Summer 9-3-2015

A Town on Fire: The Copperfield Affair of 1914

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<https://doi.org/10.15760/etd.2504>

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A Town on Fire: The Copperfield Affair of 1914

by

Daniel Joseph Shepard

A thesis submitted in partial fulfillment of the
requirements for the degree of

Master of Arts
in
History

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Portland State University
2015

Abstract

In 1914, Copperfield, Oregon was militarily occupied by order of the governor, Oswald West. Its town government was deposed, the city officials were arrested, and the town's saloons were closed and all liquor and gambling devices were seized. The town, previous to Governor West's interdiction, had seen a breakdown into violence and arson between two competing saloon cliques. The resulting martial law of Copperfield and subsequent court battles between the governor and Copperfield's saloonkeepers would become known as the Copperfield Affair.

The purpose of this study is to explain how and why the Copperfield Affair happened. The event which precipitated the Copperfield Affair was the collapse of the town's economy. Copperfield was a frontier town, which placed it at greater risk of economic failure. The failure of the two construction projects necessary for its economic success led to a violent contest for customers among the town's three saloons, resulting in several arsons, eventually drawing Governor West's attention to the town.

The Temperance Movement in Oregon is a second factor influencing why the Copperfield Affair occurred. Governor West cared about the problems of a failed town in the middle of nowhere, because he was a proponent of prohibition and the violence in Copperfield presented an opportunity to make a statement for the Temperance Movement.

Finally, Governor West relied on the concurrent evolution of two important definitions relevant to the state executive. One was the increasingly general definition of martial law and how it could be used by the governor. This definition, by 1914, allowed

Governor West to legally occupy Copperfield. Second, the development of the Progressive Movement at the beginning of the twentieth century also coincided with greater public desire for a powerful and energetic executive in order to achieve reform. Governor West personified the Progressive executive, as a person who got things done and supported the sort of social reforms the Movement favored, like temperance.

By combining the development of a powerful state executive, with great military powers, a governor and public in favor of prohibition, and a weak frontier town suffering violence from the liquor trade, we arrive at a situation which keenly encapsulates a moment in time in Oregon history, one in which a governor would use such extreme measures to crack down on what was a local squabble.

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Introduction

“A little rudeness and disrespect can elevate a meaningless interaction to a battle of wills and add drama to an otherwise dull day.” – Bill Watterson

The above quote from Bill Watterson, creator of Calvin & Hobbes, could not be more suited for describing the Copperfield Affair. What would begin as competition between saloons for customers in a dying town metastasized into a violent saloon war when arsons threatened to reduce the town to cinders. When the governor of Oregon, Oswald West, became involved, the drama, which heretofore had been restricted to Copperfield, became a bitter feud between Baker County and the governor’s office. What is clear from newspaper accounts of the entire affair is that the level of rudeness and disrespect, first between Copperfield’s citizens and saloonkeepers, then between Oswald West and Baker County authorities, turned what should have been a simple matter of settling a business dispute into a dramatic showdown.

Eastern Oregon is beautiful and incredibly isolated. The image commonly associated with it is rugged, arid terrain mixed with incredible vistas looking out on scrubland with baby blue skies as far as the eye can see. It is by no means monolithic. In Baker City, one can drive past verdant ranch land, crisscrossed with irrigation channels and look out to the snowcapped Elkhorn or Wallowa Mountains. Travel into the rugged country northeast of Baker City and one might discover a tiny valley located at the mouth of Hell’s Canyon. Today, the town of Oxbow, Oregon resides in this valley, but nearly a century ago, the little town of Copperfield was rapidly taking over the valley. Founded in 1907, Copperfield was nestled at the oxbow on the Snake River, and lay at the heart of a

rapidly expanding network of mining communities all across Baker County. The country surrounding Copperfield was rough. At an altitude of approximately 2,000 feet, and located near the Wallowas, reaching Copperfield could be quite difficult. A rail line to Copperfield would not be completed until 1909. The nearest town to Copperfield was Homestead, approximately four miles away. The county capital of Baker City was seventy miles, as the crow flies, from Copperfield, but travel to Copperfield from the county capital often involved a circuitous route through rough terrain.

Who started Copperfield is a matter of some debate. An April 6, 1907 *Oregon Daily Journal* article credits two women, a “Mesdames Day and Knapp of Pine Valley,” with being the pioneers of Copperfield by constructing the first major building, the Hotel Magpie, at the site.¹ Another version has several Baker City businessmen joining together to form the Eastern Oregon Investment Company. The company then purchased the Vaughn homestead on which the future town site would exist, for \$10,000.² Whatever the case, the Copperfield Townsite Corporation is the name on the deed outlining the plat of Copperfield on March 31, 1907.³

Despite its name, Copperfield was not home to any copper deposits, or much of anything for that matter. The land was relatively good for grazing cattle, but other than that, there would appear to be nothing to attract the attention it did in 1907. What would eventually attract thousands to the town was its geography. The oxbow near the future town site was the real natural resource of Copperfield. A few years earlier, a utility company out

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¹“Oregon’s Match For Goldfield,” *The Oregon Daily Journal*, April 06, 1907, 8.

²Bird, David P. “A Brief History of Copperfield Oregon.” (Undergraduate Thesis, Eastern Oregon University, 1965), 4.

³Blakeslee, W.B. Map of Copperfield Townsite. 19 March, Baker County Archives, Baker City, OR.

of Idaho called the Idaho-Oregon Power Company had taken interest in the spot's potential for a hydroelectric dam. The power generated from this, coupled with a railroad line built along the Snake River to transport the region's rich mineral resources, would make Copperfield rich, not only from the influx of construction money, but also potential future industry.

Figure 1. Aerial photo of the Oxbow and former Copperfield site, ca 1950.⁴ (Courtesy of Baker County Library)

At first, the rich destiny of Copperfield seemed assured. Nearly 2,400 workers streamed to the area to work on construction projects. With the nearest town four miles away through rugged country, the workers were a captive audience. As other mining towns

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⁴ "2010.15.10 Print, Photographic." *Baker County Library Historic Photographs*, accessed March 20, 2015, <http://www.bakeroregonhistory.info/exhibit6/e60337a.htm>.

in the region experienced busts, the gamblers, prostitutes, and saloonkeepers drifted to Copperfield to provide their services to the workmen. The presence of fourteen saloons and thirteen brothels should give some idea of the money brought in by the workmen who had little to do outside of work other than drink, carouse with the working girls, and get into brawls with rival work gangs.⁵ Unsurprisingly, Copperfield earned a reputation as a “wide open” town, meaning that gambling, drunkenness, prostitution, and violence were a normal, if not acceptable, occurrence.

Copperfield had changed dramatically by 1913. After the completion of the railroad and the initial dam construction, the town was facing a serious depression. The thousands of workers who had once called the town home left. Along with the workers many prostitutes, gamblers, and saloons that had relied on their money moved on. Those once rowdy and numerous saloons were reduced to three, serving a population of fewer than 100 people. Out of this economic depression stemmed what would become known as the Copperfield Affair. After a series of arsons in which rival saloons were victims, and the takeover of city government by a faction of saloonkeepers, a group of some fifty citizens sent a petition to Governor Oswald West. The citizens appealed to him for aid in ending what they referred to as a situation that was “deplorable and unsafe,” specifically citing the threat of fires to both property and life.⁶

Why and how Governor West reacted to the petition is crucial to any understanding of the Copperfield Affair. On the surface, Governor West was responding to a plea from his constituents to diffuse a violent situation. However, who was responsible for stopping the growing saloon war was at issue in the earliest stages of the Affair. West’s

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⁵Bird, “A Brief History of Copperfield Oregon,” 6.

⁶Dimick, Stanley R. A Petition. 1913, Copperfield Papers, Oregon State Archives, Salem, OR.

first reaction was to request the action of Baker County authorities to act on the information presented by the petition. When county authorities failed to act, Governor West took matters into his own hands by sending his secretary, Fern Hobbs, to Copperfield. On her arrival she stood before a gathering of the town's citizens and gave a brief summation of Governor West's reading of the situation in Copperfield. Upon finishing her speech she presented the council members involved in the saloon business with an ultimatum, "Resign or face the consequences." Upon refusing to cede their positions, Lt. Col. Lawson of the Oregon militia took to the stage and declared that the town of Copperfield was under martial law. The saloons were quickly closed, the council members placed under arrest, and the townspeople relieved of their weapons as they left the speech. With that Copperfield was an occupied city.

The next phase of the Copperfield Affair shifted to the courts. The lawyer for the saloonkeepers filed an injunction against the Governor's martial law order. A temporary injunction was granted, but ignored by the militia by order of Governor West. A full hearing on the merits of the injunction was eventually had, but upon losing this first case, the saloonkeepers appealed to the Oregon Supreme Court while also pursuing separate civil suits against the Governor. There was also no denying that laws had been violated during Copperfield's saloon war. While the arsons were front and center in the citizen's petition to Governor West, the only charges the Baker County district attorney could levy against the saloon keepers were for serving liquor to minors. Ultimately nothing came of any of the court cases: the Circuit Court declared that it had no standing to interfere with the executive's use of martial law, the Oregon Supreme Court declared an injunction after the fact, a futile gesture, ex-Governor West and his co-defendants were found not liable for

damages in the saloonkeepers' civil suits, and the saloonkeepers were acquitted of selling liquor to minors.

With the end of the court cases also came an end to interest in the events at Copperfield. Over a year had passed and the whole affair had ended anti-climactically. Oswald West declined to run for another term as governor, state-wide prohibition had passed in the meantime, and Copperfield was well on its way to being just another failed frontier town. To bring things full circle, the town's business district burnt to the ground in mid-1915, likely the victim of arson. All these events taken together were a part of what would become known as the Copperfield Affair.

What happened in Copperfield was not an isolated incident. Despite the town being located in rough country, hundreds of miles from major population centers like Seattle or Portland, what happened at Copperfield was indicative of events happening all across the United States. The Copperfield Affair was a representative event in a nationwide movement; specifically, it showed the ascendance of assertive executives in the context of the Progressive Movement's nationwide battle to define American values and culture.

Four key elements can be cited for why the Copperfield Affair occurred and why it has larger meaning to historians. First, Copperfield was the victim of a failed economy. The economic success of Copperfield rested entirely on the successful completion of the Idaho-Oregon Power Company's dam project and the Union Pacific's railroad. Originally projected to meet the entire Snake River region's power demands, the Oxbow Dam Project suffered numerous financial setbacks, resulting in delays and a disinvestment in the region's economy. The abandonment of further railroad construction beyond Homestead deprived Copperfield an existence on a major transportation artery. Without the spending power of

thousands of construction workers or any future prospect for economic diversity via industrialization, Copperfield was doomed to suffer through an economic depression. To this economic depression can be attributed the desperate competition of the remaining saloonkeepers, resulting in the tit for tat violence that would call Governor West's attention to the town. Additionally, Copperfield's status as a frontier community, a failed one at that, likely represented a soft target for the prohibitionist Governor West. The town's isolation and poverty may have figured into a belief by West that he would face little resistance to his actions.

Second, Governor West's actions to militarily occupy the town had popular support from Oregon's largely Progressive, and therefore pro-prohibitionist, voting population. Oregon was in the final days of the battle for prohibition in 1914. Temperance advocates had existed in Oregon since its territorial days but had only become a major force in Oregon at the beginning of the twentieth century. With the inception of the Oregon System and its referendum and initiative processes, temperance advocates found a means of bypassing the notoriously corrupt state congress known to be sympathetic to liquor interests. The first victory for temperance advocates was the local option, which allowed municipalities to vote on whether to go dry or not. Temperance advocates increasingly brought the question of prohibition and the dangers of alcohol and saloons into the public sphere. By the events of Copperfield in 1914, the greatest social issue in the state was the question of alcohol. Saloons had long since lost any semblance of respectability in public opinion, and were synonymous with moral degradation. At the end of 1914, Oregon would adopt state-wide prohibition, passing approximately 137,000 to 100,000.

Third, Governor West could rely on the numerous historical precedents of using martial law and state militia to suppress undesirable elements. Instances abound in which governors and even presidents have called out troops to breakup groups deemed a danger to public safety. An 1841 rebellion in Rhode Island named the Dorr Rebellion resulted in one of the first instances in which a state government declared martial law outside of war with a foreign power. A second instance occurred in 1856 in the newly formed Washington Territory. In the midst of the period's many Indian Wars, then Governor Isaac Stevens mobilized the militia and declared martial law. In the process of conducting the "war," Stevens ordered the arrest of settlers suspected of aiding the Indians, and even arrested a circuit judge for challenging the governor's orders. A third instance arose during the United States' bloody Civil War. The passage of the Habeas Corpus Act in 1863 allowed the executive to suspend the writ of habeas corpus in order to suppress insurrection. *Ex parte Milligan* (1866) and *Ex parte McCordle* (1869) were both landmark U.S. Supreme Court cases that arose from attempts to ensure national security by use of military commissions. In *Ex parte Milligan*, several members of the Sons of Liberty, including Lambdin Milligan, were arrested for plotting with Confederate agents to form a Northwest Confederacy.⁷ Tried and convicted of treason initially, the U.S. Supreme Court would rule that the military tribunal that had tried the men was unconstitutional, providing a national ruling on the definition of martial law. In *Ex parte McCordle*, Mississippi newspaper editor, William McCordle, was arrested on charges of inciting insurrection. Appealing first to the Circuit Court, then the U.S. Supreme Court for a writ of *habeas corpus*, the case hit a dead end

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⁷ The Sons of Liberty was a nickname for the Order of American Knights, which operated as a secret society consisting of northern Democrats who opposed the war effort. These societies operated largely out of the Old Northwest, or former Ohio territories. "Order of American Knights." *Ohio History Central*, accessed May 8, 2015, http://www.ohiohistorycentral.org/w/Order_of_American_Knights?rec=960.

when the Reconstructionist Congress passed legislation stripping the Court of its appellate jurisdiction in cases of *habeas corpus*. In another example, Colorado's Coalfield Wars were the result of on and off miners' strikes from the 1890s to the 1910s, culminating in the Ludlow Massacre in 1914. However, it was the U.S. Supreme Court decision in *Moyer v. Peabody* (1909) resulting from a 1904 strike involving martial law and an alleged violation of *habeas corpus* that would drastically change the future of martial law and the governor's authority.

Fourth, Governor West was the benefactor of a good deal of constitutional and legal precedent supporting his office's use of martial law to enforce his will. As the executive of the state of Oregon, in Governor West resided considerable powers. The state constitution conferred on Governor West discretionary powers that were quite broad. The first few years of the United States saw incessant debating on the role of the executive, seen by some merely as the enforcer of the legislature's will. By the beginning of the twentieth century, the debate had shifted greatly in favor of a more assertive executive. Fears of a tyrant were replaced by fears of an ineffectual, and oftentimes corrupt, legislature. The Progressive Movement, both in Oregon and nationwide, demanded action. The Progressive Movement rallied behind populist leaders who could deliver on promises focused on reforming political corruption and social issues. For Governor West, this meant coming down hard on the Copperfield saloonkeepers not only because it was popular, but because readings of the various state constitutions were now decidedly in favor of a robust executive.

Methodology & Literature Review

My first reading on The Copperfield Affair came from the *oregonencyclopedia.org* Copperfield entry. Numerous themes cropped up from the brief summary of events. Martial law, saloonkeeper wars, small town factional politics, frontier locales, prohibition, questions of executive power and arbitrary militarism, and progressivism were playing themselves out on a local and state level. Sites like *oregongenealogy.com* and *oregonencyclopedia.org* offer brief, but informative guides to the Copperfield Affair. They were an introduction to the subject but did not provide the analysis or context to fully understand why Copperfield happened or why it mattered.

The only secondary source that dealt directly with the Copperfield Affair was David Bird's *A Brief History of Copperfield, Oregon* (1965). Bird's work provided slightly more detail than that found on the previous websites. However, in comparing Bird's work to my later reading of newspaper articles I determined that inaccuracies were present in his work. Additionally, Bird seems primarily concerned with telling the story of Copperfield, not explaining the root causes. I did rely on some of Bird's information in telling the early story of Copperfield's founding, and to some degree the conflict between the saloon factions. I did so when I could find newspaper articles that provided some verifications to Bird's work.

Given the lack of secondary source material, I turned to newspapers from the period to get a better understanding of events as they happened. The website *Historic Oregon Newspapers* was invaluable in my search. The archive is extensive, and the ability to search thousands of newspapers with keyword searches allowed me to quickly piece together a much more authoritative version of events than that provided by Bird. A trend

that emerged was that rural newspapers, like the *Malheur Enterprise* or *Coos Bay Times*, often ran articles that were word for word copies of either the *Oregonian* or the *Daily Capital Journal*, which, based on the frequency and originality in their coverage of Copperfield, were the two main newspapers of the period. I would suspect the editors decided which article to use based on where their sympathies lay in terms of progressive and temperance politics. Given that the pro-business *Oregonian* was typically a champion of the status quo during the Progressive Era, it often urged voters against women's suffrage, any temperance measures, or even the initiative & referendum, and in regards to Copperfield often appeared cautious in its wording. The *Daily Capital Journal*, however, often repeated the same rhetoric used by Governor West when referring to the saloonkeepers of Copperfield as "lawless" and "criminal." The result was two newspapers setting the tone for what was happening in Copperfield, with smaller papers attaching their loyalty accordingly.

Newspaper articles provided a good outline of what occurred, but often neglected the human element. Specifically, they did not give voice to many of the individuals involved in the Affair. Governor West had ready access to the newspaper forum, and his words and thoughts are readily accessible, as are the responses of other officials like Sheriff Rand, Judge Anderson, and District Attorney Godwin. The voices of Martin Knezevich, H.A. Stewart, or any of the citizens of Copperfield, however, were shockingly absent. This may be due to journalistic standards at the time, but it left a gap in the story of the Copperfield Affair. In search of direct sources from the people involved I travelled to the Oregon Historical Society, Baker City Archives, and Oregon State Archives to search for case records, correspondence, journals, anything that could provide more direct insight than

newspaper articles. Unfortunately, what I found was rather limited. The documents provided some very useful information in establishing what occurred, and in the case of the letters written to Governor West, provided voice to some people in Copperfield. However, I was greatly disappointed to find nothing along the lines of a letter or diary from those more intimately involved in Copperfield Affair, specifically the saloonkeepers, or Fern Hobbs, or Lt. Col. Lawson. In a storytelling sense, I feel there is a great hole where one of the lead characters has no lines. West had the bully pulpit, and being situated in Salem and Portland, he had unfettered access to the media, whereas saloonkeepers like H.A. Stewart or William Wiegand had no such access. We only get an understanding through the perspective of journalists in which they play bit characters, or through the argument of their attorney during the various court cases. The fact is, very little primary source documentation exists with regards to the people directly involved with Copperfield. Even Oswald West's papers lacked anything relating to Copperfield, and no record keeping requirement existed for the Governor's Office during this period.

Another missing primary source was the court records from the various legal battles of the Copperfield Affair. Aside from the Oregon Supreme Court, every other court case took place at Baker City. On my visit to the Baker County Archives, I found only one legal record. It was the legal brief from William Wiegand's suit against Governor West, et al. Included with these documents was the responding brief from West's attorney, Frank Collier. This information, while interesting, was well represented in the newspapers, and having taken place later in the legal proceeding of the Copperfield Affair was a rehash of the same arguments used in the previous court cases. The sadder absence of primary documents, in my mind, is the records from the grand jury deliberations to try the

saloonkeepers of Copperfield, as well as any transcripts from the various cases. While the newspaper coverage was fairly good, it was brief and subject to the biases of the time, namely a focus on the sensational and a lack of detail.

After establishing an outline of events, four themes rose to my mind as key to explaining the Copperfield Affair: martial law, executive power, temperance politics, and the frontier. Understanding Copperfield, the town, meant understanding frontiers and their development. Understanding executive power informed the authority West had to act, understanding temperance politics informed the motivation and context in which he acted, and understanding martial law came back around to understanding executive power and the tools open to enforcing the executive's will. Copperfield and its problems were factors of a failed frontier economy. The sensational events following West's involvement were a whole other thing involving Progressive politics, temperance advocacy, and executive power.

W.J. Rorabaugh's *The Alcoholic Republic* (1981), James Timberlake's *Prohibition and the Progressive Movement* (1963), and John Caswell's "The Prohibition Movement in Oregon: Part 1 & 2, 1836-1904" (1938) were all greatly useful in illustrating the development of temperance rhetoric and connecting it to a growing Progressive Movement. Caswell's piece fails to draw connections between the national Temperance Movement and Oregon's Temperance Movement, but is one of the only authoritative pieces on the Prohibition Movement in Oregon. Robert Johnston's *The Radical Middle Class* (2013) was a far more recent example that not only connected the Progressive Movement to social issues like temperance, it illustrated the disconnect between the lower and middle class Progressives. Additionally, Johnston's work focused on Oregon, which allowed me to

connect many of the themes discussed into the state context. Frontier development has seen slightly more recent scholarship, but lacks scope.

Barbier's "Scarcity, Frontiers and Development"(2012) and Marvin W. Mikesell's "Comparative Studies in Frontier History" (1960) were useful in helping to understand the study of frontiers as well as where Copperfield fit into the spectrum of frontier experiences. Barbier's work especially was key in understanding the success and failure of Copperfield's economy. My critique of their scope would be that they fail to really encompass the impact the metropole has on the frontier. As great as Barbier's writing is on the phases of frontier development, he does not devote any attention to how the metropole influences the frontier. Another failing of Barbier's work is his ignoring of the human element. Barbier focuses so much on the economic development that he overlooks the social development. Earl Pomeroy's "Rediscovering the West" (1960) and Stanley Elkins & Erick McKittrick's "A Meaning for Turner's Frontier: Part I: Democracy in the Old Northwest" (1954) sufficed to fill in the lack of research into the frontier's social development. Their discussion of the Turnerian frontier thesis, coupled with their more up to date and nuanced analysis showed a greater connection between the metropole and the frontier. They successfully establish the desire by the frontier people to eventually emulate the metropole.

There are hundreds, if not thousands, of treatises on the executive and the power of the executive. However, there is less on the executive as governor, and their military power, and less still on the influence the Progressive Movement had on the executive. Research on the executive has typically focused on the presidency, and if it did look at the governor's office, it looked at the latter half of the twentieth century. This is most likely due

to the fact that the governors were just becoming active, energetic agents in state politics at the turn of the century. The subject is sorely lacking in scholarship. Of the two works connecting Progressives and the executive, Saladin Ambar's *How Governors Built the Modern American Presidency* (2012) and Harvey Mansfield's *Taming the Prince: The Ambivalence of Modern Executive Power* (1989), only Ambar's work dealt with the governor as executive while also including progressive politics at the turn of the century. Only a few, like Woodrow Wilson or Oswald West, really personified the Progressive ethos of interventionist politics. Scot J. Zentner's "Liberalism & Executive Power: Woodrow Wilson & the American Founders" (1994) and Michael E. McGerr's *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America, 1870-1920* (2003) offered the best means for connecting the Progressive Movement and an "energetic" executive.

Taking the next step from executive power to martial law was somewhat less trying. My goal was to establish the precedents of martial law in the United States that could be used to show its development as a tool of the executive. I selected the 1841 Dorr Rebellion of Rhode Island, because it was the first instance of its kind where martial law is issued purely by the state, and it also led to court cases that further illustrate the development of martial law as a matter of common law, introducing the crucial doctrine of the judiciary avoiding "political questions." George M. Dennison's "Martial Law: The Development of a Theory of Emergency Powers 1776-1861" (1974) provided an excellent overview of the events of the Dorr Rebellion, as well as connecting the U.S. Supreme Court decision from the *Luther* cases to the development of martial law.

Governor Stevens's proclamation was so fascinating, because he overstepped in

almost every manner during martial law and was sharply reprimanded by the President and the court system. Samuel F. Cohn's "Martial Law in Washington Territory" (1936) and Roy N. Lokken's "The Martial Law Controversy in Washington Territory" (1952) both provide a good overview of events as well as connecting Stevens's martial law order to contemporary thought on martial law. One issue arising from a reading of both documents was that the period in which each was written had a clear impact on perspective. Specifically, the manner in which Cohn wrote about the Native American tribes who had raided settlements revealed a perspective that uncritically viewed the Native tribes as hostile and dangerous. I have to credit the excellent teaching skills of Professor Katy Barber with reminding me that any time we as historians deal with subjects relating to Native Americans, we have an obligation to more carefully analyze and critique our work and the work of others.

The importance of the case of *Ex parte Milligan* lies in its making a clear, national definition of martial law. Peter Barry's "Ex parte Milligan" (2013) provides a good general overview of the events leading to the decision in *Milligan* as well as discussing the chief author of the Court's decision, Justice David Davis. Davis's decision was pertinent, because he touched on themes like necessity, martial law, and executive power, all aspects of the other martial law examples and Copperfield. What Barry's work lacks was much of the detail surrounding Milligan's conviction and appeals, focusing instead on a wider review of Davis's decision and subsequent historiography. Harold H. Burton's "Two Significant Decisions: Ex parte Milligan and Ex parte McCardle" (1955) provides that detail as well as throwing in what is a necessary end note in the U.S. Supreme Court case of *Ex parte McCardle* (1869). *McCardle*'s importance is its revealing the point at which politics

overturned pre-established definitions of martial law and as Burton put it, exposed the Court's "Achilles heel."⁸

Lastly, the Colorado Coalfield Wars and the *Moyer v. Peabody* (1909) case are pertinent to the events at Copperfield because they are contemporary and the U.S. Supreme Court decision perfectly encapsulated changing perspectives on the state executive and their power. I relied on George S. McGovern and Leonard F. Guttridge's *The Great Coalfield War* (1996) to provide an overview of the militia's arrest of unionizers to the U.S. Supreme Court's decision in *Moyer v Peabody* (1909).

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⁸ Burton, Harold H. "Two Significant Decisions: Ex Parte Milligan and Ex Parte McCordle." *American Bar Association Journal*, Vol. 41, No. 2 (1955): 176.

Overview

“The Snake Frontier” focuses on the establishment of Copperfield based on economic speculation over the Iron Dyke region’s mineral resources and placement on the Snake River. Copperfield’s status as a frontier economy lays the foundation for its economic trajectory and eventual collapse. “The War Within the War” relays the failure of the railroad project and Oxbow Dam Projects. The resulting violence and political intrigue among the Copperfield saloonkeepers leads to the Copperfield petition, pleading for Governor West to intercede. In “Wet vs. Dry” the context for West’s involvement is placed in the state and national context of the battle between temperance advocates and the liquor industry over prohibition. Additionally, the influence of the Progressive Movement, of which the Temperance Movement was a subset, is introduced to establish the many ways in which Progressive ideology was affecting state politics. “The Prince” covers the period from Governor West’s intercession in Copperfield by declaration of martial law and the town’s occupation to the four court cases that originated from the Copperfield Affair. Finally, the “Discussion” section ties the development of executive power and historical precedents together to explain why and how Governor West was able to declare martial law and disband Copperfield’s government without facing sanction.

Figures 2 & 3. Maps of Baker County, and Baker County in Oregon. The town of Oxbow located in the NE corner is where Copperfield once stood.⁹

⁹"MAP of Baker County, Oregon," accessed June 30, 2014, <http://www.strengthenperspective.com/Pictures-Oregon/BakerCounty-55/BakerMAP.html>.
 "File:Map of Oregon Highlighting Baker County.svg - Wikimedia Commons," accessed June 30, 2014, http://commons.wikimedia.org/wiki/File:Map_of_Oregon_highlighting_Baker_County.svg.

The Snake Frontier

Figure 4. Footbridge across the Snake River to Copperfield, ca 1916 (Courtesy of Baker County Library)¹⁰

“That coarseness and strength combined with acuteness and inquisitiveness; that practical, inventive turn of mind, quick to find expedients; that masterful grasp of material things, lacking in the artistic but powerful to effect great ends; that restless, nervous energy; that dominant individualism, working for good and evil, and withal that buoyancy and exuberance which comes with freedom - these are the traits of the frontier.” -Frederick Jackson Turner, *The Frontier in American History*¹¹

¹⁰ “1998.3.1 Print, Photographic.” *Baker County Library Historic Photographs*, accessed March 20, 2015, <http://www.bakeroregonhistory.info/exhibit2/e20665a.htm>.

¹¹ Turner, Frederick Jackson. *The Frontier In American History* (New York: Henry Holt & Co., 1873), 85.

Turner's quote is pleasant in its rose-tinted view of the United States' frontier life. His interpretation of the frontier is useful for evoking romantic notions of what it means to "be American," but it also touches on some insightful elements of the frontier. The American frontier was a place of coarseness, being so far removed from the center, law and order were dictated more by relationships between people than deference to the law. Inquisitiveness also explains the desire by many to travel so far from their homes in hope of finding fortune in a gold field, a new home for their family, or spiritual enlightenment in a religious commune. In the case of Copperfield, Oregon, there can be no doubt that it was created solely on the speculation that it would one day be at the center of a system designed to extract the region's rich mineral resources.

It was only after the discovery of mineral wealth that the region began to draw attention. Jacob Vaughn, along with his brother, eventually jumpstarted the region's economy when they discovered an iron deposit about four miles north of the oxbow in 1897.¹² The Iron Dyke Mine, as it became known, originally used the iron from its operations to provide flux for ores elsewhere. However, it was in fact sitting over an enormous deposit of copper.¹³ As with any discovery of a major mineral deposit, prospectors rushed to the area in hopes of finding more deposits. The mines in the area, like in much of Baker County and surrounding counties, were often made up of various minerals, largely copper and quartz, but also a fair amount of gold laced into the copper deposits.

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¹²"Iron Dyke Copper Co. (MRDS #10127565)." *U.S. Geological Survey*, accessed July 15, 2014, http://mrdata.usgs.gov/mrds/show-mrds.php?dep_id=10127565.

¹³Bird, "A Brief History of Copperfield Oregon," 2.

The first settlement to spring up to take advantage of the mining rush near the Iron Dyke was Homestead. Located near the mine, Homestead followed the developmental trajectory of most every mining town. With enough miners and prospectors in the area the town would build up to be the home of two saloons, several stores, a rooming house and a post office. The mine, and those smaller ones located nearby, were so rich that they would produce nearly 11.5 million pounds, worth approximately \$2.4 million, of copper over a twenty year period starting from Iron Dyke's discovery.¹⁴

Given the isolated nature of the region, and its lack of development, the mines required a means of transporting their goods to market. Hell's Canyon, along which the Iron Dyke was located, is known to be the deepest river gorge in North America.¹⁵ Initial attempts to provide proper transportation to the region's mines revolved around steam ships using the Snake River. However, the Snake River proved too powerful for ships to safely traverse, and water transport was abandoned. Despite the failure of water transport, the effort did have the effect of galvanizing the Union Pacific. There was a unique opportunity for the Union Pacific in constructing a rail line from Huntington, Oregon to Lewiston, Idaho. The Union Pacific's current rail lines ran through the Blue Mountains, which were rife with sharp turns and high grades. Following the Snake River, however, would allow them to work with much lower water grades. The benefits of such a route were twofold. The railroad stood to save money by developing on a water grade from Salt Lake City all the way to Portland, and it would traverse the rich copper belt that was desperately in need of infrastructure. In a 1908 press release, the Union Pacific touted the

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¹⁴*Ibid.*

¹⁵"Wallowa-Whitman National Forest - Recreation." *U.S. Forest Service*, accessed July 15, 2014, <http://www.fs.usda.gov/detail/wallowa-whitman/recreation/?cid=stelprdb5238987>.

“tremendous advantage” to the copper and gold mines near Iron Dyke in transporting their ores to smelters.¹⁶ Construction on the line began promptly in 1904 and progressed steadily, despite numerous calls by the railroad for workers in the early period. When the railroad did reach the oxbow in 1908, the decision was made to avoid building around the bulge that was the oxbow, and instead blast a 2,100 foot path through the mountains at the neck of the oxbow.¹⁷ It seemed nothing was going to stand in the way of the Union Pacific creating the next great western railway.

Figure 5. Photo of the Oxbow from the Idaho side showing the beginning of the Oxbow Dam [upper left], ca 1957. (Courtesy of Idaho Power)¹⁸

A second speculative project arose from the lack of electricity in the region. The Oxbow Electric Tunnel Co. was formed in 1904 to take advantage of the oxbow. The plan involved the building of a dam that would help divert water from the Snake into several

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¹⁶“Why Build Snake River Railroad,” *The News Record*, December 05, 1908, 2.

¹⁷Gary Dielman, “Copperfield.” *Oregon Encyclopedia*, accessed June 29, 2014, http://www.oregonencyclopedia.org/articles/copperfield/#.U7Bo_LGtzKd.

¹⁸“Copperfield.” *Oregon Encyclopedia*, accessed March 20, 2015, http://www.oregonencyclopedia.org/articles/copperfield/#.VQyKEOG_aiw.

tunnels that would funnel the diverted water through several turbines. The power plant would then direct the energy generated throughout eastern Oregon and southwest Idaho. As the *Sumpter Miner* newspaper proclaimed, “with the requisite equipment [the dam] will develop enough power to supply the entire scope of country included in eastern Oregon and southwestern Idaho.”¹⁹ Just two years later in 1906, it seemed that the project might fall through when the initial investors determined that the expenditures for such a project would require nearly \$2 million dollars, while also determining that the demand from the covered areas, including Baker City, Boise City, Huntington, and much of the surrounding country would not recoup such an investment.²⁰ However, new investors would move in just a few months after news appeared of the project’s abandonment. New projections were made that with the proper investment of nearly \$2.4 million dollars, the oxbow would be capable of producing anywhere from 25,000 to 35,000 electric horsepower, or 18,650 to 22,380 kilowatts.²¹ Work began later that summer with the initial construction of three tunnels through the oxbow mountain at approximately 1,200 feet each.²²

The ownership changes that plagued the first few years of the Oxbow Dam Project would continue throughout its life. By 1907, eastern financiers, the Mainland Brothers out of Wisconsin, had consolidated many of the electrical companies in Idaho and eastern Oregon to form the Idaho-Oregon Light & Power Company. With a capital stock of nearly \$7 million dollars, the new entity was enormous for its time, and the jewel of this new entity

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¹⁹“Corporation Formed To Dig Ox Bow Tunnel,” *The Sumpter Miner*, April 13, 1904, 1.

²⁰“Ox Bow Project Too Costly,” *The Oregon Daily Journal*, March 07, 1906, 14.

We might better know Boise City as Boise today.

²¹“Ox Bow Power Project,” *Morning Oregonian*, April 16, 1906, 12.

²²*Ibid.*

was the potential power output of the Oxbow Project.²³ The Mainlands outlined their plans thusly, they would “distribute the enormous power to be obtained from the oxbow to all parts of the inland empire, run lines into the rich copper belt, the gold districts, and the cities and may also take up construction of electric lines in the rich eastern Oregon country.”²⁴

The development of the oxbow region coincided with the founding of Copperfield in March, 1907, when the Copperfield Townsite Co., headed by Carl Dilsheimer and S.O. Carrell, officially took possession of the area along Pine Creek and platted it. The townsite would develop quickly alongside the construction projects. The Vaughns, having sold the land that would be the site of Copperfield, remained nearby and were some of the first to begin construction on new businesses; Bert Vaughn built a cigar store and a saloon, and Jacob Vaughn began construction on a hotel.²⁵ The aforementioned Madames Day and Knapp were constructing a hotel, while a drug store, barbershop, livery and feed store, post office, and several more saloons were also in the works for the newly formed town.

Again, the development of the oxbow was afflicted by several issues. In September of 1907, the Idaho-Oregon Light & Power Co. failed to deliver promises of power to the railroad project as it worked its way through the nearby mountains.²⁶ A second snag arose in early 1908 when railroad construction was brought to a halt by a “money scare,” likely due to the Financial Panic of 1907.²⁷ Despite these setbacks, work resumed on both oxbow construction projects by July, 1908. By that time, the Idaho-Oregon Light & Power Co. re-

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²³“Millions To Put Into Great Ox Bow Project,” *The Oregon Daily Journal*, March 15, 1907, 4.

²⁴*Ibid.*

²⁵“Oregon’s Match For Goldfield,” *The Oregon Daily Journal*, April 06, 1907, 8.

²⁶“Fidelity Buys Lime Peak Mine,” *The Oregon Daily Journal*, September 08, 1907, 16.

²⁷“Build Line Into Eagle Valley,” *Morning Oregonian*, January 01, 1908, Second Section, 24.

projected the full expenditure on the Oxbow Dam Project to be \$2 million dollars.²⁸ That amount of money brought into the area, combined with the railroad's own \$1.5 million in investments and the millions of dollars of minerals thought to exist in the nearby countryside, were all reason for workers, businessmen, saloonkeepers, gamblers, and prostitutes to flock to Copperfield.²⁹

The influx of peoples to Copperfield can be relegated to two separate categories representing two separate economic speculations. The first group constituted the temporary influx of thousands of construction workers and camp followers typical of a frontier boom. At the height of the two construction projects, there were approximately 1,100 men working on the railroad, and 1,300 men working on the Oxbow Dam Project.³⁰ These men were largely single and newly arrived immigrants. Nationalities ranged from Italian, Austrian, Greek, Romanian, Scandinavian, Asian, and even a few East Indians.³¹ The needs of these hard working, and unattached bachelors, attributed to the boom in the development of Copperfield's vice industry.

Gamblers and prostitutes fleeing busts of Nevada gold towns like Goldfield and Ely arrived in Copperfield, setting up gambling games and brothels for the workers. However, the saloons acted as a community center for many of the workers. While the workers' camps were located outside of town nearer the Snake River, the saloon was the meeting place for the various gangs of workers as they caroused the town. By 1910, business was so lucrative that fourteen saloons and thirteen red-light houses existed to meet the needs of the workmen. Additionally, since work on the two construction projects was performed on

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²⁸"Push Power Plant Work," *Morning Oregonian*, July 13, 1908, 12.

²⁹"While Build Snake River Railroad," *The News Record*, December 05, 1908, 2.

³⁰Bird, "A Brief History of Copperfield Oregon," 5.

³¹*Ibid.*

a twenty-four hour basis, shifts of workers were looking to sample Copperfield's vice on a twenty four hour basis as well.

The second group of speculators was permanent, focusing on the long-term implications of Copperfield's location near the site of what was to be the region's future power station. While the saloons, gambling halls, and red-light houses were largely temporary structures with false fronts, ready to cut and run when the money ran out, there were many who saw Copperfield as more than a boom and bust town. A sizable business district was formed with a drug store, jewelry store, hotels, a post office, a butcher, restaurants, and a bath house. Additionally, a jail house with the city hall on the second floor was constructed to manage city affairs. Copperfield could even boast a modern sewer system along with a concrete reservoir, and a fire department that could rely on high water pressures. Perhaps the surest sign of the hopes for Copperfield's permanent nature was the construction of a school, financed by Henry (H.A.) Stewart, the co-proprietor of the S & W Saloon.³² The remainder of Copperfield's economic potential lay in the success of the two construction projects to accomplish their goals, creating the United States' next great railroad from Salt Lake City to Portland, and creating a hydro-electric dam capable of turning the copper belt along the Snake River into the greatest copper camp the world had known.

Notwithstanding Copperfield's many positive attributes, its economy eventually collapsed. In order to understand why, its nature as a frontier town must be better understood. An excellent definition of frontier, which is best suited for establishing

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³²*Ibid.*, 6.

Copperfield's underlying nature, is the "outer edge of human settlement."³³ The region in which Copperfield was located had been sparsely populated by settlers throughout the early settlement of the West. The roughness of the terrain and inhospitable nature of the region's weather meant that there were no settlements until the establishment of Homestead in 1898. Perhaps the best way of describing Copperfield and its environs is a frontier that was passed over until the best, least difficult land had been taken, at which point settlers and speculators turned back in to those less desirable lands left unexploited.

Other definitions of frontier, such as those put forth by Frederick Jackson Turner, often highlight characteristics like the cultural melting pot, individualism, and distinct lack of metropolitan influence, and Copperfield certainly shared those characteristics. The workers who made up the early population of Copperfield were almost entirely single, male immigrants whose daily routine was working, drinking, carousing, and the occasional brawling. Many of the citizens who would go on to become permanent members of Copperfield were immigrants themselves, with names like Knezevich, Aklin, and Wiegand. They represented leading members of the community who would be intricately involved in

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³³ For a fascinating etymological history of the word *frontier* and how it came to the United States, see Fulmer Mood's *Notes on the History of the Word "Frontier"* (1948). Some disagreement may exist as to whether further characteristics should be included in the definition of frontier than I have provided, for instance the nature of that land being free, but I would emphasize that the land was not free from the perspective of the Native Americans dispossessed of it. Others qualifications, in many cases coming from Frederick Jackson Turner, include the nature of the frontier being devoid of any metropolitan influence or European mindset, however, an excellent review of the refutation of these and other more simplistic analyses can be found in *Comparative Studies In Frontier History* (1960) by Marvin Mikesell.

A quick disclaimer is required to first emphasize that this is a history of European settlement, not Native American settlement. There is no doubt that the land on which Copperfield, and likely the entirety of the Pacific Northwest was settled in some form or another by Native peoples who were dispossessed by European settlers, however the nature of that dispossession at the frontiers of both peoples is well outside the scope of this paper.

the battle between the frontier Copperfield and the metropole of Salem.³⁴ Of course, Copperfield was home to a number of families, as evidenced by the need for school, and the presence of so many women's signatures on the petition to Oswald West.³⁵

This begs the question, how does Copperfield's frontier status lead to its later experience with martial law? Invariably, there comes a time when the frontier transitions from frontier to metropole. The frontier no longer resides at the "outer edge of human settlement," but is brought in to the greater whole, as represented by the centralizing influence of the metropole and a desire by those in the frontier to become a part of the metropole. This process of assimilation into the metropole is a function of the successful economic development of the frontier. Where failed towns are often left to fade into obscurity, Copperfield was unique in that because of its economic failure it was brought into line by the metropole.

Economist Edward Barbier argues that the frontier typically develops in four phases. Phase One includes exploration, surveying, and small-scale extraction. Phase Two includes large-scale extraction and transportation networks. Phase Three includes agricultural conversion and permanent settlements, and Phase Four includes industrial urbanization.³⁶ Throughout these phases population density/growth, economic

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³⁴ The Merriam-Webster dictionary definition of metropole is "a chief town." Typically, when metropole, or metropolis, is used, it is used to describe a town which embodies the mass accumulation of wealth, industry, political power, population, and many more metrics which give the city in question its position as center of a region, state, or country. Descriptions of London or Paris as metropolises emphasized their existence as power centers of their respective empires. My usage within this paper is not to make a comparison between Salem and those cities, but merely to establish the context in which the frontier of Copperfield exists with regards to its metropole of Salem. I believe there exists a far wider use for the word than might have been used in the past.

³⁵ The number of shared surnames between the male and female petitioners would indicate some familial connection.

³⁶ Barbier, Edward B. "Scarcity, Frontiers and Development," *The Geographical Journal*, Vol. 178, No. 2 (2012): 111.

activity/development, pollution/resource intensity and land conversion/habitat modification increase.³⁷ In Barbier's model, the frontier does not close until sometime between the third and fourth phases, because "the abundance of land and natural resources relative to labor and capital has disappeared, and the former frontier region has effectively 'closed'."³⁸

Figure 6. Copperfield from the NW, ca 1908 (Courtesy of Baker County Library)³⁹

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³⁷Ibid.

³⁸Ibid.

Barbier compares the difference between North America's more successful development of its frontier and the rest of the non-European world where there was less success. The failure of a frontier community to reach the fourth phase of development is often predicated on whether it can achieve economic diversity. Barbier points to the failure of many Latin American and African countries to move beyond specialized export crops or silver and gold extraction. However, while Barbier explains that much of the resources of these former and current colonial nations fueled Europe's industrialization, he does not take into account the political and economic activities of European nations to ensure industrial competition did not arise from their frontiers.

³⁹ "1998.1.12 Print, Photographic." *Baker County Library Historic Photographs*, accessed March 20, 2015, <http://www.bakeroregonhistory.info/exhibit2/e20649a.htm>.

Using Barbier's model of frontier expansion, Copperfield can be placed in the larger scheme of the region's frontier development. The discovery of the Iron Dyke Mine and subsequent discovery of more and more mineral resources in the region led to a steady influx of prospectors and small scale businesses to supply them. This first phase, lasting between 1898 and 1904, was relatively short as the establishment of Homestead in 1898 led to greater investment for extraction from the Iron Dyke region and plans to build a railroad through the region in 1904. It is at Barbier's "Phase Two" that Copperfield comes into existence as an outgrowth of the infrastructure projects planned to support greater extraction of the Iron Dyke region's resources. Placed at the confluence of the future transportation and power network, Copperfield began as a town that had the potential to develop into a successful, or "Phase Four," town if it could achieve some economic diversity capable of sustaining a permanent settlement. Copperfield arguably did successfully transition into "Phase Three" as the presence of agriculture in the form of cattle ranching, and settlement features like a school, sewer system, reservoir, and relatively diverse business district would indicate it had achieved some semblance of permanency. However, with the failure of its two construction projects, Copperfield failed to develop any of the proper infrastructure for developing a diverse economy.

While Frederick Jackson Turner may have been hasty in declaring the death of the frontier in 1893, and his theory increasingly critiqued for its simplicity, he was making an excellent observation on an interesting phenomenon, specifically, the transition from frontier to metropole.⁴⁰ Turner was correct in 1893 that the great-wide-open West was

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⁴⁰ For more on the critiques of Turner, read Stanley Elkins & Eric McKittrick's "A Meaning For Turner's Frontier Part I: Democracy In The Old Northwest," *Political Science Quarterly*, Vol. 69, No. 3 (1954).

gone, but pockets still remained that were left for exploitation. Eventually, these pockets have been “conquered,” but they have still reached a point in Barbier’s frontier theory where they have either successfully transitioned from frontier to becoming a part of the metropole, or failed.⁴¹

If frontier communities succeeded, and that was contingent on its stewardship of resources and economic development, they became permanent structures that eventually came more in step with those metropole centers of power through the enforcement of laws

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It might be pointed out that in the 1890 Federal Census, the Superintendent of the Census “described the western part of the country as having so many pockets of settled area that a frontier line could no longer be said to exist.” The Census Bureau’s definition of frontier was territory with two people per square mile. That being said, there are two definitions of frontier. There is the Census’ definition, which is purely technical and allows no room for discussion. Then there is the conceptual definition. This definition allows for interpretation of the term “frontier,” ranging from themes of sociology, economics, history, anthropology, and any other framework one might wish. When Turner declared the frontier dead, there’s no doubt he was riding the notice of the Census Bureau, but he was talking about more than just two people per square mile. “Following the Frontier Line, 1790 to 1890.” *U.S. Census*, accessed May 6, 2015, <https://www.census.gov/dataviz/visualizations/001/>.

⁴¹ For Turner, the metropole was, specific to the United States, the centers of population that represented amassed political and economic power clinging to an Old World mindset, essentially the antithesis of the individualistic and egalitarian frontier, which represented the “seed-bed for the growth of American democracy.” Marvin W. Mikesell, “Comparative Studies in Frontier History,” *Annals of the Association of American Geographers*, Vol. 50, No. 1 (1960): 62. Turner was correct in pointing out that the frontier was, at least in some manner, important to the formation of a wider American democracy. Essentially, the characteristics of the frontier people came back to the metropole and influenced it in some manner. Where he has been sharply criticized is his failure to fully appreciate the amount the metropole influenced frontier societies. In *A Meaning for Turner’s Frontier Part I: Democracy in the Old Northwest*, historians Stanley Elkins and Eric McKittrick argue that the pioneers brought their conceptions of democracy with them from the East. Political offices were formed and people were chosen from the community to lead them. What Turner saw as some raw energy as the result of frontier life stripping civilization from the pioneer was in fact the result of political inexperience. Stanley Elkins and Eric McKittrick, “A Meaning for Turner’s Frontier: Part I: Democracy in the Old Northwest,” *Political Science Quarterly*, Vol. 69, No. 3 (1954): 323. Pioneers wanted to create ordered communities that resembled in some aspect the civilization they had left, but were often amateurish or inept when implementing the idea. In “Rediscovering the West,” historian Earl Pomeroy refutes the later romantic mythos of the founding of the West as a holy endeavor and its settlement an escape from the influence of the East. Early arrivers saw the West Coast, he argues, as “a place to trade in rather to live in.” Earl Pomeroy, “Rediscovering the West,” *American Quarterly*, Vol. 12, No. 1 (1960): 23. Once settlement became permanent, Westerners sought to erase their frontier image and affect an Eastern image; “as far as possible, the Pacific Coast became a copy of the East and of Europe. Portland and San Francisco were Western outposts of New England and New York.” Earl Pomeroy, “Rediscovering the West,” *American Quarterly*, Vol. 12, No. 1 (1960): 24. These Eastern affectations were not merely in style and architecture, but in mannerisms and government. The former frontier was emulating the metropole.

and regulations, and desire to emulate the metropole.⁴² However, a frontier community that failed to develop often did not survive long enough for it to become of importance to the metropole or maintain a population that resembled a permanent settlement.

Figure 7. Copperfield School, ca 1917 (Courtesy of Baker County Library)⁴³

Unlike other failed attempts at town building, Copperfield was a town with a future for a number of reasons. Located on a railway running through one of the country's greatest mineral fields, with plans to house the region's only source of cheap energy,

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⁴² It really must be said that the definition of success for any settlement varies. The Methodists who first settled Oregon likely did not count becoming an economic powerhouse as their primary goal, but rather as a means to achieving their vision for an appropriately religious community. However, economic success is so vital for achieving the goals of any community that failure to properly manage a settlement's resources can lead to its failure to secure its survival.

⁴³ "1980.1.821 Newspaper Image." *Baker County Library Historic Photographs*, accessed March 20, 2015, <http://www.bakeroregonhistory.info/exhibit5/e51238b.htm>.

Copperfield had incredible economic potential by 1910. Politically and socially, Copperfield established numerous hallmarks of a permanent settlement, with city government, a town marshal, a school, and a modern infrastructure. However, as a frontier town and one predicated so heavily on two construction projects, Copperfield's existence was fraught with great risk. The promise of Copperfield hinged on the ability of the Union Pacific and Idaho-Oregon Light & Power Co. to meet their obligations. If both projects were fruitful, the sort of economic diversity Barbier says is required for a frontier to graduate to a successful settlement would become much more likely given the advantages of such a town. If even one of them failed, however, the likelihood of future development in Copperfield would be slim. Unfortunately for Copperfield, both projects failed to live up to their promise.

Figure 8. Copperfield from the SE, ca 1908 (Courtesy of Baker County Library)⁴⁴

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⁴⁴ "1980.1.682 Print, Photographic." *Baker County Library Historic Photographs*, accessed March 20, 2015, <http://www.bakeroregonhistory.info/exhibit2/e20085a.htm>.

The War Within the War

“And your petitioners will ever pray.” – Copperfield Petitioners to Governor West

The failure of Copperfield’s economy set off a series of events that sped the town’s eventual ruin. With the failure of any economy, relationships began to breakdown as competition over resources led towards animosity and resentment. The settlement of Copperfield retreated from developing towards a model metropole settlement and reverted into an early sort of frontier mentality where survival became paramount. Copperfield’s saloons would go to war with each other in an effort to survive, then enter into another war with Governor West when he too threatened their survival.

As of 1909, the *Oregonian* was highlighting the “thriving municipality” of Copperfield. With a permanent population of “not less than” 400 people, Copperfield was home to many reputable businesses, like hotels, general stores, and restaurants, as well as a few “lesser enterprises.”⁴⁵ Lumber and food staples were in high demand, highlighting Copperfield’s potential as a future market for the region’s resources if it could sustain its growth. Additionally, with the richness of the region’s mineral resources and completion of the various construction projects, hope existed amongst its citizens for “a continuation of the extremely prosperous conditions that now prevail.”⁴⁶

The future of Copperfield lay in the hands of outside investment, primarily in the form of the Huntington-Lewiston line and Oxbow Dam. It was imperative that both projects achieve their stated goals of creating a railroad from Salt Lake City to Portland, and building a dam capable of powering the region. Despite some early setbacks to both

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⁴⁵“Copperfield, New Snake River City,” *Morning Oregonian*, June 28, 1909, 15.

⁴⁶*Ibid.*

projects prior to 1908, optimism about the future of the region, and Copperfield, continued. The Mainland Brothers, the financiers behind the consolidation and formation of the Idaho-Oregon Light & Power Co., invested “a large amount of capital” to see that the railroad would be completed.⁴⁷ The two projects were intertwined by money and a vision for the future of the Iron Dyke region, with Copperfield playing a pivotal role.

The first crack in the dam came at some point between January and July in 1909. As late as December, 1908 the newspapers continued to highlight the Union Pacific’s plan of completing the Huntington-Lewiston line, and onwards to the creation of the next “trans-continental line.”⁴⁸ A July, 1909 *Oregonian* article furthered the narrative of the line’s potential, repeating the value of “obtaining a water grade for freight, thus avoiding the heavy grades over the Blue Mountains.”⁴⁹ However, that same article went on to relate that construction had ceased at Homestead, and “At some future time, the line will no doubt be extended from Homestead to Lewiston.”⁵⁰

That “future time” was never to come. Due to the tremendous cost of constructing a rail line any further, the Huntington-Lewiston line was to become the Huntington-Homestead line. No longer would Copperfield lie along the next great railroad that would tap into the heart of North America’s great Copper Belt, but instead it became a stop on a railroad spur designed only to extract resources from the Iron Dyke Mine. Despite this setback, which did not seem to merit a drop in optimism amongst media prognosticators

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⁴⁷“Road Down Snake,” *East Oregonian*, May 22, 1908, Evening Edition, 7.

⁴⁸“Why Build Snake River Railroad,” *The News Record*, December 05, 1908, 2.

Copperfield’s “wide-open” nature was also the talk of the local papers, referred to as “the kingpin of all the northwest towns” and “the quintessence of all that is foul and immoral.” “Open Town On The Snake,” *La Grande Evening Observer*, January 7, 1909, 7.

⁴⁹ “Harriman Spikes Route On Snake,” *The Sunday Oregonian*, July 04, 1909, Section Three, 28.

⁵⁰ *Ibid.*

on the economic success of the region, construction did continue on the railroad.⁵¹ Nearly a thousand railroad workers continued to call the area near Copperfield home while they blasted out tunnels and laid track. That would continue until 1910, when the line was finished at Homestead. The first blow to Copperfield's economy occurred with the completion of the line when the railroad released the workmen. While some sources, such as David Bird's *A Brief History of Copperfield* described Copperfield's economy as "nearly normal" due to the continuing dam project, it is highly unlikely that the loss of 1,000 paying customers was not felt by the fourteen saloons and thirteen red-light houses, not to mention those more reputable businesses providing everything from dry goods to lodging.

The Oxbow Dam Project became the remaining hope for Copperfield's economy. Without the power generated by the dam, the region's mines could not use the machinery required to delve deeper, nor could a smelter be built to process the ore. However, in 1913, the Oxbow Dam Project achieved a "high water mark" in terms of its completion. According to some accounts, the original vision for a 22,000 kilowatt dam powering the entire Snake River region gave way to plans for a much smaller dam, generating approximately 1,400 kilowatts during times of high water on the Snake.⁵² However, newspaper accounts show a continued effort by Idaho-Oregon Light & Power Co. to fulfill the original vision for the project. In February 1913, *The Ontario Argus* reported that the

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⁵¹ In late 1909, there was a clear hope that economic development was coming to the Snake River when negotiations began to acquire several of the region's mines, including the Iron Dyke, to consolidate the region's copper output in order to make feasible the construction of a copper smelter. As the story makes clear, both Homestead and Copperfield were in competition for having the smelter built in their town. No smelter was ever built. "Huge Smelter Is Baker City Hope," *Morning Oregonian*, December 03, 1909, 8.

⁵² Bird, "A Brief History of Copperfield Oregon," 8.

“machinery they have installed will develop 30,000 horsepower. The plant is over half completed.”⁵³

Despite the continued optimism, Idaho-Oregon Light & Power Co. was in trouble. What exactly happened to the dam project is difficult to uncover. Newspaper articles indicate that the Idaho-Oregon Light & Power Co. was experiencing a steady financial decline. In January 1913, the *Boise Statesman* claimed that a rival power company, Idaho Consolidated Power & Utilities Co., had snatched the rights to power development on the Snake River. Using its influence in Salem, the rival power company pressed Oregon officials to review whether Idaho-Oregon Light & Power Co. had breached a recent change in Oregon law requiring that work on developing power sites be continuous. Additionally, the Idaho-Oregon Light & Power Co. did not have on record the permits for taking water from state waterways, which were also required.⁵⁴ The news story seems to have been exaggerated as the Idaho-Oregon Light & Power Co. maintained control of the oxbow site, in addition to no further mention being made of “one of the greatest power wars ever started in eastern Oregon or the entire Western country.”⁵⁵

Idaho-Oregon’s troubles did not end there. Five months later the *Morning Oregonian* reported on court proceedings in Boise, Idaho in which the State Bank of Chicago sought to foreclose on Idaho-Oregon Light & Power Co. The company’s leadership spun the news to highlight the benefits of the foreclosure, “It is announced by the officers of the company that this is but the first move in a reorganization and consolidation of the Idaho-

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⁵³“Idaho State Engineers Visit Oxbow Dam Sunday,” *The Ontario Argus*, February 27, 1913, 1.

⁵⁴“Power Site Is Snatched By New Concern,” *Malheur Enterprise*, January 25, 1913, 5.

⁵⁵*Ibid.*

Oregon Light & Power Co. with the Idaho Traction Company, operating all the interurban lines in this immediate vicinity.”⁵⁶

Notwithstanding the rosy outlook of the officers of the Idaho-Oregon Light & Power Co., the consolidation plan did not sit well with everyone. A stockholder war erupted in October 1913 when minority stockholders charged the majority with “railroading” them to enforce their reorganization.⁵⁷ The minority preferred to see the company go into a receivership. By November, a federal judge placed an injunction on officers of the Idaho-Oregon Light & Power Co. and the Idaho Railway Company from “changing or modifying present conditions of either company relative to each other.”⁵⁸ Later, in December, Idaho-Oregon Light & Power Co. failed to pay nearly \$60,000 for electricity it had purchased from the Idaho Power & Light Co., which led to its service being cut off.⁵⁹ As the *Morning Oregonian* told it, “This action on the part of the Idaho Power Company greatly crippled the Idaho-Oregon.”⁶⁰

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⁵⁶“Foreclosure Suit Starts,” *Morning Oregonian*, July 08, 1913, 12.

⁵⁷“Power Fight is Waged,” *Morning Oregonian*, October 17, 1913, 7.

⁵⁸“Companies Are Halted,” *Morning Oregonian*, November 15, 1913, 14.

⁵⁹“Firm Stops Rival’s Power,” *Morning Oregonian*, December 31, 1913, 1.

⁶⁰*Ibid.*

Figure 9. Photo of Oxbow Dam power plant construction, ca 1909 (Courtesy of Baker County Library)⁶¹

By early 1913, the tunnel work for the Oxbow Dam Project was complete. This portion of the project accounted for the majority of workers still left in Copperfield, and with their job done, they were released. The loss of thousands of workers as consumers, the failure of the Huntington-Lewiston rail line to turn into the next great continental railway, and the inability of the Oxbow Dam Project to materialize due to financial instability, meant the grand vision for Copperfield was dead.⁶² With the departure of the remaining workmen,

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⁶¹ "1981.1.2048 Newspaper Image." *Baker County Library Historic Photographs*, accessed March 20, 2015, <http://www.bakeroregonhistory.info/exhibit2/e20148b.htm>.

⁶² Out of the ashes of the Idaho Power & Light Co. was created the Idaho Power Company, formed in 1916 from a number of the region's failed electric assets. Unfortunately, when I spoke with their representative with regards to accessing any historical archives, they directed me to the 1991 book, *Legacy of Light: A History of Idaho Power Company* by Susan M. Stacy. While it does offer a rather fascinating look at the history of electric power development in Idaho, it was commissioned as a 75th Anniversary celebration of the Idaho Power Company. Hence, it cannot be relied upon to provide a critical or nuanced review of the company or its predecessors, let alone focus on the period of interest to this paper. It does however, lay

many of the saloons and brothels moved on, leaving behind few vestiges of the town's inglorious past and none of its aspirations. Copperfield had become just another boom and bust town, now well on its way to bust.

Losing the two large construction projects was devastating to Copperfield's economy, especially its vice business. Three saloons survived Copperfield's economic collapse: the S & W Saloon, owned by Tony Warner and Henry Stewart; the Ox Bow Saloon, owned by William Wiegand; and the Kentucky Club, owned by Martin Knezevich. These same saloons had competed for the business of over 2,000, but now fought over perhaps fifty men, and if later accusations were any indication, the few under-age customers who resided in the area.⁶³

Given the conditions, the saloon owners entered into a period of intense competition for control of the liquor market in Copperfield and its immediate environs. Of the three saloons, one rose above the others in its success. Martin Knezevich's Kentucky Club had been a popular saloon during Copperfield's golden age, and maintained some semblance of that popularity in its decay. A Greek by birth, Knezevich had immigrated to Copperfield along with many of its earlier residents in pursuit of making a fortune. Knezevich's continued success was not looked on kindly by his rivals: Warner, Stewart, and Wiegand. Cliques, as they were referred to by Copperfield citizen Sam Aklin, formed along lines of

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out quite succinctly that the actual costs of the Oxbow Dam Project were consistently higher than projections, leading to repeated attempts to finance the project, and eventual failure to secure further funding. Susan M. Stacy, *Legacy of Light: A History of the Idaho Power Company* (Boise, Idaho: Idaho Power Company, 1991), 29.

⁶³ While the population of Copperfield was closer to 100 at this time, one must consider that with largely single working men gone, families remained as Copperfield's permanent population. Therefore, a number of Copperfield's remaining citizens were women who would not step foot in saloon for fear of having their respectability questioned, expose themselves to the coarseness of the saloon culture, or worse yet, be mistaken as a working girl.

the competing saloon interests; on one side, Warner, Stewart, and Wiegand, and on the other Martin Knezevich, somewhat backed by the “decent” citizens of Copperfield.

In an effort to drive their competition out of business, the Stewart, Wiegand, and Warner clique conspired to use the law against Knezevich. Stewart had for some time been a member of the town’s city council, but in 1913, he, along with the rest of his allies, orchestrated a takeover of city government, when the clique’s members were swept into office by a popular vote. Stewart was elected mayor, Warner and Wiegand became councilmen, and to further stack the council, two employees of the Stewart clique were also elected. Only two other men resided on the council, the town school teacher and a livery hand.⁶⁴

The benefits of controlling city government arose from the recent passage of two, statewide liquor laws in Oregon. The Home Rule law, passed in 1910 by liquor interests in response to the Temperance Movement’s Local Option law, allowed municipalities to determine whether to go dry or not. Temperance advocates pushed the local option to push chip away at liquor’s control on Salem by letting Oregon’s voters decide to go dry or not at the county level. Liquor interests used home rule to break voting units down from the county level to the municipality or town. If the local option sought to create pockets of prohibition out of the more religious, rural, homogenous counties, home rule sought to make the typically more diverse, urban, and less religious towns into pockets of alcoholic liberty. In the case of Copperfield, home rule meant Copperfield saloons no longer had to

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⁶⁴ The election of Stewart and his allies should be taken as a savvy political move rather than a malevolent act. Throughout the Copperfield Affair, and in all of the letters sent to Governor West, no allegations of voter fraud or intimidation exist. This leads me to think that there was strong support for the Stewart clique in Copperfield. It should also be noted that even after Stewart’s removal from office by West, he would be re-elected to the city council after martial law was lifted.

go through Baker City for a liquor license, as they did under the local option, but through the city council, or in other words, through Stewart, Warner, and Wiegand.

As cliques took shape, so too did animosity and increased violence in Copperfield. In a letter to Governor West, Sam Aklin wrote of a series of disturbing events taking place in Copperfield. As an indication of the town's devolution into incivility, Aklin discussed a confrontation with then mayor Henry Stewart, which occurred after Aklin questioned Stewart about why he or his family had spread rumors about Aklin.⁶⁵ Stewart challenged Aklin first to a fist fight, then to a gun fight if that was not satisfactory. Aklin's letter eventually moved to what would eventually turn many in the town against the saloons and drive them to contact Governor West for assistance. The incident was an "incendiary" fire (arson) which burned down a portion of the business district. This in turn incensed rivalries further:

[T]he feeling at the time became very bitter, as it was felt that the feud did not justify the destruction of personal property by anyone, and the people resented any such work. Later, in fact about the first of December, fire was discovered again under a saloon building, about two hundred yards from the main town, and still another broke out at the rear part of another saloon in the main part of the town.⁶⁶

The first arson, which occurred in the spring of 1913, was the first time Martin Knezevich's Kentucky Club was burned down. Knezevich, suspecting that his rivals were behind the destruction of his saloon, appealed to county authorities in Baker City to investigate. Another letter to Governor West outlined the difficulties faced by District Attorney Godwin and Deputy Sherriff Palmer, who traveled out to Copperfield to investigate the first fire:

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⁶⁵Aklin, Sam. Letter to Governor West. (30 December 1913, Copperfield Papers, Oregon State Archives, Salem, OR), 1.

⁶⁶Ibid., 2.

Mr. Godwin endeavored to unravel the tangle there but could find no tangible evidence. When he found two saloon factions, each claiming the other to be scoundrels, but having no evidence that would convict, Mr. Godwin gave up in disgust.⁶⁷

Godwin's attempt to alleviate the situation by giving a "sound lecture" to both parties resulted in a lessening of animosity for a time.⁶⁸ Despite Godwin's lecture, the saloon war flared up again late in 1913, when Knezevich moved his saloon business off Copperfield's main street. This violated a recently created city law, passed by the opposing saloon dominated city council, which prohibited saloons from operating off of Copperfield's main street. This began a back and forth in which Knezevich complied with the ordinance, moving back onto Main Street, but then moving off of it again a short while later. The city recorder, another ally of the Stewart faction, noted the violation and promptly revoked Knezevich's liquor license. Knezevich responded by seeking a restraining order until the circuit court could rule on the legality of the city council's actions. The result of the case was in favor of the city council, forcing Knezevich to run a soda shop out of his now defunct saloon.⁶⁹

On November 23, another "incendiary" fire broke out in the building adjacent to Knezevich's saloon. As soon as the first fire had been contained, word of another fire at the saloon of William Wiegand spread. No major damage came from either fire, but it was clear that the saloon war in Copperfield was becoming too much for Copperfield's remaining citizenry. On December 14, 1913, a petition signed by fifty-two citizens was sent to Governor Oswald West pleading for aid in putting an end to the situation in

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⁶⁷ Clemens, H.A. Letter to Governor West. (27 December 1913, Copperfield Papers, Oregon State Archives, Salem, OR), 1.

⁶⁸ Ibid.

⁶⁹ Ibid.

Copperfield. In it, the Copperfield citizens claimed their town was under the control of a “certain clique” that had come to dominate the town government and citizens who refused to “sanction their official or unofficial action.”⁷⁰ Due to the conflict, the petitioners felt that Copperfield had become “an undesirable place to reside; our families, we feel are unsafe, and that our property is in constant danger of destruction from incendiary fires and possible loss of life.”⁷¹ Given these conditions, the petitioners called on Governor West for relief, “we...pray that you take whatever action you deem necessary to relieve the distressed community.”⁷²

Upon arriving on Governor West’s desk, the Copperfield Petition found a receptive audience. Governor West was an zealous prohibitionist, having declared the ambition “to shoot a bartender,” among some of his temperance agenda.⁷³ West was quick to act on Copperfield, demanding that Baker County authorities move against the town’s saloons by Christmas Day. However, before further discussing the events leading to martial law in Copperfield, it first must be drawn into the larger context of the Oregon and nationwide Temperance Movement.

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⁷⁰ Dimick, Stanley R. A Petition. 1913.

⁷¹ Ibid.

⁷² Ibid.

⁷³ “Oswald West (1873-1960).” *The Oregon History Project*, accessed March 20, 2015.
http://oregonhistoryproject.org/articles/historical-records/oswald-west-1873-1960/#.VQyGA-G_aiw.

Wet vs. Dry

“The Curse of God Almighty is on the Saloon!” – Billy Sunday

The situation in Copperfield, and Governor West’s response, were part of a larger battle surrounding liquor and saloons occurring both in Oregon, and nationally. Copperfield was a tiny bust town in a remote region of Oregon, but it would play host to a national incident in which a rabidly pro-prohibitionist governor went to war with saloons. While Governor West may have appeared to be picking on the “little guy” in Copperfield, it was only a small part of a larger political struggle in Oregon to make prohibition a reality. While wet versus dry was the obvious distinction within the battle for prohibition, dynamics of religion, rich vs. poor, rural vs. urban, and immigrant vs. native-born were also prominent.

For the first five decades of Oregon’s statehood, the state’s politics could best be described as serving the status-quo. Women did not vote, minorities were non-entities, and the rich and powerful of Portland and Salem dictated policy. Beginning in the 1890s and the rise of populist movements, Oregon’s politics began a slow shift towards reform of its notoriously corrupt political system. A series of reforms, starting with the passage of the initiative & referendum process, drove further reforms. Nineteen-ten was an important year in the development of Oregon political reform. It would be the beginning of the end of Oregon’s long battle to decide the merits of temperance and prohibition. Headlines like “Dry City Dull: Hotel Proprietor Declares Farmers Should Not Make Urban Laws” could be found across the state’s many newspapers.⁷⁴ This headline and many more like it

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⁷⁴“Dry City Dull, Says Norman,” *Morning Oregonian*, May 18, 1910, 9.

augured the showdown between Oregon's liquor industry and a growing Temperance Movement. Within four years, women would have the vote, a series of votes would separate the state into wet and dry districts, and the conflict would culminate in 1914 with the passage of statewide prohibition.

Alcohol, and its control, has existed in Oregon as long as whites had been in the region. Early traders, especially Americans, often used it as currency to trade with the Native tribes. The use of alcohol to ply the Native tribes was disdained by the Hudson's Bay Company while it held sway over trade in the region.⁷⁵ With the coming of American Methodists to the region, further efforts to prevent the use of alcohol became prevalent, and established a temperance society in 1836. As the Oregon Territory shifted from British control to American control, its Methodist roots maintained their mission to resist the influence of alcohol. The *Organic Laws* of the Provisional government from 1843 borrowed wholesale the *Iowa Code*, which outlawed the sale of alcohol to "Indians," as well as forbidding the sale of liquor within two miles of a congregation. In 1844, the Territory's legislature passed what amounted to prohibition, outlawing the introduction or sale of liquor into the territory.⁷⁶

Between 1843 and 1847, the state had seen enough growth from outside immigration that the Methodist influence no longer dominated the Territory's politics, and in a referendum the voters approved a change in the *Organic Laws* that lifted prohibition.⁷⁷ As the state saw further immigration, it also saw weakening of laws targeting alcohol and reducing fines, making it easier to get liquor licenses and increasing allowable production.

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⁷⁵ John E. Caswell, "The Prohibition Movement in Oregon: Part 1, 1836-1904," *Oregon Historical Quarterly*, Vol. 39, No. 3 (September 1, 1938): 237.

⁷⁶ *Ibid.*, 241.

⁷⁷ *Ibid.*, 243.

Regardless of the legal setbacks, temperance advocates continued to organize, typically around their religious institutions and often led by ministers. Attempts to introduce and pass prohibition legislation like the Maine Law, would continue right up to passage of prohibition in 1914.⁷⁸

The battle of ideas between temperance advocates and liquor interests was characterized by the lack of unity among opponents of prohibition. While Oregon's prohibition proponents started out being led by the Temperance Union and later the Anti-Saloon League, the opposition had no such leadership or unifying force until the final few years prior to Oregon's prohibition in 1914. When the threat of prohibition became too much to ignore in the early 1900s, business forces across Oregon finally organized to resist the Temperance Movement. Hotelmen, saloonkeepers, brewers, distillers, hop and barley farmers, bankers, and merchants of all stripes joined groups like the Greater Oregon Home Rule Association, the Liberal League, and the Dealers Mutual and Protective Association to stand against the rising tide of temperance sentiment and protect their livelihoods.

Ultimately, what would lead to prohibition's success at the polls were a number of political changes that had occurred within Oregon over the course of the two decades before the 1914 vote, the stigma of the saloon that had permeated popular imagination, and the very nature of the Temperance Movement's development. The rise of progressivism in Oregon granted energy and vitality to the Temperance Movement and

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⁷⁸ The Maine Law was passed in 1851 in Maine, and introduced such restrictive controls on alcohol that it effectively prohibited it. It's interesting to note that it was targeted at the hard drinking of the state's lumberjacks and fisherman. There is certainly something to the alcoholic tendencies of frontier life that inspires others to reform it. "Maine: First Dry State in 1851." *Affordable Acadia*, accessed May 13, 2015, <http://www.affordableacadia.com/2010/maine-first-dry-state-in-1851/>.

allowed it the political opportunity via initiative and referendum to overcome the entrenched business interests that stood to lose a great deal from prohibition. Those same business forces had to contend with indirectly defending the increasingly indefensible saloon while acclimating to the new political landscape of Oregon's populist initiative system.

Arguments for temperance can be traced to America's colonial era. Numerous founding fathers commented on the dangers of distilled spirits. George Washington, also a whiskey distiller, claimed distilled spirits were "the ruin of the workmen in this country."⁷⁹ However, there was a perfectly rational reason for drinking alcohol: it was not water. Water has been, for much of human history, a potential source of disease. Without an understanding of germs or parasites, but recognizing that water could make one sick, people drank alcohol, which contained no such infectious agents. While some might have been lucky enough to have access to springs that provided clean water, Americans were adverse to drinking water. Water was seen as a base drink fit for animals. Benjamin Franklin's quote "if God had intended man to drink water, He would not have made him with an elbow capable of raising a wine glass" only emphasizes Americans' enthusiasm for spirits.⁸⁰

Drinking was a pastime enjoyed by all segments of American society during the colonial period, but Americans suddenly began drinking more during the period from 1790 to 1830. Americans of all stripes resorted to drinking to alleviate the stresses of life, from rapid population growth in urban centers to the difficulty of pioneer life for frontier

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⁷⁹Rorabaugh, W.J. *The Alcoholic Republic, An American Tradition* (Oxford; New York: Oxford University Press, 1981), 6.

⁸⁰*Ibid.*, 97.

folk. For many urban dwellers, the most acute form of change was the effect of the industrial revolution on their livelihoods. Shifting market forces and the growth of large scale manufacturing began to break down customary employer-employee relationships, leading to greater anxieties among workers. A growing sense of decreased opportunity for social mobility, in addition to the growing mistreatment of workers in factory settings, contributed to the increase of urban drinking. Rural Americans, meanwhile, were faced with a decreasing availability of arable land in addition to market forces that could ruin them. Forced to look west if they sought land, the life of a frontiersman was harsh and alcohol offered one of the few respites.

The Temperance Movement sprang from the concern generated by the 1820s alcohol epidemic. Temperance advocates deemed every level of American society afflicted by the evils of alcohol, but saw the first step in addressing the issue to convince the upper classes to set an example for the lower classes. Cotton Mather's remedy was to "Let persons of the *Best Sort*, be Exemplary for this piece of *Abstinence*; and then let the *Lowest of the People*, be in that point, we'll consent unto it, *As Good as the Best*."⁸¹ While some of the upper class bought into the rhetoric against imbibing alcohol, their example made no impact on the consumption rates of the working class. The increasing supply of whiskey, the corresponding decrease in price, and continued economic pressure on the working class insured their reliance on alcohol.

Religious leaders led the charge in preaching against the evils of "demon rum." While some earlier arguments for temperance relied on a rational basis of alcohol leading to disease, hardship, and even death, the leaders of this movement emphasized moral

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⁸¹ *Ibid.*, 31.

arguments. Ministers and temperance speakers used the church pulpit to proclaim the damnation that came to drunkards. Using emotional and moral arguments, they argued that faith was the only means of resisting alcohol, often casting it as a Garden of Eden-like battle of resisting alcohol which was Satan in disguise.⁸²

The moralist argument against alcohol worked, as a dramatic decline in alcohol consumption would occur in the 1830s.⁸³ This might appear a victory for temperance, but the Temperance Movement's early success resulted less from its impact on the consumption rates of alcohol than from the creation of a lasting temperance persona. The acceptance of this persona by the largely Protestant middle class of the United States guaranteed that the Protestant middle class would be receptive to the Movement's propaganda later. This would become especially pertinent when that group represented the backbone of the Movement's voting bloc in Oregon's prohibition battle in the early 1900s.

Notwithstanding the drop in alcohol consumption, the liquor industry only grew in the United States. More than religious and emotional pleas against consuming alcohol were needed to persuade the American public to forswear liquor. In fact, there remained some question within the Temperance Movement as to whether temperance should be sought via individual education or law, or even whether to strive for moderation or outright abstinence.

While few opposed the idea of decreasing vice and other activities associated with drunkenness, enforcing temperance via prohibition laws was seen as an attempt by early middle class reformers to force their notions of a proper lifestyle on the lower class. Liquor interests, which had heretofore been forced to argue from a morally difficult position,

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⁸² *Ibid.*, 193.

⁸³ *Ibid.*, 187.

could rally popular support by arguing that temperance forces sought to deprive people of their rights to drink and businessmen to run their own businesses. Against such patriotically charged rhetoric, the temperance forces were hard pressed to convince the public at a time when the rapid expansion of American industry was paramount to the United States' identity.

By the early 1900s, the liquor industry was a major component of the United States economy and held enormous sway in municipal, state, and national politics as a result of the disproportionately high taxes the industry paid.⁸⁴ The industry was made up of distillers, brewers, farmers, and retailers who owned hotels, saloons, restaurants, brothels, and merchants. A handful of companies dominated the liquor industry by the end of the 19th century with manufacturers acquiring not only other manufacturers but also retail outlets in an effort to secure control of the market. The industry's influence was both a natural product of the revenue it generated for governments and its connection to vice and corruption within cities and towns. Laws that prohibited open saloons on Sundays, gambling, and prostitution were all non-starters for saloonkeepers and their suppliers who stood to make a great deal more money when they disobeyed. In addition, politicians and local police were often easily bribed to look the other way when they did so. An example arrives from the account of a Portland saloonkeeper-turned-temperance man:

Among the first things I did when I took charge of this hell hole was to fix the policeman on my beat. Now, every candid man knows there is a vast

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⁸⁴ High taxation of alcohol was not a result of any temperance agitation, but rather the result of government reliance on tax income from the industry. The liquor industry is recession resistant and highly profitable as evidenced by its burgeoning market during the 19th century. The reliability of liquor tax revenue made it indispensable to state and local governments as well as the federal government, which between 1870 and 1918 accounted for 30-40% of annual federal revenues. "How Taxes Enabled Alcohol Prohibition and Also Led to Its Repeal." *Tax Foundation*, accessed June 11, 2015, <http://taxfoundation.org/blog/how-taxes-enabled-alcohol-prohibition-and-also-led-its-repeal>.

difference between a restaurant and one of those abominable places. Still, I was better protected by the police in the hell hole than I was in the restaurant.⁸⁵

In an example from New York City we see more of liquor's connection to politics. In a single year, the Democratic and Republican parties held 633 conventions in saloons and another 96 in buildings adjacent to saloons.⁸⁶ The connection between the liquor industry and the political machine was undeniable during the period and glaringly obvious to reformers not just of the temperance variety. Corruption was public enemy number one during the Progressive Movement of the early 1900s and the liquor industry was intricately tied to the functioning of many city and state governments. In order to represent the interests of the industry better, three organizations were formed: the United States Brewers Association, the National Wholesale Liquor Dealers Association, and the National Liquor League. While these organizations, similarly to the Temperance Movement, participated in the production of propaganda, such as the publication of anti-prohibition articles in newspapers, their major focus was dominating the various state and local governments in order to protect their interests. One example was the spending of nearly \$1 million dollars in Texas from 1900 to 1911 by brewers in defiance of the state's election laws.⁸⁷

The liquor interests' opposition to women's suffrage was a significant political effort that would come back to haunt it. The existence of groups like the Women's Christian Temperance Union and the fact that many women's suffragists were members of temperance groups drove liquor interests to oppose the woman's vote for fear it would

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⁸⁵ Finn J.D John, *Wicked Portland: The Wild and Lusty Underworld of a Frontier Seaport Town* (Charleston, SC: History Press, 2012), 49.

⁸⁶ Timberlake, James H. *Prohibition and the Progressive Movement, 1900-1920* (Cambridge: Harvard University Press, 1963), 113.

⁸⁷ *Ibid.*, 110.

translate into subsequent votes for prohibition. While this may have been true for some women voters, it was not true for all. Women like Abigail Scott Duniway became vocal opponents of prohibition, but by standing in opposition to women's right to vote, it is likely that liquor interests only further alienated female voters.⁸⁸

What made Oregon unique at the turn of the century is its place in American history as a center of progressive politics. Going back to the 1890s, Oregonians showed populist outrage over the rampant corruption that pervaded state politics. In response, reform groups like the Oregon Populist Party formed, which aimed to address the corruption. While the membership in these groups often came from many different backgrounds, one common element was the strong presence of middle-class Protestants. It is no coincidence that the group most susceptible to temperance rhetoric backed a movement that targeted corruption. Certainly the Progressive Movement was not monolithic. Robert Johnston's *The Radical Middle Class* (2013), shows that there existed a

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⁸⁸ While the history of temperance in Oregon goes back to the very first settlement of whites in the Northwest, the development of the temperance ideology in Oregon was no different than it was elsewhere in the nation. Temperance rhetoric and propaganda did not deviate much from the standard demagoguery. The reason for this likely lies in the history of Oregon's settlement. Protestant missionaries Jason Lee and Marcus Whitman led the settlement of Oregon. Upon settling in the area, the missionaries in conjunction with their supporting religious organizations back east, advertised Oregon as a Protestant paradise where land was plentiful. The campaign for settlers was a success, drawing thousands of people who were largely Protestant and of northern European descent. These individuals were arriving at a time when America was in the periodic throes of the Great Awakenings that embodied the temperate ethos. Despite the potential predilection for the temperance message, the Movement was not strongly backed in Oregon for much of the nineteenth century. The early failure of temperance advocates to secure a dry Oregon was due to many of the arriving immigrants being more concerned with making their own fortune than establishing a religious community.⁸⁸ The slow decline of Methodist influence and steady growth of power politics would indicate the prioritization of industry over religious ideology. Kent D. Richards, "The Methodists and the Formation of the Oregon Provisional Government," *The Pacific Northwest Quarterly*, Vol. 61, No. 2 (1970): 87.

“fluidity” between working class and middle class in the Movement’s agenda.⁸⁹ However, as surely as the Movement sought to address concerns shared by both classes, the largely middle-class and upper-class Protestant elite dictated what reforms to focus on, a decidedly undemocratic legacy.⁹⁰

Initial reforms indicated a united front of middle and working class. “Direct democracy,” as championed by William U'Ren, a lawyer and passionate reformer who came to Oregon politics from a previous life of poverty, was the term used to describe the series of reforms that would “return power to the people.” Specifically, the initiative, referendum, recall, and direct election of senators were all conceived as a means of attacking the “monied and monopolistic classes” that controlled the legislature.⁹¹ In 1902, Oregon’s citizens showed their overwhelming support for reform when the legislation for the Initiative & Referendum passed 62,024 to 5,668.⁹²

With the passage of the initiative and referendum processes, the “fluidity” in the Progressive Movement’s class make up became more one-sided. With political reforms in place, the Protestant middle-class leadership began turning the Progressive agenda toward pet issues like prohibition, environmental laws, and censorship.⁹³ Social issues not

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⁸⁹ Johnston, Robert D. *The Radical Middle Class Populist Democracy and the Question of Capitalism in Progressive Era Portland, Oregon, Politics and Society in Twentieth-Century America* (Princeton: Princeton University Press, 2013), 117.

⁹⁰ *Ibid.*, 121.

⁹¹ *Ibid.*, 122.

⁹² “Oregon Blue Book: Initiative, Referendum and Recall: 1902-1906.” *Oregon Blue Book*, accessed May 6, 2015, <http://bluebook.state.or.us/state/elections/elections10.htm>.

⁹³ Issues like environmental laws, prohibition, and censorship of media may have been supported by some in the working class, but there was an elitist element to the middle class’ agenda. Prohibition sought to end the existence of the saloon, the meeting place for working class men, as well as a staple of immigrant cultures like Germans or Irish. Environmental laws are another issue that might be thought as a benefit for all, but working-class uses for parks like fishing or grazing, the collection of waste, and much more were economic necessities opposed by the middle and upper class. One excellent source on the beginnings of the bourgeois crusade to sterilize urban environments is Catherine McNeur’s *Taming Manhattan*:

prioritized by the working class, like temperance, were given greater attention. Oregon temperance advocates did not immediately submit a bill for prohibition. Rather, they submitted the local option bill for vote in the June 1904 election. The local option bill allowed counties to vote on the question of whether to adopt a form of prohibition, which outlawed dealers, specifically the much hated saloon. However, temperance advocates in Oregon, led by the Anti-Saloon League, had inserted additional language into the bill that allowed for individual precincts in counties to go dry if they voted that way, thereby removing the voting power of the more populous, urban precincts that would likely vote “wet.”⁹⁴

This first campaign in the prohibition battle deviated from national rhetoric on prohibition chiefly because it was not presented as a prohibition initiative. The local option’s advocates presented it using the rhetoric of the Progressive Movement, using the language of “local” and “home rule” in order to emphasize the bill’s supposed purpose of giving power to the people and removing corrupt politicians from deciding on the issue of the presence of saloons. Additionally, the option’s advocates refused to characterize it as favoring prohibition, with one advocate insisting, “the issue now pending is not prohibition, but local option, and every intelligent person knows they are not synonymous.”⁹⁵ Regardless of attempts by the bill’s advocates to cloak it in the guise of a progressive, populist measure, liquor interests were quick to call it for what it was, an opening salvo in the push for

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Environmental Battles in the Antebellum City (Harvard University Press, 2014). The same can be said of Progressive reformers who sought to censor media like silent films, which often favored working class themes. Eric Olund, “Cinema’s Milieux: Governing the Picture Show in the United States during the Progressive Era,” *Journal of Historical Geography*, Vol. 38, No. 1 (January 2012): 57–68.

⁹⁴Caswell, John E. “The Prohibition Movement in Oregon II. 1904-1915,” *Oregon Historical Quarterly*, Vol. 40, No. 1 (1939): 66.

⁹⁵“For Local Option,” *East Oregonian*, June 01, 1904, Daily Evening Edition, 2.

prohibition. The local option's opponents relied on rhetoric, which to that point and in the future, defended the interests of the liquor industry by arguing that to prohibit an industry was economically harmful. Full-page advertisements referred to the bill's supporters as fanatics and indifferent to the economic cost such a bill would incur.⁹⁶ The *Oregonian* opposed the bill, citing eight reasons why it would harm the economy. Among them local options "retard[ed] progress" by driving out businesses and putting men out of work, while lowering state tax revenues.⁹⁷ Notwithstanding the overwhelming monetary advantage that the liquor interests had, and support from Oregon's leading newspaper, the bill passed in the state, 43,136 to 40,198, or by 3.74 percent of the vote.⁹⁸

The next step in the battle for prohibition was the testing of the local option, which occurred in fall of that same year. In total, twenty-three counties voted on whether to go dry. The majority of those counties testing the law would, in fact, be rural counties like Malheur and Coos. Of the voting counties, only six went dry, but in every instance it was a close vote.⁹⁹

Rhetoric in the press that fall again rested on the potential effects of the local option. Two newspapers stood out as favoring either side. The *Oregonian* was solidly opposed to the Temperance Movement and the local option bill, while the *Oregon Daily Journal* supported it.¹⁰⁰ Hence, each paper could be depended upon to feature articles supporting either argument while attacking the other paper. The *Oregon Daily Journal*

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⁹⁶"A Vote for Local Option Monday Means A Vote for Prohibition," *East Oregonian*, June 04, 1904, Daily Evening Edition, 5.

⁹⁷"Eight Reasons Why The Local Option Law Is Dangerous," *The Sunday Oregonian*, June 05, 1904, Part Two, 11.

⁹⁸Caswell, "The Prohibition Movement in Oregon II. 1904-1915," 66.

⁹⁹*Ibid.*, 67.

¹⁰⁰The *Oregonian* and the *Oregon Daily Journal* were, respectively, the conservative and liberal papers of their day.

accused the *Oregonian* of a “paternalistic” and “condescending” campaign to malign the local option, while conversely the *Oregonian* accused the *Daily Journal* of misleading its readers.¹⁰¹ The *Daily Journal* advertised speeches and meetings about the upcoming vote at churches tellingly titled things like “Christianized Citizenship.”¹⁰² Interestingly, those same advertisements did not appear in the *Oregonian*. Liquor interests sponsored speeches and commissioned articles, but they lacked the same bully pulpit and were active only in saloons and conservative newspapers. Temperance advocates utilized churches to communicate their message directly to the Protestant middle class in cities and rural Protestants that made up much of Oregon’s voting public. As a result, the Temperance Movement more successfully delivered their propaganda to the voting public and thereby shifted public opinion towards the belief that the liquor traffic was an evil that needed to be stopped.

Following this first election, Oregon liquor interests turned to the state legislature to make amendments to the new law. Specifically, they borrowed ideas from an Ohio local option law. Under the 1904 Oregon local option law, only ten percent of a county’s population was necessary to petition a vote for local option. The proposed amendment, to be known as the Jayne bill, would have raised the number to forty percent while also restricting the precincts allowed to vote to those where half the street frontage was residential.¹⁰³ This would neuter the bill, making it nearly impossible for temperance advocates to get rid of brewers, large saloons and wholesalers most of whom would have fallen within the protected zone. Despite the liquor industry’s historically strong influence

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¹⁰¹“The Real Story Of It,” *The Oregon Daily Journal*, November 07, 1904, 4.

¹⁰²“At The Churches,” *The Oregon Daily Journal*, November 06, 1904, 18.

¹⁰³Caswell, “The Prohibition Movement in Oregon II. 1904-1915,” 68.

on the state legislature, the bill was bitterly debated, resulting in numerous amendments until it was abandoned by its creators. Out of these proceedings, further claims of liquor industry corruption surfaced. In one instance a Republican in the state senate charged “the brewing interests of Portland and Astoria had raised a fund of \$23,000 to buy up the legislature of Oregon in order to secure the passage of some amendments to the local option law.”¹⁰⁴

The court system became a battleground for both sides as they challenged the law and the actions of their opponents. In *State ex rel v. Richardson* (1907), Richardson, a county judge in Malheur County, and two county commissioners, refused to issue the results, which were decidedly pro-prohibition, of the 1904 Nyssa precinct local option vote.¹⁰⁵ Their defense, aside from questioning the legitimacy of the vote, questioned the constitutionality of local option. Despite their objections, the state Supreme Court in 1907 issued a writ of mandamus to the County demanding the release of the results, deciding that the local option was constitutional. Other cases were often instances of saloons or brewers asking for injunctions against votes that had gone against them. In one 1908 case, liquor interests successfully blocked a prohibition vote on the grounds the sheriff had failed to properly post the election notices.¹⁰⁶ Despite the various legal wrangling of both sides, neither side could be happy with the mixed results, which only exacerbated the problem of wet and dry communities existing side by side. Temperance advocates were not satisfied

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¹⁰⁴Ibid.

Astoria’s place in the liquor industry arose from its having 6 breweries. A lot for a town of about 9,600 in 1910.

¹⁰⁵Oregon Supreme Court et al., *Reports of Cases Decided in the Supreme Court of the State of Oregon* (West Publishing Company, 1907), 310.

¹⁰⁶Caswell, “The Prohibition Movement in Oregon II. 1904-1915,” 73.

with the continued taint that was the liquor industry within the state, and the liquor industry and its allies were besieged by the prohibition agitation of the Temperance Movement.

Nonetheless, by 1908, temperance forces had a great deal to be happy about. Through local option elections they had turned roughly half of the state's population dry.¹⁰⁷ The remaining "wet" half of the state's population resided largely in Portland and Multnomah County. However, 1910 would see a significant change of course for the fortunes of the Temperance Movement.

The 1910 election saw three ballot measures proposed to the people of Oregon. Two came from temperance advocates, which were aimed at the outright prohibition of alcohol in Oregon. One measure would make the manufacture of liquor illegal while the other made the sale of it illegal, while regulating shipments, and allowing for searches for liquor.¹⁰⁸ The third measure called for "Home Rule" which would allow cities exclusive power to regulate their liquor traffic.¹⁰⁹ It originated from a group calling itself the Greater Oregon Home Rule Association.

The Greater Oregon Home Rule Association (GOHRA) got its start as the brainchild of the Oregon State Hotelman's Association with the express purpose of being a "resistant force to the state-wide prohibition movement."¹¹⁰ The goal was to finally join the disparate groups that benefited from the liquor industry under one state-wide umbrella. Until that point, brewers, distillers, saloon keepers, hop growers, and others had been

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¹⁰⁷Ibid., 74.

¹⁰⁸"<http://bluebook.state.or.us/state/elections/elections11.htm>"

¹⁰⁹Ibid.

¹¹⁰"Hotel Men Take New 'Wet' Stand," *Morning Oregonian*, May 18, 1910, 9.

fighting in a largely uncoordinated fashion against the Prohibition Movement.¹¹¹ The organization's founding document provides a great deal of insight not only into the mindset of the pro-liquor business community in Oregon, but also the rhetoric they relied upon until prohibition's passage in 1914. In it, "citizens, taxpayers, merchants, manufacturers, business and professional men" were encouraged to join in order to advance "of the agricultural, industrial, and commercial development of Oregon, particularly home rule for incorporated cities and towns."¹¹² Finally, the document directly addresses the issue of liquor regulation, "It is hereby further Resolved, that we favor strict regulation of the liquor traffic, through laws already in existence, and where lacking, to be enacted."¹¹³ The GOHRA's founding document was a clear call to men, especially of the business community, to unite to defend against further liquor regulation. Notwithstanding the primary purpose of GOHRA to prevent the passage of prohibition and other liquor regulations, there was an element fear derived from the greater threat of moral regulation of business in general.

The rhetoric of GOHRA and liquor forces was not entirely without merit. The financial hardship that would result from prohibition was real. Certainly businesses like saloons, breweries and distilleries faced being driven out of business, but hotels and farmers also had a great deal to lose. At the time, hop farming was a major industry in Oregon, by some estimates bringing in \$5 million a year with \$25 million in investments.¹¹⁴ Hotels were so concerned with the loss of revenues that, aside from their being the leading

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¹¹¹ The terms "Prohibition Movement" and "Temperance Movement" are almost interchangeable at this point and time, as most temperance advocates by this point had bought into the outright prohibition of alcohol as opposed to moderation and education.

¹¹² "Hotel Men Take New 'Wet' Stand," *Morning Oregonian*, May 18, 1910, 9.

¹¹³ Ibid.

¹¹⁴ "Northwest Hotel News," June 20, 1914, 3.

force behind GOHRA, they dedicated large sections of their periodicals to propaganda on the “prohibition agitation,” as they referred to it. In one article they related how an Oklahoma hotel owner affected by prohibition recouped some of his lost revenues by turning the former bar into a soda fountain, but despite this he still only made two-thirds of what he had before.¹¹⁵

With the GOHRA established as the face of the Home Rule bill, the showdown in the 1910 election was largely a battle of rhetoric, but in this case liquor interests had learned to cater to populist arguments. Liquor interests imported speakers like Clarence Darrow to expound on the failure elsewhere of prohibition to prohibit.¹¹⁶ Meanwhile liquor interests used their large war chests to purchase full page advertisements, which emphasized the cost to businesses by calling attention to lowered property values and business deals likely to fall through in the event of prohibition.¹¹⁷ Other advertisement relied heavily on progressive rhetoric that emphasized the local option, home rule, and giving choice to the people.¹¹⁸ Temperance advocates, meanwhile, continued their tactics of taking their message to the community via churches and the newspapers. In a rare full-page advertisement calling for Oregonians to “Vote Oregon Dry,” temperance advocates reacted to what they called “lies and deception” by home rule advocates, and then proceeded to discuss the benefits prohibition had had for Kansas.¹¹⁹ Benefits ranged from increased property values to the eradication of brothels and gambling. Notwithstanding the overly rosy picture painted by the prohibitionists, they were unable to persuade voters. Home rule

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¹¹⁵“Northwest Hotel News,” May 8, 1914, 1.

¹¹⁶Caswell, “The Prohibition Movement in Oregon II. 1904-1915,” 75.

¹¹⁷“Mr. Businessman!,” *Medford Mail Tribune*, November 06, 1910, Second Section, 15.

¹¹⁸“Home Rule Means Local Option and a Square Deal for Both Sides,” *East Oregonian*, November 05, 1910, Evening Edition, 3.

¹¹⁹“Vote Oregon Dry,” *Morning Oregonian*, November 07, 1910, 9.

passed 53,321 to 50,779, while the two prohibition measures lost 43,540 to 61,221 and 42,651 to 63,564.¹²⁰

The results of the election are interesting for several reasons. Despite a major campaign by liquor interests that emphasized a populist message of self-determination, and massive organization and spending efforts, they only barely passed home rule. In contrast, the prohibition measures were defeated decisively. Why they failed is difficult to ascertain. Historian John Caswell argues that the prohibitionists lacked intensity, resting too much on the idea that voter numbers were on their side. However, it is possible given the results of the 1914 election that a great deal of their Movement's energy lay in the women of the Movement, a vote which they would not get until after 1912 when Oregon voters approved women's suffrage. The results give some indication, therefore, that Oregon voters in 1910 were less inclined toward the liquor interests' message than they were opposed to prohibition.

The next and final step in the battle for Oregon prohibition took place in 1914. It was a good time for the temperance forces to make a comeback, because having won the right to vote in 1912, the women of temperance could finally make their voices heard. This appeared to be the year in which prohibition would finally be won or defeated all across the nation as multiple states found themselves in similar situations as Oregon. Idaho, Washington, and California were also facing prohibition measures, and the nation's temperance organizations and liquor interests poured money into the various state races.¹²¹ National temperance forces went into a campaign frenzy as they organized huge get-out-the-vote efforts ranging from hiring 250 workers, 700 ministers, and numerous well-known

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¹²⁰<http://bluebook.state.or.us/state/elections/elections11.htm>"

¹²¹Caswell, "The Prohibition Movement in Oregon II. 1904-1915," 77.

speakers to tour the region.¹²² Liquor interests, meanwhile, were counting their allies when the Portland Chamber of Commerce sent out a ballot to its members gauging their allegiance. Of the 860 sent out, only 111 were in favor of prohibition.¹²³

The liquor interests found an interesting ally in Abigail Scott Duniway. Given the strong ties between the Women's Suffrage Movement and the Temperance Movement, many members were a part of both movements. Abigail Scott Duniway's ardent support of women's suffrage in Oregon made it seem likely that she would also support prohibition. However, as president of the Tax Payers and Wage Earners League, she denounced the prohibitionist's efforts, calling it "morality by law." In an open letter she described the efforts of prohibitionists as a "radical, revolutionary short-cut...by a specie of legislated eugenics directed against the human will."¹²⁴ Her opposition to prohibition was not enough to defeat it in Oregon. With only one ballot measure to vote on, and its intention of prohibition clear, the voters of the state knew fully what they were voting on. Prohibitionists continued to argue the value of removing the corrupting influence of alcohol and the liquor traffic while liquor interests tried to convince voters that competent regulation was preferable to "destroying" the economy. In the end, the vote was overwhelmingly in favor of prohibition with 136,842 for and 100,362 against.¹²⁵

The fight for prohibition was over. Temperance advocates had finally abolished "demon rum" and cleansed the corruption of the liquor traffic from Oregon. A few years later, the nation followed as the 18th Amendment passed Congress in 1919. As we know

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¹²²Ibid.

¹²³Ibid., 79.

¹²⁴"Northwest Hotel News," Aug 14, 1914, 3.

¹²⁵"<http://bluebook.state.or.us/state/elections/elections11.htm>"

now, the fondest hopes of temperance advocates were far off in their hope to scourge alcohol use from the American diet. The 1920s was an era in which corruption, vice, and alcohol were driven underground and became more violent than ever before. In this, some of the warnings predicted by the anti-prohibitionists proved prescient. Nor were liquor interests entirely accurate when they described the resulting destruction of the local economy. Certainly, many saloons, breweries, and distilleries went out of business, but hop farmers converted their fields to other crops to aid in the global recovery effort following World War I, hotels and ex-saloon keepers converted their bar spaces into soda fountains or restaurants, and brewers and distillers converted manufacturing to soda, near beer, and malt extract.

Why the liquor forces could not convince people of their case lies with a number of factors. First, they were indirectly defending what many viewed as the much reviled saloons. The heavy-handed use of their resources to pressure the newspapers and local governments was a sign of corruption at a time when the people of the state were highly conscious of business' corrupting influence. Despite the use of some rhetoric that echoed the Progressive Movement's own, liquor interests focused too heavily on arguments pleading with the business community. Their ignorance of and/or inability to enter some of the same forums as the temperance forces prevented them from reaching a larger audience. The Temperance Movement in contrast was able to influence the people of Oregon through churches and schools, arguably some of the most personal and intimate places to reach voters and future voters. Finally, what ultimately separated the liquor interests and temperance forces were their dedication to their cause. Coming from a movement based in Protestant ethos, the temperance advocates co-opted the missionary

habits of their faiths in a ceaseless crusade to drive out something they were convinced was evil. The liquor interests, while dedicated to the profit motive, were not in a constant state of war with temperance as temperance was with them. While organizations existed to represent the interests of the liquor industry, they rarely united to face prohibition, and even then it was temporary and specifically targeted at prohibition, not temperance.

The success of the Oregon Temperance Movement can best be traced to three key events: the passage of initiative and referendum in 1902, the passage of the local option in 1904, and the women's vote in 1912. Without those three events, there likely would not have been prohibition in Oregon prior to the 18th Amendment. The initiative process won temperance forces the opportunity to overcome the staggering wealth and influence liquor interests had over the state legislature. The passage of the 1904 local option planted the seed of prohibition in Oregon, allowing people to experience life with prohibition and determine its potential for themselves. Finally, the passage of the women's vote is what ultimately gave prohibitionists the numbers they needed. The difference in numbers between the 1910 and 1914 votes provide us with this conclusion. In 1910, the two prohibition measures lost approximately 43,000 to 62,000, while the 1914 vote was approximately 137,000 to 100,000. What accounts for a shift of nearly 100,000 votes in favor of prohibition? The presence of a largely pro-temperance female vote and a strong get out the vote campaign won the day for prohibition.

The Prince

Figure 10. Photo of Oswald West
(Courtesy of the Oregon Historical Society)¹²⁶

“Defy All” – Governor Oswald West’s orders to Lt. Col. Lawson of the Oregon Militia to resist any efforts by Baker County authorities to interfere with his mission.¹²⁷

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¹²⁶ “Oswald West (1873-1960).” *The Oregon History Project*, accessed March 20, 2015, http://oregonhistoryproject.org/articles/historical-records/oswald-west-1873-1960/#.VQyGA-G_aiw.

¹²⁷ “Defy All, Says West,” *The Sunday Oregonian*, January 04, 1914, Section One, 7.

One thing that cannot be said of Oswald West, whether it was during his time as governor, state land agent, or Oregon railroad commissioner, was that he was a timid man. Oswald West was, as one contemporary put it, “a man of strong convictions, and his strong square jaw indicates, and rightly so, that he will not hesitate in putting those convictions into force. He has a way too, of brushing the cobwebs of technicality aside, and if they cannot be brushed aside, he goes around them and gets to the point he started for.”¹²⁸ West was a vociferous proponent of prohibition, among other things, which was growing more popular and more important to Oregon voters. So, when Governor West received a letter of petition from a town he likely had never heard of, pleading for aid against warring saloonkeepers, the stage was set for West’s dramatic entrance.

Oregon newspapers, like the *Oregonian*, picked up on the story immediately, reporting on December 21 the contents of the petition and accompanying letter outlining how the “liquor element” had seized control of Copperfield.¹²⁹ The next day, West ordered Sheriff Ed Rand of Baker County to shut down Copperfield’s saloons, acting with the sort of conviction, and unconcern for technicality, that characterized him. Heralded by the *Daily Capital Journal* as the “The First Instance of Kind in Oregon History,” West’s order was indeed the first time an order had been given to shut down saloons in a “wet” town.¹³⁰ West justified this extraordinary act by vaguely referring to his power to act under the state law in cases of breaches of the peace.

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¹²⁸“Gov. Oswald West,” *Daily Capital Journal*, December 20, 1913, Christmas Edition, Second Section, 13.

¹²⁹“Wide-Open Town Appeals To West,” *The Sunday Oregonian*, December 21, 1913, Section One, 9.

¹³⁰“Copperfield Saloons Are Ordered Closed,” *Daily Capital Journal*, December 22, 1913, 2.

West's authority did not go uncontested. Sherriff Rand refused to act on Governor West's orders, claiming "the executive had no legal authority to make the order."¹³¹

Governor West's response was characteristic, "Well, I will close the saloons there myself, and I will close any other saloons in that county that need closing."¹³² Further detail on Sherriff Rand's refusal to act was furnished by the *East Oregonian*:

Ed Rand, sheriff of Baker County, flatly refused to carry out Governor West's order to close the saloons at Copperfield, and said that the only way he knew that the governor could have his wishes carried out was to declare martial law at Copperfield and take in the militia and enforce the law with their assistance.¹³³

According to Rand, Baker County District Attorney Godwin had informed him that no laws or statutes existed which would allow him to close a saloon with a valid liquor license. Until Governor West could provide him with such a code, Rand would not act. Lost in the back and forth between Salem and Baker County was an attempt by Sherriff Rand and DA Godwin to explain to Governor West that the situation was not as lawless as he had been led to believe:

Sheriff Rand and District Attorney Godwin were disposed to make light of conditions at Copperfield, and declared that the governor had been led to believe that a condition of lawlessness existed, when as a matter of fact, there was nothing, they said, other than a neighborhood quarrel, in which two factions were at loggerheads, and each was endeavoring to bring ruin upon the heads of the others.¹³⁴

Governor West did not back down from his position and demanded that the saloons close by Christmas Day or he would take action. Christmas Day came and went, and Rand and Godwin both held to their earlier belief that the Governor lacked authority

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¹³¹"West Declares He Will Close Town," *East Oregonian*, December 23, 1913, Daily Evening Edition, 1.

¹³²*Ibid.*

¹³³*Ibid.*

¹³⁴*Ibid.*

to make his order, while also “feeling confident” that the governor would not call out the militia.¹³⁵ Meanwhile, District Attorney Godwin attempted to head off the confrontation by urging Governor West to send him the affidavits made by the petitioning Copperfield citizens in order to convene a grand jury.¹³⁶ For days after the deadline, West was silent on Copperfield. On December 29 he was interviewed at a Portland event in which he declared “We are going to Copperfield. We are going to close up the saloons, and we are going to do it right.”¹³⁷

Governor West began to “do it right” by announcing the next day that his personal secretary, Fern Hobbs, would be traveling to Copperfield to secure the resignation of all council members associated with the liquor business. Hobbs had graduated from the Willamette University College of Law in 1913, and entered the employ of Governor West in 1913 at the age of twenty-seven. Initially hired as his stenographer, he made her his private secretary, relying on her to perform critical tasks, ranging from handling land negotiations with the federal government to traveling the state to investigate allegations of illegal gambling, alcohol, and other activities of “ill-repute.”¹³⁸ At first this seemed to be a rather restrained response by West, since it had been suspected that the militia would be used to force the saloons closed. However, West’s use of Fern Hobbs immediately set newspapers alight with the imagery of the “young, slight, and capable” “girl” facing off against the lawless, rough saloon men of a frontier town.¹³⁹ A small section of an

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¹³⁵“Copperfield Limit Up,” *Morning Oregonian*, December 27, 1913, 3.

¹³⁶*Ibid.*

¹³⁷“West Says Saloons Of Copperfield Will Be Closed Up Tight,” *Daily Capital Journal*, December 29, 1913, 1.

¹³⁸ “Fern Hobbs (1883-1964).” *Oregon Encyclopedia*, accessed March 16, 2015, http://www.oregonencyclopedia.org/articles/hobbs_fern_1883_1964_/#.VQZVdeEYGSo.

¹³⁹“Sends Girl To Close Saloons,” *Ashland Tidings*, January 01, 1914, 8.

Oregonian's article with the headline, "West Sends Woman to Close Saloons"

encapsulated the sensational nature of the story that would make Copperfield an international topic:

Asked if Miss Hobbs would stop at Baker [City], assemble a company of soldiers and, as a second Joan of Arc, march upon Copperfield, the Governor replied: 'I have said it would all be up to Miss Hobbs and for you to keep your eye on Copperfield when she arrives. She will show the men who couldn't close the saloons there what a woman can do.'¹⁴⁰

Figure 11. Fern Hobbs dressed in her Red Cross uniform, ca 1918 (Courtesy of Baker County Library)¹⁴¹

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¹⁴⁰"West Sends Woman To Close Saloons," *Morning Oregonian*, December 31, 1913, 5.

¹⁴¹"2007.15.3 Digital Photograph Image." *Baker County Library Historic Photographs*, accessed March 20, 2015, <http://www.bakeroregonhistory.info/exhibit5/e50851b.htm>.

The recent passage of women's suffrage in Oregon in 1912 made Fern Hobbs's involvement both fascinating and timely. Hobbs had already caused a stir by being elevated to private secretary to the governor, a post previously reserved for men, but her role as the hand of the governor was itself a significant change from the past. Whether women should be involved in politics at all, was still an issue, so Hobbs' power to affect a showdown with "lawless" men was something to take notice of. The imagery of Hobbs as an agent of purification acting against the vile corrupting influence of the saloon men and liquor was also ideal for the time period. Whether West's use of Hobbs was pure politics or not is debatable, but there is no doubt that he placed a great deal of trust in her to accomplish his objectives. Whatever Hobbs's efficacy in settling matters, the saloonkeepers of Copperfield, less Knezevich, were unimpressed by the news of Governor West's plan. City officials made clear that their response to any request for resignations would be a unanimous "no." They even decorated their saloons with pink and blue ribbons, flowers, and buntings "in honor of the fair official's visit."¹⁴² West was unimpressed, spinning the saloonkeepers' stunt to describe the laying to rest of Copperfield's saloons, "Flowers usually are in order when last rites are to be performed."¹⁴³ The saloonkeepers' lawyer, meanwhile, prepared himself for legal action against the governor, but acknowledged "he was at a loss to know how to proceed against a woman."¹⁴⁴

The stage was set for the showdown at Copperfield. Fern Hobbs was to arrive in Copperfield on January 2, 1914 to convey the governor's demands that the saloons be closed and demand the resignations of those city councilmen involved in the liquor

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¹⁴²"Fern Hobbs Will Be Treated Courteously," *Daily Capital Journal*, January 01, 1914, 2.

¹⁴³"Squad Off To Close Town," *Morning Oregonian*, January 02, 1914, 5.

¹⁴⁴"Fern Hobbs Will Be Treated Courteously," *Daily Capital Journal*, January 01, 1914, 2.

business. The saloonkeepers, H.A. Stewart, William Wiegand, and Tony Warner decked Copperfield out in a cordial, if condescending, display for Hobbs, fully prepared to resist Governor West's demands. Finally, county authorities Godwin and Rand remained silent in Baker City, refusing to take part in the "tempest in a tea pot." Despite the insistence by the saloonkeepers and their attorney that peace would prevail, fears spread that things may turn violent in Copperfield. In the lead up to the events at Copperfield, it was rumored Governor West might resort to martial law, with Sheriff Rand having suggested it as the only way West would see the saloons at Copperfield closed. Hence, the lawyer for the saloonkeepers, James Nichols, prepared them for an inevitable legal showdown by resisting any demands from the Governor. The newspapers speculated prior to Hobbs's arrival that the militia might be called in to enforce the governor's order, but affirmation had not occurred until they stepped off the train to flank Hobbs on the train platform. The *Daily Capital Journal* from that day led with a front page headline declaring "Bloody Clash is Feared in Eastern Oregon" and painted a picture of the events as they unfolded. The loaded imagery of Hobbs, along with the surprise of the militia's arrival, played on multiple levels, revealing the sexism and sensationalism of the period's media.

Miss Hobbs, Governor West's special representative, five feet, three inches in her neat tan boots, stood out on the little depot platform here this afternoon and read Governor West's proclamation declaring Copperfield under martial law. She was flanked by Lieutenant-Colonel Lawson of the Oregon National Guard and five members of the coast artillery, with rifles loaded and ready.

Mayor H.A. Stewart, the six councilmen, of whom four are in the saloon business that Miss Hobbs came to put out of commission, and every other of the 84 citizens of Copperfield were present to hear what the governor's secretary had to say.¹⁴⁵

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¹⁴⁵"Bloody Clash Is Feared In Eastern Oregon," *Daily Capital Journal*, January 02, 1914, 1.

The *Daily Capital Journal* also noted the “conspicuous” presence of guns at the meeting, noting that both saloon factions and their de facto leaders, Stewart and Knezevich, were armed. The situation seemed to give credence to the threat of violence:

“I have a proclamation here from the governor,” said Miss Hobbs. She did not seem dismayed by the nature of the welcoming crowd, the appearance of which would have been enough to make an ordinary man retreat to the train, to say nothing of a girl so small. She seemed lost in her great coat of furs.¹⁴⁶

The coverage of the proclamation reveals the evolving nature of women in politics; while the newspaper gave Hobbs credit for showing bravery in the face of fearful circumstances, it could not fail to condescend to her appearance and stature. Hobbs read Governor West’s proclamation, which outlined the situation as he had come to see it: perversion of Oregon’s Home Rule Law had allowed liquor interests to seize control of Copperfield, factional violence among competing liquor interests in Copperfield had led to fear amongst the citizenry, and finally an inability by local authorities to ameliorate the situation all required action by the Governor. Citing his constitutional duty to uphold the laws of Oregon, Governor West demanded the immediate resignation of all city officials involved in the liquor business, that all saloons be closed until city government could be re-organized, and finally that all liquor currently in Copperfield be shipped out by 4PM on January 3, the next day. If his demands were not met, a declaration of martial law would take immediate effect, and Lt. Col. Lawson and his men would begin enforcing his demands.¹⁴⁷

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¹⁴⁶Ibid.

¹⁴⁷West, Oswald. Copperfield Proclamation. (1 January 1914, Copperfield Papers, Oregon State Archives, Salem, OR) 1.

Mayor Stewart and others' response to the governor's demands was a unanimous "no," which set into motion the Governor's threat of martial law. With the refusal of the town's officials, Fern Hobbs's mission to Copperfield was over, and she boarded the train to return to Salem. Lt. Col. Lawson and his men went into action. Despite being outnumbered, and very likely outgunned, the five members of the militia and Lawson began enforcing martial law by confiscating guns from the crowd that had gathered to hear the Governor's proclamation. After all the talk of potential violence and bloodshed, the transition to occupation was a quiet one. Aside from some reported pistol waving and yelling, the militia was able to confiscate nearly sixty guns from the eighty-four townspeople.¹⁴⁸ Some of Copperfield's council members made a rush for the telephone office, and spoke with their lawyer in Baker City for thirty minutes before the militia seized the office and arrested the council members. Mayor Stewart was apprehended trying to board the train to Baker City.¹⁴⁹ By the evening of January 2, Copperfield was fully under the control of the six militiamen sent by Governor West. Over the next several days, the militia shuttered the saloons, and began the process of removing the town's liquor and gambling machines to the train depot for shipment to Baker City.

With Copperfield subdued, the situation would quickly turn into a fight between county authorities and Governor West. By the next day, Attorney James Nichols, lawyer for the saloonkeepers, secured an injunction against the martial law order from Circuit Judge Gustav Anderson. In a telegraph, Governor West warned Lawson to resist the circuit court's decision, "Understanding Deputy Sheriff Herbert, of Baker County, is to be in Copperfield today. Be sure and extend him every courtesy, but pay no attention to any

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¹⁴⁸"Armed Guards In Copperfield," *Medford Mail Tribune*, January 03, 1914, Second Edition, 2.

¹⁴⁹"Saloons Closed; Officers Arrested," *Morning Oregonian*, January 03, 1914, 10.

papers he may serve.”¹⁵⁰ When the deputy sheriff delivered the injunction order, Lt. Col. Lawson tore the paper to pieces and flung them in the face of the deputy, declaring “that was what he thought of it.”¹⁵¹ Fears of violence grew again as Lawson telegraphed West for reinforcements in the event that Sheriff Rand raised a posse to enforce the injunction. Lawson’s fears were reasonable as a sizeable number of individuals requested to be deputized by Sheriff Rand. Ultimately, Sheriff Rand declined to deputize citizens.¹⁵² West authorized ten additional militiamen to arrive in Copperfield by January 5.

On January 3, Governor West further inflamed county public opinion when he began proceedings to remove Sheriff Rand from office for dereliction of duty, arguing that the Sheriff was either incompetent or complicit in the troubles that had befallen Copperfield.¹⁵³ West telegraphed Circuit Judge Anderson citing a state law that allowed judges to temporarily remove a sheriff. The governor could then appoint a special agent for a period of ninety days. Nothing came of West’s first attempt to remove Rand, because Circuit Judge Anderson was unable to arrange a speedy hearing. Just as the militia reinforcements were arriving in Copperfield to support Lt. Col. Lawson, Governor West was making it known that the militia would soon be leaving Copperfield and making their way to Huntington, intimating to the newspapers that he would close other saloons in Baker County if he found the law was not being enforced. The implication was the militia would “clean up” the towns they passed on their way to Baker City. Whether cleaning up

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¹⁵⁰“Copperfield’s Late Mayor And Recorder Arrested By Lawson,” *Daily Capital Journal*, January 05, 1914, 1.

¹⁵¹“Lawson Calls For Additional Troops,” *The Sunday Oregonian*, January 04, 1914, 1.

¹⁵²“Posse Volunteers To Fight Militia,” *The Sunday Oregonian*, January 04, 1914, Section One, 7.

¹⁵³“Committee Of Citizens Will Succeed Army,” *Daily Capital Journal*, January 03, 1914, 1.

those towns meant martial law seemed to be left up to Lt. Col. Lawson.¹⁵⁴ These actions were arguably provocative, as they showed West's actions in Copperfield were the beginnings of a larger crusade against liquor.

Just as things seemed to be heating up between Governor West and Sheriff Rand, West extended an olive branch, in a way that only Governor West could have. On January 6, Governor West offered to back off the proceedings to remove Rand. The catch: Rand had to agree to enforce all liquor laws, close all houses of prostitution, and appoint one of his special agents, Frank Snodgrass, deputy sheriff.¹⁵⁵ Sheriff Rand refused to deputize Snodgrass, but he did agree to assist Lt. Col. Lawson in the removal of Huntington's gambling devices. Rand's cooperation was especially notable given that contempt proceedings against Lawson were ongoing in Baker City, and there was still a court order for injunction against Lawson's actions in Copperfield. The raid on Huntington, as it was referred to by some, was a calm affair, and an opportunity for one last hurrah for some. A number of Copperfield citizens rode the same train as Lawson and the militiamen to Huntington with the express purpose of drinking as much as they could before the militia shut down the saloons the next day.¹⁵⁶ While city officials expressed surprise at the militia's arrival, numerous complaints by local Rev. Robert C. Lee and a brief investigation by Edward Richards, another of West's special agents, were enough for Governor West to order the town dry.¹⁵⁷

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¹⁵⁴ It is humorous to note that at the same time that Governor West was relying on special agents to expand his crusade on liquor and the saloons, his agents were being charged for some of the same crimes they were investigating. In one instance, a "special agent" Conrad Glantz was forced to plead guilty to giving alcohol to minors. "Glantz Freed By West," *Morning Oregonian*, January 05, 1914, 10.

¹⁵⁵ "War Is Nearly At End," *Daily Capital Journal*, January 06, 1914, 1.

¹⁵⁶ "West's Soldiers Enter Huntington," *Morning Oregonian*, January 06, 1914, 1.

¹⁵⁷ Ibid.

As the war of words between Governor West and Sheriff Rand began to die down, West shifted his attention to District Attorney CT Godwin and the rest of Baker County. Using the same tack that he used against Sheriff Rand, West accused Godwin of negligence and warned him that unless he took prompt steps to enforce liquor laws and close down houses of prostitution, he would prosecute Godwin. Additionally, notices were sent out to police departments in towns across Baker County, including Sumpter, Haines, and Whitney, demanding that the vice trade be shut down. The *Daily Capital Journal* rightly suggested that West was aiming for a much larger campaign against vice:

The governor makes neither threats nor promises in this connection, but in light of events at Copperfield, it is fair to presume that if the governor's orders are not obeyed there will be another small war on a wider range of territory involved. More than that, while the governor made no statement regarding it this morning, from what he said a few days ago there is liable to be something done down this side of the mountains. In fact it seems there will be a general clean-up in which the whole state will be included and no corners overlooked. He's going to sweep clean.¹⁵⁸

After all the fears of violence, events quickly shifted away from the town and the people who had originally been the focus of West's attention. By January 7, only a token force of militiamen remained in Copperfield to oversee the establishment of a new city government and keep the peace between the two saloon factions. Everyone's attention, from West, to Copperfield's deposed city officials, and the whole state shifted to the potential expansion of West's vice crusade. However, before West could claim victory in Copperfield, he would have to overcome several challenges to his authority, ranging from legal challenges, public opposition, and the continued hostility of Baker County authorities.

The earliest legal steps came in the form of advice from the saloonkeepers' attorney urging them to refuse any demands made by the Governor. It was only after martial law

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¹⁵⁸"Godwin Is Told To Act," *Daily Capital Journal*, January 07, 1914, 1.

that Nichols began legal proceedings by securing an injunction from Judge Anderson in the Baker County Circuit Court. Sheriff Rand deputized Copperfield telegraph operator, U.S. Jackson, who in turn transcribed the court order and delivered it to Lawson on the 4th, at which time Lawson tore the court order to pieces.¹⁵⁹ The substance of the injunction was outlined by *The Sunday Oregonian*:

The injunction and complaint, which arrived today, are brought at the instance of William Wiegand and H.A. Stewart against Oswald West, B.K. Lawson, Miss Fern Hobbs, and other persons unknown to the plaintiffs. The injunction demands that all these defendants appear in court January 7 to show cause why a permanent injunction should not be issued restraining them from interfering in any way with the saloon business or destroying the property of the plaintiffs.¹⁶⁰

Nichols's argument was twofold: the saloonkeepers of Copperfield were operating within the laws of the state of Oregon, and that the threat to destroy their property denied due process to the saloonkeepers as they were unable to be heard or make a complaint. In addition to this injunction, Nichols laid the groundwork for two civil suits on behalf of William Wiegand and H.A. Stewart.

Frank Collier represented the Governor, et al against Nichols's charges. Additionally, it would not be a true Westian response without some form of insult levied at one of the county authorities. While West was near making peace with Sheriff Rand after Rand's cooperation in Huntington with Lt. Col. Lawson, he was far from done with District

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¹⁵⁹ It's interesting to note that Lawson actually accuses Jackson of forging Judge Anderson's signature. Lawson wires Anderson himself to verify the order, and even after receiving confirmation that the order was legitimate, and Jackson was within his telegraphing authority to make the signature, Lawson continues to ignore it based on Governor West's orders to do so. Lawson would eventually be found in contempt of court for ignoring the orders, but those charges were dropped later. "Lawson Calls For Troops," *The Sunday Oregonian*, January 04, 1914, 7.

¹⁶⁰ Ibid.

Attorney Godwin. In the January 5 *Morning Oregonian*, West made serious accusations as to Godwin's impartiality in the matter of Copperfield when he declared:

The activities of Attorney Nichols in behalf of the saloon men fully disclose the cause of our failure to get any result from his partner in the law business, District Attorney Godwin. Mr. Godwin informed me that he had an earnest desire to enforce the law and I always wondered why, he had failed until now. I learn his partner is the attorney for the lawless element—the men we were trying to reach.¹⁶¹

West was not incorrect. Godwin was formerly partners with Nichols in a law practice, but whatever question there was of Godwin's impartiality, it was offset by Governor West's refusal to work with Godwin. On January 8, Godwin repeated his demands for evidence to the Governor's claims against Copperfield's saloonkeepers, stating that whatever evidence did exist was evidently in the hands of the governor and therefore needed to be sent to him.¹⁶² West continued to level threats against Godwin, demanding promises that Godwin close down "houses of ill-repute." By January 9, Godwin had had enough of West's insinuations that he was not fulfilling his duties:

I have told him time and again that I am enforcing the laws in Baker County and that I am doing my duty here and I don't propose to repeat it. Now, if Governor West thinks I am not doing my duty, let him do his duty and take steps to remove me.¹⁶³

While the war of words developed between West and Godwin, the hearing over the martial law injunction began on January 10. The first day opened with a three hour long oration from James Nichols to a packed courthouse. Nichols spoke so long, and likely with such vigor, that he fainted following a brief recess at the three hour mark, ending the day. Nichols passionately pleaded "not for the saloon men of Copperfield, but for the rights of

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¹⁶¹"More Troops Sent To Eastern Oregon," *Morning Oregonian*, January 05, 1914, 11.

¹⁶²"Governor Turns Guns On Godwin," *Morning Oregonian*, January 08, 1914, 1.

¹⁶³"Tangles Likely In Copperfield Case," *Morning Oregonian*, January 10, 1914, 7.

American citizens; not for the maintenance of liquor selling, but for the inherent right of man for trial by jury before being deprived of his life, liberty or property.” Nichols argued that West was a “notoriety-seeker” with personal ambitions, and saw Copperfield as an opportunity to aggrandize himself. Nichols argument was that the Governor’s power to enforce the laws was “not self-executory, but that the manner of the execution is provided by the acts of the Legislature and as long as the courts are open so that these legislative acts may be carried out and followed by the Governor in seeing that the laws are enforced, that he must proceed through these prescribed channels.”¹⁶⁴ It was fundamental, yet flew in the face of contemporary developments in executive governance.

Court proceedings resumed on January 12, with the opening of attorney Frank T. Collier for Governor West, Lt. Col. Lawson, and Fern Hobbs. Once again in a packed court house, Collier attacked District Attorney Godwin’s handling of the situation in Copperfield, and citing his neglect of duty, justified the declaration of martial law and use of militia to seize the town and its alcohol. Collier cited Section 3848 of the Oregon Code that allowed the governor to use the militia if there existed “reasonable apprehension that there may be obstruction to laws,” a condition existing in Copperfield due to Godwin’s “neglect of duty.”¹⁶⁵ Further, he argued no conflict between the power of the Legislature and the executive existed in regards to martial law and its effects as the Legislature had delegated said powers to the executive. Collier also challenged the authority of the judiciary to “interfere with the functions of the executive department.”¹⁶⁶ Collier argued that the only remedy for West’s perceived overreach lay with the voters, not the courts, “If the people

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¹⁶⁴“Saloon Men’s fight Begins In Court,” *The Sunday Oregonian*, January 11, 1914, Section One, 8.

¹⁶⁵“Court Right Denied By West’s Counsel,” *Morning Oregonian*, January 13, 1914, 5.

¹⁶⁶*Ibid.*

have any grievance they have the choice of three remedies, the recall, impeachment, or refusal to re-elect him.”¹⁶⁷ Collier conceded, however, that there might be civil liability if the saloonkeepers could prove wrongdoing on the part of West in removing their liquor.

Circuit Judge Anderson ruled in favor of West, dismissing the temporary injunction against West’s martial law order on January 19. Anderson’s ruling backed Collier’s argument on every point. Anderson dispensed with the need to review the circumstances surrounding the need for martial law in Copperfield and went straight to the question of the authority of the courts to inhibit the executive’s actions. Behind Anderson’s decision lay a sense of fear of one governmental branch overpowering another. Specifically, Anderson believed that if he were to rule against West, he would be practicing “judicial control” over the discretionary acts of the executive. Anderson even allowed that whether those acts be “wise or unwise,” any other decision would vest the “ultimate and unrestrained power of government” in one department, that of the judiciary.¹⁶⁸

Anderson’s decision is striking primarily because it rather clearly states that the judiciary should not in any way inhibit the actions of the executive. While the governor is entrusted with using his own discretion in the execution of state laws, Anderson makes clear it is not the judiciary’s place to judge the actions or decision-making of the executive branch. This decision was in keeping with the U.S. Supreme Court’s own ruling involving executive discretionary powers. The Court’s sustainment of the Colorado Supreme Court’s ruling on *Moyer v Peabody* (1904), which also dealt with a governor’s martial law powers,

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¹⁶⁷ Ibid.

¹⁶⁸ “Governor Sustained By Judge,” *Daily Capital Journal*, January 19, 1914, 1.

had signaled a shift in American jurisprudence. The judiciary was to stay out of executive decision making.¹⁶⁹

The decision bolstered West's argument that he acted legally. Citing the judgment that evening, he declared that "I intend the city government and the saloons be divorced, the law must be maintained, and I intend to see that it is."¹⁷⁰ West was quite clear in his discussions with the press that in future instances of perceived lawlessness, he would use the tactics he employed in Copperfield. Of course, the decision did not mean the end to the legal challenge of West's tactics.

The events at Copperfield were now fully in the court of popular opinion as West and his supporters faced off against those in the public who saw West as a bully. One of West's first acts was to return to insulting District Attorney Godwin in the press. In a letter to Godwin, West showed some pleasure to see that Godwin proceeded to close "nuisances." However, the bulk of the letter excoriated Godwin for suggesting that West's attacks on county authorities were actually attacks on the citizens of Baker County. West went so far as to suggest that Godwin's election as District Attorney was an "act of charity," which *The Oregonian* noted was likely a reference to Godwin's only having one hand.¹⁷¹

In a speech to the Portland Ad Club, West defended his declaration of martial law in Copperfield, stating that it was clear to county officials that the laws were being broken,

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¹⁶⁹ The unabridged version of Judge Anderson's decision: "If the judicial department should undertake to restrain by injunction the governor and those acting under his command, or if it was within the province of the court to substitute its judgment for that of the governor it necessarily follows that the power of the judiciary would exist whenever the same might be invoked. Whenever the power to enjoin or restrain exists there follows with it the power to compel obedience and it will thus be seen that if the discretionary acts of the executive, whether wise or unwise, are subject to judicial control either by injunction or mandamus, the ultimate and unrestrained power of government would be vested in one department only, namely the judicial and not as our constitution provides, in three distinct and independent divisions." "Governor Sustained By Judge," *Daily Capital Journal*, January 19, 1914, 1.

¹⁷⁰ "Governor Upheld By Baker Judge," *Morning Oregonian*, January 20, 1914, 6.

¹⁷¹ "Mr. Godwin Scored," *Morning Oregonian*, January 21, 1914, 6.

but they did nothing and even denied knowing the laws were being broken. West again targeted Godwin, “What made me sore, especially, was being played for a sucker by the District Attorney of Baker.”¹⁷² West relied on colorful language to further explain his actions, defending the suspension of laws in Copperfield by calling the saloonkeepers “a bunch of cutthroats” and explaining Fern Hobbs’s capability, “I sent the young lady because when she goes to perform a mission she always performs it.” One statement by West perfectly encapsulated why he fit the mold of a truly Progressive executive:

Why didn’t I go at it through the courts? Because the constitution gives me ample power to go about it in the way I did use, and I am a great fellow for shortcuts. I believe if you think “Damn it” you should say “Damn it.” I didn’t do this because of politics, for I am not running for anything. I am running away from this job as soon as I can.¹⁷³

West’s insistence on doing what he felt necessary by whatever means necessary was the definition what it meant to be an assertive executive. West and his supporters, who contributed opinion sections of the newspapers, consistently hit on the point that West was justified both legally and morally. It is where morality enters into the discussion that we see the argument develop between West’s supporters and detractors. The rhetoric clearly falls along lines of wet vs. dry with West’s supporters parroting his own language, such as “cutthroats” and “scoundrels” to describe the saloonkeepers, while describing the Governor’s actions as a restoration of peace and decency. It was widely acceptable to demonize saloons and their operators since they were seen as the source of many of society’s woes.¹⁷⁴ Because it was a Sisyphean feat to defend the saloon trade, and by

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¹⁷²“Mr. West Defends Copperfield Act,” *Morning Oregonian*, January 22, 1914, 8.

¹⁷³Ibid.

¹⁷⁴ For a truly great reading of the events at Copperfield from an international perspective see the following citation. In it, a boy from Holland sends a Dutch newspaper’s rendition of events to Fern Hobbs in which the Lord Lieutenant (West) had decreed that the burgomaster and other innkeepers of

extension Copperfield's saloonkeepers, West's detractors focused on the heavy handed nature in which he came down on Copperfield. Opinion from the *Sacramento Bee* reflected this:

Put a man of small, narrow, intolerant mind in a position of large authority, and abuse of it naturally follows. Governor Oswald West of Oregon, is a person of that sort, and his present exhibition of "military law" in the little village of Copperfield is flagrant and ridiculous stretch of authority.¹⁷⁵

Governor West was also the subject of derision from officials within the state as when the mayor of Bend, George P. Putnam referred to West's term as the "grand-stand administration" turning Oregon into a "three-ring circus."¹⁷⁶ As Putnam put it, West's aims were honest in promising to "purge the entire State of the so-called 'social evil'" but was often distracted by "petty local difficulties."¹⁷⁷

West faced opposition not only from local authorities and sectors of the public, but he was also facing a civil suit. West was headed back to court when William Wiegand and H.A. Stewart and Tony Warner submitted separate civil suits claiming losses of \$8,000 from West's actions. Additionally, Nichols's appeal to Judge Anderson's ruling against the injunction was heading to the Oregon Supreme Court. In the span of a few weeks, it would

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Copperfield stop their taking of liquor. Sending Fern Hobbs out, she duly requisitioned some artillerymen and placed the town under a state of siege. "Dutch Account Of Copperfield Invasion," *Daily Capital Journal*, March 09, 1914, 3.

¹⁷⁵"California View Of Copperfield Invasion," *Daily Capital Journal*, January 22, 1914, 3.

¹⁷⁶"OREGON MAYOR HERE ATTACKS GOV. WEST; Copperfield Affair an Example of His Circus Methods, Says G. P. Putnam." *New York Times*, accessed April 18, 2015, <http://query.nytimes.com/mem/archive-free/pdf?res=9506E6DD1730E733A25755C0A9679C946596D6CF>.

¹⁷⁷ Ibid.

Putnam also had a few choice words to describe Fern Hobbs, referring to her as a little, inexperienced woman, and repeatedly reminding the interviewer that she was a secretary that had earned the Governor's favor.

Fern Hobbs elicited such interest that there was even a rumor that she might succeed West after his term. The fact that West had elevated Hobbs to such a visible role in Oregon politics at the time when women were finally being allowed to participate created a great deal of excitement for the prospect of a woman in the Governor's Office. "Fern Hobbs For Governor of Oregon," *Medford Mail Tribune*, January 03, 1914, Second Edition, 2.

be decided both by the judiciary, and jury, whether Governor West had overstepped his authority in Copperfield.

West was not the only one facing legal challenges during this time; the saloonkeepers were once again being investigated, this time by a grand jury on charges of providing liquor to minors. The second legal proceeding to originate from the Copperfield Affair was the grand jury deliberations against the Copperfield saloonkeepers, which began in mid-March. One of the jury's first requests was an appearance by Lt. Col. Lawson, for which he was duly summoned; however, Lawson was nowhere to be found. District Attorney Godwin asked Governor West's aid in tracking down Lt. Col. Lawson.¹⁷⁸ Instead of delivering Lawson, West offered to send his agent, Frank Snodgrass, in Lawson's place, a response which was pure Oswald West. The grand jury refused, responding by telegraph, "If Lawson cannot appear we will give your matter the consideration it deserves."¹⁷⁹ West's deduction from this exchange, and subsequent response to the grand jury was to further impugn District Attorney Godwin, claiming Godwin aided Nichols in defending "pimps, gamblers, and booze peddlers."¹⁸⁰ West also felt that this was a ploy by Godwin to aid Nichols in serving a subpoena to Lawson.

Attorney Nichols was attempting to serve Lawson in the saloonkeepers' civil suits, and West's insinuations that Godwin was helping Nichols do so arose from an odd circumstance. Godwin was a former law partner of Nichols, and at some point during Godwin's correspondence with West, he had used letterhead from his former practice. West would point to this as evidence of Godwin's duplicity, but aside from that no real

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¹⁷⁸"Governor's Aid Sought," *Morning Oregonian*, March 19, 1914, 2.

¹⁷⁹"West Raps Godwin In Telegram," *Daily Capital Journal*, March 20, 1914, 1.

¹⁸⁰*Ibid.*

evidence existed showing complicity between Godwin and Nichols. The jury eventually heard from Frank Snodgrass, which by some accounts resulted in shouting matches between Snodgrass and the jury. As the grand jury's deliberations proceeded, the first individual to be indicted for selling liquor to minors was in fact Martin Knezevich, the same man whom the original petitioners had supported in the factional war with H.A. Stewart and the city council.¹⁸¹ Others indicted by the jury included all the saloonkeepers, as well as J.J. Burns, an ex-convict the governor had pardoned in order to serve on the new city council.¹⁸² In their final report, the grand jury let it be known what it thought of Governor West's actions in the county and his continuing war of words with county officials. In the decision, the jury defended the efforts of Sheriff Rand and Attorney Godwin, while slamming the governor's interference, letting him know that the jury did not "require dictation" from Governor West and labeling his use of the militia "unwarranted and uncalled for."¹⁸³

The first saloonkeeper to face trial for providing liquor to minors was deposed mayor, H.A. Stewart. Since the cases against Copperfield's saloonkeepers were based on the same evidence, Stewart's trial would determine whether the other cases would proceed. District Attorney Godwin tried the case against Stewart, who was still being defended by Godwin's former law partner Nichols. That in and of itself smacks of some conflict of interest, not to mention Godwin certainly had motive to tank the case as a poke to the eye of Governor West for his continued insults and insinuations. Nonetheless, no evidence

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¹⁸¹ It should also be noted that Martin Knezevich would flee Oregon into Idaho following his indictment. West in turn refused to fund the extradition of Knezevich back to Oregon claiming that Godwin would not guarantee that the county would reimburse the expense. "Copperfield Case Involves Informer," *Morning Oregonian*, March 20, 1914, 6.

¹⁸² "25 Indictments Are Returned In Baker," *East Oregonian*, March 25, 1914, Daily Evening Edition, 2.

¹⁸³ "Baker County Jury Raps Governor," *Daily Capital Journal*, March 26, 1914, 3.

exists that suggests Godwin was disposed towards letting the saloonkeepers walk. Godwin had consistently asked for evidence from West that might sustain his demands for immediate action, which West refused to provide. There is certainly some indication that the trial became more about the Governor's heavy handedness than about the alleged crime perpetrated by the saloonkeepers.

The case against the saloonkeepers collapsed quickly as a result of the prosecution's witness testimony. The state's evidence against Stewart rested entirely on the testimony of three witnesses: Copperfield potentate, and West supporter, Sam Aklin, and two minors who claimed to have received liquor from Stewart. Unfortunately for the prosecution, Aklin changed his testimony in the middle of the trial to incriminate Stewart more fully. Aklin claimed Stewart told him to give out liquor to the boys on one of the nights in which Martin Knezevich's saloon had been burned.¹⁸⁴ This contradicted the testimony of the boys, who testified that they received the alcohol from Stewart. Closing arguments for both sides included criticism of Governor West. Godwin called West "one of the greatest lawbreakers in the state," while Nichols's name calling was harsher, declaring the governor "a freak, a man who had dared to trample on the Constitution."¹⁸⁵ The jury returned a not guilty verdict in five minutes, and the charges against the remainder of Copperfield's saloonkeepers were dropped the next day.¹⁸⁶

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¹⁸⁴"Deposed Mayor Of Copperfield Freed," *Morning Oregonian*, April 24, 1914, 6.

¹⁸⁵*Ibid.*

¹⁸⁶ In the intervening period between the trial against Stewart and the Supreme Court case, Stewart was the victim of an unknown sniper who shot him three times while he was working on his ranch. Stewart managed to drag himself back to his house where his wife was able to call a doctor for him. Suspecting the brother of the Copperfield town marshal who had had words with Stewart previously and suddenly disappeared into the Wallawas, Sheriff Rand followed him into the mountains for several weeks, eventually apprehending the suspect. He was tried and found not guilty. Stewart, despite grievous wounds, (one bullet punctured his liver) managed to survive the ordeal. "Mayor Of Copperfield Is Shot Three Times," *Daily Capital Journal*, June 22, 1914, 1.

The third legal battle resulting from the Copperfield Affair was Nichols's appeal of Judge Anderson's decision in the earlier injunction case. Heard by the Oregon Supreme Court on October 26, Nichols's argument rested on the denial of due process to his client, William Wiegand, when he was not allowed to object to the seizure of his liquors and the shutting down of his saloon. Attorney Collier once again argued the case for Governor West, denying none of the facts of the plaintiff's case. Instead, Collier repeated the argument that all the actions taken by West and his agents were in keeping with Oregon law, and justified by the circumstances. Justice Burnett delivered the Court's opinion on November 24. The Oregon Supreme Court departed from Judge Anderson's earlier ruling, which concerned itself with the jurisdiction of the judiciary, and focused largely on the nature of an injunction. The Court ruled that Nichols did not have a case, because the nature of an injunction is as a "preventative remedy."¹⁸⁷ Due to the injunction having been gained after the declaration of martial law, the injunction held no power to enjoin something, which had already occurred, or as Bennet so colorfully put it, "We do not...impound the water for the wheel after it has run by the mill..."¹⁸⁸

Judge Burnett stated that no evidence was provided by Nichols showing a continuing threat to Wiegand's goods, and therefore the injunction was not the appropriate

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¹⁸⁷ Oregon Supreme Court, *Reports of Cases Decided in the Supreme Court of the State of Oregon* (Bancroft-Whitney, c1880, 1915), 254.

¹⁸⁸ *Ibid.*, 254.

Bennet's decision more fully provided: "The question is whether the plaintiff has properly conceived his remedy in the present case. Giving the allegations of the complaint their full value, yet it appears that the trespass complained of happened before the commencement of the suit. Injunction is a preventative remedy, and is designed in general to stay the lawless hand before it strikes the blow. We do not, however, impound the water for the wheel after it has run by the mill...The trespass having been accomplished before the commencement of the suit; it would be of no utility for a court to enjoin what has already passed." Oregon Supreme Court, *Reports of Cases Decided in the Supreme Court of the State of Oregon* (Bancroft-Whitney, c1880, 1915) 254.

remedy. Burnett approved of a civil suit as an appropriate method of redress for the saloonkeepers, while also showing disapproval towards the tactics of both sides:

Under such circumstances, the remedy at law whereby in some manner damages could be awarded to him is fully adequate for the redress of his grievances. This being the case, equity, which always uses the remedy sparingly, will not countenance government by injunction which, in some respects, is as little to be desired as the arbitrary exercise of military power.¹⁸⁹

The final legal challenge to Governor West's actions was the civil suit of William Wiegand. The civil suit against West, Lawson, Hobbs, et al was not tried until April 10, 1915, when Nichols and Collier would once again argue their cases before a jury of Baker County citizens. There was one major difference between the previous court cases and the civil case, and that was that West had declined to run for a second term and was no longer governor of Oregon. The question in this case that differed most greatly from the previous cases was whether West and his agents were liable for their actions during the period of martial law in Copperfield. One statute, which supported the argument that the militiamen were not liable, was section 4855 of Lord's Oregon Law, providing that "members of the militia ordered into the active service of the state by any proper authorities, shall not be liable civilly or criminally for any act or acts done while on duty."¹⁹⁰ Despite the presence of Oregon law, which might directly invalidate the Plaintiff's standing, the case came down to both sides attempting to convince the jury whether martial law was justified.

On the first day of trial, Wiegand, Stewart, and Copperfield's former city recorder, R.E. Clarke, all testified as to the events surrounding the arrival of Fern Hobbs and the subsequent declaration of martial law. Collier, cross-examining for the defense, took every opportunity to prosecute the saloonkeepers by asking them about their gambling devices.

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¹⁸⁹Court, *Reports of Cases Decided in the Supreme Court of the State of Oregon*, 257.

¹⁹⁰"Copperfield Plea Of Raid Loss Denied," *Morning Oregonian*, December 17, 1914, 7.

The ensuing series of objections and sustainments got so heated that Judge Anderson was forced to “rebuke” both attorneys and request a more orderly comportment.¹⁹¹ West took the stand in his defense following the appearance of the deposed saloonkeepers. In his testimony, he stated that he based his decision to act on Copperfield from “letters, other evidences, and to talks with people, among them being Mrs. Ada W. Unruh, head of the Women’s Christian Temperance Union, HL Sheldon, then head of the Anti-Saloon League, traveling men who had visited Copperfield, and a letter from an official of the Oxbow Project.”¹⁹²

West returned to the stand the following day for a three hour cross examination during which he was severely questioned by Nichols on his methods. The questioning was so intense that the *Morning Oregonian* noted that the normally unflappable West was “flush” and “he showed that he had not enjoyed the three hours of cross-examination.”¹⁹³ Nichols drove home the argument that West had acted more out of a desire for publicity than principle, asking him:

Didn’t you know you were directing the eyes of the United States to the “lawless element” of Baker County? Didn’t you write an article for the American Magazine concerning the Copperfield episode, and weren’t you and Miss Hobbs snapped by a moving picture man on the state house steps, just before she set out for Eastern Oregon?¹⁹⁴

Rather than deny it, West cast the publicity as a way to “let the people know what was going on.”¹⁹⁵ In response to questions about how much the raid on Copperfield had cost, West hazarded that the expense was somewhere in the neighborhood of \$2,000.

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¹⁹¹“Ex-Governor On Stand At Baker,” *Morning Oregonian*, April 13, 1915, 5.

¹⁹²*Ibid.*

¹⁹³“Mr. West Grilled At Baker Hearing,” *Morning Oregonian*, April 14, 1915, 6.

¹⁹⁴*Ibid.*

¹⁹⁵*Ibid.*

Astoundingly, when Nichols asked why West did not spend more to investigate Copperfield prior to the raid, he replied that funds had been exhausted, and that he had personally borrowed \$1,500 to finance it.¹⁹⁶ Moreover, West testified he had communicated with the District Attorney Godwin and Sheriff Rand during the investigation into Copperfield, and that he felt “strung along” by them. The next day, however, Godwin appeared on the stand to testify that West had never spoken to him directly about Copperfield prior to the arrival of Fern Hobbs, and that no evidence regarding illegal activities had ever been furnished from the governor’s office.¹⁹⁷

Several developments in the case followed. First, \$3,000 of Wiegand’s claim of lost business was dismissed when he admitted in cross-examination that the amount was not reasonably accurate.¹⁹⁸ The next day, Collier asked for a directed verdict in the case. Collier’s argument was based on a reading of the role of the executive, which he asserted cannot be held liable for its actions, for “Where the executive uses his discretion in enforcing the law, he is not liable for damages, you may impeach and remove him from office, but he is answerable only to the people who elected him.”¹⁹⁹ Collier provided three precedents that supported him, one of which was the case against Governor Peabody of Colorado in *Moyer v. Peabody* (1909). In each precedent the governor was found not liable for damages resulting from the executive’s actions. Despite Collier’s argument, and the precedents backing it, Judge Anderson rejected the motion, declaring that West’s

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¹⁹⁶Ibid.

¹⁹⁷“Story Related By Mr. West Denied,” *Morning Oregonian*, April 15, 1915, 6.

¹⁹⁸Ibid.

¹⁹⁹“Directed Verdict Asked By Mr. West,” *Morning Oregonian*, April 16, 1915, 7.

“overthrow of civil government” had not been contemplated in the cited cases, and therefore a jury decision was necessary.²⁰⁰

The startling decision reversed Anderson’s earlier ruling in the injunction case where he declared the judiciary should not interfere with the executive branch. The reasoning behind this decision may be due to the fact that this was a civil case being decided by a jury, whereas the decision in the injunction case rested entirely on the decision of the judge. Anderson’s description of West’s use of martial law as an “overthrow” of the civil government is also a serious indictment of the Governor’s actions. The judge signaled that some impropriety may have existed in Governor West’s actions, but having said it outside the presence of the jury, it was a moot point.

On April 17, the jury went into deliberation. For seven hours those in attendance waited to hear the verdict. Some thought that given the length of time of their deliberation that the jury was inclined against the former governor, but when the verdict came down, it was nine in favor of the defendant and three against.²⁰¹ Surprise was evident on both sides, but the mood turned to excitement as West’s supporters, many of them WCTU members sporting white ribbons, congratulated him on his victory. West’s statement on his victory surprisingly lacked much of the blunt rhetoric he had previously employed to justify his actions, “I was naturally anxious that the verdict should be in my favor, for the case had

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²⁰⁰ Anderson’s decision: “In the previous case of this kind in this court I examined many of the cases which counsel for both plaintiff and defendant have cited as precedent, and at first it might appear that there is a hopeless conflict. There is a difference of opinion as to the length which an executive may go in enforcing the law. The Governor is invested with the power of discretion in declaring military law, but to overthrow the civil government is not contemplated by the law. This court must uphold the law and interpret it and the jury must decide the facts. The question in this trial is the taking and removing of property. The opinion of this court is that the executive is not vested with judicial power to declare cause for which goods may be taken. The jury must say if these causes existed.” “Directed Verdict Denied Mr. West,” *Morning Oregonian*, April 17, 1915, 5.

²⁰¹ “Verdict At Baker Won By Mr. West,” *The Sunday Oregonian*, April 18, 1915, Section One, 1.

been one which attracted statewide attention, involving the great question of human rights. The question, I believe, is now settled for good and all, and the rights of the human being are acknowledged to be superior to those involving mere property.”²⁰² West was certainly referencing the greater battle between liquor interests and the moral imperative of removing liquor’s “corrupting influence” on society. Where liquor interests often couched their rhetoric in the right to property, temperance advocates preached the human impact of unrestrained alcohol use. Copperfield was one small battle in a larger crusade by temperance advocates to see liquor quashed in the state of Oregon.

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²⁰²*Ibid.*

Discussion

The legal wrangling resulting from the Copperfield Affair merits a broader discussion of whether the use of martial law and the state militia was a typical, or even legal, response by a state governor. Sheriff Rand, who pointedly rejected Governor West's order to close the saloons, stated the only means for West to have his way was the declaration of martial law and enforcement through the militia. Sheriff Rand was not alone in believing that West had the power to do that.²⁰³ In the legal aftermath of the Copperfield Affair, even the attorney for Copperfield's saloonkeepers accepted the power of the governor's office to declare martial law and call out the militia. However, one must separate the legality of West's closure of Copperfield's legal saloons and seizure of property, and his use of martial law. The former involves arguments about the power of the executive that date back to the founding of the United States, while the latter was a widely accepted legal black hole that had been established by historical precedent.

The historical precedent for martial law can be traced back to the days of the Tudor dynasty in England, but its development both there and in the United States is murky. The name itself, martial, often has shaped how it is defined, leading to its equation with military law. While it does have roots in military law, historian George M. Dennison cites Sir Matthew Hale, a noted-seventeenth-century English barrister, to provide not just a glimpse into martial law's military aspect, but its civil use as well. Hale referred to martial law as "not a law," but rather "the necessity of government, order, and discipline, in an army."²⁰⁴ Hale's final say on martial law was that it should occur "only in cases of necessity,

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²⁰³"Governor Sustained By Judge," *Daily Capital Journal*, January 19, 1914, 1.

²⁰⁴Dennison, George M. "Martial Law: The Development of a Theory of Emergency Powers, 1776-1861," *The American Journal of Legal History*, Vol. 18, No. 1 (1974): 52-53.

in time of open war, [and] is not permitted in times of peace, when the ordinary courts of justice are open.”²⁰⁵ Hale’s definition drew an important distinction between military law and civil law. Namely, military law was reserved for very specific circumstances, open war, and lacking that, civil courts and laws held sway. Nichols’s original argument from the injunction case relies almost entirely on Hale’s definition, stating the governor’s martial law powers were “not self-executory, but that the manner of the execution is provided by the acts of the Legislature and as long as the courts are open so that these legislative acts may be carried out and followed by the Governor in seeing that the laws are enforced, that he must proceed through these prescribed channels.”²⁰⁶ However, by the events of the Copperfield Affair, Hale’s definition of martial law, and Nichols’s argument, would be seen as antiquated.

For the first few years of the United States’ existence, Hale’s was the agreed upon definition of martial law. Even in situations such as Shay’s Rebellion or the Burr Conspiracy, statesman and jurists alike balked at any conceptualizing of martial law that allowed executive prerogative into its use.²⁰⁷ Thomas Jefferson’s time as President was accentuated by periods of flirtation with dictatorial tendencies. In his own words: “There are extreme cases where the laws become inadequate even to their own preservation, and

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²⁰⁵ Ibid., 58.

²⁰⁶ “Saloon Men’s Fight Begins In Court,” *The Sunday Oregonian*, January 11, 1914, Section One, 8.

²⁰⁷ Dennison, “Martial Law,” 58.

Shay’s Rebellion (1786-1787) was an armed uprising in Massachusetts, largely as a result of dissatisfaction with the economic conditions following the Revolutionary War. The Rebellion was put down after martial law was declared, by the state legislature, and militia still loyal to the state routed the rebel force. “Shays’ Rebellion.” *U.S. History.org*, accessed May 8, 2015, <http://www.ushistory.org/us/15a.asp>.

The Burr Conspiracy was a plot by the former Vice President, Aaron Burr, who conspired with British agents to carve out a new country from the Louisiana Territory and parts of Spanish Mexico. Burr’s plot was eventually found out and his military expedition was driven first out of Ohio by militia forces, then seized in Louisiana after it approached New Orleans. “The American Experience | The Duel | The Burr Conspiracy.” *PBS*, accessed May 8, 2015, <http://www.pbs.org/wgbh/amex/duel/sfeature/burrconspiracy.html>.

where the universal resource is a dictator, or martial law.”²⁰⁸ While Hale was making a very clear case that martial law extended to the military, and only to civilians in times of war, there is one seed that would eventually work its way into the “modern” definition of martial law, which would allow the executive, like Governor West, to act as he did. That seed, teased at by Jefferson’s quote was “necessity of government.” Hale was clearly limiting martial law to the governance of the armed forces, but future definitions of martial law, especially in the United States, would hinge on the necessity of martial law to preserve government, and by extension, law and order. Despite this early debate, martial law only saw initial use in the United States during times of war, such as the War of 1812.

That changed, however, in 1841 when Rhode Island reformers sought to replace the state’s government. After years of petitioning the state authorities for creation of a written constitution, the Rhode Island reformers decided they would form a People’s government and create a constitution without sanction from the state. After creating and ratifying their new constitution, they formed their own rival government and elected Thomas Wilson Dorr the “People’s Governor” in 1842.²⁰⁹ The charter government, which had been presiding over Rhode Island, sought assurance from President John Tyler that he would support them. Tyler stopped short of promising immediate action, but he did assure state authorities that should violence break out he would send federal troops. With that backing, the charter government began a program of arrests to remove the reformers. Seeing his support base disappearing, Dorr called for armed resistance. However, Dorr’s power base was quickly being dismantled. The charter government declared martial law

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²⁰⁸Dennison, “Martial Law,” 58.

²⁰⁹*Ibid.*, 67.

throughout the state and used the state militia to round up dissidents. The Dorr Rebellion ended quite quickly once the charter government re-established its authority.

While the Charter Government had suppressed the rebels, it still faced legal challenges to their actions during the state of martial law. The *Luther* cases (1849) arose from a mother and son, both supporters of Dorr, claiming the Charter Government had violated their rights when militiaman Luther Borden had entered their home and arrested Martin during the state of martial law.²¹⁰ The basis of Luther's argument rested on challenging the legitimacy of the Rhode Island charter government to declare martial law. They claimed there were two definitions of martial law: "the rules and regulations for the government of the army, or a general term referring to the law of public self-defense."²¹¹ Under either of these definitions, prerogative did not enter into the declaration of martial law; rather, circumstances dictated its existence.²¹² The defense argued that the charter government was the only authority to judge the circumstances; and in this case, the charter government was clearly facing an insurrection challenging its sovereignty. The U.S. Supreme Court ruled in favor of the charter government, rejecting the assertion that the charter government lacked legitimacy, and that it was within the power of the charter government to declare martial law given a threat to its survival. It is also important to note that Chief Justice Taney made it clear that it was not the purview of the judiciary to judge the exigencies of the situation under which the charter government had acted. The ruling would introduce a doctrine under which the Court would refrain from deciding "political questions." Leaving concepts like intention up to the political branches to hash out when

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²¹⁰ *Ibid.*, 70.

²¹¹ *Ibid.*, 74.

²¹² *Ibid.*, 74.

complications arose, the U.S. Supreme Court's decision laid the groundwork for a far broader definition of martial law. In this new definition, the state authorities were the sole judge of what measures were to be taken in state crises.

Further evolution of martial law's American definition can be found in the Washington Territory in 1856. Like Oregon, from which the territory had split, Washington had to decide what to do with a sizeable Native American population, which both colonists and government had been antagonizing since the time of American settlement there. The Washington Territory's governor was Isaac Stevens, a 34 year old Army Major with no previous governing experience, and labeled by contemporary Ezra Meeker, to have a policy of extermination in his dealings with the Natives.²¹³ In 1856, Native groups from the Puget Sound area had raided several settlements, including Seattle. Stevens ordered the evacuation of Pierce and Thurston Counties until the raids could be brought to an end, but not all of the settlers left the counties. Those who remained were largely long time settlers who had originally worked for the Hudson Bay Company when it had controlled the territory, and some had Native wives. As historian Roy Lokken points out, many of the remaining settlers were foreign, and the Puget Natives appeared to be responding to American encroachment on their land.²¹⁴ Based on reports that intransigent settlers were providing aid to the Puget tribes, Stevens ordered their arrest and confinement.²¹⁵ Stevens refused to recognize neutrality in the conflict, declaring, "There is no such thing, in my humble judgment, as neutrality in an Indian War, and whoever can

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²¹³Cohn, Samuel F. "Martial Law in Washington Territory," *The Pacific Northwest Quarterly*, Vol. 27, No. 3 (1936): 197.

²¹⁴ Lokken, Roy N. "The Martial Law Controversy in Washington Territory, 1856," *The Pacific Northwest Quarterly*, Vol. 43, No. 2 (1952): 92.

²¹⁵Cohn, "Martial Law in Washington Territory," 199.

remain on his claim unmolested is an ally of the enemy and must be dealt with as such.”²¹⁶

The settlers deemed “allies” to the enemy were rounded up and placed under the custody of the regular army in March, 1856, where they would await a trial by a military commission.²¹⁷ However, if Stevens truly wanted a military commission to try the settlers, he required the effected counties to be under military law.

A fundamental component of martial law required that in order for civilians to be tried by military law, the civil courts needed to be unable to perform such a duty. Stevens accomplished this by proclaiming martial law on April 2, citing a state of war between the territory and the Native tribes. Therefore all civil functions in the affected counties were suspended.²¹⁸ Stevens’s proclamation removed any civil authority in the area, and replaced it with his military authority. Stevens’s effort to try the “sympathizers” was stymied when following the receipt of the proclamation, the commanding officer of the regular army forces holding the prisoners requested they be taken from him as he felt he could not refuse the “requisitions of the civil authorities.”²¹⁹ In other words, the regular army officer felt the conditions did not merit suspension of the civil authorities and wanted to wash his hands of the situation. Stevens obliged, sending the militia to take the prisoners into their custody.

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²¹⁶Ibid., 200.

²¹⁷ Stevens’ actions are notable, because they represent a shift in the relationship between whites and Native Americans in the region. Prior to Stevens’ actions, and the arrival of many American settlers, the relationship between whites and the Northwest’s Natives was much more amiable. Predicated on enriching itself, the British owned Hudson’s Bay Company was much interested in developing relationships with the local tribes through intermarriage and trade. While the HBC did have its share of conflict with local tribes, its policy was not geared towards the mass acquisition of land as it was for the later American settlers. The arrival of American settlers who often illegally squatted on Native lands and the brutal actions of territorial governments, like those of Stevens, led to greater hostilities with Northwest tribes. Gray H. Whaley, *Oregon and the Collapse of Illahee* (University of North Carolina Press, 2010).

²¹⁸Cohn, “Martial Law in Washington Territory,” 201.

²¹⁹Ibid.

Governor Stevens's personality was, in many ways, very much like Governor West.

His contemporary, Ezra Meeker, described him thusly:

He would take no counsel, nor brook opposition to his will. He believed in himself, and he was willing to take all responsibility. He would not shrink from the severest labor nor tolerate idleness in others.²²⁰

When either man, West or Stevens, wanted something, he went after it with tenacity, making enemies along the way. In this instance, Stevens pursued a vendetta against those settlers he suspected of aiding the local tribes. In *Martial Law in Washington Territory*, historian Samuel Cohn rightly points out that there existed two reasons for why Stevens would pursue the method he did. One, that he truly believed he had the power to make his proclamation, and two, he desired a specific outcome in a trial against the prisoners and believed it could not be had in a civil court.²²¹ That an individual with Stevens's character and military background would act with the strongest weapon in his governor's arsenal, martial law, in order to pursue what he must have seen as traitorous behavior seems likely, and understandable. Stevens's faith in a military tribunal over that of a potentially sympathetic jury also seems expedient for his purposes. Stevens's lack of respect for the civil courts and his own heavy handedness were further illustrated by his subsequent actions.

On May 7, Edward Lander, Chief Justice of the Washington Territory, held court in Pierce County. Chief Justice Lander had to have been aware that this was in violation of Stevens's martial law order. Ezra Meeker was present when Governor Stevens reacted to Landers's defiance:

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²²⁰*Ibid.*, 205.

²²¹*Ibid.*, 204.

I witnessed what but few American citizens have ever seen when, on the 7th day of May, 1856, at Steilacoom, I saw twenty armed men, acting under the orders of the Governor of the Territory, enter the court house and forcibly remove a United States Judge from the bench, arrest the clerk, and with him carry off the court records. That is what I saw while standing in the court room with arms in my hands, called there in common with other citizens by the sheriff as a special posse to protect the court from threatened indignity and arrest of the Judge.²²²

The presence of the posse organized to protect the judge failed to prevent the governor's agents from taking Landers to Olympia where he was released almost immediately. Landers proceeded to hold court in his home seat of Thurston County, and on request from the attorneys of the confined settlers, issued a writ of *habeas corpus*. Stevens duly ignored the writ and proceeded to declare martial law in Thurston County on May 14. The attorney responded with proceedings for contempt against the governor, who failed to reply to the court. Finally, Landers issued a writ of attachment against Governor Stevens and sent a US marshal to serve it and arrest the governor. The governor's agents repelled the marshal and Steven's struck back by sending militia to once again arrest Landers and his clerk.²²³

The governor quickly proceeded with the case against the settlers, establishing a military commission to try the settlers for treason on May 23. The settlers challenged the jurisdiction of the commission, claiming that the governor had no power to call such a tribunal. While the commission ruled against the settlers' argument that the governor lacked the power to call such a commission, they also ruled that the commission lacked the power to try them for treason.²²⁴ The power of any courts-martial to try treason emanated from the United States in a time of war, not the territorial government. In this instance, the

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²²²Ibid., 206.

²²³Ibid., 207.

²²⁴Ibid., 208.

tribunal was not derived from a federal order, and the “war” in question was between the Washington Territory and local Native tribes.²²⁵ The settlers were released, and seeing his failure to secure the desired convictions for treason, Stevens lifted the martial law orders.

While Stevens was being dealt defeat in his vendetta against the settlers, Associate Justice Chenoweth acted to see Judge Landers released from custody. Chenoweth issued a writ of *habeas corpus* to militia colonel Shaw requesting the return of Landers. Colonel Shaw refused, replying that his orders derived from the governor. Feeling his orders overruled those of the governor, Chenoweth sent a U.S. marshal to arrest Colonel Shaw, successfully doing so. Stevens reacted by preparing another force of militiamen to arrest Chenoweth rather than allow him to remain and continue issuing writs against his men. Meanwhile the sheriff in Steilacoom summoned men for a posse to resist such an incursion. A violent showdown seemed certain, until Judge Chenoweth appealed to the regular army for aid. Rather than send in his forces, the local army commander went to Steilacoom himself, speaking with the militia commander, and managed to diffuse the situation. The result was the release of Judge Landers, and any further contemplation of charges against the settlers by Governor Stevens.²²⁶

Upon returning to court, Landers re-issued his writ of attachment for Steven’s earlier contempt of court, demanding the presence of Stevens to justify his actions in the holding of the settlers. However, without martial law in place, Stevens lacked any cause for refusing the order and duly appeared. Despite Stevens’s arguments and legal maneuvers, he lost his case, ultimately being fined \$50 for his contempt of court.²²⁷ Stevens, not

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²²⁵*Ibid.*, 208.

²²⁶*Ibid.*, 215.

²²⁷*Ibid.*, 213.

accepting defeat, responded by refusing to pay the fine and issuing a letter, or respite, that appealed to the President of the United States, Franklin Pierce, for his consideration in the matter. The President's response would be delivered via Secretary of State W. L. Marcy. Marcy's message denounced Stevens, pointing out that rather than acting to protect civil government, Stevens had superseded it in order to pursue his own agenda. A portion of the letter is most pertinent to our discussion of martial law:

While the President does not bring into question the motives by which you were actuated, he is induced, by an imperative sense of duty, to express his distinct disapproval of your conduct, so far as respects the proclamation of martial law. Were the President able to adopt the conclusion that martial law could, in any case, be established without express legislative authority, he could not find such a case in the state of things in Washington Territory as you have presented them. Where rebellion, or a formidable insurrection, had in effect overthrown civil government, martial law has been occasionally resorted to as the only means left for its re-establishment.²²⁸

This letter, and Stevens's sound legal defeat, illustrates that the conceptualization of martial law in 1856 was still in the mold of earlier definitions. War or some serious threat to governance was required for martial law to be declared. The incident also placed a check on the executive's power in that martial law did not provide *carte blanche* power to supersede the civil courts if they could still function. Not to be lost in President Pierce's response was the fact that the judiciary, in the form of Landers and Chenoweth, had involved itself in the martial law proceedings. This broke with Taney's *Luther* decision giving the executive and legislature authority to determine the response to crises.

Only five years after Taney's decision and President Pierce's denouncement of Stevens, a situation arose that tested the United States' definition of martial law. The U.S. Civil War brought out intense feelings throughout its population. The image of brother

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²²⁸*Ibid.*, 215.

fighting brother was a powerful, and sometimes literal representation of the conflict. Sedition was feared by the Union as Confederate agents sought to sow discontent within northern and western states and territories. Fear of further rebellion prompted the U.S. Congress to pass the Habeas Corpus Suspension Act of 1863 (and a similar act in 1867) in an effort to combat the threat conspiracy. The Act allowed the president to suspend the writ of *habeas corpus* for the remainder of the War. In September that same year President Lincoln proclaimed the suspension of *habeas corpus* in all cases dealing with prisoners of war, spies, and traitors.

One of the cases to arise during the suspension of *habeas corpus* was *Ex parte Milligan* (1866). Milligan was apprehended along with several others in Indiana for plotting the formation of a Northwest Confederacy.²²⁹ Milligan was a member of the Sons of Liberty and a Copperhead. Among those amenable to the Confederacy's message were Copperheads, anti-war, northern Democrats who sympathized with the Confederacy and desired an immediate peace with the South. The conspiracy members were brought to Indianapolis where they were tried by a military commission in 1864 for treason.²³⁰ Rather than defend themselves from the charges, Milligan, et al challenged the jurisdiction of the commission, arguing that the Constitution guaranteed them a trial by jury.²³¹ Unpersuaded by their argument, the military commission found Milligan and his co-defendants guilty of treason.

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²²⁹ Barry, Peter J. "Ex Parte Milligan," *Indiana Magazine of History*, Vol. 109, No. 4 (2013): 356.

²³⁰ *Ibid.*, 356.

²³¹ Burton, "Two Significant Decisions," 122.

Milligan appealed the ruling to the federal Circuit Court. Serving at the court was the local judge, David McDonald, and U.S. Supreme Court Justice David Davis.²³² The implications of the case were immediately obvious to Davis, who felt the military commission had been illegal since Indiana's civil courts had been functioning at the time. Fearful that the military might ignore the Circuit Court's decision, Davis and McDonald split their decision in order to move the case to the U.S. Supreme Court.²³³

Upon arriving at the U.S. Supreme Court, *Ex parte Milligan* (1866) was swiftly decided 5-to-4 in favor of Milligan and a familiar definition of martial law. Writing for the Court's majority, Justice Davis ruled unconstitutional military trials of civilians when the civil courts were open.²³⁴ Davis relied heavily on a literal reading of the Constitution, citing "That the trial of all crimes, except in case of impeachment, shall be by jury."²³⁵ Davis went on to decry the imposition of martial law from threatened invasion, specifically "martial law cannot arise from threatened invasion."²³⁶ As Milligan was not an enemy combatant, nor was Indiana in the theater of war at the time, the military commission had no jurisdiction to try the conspirators.

The Court's decision, led by Davis, revealed a remarkable stream of thought on the importance of maintaining civil liberties, focusing as it did on the importance of ensuring constitutional rights, like due process, during a time of war. However, a letter written to his brother-in-law a year later would also reveal Davis's concern about executive power when

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²³² Supreme Court justices served as co-judges in the various federal court districts during this period.

²³³ Barry, "Ex Parte Milligan," 357.

²³⁴ Ibid.

²³⁵ Ibid., 359.

²³⁶ Ibid.

he pointed out “The right to try by military tribunal was claimed as an Executive power.”²³⁷

Davis’s opinion on martial law was exactly that of the United States’ earliest adoption of it, essentially that war must have closed down the civil courts, and that Congress was the authority by which military law was initiated, not the executive. Congress was not blameless in Davis’s estimation, as it had attempted to grant to the executive powers which the Constitution had specifically given to Congress.

Notwithstanding, this victory for civil liberties would not stand for long. In 1867, newspaper editor, William McCardle of Mississippi, was arrested for libel and inciting insurrection. McCardle was tried by a military commission, but before the trial could begin, McCardle appealed for a writ of *habeas corpus* to the Circuit Court claiming the military commission was unconstitutional. The Circuit Court refused McCardle’s request and remanded him to military custody, which he in turn appealed to the U.S. Supreme Court.²³⁸ Before the case could be heard, Congress, led by Reconstructionist Republicans, drafted and passed legislation that stripped the ability of the Supreme Court to hear appeals in *habeas corpus* cases. Congress’ reasoning for creating the legislation was to prevent the Court from interceding in Reconstructionist plans to rehabilitate the South. An important tool for achieving suppression of further insurrection was the use of military tribunals. The arrest of McCardle for writing material deemed incendiary was one such example. Somewhat ironically, President Johnson jumped to the defense of the judiciary by vetoing the initial legislation. However, Congress responded by passing it via a super-majority.²³⁹ Despite the passage of the bill, the U.S. Supreme Court assented to hear the *McCardle*

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²³⁷ Ibid., 361.

²³⁸ Burton, “Two Significant Decisions,” 176.

²³⁹ Ibid., 177.

case on the grounds that it was pending prior to passage of Congress' legislation. On April 12, 1859, the Court ruled unanimously that it lacked the jurisdiction to decide the case, stating "We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words."²⁴⁰ The Court was making express reference to Article III, Section 2 of the Constitution which granted Congress the power to regulate the appellate jurisdiction of the U.S. Supreme Court.

The *McCardle* case represented a major shift in the usage of martial law. In *Milligan*, Justice Davis attempted to separate the powers of the legislature and the executive, while also maintaining a definition of martial law that required the civil courts to not be functioning. *McCardle* showed that Davis was foolish in trusting the power of martial law even to a legislature. In this case Congress was energetic and politically motivated to use martial law in peace time in order to achieve its vision of a rehabilitated South. It is ironic that President Johnson sought to defend, indirectly as it may have been, the earlier definition of martial law, but the eventual result of Congress' act was the normalization of military power in peace time.²⁴¹

While the previous examples of martial law provide insight into how it had been used in the United States, all three occurred nearly six decades before the events at Copperfield. A more contemporaneous precedent occurred in 1904 in the middle of the

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²⁴⁰ Rice, Charles E. "Congress and the Supreme Court's Jurisdiction," *Villanova Law Review*, Vol. 27, Iss. 5 (January 1982): 969, accessed April 20, 2015, <http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2374&context=vlr>.

²⁴¹ As for William McCardle, he was never tried by that military commission. By the time he lost his Supreme Court case, the military commander who had ordered his arrest initially had been reassigned and his successor let the matter of McCardle's alleged incitement go. Bragg, Marion B. Letter. *American Bar Association Journal*, Vol. 50, No. 6 (June 1964), 596.

Colorado Coalfield Wars. A series of on-again-off-again strikes and violent repression of said strikes beginning in the early 1900s, culminated in 1913 and '14 with the Ludlow Massacre in which National Guard troops and mining company agents attacked and burned a tent city occupied by the striking workers and their families.

At the turn of the twentieth century, Colorado's coal fields were home to a number of mining operations, largely run by the Colorado Fuel & Iron Company (CFI Co.). The communities that sprang up around the mines were typical company towns, in which the Colorado Fuel & Iron Co. operated everything from the post offices, to housing, and stores. Like many company towns of the era, the CFI Co. used those services, and the fact they were one of the largest employers in the state, to control their labor force.

One of the key moments in the Coalfield Wars came in 1903. The strike at Cripple Creek arose from miners' demands for union recognition, better pay, and fewer hours. Governor James Peabody called out militia troops to protect strikebreakers. Unfortunately, the leader of the militia force was John Chase, described by historian George McGovern as "the state Napoleon, a battlefield overlord summoned in extremity to outwit socialists, anarchists, and other deadly foes."²⁴² Chase lacked any sympathies for the striking miners, seeing them as a fundamental threat to society. Moreover, the mine operators financed Chase's militia force. Recognizing the state could not afford to maintain troops in the field, Peabody asked the operators to pay for the guard forces, meaning their paychecks and supplies came from the mine operators. As the men were effectively in the employ of the mine operators, and their commander was outspoken in his anti-union beliefs, it should come as no surprise that Chase's command resulted in scandal.

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²⁴²George S. McGovern and Leonard F. Guttridge, *The Great Coalfield War* (Niwot, Colo: University Press of Colorado, 1996), 43.

Late in 1903, Chase arrested four strikers without charge and held them until the prisoners could bring suit for violation of *habeas corpus*. When the case was heard, Chase argued “military necessity” in order to maintain the peace.²⁴³ The judge rejected this argument and ordered the men freed, which Chase refused to do, seizing the prisoners and removing them to his custody. The governor eventually backed the court’s decision. Chase again refused, leading to his court-martial for disobedience, which was later negated when Peabody capitulated, this time to Chase’s supporters. The result of Chase’s actions, the lenient response to his blatant insubordination, and continued virtual control of militia forces by mine operators resulted in further instances of arrests without trial of strikers and union organizers. One such case, the arrest of Charles Moyer, by the militia, and refusal to honor writs of *habeas corpus*, resulted in *Moyer v. Peabody*, which went to the Colorado Supreme Court in 1904, and was eventually passed to the U.S. Supreme Court in 1909.

The U.S. Supreme Court’s ruling from the case established a far broader definition of martial law than had previously been seen. In the case, Moyer argued that his right to due process and *habeas corpus* had been violated. The state’s attorney general argued that a state of insurrection existed and therefore military necessity required the detention of strikers to maintain order. The Court’s decision was unanimously in favor of the state’s argument, making a decision that would be strikingly similar to that of Circuit Judge Anderson’s injunction decision during the Copperfield Affair. In essence, the Court ruled that it was not within its scope to question whether a state of insurrection existed, but rather, to question whether the governor was within his power to declare such a state, which he most assuredly was. Declaring that “So long as such arrests are made in good faith and

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²⁴³*Ibid.*, 44.

in the honest belief that they are needed in order to head the insurrection off, the governor is the final judge and cannot be subjected to an action after he is out of office, on the ground that he had not reasonable ground for his belief,” Associate Justice Oliver Wendell Holmes provided the governor and his agents immunity for their actions so long as they could claim necessity.²⁴⁴ Holmes advanced executive prerogative when he said, “When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process.”²⁴⁵ Finally, what goes unsaid is that throughout the strikes during this period, Colorado’s governor had never declared martial law. The court conceded that when the governor called out troops with the intent of suppressing an insurrection, defining an insurrection was left to the executive, meaning a virtual state of martial law existed.

From these examples, several trends emerge. The clearest trend is the shift away from martial law as a wartime measure to a tool of government during times of “necessity.” One can argue that necessity is an unsaid, but clearly implied, element of the wartime measure, given that a government might not survive the loss of a war or insurrection. While Thomas Jefferson may have entertained the thought that a government’s survival might occasion the need for a dictator or martial law, he and his contemporaries likely would have been as distraught by a governor’s use of it as President Pierce was in the case of Governor Stevens in the Washington Territory. However, the Dorr Rebellion does first give rise to a localized precedent for a state government to act towards its survival in what it

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²⁴⁴“*Moyer v. Peabody*.” *FindLaw | Cases and Codes*, accessed January 13, 2015, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=212&invol=78>.

²⁴⁵*Ibid.*

might term as an insurrection. The government of Rhode Island, beset by an opposing political entity, reacted by declaring martial law and beginning a program of arrests. The U.S. Supreme Court supported the government's actions, claiming it did so as a matter of necessity in order to ensure its survival, while also removing the judiciary from judging the decision making of state authorities.

The case of the Dorr Rebellion is relatively clear cut, as it can hardly be argued that the state was not facing an insurrection, but the validation of Rhode Island's actions does begin a process of evolving martial law's definition. The case of Governor Stevens and the Washington Territory only fourteen years later is far less clear cut. While Stevens could claim a war was occurring within his territory, his subsequent actions would lead to another moment in the evolution of martial law, and by extension the power of the executive.

Stevens met with resounding condemnation from his political peers for his use of martial law, which was seen as a usurpation of civil authority. Despite the great power martial law provides to the executive, one key component he was attempting to bypass was that martial law can only exist in circumstances in which the civil authorities are unable to perform their duties. As Chief Justice Landers set out to prove, the courts were still very much capable of operating, and the only reason he was not able to proceed with his duties was because Governor Stevens had declared martial law and arrested him. Of course, this raises an interesting paradox. Stevens declared martial law prior to Landers holding court, thereby superseding civil authorities until he removed martial law. However, Landers proved that the civil authorities could function given that he was present and ready to perform his civil duties. Were it not for his arrest by the militia, he would have done just that, thereby showing that martial law could not exist. The question must be asked then, who is right?

The way it played out, Landers ultimately won, not just in tweaking the governor's nose and fining him for contempt of court, but also when President Pierce's reply soundly reprimanded the governor for his actions. Pierce's reply makes clear that not only is martial law a tool that requires some conference of approval from the legislature, but the circumstances under which Stevens declared martial law did not meet the definition of a dire threat to the survival of the Territory's government. Stevens was found to be acting like a dictator, imprisoning judges and citizens alike, establishing military tribunals, and declaring martial law in counties which posed potential threats to his continued campaign against perceived traitors in his war against the local Native tribes.²⁴⁶

In *Ex parte Milligan*, one might consider that the definition of martial law had been maintained by the U.S. Supreme Court's decision. Justice Davis's words echoed those of President Pierce's when he ruled unconstitutional military tribunals when the civil courts are active, but also the power to enforce martial law to be reserved for the legislature, not the executive. However, the nature of the conflict left a clear imprint on the American psyche. Despite Davis's intent to safeguard civil liberties, detractors saw the Court's decision as politically motivated, calling it "judicial tyranny," and unable to withstand "the strain of a real war."²⁴⁷ The last charge most clearly referenced the need by the government to act authoritatively in suppressing threats.

In contrast, *Ex parte McCordle*, revealed that the slim majority in the Supreme Court that leaned towards civil liberties was no match for a determined political force. In this case, Reconstructionist Republicans, were determined to use the military not only to

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²⁴⁶ Despite Stevens' conduct, and reprimand, for his actions, he would be elected as territorial delegate to Congress in 1857, which Cohn notes may indicate that the governor enjoyed popular support for his actions. Cohn, "Martial Law in Washington Territory," 216.

²⁴⁷ Barry, "Ex Parte Milligan," 362.

police the south, but to prop up Republican governments. The fact military policing was perceived as a necessary tool during peacetime demonstrates some growing inclination towards acceptance of a new definition of martial law. This new definition eschewed due process and trial by jury in favor of arguments that favored security. War or insurrection did not have to displace civil courts. Instead, demonstrating a threat to national security was reason enough to institute martial law. It is not a great leap from the actions of the Reconstructionists to see how Governor West might have felt obligated to enforce his will militarily.²⁴⁸

Turning to the Colorado Coalfield Wars, we see almost a complete 180 degree turn in the definition and perception of martial law and the power of the executive vis-à-vis martial law. In the Dorr Rebellion there existed a substantial threat of insurrection against the state government; in the Washington Territory an Indian War necessitated the use of militia in defense of the effected counties. In Colorado, there was a miners' strike. In the strike at Cripple Creek, the governor responds by sending the militia to escort strikebreakers past the striking miners and prevent violence. The militia was almost wholly paid for by the mine operators and commanded by a rabid anti-unionist. Their subsequent actions led to arrests without trial or charges by the militia, leading to a U.S. Supreme Court case, which completely denied the sentiment of President Pierce's earlier statement on martial law. Not only did Governor Peabody have the power to unilaterally declare

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²⁴⁸ One might argue the moral imperative of Reconstructionists far outweighed that of Governor West, who was only fighting alcohol, after all. However, I cannot emphasize enough the incredible vitriol stirred up during the fight for prohibition. Governor West was on record stating he would like to shoot a saloonkeeper, Carrie Nation was running around with a hatchet attacking saloons, and liquor men throughout the nation were doing everything in their power to denigrate and defeat the Temperance Movement. Temperance and prohibition were moral imperatives so great for their time that the U.S. Constitution was amended.

martial law, martial law was implied wherever the state's militia was sent. Additionally, the circumstances under which martial law or the militia were used was not for the judiciary to contemplate, but something that the executive would be trusted to handle in good faith. To top off the U.S. Supreme Court's incredible decision, they provided immunity for the actions of the governor and his agents during times of martial law. Essentially, the only respite for perceived wrong doing was to recall the governor or vote him out at the end of his term.

With the U.S. Supreme Court decision, the governor was now the sole authority on all matters martial, a workers' strike could be classified as open insurrection, and the civil authorities were irrelevant if the governor deemed it so. How, in fifty years, did the concept of martial law and executive prerogative change so dramatically? What happened to the importance of the executive to at least confer with the legislature before declaring martial law, to requiring a state of war or open insurrection, to the civil authorities being incapable of carrying out their duties?

To understand the shift in the American executive, one must understand how the executive has been defined previously. The executive is a catch all term that often refers to a person who manages or directs something. In earlier times, one might venture to call a tribal chieftain an executive. As societies became more sophisticated, tribal chiefs became kings, and in most cases, our modern society has presidents and prime ministers. What the executive was and did, and represented, however, has always been "debated." Nobles warred on kings to check their "arbitrary" powers, Catholics rebelled against Protestant monarchs and vice-versa, Popes challenged the authority of emperors, and Kings created popes when it suited their purpose. All of these situations show the violent debates in

history to determine what an executive could and could not do. Of course, there existed philosophical discourse on how an executive should behave. One can go back as far as Western antiquity and certainly further to find those who ruminated on the role of the king, senate, and people in the realm of governance.²⁴⁹

Niccolò Machiavelli's *The Prince* is a fountainhead of thought on the executive. The foremost aspect of what made the executive was the source from which his power emanated. While *The Prince* dealt with an executive, in the form of a king or duke, Machiavelli recognized that the power of the executive in these cases did not derive just from some hereditary origin. The people were an important instrument in legitimizing and maintaining the authority of the executive. Machiavelli refers to this as “monarchy with public support.”²⁵⁰ Machiavelli also recognizes that there are two types of citizen to contend with: the nobles and the common people. The nobles seek dominance over the commoner while the commoners seek not to be ruled over by the nobles, and inevitably the result is a monarchy, a republic, or anarchy. It is Machiavelli's contention that the king, or executive, which is thrust to power via the commoners is much more likely to maintain power, stating:

A man coming to power with the support of the common people holds it alone and has no one, or hardly anyone, around him who's unwilling to obey. What's more, you can't in good faith give the nobles what they want without doing harm to others; but you can with the people. Because the people's aspirations are more honourable than those of the nobles.²⁵¹

The executive that can claim popular support has a stronger claim to power, in addition to a moral one. The executive is then a protector of the people against the oppressive

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²⁴⁹ And no doubt countless Native American, African, Middle Eastern, and Asian philosophers existed as well, but I will limit the scope.

²⁵⁰ Niccolò Machiavelli, *The Prince*, Penguin Classics Deluxe Edition (New York: Penguin Books, 2009), 38.

²⁵¹ *Ibid.*, 39.

nature of the nobles. Machiavelli goes on to impart that any ruler intent on keeping his kingdom must have one thing on his mind:

A ruler, then, must have no other aim or consideration, nor seek to develop any other vocation outside war, the organization of the army and military discipline. This is the only proper vocation of the man in command.²⁵²

Early American history saw the executive as a potentially terrifying source of dictatorial impulses. American colonists were acutely aware of what an executive with perceived arbitrary military powers and no need for popular support could accomplish. To be called “King” was to refer to someone’s tyrannical behavior. A body of peers, empowered to create legislation and control the purse strings, was the preventative remedy for the executive tyrant. The Legislature was deemed to be the source of sovereignty in many of the newly formed states, while the governor’s office was deemed to be a mere agent of the Legislature’s will. The definition, which most closely fit the executive in Early America, was to “execute” the laws passed by the legislature. Nichols was making just that point when he said the Governor’s power to enforce the laws was “not self-executory, but that the manner of the execution is provided by the acts of the Legislature and as long as the courts are open so that these legislative acts may be carried out and followed by the Governor in seeing that the laws are enforced, that he must proceed through these prescribed channels.”²⁵³ The executive, according to Nichols, and for many in the early United States, was second in power to the Legislature.

Nonetheless, the founding fathers argued over how powerful the executive should be. The war of words between Alexander Hamilton and Thomas Jefferson in the *Federalist Papers* and the *Anti-Federalist Papers* provides insight into the debate of the organization

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²⁵²*Ibid.*, 57.

²⁵³“Saloon Men’s Fight Begins In Court,” *The Sunday Oregonian*, January 11, 1914, 8.

of the early Republic. Hamilton's concepts on the executive and "good government" shed the most light on the primacy of the executive in Progressive politics of the 1890s -1920s. While many of Hamilton's concepts focused on the formation of a strong, central government, the key component of that government had to be an "energetic" executive. Hamilton's *Federalist* 23 expressed strong concepts already mentioned: "necessity," "ends justify the means," and "survival." When Hamilton argues that "the *means* ought to be proportioned to the *end*; the persons, from whose agency the attainment of any *end* is expected, ought to possess the *means* by which it is to be attained," he is saying specifically the *ends* are the key consideration, and the *means* must be furnished to achieve those *ends*. Failure to supply those means, or to become too bogged down in justifying the means invariably results in a slow and inadequate government. Hamilton spoke out against the weaknesses that had plagued the United States during the time of the Articles of Confederation, when an inept and feeble central government was unable to respond to crises like Shay's Rebellion. In *Federalist* 70, Hamilton argued good government was the result of an "energetic" executive. The energetic executive was "essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy."²⁵⁴ According to Hamilton, the ingredients for an "energetic" executive were, "first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers."

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²⁵⁴ "The Federalist #70." *Constitution.org*, accessed May 8, 2015, <http://www.constitution.org/fed/federa70.htm>.

While the Federalists' strong, central government argument eventually won out at the Constitutional Convention, the existence of an "energetic executive" was not certain. Certain conditions were required for an executive to overcome the check of a legislature. One condition was a popular mandate for the executive. Their election itself might suffice if they were elected on some issue which drew great popular attention. However, if there were no popular causes to pursue, no groundswell to inspire action from the executive, what claim to action did they have? Machiavelli's requirement for a "monarchy by popular support" meant the executive needed some claim to popular support in order to claim legitimacy and avoid responsibility for any unpopular actions. The second requirement was Hamilton's third ingredient, or provision for support. Simply put, the executive had to have the resources to execute the laws. If the executive's office lacked the funds and manpower to enforce the laws of the land, it could not act energetically.

It could be pointed out that I have left out Hamilton's "competent powers" ingredient, which is arguably the most important ingredient. However, that does not seem to have ever been an issue in any of the examples so far reviewed. The success (or failure, depending on your political leaning) of the Federalists, was in securing sufficiently vague phrasing in the Constitution, which allowed for broad interpretations of powers in regards to the various governmental branches. One interpretation for the existence of the Constitution's vagueness in certain areas was that it allowed for flexibility in the exercise of the various branches' powers. Since many state constitutions would end up mimicking the Constitution, they carried with them seeds of the Federalists vague wording.

An examination of Oregon's constitution reveals just how vague the powers of governor were, and how under the right circumstances, they might be interpreted to allow

for an energetic governor. Several sections of the 1857 Oregon Constitution are pertinent to the discussion of executive power, and to the events surrounding Copperfield. Section No. 9 of the constitution spells out the governor's military powers: "The governor shall be commander-in-chief of the military and naval forces of this state, and may call out such forces to execute the laws, to suppress insurrection, or to repel invasion." Section No. 10 re-emphasized the governor's role in executing the law: "He shall take care that the laws be faithfully executed." Martial law is never mentioned anywhere in the Oregon Constitution, because it was not an enumerated power, but rather, an accepted reality when military authority replaces civil authority.

President Pierce did not reprimand Stevens for declaring martial law, so much as he reprimanded him for not first consulting the legislature, and for declaring it when no clear danger to Washington's survival was present. Justice Davis's decision in *Milligan* was not only a reprimand of the executive, but of the legislature for attempting to hand away a power that was expressly granted to it by the Constitution. Lost in all of West's rhetoric is any thought to consult the legislature. By 1914, legislatures had done exactly as Justice Davis feared in 1866 and ceded an express power to the executive. The state constitution repeats the governor's role as protector and executor of the law. This is important, because Oregon was actually the only state to include "execute the laws" in the section dealing with the governor's military powers. When West defended his actions in court and in public, he relied on this language to support his position. The governor's job was to protect the laws of Oregon, and West believed the saloonkeepers of Copperfield were making a mockery of those laws.

How West came to do what he did, and how he could do so without meeting the same fate as Governor Stevens can be found in the U.S. Supreme Court's decision in *Moyer v. Peabody* (1909). Justice Holmes's decision provides a glimpse at a new perception of the role of governor at the turn of the century. Holmes declared:

No doubt there are cases where the expert on the spot may be called upon to justify his conduct later in court, notwithstanding the fact he had sole command at the time and acted to the best of his knowledge. That is the position of the captain of a ship. But, even in that case, great weight is given to his determination, and the matter is to be judged on the facts as they appeared then, and not merely in the light of the event. When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process.²⁵⁵

There are two crucially important points arising from Holmes's statement. First, he equates the state's executive with that of a ship captain. The responsibility of securing the ship is paramount and responsibility resides solely on the ship's captain, their word being the law on board. Citing a number of cases involving ships, Holmes repeated rhetoric similar to that used by Alexander Hamilton in describing his energetic executive. As Holmes further explains, the governor, or head of state, is the authority to judge on matters involving the "survival" of the state, and has the power to override the rights of any individual in pursuit of maintaining that "survival." Holmes also accepted that the executive process can supersede judicial process when the executive can show some danger exists. Backed by a unanimous U.S. Supreme Court, Holmes conceded enormous powers to the state's executive. There was no mention of legislative input, and the judiciary was to remove itself from judging the decisions of the executive. Hamilton would have found these

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²⁵⁵"*Moyer v. Peabody*." *FindLaw | Cases and Codes*, accessed January 13, 2015, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=212&invol=78>.

conditions conducive to an executive who could act without the restraints that would inhibit the administration of a strong government.

The U.S. Supreme Court's decision did not occur in a vacuum. Holmes was interpreting the role of governor based on shifting perceptions of what a state's executive should be. He does not cite case law or state statutes or enumerated powers in the state constitution that specifically discuss the power of the executive in so vast a definition. The old order, which concerned itself with maintaining the status quo and a balance of powers, was giving way to moralizing politics. At the turn of the twentieth century the Americans' political views were changing. Americans were becoming less concerned with checking government powers, and more concerned with checking its rampant corruption. Holmes's reference to the governor as captain of the ship was a clear representation of shifting political norms, which originated from the Progressive Movement of the 1890s to 1920s.

While the Progressive Movement is clearly dedicated to restoring a measure of democratic process to a stagnant political system, it is also in some ways guilty of paving over important democratic processes. As political scientist Scot Zentner put it, "Progressives sought to save the social order of liberalism by recasting the role of the central government in economic and social regulation and by reshaping the very form of constitutional government itself."²⁵⁶ In order to achieve those economic and social changes, progressives sought reforms that more readily facilitated societal change. Fundamental to the progressive reform of society was a change to how progressives viewed the governor as a political entity. In *How Governor's Built the Modern American Presidency*, Saladin Ambar cites an *Evening Post* article on the election of Governor Woodrow Wilson:

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²⁵⁶Zentner, Scot J. "Liberalism & Executive Power: Woodrow Wilson & the American Founders," *Polity*, Vol. 26, No. 4 (1994): 580.

“Governors are coming more and more to be regarded as party leaders. In Woodrow Wilson’s case, the thing was perfectly clear, for he again and again notified voters that, if they elected him Governor, he should regard himself as Democratic leader – he is to be responsible and no boss or machine, for executing the popular will.”²⁵⁷ Wilson was quoted as saying, “There is something pathetic in the reliance of Americans on statute. The average American always wants a statute to save him from something or somebody. One of the most conspicuous things about the spirit of America is its faith in the law. Our appetite for legislation is notorious. The real way to have good government is to have good men.”²⁵⁸ Wilson placed himself above any other officer in the state, in addition to lambasting the conflation of balanced government with good government. He was “executing the popular will,” a claim that no state senator or attorney general could make. By claiming popular support, he could lead the political machine rather than have it lead him. This was exactly what Progressives wanted in an executive, someone who could rise above the inadequate status quo and govern. When Wilson said “the President stands at the center of legislation as well as of administration in executing his great office,” he connected Machiavelli’s Prince with progressive republicanism.²⁵⁹ Machiavelli’s quote described another essential component of the Progressive executive: “A man coming to power with the support of the common people holds it alone and has no one, or hardly anyone, around him who’s unwilling to obey.” Woodrow Wilson, Oswald West, Isaac Stevens, and James Peabody were all executives who sought to set their state’s agenda while claiming their actions, no

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²⁵⁷ Ambar, Saladin M. *How Governors Built the Modern American Presidency*, 1st ed.. (Philadelphia: University of Pennsylvania Press, 2012), 73.

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*, 74.

matter the critiques of constitutional impropriety, were justified because they acted for the people.

Progressives wanted an executive that could accomplish their agenda. Fears of a dictator were disregarded as unrealistic, especially when Progressives already felt oppressed by what Machiavelli might have termed rule by the nobility. Moneyed interests ruled the legislature and local governments. Progressive voters felt powerless and largely at the mercy of the political machine wielded by those with the money to buy votes. The initiative and referendum were one method of going around the corruption, but a leader like Wilson or West who ran on progressive reforms and embodied an “ends justify the means” mentality spoke the language of the Progressive Movement.

Conclusion

In the wake of the jury's verdict in William Wiegand's civil suit, any further thought of suing West, et al was dropped, as the evidence, argument, and a supposedly sympathetic Baker County jury were not enough to sustain the saloonkeepers' cases. It was not all bad news for Copperfield's saloonkeepers. In January, the newly elected governor, James Withycombe, proclaimed the lifting of martial law in Copperfield. Without the yoke of West's military rule, Copperfield held elections for city government. J.H. Dauer was elected mayor and H.A. Stewart and William Wiegand were both elected to the city council.²⁶⁰ The positive news was muted for the saloonkeepers, since state-wide prohibition had passed the ballot in November of the previous year. Given that their saloons and liquor would soon be illegal, the city council, including Wiegand and Stewart, voted to remain dry.²⁶¹ The same newspaper article that broke the news of Copperfield's surrender on booze also shed light on the town's withered community. Sam Aklin, founding father and leading merchant, had left town, and school attendance had dropped by fifty percent.²⁶² The railroad depot at Copperfield had been closed as far back as March, 1914, when the then Oregon Short Line railroad agent declared the town dead, with just fifty people remaining in Copperfield.²⁶³ The Oxbow Project, which had shown so much promise was in and out of receivership, and did not deliver any power until 1917, when its first transmission lines were connected to Halfway, Oregon.²⁶⁴ Copperfield was clearly in the

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²⁶⁰"Suit Against West Ordered Dismissed," *Daily Capital Journal*, November 24, 1914, 8.

²⁶¹"Copperfield Stays Dry," *The Sunday Oregonian*, January 24, 1915, Section One, 8.

²⁶²*Ibid.*

²⁶³"All Leaving Copperfield," *Daily Capital Journal*, March 12, 1914, 5.

²⁶⁴"Kingman Kolony: Organize Industrial Club," *Malheur Enterprise*, April 28, 1917, 4.

sad, final stages of a bust town, but it would not be Copperfield if it did not go out in a literal blaze.

In the early morning of April 13, 1915, the remnants of Copperfield's business district burned to the ground. The buildings of the men who figured so prominently in the Copperfield Affair -- H.A. Stewart, Tony Warner, William Wiegand, and Sam Aklin -- were all reduced to ashes. The towns various dry goods stores, lodging houses, restaurants, and post office were gone. A combination of winds and a system of unmaintained pipes meant that all the people of Copperfield could do was look on as their town burned. Ironically, one of the few buildings to survive the fire was the long abandoned saloon of Martin Knezevich.²⁶⁵ Arson was the clear culprit when it was discovered that the telephone lines between Halfway and Copperfield had been cut three hours prior to the fire, and a witness claimed to have seen a man riding a horse at high speed from the cut line towards Copperfield.²⁶⁶ If the case was ever solved, it was never mentioned in the newspapers. The few who remained eked out an existence in the furthest corner of Oregon, but never again could they aspire to what they had just a decade before. Copperfield was dead.

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²⁶⁵"Copperfield In Ruin," *Morning Oregonian*, August 14, 1915, 7.

²⁶⁶"Arson Plot Is Bared," *The Sunday Oregonian*, August 15, 1915, Section One, 6.

Figure 12. Fern Hobbs returns to the site of Copperfield in 1959²⁶⁷ (Courtesy of Baker County Library)

While Copperfield may be long buried, its lessons about executive power during a time of political upheaval should not be. Copperfield was a small battle in a much larger struggle in Oregon and the United States. Political activism was seeing an enormous resurgence among the middle and working class in response to decades of political corruption and corporate paternalism, which operated for the benefit of the upper class.

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²⁶⁷ "2007.15.10 Digital Photograph Image." *Baker County Library Historic Photographs*, accessed March 20, 2015, <http://www.bakeroregonhistory.info/exhibit5/e50858b.htm>.

The Progressive Movement, as it would come to be called, was focused on remedying the social and political shortcomings of the United States. The Progressive Movement required strong personalities and energetic displays of populist power in order to achieve its agenda. The election of men like Woodrow Wilson, James Peabody, and Oswald West were indications of an electorate that was interested in results. Strong, energetic executives that saw their authority stemming from the people could aggressively pursue a Progressive agenda and cite the will of the people when challenged.²⁶⁸ Legislatures, seen as defenders of liberty after the Republic's founding were viewed as bastions of corruption during the Progressive Era.

Social issues were also of profound importance to the Progressive Movement, but one which split the classes. The largely Protestant, middle class faction was intent on addressing a number of society's moral failings. While sizeable portions of the working class might have favored the same social issues as the middle class, like temperance, education, and environmental regulation, the working class was also the target of many of those issues. Middle-class reformers saw the working class as a part of the problem, and by reforming the "uncouth" working class, they could in turn address many of the issues affecting society. Copperfield was a direct corollary of the Oregon Progressive Movement's war on alcohol. Temperance advocates were middle-class Progressives seeking an end to "devil rum" and the associated saloon business. The election of the prohibitionist Oswald West was a victory for temperance advocates as it placed one of their own in the most powerful office in the state. Oswald West embodied the Protestant ethos that had

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²⁶⁸ One might say that Governor Peabody's actions during the Colorado Coalfield War were not Progressive, but I would argue that unions were still unpopular to a degree. Additionally, it would support the split between middle-class Progressives and working-class Progressives on certain issues.

originated in the previous century's Great Awakenings, which in turn had formed the moral underpinnings of the Progressive middle class' political activism. The belief in the righteousness of his cause, paired with the popular backing of many Progressives and temperance advocates, made using the governor's discretionary powers easy for West. As West was quoted, "if you think damn it, say damn it."²⁶⁹

West's dedication to the temperance cause was unquestionable. West saw Copperfield as a clear example of the insidious nature of the liquor industry, and he had to put a stop to the corruption and violence stemming from liquor. Copperfield presented an incredible opportunity for West to make a statement about the evils of liquor that the state and perhaps even the nation would hear. The fact Copperfield was a failed frontier community could only have made West view it as an easy target to make that statement. Resistance should have been minimal: the population was poor and small, it had no influence either politically or economically, and its reputation was one of immorality and corruption. Imagine West's surprise when the saloonkeepers of Copperfield did fight back and he even incurred the scorn of the public and his peers. The scandal of Copperfield arose because, despite the changing political landscape of the Progressive Era, West's actions were still seen as an overreach. The act of unilaterally declaring martial law, occupying a town, and disbanding its government was bound to make people mad and call into question the discretionary powers of the executive. The question at the heart of Copperfield Affair was did the governor have the power to declare martial law given the circumstances in Copperfield.

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²⁶⁹ "Mr. West Defends Copperfield Act," *Morning Oregonian*, January 22, 1914, 8.

The answer was not as clear as it might seem given the various court decisions. The first court case, involving the injunction against martial law, and ruled upon by Judge Anderson, supported Governor West. However, the decision dodged any judgment on Governor West's actions by taking the stance that the judiciary could not judge the actions of the executive. In the appeal to the Oregon Supreme Court, the court's decision again took the path of least resistance by ruling that an injunction was an improper remedy for the saloonkeepers. In the civil suit, West was cleared by a jury of damages suffered from martial law. The jury's decision supported that West was within his powers to declare martial law in Copperfield.

These court decisions, especially that of the civil suit, undeniably validate West's martial law order.²⁷⁰ However, West benefited greatly from recent historical precedent, both in legal thought and political thought. Instances of martial law prior to 1914 demonstrated a trend towards West's own justifications. The Dorr Rebellion demonstrated the legitimate use of martial law by a state government to guarantee its existence outside of war. Additionally, it introduced into American law the idea that the judiciary should refrain from "political questions." Governor Stevens's martial law order demonstrated the abhorrence generated by an energetic executive, which led to resistance to the order from the judiciary and even the chief executive. While *Ex parte Milligan* appears to continue the tradition of the Stevens example, the precedent of the Habeas Corpus Act of 1863 signals an awakening of thought in which the executive can, and should, be empowered to suppress civil liberties under certain circumstance. The U.S. Supreme Court's decision for Colorado's Governor Peabody in 1909 demonstrated the enormous shift in legal and

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²⁷⁰ While West did not face a recall for his actions, the civil suit was the closest he came to facing a referendum on his actions. A jury of supposedly hostile Baker County citizens found for West.

political thought during the Progressive Era. Progressive politics, which emphasized a conceptualization of the executive as a driving force behind state policy was clearly leaching into legal conceptualization. When Justice Holmes referred to the state executive as “captain of the ship,” he elevated the executive into a position of leadership among the various branches.

Notwithstanding the validation of his actions by temperance advocates, court decisions, and some historical precedent, there was still a fundamental moral resistance to West’s actions. West proceeded in such a way as to appear as an interloper in the affairs of Baker County. His threats and insults to the county authorities, his condescension towards the Baker grand jury, and his occupation of Copperfield were examples of the metropole forcing its agenda on the frontier.²⁷¹ The frontier, in turn, was resistant to his adventurism. While Copperfield may have been the focus of West’s attention initially, his heavy-handedness throughout Baker County inflamed that frontier county’s sentiments. Anxiety also existed within each of the Copperfield court cases. In the first case, Judge Anderson remarked that even if the actions of the executive are “unwise,” the judiciary must refrain from judging the executive’s discretionary powers. During the civil suit Anderson went a step further, and described West’s action as an overthrow of civil government. Finally, the Oregon Supreme Court decision referred to West’s actions as “an arbitrary exercise of military powers.”

All of these examples exhibit a distinct wariness towards how Governor West handled the situation in Copperfield. Even the judiciary, clearly fearful of weighing in on the “political question,” felt that West had overstepped. The military occupation and

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²⁷¹ I think we see this frequently today in Oregon as the urban-rural divide.

dismantlement of a popularly elected government, while legal, was abhorrent to those who could see the implications of it. Copperfield was not the only town to see militia. West sent militia to Huntington and Milwaukie, and threatened many more cities if they did not “clean up their acts.”²⁷² The governor had a virtually unchecked military power. The most the judiciary was willing to do was hint at recourse for what was viewed as the arbitrary use of the executive’s military powers.

The executive’s power was not absolute. The legislature still held the power of the purse and the ability to check the executive via legislation. The act of withholding funds could be a powerful deterrent, as was the case in West’s use of the militia. He bankrupted the Governor’s Office, having to go so far as funding his military actions with his own money. However, the Oregon legislature did not act to censure the Governor. Recall was another means of checking the governor. The civil suit, suggested as one remedy for the saloonkeepers, failed. There are two reasons why the jury ultimately found West not liable, and why no recall ever materialized, despite the underlying ambivalence about how West handled the situation in Copperfield. First that there was no denying that West had the power to declare martial law, and to do as he saw fit during martial law. Lastly, while West had overthrown an elected government, he was overthrowing saloonkeepers. In popular opinion the saloonkeeper was synonymous with political corruption, crime, and moral degradation. Who could truly object to West’s targeting of men who had waged a war with each other that had nearly burned an entire town to the ground multiple times? Oswald

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²⁷² West sent small detachments to numerous cities and threatened the governments of many more in an attempt to cut down on perceived vice. In the case of Milwaukie, a small saloon known as the Friar’s Club was shut down and had a guard placed on it. After Copperfield, most city governments believed the Governor’s threats and sought to distance themselves from the liquor trade. Any city officials associated with the liquor industry were often encouraged to leave office for fear of drawing West’s attention.

West struck a deathblow to the Copperfield saloonkeepers because, “damn it,” he could and because, “damn it,” it was right.

The use of the governor’s military powers since Copperfield has changed dramatically, but that shift has been slow. The Ludlow Massacre in 1914 happened only a few months after martial law was first declared in Copperfield, and represented a watershed moment highlighting the violence between National Guards and unionizers. The use of the National Guard by governors continued to emphasize an adversarial relationship against political undesirables, like unionizers and anarchists, for several more decades.²⁷³ However, political scientists Bennett M. Rich and Philip H. Burch Jr., writing in 1956, noted that the perception of the National Guard had changed. This was due in large part to a shift towards “community service” duties and a shift away from police actions.²⁷⁴ The goodwill engendered by seeing the National Guard used as a bulwark against natural disasters rather than lined up against citizens changed how the National Guard was conceived of as a tool.²⁷⁵ Later events like the suppression of the Freedom Riders in Alabama in 1961, and the Kent State Massacre in 1970, further proved that the National Guard was not suited for police actions like that of Copperfield.

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²⁷³ The term National Guard comes to displace militia in the early 1900s after the National Guard Act of 1903, which began the process of professionalizing state militias. In exchange for funding, supplies, and training, the Guard units could be called to service by the federal government. An amendment to the National Defense Act of 1916 would eventually set the stage for the creation of an Army National Guard, which would work in conjunction with the state National Guards to serve as a reserve force for the U.S. Army. “History of the Army National Guard.” *About.com Careers*, accessed May 12, 2013, <http://usmilitary.about.com/od/guardandreserve/a/anghistory.htm>.

²⁷⁴ Rich, Bennett M. and Burch Jr, Philip H. “The Changing Role of the National Guard,” *The American Political Science Review*, Vol. 50, No. 3 (1956): 705.

²⁷⁵ The increasing incorporation of the National Guard into the US Army’s command structure, beginning in 1903, also had a role in turning the Guards into a professional force that was not so easily influenced by monied interests as was the case in Colorado’s Coalfield Wars. “History of the Army National Guard.”

If we are to conclude the legacy of Governor West's actions, all we need do is imagine a modern example. What if the governor of a state declared martial law in a town, sent the National Guard to occupy it, and disbanded the town's government, placing the former officials under arrest, and censoring all communication out of the town?⁹ Under what circumstances would that be acceptable to a modern US citizen?

Figures 13 & 14. Top: Oxbow, Oregon; situated just south of the former site of Copperfield. (Photo by Gary Dielman, 2004)
Bottom: Photo from the Idaho side of the Oxbow and the completed Oxbow Dam. (Courtesy of Idaho Division of Commerce)²⁷⁶

²⁷⁶Dielman, "Copperfield."

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