal pose, the men's suits and dapper, wide-brim hats, and the women's dresses testify to the changes the Modocs endured during their exile. Many Modocs died in Oklahoma, and many–influenced by Quakers who ran the agency–became Christians. The people in this photograph are identified as (1) Agent Jones; (2) Hooka Jim; (3) Shacknasty Jim; (4) Scarfaced Charley; (5) Mr. Squier; (6) Bogus Charley; (7) Faithful William; (8) Long Jim; (9) Hooka Jim's wife; (10) Bogus Charley's wife and boy; (11) Scarfaced Charley's wife; (12) Princess Mary, Captain Jack's sister; (13) Lizzie, Captain Jack's favorite wife; (14) Little George and Mother; (15) Amelia; (16) Lucy.

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reservations." It was "Indian nature," the paper continued, "if one white man does him a wrong, to seek revenge on the first white man he meets. . . ." Two days before the trial began, the paper editorialized that the Modocs "have always been a nuisance to the community, living a vagabond shiftless life, too lazy to earn their livelihood, and inclined to steal whenever an opportunity offered, while their women are nearly all prostitutes. . . . it seems to be an impossibility to civilize the Indian." Anti-Indian editorials such as these had been common in the California press during the Gold Rush era. The press had routinely depicted Indians "much as they would wild animals who aimlessly 'roamed' the land like herds with no social organizations, governments, laws, or religions."[74]

These characterizations also reached into government documents. Six months after the trial, the governor of Oregon wrote a report on the Modoc War for the army in which he characterized the Modocs as "fiends," as "a band of murderers and robbers," and as "the most treacherous and blood-thirsty savages west of the Rocky Mountains." According to the governor, "innocent and unoffending emigrants, with their wives and families, passing through the Modoc country along the old southern overland road to Oregon, have been attacked and butchered indiscriminately by these fiends. . . ." Resistance to the immigrants would have seemed only natural to the Modocs, but the governor perceived the tribe's defiance as barbaric. For most western newspaper editors and government officials, settlers who killed Indians were seen as "defenders" of their farms and ranches, but Indians who killed settlers were seen as "exhibiting a violence that was irrational, uncontrolled, and ferocious beyond belief."[75]

Local sentiment also united in its condemnation of the Modoc defendants. In Yreka, both the Republican and Democratic newspapers, which rarely agreed on any subject, demanded the execution of the Modoc leaders. On the eve of the trial, Yreka's Republican paper, the *Yreka Journal*, wrote that

> those whose hands are red with blood must pay the penalty of their crimes, and learn [*sic*] other tribes that treacherous murders of . . . those sent to negotiate peace cannot pass unpunished. That, though savages, such crimes shall and will be punished as civilized law directs. We ask the execution of Capt. Jack and the murderers of the Peace Commissioners. . . .[76]

The Democratic paper, the *Yreka Union*, wrote: "No mawkish sentimentalism should be permitted to interfere with the course of justice in this matter. No desirable object could be accomplished by sparing the

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lives of these murderers and assassins." The trial was still nearly three weeks away, yet they proposed how the defendants should be executed:

> It is said Indians dread death by hanging more than in any other form. This then is the mode of execution which should be adopted. The fate of Capt. Jack and his associate murderers and assassins should be such as to strike a salutary terror among all other Indians who shall hear of it. It is fear, dread of consequences, more than any or all other motives that will make Indians respect the lives and property of others. Let the occasion now placed in our hands be utilized. . . .[77]

IMPERFECT JUSTICE

The army seemed to view the war crimes trial as a mere formality to be disposed of before executing the Modoc leaders. When the men were captured, General Sherman had advised that "some should be tried by Court martial and shot. . . ."[78] Initially, the army commander in the field did not plan to give the Modocs a trial at all. Shortly after capturing Captain Jack, General Davis had a gallows built so he could summarily execute "eight or ten ringleaders" in the field. He even wrote a declaration of charges that he planned to read to the Modocs before hanging them:

> The history of your tribe is filled with murders of the white race. . . . For these many crimes no adequate punishment has even been visited upon the guilty parties, either as a tribe or individually; upon the contrary, the Government has tacitly overlooked them. A few years ago, regardless of these acts of treachery, it gave your tribe a reservation of land for a home. . . .You left the reservation; you spurned the kindness of the Government and even resisted the soldiers in the execution of their duty . . . you decoyed the Commission into your hands and murdered them. . . . These acts have placed you and your band outside the rules of civilized warfare. In other words you have made yourselves outlaws.[79]

When General Davis notified his superiors of his plan, however, he was advised that the War Department wanted no summary action taken until the attorney general could decide whether the Modocs were prisoners of war who should be tried by military law or murderers who should be turned over to civil authorities.[80] Davis immediately sent a reply: "Have no doubt of the propriety and had none of my authority as *Department Commander* in the field to execute a band of outlaws, robbers and murderers. Your dispatch indicates long delay of cases of these red-devils which I regret. Delay will destroy the moral effect which

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their prompt execution would have upon other tribes. . . ."[81] General Davis explained to a reporter that week:

> I know that the prompt execution of the Modoc outlaws would facilitate peace talks among the Indians of Oregon and Washington Territory, as well as California, and have a tendency to quiet the Indians all through the country. The Indians all know that we have captured the Modocs and they will quickly learn the news if the death penalty is inflicted.[82]

Davis's commanding officer, Gen. John Schofield in San Francisco, advised him that trying and punishing the Modoc "assassins" by military commission "will produce an equally good effect and in some respects much better than the more summary Course." One advantage of a trial was that it offered the army a public forum to condemn selected Modocs while rewarding other Modocs for betraying their leaders and siding with the army. The army chose not to try Hooker Jim and three other Modoc "scouts" who helped capture Captain Jack after the Modocs fled their lava-bed stronghold, even though these men had also participated in the attack on the peace commissioners. Although Davis did not promise the Modoc scouts immunity from prosecution when they offered to lead the army to Captain Jack, he later said that he felt "honor bound" to secure the scouts' exemption from the death penalty in return for their services to the army.[83]

Hooker Jim and the other Modoc scouts not only escaped execution, but they also escaped trial. Alfred Meacham complained to the commissioner of Indian affairs that it was unjust that the Modoc scouts were not tried and punished, because they were "really very bad men." General Davis called Hooker Jim the "most desperate" of the Modoc warriors and "probably the greatest criminal in the whole land." Meacham called him a "notorious cut-throat" and "a blot on humanity." It was Hooker Jim, after all, who had led the group of Modocs that killed a score of unarmed male settlers near Tule Lake the day the war broke out. When Captain Jack had sought to dissuade his warriors from killing the peace commissioners, Hooker Jim had helped push Jack down on the rocks, placed a woman's hat on his head, and "taunted him with cowardice." According to Meacham, Hooker Jim not only had helped plan the attack on the peace commissioners, but he had also agreed to kill Col. A. C. Gillem, who did not show up at the meeting.[84]

Meacham complained to the commissioner that Hooker Jim and the other scouts were not confined in the stockade with the other captured Modocs and were allowed the liberty of the camp at Fort Klamath. During the trial, the four scouts stood near the door "unfettered

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ON TOUR

Members of Alfred Meacham's lyceum lecture troupe pose here on their tour of the eastern United States after the Modoc War. From left are Steamboat Frank, Shacknasty Jim, interpreters Frank Riddle and Toby Riddle, and Scarfaced Charley. Seated in front is the Riddles' son Jeff. The three former warriors are not dressed in traditional Modoc attire, but rather in regalia chosen to satisfy urban audiences' expectations of what Indians should look like.

and unguarded" and then testified as prosecution witnesses. Although Hooker Jim's testimony implicated Captain Jack, he also admitted under oath that he had agreed to kill one of the peace commissioners and that he had chased and shot at Commissioner Dyar.[85]

Hooker Jim escaped trial only because the army wanted to make an example of him. Major H. P. Curtis, the judge advocate who tried the Modocs, explained that he did not arraign the four Modoc scouts for their participation in killing Canby, even though they "all were more or less concerned in it." He spared them not only because of their service to the army in capturing Jack but also because "there could be no better policy than that of teaching these savages that treachery to their race, under such circumstances as those which have obtained here, would

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meet with its sure reward." Major Curtis took the official position that executing all the Modoc defendants was justified regardless of their individual culpability because such an execution would be such an important example for other hostile tribes.[86]

Because Captain Jack and the other Modoc defendants could not write, they left no letters or other documentary evidence of how they felt about the army's pardoning of Hooker Jim or of how they viewed their trial by military commission. General Davis said that the Modocs were incapable of understanding a court proceeding and, if convicted, could never be made to understand the role justice played in their conviction.[87] According to Meacham, however, the Modocs had reason to believe that justice would play only a minor role if they were tried by a court on the western frontier. At their last meeting before the peace commissioners were killed, Captain Jack and Meacham talked about trials, a conversation that Meacham would write about two years later. At that meeting, Meacham told Jack there could be no peace until the Modocs who had murdered the settlers were turned over for trial. Jack asked, "Who will try them, white men or Indians?" Meacham replied that they would be tried by white men, even though he recognized that this answer would not be well received because Jack "had an inherent idea of the right of trial by a jury of his peers."

"Will you give up the men who killed the Indian women and children on Lost River, to be tried by the Modocs?" Jack asked. Meacham said no, "because the white man's law rules the country." Jack asked: "Will you try the men who fired on my people, on the east side of Lost River, by your own law?" Meacham knew that this could not be done because "the prejudice was so strong against the Modocs." He said again that "the white man's law rules the country." Captain Jack replied: "Oh, yes, I see. The white man's laws are good for the white man, but they are made so as to leave the Indian out."[88] Jack was referring to what had happened at Lost River on the day the war broke out. As the army surrounded Captain Jack's village, a group of settlers surrounded Hooker Jim's village across the river. One of the first shots of the Modoc War was a blast from a settler's double-barreled shotgun that killed a baby and wounded his mother, who was holding him.[89]

Captain Jack and the other Modoc defendants received a measure of justice in that they were tried by court-martial instead of being summarily executed. Further, they were treated as belligerents of a nation at war rather than as common criminals. Still, they were denied justice throughout the proceedings. They were not assigned legal counsel, and their judges were clearly partisan and biased. The outcome of the trial appears never to have been in doubt. The American legal system

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on the western frontier during this period offered only selected justice. The white settler who murdered the Modoc baby on the day the war broke out, for example, and those who murdered the Modoc prisoners of war were never indicted, tried, or punished.

THE AFTERMATH

The military commission found all six Modoc defendants guilty on all counts and sentenced them to be hanged. In response to pleas for executive clemency, President Grant commuted the death sentences of the two youngest Modoc defendants, Barncho and Slolux, to life imprisonment at Alcatraz Island.[90]

On October 3, 1873, throngs of curious spectators descended on Fort Klamath to see the hangings. One school in Ashland, Oregon, was given a weeklong holiday so the students could attend. All Modoc prisoners were forced to watch, including Schonchin John's children, teenager Peter Schonchin and his young brothers and sisters. "Forcing families to watch their men die was a lesson in power," says Lynn Schonchin. Forcing the tribe to watch was telling them "they had no rights, no freedoms . . . if you stand up this is what we're going to do to you."[91]

Morbid souvenir hunters went wild at Fort Klamath. Strands of the rope that had hanged Captain Jack and locks of his hair sold for as much as five dollars apiece. One of the judges of the military commission, Lt. George Kingsbury, mounted short lengths of the hangman's rope on printed cards as souvenirs. When the bodies of Schonchin John and Captain Jack were taken from the scaffold, an army surgeon cut off their heads for shipment to Washington, D.C. The *San Francisco Chronicle* called this barbaric, but the *Army and Navy Journal* defended the action as a case of medical dissection for craniology studies. For over a hundred years, the two men's skulls rested on shelves of the Army Medical Museum and later the Smithsonian Institution.[92]

Soon after the executions, the remaining members of Captain Jack's band–thirty-nine men, fifty-four women, and sixty children–were shipped off to live in exile in Oklahoma Territory, where "diseases accomplished what bullets could not." Thirty-six years later, in 1909, many of the surviving Modocs returned to Oregon when the government allowed them to leave Oklahoma and live on the Klamath reservation.[93]

The Modoc war was only one of many incidents of violence during the Indian Wars that fit the war crimes analysis outlined by U.S. Attorney General Williams and Judge Advocate Curtis.[94] Yet, the Modoc case

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was the only war crimes trial of Native Americans. Why were the Modocs treated differently?

One reason was the narrow window of opportunity for the government to take such action. The rules of war were not codified and adopted by the government until 1863, and the last battle of the Indian Wars took place less than twenty years after the Modoc War, with the battle at Wounded Knee in 1891. Another reason is that the government feared more criticism of the kind leveled by many humanitarians when the Modocs were tried. Although the army never repudiated the Modoc war crimes trial, President Grant was sensitive to such criticism. If the government had staged another trial, it would have opened itself to further charges of hypocrisy. Having adopted formal rules of war, the government lacked the will to punish its own soldiers for even the most flagrant violations of those rules in the Indian Wars. In 1865, for example, a U.S. congressional committee concluded that Col. John M. Chivington's soldiers had "indiscriminately slaughtered" over a hundred "friendly" Cheyennes at Sand Creek in Colorado Territory, most of them women and children, in violation of a flag of truce. Nonetheless, the three-man military commission that conducted a fact-finding inquiry about the Sand Creek Massacre that same year, after listening to testimony for seventy-six days, issued no conclusion, made no judgments about guilt or innocence, and meted out no punishment.[95]

The decision to try the Modocs but not other tribes for war crimes may also have been influenced by the fact that most Modocs had adopted western dress and so seemed more like the settlers and that Captain Jack's band had held a fixed defensive position in the lava beds for several months, much like European troops would hold a fortress under siege. Moreover, Captain Jack's acceptance of a temporary truce seems to have been viewed as an implicit acceptance of rules governing the conduct of the war, which justified the formal process of a war crimes trial when the truce was violated.

All of these reasons can help explain why the government treated the Modocs differently from other Indian combatants. The decision to try the Modocs for war crimes was a political one made by high officials in the War Department, officials who were almost certainly influenced by General Canby's high rank and national popularity. Their decision may also have been influenced by memories of the assassination of President Lincoln eight years before, which had resulted in a highly publicized war crimes trial. The decision to try the Modocs for war crimes was fueled by great indignation and righteousness, and, as historian Walter Palmberg observed, "vengeance, retaliation, revenge, and reprisal" were to determine the Modocs' fate.[96]

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Notes

1. Carol Chomsky, "The United States-Dakota War Trials: A Study in Military Justice," *Stanford Law Review* 43:13 (1990): 74 n. 383, 75. See also Col. William Winthrop, *Military Law and Precedent*, 2d ed. (1896; reprint, Washington, D.C.: GPO, 1920), 838 n. 98.

2. Keith Murray, *The Modocs and Their War* (Norman: University of Oklahoma Press, 1958), 196, 203. Richard Dillon, *Burnt-Out Fires: California's Modoc Indian War* (Upper Saddle River, N.J.: Prentice-Hall, 1973), 246; *Harper's Weekly*, May 3, 1873, 364; Oliver Knight, *Following the Indian Wars: The Story of the Newspaper Correspondents Among the Indian Campaigners* (Norman: University of Oklahoma Press, 1960), 144, 143. George Armstrong Custer was a lieutenant colonel when he was killed by the Sioux at the Little Bighorn; he held the temporary "brevet" rank of major general during the Civil War. John Doerner, Chief Historian, Little Bighorn Battlefield National Monument, telephone conversation with author, June 16, 1998.

3. Erwin N. Thompson, *Modoc War: Its Military History and Topography* (Sacramento, Calif.: Argus Books, 1971), xvi-xvii. The place where the South Emigrant Road first touched Tule Lake in Modoc country came to be known at "Bloody Point" because Modocs attacked so many wagon trains there. See Murray, *Modocs and Their War*, 17-18.

4. *Yreka (California) Journal*, April 16, 1873.

5. Lynn Schonchin, interview with author, October 1, 1997; Ken Tanner, interview with author, September 6, 1997.

6. Lynn Schonchin, interview with author, September 9, 1997.

7. Murray, *Modocs and Their War*, 81, 309. The war resulted in nearly a hundred deaths, and the direct cost to the federal government exceeded $400,000. See Dillon, *Burnt-Out Fires*, 339-40.

8. For more information, see Chomsky, "United States-Dakota War Trials," 13-15; Karin Thiem, "The Minnesota Sioux War Trials" (M.A. thesis, Mankato State University, Mankato, Minn., 1979); Kenneth Carley, *The Sioux Uprising of 1862* (St. Paul: Minnesota Historical Society, 1976).

9. See Theodore Stern, *The Klamath Tribe: A People and Their Reservation* (Seattle: University of Washington Press, 1965), 39-40, 82; Alfred B. Meacham, *Wi-ne-ma (the Woman-Chief) and Her People* (Hartford, Conn.: American Publishing, 1876), 157; Murray, *Modocs and Their War*, 41; Philleo Nash, "The Place of Religious Revivalism in the Formation of the Intercultural Community on the Klamath Reservation," in *Social Anthropology of North American Tribes*, ed. Fred Eggan (Chicago: University of Chicago Press, 1937), 391-2.

10. U.S. House, *Official Copies of Correspondence Relative to the War with the Modoc Indians*, 43d Cong., 1st sess., H. Ex. Doc. 122, 158, 161 [hereafter cited as Modoc Correspondence].

11. Murray, *Modocs and Their War*, 180, 188-90. See also Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), 536-8.

12. Thompson, *Modoc War*, 141 n. 13; Murray, *Modocs and Their War*, 319; Dillon, *Burnt-Out Fires*, 247; Modoc Correspondence, 134.

13. George H. Williams, "The Modoc Indian Prisoners," June 7, 1873, 14 Opinions of the Attorney General, 250. After the trial, the government admitted that no white flag had been set up and its use of the expression "flag of truce" was intended to mean that there was a "truce between the parties." J. Holt, judge advocate general, to secretary of war, August 12, 1873, Modoc Correspondence, 195.

14. Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 1, 2, 4-6. See also David Getches et al., *Federal Indian Law: Cases and Materials* (St. Paul, Minn.: West Publishing, 1979), 143-277.

15. Maj. H. P. Curtis to Gen. A. J. Schofield, June 7, 1873, in Olaf Hagen, "Modoc War: Correspondence and Documents, 1865-1878," typescript (Washington, D.C.: National Park Service, May 1942). This 1,780-page document is available at the Klamath County Museum, Klamath Falls, Oregon, at the Lava Beds National Monument library, Tule Lake, California, and on microfilm at the Bancroft Library, University of California, Berkeley, under "Modoc War Correspondence and Documents Assembled from Various Sources," 1062, 1067.

16. Williams, "Modoc Indian Prisoners," 253.

17. *Yreka Journal*, July 9, 1873. For examples of bias in the press, see Clifford E. Trafzer and Joel R. Hyer, *Exterminate Them: Written Accounts of the Murder, Rape, and Slavery of Native Americans During the California Gold Rush, 1848-1868* (Lansing: Michigan State University Press, 1999).

18. W. C. Gould to Department of the Interior,

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August 8, 1873, Hagen, "Modoc War," 1293.

19. See Chomsky, "United States-Dakota War Trials," 15. For a thorough discussion of this issue, see Telford Taylor, *Nuremberg and Vietnam: An American Tragedy* (Chicago: Quadrangle Books, 1970), 19-20.

20. For a complete analysis of the Whitman trial, see Ronald Lansing, *Juggernaut: The Whitman Massacre Trial, 1850* (Pasadena, Calif.: Ninth Judicial Circuit Historical Society, 1993). On the legal treatment of the Sioux who participated in the 1862 uprising in Minnesota and were tried by a military commission for the civil crime of murder for killings on the battlefield, see Chomsky, "United States-Dakota War Trials," 13-15.

21. Williams, "Modoc Indian Prisoners," 252-3. See also Donald A. Wells, *The Laws of Land Warfare: A Guide to the U.S. Army Manuals* (Westport, Conn.: Greenwood Press, 1992), 1-4; Chomsky, "United States-Dakota War Trials," 66, 72; Taylor, *Nuremberg and Vietnam*, 21, 45.

22. Murray, *Modocs and Their War*, 280, 283.

23. Ibid., 147-8, 288; Dillon, *Burnt-Out Fires*, 57, 109, 312; Gen. W. T. Sherman to Gen. G. B. Davis, June 9, 1873, Hagen, "Modoc War,"1077; Capt. Henry Coppee, *Field Manual of Courts-Martial* (Philadelphia: J. B. Lippincott, 1863), 105. See also Winthrop, *Military Law*, 841.

24. Coppee, *Field Manual*, 16, 66; Winthrop, *Military Law*, 841; Modoc Correspondence, 134.

25. *Daily Oregonian* (Portland), July 12, 1873. See also Chomsky, "United States-Dakota War Trials," 55 n. 264.

26. *Yreka (California) Union*, June 14, 1873.

27. *Yreka Journal*, May 7, 1873.

28. Walter H. Palmberg, *Copper Paladin, a Modoc Tragedy: A Story of the Two Principal Role-players of the Modoc Indian War of 1872-3* (Bryn Mawr, Penn.: Dorrance, 1982), 151.

29. Winthrop, *Military Law*, 841 n. 26. See also Chomsky, "United States-Dakota War Trials," 61 n. 297.

30. Murray, *Modocs and Their War*, 288; Winthrop, *Military Law*, 842. See also Coppee, *Field Manual*, 57. To compare procedures at the trial of the Cayuses accused of killing the Whitmans, see Lansing, *Juggernaut*, 7, 9, 27, 123 n. 100.

31. Modoc Correspondence, 134. During a break in the trial, Captain Jack even asked Meacham to act as his counsel, but Meacham declined. See Alfred B. Meacham, *Wigwam and Warpath; or the Royal Chief in Chains* (Boston: John P. Dale, 1875), 628-30. Meacham's book includes extensive quotations of conversations that occurred more than two years earlier, so his reports should be viewed with some caution.

32. *Yreka Union*, July 12, 1873; Meacham, *Wigwam*, 634; Palmberg, *Copper Paladin*, 150; H. Wallace Atwell to secretary of the interior, July 30, 1873, Modoc Correspondence, 323-4.

33. Coppee, *Field Manual*, 20, 48-9, 57, 65; Meacham, *Wigwam*, 607.

34. *Yreka Union*, May 7, 1873; Atwell to secretary of the interior, July 30, 1873, Modoc Correspondence, 323; Palmberg, *Copper Paladin*, 81; Schonchin interview, September 9, 1997.

35. Modoc Correspondence, 172-3.

36. Murray, *Modocs and Their War*, 42.

37. Ibid., 50.

38. Modoc Correspondence, 173, 176.

39. Holt to secretary of war.

40. Ibid., 155-6; Nash, "Place of Religious Revivalism," 385, 387; Francis S. Landrum, *Guardhouse, Gallows and Graves: The Trial and Execution of Indian Prisoners of the Modoc Indian War by the U.S. Army, 1873* (Klamath Falls, Ore.: Klamath County Museum, 1988), 2-3. See Elijah Steele to I. Steele, May 26, 1873, in Jeff C. Riddle, *The Indian History of the Modoc War–and the Causes that Led to It* (1908; reprint, Medford, Ore.: Pine Cone Publishers, 1973), 275. For a text of Steele's treaty, see *Yreka Union*, July 19, 1873.

41. Dillon, *Burnt-Out Fires*, 58-9, 61; Nash, "Place of Religious Revivalism," 389; Murray, *Modocs and Their War*, 41; Meacham, *Wi-ne-ma*, 157. One potential problem with the argument that Captain Jack could repudiate the Treaty of Council Grove is that three other Modoc chiefs besides Captain Jack "signed" the treaty and none of them repudiated the treaty. See Dillon, *Burnt-Out Fires*, 60. Captain Jack's authority to repudiate this treaty depended on whether he signed just in behalf of his Lost River band or as one of the representatives of the tribe or as the head chief of the tribe. See Stern, *Klamath Tribe*, 38, 74. Historian Francis Landrum, however, believes that Captain Jack only signed the Treaty of Council Grove in behalf of the Lost River group. Francis Landrum, interview with author, June 24, 1998. Congress ratified the treaty on July 2, 1866, subject to Indian approval of two proposed treaty amendments. President Grant did not sign the treaty until February 17, 1870, more than five and a half years after the treaty was first signed by the Indians. The executive order formally setting aside land for the Klamath reservation was not signed until March 14, 1871. See Dillon, *Burnt-Out Fires*, 61.

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42. Nash, "Place of Religious Revivalism," 389-90; Dillon, *Burnt-Out Fires*, 61-2; Landrum, *Guardhouse*, 2-3; Stern, *Klamath Tribes*, 74; Thompson, *Modoc War*, 6-7. One problem with the argument that Captain Jack did not know what he had agreed to when he "signed" the original treaty is that on December 10, 1869, when his band was back on the reservation, Captain Jack "signed" two amendments to delete the word "guaranteed" from the original treaty. Nonetheless, Captain Jack's 1870 decision to flee the reservation for a second time may still be viewed as a repudiation of the amended treaty. U.S. Congress, Committees on Interior and Insular Affairs, *Termination of Federal Supervision over Certain Indian Tribes: Hearings on S. 2745 and H.R. 7320; Part Four: Klamath Indians*, 83d Cong., 2d sess., February 23-24, 1954, 188-9.

43. Murray, *Modocs and Their War*, 49, 66-7; Dillon, *Burnt-Out Fires*, 125.

44. See Murray, *Modocs and Their War*, 184, 190-1; Meacham, *Wigwam*, 433, 440, 450; idem, *Wi-ne-ma,* 44. The Lieber Code was ambiguous about the proper wartime treatment of noncombatants, such as Rev. Eleasar Thomas. See Chomsky, "United States-Dakota War Trials," 86-7.

45. Meacham, *Wi-ne-ma*, 44-5; idem, *Wigwam*, 421-3; Col. William Thompson, *Reminiscences of a Pioneer* (San Francisco, 1912), 3,5.

46. Meacham, *Wigwam*, 436; Dillon, *Burnt-Out Fires*, 206; Murray, *Modocs and Their War*, 163-4; Knight, *Following the Indian Wars*, 137.

47. Meacham, *Wigwam*, 433, 439; idem, *Wi-ne-ma*, 44-5, 52, 161; Murray, *Modocs and Their War*, 163; Dillon, *Burnt-Out Fires*, 210.

48. Meacham, *Wigwam*, 450.

49. For a discussion of circumstances that may mitigate a charge of war crimes, see Taylor, *Nuremberg and Vietnam*, 33.

50. Meacham, *Wi-ne-ma*, 161. For Meacham's report after testifying, see A.B. Meacham to commissioner of Indian affairs, July 8, 1873, Modoc Correspondence, 311. For his physical condition, see Dillon, *Burnt-Out Fires*, 314. For his offer to act as the Modocs' counsel, see Murray, *Modocs and Their War*, 289. Although Meacham waited two years after the trial to accuse the army of being the first to break the armistice, humanitarians made this argument both before and just after the trial. Alfred H. Love to secretary of the interior, August 2, 1873, in Modoc Correspondence, 318, 321; and Mary L. Benham to secretary of the interior, June 8, 1873, Hagen, "Modoc War," 1224.

51. Williams, "Modoc Indian Prisoners," 252-3; U.S. Department of Commerce, *Historical Statistics of the United States: Colonial Times to 1970*, vol. 1 (Washington, D.C.: GPO, 1975), 8; ibid., vol. 2, 1142; Williams, "Modoc Indian Prisoners," 252-3.

51. Williams, "Modoc Indian Prisoners," 252-3; Palmberg, *Copper Paladin*, 157. See also Modoc Correspondence, 121, 318, 321. Palmberg acknowledges that he wrote his Modoc War history to present a view sympathetic to Captain Jack. See Palmberg, *Copper Paladin*, xii.

53. Chomsky, "United States-Dakota War Trials," 88. See Robert M. Utley and Wilcomb E. Washburn, *History of the Indian Wars* (New York: American Heritage, 1977), 118; and John C. Ewers, *The Blackfeet: Raiders on the Northwestern Plains* (Norman: University of Oklahoma Press, 1958), 124, 126.

54. Meacham, *Wigwam*, 572; Murray, *Modocs and Their War*, 227-31, 301-2. For a thorough discussion of warfare between eastern tribes and European colonists during the Colonial period, see Ian K. Steele, *Warpaths: Invasions of North America* (New York: Oxford University Press, 1994); and Armstrong Starkey, *European and Native American Warfare, 1675-1815* (Norman: University of Oklahoma Press, 1998). See Chomsky, "United States-Dakota War Trials," 87. For a comparison with the Whitman trial, in which a defense based on "Indian customary law" was rejected, see Lansing, *Juggernaut*, 70, 111, 128 n. 146.

55. Schonchin interview, October 1, 1997; E. Steele to I. Steele in Riddle, *Indian History of the Modoc War*, 273; Murray, *Modocs and Their War*, 26-7.

56. Murray, *Modocs and Their War*, 26-7; Meacham, *Wigwam*, 298-9.

57. Murray, *Modocs and Their War*, 26-7; *Yreka Journal*, May 7, 1873; Thompson, *Reminiscences,* 82. See also Meacham, *Wigwam*, 301; idem, *Wi-ne-ma*, 46; Nash, "Place of Religious Revivalism," 383.

58. Riddle, *Indian History of the Modoc War*, 30; Meacham, *Wigwam*, 298; Murray, *Modocs and Their War*, 21, 26-7, 30; Odie B. Faulk and Laura E. Faulk, *The Modoc* (New York: Chelsea House, 1988), 29. According to one historian, Captain Jack's father was one of those killed at the Wright massacre. See Thompson, *Modoc War*, 5.

59. Murray, *Modocs and Their War*, 145,151,302; Nash, "Places of Religious Revivalism," 394; Meacham, *Wigwam*, 426; Modoc Correspondence, 175, 178.

60. Meacham, *Wigwam*, 450-1.

61. Benj'n Hallowell to President U. S. Grant,

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September 13, 1873, Modoc Correspondence, 328; Benham to secretary of the interior.

62. Thompson, *Reminiscences*, 73, 80; *Yreka Journal*, April 26,1873.

63. Benjamin Coates to President Grant, June 11, 1873, Hagen, "Modoc War," 1102, 1109. See Dillon, *Burnt-Out Fires*, 306-7.

64. The undated newspaper clipping from either the *Philadelphia Press* or *Evening Bulletin* was sent in Coates's letter to Grant.

65. E. P. Smith, commissioner of Indian affairs, to secretary of the interior, Hagen, "Modoc War," 1136.

66. Thompson, *Modoc War*, 119; Murray, *Modocs and Their War*, 277-8.

67. L. S. Dyar to Oregon superintendent of Indian affairs, June 18, 1873, Hagen, "Modoc War," 1131; H. R. Clum, acting commissioner of Indian affairs, to secretary of the interior, September 23, 1873, Modoc Correspondence, 329; Murray, *Modocs and Their War*, 278.

68. 1st Lt. J. Q. Adams to Maj. Green, commander of Cavalry Forces, Modoc Expedition, June 8, 1873, Dyar to Oregon superintendent of Indian affairs, Hagen, "Modoc War," 1076, 1131; *Yreka Journal*, June 18, 1873; undated newspaper clipping in Coates to Grant, Hagen, "Modoc War," 1102, 1109; *Yreka Union*, June 28, 1873. See also Landrum interview; Riddle, *Indian History of the Modoc War*, 155; Dyar to Oregon superintendent of Indian affairs.

69. Meacham, *Wigwam*, 595; Palmberg, *Copper Paladin*, 146; Murray, *Modocs and Their War*, 278.

70. Organic and Other General Laws of Oregon, 1843-1872 (1874), secs. 161, 379; Taylor *Nuremberg and Vietnam*, 19-20.

71. Trafzer and Hyer, *Exterminate Them*, 19-21, 141.

72. Landrum, *Guardhouse*, 8; Murray, *Modocs and Their War*, 143.

73. *Ex Parte Crow Dog*, 109 U.S. 571-72 (1883). See Clare V. McKanna, Jr., *Homicide, Race and Justice in the American West, 1880-1920* (Tucson: University of Arizona Press, 1997), 139.

74. *Yreka Journal*, June 11, July 2, 1873; Trafzer and Hyer, *Exterminate Them*, 26, 30.

75. L. F. Grover, *Report of Governor Grover to General Schofield on the Modoc War* (Salem, Ore.: State Printer, 1874), 4; McKanna, *Homicide*, 129, 131.

76. *Yreka Journal*, June 25, 1873.

77. *Yreka Union*, June 14, 1873.

78. Gen. W. T. Sherman to Gen. J. C. Davis, June 3, 1873, Hagen, "Modoc War," 1054.

79. Reported in *Yreka Union*, June 14, 1873.

80. Thompson, *Modoc War*, 120-1; Murray, *Modocs and Their War*, 273-4.

81. Brev. Maj. Gen. Jeff C. Davis to assistant adjutant general, Military Division of the Pacific, June 5, 1873, Hagen, "Modoc War," 1059.

82. *Yreka Union*, June 14, 1873.

83. Maj. Gen. J. M. Schofield to Gen. J. C. Davis, June 7, 1873, Hagen, "Modoc War," 1074; Davis to Headquarters Department of the Columbia, July 29, 1873, Modoc Correspondence, 189-90. For a different interpretation, see Palmberg, *Copper Paladin*, 149.

84. A. B. Meacham to E. P. Smith, commissioner of Indian affairs, July 8, 1873, Modoc Correspondence, 311-12; Davis to Headquarters Department of the Columbia; Meacham, *Wi-ne-ma*, 55-7; Murray, *Modocs and Their War*, 83, 91-2, 191; Palmberg, *Copper Paladin*, 113; Nash, "Places of Religious Revivalism," 395; Landrum, *Guardhouse*, 109.

85. Meacham to Smith; Meacham, *Wigwam*, 608; Landrum, *Guardhouse*, 109.

86. H. P. Curtis to Lt. Col. J. C. Kelton, Military Division of the Pacific, July 8, 1873, Modoc Correspondence, 88-9; H. P. Curtis to Gen. J. M. Schofield, September 2, 1873, Modoc Correspondence,199. See also Major Curtis to an officer in the Judge Advocate General's Office, n.d., Modoc Correspondence, 190.

87. *Yreka Union*, June 14, 1873.

88. Meacham, *Wigwam*, 447-8.

89. Murray, *Modocs and Their War*, 86-8.

90. Ibid., 297, 312. Barncho died at Alcatraz; Slolux was pardoned after serving five years of his life sentence and died in Oklahoma in 1899.

91. Landrum, *Guardhouse*, 69; Schonchin interview, October 1, 1997.

92. Dillon, *Burnt-Out Fires*, 333-4; Thompson, *Modoc War*, 125. One of these cards can still be seen at the Arizona State Museum in Tucson.

93. Faulk and Faulk, *The Modoc*, 78; Murray, *Modocs and Their War*, 306, 312; Thompson, *Modoc War*, 126.

94. See Utley and Washburn, *History of the Indian Wars*, 145-6, 198-9.

95. See Chomsky, "United States-Dakota War Trials," 63-7, 82 n. 434; Utley and Washburn, *History of the Indian Wars*, 340-1, 234-5; Murray, *Modocs and Their War*, 279, 294-5; Duane Schultz, *Month of the Freezing Moon: The Sand Creek Massacre, November 1864* (New York: St. Martin's Press, 1990), 148, 164-7, 174. See also Ewers, *The Blackfeet*, 249-52; Wells, *Laws of Land Warfare*, 160-1.

96. Williams, "Modoc Indian Prisoners," 251; Palmberg, *Copper Paladin*, 148.

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