

U.S. Supreme Court

United States v. Sioux Nation of Indians, [448 U.S. 371](#) (1980)

United States v. Sioux Nation of Indians

No. 79-639

Argued March 24, 1980

Decided June 30, 1980

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Syllabus

Under the Fort Laramie Treaty of 1868, the United States pledged that the Great Sioux Reservation, including the Black Hills, would be "set apart for the absolute and undisturbed use and occupation" of the Sioux Nation (Sioux), and that no treaty for the cession of any part of the reservation would be valid as against the Sioux unless executed and signed by at least three-fourths of the adult male Sioux population. The treaty also reserved the Sioux' right to hunt in certain unceded territories. Subsequently, in 1876, an "agreement" presented to the Sioux by a special Commission but signed by only 10% of the adult male Sioux population, provided that the Sioux would relinquish their rights to the Black Hills and to hunt in the unceded territories, in exchange for subsistence rations for as long as they would be needed.

In 1877, Congress passed an Act (1877 Act) implementing this "agreement" and thus, in effect, abrogated the Fort Laramie Treaty. Throughout the ensuing years, the Sioux regarded the 1877 Act as a breach of that treaty, but Congress did not enact any mechanism by which they could litigate their claims against the United States until 1920, when a special jurisdictional Act was passed. Pursuant to this Act, the Sioux brought suit in the Court of Claims, alleging that the Government had taken the Black Hills without just compensation, in violation of the Fifth Amendment.

In 1942, this claim was dismissed by the Court of Claims, which held that it was not authorized by the 1920 Act to question whether the compensation afforded the Sioux in the 1877 Act was an adequate price for the Black Hills, and that the Sioux' claim was a moral one not protected by the Just Compensation Clause. Thereafter, upon enactment of the Indian Claims Commission Act in 1946, the Sioux resubmitted their claim to the Indian Claims Commission, which held that the 1877 Act effected a taking for which the Sioux were entitled to just compensation, and that the 1942 Court of Claims decision did not bar the taking claim under *res judicata*. On appeal, the Court of Claims, affirming the Commission's holding that a want of fair and honorable dealings on the Government's

part was evidenced, ultimately held that the Sioux were entitled to an award of at least \$17.5 million, without interest, as damages under the Indian Claims Commission Act.....

...The Court of Claims' legal analysis and factual findings fully support its conclusion that the 1877 Act did not effect a "mere change in the form of investment of Indian tribal property," but, rather, effected a taking of tribal property which had been set aside by the Fort Laramie Treaty for the Sioux' exclusive occupation, which taking implied an obligation on the Government's part to make just compensation to the Sioux. That obligation, including an award of interest, must now be paid.

This case concerns the Black Hills of South Dakota, the Great Sioux Reservation, and a colorful, and in many respects tragic, chapter in the history of the Nation's West. Although the litigation comes down to a claim of interest since 1877 on an award of over \$17 million, it is necessary, in order to understand the controversy, to review at some length the chronology of the case and its factual setting.

Excerpt of the Court's Opinion:

For over a century now, the Sioux Nation has claimed that the United States unlawfully abrogated the Fort Laramie Treaty of April 29, 1868, 15 Stat. 635, in Art. II of which the United States pledged that the Great Sioux Reservation, including the Black Hills, would be "set apart for the absolute and undisturbed use and occupation of the Indians herein named." *Id.* at 636. The Fort Laramie Treaty was concluded at the culmination of the Powder River War of 1866-1867, a series of military engagements in which the Sioux tribes, led by their great chief, Red Cloud, fought to protect the integrity of earlier-recognized treaty lands from the incursion of white settlers. [Footnote 1]

The Fort Laramie Treaty included several agreements central to the issues presented in this case. First, it established the **Great Sioux Reservation**, a tract of land bounded on the east by the Missouri River, on the south by the northern border of the State of Nebraska, on the north by the forty-sixth parallel of north latitude, and on the west by the one

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hundred and fourth meridian of west longitude, [Footnote 2] in addition to certain reservations already existing east of the Missouri. The United States "solemnly

agree[d]" that no unauthorized persons "shall ever be permitted to pass over, settle upon, or reside in [this] territory." *Ibid.*

Second, the United States permitted members of the Sioux tribes to select lands within the reservation for cultivation. *Id.* at 637. In order to assist the Sioux in becoming civilized farmers, the Government promised to provide them with the necessary services and materials, and with subsistence rations for four years. *Id.* at 639. [Footnote 3]

Third, in exchange for the benefits conferred by the treaty, the Sioux agreed to relinquish their rights under the Treaty of September 17, 1851, to occupy territories outside the reservation, while reserving their

"right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill river, so long as the buffalo may range thereon in such numbers as to justify the chase."

Ibid.

The Indians also expressly agreed to withdraw all opposition to the building
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of railroads that did not pass over their reservation lands, not to engage in attacks on settlers, and to withdraw their opposition to the military posts and roads that had been established south of the North Platte River. *Ibid.*

Fourth, Art. XII of the treaty provided:

"No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three fourths of all the adult male Indians, occupying or interested in the same."