laws, and all rules and regulations for the government of said Indians, as may be prescribed by the Interior Department: *Provided*, That all rules, regulations, or laws adopted or amended by the chiefs and headmen on either reservation shall receive the sanction of the agent.

APPENDIX B TO OPINION OF THE COURT

AGREEMENT OF 1889, RATIFIED BY THE ACT OF MAR. 3, 1891, 26 STAT. 1035

Whereas, by section five of the act of Congress entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven, it is provided "That at any time after lands have been allotted to all the Indian of any tribe, as herein provided, or sooner," if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by the said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservations not allotted as such tribe shall from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress; and the form and manner of executing such release shall also be prescribed by Congress.

Whereas the Sisseton and Wahpeton bands of Dakota or Sioux Indians are desirous of disposing of a portion of the land set apart and reserved to them by the third article of the treaty of February nineteenth, eighteen hundred and sixty-seven, between them and the United States,

and situated partly in the State of North Dakota and partly in the State of South Dakota:

Now, therefore, this agreement made and entered into in pursuance of the provisions of the Act of Congress approved February eighth, eighteen hundred and eighty-seven, aforesaid, at the Sisseton Agency, South Dakota, on this the twelfth day of December, eighteen hundred and eighty-nine, by and between Eliphalet Whittlesey, D. W. Diggs, and Charles A. Maxwell, on the part of the United States, duly authorized and empowered thereto, and the chiefs, head-men, and male adult members of the Sisseton and Wahpeton bands of Dakota or Sioux Indians, witnesseth:

ARTICLE I.

The Sisseton and Wahpeton bands of Dakota or Sioux Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation set apart to said bands of Indians as aforesaid remaining after the allotments and additional allotments provided for in article four of this agreement shall have been made.

ARTICLE II.

In consideration for the lands ceded, sold, relinquished, and conveyed as aforesaid, the United States stipulates and agrees to pay to the Sisseton and Wahpeton bands of Dakota or Sioux Indians, parties hereto, the sum of two dollars and fifty cents per acre for each and every acre thereof, and it is agreed by the parties hereto that the sum so to be paid shall be held in the Treasury of the United States for the sole use and benefit of the said bands of Indians; and the same, with interest thereon at three per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of the said bands of Indians, or members thereof,

as provided in section five of an act of Congress, approved February eighth, eighteen hundred and eighty-seven, and entitled "An act to provided for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes:" *Provided,* That any religious society or other organization now occupying, under proper authority, for religious or educational work among the Indians, any of the land in this agreement ceded, sold, relinquished, and conveyed shall have the right, for two years from the date of the ratification of this instrument, within which to purchase the lands so occupied at a price to be fixed by the Congress of the United States: *Provided further,* That the cession, sale, relinquishment, and conveyance of the lands described in article one of this agreement shall not take effect and be in force until the sum of three hundred and forty-two thousand seven hundred and seventy-eight dollars and thirty-seven cents, together with the sum of eighteen thousand and four hundred dollars, shall have been paid to said bands of Indians, as set forth and stipulated in article third of this agreement.

ARTICLE III.

The United States stipulates and agrees to pay to the Sisseton and Wahpeton bands of Dakota or Sioux Indians, parties hereto, per capita, the sum of three hundred and forty-two thousand seven hundred and seventy-eight dollars and thirty-seven cents, being the amount found to be due certain members of said bands of Indians who served in the armies of the United States against their own people, when at war with the United States, and their families and descendants, under the provisions of the fourth article of the treaty of July twenty-third, eighteen hundred and fifty-one, and of which they have been

wrongfully and unjustly deprived by the operation of the provisions of an act of Congress approved February sixteenth, eighteen hundred and sixty-three, and entitled "An act for the relief of persons for damages sustained by reason of depredation, and injuries by certain bands of Sioux Indians"; said sum being at the rate of eighteen thousand four hundred dollars per annum from July first, eighteen hundred and sixty-two, to July first, eighteen hundred and eighty-eight less their pro rata share of the sum of six hundred and sixteen thousand and eighty-six dollars and fifty-two cents, heretofore appropriated for the benefit of said Sisseton and Wahpeton bands of Dakota or Sioux Indians, as set forth in report numbered nineteen hundred and fifty-three, of the House of Representatives, Fiftieth Congress, first session.

The United States further agrees to pay to said bands of Indians, per capita, the sum of eighteen thousand and four hundred dollars annually from the first day of July, eighteen hundred and eighty-eight, to the first day of July, nineteen hundred and one, the latter date being the period at which the annuities to said bands of Indians were to cease, under the terms of the fourth article of the treaty of July twenty-third, eighteen hundred and fifty-one, aforesaid; and it is hereby further stipulated and agreed that the aforesaid sum of three hundred and forty-two thousand seven hundred and seventy-eight dollars and thirty-seven cents, together with the sum of eighteen thousand and four hundred dollars, due the first day of July, eighteen hundred and eighty-nine, shall become immediately available upon the ratification of this agreement.

ARTICLE IV.

It is further stipulated and agreed that there shall be allotted to each individual member of the bands of Indians, parties hereto, a sufficient quantity, which, with

the lands heretofore allotted, shall make in each case one hundred and sixty acres, and in case no allotment has been made to any individual member of said bands, then an allotment of one hundred and sixty acres shall be made to such individual, the object of this article being to equalize the allotments among the members of said bands, so that each individual, including married women, shall have one hundred and sixty acres of land; and patents shall issue for the lands allotted in pursuance of the provisions of this article, upon the same terms and conditions and limitations as is provided in section five of the act of Congress, approved February eighth, eighteen hundred and eighty-seven, hereinbefore referred to.

ARTICLE V.

The agreement concluded with the said Sisseton and Wahpeton bands of Dakota or Sioux Indians, on the eighth day of December, eighteen hundred and eighty-four, granting a right of way through their reservation for the Chicago, Milwaukee and Saint Paul Railway, is hereby accepted, ratified and confirmed.

ARTICLE VI.

This agreement shall not take effect and be in force until ratified by the Congress of the United States.

In witness whereof we have hereunto set our hands and seals the day and year above written.

ELIPHALET WHITTLESEY,
D. W. DIGGS,
CHAS. A. MAXWELL,
On the part of the United States.

The foregoing articles of agreement having been fully explained to us, in open council, we, the undersigned, being male adult members of the Sisseton and Wahpeton

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bands of Dakota or Sioux Indians, do hereby consent and agree to all the stipulations, conditions, and provisions therein contained.

Simon Ananangmari (his x mark), and others

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

In my view South Dakota has no jurisdiction over either the civil suit in the first of these two cases or the criminal prosecutions involved in the second. The so-called jurisdictional acts took place in "Indian country" over which the federal regime has exclusive jurisdiction until and unless the United States relinquishes it, and that has not been done here. Here, as in *United States* v. *Mazurie,* 419 U. S. 544 (1975), the acts were done within "Indian country" as defined in 18 U. S. C. § 1151, for they occurred on land "within the limits of" an Indian reservation "notwithstanding the issuance of any patent . . . ."

Petitioner DeCoteau is an enrolled member of the Sisseton-Wahpeton Sioux Tribe against whom South Dakota brought dependency and neglect proceedings in the state courts, seeking to terminate her parental authority over her minor children, also enrolled members of the tribe. The parties stipulated that all of the facts relevant to the court's order took place on the Lake Traverse Reservation which was established under the Treaty of February 19, 1867, 15 Stat. 505. Approximately half of the incidents involved occurred on allotted Indian land, and half occurred on land patented to non-Indians. The South Dakota Supreme Court ruled that since some of the incidents pertaining to dependency and neglect occurred on nontrust land within the reservation, they happened on land in "non-Indian country." 87 S. D. 555, 561, 211 N. W. 2d 843, 846 (1973).

Petitioner Erickson is the warden of a South Dakota penitentiary having in custody the 10 respondents in No. 73–1500. They are all members of the Sisseton-Wahpeton Tribe, and their crimes were committed within the boundaries of the Lake Traverse Reservation but on land owned by non-Indians. The Court of Appeals, ruling on petitions for habeas corpus, held that South Dakota had no jurisdiction to try respondents, 489 F. 2d 99 (CA8 1973).

The Treaty of Feb. 19, 1867, granted these Indians a permanent reservation with defined boundaries and the right to make their own laws and be governed by them subject to federal supervision, 15 Stat. 505, as amended. No more is asked here; and it must be conceded that the jurisdictional acts took place within the contours of that reservation.

In 1889 these Indians and three commissioners entered into an Agreement that, to furnish the Indians the wherewithal to survive, some of their lands would be opened for settlement. S. Exec. Doc. No. 66, 51st Cong., 1st Sess., 19 (1890). That Agreement was the occasion for the Act of Mar. 3, 1891, 26 Stat. 1035. The 1891 Act sets forth the entire Agreement, which Agreement was made under the authority of the General Allotment Act of Feb. 18, 1887, 24 Stat. 388, authorizing the Secretary of the Interior, if the President approves, to negotiate with an Indian tribe for the acquisition by the United States of such portions of its lands which the tribe consents to sell on terms "considered just and equitable." § 5, 24 Stat. 389. The Indians undertook to sell all their claim "to all the unallotted lands within the limits of the reservation." 26 Stat. 1036. There is not a word to suggest that the boundaries of the reservation were altered. The proceeds of sale were to be used "for the education and civilization" of these Indians. § 27, 26 Stat. 1039. The

lands allotted were not for the general use of the United States but with the exception of school lands [1] were to be "subject only to entry and settlement under the homestead and townsite laws" as provided in § 30 of the Act. 26 Stat. 1039. The purpose was not to alter or change the reservation but to lure white settlers onto the reservation whose habits of work and leanings toward education would invigorate life on the reservation.[2]

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[1] See 35 Cong. Rec. 3187, where Senator Gamble stated:

"Under the provisions of the enabling act authorizing the admission of the State of South Dakota into the Union, sections 16 and 36 in every township were reserved for school purposes. This provision did not apply to permanent Indian reservations, but became operative when the Indian title was extinguished and the lands restored to and became a part of the public domain. This would withdraw about 29,000 acres of these lands and would leave 387,000 acres to be opened to settlement, and which would be affected by the proposed amendment."

See also 38 Cong. Rec. 1423, where Congressman Burke said:

"I would state that under the enabling act under which the State of South Dakota was admitted to the Union it was provided that sections 16 and 36 in said State should be reserved for the use of the common schools of that State, and it further provided that as to the lands within an Indian reservation the provisions of that grant would not become operative until the reservation was extinguished and the land restored to the public domain. That enabling act was passed by Congress on the 22d day of February, 1889. In March of that same year Congress ratified a treaty with the Sioux Indians in South Dakota for the cession of something like ten or eleven millions of acres of land, and made an express appropriation, in accordance with the provisions of the enabling act, to pay outright out of the Treasury the money for sections 16 and 36 of that land at the price stipulated for in the treaty."

[2] A member of the Commission negotiating with the Indians stated:

"This reservation will be quickly settled by whites, bringing the arts of civilization, establishing schools in every township, so that you can send your children to school . . . . Another advantage is, that the whites will exchange work with you. This will enable you to

While doubtful clauses in agreements with Indians are resolved in favor of the Indians, see *Alaska Pacific Fisheries* v. *United States,* 248 U. S. 78, 89 (1918), there is no doubtful language in the Agreement or in the 1891 Act. We recently stated in *Mattz* v. *Arnett,* 412 U. S. 481, 504 n. 22 (1973), that Congress uses "clear language of express termination" to disestablish and diminish a reservation and restore it to the public domain "when that result is desired." Congress in the very Act that opened the instant reservation opened several other reservations also. But as respects them it used different language. In contrast to the instant reservation, one other tribe agreed to "cede, relinquish, and forever and absolutely surrender to the United States all their claim, title and interest of every kind and character in and to" a described tract.[3] Another agreed to "cede, convey, transfer, relinquish, and surrender forever and absolutely, without any reservation" all their claim, title, and interest in a described tract.[4] Another agreed to "cede, sell, and relinquish to the United States all their right, title, and interest in and to all that portion" of a named reservation as specifically described.[5] Another agreed to sell to the United States "all that portion" of the reservation described by metes and bounds.[6]

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cultivate 50 acres where you now cultivate 10. There are other advantages which I have not mentioned. One is you will have towns and railroads and good markets near you. All this will make your lands more valuable. . . . You hitch the two together and the white man and the Indian will pull together." S. Exec. Doc. No. 66, 51st Cong., 1st Sess., 24 (1890).

[3] Citizen Band of Pottawatomie Indians, Act of Mar. 3, 1891, 26 Stat. 1016.

[4] Cheyenne and Arapahoe Indians, Act of Mar. 3, 1891, 26 Stat. 1022.

[5] Arickaree, Gros Ventre, and Mandan Indians, Act of Mar. 3, 1891, 26 Stat. 1032.

[6] Crow Indians, Act of Mar. 3, 1891, 26 Stat. 1040.

Congress made an unmistakable change when it came to the lands ceded in the instant case.

The dimensions of the tragedy inflicted by today's decision are made apparent by the facts pertaining to the management of this reservation.

This tribe is a self-governing political community, a status which is not lightly impaired, *McClanahan* v. *Arizona State Tax Comm'n,* 411 U. S. 164, 168 (1973); *Williams* v. *Lee,* 358 U. S. 217, 220 (1959). The South Dakota decision limits tribal jurisdiction to the "closed" portion of the reservation. That tears the reservation asunder. The only provision of the 1891 Act which extends state jurisdiction into the reservation is a clause in § 30 which exempts sections 16 and 36 and reserves them "for common school purposes," and makes them "subject to the laws of the State wherein located." That language was deemed necessary because the South Dakota Enabling Act did not reserve the 16th and 36th sections in Indian reservations for school purposes; hence this special provision had to be made.[7]

Today only a small percentage of the members of the tribe live on the "closed" part of the reservation. The office of the local Bureau of Indian Affairs is at Sisseton which is not in the "closed" reservation. Federal services to members of the tribe extend to those residing on land opened to settlement as well as to those on trust allotments. The United States supports a tribal government to make and enforce laws throughout the land within the exterior boundaries of the reservation. The attitude of Congress, of the Department of the Interior (under which the Bureau of Indian Affairs functions), and of the tribe is that the jurisdiction of the tribe extends throughout the territory of the reservation as described in the Treaty. A

[7] See n. 1, *supra.*

tribal constitution approved August 26, 1966, perpetuates that concept:

> "The jurisdiction of the Sisseton-Wahpeton Sioux Tribe shall extend to lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Article III of the Treaty of February 19, 1867."

The Code of the tribe asserts a jurisdiction over the same domain:

> "The [Sisseton-Wahpeton Sioux Tribal] Court shall have a civil and criminal jurisdiction within the boundaries of the Sisseton-Wahpeton Indian Reservation as defined in the Treaty of February 19, 1867 including trust and non-trust lands, all roads, waters, bridges, and lands used for Federal purposes."

The tribe has a police force and a court. The tribe provides rental housing of 240 units. It provides fire protection. It is the major employer. It operates the only garbage collection and disposal. It is the major governmental entity within the reservation boundaries, servicing Indians [8] and non-Indians.

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[8] The *DeCoteau* case involves a problem of domestic relations which goes to the heart of tribal self-government. The question of a child's welfare cannot be decided without reference to his family structure. This involves both a sympathetic knowledge of the individuals involved, and a knowledge of the background culture. The tribe is fearful that if South Dakota has jurisdiction over tribal children it will place them with non-Indian families where they will lose their cultural identity. Accordingly the tribe on July 6, 1972, passed the following resolution:

"WHEREAS, The Sisseton-Wahpeton Sioux Tribe is interested in the well-being of all the enrolled members of the tribe and

"WHEREAS, Minor children of Sisseton-Wahpeton descent have been placed in non-Indian foster and adoptive homes all over the United States.

"WHEREAS, The tribal council is in the process of researching

If this were a case where a Mason-Dixon type of line had been drawn separating the land opened for homesteading from that retained by the Indians, it might well be argued that the reservation had been diminished; but that is not the pattern that took place after 1891. Units of land suitable for homesteaders were scattered throughout the reservation. It is indeed difficult, looking at a current map, to find any substantial unit of contiguous Indian land left. The map picture, as stated in oral argument, shows a "crazy quilt pattern." The "crazy quilt" or "checkerboard" jurisdiction defeats the right of tribal self-government guaranteed by Art. X of the 1867 Treaty, 15 Stat. 510, and never abrogated.

In *Seymour* v. *Superintendent*, 368 U. S. 351, 358 (1962), we were invited to make a like construction of "Indian country" as used in 18 U. S. C. § 1151. We rejected that offer saying:

> "[W]here the existence or nonexistence of an Indian reservation, and therefore the existence or nonexistence of federal jurisdiction, depends upon the ownership of particular parcels of land, law enforcement officers operating in the area will find

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the sovereign status of the tribal entity in respect to its jurisdiction as stated in the constitution of the Sisseton-Wahpeton Sioux Tribe, and,

"WHEREAS, It is the intent of the Sisseton-Wahpeton Sioux Tribe to establish its own method of social and economic development and well-being of the enrolled members, and,

"WHEREAS, It is the strong feeling of the tribal council to 'make every stand possible to keep these children on the reservation' (minutes of June 6th council meeting) and 'the tribal council would like these children to be placed in an Indian licensed home until an Indian home can be found for them to be adopted.'

"THEREFORE, BE IT RESOLVED, that Mr. Bert Hirsch, legal counsel from the Association of American Indian Affairs, will stand on these grounds in his argument in Roberts County Court on July 7, 1972 and future cases of this nature."

it necessary to search tract books in order to determine whether criminal jurisdiction over each particular offense, even though committed within the reservation, is in the State or Federal Government. Such an impractical pattern of checkerboard jurisdiction was avoided by the plain language of § 1151 and we see no justification for adopting an unwarranted construction of that language where the result would be merely to recreate confusion Congress specifically sought to avoid."

This case involves jurisdiction over Indians—not non-Indians as in *United States* v. *Mazurie,* 419 U. S. 544 (1975)—within the boundaries of the reservation. If South Dakota has its way, the Federal Government and the tribal government have no jurisdiction when an act takes place in a homesteaded spot in the checkerboard; and South Dakota has no say over acts committed on "trust" lands. But where in fact did the jurisdictional act occur? Jurisdiction dependent on the "tract book" promises to be uncertain and hectic. Many acts are ambulatory. In a given case, who will move—the State, the tribe, or the Federal Government? The contest promises to be unseemly, the only beneficiaries being those who benefit from confusion and uncertainty. Without state interference, Indians violating the law within the reservation would be subject only to tribal jurisdiction, which puts the responsibility where the Federal Government can supervise it. Checkerboard jurisdiction cripples the United States in fulfilling its fiduciary responsibilities of guardianship and protection of Indians. It is the end of tribal authority for it introduces such an element of uncertainty as to what agency has jurisdiction as to make modest tribal leaders abdicate and aggressive ones undertake the losing battle against superior state authority. As Mr. Justice Miller stated nearly 100 years ago concerning the

importance of exclusive federal jurisdiction over acts committed by Indians within the boundaries of a reservation: "They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies." *United States* v. *Kagama,* 118 U. S. 375, 384 (1886).