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Cover photo: Polygamist prisoners at the Utah State Penitentiary, at Sugar House, c. 1889. George Q. Cannon sits in the center, holding flowers. (Courtesy of Utah State Historical Society)

A CIVIL DEATH: MORMON DISENFRANCHISEMENT IN THE INTER-MOUNTAIN WEST

WINSTON BOWMAN

INTRODUCTION

Between the Civil War and the First World War, Americans grappled with the concept of citizenship as never before. Historians rightly emphasize the role race and gender played in the transformation of citizenship's legal and cultural meanings during this period.¹ Nevertheless, this article focuses on the nexus between religion and citizenship, examining federal and state attempts to disenfranchise Mormons in the mountain West in the 1880s. Disenfranchisement was just one component of a series of constitutional conflicts over the Church of Latter-day Saints' promotion of polygamy before 1890, but it was particularly significant for two reasons.² First, it underlines the

¹For examples of the voluminous body of scholarship on these subjects, see, generally, Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT, 1997); Ian Hanley Lopez, *White By Law: The Legal Construction of Race* (New York, 1997); Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York, 1999); Catherine Dauvergne, "Citizenship with a Vengeance," *Theoretical Inquiries in Law* 8 (2007): 489; Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* (New York, 2008).

²See, generally, Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill, NC, 2002); Leonard J. Arrington, *The Mormons in Nevada* (Las Vegas, NV, 1979).

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impact that anti-Mormonism exerted on Republican legislators and Supreme Court justices' understandings of citizenship at a critical juncture; second, it shows how the dubious theories justifying Mormon disenfranchisement provided the foundations for a complex lattice of modern felon disenfranchisement laws that currently deny the vote to approximately six million adult American citizens.³

Modern jurists are wont to conflate felon disenfranchisement laws' long standing in the statute books with a solid jurisprudential pedigree or, at least, a reassuring sense of stability. By focusing on the tensions that anti-Mormon laws caused between and among politicians, judges, and lawyers more than a hundred years ago, I aim to challenge this misconception.

THE NATIONAL RESPONSE TO POLYGAMY IN THE WEST

Mormons were generally an unpopular group throughout their early existence.⁴ Nevertheless, national efforts to interdict Mormon polygamy intensified in the early 1880s.⁵ The persistence of the so-called "twin relic of barbarism" nearly twenty years after the abolition of slavery (the other twin) and Mormon adherence to a body of religious law that claimed priority over temporal authorities inflamed the nation's passions and led to a series of laws designed to limit Mormons' political efficacy.⁶

³The number appears to be climbing towards this figure inexorably as felony convictions pile up. In 2008, Jeff Manza and Christopher Uggen's study of state laws removing voting rights from some or all felons estimated that 5.3 million Americans were affected by such laws. Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy*, 69–94 (New York, 2008). Although in recent years some states have modified or removed impediments on convicted felons voting at some point after their release or completion of probation, parole, or both, the number of disenfranchised individuals appears to be growing apace. A 2012 study by the Sentencing Project estimated that the number had increased to 5.5 million. See "Editorial: Disenfranchised Felons," *New York Times*, July 16, 2012. At this writing, Sentencing Project's website cites a figure of 5.85 million, although its source for that estimate is not attributed. See Sentencing Project (2013), available at <http://www.sentencingproject.org/template/page.cfm?id=133>.

⁴See Gordon, *The Mormon Question*, 1–84.

⁵See Christine Talbot, "'Turkey Is in Our Midst': Orientalism and Contagion in Nineteenth Century Anti-Mormonism," *Journal of Law and Family Studies* 8 (2006): 363, 363–64.

⁶Gordon, *The Mormon Question*, 55–84. For an excellent synopsis of the historical evolution of legal efforts to interdict Mormon polygamy during the nineteenth century, see Shayna M. Sigman, "Everything Lawyers Know about Polygamy Is Wrong," *Cornell Journal of Law and Public Policy* 16 (2006): 101, 108–34.

Often equating plural marriage with slavery, post-Civil War Republicans were the fiercest crusaders against polygamy,⁷ while most Mormons gravitated toward the rhetoric of regional sovereignty espoused by Democrats.⁸ These party alignments had their own internal logic, but they led to incongruous results, exemplified by U.S. senator William Stewart's attempts to disenfranchise Mormons in Nevada.⁹ Stewart was one of the primary architects of the Fifteenth Amendment, which protected racial minorities from disenfranchisement at the polls.¹⁰ Nevertheless, as described at greater length below, he championed the disenfranchisement of thousands of otherwise qualified Mormon voters in his home state.

Some historians have highlighted the similarity between late nineteenth-century attitudes toward Mormons and racial minorities (particularly Native Americans and Asian Americans) in the American West.¹¹ Although some of these parallels are compelling,¹² in the public consciousness¹³ the Mormon church bore a singular connection to an illegal and immoral activity that made Mormons uniquely vulnerable to felon disenfranchisement

⁷See, generally, Eric N. Moody, "Nevada's Anti-Mormon Legislation of 1887 and Southern Idaho Annexation," *Nevada Historical Society Quarterly* 22 (1979): 21.

⁸See, generally, David Buice, "A Stench in the Nostrils of Honest Men: Southern Democrats and the Edmunds Act of 1882," *Dialogue: A Journal of Mormon Thought* 21 (1988): 100 (describing the unusual and sometimes uneasy alliance between southern Democrats and western Mormons).

⁹See Russell R. Elliott, *Servant of Power: A Political Biography of Senator William M. Stewart* (Reno, NV, 1983), 101–11.

¹⁰*Ibid.*, 63–64.

¹¹See, e.g., Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York, 1987), 259–88.

¹²There were, of course, real and important differences between the Mormons and other maligned minorities in the West during the late nineteenth century. Population estimates, for example, indicate that the vast majority of Utah Mormons were of northern or western European heritage, or recent immigrants from those areas. See Dean L. May, "A Demographic Portrait of the Mormons, 1830–1890," in *After 150 Years: The Latter-day Saints in Historical Perspective*, ed. Thomas G. Alexander and Jessie L. Embry (Champaign, IL, 1986), 40, 67; The University of Virginia Geospatial and Statistical Data Center, Historical Census Browser, available at <https://library.rice.edu/collections/eresources/university-of-virginia-geospatial-and-statistical-data-center-geostat>.

¹³See Buice, "A Stench in the Nostrils of Honest Men," 103 (noting that "[t]he horror with which most Americans of that day viewed polygamy led to a flood of anti-Mormon literature, much of it erotic and sado-masochistic in tone. Most national magazines carried numerous articles on the Mormons, and polygamy was the most common theme.")

and other¹⁴ legal sanctions.¹⁵ Although laws removing voting privileges from felons were generally created by states, pressure to act against Mormon polygamy, coupled with the poor prospects for the voluntary promulgation of restriction on polygamists' voting privileges in Utah itself, prompted congressional leaders to strike out at Mormon polygamy from Washington.¹⁶

In 1882 Congress passed the Edmunds Act,¹⁷ which not only outlawed bigamy and polygamy in U.S. territories, but also explicitly disenfranchised those convicted of such crimes.¹⁸ Vacating all voting official positions held in the Utah Territory at the time of its enactment, the act created a five-man board of commissioners selected by the president of the United States.¹⁹ These commissioners were to appoint a series of "loyal" (viz., non-Mormon) election officials in the territory who would, in turn, see to it that no polygamists slipped through the broad net cast by the act.²⁰ To ensure the efficiency of disenfranchisement policy in the territory, the new board of election officials created a "test oath" intended to weed out polygamists.²¹ The oath required would-be voters to swear they were neither bigamists nor polygamists.²²

¹⁴In addition to disenfranchisement, Congress sought to limit the church's wealth by enforcing mortmain statutes (restrictions on church property ownership) and mandating that polygamists' estates escheat to the federal government. A series of state and federal statutes created harsh criminal punishments for polygamy and other crimes linked to polygamous Mormons such as fornication and adultery. See Gordon, *The Mormon Question*, 163–64, 183–220.

¹⁵See Nora V. Demleitner, "Continuing to Pay One's Debt to Society: The German Model of Felon Disenfranchisement as an Alternative," *Minnesota Law Review* 84 (2000): 753, 780 (describing the connections between Mormons' perceived immorality and the use of felon disenfranchisement against them).

¹⁶See *ibid.*, 147–82.

¹⁷*An Act to Amend Section 5352 of the Revised Statutes of the United States, In Reference to Bigamy and for Other Purposes*, ch. 47, 22 Stat. 30 (1882) [recodified at 48 U.S.C. 1461] [repealed 1983] (hereinafter *Edmunds Act*). 47th Cong., 1st sess.

¹⁸See L. Rex Sears, "Punishing the Saints for Their 'Peculiar Institution': Congress on the Constitutional Dilemmas," *Utah Law Review* 2001 (2001): 581, 592–93. Section 8 of the act stated that "No polygamist [or] bigamist . . . and no woman cohabiting with any [bigamist or polygamist], in any Territory . . . shall be entitled to vote at any election held in any such Territory or other place." *Edmunds Act*, §8. Interestingly, women were granted voting privileges in Utah in 1870, long before female citizens of most other states and territories. In an unprecedented move, Congress later completely removed these privileges from women in the territory. See Gordon, *The Mormon Question*, 97, 164–172.

¹⁹*Ibid.*, §9.

²⁰*Ibid.*

²¹*Ibid.*

²²*Ibid.*

Although some anti-polygamy crusaders criticized it for not going further, the Edmunds Act's impact was forcefully evident within a few years of its passage. An 1885 *New York Times* article claimed that the law had, in the space of three years, stripped some fifteen thousand Mormons of their voting privileges in the Utah territory alone.²³ This statistic, if accurate, is startling when one considers that, according to the 1890 U.S. Census, Utah was home to only about 112,000 adults.²⁴ The Edmunds Act and laws like it also seem to have led to many qualified voters refusing to register in protest.²⁵ What is more, several of the most prominent Mormon leaders, including George Cannon, a prospective congressional delegate, were imprisoned and disenfranchised under the act's auspices.²⁶

Although the Edmunds Act was an effective measure in the campaign to weaken a potentially powerful Mormon voting bloc in the West, many questioned its constitutionality. The legislation's opponents charged that it imposed an ex post facto punishment on those who had been practicing bigamists or polygamists before its passage, but who had abstained from living with more than one wife by 1882. Taking their pleas to the U.S. Supreme Court, a group of Utah Mormons in this predicament brought forward the first major federal challenge to a felon disenfranchisement law.

It didn't work. In *Murphy v. Ramsey* (1885),²⁷ Justice Stanley Matthews, writing for a unanimous Court, held the Edmunds Act and the test oath it authorized to be constitutional.²⁸ The Court reasoned that disenfranchisement was simply an alteration to voter qualifications and, as such, was not a retroactive punishment or, for that matter, a punishment at all.²⁹

²³"The Law Is Not a Failure," *New York Times*, May 4, 1885.

²⁴Historical Census Browser.

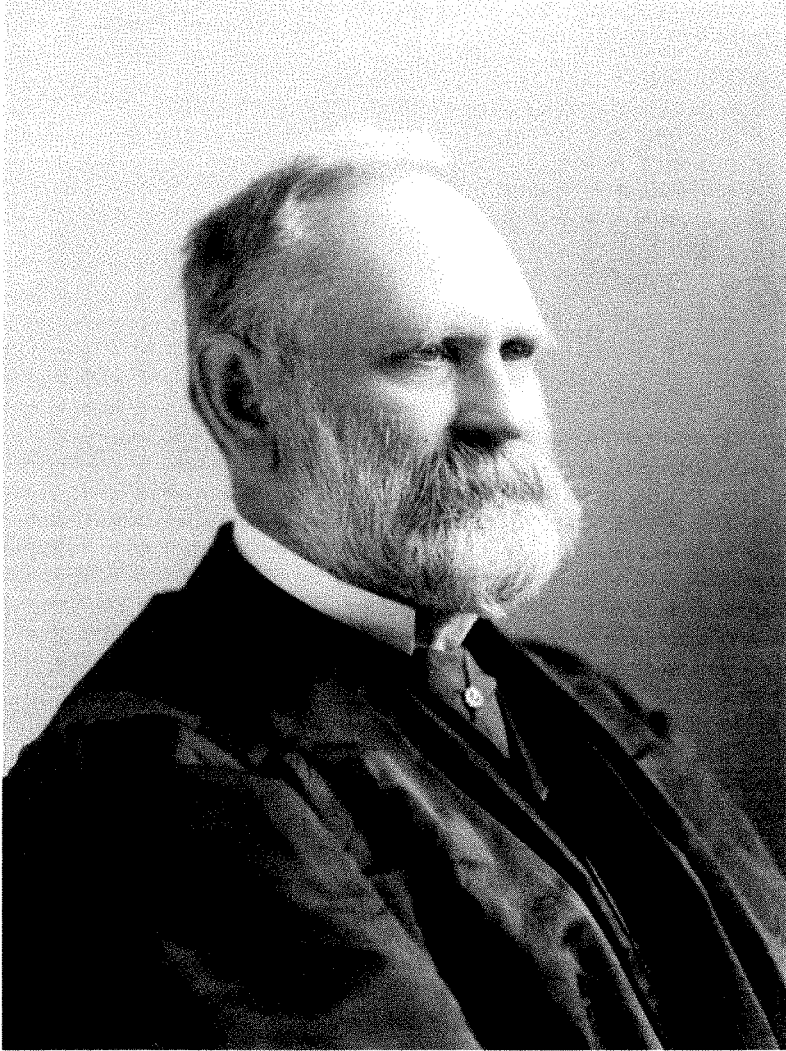
²⁵See *Memorial of the Constitutional Convention of Utah in The Constitution of the State of Utah with the Proceedings of the Constitutional Convention* 50 (1887) (noting that "[t]he test oath prescribed by [a similar 1887 act] was so distasteful to many persons of all classes who were otherwise qualified, that they abstained from registration.")

²⁶Gordon, *The Mormon Question*, 211–12.

²⁷114 U.S. 15 (1885).

²⁸*Ibid.*, 45.

²⁹*Ibid.*, 43. Unlike some later opinions, *Murphy's* holding largely comported with the prevailing legal orthodoxy of its time. Disenfranchisement was generally accepted as a non-punitive act carried out by the sovereign states throughout the nineteenth century. As the influential nineteenth-century legal scholar John Norton Pomeroy observed, "the voter possesses a mere privilege; . . . the States have supreme control over this privilege; . . . taking it away, or what is the same thing, refusing to confer it, does not impair a right, and cannot be regarded as a penalty or punishment." John Norton Pomeroy, *An Introduction to the Constitutional Law of the United States*, 10th ed. (Indianapolis, 1888), §535.



Justice Stanley Matthews, above, writing for a unanimous U.S. Supreme Court, held the Edmunds Act and the test oath it authorized to be constitutional. (Photograph by Napoleon Sarony, courtesy of Collection of the Supreme Court of the United States, 1881.17)

Moreover, Matthews stressed that “[t]he words ‘bigamist’ and ‘polygamist’ evidently are not used in this statute [to] describ[e] those who entertain the opinion that bigamy and polygamy ought to be tolerated as a practice[.]”³⁰ In other words, the act based disenfranchisement on criminal conduct rather than religious belief. Nonetheless, the tone of *Murphy* emboldened state governments to go further. Indeed, the Court specifically lauded efforts to “withdraw all political influence from those who are practically hostile to . . . that reverent morality which is the source of all beneficent progress in social and political improvement.”³¹

The Edmunds Act struck a significant blow against Mormon political efficacy, but many anti-Mormon politicians felt it did not go far enough. The act applied only to the territories³² and denied the vote only to polygamous Mormons within that limited geographical reach. Indeed, it explicitly forbade election officials from “refus[ing] to count any . . . vote on account of the opinion of the person casting it on the subject of bigamy or polygamy.”³³ Over the next few years, the legislatures of several western states and territories attempted to create a more extensive brand of felon disenfranchisement that would encompass their entire Mormon populations.

NEVADA'S ANSWER TO THE MORMON QUESTION

Nevada's Mormon disenfranchisement efforts were the most draconian and least successful in the nation. Nevertheless, Nevada's failures exemplify the doctrinal and political tensions that disenfranchisement implicated. The history of the Mormon presence in Nevada was long and meandering. The Mormons were among the first white settlers in the region that encompasses present-day Nevada.³⁴ While most members of the

³⁰*Murphy*, 114 U.S., at 40.

³¹*Ibid.*, at 45.

³²The U.S. Constitution gives states exclusive power to set the criteria for federal elections held in their boundaries; territories are not so lucky. See U.S. Constitution, art. I, §2; art. II, §1.

³³*Edmunds Act*, §9.

³⁴See Juanita Brooks, “The Mormons in Carson County, Utah Territory,” *Nevada Historical Society Quarterly* 8 (1965): 13–24; Russell R. Elliott and William D. Rowley, *History of Nevada* (Lincoln, NE, 1973), 49–68; James W. Hulse, *The Silver State: Nevada's Heritage Reinterpreted* (Reno, NV, 1998), 50–51, 57–73, 91–100; Michael W. Bowers, *The Sagebrush State: Nevada's History, Government, and Politics* (Reno, NV, 2002), 4–7.

church returned to the eastern parts of Utah Territory intending to fight in the "Mormon War" of 1857 (a military conflict that never actually happened), a few—resisters of the centralized church's rule who often were dubbed "Josephites"—stayed on in what was then Carson County, Utah.³⁵ Until Nevada's separation from Utah Territory, a Mormon-dominated government officially controlled most of present-day Nevada.³⁶

Dissatisfied with the territorial government in distant Salt Lake City, non-Mormons in the region sought to gain independence from Utah Territory several times during the 1850s and early 1860s, finally succeeding in 1861.³⁷ Although there were examples of cooperation between gentiles and Mormons, latent and manifest hostility toward the Mormons was still evident in the Silver State after its successful bids for territorial independence and statehood.³⁸

During the late 1880s, several prominent Nevada politicians, led by U.S. senator William Stewart, pushed to annex territory from the southern tip of Idaho Territory. The plan had its political and economic benefits; Stewart claimed that annexation would help to stem the tide of emigration and economic hardship associated with the decline of the silver rush by doubling the state's taxable property and increasing the population to levels comparable to other states.³⁹ Even so, southern Idaho had more than its share of political baggage. For more than a decade, the area had been home to some of the nation's most ferocious religious conflict.⁴⁰ In response to the territory's growing Mormon population, Idaho's legislature experimented with a series of test oaths intended to strip the territory's Latter-day Saints of their voting privileges. The earliest of these oaths differed little from the formula established by the Edmunds Act inasmuch as they required those who might register to vote to swear that they were neither bigamists nor polygamists. As the territory's

³⁵See Elliott and Rowley, *History of Nevada*, 56–57; Effie Mona Mack, *Nevada: A History of the State from the Earliest Times through the Civil War* (Glendale, CA, 1936), 169.

³⁶The extent to which Salt Lake City was actually able to control modern-day Nevada fluctuated in these years. See Elliott and Rowley, *History of Nevada*, 49–68. Portions of southern Nevada, including present-day Las Vegas, were part of the New Mexico Territory until 1867 but also had a Mormon presence of varying sizes. Ibid.; Bowers, *The Sagebrush State*, 7–12.

³⁷Ibid.; Elliott and Rowley, *History of Nevada*, 49–68.

³⁸See, generally, Arrington, *The Mormons in Nevada*.

³⁹See Elliott, *Servant of Power*, 101–10.

⁴⁰See, generally, Merle W. Wells, *Anti-Mormonism in Idaho, 1872–92* (Provo, UT, 1978).

Mormon population continued to swell throughout the 1880s (particularly in the south, near Idaho's borders with Nevada and Utah), anti-Mormon crusaders grew anxious for further assurances, and the territory's policies became increasingly severe.⁴¹

Fears that Latter-day Saints might expand their control seemed partially vindicated in southern Idaho in the early 1880s, as Mormons exercised political muscle and continued to gain strength. The territory's 1884 election was an ugly affair; Democrats and Republicans sought desperately to out-do each other by clamping down on Mormons. Voter intimidation, physical violence, bold-faced ballot stuffing, and a litany of other illegal activities characterized the election in the southern part of the territory. Yet, for all these efforts, several Mormons were elected to local offices in southern Idaho.⁴²

For Nevada's anti-Mormon politicians, the results of the 1884 election were a vivid demonstration of the need to couple any prospective annexation of southern Idaho with complete Mormon disenfranchisement. Otherwise Nevada would invite widespread chaos and the invidious spread of Mormon theocracy. The politicians were hardly coy on this point: "In joining a portion of [Idaho's] territory with ours," Senator Stewart claimed, "[Idaho's non-Mormons] ask perfect security against Mormon rule and aggressions, and we must give it to them."⁴³

The state legislature was more than willing to provide this form of "security." In January 1887, the state senate passed a proposal to amend the state's constitution to explicitly disenfranchise the state's substantial⁴⁴ Mormon popula-

⁴¹Ibid., 37–50.

⁴²Ibid.

⁴³"The Anti-Mormon Bill Passes the Senate," *Daily Territorial Enterprise*, February 10, 1887.

⁴⁴Although reliable population statistics for Mormons living in nineteenth-century Nevada are hard to come by, the extant evidence suggests a fairly large Mormon presence in the state, particularly in the northern and eastern counties, during this period. Moody cites estimates that place the Mormon population of Nevada somewhere between 2,000 and 150. Census records from 1890 suggest that 525 Mormons lived in Nevada (about 4.4 percent of the total census population), but even census numbers are questionable because Mormons were notoriously under-reported in massive numbers. See May, "A Demographic Portrait of the Mormons." Although Mormons did not hold a majority in any Nevada county, Moody notes that Lincoln County's Mormon population might have been as high as 17 percent of the total population. Moody, "Nevada's Anti-Mormon Legislation," 23. Unfortunately, the ultimate significance of any of these numbers is difficult to gauge when one considers the dramatic swings in population and demographics in Nevada during the period. From 1880 to 1890, for example, the state's total census population fell precipitously, from 62,266 to 45,761 (a 26.5 percent drop, probably brought on by hard economic times and an exodus of miners after the Comstock Lode ran dry). See Historical Census Browser.

tion.⁴⁵ On February 7, 1887, after a number of minor scuffles over revisions and amendments,⁴⁶ the assembly unanimously approved the proposal.⁴⁷ The revised version of the constitutional amendment then went back to the senate for approval.

During the senate proceedings, Stewart made a guest appearance, delivering a vitriolic speech that inveighed against Mormons and urged the amendment's passage.⁴⁸ An eminently important figure in the history of both voting rights and Nevada, Stewart had been one of the principal authors of the Fifteenth Amendment to the U.S. Constitution and had played a vital role in securing its passage.⁴⁹ The best explanation for this disconnect between the senator's positions on Mormon and African-American suffrage is probably a combination of Republican attitudes equating polygamy with slavery and the limited scope even some of the most radical Republicans applied to the reconstruction amendments, coupled with Stewart's own idiosyncrasies.

As Amy Dru Stanley notes, the notion that the legal protections created to destroy slavery in the aftermath of the Civil War might be extended to non-freedmen troubled many Reconstruction-era lawmakers.⁵⁰ Aside from these initial limits

⁴⁵*Journal of the Thirteenth Session of the Senate of the State of Nevada*, 114, 116, 117, 126–27, 143, 160, 168, 203–204, 209 (1887) (hereinafter *13th Session Senate Journal*).

⁴⁶*Journal of the Thirteenth Session of the Assembly of the State of Nevada*, 133–34 (1887) (hereinafter *13th Session Assembly Journal*). The senate initially refused to concur with these amendments but eventually acquiesced following a unanimous assembly vote in which the house chose not to recede. See *ibid.*, 148, 154.

⁴⁷The final vote was 38-0, with two absences. See *13th Session Assembly Journal*, 133–34, 148, 154.

⁴⁸See "The Anti-Mormon Bill Passes the Senate," 1.

⁴⁹See Elliott, *Servant of Power*, 63–64. One should be cautious about labeling Stewart a die-hard champion of African-American voting rights. As a member of the "silver bloc," Stewart successfully obstructed the passage of the Lodge Force Bill in 1890–91, which would have compelled southern states to hold fair and free elections. Although the measure would have upheld Stewart's own language in the Fifteenth Amendment, the bill's powers extended well beyond the South, and the idea of strict federal supervision of Nevada elections did not appeal to Stewart. See Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York, 2000) 117–71. Nevertheless, noted historian David Blight describes Stewart's position on African-American suffrage as emblematic of the "thoroughgoing political liberalism" of radical reconstruction. David W. Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge, MA, 2001), 55.

⁵⁰See, generally, Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Marketplace in the Age of Emancipation* (New York, 1998).



Although Senator William Stewart, above, was one of the primary architects of the Fifteenth Amendment to the U.S. Constitution, which protected the voting rights of racial minorities, he championed the disenfranchisement of thousands of Mormon voters in Nevada. (Courtesy of Special Collections Department, University of Nevada, Reno, libraries)

placed on the scope of emancipation, a compromised vision of freedom, designed to facilitate national reconciliation and endorsed in substantial measure by the Supreme Court,⁵¹ had already gained traction by the time Nevada politicians sought to remove voting rights from the state's Latter-day Saints.⁵²

Stewart himself saw limits on Reconstruction-era freedoms that were enforced by a narrow definition of citizenship grounded in traditional Christian values. The senator countered early claims of inconsistencies between his positions on black suffrage and Chinese naturalization, for example, by resorting to what he claimed were "the fundamental religious differences between the Chinese and citizens of the United States."⁵³ Stewart likewise distinguished Mormons' religious worldview from mainstream Christian morality. "The true Mormon," he claimed, "is the absolutely servile minion of the church and . . . will commit murder or any other crime required in the interest of the church."⁵⁴

Stewart went further, however, by portraying Mormonism as "a political organization, which, when it obtains the power, overrules all other power. No American citizen can live among them[.]" he warned, "without being made subject to their complete control."⁵⁵ This form of theocracy, Stewart argued, bred an inveterate lawlessness,⁵⁶ which meant that "absolute submission to the civil law must be inflexibly required of them."⁵⁷ Nevadans could only ensure that sort of submissiveness by disenfranchising all Mormons, ensuring secular government through religious discrimination.

⁵¹For example, in *United States v. Reese*, 92 U.S. 214 (1876), an early U.S. Supreme Court case that interpreted the Fifteenth Amendment, Chief Justice Morrison Waite offered a vision of the post-Reconstruction federal franchise that acknowledged that the amendment protected African Americans against discrimination at the polls and did nothing more. "The Fifteenth Amendment," Waite wrote, "does not confer the right of suffrage upon any one. It prevents the States, or the United States . . . from giving preference . . . to one citizen of the United States over another on account of race, color, or previous condition of servitude." *Ibid.*, 217. For comparably narrow constructions of the Thirteenth, Fourteenth, and Fifteenth Amendments, see *Slaughter-House Cases*, 83 U.S. 36 (1872); *Minor v. Happersett*, 88 U.S. 162 (1874); *Civil Rights Cases*, 109 U.S. 3 (1883); *Ex parte Yarbrough*, 110 U.S. 651 (1884).

⁵²See Blight, *Race and Reunion*, 31–98.

⁵³Elliot, *Servant of Power*, 66.

⁵⁴"The Anti-Mormon Bill Passes the Senate," *Daily Territorial Enterprise*.

⁵⁵*Ibid.*

⁵⁶*Ibid.* (arguing that Mormons "ask no knowledge of our laws, neither do they respect them").

⁵⁷*Ibid.*

On February 9, 1887, the senate approved the measure, 16-3, to amend the state constitution.⁵⁸ Although the Nevada constitution called for both houses to approve amendments in two consecutive legislative sessions, the initial majorities in both the assembly and the senate suggested that attaining such approval would not prove onerous for the amendment's supporters.⁵⁹ The final version of the amendment combined felony disenfranchisement in the mold of the Edmunds Act with religious discrimination, denying the vote to anyone "who is a member of or belongs to the Church of Jesus Christ of Latter-day Saints, . . . or who is a member of or belongs to any order, organization or association which sanctions or tolerates bigamy or polygamy, . . . or claims the right to exercise . . . civil power in conflict with . . . the Constitution or laws of this State or of the United States."⁶⁰ While the proposed amendment explicitly removed voting privileges from all Latter-day Saints, it also sought to tie Nevada's disenfranchisement campaign to the longstanding practice of felony disenfranchisement in ways that mirrored the national policy set forth in the Edmunds Act and Stewart's argument that the Mormon church threatened the secular legal order.⁶¹

⁵⁸Ibid.

⁵⁹Nevada Constitution, art. XVI, §1.

⁶⁰*Proposed Amendment to the Constitution of the State of Nevada No. XII—Senate and Concurrent Resolution, relative to amending the Constitution of the State of Nevada* (1887). The proposed amendment was inexplicably reprinted in *The Daily Territorial Enterprise*, September 28, 1888, as *Proposed Amendment to the Constitution of the State of Nevada No. XIV*, but as far as the author can determine, the proposal was officially referred to as cited.

⁶¹According to Alexander Keyssar, as of 1912, when Arizona became a state, forty-five of the forty-eight states had some form of felony disenfranchisement law in place (Maine, Michigan, and Massachusetts were the exceptions). Two states, Utah and Vermont, initially disenfranchised felons for one crime (treason and election bribery, respectively); Vermont's law changed in 1884 to encompass all felonies. Two additional states (Colorado and Indiana) allowed felons to vote after the completion of their sentences. See Keyssar, *The Right to Vote*, A12. For overviews of the prevalence of felony disenfranchisement, see Manza and Uggen, *Locked Out*; Mark E. Thompson, "Don't Do the Crime If You Ever Intend to Vote Again: Challenging the Disenfranchisement of Ex-Felons as Cruel and Unusual Punishment," *Seton Hall Law Review* 33 (2002): 167; Alec C. Ewald, "Civil Death: The Ideological Paradox of Criminal Disenfranchisement Law in the United States," *Wisconsin Law Review* 2002 (2002): 1045. Felony disenfranchisement laws were challenged relatively few times during the nineteenth century, and none were overturned until 1910. See *Osborne v. County Court*, 68 W.Va. 189 (1910). During this period, such protests were generally made on due process or ex post facto grounds and rarely, if ever, challenged the validity of felony disenfranchisement as a whole. See, e.g., *Washington v. State*, 75 Ala. 582 (1884).

Attempting to do an end-around to avoid the lengthy process of ratifying a constitutional amendment⁶² and prevent Mormons from voting in the upcoming 1888 election, the state assembly also sought to disenfranchise Nevada's Mormons by statute.⁶³ On February 14, 1887, the assembly began debating a statutory ban on Mormon voting in Nevada.⁶⁴ Within four days, the lower house unanimously passed a bill disenfranchising all Mormons.⁶⁵ The bill also established a test oath that required those wishing to register to vote to swear that they were not members of the Mormon church.⁶⁶ Although the bill glided easily through the state assembly, its passage through the senate was a more difficult one that illustrates the odd logic of combining religion and citizenship.

Senator Henry Fish, for example, disapproved of the Mormon voting ban because he felt it ignored important distinctions between "old Mormons" and Josephites. Fish, who eventually voted for the act, claimed that the Josephites, "neither practice nor recognize polygamy or bigamy, but are good, true citizens of the Republic, while the old Mormon Church is not."⁶⁷ The day after the assembly passed its statutory ban on Mormon voting, Fish proposed a more nuanced law reflecting his reservations, which passed the senate by a slender 11-8 majority but was narrowly defeated in the state assembly.⁶⁸

The indiscriminate nature of the new brand of anti-Mormon legislation troubled other members of the state senate, too. Several senators appear to have been concerned from the outset that the assembly's anti-Mormon bill was unconstitutional. Senator Henry Harris objected to the legislation because it departed from traditional felon disenfranchisement practices: "If a man commits a crime he should be punished, regardless of any religious belief he may or may not have," Harris claimed, but this new legislation was "in direct conflict with the State

⁶²See Elliot, *Servant of Power*, 104–105.

⁶³13th Session Nev. Assembly Journal, 190, 195, 203, 219, 326, 336, 356.

⁶⁴Ibid., 190.

⁶⁵An Act Prescribing the Qualifications and Modifying the Oath for the Registration of Voters in Conformity therewith, 1887 Nev. Stat. 106–107 (repealed 1909). The assembly vote count was 34-0, with six absences. 13th Session Nev. Assembly Journal, 219.

⁶⁶1887 Nev. Stat. 106; *State ex rel Whitney v. Findlay*, 20 Nev. 198, 199 (1888).

⁶⁷See "The Anti-Mormon Bill Passes the Senate," *Daily Territorial Enterprise*.

⁶⁸See Moody, "Nevada's Anti-Mormon Legislation of 1887," 29–30.

Constitution, which gives the franchise to all, regardless of religious belief."⁶⁹

Anti-Mormon sentiment was strong enough to overcome these objections, however. After a series of procedural machinations,⁷⁰ the law passed the senate on March 1, 1887.⁷¹ It

⁶⁹Ibid. See also "The Anti-Mormon Bill Passes the Senate," *Daily Territorial Enterprise*.

⁷⁰After its introduction to the senate on February 18, 1887, the Anti-Mormon Bill was referred to the standing committee on the judiciary. *13th Sess. Nev. Senate Journal*, 217, 218, 236. On February 24, John Foley, the committee chair and senator from Esmeralda County, issued an unfavorable report on the bill and recommended that it not be passed. Ibid., 236. At Foley's request, the bill was then tabled. Ibid., 239. After its removal from the table on March 1, 1887, the bill came up for a vote before a closely divided senate. During the final debate and vote, it survived numerous attempts to table it again, to postpone it indefinitely, and to revise it drastically (Senator Harris moved to strike out the words "the Church of Latter-day Saints," and "Mormon Church" from the bill in a last-ditch effort to shore up its constitutionality), and was passed by a final vote of 12-8. Ibid., 296.

⁷¹It is unclear why the Anti-Mormon Act faced so much opposition when the proposed constitutional amendment had sailed through the same legislature. Senator Harris' objections to the act may be instructive here. Harris' misgivings about the bill's constitutionality resonate with broader debates in legal and political circles during the late nineteenth century over the limits constitutions imposed on the legislative will. Evolving notions of these constitutional constraints profoundly influenced the prevailing legal conception of the franchise during this period. See Nancy Cohen, *The Reconstruction of American Liberty, 1865-1914* (Chapel Hill, NC, 2002), 137-40. Orthodox legal opinion—then as now—posited that individuals did not hold a constitutionally cognizable "right" to vote. As Thomas Cooley, one of the leading jurists and scholars of the mid-nineteenth century explained in his path-breaking constitutional treatise, restrictions on the franchise could be made only by amending state constitutions; a statute alone would not suffice. Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union* (Boston, MA, 1890), 758. Legal historian William J. Novak notes that Cooley's treatises "moved constitutionalism from the periphery to the center of American jurisprudence as the definitive oracle on governmental power and individual liberty, public aspirations and private freedoms." William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill, NC, 1996), 246. Drawing on the earlier works of legal thinkers and treatise writers like Cooley and Joseph Story, many jurists emphasized constitutions as an affirmative, substantive check on legislative power in the last third of the nineteenth century. According to Alexander Keyssar, franchise qualifications were "matters of fundamental or constitutional, rather than statute, law: legislatures . . . were permitted to enact laws that concretized or carried out constitutional provisions, but they did not possess the power to alter suffrage qualifications." Keyssar, *The Right to Vote*, 167. The Nevada legislature's enthusiasm for the proposed amendment to the Nevada Constitution and relative ambivalence toward a proposed statute with the exact same purpose arguably suggest the influence of these legal ideas.

would be struck down before the next election. Sometime after the law's passage, a Mormon named George Whitney attempted to register to vote in the 1888 election.⁷² Whitney offered to take the state's original oath for electors but refused to take the new oath established by the Anti-Mormon Act.⁷³ After being turned away, Whitney petitioned the Nevada Supreme Court for a writ of mandamus compelling his local registry agent, A.M. Findlay, to add his name to the list of qualified voters.⁷⁴ Whitney argued that the statute was invalid on two counts. First, he argued, the Anti-Mormon Act should have been ruled unconstitutional because the state legislature lacked the authority to limit the franchise without a constitutional amendment.⁷⁵ Whitney also claimed that the act abridged the free exercise of religion guaranteed by the Nevada Constitution.⁷⁶

Pundits and politicians eagerly awaited the court's decision in *State ex rel Whitney v. Findlay*, even though attempts to annex southern Idaho had been thwarted before the case came to the court.⁷⁷ While lingering hopes of annexing part of western Utah may account for the desire of some to keep the act alive, it seems clear that anti-Mormon sentiments played a significant role in efforts to sustain the legislation with a victory in the courts. Any legal protection or recognition of the Mormon church could have thrown up obstacles that might impede further efforts in the broader campaign against the Latter-day Saints in the western states and territories.

Stewart's message to Findlay's lawyer emphasized the potential dangers of a verdict in Whitney's favor: "The proposition to colonize and take possession of our State Government[,] he claimed, was "seriously considered by the Mormon Church. . . . I hope the Supreme Court will not by a strained construction of

⁷²*Findlay*, 20 Nev., at 199.

⁷³*Ibid.*

⁷⁴*Ibid.*

⁷⁵*Ibid.*, at 199–200.

⁷⁶*Ibid.*, at 202.

⁷⁷Despite several efforts to gain the support of the U.S. Congress and Democratic president Grover Cleveland, Senator Stewart's bid for annexation was thoroughly defeated by the time the court handed down its decision. Cleveland ended Stewart's proposal for the southern Idaho petition with a pocket veto, and Idaho residents, many of whom had mixed or negative reactions to Stewart's territorial ambitions in any event, refocused their energies on gaining statehood. See Elliott, *Servant of Power*, 105–106. While it is impossible to know whether the court's rejection of the legislature's Article XI claims would have been affected if the annexation had gone through as planned, nothing in the opinion itself suggests as much.

the Constitution make a decision that will place Nevada at the mercy of the Mormons."⁷⁸

Thus admonished, Findlay's counsel answered claims that the legislature had exceeded its constitutional authority by creating an argument based on article II, section 6 of the Nevada Constitution, which empowered the legislature to promulgate "rules or oaths as may be deemed necessary" to "preserve the purity of elections."⁷⁹ This contention relied on the language of the preamble to the Anti-Mormon Act, which claimed that it was "necessary for the peace and safety of the people of this state to exclude from participation in the electoral franchise all persons belonging to the self-styled 'Church of Jesus Christ of Latter-day Saints.'"⁸⁰

Today the goals of maintaining the integrity of the electoral system and disenfranchising large swaths of the electorate seem mutually exclusive. Not so in the late nineteenth century. The great historian of the American South, C. Vann Woodward, phrased his account of the disenfranchisement of African Americans in the region in terms of a tacit agreement between warring conservative and radical factions in the South to avoid inflicting mortal wounds on the purity of the electoral process through attempts to manipulate, or curry favor with, African Americans.⁸¹ And while efforts to introduce the widespread use of the silent, or Australian, ballot fed into the call to purge the electoral system of corruption, the primary benefit most southern legislators saw in the system was that "the need to read and mark the ballot would require a degree of literacy that might well disqualify a large number of blacks."⁸²

Unlike parallel arguments made by southern politicians, however, the Nevada legislature's claim that Mormon disenfranchisement was necessary to protect Nevada's peace and safety did not survive constitutional challenge. Responding to Findlay's argument with a unanimous opinion, the Nevada Supreme Court held that the state had no authority to so

⁷⁸Ibid. (quoting Stewart to T.H. Wells, Sept. 17, 1888).

⁷⁹Nevada Constitution, art. II, §6.

⁸⁰See *Findlay*, 20 Nev., at 201.

⁸¹See C. Vann Woodward, *The Strange Career of Jim Crow* (New York, 2002), 83.

⁸²Michael Perman, *Struggle for Mastery: Disenfranchisement in the South, 1888–1908* (Chapel Hill, NC, 2001), 20.

dramatically restrict the franchise.⁸³ Justice Thomas Hawley—Stewart's close friend and fellow Republican⁸⁴—held that only an amendment to the state constitution could make a substantive restriction on the franchise.⁸⁵

The court granted Whitney's request for a writ of mandamus and threw out the Anti-Mormon Act, but its opinion was victory for legal formalism, not religious liberty. Indeed, the court declined to rule on Whitney's free-exercise claim. Article I, section 4 of the Nevada Constitution created a broad, but not boundless, protection of religious freedoms that might well have been consonant with Stewart's philosophy. The provision commanded that "liberty of [conscience] . . . shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace, or safety of this State."⁸⁶ Employing a similar principle, the U.S. Supreme Court had already ruled in *Reynolds v. United States* (1879)⁸⁷ that anti-polygamy laws did not violate the free exercise of religion as protected by the U.S. Constitution.⁸⁸ The Nevada court declined to take a position on the contentious supposition that Mormonism itself was sufficiently licentious and lawless to bring the faith outside the ambit of free-exercise protection.⁸⁹ Nonetheless, the court's decision combined with the failure of Nevada's efforts to annex southern Idaho to take the wind out of anti-Mormon Nevadans' sails. With the principal pragmatic rationale for disenfranchisement gone and the court's decision producing a cloud of impropriety, the proposed amendment proved unviable. The election of 1888 decimated the once-solid anti-Mormon bloc in the state senate. Eleven of the twenty senators in office during the 1889 term had not been members of the upper

⁸³Cooley's decision in *People v. Maynard*, 15 Mich. 463 (1867), made during his tenure as a Michigan Supreme Court justice, is perhaps the leading example of this jurisprudence in practice, although several state supreme court cases used the same or similar reasoning and were cited in the *Findlay* opinion. See, e.g., *Davies v. McKeeby*, 5 Nev. 369 (1870); *Clayton v. Harris*, 7 Nev. 61, 64 (1871); *State v. Williams*, 5 Wis. 308 (1856); *State v. Baker*, 38 Wis. 71, 86 (1875); *Quinn v. State*, 35 Ind. 485, 490 (1871).

⁸⁴See Elliott, *Servant of Power*, 238–42.

⁸⁵*Findlay*, 20 Nev., at 202.

⁸⁶Nevada Constitution, art. I, §4.

⁸⁷98 U.S. 145 (1879).

⁸⁸*Ibid.*, 162. The federal Constitution's free exercise clause was not incorporated against the states until 1940. See *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

⁸⁹*Findlay*, 20 Nev., at 202.

house when the Anti-Mormon Bill and proposed Amendment XII passed.⁹⁰ At least nine of the eleven senatorial newcomers opposed the amendment.⁹¹ After three postponed votes, the senate defeated the amendment the second time around by a 12-6 vote on February 5, 1889.⁹²

Nevada's ill-fated adventures in Mormon disenfranchisement proved instructive for other western legislatures in their attempts to remove voting privileges from Mormons in their own states and territories. Specifically, lawmakers learned that well-crafted felony disenfranchisement provisions remained the most constitutionally sound means of disenfranchising Mormons. Two years after the Nevada court's decision in *Findlay*, the U.S. Supreme Court's acceptance of modified felony disenfranchisement laws elsewhere in the West sounded one of the last and loudest death knells for Mormon polygamy.⁹³

DISENFRANCHISEMENT IN IDAHO

Seeking to allay fears that Mormons would overrun southern Idaho, and concerned that a simple proscription against Mormons like the one overturned in Nevada would not pass constitutional muster⁹⁴ Idaho's legislature created a novel set of test oaths and disenfranchisement laws that culminated with the passage of the Idaho Test Oath Act.⁹⁵ This law attempted to strip all Mormons—polygamous or not—of their voting privileges through a combination of felony disenfranchisement and guilt by association. The test oath law targeted Mormons by denying the vote not only to those who committed bigamy and polygamy, but also to those who encouraged or belonged to an organization advocating such practices. Without specifically disenfranchising all Latter-day Saints (a policy sure to resurrect *Findlay*), Idaho

⁹⁰Senators Foley, Forbes, Harris, Hardesty, Kaiser, Nicholls, Noteware, Osborn, and Sharon were the nine remaining members of the upper house. *Journal of the Fourteenth Session of the Senate of the State of Nevada* (1889), 5.

⁹¹Senators Comins, Dunlop, Emmit, Lagrave, Millet, Sawyer, Sproule, Torre, and Williams would eventually vote against the amendment; among the newly elected senators, only Senator Gallagher supported its passage. *Ibid.*, 107.

⁹²*Ibid.*

⁹³See *Davis v. Beason*, 133 U.S. 333 (1890).

⁹⁴See *Proceedings and Debates of the Constitutional Convention of Idaho 1889*, vol. 1, I.W. Hart, ed. (Caldwell, ID: 1912) (hereinafter *Proceedings 1*), 143-46.

⁹⁵Rev. Stat. Id. Terr. §501 (1889).

anti-Mormons created a law that could effectively disenfranchise the territory's entire Mormon population as long as the Mormon Church subscribed to a pro-polygamy doctrine.

Not surprisingly, Mormons in the territory launched a legal campaign against the act, eventually finding themselves in the U.S. Supreme Court. Samuel Davis, the man who pressed this challenge, renounced the Mormon faith just prior to the 1888 election, took the Idaho test oath, voted a Democratic ticket, and then promptly rejoined the church after the election.⁹⁶ Davis was arrested and indicted along with several other erstwhile Mormons who had voted in the election.⁹⁷ Davis, however, was the only defendant to rejoin the church officially and was convicted of "conspiracy to unlawfully pervert and obstruct the due administration of the laws of the Territory."⁹⁸

Davis' lawyers argued that he had been denied the privileges and immunities of citizenship⁹⁹ and had been deprived of liberty without due process of law.¹⁰⁰ They also claimed that the "Idaho statute violate[d] the provision in Article 6 of the Constitution of the United States, that "[n]o religious test shall ever be required as a qualification to any office or public trust under the United States."¹⁰¹ Davis' fourth claim was based on federal preemption. Since Congress had explicitly protected those who simply thought polygamy was a good idea, the Idaho provision should have been overridden by its federal counterpart.¹⁰² Finally, Davis' lawyers also asserted that the test oath prohibited free exercise of religion in the territory in violation of the First Amendment, a somewhat wobbly claim in view of the Court's decision in *Reynolds*.¹⁰³

The stakes of these arguments were high. As Davis' case was argued before the Court, Idaho was preparing its constitution in an attempt to join the union as a state. Large portions of the Idaho State Constitutional Convention were devoted to the issue of Mormon voting rights, as the delegates debated whether to include a provision similar to the Test Oath Act in their new constitution, with the impending *Davis* decision hanging

⁹⁶*Davis*, 133 U.S., at 333.

⁹⁷*Ibid.*

⁹⁸*Ibid.*

⁹⁹*Davis*, 133 U.S. 133 (arguments of counsel), 1890 U.S. Lexis 1915.

¹⁰⁰*Ibid.*

¹⁰¹*Ibid.*

¹⁰²*Ibid.*

¹⁰³*Ibid.*

over their heads.¹⁰⁴ In the end, however, most of the delegates remained confident that the bill would be upheld and that felony disenfranchisement, aimed at the territory's Mormon population, was the most effective means of making sure that no Mormons would be able to participate in the new state's political system. Indeed, one delegate described the proposed constitution as "a death-blow to the Mormon Church."¹⁰⁵

Still, many remained unconvinced of the validity of Idaho's disenfranchisement provision. A *New York Times* article about Idaho's prospects for admission ran with the headline "Idaho's Unstable Claims."¹⁰⁶ Meanwhile, Congress, though eager to admit a new state with precious metal and valuable mineral deposits, was wary of doing so should Idaho's test oath fail to pass constitutional muster. "If the test oath is declared to be unconstitutional," the article stated, "there will be no effort in the direction of statehood."¹⁰⁷ Visitors to the Idaho convention issued similar warnings.¹⁰⁸ As it turned out, however, the Idaho legislature's confidence in the U.S. Supreme Court was well placed. Writing on behalf of a unanimous court in the *Davis* case, Justice Stephen Field presented the nation with an unequivocal sanction of the Idaho test oath, and a booming condemnation of Mormon polygamy.

Seizing on Davis' First Amendment claims, Field completely ignored his due process, privileges and immunities, and Article 6

¹⁰⁴See *Proceedings 1*, at 143–46, 184–89, 382–85, 471, 727.

¹⁰⁵I.W. Hart, ed., *Proceedings and Debates of the Constitutional Convention of Idaho 1889*, vol. 2 (Caldwell, ID, 1912), 1997. This claim hardly seems hyperbolic when one sees the final constitutional provision. Article VI, section 3 of the proposed Idaho constitution stated that "no person is permitted to vote, serve as a juror, or hold any civil office who is . . . a bigamist or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who in any manner teaches, advises, counsels, aids or encourages any person to enter into bigamy, polygamy or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid or encouragement of, any order, organization, association, corporation, or society, which teaches, advises, counsels, encourages or aids any person to enter into bigamy, polygamy or such patriarchal or plural marriages, or which teaches or advises that the laws of this state prescribing rules of civil conduct, are not the supreme law of the state[.]" *Constitution of the State of Idaho*, art. VI, §3 (1890).

¹⁰⁶"Idaho's Unstable Claims: The Territory's Desire to Become a State," *New York Times*, February 19, 1890.

¹⁰⁷*Ibid.*

¹⁰⁸*Proceedings 1*, at 728 (speech of Representative Goff).

arguments.¹⁰⁹ Field also gave short shrift to Davis' preemption challenge. Neglecting the federal ban on disenfranchisement based on an individual's views on polygamy, Field reasoned that federal law did not preempt the territorial oath because it did "not touch upon teaching, advising and counseling the practice of bigamy and polygamy."¹¹⁰

Field focused the case on the idea that the government could constitutionally forbid religious "tenets . . . destructive of society, [from being] held and advocated, [even] if asserted to be a part of the religious doctrines of those advocating and practicing them."¹¹¹ And, in Field's estimation, the tenets of the Mormon faith were particularly destructive of the existing social order: "Bigamy and polygamy are crimes of all civilized and Christian countries. . . . They tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman and debase man. Few crimes are more pernicious to the best interests of society and receive more general or more deserved punishment. To extend exemption from punishment for such crimes would be to shock the moral judgment of the community. To call their advocacy a tenet of religion is to offend the common sense of mankind."¹¹²

Timing is as important in constitutional law as it is in all things. Although Field confidently stated that disenfranchising citizens for merely advocating potentially illegal activities was "not open to any valid legal objection,"¹¹³ the Court began seriously evaluating such claims under a free speech clause rubric around World War I.¹¹⁴ In Justice Oliver Wendell Holmes, Jr.'s classic formulation, the government could forbid people from advocating illegal acts only where such advocacy presented

¹⁰⁹Indeed, one observer understandably assumed that "Davis's counsel rested his case on two issues: a First Amendment challenge to the legislation, and a preemption argument that the Edmunds Act 'covered the whole subject of punitive legislation against bigamy and polygamy, leaving nothing for territorial action on the subject.'" Sears, "Punishing the Saints," 614.

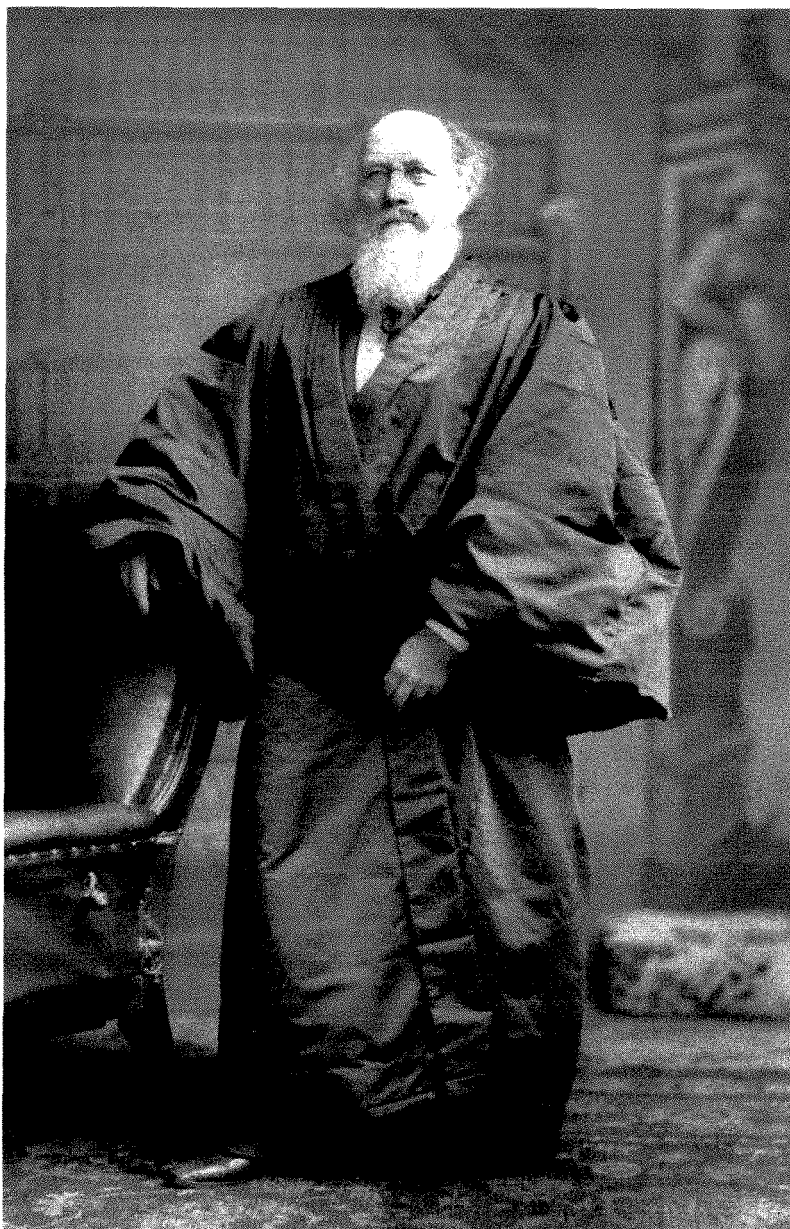
¹¹⁰*Davis*, 133 U.S., at 348.

¹¹¹*Ibid.*, at 345.

¹¹²*Ibid.*, at 341–42.

¹¹³*Ibid.*, at 347.

¹¹⁴See, e.g., *Schenck v. United States*, 249 U.S. 47 (1919); *Abrams v. United States*, 250 U.S. 616 (1919). Sears suggests the *Davis* Court "simply fail[ed] to recognize the difference between punishment for advocacy and punishment for membership in an advocating group[.]" although there is little indication that analytical distinction had been seriously considered by the Court in any case before *Shenck*. Sears, "Punishing the Saints," 614.



Justice Stephen Field, above, unequivocally sanctioned the Idaho test oath and strongly condemned Mormon polygamy. (Photograph by C.M. Bell, courtesy of Collection of the Supreme Court of the United States, 2007-3-34_DA)

a "clear and present danger" of a crime.¹¹⁵ Over time, that formula evolved and mutated into a much more protective set of doctrines evincing a clear suspicion of any law interdicting subversive advocacy.¹¹⁶

Even before those constitutional developments, however, *Davis* pointed to tensions in late nineteenth-century political and legal thought. The decision clearly achieved the desired effect.¹¹⁷ On October 6, 1890, just months after Field handed down the *Davis* opinion, the church body, acting on a timely "revelation" received by Wilford Woodruff, the church's temporal leader, voted to end its official sanction of polygamy.¹¹⁸ Now, since the church no longer advocated polygamy, Mormons could take the oath and vote, with the curious result that a Mormon leader's interpretation of religious doctrine set the legal standards for voting in Idaho.

Idaho, of course, became a state, though not without continued conflict over the test oath's legitimacy. Five U.S. representatives issued a minority report to Congress' recommendation that Idaho join the Union. The minority report was stridently critical of the *Davis* decision, claiming it represented a total departure from precedent regarding felony disenfranchisement laws. After reprinting every state provision ever to disenfranchise felons, the report claimed, "It is thus that for the first time in American history, save one, the effort is made to depart from this principle [conviction before disenfranchisement] for which the minority is now contending. The exception referred to is in the case of the Constitution of the State of Missouri. . . .

¹¹⁵*Schenk*, 249 U.S., at 52.

¹¹⁶See, e.g., *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

¹¹⁷Many scholars also emphasize the significance of the Supreme Court's decision in another 1890 case, *The Late Corporation of the Church of Jesus Christ of Latter-day Saints v. United States*, 136 U.S. 1 (1890). That decision upheld a federal statute that revoked the church's charter and confiscated a significant amount of Mormon property. See, e.g., Keith E. Selig, "Polygamists out of the Closet: Statutory and State Constitutional Prohibitions Against Polygamy Are Unconstitutional under the Free Exercise Clause," *Georgia State University Law Review* 17 (2001): 691, 703–704.

¹¹⁸Leonard J. Arrington and Davis Bitton, *The Mormon Experience: A History of the Latter-day Saints*, 2^d ed. (Champagne, IL, 1992), 183–84; Sigman, "Everything Lawyers Know," 131. Selig doubts the sincerity of Woodruff's change of heart. See Selig, "Polygamists out of the Closet," 704–705. By most accounts, however, the change of church policy did bring about a corresponding change in federal policy toward the Mormons. According to Sigman, for example, the church's property was returned and most of those convicted of or indicted on polygamy charges were pardoned. See Sigman, "Everything Lawyers Know," 131.

But in the case of *Cummings*[,] the Supreme Court . . . held that provision to be unconstitutional."¹¹⁹

The minority report's reference to *Cummings v. Missouri* (1866)¹²⁰ forcefully demonstrates the tension between *Davis* and ambient constitutional jurisprudence. In the aftermath of the Civil War, Field had authored an opinion that ruled unconstitutional a Missouri constitutional provision barring former Confederate sympathizers from poll booths and public offices that required a test oath similar in tone to the Idaho statute. The Missouri oath, according to Field, was both an *ex post facto* law and a bill of pains and penalties.¹²¹ While the subsequent passage of the Fourteenth Amendment, whose second section allowed states to disenfranchise individuals for participating in a "rebellion," arguably undermined *Cummings*, Field's broad rejection of the suggestion "that 'to punish one is to deprive him of life, liberty, or property, and that to take from him anything less than these is no punishment at all'"¹²² strongly suggests that the anti-Mormon cases were governed by ulterior concerns.

THE LEGACY OF MORMON DISENFRANCHISEMENT

The church's abandonment of plural marriage effectively ended the national campaign against Mormons, but the constitutional principles shaped during that conflict had a tremendous impact on the twentieth-century jurisprudence of religious liberty and voting rights. In *Minersville School District v. Gobitis* (1940),¹²³ for example, Justice Felix Frankfurter relied on *Davis*¹²⁴ to deny claims that laws forcing Jehovah's Witnesses to swear allegiance to the flag violated the First and Fourteenth Amendments.¹²⁵

Although laws stripping convicted felons of their voting privileges trace their roots back to English common law tradi-

¹¹⁹House Report No. 1064: *Admission of Idaho into the Union* (1890), 51st Cong. 1st sess., 42.

¹²⁰71 U.S. 277 (1866).

¹²¹*Ibid.*

¹²²*Cummings*, 71 U.S., at 320.

¹²³310 U.S. 586 (1940).

¹²⁴See *ibid.*, 595.

¹²⁵*Gobitis* was later overruled in *West Virginia State Board of Education v. Barnette*, 391 U.S. 624 (1943).

tions of criminals' "civil death,"¹²⁶ many such laws changed in character and intent in the years after *Davis* and *Murphy*. "In the South," for example, "laws were generally rewritten to target 'black' crimes and exclude as many African Americans as possible."¹²⁷ The 1901 Alabama State Constitution excluded a laundry list of criminals from the franchise:

Those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or offering to buy the vote of another.¹²⁸

Alabama's attempts to disenfranchise African Americans through laws ostensibly designed to disenfranchise criminals regardless of race were so effective that by 1903 this provision disenfranchised ten times as many blacks as whites.¹²⁹ The U.S. Supreme Court invalidated this provision, but not until 1985, and then only on the basis of unequivocal evidence showing that the law's disparate impact on blacks was intentional and that the state could proffer no satisfactory alternate rationale for the provision.¹³⁰ Unless one unearths documentary evidence of legislators twisting their mustaches on the record, it can be very difficult to meet that burden.¹³¹

It is not as though people haven't tried alternative strategies, either. In the Court's important *Richardson v. Ramirez* decision,¹³² for example, then-Justice William Rehnquist upheld the disenfranchisement of felons even after the completion of their sentences, citing the cases upholding Mormon disenfran-

¹²⁶See William Blackstone, *Commentaries on the Laws of England*, Book IV (Boston, MA, 1962), 7–20.

¹²⁷Alexander Keyssar, "The Right to Vote and Election 2000," in *The Unfinished Election of 2000*, ed. Jack Rakove (New York, 2002), 86.

¹²⁸*Constitution of the State of Alabama*, art. VIII, §182 (1901).

¹²⁹*Hunter v. Underwood*, 471 U.S. 222, 227 (1985).

¹³⁰*Ibid.*, at 227–28.

¹³¹Compare *Washington v. Davis*, 426 U.S. 229 (1976) [holding police officer candidates denied positions on basis of a facially neutral test had to demonstrate a racially discriminatory purpose to show violation].

¹³²418 U.S. 24 (1974).

chisement in the 1880s and 1890s as the only meaningful precedent.¹³³ Ironically, Rehnquist's opinion tried to build a solid history of felony disenfranchisement laws by referring to a Reconstruction senator's insistence that felony disenfranchisement laws be uniformly enforced because "[i]t is a very easy thing in a State to make one set of laws applicable to white men, and another set of laws applicable to colored men."¹³⁴ Yet the Mormon disenfranchisement cases had undermined the egalitarian spirit of these concerns. In an animated dissenting opinion, in language that resonates with the modern and historical debates over disenfranchisement, Justice Thurgood Marshall reproved the Court's six-man majority for relying on the anti-Mormon cases:

This court's holding in *Davis* . . . and *Murphy* . . . that a state may disenfranchise a class of voters to 'withdraw all political influence from those who are practically hostile' to the existing order, strikes at the very heart of the democratic process. . . . The ballot is the democratic system's coin of the realm. To condition its exercise on support of the established order is to debase that currency beyond recognition. . . . The disenfranchisement of ex-felons had its origin in the fogs and fictions of feudal jurisprudence and doubtless has been brought forward into modern statutes without fully realizing either the effect of its literal significance or the extent of its infringement upon the spirit of our system of government.¹³⁵

The Court finally heeded Marshall's admonitions when it struck *Davis* down in 1996 in the landmark gay rights case *Romer v. Evans*.¹³⁶ Justice Anthony Kennedy's majority opinion in that case struck down a Colorado constitutional provision that forbade government protection of an individual's legal or political status on the basis of sexual orientation. Justice Antonin Scalia's acerbic dissent suggested just how influential the Mormon disenfranchisement cases had become. "The Court," Scalia claimed, "cannot escape the central fact that [*Davis*]

¹³³*Ibid.*, at 53.

¹³⁴*Ibid.*, at 52. This history was significant for Rehnquist, because he determined that the original intent of section 2 of the Fourteenth Amendment was to preserve felon disenfranchisement laws and insulate them from equal protection scrutiny. *Ibid.*, at 41–56.

¹³⁵*Ibid.*, at 82–83 (Marshall, J., dissenting) (internal citations omitted).

¹³⁶517 U.S. 620 (1996).

found the statute at issue—which went much further than [the Colorado anti-homosexual provision], denying polygamists not merely special treatment but the right to vote—not open to any constitutional or legal objection. . . . ‘The Court’s disposition today suggests that . . . Polygamy must be permitted in the States . . . Unless, of course, polygamists for some reason have fewer constitutional rights than homosexuals.’”¹³⁷

The Court rejected Scalia’s application of the *Davis* precedent to modern gay rights cases, but it has yet to reevaluate felony disenfranchisement. The impact of the continued practice of felony disenfranchisement laws is undeniably significant. As noted at the outset, convicted felons and ex-convicts comprise far and away the largest group of disenfranchised adult citizens in the United States today.¹³⁸ To put it in more concrete terms, consider the 2000 presidential election. That election, of course, was decided by perhaps a few hundred votes in the state of Florida, a state that then barred some 647,100 otherwise eligible voters from the polls through felony disenfranchisement laws.¹³⁹

Although a number of recent civil rights cases have tried, with mixed results, to challenge these laws,¹⁴⁰ plaintiffs in those cases often have the daunting task of proving that legislators—many of them dead for a century or more—implemented those laws with the intention of achieving a disproportionate effect.¹⁴¹ No one seriously doubts that those laws have such an effect, however. A recent study found that ten states disenfranchise at least 20 percent of their black male population.¹⁴² Just as telling and nearly as significant, however, is the legacy of felony disenfranchisement in Utah, the state with the nation’s largest Mormon population and one seldom thought of as a center of progressive political policy. Until 1998, when it revoked the voting rights of inmates serving time in prison, Utah had one of the most liberal felony disenfranchisement

¹³⁷*Ibid.*, at 648 (Scalia, J., dissenting).

¹³⁸See The Sentencing Project of Human Rights Watch, *Losing the Vote: Felony Disenfranchisement Laws in the United States*, at <http://www.hrw.org/legacy/reports98/vote/>.

¹³⁹*Ibid.*

¹⁴⁰See, e.g., *Wesley v. Collins*, 791 F.2d 1255 (6th Cir. 1986); *Farrakhan v. Washington*, 359 F.3d 1116 (9th Cir. 2004).

¹⁴¹See, e.g., *Wesley*, 791 F.2d 1255.

¹⁴²Alabama, Delaware, Florida, Iowa, Mississippi, New Mexico, Texas, Virginia, Washington, and Wyoming. See The Sentencing Project of Human Rights Watch, *Losing the Vote*, 9–10.

laws in the nation.¹⁴³ Chastened by their experiences with Mormon disenfranchisement, the state's 1895 constitution both outlawed religious test oaths at the ballot box¹⁴⁴ and permitted everyone who had not been convicted of "treason . . . or crime against the elective franchise" to vote.¹⁴⁵

¹⁴³See Ryan S. King, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997–2008* (2008) accessed at http://www.sentencingproject.org/doc/publications/fd_statedisenfranchisement.pdf.

¹⁴⁴Utah Constitution, art. I, §4.

¹⁴⁵*Ibid.*, art. IV, §6. The draft constitution originally contained no form of felon disenfranchisement but was amended during the convention to include crimes specifically tied to voting and loyalty. See *Official Reports of the Proceedings and Debates of the Utah Constitutional Convention* (Salt Lake City, 1898), 617. The convention seems to have been aware that this standard was itself "quite liberal." *Ibid.*, 607.

THE FRONTIER LEGAL SYSTEM, TOMBSTONE SILVER MINES, AND PENNSYLVANIA OIL MEN

CYNTHIA F. HAYOSTEK

Many people think of Tombstone, Arizona, in the 1880s as a lawless frontier settlement with gunfights so common that the town had a man for breakfast every morning. The reality was very different. Most Tombstone residents were law abiding, and they relied on the court system to provide justice.

Two examples are Burdette A. Packard and Alphonious A. Hopkins, friends who arrived in southern Arizona in April 1880. They had made fortunes in Pennsylvania oil and wanted to invest some of their money in Tombstone's silver mines. Tombstone must have reminded them of Bradford, Oil City, Titusville, and other raw Pennsylvania oil boom towns where they had lived. Undoubtedly, they fit easily into early Tombstone. Perhaps because of this, their involvement in 1880s Tombstone has been overlooked by historians.

Packard and Hopkins were among the more than two dozen Pennsylvania oil men who contributed to Tombstone's boom. In just a few years, the Pennsylvanians invested more than \$1 million (approximately \$2.2 billion in 2011) in Tombstone and southern Arizona. About half of them lived in, or at least visited, the region during the 1880s. They formed a web of business connections with each other and with other investors, and they did

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not hesitate to use the legal system to protect their property.

The names of Packard and Hopkins, and their fellow Pennsylvanians Charles H. Filkins, Fordyce A. Roper, and Casper Taylor, appear on at least seventy-five southern Arizona mining records. That is because Filkins and Roper acted as brokers, and Packard and Hopkins speculated; they were the most active buyers and sellers among their oil country contemporaries.

Although true prices are listed on only some of their deeds (a common subterfuge to avoid taxes was "\$1 and other valuable considerations"), some amounts mentioned are quite large. For example, the 1881 sale of three mines by Packard, Hopkins, and William W. White to Boston residents Edward H. Dunn and J. Henry Sleeper lists a price of \$100,000 (\$2.2 million in 2011). Potential amounts are even bigger. White, along with fellow Pennsylvanians Jonathan B. Smithman, James Amm, and William A. Pullman, bought, went to court over, and then sold Bisbee's Atlanta claim, which became a major copper producer for Phelps Dodge Corp. for almost one hundred years.¹

Other Pennsylvanians invested their considerable talents toward the progress of Tombstone and Arizona Territory. A prime example is Artemis E. Fay, who edited the Titusville *Daily Courier* before moving to Arizona. Fay established Tombstone's first newspaper, the *Weekly Nugget*, on October 2, 1879. Democratic in its political viewpoint, the *Nugget* served Tombstone for seven months before a Republican-leaning newspaper with an even more clever name, the *Tombstone Epitaph*, printed its premier issue.²

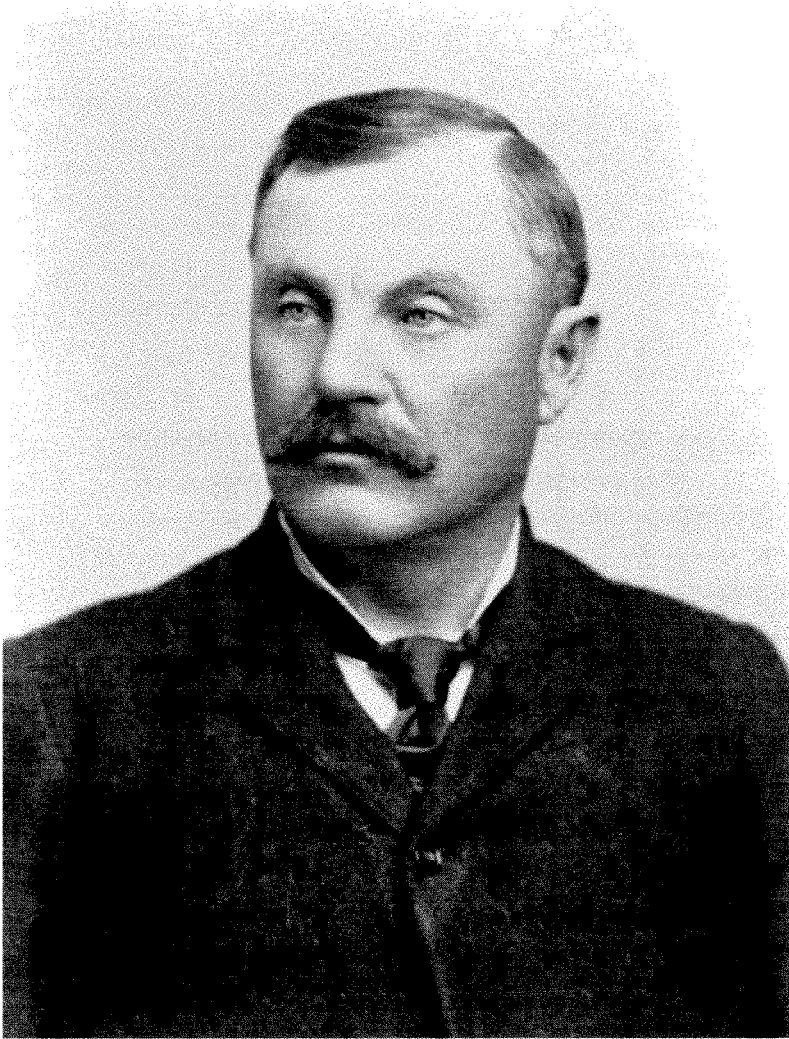
Fay, like other editors of the time, routinely exchanged issues with newspapers at which he had previously worked. Thus news of Tombstone appeared in Pennsylvania oil country. This subtle bit of public relations undoubtedly encouraged oil men to think about silver when they wanted to invest their profits.

Such a connection was important because, although the oil men were strongly entrepreneurial, they did need information before deciding to invest money in a capital-intensive venture in the Arizona desert. To plunk down thousands of dollars in a

¹Knoxville deed: Cochise County Mine Deeds, Book 3, pp. 595–98. Atlanta deeds: Cochise County Mine Deeds, Book 3, pp. 133–45. Cochise County Recorder's Office, Bisbee, AZ.

Atlanta court case: *William W. White, Jno. A. Smithman, James Amm, Wm. A. Pullman v. George A. Atkins, Pat J. Delaney, and Samuel Shaw*, ms. 180, file 507. Arizona Historical Society Archives, Tucson, AZ. The plaintiffs said they received a clouded title from the defendants; the court agreed and gave the Pennsylvanians the mine.

²*Arizona Quarterly Illustrated*, July 1880, Arizona Historical Society Library, Tucson, AZ.



Burdette A. Packard, above, had made a fortune in Pennsylvania oil and wanted to invest some of his money in Tombstone's silver mines. (Courtesy of Arizona State Library, Archives and Public Records, History and Archives Division, Phoenix, 98-1529)

chancy proposition thousands of miles from home called for a certain adventuresomeness.

Adventuresomeness was certainly a characteristic of Ed Schieffelin, the prospector generally credited with discovering Tombstone's treasure trove. Although he was warned that all

he would find was his tombstone at the hands of Apaches if he prospected some unprepossessing hills a few miles east of the San Pedro River, Schieffelin ignored the naysayers. In August 1877, he found silver ore rich enough to convince his brother Albert and civil engineer and assayer Richard Gird to brave the Apache threat and return with him to southeastern Arizona early the following year. Their exploratory work produced claims they dubbed the Lucky Cuss, Toughnut, and Owl's Nest.

Prospectors who trailed behind the Schieffelins and Gird included Henry Williams and Oliver Boyer. They located the Grand Central claim which, because of a dispute with the Schieffelins and Gird, became known as the Contention. Despite the disagreement, Williams and Boyer participated with the Schieffelins, Gird, and Gird's cousin, Thomas E. Walker, in establishing the Tombstone Mining District. The district's formal foundation, plus its ore body, attracted capital with which to develop mines and build mills. By 1879, Tombstone was the site of numerous mines employing hundreds of men.

Water flowing down the San Pedro River generated the power to run a mill of Gird's design that processed ore at Charleston, seven miles southwest of Tombstone. Another Charleston mill, this one steam powered, was part of a company whose directors included former Arizona governor Anson P.K. Safford and three Connecticut industrialists, Frank, Elbert, and Philip Corbin.

Early in 1880, not long after their mill started up, the Corbin brothers, along with Marcus and Willis Hulings of Oil City, a few Philadelphians, and two individuals from Boston, formed a syndicate. This syndicate bought stock in the Schieffelins' company, and the two entities merged on May 20, 1880, into the Tombstone Mill & Mining Co.³

Most likely, Artemis Fay and the Hulings were the connections that brought Filkins from Oil City to Tombstone early in 1880, just as Filkins was the connection that brought his friends Packard and Hopkins to Tombstone in late April that year. When they arrived, Packard and Hopkins became part of the Quaker State contingent in Tombstone. The presence of other Pennsylvanians in Tombstone must have reassured the two men, for they soon were deeply involved in silver mining.

The April 8, 1880, issue of the *Weekly Nugget* announced commencement of work on the Vizina Mine in a bond arrangement. (Bonding was a form of financial assurance that a mine could produce marketable ore.) On April 28, Filkins purchased

³William B. Shillingberg, *Tombstone, A.T. A History of Early Mining, Milling and Mayhem* (Spokane, WA, 1999), 54–56.

the Vizina outright for \$41,500 on behalf of "Pennsylvania parties," who incorporated the Vizina Mining Co. in New York.⁴ Thanks to Hopkins, Packard owned shares in this company—although he did not know it until he arrived in Tombstone. He had been against investing in the Vizina while he was still in Pennsylvania. Once in Tombstone, however, he saw the possibilities and told Hopkins so: "Thereupon Hopkins took an instrument in writing from his pocket and said: 'Well, Pack, I bought stock in it before we started and made up my mind if it was good, you were in, but if it was no good then I'd forget it and say nothing about it. We're partners, and you're in half on this interest.' After recounting the incident, . . . Packard said, 'that was the sort of partner I had. He was a fine fellow. None better.'"⁵

Packard was correct on both counts. Hopkins was a good man, and the Vizina did indeed have potential. But, as with all mines, investment was extremely risky. It was all too easy then (as it still is today) not only to lose the initial investment, but to have bankruptcy overtake a nascent mining company.

Three factors (other than the amount of ore) controlled the destiny of mining companies late in the nineteenth century: access to capital and professional management, inexpensive (rail) transportation, and market conditions. Tombstone mining companies in the 1880s had precious little influence over the last two factors. Therefore, it was imperative to do everything right when it came to the first factor. Capital had to be invested wisely. Upper-level management needed to be on site, or at least visit regularly, if the corporation was headquartered somewhere other than Arizona. Hiring a professional superintendent was wise, especially if dealing with metallurgically complicated ore bodies, as in Tombstone.

Professional services, however, often ranked low on company directors' priority lists, and they commonly made the mistake of spending more money on mill and concentrator

⁴Original deed in civil case files of Cochise County Superior Court Clerk's Office. The deed says the Vizina was located August 6, 1878, by James Vizina and Benjamin Cook as an extension of the Good Enough Mine.

Cochise County Incorporations Book 1, pp. 195–201, in the Recorder's Office, says the Vizina incorporators included Thaddeus E. Sumner, Judson E. Haskell, and James Amm—all Pennsylvania oil men—and Fred E. Borden and Saul H. Bradley.

⁵"Colonel Packard Paints Rosy Picture of Arizona's Future on 81st Birthday Anniversary," *Douglas Dispatch*, Nov. 2, 1928. This is the first appearance of this story; it shows up at least three other times in the *Dispatch* and once in the *Tombstone Epitaph*. All the articles were written by Charles A. Nichols, Douglas historian and business partner of Tom Pollack, a man who was Packard's business partner.

construction than on mine development.⁶ An example of this flawed emphasis was the Tombstone Mill (first) & Mining (second) Co., the firm that was put together by the eastern investors who took over from the Schieffelins and Gird.

The Pennsylvanians, on the other hand, generally hired professional superintendents and kept management local. That was one reason why Packard remained in Tombstone; he was a local administrator for several companies in which he held an interest. Another reason was that these companies became entangled in legal difficulties that required close supervision.

One Pennsylvania corporation that emphasized mill over mine was the Sunset Silver Mining Co. Its directors hurried to build a mill, then apparently figured out they had made a mistake and tried to rectify it by selling the mill. But it was too-little-too-late, and, combined with declining ore, the Sunset Co. became a has-been in less than two years.

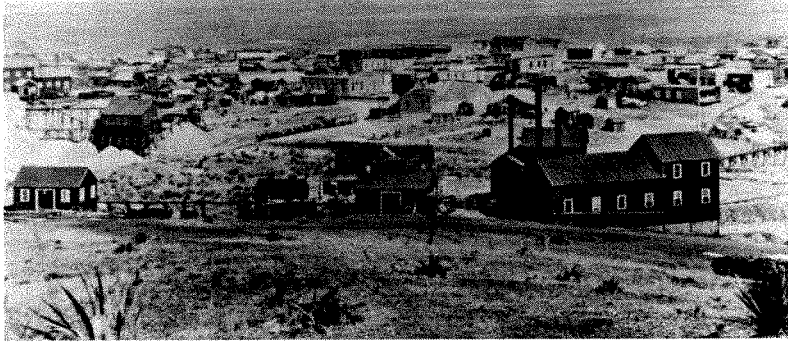
Packard was not involved in the Sunset Mine, which occupied 12.27 acres of ground on the western slope of Lucky Cuss Hill, southwest of the mine of the same name. But several of Packard's connections, most notably Asa W. Say, were deeply involved in the Sunset. The Schieffelins and Gird located the Sunset on May 13, 1878. The trio gave the property to Gird's cousin Walker, who sold it to Pennsylvanians in spring 1880.⁷

"Speculators of the oil regions who have paid attention to the silver stocks," said the April 8, 1880, *Weekly Nugget*, quoting the Bradford, Pennsylvania, *Era*, "are aware of the present value attached to shares in the Sunset Mine. . . . It is said a share recently changed hands at \$10,000. . . ." Stirring up some of this excitement was Asa Say. The April 29, 1880, *Arizona Star* describes Say in Tucson showing off a large specimen that was a mass of bright yellow chloride ore held together by native silver. Say claimed the specimen came from a Sunset vein 23 inches wide and 100 feet long.

Smithman and B. Frank Hall (also a Pennsylvanian) paid \$10,000 to buy into the Sunset, whose official incorporation took place September 7, 1880, in Oil City. Shares were \$50 each. Marcus Huling purchased 4,200 shares and so, not surprisingly,

⁶Mary M. Farrell et al., *Tearing Up the Ground With Splendid Results: Historic Mining on the Coronado National Forest*, Heritage Resources Management Report No. 15, USDA Forest Service Southwestern Region, 1995.

⁷Sunset acreage: Cochise County Mining Deeds, Book 7, p. 110. Location: Pima County Mine Records, Book D, p. 28. Pima County Recorder's Office, Tucson, AZ.



The Tombstone Mill & Mining Co., above in the foreground, c. 1881, was established by investors from Pennsylvania, Connecticut, and Massachusetts. The building on stilts, to the left, houses the Vizina plant. (Photo by C.S. Fly, courtesy of Arizona Historical Society, 42005)

became the corporation's president. Other investors included Huling's son Willis, Say, W.P. Book, White, and Taylor.⁸

The *Sunset* owners were so confident of their mine that they decided to enlarge its ground. "[A] number of capitalists have purchased three claims that nearly surround the *Sunset*," reported the April 8, 1880, *Weekly Nugget*. "They are the Longfellow, Luck Sure and Sunnyside, and promise to prove as valuable as the *Sunset*. They have been consolidated and stocked to \$65,000."

The Luck Sure, Sunnyside, and Longfellow, the *Weekly Nugget* informed its readers, had been purchased by James S. Book, a Pennsylvanian. He had been offered more money for the Luck Sure than what he paid for all three mines, apparently because assay values from the Luck Sure ran between \$300 and \$1,000 per ton.⁹

On April 29, 1880, James K.P. Hall, Say, and B. Frank Hall applied for a patent from the U.S. Land Office for the *Sunset*. The *Weekly Nugget* issue that day, in addition to the patent application notice, published a paragraph that was, in essence,

⁸\$10,000 share: Cochise County Mine Deeds, Book 1, p. 452. *Sunset* incorporation: Cochise County Articles of Incorporation, Book 1, pp. 76–85. Huling: A paragraph in the Dec. 3, 1880, *Weekly Nugget* mentions the arrival of Marcus Huling and son, W.J., in Tombstone to look after their mining interests. The *Sunset* incorporation document lists Willis J. Huling.

⁹"Luck Sure, Sunnyside and Longfellow Mines," *Weekly Nugget*, May 6, 1880.

a request for bids for erection of a hoist at the Sunset mine and for a mill on the San Pedro River.

In its May 13 issue, the *Weekly Nugget* reported, "The lower shaft of the Sunset Mine is now down 145 feet, all in ore, which is a sight to look upon." A week later, the *Weekly Nugget* stated, "Since our last issue, the Sunset Mine has been showing to better advantage than before. In the upper shaft, the ledge has widened, and the body of ore strengthens in proportion. . . . The Company are arranging for the erection of a mill on the San Pedro. Mr. [J.W.] Pender has secured the contract for erection of hoisting works, and he and Asa W. Say are now in San Francisco purchasing the machinery."¹⁰

The "powerful set of hoisting works," according to the *Nugget*, consisted of "a double set of engines with double reels, gearing, etc." purchased from Rankin, Brayton & Co. of San Francisco. That firm installed custom mill machinery for the Boston & Arizona Smelting & Reduction Co., about three miles north of Charleston, Arizona.¹¹

The ten-stamp Sunset Mill, erected immediately after the Boston & Arizona Mill, was about eight miles down the San Pedro from the Boston Mill, and ten miles north of Charleston. According to the April 1881 *Arizona Quarterly Illustrated*, the Sunset Mill included an amalgamation setup and two retorts. These items meant Sunset ore underwent several concentration steps, and the final product was bullion (a mixture of silver and gold), which, beginning in June 1880, was hauled to Benson's railroad depot.

A small settlement dubbed Bullionville sprang up around the Sunset Mill, but it soon was considered part of Contention City, since that place was situated between the Sunset Mill and the Contention Mill. Contention City's population peaked at around two hundred—not even close to the mill town upriver, Charleston, which had about four hundred residents.

The Sunset Mill probably did pay for itself. The July 27, 1880, *Epitaph* reported that when the Oil City men bought the Sunset Mine for \$60,000, everyone laughed because its shaft was only 12 feet deep. Four months later, 150 feet of levels radiated off a 100-foot shaft. The ore found was enough to pay the purchase price five times over, the *Epitaph* assured its readers.

During September 1880, the Sunset's optimistic directors spent \$60,000 buying into two claims near the Lucky Cuss, and Say bought two claims adjacent to the Longfellow. In Novem-

¹⁰"The Sunset," *Weekly Nugget*, May 20, 1880.

¹¹"Machinery for the Boston and Arizona Mill—The Sunset Hoisting Works," *Weekly Nugget*, June 3, 1880.

ber 1880, the pragmatic Halls sold their rights in the Sunset Mine to the company.¹²

On Jan. 5, 1881, the Sunset sold its mill for \$25,000 to the Head Center Mining Co., which was owned then by four Tucson men. The deal involved two promissory notes, which the Head Center Co. paid off by Dec. 12, 1881.¹³

So what happened? In September 1880, the Sunset Co. was on top of the world. But three months later, it sold its mill—a major asset. The company may have done this because the ore lode pinched out in October. The ore's disappearance is likely the reason that the experienced Halls sold in November.

Undoubtedly, miners tried to find a new lode, but when exploration turned up nothing, the Sunset directors leased the mine to the Des Moines and Tombstone Mining & Milling Co., which was composed of individuals who picked out the ore fragments remaining in the mine. These scavengers, known then as chloriders, also worked dumps and tailings.

In 1883, one of those chloriders, D.W. Cunningham, received a notice from the Des Moines Co. that, since he had not worked in the Sunset the previous year, the company demanded that he pay \$200 as his share of the total or forfeit his interest in the mine. It was an ignoble end to what had been a bonanza, especially since, in mid-1883, the federal government finally granted the patent the Sunset Co. applied for in 1880.¹⁴

While the Sunset included operational obstacles, one mine in which Packard was directly involved, the Vizina, presented legal challenges. This was not apparent, however, in 1880, after Filkins bonded the Vizina for his fellow Pennsylvanians. They incorporated, and the Vizina's directors did everything right. They hired a professional superintendent who focused on mine development instead of building a mill. "The work of developing the Vizina Mine," reported the April 8, 1880 *Weekly Nugget*, "commenced on Monday last, under the direction of Dr. [James W.] Steinburn, a mining engineer of many years' experience on the Pacific coast."

¹²Sunset and Say purchases: Cochise County Mining Deeds, Book 2, pp. 607–609, 611–13, 697–99, 699–701. These were a portion of a claim adjacent to the Longfellow sold by C.W. Pratt and H.H. Hollock to Say for \$5,000; a claim adjacent to the Longfellow sold by William W. White to Say for \$5,000; a claim near the Lucky Cuss sold by Say to the Sunset Co. for \$40,000; and a portion of a claim near the Lucky Cuss sold by Smithman to the Sunset Co. for \$10,000. Hall sale: Cochise County Mining Deeds, Book 2, p. 733–35.

¹³Mill sale: Cochise County Misc. Book 1, pp. 9–13. Promissory note satisfaction: *ibid.*, pp. 189–90.

¹⁴Forfeiture: Cochise County Misc. Book 2, pp. 230–31. Patent: Cochise County Deeds of Mines, Book 7, pp. 107–13.

Steinburn set a crew to digging a shaft and a cut about forty feet away that angled toward the shaft. Both excavations reached ore that contained "three thousand dollars to the ton, picked rock, while an average assay clings to the hundreds," reported the *Nugget*. Undoubtedly, this strong show of ore was what convinced Packard that Hopkins had involved him in a profitable mine when they first arrived in Tombstone.

By the first part of May 1880, the Vizina consisted of two shafts. The northern one contained a five-foot-wide ore vein that dipped toward Tombstone. As May wore on, blasting inside the Vizina alarmed Tombstone pedestrians.¹⁵ This happened because "the mine takes in a large portion of the lower [southern] end of the business part of our city," explained the *Nugget* on April 8, 1880. The newspaper added, "[R]ent from business houses and private residences [on the surface] will remunerate the price paid for the mine in a year or so."

In September 1880, Alfred H. Emanuel, who had been Steinburn's assistant, took over from him as Vizina superintendent. Also that month, a twenty-horsepower steam engine and other machinery arrived. The engine, which powered the mine's hoist, went into a building on the southwest corner of Toughnut and Fourth Streets that was tall enough to cover a fifty-two-foot head frame.¹⁶

Before October arrived, the Vizina had sent 200 tons of ore to the Boston & Arizona Mill for processing, said the October 1, 1880, *Epitaph*. The ore, noted the August 26, 1880, *Epitaph*, was richer than any other district mine—"15 tons gave \$410 per ton from the battery samples." The \$410 figure was impressive because Tombstone's average value ranged between \$45 and \$70 per ton.¹⁷ Such bounty allowed the Vizina Co. to pay for its new office building that faced Toughnut Street and included several apartments with attached bathrooms.

Across the street was a building that contained Packard's office.¹⁸ He lived in, as well as worked out of, a three-room apartment. He had become a local contact for the Vizina Co. as well as a number of other mining firms in which he was involved. Because his wife, Ella, stayed back East, Packard traveled be-

¹⁵Two shafts: "Mining Review of the Week," *Weekly Nugget*, May 6, 1880. Alarmed pedestrians: "Weekly Review Of Mines," *Weekly Nugget*, May 20, 1880.

¹⁶Emanuel appointed: Cochise County Misc. Book 1A, p. 206. Machinery: *Arizona Quarterly Illustrated*, January 1881, p. 21.

¹⁷William P. Blake, *Tombstone and Its Mines* (New York, 1902), 71.

¹⁸Vizina office building: "Mining Review of the Week," *Weekly Nugget*, Oct. 13, 1880. Packard's office: "Douglas Pioneer Tell[s] Story of Early Days in This Country When Indians Were on Warpath," *Tombstone Epitaph*, Oct. 15, 1929.

tween Tombstone and New York often. (He did so three times in the last six months of 1880 alone.) An apartment made sense for him.

As 1881 began, the Vizina Mine consisted of three shafts more than 100 feet deep; two shafts were in ore. A drift connected the shafts, which had produced 800 tons of ore and \$60,000 for the company. The Vizina was the Tombstone district's third-largest mine.¹⁹ This, plus its location on part of the town site, made the Vizina the target of opportunists. One such was James B. McGowan who, around August 1, 1880, moved onto two Vizina-owned lots at Allen and First Streets, and repelled all comers. Since the Vizina had been getting \$20 a month in rent on the lots until McGowan took possession, the company took him to court. The U.S. First District Court declared that McGowan presented no usable facts in his defense, since he was not "a man of ordinary understanding." John H. Lucas, McGowan's attorney, said his client would leave if no damages were demanded, and the court dismissed the case for costs.²⁰

The Vizina used the September 30, 1880, *Epitaph* to warn squatters such as McGowan off company property. After Cochise County split off from Pima County on Feb. 1, 1881, the Vizina Co. complained about other squatters to the newly formed Cochise County Board of Supervisors, which repeatedly asked district attorney Lyttleton Price for an opinion about the validity of the Vizina Co. title.

Price told the supervisors that Vizina land fronting Toughnut Street clearly belonged to the company because "the Vizina Mining Claim was located under the Act of Congress of 10th May 1872 prior to the location of the Townsite of the Village of Tombstone . . . and . . . the locators of said mining claim and their successors in interest have complied with all the requirements of the law under which the said claims was [sic] located."

The Vizina Co. owned the surface land, said Price, despite "a deed . . . executed by the Mayor of said village to certain persons (the so-called Townsite Company) conveying the premises in question, and those persons claim, by reason of said conveyance, title to the premises in question, as against the owners of the Vizina Mine."²¹

Price's opinion makes it clear that the Vizina Co., like many Tombstone property owners of the time, was embroiled in the Townsite controversy. This dispute began, as many in the West do, over water availability, and thus over where Tombstone

¹⁹*Arizona Quarterly Illustrated*, January 1881, p. 21.

²⁰Arizona Historical Society (AHS) Library, ms. 180, file 504.

²¹AHS, ms. 180, series 1.

would be located. In 1879, Safford and some other men created a company that sold lots on what became Tombstone, but this company had not obtained legal title to the land it sold. People who bought land from this company discovered that their deeds were faulty after a second company, the Tombstone Townsite Co., began selling the same real estate in May 1880.

The Tombstone Townsite Co. was set up so that the mayor, in 1880 a man named Alder Randall, held all company deeds in trust. In October, Randall sold his deeds to the Townsite Co., which attempted to transfer most of them to nonresident company partners. To protect their real estate and prevent lot-jumping, many Tombstone landowners took up armed residence on their property. *Epitaph* editor John Clum led a vigorous protest against the scheme, which affected not only private parties but also mining companies holding property within Tombstone—the Vizina, Mountain Maid, Way Up, Good Enough, and Gilded Age mines.

Edward Field, Gilded Age owner, cited the 1872 Mining Law in his suit against the Townsite Co. and one of its owners. Citation of the 1872 Mining Law was easier to back in the Vizina case than in Field's, since the Vizina had a proven lode within its claim and the Gilded Age did not.²²

The Vizina produced steadily from its lode throughout 1882—the year of peak production in the Tombstone district. Packard's friend Taylor took over as Vizina superintendent in January of that year. Taylor's wife, Jennie, joined him after Packard purchased a house for the couple.²³

The November 4, 1882, *Epitaph* said a 350-foot stope (room) dominated the Vizina, which daily produced a wagonload of ore sent to the Boston & Arizona Mill. The November 25, 1882, *Epitaph* declared that the Vizina had paid \$100,000 in dividends and had shipped \$154,200 in bullion.

An omen that these halcyon days would not last long appeared in the November 28, 1882, *Epitaph*, which reported a fire in the Vizina plant. Because a fire station was only a block away, a quick response insured that all miners were hoisted out of the mine safely, and structural damage was slight. This fire was in the middle of a half-dozen or so conflagrations that occurred at the Vizina plant. Given that the blacksmith shop had a constant fire and all the steam that ran the machinery was

²²Shillingberg, *Tombstone*, A.T., 76, 92–93.

²³Taylor as Vizina superintendent: Cochise County Power of Attorney, Book 1, p. 325. Purchase house: Cochise County Deeds, Book 4, p. 8. The clue that the property was for Taylor is that he was the one who recorded the deed. His wife later ran a boarding house there.

fire-produced, it is surprising that the fire department was not called more often.

At the time of the 1882 blaze, a difficulty already confronted the Vizina that was completely opposite from the fire and that would eventually end the Tombstone district's boom. The December 16, 1882, *Epitaph* reported that a pump installed in the Vizina removed ten thousand gallons of water every twelve hours.

The first Tombstone mine to encounter excessive water was the Sulphret, south of the Vizina, during March 1881. As other Tombstone mines reached five hundred feet in depth, they too found prodigious amounts of water.

Initially, mining companies welcomed the flow, since it could be used in mills built near Tombstone, thus eliminating the cost of shoveling ore into canvas sacks and then loading the sacks into wagons for a trip to mills along the San Pedro River. By mid-1886, the mills at Charleston were closed, and the town was abandoned.

The first of Tombstone's new mills was the Girard, which began utilizing water from the Grand Central and Contention Mines in early 1882. Installing additional pumps in 1883 temporarily suspended operations in those two mines, but by 1884 the new pumps again lowered the water level.²⁴

Mines such as the Vizina benefited from the Grand Central/Contention pumping, but the oil country men did not wait to find that out. On November 27, 1883, the Vizina directors voted to sell the property for \$11,600 to a New Yorker, Henry A. Tweed, who kept Taylor as superintendent.²⁵ Taylor hired twenty-five choloriders, according to the September 15, 1885, Tombstone *Record-Epitaph*. He also overcame a variety of difficulties, including one that began around 4 a.m. on December 15 with "pistol shots, followed by the alarm bells of the fire department, and the shrill screeching of the whistles of various hoisting works [which] advised residents . . . that a serious conflagration was in progress. . . . [T]he Vizina hoisting works . . . [was] enveloped in flames."

Fireman Henry Quigley struggled to connect a hose to the Vizina hydrant and was aided by U.S. Army lieutenant Jenkins, who "risked his personal comfort and safety and leaving his own face exposed to the fiery element, held his hat in front of the valiant Quigley while he made the connection with the hose. About this time, both companies of the fire department appeared upon the scene and in a very few seconds no less than five streams were upon the burning building. . . ." Despite this effort,

²⁴Odie B. Faulk, *Tombstone: Myth and Reality* (New York, 1972), 165–66.

²⁵"Vizina," *Tombstone Epitaph*, Oct. 15, 1887.

the hoist building was a total loss, although adjoining structures were saved. Taylor said it would cost \$20,000 to replace the hoist house, but the company carried only \$3,000 insurance.²⁶

Tweed came up with the money for a new Armstrong hoist, but shortly before it became operational, he sold the Vizina to Taylor. Beginning in February 1886, Taylor leased the Vizina to eighteen chloriders and shipped their output to a Socorro, New Mexico, smelter.²⁷ Although the chloriders occasionally found pockets of rich ore, clearly the Vizina's producing days were numbered. Early in 1888, Tombstone merchant Lewis W. Blinn bought the mine for \$4,000.²⁸

The Vizina, which had been the district's third largest mine, thus suffered an ignominious end—the same as the Sunset. It was a far cry from the exhilaration people felt during Tombstone's first few years as a boom town.

Toward the end of his life, Packard recalled how people in 1880 Tombstone were literally wild with excitement. Packard became infected, too; just days after learning of his Vizina stock acquisition as Hopkins' partner, his next move was to purchase other mining properties.²⁹ Early in May 1880,

B.A. Packard and A.A. Hopkins . . . [i]n a quiet manner have secured some very valuable property in different localities in this district, among them the Baker, Haley and Thunderbolt claims, belonging to Baker, Haley and Slattery, and the Stonewall by bond. Actual purchases, one-fourth of the Orneo, and one claim in the Turquoise [district, 15 miles east of Tombstone], and they have a bond on nine claims in the Dragoon Mountains.

"Thorough, energetic businessmen," continued the *Nugget*, "they will prove a valuable acquisition to our camp."³⁰ Only the Stonewall developed into a top-rank producer. Of the Baker, Haley and Thunderbolt claims, just the Thunderbolt incorporated, with James Vizina and three others as principals.³¹

The nine claims (plus three others not mentioned in the paper) in the Dragoon Mountains were all locations made in

²⁶"The Fire Fiend," *Daily Tombstone*, Dec. 15, 1885.

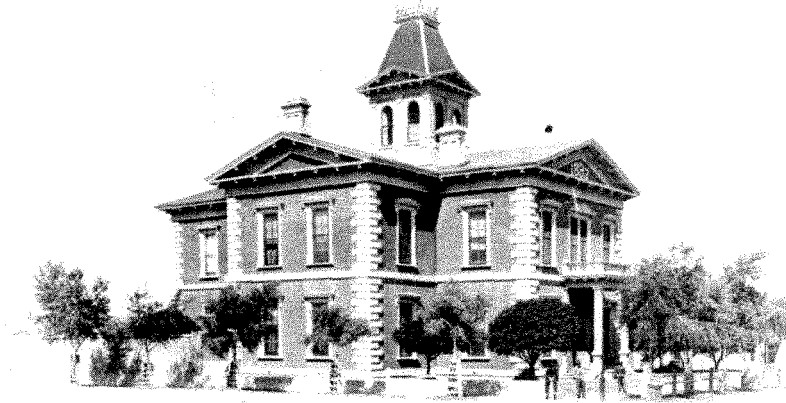
²⁷Tweed to Taylor, "Vizina," *Tombstone Epitaph*, Oct. 15, 1887. Activity details: *Daily Tombstone*, Jan. 26, Feb. 24, March 2, and March 7, 1886.

²⁸Ore pocket: "Rich Ore Out of Vizina Mine," *Tombstone Epitaph*, Sept. 24, 1886. Sold to Blinn: "Vizina Sold," *Tombstone Epitaph*, Jan. 14, 1888.

²⁹"Col. B.A. Packard: An Old Cowman of Cochise," *Bisbee Review*, Aug. 5, 1934.

³⁰"Mining Purchases," *Weekly Nugget*, May 13, 1880.

³¹Cochise County Incorporations, Book 1, pp. 224–26.



Most Tombstone residents were law abiding, relying on the court system to provide justice. The Cochise County Courthouse, above, was built in 1882 and served as the county courthouse until 1929. [Courtesy of Arizona State Library, Archives and Public Records, History and Archives Division, Phoenix, 98-2633]

the names of Packard, W.S. Mollison, and Richard R. Richardson (of Franklin, Pennsylvania) in the Turquoise district. That district was also the site of the Silver Cloud, a mine in the southern end of the Dragoons. Packard and Hopkins, along with fellow oil men Hiram W. Hoag and John S. Hunter, invested with two Tombstone residents, John R. Duling and Silas M. Leavenworth, in the Silver Cloud, but there was not much ore to develop.³²

In the Orneo mine, Packard, Hopkins, and Richardson confronted another mining world difficulty—apparent fraud. When the trio bought into the Orneo on Say's recommendation, Richardson and Say purchased half the mine, and Packard, Hopkins, and Say bought a quarter.

Richardson recalled that Say told him the Orneo had a good title with no claims against it. Say "pointed out to [Richardson] a ledge or vein of valuable ore," which Say stated was part of the Orneo. On the strength of this, Richardson bought his

³²Nine claims: Cochise County Mine locations, Book 5, pp. 504–13 and 518–19. Silver Cloud: Cochise County Mine Deeds, Book 1, pp. 471–75; Book 2, pp. 148–49; Book 3, pp. 484–86; Book 6, pp. 776–79. The Silver Cloud is mentioned in the July 22 and Aug. 6, 1880, *Tombstone Epitaph*, and the June 10, July 29, and Oct. 22, 1880, *Weekly Nugget*. That it did not produce much is clear from Cochise County Mine Deeds Book 2, pp. 148–49, which records Packard purchasing the Silver Cloud claim from Leavenworth in 1885 for \$100.

share and received a deed.³³ The ore he saw, Richardson said in the suit he later filed against Say, was really on the Prompter claim, which was south of the Sunset. Richardson insisted that the Orneo was never a valid claim and that Say had committed fraud when he said it was. Richardson took Say to court, asking for \$2,000 and expenses. Since the Orneo was properly located, the First U.S. District Court dismissed Richardson's suit in June 1882 and required him to pay court costs.³⁴

Packard and Hopkins did not join Richardson in this suit; they filed their own lawsuit against Say as part of a legal whirlwind that enveloped the Stonewall Mine. This extensive litigation shows that, while some shot it out on the streets of Tombstone, Packard and the other Pennsylvanians fought in court.

The Stonewall was southwest of the Sunset. South of the Stonewall was a claim located May 6, 1878, by R.C. Jacobs. It was 1,500 feet of "mineral bearing ledge," and Jacobs claimed "300 feet on each side of the center of the ledge. . . ." He marked his claim with four stone monuments and named it the Knoxville. When he recorded his claim, Jacobs mentioned the monuments but not the Stonewall, since it was located a week after the Knoxville.³⁵

On May 10, 1880, Hopkins, Say, and Packard bought the Knoxville for \$16,000 from T. McPherson, H. Lines, Thomas J. Jones, and A. Ames. The Pennsylvanians, however, may not have known it as the Knoxville, for the property is never called that in a deed recording the transaction. Instead, it is described as 1,500 by 500 feet and delineated by stone monuments. Then the deed states, "also the Stonewall No. 2 Mine located May 6, 1880 by the parties of the first part" (McPherson and the others).³⁶

Why there was a Stonewall No. 2 and why it was located in 1880, not in 1878 (the same as many other Tombstone claims), was central to Packard's and Hopkins' stance in the litigation that followed their purchase. Another part of the problem, as Packard ruefully noted, was that 1880s Tombstone investors, including him, were in such a big hurry to make a fortune that

³³AHS ms. 180, file 445.

³⁴Orneo location: Pima County Mine Records, Book D, p. 535. Dismissal: "District Court," *Weekly Nugget*, June 1, 1882.

³⁵Stonewall: Pima County Mine Records Book C, p. 338. It was located by George Snider on May 14, 1878. Knoxville: Pima County Mine Records Book D, p. 62. Although the two locations were made only a week apart (the Knoxville on May 6 and the Stonewall on May 14), for some reason they appear in two different Books. This probably contributed to subsequent confusion.

³⁶Cochise County Mine Deeds Transcribed from Pima County, Book 2, pp. 494-95.

they did not bother with mundane matters such as checking for clear title.

With what they thought was a good deed in hand, the Pennsylvanians wasted no time putting the Stonewall into production. The May 20, 1880, *Nugget* reported, "Say, Hopkins & Packard . . . have put a force of men to fully develop [the Stonewall]. Only a few days work disclosed large bodies of good ore, the extent of which is not yet fully determined as the excavations are all in ore."

Cheered by this, Packard and Hopkins left Tombstone in mid-June for Pennsylvania to find investors. Within days of their departure, trouble visited their property. Two items in the June 24 *Nugget* tell what happened; both items mention shotguns in their headlines:

During a few days last week, there was considerable excitement over on the Unexpected-Owl's Nest-Minerva Mine (it is claimed by different people under all three names.) The same ground is claimed to have been originally located by Andy Baldrige on April 11, 1879. Messrs. Corbin and Richard Gird claim the mine under the name of Owl's Nest, and Dr. Stainborn [sic] claims it under the name of Minerva. The latter has been in possession of the mine for months, and during that time has done a great deal of work.

Last week the Corbin-Gird men went on the property, removed the Stainborn windlasses from the shafts, and took possession. Stainborn, being informed of the proceedings, went up to the mine, and of course was told to leave the ground, the argument being backed more forcibly by a shotgun. After some parlaying with Horner, the shotgun expert, Stainborn returned to town, had Horner arrested and lodged in the lock-up, and during the same night Stainborn put a force of men on the property, and the two parties held together, four on a side, all well armed.

During the following day, a consultation took place between Doc Stainborn and Messrs. Corbin and Gird downtown while their forces were at the mine, and the result was, as a suit for title is proceeding in the courts, that Stainborn's men were withdrawn from the property, and the other side . . . is now in possession. . . .

Another *Nugget* article immediately following the one above began, "And now the Stonewall mine, located on the hill opposite town, comes in for its share of notoriety in the shotgun policy."

The property was recently sold to A.B. [sic] Packard and H.H. [sic] Hopkins and others, of Pennsylvania, on a working bond, and the developments during the past two or three weeks has made the property very valuable. Messrs. Corbin and Gird claim a prior right to the property, and one or two men, accompanied by their attorney, Harry B. Jones, went upon the ground and demanded possession.

Harry Jones looked down the muzzle of a shotgun for a brief period, but it didn't frighten him much, as he had been there before. However, after a time Jones and party retired, leaving the property in the same possession as before. Here the matter ends for the present, and in all probability the courts will decide the title question.

U.S. district courts did become involved, although it took five cases and four years before all disputes pertaining to the Stonewalls and Knoxville were cleared. The first of the five cases stemmed from the attempt to seize the Stonewall.

Although the *Nugget* article did not say that Jones represented the Orion Silver Mining Co., the newspaper implied this when it mentioned "Messrs. Corbin and Gird." The Orion was a corporation whose principals were the three Corbin brothers. Frank and Elbert were also principals in the Tombstone Mill & Mining Co., the syndicate formed on May 20, 1880, by merging with the Schieffelins' and Gird's interests.

On June 28, 1880, Philip Corbin and Orion Co. sued Hopkins, Say, and Packard. Orion Co. stated that it was an Arizona corporation with a valid claim to the Knoxville, so the defendants had no right to eject Orion from the Knoxville. Orion sought \$5,000 in damages and possession of the Knoxville.³⁷ These preliminaries show that Orion Co. thought it was dealing with the Knoxville. The *Nugget* newspaper article shows that Packard, Hopkins, and Say thought they were dealing with the Stonewall.

Summonses were issued. Pima County Sheriff Charles A. Shibell told the First U.S. District Court that he had personally served Say, but Hopkins and Packard were out of the county. Presumably, they were served when they returned to Tombstone in late July.³⁸

In September, the Pennsylvania trio hired attorneys who responded to Orion Co., saying there were insufficient facts and no grounds for the complaint. On February 18, 1881, Orion filed an amended complaint that included a telling detail—after

³⁷Pima County Recorder's Office, Book 1, case no. 365.

³⁸"Local Intelligence," *Weekly Nugget*, July 29, 1880.

ejecting Orion in June 1880, the three men had been in possession of the Knoxville "ever since." Packard and Hopkins must have mined the Knoxville for all it was worth while stalling in the court system.

On May 5, 1881, Packard and Hopkins filed a supplemental location notice for the Knoxville, "made for greater certainty being desirous of obtaining a patent for said mine. . . ." They hired Cochise County surveyor H.G. Howe to survey the property; his survey eliminated all references to stone monuments that could be moved.

Signing with Packard and Hopkins as Knoxville owners were William White, C.W. Pratt, and Thomas Liggett, whose investment occurred during Packard's and Hopkins' June 1880 trip east. Missing as an owner was Say, since his partnership with Packard and Hopkins was dissolving.³⁹

Packard's and Hopkins' response to Orion's amended complaint went to the heart of the dispute. After denying that Orion was an Arizona corporation, the duo said the trouble was not over the Knoxville but instead was over the Stonewall. Orion's ownership claim, said Packard and Hopkins, was based on a location that Orion's owners "pretend was made by their grantors."

Even if the location had been made by the people that Orion alleged had made it, Packard and Hopkins said, Orion forfeited that location because its grantors had not worked the claim even once during the previous 365 days—a requirement of the 1872 Mining Law. The ground therefore became open to claim by anyone who was savvy enough to realize the situation, and Packard's and Hopkins' grantors (McPherson and the others) had done just that.

On August 11, 1881, Orion, from its Philadelphia office, quit-claimed the Knoxville to Packard and Hopkins for \$1 and "diverse considerations." On October 29, White, Hopkins, and Packard sold the Knoxville, Stonewall, and Stonewall No. 2 for \$100,000 to Dunn and Sleeper. On April 9, 1882, the U.S. First District Court granted Orion's withdrawal from its Knoxville suit, and Packard and Hopkins consented to the withdrawal.⁴⁰

A related case made its way through the court system beginning in late 1881. It began with a complaint filed by John Haynes and John Lucas, Packard's and Hopkins' attorneys in the Orion case. Haynes and Lucas wanted \$1,000 for their services, but said they had received only \$10.

³⁹Cochise County Mining Locations, Book 1, pp. 584–85.

⁴⁰Knoxville deed: Cochise County Mine Deeds, Book 3, pp. 595–98. Orion dealings: Pima County Superior Court, case no. 365.

After receiving a summons, Hopkins and Packard responded to Haynes' and Lucas' complaint, saying it was "ambiguous, unintelligible and uncertain." Packard and Hopkins said they were not certain the complaint was meant for them, since it listed only initials and not first names, or that the complaint was from Lucas, since only his initials were given and not a first name.

After Haynes and Lucas filed an amendment taking care of that deficiency, Packard and Hopkins were unavailable to receive a subsequent summons. It was December 1881, and they had left Arizona to spend the holidays with their families back East. Next, Packard and Hopkins protested that Haynes and Lucas had not been partners when they took the case, so they should not be paid as partners.⁴¹

Perhaps Packard and Hopkins considered \$1,000 an excessive charge. Perhaps Haynes and Lucas thought \$1,000 was reasonable, since Packard and Hopkins had kept the Knoxville through their efforts and then sold it. Packard and Hopkins must have paid Haynes and Lucas, for no other record has yet been found about the case.

The Haynes-Lucas suit seems laughable when compared to three intertwined Stonewall cases. When Packard and Hopkins sold the Stonewall and the Stonewall No. 2, their partners were White, Liggett, and Hunter. The buyers were Dunn and Sleeper as trustees of the Boston & Arizona Co., which processed ore from the Vizina and other Tombstone mines in its plant on the San Pedro River. Operations superintendent was George S. Rice, a Bostonian who introduced baseball to Tombstone.

Boston & Arizona's founder was W.A. Simmons, who had been the U.S. customs collector in Boston. The May 6, 1880, *Nugget* reported, "[A]s President of the Empire [Mining Co.], he is pushing the work vigorously; as President of the Sycamore Water Company, he has organized and equipped that company; he is also the head of the Contentment mine, . . . owner and director of the Sulphret, Tranquility and Townsite companies. . . ."

According to the *Nugget*, Simmons and his associates were "some of the heaviest business men of Boston," and they acted the part. For example, within months after the Tranquility Co. (a California corporation dominated by Wells Fargo interests) won a court judgment in 1882 against the Head Center Co. (purchaser of the Sunset mill), Tranquility arranged what

⁴¹AHS ms. 180, file 520.

appears to be a hostile takeover of Head Center by acquiring 100,000 shares of its stock.⁴²

Boston & Arizona, eventual owner of the Knoxville, was Tombstone's custom reducer.⁴³ That is, if a mining company did not have its own mill, it sent its ore to be concentrated and turned into bullion at the Boston & Arizona operation. Ore from the Knoxville, Stonewall, and Stonewall No. 2 mines went to Boston & Arizona.

After Packard returned from his eastern fundraising trip during the summer of 1880, development on the Stonewall began in earnest. He hired Augustus Barron, a well-regarded mining man, as foreman. West of the original shaft, workers began digging a double compartment shaft with drifts and crosscuts planned off its 300-foot depth.

Although only one wagonload of Stonewall ore went to the Boston & Arizona mill daily during the summer of 1880, 3,000 tons waited for processing on a dump.⁴⁴ During the time Packard, Hopkins, and White owned the Stonewall, reported the November 3, 1880, *Nugget*, the mine "yield[ed] them about \$20,000 in cash, the ore milled having averaged a little over \$80 per ton. . . ."

The December 12, 1880 *Nugget* reported progress on Stonewall No. 2. Miners had found a rich ore vein when the shaft was only 20 feet deep. These successes at the Stonewalls attracted George Rice's attention, and, early in 1881, Boston & Arizona offered to purchase them and the Knoxville from Packard and Hopkins. The \$100,000 transaction, however, did not take place until October 29. The reason for the delay relates to the Orion court case.⁴⁵

Boston & Arizona must have been satisfied with its purchase. The June 1 and June 15, 1882, *Epitaphs* reported that the Stonewall's new shaft had reached 290 feet, with levels at 100 and 160 feet. Two winzes (steeply inclining passageways) were

⁴²Court case: AHS ms., 180, file 562. Merger: Cochise County Mine Deeds, Book 7, pp. 22–31. Wells Fargo connection: Cochise County Articles of Incorporation filed March 15, 1883.

⁴³B&A own Knoxville: *Boston & Arizona Smelting & Refining Co. v. Robert A. Lewis et al.*, deposition of R.N. Leatherwood, civil case no. 504, Cochise County Superior Court Archives. Leatherwood described his ownership and assessment work on the Knoxville in 1878. He declared that there was no Merry Christmas claim in sight then—a crucial point, since Lewis and other Merry Christmas owners maintained that most of their claim was on Knoxville ground.

⁴⁴Barron: "Notes," *Tombstone Epitaph*, Aug. 26, 1880. Operations: "Stonewall," *Tombstone Epitaph*, Aug. 26, 1880.

⁴⁵In "Col. B.A. Packard, An Old Cowman of Cochise," Packard is quoted as saying Boston & Arizona approached him.

added at the 160-foot level, and 22 miners produced 25 tons of ore each day.

At the Knoxville, production reached 14 tons per day, reported the October 28, 1882, *Epitaph*. Miners dug a shaft to the 90-foot level so a hoist could be installed that would connect to the 200-foot level.

Then legal difficulties emerged.⁴⁶ When Packard and Hopkins sold the Stonewall, the contract stipulated that they would hold Boston & Arizona harmless in a suit then pending in U.S. District Court. The suit had been filed against them by Lavina C. Holly, proprietress of Rural House, a boarding establishment on Allen Street near Fifth. (An indication that Holly could be a tough-minded businessperson is a claim she filed against Jessie E. Brown, manager of the Grand Hotel. In an 1881 decision, the court decreed that Holly was to get a sofa bed from Brown or \$50 plus costs.)⁴⁷

Packard and Hopkins met Holly when they first arrived in Tombstone; they bought the Stonewall from her on May 10, 1880—just two weeks after their arrival. The deal was for \$8,000, with \$4,000 up front and another \$4,000 due when the mine started to produce or was sold again. Holly took an initial payment, gave Packard a receipt, and on June 22, 1880, hosted a lavish supper and then a dance in the new Vizina & Cook building for all her Tombstone friends.⁴⁸

Packard and Hopkins refused to pay Holly the second \$4,000. Within days of their purchase, they realized that the Stonewall had a clouded title and they would receive no legal deed from Holly. Almost a year later, on April 22, 1881, Holly sued Say, Packard, and Hopkins, demanding \$8,000.⁴⁹

So, just as they had at the Knoxville, Packard and Hopkins mined the Stonewall at a furious pace while stalling their appearances in court. This was not easy, since the opposing attorneys initially were Haynes and Lucas, and papers served on Packard and Hopkins bore their first names.

⁴⁶Documents relating to the legal tangle over the Stonewall are in AHS ms. 180, files 708, 778, and 787. A portion of the decision in 778 is Cochise County Superior Court Civil Actions, case no. 44. The decision in 787 is Cochise County Superior Court Civil Actions, case no. 911.

⁴⁷Boarding house: Front-page ad in May 6, 1880, *Weekly Nugget*. *Holly v. Brown*: U.S. District Court Minutes Book 1, p. 18, case no. 40, Clerk of Superior Court records.

⁴⁸"Local Intelligence," *Weekly Nugget*, June 24, 1880.

⁴⁹Within days: "Col. B.A. Packard An Old Cowman of Cochise." No deed: A day after Packard and Hopkins bought the Stonewall from Holly, she sold them seven claims in the Dragoons. There are recorded deeds for the claims (see note 32), but not for the Stonewall.

In autumn 1881, Packard and Hopkins appeared in court, as summoned, but Say never showed up. On October 11, Holly withdrew her demurrer, and two weeks later Packard and Hopkins sold the Stonewall to Boston & Arizona. Although Holly withdrew her suit, her assignee, John M. Miller, did not. He had become Holly's partner on April 12, 1881—shortly before she sued Packard, Hopkins, and Say.

On March 3, 1883, the U.S. Second District Court awarded Holly-Miller \$9,466.66, which was the \$8,000 asked for, plus taxes and costs, but minus Packard's initial payment. On April 13, Holly-Miller received \$5,531.80, which was Packard's and Hopkins' share, but not Say's. His non-participation was one of the first indications that the trio's partnership had fallen apart. Say left Tombstone on July 12, 1881. Packard and Hopkins formally called an end to the partnership on November 1. No accounting was done, although Packard and Hopkins claimed that Say owed them money and was in debt to many others.

Holly also had debts—\$607 to M. Levi and Co., \$1,371 to Shromp and McCann, and \$430 to J.D. Culph and Co.—all San Francisco businesses. After getting Packard's and Hopkins' money, Holly paid her creditors and attorneys, then gave \$1,705 to Benjamin F. Maynard and the remainder to Say. Maynard was an assignee whom Holly had acquired during August 1881 in place of Miller. That Holly gave Say money was proof that Holly and Say were in collusion, said Packard and Hopkins. It also explained, they said in their suit against Say and Miller, why Say never appeared in court.

This suit came about after two other court cases over the Stonewall. In one of them, Boston & Arizona sought an injunction against Cochise County sheriff J.L. Ward, who was selling the Stonewall at auction. That happened because Holly filed a writ of attachment on April 25, 1881,⁵⁰ which went into effect after Miller won the case. Although Packard and Hopkins paid their share of the settlement, Say did not, so the attachment process began. After Sheriff Ward published a notice in a Tombstone newspaper of his intent to auction the Stonewall, Boston & Arizona sought an injunction to prevent that.

In its motion, Boston & Arizona said it believed Holly's dismissal of her suit made all further action unnecessary. With apparent guilelessness, Boston & Arizona asserted that if Ward sold the Stonewall at auction, this would cloud its title, thus decreasing the mine's value. The court was not sympathetic, and it denied the injunction on March 27, 1883.⁵¹ At the auc-

⁵⁰Lis Pendens Book 1, pp. 18–20, in Cochise County Recorder's Office.

⁵¹AHS ms. 180, file no. 708.

tion, held October 11, Boston & Arizona bought its own mine for \$6,527.52. Boston & Arizona then sued Hopkins and Packard for this amount, but got nowhere.

The opposite was true in Packard's and Hopkins' suit against Say and Miller. In a decision filed December 26, 1884, that included Maynard, the U.S. Second District Court held that Holly's assignment to Maynard was not a "bona fide transaction but was made merely to cover up and conceal" her ongoing interest in the case. The court pointed out that Packard and Hopkins had paid Holly and Miller what the court had ordered. Since Say had been living in Tombstone when the suit began, Holly and Miller could have approached him for money then. That they did not suggested that they were in cahoots, the court said. It placed an injunction on Holly, Miller, and Maynard, prohibiting them from seeking anything more from Packard and Hopkins.

The court did order Packard and Hopkins to pay costs of \$20.65. They probably were happy to do so, since the decision cleared their good names. That undoubtedly was all they were after when they sued Say and Miller.

After all the turmoil surrounding the Knoxville and Stonewall mines, it was probably refreshing for Packard to deal with the Old Guard Mine. Although never a major producer like the Vizina or Stonewall, the Old Guard held its own among the smaller corporations. The same as the Sunset, the Old Guard was one of the first mines located in Tombstone, and it ended up in the hands of oil country men in 1880 via Fordyce Roper's brokerage efforts. Roper also was one of the incorporators of the Old Guard Mining Co., along with Francis Graves Burke, a Tombstone attorney, and Sumner P. Vickers, brother of attorney-cattleman John V. Vickers, who invested his money.⁵²

They pushed the work on their mine, which was north of the Lucky Cuss. By August 1880, the Old Guard included a shaft, a drift developing from the 80-foot level, and a winze connecting the 150- and 220-foot levels. Among those who purchased a portion of the mine was Packard.⁵³

Mining continued steadily throughout 1882. The October 28 *Epitaph* of that year reported that the Old Guard's shaft was 235 feet deep. At the southeast drift off the 90-foot level, the company was installing a whim (a windlass for raising ore or water

⁵²Location: Pima County Mine Records, Book D, pp. 123, 132. Incorporation: Cochise County Articles of Incorporation, Book 1, pp. 147-49.

⁵³"Old Guard," *Tombstone Epitaph*, Aug. 26, 1880. Packard share: Cochise County Mine Deeds, Book 4, pp. 475-78.

from a mine) to begin hoisting again. The December 16, 1882, *Epitaph* told of a new raise [shaft] in the Old Guard.

The next year, as in all other Tombstone mines, excessive water became an increasingly insurmountable problem. The Old Guard Co. leased its property to chloriders, who picked over the mine's bones for several years.

By the end of the 1880s, scavenging of the Old Guard, Vizina, Tranquility, and Bunker Hill mines provided almost all the district's production. Tombstone's population, generally estimated at more than 10,000 in 1882, fell to less than 650 by the end of the 1890s.⁵⁴ There were a couple of mining revivals in the early twentieth century, but mining in Tombstone never flourished again as it had in 1882.

This demeaning decline in what had been a prosperous town makes it easy to overlook the fact that Tombstone mining jump-started Cochise County's, and thus Arizona's, development. Everything came from mining: soldiers were at Fort Huachuca to protect mines, farms and ranches; farmers and ranchers thrived by supplying food to miners and soldiers, and fodder to their animals. For the next one hundred years, copper mining in Bisbee was the engine that powered Cochise County's economy.

Packard and his oil country compatriots were part of this. Their money and values helped shape Cochise County and southern Arizona. They were law-abiding businessmen who relied on the court system instead of gunfights to achieve their aims. They worked to install civilization as they understood it, and eventually were successful.

⁵⁴Shillingberg, *Tombstone*, A.T., 340.

"TALK THE LANGUAGE OF THE LARGER WORLD": FISHING WARS, NATURAL RESOURCES, AND THE BIRTH OF THE SOVEREIGNTY MOVEMENT IN THE POSTWAR PACIFIC NORTHWEST

JOHN J. DOUGHERTY

"If we're going to say we're nations and we got sovereignty and our treaties are as valid as other treaties, then we got to talk the language of the larger world."¹

—Vine Deloria Jr., 2001

On March 2, 1964, Hollywood actor Marlon Brando and Puyallup tribal member Robert Satiacum were arrested on the Puyallup River in Washington State for violating net fishing regulations. The local newspaper, *Tacoma News Tribune*, ran the headline, "Marlon Nets 2 Steelhead in the Puyallup." The National Indian Youth Council (NIYC) had organized the demonstration, soon called a "fish-in," and these

¹Vine Deloria, Jr., as quoted in *Beyond Red Power: American Indian Politics and Activism Since 1900*, ed. Daniel Cobb and Loretta Fowler (Santa Fe, NM, 2007), 162.

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demonstrations became a common occurrence on waterways in the Pacific Northwest in the 1960s. However, this one was different; it had garnered national attention because of Brando's involvement. By this time, the arrests of treaty fishermen had become routine. Tribal council meetings around the Pacific Northwest were inundated with cases of tribal members who had recently been arrested by state game officials for violating fishing laws. In most cases, the tribes' primary concern was to find a way to have their tribal members released from prison and to get their confiscated equipment back.² The confrontation between tribal members who were exercising disputed fishing rights and state agencies that were enforcing dubious fishing laws became a commonplace occurrence. These were the emerging fishing wars of the 1960s and early 1970s.

The backdrop of the fishing wars was the long-disregarded threat that industrial development posed to natural resource economies in the Pacific Northwest. The tremendous industrial growth of the region in the years following World War II was made possible by the intensive harnessing of natural resources, and in the late 1940s and 1950s very few people were talking about the long-term sustainability of these resources. The momentum of the postwar economy was simply too great to ignore. But by the early 1960s, there was a striking realization that approaches to natural resource management in the region must change if resources were to be maintained for the long term. Once again, Native communities in the Pacific Northwest would pay a higher price than others. In the boom years of the postwar economy, Native communities were displaced and dispossessed to make way for the development of a seemingly immeasurable supply of natural resources; when the postwar boom years began to fade, and the immeasurable suddenly became measurable, Native communities had their already limited rights restricted even further. In climates of both abundance and scarcity, Native peoples were the first to lose. This time, though, the outcome would be different.

During this period, treaty rights and federal Indian policy became entangled with regional debates around environmental conservation and natural resource management. One of the striking ironies of the attack on Native fishing rights was the concern by state agencies in Oregon and Washington that the annual fish harvest of treaty tribes would threaten the long-

²Nisqually Community Council, Nisqually Tribal Minutes, June 11, 1962, box 1574, folder 11. PAO 58: Tribal Council Minutes and Resolutions, 1946–65, records for the Bureau of Indian Affairs, Portland Area Office, record group 75, National Archives and Records Administration, Pacific Alaska Region, Seattle, Washington.



Actor Marlon Brando, left, and Puyallup tribal member Robert Satiacum participated in a fish-in on the Puyallup River in Washington State. (Courtesy of Post-Intelligencer Collection, Museum of History & Industry, Seattle)

term returns of fish to waterways in the Pacific Northwest. Yet, in the 1960s, the treaty tribes' annual fishing harvest accounted for only a marginal amount compared to the fish reserved for sport and commercial fishing.

State agencies took the firm position that the issue was fundamentally and exclusively about the "conservation" of natural resources, but it is difficult to avoid seeing these policies as a direct and ongoing attack on the rights of Native American communities. The fishing wars emerge as a dramatic example of treaty rights under attack by regional economic interests and their organized and powerful lobbyists. This period in the Pacific Northwest showcases how the rights of Native communities were directly undermined to ensure the continuation of a growing, yet threatened, natural resource economy in the region.

At the center of the fishing wars were the treaties of 1855, which had guaranteed tribes in the Pacific Northwest the continuous right to fish at their "usual and accustomed places"; the dispute over this provision became the signature conflict of this period. More than one hundred years after they were drafted, the original treaties began to impact the people of the

region as never before, taking on a new life and influencing the day-to-day life of Native and non-Native peoples alike. From the federal courts, to state courts, to local courts, to state commissions, to game officers, to newspaper columnists, and to Native men, women, and children, the treaties of 1855 were regularly exercised, disregarded, interpreted, reinterpreted, and debated throughout the 1960s and 1970s. As stated in an article from *The Oregonian* in May 1969, "[E]ach court decision seems to make the problem more complex."³

At the core of the debate was the question, What validity do century-old treaties have in the modern United States? But the debate around the treaties of 1855 was not simply a legal one; it also showcased the systemic legacies of colonialism and its impact on Native American communities. As historian Alvin Josephy remarked, "[T]he issue of Indian treaty fishing rights has often been attended more by emotion and racist prejudice than by understanding."⁴

Throughout the 1960s and 1970s, as Native peoples were attempting to exercise their rights, the debate surrounding the treaties exposed "the microtechniques of dispossession."⁵ Paige Raibmon identifies these microtechniques as "the intimate interactions between policies and practices,"⁶ and in the 1960s and 1970s Pacific Northwest these interactions took shape as Native peoples confronted state and federal authorities in order to preserve the critical cultural and ceremonial practice of taking fish. More than simply presenting a history of laws or treaties, Raibmon asks us to consider the specific ways in which Native peoples were culturally and personally dispossessed by federal Indian law and policy. In their efforts to defend the treaties of 1855, Native peoples suffered racism and prejudice, physical abuse, imprisonment, the confiscation of property, and the loss of their livelihoods. For the Native peoples of the Pacific Northwest, the right to take fish at the "usual and accustomed places" was not simply a legal issue.

The fishing wars of the Columbia River and Puget Sound, and the accompanying court cases and legal debates, also demonstrate the shifting direction of federal Indian policy. From

³"Indian Rights Unclear," *The Oregonian*, May 2, 1969.

⁴Alvin M. Josephy, *Now That the Buffalo's Gone: A Study of Today's American Indians* (Norman, OK, 1984), 178.

⁵Paige Raibmon explores this concept in her chapter "Unmaking Native Space: A Genealogy of Indian Policy, Settler Practice, and the Microtechniques of Dispossession" in *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, ed. Alexandra Harmon (Seattle, WA, 2008), 56–85.

⁶*Ibid.*, 79.

the 1950s to the mid-1960s, termination—the federal government's attempt to assimilate Native people into the general population by ending its trust responsibilities to Indian communities—had been the policy of the U.S. government. Amid increasing criticism of the termination policy coming from nearly all angles of the political spectrum, the Bureau of Indian Affairs had yet to adopt and design a new direction for federal Indian tribes. But in contrast to the termination era only a decade before, by the 1960s the BIA would emerge in defense of treaty rights. The fishing wars provide a gateway from which to witness the birth of the new era of Native sovereignty. Additionally, examining the era of the fishing wars in the Pacific Northwest forces us to reconsider our chronology of modern Native activism, since the fishing wars, fundamentally based on the protection of treaty fishing rights and tribal natural resources, predated the national activist movements of the late 1960s and early 1970s. The fish-ins of the early 1960s helped pave the way for the Native activism that followed.

The fishing wars of the 1960s and early 1970s in the Pacific Northwest have been well documented in the existing scholarship. The vast majority of research has focused exclusively on legal and policy history, the most notable being the American Friends Service Committee's *Uncommon Controversy*,⁷ Fay H. Cohen's *Treaties on Trial*,⁸ Alvin Josephy's *Now That the Buffalo's Gone*,⁹ and Robert Ulrich's *Empty Nets*.¹⁰ But more recently scholars have examined other dimensions of the fishing wars. Andrew H. Fisher's *Shadow Tribe*¹¹ and Alexandra Harmon's *Indians in the Making*¹² discuss how fishing rights have shaped regional tribal identities on the Columbia River and Puget Sound. Others have looked at the connection between the fish-ins and other forms of Native and non-Native activism—particularly Paul Chaat Smith's and Robert Allen

⁷American Friends Service Committee, *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians* (Seattle, WA, 1970).

⁸Fay Cohen, *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights* (Seattle, WA, 1986).

⁹Josephy, *Now That the Buffalo's Gone*.

¹⁰Roberta Ulrich, *Empty Nets: Indians, Dams, and the Columbia River* (Corvallis, OR, 2007).

¹¹Andrew Fisher, *Shadow Tribe: The Making of Columbia River Indian Identity* (Seattle, WA, 2010).

¹²Alexandra Harmon, *Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound* (Berkeley, CA, 1998).

Warrior's *Like a Hurricane*;¹³ Bradley Shreve's "From Time Immemorial: The Fish-In Movement and the Rise of Intertribal Activism";¹⁴ and Sherry L. Smith's "Indians, the Counterculture, and the New Left."¹⁵ Charles Wilkinson's *Blood Struggle*¹⁶ is perhaps the most thorough analysis of this period in Native American history. Yet despite the existing studies of the period, we have yet to consider the fishing wars in the broader scope of postwar environmental and economic history of the Pacific Northwest. Although the fishing wars themselves have been thoroughly documented, our understanding of them in relation to environmental and regional histories has not.

Perhaps most importantly, the fishing wars of the Columbia River and Puget Sound highlight the critical ways in which Native communities actively resisted forces aimed at the further erosion of treaty rights and began to effect new directions in federal Indian law and policy. Through political, legal, and social activism, Indian resistance also heralded the dawn of a new period in Native American history.

In the 1960s and early 1970s, Native communities began to reshape their own political, social, and economic destinies; however, an important dimension of this story has yet be explored in the existing scholarship. Too often this period is discussed in isolation from the period that directly preceded it, the era of termination and the "withdrawal from supervision." The Pacific Northwest provides the perfect context to analyze the connections between these periods. In the 1960s and early 1970s, Native peoples of the Pacific Northwest reshaped the direction of federal Indian law and policy and the status of federally recognized Indian tribes regionally and nationally for the next generation. As was noted poignantly by journalist Mark Trahant, this period was a "full-length chronicle of skirmishes" that expands our understanding of "Indian wars."¹⁷ From fish-ins, to federal courts, to the birth of the sovereignty movement, Native peoples of the Pacific Northwest were, as Vine Deloria, Jr., eloquently stated, beginning to "talk the language of the larger world."

¹³Paul Chaat Smith and Robert Allen Warrior, *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee* (New York, 1997).

¹⁴Bradley Shreve, "From Time Immemorial: The Fish-In Movement and the Rise of Intertribal Activism," *Pacific Historical Review* 78:3 (August 2009): 403–34.

¹⁵In Cobb and Fowler, *Beyond Red Power*, 142–59.

¹⁶Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York, 2005).

¹⁷Mark N. Trahant, *The Last Great Battle of the Indian Wars* (Fort Hall, ID, 2010), viii.

NATURAL RESOURCES AND ECONOMIC GROWTH IN THE PACIFIC NORTHWEST

Throughout the 1960s and into the early 1970s, the Pacific Northwest continued its intensive postwar industrial growth. The development of natural resources, particularly timber and water, had reshaped the regional economy and its national importance. Timber from the region's forests was sent across the country to help in postwar development projects and in constructing emerging suburban centers.¹⁸ Water from the Columbia River Basin helped irrigate vast acres of previously infertile agricultural land and made the river system one of the greatest hydroelectric and nuclear energy machines in the world.¹⁹ But by the early 1960s, attitudes toward natural resources changed as the seemingly never-ending abundance suddenly showed its limits.

The Pacific Northwest timber industry flourished in the postwar years as regional forests supplied the nation with the building materials needed to make the construction and development boom possible. The region became the primary national supplier of forest products like plywood for constructing new, low-cost suburban homes across the country. The region was producing nearly 95 percent of the national plywood supply in the 1950s and early 1960s, yet the states of Oregon, Washington, and Idaho consumed only 5 percent of the supply.²⁰ In 1950, 1.9 billion board feet were harvested in national forests in the Pacific Northwest; by 1960 this number had increased to 3.6 billion, and by 1970 it was 4.1 billion. The value of the timber harvest increased as the national demand grew. In 1950, the total timber harvest in national forests was worth \$23 million; in 1960 it was \$63 million, and in 1970 it was \$125 million.²¹ But by the mid-1960s, federal agencies became

¹⁸For historical and environmental analyses of the twentieth-century Pacific Northwest timber industry, see W. Scott Prudham, *Knock on Wood: Nature as Commodity in Douglas-Fir Country* (New York, 2005); William G. Robbins, *Landscapes of Conflict: The Oregon Story, 1940–2000* (Seattle, WA, 2004); Nancy Langston, *Forest Dreams, Forest Nightmares: The Paradox of Old-Growth in the Inland West* (Seattle, WA, 2005); and William Dietrich, *The Final Forest: The Battle for the Last Great Trees of the Pacific Northwest* (New York, 1992).

¹⁹For more on the hydroelectric development of the Columbia River, see Richard White, *The Organic Machine: The Remaking of the Columbia River* (New York, 1995).

²⁰United States Forest Service, Pacific Northwest Research Station, "Production, Consumption, and Prices of Softwood Products in North America: Regional Time Series Data, 1950–1985," Resource Bulletin PNW-RB-161.

²¹*Ibid.*

concerned with the overharvesting of Pacific Northwest timber and began to adopt sustained-yield practices in many national forests to prevent a sudden collapse of the regional industry.

Construction of hydroelectric dams had begun in the late 1930s and continued in the Columbia River Basin throughout the 1960s and early 1970s. In 1961, the United States signed the Columbia River Treaty with Canada to increase hydroelectric capacity in the Canadian stretches of the Columbia River. Around that time, nearly all hydroelectric projects in the region were either completed or were under construction. On the main stem of the Columbia River, the Rocky Reach and Priest Rapids dams opened in 1961, the Wanapum in 1963; the Wells in 1967; and the John Day in 1971. On the Snake River, the Oxbox Dam opened in 1961, the Ice Harbor in 1962, the Hells Canyon in 1967, the Lower Monumental in 1969, the Little Goose in 1970, and the Lower Granite in 1972.

By 1975, there were forty-four operating dams in the Columbia River Basin,²² many of which contained no fish passages for salmon. The Bonneville Power Administration (BPA), the federal energy agency entrusted with hydroelectric power generation in the Columbia River Basin, had become one of the largest power suppliers in the country, providing the "backbone"²³ for the postwar development of the region. By 1970, with nearly 12,000 circuit miles of power lines, it was serving Oregon, Washington, Idaho, Montana, and sections of California, Nevada, Utah, and Wyoming. In 1946, the BPA was generating 6.2 kilowatts per hour of Columbia River hydroelectricity; by 1970, it was generating 55.6 kilowatt hours, an increase of nearly 900 percent in the generation since World War II.²⁴

In addition to hydroelectric production, the federal government had decided during the war that the Pacific Northwest was the perfect location for a large-scale nuclear facility. The original planners had decided on eastern Washington State as a location, because, as it was noted, the region was "remote from population centers and close to substantial quantities of electricity and fresh water."²⁵ By 1963 the Hanford nuclear facility was operating nine nuclear reactors, and from 1956 to 1965 it

²²This number also includes dams on the Pend Oreille, Clark Fork, and Flathead Rivers in Idaho and western Montana and those constructed and maintained by the Canadian government in southern British Columbia.

²³Bonneville Power Administration, "Everything You Always Wanted to Know about the BPA," 1971.

²⁴Ibid.

²⁵Doug E. Ficken, "Grand Coulee and Hanford: The Atomic Bomb and the Development of the Columbia River" in *The Atomic West*, ed. Bruce Hevly and John M. Findlay (Seattle, WA, 1998), 21–38.

supplied the vast majority of the federal government's nuclear arsenal. The reactors underwent a decommissioning process from 1965 to 1971, since most had reached their maximum thermal output. But in 1968 there was another push to make the Pacific Northwest the leading nuclear power producer. In a report titled "Hydro-Thermal Power Program for the Pacific Northwest," the Bonneville Power Administration announced that hydroelectricity alone would not be able to meet the region's power needs for the next generation; the BPA called for continued regional investment in nuclear power development. By the early 1970s, the Washington Public Power Supply System (WPPSS) had assumed responsibility for building five new, large-scale nuclear plants, all in Washington State.²⁶ In addition to hydroelectricity, nuclear power and weapons production were making the Pacific Northwest a national energy powerhouse.

But the largely across-the-board growth of the region's natural resource economies would ultimately have some unintended consequences: by the mid-1960s, salmon would emerge as possibly the first natural casualty of an otherwise heralded era of regional and industrial prosperity.²⁷ There is no greater symbol of the Pacific Northwest than the Pacific salmon, but the seasonal salmon runs into regional waterways were paying the price for the region's postwar industrial expansion. The ongoing construction of hydroelectric dams had obstructed the major migratory waterways and, in some cases, completely prevented salmon from entering them. The development of an extensive irrigation system in the Columbia Basin had hydrated vast landscapes for agricultural expansion, but it had displaced migratory salmon into unfamiliar areas. The clear-cutting of forests had made the Pacific Northwest the primary timber producer in the country, but it had flooded waterways with debris and destroyed habitats. And the Hanford nuclear facility was leaking contaminants into the Columbia River. Each industry was contributing its own unique form of devastation to the fish runs and was pushing many salmon runs to near extinction.

²⁶For more about the WPPSS and the nuclear power proposal for the Pacific Northwest, see Daniel Pope, "Antinuclear Activism in the Pacific Northwest: WPPSS and Its Enemies" in Hevly and Findlay, *The Atomic West*, 236–54.

²⁷For historical and environmental analyses of the Pacific Northwest salmon crisis, see Michael C. Blumm, *Sacrificing the Salmon: A Legal and Policy History of the Decline of Columbia Basin Salmon* (Den Bosch, Netherlands, 2002); Jim Lichatowich, *Salmon Without Rivers: A History of the Pacific Salmon Crisis* (Washington, DC, 1999); David Montgomery, *King of Fish: The Thousand-Year Salmon Run* (Boulder, CO, 2003); and Joseph Taylor, *Making Salmon: An Environmental History of the Northwest Fisheries Crisis* (Seattle, WA, 1999).



The clearcutting of forests had made the Pacific Northwest the primary timber producer in the country, but it had flooded waterways with debris and destroyed habitats for fish and wildlife. (Photo by Mark Gibson, courtesy of Getty Images)

In 1947, roughly 2.1 million salmon and steelhead returned to the Columbia River from the ocean, but by 1960 the number had declined to around 1.1 million. During the 1960s, the number of returning fish averaged about 1.5 million. The commercial take of Columbia River salmon and steelhead declined as well. In 1910, 50 million pounds of fish had been harvested; in 1946, the commercial harvest was still substantial at 22 million pounds, but in 1960 only 5 million pounds were harvested. This number would average between 5 and 10 million pounds throughout the 1960s. The states of Oregon and Washington responded to the declining seasonal returns by limiting fishing access to the Columbia River. In 1970, access was limited to only about 80 days, compared to 1945, when the river had been open for commercial salmon and steelhead fishing for more than 220 days.

Salmon returns were not the only statistics declining by the 1960s. Several economic surveys of reservation communities in the American West suggested that Native peoples were certainly not benefiting from the region's heralded economic transformation in the postwar years.²⁸ Since the end of World War II, unemployment rates on reservations had risen, and the average annual family income was only about one-fifth of the national average. During this era many Native families of the Pacific Northwest had returned to fishing, not just for commercial harvesting but also for subsistence purposes. For many families, fishing once again had become a necessity. Yet as the 1960s progressed, Native peoples were faced with even further restrictions on their rights to fish. The fishing wars and the debates over treaty rights emerged from this context: the continued contestation over Native rights, declining natural resources, and a still-growing, yet threatened, regional economy.

THE TREATIES OF 1855 AND THE ORIGINS OF CONFLICT

By the 1960s, the treaties of 1855 had become a passport to daily life for tribal fishermen in the Pacific Northwest. More than one hundred years after they were originally negotiated and crafted, the treaties remained the most powerful legal document for the tribes in the region.

The year 1855 had been one of the most critical years in the history of the Pacific Northwest. In that year, multiple trea-

²⁸Harmon, *Indians in the Making*, 221.

ties between tribes of the Pacific Northwest and encroaching American settlers established the bedrock of tribal fishing rights in the region.²⁹ From December 1854 to January 1856, the governor of Washington Territory, Isaac Stevens, had signed ten treaties with tribes in what would become the states of Oregon, Washington, Idaho, and western Montana. The original treaties, in chronological order, were the Treaty of Medicine Creek in Washington (December 26, 1854); the Treaty of Point Elliot in western Washington (January 22, 1855); the Treaty of Point No Point in western Washington (January 26, 1855); the Treaty of Neah Bay in western Washington (January 31, 1855); the Treaty with the Walla Walla, Cayuse in eastern Oregon and Washington (June 9, 1855); the Treaty with the Yakama in central Washington (June 9, 1855); the Treaty with the Nez Perces in eastern Oregon and Idaho (June 11, 1855); the Treaty of Hell Gate in western Montana (July 16, 1855); the Treaty with the Blackfeet in western Montana; and the Treaty of Olympia in western Washington (January 25, 1856).³⁰

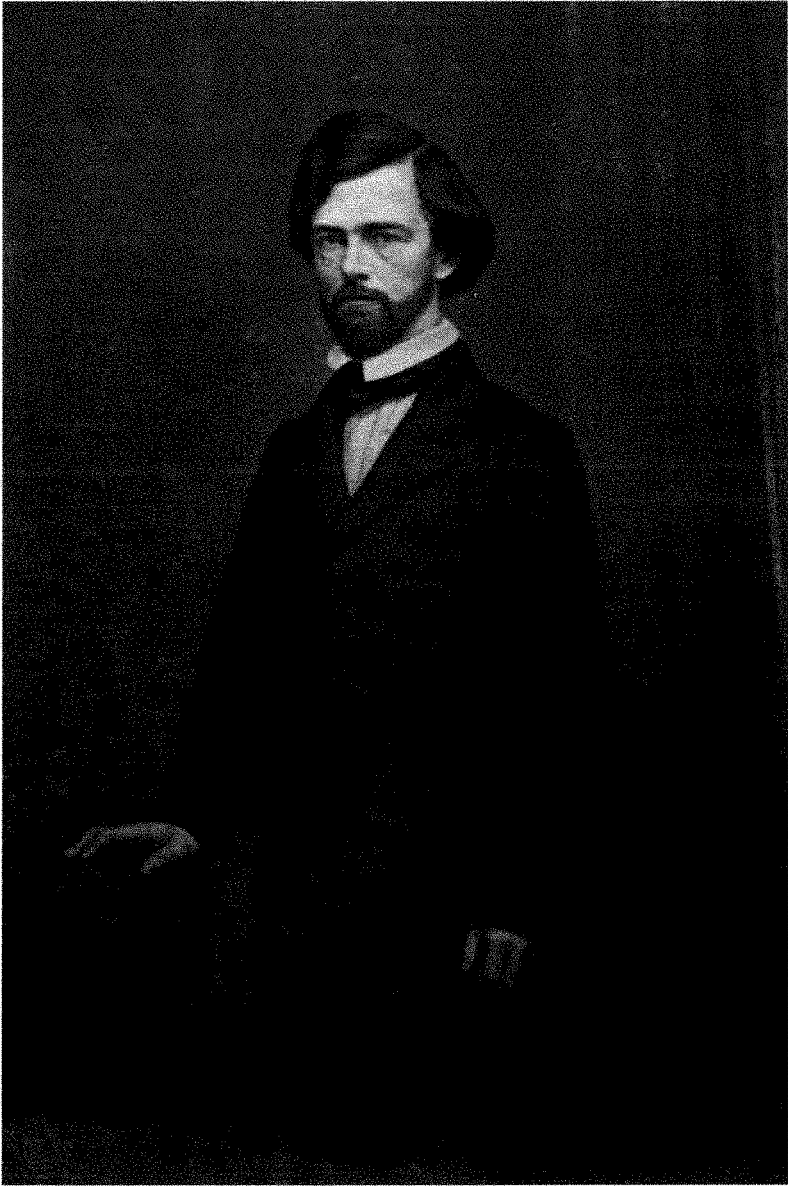
In just a thirteen-month span, Stevens had negotiated treaties that opened vast stretches of the Pacific Northwest to white settlement. But in compensation for granting non-Indians access to tribal lands and resources, tribes reserved the right to maintain their most important social, economic, and ceremonial activity: harvesting fish from regional waterways. The original treaties each contained a provision guaranteeing the right to fish at the "usual and accustomed places" regardless of territorial boundaries, and this was the centerpiece of the treaty negotiations. Without such a provision, the treaty negotiations likely would have failed.³¹ Many of the treaties contained almost exactly the same wording regarding fishing rights, much like this excerpt from the Treaty with the Nez Perces:

The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with Citizens of the Territory, and of erecting temporary buildings for curing them, together with the privilege of hunting, gathering

²⁹For a critical examination of the contemporary importance of Pacific Northwest treaties, see Harmon, *The Power of Promises*.

³⁰Harmon, "Introduction: Pacific Northwest Indian Treaties in National and International Perspective" in *The Power of Promises*, 3–31.

³¹*Empty Promises, Empty Nets*, Columbia River Inter-Tribal Fish Commission (Portland, OR: Wild Hare Media, 1994), VHS.



Washington territorial governor Isaac Stevens, above, negotiated treaties that opened vast areas to white settlement but allowed tribes to continue to fish in "usual and accustomed places," regardless of territorial boundaries. (Photo by Mathew Brady, courtesy of University of Washington, Special Collections, UW 36545)

roots and berries, and pasturing their horses and cattle upon open and unclaimed land.³²

The treaties were signed on the cusp of a major demographic shift in the Pacific Northwest. Following ratification, they immediately posed a legal dilemma for the rapidly increasing non-Indian population of the region. In 1855, Native peoples still constituted the demographic majority in the Pacific Northwest, but in the years following 1855, a massive influx of non-Indians swept across the region and brought with it increasing criticism of the 1855 treaties.

Governor Stevens had originally negotiated the treaties to gain access to former tribal lands for incoming settlers, but within a few years these lands simply were not enough to satisfy the newcomers, and settlers began to target the "special" rights of treaty tribes. The first major challenge came in 1887 with *United States v. Taylor*,³³ which upheld the treaty fishing rights of the Yakama Indians in Washington Territory. The case was a dispute about whether treaty fishing rights extended across private property. When Washington achieved statehood in 1889, the new state tried to abolish net fishing altogether, which had been the most effective strategy of treaty fishermen. In 1905, in the case of *United States v. Winans*,³⁴ the United States defended the rights of treaty tribes by making it illegal to obstruct waterways at the "usual and accustomed" sites. Again in 1919, in *Seufert Brothers v. United States*,³⁵ treaty fishing rights were upheld against the interests of regional fish canneries, which had tried several times to limit tribal access to traditional fishing sites. Regardless of the legal challenges to the treaties, the fishing rights of Native peoples had remained largely intact.

For the Native peoples of the Pacific Northwest, treaty-based fishing rights had always been something to maintain and protect, and this became more important as the region underwent intensive development in the first half of the twentieth century. As noted by Alexandra Harmon, "before the 1950s the fishing issue simmered without boiling over."³⁶ But by the late 1940s, as numerous hydroelectric projects were being planned for the Columbia River, Native fishing rights became a

³²"Treaty with the Nez Perces, 1855," http://www.critfc.org/member_tribes_overview/nez-perce-tribe/treaty-with-the-nez-perces-1855.

³³*United States v. Taylor*, 3 Wash. Terr. 88 (1887).

³⁴*United States v. Winans*, 198 U.S. 371 (1905).

³⁵*Seufert Brothers Co. v. United States*, 249 U.S. 194 (1919).

³⁶Harmon, *Indians in the Making*, 218.

more public issue, and the dams themselves posed an obvious and well-acknowledged threat to the vitality of fisheries. The dams garnered much public support, and Native fishing rights were seen as irrelevant roadblocks that should not interfere with regional development. Many of those who questioned the validity of Native fishing rights did so on the grounds that special rights for Native Americans were in conflict with their status as American citizens.

In a series of editorials in *The Oregonian*, citizens in favor of hydroelectric development voiced their opinions regarding the status of Native fishing rights. In a 1946 editorial, one citizen wrote, "If an Indian is to claim privilege or benefit under a treaty enacted by an Indian nation he must show that he is a member of that nation and not a citizen of the United States."³⁷ American Indians had been granted U.S. citizenship in 1924, and the Native peoples of the Columbia River also were members of federally recognized tribes. Many non-Indians in the region believed that this dual identity gave tribal members more privileges and legal advantages than the "average citizen" in the region. In an effort to undermine treaty rights, many argued that being both a U.S. citizen and a member of a federally recognized tribe constituted two fundamentally incompatible national identities.

Some people who were opposed to treaty fishing rights also focused on specific language contained in the treaties of 1855. In addition to the provision regarding "usual and accustomed places," the treaties contained a statement that tribal fishing rights should be "in common with all citizens." It was generally understood that this statement referred to the amount of fish that tribes were entitled to, rather than access to them. However, those opposed to the treaties claimed that this statement meant that tribal members were restricted to the same laws and regulations as non-Indians, and that the treaties did not guarantee special rights for the treaty tribes.

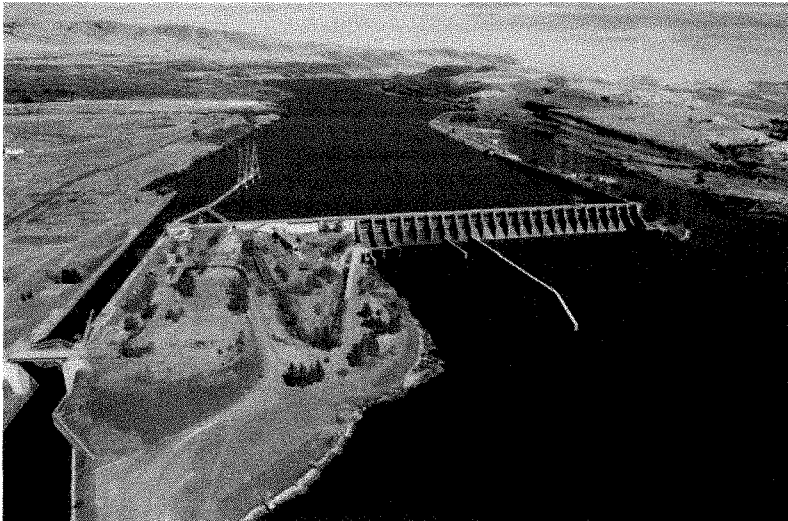
After the inundation of Celilo Falls by The Dalles Dam in 1957 and the construction of the John Day Dam in 1960, the central debate surrounding Native fishing rights was based on disputed interpretations of what "usual and accustomed" actually meant. These sites had been established by the treaties of 1855 for tribes of the Columbia River and Puget Sound, but the postwar development of the river systems had impacted access to these sites by treaty fishermen. Often these sites were located off reservation lands but were still legally accessible as guaranteed by the treaties. The construction of The Dalles

³⁷"Indian Treaty Rights," *The Oregonian*, September 14, 1946.

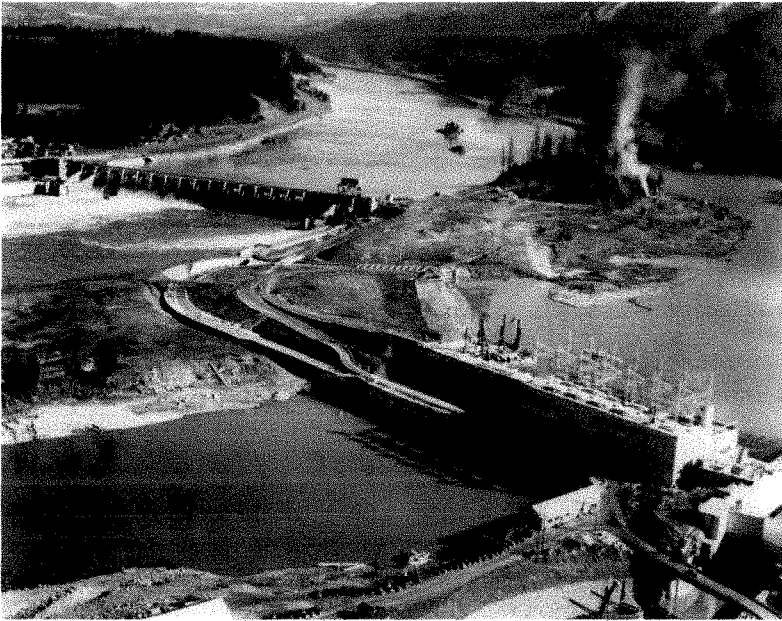
Dam had been the most egregious violation of the "usual and accustomed places" provision. Throughout the 1960s, the controversy over these sites would dominate regional affairs between the state and federal governments and the tribes.

There also was a growing controversy surrounding access to "in-lieu" fishing sites on the Columbia River. In-lieu sites originally had been designated in 1939, after the backflow of the Bonneville Dam had inundated numerous "usual and accustomed" fishing sites above the dam. Beginning in the 1940s, the Bonneville Power Administration and the Bureau of Indian Affairs (BIA) had designated several compensatory, or in-lieu, tribal fishing sites. But by the 1950s, the fish commissions in Oregon and Washington were beginning to regulate access to these sites as well, outlining the regulations that tribal members would need to follow to use them. Many Native families regularly took up residence on these sites, and this, again, emerged as a critical point of contention between Native peoples and state officials.

State discrimination against treaty tribe fishermen was evident in the organization of fishing sites on the Columbia River. In 1957, as a result of the inundation of Celilo Falls, the salmon runs plummeted, and the states were forced to reconsider fishing access for all parties, Indian and non-Indian alike. The river was divided into six distinct fishing "zones." Zones 1 through 5 were



Construction of The Dalles Dam, above, on the Columbia River was a flagrant violation of the "usual and accustomed places" provision of the Stevens treaties. (Courtesy of U.S. Army Corps of Engineers, Portland District)



In 1939, the backflow of the Bonneville Dam, seen above under construction, inundated numerous tribal fishing sites. (Courtesy of University of Washington, Special Collections, A. Curtis 65027)

located along the stretch of the Columbia from Bonneville Dam westward to the Pacific Ocean, while zone 6 was the stretch from Bonneville Dam eastward into the Columbia Plateau. Zones 1 through 5 were reserved for the non-Indian commercial fishery, while zone 6 was reserved for the Columbia River treaty tribe fishery. This meant that the non-Indian commercial fishery had rights to the earliest and most unimpeded runs of migratory fish coming from the Pacific Ocean, while treaty tribes had access to fish only above Bonneville Dam—the smaller numbers of fish that had made it beyond the non-Indian commercial fishery. To compound the issue, from 1957 to 1967, joint action by Oregon and Washington officials closed section 6 to commercial fishing altogether for “conservation purposes.” As a result, tribes were not permitted to take fish for commercial purposes, only for subsistence and ceremonial usage. This greatly impacted the economic subsistence of many Native families. By 1960, of the 867,000 pounds of commercial spring Chinook harvested, only 1,200 pounds were taken by treaty tribes.³⁸ The restriction on

³⁸Ulrich, *Empty Nets*, 117.

treaty tribes' ability to harvest fish commercially, while non-Indian commercial fisheries were still allowed to operate, would be challenged in 1968 in *Puyallup v. Washington*.

In addition to the official policy of termination, which had unilaterally removed federal recognition from more than one hundred tribes in the Pacific Northwest, the 1950s also produced several other assimilationist policies. In particular, Public Law 280, passed in 1953, complicated the administration of tribal affairs in the postwar Pacific Northwest. Unlike termination, PL 280 maintained the trust status of federally recognized tribes, but it transferred civil and criminal jurisdiction over reservation communities to the state, regardless of the tribes' preference for autonomy.³⁹ The statute was offered to all states, but only five states, one of which was Oregon, adopted it in 1953. Washington followed in 1957, and Idaho in 1963. PL 280 complicated the issue of treaty fishing rights because it led states to assume that they could develop policies without regard for treaty rights and despite existing federal treaties. However, the extent to which PL 280 allowed states to override treaty rights was unclear. The contested meanings of tribal status and treaty rights, the discriminatory organization of tribal fishing sites on the Columbia River, and the policies of termination and PL 280 had all laid the groundwork for a confrontation between Native communities and regional agencies in the emerging "fishing wars."

CIVIL RIGHTS AND THE EMERGENCE OF NATIVE ACTIVISM

The official organizer of the inaugural "fish-ins" of 1964 was the National Indian Youth Council. Prior to the formation of the NIYC, Native activism had been quite different from that of the emerging civil rights movement and its strategies of civil disobedience.⁴⁰ The largest intertribal organization, the National Congress of American Indians (NCAI), did not seek to become involved in the treaty fishing rights controversy and did not approve of the NIYC's form of activism and civil disobedience. This was evident in the NCAI's motto: "Indi-

³⁹David H. Getches, Charles F. Wilkinson, and Robert A. Williams Jr., *Cases and Materials on Federal Indian Law*, 3^d ed. (St. Paul, MN, 1993), 479.

⁴⁰For a complete history of the NIYC and its involvement in the fish-ins, see Bradley Shreve, "From Time Immemorial: The Fish-In Movement and the Rise of Intertribal Activism," *Pacific Historical Review* 78:3 (August 2009): 403-34.

ans don't demonstrate."⁴¹ The NIYC shared many of the same ideals as the NCAI but disagreed about tactics. Many of the Native peoples involved in the NIYC were young students who were allied with other activist student groups, most notably the Student Nonviolent Coordinating Committee (SNCC). Members of the NIYC decided to head to the Pacific Northwest to support the treaty fishermen and shine a national light on the fishing rights controversy.

Despite its alliances with other activist organizations, the NIYC did not want to be associated with the nationally recognized civil rights movement. At the core of this division was the matter of identity and goals. In the eyes of Native activists, Native Americans held a unique legal relationship with the federal government and sought to uphold existing treaties. In contrast, for civil rights activists, African Americans and other racial minorities held a problematic racial relationship with the American legal system and sought to challenge discriminatory laws and policies. As a NIYC spokesperson remarked in 1964, "The Negroes don't have the law on their side yet and they have a lot of popular prejudice against them, while the Indians' problem is the federal bureaucracy; we almost have the law on our side in the form of treaties, and all we ask the white man to do is to live up to those treaties."⁴²

The NIYC's decision to involve celebrities like actor Marlon Brando in 1964 and comedian Dick Gregory in 1966 also complicated the matter, since both had already established themselves as civil rights advocates. To many non-Indians unfamiliar with Native activism, there was a visual similarity between the civil rights movement and the media-covered violence of the fish-ins. As historian Andrew Fisher remarked, the fish-ins "appeared to mirror the brutality of southern officials defending Jim Crow."⁴³

The emerging civil rights movement had a significant impact on the perceived social and cultural status of Native peoples. By the mid-1960s, Native claims to sovereignty and special fishing rights seemed relatively obsolete. The issue of minority rights was being dominated by the rhetoric of the civil rights movement, while, in Indian Country, the policies of termination and relocation were seeking to erode the cultural and political fabric of reservation communities. Put simply, Native peoples exercising treaty rights were met with opposition in the 1960s.

⁴¹Ibid., 404.

⁴²Ibid., 419.

⁴³Fisher, *Shadow Tribe*, 214.

In the early 1960s, then-commissioner of Indian affairs Philleo Nash used the civil rights movement to advocate for a reenergized approach to assimilationist policies toward Native Americans. In a 1963 speech to Oregon State officials at the Portland City Club, Nash remarked that African Americans were succeeding in breaking down the wall of "cultural separatism" but that "Indians want to be thought of as Indian."⁴⁴ He continued, "The problem is a cultural one; the Indian desires to maintain his cultural identity and cultural separatism, yet he wants to share fully in the country's citizenship and economy."⁴⁵ In his remarks, Nash sought to use the seemingly progressive and integrationist social agenda of the civil rights movement to criticize the anti-assimilationist attitudes of Native communities. Nevertheless, he acknowledged the validity of these attitudes and the critical difference between the struggles of Native Americans and other minority groups. He remarked that many Native peoples "feel that trusteeship was an agreement made at the time the lands were ceded and that relinquishment is a breach of the agreement." Nash represented a still-prevalent political ideology that, despite the failures of termination, federal Indian policy should be focused on the assimilation of Native peoples into broader American life. In this particular case, Nash was using civil rights rhetoric to argue against the unique treaty-based rights of tribes.

Despite their ideological reasoning about the uniqueness of Native peoples and their effort to distance themselves from other forms of activist rhetoric, Native activists of the NIYC certainly borrowed significantly from the civil rights movement. From "sit-ins" to "fish-ins," from "Black Power" to "Red Power," Native activists succeeded in channeling much of the national activist momentum into the Native treaty rights discussion. But Native activists were capable of making their own unique imprint that would put the issue of Pacific Northwest treaty fishing rights in the national headlines. As noted by Fay Cohen,

During the 1960s, confrontations with the state would propel Indians onto television screens and into newspaper headlines. Just as the sit-ins in the South would increase and accelerate federal enforcement of black civil rights, so also the fish-ins would focus public attention on the Indians' appeal for federal enforcement of their full treaty

⁴⁴"Indian Held Differing from Negro in Wishing to Preserve Own Culture," *The Oregonian*, July 27, 1963.

⁴⁵*Ibid.*

rights in the face of almost a century of state restriction. Treaty fishing rights would become an issue of major national concern.⁴⁶

The social and political impact of the fish-ins has a profound influence on our understanding of modern Native activism. Chronologies of modern Native activism often begin in the late 1960s or early 1970s, placing emphasis on the founding of national organizations such as the American Indian Movement (AIM) in 1968 and larger intertribal and collective protests such as the occupation of Alcatraz Island in 1969, the Trail of Broken Treaties in 1972, and the siege at Wounded Knee in 1973.⁴⁷ However, the era of Native activism actually began much earlier in the Pacific Northwest and was fundamentally based on the protection of treaty rights and tribal natural resources.⁴⁸

TREATY RIGHTS VERSUS CONSERVATION

By the mid-1960s, the dispute over Native fishing rights and "usual and accustomed places" had moved beyond the fish-ins and was declared an outright "salmon war" and "fishing war" by the regional media. The fish-ins throughout the Pacific Northwest had become more militant, with both state game officials and tribal members carrying weapons in preparation for confrontation. These confrontations have been well documented in previous scholarship about the period,⁴⁹ but the banks of Pacific Northwest rivers were not the only places where the fishing wars were being waged. Disputes over fishing rights also took place in local, state, and federal courts throughout the 1960s and early 1970s, as the treaties of 1855 became perhaps the most contested pieces of law in the region. From the banks of the Puyallup and Columbia Rivers, to courtrooms in Tacoma, Washington; Salem, Oregon; and Washington, D.C., the contemporary relevance of treaty fishing rights would be debated by a variety of stakeholders.

⁴⁶Cohen, *Treaties on Trial*, 65.

⁴⁷For a chronology of Native activism in the late 1960s and early 1970s, see Smith and Warrior, *Like a Hurricane*.

⁴⁸In addition to the fishing wars, Native activists, in solidarity with the activists at Wounded Knee, took over the Bonneville Power Administration office in Portland in August 1975. They accused the federal government of the "exploitation and murder of Indian people."

⁴⁹See Josephy, *Now That the Buffalo's Gone*; Charles Wilkinson, *Messages from Frank's Landing: A Story of Salmon, Treaties, and the Indian Way* (Seattle, WA, 2000); and Cohen, *Treaties on Trial*.

The fishing wars of the Pacific Northwest had two central geographical battlefields: Puget Sound and the Columbia River. Tribes in both areas had treaty fishing rights established in 1855; by the 1950s, these treaty rights were facing increasing threats as state agencies and commercial fishing interests attempted to limit tribal access to receding fish runs. Despite the similarities in the central issues affecting these two sites, the geographical separation between Puget Sound and the Columbia River made each fishing war fundamentally unique. The key differences between them were the issue of jurisdiction and the provisions of PL 280. The tribes of Puget Sound were confronting the state of Washington, which had been one of the original states to adopt jurisdictional authority over tribes as outlined by PL 280. The tribes of the Columbia River occupied a region that included both Washington and Oregon. In the mid-1950s, both states were trying to determine their legal powers to regulate treaty-based fishing rights.

Puget Sound was the site of the first days of the fishing wars.⁵⁰ The first arrest occurred on the Puyallup River in 1954, as state officials attempted to increase control over—and regulate access to—fish runs. Robert Satiacum, a Puyallup and Yakama fisherman, was arrested for possession of a steelhead during a closed fishing season. As early as *Washington State v. Satiacum*⁵¹ in 1957, courts in the Pacific Northwest became the central battleground over treaty-based fishing rights for tribes; thus began an era of legal confusion and ambiguity that would last nearly twenty years. *Washington State v. Satiacum* established an early legal precedent that the treaties from 1855 guaranteed a right to fish at the “usual and accustomed” sites, but how the state would observe this provision was unclear, and arrests of tribal fishermen were commonplace.

Numerous suggestions arose about how to deal with the legal confusion of the “usual and accustomed places.” By 1963, lawmakers were even considering amending treaty rights at the federal level, or simply purchasing treaty rights outright, which would cost several hundred million dollars.⁵² At the time, the state of Washington was trying to establish its own legal authority over treaty tribes, regardless of the federal treaties. The state maintained that despite treaty-based fishing rights, Washington held the power to regulate natural resource man-

⁵⁰For a comprehensive history of the fishing wars in Puget Sound, see American Friends Service Committee, *Uncommon Controversy*, and Wilkinson, *Messages from Frank's Landing*.

⁵¹*Washington State v. Satiacum*, 50 Wash. Reports 2d 513 (1957).

⁵²“3 Solutions Suggested on Indian Fishing Rights,” *The Oregonian*, April 25, 1962.

agement regardless of federal treaties. The state believed that treaty fishing rights gave tribal members an unequal share of the fish runs and therefore made them more "privileged citizens," as compared to non-Indian commercial or sport fishermen. In 1964, Washington assistant attorney general Joseph L. Coniff, speaking on behalf of the state's Department of Fisheries, expressed this view: "The State has to operate on a system of equality of all its citizens. . . . [T]he State of Washington is unalterably opposed to Federal regulation of off-reservation sites. . . . I feel that it is essentially an unworkable program, that is, to divide the management power for each run of fish. In other words, in order to have an intelligent management program, it should be unified."⁵³

But by the mid-1960s, Washington state had changed the legal rhetoric surrounding the issue of treaty fishing rights; it had now become a debate about natural resource "conservation." The debate over Native fishing rights and "usual and accustomed places" had evolved into a question of "what is necessary for conservation,"⁵⁴ and whether granting further access for tribal members would ultimately injure the annual salmon harvest. Despite claims that the state agencies were discriminating against tribal members, the agencies held that their objection to treaty fishing rights was based on a general concern about natural resource management and sustainability and the regional industries that depend on them, rather than on a desire to restrict the rights of Native peoples.

Once again, the interests of Native communities were presented as conflicting with "the greater good" of the region. However, despite state agencies' insistence that the tribal harvest of fish was negatively impacting annual runs, the claim did not match the percentages of annual fish allocation. Central to the state's argument was that "conservation" supersedes treaty rights and that the tribes' annual harvest, if not limited, would impact conservation and sustainability efforts. Yet, from 1958 to 1967, only 6.5 percent of the annual salmon harvest was taken by tribal fishermen, while 93.5 percent of the harvest went to non-Indian sport and commercial fishermen.⁵⁵

On the Columbia River, the story was nearly identical. Many tribal fishermen had taken up residence at in-lieu fishing sites on the river, in opposition to the requests of Oregon of-

⁵³American Friends Service Committee, *Uncommon Controversy*, 122–30.

⁵⁴"Root of 'Salmon War' Found in Indian Treaty," *The Oregonian*, May 8, 1966.

⁵⁵American Friends Service Committee, *Uncommon Controversy*, 127. The 93.5 percent is composed of 12.2 percent sport fishing and 81.3 percent commercial fishing.

ficials. David Sohapp, a Yakama tribal member, and several others gathered at Cook's Landing on the Columbia River in 1965. By the spring and summer of 1966, state officials had made more than thirty-two arrests at Cook's Landing for fishing and harvesting violations. Many of those arrested used the treaties of 1855 and their treaty-based rights to fish at the in-lieu sites to argue that the charges should be dismissed, and the vast majority were successful in their claims. Yakama tribal member Margaret Cloud was arrested in January 1967 but was subsequently released after a local judge, interpreting the original treaty, noted that Cloud's processing of fish taken on the Columbia River at an in-lieu site was "reasonable and necessary" according to the treaty.⁵⁶ The series of arrests and the subsequent hearings were further compounding the legal confusion over the treaties.

As in Puget Sound, state agencies in Oregon claimed that the annual fish harvest by tribes of the Columbia River would further threaten the vitality of already declining salmon runs. To strengthen their position and to regulate treaty rights further, Oregon agencies claimed that allowing tribes to take unregulated amounts of salmon would potentially injure the commercial fishing economy on the Columbia River. Yet the percentage of annual tribal fish harvest on the Columbia River from 1958 to 1967 was virtually identical to that of Puget Sound over the same period of time. Non-Indian commercial and sport fishermen accounted for about 93.5 percent of the total fish harvest on the Columbia River, while treaty tribes claimed only 6.5 percent.

In early 1967, the tension was mounting between tribal fishermen and the Oregon and Washington State agencies. The agencies were reluctant to establish dates for the commercial fishing season until they had had a chance to study the long-term outlook of the annual fish harvests. However, many tribes disregarded this policy and established their own fishing season dates for Puget Sound and the Columbia River. The Oregon Fish Commission responded, "Apparently they didn't pay attention to our request."⁵⁷ To a certain extent, fishing regulations were being established at three different levels: the state, the tribe, and the individual treaty fishermen. The state would define its own season, the tribe would follow with its own, and many tribal members disregarded both and fished on their own schedules. There was no established legal precedent—addressing both treaty rights and conservation—regarding how

⁵⁶"Court Upholds Indian Treaty in Fish Case. Woman Freed by Circuit Judge; 1855 Agreement Cited in Ruling," *The Oregonian*, January 14, 1967.

⁵⁷"Indian Salmon Season Ignores State Request," *The Oregonian*, March 1, 1967.

fish runs should be managed and allocated. As confrontations escalated and the legal confusion over the treaties of 1855 increased, county courts began to announce officially that they would not accept any further fishing rights cases until the U.S. Supreme Court intervened and established a precedent for all other lower courts to follow. Later that year, the Supreme Court agreed to help resolve the issue.

FISHING WARS AND THE EMERGENCE OF NATIVE SOVEREIGNTY

As the fishing wars escalated in the Pacific Northwest, the BIA remained relatively silent regarding its position on tribal fishing rights. It was absent in almost every protest or court decision or negotiation between state officials and tribes. Because it was the administrator of reservation lands and resources, local, state, and federal officials looked to the BIA for guidance about how treaty rights were to be interpreted and implemented, but the BIA provided little direction or support in resolving the disputes. Records relating to the treaty rights disputes from this period are notably absent from the files of the BIA Portland area office, which was responsible for overseeing tribal relations in the 1960s. Additionally, the Portland office employed only one fisheries specialist to oversee these issues in Oregon, Washington, and Idaho. The BIA office appeared not to be interested in the region's critical natural resource and treaty rights debates.

Much of the BIA's indifference to the treaty rights debate can be attributed to its own ideological confusion during in the early 1960s. Amid increasing criticism of termination-era policies, the BIA was struggling with its own political identity and was not prepared to intervene in a critical discussion about treaty rights. Either a defense or a dismissal of treaty rights would be a critical policy stance, and the BIA was not willing to make a commitment. Not until the 1968 ruling in *Puyallup Tribe v. Department of Game of Washington*⁵⁸ did the BIA emerge in defense of treaty rights.

The *Puyallup* decision determined that state officials have the right to regulate fishing rights, regardless of treaty, for the "interest of conservation." In response to the *Puyallup* decision, the BIA stated, "If an Indian is fishing in his usual and accustomed place under tribal rules and regulations and he is arrested by the state, the Department of Justice will defend

⁵⁸*Puyallup Tribe v. Department of Game of Washington*, 391 U.S. 392 (1968).

that Indian person."⁵⁹ The fishing wars led to a change in the policy stance of the BIA from the termination-era policies only a decade earlier. Thus began a new era in federal Indian law and policy: self-determination.

In April 1969, the state of Oregon ruled in favor of treaty fishing rights in *Sohappy v. Smith*.⁶⁰ Yakama tribal fisherman Richard Sohappy had sued the state in 1968 over a wrongful fishing rights arrest. Sohappy, along with other tribal fishermen, was disputing the state's regulatory control over tribal members. The following year the case was combined with *United States v. Oregon*,⁶¹ with the United States joining Sohappy as a plaintiff. The decision in favor of the tribal members required that commercial fishing laws be rewritten to allocate the annual harvest by treaty tribes. In justifying his decision, U.S. district judge Robert C. Belloni remarked that the state's interpretation of the treaty "seems to be affected much more by the superior political power of sport and commercial fishermen over a handful of Indians, rather than on reason and fairness."⁶² Belloni acknowledged publicly that the anti-Indian and pro-commercial and sport fishing lobby was preventing an honest interpretation of the treaty. Belloni continued, "[T]he regulating must be done according to the Supreme Law of the land which in this case is the Treaty of 1855. . . . [N]o one, Indian or non-Indian, has a right to violate this law."⁶³ Belloni defended the original treaty agreement as one between two sovereign nations.

Unfortunately, there was a critical logistical flaw in the decision. Belloni did not provide a specific allocation amount, only that there should be an allocation for treaty tribes. Although he argued that the state could not use "conservation" to undermine treaty rights and that the amount of fish reserved for treaty tribes should be "fair and equitable," he did not clarify the meaning of "fair and equitable" in terms of numbers. While Belloni's decision constituted an official legal stance regarding treaty fishing rights in Oregon, it did not offer specifics for the state or the tribes to implement.

Judge Belloni's decision temporarily alleviated tensions between Oregon state officials and the Columbia River tribes. Representatives of the Warm Springs, Yakama, Umatilla, and Nez Perce agreed to suspend fishing at the "usual and accus-

⁵⁹American Friends Service Committee, *Uncommon Controversy*, 141.

⁶⁰*Sohappy v. Smith*, 302 F.Supp. 899 [D. Or. 1969].

⁶¹*United States v. Washington*, 382 F.Supp. 312 [W.D. Wash. 1974].

⁶²"Judge Rules in Favor of 1855 Indian Fishing Treaty," *The Oregonian*, April 25, 1969.

⁶³*Ibid.*

tomed" sites until the fish commission had adequate time to study the sustainability of the salmon runs. The tribes were encouraged by the potential of Belloni's decision, since the state of Oregon had taken a stance on treaty fishing rights.

But officials in Washington State were not ready to concede to the interests of Native communities. The optimism following Belloni's decision was short-lived; as the state agencies and the treaty tribes waited for the decision to become official, conflicts continued. By early 1969, as Oregon and Washington put a halt on the commercial fishing season, the arrests of tribal fishermen continued. Despite Belloni's decision, the legal confusion was not resolved; in fact, the decision may have exacerbated the legal confusion even further. As stated in an article from *The Oregonian* in May 1969, "[E]ach court decision seems to make the problem more complex."⁶⁴ Since Belloni had not offered specific numbers for the allocation of fish runs, many people did not follow the provisions of the decision, considering it too vague to implement. In the early 1970s, non-Indian commercial and sport fishing accounted for more than 85 percent of the fish harvest on the Columbia River, 10 percent of the fish were released for spawning purposes, and the treaty tribes acquired only 3 percent of the harvest.⁶⁵ Belloni's decision had not changed the discriminatory allocation of fish on the Columbia River. But, nationally, the status of Native communities was beginning to change.

The presidency of Richard Nixon in 1968 would bring an unlikely change to federal Indian law and policy. In the months prior to Nixon's election, the Indian Civil Rights Act (ICRA) had passed, extending the rights of tribal members as citizens of both tribal governments and the United States.⁶⁶ But Nixon would leave his own imprint on federal Indian policy. Despite his larger focus on domestic and international issues, Nixon faced increasing pressure to provide direction to the BIA. His intervention in federal Indian law and policy was not so much a response to emerging Native activism as it was an effort to resolve lingering domestic issues, specifically rural and urban poverty. His administration recognized that, in terms of social welfare, Native communities were among the most desperate. In comparison to all other minority groups in the United States, reservation communities were the most disadvantaged in health, employment, and education. Additionally, by the time Nixon was elected, there was almost unanimous agree-

⁶⁴"Indian Rights Unclear," *The Oregonian*, May 2, 1969.

⁶⁵Ulrich, *Empty Nets*, 133.

⁶⁶See Wilkinson, *Blood Struggle*, for more on the ICRA.

ment in Washington, D.C., that termination had been an ill-conceived failure.

In July 1970, Nixon officially announced the change in policy with his "Special Message on Indian Affairs." In his statement, he called for "self-determination without termination":

It is long past time that the Indian policies of the federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian resources.⁶⁷

This national policy shift coincided with a critical legal victory for tribes in the Pacific Northwest. The pressure between tribes and state agencies in Washington culminated in *United States v. State of Washington*⁶⁸ in the U.S. District Court for the Western District of Washington in 1974. Judge George Hugo Boldt presided over the case, which would determine whether the treaty-based fishing rights of Native peoples held relevance in managing and allocating state fish runs. The case was heavily lobbied by well-organized and powerful commercial fishing groups that hoped it would finally override the claims of Native communities and their rights to fish. But in the decision of March 22, 1974, or the "Boldt decision," Judge Boldt stated,

It is the responsibility of all citizens to see that the terms of the Stevens treaties are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the councils, and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people. . . . The taking of anadromous fish from usual and accustomed places, the right to which was secured to the Treaty Tribes in the Stevens treaties, constituted both the means of economic livelihood and the foundation of native culture. . . . Settlement of the West and the rise of industrial America have significantly

⁶⁷Colin G. Calloway, *First Peoples: A Documentary Survey of American Indian History*, 2^d ed. (Boston, MA, 2008).

⁶⁸*United States*, 382 F. Supp. 312.

circumscribed the opportunities of members of the Treaty Tribes to fish for subsistence and commerce and to maintain tribal traditions. But the mere passage of time has not eroded, and cannot erode, the rights guaranteed by solemn treaties that both sides pledged on their own honor to uphold. . . . The treaty was not a grant of rights to the treating Indians, but a grant of rights from them, and a reservation of those not granted.⁶⁹

In one definitive decision, Boldt had established that the state could not apply its fishing regulations to members of federally recognized tribes covered by federal treaties. He had based his decision largely on the precedents established in the *Sohappy* decision, but he established specific provisions that the *Sohappy* decision had not. The Boldt decision suddenly emerged as a landmark in contemporary federal Indian policy because it upheld the validity, in a modern court, of mid-nineteenth-century treaties. Even more striking, it did so in the midst of threatened natural resources and regional economies, and against tremendous political pressure. State fish officials almost unanimously opposed the decision and immediately began discussing an appeal. Their opposition to Judge Boldt's decision was mostly based on their belief that he was using "1850s logic to solve 1960s fisheries management problems."⁷⁰ Further, they argued that the treaties of 1855 were crafted during a time when the demographic and environmental makeup of the region was vastly different, and that the treaties should not be used to determine contemporary policies and problems.

Carl Crouse, director of the Washington Department of Game in 1974, framed the possible implications of the Boldt decision in a much larger way. He believed that the decision gave tribal members the "potential of decimating" regional fisheries and could even be extended to cover hunting, logging, and agricultural policy. Additionally, Crouse argued that the decision was an assault on the rights of states.⁷¹ The fish commissions of Oregon and Washington also held a legitimate concern about foreign harvesting of Pacific Northwest fish. By the late 1960s, Russian, Canadian, Korean, and Japanese

⁶⁹Francis Paul Prucha, *Documents of United States Indian Policy*, 3^d ed. (Lincoln, NE, 2000), 268–69.

⁷⁰"Court Decision on Indian Fishing Rights, Foreign Invasion Embitter Conservationists," *The Oregonian*, March 13, 1974.

⁷¹"Judge's Decision on Indian Fishing Rights Disturbs Agencies," *The Oregonian*, March 26, 1974.

trawlers were getting closer to the mainland United States, and returning fish numbers were declining. International law requires that foreign ships obey a twelve-mile offshore zone, but this limit still gives foreign ships access to fish from the Pacific Northwest. Many people favored increasing the offshore zone to limit the foreign impact on the fishery. Fish commissioners attached the subject of foreign impact to the Native fishing rights discussion to compound the threat to the Pacific Northwest fishery.

Columnist Herbert Lundy covered the Native fishing rights controversy and the Boldt decision fallout for *The Oregonian*. In response to non-Indian sport fishermen who strung up an effigy of Judge Boldt in front of his Tacoma, Washington, courtroom, Lundy remarked, "[T]he effigy more properly might have been that of Isaac I. Stevens."⁷² In his summary of the case, Lundy wrote, "The whole controversy may wind up in Congress, which has the exclusive right to abrogate or change treaties. But Indian fishing disputes have been there before and the Indians have come out on top every time. They couldn't stand off the white man's troops and armed settlers. But they do all right in the white man's courts."⁷³

In the aftermath of the Boldt decision, and while it underwent an extensive appeals process, the decision provoked an unspoken truce between state agencies and the treaty tribes. State officials were no longer arresting tribal fishermen on the Columbia River or in Puget Sound, and tribes were observing, with only few exceptions, the fish seasons established by the states.

The Boldt decision also raised the issue of federal recognition. Although the decision officially pertained only to treaty tribes, thirteen Native communities in Oregon and Washington asked to be included as descendants of the original treaty parties so that they would be entitled to a share of the fish harvest. Of the thirteen petitioning tribes, eight were recognized by the BIA and were included in the fish allocation. The other five tribes, however, were "unrecognized" and therefore were left out.⁷⁴

The BIA, in an effort to strengthen its stance on tribal sovereignty and self-determination, openly supported the Belloni and Boldt decisions. In a speech to the Portland City Club in 1975, then-BIA commissioner Morris Thompson articulated his support of the decisions:

⁷²"Indians Gave up Land, But Keep Their Fish," *The Oregonian*, April 5, 1974.

⁷³*Ibid.*

⁷⁴Harmon, *Indians in the Making*, 241.

Because the Belloni and Boldt decisions are the law of the land and must be implemented, I think it is very important that all people affected by them understand the unique relationship Indian tribes have with the federal government and the reasons for that relationship. . . . When Indian tribes signed treaties with the United States, in most cases they relinquished title to lands wanted by the federal government and which Indians formerly occupied. But it was not a question of the tribes "getting" something from the federal government. They "gave up" something, and what they did not specifically give up, they reserved. And they reserved their right, and that is an important word, to fish in their usual and accustomed places, both on and off reservations. . . . An Indian does not have a right to fish because of any racial differences. He has a right to fish because his tribe has a valid treaty with the United States giving him that right.⁷⁵

By early 1976, *United States v. State of Washington* had reached the Ninth Circuit Court of Appeals, but the court would not satisfy the hopes of the non-Indian commercial and sport fishermen. The Boldt decision was upheld, and it was determined that the allocation of resources established by the decisions contained nothing "inequitable or impracticable."⁷⁶ After the Ninth Circuit Court upheld the decision, non-Indian fishermen tried to get the Boldt decision reviewed several more times, but each case was rejected by the court. In late 1976, in response to these attempts, the court commented that these challenges were "like that strutting and fretting carried on before it finally sinks in on people that Boldt is the law of the land."⁷⁷ In his 2009 memoir, *A Lawyer in Indian Country*,⁷⁸ Alvin J. Ziontz, the senior attorney representing the tribes in *United States v. Washington*, reflected on the significance of the Boldt decision: "[T]he decision enabled the Indian people of the Pacific Northwest to return to fishing as a way of life."⁷⁹

⁷⁵"Indian Fishing Rights Negotiated, Upheld as Sovereign Nation-to-Nation Treaties," *The Oregonian*, November 11, 1975.

⁷⁶"Court Upholds as Equitable '74 Indian Fishing Decision," *The Oregonian*, February 4, 1976.

⁷⁷"Indian Fishing Rights Pass Court Test," *The Oregonian*, November 2, 1976.

⁷⁸Alvin J. Ziontz, *A Lawyer in Indian Country: A Memoir* (Seattle, WA, 2009).

⁷⁹*Ibid.*, 129.

CONCLUSION

By the mid-1970s, the political and economic climate of the Pacific Northwest, and the United States as a whole, had changed dramatically. The heralded era of post-World War II economic growth had largely dissolved by 1973, during a national recession, and the Fordist economic policies that had dominated the national economy for most of the twentieth century were over.

The emergence of environmentalism, and the founding of both Greenpeace and the Environmental Protection Agency (EPA) in 1970, had changed the national perspective regarding natural resources and their limitations. Federal agencies were now being pressured to preserve and sustain, rather than develop and exploit, natural resources economies. In the Pacific Northwest, the era of dam building had come to an end, and the environmental devastation of the previous generation of development was being felt throughout the region. As early as 1967, U.S. Supreme Court justice William O. Douglas had overturned the Federal Power Commission's grant of a license to build the High Mountain Sheep Dam on the Snake River in Idaho. In his objection to the dam, Douglas wrote, "[T]he importance of salmon and steelhead in our outdoor life as well as commerce is so great that there certainly comes a time when their destruction might necessitate a halt in so-called 'improvement' or 'development' of our waterways."⁸⁰

The situation had also changed dramatically for Native peoples, but in very different ways. Nixon's policy of "self-determination without termination" came to fruition in 1975 with the passage of the Indian Self-Determination and Education Assistance Act, and with it came an official reversal of the legal status of federal Indian tribes. The Boldt decision of 1974 had upheld treaty rights against states' rights, and it would survive two more challenges in the U.S. Court of Appeals. It appeared that Native communities, despite the devastating policies of the previous generation, were entering a new era of prosperity. Further changes were coming for tribes in the Pacific Northwest. In late 1976, the American Indian Policy and Review Commission announced that it was releasing to Congress a twenty-five-year program for the "development of Indian America."⁸¹ The program would create the American Indian Development Authority within the executive branch

⁸⁰Blumm, *Sacrificing the Salmon*, 13–14.

⁸¹"Indian Economic Aid Plan Prepared," *The Oregonian*, December 18, 1976.

and would focus on issues of jurisdiction, community health, and tribal governments.

The legal victories of the 1970s marked a significant shift in the status of Native peoples, and, as remarked by Charles Wilkinson, this political revival "deserves to be recognized as a major episode in American history."⁸² As noted by Standing Rock tribal leader P. Sam Deloria, "Indians did not discover they were Indians in the early 1970s. We were not reborn. We were simply noticed."⁸³

Often, however, scholars are too quick to generalize about the significance of the 1960s and early 1970s for Native communities. Although it was often heralded as the "golden era" of federal Indian policy, this new phase would also introduce an additional set of challenges for Native communities. Tribes would be forced to consider their own natural resource limitations and their management and sustainability programs. For the tribes, a treaty that guaranteed access to natural resources was meaningless if there were no more natural resources.

In many ways, though, the 1960s and early 1970s had prepared tribes for the new challenges of self-determination, because, as noted by historian Roberta Ulrich, "most Northwest tribes, with their long history of battling for fishing and hunting rights, were well prepared to manage their own affairs."⁸⁴ By the mid-1960s, tribes of the Columbia River had begun to take ownership of their own natural resource management and sustainability programs. During the 1960s and 1970s, the Native peoples of the Pacific Northwest reshaped our modern understanding of treaty rights and self-determination.

⁸²Wilkinson, *Blood Struggle*, xiv.

⁸³As quoted in Trahant, *The Last Great Battle of the Indian Wars*, 2.

⁸⁴Ulrich, *Empty Nets*, 129.

BOOK REVIEWS

Forgotten Dead: Mob Violence against Mexicans in the United States, 1848–1928, by William D. Carrigan and Clive Webb. New York: Oxford University Press, 2013. 320 pp.; photographs, appendix, notes, index; \$34.95 cloth.

References to lynching in the United States are, for most Americans, associated with a history of violence against African Americans, particularly in the post-Civil War South. In this important work, William Carrigan and Clive Webb ask their readers to adopt a broader view of racialized violence in American history, one that shifts the historical gaze westward and encompasses a long and brutal story of extra-legal violence perpetrated against people of Mexican origin.

Forgotten Dead is based on an exhaustive effort to trace and document every case, confirmed and unconfirmed, of anti-Mexican mob violence in the United States between 1848 and 1928. The 547 resulting cases are listed and described in a pair of appendices totaling sixty pages, although the authors concede that this figure vastly underestimates the true extent of anti-Mexican violence. This list, by itself, constitutes an invaluable resource, but the authors also make excellent use of their evidence to explain the nature and contours of mob violence against Mexicans in the American Southwest, efforts by Mexicans to resist, and the reasons for the end of anti-Mexican lynchings.

Anti-Mexican violence clearly reflected the ideologies of Manifest Destiny. The authors demonstrate that economic competition and racial prejudice, both important components of expansionist doctrine, were key motivating factors in the lynching of Mexicans. Violence was often rationalized by appealing to the inadequacies of the justice system in the frontier regions of the Southwest. Defenders of lynching complained that law enforcement was stretched too thin, that court systems were slow and expensive, and that lawyers, judges, and juries were unreliable or excessively lenient. All of this added up to an institutional failure that could be corrected, according to many Americans, only by concerned citizens securing justice for their communities. Some Anglo-Americans and many Mexicans argued that systemic failures did not excuse mob violence, but their voices were generally ignored.

In outlining the contours of anti-Mexican violence, the authors draw some interesting comparisons with anti-black violence in the American South. Mexicans were much more likely than African Americans to be targeted for property crimes such as theft. The fear of sexual assault, so significant in justifying anti-black violence in the South, was almost wholly absent in the case of Mexicans, who were often described in terms of feminized inferiority. Mexicans themselves were sometimes involved in extra-legal violence against other Mexicans, reflecting class divisions within Mexican communities and a concern among some Mexicans, especially local elites in areas with large Mexican populations, such as New Mexico, to project an image of respectability and whiteness.

Mexican resistance to mob violence took a variety of forms. Armed resistance and retaliation were not uncommon in border regions, and Spanish-language newspaper editors in some Southwest towns and cities also mirrored the strategy of black anti-lynching activists by editorializing against violence and in support of the rule of law. Official recognition of their political rights—something that African Americans lacked—gave Mexicans some avenues for formal protest against lynching, but such efforts had limited success, and a desire to maintain white respectability discouraged Mexicans from joining their efforts with those of African-American activists on a national level.

The national story takes center stage in the fourth chapter of the book, which discusses efforts by Mexico to enlist the United States government in the fight to eliminate mob violence against Mexicans. This story of diplomatic pressure demonstrates both the strengths and the limitations of America's federal system. Concerned about its international reputation and threats to American investments in Mexico, and pushed by resourceful and committed Mexican diplomats, the U.S. government put pressure on state governors to investigate anti-Mexican violence. The problem was that local authorities were, as Carrigan and Webb clearly show, often directly involved in the extra-legal violence they were supposed to be preventing, and did their best to undermine efforts at reform.

It is here, in particular, that the authors do a nice job of exposing the contradictions of those who rationalized mob violence by appealing to the failure of legal institutions. Although Carrigan and Webb are unequivocally opposed to mob violence and do not believe that it can be justified by blaming inadequate legal institutions, they note that there may at times have been some truth to the argument that the legal system was insufficient to the task of frontier justice. By the late nineteenth and early twentieth centuries, however, the problem clearly

was not the lack of a legal system, but discriminatory enforcement and the complicity of local authorities.

Forgotten Dead grapples quite well with the thorny issue of evaluating the agency of an oppressed group, but readers seeking an uplifting narrative of declining oppression in the face of opposition are likely to be disappointed. Although Mexicans in danger of mob violence sometimes succeeded in individual and collective acts of resistance, and Mexican diplomats helped to foster broader legal and institutional changes, most victories were partial and temporary. The authors attribute the end of lynching largely to the decline of broad public support for mob violence in the United States in the 1920s. As national opinion moved against lynching, local mobs and their supporters found themselves increasingly marginalized and subject to pressure to reform. Even the end of "frontier justice" was not all good news for Mexican Americans, however, since the racial prejudices that had characterized extra-legal violence became formalized and embedded in the legal system itself.

The title of the book signifies, for Carrigan and Webb, an effacing of America's collective memory and historical consciousness about anti-Mexican mob violence. The authors have performed an important act of historical recovery, telling a story that will be new to many readers and connecting their Southwestern tale to the broader historiography of lynching and mob violence in the United States.

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Treasure State Justice: Judge George M. Bourquin, Defender of the Rule of Law, by Arnon Gutfeld. Lubbock: Texas Tech University Press, 2013. 188 pp.; illustrations, appendices, notes, bibliography, index; \$29.95 paper.

When it comes to biographies of federal judges, American legal history is top-heavy. There are numerous books covering the lives and legal careers of prominent United States Supreme Court justices but very few about judges at the trial court and intermediate appellate court levels. For the most part, the names and accomplishments of judges who worked at these levels of the federal judiciary are lost to history. Fortunately, some historians—Arnon Gutfeld being the latest—are bringing deserved attention to lower court federal judges who contributed significantly to the nation's legal development. Gutfeld's subject is George M. Bourquin, whom President Taft appointed U.S. District Court judge for Montana in 1912. Bourquin served in this capacity for twenty-two

years; then he resigned and ran for a U.S. Senate seat. This book is a legal rather than a personal biography, for information about Judge Bourquin's life outside the courtroom is scant. But Gutfeld has fully examined Bourquin's professional career, including almost 250 reported judicial decisions, along with stands Bourquin took on issues during the Senate race, to reveal the judge's views on government, law, and liberty.

The pillars of Judge Bourquin's legal philosophy were political conservatism and civil libertarianism. His political conservatism resembled that of many judges of the era who believed in limited government and objected when lawmakers tried to infringe on property and contract rights. Bourquin was a legal formalist who thought government regulations interfering with individual rights violated core American values. He held fast to what the author calls an "old style liberalism" that encouraged absolute freedom and free enterprise. His opposition to government intervention in the economy did not change even when Montana was rocked by the Great Depression in the 1930s. Bourquin's steadfastness on this point fueled his attacks on New Deal programs and the growth of the central government. He opposed popular federal programs, including those that benefited his state. Bourquin's political conservatism led to his overwhelming defeat in 1934, when he ran as Montana's Republican candidate for the Senate. The loss ended his short-lived flirtation with politics and was the final chapter of his public life.

Gutfeld also reveals how Bourquin's political conservatism and distrust of big government led to his becoming a protector of individual political rights. The book's most interesting chapters discuss cases Bourquin decided during and after World War I, in which he showed what the author calls his "civil libertarian side." Bourquin made these rulings during the height of the "Red Scare." The cases involved prosecutions under state and federal laws aimed at criminalizing the speech of political dissenters who criticized the government and the war effort. The defendants in these cases—German immigrants, an I.W.W. labor agitator, alleged draft dodgers, and war opponents—were very unpopular in Montana. Although Bourquin disagreed with most of their views, he considered it un-American to punish individuals for speaking their minds on political subjects. His written opinions pulled no punches; he abhorred patriotism that descends to fanaticism and mob rule that ends in lynch law. He believed that Americans had more to fear from a government that would take advantage of a crisis to act in tyrannical ways than from the statements of the insignificant defendants being prosecuted. Politicians and the media of the day berated Bourquin for these decisions protecting freedom of speech. During a special session of the Montana Legislature

convened to combat sedition, a resolution was introduced calling on him to resign. Bourquin resisted these pressures. And, as the author shows, history has vindicated him. Bourquin was ahead of his time—and the U.S. Supreme Court, for that matter—in defending minority political rights from the dangers of governmental despotism.

Gutfeld also discusses Judge Bourquin's opinion-writing style in cases relating to constitutional law. In a sense, the judge was always looking backward; he relied on the text of the Constitution and traditional views of the Founding Fathers, especially Jefferson, when discussing the proper role of government. To make his points, Bourquin also freely peppered his decisions with references to history, philosophy, political theory, literature, religion, and other non-traditional sources. The book includes appendices that present three Bourquin decisions in cases involving individual rights so the reader can experience his style firsthand.

This book is a welcome addition to the literature on the work of lower federal court judges. Persons interested in judicial biography, First Amendment issues in the World War I era, and western legal history in general will want to read it.

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The Contested Murder of Latasha Harlins: Justice, Gender and the Origins of the L.A. Riots, by Brenda Stevenson. New York: Oxford University Press, 2013. 432 pp.; photographs, notes, index; \$29.95 cloth.

The conflagration that beset Los Angeles in spring 1992 was the most destructive upheaval in recent U.S. history. Ostensibly it was sparked by negative reaction to the failure to convict law enforcement authorities captured on videotape administering a savage beating to African-American motorist Rodney King.

But as this book tells the story, what helped to drive so many to the streets in contravention of law and order was another riveting event captured on videotape: the killing of African-American teenager Latasha Harlins by Soon Ja Du, a shopkeeper of Korean origin. Harlins and the shopkeeper came into conflict over payment for a small item. After the jury found the defendant guilty of "voluntary manslaughter" (p. 262), she received a "suspended ten-year term in the state penitentiary; five years probation; 400 hours of community service; a \$500 fine; and the cost of Latasha Harlins' funeral and medical expenses" (p. 236). Many people deemed this punishment to be too lenient, and this, too, drove them to the streets.

What some found troublesome was that, in a contemporaneous case, a defendant received thirty days in the county jail for abusing a dog (p. 241). This triggered a deep well of disturbing memories among African Americans, many of whom were descendents of slaves—a group that was abused routinely, at times when family pets were cosseted on the veranda.

In a further perceived slap, the Los Angeles County Bar Association's Criminal Justice Section awarded Judge Joyce Karlin, who presided over the case, the "Trial Judge of the Year" title and Charles Lloyd, Soon Ja Du's attorney, "Trial Attorney of the Year," in what the author terms "a clear statement of support for their part in the Du trial" (p. 299).

The author tells the story by focusing not only on Ms. Harlins and the shopkeeper, but also on Judge Karlin, who was Jewish. What the author seeks to do is fill out the back story by discussing at length the histories of women of African, Korean, and Jewish origin, notably in Southern California, in a cinematic fashion that drives the narrative and marches these histories to March 16, 1991, at 9172 South Figueroa Street in Los Angeles, where Ms. Harlins breathed her last breath. Then the author switches her gaze to the aftermath of this tragic loss of life.

The book represents a different kind of women's history—a field that often focuses on one of the three groups; instead, the author seeks to weave these disparate stories together. The book focuses intently on how class and patriarchy shaped the lives of the principals involved. In other words, this book presents history as sociology and sociology as history.

Since this is relatively recent history, the archival base is not as extensive as it will be as the current century unfolds. Still, the author is able to draw on trial transcripts and newspaper accounts in order to tell the story. More interviews would have helped to fill in details that the written record has yet to reveal.

The Contested Murder of Latasha Harlins also is a legal history. The author observes that the defense called character witnesses but the prosecution did not, which suggests that the accused was "humanized" in a way that the victim was not. Yet the fact remains that, to the extent that this was relevant, it impacted the judge more than the jury. A wider community gave its verdict when Los Angeles erupted in flames.

This is a cautionary tale, reminding readers of the extraordinary burdens resting on the shoulders of officers of the court, judges not least. As such, the author deserves our heartfelt thanks for bringing this riveting story into sharper focus.

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Debates on the Federal Judiciary: A Documentary History, vol. I: 1787–1875, edited by Bruce A. Ragsdale. Washington, D.C.: Federal Judicial Center, 2013. 285 pp.; vol. II, 1875–1939, edited by Daniel S. Holt. Washington, D.C.: Federal Judicial Center, 2013. 277 pp. Available as a free download at www.fjc.gov.

The U.S. Constitution says surprisingly little about the federal judiciary. Indeed, Article III, which establishes and provides for the federal courts, runs less than four hundred words. But in that very brief text, the Constitution does some mighty work. It creates a Supreme Court and lists its jurisdiction. It authorizes Congress to design and empower a system of lower federal courts. And, most impressively, it establishes an independent federal judiciary, by specifying that federal judges shall receive lifetime appointments without diminishment in salary.

Still, the brief text leaves many questions unanswered. For example, How many justices shall sit on the Supreme Court? How might Congress organize the lower federal courts? Can federal judges simultaneously occupy other offices in the federal government? How might Congress enhance or constrain the power of the federal courts by enlarging or restricting their jurisdiction? These are just some of the unanswered questions, and the obvious ones at that. There are many, many more.

These open questions are fodder for political and constitutional debates over the proper role of the federal courts in our democracy. And there is no shortage of those debates. Relatively recently, the Senate majority abolished the use of the filibuster for lower federal court nominees in response to minority foot-dragging on confirmation votes. The minority tactic was designed to halt objectionable nominees to the federal bench and to register discontent with other administration policies. In short, the federal judiciary became a political football through the Senate confirmation process. This politicization (on both sides of the aisle) was hardly surprising in a culture where criticizing the federal courts has become a mainstay in political campaigns and day-to-day politics. The politicization is not just theater; it matters. In holding up federal judicial nominees, the minority effectively undermined the work of the judiciary. In abolishing the filibuster for those nominees, the majority cleared a path to put the judiciary back to work.

This process—political and constitutional debates that result in meaningful changes in the federal judiciary—is nothing new. Indeed, some of the fiercest debates over the federal courts, and some of the most dramatic changes to the judiciary, date back to the early years of the Republic. In today's politics, it is easy to forget this. But understanding those historical debates, and the resulting changes over time in the federal ju-

diciary, is essential work for any student of the contemporary federal courts.

The delightful two-volume set, *Debates on the Federal Judiciary: A Documentary History*, published by the Federal Judicial Center, traces these debates and the resulting changes from the founding of the nation. The volumes start with the Constitutional Convention of 1787 and move both topically and chronologically through the nineteenth and early twentieth centuries to 1939. Volume I presents highlights like the Judiciary Act of 1789, the impeachment trial of Justice Samuel Chase, the debates over circuit riding, and the reorganization of the federal judiciary during and after the Civil War. Volume II covers the creation of the intermediate appellate courts, efforts to limit judicial review, the Federal Rules of Civil Procedure, and Roosevelt's court-packing plan, among other topics. Together, they provide a comprehensive history of the evolution of the federal judiciary during this formative period.

In doing so, the set reminds us of the deep historical divisions around recurring issues, issues that we debate even today. For example, the set weaves a discussion of federalism through the debates, demonstrating how issues of federal-state relations—how federal judicial authority runs up against claims of state sovereignty—influenced nearly every step in the evolution of the federal judiciary. The two volumes similarly weave discussions of judicial independence, separation of powers, and access to the judiciary through the debates. The net result is a story of recurring issues and themes through debates on particular problems, and not only a story of those problems themselves.

The set draws on and reproduces a remarkable variety of original sources, from the expected (records from the Constitutional Convention of 1787, the Federalist Papers, various congressional acts, and congressional debates) to the more obscure (speeches, bar association position papers, editorials, and private letters). Each topical section begins with an insightful introduction, and each original source begins with a helpful editorial overview. The original sources themselves are carefully edited and sequenced to trace the unfolding debates, point by point, and the resulting evolution of the federal courts. (Importantly, the set gives full and equal attention to material from the losing side of each particular debate. This is, of course, essential in fully understanding the debates, but it is a point too often lost in our contemporary wrangling over these issues.)

These features make the volumes remarkably readable, cover to cover. They provide a coherent and compelling historical story, more than the sum of the original sources themselves, and they do it in a highly accessible way. This is unusual for a compilation of original sources, and refreshing.

These features also make the volumes relevant and applicable to today's debates over the federal courts. Sure, they offer fodder for originalists, as we might expect from a compilation of original sources. But they also provide a deep historical context for our contemporary debates. They remind us that our debates today sit at a particular point in history and politics—that our arguments have pedigrees and, by extension, implications for the future.

The Center plans to publish a third volume in the set, to bring the history to the present and to survey the history of bankruptcy courts. *Debates on the Federal Judiciary* adds to the rich bank of resources and publications on the history of the federal courts already available from the Federal Judicial Center.

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ARTICLES OF RELATED INTEREST

Below we list articles recently published in journals of history, law, political science, and other fields that we believe may be of interest to readers. Although comprehensive, the list is not definitive, and the editor would appreciate being informed of articles not included here.

Ahmad, Diana. "Virginia City's Fledgling Police Force Takes on Journalist and Opium, 1870s–1880s," *Nevada Historical Quarterly* 54:1–4 (2011): 126–41.

Azuma, Elchiro. "Japanese Immigrant Settler Colonialism in the U.S.-Mexican Borderlands and the U.S. Racial-Imperialist Politics of the Hemispheric 'Yellow Peril,'" *Pacific Historical Review* 83:2 (May 2014): 255–76.

Bennett, Lyn Ellen. "Child Custody, Custodial Arrangements and Financial Support in Late Nineteenth-Century Kansas," *Kansas History, Journal of the Central Plains* 37:1 (Spring 2014): 20–33.

Bronstein, Jamie. "Sowing Discontent: The 1921 Alien Land Act in New Mexico," *Pacific Historical Review* 82 (August 2013): 362–95.

Coen, Ross. "Statehood Lobbying by Alaska Republicans," *Alaska History* 29:1 (Spring 2014): 43–52.

Eldrege, Michael S. "All Hail to the President! Theodore Roosevelt Comes to Utah, May 29, 1903," *Utah Historical Quarterly* 82 (Winter 2014): 27–42.

Freeman, Martha Doty. "Preservation of Texas's Public Records, a Vital Work in Progress," *Information and Culture: A Journal of History* 49:1 (2014): 90–107.

Friedman, Samantha, Hui-Shien Taso, and Cheng Chen. "Housing Tenure and Residential Segregation in Metropolitan America," *Demography* 50 (August 2013): 1477–98.

Goode, Barry. "The American Conquest of Alta California and the Instinct for Justice: The 'First' Jury Trial in California," *California History* 90:2 (2013): 4–23.

Hall, Nicholas Sean. "The Wasp's 'Troublesome Children': Culture, Satire, and the Anti-Chinese Movement in the American West," *California History* 90:2 (2013): 42–63.

Hill, Christina Gish. "'General Miles Put Us Here': Northern Cheyenne Military Alliance and Sovereign Territorial Rights," *American Indian Quarterly* 37 (Fall 2013): 340–69.

Jett, Brandon. "Paris Is Burning: Lynching and Racial Violence in Lamar County, 1890–1920," *East Texas Historical Journal* 51 (Fall 2013): 40–64.

Johnson, Khalil Anthony, Jr. "The Chinle Dog Shoots: Federal Governance and Grass-roots Politics in Postwar Navaho Country," *Pacific Historical Review* 83 (February 2014): 92–129.

Kurashige, Lon. "Rethinking Anti-Immigrant Racism: Lessons from the Los Angeles Vote on the 1920 Alien Land Law," *Southern California Quarterly* 95 (Fall 2013): 265–83.

Lowenthal, Kristi. "The Equal Rights Amendment and the Persistence of Kansas Conservatism," *Kansas History, A Journal of the Central Plains* 37:1 (Spring 2014): 34–49.

Muckey, Lance. "Nevada Responds to the 'Yellow Peril,' 1909–1924," *Nevada Historical Quarterly* 54:1–4 (2011): 142–61.

Nysrom, Eric. "'Brilliant Contingency of Legal Talent and Mining Experts': Tonopah Apex Lawsuit, 1914–1918," *Nevada Historical Quarterly* 54:1–4 (2011): 101–25.

Reavis, Jack Anthony. "Rex Brinlee: The Man and His Escape," *Chronicles of Oklahoma* 91 (Summer 2013): 192–219.

Scott, Kim Allen. "The Montana Bankers Association and the Bozeman Bank Robbery of 1932," *Montana: The Magazine of Western History* 63 (Autumn 2013): 3–17.

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Ulrich, Paul G. "Miranda v. Arizona: History, Memories, and Perspectives," *Phoenix Law Review* 7 (2013): 203–88.

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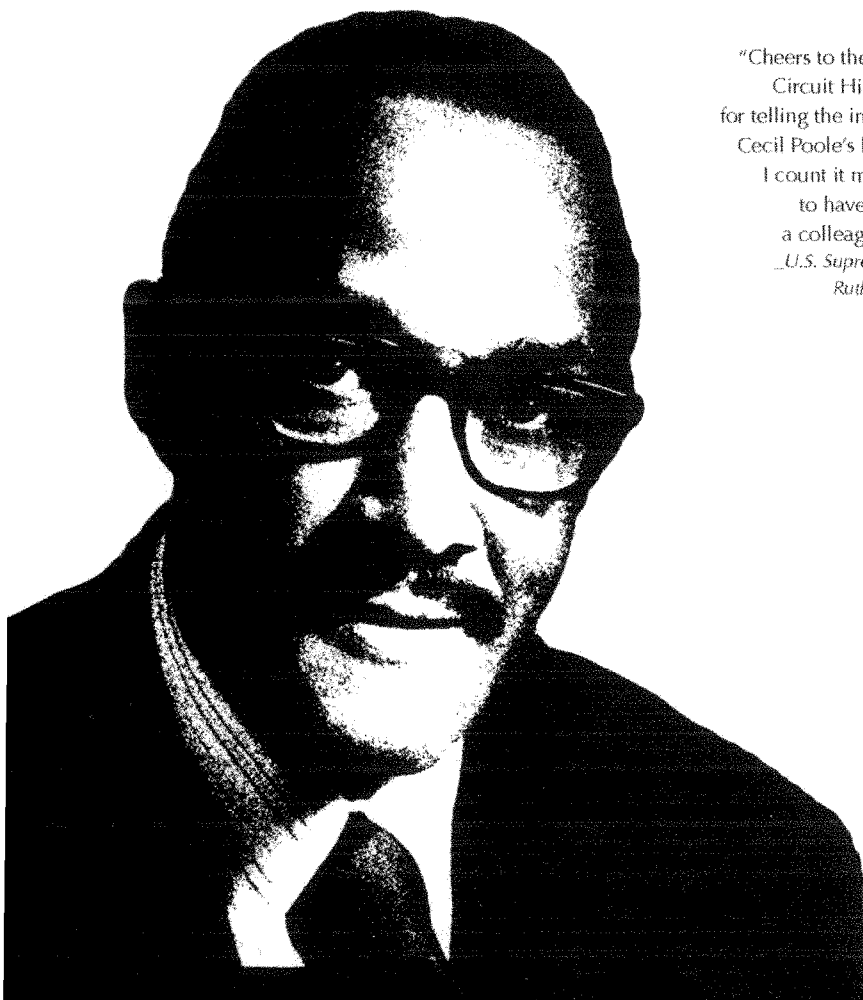
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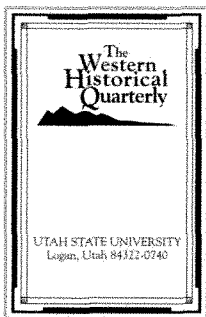
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