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“WHEN WE WERE FIRST PAID”

THE BLACKFOOT TREATY, THE WESTERN TRIBES, AND THE CREATION OF THE COMMON HUNTING GROUND, 1855

WILLIAM E. FARR

In mid-October of 1855, Blackfoot Treaty commissioner Isaac I. Stevens, governor of Washington Territory and ex-officio its superintendent of Indian Affairs, and his co-commissioner Colonel Alfred Cumming, head of the Central Superintendency including Nebraska Territory, finally assembled the Blackfoot Peace Council just below the confluence of the Judith and Missouri Rivers. The federal government through the Office of Indian Affairs by then had already pieced together a

new reservation policy for the West. This “new order of things,” largely designed by Commissioner of Indian Affairs George Manypenny, hoped to reduce white conflicts with Indians, to prevent, if possible, expensive military actions, and above all to extinguish Indian land title by purchase, thereby enabling “legitimate” white settlement. In doing so, the new policy went well beyond the government’s earlier and more limited goals of keeping immigrant trails free of hostile Indians and of creating a peaceful, federal dispensation or order on the Great Plains by means of annual compensation.¹

The Blackfoot Council and the treaty that emerged from it, often termed *Lame Bull’s Treaty*, however, did not fit the new reservation policy. It extinguished no aboriginal land title through land sales or cessions, nor did it provide for Indian removal to reservations where the government could establish schools, hospitals, and mills and provide farming instruction and moral guidance. Nor did the treaty advance the division of communal lands in order to allot small parcels to individual Indians. It was not a so-called land treaty at all; it was a peace treaty. And it contained a surprise—the federal creation of a common

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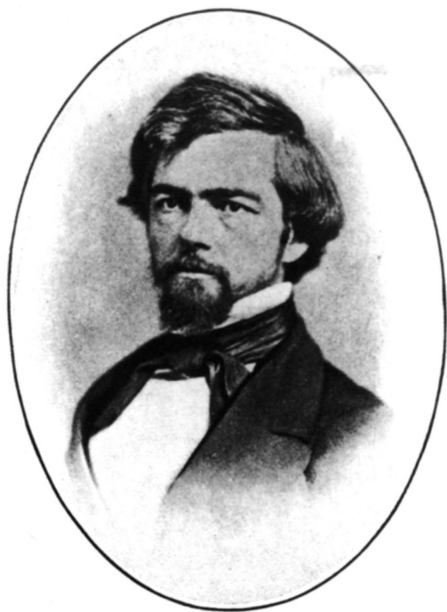


FIG. 1. Isaac Ingalls Stevens (1818-1862). First Governor of Washington Territory and Commissioner at the Blackfoot Treaty. Courtesy of K. Ross Toole Archives, The University of Montana.



FIG. 2. Col. Alfred Cumming, Commissioner at the Blackfoot Treaty. Drawing by Gustavus Sohon. Courtesy of Washington State Historical Society, Tacoma.

hunting ground. This designated area was to be shared "in peace" by the Blackfoot tribes and what were termed the "Western Indians," those who had come from west of the Rocky Mountains, across the continental divide, from the drainages of the Columbia River. These Western Indians were the Nez Perce, Yakima, Walla Walla, Cayuse, Kootenai, Spokane, and numerous Salish speakers, most prominently the Flathead and the Pend d'Oreille.

The formal establishment of such a common hunting ground in October of 1855 flew in the face of much of the emergent reservation policy. Instead of being encouraged to establish fixed and permanent homes, namely reservations, for exclusive tribal use, and to stay put, Stevens's federal recognition and formal establishment of a "buffalo commons" stimulated the bison hunters of the Columbia River drainages to continue their long, seasonal migrations to the contested buffalo plains

centered at the headwaters of the Missouri and Yellowstone Rivers just as they had always done.

Where did the Blackfoot Treaty commissioners find the precedent for such a common hunting ground and what lay behind their willingness to establish it on the buffalo plains? Could this divergent, if not contradictory, regional determination in the Far West be reconciled with the prevailing federal reservation policy as determined by the Office of Indian Affairs? Or was that unnecessary, given that American reservation policy in the 1850s was by its nature contradictory, little more than a series of regional improvisations?²

Commissioners Stevens and Cumming, of course, did not actually "create" the common hunting ground. They simply acknowledged and restructured the reality of a preexisting Indian common hunting ground, a sort of buffalo commons, that gradually over the years

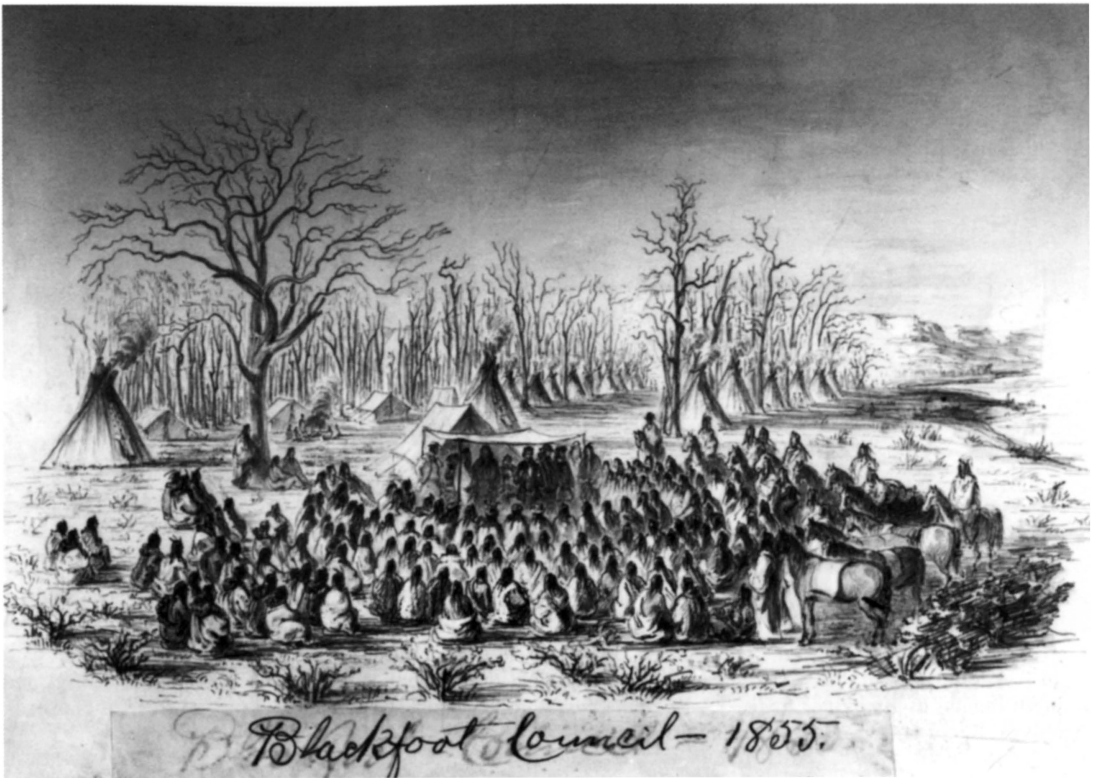


Fig. 3. "Blackfoot Council - 1855." Drawing by Gustavus Sohon. Courtesy of Washington State Historical Society, Tacoma.

had been constructed through war, treaties, and diplomacy on the part of the tribes themselves. Stevens had first encountered this dynamic tribal creation with its shifting boundaries and alliances when he led a congressionally funded transcontinental railroad survey through the middle of Blackfoot territory in 1853. Two years later, not only did treaty commissioners Stevens and Cumming recognize this Indian construction in the treaty provisions in 1855, they gave it an inordinate amount of attention. What were their goals and expectations regarding the federal definition, limitation, and reshaping of this preexisting regional Indian commons? How did these purposes relate to possible repercussions for a

bison population, already perceived to be dwindling on the Northern Plains?

Long before Lewis and Clark wrote of the Cokahlarishkit, or the river of the road to buffalo, in July of 1806, Indian tribes west of the Rocky Mountains had crossed the continental divide on their way to hunt buffalo on the open plains of the upper Missouri, Yellowstone, and Musselshell Rivers. There, Western Indians from the distant reaches of the Columbia Plateau and the tangle of mountain ranges that would become Idaho and western Montana seasonally competed with a

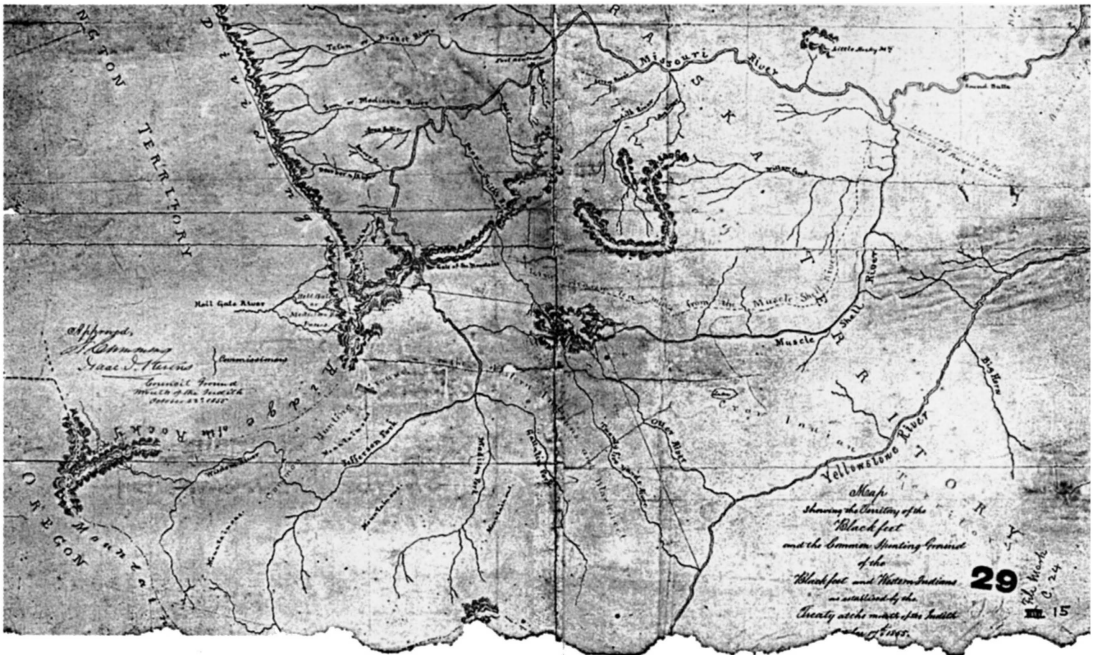


FIG. 4. Map showing the Territory of the Blackfeet and the common Hunting Ground of the Blackfeet and Western Indians as established by the Treaty at the mouth of the Judith, 17 October 1855. Courtesy of National Archives, Records of Bureau of Indian Affairs, RG75, Microcopy T-494, Roll 5, Frame 1093.

welter of Plains people for hunting access to the immense herds of buffalo. The most important of these Plains tribes were those of the Blackfoot Confederacy, consisting primarily of Blood, Blackfeet proper, and Piegan, along with their allies, the Gros Ventres, and the Crow, Sioux, and Cree.³ In the hunting parlance of the nineteenth century this was called "going to buffalo." It would be for many of the Western Indians a right and a passion essential to their culture and one they swore never to give up.⁴

While Indian initiative to "go to buffalo" would always remain decisive, Governor Stevens's 1855 signature treaty solutions in Washington Territory also came to play a significant role. In these treaties Stevens formally recognized the right of the Western Indians to continue to "go to buffalo" from their newly established reservations, and with this right, the de facto existence of a buffalo common

hunting ground on the plains of what would become Montana. Both acknowledgments encouraged a more active interest in buffalo hunting and an even greater Western tribal presence east of the Rockies.

The evidence for a buffalo hunting commons, where rival tribal entities and bands hunted, clashed, allied, socialized, and traded on the Upper Missouri and Yellowstone drainages, is remarkably rich throughout the nineteenth century. As early as in the journals of Lewis and Clark it was amply documented. In fact, not only was it recognized, but William Clark linked the existence of such a war zone or no-man's-land to the unusual abundance of big game populations, especially bison, that the Corps of Discovery encountered there.⁵ This phenomenon of a contested ground, shared in common by a number of tribes, was also attested to by the German physician F. A. Wislizenus. In 1839 he remarked that buffalo-

hunting Indians "recognize certain districts, where buffalo usually abound, as common hunting and war ground." There the various tribes "roam at will, subjecting their conflicting rights to the test of strength. Between the tribes there is perpetual warfare."⁶

While portions of the Western Indians had always gone to buffalo, they did so in increasing numbers after the arrival of the horse. Buffalo hunting became a regular activity and could not be stopped. Both Francois Larocque in his journal of 1805 and Ross Cox puzzled over this preoccupation to go each fall to "the fork of the Missouri or there about to kill Buffaloes," and both concluded that the only reason they could discern for the Western Indians' willingness to fight constant and losing battles with the Blackfeet and other tribes on the east side of the Rocky Mountains was their love of the buffalo.⁷ The journals of David Thompson and Alexander Henry the Younger reinforce this view and are replete with references to the numerous alliances the Western tribes constructed in order to compete with the more numerous and dominating Blackfeet. In the 1840s Father Nicolas Point, who traveled with the Flathead and Pend d'Oreille on their annual winter hunting expeditions to the common hunting ground, related other firsthand examples of bloodshed, peace delegations, horse raids, truces, trading, and hospitality. There existed, then, an ongoing "bison diplomacy" between the contending if unequal tribes that was vibrant, intensely dynamic, and nothing like the picture of unremitting and unrelieved warfare so often portrayed.

By the time Governor Stevens reached Fort Owen in the Bitterroot Valley in 1853, he knew from his own experience that the Western Indians, as well as the Blackfeet, Crow, and Shoshoni, all hunted bison around the Three Forks of the Missouri, the Musselshell, and the upper Yellowstone country. Two years later at the Walla Walla Council in 1855 he told the Yakima and Nez Perce, "I have met you in the trail. I saw your people in buffalo country. I met your people on the road to buffalo country."⁸ He knew as well from numer-

ous personal conversations that each of these tribal entities maintained that it had done so since time immemorial. As a result of that personal experience, when Stevens had his 1854 "Map Showing the Indian Tribes of Washington Territory and on the Missouri and its Tributaries" drawn up and submitted to Washington, D.C., he clearly identified this long-standing neutral territory that was occupied at various times by all, but controlled by none, as "Common Hunting Grounds of the Blackfeet, Crows, and the Indians of Washington Territory." In Stevens's mind there was no question about its existence.⁹

By December 1854 and throughout the following winter and spring, Governor Stevens implemented a new federal reservation policy in western Washington Territory. He did so by means of a series of treaties in which he extinguished Indian aboriginal title and removed the various tribes and consolidated fragments to designated reservations. By May 1855 Stevens had moved his treaty tour east of the Cascade Mountains. There, he and his Oregon counterpart, Governor Joel Palmer, conducted at Walla Walla a treaty council with the Plateau tribes on both sides of the Columbia River. Hoping to make the land sales more palatable, the two commissioners promised that not only would the treating tribes of Nez Perce, Yakima, Walla Walla, and Cayuse receive government compensation for their lands, but also they would be able to continue hunting, gathering, and fishing in the lands they had sold or ceded—as they had always done. Governor Palmer, attempting to sweeten the agreement, described the policy this way: "[W]e buy your country and pay you for it and give the most of it back to you again."¹⁰

As attractive as that proposal was, Stevens upped the ante by holding out the promise that those same off-reservation rights, exercised in what was phrased "usual and accustomed places," could be extended even *beyond* the claimed and then ceded territory in question—in other words, even to the buffalo hunting ground beyond the Blue Mountains and beyond the Rocky Mountains, some 400 to

600 miles away from their newly designated reservations. This was a remarkable concession to local Plateau subsistence patterns. It was also a significant departure from Stevens's earlier treaties. Even more remarkable was Stevens's promise that the Columbia River tribes would be able to do this without having to constantly fear the harassment of Blackfoot raiders as in the past. With federal support, Stevens promised there would be equal access and intertribal peace on the buffalo hunting ground.

We want you to have your roots and to get your berries, and to kill your game. We want you, if you wish, to mount your horses and to go to the Buffalo plains, and we want more; we want you to have peace there.¹¹

With a pronounced flourish and knowing full well the predictable response, Stevens trotted out a telling rhetorical question: who had been disturbing them on their way to buffalo, who had tried to keep them away from their hunting ground on the Missouri and Yellowstone, stolen their horses and murdered their men, women, and children? Was it the whites? Of course not. The answer was clear to all—it was the Blackfeet. “We want that to cease forever,” Stevens said. “If we can agree here, this you will be able to say to the Blackfeet and the Blackfeet will say ‘We will be friends, we will chase the buffalo together on the plain, we will be friends forever.’”¹² Stevens had already laid plans for formal federal recognition—and regulation—of the preexisting Indian common hunting ground, a recognition that only confirmed its existence and the entitlement, by prescriptive use, of the Western Indians to hunt there.

Given these promises at Walla Walla, it was appropriate that in Stevens's next effort, the Hellgate Treaty with the Pend d'Oreille, Flathead, and Kootenai, he would repeat his pledges to establish an intertribal peace across the continental divide in buffalo country. Conducted in July 1855 at the confluence of the Bitterroot and Clark Fork Rivers, Stevens told

Victor, whom he had selected as head chief for the consolidated three tribes, that he expected to make “a treaty which will keep the Blackfeet out of this valley, and if that will not do it we will then have soldiers who will.” He added that he had been directed to make this treaty by the President and that “we hope it will forever settle your troubles with the Blackfeet.”¹³ “Going to buffalo” loomed large in the subsequent negotiations. It even affected the decision as to which valley west of the Continental Divide was the better choice for the site of the consolidated reservation—the Bitterroot favored by the Flathead or the Mission Valley selected by the Pend d'Oreille and the Kootenai.¹⁴

The long-anticipated Blackfoot Peace Council was the final stop in Governor Stevens's ambitious treaty tour. Although scheduled for late September in Fort Benton, the council did not actually open until 16 October. It had been put off as a result of numerous delays in transporting critical treaty goods up the Missouri. Even the venue had to be changed. Instead of Fort Benton, the commissioners and Indians met 100 miles downstream just below the mouth of the Judith River on the north bank amid the leafless, bare cottonwoods. Here at the confluence of the two rivers, the Missouri and the Judith, called the Big River and Yellow River by the Blackfeet, Stevens made good his earlier promises to bring together the far-flung tribes and bands of the so-called Blackfoot Nation, the Nitzitapi, who straddled both sides of the forty-ninth parallel from the Yellowstone River in the south to the Red Deer River in the north.¹⁵ He also brought to the Judith representatives of the Plateau and Mountain Indians from across the divide in Washington Territory, led by a strong, well-armed Nez Perce contingent and the various elements of the recently created Flathead Nation.¹⁶ In addition, there was one Plains Cree chief, Broken Arm, already celebrated for his efforts at brokering peace between the Cree and the Blackfeet. Well traveled, Broken Arm had been to Washington, D.C., in 1831-32, and in 1851 he had

attended the Fort Laramie Treaty Council where tribal boundaries on the Northern Plains were "discussed and mapped." Broken Arm, or Maskepetoon, came with the Piegan leader Little Dog bearing tobacco as a delegate for both the missing Cree and their frequent companions, the Assiniboine.¹⁷ The Crow, too, were conspicuously absent, although not by design, as were Shoshoni elements. Even so, the eventual distribution of provisions on the treaty grounds indicated the presence of some 3,295 Indians, who represented a total census of some 15,500.¹⁸

The treaty that emerged from this belated Blackfoot Council, because of its intent toward peace, was something of a throwback to 1851 and the Treaty of Laramie. Neither had as its purpose the sale or acquisition of Indian lands for white settlement or the extinguishing of native land title. Nor did either treaty establish small, formal reservations of Indian land that were to become "fixed, permanent homes" for exclusive tribal use as required by the new policy coming from the Indian Office.¹⁹ Instead, both aimed at establishing "permanent relations of peace and amity"—in the case of the Judith Treaty, between the various Blackfoot tribes "hunting and trading on American soil" and the US government. In addition, the Judith River council was to initiate intertribal peace between those same Blackfoot bands and tribes and their competing neighbors, with a special insistence upon peace with the Western Indians.

The Blackfoot Council, like its earlier counterpart for the "nations of the Prairie and Mountain Indians" at Fort Laramie, amounted to a federal attempt at establishing a peaceful dispensation on the Northern Plains. Peace was critical in Stevens's eyes. Two years before, with energy and great organizational skill, he led the Northern Railroad Exploration and Survey through the heart of Blackfoot country. For this northern route to be competitive with the other transcontinental railroad surveys, Stevens felt he had to pacify the Blackfeet and their neighbors. Moreover, his newly created Washington Territory was attracting im-

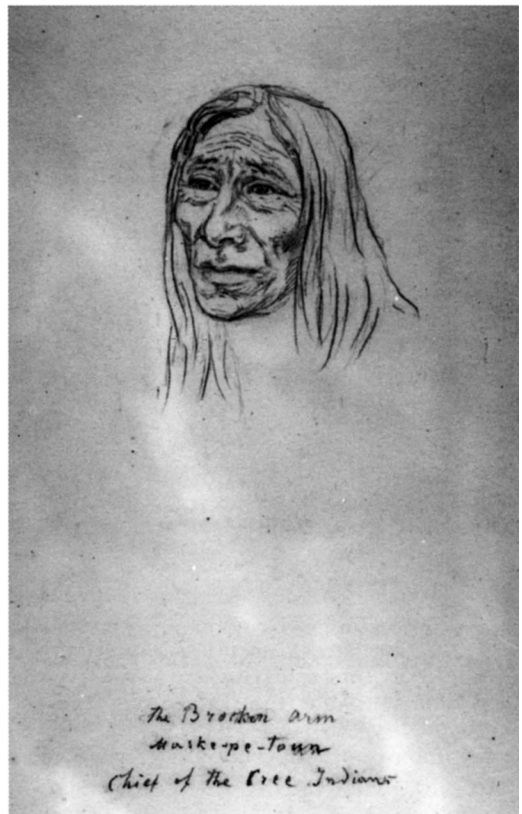


FIG. 5. "The Broken Arm (Maske-pe-town), Chief of the Cree Indians." Drawing by Gustavus Sohon. Courtesy of Washington State Historical Society, Tacoma.

migrants and capital, and he had almost completed his task of clearing Indian title to most of the territory's lands, preparing them for extensive settlement. Consequently, when he later functioned as a Blackfoot Treaty commissioner, Stevens was determined to install the permanent peace his survey and Washington Territory required.²⁰

Ensuring intertribal peace, in the view of the government and its two resident commissioners, rested on two assumptions, both previously explored at Laramie. The first was compensation for Indian losses of game, grass, and wood; the second was the desirability of establishing carefully defined and designated tribal territories, with specific boundaries.

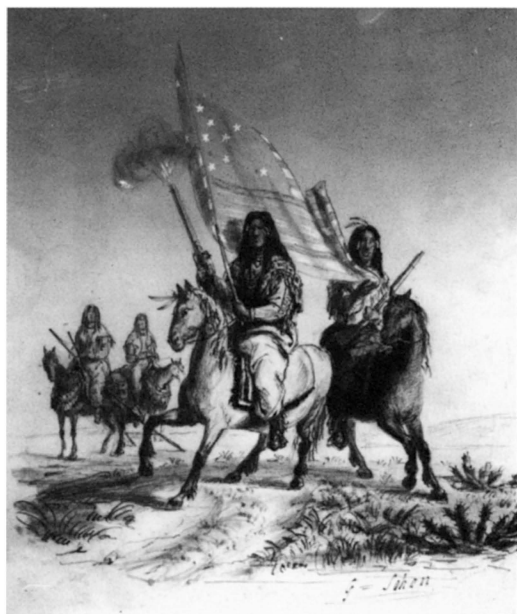


FIG. 6. "The Bloods Come in the Council, Blackfeet Camp, 1855." Drawing by Gustavus Sohon. Courtesy of Washington State Historical Society, Tacoma.

These were viewed by government officials as necessary steps in removing many of the causes of intertribal war on the buffalo plains. Both Stevens and Cumming would also insist upon what the Indians called "lines."²¹

While the Laramie Treaty had asked tribal members to stay within their designated boundaries, it had not meant they were to "surrender the privilege of hunting, fishing or passing over any of the tracts of country herein before described."²² The Judith Treaty would not demand this either—as long as peace prevailed. Nonetheless, both treaties promoted the idea that *if* the Indians remained in their own territories, intertribal peace would be easier to secure. Territorial segregation was the key. It would also allow federal authorities, if need be, to identify Indian parties responsible for depredations, even pinpointing specific bands that ignored the commitments of tribal leaders and broke the peace. Building

on this Laramie pattern, Stevens and Cumming also devised provisions for guaranteed rights-of-way, the establishment of military forts, and the creation of telegraph installations. The idea in 1855 was to secure an American peace for this sprawling expanse of high plains, as previous negotiators at Laramie had done.

But things had changed. A new federal reservation policy in 1855 had replaced the Fort Laramie model. Stevens's own treaties, from Puget Sound to Hellgate, had reflected these changes and were certainly preferable, from the government's perspective, to the Laramie example. Nonetheless, Stevens and Cumming returned to the model of 1851, as it was simply too early to pursue the new reservation policy with the more nomadic bison hunters of the Northern Plains. This was especially so since no white settlement was contemplated. Consequently, the Indian Office addressed the problem of intertribal war and the growing threat of Indian-white hostilities by simply promoting peace and territorial segregation. Again, as at Laramie, the Indian Office held out the reward of government compensation. Indemnification would make up for the Indian losses of large amounts of grass and timber and for the ever-declining game populations occasioned by white expansion.²³

Had the 1851 Fort Laramie Treaty dealt with all tribal lands south of the forty-ninth parallel, US-Blackfoot tribal relations, whether good or bad, would have already been in place. But that was not the case. It was not addressed because the federal mandate in 1851 concerned only those tribes and lands *south of the Missouri* and north of Texas and New Mexico. Rather, it was left to future agreements to establish federal relations, to say nothing of peace, in the vast buffalo commons between the Missouri River and the Canadian border, east of the continental divide.

Besides failing to have provided the proper purview, the Treaty of Laramie had not even lived up to its own promises, as Governor Stevens himself was quick to point out. "Tribes, parties to the Treaty of Laramie," Stevens related, "are now at open war with

the Government, and the employment of four thousand troops, and an expenditure of, say, two million dollars is the price now being paid by the Government for the management of the Indian, in a comparatively small portion of the jurisdiction of the western superintendency."²⁴

The situation in 1855 on the Northern Plains was somewhat analogous to the pre-Laramie-treaty conditions. Land sales were not called for and tribal territories prior to both treaties remained largely undefined, with the tribes migrating, mingling, fighting, and competing in what appeared to be a chaotic free-for-all. Yet the differences were significant. New initiatives were clearly needed. From the perspective of the Indian Office in Washington, D.C., and of treaty commissioners like Stevens and Cumming, the major difference was that they now recognized all too well that war had to be prevented. Military solutions were too expensive. A more economical answer had to be found—even if that meant greater concessions.

It was unlikely that a treaty consistent with the newly emergent reservation policy could be concluded with the militarily powerful Blackfeet, Crow, Gros Ventre, and Assiniboiné. These nomadic hunters had been unwilling to sell their land. It was doubtful whether they would compromise their freedom by acquiescing to definite boundaries—to being penned in—or to a white-brokered peace. Concessions would have to be negotiated with the tribes in the form of increased annuities, greater recognition of home territories, and more support for federal aid in the form of agencies, schools, missions, shops, hospitals, and yearly presents of useful goods and provisions. There needed to be something akin to a reservation treaty with an expanded agency plant, but one that would retain significant regional freedoms appropriate to a nomadic, buffalo-hunting people.

Another consideration pushing innovation was the promises Stevens had made on the part of the government at Walla Walla and Hellgate to ensure the continued right of the

Western Indians to "go to buffalo," in other words, for the various bands and intertribal alliances to access the rich buffalo hunting ground they had shared in war and in peace across the Rocky Mountains.

Innovation may have been needed at the Blackfoot Council, but the portents were not auspicious. Contention between Governor Stevens, whom the Blackfeet called "Short Man," and his equally strong-minded co-commissioner, Colonel Cumming, reigned from the beginning.²⁵ Only with difficulty could they agree upon anything, certainly anything having to do with their respective official responsibilities, logistical support, or levels of treaty compensation. The official bickering continued over the character of the Blackfeet and the essential nature of the country they occupied. It was a surprise, then, to have both commissioners agree upon a rough determination of Blackfoot and Crow tribal boundaries, ones significantly different from those set down at Laramie. It was even more astonishing to have them issue a joint determination to designate a "common hunting ground" along the lines Stevens had already acknowledged and explored at Walla Walla and Hellgate.²⁶

Their proposed solution was to formally define, by way of natural landmarks and geometric lines, a buffalo commons south of the Missouri, north of the Yellowstone, and east of the Continental Divide. This was arguably one of the richest, most contested game arenas of the Northern Plains. In doing so they clearly overturned and redrew the tribal boundaries contained in the 1851 Laramie accords. More creative and imaginative yet was the insistence that in this "open" arrangement, the subscribing tribes

should all live in peace, stay home when not hunting or trading and that the Blackfeet collectively should agree and consent that what had been defined as Blackfeet territory in the Laramie Treaty of 1851 should become a common hunting ground for 99 years where all the signers, east and west, shall enjoy equal privileges.²⁷

Article III of the eventual treaty had the Blackfoot Nation as a whole consenting and agreeing

that all that portion of the country recognized and defined by the Treaty of Laramie as Blackfoot territory, lying within lines drawn from the Hell Gate or Medicine Rock Passes in the main range of the Rocky Mountains, in an easterly direction to the nearest source of the Muscle Shell River, thence to the mouth of Twenty-five Yard Creek, thence up the Yellowstone River to its northern source, and thence along the main range of the Rocky Mountains, in a northerly direction to the point of beginning, shall be a common hunting ground for ninety-nine years, where all the nations, tribes and bands of Indians, parties to this treaty, may enjoy equal and uninterrupted privileges of hunting, fishing and gathering fruit, grazing animals, curing meat and dressing robes.

This common hunting ground did not conform or agree with the boundaries of what Laramie had erroneously described as "Blackfoot Territory."²⁸

The Blackfoot treaty proposals in fact defined the lands between the Missouri and the Yellowstone Rivers correctly for the first time. Use of the territory in question did not belong exclusively to the Blackfeet, however defined, nor did they overwhelmingly and convincingly occupy it, possessing it in the sense of controlling either the sweeping grasslands themselves or access to them. This had been and would remain something of a war zone—contested, neutral, and therefore common ground on which the competing and always moving tribes shifted about like chess pieces as they wished or dared.

Through their deliberate actions and diplomacy, the nomadic camps and alliances had created a territory that was controlled by none but hunted and used by all at various times in the ebb and flow of tribal movements. The Blackfoot tribes, for example, usually wintered

near the mountains, along the Marias, Two Medicine, Belly, and Oldman Rivers. In late spring, with the return of the green grass, many of them moved east into the area immediately west of the Cypress Hills. If the buffalo were scarce in that quarter, they might decisively move farther east, skirting around the Cypress Hills. But if their scouts determined that the Gros Ventre or Assiniboiné were in that area, they stayed away. Likewise, the Kootenai and Salish would often slip over the mountains to move in behind the Blackfeet after they had left their wintering grounds for the high plains in May. They would take their chances in what they hoped would be vacant land. On still other occasions the tribes asked permission to hunt, relied on adopted relations, or negotiated a temporary peace between local bands.²⁹

The common hunting ground was not unvisited or uninhabited land. It was not an empty land, as has been portrayed by Paul Martin and Christine Szuter for an earlier period, although at any given time it may have looked like one.³⁰ Nor was this arena just a war zone. Numerous times the martial web traced by the comings and goings of war parties and horse raiders collapsed. Temporary treaties and awkward truces were forged, after which carefree hunting, peaceful socializing, and intertribal trade reigned. Stevens recognized this fundamental fact of tribal reality and, together with Cumming, designated and described the territory for what it was—a common hunting ground founded upon multiple tribal movement and multiple use.

Such places and practices, while seldom exact, were not uncommon.³¹ These often surfaced without design, as terrain became more or less neutral, more or less dangerous, and particularly if it was geographically large, poorly defined, or only sporadically defended. Sometimes they cropped up as buffer zones between or within shifting tribal occupations. In other cases, there were conscious efforts to establish neutral zones or common hunting grounds. So, for example, following the Laramie Treaty of 1851, the Crow and the Miniconjou Sioux, for their mutual benefit,



FIG. 7. Map of the area between the Missouri and Arkansas Rivers and northwestward to the Columbia River showing various Indian tribes, to Col. D. D. Mitchell by P-J. DeSmet, S.J., 1851. Records of the Department of Interior, Office of Indian Affairs, RG 75, Map No. 251. Courtesy of the Mansfield Library, University of Montana G4050 1851 .U5.

agreed to share and use jointly the seam of territory between their Laramie-designated boundaries. Referred to as the “Neutral Grounds,” age-old enmities were set aside in order to enjoy the benefits of safe hunting and of passage through each other’s territory to expand trading opportunities.³²

Then, too, there were sacred places such as Medicine Mountain, where a shared common spiritual purpose created a zone of neutrality. In such terrain hostilities and bloodshed were to be set aside. Otherwise the sacred character of the immediate landscape would be violated to the detriment of the offender.³³ In other cases fur trade posts functioned as a form of common or neutral ground where band or tribal entities momentarily set aside or inter-

rupted current animosities in the pursuit of mutual self-interest. For Indian peoples that interest could be access to Euro-American trade goods or the goodwill or gifts of the fur traders in charge who desired to foster regional peace, so necessary for success. Advantages and disadvantages were weighed and minutely calculated on the part of the bands and communities. Traders used their posts as neutral sanctuaries as they sought to broker or mediate peace.³⁴ Sometimes common ground emerged along river or mountain corridors, avenues of passage that could not be avoided and were therefore unavoidably shared. As with the buffalo commons, it was common only in the sense that these corridors were used by all, at different times, but alertly,

quickly, and preferably in large numbers. The Blackfoot treaty provision for a common hunting ground or a buffalo commons was not a concept foreign to tribal experience.

Moreover, almost any landscape, even those thought of as specific to a single tribe, could regularly be penetrated or subject to shared expedient use. This did not mean the Indian tribes would take regular turns using this land and exploiting its resources. It did not mean there would be orderly spheres of influence or a free-for-all in which the strongest prevailed. And while Stevens and Cumming did not use the term "common" to qualify the privileges they described in the common hunting ground provision, they did insert "common" in the identifying label of the Indians' destination—"the common hunting ground." In the opinion of the commissioners, in order for this hunting ground to be durable and truly common, peace among the tribes would have to prevail.³⁵ From the time of Walla Walla, Stevens had proclaimed, "My heart said peace in the buffalo country, peace here, peace is here now, peace between yourselves, peace between us."³⁶

Over and against this now designated and delineated common hunting ground, the Blackfoot Treaty in Article IV called for a Blackfoot reservation of territory within the United States that was to be theirs alone. Neither this land nor its resources were to be shared or held in common with any other tribe. In the parlance of the new reservation policy, which Stevens was anxious to adopt, if not actually replicate, this land was to be exclusively theirs—"excepting as may be otherwise provided in this treaty." There were two stipulations that did provide otherwise. The first was the establishment of a ten-mile buffer zone or neutral or demilitarized strip that ran north of the common hunting ground boundary and parallel to the Musselshell from its source to its mouth on the Missouri River. Within this ten-mile zone there could be no permanent villages and the Blackfeet would not have or exercise "any exclusive rights."³⁷ They had given to the Western Indians the

right or liberty to hunt on the trail down the Musselshell.

The second provision created an additional common hunting ground on the eastern edge of the Blackfoot territory where it abutted the country of the Assiniboiné.

Provided also, that the Assiniboinés shall have the right of hunting, in common with the Blackfeet, in the country lying between the aforesaid eastern boundary, running from the mouth of the Milk River to the forty-ninth parallel, and a line drawn from the left bank of the Missouri River, opposite the Round Butte north, to the forty-ninth parallel.³⁸

So, the Blackfoot Treaty recognized not just one preexisting common hunting ground but two. Yet of the two, it is the one with the Indians to the west, across the Rocky Mountains, that dominated the Blackfoot Council discussions. Objections immediately came from the Western tribes and not from the Assiniboiné, who, although a party to the treaty, were not present. These objections reveal much about the character of the tribal links to the bison grounds both inside and outside of the treaty-designated common hunting ground.

Alexander, the Pend d'Oreille chief who had been so effective in the Hellgate Treaty negotiations, bitterly protested the restricted routes over the divide to the buffalo, as well as the proposed limitation to hunt only within the common hunting ground. "A long time ago our people, our ancestors, belonged in this country . . . around the Three Buttes," he said, meaning the Sweetgrass Hills on the Canadian border, smack in the middle of Blackfoot country. "We had many people on this side of the mountains. When my father was living he told me that was an old road for our people."³⁹ His second criticism was not unlike that which he had made at the Hellgate negotiation:

We Indians were all well pleased when we came together here in friendship. Now you

point us out a little piece of land to hunt our game in. When we were enemies I always crossed over there, and why should I not now when we are friends. . . . Which of these chiefs [pointing to the Blackfeet] says we are not to go there? Which is the one?⁴⁰

Little Dog allowed that he had raised the issue, not because he wanted to be unfriendly but because "the North Blackfeet might make a quarrel if you hunted near them. Do not put yourself in their way."⁴¹ Such sparring was a further reminder that each band, to say nothing of the various tribal elements in the Blackfoot confederacy, acted independently and that the whole of the country was at times a "war zone," although it was penetrable under the right circumstances and therefore part of the Indian commons.

Alexander would not let it drop. He wanted to continue travel to the buffalo hunting ground through the northern passes, those north of the treaty-sanctioned Hellgate Passes, by which he meant principally Marias and Cut Bank. "The Chief [Stevens] tells us that we are all, all of us Indians, to eat out of the same plate, one plate. Now you tell me to quit crossing in the North. I wonder how this can be?"⁴² Why were they, the Kootenai and the Pend d'Oreille, to say nothing of the others, to be restricted? Alexander's fellow tribesman Big Canoe concurred. He wanted no restrictions at all: "I thought our roads would be all over this country. Now you tell us different." Big Canoe must have been referring to how Stevens, as "soldier chief," had promised the Salishe and Kootenai government protection and help against the Blackfeet so that they could hunt buffalo east of the mountains. The implication had been, at least from their perspective, that they could hunt wherever they wanted. Big Canoe recognized the consequences. "Supposing that we *do* stick together and *do* make a peace. . . . Now you tell me not to step over that way. I have a mind to go there."⁴³ Both Big Canoe and Alexander had a point. Since their "common hunting

ground" included all Blackfoot territory south of the forty-ninth parallel, why should they agree to a limited and smaller commons, even with government guarantees?

Given the vociferous objections, Little Dog, chief of the Black-Patched Moccasin band of the Piegans, retreated, saying "Since he [Alexander] speaks so much of it, we will give him liberty to come out in the North."⁴⁴ Commissioner Cumming, using a map, tried to make Alexander understand that the whole of the territory had been designated as belonging to the Blackfeet at the Fort Laramie Treaty and that the commissioners were now being most generous in transforming the southern portion into a federally brokered "common hunting ground." Stevens chimed in with another rationale:

In making this division we looked to the Indians obtaining their living. The Western Indians have enough in the piece given them in proportion to their numbers. . . . The Western Indians are only one fourth as numerous as the Blackfeet. Let Alexander think of this. He does not get all his food from the Buffalo. He has farms and cattle. The Blackfeet have none.⁴⁵ (Stevens thought the Blackfeet to number in excess of 11,000.)

Finally, the Piegan Chief Lame Bull, also called Nee-ti-nee or "The Only Chief," reminded everyone in attendance, especially the Salish and Nez Perce so proud of their longstanding friendship with the whites, that it was not the Blackfeet who had sought out this treaty nor had they written it.

It is not our plan that these things are going on. I understood that what the White Chiefs told us to do, we were to do both sides. It is not we who speak. It is the White Chiefs. Look at those tribes (pointing to the Western Indians), they are the first to speak, making objections this morning. We intend to do whatever the Government tells us.⁴⁶

Stevens should have anticipated these Salish and Nez Perce concerns. Anything that altered the subsistence round generated anxiety, especially changes in the way the bands hunted buffalo. However reasonable from the government's perspective, the geographical limitations, the restriction on their liberty to go where they wanted or dared, as represented by designated common or exclusive spheres, was a palpable sacrifice. It was like a big-city politician gerrymandering voting districts to suit his own self-interest. The federal government was attempting to engineer a precisely drawn new world order, to reshape use-rights in an Indian-created buffalo commons, and the Pend d'Oreille did not like it. The Nez Perce and Flathead probably did not like the situation either, but there is no record that they objected. More likely, they decided to save their words and do what they wanted, as they always had. If the treaty could replace a war-zone commons with a peaceful, government-designated, common hunting ground that offered better hunting and other advantages, they could reconsider. The key issue was the condition of peace. Although limited and circumscribed, a peaceful commons might be truly preferable to the larger commons where warfare was a constant. The Salish verb for "going to war" meant "stealing horses." In the new peace of the federal common hunting ground, the Blackfeet duly promised the Salish "they would go home on as good horses as they came on."⁴⁷ Possibly there were advantages to peace.

But what if the buffalo were uncooperative and would not stay put in the common hunting ground? What if the buffalo could not be found in sufficient numbers within the designated "lines," as was the case that very year, 1855? The tribal parties from west across the mountains had just experienced real want, if not actual starvation, as they assembled in or near what would be named the common hunting ground, preparatory to the council. Severe drought dominated in every direction. Bison had not been seen in the Musselshell country for over six weeks. Grass was so scarce that the

Flathead and the Nez Perce resorted to felling cottonwood trees along the small watercourses to feed their horse herds.⁴⁸ Farther south, other Nez Perce hunting parties, finding "few buffalo and small game scarce," split up, with some traveling as far south and east as below the confluence of the Big Horn and Yellowstone Rivers into Crow country.⁴⁹ As for the Blackfeet themselves, Bad Head, or "Father of Many Children" as he was known when he signed the Judith Treaty, designated 1854 in his winter count as "Itaomitaohoyop," or "when we ate dogs"—a disastrous condition.⁵⁰

Bison were mysterious animals.⁵¹ Their location and movement were never to be taken for granted. Frequently they seemed propelled by spirits or offended by humans; they were subject to various levels of hunting pressure, to weather and climate changes, to grass fires and blackened prairies, to changes in winter forage, and who knew to what else. If buffalo were not presently to be found in the common hunting ground, when would they return? If they drifted on and off a particular and bounded landscape willy-nilly, what logic was there to restricting tribal hunting to a limited and particular tract of land, especially one so small and restricted?

Stevens and Cumming could be rather cavalier about buffalo hunting. Along with a good many others, they did not believe that either buffalo or Indian buffalo hunting had a bright future. In his preamble to the treaty, even before the various articles were read and translated, Stevens had set out the government's hope and vision for the future.

We want to establish you in your country on farms. We want you to have cattle and raise crops. We want your children to be taught, and we want you to send word to your Great Father, through us where you want your farms to be. . . . This country is your home. It will remain your home. And as I told the Western Indians we hoped . . . the Blackfeet would not live on poor Buffalo Meat but would have domestic Cattle for food. We want them to have Cattle.

You know the Buffalo will not continue forever. Get farms and cattle in time.⁵²

Indians were not so sure. The Blackfeet had indeed complained that "the buffalo are not as plenty as formerly, we have to eat too many old bulls."⁵³ And in 1851 an Assiniboine chief, The Bear, lamented to Father DeSmet, "I see the buffaloes decrease every year."⁵⁴ Bad Head's winter count for 1854 graphically reinforced this perception. Yet not all Blackfeet or others were convinced that the losses were irreversible. After all, even amid the general lack of buffalo numbers in the drought-stricken summer of 1855, Stevens had reported large counts between the Marias and the Milk River. Maybe the bison would return in some equally mysterious way. It was an open question.⁵⁵

Stevens hammered away on this point—the buffalo cannot subsist forever. Whatever Stevens's sincerity, he was not alone. A decline in bison numbers had become a generalized prediction since the 1840s.⁵⁶ The idea of the disappearance of the buffalo as a major source of Indian subsistence sometime in the future was not confined to federal authorities or missionaries pushing a pacific or agricultural agenda or hoping to establish a buffalo commons in an effort to ease an Indian transition to civilization. With considerable sarcasm the writer of the *Fort Benton Journal*, in September 1855, advised visiting native hunters: "[G]o to it while you are young for when you 'get old' you will have no buffalo to kill as Gov. Stevens' railroad hands will consume them all."⁵⁷

Times were troubled and difficult, for not only were bison numbers in decline, tribal populations were as well. Smallpox had ravaged the Blackfeet, the Blood and the Piegan with particular intensity in 1837. The journal of Lieutenant Bradley, relying on information from Alexander Culbertson, reported that "among these three tribes not less than six thousand perished, or about two-thirds of their whole number—the very flower of the tribes." Father Nicolas Point, writing a decade later, concurred observing that the Blackfeet,

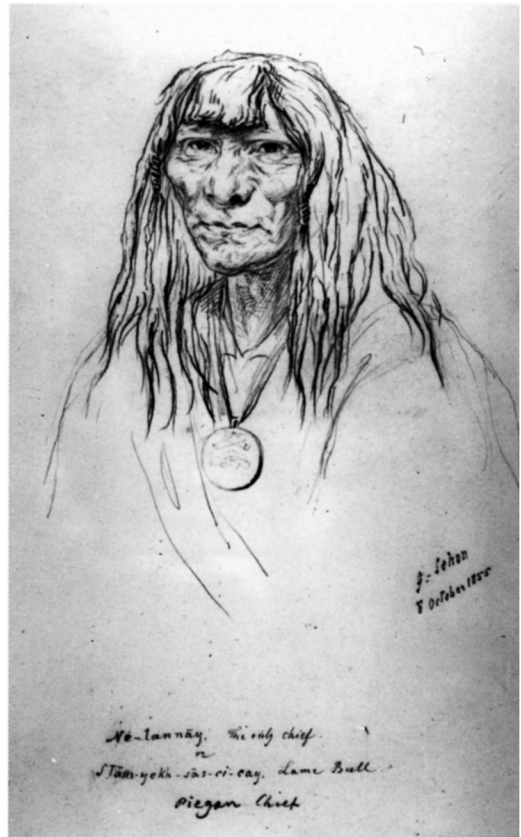


FIG. 8. "Ne-tannay, The Only Chief" or "Stam-yekh-sas-ci-cay, Lame Bull," Piegan Chief, 8 October 1855. Drawing by Gustavus Sohon. Courtesy of Washington State Historical Society, Tacoma.

previously so numerous, had experienced an alarming drop in numbers and had not recovered. "War, intoxicating liquor, small pox and similar gifts presented to the people by the white man," had reduced them, Point said, to "a third of what they had been a quarter of a century before."⁵⁸ The September 1853 report of Blackfeet agent Alfred J. Vaughan also reported "recurring waves of smallpox, measles, and cholera, causing population losses."⁵⁹ The consequences of this level of depopulation and the continuing threat of epidemics altered band sizes, marriage patterns, hunting strategies, as well as alliances and political leadership.⁶⁰

Blackfeet leaders groped in the changing circumstances of population loss, bison scarcity or its threat, and the intensified intrusions of other tribes—Cree, Crow, Métis, and Sioux.⁶¹ They willingly resorted to diplomacy, to treaties, to giving peace and diplomacy a chance—even if that meant confinement of a sort.⁶² Hudson Bay Company officials reported that the Piegan, for instance, sent peace delegations to Edmonton in September 1855, where a Piegan-Cree peace treaty emerged. Later, fearful that the fragile peace would be broken, tribes made new efforts at conciliation—this time to include wider involvement by more tribes of the Blackfeet Confederacy.⁶³ The Blackfeet seemed desperate for peace. Peace would allow them to replenish their numbers, to regain their equilibrium, and to secure their territories against the ever more aggressive assaults. Treaties are often signed when leaders see no other choice. In like fashion, the Métis, Sioux, and Chippewa reached “a great treaty of peace” in July 1858 when they agreed that the Cheyenne River was to be a dividing or boundary line between their hunting territories. Should buffalo or game become scarce on either side, the tribes should “have the privilege of crossing over said dividing line . . . and should be welcomed by said neighboring tribes.” Indians did not need federal white brokers to establish “common hunting grounds.”⁶⁴ They did it themselves.

On Wednesday, 17 October 1855, after lengthy discussions of what the Blackfeet were giving up “in their desire for peace and friendship,” especially in granting the Western Indians the liberty to hunt on the trail down the Musselshell to the Yellowstone, the Pend d’Oreille and others agreed to the new boundary lines.⁶⁵ The Blackfeet Council thereby avoided what had promised to be another treaty stalemate, with bouts of acrimony and posturing. Once again, as at Walla Walla and Hellgate, Indian opposition in public to treaty proposals quickly, miraculously, inexplicably evaporated. When Commissioners Cumming and Stevens reconvened the great council at

noon, the chiefs and headmen reviewed the tribal boundaries with “the aid of a map and a rough sketch of the country drawn on a buffalo skin.” The written proceedings register only compliance. No objections were recorded; if there were any, they disappeared or were swallowed.

In its final form the Blackfoot treaty contained sixteen articles. In addition to Article III recognizing common hunting grounds with its three provisos and Article IV defining the territory over which the Blackfeet tribes would “exercise exclusive control,” the most important issue was how to get to the “common hunting ground.” This was taken up in Article V. It provided detailed regulations limiting the entry points the Western tribes were to be confined to as they journeyed east. “They will not enter the common hunting ground, nor any part of the Blackfeet territory, or return home by any pass in the main range of the Rocky Mountains to the north of the Hell Gate or Medicine Rock Passes.” This comported with Stevens’s assertion that the Western Indians “use certain passes. The Medicine Rock, the Big Hole, and others further south.”

Article VI completed the treaty discussion of the common hunting ground by reminding the signers that, when not hunting in the common hunting ground or going to it or returning from it, the tribes consented “to remain in their own respective countries, except . . . when visiting each other for the purpose of trade or social intercourse.” The reason for this, explained Commissioner Cumming, was “only to preserve their hunting grounds distinctly apart. . . . The whites make these lines to show where each must hunt so there shall be no quarrels.”⁶⁶

The remaining articles hollowed out or lopped off considerable elements of tribal independence. Although important to the commissioners, these losses were of little significance to the Indian signers of the 1855 treaty. After all, there was nothing terribly threatening or conspicuous about the concessions demanded of the Indians by the government. They would keep their lands or at least

their rights to access the resources of those regions, and after all, that was all they had ever had. The chiefs and headmen of the bands and tribes would retain their conventional authority. If anything, that authority would be intensified and extended. Tribal leaders could see no danger of an imminent invasion of great numbers of whites such as the country to the south bordering the Oregon Trail had experienced. In all the territories held by the participating tribes at the council, white occupation was negligible. Nor was that expected to change. If there was an erosion of tribal authority and independence, it was insidious—invisible to the stressed tribal leaders.

In essence, there were two visions of the future represented at the council. The white one saw the inevitable decline of the buffalo, the continued, spiraling drop in Indian numbers, the coming of a general peace with the establishment of isolated and permanent Indian reservations, and a mixed but asymmetrical Indian and white society amid the establishment of a transcontinental railroad and territorial growth. Opposing this was an Indian vision featuring very limited change, coupled with federal guarantees of continuity. Above all, this Indian perspective would allow for the continued but peaceful tribal mobility across and within ceded lands and even beyond into a shared Indian landscape, the common hunting ground.⁶⁷ Dogged persistence, a willingness to engage in endless if intermittent skirmishes, and an irregular tribal diplomacy had created that situation historically. With federal help this older Indian commons could be reshaped, limited, redefined, and blessed with peace. The implications of such actions in terms of either human or bison numbers were not formally considered.

In return for the Indian concessions, the United States agreed to spend \$20,000 annually for ten years on goods and provisions, the so-called annuities, for the tribes of the Blackfoot Nation. In that same period an additional \$15,000 would be spent annually on farms and agricultural instruction, in educating children, and "in any other respect

promoting their civilization and Christianization." Bad Head's winter count reinforced the importance of the annuities and the changes they signified when he recorded that 1855 was the year "when we were first paid."⁶⁸ After a theatrical and idealistic last presentation by Commissioner Cumming, the commissioners signed the treaty, according to the record kept, and were followed by the chiefs, headmen, and delegates. "Great satisfaction prevailed and every chief of any importance signed the treaty."⁶⁹

The Blackfoot agent Edwin A. C. Hatch leveled a more realistic assessment. Not long after Commissioners Cumming and Stevens had left to return to their posts, Hatch confided to his diary

A man arrived from the Yellowstone (Fort Union) last night with a letter dated Oct. 7th. Sioux threaten to besiege Fort Clark—so we here are between two fires, the Sioux below and the combined tribes west of us—and we are quiet in the center of the most warlike and heretofore the most hostile tribes on the continent, vis. the Blackfeet.⁷⁰

* * * * *

Although the collected Blackfeet had anticipated a treaty of peace and amity to emerge from the Blackfoot Council, they were initially unprepared to bargain in land, which the common hunting ground provision required. By September, however, rumors began to emanate out of Forts Benton and Campbell on the Missouri indicating that something to do with territory was afoot. James Doty, secretary for the Treaty Commission, while on the Bow River in early September attempting to drum up interest in the Blackfoot Council, was asked whether it was true that the Blackfeet would be asked to give up their lands and hunting grounds south of the Missouri River to "the Flatheads, Pend Oreilles and Nez Perce for a home." The story, Doty reported, was much discussed within the various camps, and although Doty did his best to allay their

fears, a number of leaders decided to stay away.⁷¹ If the headmen were not there, they reasoned, they could not be a part of any land transaction. Although the rumors and leaks did not get the details exactly right, the essence of the message was accurate—the US government was going to give to the Western Indians, in recognition of their longstanding use, land east of the divide, and this would be done at the Blackfeet's expense. It may not have been the rumored "home," but it was close to it, a kind of home away from home, in the territory that had been previously assigned to the Blackfeet alone by the Fort Laramie Treaty.

Although both Commissioners Stevens and Cumming had obviously agreed on the common hunting ground provision, Stevens appears, from the treaty discussions and promises made at Walla Walla and Hellgate, in addition to his 1854 map, to have had the concept of a common hunting ground in mind for some time—certainly more so than did either his colleague Cumming or the Indian Office in Washington, D.C.

Further evidence for Stevens's principal responsibility for the common hunting ground designation can be found in the similarities between the treaty provisions of his Washington treaties and those in the Judith Treaty. The central feature of those earlier treaties was the establishment of a fixed and permanent home—a reservation of a small portion of their former lands—that was to be exclusively theirs. This policy had come out of the Indian Office under Luke Lea, Charles E. Mix, and George W. Manypenny. It did not represent Stevens's personal initiative. Stevens's contribution, however, did surface when he conceded to the Indians "rights of access to the open and unclaimed lands" they had just sold or ceded into the public domain. These rights to hunt, fish, and gather as they always had would now be exercised "in common" with the citizens of the territory. It was this key combination of Indian uses, exclusive *and* shared, that became the stamp of Stevens's innovative regional approach.

By recognizing a public area in Washington Territory to be shared "in common" by Indian and white alike—until claimed by white colonizers—Stevens explored new ground. It was also a model that he thought could be adapted to the sprawling Indian commons or war zone that constituted the buffalo country of the Northern Plains beyond the continental divide.

In line with his novel reservation policy, Stevens decided to acknowledge an exclusive territory for the American Blackfeet. Unlike the small parcels on Puget Sound, however, this reservation would closer resemble the pastoral examples of the Plateau, only bigger. In fact, the Blackfeet Territory could be huge. Whites were not clamoring for lands there and Congress could easily justify such a large reservation as politically acceptable. Adjacent to this exclusive territory defined by the Blackfoot treaty, Stevens established, as in Washington Territory, a limited commons—the "common hunting ground." It was defined as "open and unclaimed" and would be held "in common" for both the Blackfeet and the Western Indians. These on-reservation and off-reservation rights together formed a tidy package designed to resemble the new federal reservation policy enough to be reconcilable with it, and yet to dovetail with the customary buffalo hunting provisions of the treaties of Walla Walla and Hellgate. Promises had been made. Promises had been kept.

Again, Stevens did not have to create a common hunting ground; all he had to do was to recognize its *de facto* existence, structure it by means of imposing boundaries and guarantees, and define the nature and kinds of activities that would take place there. It would not be organic or dynamic as in former times. There would be an artifice to this federal creation it could not escape; its parentage was known. But this federal child, however limited, would permit the continuation of equestrian buffalo hunting for both the Blackfeet and the Western Indians. In many respects the common hunting ground was a human and moral concession to previous treaty commitments. It was

also an expedient one on the part of a stingy government.

Within the defined portion of the old contested territory, Stevens determined to transfer the essential intertribal peace of the west side of the Rockies, so often associated with the tribes of the Columbia Plateau, onto the east side, inhabited by warring Indians and, at the moment, sufficient bison. It was an engaging territorial mission. There was no acknowledgment, however, that peaceful common access would further deplete scarce game populations. Maintaining a healthy bison population was not Stevens's goal; establishing peace was paramount.

In retrospect, this formal creation of a defined, limited, and structured "common hunting ground" amounted to a kind of federal seizure of the public domain prior to citizenship or any actual land transfers. It was a legal "taking" as defined by the Fifth Amendment to the US Constitution, for it laid down regulations and controls regarding which parties were to be included, how they were to conduct themselves (peacefully), proper uses of the resources available, and avenues of entry—to say nothing of determining how long the federal creation would exist. And while it may be argued there had been due process, there had not been fair compensation, or, for that matter, any compensation. If these standards applied to the property rights of citizens subject to a common good, didn't they also apply to dependent sovereigns?

The treaty also envisioned for this common hunting ground a military presence in the form of forts and troops that would give the government an enforcement apparatus should it be needed. Finally, the creation of the common hunting ground was considered a temporary and expedient solution. It would meet immediate needs, buying time until a treaty of cession could be negotiated and a complete reservation policy effected.

What the government needed was time to institute a full reservation effort at moderate expense, not to protect the declining buffalo resource. Whether the government's view rep-

resented keen observation or simply the assumptions associated with a political and cultural agenda is almost beside the point. With the buffalo becoming increasingly scarce, the tribes would lose the incentives to undertake the long, difficult pilgrimages into either a peaceful buffalo commons or hostile territory and thus would remain in their home orbits. That would not only be to their advantage but would relieve some of the hunting pressure on those unpredictable pockets of bison that remained on the Northern Plains. On the other hand, if the tribes were determined to continue to go to buffalo, Stevens felt they needed to avoid the persistent and debilitating tribal altercations formerly attendant upon bison hunting. Otherwise, the martial ethos now so disruptive to the government plans for territorial development would persist as long as the buffalo.

The trick was to keep the common hunting ground viable long enough to accomplish the tribal passage from a hunting and foraging culture to one of "civilization" and agriculture. This was no easy task. Persistent fear of attack and staggering war losses, deadly disease pathogens, and liquor had imposed in the earlier contested commons informal, but very real, limits to tribal buffalo hunting. Once those obstacles were lessened, would hunters from all sides converge onto the buffalo commons, both old and new, where peace was now so encouraging? Would implosion occur?⁷² The answers to these questions dealt not only with the perception of bison numbers and locations but with the Indians themselves. Many whites were just as convinced that the Indians were disappearing, although it was never clear to nineteenth-century observers whether it was the Indian population or their culture that was vanishing, or both. Still, these were parallel trends, and in the minds of many, their convergence would make the ninety-nine-year life span of the common hunting ground sufficiently long. Then, too, the federal military presence would constitute a regulating mechanism on the movement of the tribes or on the exploitation of bison resources. If that were

not enough, a fully implemented and successful reservation policy would provide the means and the social pressure for the tribes to stay home.

Together, these constraints in the minds of the commissioners would be enough to ensure the continuing presence of the buffalo and the vitality of the common hunting ground—at least in the short term. As early as 1839 the Indian and the buffalo had been described as “Siamese twins” who would perish together.⁷³ We know the analogy was wrong. Stevens, however, would not take a chance. He sought to separate the twins, weaning the buffalo Indians from the nomadic life and substituting in its place reservations, stock, and agriculture. But that would take time. If the western tribes and the bison did not perish together, certainly they would negotiate together the inevitable transition that time would bring. Meanwhile, the common hunting ground was the government’s safety valve, for it would relieve economic pressure to support the transition. If the buffalo and Indians should somehow unexpectedly survive in the common hunting ground, then the ninety-nine-year lease would run out. In fact, the federal common hunting ground was negotiated out of existence within ten years and the buffalo were all but gone in thirty. Yet in concept, the common hunting ground was an experiment—an ameliorating one, given government parsimony—and a necessary if temporary stage in the Indians’ hope for survival.

NOTES

1. Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), 1:315-409, and *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), pp. 235-60.

2. Richard White, *“It’s Your Misfortune and None of My Own”: A New History of the American West* (Norman: University of Oklahoma Press, 1991), pp. 91-92.

3. As early as 1800 David Thompson, *Travels in Western North America, 1784-1812*, ed. Victor G. Hopwood (Toronto: MacMillan, 1971), p. 224, has

the Flatheads hunting buffalo and stealing horses across the Rocky Mountains. “The Journal of Charles LeRaye,” *South Dakota Historical Collections*, vol. IV (1908), p. 175, corroborates Flathead buffalo hunting east of the Rocky Mountains in 1801, along with the observation “The buffalo is not found on the west side of the Rocky Mountains and there these people subsist on fish and roots.” Francois-Antoine Larocque’s “Yellowstone Journal” in *Early Fur Trade on the Northern Plains: Canadian Traders Among the Mandan and Hidatsa Indians, 1738-1818*, ed. W. Raymond Wood and Thomas D. Thiessen (Norman: University of Oklahoma Press, 1985), pp. 218-29, tells us: “The Flatheads inhabit the Western side of the Rocky Mountains at the heads of Rivers that have a S. Western Course and flow in the Western Ocean. The Ridge of Mountains that parts those waters with the Missouri can be crossed in two days, and no more Mountains are found to the Ocean. They come every fall to the fort [forks] of the Missouri or thereabouts to kill Buffaloes of which there are none across the range of Mountains, dress Robes, dry meat with which the[y] return as soon as the winter sets in. They have deers of different kinds on their lands and beaver with which they make themselves Robe, but they prefer Buffaloes.” M. Catherine White, ed., *Journals of David Thompson, 1808-1812* (Missoula: Montana State University Press, 1950), pp. 208-10, relates how the Flatheads and their allies to the West claim ancient rights to hunt buffalo on the Plains: “We shall then [in the summer of the time the Bull Bison become fat] not only hunt upon the lands we claim, but extend our hunting on the lands of the Peegans, which will be sure to bring a battle between us.” See also Barry M. Gough, ed., *The Journal of Alexander Henry the Younger, 1799-1814* (Toronto: Champlain Society, 1992), vol. 2: 523-26: “The Saleeish or Flat Head Indians are numerous and dwell more to the Southward and along the Saleeish River where the Country is open [and] admits of their using horses of which they have great numbers. Buffalo are numerous upon the Plains towards the Southward, which quarter they frequent at particular seasons to make provisions. It is generally there where they encounter the Peegans and fight most desperately when they are attacked. . . . The Kullyspel or Earbob Indians, are also a tribe of Flat Heads, and frequently join with the Saleeish Indians, and accompany them to the Plains, to procure dried Buffalo meat. . . . The Sapetens or Nez Perce Indians, . . . are well provided with Horses, like all their neighbors, and frequently resort to the Plains in search of Buffalo.” And, of course, Gary E. Moulton, ed., *The Journals of Lewis and Clark Expedition*, 10 June–26 September 1806

(Lincoln: University of Nebraska Press, 1993), 8:85, tells of Cokahlarishkit or the River of the Road to Buffalo; see especially the entry for Thursday, 3 July 1806. And finally, Nicholas Point, *Wilderness Kingdom: The Journals and Paintings of Father Nicholas Point*, trans. Joseph P. Donnelly, S.J. (New York: Holt, Rinehart and Winston, 1967), p. 43, has the Flatheads departing for their winter buffalo hunt across the mountains: "Some fifteen parallel trails, formed by dragging wigwam poles, wound between two chains of mountains which sometimes drew together to offer at close range a view of what was most majestic about the wilderness, sometimes separated to reveal a series of infinitely varied and distant perspectives. This is what was called the great hunting trail."

4. U.S. House, Report of The Secretary of War, 41st Cong. 2 sess. 1869, H. Doc. 1, pt. 2, serial 1412, p. 64, Major General Hancock, Headquarters Department of Dakota, Report, 20 October 1869: "The passion for buffalo hunting is such, and its profits are a matter of such importance to the Indians, that even the tribes from the Pacific slope of the Rocky Mountains, and from Oregon and Washington, come over yearly to engage it. The Flatheads, Nez Perces, Pend d'Oreilles, and Coeur d'Alenes, are prominent among them." For earlier examples, see Elizabeth Vibert, *Traders' Tales: Narratives of Cultural Encounters in the Columbia Plateau, 1807-1846* (Norman: University of Oklahoma Press, 1997), p. 221 and chap. 7.

5. Paul S. Martin and Christine R. Szuter, "War Zones and Game Sinks in Lewis and Clark's West," *Conservation Biology* 13 (1999): 36-45. For Clark's observation, see Moulton, *Journals* (note 3 above), 16 September 1804.

6. Frederick A. Wislizenus, *A Journey to the Rocky Mountains in the Year 1839* (St. Louis: Missouri Historical Society, 1912), p. 150; as quoted in Martin and Szuter, "War Zones," and *ibid.*, p. 11.

7. Larocque, *Journal* (note 3 above), pp. 84-85; Ross Cox, *The Columbia River*, ed. and intro. by Edgar I. Stewart and Jane R. Stewart (Norman: University of Oklahoma Press, 1957), pp. 134-35.

8. Isaac Ingalls Stevens, *A True Copy of the Record of the Official Proceedings at the Council in the Walla Walla Valley, 1855*, ed. Darrell Scott (Fairfield, Wash.: Ye Galleon Press, 1985), p. 38.

9. Isaac I. Stevens, *Map Showing Indian Tribes in Washington Territory and on the Missouri and Its Tributaries to the Mouth of the Yellowstone* (Washington, D.C., 1854), map G4241 E6 1854 U5, University of Montana Library, Missoula, Mont.

10. Stevens, *Official Proceedings* (note 8 above), p. 103.

11. *Ibid.*, p. 44.

12. *Ibid.*, p. 46.

13. "Official Proceedings of the Hell Gate Treaty Council," with notes by Albert J. Partoll, 7 July 1855, *In the Name of the Salish and Kootenai Nation*, ed. Robert Bigart and Clarence Woodcock (Pablo, Mont.: Salish Kootenai College Press, 1996), p. 22.

14. *Ibid.*, 11 July 1855, p. 42.

15. For the Blackfoot name for the Judith River, see James Willard Schultz, *Blackfeet and Buffalo: Memories of Life among the Indians*, ed. Keith C. Seele (Norman: University of Oklahoma Press, 1962), p. 373, where in "Glossary of Geographical Names" the Judith River is given as "Otokwi Tuktai" or Yellow River. Schultz, writing under the name Walter B. Anderson, "In the Lodges of the Blackfeet," *Forest and Stream* 65, no. 27 (30 December 1905): 26, translates the Missouri as "Big River."

16. Albert Partoll, ed., "The Blackfoot Indian Peace Council," *Frontier and Midland: A Magazine of the West* 17 (spring 1937): 199-207, reprinted sources of *Northwest History*, no. 3, Montana State University, Missoula, Montana, 1937, pp. 3-11.

17. For Broken Arm or Maskepetoon, see John C. Ewers, "When The Light Shone in Washington," *Montana: Magazine of Western History* 6, no. 4 (autumn 1956): 3-11; Allen Ronaghan, "The Problem of Maskepetoon," *Alberta History* 24, no. 2 (spring 1976): 14-19; Ronaghan, "A Second Portrait of Maskepetoon," *Alberta History* 26, no. 3 (summer 1978): 36; and Hugh A. Dempsey, *Dictionary of Canadian Biography* (Toronto: University of Toronto Press, 1966), 9:537-38, for further bibliography.

18. National Archives, Records of the Bureau of Indian Affairs (Record Group 75), Documents Relating to Ratified and Unratified Treaties, 6 October 1855, Roll 5, F1020--; Pieguns, north and south, are 340 lodges or 3,060 souls; Bloods, with 290 lodges and 2,610; Blackfeet proper, 290 lodges and 2,610; Gros Ventres, 360 lodges and 2,880, for a total of 11,160. The Flathead Nation was broken down into Flatheads, 450; Pend d'Oreilles, 600; Kootenais, 350, for a total of 1,400, and the Nez Perces were lumped together and given the figure 2,500.

19. Luke Lea quotation cited in Prucha, *Great Father* (note 1 above), 1:324-25.

20. Letter to Luke Lea, St. Louis, 11 November 1851, from Commissioner of Indian Affairs, Fort Laramie, 1851, Ratified and Unratified Treaties (note 18 above), Roll 4; William H. Goetzman, *Army Exploration in the American West, 1803-1862* (New Haven, Conn.: Yale University Press, 1959), p. 278.

21. Partoll, "Blackfoot Indian Peace Council" (note 16 above), pp. 7-8.

22. Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties* (Washington, D.C.: US Government Printing Office, 1904), Article V, 2:737.

23. Richard White, "The Winning of the West: The Expansion of the Western Sioux in the Eighteenth and Nineteenth Centuries," *Journal of American History* 65, no. 2 (September 1978): 340. For Indian alarm at the growing numbers of whites who were marching across their lands in the Central Plains, see Elliot West, *The Way to the West: Essays on the Central Plains* (Albuquerque: University of New Mexico Press, 1995), pp. 40-45.

24. Ratified and Unratified Treaties (note 18 above), Roll 5, F1013.

25. Interview with Mike Oka, Blood Indian, by his son-in-law Harry Mills, 1936. Dempsey Papers, Glenbow Museum, Calgary, Alberta; Dog Takes A Gun, 29 June 1951, Claude Schaeffer Papers, Glenbow Museum.

26. While the official record noted that discussions regarding the boundaries, including that of a common hunting ground, had taken place on the 5 and 6 October 1855, that was all that was mentioned, Ratified and Unratified Treaties (note 18 above), Roll 5.

27. John Fahey, *The Flathead Indians* (Norman: University of Oklahoma Press, 1974), pp. 101 ff.; Kent D. Richards, *Isaac I. Stevens: Young Man in a Hurry* (Pullman: Washington State University Press, 1993), pp. 230-34. Specifically, see Kappler, *Indian Affairs* (note 22 above), Article III, 2:736-40.

28. See P. J. DeSmet map presented to D. D. Mitchell, National Archives, Washington, DC, Records of Bureau of Indian Affairs, RG 75, Map No. 251.

29. Hugh A. Dempsey, pers. comm. with author, 14 December 1999.

30. Martin and Szuter, "War Zones" (note 5 above), pp. 36-45.

31. For a thorough, imaginative and sophisticated treatment of the northwestern plains as a common and contested hunting ground, in the 18th century, where coalitions of bands interacted in peace and war, see Theodore Binnema, "The Common and Contested Ground: A History of the Northwestern Plains from A.D. 200 to 1806" (Ph.D. diss., University of Alberta, Edmonton, 1998).

32. Kingsley M. Bray, "Lone Horn's Peace: A New View of Sioux-Crow Relations, 1851-1858," in *Nebraska History* 66, no. 1 (spring 1985): 28-47, especially pp. 30-31.

33. Gregory R. Campbell and Thomas A. Foor, "The Big Horn Medicine Wheel: A Sacred Landscape and the Struggle for Religious Freedom," in *European Review of Native American Studies* 13, no. 2 (1999): 26-27.

34. Ibid., p. 324, for 18th century examples and Edwin Thompson Denig, *The Assiniboine*, ed.

J.N.B. Hewitt (Norman: University of Oklahoma Press, 2000), p. 10, for an example of peace brokering at Fort Union. On the Columbia River Plateau at Fort Nez Percés John Dease negotiated in the spring of 1826 a peace between Cayuse and Nez Percés and Snakes. See *Fur Trade at Empire: George Simpson's Journal Entitled Remarks Connected with the Fur Trade in the Course of a Voyage from York Factory to Fort George . . . with Related Documents*, Frederick Merk, ed. (Cambridge: Harvard University Press, 1968), p. 273.

35. Partoll, "Blackfoot Indian Peace Council" (note 16 above), pp. 8-10.

36. Stevens, *Official Proceedings* (note 8 above), p. 38.

37. One foundation for such an example may have been the situation in 1834, when government officials trying to find a remedy that would protect Indian lands from white encroachment called for a "neutral strip of land five miles wide between the lands of the two races, on which settlement would have been prohibited." Francis Paul Prucha, *American Indian Policy in Formative Years, 1790-1834* (Lincoln: University of Nebraska Press, 1970), p. 258, as cited in John J. Killoren, S.J., *Come Blackrobe: DeSmet and the Indian Tragedy* (Norman: University of Oklahoma Press), p. 64.

38. Kappler, *Indian Affairs* (note 22 above), Article IV, 2:737.

39. Partoll, "Blackfoot Indian Peace Council" (note 16 above), p. 7.

40. Hazard Stevens, *The Life of Isaac Ingalls Stevens* (Boston: Houghton, Mifflin, 1900), 1:113.

41. Partoll, "Blackfoot Indian Peace Council" (note 16 above), p. 7.

42. Ibid.

43. Ibid., p. 8.

44. Ibid., p. 7; Fahey, *Flathead Indians* (note 27 above), p. 102.

45. Ibid., p. 8.

46. Ibid., p. 8; and John C. Ewers, *The Blackfeet: Raiders on the Northwestern Plains* (Norman: University of Oklahoma Press, 1958), p. 218.

47. For "going to war" as "stealing horses," see Jacqueline Peterson, *Sacred Encounters: Father DeSmet and the Indians of the Rocky Mountain West* (Norman: University of Oklahoma Press, 1993), p. 49. For the Blackfeet promise as to what peace meant, see James Doty, Report, 6 September 1855, Ratified and Unratified Treaties (note 18 above), Roll 5. This also appears as James Doty, "A Visit to the Blackfoot Camp," ed. Hugh A. Dempsey in *Alberta Historical Review*, vol. 14, no. 3 (summer 1966), p. 22.

48. Thomas Adams, Special Agent for the Flatheads, Report, 4 October 1855; Ratified and Unratified Treaties (note 18 above), Roll 5, F1024-1025. See also Stevens, *Life* (note 40 above), 2:107-9.

49. W. H. Tappan, Sub-Agent for the Nez Perce, Report, Ratified and Unratified Treaties (note 18 above), Roll 5, F1026-1030.

50. Hugh A. Dempsey, *A Blackfoot Winter Count* (Calgary: Glenbow-Alberton Institute, 1965), p. 12.

51. For buffalo as spiritual or power beings to be listened to, to be obeyed, to be dreamed about and communicated with in the Blackfeet tradition, see George Bird Grinnell, *Blackfoot Lodge Tales* (Lincoln: University of Nebraska Press, 1962), pp. 140-41, as well as Howard L. Howard, *The Animals Came Dancing: Native American Sacred Ecology and Animal Kinship* (Tucson: University of Arizona Press, 2000), pp. 55-58. For the unpredictable wanderings and divisions of the bison, see Andrew C. Isenberg, *The Destruction of the Bison* (Cambridge: Cambridge University Press, 2000), pp. 65-75. Frank Gilbert Roe, *The North American Buffalo: A Critical Study of the Species in Its Wild State* (Toronto: University of Toronto Press, 1970), p. 188, describes buffalo movements as "inscrutable fluctuations."

52. Partoll, "Blackfoot Indian Peace Council" (note 16 above), p. 16.

53. Stevens, *Official Proceedings* (note 8 above), p. 45.

54. Hiram Martin Chittenden and Alfred Talbot Richardson, *Life, Letters and Travels of Father DeSmet* (New York: Francis P. Harper, 1905), 3:935. See also p. 994 for buffalo and Indians vanishing together. Agent Alfred J. Vaughan, in "Annual Report of the Commissioner of Indian Affairs," 33rd Cong., 2d sess., 1854, S. Doc., serial 746, 290-91, reported in 1846 that these same Assiniboiné had resorted to cannibalism as a result of buffalo shortages near the Missouri River. This event is also cited in Andrew C. Isenberg, "Towards a Policy of Destruction: Buffaloes, Law, and the Market, 1803-83," *Great Plains Quarterly* 12 (fall 1992): 236.

55. See Stevens, *Life* (note 40 above), 2:109. Jeffrey Ostler, "They Regard Their Passing as 'Wakan': Interpreting Western Sioux Explanations for the Bison's Decline," *Western Historical Quarterly* 30, no. 4 (winter 1999): 486, 490-92, attempts to reconstruct what Indians of the Plains thought about the decline of the buffalo. He also explores what the western Sioux thought might bring a return of the bison. There were many accounts and, unlike what they heard from whites, absolutely no consensus or certainty.

56. Dan Flores, "Bison Ecology and Bison Diplomacy: The Southern Plains from 1800 to 1850," *Journal of American History* 78, no. 2 (September 1991): 480-83; West, *Way to the West* (note 23 above), pp. 51-57; Stevens, *Official Proceedings* (note 8 above), pp. 45, 52. Agent Alfred Vaughn wrote in September of 1853 "It is . . . manifest to

every observing and reflecting mind, that notwithstanding many portions of this country abound so plentifully with buffalo and smaller game, that this source of their [Indians] subsistence is occupying annually a smaller portion of territory; and the improvident and reckless course pursued by the Indians in destroying them, must in a few years produce such a scarcity that distress as a natural consequence must follow." Alfred D. Vaughn to Col. Alfred Cumming, Superintendent Indian Affairs, St. Louis, Missouri, Executive Documents, House of Representatives, 33rd Cong., 1st sess., vol. 1, part 1, serial 710, no. 43, p. 354.

57. "Fort Benton Journal," *Contributions to the Historical Society of Montana*, vol. 10 (25 September 1855): 47.

58. James H. Bradley, "Affairs at Fort Benton from 1831 to 1869 from Lieutenant Bradley's Journal," *Contributions to the Historical Society of Montana*, vol. 3, p. 225 relates Alexander Culbertson's tragic experiences with the Blackfeet. For Nicolas Point, see Cornelius M. Buckley, *Nicolas Point, S.J.: His Life and Northwest Indian Chronicles* (Chicago: Loyola University Press, 1989), p. 245. Point also quotes from J.P. DeSmet's 1841 account and then later compares this "tragic decimation of the Blackfeet to the increase of the Flathead population." The Salish increase he attributes to the hand of God.

59. Vaughan, "Annual Report" (note 54 above), p. 352.

60. Gregory R. Campbell, "The Disease Question on the Northern Plains: An Inquiry about the Consequences of Depopulation on Social Structure," (University of Montana, Department of Anthropology, unpublished paper in author's possession 2001). See also Binnema, "Common and Contested Ground," (note 31 above), pp. 235-68, for the after effects of the small pox epidemic of 1781 and for the strategy of withdrawing from the contested area.

61. For the Sioux expansion, see Richard White, "The Winning of the West" (see note 23 above), pp. 319-43. For the expansion of Métis hunters as early as 1857 into Blackfoot home territory in sight of Chief Mountain, see H.Y. Hind, *Narrative of the Canadian Red River Exploring Expedition of 1857 and of the Assiniboiné and Saskatchewan Expedition of 1858, II* (London: Longman, Green, Longman Roberts, 1860), p. 360, as well as Gerhard J. Ens, *Homeland to Hinterland. The Changing Worlds of the Red River Metis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996), pp. 72-74.

62. Small Robes, for example, made peace with one Salish with important consequences. See John C. Ewers, *Ethnological Report on the Blackfeet* [Docket No. 279-A]. John Ewers, "Ethnological Report on the Blackfeet and Gros Ventre Tribes of Indians," Commission Findings, U.S. Indian Claims

Commission [Docket No. 279-A], (New York: Garland Publishing, 1974).

63. Hudson's Bay Company Papers, Edmonton Post Journal, Reel IM50, 29 September 1855, 25 October 1855, and 21 March, 1856, as cited in John S. Milloy, *The Plains Cree: Trade, Diplomacy and War, 1790-1870* (Winnipeg: University of Manitoba Press 1988), p. 110.

64. "Turtle Mountain Band of Chippewa Indians," 56th Cong., 1st sess., 1899-1900, S. Doc. 444, serial 3878, No. XXXII, Document No. 7, p. 152.

65. Partoll, "Blackfoot Indian Peace Council" (note 16 above), pp. 8-9.

66. Ibid.

67. Hugh Dempsey, *Indian Tribes of Alberta* (Calgary: Glenbow Museum 1979), p. 13.

68. Dempsey, *Blackfoot Winter Count* (note 50 above), p. 12. For the importance of these annu-

ities for Lame Bull, see Report of the Reverend E.D. Mackey, St. Joseph, Miss., 13 November 1856, in "Missionary Endeavor's of the Presbyterian Church Among the Blackfeet Indians in the 1850s," compiled by Guy S. Klett in *Journal of the Department of History* (University of Oregon, Presbyterian Historical Society) 19, no. 7 (1940-41): 343.

69. Partoll, "Blackfoot Indian Peace Council" (note 16 above), p. 11.

70. Edwin A. C. Hatch, *Journal* (1855), MS237.5, Newberry Library, Chicago, Ill.

71. Doty Report (note 47 above), Roll 5, F0987.

72. For a thorough discussion of this situation as it existed on the Central Plains, replete with buffer or neutral zones, changing power relationships and the creation of an intertribal peace, see West, *Way to the West* (note 23 above), pp. 61-63.

73. Wislizenus, *Journey* (note 6 above), p. 53.