

Becoming Dakota Territory

The 1861 Organic Act and the Struggle for Territorial Status

The signing of the 1861 Organic Act by President James Buchanan and the subsequent creation of Dakota Territory marked an important step in the settlement of the western United States, yet the new territory did not come into existence with the stroke of a presidential pen. Rather, it was part of a process that began in the early years of the nation's independence. With each new territory, including Dakota Territory, the United States advanced its expansion from the Atlantic Seaboard to the Pacific Coast. By examining the process for creating new territories generally, and the attempts to establish Dakota Territory specifically, we can more fully comprehend the issues and challenges involved in the pioneer settlement of the land we now know as the states of North Dakota and South Dakota.

The issue of territories and their role emerged early in the country's history. Shortly after declaring independence, the United States had to develop a policy for dealing with the unsettled western lands and the numerous Indian nations included within the boundaries of the new country.¹ As early as 1778, Maryland insisted that it would accept the Articles of Confederation as a common government among the states upon the condition that the states agreed to give control of all western lands to the national Congress.² As a result, the Continental Congress

The author presented a variation of this article on 20 May 2011 as the opening address for the annual history conference of the South Dakota State Historical Society. The conference title was "Being Dakota: Territorial Sesquicentennial, 1861–2011."

1. Although not formally designated until the 1783 Treaty of Paris, the United States' western boundary was the Mississippi River. "Treaty of Paris, 1783," International Treaties and Related Records, 1778–1974, General Records of the United States Government, Record Group 11, National Archives, Washington, D.C.

2. Richard B. Morris, *The Forging of the Union, 1781–1789* (New York: Harper & Row, 1987), p. 227.

passed a resolution in October 1780 stating that “the unappropriated lands that may be ceded or relinquished to the United States, . . . shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican states, which shall become members of the federal union, and have the same rights of sovereignty, freedom and independence, as the other states.” The resolution further stipulated that “the said lands shall be granted and settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled, or any nine or more of them.”³ With this resolution, the Continental Congress addressed early the initial concern over the states’ competing land claims while paving the way for future states to be created.

Because American Indian tribes inhabited the western lands where eventual states were foreseen, the United States also needed to address the issue of Indian policy. As a result, Article 9 of the Articles of Confederation specifically stated that Congress was responsible for “regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not interfered or violated.”⁴ On 22 September 1783, the Continental Congress bolstered Article 9 by prohibiting settlement on any lands inhabited or claimed by Indians. At the recommendation of an eleven-man committee, a proclamation titled “An Ordinance prohibiting the settlement and purchase of certain lands” became law. The committee, by consensus, believed that prohibiting such settlements without congressional authority was deemed necessary for the best interests of the country, as well as for maintaining “harmony and friendship with the Indians, not members of any of the states.”⁵ In short, members of Congress feared that any uncontrolled settlement on lands already occupied by Indian tribes would result in open hostilities, to the detriment of all parties involved, and would interfere with the creation of new states.

3. Worthington C. Ford, et al., eds., *Journals of the Continental Congress, 1774–1789*, 34 vols. (Washington, D.C.: Government Printing Office, 1904–1937), 18:915.

4. Articles of Confederation, art. 9, par. 4.

5. “Proclamation of the Continental Congress, September 22, 1783,” *Journals of the Continental Congress*, 25:602.

The issue of western lands became increasingly important for the national congress under the Articles of Confederation, and in April 1784, Thomas Jefferson, serving as a congressional delegate from Virginia, chaired the committee that drafted the first major land legislation designed to establish future states.⁶ Titled “A Plan of Government for the Western Territory,” the legislation included several key phases. First, Congress would create new states from lands ceded by individual states or purchased from Indian nations. Then, with congressional authority, the settlers (or, more specifically, “free males of full age”), could convene to establish a temporary government and organize counties. Once the proposed state acquired at least twenty thousand free residents, it could receive permission from Congress to hold a convention for the purpose of creating a permanent state constitution. Finally, when the proposed state had as many free inhabitants as the least-populated of the original thirteen states had, it would be admitted “on an equal footing with the said original states.”⁷

The following year, Congress took yet another crucial step in preparing for the settlement of western lands by passing the Land Ordinance of 1785, which stipulated the process for surveying territories and plating townships.⁸ Although both the 1784 and 1785 land ordinances were important steps in establishing western settlement policy, neither one dealt with how the proposed states would be governed until they were ready to be admitted.⁹ Furthermore, the use of the term “state” in both land ordinances soon became the subject of debate among congressional delegates. The issue at hand centered around how the 1784 and 1785 land ordinances referred to newly settled areas as “states,” when the term, in its true political sense, implied a sovereignty that did not immediately exist. Consequently, over the next couple of years, Congress

6. Morris, *Forging of the Union*, p. 227. Committee members included Jefferson, Samuel Chase of Maryland, and David Howell of Rhode Island. Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington: Indiana University Press, 1987), p. 46.

7. American Continental Congress, “Friday, April 23, 1784,” *Journals of the American Congress from 1774 to 1788*, 4 vols. (Washington, D.C.: Way & Gideon, 1823), 4:379–80.

8. Ibid., “Friday, May 20, 1785,” pp. 520–22.

9. Onuf, *Statehood and Union*, p. 49.

developed a clearly recognized distinction between “territories” and their temporary governments, which were largely overseen by Congress, and the eventually established “states” that enjoyed the same degree of sovereignty as the original thirteen.¹⁰

Using the first land ordinances as starting points, congressional committees continued to discuss the issue of the settlement and governing of western territories. Then, in July 1787, Congress passed a new ordinance. A committee consisting of Nathan Dane of Massachusetts, Melancton Smith of New York, John Kean of South Carolina, and Edward Carrington and Richard Henry Lee of Virginia drafted a revised ordinance, which the state congressional delegations unanimously adopted on 13 July 1787. Officially titled “An Ordinance for the government of the territory of the United States North West of the river Ohio,” it became more commonly known as the Northwest Ordinance.¹¹

Even after the Articles of Confederation were replaced with the United States Constitution, the Northwest Ordinance remained the basis for establishing new territorial governments well into the nineteenth century. Under the measure, Congress appointed a governor, secretary, and three justices to fulfill the initial executive, legislative, and judicial roles in a new territory.¹² In addition to serving as the commander-in-chief of the militia, the governor also had the authority to establish counties and townships, whose boundaries could later be altered by the legislature as deemed appropriate. Once a territory’s population reached five thousand free male inhabitants, representatives were to be elected to a legislature consisting of a council and a house of representatives. This general assembly would be permitted to make laws and elect a nonvoting delegate to represent the territory in Congress.¹³ Once the territory gained sixty thousand free citizens, a

10. Ibid., p. 45.

11. Ibid., p. 58.

12. After the ratification of the United States Constitution, the president appointed these officials with confirmation by the United States Senate. [Herbert T. Hoover,] “Territorial Politics and Politicians,” in *A New History of South Dakota*, ed. Harry F. Thompson (Sioux Falls, S.Dak.: Center for Western Studies, Augustana College, 2005), p. 96.

13. “An Ordinance for the government of the territory of the United States North West of the river Ohio,” *Journals of the Continental Congress*, 32:334–43. Another section of the Northwest Ordinance stated that “the utmost good faith shall always be observed

state constitution could be submitted for congressional approval. Congressional approval gave the former territory the political status of a new state, admitted to the Union as an equal to all existing states.¹⁴ The organic acts that created later territories, such as the 1861 Organic Act that established Dakota Territory, included many of these same provisions.¹⁵

Beginning with the 1787 Northwest Ordinance and continuing with each newly created territory, the opening of western lands for non-Indian settlement brought both positive and negative consequences. According to Peter Onuf, a well-known historian and author specializing in the early American Republic, the positive aspects of adding new western territories included significant growth and greatness for the country as a whole. New settlements meant economic and commercial development that would contribute to the United States' overall growth, which, in turn, would make for a stronger and more harmonious union. In addition, land sales provided a dependable means by which revenue could be raised to pay off the nation's public debt. Furthermore, a controlled western expansion overseen by Congress could help to ensure that peace would be adequately maintained with the numerous Indian nations of the West as well as with neighboring territories, states, and European colonial powers.¹⁶

Such prospects certainly held promise for the new country, but there were also a number of negative concerns that had to be considered. For example, Onuf relates, many early congressional delegates

towards the Indians, their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorised by Congress. . . ." Such "just and lawful wars" became an important factor in the creation of new territories and the settlement of the American West.

14. Howard R. Lamar, *Dakota Territory, 1861–1889: A Study of Frontier Politics* (New Haven, Conn.: Yale University Press, 1956), pp. 2–3.

15. In legal terms, an organic act or statute referred to an act that created a new territory. The term is derived from the French *reglement organique*, which refers to any acts that create regulations for a government or government administrative agency. US-Legal, Inc., "Organic Statute Law & Legal Definition," <http://definitions.uslegal.com/o/organic-statute>, accessed 19 April 2011.

16. Onuf, *Statehood and Union*, p. 3.

feared increased lawlessness as settlers moved farther away from the already settled and civilized states of the Atlantic coastal region. This situation could, in turn, easily contribute to a higher risk of frontier warfare, rather than the greater harmony that others predicted. In a worst-case scenario, some viewed western territorial expansionism as a factor that would increase sectionalism and disunity.¹⁷ In hindsight, the United States experienced each of these positive and negative consequences at some point, and Dakota Territory was no exception.

The territory that came to be known as Dakota actually began as part of the much-larger Louisiana Territory, which the United States acquired from France in 1803.¹⁸ Throughout much of the nineteenth century, Louisiana Territory was divided into smaller territories and, finally, states. In fact, prior to 1861, the various territories of Louisiana, Missouri, Michigan, Wisconsin, Iowa, Minnesota, and Nebraska included all or part of the geographical area that became Dakota Territory.¹⁹ Throughout this process, new territories generally followed the surveying procedures and stages of political development laid out by the Land Ordinance of 1785 and the Northwest Ordinance, respectively.²⁰

The story of the beginnings of Dakota Territory is not a simple one, and the complications that slowed its initial growth become clearer when examined against the related events associated with statehood for neighboring Minnesota. Between 1853 and 1856, Minnesota experienced boom years in which the population increased steadily to

17. Ibid.

18. On 30 April 1803, the French minister of the public treasury, François M. Barbe-Marbois, and American diplomats Robert Livingston and James Monroe signed the Louisiana Purchase Treaty. News of the purchase was not made public in the United States until 4 July 1803, more than four months later. Congress ratified the treaty on 25 October 1803. See François Barbe-Marbois, *The History of Louisiana* (1833; reprint ed., Baton Rouge: Louisiana State University Press, 1977), p. 286, and Dayton Duncan and Ken Burns, *Lewis & Clark: The Journey of the Corps of Discovery* (New York: Alfred A. Knopf, 1997), p. 15.

19. Jon K. Lauck, *Prairie Republic: The Political Culture of Dakota Territory, 1879–1889* (Norman: University of Oklahoma Press, 2010), p. 4.

20. Bruce G. Milne and Herbert T. Hoover, *A Teaching Guide for the Cultural History and Geography of the Western Frontier and Upper Missouri Region* (Vermillion, S.Dak.: Educational Research and Service Center, University of South Dakota, 1975), pp. 2–3.

the point that made applying for statehood possible. Throughout its existence, Minnesota Territory included the area that is now present-day Minnesota plus the region extending to the Missouri River. Statehood supporters debated whether the proposed borders should create a south-north or east-west state entity. In the first case, the state's boundaries would run from Iowa north to Canada, with the Big Sioux and Red rivers marking the western border. In the second proposal, the state would include much of the territory's existing region to the west.²¹ When Congress passed the bill creating the state of Minnesota, the boundaries outlined for the state followed the south-north plan. Meanwhile, Nebraska Territory, as created by the 1854 Kansas-Nebraska Act, included the region directly west of the Missouri River up to the forty-ninth parallel. The Missouri River, therefore, served as a natural boundary between Minnesota and Nebraska territories. According to its statehood bill, however, the state of Minnesota's lower western boundary, as favored by the south-north proposal, extended just to the east from a point on the Big Sioux River. Consequently, the region between Minnesota's western border and the Missouri River was no longer included in any organized territory, creating an opportunity for the designation of an entirely new territory.²²

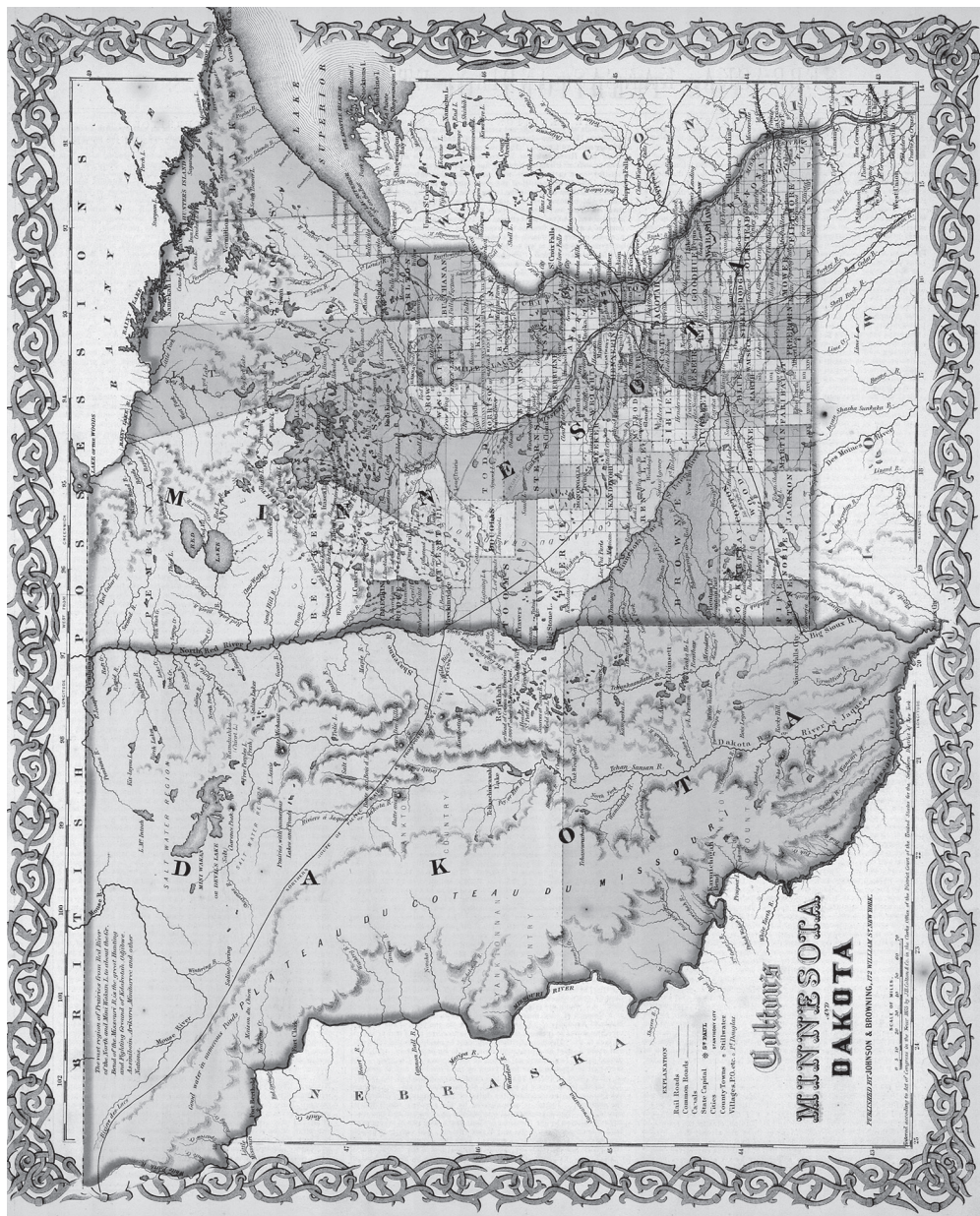
The prospect of a new territory to the west of Minnesota greatly appealed to politicians and land speculators who recognized the financial opportunities that a new territory held. A variety of townsite companies, including the Dakota Land Company, the Minnesota and Dakota Land Company, and the Big Sioux Land Company, began organizing in 1857 with their sights set on establishing new communities.²³ The

21. William E. Lass, "The First Attempt to Organize Dakota Territory," in *Centennial West: Essays on the Northern Tier States*, ed. William L. Lang (Seattle: University of Washington Press, 1991), pp. 143–44.

22. Herbert S. Schell, *History of South Dakota*, 4th ed., rev. John E. Miller (Pierre: South Dakota State Historical Society Press, 2004), pp. 65, 70.

23. Lass, "First Attempt to Organize Dakota Territory," p. 145.

(facing page) This map drawn shortly before Minnesota achieved statehood shows the proposed state's north-south orientation, along with the leftover land extending to the Missouri River that would eventually become part of Dakota Territory.



The best map of Minnesota and Dakota
in the world. It shows the boundaries of the
various counties, the location of the
various cities, and the location of the
various towns. It also shows the location of
the various lakes and rivers.

LEGEND
Rail Roads
County Seats
Cities
State Capital
County Seats
Villages 1000 ft. or more
Villages 500 ft. or more

Upton's
MINNESOTA
DAKOTA
PUBLISHED BY JOHNSON & BROWN, 172 WILLIAM STREET, N.Y.

Scale 1:100,000
Published by Johnson & Brown, 172 William Street, N.Y.
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previous year, in October 1856, organizers with the same intentions had already founded the Western Town Company of Dubuque, Iowa. Among townsite companies, the Dakota Land Company, based out of Saint Paul, enjoyed a great deal of political favor. Given the fact that Samuel Medary, the Minnesota territorial governor, and a number of other territorial officials spearheaded the business, it is not surprising that it easily received a charter and became incorporated on 21 May 1857 during a special legislative session.²⁴

Stockholders of the Dakota Land Company had plenty of reason for optimism. With Minnesota statehood pending and treaty negotiations underway between the federal government and the Yankton Sioux, the creation of a new territory seemed imminent. In response, the Dakota Land Company began making plans in earnest. The first step involved acquiring land as soon as the Yankton Sioux officially agreed to move to a designated area, thus making way for white settlement. The next steps involved establishing townsites and counties. If all went as planned, the townsites would serve as railheads for the extension of the railroad. In addition, designated townsites could become the seats of government for the newly created counties. Finally, with Democratic president James Buchanan in office, the Dakota Land Company, with its support from the Democrat-heavy territorial government, planned to have an established townsite that would serve as territorial capital.²⁵

On 23 May 1857, only two days after the incorporation of the Dakota Land Company, the Minnesota territorial legislature created new counties in what is now the southwestern part of Minnesota and in the Big Sioux River valley in present-day South Dakota. The legislature named the two Big Sioux valley counties Midway and Big Sioux, and the legislation went so far as to name some specific county seats, including the town of Medary as the seat of Midway County.²⁶ Furthermore, the legislation also authorized Governor Medary to appoint county commissioners who would then organize the county govern-

24. Ibid.; Hoover, "Territorial Politics and Politicians," p. 98.

25. Hoover, "Territorial Politics and Politicians," p. 98; Schell, *History of South Dakota*, p. 73.

26. Dakota Land Company officials later designated Sioux Falls City as the seat of Big Sioux County. Lass, "First Attempt to Organize Dakota Territory," p. 151.

ments. The expediency in designating county seats was intended to help Dakota Land Company officials by creating the impression that the region had already been settled and was prepared for additional settlers. Of course, the more organized and settled the counties were, the greater the advantage they would have when Congress created the new territory, which would need a site for the territorial capital.²⁷

This concept of settling a region before being legally permitted to do so is what Minnesota territorial justice Charles E. Flandrau later described as an attempt “to form government on the principles of ‘squatter sovereignty’ pure and simple.”²⁸ On the same day the Dakota Land Company received its charter, it sent a settlement expedition to the Big Sioux valley for the express purpose of claiming townsites. Led by Alpheus G. Fuller, the expedition included forty-one men plus wagons loaded with building supplies and enough provisions to last a year.²⁹ Despite their evident preparedness, Dakota Land Company officials soon discovered that townsite locations along the Big Sioux and Missouri rivers were already being established by other companies.

One month before Fuller’s party arrived at the Big Sioux River, representatives of the Western Town Company from Iowa had already claimed a townsite, which they called Sioux Falls. Recognizing the potential of the site, Fuller’s group was undeterred and chose a location nearby, naming it Sioux Falls City.³⁰ At the same time, Daniel M. Frost and his partner, John Blair Smith Todd, were operating a trading company based out of Sioux City, Iowa. Called D. M. Frost and Company, it had been conducting business from well-placed trading posts along the Big Sioux and Missouri rivers for several years. The posts’ strategic

27. Lass, “First Attempt to Organize Dakota Territory,” p. 146.

28. Charles E. Flandrau, preface to “The First Organized Government of Dakota,” by Governor Samuel J. Albright, *Minnesota Historical Collections* 8 (1898): 129. Judge Flandrau of Saint Paul was a stockholder in the Dakota Land Company and the namesake for the townsite of Flandreau, South Dakota. Gary D. Olson, “Cities and Towns,” in *A New History of South Dakota*, p. 162.

29. Lass, “First Attempt to Organize Dakota Territory,” pp. 147–48. Fuller’s party traveled by steamboat up the Minnesota River to a landing near Fort Ridgely. The wagons then proceeded to the Redwood River, Hole-in-the-Mountain Pass, and the Big Sioux River.

30. Schell, *History of South Dakota*, p. 73.

locations were made with the prospect of future townsites in mind, with the main post being situated near the eventual location of Yankton.³¹ As Frost and Todd shifted their business interests from trading posts to townsite companies, investors from Sioux City joined them in creating the Upper Missouri Land Company in February 1858.³² In addition, a movement based out of the fur trading post of Pembina along the Red River promoted the creation of not one, but two territories from the unorganized region that would lie directly west of Minnesota once statehood was gained. Just as the Dakota Land Company, Western Town Company, and D. M. Frost and Company hoped to establish the site of a territorial capital in the south, the Pembina faction hoped that the trading post community of Saint Joseph, located a short distance west of Pembina, would be the capital of a northern territory.³³

Of the various townsite enterprises, the Dakota Land Company took the most aggressive approach toward creating a new territory. As mentioned, Governor Medary and many Minnesota territorial politicians and other prominent individuals acted quickly to create new townsites, counties, and county seats. Once Congress passed the Enabling Act for Minnesota statehood, the Dakota Land Company's squatter government took action. Because many officials believed that a new territory would be established as soon as Minnesota became a state, an election for territorial delegate was set for 13 October 1857. Despite this hope, Minnesota failed to gain statehood until May 1858, and Congress did not approve the creation of Dakota Territory until March 1861. This turn of events, however, did not prevent the squatter government from electing Alpheus Fuller, who had led the Dakota Land Company's 1857–1858 settlement expedition to the Big Sioux valley, as territorial delegate.³⁴

When Fuller arrived in Washington, D.C., he presented a petition to Congress requesting that “so soon as the Territory of Dakota may be organized he be admitted to a Seat in the House of Representatives

31. Ibid., p. 70; Hoover, “Territorial Politics and Politicians,” p. 100.

32. Herbert S. Schell, *Dakota Territory during the Eighteen Sixties* (Vermillion, S.Dak.: Governmental Research Bureau, University of South Dakota, 1954), p. 5.

33. Lamar, *Dakota Territory*, p. 53.

34. Schell, *Dakota Territory during the Eighteen Sixties*, pp. 10, 12.

as the Delegate for Said Territory.”³⁵ On 2 June 1858, Fuller presented Congress with a written statement claiming those he represented numbered “from ten to fifteen thousand” and were “settled principally in the eastern portion of said Territory.”³⁶ Almost immediately, opponents of the Dakota Land Company began contesting Fuller’s numbers. In fact, some accounts later placed the 1857–1858 winter population of Sioux Falls at as few as sixteen or seventeen men.³⁷ Fuller’s biggest obstacle, however, came from the Minnesota territorial delegate, William W. Kingsbury, who argued that the western portion of Minnesota Territory, situated outside of the Minnesota state border and extending to the Missouri River, continued to exist until Congress created a new territory. Consequently, Kingsbury argued that he, not Fuller, represented the region as territorial delegate. Congress created a significant setback for the Dakota Land Company’s squatter government when, on 3 June 1858, it ruled in favor of Kingsbury and passed a resolution stating that Congress must officially create a new territory before those living west of Minnesota were entitled to a delegate of their own.³⁸

A second attempt to establish a squatter government came in September 1859, when the voters of the still-unofficial territory elected Wilmot W. Brookings, a representative of the Western Town Company, to serve as governor. In this same election, Fuller once again ran for territorial delegate, only to be soundly defeated by Saint Paul newcomer Jefferson P. Kidder in a vote of 1,938 to 147.³⁹ Despite Kidder’s certificate of election, which acting governor Brookings signed, Congress once again refused to accept any delegate until legislation formally created a territory.⁴⁰ Yet, Congress did not feel compelled to act with any haste in passing an organic act to create a new territory.

Given its political influence and organization, it is difficult at first

35. Lass, “First Attempt to Organize Dakota Territory,” p. 155.

36. U.S., Congress, House, *Congressional Globe*, 35th Cong., 1st sess., 2 June 1858, pp. 2660–61.

37. Lass, “First Attempt to Organize Dakota Territory,” p. 155.

38. Schell, *Dakota Territory during the Eighteen Sixties*, p. 12.

39. *Ibid.*, p. 13. Despite the more than two thousand votes cast in the 1859 election, one report listed the population of Sioux Falls at twenty-five individuals—twenty-three men and two women.

40. Schell, *History of South Dakota*, pp. 74–75.



Wilmot W. Brookings, the Western Town Company official who was elected governor of the squatter government in 1859, went on to serve as a judge once Dakota Territory was legitimately organized.



Jefferson P. Kidder ran unsuccessfully for delegate of the squatter government but later gained a seat on the territory's supreme court. In this view of the court taken during the early 1860s, he is seated on the left at the top table.

glance to understand why the Dakota Land Company suffered in its attempts to spur the creation of a new territory. Upon deeper investigation, however, it becomes more apparent that several obstacles combined to block the efforts. First, the Dakota Land Company was not the only enterprise promoting settlement and a new territorial government. The Pembina faction continued its efforts advocating northern and southern territories, while Frost and Todd's Upper Missouri Land Company promoted its settlements and sought a territorial government that would benefit them. While both groups competed against the Dakota Land Company, Frost and Todd were especially effective in lobbying for their own interests. Todd even went so far as to visit Washington, D.C., in 1858 to oppose Fuller's claim as territorial delegate and to question the number of votes cast in the October 1857 election. Furthermore, early in June of 1858, hostile Yanktonais Sioux caused the evacuation of the Dakota Land Company's Medary and Flandreau townsites. As if local issues were not enough to hamper the company's success, the impact of the slavery issue on the national level also loomed large. Quite simply, the issue of new territories and their slavery status was so volatile at the time that Congress remained hesitant to create new territories.⁴¹

In order for any of the companies to profit from land speculation, it was evident that the Yankton Sioux would have to be removed from the region to make way for future white settlement. As early as 1857, the federal government sent an agent to gather some of the principal Yankton leaders and bring them to Washington, D.C., to negotiate a treaty. The agent, however, lacked any personal connection to the Yankton tribe and was essentially disregarded. Because Todd had already established himself in the area and successfully conducted business as a licensed trader, he became the obvious choice to help in negotiating with the Yankton Sioux.⁴²

To negotiate a treaty successfully, Todd knew that he had to gain favor with two individuals in particular: Charles Picotte and Struck-

41. Schell, *Dakota Territory during the Eighteen Sixties*, p. 15; Lass, "First Attempt to Organize Dakota Territory," p. 158.

42. "General Todd," *South Dakota Historical Collections* 7 (1914): 498.



Charles Picotte was a trusted interpreter who helped to negotiate the 1858 treaty opening Yankton lands to white settlement. He appears second from left at back in this photograph of a Yankton delegation taken by A. Zeno Shindler in 1867. Struck-by-the-Ree sits second from the right.

by-the-Ree. Picotte, whose father was French and whose mother was Yankton, enjoyed favorable relationships with the Indians and often served as an interpreter. Indeed, Picotte often assisted Frost, Todd and Company in carrying out its business with the Yanktons. Given Picotte's association with both Todd and the Yanktons, plus his ability to serve as an interpreter, Todd immediately sought his assistance in the treaty negotiations.⁴³

43. Robert F. Karolevitz, *Challenge: The South Dakota Story* (Sioux Falls, S.Dak.: Brevet Press, 1975), pp. 45, 47. After the Yankton Treaty of 1858 was successfully signed, Picotte received a considerable amount of land for his role in the treaty process.

Struck-by-the-Ree, the second man Todd needed, was a Yankton leader who accepted the encroaching white settlement as inevitable and supported the cession of land. According to a well-known quotation attributed to him, Struck-by-the-Ree once told his fellow Yanktons, "The white men are coming in like maggots. It is useless to resist them. They are many more than we are. We could not hope to stop them. . . . We must accept it, get the best terms we can get and try to adopt their ways."⁴⁴

In the end, Todd escorted sixteen Yankton leaders to Washington, where the Yankton Treaty was signed on 19 April 1858. According to the terms of the treaty, the Yanktons agreed to accept a 430,000-acre reservation in return for \$1.6 million in annuities to be paid over the next fifty years. The amount of land ceded to the United States under the terms of the treaty totaled more than 11.1 million acres.⁴⁵

Although Todd's role in the 1858 Yankton Treaty cannot be overstated, one complication involving the carrying out of the treaty soon became evident. Government and townsite officials generally understood that the ceded lands could be settled one year after the April 1858 treaty signing. On the other hand, the Yanktons were under the impression that they did not have to remove to their reservation tract until one year after the treaty's ratification, which did not occur until 17 February 1859. Nonetheless, on 10 July 1859, the Yanktons began to relocate, thus making way for white settlers to enter the ceded lands without interference. In essence, this date can be considered the unofficial opening of Dakota Territory.⁴⁶

As the Yanktons began moving to their reservation, the Upper Missouri River Land Company went through some organizational changes, resulting in the newly created Yankton Land and Town Company with Todd as its president.⁴⁷ As the likelihood of a new, formally or-

44. Ibid., p. 46. Struck-by-the-Ree is sometimes known as Strike-the-Ree or Old Strike.

45. Herbert T. Hoover, *The Yankton Sioux* (New York: Chelsea House Publishers, 1988), p. 30.

46. Schell, *History of South Dakota*, pp. 71–72.

47. Norman Thomas, "John Blair Smith Todd, First Dakota Delegate to Congress," *South Dakota Historical Collections* 24 (1949): 187.

ganized territory increased, Todd and Frost used any influence they had to promote the creation of the territory and to have the territorial capital located at one of their townsites. In the fall of 1859, Todd went to Washington, D.C., with a petition of more than four hundred signatures supporting the new territory.⁴⁸ Todd, however, faced the same political circumstances Fuller and Kidder had encountered when they delivered petitions. Given that the Democratic party controlled both the House of Representatives and the Senate during the thirty-fifth United States Congress, the creation of a new northern territory that could eventually become one or more free states was not well received, and Todd's efforts failed.⁴⁹

Todd was not one to allow this failure to deter his efforts. In fact, he spent the winter of 1860–1861 winter organizing rallies and petitions, and he returned to Washington with another petition in early 1861.⁵⁰ With several states already seceding and civil war looming on the horizon, the political climate had changed considerably since Todd's last visit to the nation's capital, and Congress was now more receptive toward new territories. Consequently, the Senate passed a bill supporting the creation of Dakota Territory on 26 February, and the House of Representatives passed the bill on 1 March. The following day, 2 March 1861, President Buchanan signed the Organic Act officially creating Dakota Territory. Two days later, Abraham Lincoln was inaugurated as the country's sixteenth president.⁵¹ By the time of Lincoln's inauguration, Todd, who had connections to the Lincoln family, was perhaps the most well-known resident of Dakota Territory. More important, however, was the creation of Dakota Territory, which had taken almost three years after Minnesota achieved statehood.

The Organic Act was actually one of three such acts that created new United States territories in 1861. In fact, President Buchanan signed all three organic acts within the time span of only three days, with Colorado being approved on 28 February and Nevada and Dakota both on 2 March. Consequently, it is not surprising that each of

48. Schell, *History of South Dakota*, p. 76.

49. Thomas, "John Blair Smith Todd," p. 189.

50. Schell, *History of South Dakota*, pp. 76–77.

51. Thomas, "John Blair Smith Todd," p. 189.



With his background as a successful trader and his ties to the Lincoln family, J. B. S. Todd was instrumental in the establishment of Dakota Territory. He became the territory's first delegate to Congress in 1861.

the organic acts shared the same basic language regarding the respective territories. The topic of slavery generated some discussion during the consideration of the Colorado Organic Act, but it did not prove substantial enough to deter passage. In the end, Section 6 of all three territorial organic acts casually addressed the slavery issue by stating that no law shall “be passed impairing the rights of private property.” Everything considered, Congress essentially ignored the issue of slavery, and each of the acts moved quickly through the legislative process, passing with relatively little debate.⁵²

Without question, the 1861 organic acts bore more similarities than differences. For example, much of the wording in sections one through seventeen is repeated verbatim from one act to the next. Overall, each of the organic acts followed the same basic outline in setting down the requirements for governance: Section 1–Territorial boundaries and the rights of American Indians residing within the territorial borders; Section 2–Territorial governor; Section 3–Territorial secretary; Section 4–Territorial legislature; Section 5–Voter qualifications and qualifications for holding office; Section 9–Territorial courts; Section 11–Presidential appointments; Section 12–Designating the first meeting of the legislature and the territorial capital; Section 13–Territorial delegate; and Section 14–Township provisions for school lands.⁵³

The influence of the 1787 Northwest Ordinance, and even the land ordinances of 1784 and 1785, is evident in many of the provisions included in the 1861 organic acts. While much of the information in sections 1–17 of the territorial acts remained unchanged from one territory to the next, the Dakota Organic Act also included several sections that pertained exclusively to Dakota Territory. An examination of those differences sheds light on the issues and challenges that Dakota Territory faced during its early years.

52. Lamar, *Dakota Territory*, pp. 61–62.

53. See “An Act to provide a temporary Government for the Territory of Colorado,” *Statutes at Large: Treaties and Proclamations of the United States of America from December 5, 1859, to March 3, 1863*, ed. George P. Sanger (Boston: Little, Brown & Co., 1863), 12:172–77; “An Act to organize the Territory of Nevada,” *ibid.*, 12:209–14; and “An Act to provide a temporary Government for the Territory of Dakota, and to create the Office of Surveyor General therein,” *ibid.*, 12:239–44.

Because Minnesota and Iowa had already achieved statehood, the eastern border of the newly created Dakota Territory was already established. Likewise, Nebraska Territory served as the southern boundary. The question of how far west the territory would extend, however, had been debated since the idea of a new territory first emerged. In the end, Dakota Territory as established in 1861 extended to the continental divide of the Rocky Mountains and the eastern boundary of the Territory of Washington. Given the vast size of the original territory, there was also a provision in the Organic Act allowing for the future division of Dakota Territory into two more territories.⁵⁴ Much of present-day Montana and Wyoming, along with the states of North and South Dakota, were eventually carved out of the original Dakota Territory.

Although President Buchanan's signing of the Organic Act officially created Dakota Territory, the task of appointing territorial officials was left to Lincoln. He named a territorial governor who also served as the superintendent of Indian affairs, a territorial secretary, three federal judges, and a surveyor general, along with other land-office personnel. The most noteworthy of Lincoln's initial appointees was William Jayne, who served as the first territorial governor. Having lived in Springfield, Illinois, Jayne was both a friend and personal physician to Lincoln.⁵⁵ While Jayne and Lincoln enjoyed a special camaraderie that lent itself well to the patronage system, Jayne did not have as much political clout with Lincoln as one might expect. Instead, John Blair Smith Todd dominated the early politics of Dakota Territory more than anyone else at the time.

Given his active roles in the years prior to the 1861 Organic Act, Todd likely would have continued to enjoy political success, but his relationship as a first cousin to First Lady Mary Todd Lincoln offered additional advantages to Todd and his political supporters. For instance, the choice of Yankton as the temporary territorial capital certainly coincided with Todd's wishes—both politically and commercially. Histo-

54. "An Act to provide a temporary Government for the Territory of Dakota," 12:239–44.

55. Schell, *History of South Dakota*, p. 93.

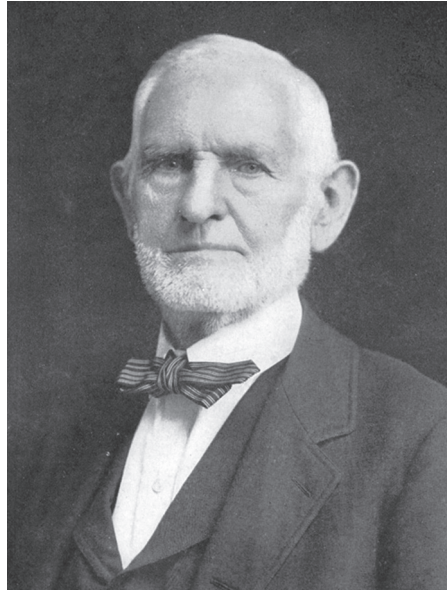


JOHNSON'S
NEW MEXICO,
ARIZONA, COLORADO, &
UTAH.

BY
JOHNSON & BROWNING.

SCALE OF MILES.

Although he won appointment as the first governor of Dakota Territory, William Jayne wielded less political influence than did the well-connected J. B. S. Todd.

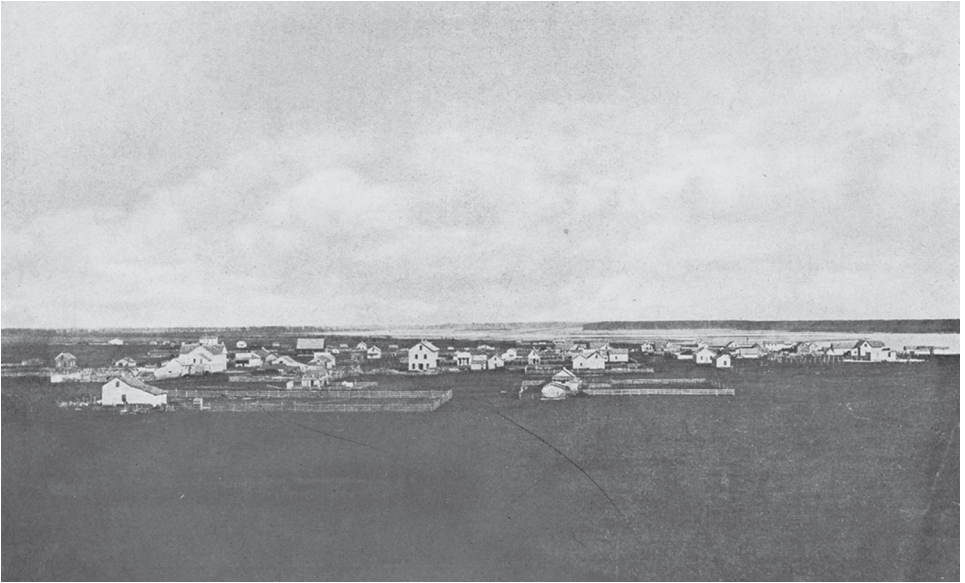


rian Herbert S. Schell writes that “the hand of J. B. S. Todd is evident in the selection of Yankton as the temporary capital” and notes that his relation to the first lady gave him “influence in the President’s household.”⁵⁶ Historian Doane Robinson believed that Governor Jayne accepted “Captain Todd’s town” as the temporary capital due to Mary Todd Lincoln’s personal request, although there is no known historical record testifying to this preference.⁵⁷ When Governor Jayne arrived in Yankton in late May 1861, the community was still in a primitive state of log cabins and shacks. However, if Mary Lincoln had indeed had

56. Ibid., p. 94.

57. Lynwood E. Oyos, ed., *Over a Century of Leadership: South Dakota Territorial and State Governors* (Sioux Falls, S.Dak.: Center for Western Studies, Augustana College, 1987), p. 3.

(facing page) As shown in this 1861 map, the newly created Dakota Territory extended west from the Minnesota border to the eastern boundary of Washington Territory. Four new states would eventually be carved out of the vast area.



By the time this view of Yankton was recorded in 1866, white frame buildings had replaced many of the log cabins that made up the territorial capital in its earliest days.



Members of one of the early Dakota Territory legislative assemblies posed for this photograph in front of the new capital building in Yankton.

some input into Yankton's selection, it is unlikely that Jayne would have voiced any protest. For that matter, there were no other communities at the time that could offer anything more than did Yankton.⁵⁸

Among Governor Jayne's first responsibilities upon arriving in Dakota Territory was to call for an election for a territorial delegate to Congress and members of a territorial legislature.⁵⁹ Todd became an immediate front runner for territorial delegate, and his supporters did not hesitate in emphasizing his qualifications, as well as his connection to the Lincolns. For example, in the 20 July 1861 issue of the *Yankton Weekly Dakotian*, an editorial acknowledged Todd's role in ending Indian title to the land and making way for white settlement. The editorial ended by stating, "He is so well acquainted with the wants of every section of the Territory—his intimate relations at Washington with the Chief Executive—[and] his honesty and ability all point to him as the man for Delegate." Other published endorsements referred to Todd as "a man well known," "respected," "a man of means," "acquainted with the necessities of her [Dakota Territory's] people, and [one who] possesses the qualifications, as well as the personal relations and influence necessary to secure her claims."⁶⁰ In the general election held on 16 September 1861, Todd easily outdistanced the other two candidates.⁶¹

The first territorial legislature, as stipulated by the Organic Act, consisted of nine members of the legislative assembly, or council, and thirteen members of the house of representatives. When they convened on 17 March 1862 in Yankton, one of the lawmakers dubbed the small group collectively as the "pony Congress." Moses K. Armstrong, a member of the territory's first house of representatives, is credited with recording for posterity much of the behind-the-scenes activity of the first legislative session. Using the pseudonym "Logroller," he wrote a series of letters to the *Sioux City Register*, which were later compiled

58. Karolevitz, *Challenge*, pp. 54–55.

59. George W. Kingsbury, *History of Dakota Territory*, and George Martin Smith, *South Dakota: Its History and Its People*, 5 vols. (Chicago: S. J. Clarke Publishing Co., 1915), 1:178.

60. *Weekly Dakotian*, 20 July 1861, clipping, Folder 2, Clippings and Manuscripts, John Blair Smith Todd Papers, State Archives Collection, South Dakota State Historical Society, Pierre.

61. Kingsbury, *History of Dakota Territory*, 1:185, 187.

and published in 1901 in *The Early Empire Builders of the Great West*. Among the main issues the legislature addressed—and Armstrong covered—were the locations of a permanent territorial capital, university, and penitentiary. Regarding the capital decision, Armstrong later wrote that “a little blood was shed, much whiskey drank, a few eyes blacked, revolvers drawn and some running done.”⁶²

As with the territories of Colorado and Nevada, Section 5 of the Dakota Territory Organic Act extended voting rights to “every free white

62. The legislature approved Yankton as the permanent capital location, while Vermillion received the territorial university. As part of the legislative dealings, Bon Homme was designated for the territorial penitentiary. Schell, *Dakota Territory during the Eighteen Sixties*, pp. 62–65.



Moses K. Armstrong, a politician and historian, recorded the lively proceedings of the first territorial legislature as it doled out political plums such as the permanent capital, university, and penitentiary.

male inhabitant of the United States above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act.” Furthermore, “the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the legislative assembly.”⁶³ Despite the common wording found in each of the 1861 organic acts, as well as many previous territorial acts, the issue of legal residents became a serious point of discussion on two accounts for the first territorial legislature. First, in Governor Jayne’s address to the legislature, he advocated the prohibition of slavery, which did not sit well with the Democratic majority of the assembly. In reaction to his antislavery remarks, the council passed a measure stating that “no persons of color, bond or free, shall reside upon the soil of Dakota Territory.” If caught doing so, they had twenty days to leave the territory or be arrested. The house of representatives, by a narrow margin, did not approve the bill.⁶⁴

A more immediate issue centered on the status of individuals of mixed white and American Indian ancestry. Todd and his followers knew full well that people of this mixed-race background accounted for the second largest racial group in the territory, surpassed only by American Indians. With his background as a trader along the Missouri River, Todd also knew that this group could be a considerable political force in future elections. Consequently, the Todd Democrats, or the “Moccasin Democrats,” as they soon became known, introduced the General Half-Breed Bill, which would give qualifying individuals the right to vote. The bill passed the house of representatives by one vote, but it failed in the council. In a twist of irony, the territorial Democrats wanted to ban African Americans from living in the territory but advocated for allowing Indian-white “half breeds” to become voting citizens. Conversely, Republicans held the opposite opinions on both issues.⁶⁵

The debate over extending voting rights to the territory’s mixed-ancestry population exemplified the tense political atmosphere that

63. “An Act to provide a temporary Government for the Territory of Dakota,” 12:241.

64. Lamar, *Dakota Territory*, pp. 86–87.

65. *Ibid.*, pp. 87–88.

existed during the first territorial legislative session. In recording the events of the session, Representative Armstrong later wrote, “Hair pulling, choking, striking, blood spitting, and pugilistic exercises were the order which were performed with grit and relish.”⁶⁶ Such images of a less-than-proper protocol are often cited in studies of the early political atmosphere of Dakota Territory, but they are not evidence that political figures of the time were ineffective. On the contrary, in his multivolume history of Dakota Territory, George Kingsbury stated, “Nearly every legitimate subject was covered by various enactments, and the general sentiment was that the legislative body had acquitted itself very creditably in covering the field of necessary legislation so thoroughly.” Herbert Schell commented favorably that the 1862 legislature worked “conscientiously” and “in conformity with the Organic Act.”⁶⁷ Beginning with the land ordinances established under the Articles of Confederation, it had become the practice for new territorial legislatures to borrow laws from other territories and states, and the Dakota Territorial Legislature of 1862 was no different. In fact, early legislators adopted many laws from Ohio, the first state created by way of the 1787 Northwest Ordinance.⁶⁸

Among the sections of the 1861 Organic Act tailored specifically to fit a unique feature of Dakota Territory was Section 20. It read, “And be it further enacted, That the river in said territory heretofore known as the ‘River aux Jacques,’ or ‘James River,’ shall hereafter be called the Dakota river.”⁶⁹ The reason for this section had to do with the promotional activities of the Dakota Land Company. It seemed appropriate that the new territory to the west of Minnesota be named “Dakota” in recognition of the Dakota Indians. Because other territories, such as Ohio, Wisconsin, Illinois, Kansas, Iowa, and Minnesota, had been named for notable rivers that ran through their respective boundaries, it also seemed logical to apply the same practice to Dakota Territory. The problem was, however, that all of the major waterways in the new

66. Schell, *Dakota Territory during the Eighteen Sixties*, p. 64.

67. *Ibid.*, p. 65.

68. *Ibid.*

69. “An Act to provide a temporary Government for the Territory of Dakota,” 12:244.

territory had already been named, and none of them carried the name “Dakota.” The United States Congress decided to resolve this situation by adding Section 20 to the Organic Act.⁷⁰ Later, the territorial legislature reinforced this provision by passing an act officially renaming the James River the Dakota River, although the name never found common usage.⁷¹

The refusal to accept the name change from the James to the Dakota River may be due to the fact that the James designation had long been in use and was well known. Another explanation as to why the public largely ignored the new name may be due to the events of the 1862 United States-Dakota War. The Dakota Sioux, frustrated over the United States’ failure to fulfill treaty obligations, began an uprising in August 1862 that affected settlements in Minnesota and neighboring Dakota Territory. By the time the conflict was over, original estimates as to the number of whites killed were placed as high as eight hundred, while some forty thousand settlers reportedly fled east. As order was being restored, many of the Sioux, whether hostile or not, fled westward into Dakota Territory in fear of military reprisals.⁷² Section 2 of the Organic Act had provided for such situations by authorizing the territorial governor to serve as the commander-in-chief of the militia.⁷³ As a result, Governor Jayne issued a proclamation dated 30 August 1862 stating, “It is ordered that every male citizen in the Territory between the ages of 18 and 50 shall at once enroll himself in a company to be formed for home defense in his respective county, with such arms as he may have in his possession.”⁷⁴ While changing the name to the Dakota

70. Thomas J. Gasque, “River Names: Our First Signposts,” in *Papers of the Fortieth Annual Dakota Conference*, comp. Lori Bunjer, Harry F. Thompson, and Arthur R. Huseboe (Sioux Falls, S.Dak.: Center for Western Studies, Augustana College, 2008), p. 40.

71. Virginia Driving Hawk Sneve, ed., *South Dakota Geographic Names* (Sioux Falls, S.Dak.: Brevet Press, 1973), p. 142.

72. Clair Jacobson, *Whitestone Hill* (La Crosse, Wis.: Pine Tree Publishing, 1991), p. 68; Brad Tennant, “The 1864 Sully Expedition and the Death of Captain John Feilner,” *American Nineteenth Century History* 9 (June 2008): 183.

73. “An Act to provide a temporary Government for the Territory of Dakota,” 12:240.

74. Robert J. Perry, *Prayer Rock: Story of the Settlement of the Glacial Lake Area Dacotab Territories* (N.p., 1990), p. 93.

River may have seemed like a good idea at one time, the tense Indian-white relations of the early territorial period proved otherwise.⁷⁵

Because of the Civil War, the United States–Dakota War of 1862, and early problems with drought and grasshopper plagues, historian Herbert Schell referred to the 1860s as the “Decade of Uncertainty” for Dakota Territory.⁷⁶ Nonetheless, the 1861 Organic Act and the creation of Dakota Territory played an important role in the settlement of the United States. While the land ordinances of 1784, 1785, and 1787 can rightfully be credited for the provisions included in the organic acts of the nineteenth century, each new territory faced its own set of circumstances and challenges, and Dakota Territory was no different. In retrospect, the circumstances and challenges that led to the 1861 Organic Act deserve to be acknowledged for their roles in the creation of Dakota Territory.

75. The United States–Dakota War impacted the naming of early pioneer settlements, as well. A 1986 study by Thomas J. Gasque of the University of South Dakota regarding place names for towns settled during the period 1859–1890 shows few names associated with American Indian, especially Sioux, words. By comparison, there are numerous examples of Indian names and words for towns throughout the state of Minnesota, which was settled earlier. Gasque noted that only three South Dakota towns with populations exceeding one thousand residents had names associated with the Sioux—Sioux Falls, Sisseton, and Yankton. Likewise, only three South Dakota counties—Minnehaha, Yankton, and Brule—have names associated with the Sioux. Gasque, “Indian Place Names in South Dakota,” *Dakota History Conference, April 11–13, 1985, Papers*, comp. H. W. Blakely (Madison, S.Dak.: Dakota State College, 1986), pp. 731, 735.

76. Schell, *History of South Dakota*, pp. 78, 80.