

Lore of the Corps

Indians as War Criminals? The Trial of Modoc Warriors by Military Commission

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Early in the morning of Good Friday, 11 April 1873, Brigadier General (BG) Edward R.S. “Richard” Canby stepped out of his tent, which was pitched near Tule Lake on the California-Oregon border. Canby, a 56-year-old West Point graduate and veteran of the Civil War, was the commander of the Department of the Columbia, which consisted of the State of Oregon and the Territories of Washington, Idaho, and Alaska. He was near Tule Lake that day to negotiate a peaceful settlement to the war that had broken out between a band of Modoc Indians and U.S. Army troops and territorial militia. Although he did not know it, Canby’s attempt at negotiation was destined for utter failure. Within hours he was dead—shot in the head and back by the Modoc Chief Kientpoos. Also dead was another member of Canby’s peace commission, and two more men were badly injured.¹

The brutal murders shocked Americans, and the Army’s Commander-in-Chief, Major General William T. Sherman, exclaimed that the Modoc treachery fully justified their “utter extermination.”² In any event, on 1 June 1873, Kientpoos and his fellow Modocs were in Army custody. But what was to be done? Should these assassins be summarily dealt with? Should they be turned over to civilian authorities for prosecution? After considerable discussion, the U.S. Government decided that the Modocs responsible for murdering Canby and his fellow commissioner should be tried by military commission. As a result, on 1 July 1873, Kientpoos and five other Modoc warriors stood trial for the war crime of violating a flag of truce by committing murder during a suspension of hostilities. It was the only time in U.S. history that Native Americans were tried by an Army court for war crimes.

In October 1864, the Modoc tribe had signed a treaty with the United States in which the tribe agreed to give up ancestral lands on the Oregon-California border and move thirty miles north to the Klamath Indian Reservation. Within a short time, however, the Modocs regretted their decision. In early 1870, they left the reservation and returned to their ancestral home. Led by their chief, Kientpoos, better known as “Captain Jack,” the tribe of 371 men, women, and children set up camp in an area near Tule Lake.

The Army’s mission was to force the Modocs to return to the reservation. The Modocs resisted and were only defeated, on 29 January 1873, after months of fighting. In an attempt to negotiate an end to this small war, the Secretary of the Interior appointed a special “peace commission” headed by BG Canby. The other members of the peace commission were the Reverend Eleasar Thomas, L.S. Dyar, and Alfred Meacham.

On Good Friday, 11 April 1873, the four commissioners went to meet Captain Jack and the Modocs. All agreed to come unarmed. There were some warning signs that the commissioners might be in danger, but Canby insisted that the negotiations proceed because he thought the presence of so many Soldiers in the area would intimidate Captain Jack.

Soon after the men began to parley, they reached an impasse. Then, on a signal from Captain Jack, two Modoc warriors in hiding began firing at the commissioners. Captain Jack then pulled out a pistol and shot Canby in the face, killing him instantly. Thomas was also killed in the gunfire. Dyar and Meacham survived, although the latter was badly wounded. As for Captain Jack and his accomplices, they escaped but were soon captured.

The U.S. Government was incensed that Canby had been killed while “under a flag of truce,” and his status as a Regular Army officer and Civil War veteran only heightened this anger. Local civilian authorities wanted to prosecute the Modocs for murder, but U.S. Attorney General George H. Williams and BG Joseph Holt, then serving as The Judge Advocate General, opined that a military commission should hear the case. They reasoned that the Modoc tribe was akin to a foreign nation, that a state of war existed between the tribe and the United States, and that the killing of Canby during peace negotiations was a war crime.³

On 1 July 1873, a military commission consisting of five Army officers heard evidence against Captain Jack and five other Modocs. All were found guilty of murder. Four were sentenced to be hanged by the neck until dead. Once President Ulysses S. Grant approved their sentences, the accused were hanged at Fort Klamath, Oregon, on 3 October 1873.

¹ For the details on Canby’s life, see Max L. Heyman, Jr., *Prudent Soldier: A Biography of Major General E.R.S. Canby* (1959).

² Wilfred P. Deac, *Indian Fortress Assailed*, WILD WEST, Feb. 1991, at 39.

³ For more on the decision to try the Modocs by military commission, see Doug Foster, “*Imperfect Justice: The Modoc War Crimes Trial of 1873*,” 100 OREGON HISTORICAL Q., Fall 1999, at 246–87.

Measured against today's court-martial procedure, the Modoc military commission was flawed. The accused did not have the assistance of defense counsel, and the trial lasted only four days. Perhaps most importantly, the five officers who decided the case were not impartial or unbiased; all knew Canby, and all admired him. However, this military commission was a unique event in our military legal history: the only time the Army ever prosecuted Native Americans for violating the law of armed conflict.

More historical information can be found at

The Judge Advocate General's Corps
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