Rosebud Sioux Tribe v. United States, 9 F.4th 1018 (8th Cir. 2021)

- **Holding:** 1868 Fort Laramie Treaty, together with the subsequent historical record, the Snyder Act and the Indian Health Care Improvement Act, established a trust responsibility to provide competent physician-led health care to the Rosebud Sioux Tribe and its members.
- **Summary:** This decision is in an appeal by the United States from *Rosebud Sioux Tribe v. United States*, 450 F. Supp. 3d 986 (D.S.D. 2020), summarized at https://docs.google.com/document/d/1Oymheyn4pSkw_OVnTKYkJM-sBYnJXag1/edit, where the district court held that an enforceable trust duty was created under the 1868 Treaty of Fort Laramie to provide competent physician-led health care to the Rosebud Sioux Tribe's members. The controversy arose from "persistent deficiencies at Rosebud Hospital" that prompted the Tribe to sue for declaratory and injunctive relief. A divided Eighth Circuit panel affirmed.

  The majority began with a discussion of the relevant treaty provisions:

  > The promise that is central here is found at Article XIII of the Treaty, which states: "The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths, as herein contemplated, and that such appropriations shall be made from time to time ... as will be sufficient to employ such persons." In Article IV, the United States also agreed to provide a residence for the physician. And, in Article IX, the United States reserved a privilege to withdraw the physician after 10 years, but only if the United States paid $10,000 annually to the tribes. Because they were not proficient in the English language, each of the Sioux representatives indicated their signature on the Treaty by marking an "X."

  Thereafter, "the historical record reflects decades of the Government providing healthcare after the Treaty, in exchange for the Tribe's continued trust in the Government." Congress later adopted more general legislation related to the provision of health care to Indians, i.e., the 1921 Snyder Act, 25 U.S.C. § 13, for the "'conservation of [Indian] health'" and the 1976 IHCIA "'to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level.'" 25 U.S.C. § 1601(b). The majority did not construe these statutes themselves to create an enforceable trust relationship but did find that they "reinforced a prior existing duty and relationship between the Tribe and the Government." It concluded by endorsing the district court's analysis:

  > Given the special trust relationship between the Government and the Tribe, the history of reinforced promises, and the unacceptable state of healthcare provided at Rosebud Hospital, the district court's order is a treaty-based declaration to define (and assign) the duty owed to the Tribe in light of [Indian Health Service's] stated purposed to raise the level of Indian healthcare. The "physician-led" portion of the duty is based on the Government's promise—originating from the Treaty—to furnish a physician and to appropriate funds to employ the physician. The "competency" portion of the duty comes from the recognition that some "adjustment and accommodation" must occur to make a tribe whole when treaties are read decades later. ... After all, it is difficult to imagine a set of circumstances in which the Tribe would have agreed to the Government's delivery of

> "incompetent" healthcare. The declaratory judgment below gives meaning to promises made, and it assigns to the Government a measure of accountability for persistent deficiencies at Rosebud Hospital.

In sum, "[t]he Treaty created a duty, reinforced by the Snyder Act and the IHCIA, for the Government to provide competent, physician-led healthcare to the Tribe and its members."

The dissent, while sharing "the court's concern about healthcare in Rosebud[,]" argued that "[t]he historical evidence makes it clear that the physician was supposed to be a temporary instructor, not a permanent service provider[,]" and that "the doctor's role was to teach the Sioux how to administer medicine—not to provide healthcare to the entire Tribe." He examined the treaty's various provisions and found that it "does not discuss the physician with any detail, so the doctor's role is still unclear." Nevertheless, "the Treaty's terms sketch out a purposeful design: with the exception of the teachers (who were required by the Treaty to teach, regardless of the lack of supplies) and [a] second blacksmith, no Treaty professional was required to provide their services for the Sioux." In the dissent's view, "[t]he Treaty's goal was not to provide medical services to the Sioux for all of time; rather, it was to instruct the Sioux about how to provide their own medical care." The dissent drew the same conclusion from various post-treaty reports and other documents related to the various Sioux tribes which

> establish that the Treaty's purpose—understood by the Government and the Sioux alike—was to exert pressure on the Sioux to learn to live like white Americans. Likewise, the Government and the Sioux understood that most of the Treaty professionals' duty was not to provide services, but rather to teach the Sioux until they could reasonably take up the professions themselves. Like every other Treaty professional (except the second blacksmith), the physician's task was to educate.

- **Relevant (2021) Deskbook Section:** 1:7 n.1
- **Comment:** The majority's reasoning is rather thin gruel. It is a substantial leap from a treaty provision specifying one physician for a large geographical area and many thousands of Sioux members to a trust duty to offer modern health care services and attendant facilities. It bears remembering that various tribes and bands were parties to the 1868 Treaty that set aside the Great Sioux Reservation. Technically, moreover, the United States could discharge any such duty by paying the Tribes $10,000 annually.