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A History of the Constitution and Government of Washington Territory

Wilfred J. Airey

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**A HISTORY OF THE CONSTITUTION AND GOVERNMENT OF
WASHINGTON TERRITORY**

by

WILFRED J AIREY

A thesis submitted for the degree of

DOCTOR OF PHILOSOPHY

UNIVERSITY OF WASHINGTON

1945

FOREWORD

It is impossible to give credit to all who have aided in the gathering of materials or who have offered helpful suggestions on this thesis. I am, however, especially grateful for the constructive criticisms of Dr. Merrill Jensen, formerly of the History Department of the University of Washington. Dr. Arthur S. Beardsley, Law Librarian of the University of Washington, also contributed helpful suggestions and valuable materials to sections of this work. In the collection of materials, I am particularly indebted to the assistance offered by Mr. Ronald Todd, Assistant Librarian of the University of Washington, and his associates. I am also indebted to the courtesy of Frank McCaffery, Seattle printer, and Charles W. Smith, Librarian of the University of Washington, for placing the manuscript notes on the proceedings of the Constitutional Convention of 1889 at my disposal. To these and a large number of persons on the University of Washington staff, in the Bancroft Library at the University of California at Berkeley, in the Oregon Historical Society at Portland, in the Washington Historical Society at Tacoma, in the Oregon State Library at Salem, in the Washington State Library at Olympia, in the University of Southern California Library at Los Angeles, in the Los Angeles City Library, in the Walla Walla City Library, and to private persons who have placed newspapers and documents at my disposal, to each and all of these I owe a debt of gratitude in writing this thesis that can never be repaid.

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A HISTORY OF THE CONSTITUTION AND GOVERNMENT OF
WASHINGTON TERRITORY

PART I. THE NATIONAL GOVERNMENT AND THE TERRITORY

CHAPTER I. WASHINGTON BECOMES A TERRITORY

UNDER THE GOVERNMENT OF OREGON

The first efforts to organize government in present-day Washington came from south of the Columbia River. When Michael T. Simmons arrived on Puget Sound in 1845, the Oregon provisional legislature had already organized the area north of the Columbia into the Vancouver district. The dominant Hudson's Bay Company quickly recognized this government in an effort to obtain its large property holdings in the area. The provisional government appointed three commissioners and a sheriff to perform its administrative and judicial functions there.(1) Before

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1. Snowden, Clinton A. History of Washington, New York, Century History Company, 1909, Vol. III, p. 60. The three commissioner judges were Michael T. Simmons, James Douglas, and Charles Forrest, the superintendent of the Hudson's Bay Company's Cowlitz farm; the sheriff, John R. Jackson.

the end of 1845 Lewis County had also been created comprising all of that part of the Vancouver district west of the Cowlitz River and north of the Columbia.(1) After 1846 the commissioners or justices of the peace, sheriffs, treasurers and county clerks for both counties were elected rather than appointed.(2)

The officials of the Hudson's Bay Company took a lively interest in the election of representatives for the Oregon legislature, often opposing the settlers' choice in order to elect individuals favorable to them and their large holdings north of the Columbia. Through their influence in Lewis County, Dr. William Fraser Tolmie defeated John R. Jackson in the election of 1846.(3) The Hudson's Bay Company also elected its representatives from the two counties north of the Columbia River in 1847(4) and was responsible for the reelection of

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1. Snowden. Op. cit., pp. 60-61. On events prior to 1851 cf. also Bancroft, Hubert Howe. "Washington, Idaho, Montana", Works, San Francisco, History Company Publishers, 1890, Vol. XXIV, pp. 43-45.
 2. Snowden. Op. cit., pp. 61-62. The Vancouver district elected Richard Lane, R. R. Thompson and John White, two Americans and a company man; Lewis County chose Jacob Wooley, S.B. Crockett, and John R. Jackson. Lewis County was to have the same organization as the Vancouver district whose sheriff was to assess and collect the revenue in the county for the following year, an easy task since the farming interests of the Hudson's Bay Company owned most of the land in the new county. There were no judges chosen for Lewis County in 1846.
 3. Ibid., pp. 62-63. This influence is indicated in a letter from Peter Skene Ogden and James Douglas to Dr. Tolmie quoted by Snowden. The settlers wanted Jackson, but the company had obtained the right man for judge of the election and was confident of victory. Henry N. Peers, another company man, was elected in Vancouver County.
 4. These were Simon Plomondon, a retired French-Canadian, Hudson's Bay Company employee, from Lewis County, and Peers again from Vancouver County.

Oregon's Provisional Governor George Abernethy.(1)

Under the Territorial Government of Oregon the counties north of the Columbia River suffered from chronic underrepresentation in the Oregon legislature. Since the Lewis County representative was drowned in 1848, only the Vancouver County representative represented Northern Oregon during the last session of the provisional legislature that year.(2) In the new territorial legislature in 1849, Lewis and Vancouver Counties north of the Columbia and Clatsop County south of the river formed a district with one representative in each house. Under this arrangement Michael T. Simmons in the lower house was the only representative from Northern Oregon in the first legislature.(3)

Underrepresentation became acute during the next few months. The northern section was represented only by a coun-

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1. Snowden. Op. cit., pp. 64-65; Oregon Spectator, June 11, 1846, and, July 22, 1847. Abernethy, a friend of Dr. John McLoughlin, chief factor of the western department of the Hudson's Bay Company, received a majority of 91 north of the Columbia to overcome a lead of 509 to 435 for his opponent south of the river.
 2. Idem. The California gold rush and the news of the formation of Oregon Territory interrupted action in 1848. Even then the governor vetoed many of the acts passed. Fifteen years were to pass before the governor vetoed legislation affecting the area north of the Columbia River again since the governor possessed no veto in Oregon Territory or in Washington Territory before 1864.
 3. Ibid., pp. 65-74. This legislature changed the name of Vancouver County to Clarke County and provided a special criminal court for Lewis County to try the Wallace murders. Courts were provided for Northern Oregon by May 15, 1849, when Lewis County was made one district and Vancouver County was attached to a district south of the Columbia.

cilman(1) from Clatsop County, south of the Columbia, during the long term of the legislature in 1849, while both of the representatives for Northern Oregon were from Clatsop County in 1851. The election of Councilman Columbia Lancaster and Representative D. F. Brownfield from north of the Columbia in 1851 failed to better the situation.(2)

The previous session the legislature moved the capital to Salem, located the penitentiary at Portland, and the university at Marysville. Despite the declaration of the governor, the district attorney, the United States Attorney General, and two of the three judges that the bill was unconstitutional because it dealt with more than one subject in direct violation of the Organic Act, the next legislature met at Salem. Councilman Lancaster, Daniel F. Brownfield, and three other members of the Assembly proceeded to organize a minority legislature at Oregon City in protest against this removal. Lancaster elected himself president of the Council; the four members of the House organized temporarily. Then for seventeen days the two houses met and adjourned for lack of a quorum.(3) The Oregon Spectator(4) commended the "honesty of purpose of those gentlemen", but a later critic has condemned the "idiotic obstinacy" of these "dunces" for not attending to the needs of

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1. Samuel F. McKean of Clatsop County.
 2. Bancroft. Op. cit., p. 46. Pacific County had been added to Lewis and Clarke Counties north of the Columbia early in 1881.
 3. Snowden. Op. cit., pp. 200-201.
 4. An Oregon City newspaper, December 9, 1851.

their constituents.(1) With no better representation from the north than this, little wonder that the Willamette Valley took all the spoils and left none for the few settlers in the region north of the Columbia River. To the representative from Clatsop County was again left the responsibility of guarding the interests of the entire section north of the Columbia River.(2)

EARLY UNREST

Two public meetings prior to 1850 reflect the attitude of the settlers north of the Columbia. On June 11, 1847, a local meeting at the home of J. R. Jackson protested against claim jumping.(3) The Treaty of 1846 provided that the claims of the Hudson's Bay Company and the Puget Sound Agricultural Company should be respected, and these companies desired to improve their holdings before the day of final judgment. This action brought about the second meeting in Northern Oregon at Tumwater, November 5, 1848, which protested against these efforts and the alleged use of misrepresentations by these companies to discourage American settlers from coming to Puget Sound. The protest also warned the company that the United

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1. Bancroft, Vol. XXVI, loc. cit.
 2. Ibid., p. 51; Snowden, op. cit., pp. 142-143. J. A. Anderson of Clatsop and Pacific Counties, acting on the petition of 56 inhabitants along Puget Sound, obtained the creation of Thurston County early in January, 1852.
 3. Oregon Spectator, July 8, 1847. This meeting concurred in the resolutions passed by the public meetings held at Oregon City and elsewhere May 14, 1847, protesting against widespread claim jumping.

States had never granted preemption rights to any but American citizens, which fact would invalidate any claims based on improvements after the treaty was signed. The settlers insisted further that since the United States had never parted with the actual title to the occupied lands, any American citizen might appropriate company land and its improvements to himself.(1) The settlers made it their business to fight the Puget Sound Agricultural Company and obtain all the land they could for themselves.

Friction between the settlers and the territorial judiciary appeared in 1851. Although not assigned to the northern district, Judge William Strong held the first term of court there November 12, 1850, at the home of John R. Jackson at Jackson Prairie. The May term in 1851, presided over by Judge Thomas Nelson, who admitted John B. Chapman to the bar as the first attorney in Northern Oregon, was also held at Jackson Prairie. According to Oregon law, the county commissioners were to select a county seat where all county business was to be transacted. Accordingly, the county commissioners for Lewis County fixed the county seat at Sydney S. Ford's claim on the Chehalis River. Judge Strong, however, summoned the jurors in the usual form

1. Bancroft. Op. cit., pp. 39-41; Oregon Spectator, January 11, 1849. Cf. also, Meany, Edmond S., History of the State of Washington, pp. 150-151; Spencer, Lloyd, and, Lancaster, Pollard, A History of the State of Washington, New York, American Historical Society, 1937, Vol. I, p. 281. Michael T. Simmons called the meeting together and William Packwood was elected president.

"to appear and fail not under penalty" at Jackson Prairie for the October, 1851, term of court which required those living in the northern part of the district to travel more than 15 miles farther south. These individuals, on Chapman's advice, refused to obey the "imperious demands" of the judge, objected to being treated as "serfs", and threatened to impeach a judge who so presumed upon their rights as free Americans. Judge Strong retaliated by condemning Chapman, issuing warrants for the arrest of the four jurors who failed to appear, and fining them \$10 each for contempt at the next term of court in May, 1852.(1)

In the meantime Chapman had placed himself at the head of the division movement in Northern Oregon, exploring the land north of the Columbia during the winter of 1850-1851. On February 17, 1851, he wrote to A. A. Durham of Oswego, that he had found

"...the fairest and best portion of Oregon north of the Columbia River; and no doubt must and will be a separate Territory and State from the south. Everything in nature wills and decrees the Columbia River the natural boundary. The north must be the 'Columbia Territory', the south the 'State of Oregon'--how poetical, from 'Maine' to 'Columbia', and how meaning of space."(2)

1. Puget Sound Courier (Steilacoom), July 5, 1855; Beardsley, Arthur S., and, McDonald, Donald A., "The Courts and Early Bar of Washington Territory," Washington Law Review and State Bar Journal, Vol. XVII, pp. 51-63 (April, 1942). These courts were unusual since there was no definite assignment of judges to the northern district until 1853.
2. Oregon Spectator, April 10, 1851; Bancroft, op. cit., p. 47. The letter was signed "Carman and Chapman" but as Carman has never been identified, Elwood Evans concludes he was a myth. This is the first recorded reference to political division and the first time the name "Columbia" was used for the new Territory.

THE COWLITZ CONVENTION

A second and more productive suggestion for the division of the Territory came also from Chapman when, on July 4, 1851,² he, the new lawyer in the Territory, was the orator of the day. His reference to the "future State of Columbia" touched a popular chord; and an adjourned meeting was called for that afternoon to stimulate action on the suggestion. (1) This meeting called for a general convention of delegates from every precinct in Clarke, Lewis, and Pacific Counties to be held at the house of E. D. Warbass on the Cowlitz River, August 29,

"...to take into careful consideration, the present peculiar position of the northern portion of the Territory, its wants, and the propriety of an early appeal to Congress for a division of the Territory, together with such other matters as may be of immediate interest to themselves and constituencies." (2)

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1. Prosch, Thomas W. "The Political Beginning of Washington Territory", The Quarterly of the Oregon Historical Society, Vol. VI, No. 2, June, 1905, p. 151. Also, Prosch, Addresses and Articles, Pacific Northwest Collection, University of Washington. On motion of Chapman, Capt. C. Crosby was called to the chair and A. M. Poe appointed secretary. Speeches by Crosby, I. N. Ebey, Chapman, and H. A. Goldsborough presented the situation and wants of Northern Oregon. A committee of seven was appointed by the chair, consisting of Chapman, Henry Wilson, Simmons, T. M. Chambers, Ebey, Goldsborough, and S. B. Crockett to draft resolutions reflecting the sentiments of the meeting.
 2. Oregon Spectator, July 29, 1851. The complete resolution was to be forwarded to each election precinct and to a Territorial newspaper.

This was the call for one of the most important meetings in early Washington history. (1)

On August 29, 1851, the Cowlitz Convention met according to the announcement. (2) The various committees reported the next day in favor of a memorial to Congress requesting Delegate Lane of Oregon Territory to use his influence to obtain a separ-

1. Meany. "Cowlitz Convention: Inception of Washington Territory", Washington Historical Quarterly, Vol. XIII, No. 1, January, 1928, pp. 3-19; Meany points out his own errors in History of Washington, pp. 156-157; those of Snowden, op. cit., pp. 197-198, 203-206; those of Bancroft, op. cit., Vol. XVI, pp. 48-49, 60-61; and those of Evans, Elwood, History of the Pacific Northwest: Oregon and Washington, Portland, North Pacific History Company, 1889, Vol. I, pp. 337, 348-349. Spencer and Pollard, op. cit., pp. 282-283, has the more correct account stressing the importance of the Cowlitz Convention.
2. Reports of the proceedings were carried in the Portland Oregonian, September 20, 1851; Oregon Spectator, September 23, 1851; Oregon Statesman, September 23, 1851; and, in the Portland Oregon Weekly Times, September 25, 1851. The accounts in the Spectator and Statesman give a more complete list of delegates than the other two papers. With other minor differences the accounts are generally the same. Thomas M. Chambers called it to order and the 26 delegates, all from Lewis County, as Clarke and Pacific Counties failed to select delegates, began their work. Those in attendance were: Seth Catlin, Jonathan Burbee, Robert Huntress from Monticello; E. D. Warbass, John R. Jackson, W. L. Frazer, Simon Plomondon from Cowlitz Landing; S. S. Saunders, A. B. Dillenbaugh, Marcel Bernier, Sidney S. Ford, James Cochran, Joseph Borst from Newaukum; T. M. Simmons, Clanrick Crosby, Joseph Broshears, A. J. Simmons from Tumwater; A. M. Poe, D. S. Maynard, D. F. Brownfield from Olympia; T. M. Chambers, John Bradley, J. B. Chapman, H. C. Wilson, John Edgar, and F. S. Balch from Steilacoom. Bancroft, op. cit., p. 50; Snowden, op. cit., p. 204. Seth Catlin was elected president with A. M. Poe and F. S. Balch as secretaries. On motion of Chapman five standing committees were appointed: the one on Territorial Government with five members, that on Districts and Counties with eight, that on the Rights and Privileges of Citizens with three, the Committee on Internal Improvements and that on Ways and Means with three each. - Oregon Spectator and Oregon Statesman, September 23, 1851.

ate territorial government for Northern Oregon(1), another memorial asking for \$100,000 for roads from Puget Sound to Walla Walla and to the Columbia river, and a request to the Oregon legislature for twelve additional counties north of the Columbia river.(2) The name of "Columbia" was suggested for the new territory; and Dr. D. S. Maynard went further than the convention intended in his suggestion,

"That when this convention does adjourn, it adjourn to meet on the third Monday in May next, at Olympia, then and there to form a State Constitution, preparatory to asking admission into the Union as one of the States thereof: provided that Congress has not at that time organized a Territorial Government."(3)

This was a remarkable suggestion; according to the Census of 1850 the white population north of the Columbia was 1,049,(4) and now could scarcely have been over 1,500 at most. Oregon proper outnumbered the northern district at least eight to one; but still these representatives from Northern Oregon hoped to achieve statehood if a territorial status were denied them. They must later have realized the utter futility of the idea, however, for the May convention was never held.(5)

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1. J. B. Chapman, F. S. Balch and M. T. Simmons were selected as a committee to prepare this memorial for the Convention.
 2. Oregon Statesman, September 23, 1851. A good many of the suggested boundaries for these counties were adopted when the counties were formed later on.
 3. Idem.
 4. Evans, Elwood. History of the Pacific Northwest: Oregon and Washington, I, p. 334.
 5. Prosch. Op. cit., p. 153.

The committee selected for that purpose by the Cowlitz Convention prepared a memorial and sent it to Delegate Lane. No record of this memorial survived until it was found among Lane's papers in the Library of Congress. Although it gained little publicity in Congress, it may have accomplished more than the better-known Monticello Memorial. The Cowlitz Memorial complained "that those participating in the burdens of Government are entitled to its benefits and protection". If these services were not insured by the Government it should be reorganized so as to obtain them. The "inhabitants north of the Columbia River receive no benefit or convenience whatever from the Territorial Government of Oregon as now administered". The committee claimed further that it took longer for a person to travel from North Oregon to a district judge south of the Columbia than to go from St. Louis to Boston and back. The judge north of the Columbia resided near Astoria at so remote a location from the interior that he was inaccessible.(1) The memorial further requested an Indian Agent for the north side of the river and lauded the natural advantages of the country, its farm and timberlands, its undeveloped mines, its good harbors, rivers, and commercial opportunities. It criticized the Hudson's Bay Company for claiming the best land and using its control of commerce on Puget Sound to exclude American settlers from that area.

1. This criticism of Judge Strong reflects Chapman's hostility toward the judge which came to light later in the year when he objected to Strong's effort to hold court at Jackson Prairie rather than Ford's claim.

The memorial also complained of the political discrimination against Northern Oregon. The seat of government was said to be 300 miles distant from the chief northern settlements, giving the southern part of the territory the control of all legislation. Since the interests of the south and north were divergent, since government officials rarely came north due to the expense and inconvenience of travel there, "the rights of citizens must go unredressed, crimes and injuries unpunished". In compliance with the resolution of the convention, the memorial requested a separate territorial government north of the Columbia to "be known and designated as 'Columbia Territory'".(1) Northern Oregon's grievances were still essentially economic, directed primarily against the Hudson's Bay Company and physical barriers to settlement and only secondarily against discriminations from the government of Oregon.

Delegate Lane received the Cowlitz Memorial and used it. Although not mentioned in the Congressional Globe, the Lane papers indicate that he referred it to the Committee on Territories on December 30, 1851. Since it was impossible for the Monticello Memorial to reach Lane by December 6, 1852, when he introduced the successful division bill, it may be assumed that he based it on the Cowlitz Memorial.(2)

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1. Meany. "Cowlitz Convention: Inception of Washington Territory", op. cit., pp. 5-10.
 2. Ibid., pp. 4, 5.
Oregon Petition of Citizens, Seattle, University of Washington Library, Pacific Northwest MS., December 30, 1851.

THE MONTICELLO CONVENTION

Events tended to widen the rift between the two sections. Judge Strong's assertion of the authority of the court in October, 1851, was symptomatic of growing antagonism. The editor of the Portland Oregon Weekly Times commented on the Cowlitz Convention(1) that "The inhabitants north of the Columbia think they have not had justice done them in the apportionment of the Territorial Legislature and some other neglects which call for their united action."

By July 4, 1852, the separation movement received a new impetus from the suggestion of Daniel R. Bigelow, the orator of the day,(2) that Puget Sound would soon rival San Francisco as the second great port on the Pacific.(3)

In September the newly-founded Olympia Columbian began to agitate for separation on the basis of definite grievances:

"Neither our territorial legislature, federal officers, Congress, or the departments at Washington seem to consider the interest of the people on the Sound worth caring for; but that 'better day' will shortly afford us a legislature of our own and either compel the 'powers that be' to respect our rights or regret the consequences. The Willamette Valley is welcome to all the nursing and petting she

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1. September 25, 1851.
 2. Meany. "Cowlitz Convention:", op. cit., p. 3. Chapman's ability to make enemies is reflected in the choice of a new leader in 1852.
 3. Olympia Columbian, September 11, 1852.

has received, and is receiving from the home government. The stepchild on her north will soon be of age and able to talk for herself, when she will 'go it' on her own hook."(1)

"Ella" complained regularly that with its population advantage southern Oregon commanded the legislature and received all the benefits from it, and gave the northern area only two representatives when it was entitled to four.(2) The complaint continues, "They have us under the foot and wish to roll us in the dust;" as a result all petitions for improvements had been disregarded. Funds for public buildings and transportation improvements all went to the southern side of the river, while the surveyor-general and the Superintendent of Indian Affairs neglected the north entirely.(3)

By October 16 the Columbian was agitating for a convention to take the necessary steps "towards the creation of a New Territory, north of the Columbia". The next week it presented a tangible suggestion for bringing about this convention. The meeting of the court at J. R. Jackson's the following Monday was to be used as an opportunity to appoint a committee which would work for a general convention to present a request for a separate territorial government to the next Congress and the next legislature before each met.(4)

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1. Olympia Columbian, September 18, 1852. Every inducement that could be offered was presented to the immigrant to "help in the formation of a New State".
 2. One of these was granted by a recent act of "magnanimity and condescension on the part of our southern neighbors".
 3. Ibid., September 25, October 2, 1852. The October 9 issue looked forward to territorial status and eventual statehood.
 4. Ibid., October 23, 1852.

On October 26 when a large group of citizens assembled for court at Jackson Prairie, a public meeting was called to arrange for a general convention to memorialize Congress for an early division of the territory. The suggestion for an Olympia convention was abandoned in favor of one at Monticello in an effort to win greater support along the Columbia River for separation.(1)

With its first notice of the Jackson meeting, the Columbian(2) began rallying support for the proposed convention by pointing out that while the Cowlitz and Puget Sound residents were ardent in their desire for separation, the river district was in constant intercourse with the southern area, and was apt to have its sympathies divided. Better, therefore, to carry the convention to them, than to run the risk that the ardor of the Columbia district might cool if their representatives were compelled to come to Olympia for it.(3)

By this time other grievances were being used by the Columbian to direct public opinion toward separation. Although Congress had granted one township of land in northern Oregon of the two granted the territory for an university, the Oregon legislature located the school at Marysville, 100 miles south of the river and out of reach of the northern citizens. The editor complained that the legislature in creating Thurston County,

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1. Portland Oregonian and Oregon City, Oregon Statesman, November 13, 1852, Olympia Columbian, November 6 and 13, 1852. F. A. Chenowith was chairman; R. J. White, secretary.
 2. Olympia Columbian, November 6, 1852.
 3. Idem.

January 12, 1852, failed to attach it to any judicial district leaving it "without the pale of civil law", thereby causing endless confusion. He objected to the fact that all the public buildings were located in the Willamette Valley, that northern Oregon was underrepresented, and that settlers in the Willamette Valley discouraged immigration to the north. These were sufficient reasons for "A Legal Divorce from the South".(1)

The Monticello Convention met on November 25, 1852(2) in compliance with the resolution of the Jackson meeting, and drafted a memorial to Congress in short order.(3) Composed as it was of delegates from the whole of northern Oregon, this convention better represented the interests of that section than its predecessor.(4). This Monticello Memorial requested Congress to organize the area north and west of the Columbia River as the Territory of Columbia. Nine reasons were given for this change: 1. Oregon with 341,000 square miles was too large for

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1. Olympia Columbian, October 23, 30, 1852.
 2. Bancroft. Op. cit., p. 52; Spencer and Pollard, op. cit., p. 284. Others give the date as October 25, 1852, possibly in an effort to give Delegate Lane an opportunity to use it when he introduced his bill December 6, 1852. Meany, "Cowlitz Convention:", op. cit., pp. 3-19, discusses the correct date. Lane could not have received the memorial as the Columbian did not publish it until December 11, 1852; The Oregonian, December 25; The Statesman, January 1, 1853. The date given on the memorial is November 25, 1852.
 3. The convention resolved to adjourn until the second Wednesday in May in case Congress failed to act in the meantime. The forty-four delegates then signed the memorial and left for home.
 4. The representatives at the Cowlitz Convention were largely from Lewis County.

one State. 2. A division of the 650 miles of seacoast was preferable to the formation of one interior and one coastal state. 3. The area of 32,000 square miles suggested for Columbia was about right for a territory and state. 4. There were plenty of natural resources for a state. 5. The Columbia River was a natural barrier between the two sections. 6. Southern Oregon with control of the legislature had deprived northern Oregon of the benefits of Congressional appropriations. 7. A good many of the citizens of northern Oregon were 500 miles from the state capital. 8. As long as southern Oregon controlled the legislature the interests of northern Oregon would never be recognized. 9. Moderate-sized states like the prospective Columbia could guard the interests of their people better than large ones where sectional rivalry was apt to appear.

"In conclusion, your petitioners would respectfully represent that Northern Oregon, with its great natural resources, presenting such unparalleled inducements to immigrants, and with its present large population, constantly and rapidly increasing by immigration, is of sufficient importance, in a national point of view, to merit the fostering care of Congress, and its interests are so numerous, and so entirely distinct in their character, as to demand the attention of a separate and independent legislature."(1)

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1. Signed: G.N. McConaha, President; R.J. White, Secretary; Q.A. Brooks, C.S. Hathaway, E.H. Winslow, A. Cook, A.F. Scott, Wm. N. Bell, A.A. Denny, L.M. Collins, G.B. Roberts, N. Stone, L.L. Davis, C.H. Hale, S.D. Ruddell, Seth Catlin, J.N. Low, C.C. Terry, A.J. Simmons, S. Plomondon, H.A. Goldsborough, G. Drew, M.T. Simmons, H.C. Wilson, L.B. Hastings, S.S. Ford, B.C. Armstrong, J. Fowler, A. Crawford, H.D. Huntington, E.J. Allen, A.B. Dillenbaugh, J.R. Jackson, D.S. Maynard, F.A. Clarke, Wm. Plumb, A. Wylie, W.A.L. McCorkle, N. Ostrander, C.F. Porter, E.L. Ferrick, H. Miles, P.W. Crawford, S.P. Moses. Columbian, December 11, 1852; Oregonian, December 25, 1852; Oregon Statesman, January 1, 1853; Meany, "Cowlitz Convention:", op. cit., pp. 17-18; Snowden, op. cit., Vol. I, pp. 505-517. Catlin, Dillenbaugh, Ford, Maynard, Plo-

Economic grievances were now subordinated to the political in direct contrast to the Cowlitz Memorial, and hostility to the Hudson's Bay Company was no longer apparent.

THE TERRITORIAL BILL

Since it was impossible for the Monticello Memorial to reach Delegate Lane in the eleven days intervening before he introduced his division bill on December 6, 1852, the Cowlitz Memorial apparently prompted his action on the first day of the new session of Congress. (1) By the time the committee on territories reported the bill on February 8, 1853, the Monticello Memorial was in Lane's hands, and he made use of it in the debate which followed.

There was some doubt in the House of Representatives that Oregon had sufficient population for two territories. While Lane was speaking in favor of the bill, Shelton of New Jersey interrupted, "Will the gentleman inform me what the population of the proposed new Territory will be in case the division is made?" Lane was in a difficult position. The exaggerated claims of the Cowlitz Memorial had not dared to place it above 3,000 while the Monticello Memorial evaded the issue. Lane's reply was an adroit one: "The population of Columbia in that

mondon, M. T. Simmons and A. J. Simmons had attended the Cowlitz Convention. Spencer and Pollard, op. cit., p. 284.

1. Congressional Globe, 32d Cong., 2d Sess., p. 6. "That the Committee on Territories be requested to inquire into the expediency of dividing Oregon Territory, and forming a new Territory north of the Columbia River, by the name of Columbia Territory, with leave to report by bill or otherwise." Cf. also, Meany, "Cowlitz Convention:", op. cit., pp. 3-19.

case will be quite as great as the whole of Oregon at the period of its organization into a Territory." (1) Lane then read the Monticello Memorial and agreed with all except that part which seemed to cast reflections on the Oregon legislature.

After the name of the new territory had been changed from "Columbia" to "Washington" (2), the bill passed the House on February 10, 1853. (3) With the comment that "It is one of the old-fashioned Territorial bills", it passed the Senate as regular routine business on March 2, 1853. (4) Washington became a Territory when President Fillmore signed the bill the same day.

Pressure to gain support for division was also exerted on the Oregon legislature. When Councilman Lancaster resigned his position just before the legislature met, the Columbian lamented that "the resignation of our representative, at this particular crisis, has caused no small degree of astonishment in this latitude". (5) Even though a hasty election failed to get a substitute councilman to Salem in time, (6) northern Oregon was better represented in the new legislature than it had

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1. Congressional Globe, 32d Cong., 2d Sess., p. 541.
 2. Ibid., pp. 541-542. Stanton of Kentucky suggested the change.
 3. Ibid., p. 555.
 4. Ibid., pp. 581, 658, 1020. Cf. also, Evans, op. cit., Vol. I, pp. 348-349. An amendment favoring "Washingtonia" as the name for the Territory was dropped in the Senate.
 5. Columbian, November 20, 1852.
 6. Snowden. Op. cit., Vol. III, p. 202. Catlin defeated A. A. Denny.

been before. (1) Under the influence of the two northern representatives a memorial to Congress

"...to establish a separate Territorial government for all that portion of Oregon Territory lying north of the Columbia River and west of the great northern branch of the same to be known as the Territory of the Columbia" (2)

unanimously passed the legislature with only three opposing votes in the House and none in the Council. (3) The people south of the Columbia appear to have been as eager for division as those north of it.

Other evidences of cooperation are found in the work of this session. Congress was asked to appropriate \$30,000 for a road from Steilacoom to Walla Walla; Jefferson, King, Pierce, and Island Counties were established with two additional repre-

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1. Bancroft. Op. cit., p. 59; Meany, "Cowlitz Convention", op. cit., p. 18. F. A. Chenowith represented Clarke County and I. N. Eby, Lewis County.
 2. Oregon House Journal, Appendix, pp. 33-34, 1852-1853; Bancroft, op. cit., pp. 59-60; Oregon Statesman, January 29, 1853; Meany, op. cit., p. 18; Olympia Columbian, February 12, 1853, gives the date for passing the House as January 15. On January 10, 1853, F. A. Chenowith offered a resolution asking that their delegate in Congress be requested to use his best efforts to obtain division. A committee with Chenowith as chairman, G. E. Cole, and I. N. Eby, two from the North, east selected to consider this resolution. The committee reported back a memorial to Congress as a substitute for the resolution. This in turn was laid aside for a substitute memorial presented by Eby.
 3. The vote on this bill readily explains Lane's action in Congress. Although it could hardly have influenced this action since it passed the Council on January 18, three weeks before the division bill was debated in Congress, Oregon House Journal, pp. 103-104, 1852-1853, lists 20 for and 3 against; Oregon Council Journal, p. 92, 1852-1853.

representatives in the legislature, one from Island and Jefferson Counties and one from King and Pierce Counties.(1) In fact, the interests of northern Oregon were well taken care of; but even the representatives south of the river, realizing the artificiality of any accord between the two sections, had no serious objection to separation.

Early word from Washington was not encouraging; in March, therefore, the Columbian continued its agitation. On the twelfth "Agricola" issued an appeal for the May convention at Olympia with the suggestion that this body nominate a delegate from northern Oregon, to be elected by the people, and that the delegates provide for his expenses in going to Washington to foster the best interests of his constituents.(2) A week later this same writer gave tangible evidence of his interest in the project by expressing his willingness to be one of twenty-five to give \$100 each or one of fifty to give \$50 each to pay the expenses of such a delegate.(3) On March 26 call was issued for the reassembling of the adjourned Monticello Convention at Olympia, May 11, the day set for this event. The author was needlessly pessimistic about the results of the former conventions. "Even the most active and enthusiastic supporters of these movements did not think that either memorials would have the desired effect upon Congress." He again called for the

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1. Meany. "Cowlitz Convention:", op. cit., p. 18.
Bancroft. Op. cit., p. 59.
 2. Columbian, March 12, 1853.
 3. Ibid., March 19, 1853.

nomination of a territorial delegate at this convention.(1) The Olympia Convention of May 11, 1853, was never held.

By April 16 the news arrived that the House had passed the Organic Act and named the Territory "Washington". There was some dissatisfaction among the settlers over this change of name, and greater dissatisfaction over the bill itself when news of its final passage arrived a week later.(2) The Columbian complained that this bill

"...followed very closely the precedents established in the organization of the older territories. These may have been very well suited to the circumstances of a population, interior, agricultural, and nigh to the central government; but as has been proven by the history of Oregon Territory, wholly foreign and ill-adapted to the wants, the absolute necessities, of a people whose home is upon the distant shores of a vast ocean [with its commercial opportunities. The people of Washington should now work for improvements upon the old system.]...Every trace of proconsular-ity, from the evils of which, in common with our southern neighbors, we have suffered in our previous territorial existence, should be as far as possible eradicated. The progress of the age demands it. In nothing is the Republic so far behind that spirit which so eminently characterizes it as in the govern-

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1. Columbian, March 26, 1853. It published a letter on April 9, 1853, from Delegate Lane to Quincey A. Brooks which presents the facts about the Monticello Memorial. Brooks sent it to Lane, December 3, just three days before Lane introduced his division resolution in Congress. The bill had already been reported by the House on January 25 before Lane acknowledged its receipt. It appears that while the memorial was useful in debate, it served no other purpose in Lane's efforts. This would indicate that the acknowledgment of the receipt of the Monticello Memorial sent December 3,, 1852, was not received until early in April, 1853.
 2. Ibid., April 16 and 23, 1853. The message of the final passage came through in seven weeks, giving some idea of the time necessary to send back the memorial.

ment of its Pacific territories. The closest approximation to the sovereignty of a State, while preserving the forms of dependence germane to a Territory, is a problem in the successful solution of which, we have now our intimate interest."(1)

This was a laudable aim; but experience was to teach that it is easier to deal with a self-interested neighbor than to gain concessions from a prying superior. The Columbian might already shout the praises of statehood,(2) however, a long rocky road lay ahead before the consummation of these hopes. Contrary to the fondest dreams of the infant Territory, it was not to be a story of more self-government but actually of less.

FIRST CONSTITUTION: TERRITORIAL GOVERNMENT UNDER THE ORGANIC ACT

In territorial government the authority of the central government is absolute. While the Northwest Ordinance of 1787 provided the general outline for succeeding territorial governments, each Organic Act, the constitution of the territory, had its distinctive characteristics. Senator Pettit's statement that Washington's new constitution was one of the old-fashioned territorial bills is only partially accurate.(3) The Organic Act passed March 2, 1853, was to be Washington's constitution

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1. Columbian, April 23, 1853.
 2. Ibid., May 14, 1853.
 3. Congressional Globe, 32d Congress, 2d Sess., p. 1020, 1853.

for thirty-six years.(1)

The position of Washington's territorial governor was weak in relation to that of other territorial governors. Under the Organic Act his duties were closely restricted to commanding the militia, superintending Indian Affairs, granting pardons and remitting fines for offenses against the territory or respites(2) from Federal penalties, administering territorial laws, and commissioning territorial officials who required commissions. In fact, the governor soon lost his most important duty as Superintendent of Indian Affairs, making him little more than a figurehead. The impotence of Washington's early territorial governors was largely due to the fact that they did not receive the veto power in the Organic Act.(3) The authority of the governor, however, increased gradually throughout the entire territorial period. It is not surprising then that the early governors, whose position meant little more than an honorary title, spent about half their time away from the territory, despite the restriction that they were to reside in it.

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1. Organic Act, Sec. 1. Congressional Globe, op. cit., Appendix p. 338. Cf. also Laws of Washington Territory, pp. 33-41, 1854, for the Organic Act; United States Statutes at Large, Vol. X, pp. 172-179. The boundary of the new Territory followed the Columbia River as far as the 46th parallel, then along this line to the summit of the Rocky Mountains, and north to the Canadian border. When Oregon became a State, this liberal grant was again extended. Washington's present boundaries were given in 1863 when Idaho became a Territory.
 2. A respite was granted merely until the President could render his decision on the case.
 3. Organic Act, Sec. 2. Only in Oregon among the other territories did the governor fail to receive the veto power. Cf. chapter on the Territorial Executive.

The other executive officer in the government was the secretary who was to reside in the territory and to hold his office for four years unless removed by the President. It was his duty to record and preserve all the laws and proceedings of the legislature and all the executive acts of the governor. He was to submit one copy of the laws and journals of the legislature to the President and two copies of the laws to the president of the Senate and to the speaker of the House within thirty days after the end of each session. He also forwarded a semi-annual report of executive proceedings and official correspondence to the President. In case of the death, removal, resignation, or absence of the governor the secretary was to act as governor during such vacancy or absence.(1)

The legislature had more authority in early Washington territory than any other branch of the local government. It consisted of a council of nine members and a house of representatives beginning at eighteen members and increasing to thirty members as the population of the territory increased. The members of the lower house were elected annually; those of the council, for three years.(2) This was the most democratic feature of the government since any qualified voter could sit in either house. Apportionment for both houses was based on qual-

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1. Organic Act, Sec. 3.
 2. Three members were elected each year. Vacancies in the council were to be filled at the next election; those in the house, by a special election. The governor was to have a census taken, to regulate apportionment for the first election. In case of a tie vote or an unexpected vacancy the governor could order a new election.

ified voters rather than population. The members of both were to be residents and inhabitants of the county or district from which they were elected. The time, place, and manner of holding elections, the day for the convening of regular sessions of the legislature, and the apportionment of both houses as to qualified voters was to be fixed by law. The first session of the legislature was limited to 100 days; all others to 60 days.(1)

The power of the legislature was restricted only by the Organic Act, by the right of Congress to disavow its acts, and by the right of the courts to declare them unconstitutional. It could fix the qualifications for voting and holding office,(2) could pass all laws that were not inconsistent with the Constitution and laws of the United States, and could fix the method of appointment or election of township, district or county officers.(3)

What appears to be a liberal grant of power, however, was rigidly curtailed by the Organic Act. The limitations on the legislature were definite; it could not pass laws interfering with the primary disposal of the soil, tax the property of the United States, levy taxes discriminating against the lands or property of non-residents, borrow money in the name of the

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1. Organic Act, Sec. 4.
 2. This right was limited to citizens or persons who had declared their intention to become citizens above the age of 21 years. United States soldiers or sailors were not allowed to vote by virtue of their residence in the territory while on duty. Persons belonging to the Army and Navy were barred from holding any civil office or appointment in the Territory. Organic Act, Sec. 5.
 3. Ibid., Sec. 5, 6. Congress disavowed few acts of the legislature.

territory, incur debts beyond the issuing of warrants for services already performed, levy unequal or non-uniform taxes, nor assess taxes as to the kind of property but only on its value. The most important restriction on legislative power, in the new territory, however, was the prohibition against the incorporation of banks or branches of banks in the territory, or the granting of permission to issue bank notes, bonds, scrip, drafts, bills of exchange, or other banking powers.(1) Finally, every law was to embrace only one object and that was to be expressed in its title.(2)

The third branch of the territorial government was the judiciary which consisted of a supreme court, three district courts, probate courts, and justices of the peace. The supreme court, consisting of a chief justice and two associate justices(3) were to be appointed for four years and were to hold annual courts at the capital of the territory. The territory was to be divided into three judicial districts with one of the supreme court judges presiding over the district court in each. The time and place for holding court and the assignment of districts was to be fixed by law with the requirement that the judges must reside in the districts to which they were assigned. The relative jurisdiction of each court was fixed by law. The

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1. The later effect of this provision on interest rates presented a grave problem.
 2. Organic Act, Sec. 6-8. With the exception of the first legislature, no member was to hold or be appointed to any office which was created or the salary to which was increased by the legislature while he was a member and for one year after his term had expired. No Federal officer or employee was to be a member of the legislature or hold any territorial office.
 3. Two members of the supreme court constituted a quorum to do business.

jurisdiction of the justices of the peace was limited to cases in which no title of land was involved or the debt or damage exceeded \$100. The supreme and district courts were to have chancery as well as common-law jurisdiction. (1)

Appeals were allowed in all cases from the district court to the supreme court of the territory under such regulations as might be prescribed by law. Appeals from the decision of the supreme court of the territory were allowed to the Supreme Court of the United States in the same manner as appeals from a United States circuit court if the value of property or the amount in question exceeded \$2,000 and in cases where the constitution, acts of Congress, or a treaty were brought in question. The territorial district court was to have the same type of jurisdiction as the United States circuit and district courts, making them both Federal and Territorial courts. The same general regulations governed appeals in both Federal and Territorial cases; \$2,000 in value must be involved before either type of case could be appealed to the United States Supreme Court. (2)

The important officers of the Territory--the governor, the secretary, the chief justice and the associate justices, the attorney, and the marshal--were all appointed by the President

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1. Organic Act, Sec. 9. Each district judge was to appoint his clerk who was also to be the register in chancery.
 2. Idem. There was to be no jury trial before the supreme court of the territory. The supreme court could appoint its own clerk. The minor territorial officers were a territorial district attorney appointed for four years, and a United States marshal appointed for four years. Their duties and fees were to be the same as those of the Oregon district attorney and marshal.

and ratified by the Senate.(1)

Territorial salaries were not large. The governor received \$1,500 a year plus an additional \$1,500 for his duties as Superintendent of Indian Affairs. Each of the justices received \$2,000 a year; the secretary \$1,500. The members of the legislature received \$3 per day and mileage at the rate of \$3 for each 20 miles traveled. A chief clerk, an assistant clerk, a sergeant-at-arms, and a doorkeeper could be selected for each house of the legislature; the chief clerk received \$5 per day; the other officers, \$3. No other officers within the territory were to be paid by the United States. Incidental appropriations were allowed for public printing and other items of expense not covered in the regular salary schedule. The Secretary of the Treasury was to have complete control over all Federal expenditures within the territory; the legislature could not appropriate any of this money for any other object except that fixed by Act of Congress nor beyond the sum appropriated by Congress.(2)

A delegate to the House of Representatives elected for two years represented the territory in Congress. He received the same mileage and salary as the delegate from Oregon and possessed the right to introduce bills and speak on the floor of the House but not to vote.(3)

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1. Organic Act, Sec. 10, 11. The governor and secretary were required to take an oath before some judicial officer of the territory or nation; the judicial and civil officers of the territory could take their oaths before the governor or secretary, or some other judicial officer within the territory.
 2. Ibid., Sec. 12. The governor might call an extra session of the legislature in case of special emergency; ordinarily, however, one session a year was all that was permitted, and this proved to be too many.
 3. Ibid., Sec. 14.

Cases pending in the Oregon courts were transferred to the proper courts in Washington territory if that was where they belonged; but these cases were still governed by Oregon law. The justices of the peace and other local officers continued in office until the new territorial organization could be perfected. Oregon and Washington territories were to have concurrent jurisdiction in all cases committed on the Columbia River where this river formed the common boundary between the two.(1)

This was the constitution of the territory, a constitution that could be amended merely by act of Congress and only by act of Congress. Little opportunity for self-government could be found within its provisions.

THE FIRST TERRITORIAL OFFICIALS

Soon after his inauguration, President Pierce nominated the officers for the new territory. Isaac I. Stevens of

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1. Organic Act, Sec. 15-20. Federal laws relative to Oregon and Oregon laws applicable to Washington prior to the formation of the territory were to remain in force until superseded by other legislation. The location of the capitol was to be fixed by the legislature, \$5,000 being appropriated for a temporary building as soon as the site had been chosen. Organic Act, Sec. 13. Five thousand dollars was appropriated to the governor for a library at the capitol for the use of the Federal officials in the territory and the legislature and all others the law might indicate. The governor was to define the judicial districts and assign the judges until laws could be passed for that purpose. Federal officers were required to give security as the Treasury Department might indicate for all funds intrusted to them by the central government. Secs. 16 and 36 in each township of the public lands were to be reserved for the common schools.

Massachusetts was appointed governor; J. Patton Anderson of Mississippi, United States Marshal; J. S. Clendenin of Louisiana, District Attorney; and Charles H. Mason of Rhode Island, Secretary.(1) Edward Lander of Indiana was chosen Chief Justice with John R. Miller of Ohio and Victor Monroe of Kentucky Associate Justices.(2) Justice Miller soon became ill and did not qualify. Moses Hoagland, also of Ohio, was appointed in his place but declined the appointment. Through an error, O. B. McFadden of Pennsylvania had been appointed to an office in Oregon already filled by Judge Matthew P. Deady. After McFadden attempted to hold court over Deady's protest, McFadden was appointed justice in Miller's place, relieving President Pierce of an embarrassing situation. In August, 1854, Justice Monroe was removed from office, and Francis A. Chenoweth took his place.(3)

In order to take the Census of the territory, United States Marshal J. Patton Anderson hurried on ahead of the other appointees, reaching Puget Sound in July. Arriving late in November, Governor Stevens, intrusted with the exploration of the northern route of the Pacific Railroad was the last Federal official to reach Olympia.(4)

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1. Mason had been recommended for attorney, but when Mayor Ferguson of Texas failed to qualify for secretary, Mason took his place.
 2. Snowden. Op. cit., p. 211; Bancroft, op. cit., pp. 61-62; Evans, op. cit., p. 460. Word of these appointments did not reach Olympia until the middle of May.
 3. Beardsley and McDonald. Op. cit., pp. 66-68; Snowden, op. cit., p. 211; Williams, George W. "Political History of Oregon, 1853-1865", Oregon Historical Quarterly, Vol. II, p. 9, March, 1901. Deady's commission had been made out to Mordecai P. Deady rather than Matthew P. Deady.
 4. Bancroft. Op. cit., p. 62. Anderson completed the Census in advance in order to allow Stevens to organize the territorial government as soon as he arrived.

THE ORGANIZATION OF THE TERRITORY

Probably no other territory was organized with a population as small as that of Washington. A year after Minnesota became a territory, the Census of 1850 gave its population as 6,077. The Census taken by United States Marshall Anderson upon his arrival in Washington territory showed a total population of only 3,965 white persons.(1) This Census also indicated an unequal ratio of voters to population within the territory; the ratio was about 2.5 persons to one voter in Island, Pacific, Clarke, Thurston, and Lewis Counties; less than 2 to every voter in Pierce County; nearly 3 to 1 in Jefferson County; and only 1.5 to 1 in King County.(2) With representation according to qualified voters rather than population, King and Pierce Counties possessed an advantage that was later to bring a protest against unequal representation from the other counties.

On passing the summit of the Rocky Mountains where lay its eastern boundary, Governor Stevens issued his proclamation assuming authority over the new territory September 29, 1853.(3) The Governor reached Olympia November 25; and, although his arrival was unheralded, he was given a regular frontier recep-

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1. Snowden. Loc. cit. The population and voter ratio by counties were: Clarke 1,134 to 446; Thurston, 996 to 381; Lewis, 616 to 239; Pierce, 513 to 276; Island, 195 to 80; Jefferson 189 to 68; Pacific, 152 to 81; and King, 170 to 111.
 2. Washington Council Journal, 1st Sess., p. 215, 1854.
 3. Snowden. Op. cit., pp. 220-221.

tion.(1) A salute was fired, speeches were delivered by the leading citizens, and the Governor was given a cordial welcome to the territory.(2) On November 28, Stevens issued his proclamation organizing the temporary government of the territory and calling for the election of a delegate and a legislature on January 30, 1854.(3)

PROBLEMS IN APPORTIONMENT

Temporary apportionment was necessary for the election of the legislature. This presented some problems for the Governor; equal apportionment would have given 1 councilman to about 187 voters or to 441 population. The Governor gave 1

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1. Meany. History of Washington, p. 161. He tells the legend that Stevens, unrecognized, feasted on the scraps for his own banquet until he could not eat when presented at the table.
 2. Snowden. Op. cit., pp. 218-219.
 3. "Stevens' Proclamation", Washington Historical Quarterly, Vol. XXI, pp. 138-141, April, 1930. This was part of his work as presented in the Organic Act. The Governor was required by this act to allow 60 days between the proclamation and the election; with characteristic promptness, Stevens allowed 63, calling the election for Monday, January 30, 1854. He also fixed the places of election and selected the election judges for each of these precincts. There were 3 Clarke County precincts at Columbia City, Cascade City, and Walepta; 3 in Lewis County, Monticello, Cowlitz Landing, and Jackson's; 2 in Pacific County, Chinook City and Pacific City; 4 in Thurston County, Olympia, Shoalwater Bay, Chambers' Prairie, and Ford's; 2 in Pierce County, Steilacoom and Tallentire's; 2 in King County, Alki and Seattle; 2 in Island County, Penn's Cover and Bellingham Bay; and, 2 in Jefferson County, Port Townsend and Port Ludlow. These election precincts are a pretty accurate index of the thin line of settlement in Washington territory in 1853.

councilman to Island and Jefferson Counties with 148 voters and 384 population; 2 to Thurston County with 381 voters and 996 people; 2 to King and Pierce Counties with 387 voters and 683 people; 2 to Pacific and Lewis Counties with 300 voters and 768 population; and, 2 to Clarke with 466 voters and 1,134 people. Either on the basis of population or voters, Clarke County was definitely slighted in the Council. Equal apportionment in the House required 1 representative for every 93 voters or 220 population. Of the small Counties of Island, Jefferson, King, and Pacific, King alone had more voters than this number; while none of them had a population of 200, all received 1 representative in the House. The resulting deficiency was made up by under-representation in Lewis County.(1) It may be assumed that Governor Stevens attempted to avoid inequalities of representation but that he, like many others who have faced this old problem, failed to find an entirely satisfactory solution to the question of relating unequal county units to equal representation.(2)

The Governor's apportionment, the manner in which he arranged the election precincts in the river counties, and the short time he allowed for the election returns to be made to

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1. Pacific County had only 61 voters and Jefferson, 68. Washington Council Journal, loc. cit. Lewis County was given to representatives for 239 voters and 616 population. Clarke, Thurston, and Pierce Counties received an equal representation in the House as to qualified voters.
 2. There seems to be no equitable solution to the problem of representation as long as it is based on county rather than population units.

Olympia were not above criticism. The Washington Pioneer (Olympia) excused the Governor's arrangement of precincts on the basis of his lack of acquaintance with the territory, but his granting of only 3 precincts to Clarke County with the largest population in the territory does not seem equitable. "No man can deny," said the Oregonian, (1) "but that she [Clarke County] ought to have her just and equitable proportion of representatives in each branch of the Legislature, according to her population." The Oregonian concluded that Clarke County's complaint against Governor Stevens' first official acts was a just complaint. But apportionment was to be according to voting population; and Clarke had fared better on this basis. A special committee appointed to investigate the apportionment given Clarke County reported that it had not been discriminated against and that the fractional difference between Clarke, Pacific, and Lewis Counties was equitable in the aggregate. In fact, Clarke County had one real advantage: United States Marshal Anderson had taken the Census in the northern counties first, giving the southern counties the advantage of immigration. (2)

The Governor also temporarily organized the judiciary in his proclamation of November 28, 1853. Pacific and Clarke

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1. Portland Oregonian, January 14, 1854; Copied in Pioneer and Democrat, February 18, 1854.
 2. Idem. Even when the legislature wrestled with the problem of apportionment its solution was not always satisfactory to every section.

Counties formed the First District; Lewis and Thurston Counties, the Second; and, Pierce, King, Island, and Jefferson Counties, the Third. Stevens also outlined the times and places of holding the courts in each district, assuring each county at least one annual session of court.(1) The Governor's organization was only temporary; but it provided a good point of departure, from which the first legislature could lay the foundations for the new territorial government.

EARLY POLITICS

Political parties quickly organized in the new territory. As early as July 9, 1853, the Columbian abandoned its neutral position in politics, changed its name to the Pioneer, and attempted to rally the Democrats for victory in the forthcoming election. County Democratic conventions were soon called to select delegates for the territorial convention.(2) One delegate was to be sent to this convention for each representative in the legislature and two for each councilman.(3)

The Whig Convention at Olympia in December nominated William H. Wallace for delegate;(4) but the main interest centered in the Democratic convention at Cowlitz Landing early in

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1. "Stevens' Proclamation", op. cit., pp. 138-141; Washington Pioneer, December 3, 1853. The legislature was to meet February 27, 1854.
 2. Washington Pioneer, December 3, 1853. The editor thought Washington had the best set of Federal officials on the Pacific Coast.
 3. Ibid., December 17, 1853.
 4. Ibid., December 31, 1853.

January, 1854.(1) Since many of the votes in these early conventions were cast by proxy, P. W. Crawford of Clarke County possessed 9 votes in this one. By splitting the Sound delegates between three candidates, Crawford was able to win the nomination for the lone river candidate, Columbia Lancaster, after about 30 ballots.(2) With an eye for showmanship, G. W. McConaha of Seattle approached him and recited Timothy Dwight's poem, beginning, "Columbia, Columbia, to glory arise!"(3) With an efficient party organization behind him and a wealth of humorous stories, Lancaster won easily.(4)

The election of the legislature also proved favorable to the Democrats; they carried the Council by a slim majority

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1. Washington Pioneer, January 11, 1854. G. W. McConaha of Seattle was one of the leading Democratic candidates; but serious accusations against him in California papers arrived just in time to embarrass his cause. He had to send to Sacramento for evidence to refute these charges which required time and imperilled the success of his party; therefore, he withdrew. The convention showed its regard for him by electing him chairman; and he in turn rendered a service to the convention by helping defeat the suggestion for two-thirds rule, as was the custom in Democratic conventions, by a ringing speech against it. Snowden, op. cit., p. 222.
 2. Crawford, P. W. Narrative of the Overland Journey to Oregon, p. 7, No. 266 Pacific MS., Bancroft Library, University of California, Berkeley, 1878. Wells, Anderson, and M. T. Simmons were the three candidates.
 3. Snowden, loc. cit.
 4. Ibid., p. 223; Pioneer and Democrat, March 4, 1854. Lancaster received 698 votes to 500 for Wallace and 18 for independent M. T. Simmons, who, though personally popular, suffered the fate of a volter whose party has chosen someone else in the convention. According to the Organic Act, this, the first delegate, was chosen only for the term of Congress to which he was elected.

and the House by six or more over their opponents.(1) However, the first legislature was strangely free from partisan conflicts.

THE FIRST LEGISLATURE

Possibly the most important session of the legislature in the history of Washington territory convened February 27, 1854.

(2) The Pioneer lists the average age of the members as only 28; 10 of them being farmers; 7 lawyers; 4 mechanics; 2 merchants; 2 lumbermen; 1 a civil engineer; and, 1 a surveyor.(3) This gave adequate representation to most of the territorial interests.

1. Bancroft, Op. cit., Vol. XXVI, p. 73, gives the majorities as 1 in the Council, 6 in the House. The Pioneer, March 4, 1854, lists 2 majority in the Council and 7 or 8 in the House. By a strange succession of deaths, Pacific County was practically left without any representatives in the first legislature. J.L. Brown, one of the candidates, died just before the election; Jehu Scudder was nominated in his place and elected but died before the legislature met. A special election was held and Henry Feister was chosen to fill the vacancy. He rushed to the capitol by March 29, sworn in and took his seat, but died that night while catting in the barroom of the Washington Hotel, a victim, it is supposed, of apoplexy. A resolution was passed immediately authorizing another election; two weeks later, on April 14, James C. Strong took his seat giving Pacific County a representative in the House for the remaining days of the session. Snowden, op. cit., p. 233; Pioneer, April 1, 1854; Washington House Journal, 1st Sess., pp. 32, 83, 84, 97, 1854.
2. The Council soon organized with G.N.McConaha, President; Elwood Evans, Chief Clerk; U.E.Hicks, Assistant Clerk; J.L.Mitchell, Sergeant-at-arms; and Wm.W.Plum, Doorkeeper. The House elected a corresponding set of officers: F.A.Chenoweth, Speaker; S.F. Kendall, Chief Clerk; D.L.Phillips, Assistant Clerk; E.T.Austin, Sergeant-at-arms; Jas.H.Roundtree, Doorkeeper. The members of the Council were: Daniel F.Bradford and W.H.Tappan from Clarke County; Seth Catlin and Henry Miles, Lewis and Pacific; B.F.Yantes and Daniel F.Bigelow, Thurston; Lafayette Blach and G.N.McConaha, Pierce and King; Wm.T.Sayward, Island and Jefferson. In the House, Clarke County sent A.J.Bolon, J.D.Biles, F.A.Chenoweth, Henry R.Crosbie, and A.Lee Lewis; Island County, S.D. Howe; Jefferson, D.F.Browfield; King, A.A.Denny; Lewis, H.D. Huntington and J.R.Jackson; Pierce, John M.Chapman, Henry C. Moseley and L.F.Thompson; Thurston, L.D.Durgin, C.H.Hale, David Shelton and Ira Ward. Journal, ibid., pp. 6-7. Snowden, op.cit., pp. 229-232, gives short sketches of each by W. H. Struve.
3. Snowden, op. cit., p. 220.

On February 28, Governor Stevens delivered his message to the legislature. After expressing confidence in the position and future of the territory for commercial development, he presented some of the problems it faced. As the Indian titles to the land had not been extinguished nor a law passed to extinguish them east of the Cascades, it was impossible, under the land laws, to secure titles to land, thus impeding the growth of the territory. The public surveys were languidly conducted while settlers flocked to all sections of the territory. Memorials to Congress were needed for roads from the Columbia River to the Sound, across the mountains to Walla Walla, and on to the Missouri River; for a surveyor general's office in the territory to press the land surveys; for a modification of these land laws to facilitate settlement; and for a continuation of the geographical and geological surveys already begun until the whole of the territory was covered. Stevens favored railroads from the east coast to San Francisco and Puget Sound if practical routes could be found; he knew definitely that the northern route was practical. The interests of the territory demanded an efficient mail service rather than the defective one then in existence. (1)

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1. Gates, Charles M. Messages of the Governors of the Territory of Washington to the Legislative Assembly, 1854-1889, pp. 3-6. For six weeks that winter it had not come through despite the fact that sailing vessels had reached Seattle from San Francisco during this interval. Congress should also be memorialized to extinguish the title of the Puget Sound Agricultural Company; Stevens had given the Hudson's Bay Company until July to wind up its trade with the Indians, as it had no right to carry on this trade under the treaty. With a rapid increase of population, the Governor suggested a yearly census.

The Governor recommended much practical legislation to the new legislature. An efficient set of laws was needed for the new territory; new counties should be organized, particularly east of the mountains. The Organic Act enjoined the legislature to pass an election law, to assign judges, and to create judicial districts. He further recommended that a commission be selected to report on a common school system and that Congress be asked to appropriate land for a university.(1) The Governor's suggestion for a competent militia for the territory was neglected at this session. He hoped that "no hostile foot will be able to land upon our soil, though we maintain the conflict single-handed, without additional aid from home, against whatever power may be brought against us." Subsequent events were to show the practical nature of this suggestion; but the legislature failed to see the need as clearly as an army officer who counted 10,000 Indians in his territory.(2)

The first act of the legislature was to create a code commission consisting of Chief Justice Lander,(3) Victor Munroe, and William Strong. This commission submitted the laws to the standing committees of the legislature as they were drafted to avoid any difficulty with that section of the Organic Act which required that each Act should embrace but one object to

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1. Gates. Op. cit., pp. 7-8.
 2. Ibid., pp. 8-9. Cf. also Snowden, op. cit., pp. 233-237; Bancroft, op. cit., pp. 73-76.
 3. Washington House Journal, 1st Sess., pp. 40-41, 1854. Lander had to be convinced that this new job did not violate his official duties. These three men were among the best legal talent in the territory.

be expressed in its title. It did its best work on the Civil Practice Act, the Criminal Code, the Criminal Practice Act, the Probate Code, and the Justice Practice Code. The commissioners largely followed the code of New York with occasional changes adopted from the codes of Indiana and Ohio.(1)

The work of the commission and the legislature was accomplished in sixty-four days. Elwood Evans, a lawyer of considerable ability, says of its work, that

"...it substantially continued the great body of the statutory law of Washington, throughout its territorial existence. The innovations made by subsequent legislatures upon that collection of laws--uncodified because each subject matter must be confined to a separate enactment, but regarding each act as a chapter, rather than a code--under the guise of so-called amendments, in no way improved the very creditable system, which had emanated from those two vigorous legal minds and learned jurists, Edward Lander and William Strong."(2)

The problem of suffrage proved one of the most difficult for the legislature to solve. A House amendment granting the vote to "civilized half-breed" American Indians caused the

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1. Beardsley, Arthur S. "Compiling the Territorial Codes of Washington", Pacific Northwest Quarterly, Vol. XXVIII, pp.4-7, January, 1937; Snowden, op. cit., pp. 237-238. Other Acts of the legislature show definitely the influence of the laws of Oregon, which had been borrowed from the laws of Iowa. The commissioners had lived in New York, Indiana, and Ohio before they came West and naturally employed the laws with which they were familiar. The people of the territory were familiar with the laws of Oregon; thus the legislators found it convenient to follow the laws of that territory on election practices and the like.
 2. Evans, op. cit., p. 466; Snowden, op. cit., p. 238; Beardsley, op. cit., p. 7. It may seem strange that Evans omits all reference to Victor Monroe the third member of the commission; but when one considers that Monroe backed Governor Isaac I. Stevens in the martial law controversy, while Evans strongly opposed the Governor, the mystery is largely cleared up. Years later Evans was still unable to give Monroe his just measure of credit on the code commission; prejudices still lingered.

defeat of the first franchise bill.(1) A second bill prompted considerable debate, especially on the provision: "That nothing in this Act shall be so constructed as to prevent all such American half-breed Indians, as the judges of election shall determine, have adopted the habits and customs of civilization from voting."(2) During the debate on this section, A. A. Denny offered to amend it still further "to allow all white females over the age of eighteen to vote". This first introduction of woman suffrage in the House failed by only one vote, thought to be that of a member with an Indian wife who could not have voted even if the bill had passed.(3) The suffrage act gave the vote

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1. Washington House Journal, 1st Sess., pp. 58, 61, 62, 1854. A real effort had been made to keep from aligning the parties in the legislature; but the discussion of this question had effectually drawn the distinction between Whig and Democrat; two Democrats, however, voted in the minority and one Whig in the majority, disrupting an otherwise strictly party vote.- Pioneer and Democrat, April 22, 1854. The Whigs apparently favored no limitation; the Democrats some on half-breed voting. This Amendment passed the House 8 to 6 and was concurred in by the Council; but other amendments were not so fortunate. After the bill had been referred to a committee of conference, it was returned to the House and indefinitely postponed on March 22. On April 11, House Bill No. 51 was instituted as a substitute measure. The day following, the House refused to concur in the Council amendment granting the franchise to half-breeds. Another committee of conference was chosen from both houses, and this committee recommended the proviso that was finally adopted. - Journal, op. cit., pp. 62; 70; Washington Council Journal, 1st Sess., pp. 64, 76, 1854.
 2. Washington House Journal, 1st Sess., pp. 104, 110-112, 1854. On April 14, 1854. - Laws of Washington, 1st Sess., p. 64, 1854.
 3. Washington House Journal, 1st Sess., pp. 88, 98, 99, 1854. Meany. Op. cit., p. 163. Pioneer and Democrat, April 22, 1854.

to all whites over twenty-one who had resided in the territory for three months and who were citizens or had declared their intention to become citizens. Civilized half-breeds could also vote as mentioned above. (1)

Two problems arose in connection with apportionment. Since the Organic Act said that the members of the legislature should be elected for one year and since the first legislature met February 27, 1854, 365 days later would take in the regular time of meeting for the second legislature. Under these circumstances, did the present legislators continue in office until after the next session? In case they did, no apportionment bill would be necessary before then. United States District Attorney Clendenin informed the Council that the legislature had the power to fix the time for the next session, that the Organic Act referred to legislative years rather than literal years, that

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1. Laws of Washington, 1st Sess., p. 64, 1854. Soon after this law passed, the Council received a Memorial from Lewis County requesting that only those Indian half-breeds who could speak, read, or write English should be allowed to vote. A statement by Leclaire, a Catholic missionary at the Cowlitz Mission, approved this Memorial on the ground that it would encourage parents of half-breed children to give them some education. A majority of the committee opposed the Memorial while a minority favored it. This minority report called forth a supplementary act to the election law restricting the vote to half-breeds who could speak, read, or write English. But this bill, Council Bill No. 34, failed to pass by the adverse vote of the Council. - Washington Council Journal, 1st Sess., pp. 126-130, 133, 1854. Cf. also, Pearce, Stella E. "Suffrage in the Pacific Northwest", Washington Historical Quarterly, Vol. III, pp. 108-109, April, 1912.

only one regular session of the legislature could meet each year, and that members elected for one year could not hold seats in two regular sessions of the legislature. Therefore, the meeting of the legislature on the first Monday in December, 1854, would be in the next legislative year, and present members would not hold-over. (1)

Considerable dissatisfaction existed over apportionment by qualified voters rather than by population. (2) A Memorial passed May 1, 1854, with apparently no opposition in either house, not even from Pierce and King Counties who profited most from the arrangement under the Organic Act, insisted that "great injustice will be done to several portions of this territory, by apportioning the representation in the Council and House of Representatives by the number of 'qualified voters'." The Memorial requested a revision of the Organic Act in order to apportion the territory by the "number of inhabitants". (3) Congress failed to harken to this appeal; and no official change of policy on this question is to be noted for another twenty years. (4)

Considerable work of organization was done during this session. The first legislature created eight new counties and

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1. Washington Council Journal, 1st Sess., p. 157, 1854; Organic Act, Sec. 4.
 2. Organic Act, Sec. 4.
 3. Washington Council Journal, ibid., p. 183.
 4. Revised Statutes of the United States, 2d Ed., Sec. 1849, 1878.

appointed temporary county commissioners and other county officers for them until permanent sets of county officials could be selected. The more populous counties received boards of county commissioners, sheriffs, auditors, treasurers, justices of the peace, coroners, assessors, constables, and judges of the probate court.(1)

A good many other Acts were passed. The Governor received power to fill vacancies in the territorial government during the recess of the legislature. County and precinct vacancies were to be filled by the county commissioners.(2) A poll tax was levied on male whites from 21 to 50 years of age, as well as a property tax of 1 mill for territorial purposes, 2 mills for schools, and not over 4 mills for county purposes.(3) Roads were to be kept up by citizen labor; the county commissioners were to superintend the care of the poor; and persons nearer of kin than first cousins were not allowed to marry.(4) The law code and a large number of details of this type completed the legislation of the first legislature. It also created the offices of territorial auditor, treasurer, and librarian, and provided for their appointment by a joint convention of the

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1. The counties were Clallam, Chehalis, Skamania, Sawanish (later changed to Mason at the death of Secretary Mason), Wahkiakum, and Walla Walla. - Laws of Washington, 1st Sess., pp. 471-485, 1854; Snowden, op. cit., pp. 238-241. The officers of Walla Walla County failed to qualify and no representatives were elected to the territorial legislature until 1859 although the county was allowed two in 1854. Snowden, ibid., p. 241.
 2. Laws of Washington, 1st Sess., p. 74, 1854.
 3. Ibid., p. 330.
 4. Ibid., pp. 340, 395, 404.

legislature. (1)

The Council unanimously favored a prohibition referendum; but the thirsty House wiped out most of the bill and sent it back to the Council which refused to accept the amendments while the House insisted upon them, thus postponing action for this session. (2) In compliance with the Organic Act the legislature gave the judiciary a permanent organization by organizing the judicial districts, assigning the judges to each, (3) and appointing the prosecuting attorneys for each. (4)

Memorials to Congress included requests for a separate mail agent for Washington Territory, an order compelling mail steamers on the Columbia River to stop for and leave mail on the

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1. Laws of Washington, 1st Sess., pp. 408-415, 1854. In joint convention, April 17, J. W. Wiley was elected Public Printer; and to fill the new offices, Daniel R. Bigelow, Auditor; William Cook, Treasurer; and B. F. Kendall, Librarian. - Washington House Journal, 1st Sess., pp. 103-104, 1854; Council Journal, 1st Sess., p. 116, 1854. With the exception of the Public Printer, this method of selection of these officers continued until 1874. More worry than work dogged the steps of the new Treasurer; his reported receipts for the year were a little over \$5.00 while the liberal legislature appropriated \$250 for extra services performed by the prosecuting attorney, and \$10 per day for the code commission while they worked and \$7 per day for their clerks. - Snowden, op. cit., p. 241.
 2. Washington Council Journal, pp. 103, 125; House Journal, pp. 112, 115; Pioneer and Democrat, April 15, 1854. The House vote was 9 to 8.
 3. Laws of Washington, 1st Sess., p. 448, 1854. The first district with Associate Justice O. B. McFadden as judge consisted of Walla Walla, Skamania, Clarke, Cowlitz, Wahkiakum, and Pacific Counties; Justice Monroe was assigned to the second district of Lewis, Chehalis, Thurston, and Sawamish Counties; and Chief Justice Lander, to the third, composed of Pierce, King, Island, Jefferson, Clallam, and Whatcom Counties.
 4. Washington House Journal, p. 116. F. A. Chenoweth was selected for the first, D. R. Bigelow for the second, and Frank Clark for the third.

north side of the river every trip, additional mail routes, the extinguishing of the Indian titles to the land, a surveyor general and a separate donation act for the new territory, a grant of land for a university, and the extinction of the Puget Sound Agricultural Company land titles on the basis of lands actually fenced in 1846. (1) Congress was also asked to grant George Bush, a free mulatto who had befriended immigrants, title to his 640 acres of land in Thurston County inasmuch as he was excluded from holding land under the donation act. (2) Congress passed the act and Bush was rewarded for his industry and generosity. (3) But to grant Bush citizenship was another question; an act to this effect was defeated by a close vote in the House. (4)

Several important joint resolutions were also passed. Congress was requested to annex the Sandwich Islands, to settle the San Juan boundary dispute, to extend direct mail service on Puget Sound, to build more roads, to provide additional surveys, lighthouses, and a marine hospital, to supply arms and military equipment for the men of the territory, to grant additional ports of delivery, and to appropriate funds to settle debts due the Marshal of Oregon and to reimburse the Secretary of the Territory for the loss of nearly \$3,000 when an employee of the express company absconded with it. (5)

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1. Washington House Journal, pp. 145-156; Council Journal, pp. 175-188. Congress was also asked to pay Lafayette Balch for the expedition to Queen Charlotte's Island to rescue the imprisoned whites there.
 2. House Journal, pp. 157-158; House Reports, 33rd Cong., 2d Sess., Serial 808, No. 54, pp. 1-2.
 3. Snowden. Op. cit., pp. 242-243.
 4. Washington House Journal, p. 108.
 5. Washington Council Journal, pp. 191-211.

Two other resolutions have more than passing significance. The first of these authorized Governor Stevens to proceed to Washington, D.C., before the session of the legislature was half over to promote his recommendation for the northern route for the Pacific Railway as against the insistence of Secretary of War Jefferson Davis for the southern route. The Governor could easily be spared at this time because he had no power to approve or veto the acts of the legislature.(1) The other important resolution asked for an increase of salary for the Collector of Customs on Puget Sound to equal the salary of the Oregon Collector, and for a general increase of the salaries of the Federal officials and of the members of the legislature within the territory.(2) The Pioneer and Democrat(3) complained that \$3.00 per day for members of the legislature was exactly no compensation at all as it failed to cover their current expenses; in fact, the salaries of the judges and other Federal and Territorial officers were not enough for respectable occupancy of these positions. The editor concluded that low salaries excluded the worthy poor from becoming representatives or holding any office within the territory as a person had to have private means

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1. Washington House Journal, p. 166; Snowden, op. cit., p. 240.
 2. Washington House Journal, p. 174.
 3. April 1, 1854.

"...to maintain the position with that respectability which can be assumed in the states or territories east of the Rocky Mountains. The moiety of compensation which has been fixed by the Organic Act for the service of members of the legislature, very naturally would have the effect to make property represent the wishes of the people of the territory probably not in accordance with their real desires."(1)

The legislature had done its work well. Sectional struggles had been subordinated to the interests of the whole; controversial issues, as the location of the public buildings, had been evaded in an effort to obtain a workable and efficient system of government first. President McConaha summarized aptly the work of the legislature in his closing remarks to the Council at the end of their 64-day session,

"...in which time you have transacted more business than is generally performed in twice that time. All and each of the laws of Oregon, which were in force at the time of our territorial organization, have been repealed, and one, better adapted to our wants, substituted for each one so repealed; and thus our Legislature secured to our Territory a new and greatly improved code."(2)

It would have been fortunate for Washington had later legislatures done as well by the Territory.

A spirit of levity prevailed at the end of the session. A committee from "headquarters" cornered A. A. Denny on his way to his canoe the morning after adjournment and attempted to force him to drink a glass of whiskey which he refused to do.

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1. Pioneer and Democrat, April 1, 1854.
 2. Washington Council Journal, p. 167.

Elwood Evans saved the day for him, "the only member of the Legislature who consistently lives up to the principles of the Maine liquor law." President McConaha of the Council did not fare so well. He had quit drinking; but a "headquarters" committee overtook him while Denny was on his way to his canoe the second time. On his return trip a storm off Vashon Island capsizeed McConaha's canoe, and he was drowned. Many persons attributed his death to the delay and liquor at "headquarters".(1)

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1. Meany. History of Washington, p. 163; Whitworth Statement, Pacific MS., Bancroft Library, University of California, p.2. McConaha's death was considered a real loss to the Territory.

CHAPTER II. THE FEDERAL GOVERNMENT AND THE TERRITORY

The treatment given the American Colonies before 1775 parallels that given the subject territories of the United States in the next century. The increased and often oppressive interference of the central government in local affairs as the territory grew in population and wealth and in the assurance of its ability to govern itself is definitely illustrated in the development of Washington Territory. The hope of eventual statehood undoubtedly went far to allay what might easily have developed into serious discontent at the increased meddling of the central authority in territorial affairs. The Government at Washington was ever less inclined to grant concessions as the territory grew and prospered.

An early settler expressed the territorial relation in rather apt terms when he characterized the territories as "Poor little things helpless as little infants" entirely dependent for assistance of every variety upon the central government.(1) This relation was a far cry from the hope of the editor of the Olympia Columbian(2) that Washington's government

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1. Crawford, P. W. Narrative of the Overland Journey to Oregon, MS., p. 319, 1878.
 2. April 23, 1853.

would be the "closest approximation to the sovereignty of a State, while preserving the forms of dependence germane to a Territory."

THE INDIAN WAR AND WAR DEBTS

The two major developments in the relation between the Federal Government and the Territory between 1853 and 1860 center around the Indian War. Since the reaction of the Federal Government to martial law is discussed elsewhere, its relation to the war effort merits attention here. Under the donation acts it was necessary for the Indian title to the land to be extinguished before the settlers could obtain a clear title to their claim. The central government authorized Governor and Superintendent of Indian Affairs Isaac I. Stevens to make treaties with the Indian tribes relinquishing their claim to large areas of land in Washington Territory. (1)

Stevens' haste in doing this work accelerated the Indian War early in 1855. Governors G. L. Curry of Oregon and Stevens of Washington attempted a vigorous prosecution of the war, called out volunteers, and planned to take the offensive as soon as possible; in this effort, however, they received little encouragement from the commander of the regular troops on the Pacific Coast, General John E. Wool, whose headquarters were

1. Snowden, Clinton A. History of Washington, Vol. III, pp. 257-260. For an account of the treaties, cf. pp. 257-309.

at Benicia, California.(1) This unfortunate lack of cooperation nearly proved disastrous to the war effort and provided a problem for the territorial governors in their effort to secure payment from the Federal Government for the war debts that the territories were unable to bear.

Some of the causes for this friction, and the reasons for the attitude of the central government toward the Indian War, are set forth in the debate in the House of Representatives on the Deficiency Bill for the regular Army in 1856. The debate revealed General Wool's insistence that the Indian wars were unnecessary and that the people of the territories of Washington and Oregon wished to use them to free land for speculation, to exterminate the Indians, and plunder the treasury of the United States as they expected to be paid well for their services. He blamed the governors of the two territories for exceeding their powers by raising volunteers and using them freely against the Indians. Stanton of Ohio argued that there were really two rival heads for the military arm of the government on the Pacific Coast. The governors of Oregon and Washington with their volunteers made war on their own responsibility, while General Wool made a separate war in behalf of the

1. Snowden. Op. cit., pp. 313-338. This chapter discusses the causes of the war in some detail. Wool especially disliked Stevens who was a West Point graduate while the General was not. This jealousy was increased when Stevens, on his return to Washington Territory with his family in 1854, stopped over for a dinner party in San Francisco and on this occasion publicly disputed Wool's pretensions to have won the Battle of Buena Vista. This friction proved a real threat to the safety of the people in Oregon and Washington during the war. - Ibid., p. 343.

central government. Either the governors or General Wool was in the wrong; there could be no occasion for two separate wars. The President ought to investigate and either remove the governors or General Wool in order to eliminate this awkward situation.(1)

Although Delegates Joseph Lane of Oregon and J. Patton Anderson of Washington protested, these arguments had their effect. Lane accused Wool of perverting the facts to discredit Governor Curry and place the people of the Northwest in the unfavorable light of making war on an innocent and unoffending people merely to enrich themselves by robbing the public treasury.(2) Delegate Anderson also replied to the charge that the war was essentially one of plunder by insisting that it was without evidence or the shadow of a foundation. He pointed out that the persons in the locality were much better able to judge the need of volunteers than General Wool in California and that while Wool denied the right of the Oregon volunteers to receive pay be-

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1. Congressional Globe, 34th Cong., 1st Sess., pp. 1135-1136.
 2. Ibid., p. 1144. Speech of Lane, May 7, 1856. Lane favored no deficiency appropriations to support troops merely to remain in their barracks in time of war and to pay officers for writing defamatory letters against the civil authorities in the territories. He further insisted that while Wool claimed that the volunteers were unnecessary, in March, 1856, he had sent two regiments of regulars to Puget Sound and asked Colonel Casey to ask Governor Stevens for two companies of volunteers to aid them; but cooperation, again, was not to be obtained as Stevens claimed these men were in the field on decisive duty and could not be spared. The Governor of Washington expected General Wool to grant him a conference when the latter visited Puget Sound; but the General had his own ideas of the war, and they were not those of Stevens'; therefore, he declined to see the Governor.

cause the governors of Oregon and Washington possessed no authority to call them, he had at the same time recommended pay for volunteers called out by governors in other sections of the Pacific Coast. (1)

This is indicative of a conflict over the causes of the Indian Wars which embarrassed the territories of Oregon and Washington in their efforts to gain Federal aid for payment of the war debts. The war was not due to specific outrages by the whites, as Wool claimed, but to the unwillingness of Congress to relinquish the Indian title to the land before the settlers arrived and a disastrous delay in ratifying the Indian treaties relinquishing this title after they had been made, causing the Indians to lose faith in the treaty-makers. Possibly the treaties were made in too great a hurry; but much of the trouble came from the fact that the donation law allowed the settlers to claim the lands before the Indian titles were extinguished. (2)

J. Ross Browne, special agent for the Treasury Department to investigate the causes of the Indian War, found that the settlers generally denied that the war was started for the purpose of speculation but insisted that its chief cause was the encroachment of a superior upon an inferior race. He concluded that the Donation Law, with no restriction on claims before the extinction of the Indian title, had encouraged this encroachment

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1. Congressional Globe, 34th Cong., 1st Sess., pp. 1191-1192.
 2. Snowden. Op. cit., pp. 313-338; General Gibbs' letter on the causes of the Indian War in Swan's Northwest Coast, Appendix, pp. 425-428; Yesler, H. L., Settlement of Washington Territory, Pacific MS., Bancroft Library, University of California, p. 16, 1878.

and accentuated the trouble.(1) This source of friction was removed in 1859 when Congress finally ratified the Indian treaties.(2)

The payment of the war debt became a troublesome problem in Federal and Territorial relations.(3) The Olympia Pioneer and Democrat for November 7, 1857, lamented that, while the

1. J. Ross Browne to J. W. Denver, Commissioner of Indian Affairs, House Executive Documents, 35th Cong., 1st Sess., Serial 955, No. 38, pp. 1-4. The opposition to Governor Stevens over martial law and the Indian treaties caused Congress to combine the Oregon and Washington superintendencies in 1857, under Colonel Nesmith of Oregon, which change was regarded as "the crowning act of injustice to Washington Territory". - U.S.Statutes at Large, Vol. XI, p. 184; Pioneer and Democrat, May 8, 1857. Repeated Memorials were sent to Congress protesting against this unsatisfactory arrangement, and in 1861, the people of Washington were granted what they had hoped for, an Indian Superintendent of their own, separate from the Governor, with a salary of \$2,500 a year. - U.S.Statutes at Large, Vol. XII, p. 130; Laws of Washington, 5th Sess., pp. 75-76, 1857-1858; Ibid., 6th Sess., pp. 81-82, 1858-1859; Ibid., 7th Sess., pp. 494-495, 1859-1860.

B. F. Kendall was appointed Superintendent against the wishes of the Republican territorial leaders in 1861, but was removed shortly after when C. H. Hale, an Administration man, took his place.Olympia Washington Standard, August 24, 1861, March 29, 1862.

2. Bancroft, Hubert Howe. "Washington, Idaho, Montana", History of the Pacific Coast States, Vol. XXVI, p. 198; Laws of Washington, 5th Sess., p. 82, 1857-1858; Ibid., 6th Sess., p. 81, 1858-1859. The ratification of the treaties removed the threat of another Indian war like that of 1855-1858.

3. General Wool's proclamation closing Walla Walla County to settlement, a policy continued under Colonel Wright when Wool was removed early in 1857, caused considerable reaction against him in Washington Territory. In a Memorial to Congress protesting against this action, it was claimed to be without the authority of law and a "high-handed outrage upon the rights and liberties of the American people" and an "outrageous usurpation of the military over the civil authority." - Laws of Washington, 5th Sess., p. 66, 1857-1858.

States were adequately defended and the liquidation of their war claims provided for, the territories were dependent upon the discretion and mercy of Congress and were

"...at first provided with inadequate defenses, and then left to suffer a ruinous delay in compensation for defending themselves... .But the neglects, injuries, and insults are brooked, because the suffering party is a Territory! She has no power to re-buke, nor retribution."

In 1857 Governor Stevens was elected delegate, which position he held for four years. During this period, he and Lane attempted to obtain favorable action on the war debt.(1) These efforts were partially rewarded in 1861 when Congress passed a bill for the payment of the debt;(2) but since no method of financing this project was provided in the bill, it had little value.(3) As a result, the territorial legislature continued to send Memorials to Congress for an equitable payment of the war claims throughout the decade of the

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1. Congressional Globe, 35th Cong., 1st Sess., Appendix, pp. 490-495; Ibid., 36th Cong., 1st Sess., pp. 1989-1990. Stevens repeatedly denied that speculation caused the war or that the treaties were responsible; but these old causes given by General Wool continued to impede action. He laid much of the blame for the friction between the volunteers and the regular troops to General Wool and the causes the latter had given for the war. That the war had been a real disaster for the Territory of Washington no person could deny. - U.S. Statutes at Large, Vol. XII, p. 19.
 2. Idem.
 3. Congressional Globe, 37th Cong., 2nd Sess., p. 1655, April 15, 1862.

1860's. (1)

CARPETBAG RULE

While the carpetbag rule became a much greater problem later in the territorial period, some disaffection soon appeared in regard to Federal appointments. Self-government for the territories was not easy to obtain while their offices were convenient political rewards for friends of the Administration who were unpopular elsewhere. Both the Democratic and Whig

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1. Laws of Washington, 14th Sess., p. 256, 1866-1867; 1st Bienial Sess., pp. 171-174, 1867-1868. Three delegates represented Washington Territory in Congress from 1853 to 1861. These individuals had only nominal influence as they possessed no vote and often little ability to convince Congress that remote territories demanded more than passing attention. Columbia Lancaster, J. Patton Anderson, and Isaac I. Stevens, all Democrats, were the delegates from 1853 to 1861. The first election of Stevens in 1857 largely vindicated his policies during the Indian War and martial law. - Pioneer and Democrat, September 11, 1857, and August 19, 1859; Evans, Elwood. History of the Pacific Northwest: Oregon and Washington, Vol. I, p. 490; Vol. II, pp. 54-55.

Several Acts of importance were passed by Congress affecting Washington Territory during this earlier period. One of the first of these extended the Pre-emption Act of September 4, 1841, to both Oregon and Washington Territories. It also provided for two townships of land to be granted to Washington Territory for a university, and a Surveyor General and separate surveying district for the new Territory. A Register and Receiver were also granted by the Act. - U.S. Statutes at Large, Vol. X, pp. 305-306. Washington now had the full privileges of the Donation Act. - Laws of Washington, 1st Sess., pp. 43-55, 1854. In 1858 the land laws were extended east of the Cascade Mountains and two years later the Columbia River Land District was created. - U.S. Statutes at Large, Vol. XI, p. 293; Ibid., Vol. XII, pp. 16-17. A commission was provided to run the northern boundary of Washington in 1856; and the southern boundary was to be surveyed in 1860. - Ibid., Vol. XI, pp. 42, 110. The territorial laws were regularly submitted to Congress and referred to the committee on territories. This gave ample opportunity for disallowance, but no Federal interference is to be noted during the 1850's. Congressional Globe, 34th Cong., 1st Sess., p. 428.

Conventions protested against political importations as early as 1855. The Whig resolution expressed the confidence that the Territory had within itself the means "for self-government, and the material of which to constitute every officer required in the administration of the Territory."(1) Such protests were of little effect. The next year when Selucius Garfield was appointed Receiver of the public money at Olympia, the local paper criticized the selection since he was chosen without consulting the delegate who opposed him. "Some one of your citizens was entitled to the appointment," the editor concluded, "and they ought to have had their wishes considered."(2) Again in 1858, Judge Chenoweth was removed despite the fact that a large majority of the voters of his district petitioned Washington for the renewal of his commission.(3) Two Memorials to Congress in 1859 and 1860 for the privilege of allowing the people of the Territory to elect their own governor and judges reflect popular dissatisfaction with Federal appointments in the Territory.(4) Self-government, however, was an aim not to be

1. Pioneer and Democrat, May 12, and, June 1, 1855.

2. Ibid., October 17, 1856.

3. Ibid., May 21, and, September 10, 1858. Delegate Stevens may have been responsible for this removal of his political enemy despite the unpopularity of the move in the immediate territory. Politics and the influence of the delegate, rather than popular desire or public interest, often determine the choice of Federal officers within the Territory.

4. Laws of Washington, 6th Sess., p. 90, 1858-1859; 7th Sess., p. 511, 1859-1860.

obtained by any Territory before it became a State. (1)

In 1861 the editor of the Olympia Overland Press (2) considered a territorial government preferable to state government because it was a simpler form and because the central government paid most of its expenses. The same paper later outlined the actual expenses paid by the Federal Government in the first eight years of the existence of Washington Territory: mail service, \$222,600; military roads, \$330,000; survey of the Northwest boundary, \$336,000; salaries of the Governor, Secretary and three judges, \$100,000; compensation and mileage for the legislature, \$172,000; incidental expenses for the Territorial government, \$12,000; salaries for the Surveyor General and clerks, \$56,000; salaries of officers of the Indian Department, \$58,000; Land Offices, \$10,000; lighthouses, \$189,500; other expenses, \$20,000, for a grand total of \$2,728,600, or a yearly average of \$344,825. Add to this \$750,000 a year for expenses in the military department. This

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1. September 13, 1858, the War Department divided the Department of the Pacific and placed General W. S. Harney in command of the new Department of Oregon. This was a popular move; the General's actions were also popular. Two days after taking command on October 29, he ordered the reopening of the Walla Walla country to settlement. The Pioneer and Democrat, November 19, 1858, acclaimed the new department as the "most important achievement and concession that has ever yet been made by either or any of the Departments of Government, as affecting the future permanent interests of our citizens." - Bancroft, op. cit., pp. 197-198. But this was not to be permanent; by 1860 the Territory was again to protest against the restoration of the Department of the Pacific before a more lasting division was obtained. - Laws of Washington, 8th Sess., pp. 169-170, 1860-1861; 7th Sess., p. 510, 1859-1860. This later Memorial protested the possibility of union again.
 2. November 21, 1861.

gives a total of \$1,100,000 each year on an average expended by the central government on a territory that had a few over 10,000 at the last Census or more than \$100 a year for each person.(1)

THE TERRITORY DURING THE CIVIL WAR

The Civil War period proved to be an important one in the history of Federal and Territorial relations. The attitude of many in Washington Territory toward the Federal Government is reflected in the claim that Stevens failed to gain his third nomination for delegate on the Democratic ticket in 1861 because he actively opposed secession; a large proportion of the inhabitants of the Territory were from the southern States and had little interest in maintaining the Union. Stevens managed to secure the adoption of resolutions favoring the Union and then accepted the nomination of his chief competitor, Selucius Garfielde.(2)

This pro-southern attitude was reflected as early as 1858 when the legislature passed a joint resolution commending the Supreme Court on the Dred Scott decision as a fair interpretation of the Constitution and lauding the principle of popular sovereignty.(3)

The charge of secessionist sympathies rested even upon high government officials in Washington Territory. The Washington Standard rebuked the secession sentiments of one of the

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1. Olympia Overland Press, September 22, 1861, data taken from U.S.Statutes at Large.
 2. Snowden, Clinton A. History of Washington, Vol.IV, p. 143.
 3. Laws of Washington, 5th Sess., p. 72, 1857-1858.

Federal judges. A reader placed the finger of suspicion on Judge William Strong of the Columbia River District for uttering pro-southern sentiments on his way north to attend the session of the Supreme Court. The people were astonished at his declaration that he did not believe President Lincoln would ever be inaugurated. When a member of the crowd remarked that he must not have a very high regard for his own party if he thought it would countenance assassination, he replied that he knew it would be wrong but was certain it would be done.(1)

The election of President Lincoln produced a crisis on the Pacific Coast. The idea of three republics, rather than two, growing out of sectional differences, had considerable backing west of the Rockies. By January, 1861, many persons feared that the Union would be divided into a northern and a southern republic by April which would force the Pacific States to choose between a confederacy of northern States and a Pacific republic. (2) The Pioneer and Democrat(3) opposed any separate or independent organization as long as it was possible to maintain the central government.

"This sentiment appears to be universal among our people, and no encouragement would be received from Washington Territory for the scheme of an immediate Pacific Republic, that appears to be agitated in such precipitate haste by a few restless spirits in California."

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1. Washington Standard, December 29, 1860.
 2. Pioneer and Democrat, January 4, 1861.
 3. January 4, 1861.

This Olympia paper further insisted that a country as narrow and long as the proposed republic would be extremely difficult to defend while Washington Territory with its small population would be especially vulnerable to enemy attack. The Washington Standard,⁽¹⁾ while opposed to the Pioneer and Democrat in politics, was in complete accord with its Democratic rival on the question of a new confederacy on the Pacific Coast: "Let any who propose to speak for this Coast look elsewhere for sympathy and support in such treasonable plottings, than in the territory bearing the honored name of the Father of his Country."

The legislature of 1860-1861 recognized the threat to Washington Territory of the agitation for a Pacific Republic. A report was circulated in the Oregon newspapers that Delegate Stevens was linked with prominent Oregonians in the scheme to form a Pacific Republic.⁽²⁾ This report resulted in a resolution in the House condemning Delegate Stevens for endeavoring to promote disunion and a Pacific Republic and claiming that this action grossly and criminally misrepresented the people of Washington Territory and deserved the censure of every patriotic citizen. Stevens' friends in the legislature considered this charge a fabrication of his enemies and defeated the resolution by a substantial vote.⁽³⁾ The charge of disloyalty was a convenient method of besmearing one's opponents.

1. January 12, 1861.

2. Bancroft. Op. cit., p. 207, from the Oregon Statesman, May 20 and August 12, 1861.

3. A vote of 12 to 18. - Washington Standard, February 9, 1861.

The fact that the same legislature pledged its loyalty to the Union and condemned the Pacific Republic would indicate that most of its members were certain of the loyalty of Stevens and of the people of this area. In this Union Resolution the legislature insisted that the chief duty of all citizens was to maintain the

"...integrity and perpetuity of that holy brotherhood of States...[and to utterly discountenance] as fraught with incipient treason, and as the insidious offspring of reckless aspirations and disappointed ambition, or a culpable ignorance, all projects of a Pacific Confederacy. Washington Territory covets only the distinction of exhibiting, first and last, her devotion to the entire Union as created by our ancestors, consecrated by their blood, and bequeathed to us, the palladium of civil and popular rights."(1)

One editor insisted that if Washington Territory could not have the Union, she should find her place as part of "The Great Northwest" and not a Pacific Confederacy.(2)

Other tangible efforts were made to combat this further threat of disunion involving Washington Territory. A mass meeting held at Olympia on March 14, 1861, declared for the Union and condemned the Pacific Confederacy.(3) On May 20, the Republican Territorial Convention resolved, "That we utterly repudiate and unceasingly denounce and condemn any and all efforts and projects looking to the formation of a Pacific Con-

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1. Laws of Washington, 8th Sess., p. 175, 1860-1861; Steilacoom Puget Sound Herald, February 28, 1861; Washington Standard, February 16, 1861.
 2. Puget Sound Herald, February 28, 1861.
 3. Washington Standard, March 16, 1861.

federacy."(1) Judge Wyche, appointed in 1861, and other leading Union men, took an active part in forming Union Leagues to combat the exponents of the Pacific Republic and active secessionists in Washington Territory.(2)

The Washington Standard claimed that the chief northwestern leaders favoring the Pacific Republic were Oregonians, particularly ex-Governor George L. Curry, now editor of the Portland Advertiser and a recent candidate for the United States Senate. It charged that his paper was faithful in doing the bidding "of the handful of traitors on the coast, headed in Oregon by such men as Whiteaker and Jo Lane," the authors of the Pacific Republic idea which would make the Pacific Coast the scene of a bloody conflict. Still they cried, "Peace and compromise! Reconstruct the Union! Let the South go and guarantee her rights!" This journal was condemned for not censuring the Confederate States and offering only one plan of reconstruction: the amendment of the Constitution to suit the rebels by insuring the dominance of the South.(3) This same paper was later attacked for publishing in its columns an advertisement of a Mr. Whiteside who carried letters and papers between the Union and seceded States, even though the New York News and the New York Day-Book had lately been suspended for similar offenses.(4)

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1. Washington Standard, May 25, 1861.
 2. Reminiscences of Washington Territory, p. 51, Prosch, Charles
 3. Washington Standard, August 24, 1861.
 4. Overland Press, September 16, 1861.

The Washington Standard(1) charged that the leaders of the secessionist movement on the Pacific Coast hoped for a southern success which would dismember the Union, allow them to recognize the South, and establish a Pacific Confederacy on the Coast. It insisted that "there is evidently a complete organization of the treason party on this Coast," and condemned the Portland Advertiser for having correspondents throughout California apparently well paid for their services while it was common knowledge that the weekly receipts of the paper would not "pay the board of the workmen employed upon it." The Washington Standard intimated that its financial support came from the South, and protested against the delivery of this paper in the mails in an effort to end the treasonable acts of Curry and his associates in attempting to break up the national Union.(2) Woodward indicates that after 1861 the activities of the proponents of the Pacific Republic were less apparent; but the Knights of the Golden Circle were evidently bidding their time, waiting for a moment of northern reverses to revive their scheme.(3)

The central political conflict in Washington Territory now centered around the Administration and its policies.

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1. October 12, 1861.
 2. November 16, 1861.
 3. Woodward, Walter C. "Rise and Early History of Political Parties in Oregon", Oregon Historical Quarterly, Vol. XIII, p. 22, March, 1912. He claims that the Oregon and Washington Cavalry volunteers were retained in the Pacific Northwest to thwart any efforts of the exponents of the Pacific Republic and that the Knights of the Golden Circle had ten societies in Oregon at this time.

In his annual address to the legislature December 19, 1861, Acting-Governor L. Jay S. Turney, a personal friend of President Lincoln, requested drastic Union resolutions asking for a boycott of all those opposed to the Administration. For his own part, Turney wished for the authority to hang traitors, "men who with long faces cry peace, peace, in this time of their country's greatest war and greatest peril." He then entered into a tirade against treason in the South and among the advocates of peace in the North.(1) The response of the members of the legislature was apparently directed to embarrass Turney and to shield themselves.

The action of the legislature on the Griswold Resolution caused a mild sensation both within and outside the Territory, particularly since, by the time it was introduced on January 27, 1862, both branches of the legislature had passed Union Resolutions, but not the same resolution. The Council and the House likely had a tacit understanding that they would use a clever bit of strategy to embarrass Acting-Governor Turney and shield their own course. On December 22, 1861, Mr. Hubbs introduced a resolution in the Council stating that "it is the paramount duty of every citizen of the Territory to aid the Government of the United States in the preservation of the Union."(2)

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1. "Message to the Legislature, December 19, 1861", in Gates, Charles M., Messages of Washington Territorial Governors, pp. 98-99.
 2. Washington Council Journal, 9th Sess., p. 47, 1861-1862; quoted in full in Overland Press, March 3, 1862. The sympathies of the people of Washington were extended to the people of the South suffering as they were from the ravages of a "lawless rebellion". The Government should use every lawful means to suppress this rebellion and to restore the tranquility of the country.

The following day Mr. Griswold introduced a corresponding set of Resolutions in the House condemning the southern leaders and expressing confidence in the general Government in its prosecution of the war "to a speedy, safe, and honorable conclusion" thereby insuring the preservation of the Union and the rights of the majority.(1) It is true, the House Resolutions are stronger in their condemnation of rebellion than those of the Council; but both of them suffered the same fate.

The Hubbs Resolution passed the Council without opposition, and the first Griswold Resolution passed the House with only one dissenting vote.(2) On January 13 the Council Resolution was indefinitely postponed in the House; two days later the Council retaliated by postponing action on Griswold's first Resolution until April 1, after the close of the session.(3) An en-

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1. Washington House Journal, 9th Sess., p. 31, 1861-1862; quoted in full in Overland Press, February 27, 1862, and Washington Council Journal, 9th Sess., pp. 207-208, 1861-1862. These Resolutions also stated that this was the first real test of widespread rebellion with the avowed object of the dismemberment of the Republic our Country had been forced to face. This dismemberment would jeopardize the institutions which have been responsible for the prosperity of the nation, diminish its resources, increase its difficulties, deplete its flag, and weaken its constitutional safeguards. The leaders of the rebellion would accept only terms of peace conceding the right to secede and the creation of artificial boundaries which would necessitate numerous fortifications and large standing armies. In view of these facts the legislature extended its sympathy and condolence to its countrymen both North and South in their affliction and losses in this Civil War to prevent the designs of reckless and disappointed ambition. The misguided leaders of the South could be regarded only as the worst of public enemies worthy a traitor's death.
 2. Overland Press, February 27, and, March 3, 1862.
 3. Washington House Journal, *ibid.*, p. 100; Council Journal, *ibid.*, pp. 206-207. This was House Joint Resolution No. 2, relative to the State of the Union.

tirely loyal legislature might easily have passed either or both of these Resolutions.

Then followed the more famous Griswold Resolution of January 27 rejected by the House(1) which proclaimed that "the Union is so incorporated with the institutions of our country, that its dissolution would endanger their permanence, and seriously threaten our existence as a nation," that sectional differences could be better adjusted within than without the Union; that the support of the people of the North to the Union made this distant territory forever their debtor. The Resolutions concluded with the controversial section that

"Washington Territory, true to herself, and true to the Government, will not be found wanting in devotion to the Union, in fidelity to the Laws and Constitution, or in due respect for, and support for Mr. Lincoln's administration, which the popular voice has called to maintain the one and enforce the other."(2)

The Washington Standard charged the legislature with disloyalty for not passing these resolutions.(3) B.F.Kendall's(4)

1. Washington House Journal, 9th Sess., pp. 181-182, 1861-1862. Representative Griswold of Pacific County introduced House Joint Resolution No. 16, Relative to the Union, on January 27, 1862, which was promptly rejected by a vote of 8 to 16. The Washington Standard, February 1, 1862, accused the legislature of disloyalty and condemned the Democratic party for defeating this Resolution and a like measure in the Council.
2. Washington Standard, June 21, 1862.
Overland Press, March 3, 1862.
3. Washington Standard, February 1, 1862.
4. Overland Press, February 27 and March 31, 1862. It received the public printing at this session of the legislature which explains its defense of that body. The fact that it failed to gain the public printing (Washington Standard), may explain, at least partially, its attack on the legislature. The Overland Press, February 27, 1862, claimed both the Standard and the Oregonian were trying to fasten the charge of disloyalty and treason on the legislature.

Overland Press claimed that Dr. Anson G. Henry's Washington Standard was attempting to make the people at home and abroad think that a majority of the citizens of Washington Territory and their representatives were disloyal. The failure of either or both sets of the previous Resolutions to pass both Houses was said to be a "mere matter of etiquette and not of principle." It is easy to see why the second Griswold Resolutions, endorsing the Lincoln administration, failed to pass a Democratic House.(1)

The next week the Standard replied that even so, there was nothing in these Resolutions, as acted upon by the legislature that a Union man could not vote for; but by voting against them the Democrats in the legislature had virtually said that they were opposed to sustaining the laws of the United States, its Constitution, and the Union. The following quotation was included from the secessionist Corvallis Oregon Union:

"The Washington Legislature has adjourned. The few Blacks in that assembly tried to commit the people to a support of 'Lincolnism and Greeley's abolition War', by a series of carefully worded Resolutions to that effect. They were voted down by nearly two to one. Every Democrat in the body voted against them. The Democracy of Washington want no fusion with abolitionism."

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1. Overland Press, March 3, 1862. Kendall accused Henry of sending an objectionable Resolution he knew would not pass to the House (the one referred to above) and printing a less objectionable one in his own paper as the rejected bill in order to place the legislature in as bad light as possible. There is some truth to the charge that Henry modified his first printed copy in the Standard.

Some of these individuals who voted against the Union Resolutions may not have been really disloyal, but they were used as the tools of the secession leaders to do what the Union said they had done:

"...refused to commit themselves and their constituents to a support of the war policy of the Administration; while they kept up a show of loyalty by throwing an occasional vote for series of Union resolves, which by a cunning arrangement entered into by the secession leaders were only sprung to be voted down in the other House."(1)

At best the legislature of 1861-1862 did not agree with the policies of the President, and their political opponents questioned their loyalty to the laws and Constitution of the United States.

The action of the legislature had an unexpected and unfortunate result for Washington Territory. In Congress, Delegate W. H. Wallace was embarrassed by the rejection of the Union Resolutions in his efforts to obtain anything for the Territory.(2) Congress was alert for disloyal sentiment. The Portland Times(3) criticized many individuals in Washington Territory for complaining against Delegate Wallace because no peculiar favors had been shown to the Territory for some time; for, although Lane had pledged both Oregon and Washington to aid the rebellion, Oregon alone had declared her loyalty while

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1. Washington Standard, March 8, 1862.
 2. Wallace to George A. Barnes, April 13, 1862, in W.H.Wallace Letters, Pacific Northwest Collection, University of Washington. Wallace asked for an answer by express as the mails were extremely uncertain.
 3. June 10, 1862, quoted from Washington Standard, June 28, 1862.

Washington Territory had done nothing yet to erase the stigma of disloyalty. The Portland paper further indicated that the Republican delegate had been elected, to be sure, but by 421 votes less than his two opponents. This majority was divided between a Breckinridge Democrat, Edward Lander, and a "gentleman who is now making secession speeches through the country, and who doubtless expects to find enough of friendship in the Territory to make him the successor of Colonel Wallace," Senecius Garfield. Garfield's followers were undoubtedly both loyal and disloyal, but his course would tend to place them all in the category of secessionists in the eyes of Congress. The Portland Times further pointed out that the refusal of the legislature to pass Resolutions endorsing the efforts of the President to suppress rebellion and bring traitors to justice only increased the fear on the part of the National Government that Washington Territory was disloyal and that instead of granting it money Congress was contemplating placing the Territory under martial law since it had never shown its loyalty to the Union. The Times insisted that the forthcoming election would be the opportunity to rebuke the secessionists; but without a Union triumph it would be beyond "the power of any man, however energetic, to accomplish anything for the Territory."⁽¹⁾ The subsequent election of a Democrat, George Cole, as Delegate in 1863 did little to better the situation.

1. Portland Times, June 10, 1862, quoted in Washington Standard, June 28, 1862.

Public-printer Kendall's Overland Press attempted to refute the charges of disloyalty by claiming that the professedly Union papers were making secessionists in the Territory faster than all of the disloyal elements put together. Kendall insisted that a few informers, particularly Federal officials, had used the press to advance sweeping charges of disloyalty against every man who assumed the "right to interpret his own loyalty, and will not bed the knee to political dictators." (1) He considered the opposition to this Federal clique, while only a manly assertion of independence, had been distorted into treasonable action and paraded before the public as evidence of the disloyalty of the people of the Territory. Kendall admitted that while the mining region and a strip near the hotbed of secession, Oregon, might be disloyal, the territorial legislature "wouldn't swallow abolition physic last winter and call it good Unionism", and the threat of martial law was the result. If the Territory, therefore, could be rid of meddling Federal officials, her loyalty would remain unquestioned. (2) The sentiment in the nation's capital, however, continued to be that Washington Territory was inclined to disloyalty because of the non-enlistment of volunteers there and the failure of her legislature to pass Union Resolutions. (3)

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1. Kendall had been removed from a Federal office by the efforts of these Federal officials.
 2. Overland Press, July 21, and 26, 1862.
 3. Ibid., August 18, 1862.

Even the Confederacy recognized the unsettled conditions on the Pacific Coast. On October 2, 1862, a series of Resolutions was introduced in the Confederate Congress and referred to the Committee on Foreign Affairs recognizing the practical neutrality of the States of California and Oregon, and the Territories of Washington and Nevada. This Resolution presented the advantage of independence from the United States and proposed the formation of an offensive and defensive league with the Confederacy.(1)

Whether or not this stigma of disloyalty attached to Washington Territory was due merely to partisan rivalry or to a lack of patriotism, the legislature of 1862-1863 attempted to remove it by passing Union Resolutions early in the session with only one dissenting vote. It was hoped that this action would have a beneficial influence upon the central government and bring additional favors for the Territory as it apparently proved the inherent loyalty of the people of Washington.(2) In 1863-1864 the next House of Representatives followed the same precedent and endorsed the policies of the Government and the war but with an increased opposition of ten.(3) The Council was composed of four Democrats and three Union men and cleve-

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1. Woodward, Walter C. "Rise and Early History of Political Parties in Oregon", VI, Oregon Historical Quarterly, Vol. XIII, pp. 21-22, March, 1912. Plotters continued to bide their time for further Confederate successes before attempting to establish the Pacific Republic, making it necessary for the volunteer forces of the Northwest to be retained in that locality to prevent possible trouble.
 2. Washington Standard, December 27, 1862.
 3. Ibid., January 16, 1864.

erly avoided the issue. Several attempts were made to introduce Union Resolutions there, but the war Democrats resorted to the strategy of breaking a quorum each time with the aid of the presiding officer. (1)

Early in 1863 Allen Francis, United States Consul at Victoria, reported a plot to seize the revenue cutter Shubrick and convert her into a Confederate privateer. The fact that her commander, Captain Pease, was a southern man caused some suspicion to rest upon him. The Pacific Mail steamers were carrying considerable gold dust from San Francisco to Panama and offered a tempting prize for a privateer. The Shubrick, though small, was well armed, and could easily be adapted to this type of work. It was claimed that a full crew had already been provided

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1. Puget Sound Herald, January 23, February 6 and 20, 1864. There are two other illustrations of the pro-southern attitude in the legislature of 1863-1864. A Resolution passed the Council by a strict party vote of 4 to 3 censuring Vice-President Hannibal Hamlin for giving "utterance to the following disloyal sentiment: 'These are men who want the Union, as it was, restored; well I can tell them they cannot have it.'" These "disloyal and treasonable sentiments" at a "time when the nation was engaged in a major conflict," the Council Resolution concluded, "professedly for the restoration of the Old Union and in defense of the Constitution as it is, merits the indignation and contempt of every loyal citizen." - Washington Council Journal, 11th Sess., p. 74, 1863-1864. The old Union or none at all seems to have been the desire of the local Democrats. The Democrats also voted to a man in the House against a bill granting the right of suffrage to soldiers and sailors of the Armed Forces who were entitled to vote in the Territorial area at the time of their entry into service. There seems to have been some fear that this bill might hamper the Democratic party in its efforts to remain in control in Washington Territory. - Puget Sound Herald, January 23, 1864; Washington House Journal, 11th Sess., p. 223, 1863-1864. The bill was indefinitely postponed by a vote of 16 to 5.

for her in Victoria and that a large number of her own crew were in league with the plotters. On the next visit of Shubrick to Victoria, the Consul presented his suspicions to Lieutenant James M. Selden, second officer on the cutter whose loyalty was undoubted. While the captain and a large part of his crew were in shore, Seldon left Victoria with six men on board instead of the usual complement of 30 or 40 and sailed to Port Townsend. Captain Pease made no effort to rejoin his ship but left for the East and thus gave tacit confirmation of the suspicions of Consul Francis. (1)

Another illustration of secessionist activity in Washington Territory was reported the next year, 1864, at New Dungeness in Clallam County. Charles M. Bradshaw, a prominent Republican, relates how the pro-southern Democrats, in order to gain control there, organized a Vigilance Committee on the pretext that the Union of the States was dissolved by the Civil War and every community had the right to govern itself in its own way. He tells that in one of its first meetings, the committee accused four prosperous Republican farmers and banished them to Vancouver Island without a hearing. Later other Unionists were also secretly tried and ordered to leave under threat that if

1. Prosch. Op. cit., pp. 52-53; Snowden, op. cit., pp. 110-111. John T. Jeffreys later acknowledge in the British Colonist that the plot existed to seize the Shubrick and convert her into a privateer. He attacked the editor of the Colonist for exposing the scheme and admitted that there was a Confederate commander at Victoria with a commission in his pocket to take over the ship. - Quoted from Walla Walla Statesman, March 7, 1863.

they returned they would be killed. Bradshaw further relates that 70 armed Vigilantes dominated the polls in the election of 1864 giving the Democrats a clean sweep of the county offices and electing E. H. McAlmond, one of their leaders to the territorial legislature. By the use of intimidation, the Vigilantes gained full control of the community.(1)

Bradshaw further relates that the Union sympathizers attempted to have the whole case reviewed at the August term of the District Court at Port Townsend but that two of the leading exiles were captured by the Vigilantes and returned to New Dungeness. The mob finally decided to banish the two again to Victoria, rather than put them to death; however, one of them was compelled to sell his \$2,000 farm for \$500 in order to gain their freedom.(2) When another exile later returned and found refuge at Bradshaw's, he was shot and killed one day when he ventured a little distance from the house of his benefactor. Since this act brought the whole organization into disrepute, it soon disappeared; and the exiles recovered their homes. A political reaction against these excesses soon accomplished the defeat of all the officials who had gained their offices by the use of the Vigilante intimidation at the polls in the election of 1864.(3)

1. Bradshaw, C.M. New Dungeness Vigilance Committee, Pacific MS., Bancroft Library, University of California. Bradshaw's story may be exaggerated since he was the man defeated by the Vigilantes; but there seems to be no surviving newspaper accounts of the episode, making Bradshaw's own statement our only source.
2. Bradshaw's effort to secure a writ of habeas corpus from Judge J.E. Wyche at Port Townsend for the release of the two exiles held by the Vigilantes were not quick enough to save the captive men from their second exile.
3. Idem.

The stories of the New Dungeness Vigilance Committee and the Shubrick affair indicate at least some sympathy for the South in Washington Territory. The election of the Democrat Cole as Delegate in Washington in 1863 and the election of the Republican W. H. Wallace as Delegate in the new Territory of Idaho the same year proved to be a real surprise. Washington Territory was expected to have a Union majority, and Idaho was thought to be a hotbed of disaffected Copperheads who had gone to the mines to escape army service or to free themselves of the odium of disloyalty in other localities. (1)

FEDERAL RELATIONS AFTER THE CIVIL WAR

Even after the Civil War, Washington Territory continued to pursue an unpopular course with the controlling faction in the central government. The legislature of 1865-1866 passed a Resolution lauding Lincoln and his work in suppressing the rebellion and emancipating the slaves and deploring his assassination. Had the Resolution ended there, little damage would have been done to the cause of the Territory in Congress.

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1. Washington's war effort was only mediocre. Acting-Governor Henry M. McGill's call for volunteers was responded too slowly. Still the legislature of 1861-1862, while rejecting Union Resolutions, voted the Territory's portion of the direct tax levied by Congress, which amounted to \$7,755.33. - Snowden, op. cit., pp. 104-108; Washington Standard, May 18, 1861. At least one regiment seems to have been formed in Washington Territory by 1863; and another was authorized but with apparently no great success. These troops were used primarily to free the members of the regular army and were stationed in the Pacific Northwest until after the war. - Kittredge, Frank A. "Washington Territory in the War Between the States", Washington Historical Quarterly, Vol. II, pp. 33-39, October, 1917.

But when Congress was in control of the government that administered territorial affairs and was quarreling with the President, it was hardly judicious on the part of the territorial legislature to praise the reconstruction policies of President Andrew Johnson in his effort to secure an "early reorganization of civil government in the lately revolted States".(1)

The principle enunciated by the editor of the Washington Standard that the territories followed the political changes at the nation's capital in order to gain additional favors from the central government had not been carried out in the Territory of Washington(2) which had consistently voted Democratic from 1860 to 1865 with the result that few favors had been shown to the Territory. When a Republican Delegate was again sent to Congress in 1865, a definite effort was made to redeem the Territory from the "stigma of disloyalty" cast upon it by the election of a "Copperhead" delegate in 1863.(3) The attitude of the territorial legislature also changed gradually. A Resolution condemning the reconstruction policies of Congress and the extension of Negro suffrage to the territories failed to pass the Council during the session of 1866-1867.(4)

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1. Laws of Washington, 13 Sess., pp. 241-242, 1865-1866. Passed December 13, 1865.
 2. June 8, 1867: "Territories have almost universally gone with the party in power... Territories have everything to gain by going with the party in power, and everything to lose by going against it."
 3. Baneroff Scraps, Vo. CX, p. 155. A. A. Denny, Republican, easily defeated James Filton, Democrat, in 1865.
 4. Washington Council Journal, 14th Sess., pp. 173-174, 1866-1867. Frank Clarke introduced this Resolution which was defeated by a vote of 3 to 5.

This was done by a Council reported to be overwhelmingly conservative and Johnsonist in its sympathies,(1) which indicates that it had learned that opposition to the central authority paid few dividends to the Territory in the way of governmental favors. The lesson expressed by the Washington Standard that "Territories have almost universally gone with the party in power", as they "have everything to gain" by so doing and "everything to lose by going against it"(2) was now being practiced. That the Council in 1867 had learned this lesson and that the House had not was demonstrated when the latter passed a Resolution favoring strict construction as the proper interpretation of the Constitution, condemning the exclusion by Congress of Senators and Representatives from that portion of the South which had complied with the President's plan of reconstruction, and favoring the presidential policy of restoration for the excluded States, only to have it defeated in the Council on January 31, 1867.(3) The day had passed when the Council was willing to risk the ill-will of the central government by flaunting its opposition before Congress.

The Territorial Democratic platform in 1867 called for the defeat of the radical party and a severe condemnation of

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1. Washington Standard, December 1, 1866, lists seven conservative Johnsonists to two radicals in the Council.
 2. Ibid., June 8, 1867.
 3. Ibid., January 26, 1867; Washington House Journal, 14th Sess., pp. 226, 239, 1866-1867; Council Journal, 14th Sess., pp. 174, 265, 1866-1867. The Resolution introduced by Frank Henry passed the House by a vote of 14 to 12 but was defeated in the Council by a vote of 3 to 5.

congressional reconstruction and Negro suffrage.(1) This platform nearly carried the party to victory in the election.(2) Those Democrats who had deserted the party after the Civil War were now returning to their former politics.

FEDERAL APPOINTMENTS: VICTOR SMITH

The problem of appointments and carpetbag rule proved a vexing one during the early 1860's. By 1860 a good many of the settlers were demanding the appointment of local individuals to fill the various Territorial offices and protesting against any "importations of foreign talent".(3) The choice of some of these officers was unfortunate. The accusation was freely made that Territorial officials were more interested in the money they could make for themselves than in the best interests of the Federal Government in the Territory. Dr. Anson G. Henry, Surveyor General from 1861-1866, who was interested in the Washington Standard, was accused of claiming that his newspaper ought to be rewarded with the public printing and other Federal favors merely because it supported the Administration. Secretary L. Jay S. Turney was charged with entertaining the notion that it was not worth while to be "patriotic and shout lustily for the

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1. Washington Standard, June 1, 1867.
 2. Ibid., July 6, 1867. Alvin Flanders, Republican, barely defeated Frank Clarke, Democrat, for Delegate, and the legislature was almost evenly divided. The Washington Standard, formerly a Republican paper, now became a Democratic journal.
 3. Pioneer and Democrat, April 6, 1860.

Union, unless one is well paid for it". The most serious charges of all were made against Victor Smith, Collector of Customs for the Puget Sound district. The Puget Sound Herald considered that Smith's chief aim was not Government service but land speculation "for his own benefit, as a reward for his patriotism" possibly with money collected from the Customs and loaned by the Government for that purpose. The Herald stated that Mr. Lincoln had "inflicted" such persons as Henry, Turney, and Smith upon the Territory. (1)

The case of Victor Smith merits special attention. In August, 1861, Victor Smith of Ohio, a former neighbor of Secretary of the Treasury Salmon P. Chase was appointed as Collector for the Puget Sound district with authority to investigate the expenditure of all Federal funds within the Territory. This was a dangerous power to give one of Smith's temperament. He was inclined to be arrogant in manner and intolerant in speech, a believer in spirit rappings, and an abolitionist. These characteristics, especially the last, made him unpopular in Washington Territory. (2)

Victor Smith's meddling in the affairs of others soon brought him into disrepute among the other Federal officials of the Territory. Puget Sound mail service had been improved by a

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1. Puget Sound Herald, January 23, 1862. These men had attempted to control the newspapers in the Territory to hide their questionable activities.
 2. Snowden. Op. cit., pp. 166-167; Bancroft, op. cit., Vol. XXVI, pp. 219-220. The previous Collectors of the Customs, Isaac N. Ebey, Morris H. Frost, and C. C. Phillips, had caused little difficulty in the Territory.

mail contract with the local steamer Eliza Anderson. Smith's supposed powers now prompted him to take a step in the interest of economy which increased his unpopularity among the inhabitants of the Sound. Apparently with no authority for the move from the Postoffice Department, he terminated the contract with the Anderson and placed the responsibility for delivering the mails upon the revenue cutter Shubrick which made no regular trips to all parts of the Sound as the former steamer had done. (1)

A little later Smith was allowed to use the empty military buildings at Port Townsend for a marine hospital. He was charged with renting these rent-free buildings to a private hospital, which charged the Government \$1.50 per day for each sailor treated in it, and with pocketing the \$218 per month in rent for his own use. He was also accused of embezzling \$4,354.98 and of "official misconduct of the most disgraceful character". (2) When further charged with defaulting the Government of \$15,000, Smith left for Washington, D.C., early in 1862 to defend himself, which he was able to do by indicating that he had merely transferred that sum from one account to another. (3)

In the meantime, Secretary of the Treasury Chase had so urged Smith's scheme to move the Customs' house from Port Townsend to Port Angeles upon Congress that the removal was

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1. Snowden. Op. cit., pp. 167-168.
 2. Lt. J. H. Merryman to General Alvord, May 26, 1862, quoted from Snowden, ibid., pp. 168-169.
 3. Ibid., p. 169; Bancroft, op. cit., p. 221.

authorized before Smith reached Washington in June, 1862. Since he had obtained the support of Delegates W. H. Wallace who thus refused to recognize popular remonstrances against the removal, Smith further increased the animosity toward him on the Sound. A new bill allowing the Government to resurvey granted townships and sell them to the highest bidder at a later date was first applied to Port Angeles. This procedure would give the company a perfect title to the townsite in case it was the chief buyer. Smith was shown to have a considerable interest in the company. (1)

Smith left Maj. J. J. H. Van Bokkelen as Inspector and Deputy Collector when he started for the nation's capital; but Capt. J. S. S. Chaddock of the revenue cutter Joe Lane, assuming that Smith would be removed, took over the Customs house and replaced Van bokkelen with Lt. J. H. Merryman. The Lieutenant quickly informed the central authorities that Smith was using Government funds for private speculation and was guilty of other misconduct in office. When Smith returned about the first of August, Merryman refused to give him possession of his office until Smith produced either his commission or written authority for making the demand. Two officers and a party of marines landed and repeated the demand for the office while the guns of the Shubrick were trained upon the town; but again it was refused. Lieutenant Wilson, commanding officer of the Shubrick, then went ashore and made a formal requisition for the possession of the Customs house papers and moneys, backing his demand by a

1. Snowden, loc. cit., Bancroft Scraps, Vol. CX, p. 143.

threat that if this request was not complied with in fifteen minutes, force would be used to take the customs house. Merryman, fearing for the safety of the inhabitants of the town if the customs house was fired upon, gave possession; and the books and papers were taken on board the cutter where the business of the office was transacted until it was removed to Port Angeles in September.(1)

As soon as Governor William Pickering heard of this action, he, his private secretary, United States Marshall William Huntington, United States Commissioner and ex-Secretary of the Territory Henry M. McGill, Major Patten of the regular Army at Fort Steilacoom, and several friends, arrived at Port Townsend on August 11, 1862, to bring Victor Smith to terms. Governor Pickering proceeded to Victoria to counsel with Lieutenant Merryman before he approached Smith. McGill, on affidavits by several of the townsmen at Port Townsend that the guns of the Shubrick were actually trained on the town, issued warrants for the arrest of Victor Smith and Lieutenant John E. Wilson on a charge of assault with intent to kill. When the cutter arrived near the town that evening, it anchored outside the harbor. Smith and Wilson thwarted every effort of United States Marshal William Huntington and a deputy to arrest them, even resorting to keeping the paddle wheels of the Shubrick in motion to prevent a small boat from approaching the cutter. Smith and Wilson continued to escape arrest even when McGill revised

1. Bancroft, op. cit., pp. 221-222; Snowden, op. cit., pp. 169-170.

his charge against them to that of resisting and obstructing the process of the United States Marshal. Proceedings were suspended when Smith left abruptly for San Francisco.(1)

Many thought that Smith would never return; but he and Wilson presented themselves at Olympia on September 12 and were held to appear at the September term of the district court on bail of \$2,000 each. They failed to appear, however, and their bail was declared forfeited. Smith was later indicted on four counts by the Grand Jury in October: for resisting the Marshal, for embezzling public funds, for procuring false vouchers, and for assault on the people of Port Townsend.(2) He had been in Olympia two days before the indictment; but when it was served, he was 150 miles away and had to be reached by a bench warrant. Apparently he feared a trial and avoided Olympia until several days after court had adjourned, thus postponing the trial until Secretary Chase could come to his aid. It is claimed that proceedings in the district court against Smith were quashed by a pre-emptory "order from the Solicitor of the Treasury to our District Attorney received in March, 1863."(3) Chase seems to have used his influence to free his friend.

So great had the disturbance become that a special agent of the Treasury Department, Thomas Brown, was sent out to

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1. Bancroft Scraps, Vol. CX, p. 77, Clipping of August 21, 1862; Snowden, op. cit., pp. 171-173.
 2. Bancroft Scraps, Vol. CX, p. 143, Clipping November 2, 1862; Bancroft, op. cit., pp. 222-223; Snowden, op. cit., p. 173. Their bail was furnished by Joseph Cushman, Receiver of the Public Moneys, and L. B. Hastings of Port Townsend.
 3. Paul K. Hubbs to Pickering, May 13, 1863, "Charges Against Victor Smith", Miscellaneous Pamphlets, Pacific Northwest Collection, University of Washington, No. 12, pp. 13, 24.

investigate Smith's conduct. His report attempted to exonerate Smith and lauded his work.(1) Smith's enemies, however, were not satisfied with the outcome. The Federal clique at Olympia made a special political issue of the whole affair and was very insistent that Smith be removed. Governor Pickering and Surveyor General Anson G. Henry were especially active in their efforts to accomplish this end. Dr. Henry made a special trip to Washington and presented the charges against Smith to the President. Some of these merit attention. Smith was reputed to have changed the customs house to Port Angeles in defiance of public interest to reap the benefits of his own specula-

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1. Bancroft Scraps, Vol. CX, pp. 14-15, Clipping December 12, 1862. "Charges Against Victor Smith", loc. cit., gives the statement by Thomas Brown in San Francisco, December 12, 1862. According to this report, Smith was not then nor ever had been in default to the Government, but all of his actions had been solely in the interests of the Federal Government. He had reduced the cost of the Marine Hospital at Port Townsend from \$34,000 the year before he took office to \$10,100 the year after. By a general reform of all departments of the revenue district, he had reduced the unnecessary expenses in his district by \$27,000; an additional \$2,800 cash in surplus funds was turned over to Special Agent Brown that Smith had saved by "keen personal application" out of the sum he had been given to disburse by the central government. Brown pronounced the charges of Lieutenant Merryman and the four indictments against Smith by the Grand Jury as "utterly false". The special agent also favored Port Angeles as the port of entry and called it a "revenue success". It was further claimed that Smith did not own a foot of ground in the Territory either directly or indirectly but had secured it as a Government reservation on the day after the passage of the Port Angeles bill through Congress. Technically this latter assertion may have been correct but seems to have been a definite effort to exonerate Smith.

tion.(1) He was also accused of having a verbal contract with Dr. John Allyn of the Marine Hospital at Port Townsend, whereby Allyn was to pay \$100 a month out of the profits of the hospital to Andrew Jackson Davis, well-known spiritualist, for the support of his paper, The Herald of Progress; the rest of the profits, which amounted to over \$1,600 in three months, were to be turned over to Smith for the War Fund.(2) Smith was further accused of appointing Hugh A. Goldsborough as Inspector of Customs at Colville and paying him \$276 for services there that he did not perform and had no intention of performing.(3)

If the charges ended here, little might be thought of the whole incident; but high Government officials were to be im-

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1. Lt. J. H. Merryman to Secretary S. P. Chase, May 25, 1862. [All letters referred to in this connection, unless otherwise cited, are taken from "Charges Against Victor Smith", op.cit., pp. 1-24.] Other charges were that while Special Agent Brown claimed that Smith's purchase of 160 acres of land at Port Angeles was for a Marine hospital, these purchases were made over three months before the Removal Act passed in Congress, showing that some other interests were involved. Smith had deposited \$3,257 in Federal funds with L. B. Hastings of Port Townsend as security for a \$500 loan to the Collector and another \$1,000 with the Hudson's Bay Company for special commercial favors to Smith by Dr. W. F. Tolmie.
 2. Ibid., pp. 1-2, John Allyn to Pickering, September 10, 1862, Bancroft Scraps, p. 143. It was shown that Allyn had paid out at least \$400 to Davis.
 3. Ibid., pp. 2, 12. Goldsborough's oath of December 31, 1862, that he had received the money, is reproduced. He was further charged with selling the condemned cutter Jeff Davis for over \$3,000 which sum was unaccounted for in his books. Special Agent Brown claimed that he used it to build a Marine hospital at Port Angeles; but this, too, was impossible as the lumber was purchased with the money and used three months before the Removal Act was passed. - Ibid., pp. 2, 3, William L. Chalmers to Pickering, September 26, 1862. In place of a \$24,000 decrease in the expenses of the Marine Hospital for one year, as the Brown report indicated, it was shown that under Smith there had actually been a \$10,169.28 increase during the year ending June 30, 1863.- Ibid., pp. 13, 4.

plicated in the removal affair. It was claimed that part of the Port Angeles townsite was bought first in the name of Secretary Chase and later transferred to that of H. G. Plants, Chase's private secretary in the Treasury Department. There may have been a good reason why Secretary Chase did not wish Special Agent Brown to investigate Smith's conduct too thorough. A note from Smith to O'Brien of February 23, 1862, claimed that Smith had promised Plants "to secure an interest for him in the townsite speculation at Cherbourg". This was done in March, 1862, when O'Brien sold an interest in the company to Plants. O'Brien thought that Smith was attempting to gain a complete control of the company for himself; but the case is not as easily dismissed as that. Apparently Assistant Treasurer Cheeseman in San Francisco and Collector Rankin, also of the Bay City, wished to buy into the company in January, 1862. (1) Subsequent events indicate that Smith was not alone in his scheme for speculation at Port Angeles. Special Agent Brown had been instructed to inquire into the cause and propriety of the removal to Port Angeles; but for some unknown reason evaded this topic. (2) Such an investigation might have embarrassed the Secretary of the Treasury. Dr. Henry explained to the President that Smith was a "swaggering, conceited egotist" who boasted of

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1. Dr. P. M. O'Brien to Pickering, March 1862, op. cit., pp.3,6. O'Brien acting under the power of attorney sold M. H. Frost's interest and accepted Smith's note for three months in return for the deed made out to Plants.
 2. Paul K. Hubbs to Pickering, May 13, 1863, loc. cit.

his intimacy with Secretary Chase and of his confidence that his friend would sustain him because Chase owed him \$6,000.(1) Henry concluded that since the leading citizens of the Territory considered Smith to be unfaithful and unworthy of public office, he should be removed to prevent friction.(2)

Although the whole affair presented a difficult problem for President Lincoln, the charges finally had their effect. On May 8, 1863, he wrote a personal letter to Chase stating that his mind was made up to remove Victor Smith as Collector of Customs for the Puget Sound district. He evaded direct reference to the charges as they might implicate the Secretary himself by saying:

"Yet, in doing this, I do not decide that the charges against him are true. I only decide that the degree of dissatisfaction with him there is too great for him to be retained. But I believe he is your personal acquaintance and friend, and if you desire it, I will try to find some other place for him."(3)

Chase handed in one of his several resignations in protesting this action but was prevailed upon to withdraw it. If as one author contends that this removal "brought about a clash between the President and his Secretary of the Treasury, creating

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1. J. M. White, former commander of Jeff Davis, to Pickering, August 15, 1862, op. cit., p. 3. Smith boasted that \$5,000 of this was from a house sold Chase, a debt Smith was in no hurry to collect.
 2. Loc. cit. Henry insisted to Lincoln that "even admitting that Mr. Smith was innocent of the many grave and serious charges made against him, his retention in office in a community so fully impressed with his unownrthiness, and who feel it and resent it as an insult and an outrage, would neither be wise nor just."
 3. Snowden. Op. cit. p. 174.

a breach that never wholly healed", (1) it may be assumed that it upset some of Chase's personal plans, the fulfilment of which were disrupted by Smith's displacement. At least the townsite reserve of 3,520 acres created by an order of President Lincoln, June 19, 1862, and legalized by the special townsite reserve act of Congress, the only instance in which this law was used, continued until January, 1894, when the lots were sold to the highest bidders. (2) The efforts of Smith and his friends to gain a permanent title on their townsite speculation had not succeeded.

The President left a curious memorandum of the case in his own handwriting on file in the Treasury Department. Smith's removal had been asked:

"1st, Because all the Government officers there but two [presumably Goldsborough and Elwood Evans] desire it; 2nd, Because, by misrepresentations, and for the purpose of speculation, he procured an act of Congress, removing the customs house from Port Townsend to Port Angeles; 3rd, Because he has used the public monies in various ways for his private use; 4th, Because he made a contract, by which one hundred dollars per month, of public money was to be paid to a spirit-rapping newspaper, and on which \$400 was actually paid; 5th, Because he implicated the Secretary of the Treasury in his transactions, and boasts that the Secretary and President dare not remove him; 6th, Because he has no business-like practices, if he has such qualifications." (3)

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1. Meany, Edmond S. History of Washington, p. 260.
 2. Ibid., pp. 260-261.
 3. "Charges Against Victor Smith", op. cit., p. 24.

The President certainly believed some of these charges and accepted the personal challenge of the fifth; for he dismissed Smith and faced an irate Secretary.

A disastrous flood which destroyed the new customs house at Port Angeles with the loss of two lives(1) and repeated Memorials to Congress by the legislature protesting the removal of the customs house brought about its return to Port Townsend in 1865.(2) In the meantime Smith had been returned to the Sound as a Special Agent for the Treasury Department, in reality an office of greater authority than that of Collector. Secretary Chase still had a personal interest in his friend.(3)

Gratitude is fleeting. Governor Pickering soon complained that the Federal officials, who enjoyed the confidence of the Administration and who loved justice and opposed the wrong done to Port Townsend by Smith, had made a full representation to the President of all the charges against the Collector, sending a special agent, Dr. Henry, to Washington, D.C., at their own expense and by so doing succeeded in getting Smith removed from office. Governor Pickering alone had spent \$500 of his own money to aid the interests of Port Townsend in removing Smith; but the full measure of ingratitude, according to the Governor, was shown by the people of Port Townsend in the

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1. Plummer. Sketches of Washington Territory, Pacific MS., Bancroft Library, University of California, No. 42, pp. 71-73; Snowden, op. cit., pp. 175-176.
 2. Laws of Washington, 12th Sess., pp. 176-177, 1865-1866; 13th Sess., p. 244, 1865-1866.
 3. Snowden. Op. cit., pp. 174-175.

election of 1863. Smith wished revenge on all Federal officials except Evans and Goldsborough "who are with Smith". Governor Pickering accused the people of Port Townsend of aiding the former collector in this scheme by spending their money, using whiskey, and employing all other means to keep L. Jay S. Turney in the field as a third party candidate, thereby defeating the Republican candidate and fostering the election of George E. Cole, Democrat, as Delegate. Cole had pledged that if he were elected he would secure the removal of all the Federal officials in the Territory. Pickering lamented that while he and Dr. Henry had spent their money to get Smith removed, Port Townsend, which gain most from this removal, elected Cole to get Henry and Pickering removed and then boasted of their "ingratitude" to these Federal officials.(1) There was some reason for this bitterness of the Governor toward Port Townsend as Cole was elected by a plurality of 87 votes over Joseph Raynor. With Port Townsend's wholehearted backing for Raynor, as Pickering expected, Turney's 98 votes might have been directed to his support, thereby defeating Cole.(2)

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1. Pickering to Frank A. Wilson, December 19 and 21, 1863, in the Pickering Letters, Pacific Northwest Collection, University of Washington. Pickering could see no reason why Register A. A. Denny, Receiver Joseph Cushman in the land office, Indian Superintendent Calvin H. Hale, or the three judges in the district courts should be removed as they had not been active against Smith.
 2. Snowden. Op. cit., p. 144.
Washington Standard, August 8, 1863.

OTHER FEDERAL OFFICIALS AND THEIR ABUSES

Popular dissatisfaction with other Government officials was also evident during the 1860's due to the abuses of carpetbag rule which were now increasingly prominent in Washington Territory, especially from the large number of Federal officials who were consistently absent from the Territory. In 1865 it was claimed that for the past ten years the Governors of the Territory had spent less than half their time within the Territory while the secretaries and judges had been absent entirely too often. (1) The legislature of 1865-1866 made this condition the subject of a Memorial to Congress requesting that the territory be allowed to elect its own officers. This Memorial claimed that many of the executive and judicial officers had been absent from their posts of duty for so long a time as to seriously embarrass the Territory. In fact, two of the three judges had been absent for many months at the same time during the past year. (2) As a result, some of the district courts had been unable to meet and the annual session of the Territorial Supreme Court had to be postponed, thus denying justice to the Territory. (3) The Memorial further urged that since many of these importations from other sections were not familiar with

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1. Washington Standard, November 4, 1865.
 2. These missions were often political as Judge J.E. Nyche had been in Washington, D.C., attempting to gain the governorship over the opposition of Delegate A. A. Denny. - Denny to Daniel Bagley, November 23, 1865, A. A. Denny Letters, Pacific Northwest Collection, University of Washington.
 3. Laws of Washington, 13th Sess., p. 219, 1865-1866.

local problems and were unable to deal with them properly, the best corrective for this evil was to hold these officers accountable before the people who were taxpayers, represented only by a delegate who had no vote, thus measurably subjecting them to "taxation without representation". If the Territory could not elect its own officers, the legislature asked that Congress provide by law for the appointment of only local citizens to territorial offices.(1) The complaints against the conduct of their appointed officers and of taxation without representation sound strangely reminiscent of the American Colonial period. This petition to Congress was unheeded even though unsuccessful bills to provide for the election of territorial officers were introduced in 1868 and 1869.(2)

So oppressive was carpetbag rule in the 1860's that the Washington Standard considered it the

"...settled practice of the Federal Government to fill the Territorial offices with worn-out politicians and useless hacks, who were a nuisance and deadweight at home, and could not be got rid of in any other way. ...As a general rule the Federal appointees in the Territories had no interests or no sympathies with the people upon whom they were forced. They were sent among them like a pack of hungry wolves to eat out their substances."(3)

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1. Laws of Washington, 13th Sess., p. 219, 1865-1866.
 2. Congressional Globe, 40th Cong., 2d Sess., p. 3580, June 29, 1868; Ibid., 41st Cong., 2d Sess., p. 7034, December 8, 1869.
 3. February 1, 1868.

MISCELLANEOUS RELATIONS DURING THE 1860'S

Several other important changes were made in the 1860's affecting Washington Territory. In 1861, the Attorney-General informed the Territorial Secretary that the opinions of that office were not available in Territorial questions,(1) indicating that while the national government could dictate to local officials it refused to advise them. The Territory was divided into Washington and Idaho Territories in 1863 due largely to the jealousy of the Puget Sound area over the fact that the mining section to the east outnumbered it by then and threatened it control of the legislature.(2) And in 1866 Congress responded to a Memorial for bien-

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1. In 1861 Secretary Turney requested the opinion of the United States Attorney-General on several questions of local importance. He was promptly informed that the services of the Attorney-General's office were confined only to opinions relating to specific cases presented by the President and heads of the departments in the central government. The Attorney-General had no authority to advise public officials, especially not to intervene in the affairs of a Territory by furnishing "to any of its officers an opinion on questions which belong to the local legislative, judicial, and executive authorities. Such an opinion, having no sanction in existing laws, could carry with it no binding force", at least no more than the opinion of any other respectable lawyer. - Assistant Attorney-General Coffey to Turney, October 24, 1861, Letters of Secretaries and Governors, Pacific Northwest Collection, University of Washington.
 2. The Washington Standard, February 21, 1863, complained that the vote east of the mountains in the last election was over 1,400 greater than that west of the Cascades. In another year the eastern would more than double the western vote. "The time is near at hand when that section will overrule this." Only the defeat of a just apportionment bill in the preceding legislature had prevented domination of the territory by the eastern section by 1863.

Not all voices, even in western Washington, favored division. B. F. Kendall, who considered a good many of the Federal appointees to be a meddling group [Overland Press, March 3, 1862] used this agitation for division as an excuse for an attack on Federal officials in his Overland Press, claiming,

nial sessions of the legislature(1) by passing a bill to this effect.(2)

Early in 1867, Congress provided that the net proceeds of the internal revenue for the Territories of Nebraska, Washington, Colorado, Idaho, Montana, Arizona, and Dakota for the two fiscal years from June 30, 1866, to June 30, 1868, should be set aside for the erection of penitentiary buildings in each of these Territories at such places as might be chosen by the various territorial legislatures and approved by the Secretary of the Interior. The grant to Washington Territory reflects a little of how the Territory was regarded in 1867; it was not to

"The number of Federal officials sent into this Territory, according to the caprice of every administration, has borne too great a ratio to the entire population. They assume too much importance, and unfortunately for the public welfare and the interests of the nation, exercise a pernicious influence. There has seldom been an official sent into the Territory who has not, first or last, used his post as a stake to gamble for the Delegateship." A Territorial division along the Cascade Mountains, the only natural boundary, would curse the Sound region with a "quadrennial shower of Egyptian frogs [Federal officials], for a quarter of a century"; Kendall preferred union with Oregon rather than this since immediate statehood was desirable. - Washington Statesman, January 17, 1863. These Federal officials had secured Kendall's removal as Superintendent of Indian Affairs. Idaho became a Territory March 3, 1863. - Bancroft, op.cit., p.262.

1. Laws of Washington, 12th Sess., pp. 155-156, 1864-1865.
2. Congressional Globe, 38th Cong., 2d Sess., p. 1413, 1864-1865; U.S.Statutes at Large, Vol. XIV, p. 77. After the next session of the legislature, the sessions should be biennial. Members of the Council were to be elected for four years; and members of the House, for two. Their salaries were to be increased from \$3 to \$6 per day but their mileage allowance was to remain at \$3 for each 20 miles traveled. An enrolling clerk was allowed to each house as an additional officer. All the special officers were to receive \$5 per day except the chief clerk who received \$6. A change was made in an amendment to an appropriation bill in 1869 by providing that the members of both branches of the legislatures of all the Territories should be elected for two years and should meet biennially. - Ibid., Vol.XV, p.300.

exceed \$20,000 while each of the other Territories were allotted \$40,000. The Census of 1870 changed this attitude materially; and, in 1873, Washington's allotment was made the same as that of the rest of the Territories.(1) Another Act in 1871 definitely indicated that these penitentiaries were not to be Territorial but Federal institutions.(2) The efforts of the Territory, however, to assume control of the location, erection, and administration of this penitentiary proved abortive;(3) and it remained in the hands of the Federal Government even after all the other penitentiaries provided in this Act of Congress had been transferred to their respective Territories.(4)

The change affected only the Council in Washington Territory. It is difficult to see the advantage of a bicameral legislature with the members of both houses elected for the same period of time.

1. U.S. Statutes at Large, Vol. XIV, p. 337; Vol. XVII, p. 475.
2. Ibid., Vol. XVI, p. 398. They were all placed under the control of the United States Marshals of the Territories while the United States Attorney-General prescribed all rules for their government and regulated the compensation of employees. Persons convicted in Territorial courts for the violation of Territorial laws might be imprisoned in the new penitentiaries only at the cost of the Territories which generally consisted of a fixed charge per convict. Washington Territory failed to take advantage of this provision.
3. Laws of Washington, 14th Sess., pp. 119-123, 1866-1867.
4. Meany. Op. cit., pp. 340-341. The central authority was unwilling to release control of anything it provided the money for within the Territory which continued to expect outright gifts from the Federal Government. As a result, this penitentiary on McNeil's Island is still a Federal rather than a State penitentiary.

THE TERRITORIAL DELEGATE

In contrast to the 1850's when all the Territorial Delegates were Democrats, the Republicans predominated in this capacity during the following decade.(1) Most of them had difficulty securing desired legislation; but they were not totally without influence at the nation's capital in that their suggestions were often followed with regard to removals or appointments.(2) Occasionally a department would coerce a Delegate into making a different selection by threatening to make its own appointment if he did not.(3) The Delegate was constantly on the alert to see that the interests of his influential constituents were carefully guarded.(4)

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1. William H. Wallace, Republican, elected in 1861, was succeeded by George E. Cole, Democrat, in 1863. After that the Republicans carried each election down to 1872 with Arthur A. Denny elected in 1865, Alvin Flanders in 1867, and Selucius Garfielde, now a Republican, for the short term 1869-1870, and again from 1870-1872. Garfielde defeated Marshall F. Moore by less than 150 votes in 1869.
 2. Selucius Garfielde wrote in 1869 that he would go systematically to work in securing removals and appointments as soon as the petitions from the Territory reached him. It was also a general policy of the Delegates to take the "good of the party into consideration". Garfielde to Clarence Bagley, October 7, 1869, Selucius Garfielde Letters, Pacific Northwest Collection, University of Washington.
 3. Ibid., November 28, 1860.
 4. Ibid., January 10, 1870. "In your management of the paper, don't say anything against the mill men. Treat them all well... .Don't let any of our papers abuse the mill men. Look to this."

The Civil War period was a turbulent one in Federal and Territorial relations in Washington Territory. But even more significant, it was the beginning virtually of a revolution in territorial policies that was completed in the succeeding decade. This transition will be considered in the following chapter.

CHAPTER III. THE REVISED STATUTES - A REVOLUTION IN
TERRITORIAL POLICY(1)

THE INCREASE OF EXECUTIVE POWER

Possibly the most significant change made by the national government during the entire territorial period consisted of the strengthening of the power of the territorial executive, an appointed officer whose activities were under Federal control, and an even greater curtailment of legislative authority, an elective body responsible to the people. In short, while the Territory grew in population, wealth, and the apparent ability to govern itself, many of the democratic features of its Government were removed. This process began early in the 1860's when the Governor was granted the power to veto Acts of the territorial legislature and when the right to select the territorial printer was transferred from the legislative to the executive branch of the government.(2)

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1. For a discussion of these changes for the Territories in general, cf. Pomeroy, Earl S. "The Territories and the United States: Studies in the Control of Dependencies", Thesis, pp. 237-260, Berkeley, University of California, 1940.
 2. U.S. Statutes at Large, Vol. XIII, p. 131; R. W. Taylor, Comptroller, Treasury Department to Secretary Elwood Evans, April 21, 1863, Washington House Journal, 11th Sess., p. 20, 1863-1864. These two changes are discussed in some detail in the chapter on the Territorial Executive.

CONGRESSIONAL DISALLOWANCE

The next major limitation on the power of the territorial legislature came as a result of efforts in Washington Territory to organize competition to the monopoly of the Oregon Steam Navigation Company on the Columbia River, (1) which company had been accused of discriminating against Vancouver and Washington Territory by attempting to turn immigration south into Oregon. (2) The first substantial threat (3) to this monopoly came from the Washington Territory Transportation Company founded in 1864. (4) This company, chartered on January 14, 1865,

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1. For a more complete discussion of this competition cf. Johansen, Dorothy O. "Capitalism on the Far Western Frontier, the Oregon Steam Navigation Company", Thesis, pp. 109-167, Seattle, University of Washington Library, 1941.
 2. Olympia, Pacific Tribune, December 31, 1864.
 3. Early companies were not very effective. The Columbia Transportation Company was chartered in January, 1862, to "facilitate the conveyance of passengers and freight from the seaboard to the interior of the Territory". This Act provided for portage railroads on the Washington side of the Columbia around the chief rapids and prohibited any form of combination with the hated Oregon monopoly, the Oregon Steam Navigation Company. The railroads were to be completed in two years or the charter would be forfeited; no effort was made, however, to fulfill the provisions of this charter. The Puget Sound and Columbia River Railroad Company was chartered by the same legislature to connect Vancouver with the Sound. In 1864, this Act was amended to extend the rights of the company to build a line from Vancouver to a point opposite Celilo on the Columbia. - Johansen, op. cit., pp. 125-124; Laws of Washington, 9th Sess., pp. 109-113, 124-128, 1861-1862; ibid., 11th Sess., pp. 103-105, 1863-1864.
 4. The founders were Captain Alexander P. Ankeny of Oregon; Peter Donohue, San Francisco financier; and, William Kohl, Victoria financier.

had the enthusiastic support of the territorial legislature in its purpose to build a double track railroad around the Cascades in the County of Skamania. Another Act passed the same day chartered the Middle Cascades Portage Company to build a single track railroad around the upper, or middle Cascades. This charter also provided for the condemnation of lands and materials, "such as railroads", and revealed the intention of the legislature to break the hold of the Oregon Steam Navigation Company at this vital point. (1)

Even more significant was an Act, also passed on January 14, 1865, which had for its purpose the destruction of Skamania County as a political unit. There were only two small villages within the limits of Skamania County, Cascades and Upper Cascades, termini of the railroad of the Oregon Steam Navigation Company; but the County included the Cascades portage, making it the key to the control of the north bank of the Columbia, which key was in the hands of the Oregon Steam Navigation Company. (2) A prominent resident of Skamania County described company practices in the Vancouver Register (3) by indicating that an effort had been made to use the County funds to work a free road up to Wind Mountain; but when the Oregon

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1. Laws of Washington, 12th Sess., pp. 108-114, 1864-1865; Ibid., pp. 114-120; Johansen, op. cit., pp. 125-127.
 2. Pacific Tribune, December 31, 1864: "The truth is that our territory, this side of the mountains, languishes because that company has possession of the door to this territory and so far as this part of it is concerned has turned the key on us; and by persistent misrepresentations is, and has been endeavoring to prevent any immigration to our Territory."
 3. October 21, 1865; Johansen, op. cit., pp. 127-128.

company discovered that the real purpose was to extend this road to The Dalles, they are claimed to have spent \$500 in the next election to elect their own county commissioners, who laid out a new road across the Cascade portage to exhaust the public money and thus prevent the construction of a road in competition to their interests. This type of manipulation by the Oregon Steam Navigation Company had continued

"...ever since the county was organized, which is the cause of our county being almost entirely abandoned. Klickitat was set off from Skamania for the express purpose of allowing a few capitalists to hold the key to Washington Territory."(1)

Another editor insisted that it was time for Oregon to be aware and frightened at the fact

"...that Washington Territory is waking up and is determined not to be bound hand and foot and cast at the feet of the Dragon of monopoly... .The bond fide citizens of Skamania County demand its re-annexation to Clarke, as their only present defense against the wiles, machinations, and the tyranny of the Oregon Steam Navigation Company."(2)

In order to destroy the influence of this company, the Washington legislature partitioned Skamania County between Klick-

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1. Vancouver Register, October 21, 1865, from Johansen, loc. cit.
 2. Pacific Tribune, December 31, 1864.

itat and Clarke Counties. (1)

The Oregon Steam Navigation Company as actual owner of the Cascades Railroad Company refused to lease its lands to the Middle Cascades Portage Company, which soon took steps to secure them by condemnation. Daniel Bradford then brought suit for the

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1. Laws of Washington, 12th Sess., p. 46, 1864-1865. The division was to be made at Rock Creek which enters the Columbia River near the present town of Stevenson, Washington, giving Clarke County the control of the Cascades. Because Clarke County received the most important section of Skamania County, the records of the county were turned over to Clarke County. The officers of the partitioned county were to cease to function after April 1, 1865. Any surplus in the county treasury of the dismembered county was to be equally divided between the two counties to be used in the school fund of each; if no surplus existed, all indebtedness was to be absorbed by Clarke County. Clarke County was willing to pay the price if only the control of the Oregon Steam Navigation Company could be broken in southern Washington. Some person, apparently in close alliance with the company, stole the Skamania division bill near the end of the session; but when an adequate substitute was presented, the original bill was quickly located. - Pacific Tribune, January 28, 1865. Other efforts were made by the company to defeat the partition bill but with no success. Shortly after the bill was introduced a remonstrance against division signed by 75 citizens of Skamania County was presented to the legislature. A petition for division had been signed, according to this remonstrance by "half that number, many of whom were non-residents, and many of whose names were fraudulently obtained". This information was included in a protest against division which the citizens of the partitioned county presented shortly after the Act had passed, but to no avail. These citizens threatened to prevent the turning over of the county records or monies to Clarke County and requested all county officers to remain on their jobs until removed by legal action. The petitioners claimed it to be their right and privilege to vote on the dismemberment of their county before any division was made. - Washington Democrat, February 11, 1865. With the Oregon Steam Navigation Company controlling elections there as they chose, such a course was not a practical one.

Cascades Railroad Company against the Middle Cascades Portage Company on the grounds that the award of \$1,000 for the property was irregularly assessed and that the latter company's charter was unconstitutional. The district court sustained the award and declared the charter valid. Bradford appealed the decision. The Oregon Steam Navigation Company also instituted suit in the name of the dispossessed officers of Skamania County, contesting the validity of the Act abolishing the county.(1) In the meantime the Oregon Steam Navigation Company refused to abide by the Acts of the legislature and was promptly accused of setting itself "above the laws".(2)

But any approach to justice was extremely uncertain in Washington Territory in 1865. This was the year that two of the judges were absent from the Territory for so long a period that it was impossible to hold a session of the territorial supreme court.(3) As a result no action could be taken on the Bradford appeal until the next year. The district court, however, further discouraged the aims of the Oregon Steam Navigation Company by declaring in favor of the Skamania bill.(4)

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1. Johansen. Op. cit., p. 129 from Vancouver Register, November 4, 1865.
 2. Ibid., p. 130, loc. cit., October 21, 1865.
 3. "Memorial Relative to the Election or Appointment of Federal Officers in the Territory of Washington", Laws of Washington, 13th Sess., p. 219, 1865-1866; Washington Standard, November 25, 1866.
 4. Johansen. Op. cit., p. 131.

Meanwhile the Oregon Steam Navigation Company had attempted to influence the election of the legislature as much as possible in order to put across its program during the next session. J. W. Brazee, either a company agent or in close relation with the company, attempted to win a seat in the Territorial House of Representatives on the ground that Skamania County had not been dismembered. H. G. Struve denied the right of Skamania County to representation in the legislature because it had been divided between Clarke and Klickitat Counties and easily won his point when the contest was decided in his favor.(1) Despite his defeat in his effort to gain a seat in the House, Brazee remained at Olympia throughout the session to exert all the influence he could in favor of the Oregon Steam Navigation Company.(2)

The prospects for the company were not encouraging in the legislature of 1865-1866. R. K. Hines, one of the editors and publishers of the Vancouver Register and openly hostile to the company, and Levi Farnsworth, a steamboat operator whom the company had run off the river, were two of the delegates from Clarke County. Dr. Dorsey S. Baker of Walla Walla, who was now interested in the Middle Cascades Portage and the Washington Territories Transportation Companies, was active behind the scenes. Nevertheless the Oregon Steam Navigation Company presented three

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1. Washington Standard, November 25 and December 9, 1865.
 2. Johansen. Loc. cit., from Vancouver Register, May 26, 1866.

bills to the Council: one, to empower the Cascades Railroad Company, still technically a separate corporation, to transfer its rights and privileges to the Oregon Steam Navigation Company; another, to further amend an Act to incorporate the Cascades Railroad Company; and a third, to authorize the Oregon Steam Navigation Company to purchase the Cascades Railroad Company, all of which were indefinitely postponed.(1) Brazee was convinced that little could be done in this legislature as long as Hines and Farnsworth were active in it unless bribery of individual members were resorted to. He and Elwood Evans, however, continued to introduce bills in an effort to force all parties to "show their hands", and, if possible, by this means "to have Congress interfere...for it shows on its face that they are not willing to do what is right."(2) All efforts to influence the territorial legislature had failed; therefore, the Oregon Steam Navigation Company turned to Congress for aid and sent Simeon Reed, vice-president, to Washington, D.C., to lobby early in 1866.(3)

This was a difficult task in 1866 for Congress was absorbed in the reconstruction of the South and its opposition to the President; but Reed succeeded in getting three bills introduced. The first of these, the Cascade Bill had a double purpose: to gain congressional recognition of the validity of the

1. Johansen. Loc. cit.

2. Ibid., p. 132, John W. Brazee to Simeon Reed, January 11, 1866, in Reed Letter Book.

3. Ibid., p. 133.

charter granted the Cascades Railroad by the legislature of Washington Territory under which the portage railroad had been constructed and, in an effort to forestall further retaliatory measures by the Territory, a grant of right-of-way for the company's road through the military reserve at the Cascades. These objects were gained in an Act passed April 10, 1866.(1)

The second bill advocated by Reed was an Act to disallow the Act of the Washington territorial legislature dismembering Skamania County.(2) Under the influence of the lobby for the Oregon Steam Navigation Company, the House Committee first agreed to annul the Skamania County bill; but Delegate A. A. Denny of Washington found out about it before the Committee reported, went before the Committee, protested that the legislature of Washington ought to know what measures were for the good of the Territory, and demanded that the Committee reject the bill, thereby killing it.(3) The question arose within the Committee as to the type of precedent that might be established in regard to the relations of the national government to the Territories in case a bill of this type passed. Reed's efforts seemed futile.(4) It was then that he accidentally learned that

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1. Johansen. Op. cit., pp. 134-135.
 2. Congressional Globe, 39th Cong., 1st Sess., p. 2282, 1866. This bill was introduced on April 30, 1866, by Mr. Rice of Maine and referred to the Committee on Territories.
 3. Pacific Tribune, October 27, 1866.
 4. Elwood Evans worked with Reed in an effort to secure favorable action on the bill by the Committee; but a majority of its members were no longer disposed to interfere with territorial legislation. Reed then approached Chairman Ashley of the Committee and was informed that whatever agreement Reed and Delegate Denny might reach would be acceptable to Ashley. Denny's opposition to the measure has already been noted; consequently Reed's efforts seemed futile.

Denny had introduced a bill providing for biennial sessions of the territorial legislature which had already passed the House and the Committee on Territories in the Senate but had not as yet been acted upon by that body. Reed, therefore, made every effort to secure an amendment to this bill disapproving the Skamania dismemberment bill. The amended bill could then be referred back to the House for its concurrence, and Denny would not dare to oppose the amendment for fear it might jeopardize his measure in the Senate. (1)

Reed's scheme worked as he had planned. Denny's bill had widespread support in Washington Territory because it provided for biennial rather than the annual sessions of the legislature and an increase of salaries for its officers and members. Denny was unable to fight Reed's amendment, and it passed the House on June 26, 1866. (2) It was too late in the session to refer the bill back to a Committee; Denny was, therefore, forced to allow the amended bill to pass rather than risk the loss of his bill providing for biennial legislatures. (3) "This will undoubtedly be welcome news to the Company," Reed wrote John C. Ainsworth, "and in connection with the Cascade Railroad Bill a 'bitter pill' for our friends in Washington Territory and here-

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1. Johansen. Op. cit., pp. 135-136, Reed to Ainsworth, May 30, 1866, in Hanley Papers.
 2. Congressional Globe, 39th Cong., 1st Sess., p. 3420, 1866. This amendment disapproved the Act of the Washington legislature approved January 14, 1865, entitled, "An Act in Relation to the County of Skamania", U.S. Statutes at Large, Vol. XIV, p. 77.
 3. Pacific Tribune, October 27, 1866. This was the first instance of congressional disallowance of a Territorial Act but not the last.

after the Legislature of that Territory will be reminded that there is a 'power above them'."(1) It was the humiliating task of the next legislature to give in to the victorious Oregon Steam Navigation Company by repealing the Skamania bill and by legalizing all acts done by the officers of Skamania County contrary to the repealed bill.(2) A territorial government could not successfully compete with an aggressive company in a neighboring state.

This precedent was not widely followed in the history of Washington Territory. While the Montana legislature had all the acts passed by two of its sessions disallowed in 1867(3) only one other Washington law suffered this fate in Congress.(4) This second act resulted from the political rivalries of the 1860's. Christopher C. Hewitt was appointed Chief Justice of the Territorial Supreme Court in 1861.(5) His curious rise may explain his unpopularity with other members of the bar. After arriving in the Territory, Hewitt avoided going into debt by making ox yokes for the logging camps of the Port Madison Mill Company. These yokes were so well made that the manager of the mill company employed Hewitt as attorney for a case which was

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1. Johansen. Op. cit., p. 137, Reed to Ainsworth, June 29, 1866, Henley Papers.
 2. Laws of Washington, 14th Sess., p. 165, 1866-1867.
 3. Congressional Globe, 39th Cong., 2d Sess., p. 197, Appendix, 1867.
 4. At another time Congress failed to validate certain objectionable laws.
 5. He followed O. B. McFadden.

finally carried to the Supreme Court of the United States. He and Joseph S. Smith prepared a brief which commended itself so strongly to the attention of Chief Justice Taney that he recommended Hewitt to President Lincoln for appointment as Chief Justice of the Territory. Efforts to secure his removal began almost immediately and continued throughout his eight years in office. (1)

The legislature of 1867-1868, though fairly evenly divided in politics, contained a clear majority of Hewitt's opponents. An Act was passed in January, 1868, redistricting the Territory and assigning the Federal judges in such a manner that Hewitt was given Stevens County for his district and required to reside there, while Judge J. E. Wyche received all of the rest of the Territory except Pierce, King, Kitsap, Clallam, Whatcom, Island, Snohomish, and Jefferson Counties, which were assigned to Justice C. B. Darwin, a recent appointee. (2) The Olympia, Territorial Republican, (3) charged that the "Copperhead" legislature had redistricted the judges so as to remove the only Republican judge, the Chief Justice, from the ability to exercise any authority.

The absurdity of the new law was so apparent that

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1. Snowden, Clinton A. History of Washington, Vol. IV, p. 181.
 2. Laws of Washington, 1st Biennial Sess., pp. 23-24, 1867-1868. The provision allowing Darwin to assist Wyche by holding the district courts at Olympia for Thurston, Lewis, Mason, and Chehalis Counties was shortly repealed, and Judge Wyche had most of the Territory to himself. - Snowden, op. cit., p. 24.
 3. August 31, 1868.

Congress promptly disallowed it. In the debate on the bill, Senator Williams of Oregon stated briefly the object of the Act:

"I will simply state that the Legislative Assembly of Washington Territory have passed an Act by which they have put pretty much all the Territory into one judicial district with the design to legislate so far as practicable the other judges out of office. It is entirely inconvenient to the people and unjust to the other judges. It was produced by some feeling of personal heat or political prejudice, or something of the kind, and the Act of the Legislature ought to be disapproved."⁽¹⁾

This was done July 27, 1868.⁽²⁾

Repeated efforts were made after this to secure the disallowance of objectionable bills but with no success.⁽³⁾ Congress was not willing to make this power a second veto by the delegate on territorial legislation. However, there is real significance to the fact that the decade which produced the Governor's veto for Washington Territory also possessed the only two illustrations of direct disallowance in her history. The central government was manifesting an increased disposition to interfere in territorial affairs.

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1. Congressional Globe, 40th Cong., 2d Sess., p. 3709, 1868. The measure apparently was directed first against Hewitt and secondarily against Darwin who was also unpopular.
 2. U.S. Statutes at Large, Vol. XV, p. 239.
 3. Delegate Flanders attempted to have the pilot bill repealed in 1869; Congressional Globe, 40th Cong., 3d Sess., p. 216, 1869; Delegate Garfielde, "certain legislation" in 1872, ibid., 42d Cong., 2d Sess., p. 2971, 1871; p. 3649, 1871; an Act to disallow an extension of the corporate limits of Walla Walla passed the House in 1873, Ibid., 42d Cong., 3d Sess., p. 411, 1873; in 1880 Delegate Brents asked for the disapproval of a revenue bill, Ibid., 46th Cong., 2d Sess., p. 2503, 1880.

Congress not only disapproved acts of the Washington legislature but also used this power to validate certain acts in 1884 and to disallow others while this was being done. The discrepancies which appeared in these laws are attributed to a personal quarrel between Governor Newell and Secretary Owings.(1) The Governor was accused of being so concerned with his own re-appointment that he approved most of the bills for the 1883 session of the legislature without reading them and "returned others as approved without signature".(2)

Whatever the cause may have been, a good many of the bills passed by that session were defective. In some cases the Governor's approval antedated the passage of the act; in others, it was omitted entirely. The Governor claimed to have approved and signed the acts on November 28, 1883, and to have intended to date them accordingly. Intentions failed to make the acts valid, however. The courts held that the act to correct errors and supply defects in the code embraced several different subjects and was thus invalidated by the Organic Act.(3) The enacting clause had been "intentionally omitted" from the engrossed copy of the act establishing the county seat of Garfield County, thus rendering it void; but it had been signed and approved without detecting the mistake. Other defective acts had been called

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1. Washington Standard, March 7, 1884.
 2. Idem. He did not wish to arouse opposition by scrutinizing legislation too carefully.
 3. Organic Act, Sec. 6; Revised Statutes, Sec. 1924. The Congressional Committee was opposed to allowing this section to apply to this Act.

to the attention of the committee; but after "examination, their validation is considered inexpedient". Even on the floor of the House, the act to incorporate the City of Whatcom was removed from the list of validated acts at Delegate Brents' suggestion. (1) This incident indicates that Congress not only considered that it possessed the power under the Organic Act to disavow acts of the territorial legislature but also to validate such legislation whether or not it conformed with the provisions of the Organic Act. In this particular case, committee action and even the suggestion of the Territorial Delegate was sufficient reason for Congress to render several of these same acts invalid, a virtual exercise of the power to disavow acts of the territorial legislature. (2)

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1. Congressional Record, 48th Cong., 1st Sess., p. 4136, 1884. The Acts validated were: An Act to correct errors and supply defects in the Code of Washington; an Act to prohibit the sale of pistols, fire-arms, and tobacco to children under the age of 16 years; an Act in relation to prosecuting attorneys, defining their duties, and fixing their compensation; an Act to supply deficiencies in the appropriation for the hospital for the insane for the fiscal years 1882 and 1883; an Act to provide for holding a term of the district court at Port Townsend; an Act to enable the county commissioners of Yakima County to build certain bridges in Yakima County; an Act to legalize certain ordinances and proceedings of the City of Seattle in condemning a strip of land for a public street; an Act to provide for the payment of bills for printing blank commissions for general officers, commissioners of deeds, and notaries public, for use of the executive department; and, an Act to establish the county seat of Garfield County at Pomeroy. - U.S.Statutes at Large, Vol. XXIII, p. 122.
 2. On at least one other occasion, Congress acted to validate an important law of the territorial legislature. The validity of the Act passed December 2, 1869, authorizing the county commissioners to lease school lands for a term of not over six years had been successfully challenged. In 1888 Congress declared both the Act and the leases made under the Act valid. U.S.Statutes at Large, Vol. XXV, p. 358.

LIMITATIONS ON THE TERRITORIAL LEGISLATURE

Lobbyist Simeon G. Reed for the Oregon Steam Navigation Company had one further object to obtain in Washington, D.C., in 1866. Having safeguarded his company from immediate encroachments by the opposition in Washington Territory, he now attempted to insure it against further opposition. His association with the railroad lobbyists at the nation's capital gave him access to Thaddeus Stevens, the dominant figure of the Republican Congress. Favorable contacts with Senator Washburne of Illinois, Speaker Schuyler Colfax of the House and other prominent individuals assisted Reed in carrying through his program. (1)

On May 15, 1866, Chairman Ashley of the House Committee on Territories introduced what appeared to be a general reform measure in the House which provided that the legislatures of

"...each of the Territories named shall pass no special acts conferring corporate powers, but they may authorize the formation of corporations (except for banking purposes) under general laws, which may be repealed at any time."

All special charters granted by these legislatures to associations that were not yet organized were declared void.

1. Johansen. Op. cit., pp. 137-138.

"All acts and parts of acts of any of the legislative assemblies...granting to associations or to individuals the exclusive right to go upon and occupy any part of the public domain, or to exclusive use of water to be taken from lakes, rivers, or streams...be declared null and void... ." (1)

To Reed, this was the important section of the bill. (2)

Should this Act pass, he wrote, "it would stop the W. T. Legislature from granting special franchises, and with the Baker and Persons Charter out of the way, we will have little to fear hereafter." (3) Congress was reluctant, however, to place such sweeping restrictions upon the territories. A question was raised as to the justice of validating the rights of corporations already in existence and denying similar privileges, except as

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1. Congressional Globe, 39th Cong., 1st Sess., p. 2600, 1866. This bill was to amend the Organic Acts of the Territories of Nebraska, Colorado, Dakota, Montana, Washington, Idaho, Arizona, Utah, and New Mexico.
 2. Some of the other provisions were of equal importance to the Territories. Section 6 provided that no person appointed by the President to any office in the Territories should receive any compensation until he had entered upon the discharge of his official duties within the Territory; "nor shall any officer thus appointed be paid for the time he may be absent from the Territory if absent without authority of the President of the United States." Other sections provided that unoccupied judges in the district courts were to act in place of the regular judges in case of the absence, death or inability of the regular judge to hold court and that all rulings or orders issued under these circumstances were to be binding. Legislative divorces were also to be forbidden. Section 9 provided the chief basis for debate in Congress on the bill; it declared that the elective franchise should not be denied to citizens because of race or color within the Territories and "all persons should be equal before the law." Section 10 prohibited ex-Confederate officers or those who had voluntarily borne arms in the Civil War from holding office within the territories. - Ibid., pp. 2600-2601.
 3. Johansen. Op. cit., p. 139, Reed to Ainsworth, May 12, 1866, Hanley Papers.

granted under general laws, to new companies which might be formed. A more serious question was raised, however, on the propriety of placing additional restrictions upon the territorial legislatures. Ashley's defense of the bill was based on the assumption that much of the legislation in the new territories consisted in "shingling them over with special corporations" in which territorial officers were often personally interested. Harding of Illinois replied that the territories should have the right to legislate for themselves on bridges, canals, schools, corporations, or any other domestic matter restricted only by the laws of the United States, and the decisions of the Supreme Court. "If they burn their fingers," he concluded, "let them cure them." This practical democratic advice had little effect on a House controlled by men who were interested in the well-being of the corporations. After considerable debate on section 9, the bill passed the House by a vote of nearly two to one.⁽¹⁾

But by the time the bill reached the Senate, sufficient progress had been made on the Fourteenth Amendment to indicate that it would pass. Since Reed considered that this Amendment would likewise accomplish his purpose, he wrote no more about securing the passage of this bill in Congress. The

1. Congressional Globe, 39th Cong., 1st Sess., pp. 2600-2601, 1866; Johansen, op. cit., pp. 139-140. Ashley said he wanted the law to protect the people of the territories from the acts of transients who passed corporation laws to favor the few. There were glaring instances of this sort of thing.

provision in the Fourteenth Amendment that no State shall "deprive any person of life, liberty, or property, without due process of law" went far to protect the interests of the few from the ambitions of the many.(1) Reed's original purpose was gained in an effective substitute for the territorial bill minus its more important reform provisions which accomplished for the territories what the Fourteenth Amendment did for the States.(2) This Act passed shortly after provided

"That the Legislative Assemblies of the several Territories of the United States shall not, after the passage of this Act, grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits."(3)

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1. Johansen. Op. cit., pp. 140-142. Two important provisions were the outgrowth of the original territorial bill as presented in the House. The first of these was a direct result of a lengthy debate over Section 9 of the original House bill in the Senate. - Congressional Globe, 39th Cong., 1st Sess., pp. 3476, 3525-3529, 1866. Most of the bill was stricken out and finally postponed in the Senate. Early in the following session of Congress, Senator Williams of Oregon attacked the provision in Section 9 that "all persons shall be equal before the law" on the grounds that wild Indians might sit on juries and claim equality with the more civilized elements of the population within the territories if the law passed. This might prove a real problem as there were a good many Indians in some of the territories. On January 10, 1867, all the bill was struck out except the franchise provision. - Ibid., 39th Cong., 2d Sess., pp. 365, 381-382, 1867. This was changed to read, "there shall be no denial of the elective franchise in any of the Territories of the United States...to any citizen thereof on account of race, color, or previous condition of servitude" and became a law January 25, 1867, without the President's signature. - Ibid., p. 994; U.S. Statutes at Large, Vol. XIV, p. 379. The Fifteenth Amendment ratified March 30, 1870, extended this provision to the States.
 2. Johansen. Op. cit., p. 142. This Act was "an Act Amendatory of 'An Act to provide a Temporary Government for the Territory of Montana'".
 3. Congressional Globe, Appendix, 39th Cong., 2d Sess., p.197, 1866.

Considerable significance may be attached to the fact that a lobbyist for a fairly small corporation, the Oregon Steam Navigation Company, actually possessed more influence upon the Republican Congress in 1866-1867 than did the representative of a territory.

The later history of this Act is indicative of the changing spirit of Congress toward the territories. The terms of the original Act were general, necessitating a further definition of the limitations placed on the territorial legislature. How much was included in the prohibition against granting private charters or especial privileges? The first amendment of the law in 1872 which was incorporated into the Revised Statutes did little to answer this question; but it did show a tendency on the part of Congress to outline for the legislature what it could do. (1) The revised bill in 1878 began to delineate the extent of these limitations by settling the question that the right of the legislature to create city government had not been outlawed by Section 1889 of the Revised Statutes which made no provision even for general acts of incorporation for that pur-

1. U.S. Revised Statutes, Sect. 1889; Congressional Globe, Appendix, 42d Cong., 2d Sess., p. 828, 1872. It could pass general Acts of incorporation to "permit persons to associate themselves together as bodies corporate for mining, manufacturing and other industrial pursuits, or the construction or operation of railroads, wagon roads, irrigation ditches, and the colonization, and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable, or scientific association."

pose.(1)

The final passage of this Act governing corporate privileges on July 30, 1886, reflects the tendency of Congress to become increasingly specific in its regulation of the territorial legislatures and of extending the scope of this regulation. The legislatures were not to pass local or special laws granting divorces;(2) changing the names of persons or places; providing for or altering roads or highways; vacating roads, town plats, streets, alleys, and public grounds; locating or changing county seats; regulating township or county affairs; regulating the practice in courts of justice and the jurisdiction and duties of justices of the peace, police magistrates, and constables; providing for changes of venue in civil and criminal cases, incorporating or amending the charters of cities,

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1. U.S.Statutes at Large, XX, 101. The legislature could create towns, cities, or other municipal corporations, provide for their government, and confer upon them the corporate powers and privileges, necessary to their local administration by either general or special Acts. Nothing in this Act of 1878 was to be construed so as to allow the creation of any private right except that of holding municipal offices. This Act was not to affect city contracts or to authorize a city to incur any debt except for its own internal affairs. A city could not help a corporation financially by incurring a debt for that purpose. It may be questioned further as to whether or not this restriction would prevent a city owning or operating its own public utilities if municipal indebtedness was necessary for this ownership or operation. Would this be part of the internal affairs of the city? Or were they confined to governmental affairs?
 2. The problem of legislative divorce will be discussed in the chapter on the territorial legislature.

towns, or villages; regulating the punishment of crimes; assessing and collecting any type of territorial or local tax; summoning or impaneling grand or petit jurors; providing for the management of common schools; regulating the interest on money; relating to any election or voting place; regulating the sale or mortgaging of real estate belonging to minors or other disabled persons; protecting game or fish; chartering or licensing ferries or toll bridges; remitting fines, penalties or forfeitures; "creating, increasing, or decreasing fees, percentages, or allowances of public officers during the term for which said officers are elected or appointed"; changing the law of descent; "granting to any corporation, association, or individual the right to lay down railroad tracks" or amending existing charters for such purposes; granting to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise whatever. In all other cases where a general law would apply, no special law could be enacted in any territorial legislature. Subscriptions by the territory or any of its political divisions to the capital stock of any company or corporation was definitely forbidden while territorial indebtedness was not to be over one per cent of the value of the taxable property of the Territory. Since much of the work of earlier legislatures was specifically forbidden by this act, one wonders what duties remained to these

bodies after they had passed a few general laws.(1) This was a real departure from the idea of Congressman Harding of Illinois that the territories should be allowed to manage their own affairs as they had done heretofore.(2)

This all-inclusive bill also stipulated the types of institutions the territorial legislature could incorporate by general laws; these were mining, manufacturing, and other industrial corporations; insurance companies, banks of discount and deposit but not of issue; loan, trust, and guarantee associations; and companies for the construction of railroads, wagon roads, irrigating ditches; and corporations for colleges, relig-

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1. U.S.Statutes at Large, XXIV, 107; Supplement to the Revised Statutes, I, 504. The local effect of one of the provisions of this Act merits attention. Section 4 limited municipal and county indebtedness to 4 per cent of the value of the taxable property of the city or county. - Supplement, loc. cit. The City of Olympia wished to make certain improvements on its wharf by borrowing the money for that purpose. In its charter the maximum indebtedness of the city was limited to \$12,000. If the new 4 per cent limit were adopted by the legislature, this maximum would be raised to over \$33,610, giving ample money for the desired improvements. But in this particular case one provision of the Act defeated another. To allow Olympia to increase her indebtedness to this figure, the legislature would have to pass a general act applicable to every municipal charter in the territory as the passage of local or special laws amending city charters was forbidden by this act of Congress. The needs of every municipality in the territory were not as great as those of Olympia; therefore, it was not likely that the legislature would authorize a general increase of the limits on city indebtedness throughout the territory merely to accommodate one municipality. - Washington Standard, November 5, 1887. The policy of closely regulating municipal indebtedness within the territory may have been responsible for inadequate fire-fighting equipment which contributed markedly to the disastrous fires at Seattle, Ellensburg, and Spokane in 1889.
 2. Congressional Globe, 39th Cong., 1st Sess., p. 2601, 1866.

ious, and scientific purposes and like matters.(1) In view of the fact that the Democratic press of the Territory had severely criticized several undemocratic restrictions placed by a Republican administration upon the territorial legislature by the Revised Statutes in 1873, it is significant that this crowning act of restriction on the only Democratic body within the Territory, the legislature, should be imposed during a Democratic administration. Both major parties restricted the Democratic features of territorial government until by the end of Washington's territorial history they were largely removed. A territorial legislature with almost complete powers over all types of legislation had now become a carefully restricted body curbed by the action of Congress and by the increased authority granted to the territorial governor, a Federal appointee.(2) This restriction of legislative authority is probably the most significant development in the constitutional history of Washington Territory.

TERRITORIAL ELECTIONS

In 1869, Congress passed an Act providing that the regular elections in Washington and Idaho Territories be held on

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1. Supplement to the Revised Statutes, I, 504-505. It is questionable that Simeon Reed or anyone else would have foretold the final outcome of his efforts to secure the interests of the Oregon Steam Navigation Company while he was a lobbyist at Washington in 1866. The final interpretation of this bill which affected Washington Territory was made by Congress in July, 1888; this Act, was not to prevent the legislatures from creating new counties or locating county seats. - Ibid., I, p. 598.
 2. The Governor's increased powers will be discussed later on.

the first Monday in June, 1870, and biennially thereafter on the same date.(1) The question then arose as to whether the officers elected in 1869 held over until 1871 or merely until after the new election. The Supreme Court in the case of Davidson v. Clark decided that the election of officers in 1870 was legal; but it did not affect the terms of the officers already elected. Officers elected at the 1870 election were to be entitled to a full term beginning with the expiration of the official term of their predecessors. Congress had made no change in the terms of office but only in the date of election.(2) One unfortunate result of this Act, however, was that the new legislature did not meet for from 11 to 16 months after its election. The legislature of 1867-1868~~9~~ passed an Act destined to remedy this defect which requested Congress to change the date of meeting from December to January, 1869. Governor Eugene Semple urged this change in his report to the Secretary of the Interior in 1868 in that the current arrangement allowed the pledges of the legislators to their constituents to grow dim in their minds and give time for lobbyists to "perfect combinations to defeat the

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1. U.S. Statutes at Large, XV, 339. This Act shortened Delegate Selucius Garfield's first term of office to one year.
 2. Washington Standard, December 17, 1870; October 7, 1871; Washington Territorial Reports, I, 307-314. Isaac Carson, elected Sheriff of Pierce County in June, 1869, was to continue in office until June, 1871, despite the election of D. W. C. Davidson in June, 1870. Even the legislature was to carry over until June, 1871; but this would have no significant effect unless a special session were called as the next session did not begin until October, 1871.

will of the people as expressed at the polls."(1) Congress might have recognized this laudable change had it not been urged at a time when the prospect of early statehood removed the likelihood that another meeting of the legislature would be held if the change were not made.

In 1872, the time of election was again changed. The Delegates of Washington and Idaho Territories wished to have an opportunity if renominated to canvass their territories before the election, which would be impossible if the June date was retained. The change to June had been made to prevent election frauds, as it was claimed, by making the dates for elections in Washington and Idaho Territories correspond to that of Oregon.(2)

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1. Report of the Secretary of the Interior, 50th Cong., 2d Sess., Ser. 2638, p. 900, 1887-1888. The sessions began in October and December; the elections took place in June and late November of the preceding year. The first biennial legislature of 1867-1868 had changed the time of meeting from the first Monday of December, 1869, to the first Monday of October the same year. It was necessary for Congress to pass a special appropriation bill in 1870 to cover the expenses of the legislature of 1869 as it was not held at the time stipulated within the original appropriation act. - Appendix, Congressional Globe, 41st Cong., 2d Sess., p. 740, 1870. Passed March 18, 1870.
 2. Congressional Globe, 42d Cong., 2d Sess., pp. 2960-2961, 3019, 3020, 1872. Jordan Valley was the only precinct in Oregon near Idaho and it polled only 15 votes. Senator Corbett of Oregon insisted that 100 Washington residents cast their votes in a North Portland precinct for the Democratic candidate in the June election of 1868 before the new election law had been passed. He claimed that the Democratic majorities in Oregon had declined by more than 800 votes since the law had gone into effect. Senator Kelly, also of Oregon, belittled the charges of fraud in the election of 1868 by pointing out that in Umatilla County where Walla Walla voters were accused of voting in 1868 the Democratic vote that year was only 15 greater than in the election of 1870 after the new law had been enacted.

The charges of apparent fraud by Washington citizens in the Oregon elections were subordinated to the desires of the two territorial Delegates to be able to participate in the campaign; and the time of the election 1872 and subsequent elections was changed to the more widely accepted date, the Tuesday following the first Monday of November.(1)

CHANGES OF TERRITORIAL POLICY UNDER THE REVISED STATUTES

The Revised Statutes of the United States issued first in 1873 and in turn revised in 1878 embodied all recent changes in territorial policy and, by attempting to make a nearly uniform system for all territories, made important changes in the government of Washington Territory. The Governors in all the Territories possessed the veto power, which was to be absolute in Utah and Arizona while a two-thirds vote was required to override it in all the other Territories. In most of the Territories, the Governor was given three days in which to sign or veto a bill or it became a law without his signature; but in Washington and Wyoming five days were allowed.(2)

The legislative power in each Territory was now vested in the Governor and the legislature.(3) The members of each house of the legislature were to be elected for two years and to

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1. U.S. Statutes at Large, XVII, 90; Washington Standard, June 1, 1872.
 2. Revised Statutes, Sec. 1842.
 3. Ibid., Sec. 1846. Washington's Oreganic Act, Sec. 4, says this power is vested in the legislature only.

meet biennially.(1) The members of each branch of the legislature were to have the qualifications of voters and reside in the districts from which they were elected.(2) Their powers of legislation were to extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States;(3) but as previously indicated this was not a very extensive delegation of power in 1878. Laws passed by the legislature of New Mexico, Utah, Washington, and Arizona were to be submitted to Congress for possible disapproval by that body; the legislatures of Colorado, Dakota, Idaho, Montana, and Wyoming were not subject to this restriction on their authority.

(4)

The 1870's and 1880's brought about a definite curtailment of Federal expenditures in the Territories which is reflected particularly in its effect on the territorial legislatures.(5) The first symptom of financial retrenchment came in 1872 before the Panic of 1873 when the expenses for the public printing, which by the Organic Act were regulated by an estimate by the Secretary of the Treasury,(6) were limited to \$4,000 for each session of the legislature.(7) Territorial expenses

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1. Revised Statutes, Sec. 1846.
 2. Ibid., Sec. 1846.
 3. Ibid., Sec. 1851.
 4. Ibid., Sec. 1860.
 5. The Revised Statutes reflect this tendency which might be attributed to the panic from 1873 to 1878 had it not begun before and continued after this financial collapse. The panic apparently accentuated this curtailment.
 6. Organic Act, Sec. 12.
 7. Appendix, Congressional Globe, 42d Cong., 2d Sess., p.709, 1871-1872.

were cut further early in 1873 when the sessions of the legislatures were reduced from 60 to 40 days with no increase in salaries for the regular members.(1)

This process of curtailment was completed in 1878. The Seattle Daily Pacific Tribune(2) complained that the Democratic House of Representatives was determined to reduce the number in the legislature by 12 members to a Council of 9 and a House of 18 and to reduce their pay from \$6 to \$4. "This is one of the things we get for remaining in a Territorial condition. If we were a State, we could fix all those matters."(3) The actual bill was not quite as drastic as had been anticipated; the number of members in the legislatures for all the Territories was made uniform with 12 in the Council and 24 in the House.(4) Salaries were generally reduced by one-third(5) while the expendi-

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1. U.S. Statutes at Large, XVII, 416. The salaries of the officers were increased; the President of the Council and the Speaker of the House should now receive \$10 per day; the Chief Clerks \$8. The members of each House received \$6 per day with \$3 for every 20 miles traveled. - Washington Standard, February 8, 1873. The Governor's salary was raised \$500.
 2. May 4, 1878.
 3. Idem.
 4. Revised Statutes, Sec. 1922. In New Mexico and Utah the figures had been 13 in the Council and 26 in the House. Washington had 9 in the Council and 18 increased to 30 in the House. Colorado and Dakota had 9 increased to 13 members in the Council and 13 increased to 26 in the House. The figures in Arizona were 9 and 18; Idaho and Montana, 7 increased to 13 and 13 increased to 26 for Council and House, respectively.
 5. The salaries for the presiding officers were reduced from \$10 to \$6 per day; for ordinary members, from \$6 to \$4.

ture for public printing was further limited to \$2,500.(1) Printing expenditures had been curtailed the most severely of all from about \$8,000 per year before 1871 to \$2,500 per year after 1878.(2) This remained the final Act governing the salaries and composition of the territorial legislatures as long as Washington was a Territory despite the fact that the legislature of 1879 presented a joint resolution to Congress requesting an increase in its membership.(3)

In 1880 Congress made one concession, however, to the demands of the Territories for a longer session of the legislature to provide time to finish all the business necessary for the best interests of the Territories.(4) Consequently the time limit on the sessions was again increased from 40 to 60 days.(5)

This policy of economy and retrenchment by the national government during the last two decades of Washington's territorial history placed the Territorial Delegates in a difficult position. The Vancouver Independent(6) indicates that Judge Orange Jacobs in 1876, with a House of Representatives

"hostile to internal improvements and jealous of national success and prosperity [was] placed in a more trying position than any delegate who ever preceded

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1. U.S.Statutes at Large, XX, 193. The salaries for the subordinate officers were also reduced.
 2. Seattle Daily Pacific Tribune, May 4, 1878.
 3. Congressional Record, 46th Cong., 2d Sess., p. 44, 1879-1880.
 4. Ibid., 3d Sess., 1880. Garland of Arkansas said that all nine delegates favored a longer session for this reason.
 5. U.S.Statutes at Large, XXI, 312.
 6. September 16, 1876.

him in Congress from this Territory. The cry of retrenchment has met him whenever he applied for even the smallest appropriation needed in the Territory. President-making has monopolized the lion's share of the attention of Congress, and a territorial delegate, representing a people who have no voice in this matter, dwindles to insignificance in the presence of the great party leaders of the States."

Delegate Thomas H. Brentz also complained of the same situation in 1883. He could hope for little from Congress because "our Democratic brethren can out-howl us on 'economy and retrenchment.'" He would do his best to get appropriations; but as this was the "President-making Congress", he questioned his ability to gain much.(1)

BANKING AND OTHER LIMITATIONS

The special provision forbidding the legislatures of Oregon and Washington Territories from chartering banks continued to apply to Washington Territory.(2) These restrictions appeared in the Revised Statutes in 1878 as applicable only to Washington among all the Territories. Washington's legislature

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1. Brentz to Rev. D. Bagley, December 31, 1883, D. Bagley Letters, Pacific Northwest Collection, University of Washington.
 2. In 1865, Governor William Pickering went East and secured the privilege of chartering a bank at Olympia. This was the first time, according to the Governor, that the people of any Territory had ever been granted the opportunity of subscribing for shares of bank stock. - Pickering to A. A. Denny, August 3, 1865, Letters of Secretaries and Governors. These restrictions apparently applied only to Oregon and Washington Territories.

still had no power to incorporate "a bank or any institution with banking powers". The legislature could not borrow money in the name of the Territory or pledge the faith of the people for any type of loan.

"No charter granting any privileges of making, issuing, or putting into circulation any notes or bills in the likeness of bank notes, or any bonds, scrip, drafts, bills of exchange, or obligations, or granting any other banking powers or privileges, shall be passed by the legislative assembly; nor shall the establishment of any branch or agency of any such corporation, derived from any other authority, be allowed in the Territory."⁽¹⁾

Why Oregon and Washington should be singled out as Territories without any banks is a difficult question to answer. Possibly the monied interests in California and later Oregon were strong enough to impose this restriction and keep it in force to the detriment of the economic life of Washington. There is also some logic in the suggestion that these financial restrictions were imposed on Oregon and Washington to check the powers of their respective territorial legislatures in financial matters as they are apparently the only two Territories in which the Governor had no veto power.⁽²⁾ With no other check on legislation within these Territories, Congress was unwilling to trust

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1. Revised Statutes, Sec. 1924; "Organic Act, Section 6", Appendix, Congressional Globe, 32d Cong., 2d Sess., p. 338, 1853. This provision is also found in the Organic Act of Oregon, Section 6.
 2. Cf., Congressional Globe, 38th Cong., 1st Sess., pp. 2794-2795, 1864, Delegate Cole's speech against the veto.

their legislatures on financial matters.(1) Early in 1878, a large number of citizens in King, Clarke, Kitsap, Whatcom, and Cowlitz Counties sent a petition to Congress representing the evils of this restriction. In presenting their plea to the Senate, Matthews of Ohio said that according to the Organic Act of 1853 no banking corporation was allowed to exist within the Territory of Washington, nor could any branch of a foreign banking corporation be established there. The results were unfortunate for the Territory;

"...in consequence of this unnecessary restriction the citizens, trade, and commerce of that Territory are compelled to pay excessive rates of interest, varying from 18 to 24 per cent per year",...

while citizens are also compelled "at great inconvenience to go into and borrow monies from banking corporations in the adjoining States of California and Oregon, and the colony of British Columbia". The petitioners requested the repeal, at least of that section of the Organic Act forbidding the establishment of any branch or agency of a foreign bank in the Territory.(2)

With the people of Washington Territory faced by this type of economic discrimination and excessive rates of interest to pay, little wonder that its development was comparatively slow until

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1. The only type of debt allowed in the Territory was a certificate of service to the Territory. Taxes were to be levied on the value and not the kind of property. And every law was to embrace only one object which was to be stated in its title. - Revised Statutes, Sec. 1924. Why all these limitations should be placed on Washington Territory is a curious problem.
 2. Congressional Record, 45th Cong., 2d Sess., p. 816, 1878.

after 1880. Shortly after this Congress also modified the limitations on territorial indebtedness to allow some indebtedness, thereby establishing an uniform system for all Territories.

Not until March 3, 1885, did Congress make a significant change in the Revised Statutes which repealed the special restrictions on banking in Washington Territory.(1)

THE INCREASE OF THE POWER OF THE GOVERNOR

While the powers of the Territorial legislature were being curtailed, those of the Executive were increased. Possibly no other change in Washington's Territorial history caused a greater popular reaction against the national authority than this. In 1864 the Governor of Washington Territory received the veto power.(2) The extension of his patronage in 1874 was in-

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1. U.S.Statutes at Large, XXIV, 171. By this Act, Territorial indebtedness in all the Territories was permitted to meet casual deficits in the revenue, to pay interest on the Territorial debt, to suppress insurrections, to provide for the public defense, and to authorize a loan for the erection of penal, charitable, and educational institutions "if the total indebtedness of the Territory is not thereby made to exceed one per centum upon the assessed value of the taxable property" of the Territory. It provided that the Territorial legislatures should not grant private charters or special privileges, but they could make general acts of incorporation to "permit persons to associate themselves together as bodies corporate for mining, banking, manufacturing, or other industrial pursuits", and for other purposes already mentioned in Section 1889 of the Revised Statutes. The inclusion of banking for the first time in this list of general incorporation powers allowed the Territorial legislatures would indicate that the banking restrictions on Washington Territory had finally been removed. - U.S.Statutes at Large, XXIII, 384.
 2. Ibid., XIII, 131. The debate leading up to the passage of this Act will be discussed in the chapter on the Territorial Executive.

corporated in the Revised Statutes. As early as 1869 the editor of the Washington Standard(1) complained that there was a proposition before Congress which gave the National Government at Washington the appointment of all territorial and county officers down to the constable and justice of the peace. The Washington Standard feared that this measure would "practically abolish everything like self-government in the Territories... .Slowly but surely is Radical rule obliterating every vestige of Republican government." The Act, however, as passed in 1874 was not as drastic as the Washington Standard had feared, since justice of the peace and general officers of the militia were to be elected by the people,(2) and all other township, district, and county officers were still to be elected or appointed as the Governor and legislature of each Territory chose to enact.(3) All other officers, however, were now to be nominated by the Governor subject to the approval of the Council.(4)

The reaction of the Territorial press was generally unfavorable to the extension of the Governor's appointive power. The Olympia, Puget Sound Weekly Courier(5) indicated that the effect of this action upon the legislature of Washington Territory; for since the Governor now appointed the Territorial aud-

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1. February 27, 1869.
 2. Revised Statutes, Sec. 1856.
 3. This is the same provision as Organic Act, Sec. 7.
 4. Revised Statutes, Sec. 1857.
 5. April 3, 1875.

itor, treasurer, librarian, school superintendent, and the university regents, while the Territorial military officers were to be elected by the people, the legislature no longer had the right to select them.(1) "This has been the law in other Territories," stated the Puget Sound Weekly Courier, "Washington being the exception to the rule, and the new code only makes a uniform law for all the Territories."(2)

The Democratic papers immediately objected to this new evidence of Republican "tyranny". The Washington Standard, April 3, 1875, complained that the Territories were obliged to yield to the encroachments of the Federal departments or Congress without the possibility of a hearing or of a change of policy.

"When the Democratic party went out of power in 1861, this Territory was allowed annual sessions of the Legislature, of sixty days each, which could elect its own Printer, and other officials, and enact such laws as its constituents required... .But this latitude did not suit the Republican idea of free government."

The Washington Standard then listed its criticisms of the Federal Government. First, the Governor received the veto, making him

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1. All these officers had previously been chosen by a joint convention of the legislature. By 1885 the list also included insane hospital trustees and penitentiary and pilot commissioners all paid by the Territory. - Washington Standard, October 2, 1883.
 2. April 3, 1875. The editor of the Puget Sound Weekly Courier expected a "long tirade" about "such a tyrannical law" from the Washington Standard and the Transcript; and his expectations were not unfounded.

equal with the elected representatives of the people in legislation. Then the Treasury Department removed the privilege of electing the public printer from the legislature and gave it to the Territorial secretary, a Federal appointee. Then the legislative sessions were made biennial and later shortened to 40 days.

"Next the Territory was compelled to pay for its own incidental printing; then the lands of the settlers were wrested from them and given to a grasping corporation; and now the Revised Statutes provide that the Territorial officers, formerly elected by the people, through their legally constituted representatives, are to be appointed by the Governor subject to the advice and consent of the Council; a meaningless provision, which does not in the least abridge the power of the Governor to select whom he pleases for Auditor, Treasurer, School Superintendent, Librarian, and such other positions as are now established, or may be created, by law. The simple effect of this Act will be to compel the people to pay salaries to officers they have no voice in selecting; to render tribute to the Government for the simple privilege of being an appendage of the American Union, and constituting practically a political poor-house, where it is convenient to send such politicians, and their relatives, as are no longer serviceable in manipulating State politics for national party purposes.

"How different all this is just across the water, with our Colonial neighbors! Great Britain maintains a fleet for the protection of her dependencies, she allows them to select all their officers except the Governor, levies no taxes upon them, places no burdens upon their commerce or industry, and allows them to levy the same tariffs upon her own productions as those of other countries."(1)

1. Washington Standard, April 3, 1875.

Within the week the editor of the Washington Standard had been challenged in his argument. Beginning with the Northwest Territory, practically all the other Territorial Organic Acts had granted this general appointive power to the Governor.

(1) The editor's reply is significant. The Northwest Territory was almost a wilderness when it was organized and peopled by a diverse people hard to mold into an independent government. (2)

"When it was divided, and other Territories were created, the same objectionable feature was retained in their Organic Acts, very probably because nobody thought of making the change." (3)

The newspaper concluded:

"In the year 1848, Oregon was admitted as a Territory, under a Democratic Administration, with the powers of the people greatly enlarged, the Legislature and the people electing all officers not paid by the general Government. The same provision was incorporated in our Organic Act, where it has remained until now, when it devolves upon a Republican Administration to take away a clearly defined right of the people and abridge the privileges of citizenship." (4)

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1. Cf. the following Organic Acts: Northwest Ordinance of 1787, Sec. 7; Colorado of 1861, Sec. 7; Iowa of 1838, Sec. 7; Kansas and Nebraska of 1854, Sec. 7; Minnesota of 1849, Sec. 7; Missouri of 1812, Sec. 2; Utah of 1850, Sec. 7; Nevada of 1861, Sec. 7; Wisconsin of 1836, Sec. 7. Poore, Federal and State Constitutions, pp. 430, 213, 530, 571, 430, 1024, 1097, 1237-1238, 1242, 2022. Why the Oregon Organic Act of 1848 and that of Washington in 1853 did not contain this provision while the Acts for Utah in 1850, Minnesota in 1849, and Kansas and Nebraska in 1854 did is a curious question.
 2. With less than 4,000 people Washington could be considered to be little more than in this condition in 1853.
 3. Washington Standard, April 10, 1875.
 4. Idem.

This argument is not historically correct. If the Democratic Administration was interested in democratic principles, why did it include this undemocratic provision in the Organic Acts of Minnesota in 1849, Utah in 1850, and Kansas and Nebraska in 1854?(1)

The difficult question then arises, why were the Territories of Oregon and Washington given more democratic Organic Acts than any of the other Territories of the United States? The Governor had no veto, his appointive power was more closely curtailed than in any other Territory. It could not have been a reflection of a Congressional distrust of executive authority, else the other Organic Acts of this period would have contained the same provision.(2) A possible answer to this question may be found in a speech made by Delegate Cole of Washington before the House of Representatives in 1864 in opposition to the granting of the veto power to the Governor of Washington.(3) Cole argued that Congress had been liberal to Oregon and Washington as a reward for the part played by the settlers of this area in winning the Oregon country for the United States, and for the ability they had shown in governing themselves under the provi-

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1. Cf. Sec. 7 of each of these Organic Acts. The Governor had this appointive power in each case.
 2. It is also a curious fact that the Organic Acts of these two Territories are the only ones restricting the Territorial legislatures from chartering banks or issuing bonds or other certificates of indebtedness in the name of the Territory, Organic Acts of Oregon and Washington, Sec. 6. Apparently Congress would trust the legislatures on all points except on financial matters.
 3. For a full discussion of this speech cf. chapter on the Territorial Executive.

sional government of Oregon.(1) It is uncertain that these are the only reasons prompting this difference between the governments of Oregon and Washington and that of other Territories formed about the same time, but they may have had some effect.

The legislature of 1875 resented this restriction on their appointive powers and protested to Congress(2) against the loss of their right to elect those Territorial officers paid by the Territory, a right which the people had exercised since the Territory was organized.(3) The Memorial urged that

"...every principle of justice demands, that the people should have the right to select those officers whose salaries they pay; that the provisions of section 1857 [of the Revised Statutes], in their results, are productive of principles obnoxious to freemen; that in effect, it is the same principle against which our forefathers protested, when they charged the King with erecting a multitude of new officers and sending swarms of officers, to harass our people and eat out their substance. Wherefore, we earnestly pray that the law may be so amended, that the people may appoint those officers whose salary they pay."(4)

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1. Congressional Globe, 38th Cong., 1st Sess., p. 2794, 1863-1864.
 2. Little political significance seems to be attached to this Memorial as the Council was divided evenly with four Democrats and four Republicans and one Independent who usually voted with the Democrats while the House was supposed to contain a Republican majority of 17 to 13, indicating Republican support to the Memorial as well as Democratic. - Washington Standard, October 2, 1875.
 3. The Territorial Auditor, Treasurer, and Superintendent of Schools, while now appointed by the Governor were paid by the people of the Territory who were more competent to select these officers than the Governors "who too often are strangers sent among us, knowing nothing of our people, our wants, or our interests."
 4. Laws of Washington Territory, 5th Biennial Sess., Memorial, 1875.

When near the end of October, 1875, Governor Elisha P. Ferry presented his list of appointments to the Council,(1) they were promptly rejected by a partisan vote.(2) The Republican arguments favoring the appointments insisted that Acts of Congress were supreme, that popular rights had not been infringed upon, and that the people of the Territories, dependent as they were on the central government for support, should acquiesce to the rulings of the national authority. The Democratic speakers presented their favorite arguments that the Administration

“...had step by step usurped the privileges and prerogatives of the people of the Territories; that the policy was wrong in principal, and as flagrant an outrage as some of the acts of the parent government which led to the war of the Revolution.”(3)

The Olympia Transcript commended the majority of the

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1. Washington Standard, October 30, 1875, again protested against the action of the national government. One man sent to the Territory by the National Government now possessed the power “heretofore exercised by thirty-nine representatives of the people”. The little done for the Territories had been growing less by degrees so gradual that few protests had escaped the loyal masses. The “Democratic Secretaries were excused from the duty of farming out this lucrative tidbit [the Territorial printing]” which would foster the best interests of the party. Appropriations for the Territories had been steadily cut while the political grip had been tightened by allowing the Governor to appoint “the few officers the Legislature and the people have elected [the Act of Congress originally included even the county officers].”
 2. The four Democrats and one Independent against the four Republicans. The same vote had passed the Memorial in the Council. - Idem.
 3. Idem.

legislature for passing the Memorial to Congress against the extension of the Governor's patronage as men "breathing the spirit of '76."(1) The same paper later accused Governor Ferry of attempting to intimidate the five Democratic members of the Council into sanctioning his appointments, particularly by vetoing the King County Bill in retaliation for their recalcitrance.(2)

There is some significance to the fact that, while the Republican press defended the Governor, it made no great effort to uphold the action of the National Government. After Governor Ferry's first list of nominations had been rejected by the Council, he sent in a second list to that body which postponed consideration of it until the last day of the session, thereby hoping to embarrass the Governor as long as possible.(3) The Repub-

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1. Olympia Transcript, October 30, 1875. The voting population of Washington was not made up to "Mexicans and greasers", and thus needed no such restrictions imposed upon it. "Taxation without representation was the basis of our forefathers' complaints against Great Britain"; and territorial experience had only indicate the justice of this principal.
 2. Washington House Journal, 5th Biennial Sess., p. 190, 1875; Olympia Transcript, November 6, 1875. The editor claimed that the bill was as perfect as any like it and not defective as the Governor had claimed. The Governor's action was a gross insult to the members of the legislature as they possessed the "same rights to reject as he to make the appointments, even under this tyrannical statute, and his attempts to force upon them his appointments is as outrageous as it is disgraceful."
 3. Vancouver Independent, November 13, 1875; Puget Sound Weekly Courier, November 6, 13, 1875. The antagonism of the editors of the Standard and the Transcript toward the Governor could readily be explained by the fact that they possessed the offices of Territorial Auditor and of Treasurer, respectively, and were not included in his list of appointments for the next term.

lian press admitted that the law which gave the Governor the right to appoint these officers might be a "bad law"; but it was now his responsibility to nominate them; and, unless selections were objectionable persons, the Council was duty bound to confirm them. The course they had taken was, therefore, subject to censure. (1)

DISSATISFACTION OVER TERRITORIAL APPOINTMENTS AND CARPETBAG RULE

In 1876 the report circulated in the Territory that a measure before the House Committee on Territories to allow the people of the Territories to elect their own officers would probably meet with favorable consideration. (2) The same paper, however, which reported this bill also reported a proposed act before Congress which reflected the reason a more liberal territorial policy would not pass; the salaries of Territorial officers were to be reduced which was in keeping with the "policy of retrenchment at present so fashionable at Washington with Congressmen of both political parties." (3) It was not likely for Congress, particularly a Congress committed to a policy of retrenchment, to grant the Territories the major privilege of

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1. Puget Sound Weekly Courier, November 6, 13, 1875. The Council had rejected the Governor's appointees purely on political grounds, "as they had previously in a caucus combination, agreed to." The subsequent postponement of the second list of nominations until the last day of the session was dubbed a "cowardly mode of avoiding the performance of their duty."
 2. Olympia Weekly Pacific Tribune, February 19, 1876.
 3. Idem. On the effects of low salaries on the quality of Territorial officials cf. Pomeroy, Earl C. Territories and the United States, 1861-1890, pp. 99, 104. This policy fostered the appointment of "inferior officers".

statehood, the election of their own officers, without placing on them the chief burden of being a state, the necessity to pay the salaries of these officers elected by the people. The prevailing trend was not toward greater territorial self-government but toward increased Federal interference with the little self-government the Territories possessed.

Carpetbag government and the extension of the authority of these appointees of the National Government continued to be the basis for criticism within Washington Territory. The Democratic Standard complained in 1877 that the Republican administration was riveting the chains of "territorial vassalage" more firmly. (1) Much of this complaint centered around the policy of financial retrenchment by the National Government. (2)

1. August 18, 1877.
2. Washington Standard, October 13, 1877. The Standard summarized the change as follows: In 1860 the National Government allowed annual 60-day sessions of the legislature, now biennial 40-day sessions. Then it paid the expenses of the Assembly and allowed popular election of the Public Printer by the representatives of the people, now the Territory had to pay part of its own legislative expenses while the Secretary of the Territory selected the Printer whom "the people must assist to pay". Then the legislature alone made the laws; now the Governor had to sign them before they were valid. Then the representatives of the people selected the Territorial officers, now "the Governor appoints his pets to office and the people pay them". Then "adequate appropriations were made for the public surveys; now the settler has to pay a bonus in addition to the stipend to secure the adjustment of his boundary lines. Then the Government furnished stationery, newspapers, and postage stamps for the use of the Assembly; now they must of necessity appropriate from the Territorial funds or their own pocket money for that purpose."

The report, early in 1878, that Congress might pass one of many bills to allow the Territories to elect their own officers, (1) again raised hope in the Territory for relief from carpetbag rule. According to the Walla Walla Union: (2)

"Every citizen of the Territory has lamented over the fact that the officers of Governor, Secretary, and Judges were sort of hospitals to which decaying politicians could be shipped from the populous east. They have all felt that when they were denied a voice in the choice of their governing officials they were deprived of one of the dearest rights of American citizens. Give to the citizens of the Territory the right to vote for their Governor and Judges, and the insane desire for the rights, powers, duties, and inevitable enormous taxes of Statehood without population, will be almost entirely eradicated from their minds."

The National Government, however, had no desire to abolish its patronage "hospitals" nor to make the territorial status so alluring that the Territories would not wish to become States.

The first report in 1878 on the bill which stabilized the membership of the Councils of all the Territories at 12 and the Houses at 24 and called for a general lowering of salaries for the members of the legislature and a further curtailment of printing expenses (3) called forth a scathing estimate of Territorial policy on the part of the Washington Standard: (4)

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1. Two bills in 45th Cong., 2d Sess., 1877-1878, in Congressional Record for that session, pp. 99, 319; two bills in the next session, Ibid., 45th Cong., 3rd Sess., pp. 59, 654, 1878-1879.
 2. January 26, 1878. This was written just before Washington's premature Constitutional Convention of 1878.
 3. Already discussed in this chapter.
 4. June 1, 1878.

"The Colonies rebelled and threw off the yoke of oppression for less cause and Freedom applauded the act as one of patriotism and duty; but doubtless the voice of reason is stilled by the reflection that these grievances are only temporary in character and tend to bring about the conditions which precede the sovereignty of Statehood."

It is possible that the hope of eventual statehood was sufficiently strong to prevent greater dissatisfaction in the Territories, especially Washington Territory where later government restrictions on the relatively liberal Organic Act were more severe than on other Territories. The grievances of the American Colonists before the Revolution are strikingly similar to the chief grievances presented by the Democratic press in Washington Territory during the 1870's against the United States Government: taxation without representation; unjustifiable restriction on what were accepted as established rights; and an oppressive officialdom, who fostered its own interests rather than the interests of the people governed, imposed upon them by the central authority.

There is significance to the fact that twice in the early 1880's the Committee on Territories in the House reported favorably on bills which would have alleviated the conditions of the Territories and removed some of the source of friction between the Territories and the Central Government. The first committee report in 1881 restated the principle urged by the legislature and the press of Washington Territory(1) that the

1. Washington Standard, April 3, 1875; Laws of Washington Territory, 5th Biennial Sess., 1875, Memorial; Olympia Transcript, October 30, 1875.

Territories should be allowed to select those officers whose salaries were paid by the Territories and not by the Central Government. (1) The Washington Standard (2) commented on this report that

"The result of the trial of Executive appointments in this Territory would be sufficient to condemn the plan to eternal oblivion, even had it the support of fairness in its inception. Men have been placed in office and retained, time after time, who would never have been elected by the people or their representatives in the Legislative Assembly, and the fate of bills of grave importance has been made to hinge upon the political action of the Council in 'Executive Session'... We trust that Congress will repeal the objectionable provision, and modify the veto power so that it may only be exercised to remedy legal defects in legislation." (3)

But this hope of reform proved to be fleeting, and the same paper soon complained of the continued restrictions of the Federal

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1. Reports of Committees, House of Representatives, 46th Cong., 3d Sess., Serial 1982, No. 232, 1880-1881; Washington Standard, January 28, 1881. The Committee on Territories had examined the statutes of several of the Territories and had found that other necessary offices had been created by the Territorial legislatures, as Treasurer, Auditor, and the like, whose salaries were paid by monies received from local taxation. "These officers have no official relations with, and bear no responsibility to, the general government." The Committee could see no reason "why the power that creates an office in a Territory should not also have the power to provide the mode in which the same should be filled." The Territorial legislatures created these positions; the salaries were paid by the people of the Territories. "It is therefore but proper and just that they should have the right to say how such offices shall be filled."
 2. January 28, 1881.
 3. The editor was still smarting under his own displacement in office by the Governor.

Government upon the Territorial legislature and of the extension of the authority of the National Government and of its agent, the Governor. In 1861, concluded the Washington Standard, "some of our old citizens were appointed to and retained in office, now our Territory is a veritable poor-house for broken-down politicians."(1)

In 1884, the House Committee of Territories recognized the abuses of carpetbag rule by reporting favorably on a bill requiring the governors to be residents of the Territories two years before their appointment. The reasons the Committee gave for the passage of the bill were: 1. The Territorial Governor ought to be acquainted with and fully identified with the people of the Territory. 2. He ought to know the character of the people and of the legislation best suited to their needs and necessary for the progress and development of their material resources. 3. He ought also to be attached "to the soil as a property holder and identified with the people of the Territory by the many social ties growing out of permanent citizenship." Only if this were true, would he be careful of his reputation and deal fairly with the people of the Territory.

"When these Territories were first organized there was perhaps a solid excuse for the practice which still obtains of sending men from the States to act as Governors, but in the opinion of the Committee there can be no good reason, urged for its continuance. It is, in fact, a vicious practice, inconsistent with the genius of our free institutions, and should no longer be tolerated."

1. August 19, 1861.

The Committee further claimed that the position of Territorial Governor was used as a reward for party service and as "places of refuge" for unsuccessful and disappointed politicians. In nine out of ten cases, the Territorial Governors were total strangers to the people, "who go carpetbag in hand, ready to return to their homes in the States as soon as their term of office expires."(1)

Those opposing the bill argued that the Territories were dependent upon and held in trust by the rest of the States in their process of obtaining Statehood, and that the Government could control the Territories only by selecting their Governors from all of the States. Delegate Maginnis of Montana heatedly answered this argument by indicating that Congress could invalidate Territorial laws, making it unnecessary for the central authority to control the appointment of the Governor also. The original plan had been that the Territories were not to be as large before their admission to Statehood as the Territories were in 1884. States were jealous of new States; Senators, jealous of new Senators. "And in the present state of political parties, both are equally careful lest the admission of some new State should influence the balance of political power between them."(2) This careful analysis of the political situ-

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1. Congressional Record, 48th Cong., 1st Sess., p. 2779, 1883-1884; Pomeroy, op. cit., pp. 248-254. The Committee concluded that the new railroads had brought plenty of skilled politicians to the Territories; therefore, "Why should not the people have the small privilege accorded them of having their chief executive selected from those who are most deeply interested in their social, political, and material welfare?"
 2. Congressional Record, op. cit., pp. 2779-2780.

ation before 1889 reflects the reason for the delay in admitting populous Territories into the Union.

Maginnis concluded with a caustic denunciation of the whole Territorial system:

"The only thing, then, we can fall back upon is to perfect as well as we can the present Territorial system, which I undertake to say is the most infamous system of Colonial government that has ever been seen on the face of the globe. ...I ask, what are those Territories? They are the colonies of your Republic, situated three thousand miles away from Washington by land, as the thirteen Colonies were situated three thousand miles away from London by water. And it is a strange thing that the fathers of our Republic when they threw off the yoke of Great Britain established a colonial government as much worse than that which they revolted against as one form of such government can be worse than another. I made that statement in 1876, and Mr. Potter asked me if the United States Government had ever annulled any of our laws? And the gentleman from Iowa will remember our answer...that not only particular enactments but the laws of whole sessions of our legislatures had been wiped away by one word."(1)

These arguments had effect, for the House passed this Act making it necessary for the Governors of the Territories to be residents of these Territories for two years prior to their appointments, only to have the Senate Committee of Territories report on it adversely.(2) All of the Territorial Delegates are

1. Congressional Record, loc. cit. The laws of two sessions of the Montana legislature were disapproved by Congress in 1867. Ibid., 39th Cong., 2d Sess., Appendix, p. 197, 1867. Delegate Brentz of Washington, speaking on the same bill, maintained that one State with one-third to one-fifth of the population of some Territories elected its own public officials while the Territories were not even assured that one of their own residents would be selected. And above all, Congress still reserved the power to wipe out all Territorial legislation as well as the legislature that enacted it, at any moment she chose. - Ibid., 48th Cong., 1st Sess., p.2781, 1883-1884.
2. Washington Standard, May 9, 1884.

reported to have favored the bill; but it was rejected in the Senate on the excuse that as the

"...residents of the Territories are sometimes mixed up in factional fights at home, it would render it often impossible to procure men free from schemes and local interests who are qualified for Governor and for this reason alone they think the bill should be rejected. This is a very good reason [commented the editor of the Washington Standard](1) but a better one is that it curtails the distribution of party favors where they will do the most good. As long as the people of the Territories are disfranchised on a national vote, they must submit to imported office-holders."

Despite the recognition by the House Committee of Territories of the abuse, there was no apparent relief from carpetbag rule in the Territories of the United States. (2)

OTHER RESTRICTIONS ON THE TERRITORIES

Only a few of the lesser measures affecting the Territories during the period of the Revised Statutes merit atten-

1. Washington Standard, loc. cit.
2. Both Cleveland and Harrison recognized the justice of the Territorial demand by appointing an increasingly large number of residents to Territorial offices. Of the 12 Governors appointed by Cleveland only three were non-resident appointments while all of the 10 appointed by Harrison were residents of their respective Territories. - Pomeroy, op. cit., p. 183. Not all Federal appointments, however, were considered objectionable. The Washington Standard, March 3, 1882, praised the reappointment of Surveyor-General William McMicken in 1882 despite the fact that it was his third term and that public sentiment did not favor long tenure in office. "Were all our Federal officers as faithful in their discharge of duty, and as considerate, in their personal deportment, there would be little desire to assume the grave responsibilities and increased cost of State Government."

ritories during the period of the Revised Statutes merit attention here. The Governors of Washington, Idaho, and Montana had to secure the approval of the President to call a special session of the legislature after 1874.(1) Officials who were absent from the Territory without the consent of the President now lost their salary during the entire year in which the absence occurred.(2)

The Revised Statutes contain other comparisons of the practices found in the various Territories. Writs of error and appeals from the decision of the Territorial Supreme Courts were allowed in cases where the property value was above \$1,000 in all the Territories except Washington where the value had to be \$2,000 or over.(3) The judicial power in all the Territories except Arizona was vested in a supreme court, district

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1. Revised Statutes, Sec. 1923; U.S.Statutes at Large, XVIII,135; Organic Act, Sec. 11; Pomeroy, op. cit., p. 71. In the debate in the Senate in 1868 on a bill to prevent the Governors of the Territories from calling special sessions of the Territorial legislatures, it was asserted that none of the Territorial Governors possessed this power and ought never to possess it and that it was a dangerous power, as it allowed the Territorial Governors to put the United States Government at considerable expense to suit some particular locality or party in the Territory. - Congressional Globe, 40th Cong., 2d Sess., p. 4502. This power granted in the Organic Act was used only once in Washington Territory when Governor Newell called a special session of the legislature in 1881 with the President's permission to complete the Territorial Code, and Congress appropriated \$1,194 to pay the expenses of the 6-day session. - Washington House Journal, 8th Biennial Sess., pp. 308, 333, 339, 1881; U.S.Statutes at Large, XXIII, p. 238.
 2. Revised Statutes, Sec. 1884.
 3. Ibid., Secs. 1909, 1911.

courts, probate courts, and justices of the peace. In Arizona this power was vested in a supreme court and other courts that the Territorial Council might prescribe by law. (1) The procedure for granting writs of habeas corpus in the District of Columbia was to be the basis for the procedure in all the Territories except for Idaho and Montana. (2) The legislative assemblies of all the Territories except Idaho and Montana had the power to organize and change the judicial districts as they chose; this was to be done by the supreme court in Idaho and Montana. (3) There was, however, considerable variety in the method of assigning the judges and fixing the times and places for the district court to meet within these districts. The judges of the supreme court assigned the judges to their respective districts and fixed the times and places for holding the district courts in Idaho, Montana, New Mexico, and Arizona. This was to be done by the legislatures of Colorado, Dakota, Wyoming, and Washington, while the Governor of Utah assigned the district judges to the districts and appointed the time and place for holding court in the districts. (4) Justices of the peace were not to have jurisdiction in any case where the claim exceeded \$100 in all the Territories except Colorado and Arizona where the limit was fixed at \$300. (5) The probate court of Colorado had both chancery and

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1. Revised Statutes, Secs. 1907, 1908.
 2. Ibid., Sec. 1912.
 3. Ibid., Secs. 1913, 1914.
 4. Ibid., 1914-1919.
 5. Ibid., 1926, 1927.

common law jurisdiction and authority over all types of cases in the Territory where the value involved did not exceed \$2,000. As a result writs of error and appeals were allowed from this court to the territorial supreme court.(1) In Montana the probate courts could handle civil cases where the value did not exceed \$500 and criminal cases not requiring a grand jury but could not act on cases where the title of land was involved or on divorce or chancery cases. Appeals from the probate court were allowed to the district courts but not to the supreme court.(2)

Other differences included the following: The incidental expenses for the Governors of all the Territories except Washington were placed at \$1,000 a year while the Governor of Washington received \$1,500.(3) In most of the Territories an annual account for all funds had to be rendered to the Secretary of the Treasury; but in Washington, Idaho, and Montana semi-annual accounts were required.(4) There was to be no payment of salaries to the Governors, secretaries, and justices of the Territorial courts in Washington, Idaho and Montana until such officers had entered upon the duties of their appointments.(5) The mileage payment was to be \$3 for every 20 miles traveled in all the Territories except Montana and Idaho where each 20 miles travel was worth \$4.(6) The Governor and legislature could

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1. Revised Statutes, Secs. 1929-1931.
 2. Ibid., Sec. 1932.
 3. Ibid., Secs. 1935, 1938.
 4. Ibid., Secs. 1939, 1940.
 5. Ibid., Sec. 1941.
 6. Ibid., Secs. 1942, 1943.

change the capital in all Territories except Idaho and Montana where both a popular vote and a legislative enactment were required to move it.(1) The Secretary of the Treasury prescribed the method of securities for officers appointed by the President and Senate for Washington, Idaho, and Montana Territories.(2) The Delegates to the House of Representatives for each of the territories of Washington, Idaho, and Montana were required to be citizens of the United States.(3) One wonders if an alien could be a Delegate in other Territories.

In all the Territories except Montana, Idaho, Wyoming, and Colorado the care of the penitentiaries erected by the United States was to be under the United States marshals for the Territories and regulations for the government of these penitentiaries were to be made by the United States Attorney-General. In these penitentiaries the expenses of the convicts under the laws of the United States were to be paid by the Central Government while the expenses of the offenders against Territorial laws were to be paid by the Territory.(4) In the above exceptions to this general policy the care and custody of the penitentiaries were transferred to the Territories unless otherwise stipulated by the Attorney-General, although the United States Government continued its legal title to the penitentiary property

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1. Revised Statutes, Secs. 1944, 1945.
 2. Ibid., Sec. 1951.
 3. Ibid., Sec. 1906.
 4. Ibid., Secs. 1892-1895.

in each case. (1)

An Act passed in 1873 may explain the increased interference of the National Government in Territorial affairs during this period. (2) Until then the general control of the Territories had been in the hands of the Secretary of State, which would indicate that they were considered as foreign possessions of the

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1. Revised Statutes, Secs. 1936, 1937. The United States paid \$1 per day to cover the expenses of each prisoner under the laws of the United States. In Washington Territory, however, no advantage was taken of the provision allowing Territorial convicts to be kept in the Federal penitentiary, but Territorial offenders continued to be kept in local jails, or later under special contract at Seato until the Walla Walla penitentiary was completed shortly before Washington became a State. - "Reports of the Governor of Washington Territory", in Report of the Secretary of the Interior, 45th Cong., 3d Sess., p. 1122, 1878; 50th Cong., 1st Sess., p. 962, 1886-1887.
 2. An Act passed in 1886 required that the nature of alcoholic drinks and narcotics and their effects on the human system be taught in connection with the classes of physiology and hygiene in the Territorial public schools. Teachers granted certificates in the public school system had to pass an examination which covered the information required in this Act. - Supplement, Revised Statutes, 49th Cong., 1st Sess., p. 492, 1886. The other Act passed in 1887 made it illegal for aliens or alien corporations to hold property in the Territories of the United States. Corporations having more than 20 per cent of their stock held by aliens could not hold real estate in the Territories of the United States. Another provision of this Act provided that "No corporations other than those organized for construction or operation of railroads, canals, or turnpikes shall acquire, hold, or own more than five thousand acres of land in any of the Territories of the United States, and no railroad, canal, or turnpike corporation, shall hereafter acquire, hold, or own lands in any Territory, other than may be necessary for the operation of its railroad, canal, or turnpike, except such lands as may have been granted to it by Act of Congress. But the prohibition of this section shall not affect the title to any lands now lawfully held by any such corporation." - U.S. Statutes at Large, XXIV, 476, 477. These Acts are only further indication of increased Federal interference in Territorial affairs. It may be observed, however, that had the second one been passed earlier, several corporations in Washington Territory might not have acquired so much land.

United States. After 1873 this control was transferred to the Secretary of the Interior,(1) implying that the Territories were now considered an integral part of the United States and subject to increased control by Congress as a result. There was actually more self-government for the Territories, especially for Washington, before this transfer was made. The new populous Territories were justified in objecting to the increased interference of the National Government in local affairs as they grew and prospered. The American Colonies before the Revolution had objected to this type of treatment by the British Government. The Revised Statutes proved a revolution in Territorial policy but not one favoring the popular interests of Washington Territory.

1. Appendix, Congressional Globe, 42d Cong., 3d Sess., p. 257, 1873; U.S. Statutes at Large, XVII, 484. For a more complete discussion of this change cf. Pomeroy, op. cit., pp. 37-41.

PART II. THE DEPARTMENTS OF THE TERRITORIAL GOVERNMENT

CHAPTER IV. THE TERRITORIAL EXECUTIVE

To begin with the Territorial Executive possessed less power in Oregon and Washington than in any other Territories. (1) According to the Organic Act of Washington, the Governor's power was limited to granting pardons for Territorial offenders and respites for Federal violators, (2) to commanding the militia, to executing the laws of the Territory, to granting commissions, and to calling special sessions of the legislature when needed. (3)

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1. Cf. Organic Acts of the Territories and Revised Statutes of the United States.
 2. Respites were in force until the President could decide on the case.
 3. Organic Act, Secs. 2, 11. This last power was exercised only once in the history of Washington Territory. Little wonder, then, that Governor Stevens left Washington Territory in the middle of a session of the legislature as important as the first in order to protect his railroad surveys from the unfavorable action of Secretary of War Davis. Since Washington's Governor did not receive the veto until 1864, he had no power either to approve or reject legislative enactments and could thus be absent from the Territory as well when the legislature was in session as when it was not. - Snowden, Clinton A. History of Washington: The Rise and Progress of an American State, Vol. III, pp. 246-247.

With his executive functions thus closely circumscribed, the Governor could also readily act as Superintendent of Indian Affairs. A secretary was appointed to assist him and to act in his place when he was absent from the territory.(1)

THE GOVERNOR'S MESSAGE

The fact that the Governor had no veto before 1864 does not indicate that he had no influence on Territorial legislation; for he or the Territorial Secretary as acting-Governor in the absence of the Governor, delivered regular and occasionally special messages, to each of the twenty-five sessions of the legislature during the Territorial period. It may be assumed that the influence of these messages was considerable when the Governor or acting-Governor was a man of force and political acumen and that the influence was negligible when the Governor lacked these characteristics. A brief survey of some of these messages will indicate their nature. Governor Isaac I. Stevens in his first address to the legislature on February 28, 1854, aptly summarized the chief needs of the Territory; and it is recorded of this able message that nearly all of its suggestions and recommendations, except that pertaining to the militia, were accepted and followed.(2) His later messages and that of acting-Governor

1. Organic Act, Secs. 2, 3.

2. Snowden. Op. cit., p. 237; Gates, Charles M., Messages of the Governors of the Territory of Washington, pp.3-9.

Mason in 1855 are largely concerned with the Indian treaties, Indian War, martial law, the Pacific Railroad, and desired internal improvements for the Territory.(1)

There is considerable contrast between the superficial messages of Fayette McMullen in 1857 and Richard D. Gholson in 1859, recent appointees as Governor, and the fuller understanding of the needs of the Territory reflected in the addresses of acting-Governors Charles H. Mason in 1858 and Henry M. McGill in 1860. The generalities of the two newly appointed Governors had little effect upon the legislatures while the definite recommendations of the acting-Governors in regard to Indian affairs, the Pacific Railroad, internal improvements, and other needed legislation indicate a real insight into Territorial affairs that impressed the legislature favorably.(2)

Later messages reflect the greater needs and wider interests of the Territory such as the acquisition of Alaska, treaties with the Sandwich Islands, law codes, internal improvements, the insane asylum, public lands, taxation, Territorial resources, foreign relations, the Pacific Railroad, Territorial finances, the penitentiary, the university and university lands, legislative divorce, and other items of general interest to the

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1. Messages by Stevens, December 5, 1854; by Mason, December 7, 1855; by Stevens, January 21, 1856, and December 3, 1856. - Gates. Op. cit., pp. 9-47.
 2. Ibid., pp. 49-90. The pro-Union tirade of acting-Governor L. Jay S. Turney in 1861 tended more to rouse the antagonism of the legislature than to gain its good will. - Ibid., pp. 92-99. This speech is discussed in the chapter on the Federal Government and the Territories.

members of the legislature.(1) Two major reforms were successfully urged by Governor Elisha P. Ferry in his four messages to the legislature from 1873 to 1879; a board of equalization for more equitable tax assessment, and, a publicity board to attract settlers to Washington Territory. His objection to the rapid rush of enacted bills to him for his approval during the last day of the session amounting to two-thirds of the number passed in the 1877 session was less successful since Governor William Newell objected to this abuse in his first address to the legislature in 1881.(2)

The final two messages to the legislature reflect the conditions of the Territory prior to Statehood. Governor Squire in 1885 estimated the population of the Territory at 175,000 and the total property value at \$115,000,000. He recommended the appropriation of funds for an adequate penitentiary; the creation of the office of Attorney-General; the establishment of a board of health; the erection of institutions for the deaf, blind, and feebleminded; and the re-establishment of the boards of equalization and of immigration. He recommended further that Memorials be sent to Congress for the improvement of the waterways of the Territory, for irrigation projects, for the continua-

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1. Gates. Op. cit., pp. 103-172. William Pickering in four messages from 1862 to 1866, particularly attacked legislative divorces. He was followed by Marshall F. Moore in 1867, Alvin Flanders in 1869, and Edward S. Salomon in 1871.
 2. Ibid., pp. 206-207, 229. Addresses by Governor Ferry, pp.174-216, and by Governor Newell for 1881 and 1883, pp. 218-246. Squire's address also reviewed in some detail both public and private education in the Territory, the condition of the insane asylum, the militia, and the Territorial library.

tion of the tariff on coal to protect the coal industry in Washington, for an increase of the district judges to five, for added protection to American workers under the Chinese Restriction Act, and for the admission of Washington as a State.(1)

Governor Semple announced in 1887 that the Territory was in debt for the first time in ten years by \$75,000, the greatest amount in its history; but it had a fine hospital for the insane and the Walla Walla penitentiary to show for it. His list of suggestive Memorials to Congress reflects the conditions within the Territory, including requests to Congress to adjust "the long deferred claims of certain of our citizens for services and losses of property in the different Indian Wars in which they had been engaged"; to allot money for agricultural experiment stations; to make the Chinese Restriction Act more drastic and enforce it; to appropriate more funds to improve the waterways of the Territory; to clarify the title of land especially on the Northern Pacific land grant, and to permit admission without delay or restriction.(2) With the increase of population, the social, economic, and political problems of the Territory increased, and the messages of the Governors to the legislature reflect this trend.

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1. Gates. Op. cit., pp. 248-263.
 2. Ibid., pp. 266-275.

THE VETO POWER

Possibly the most significant development during Washington Territorial history is found in the growth of Executive authority at the expense of the legislature.(1) The increase of the power of the Governor will be considered first; the extension of the Territorial Secretary's prerogative, later.

According to the Organic Act(2) the Territorial Governor possessed no veto. The first major check on legislative authority came in 1864 when the Governor was granted this power. This change occurred while William Pickering, Republican, was Governor, George E. Cole, Democrat, was Delegate and the political completion of the legislature was uncertain.(3) The granting of the veto was advocated by the Republican Territorial officials to check the Democratic leanings of the Territorial legislature. In 1864 a revealing letter from A. G. Denny to W. H. Wallace in Washington, D.C., insisted that

"Our legislature has done more mischief than can be repaired in the next ten years. I wish you would call the attention of the Committee on Territories to the importance of so altering the Organic law as to give the Governor the veto power. There is certainly no propriety in making our Territory an exception to all the others as is the case in this particular. The veto power reserved to Congress amounts to nothing. The Governor has no power

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1. Much of this problem is discussed in the chapter on Revised Statutes.
 2. Organic Act, Secs. 2, 4.
 3. Heany, Edmond S. History of Washington, pp. 370-371.

now to protect either himself from insult, or to protect the interests of the Government at Washington."(1)

Since the Congressional right to disavow acts of the legislature had not been employed as yet it appeared to be no check on the action of the legislature.

The debate on the bill granting the Governor the veto power is significant. Senator Wade of Ohio argued that a good many transient people came into the Territory possessing little responsibility, gained control of the legislature, burdened the Territory with debt, and passed unwise laws. The Governor had no veto power at present to counteract their influence.(2)

When the bill reached the House, Delegate Cole delivered an important speech against it. To repeated queries of why Washington's Governor should have no veto while other Territorial Governors had, Cole replied that the Organic Acts of Oregon and Washington were more democratic in their grant of legisla-

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1. A. G. Denny to Wallace, February 4, 1864, in W.H. Wallace Letters, Pacific Northwest Collection, University of Washington. Denny felt confident that the Committee of Territories would not hesitate to place Washington on an equal footing with Idaho and the other Territories if the matter were called to their attention.
 2. Congressional Globe, 38th Cong., 1st Sess., p. 2510, 1864. Wade stated further that a veto provision was the same as that for the President except that the Governor had only five days to return the vetoed bill due to the short sessions of the legislature. Since Delegate Cole opposed the veto, Wade's veto measure was apparently suggested by Delegate Wallace of Idaho, whom Wade had mistaken for Cole. - Ibid., p. 2600.

tive authority than those of other Territories because the population of Oregon had been instrumental in gaining the Oregon country for the United States in the dispute with Great Britain over this area and the people had shown themselves competent of self-government under the provisional government of Oregon. Congress, therefore, in both Oregon and Washington, had departed from the usual custom in organizing new Territories and deprived the Governor of the veto power.(1) He urged that Section 6 of the Organic Act so limited the powers of the Territorial legislature that they would "hardly exceed those of the board of supervisors of a county in the State of New York".(2) Even so there were already two checks on Territorial legislation; Congress had an absolute veto; and the courts could declare any laws inconsistent with the Organic Act null and void. He claimed that the people were satisfied with their government and that none of the six Governors of the Territory except the present incumbent had desired the veto. If the Governor were selected

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1. Congressional Globe, 38th Cong., 1st Sess., p. 2794, 1864. Cole also claimed that Congress gave the Territory concessions it had never given to any other Territory of the United States. Among these were the Donation Acts giving 640 acres to a married man and 320 acres to a single man if he resided on and cultivated the land for four years. "This was done probably for the same reason as that for which Congress gave to the Territory a liberal Organic Act, as a remuneration in part for the essential service rendered by that people to the Government." When Washington Territory was organized by Congress in 1853, "the people were allowed the same privileges in regard to enacting their laws the people of Oregon Territory were [allowed] in the Act organizing that Territory."
 2. These limited powers were to be still further circumscribed in the next twenty-five years as indicated in the chapter on the Revised Statutes.

from the permanent residents of the Territory or if he were elected by the people so that his interests were identified with theirs, there might be little objection to his possessing this power. Cole insisted that "troublesome fellows" unfit for position in the States were often sent as Governors to the Territories and that the people of the Territories would find difficulty in understanding why the veto was granted such persons. "They will feel it a hardship that this abridgment of their liberties should be made without cause."(1)

Cole further insisted that the question was not the same as that involved in forming a new Territory; for this bill now deprived the people of a right they had exercised for sixteen years, five years under Oregon Territory and eleven under Washington Territory. This was to be done without cause and "without them having betrayed or violated the trust reposed in them." The people would inquire into the cause for this abridgment of their liberties; and if the Federal officials sent into

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1. Congressional Globe, op. cit., pp. 2794-2795. Delegate Cole did not complain at the fact that the Territories were taxed without representation except by a Delegate who had no right to vote; this was an evil "of which our forefathers bitterly complained". But he did object to any abridgment of the right of the legislature as representatives of the people to enact local legislation to provide for and protect their own local interests. He denied that the people of the Territory were of a transient nature; and insisted that they were permanent settlers vitally concerned with the best interests of the Territory. Cole had attempted to send the bill to the Committee of Territories and thus dispose of it for that session, but the House manifested a disposition to pass it, and he could do nothing but protest against its passage if they chose to pass it.

the Territory were responsible for it, they might face serious consequences since the real division of the political parties in the Territory was between the "Federal clique party and the People's party". Cole maintained:

"It is true a Territory at best is but a State of semi-vassalage, yet my Territory has enjoyed comparative freedom in matters of local legislation within the scope of the Organic Act given them by Congress, which is quite circumscribed, yet they have been accustomed to a certain amount of freedom, and any abridgment of it without cause will, I repeat, Mr. Speaker, be to them a sad grievance. We are in a remote section of the Union. It will be a long, long time before we will be populous enough for a State. We shall have to endure our Territorial vassalage many years to come; make it, I entreat you, Mr. Speaker, as light as possible."(1)

Cole's concluding remarks are significant:

"If men sometimes find their way into our Legislature who are not sufficiently identified with the interests of the people to properly represent them, how can we expect the stranger, reared in a distant land, entrusted with the lever of the veto power, to better that condition of things? I know it is said in our Territories the Governor is clothed with the veto power, and in the instance of Utah it is absolute. The old lady when remonstrated with for skinning eels alive, said, 'Oh! that is nothing; they are used to it; I have done that these thirty years!' Well, Mr. Speaker, we are not used to it. It will not help the condition of these Territories by depriving us of a portion of our rights. You have been very indulgent toward us; but your indulgence has not spoiled us. We deserve no chastisement, and pray do not inflict it upon us."(2)

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1. Congressional Globe, op. cit., p. 2795. Cole insisted that Federal taxes would nearly be doubled during this session of Congress; but despite the fact that it was taxation without representation, the people of the Territory would pay these taxes as they believe it necessary to sustain the Government in its trying crisis. But they also expected some consideration from the Government; and this bill would merely insult them.
 2. Idem.

This speech by Delegate Cole is a reflection of three significant developments: First, it indicates a disposition on the part of the Central Government to remove the liberal provisions found in Washington's Organic Act and gives us some clue to the reason these provisions were granted. Secondly, it reflects the dissatisfaction of the Territories with carpetbag rule and the tendency of the Central Government to increase rather than relax this rule. Thirdly, the speech has definite political significance for it indicates that the Governor, a Federal appointee and member of the majority party in Congress, had more influence in that body than the Delegate as representative of the people of the Territory. Cole's excellent speech in the House had little or no weight as the bill granting the Governor of Washington the veto passed by a substantial majority. (1) A Democratic Delegate could hope for little consideration from a Republican Congress.

The political story behind the bill is clear. In his first address to the legislature December 17, 1862, Governor William Pickering stated that he could see little reason for such messages in a Territory where the Governor had no part in the law-making power but that they were important only in States and Territories where the Governor assented to or disapproved legislation. (2) With the election of the Democrat Cole as Delegate from Washington in 1863, the Republican leaders requested

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1. Congressional Globe, op. cit., p. 2810. It passed by a vote of 72 to 45 with 65 not voting. U.S. Statutes at Large, XIII, 131.
 2. Gates. Op. cit., p. 102.

W. H. Wallace, Republican Delegate from Idaho and retiring Delegate from Washington, to act as "'Guardian ad litem' for us which we confidently believe you may do."(1) With Governor Pickering, the head of the "Federal clique party" favoring the Governor's veto, and with other prominent Republicans(2) influencing Wallace to work to this end, he was doubtless responsible for the change.

Dr. Isaac L. Tobey congratulated Governor Pickering on gaining the veto power and indicated the political ramification of the move. "I think," he concluded, "it will have a very salutary effect upon the actions of certain members [of the legislature], whom it would be useless for me to name."(3) Governor Pickering stated to the next legislature on December 12, 1864, that "I beg leave to assure you, it will be my earnest desire to cooperate with you in all the measures adopted to promote the welfare and prosperity of the whole population of the Territory."

(4) Before the session was over, however, the Washington Democrat(5) reported that the legislature refused to recognize the propriety of a Governor appointed and sent to the Territory from a foreign community being clothed with the veto power and passed

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1. W. H. Wallance Letters, Judge C.C.Hewitt to Wallace, December 7, 1863.
 2. Ibid., A. G. Denny to Wallace, February 4, 1864. referred to earlier in the chapter.
 3. Isaac L. Tobey, M.D. to Wm. Pickering, October 27, 1864, in Letters of the Secretaries and Governors, Pacific Northwest Collection, University of Washington.
 4. Gates. Op. cit., p. 118.
 5. January 7, 1865.

a bill over his veto. This power was reputed to be "an assumption of authority never dreamed of before the present dynasty came into power."

The subsequent history of the Governor's veto during the Territorial period merits attention. A Code Commission(1) appointed by the legislature in 1867 reported only verbal changes in most of the Acts which had to be completely re-enacted to make the changes legal. The reprinting of these bills would greatly increase the work and profits of the Public Printer. To this Governor Alvin Flanders objected and vetoed the amended measures as they were presented to him. He argued in each case that the bills were simply re-enactments of laws as they already stood on the statute books and that whether the general or Territorial Government paid the bill, the cost was unwarranted in view of the hasty manner with which the Code had been passed.(2)

This is the only case of wholesale vetoing in Washington Territory. Its next important use came in 1875 when Governor Elisha P. Ferry was charged with employing the veto as

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1. Consisting of J. H. Lasater, Elwood Evans, and B. F. Dennison.
 2. Snowden. Op. cit., Vol. IV, p. 184; Washington House Journal, 2d Biennial Sess., pp. 430-431, 500-502, 1869. The Governor insisted that a worthwhile code demanded a critical examination and revision of these laws that could not be given at this session. Governor Flanders indirectly criticized the work of the former commission by suggesting the appointment of another code commission to "revise, digest, and codify the laws" and report to the next legislature. Washington Council Journal, 2d Biennial Sess., pp. 230-231, 1869.

a political weapon to force confirmation of his appointments. In 1874 Congress attempted to make the Territorial Governments more uniform by stipulating that all Territorial officers whose election or appointment was not otherwise provided for in the Revised Statutes should be appointed by the Governor and confirmed by the Council. (1) Governor Ferry sent in his first group of nominations and the Council promptly rejected them. He was then accused of vetoing the Ping County Bill in retaliation for this act. (2) "He who deliberately avows his purpose of vetoing a bill," commented

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1. Revised Statutes, Sec. 1857. This problem is discussed in some detail in the chapter on the Revised Statutes.
 2. Washington Standard, November 6, 1875. It seems that the Governor's objections were not well-founded. The reasons given by the Governor for vetoing the Ping County Bill were that it provided no representation of Ping County in the next legislature and that it allowed the county commissioners to appoint the rest of the county officers. It was claimed that the first defect was cured by an apportionment bill already in the Governor's hands before he vetoed the Ping County bill and that the second defect was actually no violation of the Organic Act. After the session and after the Governor's second list of nominations had been confirmed, Mr. Ping authorized the editor of the Washington Standard, November 20, 1875, to state that the failure of the Ping County bill was due to Ping's refusal to confirm the Governor's first list of Territorial nominations. Ping claimed the Governor approached him in a circuitous manner and promised him the approval of the Ping County bill if he would vote for confirmation of the Governor's nominations. Ping later affirmed that he had called on Governor Ferry at his office during the session of 1875 and was informed by the Governor that the Ping County bill would be vetoed if he did not vote for confirmation. Ping, also, was asked to mention to Councilman William Pickering that unless his outspoken opposition to confirmation ceased, the Governor would not approve of several of his measures. W. W. Boone is alleged to have been the Governor's agent to speak to Councilman J. B. Shrum to get him to use his influence on Ping to secure his vote for confirmation in return for approval of the Ping County Bill. Ping refused to agree and the bill was vetoed. Portland Oregonian, June 29, 1878; Washington Standard, August 17, 1878.

the Washington Standard, "unless his nominations are confirmed, acts from the basest motives known to man."⁽¹⁾ The veto could be used not only as a check on unwise legislation but also as a potential political weapon.

Until 1881 the legislature used an effective expedient to pass bills without the Governor's approval by passing Joint Resolutions with the force of the law. In 1881, Governor William A. Newell requested that all these Joint Resolutions be submitted to him for his approval and re-enforced his request with a telegram from the Secretary of the Interior that "A Joint Resolution of the Territorial Legislature is without effect unless approved by the Governor."⁽²⁾

This final extension of the veto power, and for that matter the veto itself, had little use under Governor Newell. It was ported in 1881 that the Governor vetoed none of the 380 bills introduced into the legislature despite the fact that nearly twice the usual number were passed. He even failed to use the power to check unwise legislation. According to the Revised Statutes no law was to be passed allowing any other compensation to the members and officers of the legislature than that provided by the United States.⁽³⁾ Since the number of officers of the legislature and their salaries had been fixed by an Act of Congress in 1878, the legislature of 1881 had no authority to employ

1. November 20, 1875.

2. Ibid., October 21, 1881.

3. Revised Statutes, Sec. 1855.

about a dozen extra clerks.(1) These additional officers were paid the same as the regular officers while the chief clerks were given additional compensation at the end of the session. All these Acts received Executive approval despite the fact that they were illegal according to the Acts of Congress.(2) The Secretary of the Interior informed the Governor October 17, 1881, that the members of the legislature could not vote themselves any additional compensation or increase their allowance for postage beyond the amount provided for that purpose by Congress. Despite this definite instruction, the Governor sanctioned a bill granting \$175 out of the Territorial funds to pay for postage used by them during the session.(3)

EXECUTIVE PATRONAGE

The other important extension of the Governor's authority came in 1874 when his appointive power was enlarged at the

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1. This was done by separating the offices grouped together in this Act of Congress of 1878 governing subordinate officials.
 2. Washington Standard, December 16, 1881. There is some reason to believe, as indicated later in this chapter, that Governor Newell failed to use the veto in return for having his own daughter approved as Territorial Librarian.
 3. Ibid., December 16, 1881.
Cf. also, Pomeroy, Earl S. The Territories and the United States, 1861-1890; Studies in the Control of Dependencies, p. 65. Governor Newell seems not to have employed his veto power during the 1883 session either since a good many defective bills approved by him had to be validated by Congress. Cf. Chapter on the Revised Statutes. U.S. Statutes at Large, XXIV, 122.

expense of the legislature.(1) The full extent to which the Governor's patronage developed is indicated by the final list of appointments by the Governor at the last session of the Territorial legislature in 1887-1888. Beside the regular officers as Territorial auditor, treasurer, librarian, and attorney-general,(2) the Governor appointed trustees for the hospital for the insane, building commissioners for the same institution and for the school of defective youth, a superintendent of public instruction, regents for the university, a coal mine inspector, dental commissioners, pilot commissioners, and members of the board of health. Even then, Governor Eugene Semple informed the Council that the lateness of the day in which the laws creating the code commission, the penitentiary commission, the inspector of coal mines, the pilot commissioners for Puget Sound, and the subordinate officers for the Territorial penitentiary were passed prevented his selecting suitable officials for these posts before adjournment.(3)

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1. This development is discussed in some detail in the chapter on the Revised Statutes, cf. Sec. 1857.
 2. This office was created at this session of 1887-1888. Laws of Washington Territory, 11th Biennial Sess., p. 44, 1887-1888.
 3. Washington Council Journal, 11th Biennial Sess., pp. 238-239. Even these did not exhaust the list because Governor Semple had to inform Judge J.H.Lewis that he could not be appointed to the position of Judge Advocate General of the National Guard as that office was created by the last legislature of which Lewis was a member, and Sec. 1854, Revised Statutes, stipulated that no member of the legislature could occupy a position created in the preceding session of the legislature and until one year following the expiration of his term of office.- Governor Semple to Hon.J.H.Lewis, March 8, 1888, in Letters and Documents of Eugene Semple, Pacific Northwest Collection, University of Washington. Territorial Attorney-General J.B.Metcalf re-enforced Governor Semple's opinion, and Elwood Evans was appointed to the position in place of Lewis. - J. B. Metcalfe to Governor Semple, March 31, 1888, Idem.

The Secretary of the Territory also gained the authority to appoint the Territorial Printer. For nearly two decades after 1853 the contract for the public printing was one of the most profitable contracts obtainable in the Territory from the Federal Government. (1) A few figures will indicate the nature of these contracts. Congress allotted \$6,000 for the public printing in 1858. (2) A little later the expenses for printing averaged about \$8,000 a year. (3) In 1869 the amount paid for the journals, bill work, and a large volume of the laws was placed at \$20,000, "half of which was profit". (4)

The first session of the legislature in 1854 passed a law providing for the election of the Territorial Printer by each session of the legislature, which Act was to become the

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1. Pomeroy. Op. cit., pp. 84-87.
 2. Washington House Journal, 7th Sess., p. 49, 1859-1860.
 3. Seattle Daily Pacific Tribune, May 4, 1878.
 4. C. E. Bagley, "Personal Notes", in Miscellaneous Articles of C. E. Bagley, Pacific Northwest Collection, University of Washington. Apparently the laws were printed only in pamphlet form until the session of 1871 after which about 100 copies of the 1,000 printed were bound in board or calf. As the small pamphlets were easily mutilated or destroyed, the laws of the early sessions soon became scarce. - Idem. With high profits to be obtained, politics played an important role in selecting the Public Printer. By 1872 the Federal Government recognized the abuses practiced in the name of necessity by limiting the allowance to \$4,000 for any session of the legislature. - Appendix, Congressional Globe, 42d Cong., 2d Sess., p. 709, 1871-1872. This was further curtailed to \$2,500 in 1878. An additional \$3,000 was granted for the Code of 1881. It would seem, however, that the National Government curtailed the printing expenses excessively for the Public Printer found it impossible to print several of the Journals after 1871. An extremely profitable job had lost most of its profits. - Bagley, loc. cit. Some later concession was made as the printing allowance in 1889 was placed at \$3,750. - U.S. Statutes at Large, XXV, 727.

center of one of the major political conflicts of the Territorial period. (1) Printers were elected in accordance with the provisions of this law for nearly ten years before the Act was seriously questioned during the intense political conflicts of the 1860's. (2)

The capital controversy provided the opening phase of the effort to take the selection of the Public Printer away from the legislature. Acting-Governor H. M. McGill removed acting-Capital Commissioner George Gallagher, special tool of the group who desired to relocate the capital at Vancouver, and replaced him by a commissioner favorable to Olympia. (3) The "Olympia clique" hoped to get the building started before the legislature met in December, 1860, to insure the capitol for Olympia. The rapidity with which the bill removing the capital to Ven-

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1. Laws of Washington, 1st Sess., p. 446, 1854; Pioneer and Democrat, December 23, 1854.
 2. Some intimation of future political struggles over printing appeared in the Third Session of the legislature when on January 25, 1856, the Council refused to meet with the House to elect a Public Printer unless they could be assured of a fair election; and 19 members of the House met in convention and elected W. H. Wallace, a Whig, Public Printer. The Territorial Secretary refused to recognize Wallace's bond, however; the matter was referred to the Treasury Department where his election by the House alone was disavowed; and George B. Goudy did the public printing. - Pioneer and Democrat, February 8, 15, 29, and June 27, 1856. Arthur A. Denny, Speaker of the House, and Frank Clark were blamed for the election of Whig Wallace, Public Printer, by this convention of the House only. - Ibid., February 15, 1856.
 3. Beardsley, Arthur S. "Controversies over the Location of the Seat of Government in Washington", Pacific Northwest Quarterly, Vol. XXXII, No. 3, pp. 258-267, July, 1941. The capital question is discussed in the chapter on the legislature.

couver passed early in the session of 1860-1861 indicated that the anti-Olympia faction had a clear majority in the legislature.(1) As a result of his removal of Gallagher, the agent for the Vancouver group, McGill's enemies in the legislature affronted him by electing Gallagher Public Printer(2) whose immediate resignation indicated the fraudulent nature of the election.(3)

McGill anticipated a quarrel over the public printing and attempted to forestall it. Instructions from the Treasury Department advised no change in the method of selecting the Printer unless the best interests of the Territory demanded

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1. Beardsley. Op. cit., pp. 274, 373.
 2. Washington House Journal, 8th Sess., p. 259, 1860-1861. This election took place on the thirty-first ballot.
 3. The affair was political spite directed against McGill. Gallagher was the "bitterest and most unrelenting enemy" the office of the Pioneer and Democrat ever had; Puget Sound Herald, February 7, 1861, and that office was the chief supporter of McGill. Gallagher was also from Steilacoom, one of the centers of the anti-Olympia party on the Sound. Some hint to the real nature of the trick may be gleaned from the allegation that Gallagher had written out his resignation and "placed it in the hands of a member who was opposed to him, before the election transpired. So it seems the whole affair was a farce." - Idem. Gallagher claims to have written it out on January 14, two days after his election and to have handed it to members from Pierce County in both houses of the legislature. If the resignation was bonda fide and was made after the election had taken place, it indicates a real sense of honor on Gallagher's part. He informed the legislature that he could not, "consistently with my sense of duty and propriety, qualify and enter upon the duties of Public Printer". - Washington House Journal, 8th Sess., p. 286, 1860-1861. It is difficult to ascertain whether Gallagher was actually party to this legislative fraud or not.

it. (1) When the Council refused to meet with the House to elect a Printer in January, 1861, (2) McGill considered that the emergency merited action and selected one himself. (3)

1. W. Medill, Comptroller, to W. M. McGill, January 18, 1861, in Bancroft Scraps, Vol. CX, p. 159. On January 18, 1861, McGill received this letter from the Comptroller's Office presumably in reply to an inquiry of his dated November 18, 1860, before the session of the legislature convened asking whether he as Secretary of the Territory had the power "to give the printing of the Assembly to any party other than the regular elected Printer." The Comptroller's reply was discouraging but evasive and of real significance in the light of a message from the same office shortly after.

"The [Treasury] Department does not desire to sanction it, [it concluded] the agitation of any issue arising out of matters under your charge, which may be productive of controversy; you will therefore take no steps to change the practice heretofore existing with regard to the public printing unless the public sentiment and interest of the Territory should render such a course necessary and proper."

2. Puget Sound Herald, February 7, 1861; Washington Standard, February 2, 1861. As indicated in the election of a Printer in 1856, the House alone could not make the choice and have it recognized.

3. Washington Standard, February 2, 1861. Gallagher's resignation had not been handed to the acting-Governor; therefore McGill waited until the 10-day period required by the law of 1854 for the Printer to file his bond had elapsed, declared a vacancy, and appointed James Lodge of the Pioneer and Democrat Public Printer.

When the office of Territorial Printer became vacant before the legislative session of 1861-1862 convened, the new acting-Governor L. J. S. Turney intimated to the editor of the Washington Standard that he possessed the disposal of the territorial printing. He merely appointed the editor of the Standard to act as Printer until the legislature should fill the vacancy by election, thus "declining to exercise a power he had no doubt of possessing. - Washington Standard, February 8, 1862. The friends of the Standard in the legislature delayed the election of the Printer for 20 days to give that organ some financial returns for the appointment; otherwise, it would have had none. J. W. Poe was finally elected Public Printer. - Washington House Journal, 9th Sess., p. 65, 1861-1862. Turney attempted to get the Standard to sell out to Poe. When this was not done, Turney refused to recognize the printing bill of the Standard, which organ had to appeal to the Treasury Department for payment. - Washington Standard, February 8, 1862.

The right of the legislature to select the Territorial Printer was again questioned during the session of 1862-1863. When the regular printer left the Territory early in the session, Governor William Pickering appointed a successor.(1) In the debate on the question of whether the Governor's appointee or the agent for the former printer was actually Printer, a member of the House questioned the right of the legislature to elect the Printer without making the Territory liable for the printing expenses.(2) After Secretary Evans informed the House he considered the legislature had no authority to elect a Public Printer and had written to the Treasury Department about it,(3) the

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1. Washington Standard, December 20, 1862. When Poe left the Territory, he appointed B. F. Kendall as his agent. Governor Pickering declared the office vacant, however, and appointed G. A. Barnes. Elwood Evans administered the oath to Barnes; but since L.J.S. Turney also claimed to be Territorial Secretary, there was some question of Evans' right to do so. Ibid., January 10, 1863.
 2. Griswold raised the first serious question as to the right of the legislature to elect the Public Printer. His joint resolution that "According to the Organic Act, the Legislature has no authority over appropriations of Congress; that it cannot contract for or pay for public printing out of the appropriations, and hence cannot elect and qualify a public printer without making the Territory liable for the cost" [Ibid., December 20, 1862] was tabled by a vote of 22 to 5.
 3. Ibid., January 10 and 17, 1863. Evans thought the laws allowing the legislature to elect the Public Printer contravened Section 11 of the Organic Act "which vests in this office the expenditure of said money, the disbursement of which 'shall be governed solely by the instructions of the Secretary of the Treasury'." Evans was absolutely insistent on holding to the contract with Barnes until he had definite instructions from the Treasury Department on the subject. Apparently enough Democratic members of the legislature had sufficient doubt as to their right to select the Public Printer to elect Barnes to conciliate Evans.

legislature attempted to avoid a showdown on the issue by electing G. A. Barnes, the Governor's appointee, to the office, several of its members protesting that it had no right to make a selection. (1)

By April 21, 1863, Evans received a reply from the Treasury Department which justified the skepticism of these members of the legislature by placing the "authority to appoint the Public Printer" in the hands of the Secretary rather than the legislature. (2) These instructions were significant for two reasons: the legislature lost its most cherished appointment; and they precipitated one of the most important political quarrels in the history of the Territory.

For some reason Evans passed over the Republican candidates in December, 1863, and appointed a Democrat, T.F. McElroy, Public Printer. (3) He was promptly accused of allying himself

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1. Washington Standard, January 17, 1863. The vote to elect a Printer was 19 to 17 indicating that only a close majority considered that the legislature and not the Secretary possessed this right. Agent Kendall's organ, the Overland Press, January 17, 1863, protested that a Black Republican Printer had been elected by the votes of Democratic members of the legislature and this fact should be remembered when these members came up for re-election. "The election of Public Printer was made to hinge upon the passage of the Apportionment Bill; so rumor says." - Evans to Reed, Speaker of the House, Washington Standard, January 17, 1863.
 2. R.W. Taylor, Comptroller Treasury Department, to Evans, April 21, 1863, Washington House Journal, 11th Sess., p. 20, 1863-1864. The letter read: "This leads me to say that by the decision of the Hon. Secretary of the Treasury, the Secretary and not the Legislature of a Territory, has the authority to appoint the Public Printer."
 3. Evans to Crosby, Speaker of the House, December 10, 1863, Idem. Judge C.C. Hewitt claimed Evans appointed McElroy in order to increase his chances for the next delegateship. - Hewitt to Wallace, December 7, 1863, W.H. Wallace Letters. Republican opposition to Evans is denoted in Hewitt's last remark, "we shall see". Evans admitted in 1861 that he wished the governorship; and it is en-

with the Democratic leaders in the House against the "corrupt clique of Federal officials" at Olympia. (1) The Democrats sustained Evans' action while the Republicans criticized it as an "uncalled for interference with the privileges of this House" and insisted that Barnes was still Printer. (2)

The reaction of the Republicans to Evans' appointment of the Democrat, McElroy, Public Printer, may be anticipated.

tirely possible that he wished to increase his chances to be Delegate by this maneuver. - Evans to Wallace, September 1, 1861, W.H.Wallace Letters. This letter will be discussed more in detail later in this chapter.

1. Puget Sound Herald, December 18, 1863. The reputed basis of this alliance is a curious one. Instead of being appointed Governor in 1861, as he expected, Evans received only the Secretaryship of the Territory. - Evans to Wallace, September 1, 1861, W.H.Wallace Letters. The Puget Sound Herald, December 19, 1863, charged that since Evans was a personal friend of George B. McClellan, it was, therefore, not surprising that he, with his "well known affiliation with peace Democracy in their opposition to the removal of 'Little Mac' from the command of the army of the Potomac", should appoint a peace Democrat as Printer. If this charge is true Evans apparently expected and hoped for the election of McClellan in 1863 and wished to be closely enough identified with his supporters in the Territory to insure a worthwhile appointment for himself.
2. Bangroft Scraps, Vol. CX, p. 151; Washington Standard, December 12, 1863; Puget Sound Herald, December 19, 1863. The House adopted two resolutions: one to ask for the Secretary's instructions from the Treasury Department, and the other to furnish the Territorial printing to McElroy. - Washington Standard, December 12, 1863. The Democratic leader, Dugan of Walla Walla, conceded that Evans had the right to appoint a Territorial Printer; and as long as Evans had appointed a Democrat, he would sustain the Secretary in this appointment. Dugan alleged that Barnes had been elected the winter before through the influence of Dr. Henry. These two had used the money in editing the Washington Standard and through it undermining their political opponents and had none left to print the journals, which printing had been delayed unduly. Evans had been ruled out by the official clique and should not be criticized for appointing a printer who had the capital to go ahead with the work. On January 6, Dugan accused McGill of inconsistency for having appointed Lodge as Printer in place of allowing the legislature to make the selection

Before the legislature of 1863-1864 convened, Charles Prosch in the Puget Sound Herald indicated the nature of the deal between Evans and McElroy. Already McElroy had purchased the material used by the Northwest and removed it to Olympia where Evans had contracted with him to do the printing. Mr. Prosch concludes:

"Custom in this respect has grown into law, and the right of the Legislature to elect its own printer has been recognized by the Department and by all former Secretaries of this Territory... Your correspondent is of the opinion that the Legislature will be slow to surrender their prerogatives, and will have some voice in the selection and election of a printer."(1)

The editor of the Seattle Gazette(2) also presented an interesting angle of the question. He asserted:

in 1861 while now McGill opposed Evans for exercising the same power that he had exercised as acting-Governor. Dugan claimed that Edward Furste, elected the previous session to that of 1860-1861, should still have been Printer in place of James Lodge, McGill's appointee, if McGill were consistent. McGill replied that he had always considered that under the Organic Act the Secretary had the abstract right to appoint the Printer, but this right had never been exercised. Lodge had been appointed only when McGill was satisfied the legislature would not select a Printer that session. Furthermore, Lodge, who had bought out the Pioneer, was then the legal representative of Furste and entitled to the printing if the legislature failed to act. - Washington Standard, January 9, 1864. During the session, George Barnes notified the legislature of his willingness to continue to do the public printing at Government rates; but the House promptly rejected his offer by a vote of 15 to 7. - Ibid., January 2, 1864.

1. Puget Sound Herald, December 5, 1863, in Bancroft Scraps, Vol. CX, p. 159.
2. December 26, 1863, quoted by Washington Standard, January 2, 1864.

"It may be that the Secretary has the power, under instructions, to appoint a Printer; but if so, it has never before been exercised in this Territory, and there must have been a strong reason for the Department to change a settled custom in the Territory, as well as a fundamental principle of our government, to take power out of the hands of the people and give it to a petty official. These reasons, at this time, are well understood to be for the purpose of preventing the public treasury from being plundered by the enemies of the country; yet this arbitrary official, and traitor to the party to which he is indebted for a little brief authority, uses the instructions of his Government to frustrate the very intent and purpose for which they are issued."

The Puget Sound Herald wondered how Evans would explain the fact that he had rejected a bid for the printing at about half the usual rates [presumably the Herald's bid], and had agreed with McElroy at the usual rates. (1) Evans' success was indicated by the same paper on January 9, 1864:

"The Secretary and his Democratic friend [Dugan] from Walla Walla have succeeded in whipping in some weak-kneed who were elected on the Union ticket, but who have in this matter proved false to their constituency and the Union organization and by their combined vote an election for Printer has been staved off for this session."

The Herald concluded that only a higher power could "spoil the plans of Evans, McElroy, and Company". (2)

Governor William Pickering's reaction was bitter: (3)

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1. January 2, 1864. "Wonder how this fact will be explained?"
 2. Ibid., January 9, 1864.
 3. Pickering to Frank A. Wilson, December 19, 1863, Pickering Letters, Pacific Northwest Collection, University of Washington.

"And when Evans had the base ingratitude to bite the hand that fed him I mean his deep-rooted ingratitude to the Republican Friends who secure his appointment to all the offices he has ever held. Dr. Henry gave him a \$1,200 a year clerkship. I did the same as my Secretary; and then the Republican Officers secured him his present office. And the Republican Administration gave him his commission, - yet in the face of all that, he has insolently and without notice assumed the right to remove George Barnes, a true Republican Union man, from his office of Public Printer. ...So the Republican Printing money is taken from Barnes, a Union Man and his transferred and given by Evans, to support McElroy, the Democrat and his Democratic paper - to thus be paid by Republican money for opposing and abusing the Republican Administration and the friends and supporters of that administration."

A. A. Denny was impressed that Evans had lost the last vestige of consistency in appointing McElroy printer, and accused him of making his office a "copperhead caucus room" by surrounding himself with Dugan, Gallagher, and McElroy and Company. Then in a confidential note not to be made public, "The whole matter is most humiliating, and I shall be surprised if some of our folks do not ask his removal... ." (1)

George A. Barnes soon asked for Evans' removal in a bitter letter to Wallace: (2)

"For the last four or five months McElroy, Miller, and that dirty skunk of a Hicks has followed pud Evans around like hounds until they have got him perfectly under their control - now the supposition is that Mc has given pud an interest in the printing

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1. Denny to W. H. Wallace, December 24, 1863, A.A.Denny Letters to Wallace.
 2. C. A. Barnes to W. H. Wallace, January 4, 1864, W.H.Wallace Letters.

and promised to toot his horn for him in the next Delegate race. [As a result Evans had sold himself out and gone over to the enemy.] Mc. holds a cudgel over pud's head in the shape of a mortgage on his house and lot... .Now, sir, I have given this man Evans money for years back and helped him out of many a tight place without ever asking security - and he probably owes me more money now than he does Mc Elroy. [Barnes says that he had treated Evans like] ...a brether - yes, like a Christian... .Now what does he do for all this kindness? Why he chops my head off as Printer."

Barnes hoped Wallace would do all he could to have Evans removed. Governor Pickering also used his influence with Wallace, the President, and Secretary of State Seward to have Evans removed(1) but to no avail.(2)

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1. Pickering to Wallace, January 5, 1864, W.H.Wallace Letters. Pickering accused Evans of being ungrateful to his old friends, of taking the printing from a Republican and giving it to a Democrat, of associating closely with the Democratic leaders, of being critical of Lincoln for dismissing McClellan and hoping that McClellan would be elected in 1864 and Evans would get an office since he spent a winter with McClellan when he was on the Coast, and of dragging the Republican convention to Vancouver in 1864 expecting to be nominated for Congress, thereby defeating the party when a total stranger was nominated.
 2. The report circulated that Evans' conscience "seems to have smitted him"; for he had attempted to obtain the signature of every member of the legislature with the exception of Messrs. McGill and McLane to a paper which apparently merely acknowledged his competency, but actually proved a "very cunningly drawn endorsement of his action in taking the appointment of Printer into his own hands and giving the work to a Copperhead!" - Puget Sound Herald, February 6, 1864. "But Mr. Evans will, I think, have the same difficulty in explaining his conduct to the satisfaction of the Government notwithstanding his endorsement surreptitiously obtained." - Idem.

The legislature of 1865-1866 made an unsuccessful effort to regain its lost prerogative in selecting the Public Printer by electing R. H. Hewitt of the Pacific Tribune early in the session. (1) The situation was rather embarrassing for Secretary Evans, for he had already contracted with McElroy to do the printing. (2) Evans attempted two expedients to please both the legislature and McElroy, who was a creditor of the Government for \$11,000 for two years' printing. To avoid injustice to McElroy, Evans first attempted to work out a partnership between him and Hewitt. (3) Evans then requested Hewitt to buy out McElroy's press and material before his bond would be recognized. This Hewitt agreed to do; but McElroy apparently had no desire to sell. When Hewitt refused to secure Evans against any claim by McElroy under his contract for the printing, negotiations bogged down. (4) The situation was complicated when the House recognized Hewitt as Printer and sent their printing to him, while the Council and Secretary recognized McElroy and sent

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1. Pacific Tribune, December 23, 1865. The vote was 18 for Hewitt to 7 for Murphy of the Washington Standard. - Washington Council Journal, 13th Sess., p. 44, 1865-1866.
 2. Pacific Tribune, December 10, 1864.
 3. Evans to Samuel Weeks, Chairman of the Select Committee of the House of Representatives, January 11, 1866, Washington House Journal, 13th Sess., p. 240, 1865-1866. This failed for reasons "not proper to be recounted" to the legislature.
 4. Idem.; Pacific Tribune, February 3, 1866.

the Council Journal and laws to him. (1)

While attempting to conciliate the legislature, Evans insisted that he and not they possessed the right to select the Printer. (2) Therefore, when the negotiations between Hewitt and McElroy failed, Evans backed McElroy rather than Hewitt. (3) Since the Secretary's support was stronger than that of the legislature,

1. Pacific Tribune, February 3, 1866. The editor complained that "in every State and Territory in the Union, a public printer is elected by the legislature, or chosen by the people"; and still the Secretary and Council refused to recognize Hewitt Printer when elected by a joint convention of the legislature. It was to be hoped that the present impasse would force the Secretary of the Treasury to decide once and for all time who selected the Public Printer.
2. Evans to Weeks, January 11, 1866, loc. cit. "Satisfied that there was a prejudice," he wrote to the House, "on the part of the Legislature against this office controlling the appointment of Printer, and that there was an equally earnest prejudice against the party I had contracted with, I concluded to adopt their judgment instead of continuing to be governed by any personal preference of my own, and as soon as I could equitably be relieved from the contract with Mr. McElroy, I determined to contract with said Mr. Hewitt." To the Council, Evans insisted that the Organic Act and the instructions of the Secretary of the Treasury gave him as Territorial Secretary the sole right to select the Printer; but he would respond to the suggestions of the legislature. "As the Legislature is composed of a large majority of Union men, partisan friends of the National Administration, I have no fear in pledging myself to carry out their expressed wish. Hence there shall be no conflict between this office, while I administer it, and a Union Legislature on a question of conferring official patronage on a Union man. While, therefore, I stand ready freely to contract with a printer named or elected by the Legislature, I must insist that said McElroy should not be subjected to pecuniary sacrifice by such an act." - Washington Council Journal, 13th Sess., pp. 16-17, 1865-1866.
3. Hewitt to Weeks, January 11, 1866, Washington House Journal, 13th Sess., p. 242, 1865-1866. A House Resolution denying Evans' right to select the Printer, condemning him for his selections, and claiming the right of selection for the legislature failed to pass by one vote. - Ibid., pp. 322-323. Even then Evans made one last effort at conciliation by suggesting that he pay Hewitt for the work he had done during the session with the understanding that McElroy was to finish the printing for the current legislature and that Hewitt was to receive the next contract if he were prepared to do the public printing. Hewitt

McElroy did the printing.(1)

After the legislative session of 1865-1866 the question of who should select the Public Printer was often revived; but the Secretary managed to retain the power. The problem was presented in the House during the session of 1867-1868 when a portion of its members claimed the right to elect the Printer in joint convention and requested the official correspondence on the subject from the Secretary.(2) In reply Secretary E. L. Smith said that the latest instructions on the appointment of the Public Printer were those from Comptroller R. W. Taylor in 1863 in which he stated the Secretary and not the legislature

refused to comply because McElroy had reprinted all the work furnished Hewitt, and both could not be paid for the same work. Furthermore, if he withdrew from the contract, he would no longer possess any basis for legal action arising from the contract. He would, therefore, continue as Public Printer as long as the legislature would support him in this action.

1. Washington Standard, January 27, 1866. After the final choice had been made, the Pacific Tribune, February 17, 1866, presented a rather difficult question for the Secretary to answer. If Evans could insist that McElroy not be subject to "pecuniary sacrifice" in material rendered valueless by rescinding his contract, then why had he taken the printing from Barnes who had the material on hand and given it to McElroy who had to purchase all his material for the work? It was common knowledge in the Territory that "without the public printing, a newspaper can hardly live". The Pacific Tribune was loyal to the Union party; but the Secretary had robbed the Union Press of its best source of revenue, the public printing. The editor could not see why Congress should not intervene in favor of the loyal press; but this was not done.
2. Washington Standard, December 14, 1867. This was the first biennial session of the legislature.

of a Territory had the authority to make the appointment.(1) Since a letter from the Treasury Department was sufficient to invalidate an act of the Territorial legislature, Smith claimed that the Secretary was solely governed by the instructions from the Treasury Department, and any act violating these instructions was void.(2)

The choices for Printed in 1869 and 1871 were unfortunate. Secretary James Scott gave the contract of 1869, the most lucrative of all, to his nephew.(3) In 1871 the new Secretary, J. C. Clements, a Republican, appointed the indefatigable McElroy Printer without giving the other printers a

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1. Smith to P. B. Johnson, Speaker of the House of Representatives, December 13, 1867, Washington House Journal, 1st Biennial Sess., p. 65, 1867-1868.
 2. Smith to Johnson, December 13, 1867, Ibid., pp. 65-67. Smith insisted that the act of the legislature providing for the election of the Public Printer was invalid for several reasons: Section 1 was void because the Secretary and not the legislature was authorized by the Treasury Department to select the Public Printer; Section 3 was void because the Act of Congress passed August 29, 1842, stated that the accounting officers and not the Territorial legislatures possessed the power to fix the price of printing and other regulations governing the Public Printer; Section 5 violated the instructions of the Treasury Department that the legislature could not fix compensation for services paid from the Treasury of the United States by granting the Secretary \$1,000 for indexing the laws and journals, a job that had never been done; Section 6 stated that the chief clerks and not the Territorial Secretary as the Act of Congress stipulated should prepare the laws and journals for the Public Printer. In conclusion, Smith alleged that in appointing the Public Printer he had made use merely of the authority "which was at the time conceded by public opinion, established by precedent, and authorized by law".
 3. Washington Standard, October 23, 1869. In his "Personal Notes" C. B. Bagley places the public printing in 1869 at \$20,000, "half of which was profit".

chance to bid. "We have had a hard fight to win the Territory from the Democrats," Selucius Garfieldde protested to Secretary of State Hamilton Fish, "and cannot possibly hold it if the patronage of the Administration is to be turned against our party." (1) Garfieldde's recommendation that Clements be replaced by Henry G. Struve was soon carried out.

By 1873 the National Government limited the regular printing expenses in the Territory to \$4,000. With this limitation politics no longer played as prominent a part in the selection as formerly, reputedly resulting in the appointment of a practical printer "without bribery" for the first time in recent years. (2) George A. Barnes was a banker; S. Coulter, a butcher; Rogers, a nephew and clerk of the Secretary; McElroy, a speculator; and Charles Prosch, the only printer and publisher in the group. "It is as much an insult to craftsmen," commented the Puget Sound Dispatch, (3) "to confer the office of Public Printer on a lawyer, as it would be to lawyers to give the office of Attorney-General to a printer... ."

After 1873 the legislature circumvented the close restriction placed on the public printing by a clever strategem;

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1. S. Garfieldde to Hamilton Fish, August 5, 1871, Pacific Northwest Collection, University of Washington. McElroy purchased one of Olympia's newspaper offices where he was accused of preparing a vigorous campaign against the Republican party and Administration.
 2. Puget Sound Dispatch, quoted in the Vancouver Independent, October 25, 1877.
 3. Idem.

it contracted for its incidental printing independent of the Secretary's office.(1)

By 1881 it was readily accepted that the Secretary appointed the Printer and generally known that the kind of type, measurement, and compensation were all fixed by the Treasury Department which scrutinized copies of all the work done.(2) This fact is in itself indicative of the two most important developments in Washington's Territorial history: the increased authority of the Territorial Executive and the increased interference of the National Government in Territorial affairs.

EARLY GOVERNORS

Before concluding the discussion of the Executive department of Washington's Territorial government a few items should be mentioned about some of her more important Governors. Washington's first Governor, Isaac I. Stevens, was a man of

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1. Washington Standard, October 11 and 18, 1873; Washington Council Journal, 4th Biennial Sess., pp. 19-20, 1873. The Standard, October 11, 1873, alleged that the Republican Secretaries had made the printers pay tribute to them. The Territorial legislatures apparently had additional printing bills to pay quite often. Ibid., October 13, 1877; the House passed a Resolution to print all bills not otherwise ordered; the Standard urged that this meant a "fat" thing for the Secretary's printer and a large bill which the Territory will have to pay." The claim was inferred that this practice was all right when the central government paid the bill but could not be tolerated now that the Territory was responsible for any deficiencies.
 2. Washington House Journal, 8th Biennial Sess., p. 193, 1881. By 1878 the amount permitted the regular printer was further reduced to \$2,500.

great administrative ability.(1) His energy is reflected in his railroad surveys, his Indian treaties, and his conduct of the Indian War. Despite his varied interests and activities, Stevens' work and authority as Governor were limited. As commander-in-chief of the militia during the Indian War, Governor Stevens exerted considerable influence; but when he attempted to make the Governor's position an important one by proclaiming martial law in his dispute with the judiciary, President Pierce reprovved him.(2). With no veto power and a very limited patronage, the Governor found little significance in his office during the first decade of Territorial history.

Washington's first Secretary, Charles H. Mason, a young man of 23 when he reached the Territory, performed efficient service until his death in 1859. His importance to the Executive department is indicated by his own statement in 1858 that he had been in the Territory for four and one-half years, 21 months of which time he had acted as Secretary, Governor, and Superintendent of Indian Affairs.(3)

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1. Evans, Elwood. Northwest Coast History, Pacific MS., Bancroft Library, pp. 4-5. Cf. Snowden, Vol. III; Loc. cit.; Meany, Governors of Washington, pp. 5-7, and, History of Washington, Loc. cit.; and, Stevens, Hazard, The Life of Isaac Ingalls Stevens, by His Son, 2 vols.
 2. Cf. chapter on Martial Law during the Indian War for a discussion of this important question.
 3. C. H. Mason to Fayette McMullen, Letters of Secretaries and Governors; and, "Documents", Washington Historical Quarterly, Vol. IX, No. 1, pp. 65-66, January, 1918. For accounts of Mason's life and work, cf. Ibid., p. 64; Snowden, op. cit., Vol. III, and Vol. IV, pp. 137-138; Gates, op. cit., p. 15. His work was well-done, and the Legislature of 1864-1864 changed the name of Sawamish to Mason County in his honor. - Snowden, Vol. IV, loc. cit.

The Civil War period was a turbulent one in Territorial politics and a difficult one for the Executive. (1) Secretary Henry M. McGill who served as acting-Governor in 1860 and 1861 possessed real administrative ability but created so many enemies for his prompt action on the capital question (2) that he was "the recipient of more unmerited abuse and malignant calumny" than any other Federal official in the Territory. (3)

Governor William Pickering's administration from 1862 to 1867 covered one of the most significant periods in the political history of Washington Territory. During it, Collector Victor Smith was removed, (4) the loyalty of the Territory was questioned, (5) the Governor received the veto, (6) the Territorial Secretary relieved the legislature of the right to appoint the Public Printer, (7) two rival Secretaries claimed

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1. Neither Fayette McMullen who came to the Territory in 1867 reputedly to get a legislative divorce [Meany, History of Washington, p. 326; Snowden, Vol. IV, op. cit., p. 137; Gates, op. cit., p. 49] nor Richard D. Gholson who succeeded him in 1859 spent much time in the territory or contributed much to its development [Gates, op. cit., p. 65; Meany, "Richard Dickerson Gholson", Washington Historical Quarterly, Vol. VIII, No. 3, pp. 180-182, July, 1917].
 2. McGill's relation to this question is discussed in full in the chapter on the Territorial Legislature.
 3. Washington Standard, August 24, 1861; Bancroft, Hubert Howe, Washington, Idaho, Montana (Works, Vol. XXVI, p. 217); Gates, op. cit., p. 75. L.J.S. Turney, a personal friend of President Lincoln's, succeeded him as Secretary in 1861. William H. Wallace was appointed Governor but failed to qualify when he was nominated and later elected Delegate by the Republicans during the same year. Turney, therefore, served also as Governor until Governor William Pickering, another personal friend of Lincoln's, arrived in June, 1862. Ibid., p. 91; Snowden, Vol. IV, p. 140; Bancroft, ibid., pp. 218-219.
 4. This is discussed in the chapter on the Federal Government and the Territory.
 5. Idem.
 6. This is discussed earlier in this chapter.
 7. Idem.

that office, a heated argument occurred over university lands, and the political situation in general was chaotic.

RIVAL SECRETARIES

Two factors contributed to the wrangling within the Executive Department in 1862 and 1863: the obstinacy of Secretary Turney and the political disappointment of Secretary Elwood Evans. When Pickering arrived in the Territory in 1862, he complained that while Turney professed to be a Republican since 1856, yet he was

"...as contrary as any Democrat could be. I think his having been Acting-Governor from the time he came here until my arrival...has spoiled him... I am very much grieved at the course he has adopted and pursued... He is as obstinately self-willed as he ever was when he was a ramping, unscrupulous Democrat."(1

Evans' lack of fidelity to the Republican cause particularly in his appointment of a Democrat as Printer(2) may be explained by two factors: first, he had spent a winter with General McClellan when he was on the Pacific Coast and resented Lincoln's removal of his friend; secondly, he was disappointed in his own

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1. Pickering to J. W. Stephenson, July 26, 1862, Washington Historical Quarterly, Vol. VIII, No. 2, p. 94, April, 1917. Pickering asked Stephenson not to say anything about his reaction to Turney as he did not wish to speak "unkindly of him or any other person".
 2. This problem has already been discussed in this chapter.

political aspirations.(1) His desire to be Governor in 1861 and Chief Justice in 1862 were thwarted by Lincoln's appointment of Pickering and the efforts of Delegate Wallace.(2)

Pickering's opposition to Turney had its effect late in 1862 when Turney was removed and Evans was appointed in his place.(3) Turney, however, refused to turn over the office until Evans had filed his bond which Evans considered unnecessary as the department had neither supplied the customary blanks nor said anything about a bond in sending out the commission.(4) The legislature faced a dilemma when it met in December, 1862. Turney administered the oath in the House,(5) only to have it

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1. Evans to Wallace, September 1, 1861, W.H.Wallace Letters. In a letter to Wallace, September 1, 1861, protesting against Kendall's appointment as Superintendent of Indian Affairs, Evans revealed his own aspirations. He acknowledged his error in criticizing Judge C.C.Hewitt's appointment as Chief Justice since Hewitt had voluntarily offered his good will to Evans when he learned that Evans was an aspirant for the Governorship. By August 22 when Prosch paid Evans a high compliment as applicant for Governor, the whole Territorial press had endorsed him with the exception of the Standard. Evans now asserted that, "Your friend Evans will allow no personal disappointment to alienate him from the support of any Republican appointee." This statement is significant in view of Evans' later split with the Republican officials already referred to in the discussion of the Public Printer.
 2. Overland Press, December 16, 1862. "Wallace had declared on his way home that Evans should not be Chief Justice if he could help it, and he did help it."
 3. Evans to Wallace, September 1, 1861, W.H.Wallace Letters. Evans now had opportunity to regret his concluding remark to Wallace a year earlier that, "I believe Turney is likely to make an exceedingly popular and efficient officer--we have been very intimate and I like him very much", as Turney used a technicality to dispute Evans' right to the office.
 4. (Washington), Puget Sound Herald, December 18, 1862; Bancroft Scraps, Vol. CX, p. 146.
 5. Washington Standard, December 6, 1862; Puget Sound Herald, December 11, 1862. Neither Chief Justice C. C. Hewitt nor Judge Wyche would readminister the oath since they wished to avoid the dispute.

readministered when the legality of his oath was questioned on the ground that Evans was Secretary. In their rival efforts to win the support of the legislature Turney, a "strict constructionist", was reported tart and spicy; Evans, amiable and accommodating. Turney refused to pay legislative postage from the Territorial funds; Evans promised to pay it. Turney refused to provide any maps since the prices were too high and the maps incorrect; Evans furnished one with the request that it be returned to him for future use.(1)

Evans' attitude finally won the legislature to his side;(2) but it was easier to declare in his favor than to convince Turney that the declaration was right. He refused to give up the Territorial Seal(3) and continued to keep it despite two Acts passed by the legislature entrusting its custody to the Governor and a summons by the United States Deputy Marshal for him to give it up.(4) Turney recognized

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1. Bancroft Scraps, Vol. CX, pp. 146-148. The correspondent wondered how the dispute would end. "But it looks as if our young sister of the Northwest must suckle twins, until the authorities at Washington determine which of them is entitled to the official nipple exclusively." The letters of Evans to the legislature, December 11 and 15, 1862, and those of Turney, both of December 12, 1862, are reprinted in the Washington Standard, December 13 and 20, 1862. Turney purchased the usual knives for the legislature; but that body donated them to the Committee on Agriculture. - Puget Sound Herald, December 18, 1862.
 2. Washington Standard, January 3 and 10, 1863.
 3. Pickering to Turney, January 10, 1863; Turney to Pickering, January 10, 1863, Letters of Governors and Secretaries.
 4. The Summons and Acts reprinted in Pickering to Turney, January 26, 1863, loc. cit. Turney still used the seal January 29, 1863, Idem.

Evans as Secretary about the middle of April, 1863, and sent him the Seal.(1)

As early as November, 1865, Judge J. E. Wyche attempted to obtain Governor Pickering's place but received no support from Delegate A. A. Denny in this project.(2) Pickering was removed in November, 1866, because he favored the Radical Republicans in their opposition to Johnson.(3) Though over 60 years old

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1. Evans to Pickering, April 17, 1863, Letters of Governors and Secretaries. The extreme pettiness of Turney's executive relations during this period is indicated by a trivial event that Turney attempted to magnify. The Territorial Librarian was unable to pay the express charges on two packages of books from the Smithsonian Institute. The express agent approached Turney and Evans and requested them to pay the charges; Turney promised to, but Evans informed the agent that the Governor or the Librarian should redeem the books. In compliance with this suggestion, the agent requested Pickering to pay for the books, which he did, and kept them for a time due to bad weather. Turney then sent a violent accusation against Pickering to the Council that the Governor had "no more right to control the Territorial Library or books belonging thereto than to appoint a Public Printer", which Pickering had recently done in selecting Barnes to succeed Poe. - Idem., Letter L.J.S. Turney, "Malicious Communication to the Legislative Council Relating to Books at the Express Office", January 3, 1863; Washington Standard, January 3, 1863. The Council appointed a committee to investigate, and the Governor soundly rebuked that body for paying attention to such petty matters; "Should the Honorable Council think proper to receive and entertain all such trifling and contemptible communications in the shape of grave charges against a coordinate branch of your Territorial Government as the accusation to which this is an answer, they may reasonably expect to be still further imposed upon, and still further misled, by pretenders and malicious intermeddlers." - Pickering to Paul K. Hubbs and J. M. Moore, Special Committee of the Council, January 5, 1863, Idem.; Ibid., January 10, 1863. Pickering's work with Dr. Henry in having Victor Smith removed and the ingratitude of Port Townsend in obtaining the election of Cole by keeping Turney in the field later in 1863 has been discussed.
 2. Denny to D. Bagley, November 23, 1865, A.A.Denny Letters.
 3. Washington Standard, January 2, 1867.

when he was appointed, he served well as Governor, and the legislature adopted a Memorial against his removal.(1) Pickering had little fear that Congress would confirm his successor, George E. Cole, since the general sentiment was that Johnson would be impeached, and he was sure that no Johnson appointee to Washington Territory would be confirmed by the Senate without the approbation of Delegate Denny.(2) As a result, when Cole demanded the legislative offices from him during the session of 1866-1867, Pickering refused to surrender them.(3) With the appointment of Marshall F. Moore as Governor in 1867, however, Pickering was forced to yield.(4)

LATER GOVERNORS

Washington's next important Governor, Elisha P. Ferry, from 1872 to 1880, has been called the "greatest of all the Territorial Governors" with the possible exception of Stevens.(5) His two-term administration, the longest in Territorial history, was marked by general progress in Territorial affairs.(6) His work

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1. Snowden. Op. cit., Vol. IV, p. 146.
 2. Pickering to Wm. Pickering, Jr., Tuesday, 29th, 1866, Pickering Letters. Cf. Pomeroy, op. cit., p. 161.
 3. Pacific Tribune, January 12, 1869; Washington Standard, January 26, 1867.
 4. Gates. Op. cit., p. 131. Moore served from 1867-1869; Alvan Flanders, 1869-1870; and, Edward S. Salomon, 1870-1872.
 5. Ibid., p. 257.
 6. Snowden. Op. cit., Vol. IV, pp. 257-266.

in obtaining a board of equalization and a publicity board of immigration and his ability in stabilizing Territorial finances despite the depression of the 1870's have been cited as evidences of his administrative ability. But in a broader sense, his administration and that of Governor Pickering extended executive authority more than any others; while Governor Pickering received the veto power and his Secretary selected the Printer, Governor Ferry saw the extension of executive patronage in the increase of his appointive power. (1)

Since his alleged use of the veto power to force confirmation of his appointments has already been discussed in this chapter, another serious political charge against Governor Ferry should be considered. His enemies charged him with abusing, not only the veto but also the pardoning power. Ferry's effort to elect his choice for Speaker of the House in the legislature of 1875 provided the basis for these allegations. (2) Alexander S. Hughes refused to support the Republicans and threatened to back the Democrats unless he could obtain a written promise of a pardon for his son who was "illegally confined" in the penitentiary. The Republicans had 17 members in the House including Hughes; the Democrats, 13; but the Republicans had two rival

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1. This problem is discussed in detail in the chapter on the Revised Statutes, the extension of Executive authority during the Pickering administration, in this chapter.
 2. Portland Oregonian, June 29, 1878.

candidates for Speaker, each of whom commanded eight votes in the caucus. Since Hughes' vote was needed in the caucus to break the tie, he refused to act unless the promised pardon was forthcoming. Still more serious for the Republicans, a sufficient number of the backers of each of these rival candidates threatened to back the Democratic candidate for Speaker if their Republican candidate were not selected to prevent an election or allow a Democratic victory if Hughes' backing was not obtained. The written promise of the pardon was secured, the Republican candidate elected, and young Hughes was later pardoned but not until the whole affair had been exposed.(1)

Governor William A. Newell succeeded Governor Ferry for a full term, 1880-1884.(2) Although he warned the legis-

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1. Portland Oregonian, August 12, 1878. When the pardon was not secured in the specified time, Hughes wanted to know why. J. B. Shrum asserted that while he and R.G.Newland were discussing matters of importance to their county, Newland, supposedly by mistake, handed him a paper containing a pledge by the members of the Republican caucus that if Hughes would come in and vote for the nominee of the caucus the members would use their influence with Governor Ferry to have Hughes' son pardoned. It is claimed that the Governor told Hughes that the pardon was delayed because this information was now known but that the pardon would be granted after the next election if Hughes would remain true to the Republicans, which was done. After the pardon of young Hughes the Territorial Chief Justice is reported to have stated that the "courts were unable to enforce justice while the dispensing of pardon was made the subject of bargains for political purposes." - Washington Standard, August 17, 1878. The affidavits were signed by Hughes, J.B. Shrum, William Pickering, and H.J.Hodges, all members of the House except Pickering who was a Democratic member of the Council in 1875.
 2. In 1880 the Democratic Washington Standard [April 9] announced that the official junta which had long controlled the Territory was to lose its acknowledged head. There is some significance in the statement by a Democratic paper that, "The mere suggestion of a third-term Governor should be as much condemned as the proposition to elect a third-term President."

lature of 1881 that since the length of its session had been increased from 40 to 60 days, he could not give his "official consent to any measure, which is not presented in time for a full consideration of its provisions", (1) Newell approved several defective Acts which Congress had to validate. (2)

The reason for this cursory approval of defective legislation may be found in the complications Newell faced after he appointed his daughter Territorial Librarian. Since the qualifications for office-holders in the Statutes of 1866 restricted them to white males over 21 years of age and none other, it was difficult to see how the Governor's daughter could qualify. (3) The Council attempted twice to legalize the appointment and allow the Librarian to draw her salary only to have the House block these efforts. On the last day of the session, however, when seven members of the House were absent, the measure was sprung and passed, relieving the Governor of embarrassment. By reconfirming the appointment, the Council acknowledged the illegality of its former confirmation. (4) Since his daughter held office by the good graces of the legislature, Governor Newell was reluctant to veto any of its Acts even if they were defective. (5)

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1. Newell to the Legislature, October 5, 1881, Gates, Op.cit., p.229.
 2. This is discussed in the chapter on the Revised Statutes.
 3. Washington Standard, November 11 and 18, December 2, 1881.
 4. Ibid., December 9, 1881.
 5. Newell's lack of the use of the veto has been discussed. In addition to this example of nepotism, Governor Newell is reported to have employed his other daughter as his own private secretary. - Ibid., December 30, 1881. The Customs Collector of Puget Sound was also accused of nepotism.

The administration of Watson C. Squire, who succeeded Governor Newell, is noted particularly for his proclamation of martial law during the Chinese riots.(1) The fact that the President in the 1850's condemned Stevens while the President in the 1880's defended Squire for the same assumption of authority, indicates the extension of Governor's power during the Territorial period. Like few of his predecessors, Squire was a resident of Washington Territory before his appointment. In 1876 he sold out his interest in the Remington Company to his wife's father and took in part payment Mr. Remington's large holdings in Washington Territory.(2) His administration was constructive and conservative. One of his first acts was to prepare an elaborate report to the Secretary of the Interior on the resources of the Territory which the Secretary commended as "the best report that has ever been given by a Governor of any Territory."(3) The Government printed 5,000 of these reports and the Northern Pacific an additional 5,000. This report was largely responsible for stimulating an influx of eastern capital to the Territory shortly after.(4)

Two developments during the administration of Eugene Semple, who succeeded Governor Squire in 1887, merit considera-

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1. For a full discussion see the chapter on martial law.
 2. Watson C. Squire, Pacific MS., Bancroft Library.
 3. Musseter, F. S. "Senator Squire of Washington", Magazine of Western History, Vol. XI, No. 3, p. 294, January, 1890; Report of the Secretary of the Interior, 48th Cong., 2d Sess., Serial 2287, pp. 577ff., 1883-1884.
 4. Watson C. Squire, loc. cit., p. 18; Musseter, loc. cit. His next two reports were also of excellent quality. The state penitentiary and reorganized militia are also products of his administration.

tion. The first of these dealt with a reputed effort to expell the Chinese from Seattle. On April 25, 1887, a "Well-Wisher" informed United States District Attorney W. H. White that a well-organized group of 1,500 armed men were plotting to put the Chinese out of Seattle.(1) When informed of the plot, the Governor requested the city and county officials and the National Guard to be ready in case of trouble.(2) Semple hurried to Seattle but no trouble materialized. Tapping the rumor a "product of idle and visionary minds", the Daily Voice of the People, May 3, 1887(3) commented:

"There is not much danger during prosperous times, that any number of men will concern themselves about the Chinese. At the present time all who desire work can obtain such at fair wages and there is no grave cause of discontent."

Labor difficulties based on economic and racial differences provided the other major problem for Governor Semple. The first dispute came at Roslyn over a tract of land reputedly

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1. A "Well-Wisher" to White, April 25, 1887, Semple Letters, Pacific Northwest Collection. "I do not care to disclose my name," the message closed, "as I fear detection, which would mean sure death to me."
 2. Telegrams: Sheriff Cochrene to Semple, April 30, 1887; White to Semple, April 30, 1887; Semple to Brigadier-General Hill, April 30, 1887; Semple to Hill, April 30, 1887; and, Semple to Mayor of Seattle, April 30, 1887, Semple Letters; Report of the Secretary of the Interior, 50th Cong., 1st Sess., Serial 2541, pp. 1000-1001, 1887-1888; Washington Standard, March 26, 1886.
 3. Clipping in Semple Letters.

sold by the Northern Pacific Railroad which failed to convey title when it learned that there was coal on the land. While the title suit was pending, the company moved in 42 white men and 48 negroes to take possession of the unenclosed land on the disputed place.(1) The affair took on significance when it was learned that the white men were detectives acting as Deputy United States Marshals.(2) Governor Semple later informed the Sheriff at Ellensburg that these detectives had no authority as Deputy United States Marshals since their use by a corporation was a reflection upon the sovereignty of the people.(3)

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1. District Attorney H. J. Snively, for Yakima and Kittitas Counties, to Semple, August 27, 1888, Semple Letters and Documents.
 2. Sheriff S. T. Packwood to Semple, August 23, 1888, Idem.
 3. Semple to Packwood, August 27, 1888, Idem. Semple's opinion was based on the reaction of United States Attorney W. H. White that the clothing of detectives with the power of United States Marshal was improper; and the reaction of Territorial Attorney General J. B. Metcalfe that such an act was "dangerous to our liberties, and censurable in the highest degree", as the United States Marshal was to act only when the laws and interests of the United States were involved; other affairs were to be left to the Sheriff. - S. H. White to J. B. Metcalfe, August 5, 1888; Metcalfe to Semple, August 25, 1888, Idem.

The main objection at Roslyn was to the introduction of negro workers and to the Knights of Labor. Ross later settled his dispute with the Northern Pacific Coal Company. The Pinkerton detectives were released and the Sheriff swore in 23 Deputy United States Marshals to aid him in case of further trouble. - Clipping, Seattle Post-Intelligencer, January 22, 1889, in Semple Documents.

The trouble at Newcastle shortly after started from a riot in which men were assaulted, shots fired, and one man killed. Sheriff Cochrane telegraphed for troops, and Brigadier-General Hill sent two companies to a point where they could be used if the Sheriff needed them. Later they were used on guard duty under his direction. (1) Governor Semple considered General Hill's order illegal and void, "a flagrant act of insubordination". Hill was saved from court martial only by the fact that his commission had expired, and he had ceased to be a member of the National Guard. (2)

Trouble flared up again early in 1889 when the Oregon Improvement Company employed a large number of detectives from the Thiel Agency in an effort to break up the Knights of Labor. (2) This was done after the company failed by "panicky" telegrams and by pressure from "poorly informed and thoughtless persons and newspapers" to get the Governor to intervene and establish a military government. The detectives were well-armed despite the fact that Governor Semple and Sheriff Cochrane of King County were both determined to protect Washington Territory from these company mercenaries imported from Oregon. However, the Oregon Improvement Company, using the pretext that the United

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1. Clipping, Seattle Post-Intelligencer, January 22, 1889, in Semple Documents.
 2. Ibid., January 4, 1889.
 3. M. H. O'Connor to Semple, January 25, 1889, and February, 1889, Semple Letters and Documents.

States Deputy Marshal T. J. Hamilton to deputize these company detectives. Governor Semple requested that Attorney-General A. H. Garland inform Hamilton that his action was disapproved. Haste was needed as the "Presence at the coal mining towns of armed bodies of mercenaries, paid by private parties and acting as Deputy Marshals, is calculated to bring the authority of the United States into contempt, is a constant source of irritation to the miners, and may...produce serious consequences."(1)

With the return of the Republicans to power in 1889, Delegate John B. Allen secured the appointment of Miles C. Moore over a combination favoring ex-Governor Squire on the basis of a promise that Moore would not be a candidate for Governor of the new State.(2) Since Statehood followed shortly, Moore's administration had little significance except that it was the last.

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1. Semple to Garland, February 11, 1889, Semple Letters and Documents. The Department of Justice later examined Hamilton's action. F. B. Coasthwaite, Examiner of the Department of Justice, to Semple, April 3, 1889, Idem.
 2. Thomas H. Cavanaugh to Ferry, March 5, 1889; Cavanaugh to Ferry, March 6, 1889, Ferry Documents. Because Squire was the strongest against "influential outsiders", Ferry was instructed to switch his support to Squire. Cavanaugh to Ferry, March 9, 1889; E. J. Hyde and Henry L. Wilson to Ferry, March 9, 1889; Wilson to Ferry, March 11, 1889; Cavanaugh to Ferry, March 16, 1889, Idem. Allen was successful even if the group did try to go over his head and appeal to the President for Squire, and Moore was selected.

CHAPTER V. THE TERRITORIAL LEGISLATURE

For the first ten years of Territorial history the legislature was the most important branch of the government. The only restrictions upon its acts were that they must conform to the laws and Constitution of the United States, that they could not interfere with the primary disposal of the soil, that no tax could be imposed upon the property of the United States or no unequal taxes upon the property of non-residents over that of residents, and that no banks should be chartered in the Territory nor money borrowed in its name except certificates for services to the Territory.(1) Beginning with 1864, however, the National Government increased the power of the Territorial Executive and reduced that of the legislature; this is possibly the most significant development during Washington's Territorial history.(2) Since these changes are already discussed in previous chapters, it will be sufficient here to indicate some of the reasons for this loss of authority.

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1. Organic Act, Sec. 6. The limitations on banking and Territorial indebtedness are discussed in the chapter on Revised Statutes.
 2. The obtaining of the veto power by the Governor and the increase of his appointive power are discussed in the chapters on the Territorial Executive and the Revised Statutes; increased Federal limitations on legislation, in this latter chapter.

QUALITY OF LEGISLATION

One of the chief reasons the National Government restricted the legislature was the inferior quality of its acts which fairly accurately mirror the quality of its members. A comparison of the legislatures of 1854 and 1879 reflects the trend. There were 10 farmers in 1854, 17 in 1879; 7 lawyers in 1854, only 3 in 1879; 4 mechanics, 2 merchants, 2 lumbermen, 1 civil engineer, and 1 surveyor in 1854; 5 mechanics, 7 merchants, 2 doctors, 2 hotelkeepers, and the manager of a livery stable in 1879.(1) The noticeable decrease of lawyers in 1879 reflects either a popular distrust of them or the fact that the decreased importance of the legislature no longer made membership in it attractive to professional men.

During the early period, the legislature spent much of its time granting special acts or privileges. Railroads were chartered but never built; the actions of inexperienced Territorial officials were legalized; private laws authorizing the building of bridges, the establishing of ferries, or the incorporating of companies often with nearly monopolistic powers,(2) were passed regularly. Since no general incorporation act was passed until 1866, the legislature chartered all types of societies and companies by special acts, including temperance societies, literary associations, music organizations, lodges, church-

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1. Washington Standard, October 24, 1879; Snowden, Clinton A., History of Washington, Vol. III, p. 229.
 2. Snowden. Op. cit., Vol. IV, pp. 150-151.

es, libraries, fire companies, gas companies, and water companies.(1) As this type of legislation predominated before 1867, it is not surprising that Congress gradually curtailed the right of the Territorial legislatures to grant private charters or special privileges.(2) So great had these restrictions become by 1887 that Governor Semple reminded the legislature that their powers were confined to passing only general laws on a long list of enumerated topics.(3) It is difficult to see the need of a restricted Territorial legislature after it had passed a few general incorporations acts.

LEGISLATIVE ABUSES: LOGROLLING

An examination of some of the legislative abuses before 1867 will indicate a few of the reasons for this restriction of the legislature. Beginning with the session of 1858-1859 some of the members were accused of having "for a price, made the interests which were committed to their keeping subordinate to their own base and sordid purposes."(4) Logrolling

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1. Snowden. Loc. cit.
 2. This development is discussed in the chapter on the Revised Statutes. Cf. Appendix, Congressional Globe, 39th Cong., 2d Sess., 1866-1867, p. 197.
 3. Semple to the Legislature, October 9, 1866, in Gates, Charles M., Messages of the Governors of Washington Territory, p.270. Cf. chapter on the Revised Statutes for a detailed discussion of this Act of Congress of 1866 and the other Congressional Acts limited special charters.
 4. Puget Sound Herald, January 28, 1859.

or "bargain and sale", the policy of "bartering the interests of one section to secure the adoption of a measure wanted by another", seems to have been a common practice especially during the political turmoil of the 1860's. This

"...principle of 'you tickle me and I'll tickle you' has hitherto prevailed to such an extent that it has been deemed to be almost useless for the people to send representatives to the legislature with the expectation of getting any favors for their respective localities, without capital of some sort to trade upon."(1)

By 1864 the abuse of logrolling had grown steadily worse. It is reported that the legislature of 1862-1863 passed almost no general laws while it enacted 150 private Acts, the majority of them "exclusive monopolies" for roads, bridges, trails, ferries, and the like, and that "the whole Democratic strength of the House and Council inaugurated a perfect system of logrolling for private interests against the general welfare."(2) The legislature of 1863-1864 covered the Sound area with monopolistic logdriving and boom charters to the timber along rivers for "almost a thousand miles".(3) This tendency was reputedly pushed so far by two members that timber and logdriving franchises were granted for a creek dry ten months out

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1. Olympia, Overland Press, January 30, 1862. The editor made the legislature of 1861-1862 an exception to his general rule that logrolling was common; but this exception may be questioned as he received the contract for the public printing in an election by this body.
 2. Washington Standard, February 6, 1864.
 3. Idem.

of the year, and for a locality where the "constituents proposed to dig a channel, as there were no natural ones left." (1) The Washington Standard claimed that exclusive ferry and road franchises for Judge Hardy became the "by-word and laughing stock" of the legislature. (2) Blatant logrolling in the granting of about 30 road, ferry, and logdriving charters during the 1863-1864 session classed it, according to the Standard, (3) "Beneath the meanest deliberative body of which we have any knowledge in point of ability and patriotism". Little wonder that Congress later in the year granted the Governor the veto power to check these irresponsible trends in Territorial legislation. (4)

Sectionalism and logrolling were also prominent in the

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1. Washington Standard, February 6, 1864. The newspaper insisted that in this session the general rule that the propriety and necessity of all local measures and franchises should be determined by the members representing the districts covered by them.
 2. Idem. These grants combined with the defeat of the Steilacoom-to-Walla Walla road bill were probably part of the program to secure the removal of the capital to Vancouver the next year and certainly designed to force travel from the north to the south in the Territory to the Columbia River and through Judge Hardy's toll gates and ferries. This evidence of sectional alignment of Thurston County and the Sound against Walla Walla and Clarke Counties proved one of the significant developments in the political history of the Territory. The capital question is discussed later in this chapter.
 3. Idem. The Puget Sound Herald, February 6, 1864, accuses this legislature of passing many laws to benefit the few and passing over laws for the benefit of the many.
 4. The grant of the veto and its consequent limitation on the legislature is discussed in the chapter on the Territorial Executive.

legislature of 1864-1865. A union of the Democrats of the north-western and southwestern sections of the Territory proved sufficiently strong to carry a large number of special charters and privileges. (1) The early part of the session was reputedly spent in covering the tributaries of the Columbia River and the country east of the mountains with charters and special privileges. (2) There was, however, some check on this tendency in 1864-1865 since the Governor vetoes several of these special grants. (3) Congress eliminated special charters entirely in 1867. (4)

LEGISLATIVE ABUSES: SECTIONAL RIVALRIES (5)

The problem of sectionalism continued to be troublesome throughout the Territorial period. The Vancouver Register, November 23, 1876, pointed out that since the Territory was di-

1. Washington Standard, January 28, 1865.
2. Ibid., December 24, 1864. On January 28, 1865, it characterized the session as "more in the nature of a star-chamber-court for the dispensation of special favors to the friends of the majority party of the body, than a legislature of the people, convened to enact laws for the general welfare of the country; and hence the statutes of the session are little else than a record of private charters for the benefit of the dominant Copperhead party in the Legislature and its constituencies."
3. Ibid., January 28, 1865. The effort to nullify the Special Contract Law was thwarted by the veto. The Special Contract Law passed by Congress allowed the use of paper in the payment of all debts; the proposed Territorial action provided that the provisions in the contracts requiring payment in coin be recognized in the Territorial courts above the recent Act of Congress.
4. This curtailment of legislative authority is discussed in the chapter on the Revised Statutes.
5. Sectionalism as it relates to the capital question will be discussed later in this chapter.

vided in three or four sections, each with its distinct climate, products, and industries, members of the legislature often wished to serve their own constituents rather than the Territory. (1) Again in 1881 a sectional combination against the nominations of the Republican caucus allowed the eastern section of the Territory to secure more than its share of offices in the legislature. The Washington Standard reported that this was generally well considered, however, as the section east of the mountains had "never hitherto asked or received a due proportion of the 'loaves and fishes'." (2) The capital controversy indicated that the early sectional rivalries in the legislature were between the Columbia River and the Puget Sound sections. Later on the chief cleavage appeared between eastern and western Washington with the river counties aligning with whichever group best fostered their interests.

LEGISLATIVE ABUSES: POLITICAL MACHINES

Another source of legislative rivalry which cut across party lines developed from opposition to the Federal appointees in the Territory. Beginning with the pro-Stevens and anti-Stevens groups as an outgrowth of martial law during the Indian War, (3)

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1. Vancouver Register, November 23, 1876.
 2. October 7, 1881. It was hoped that this concession in 1881 would promote better relations between the two sections.
 3. See the chapter on martial law during the Indian War.

the so-called Federal clique party proved particularly strong under Governors Pickering and Ferry.(1) In fact, it was reported in 1877 that the Ferry "Federal and Territorial office-holders' clique" had effectively controlled the legislature of that year.(2)

The Seattle machine under Judge Lewis was potent in the legislature of 1885-1886. Its object was reputedly to divide the surplus in the treasury and then to run things as it chose primarily to the advantage of Seattle.(3) The Washington Standard(4) charged that

"...the prodigality of the Assembly was the subject of frequent jest in both houses during the last days of the session and certain honorable members seem to consider it an exceptionally fine joke on their tax-paying constituents... There seemed to be no sense of shame, no thought of responsibility, no idea of justice, nor fear of retribution at the hands of an outraged constituency. The Tenth Biennial Session of the Legislature will long be remembered by the people as the Assembly of Misrule, and it is safe to assert that a majority of its members will be relegated to the obscurity from which they were lifted for a period which, although so brief, was long enough to demonstrate their utter unworthiness of public trust."

This partisan charge may be true since the Republicans nearly lost their comfortable control of the legislature in the next

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1. See the chapter on the relation of the Federal Government to the Territory.
 2. Washington Standard, November 17, 1877.
 3. Vancouver Independent, January 28, 1866.?
 4. February 5, 1866.

election.(1) Even by 1888 it was still criticized for logrolling, or the "give and take plan", which had effectively "squandered the people's money".(2)

LEGISLATIVE ABUSES: CONDUCT AND ORDER

Another reason the National Government curtailed the authority of the legislature may be found in its method of conducting business. As early as the session of 1855-1856, the vote for the assistant clerk in the House had to be retaken because the number of votes cast exceeded the number of members present.(3) It was also in this session that the Council refused to meet with the House in joint convention to elect territorial officers until the Council had definite assurance that the business would be conducted fairly and honorably.(4)

With the session of the 1859-1860 legislative decorum gave way to party feuds and sectional rivalries. Though overwhelmingly Democratic,(5) the House was recorded as a place where

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1. Washington Standard, November 27, 1855, lists a Republican majority in the House of 17 to 7 and in the Council of 9 to 3 in 1855; Ibid., December 10, 1856, gives a tie of 6 to 6 in the Council with 13 Republicans to 11 Democrats in the House after the next election.
 2. Ibid., February 19, 1858.
 3. Washington House Journal, 3d Sess., p. 10, 1855-1856.
 4. Washington Council Journal, 3d Sess., p. 132, 1855-1856. The Council was Democratic; the House, Whig.
 5. Pioneer and Democrat, September 16, 1859. The figures are: 27 Democrats to 3 Republicans in the House and 7 Democrats to 2 Republicans in the Council.

"...disorder was the rule, order the exception; where the gag-law was applied in the cry of 'question! question!' from the throats of brazen impudence; where personalities and vulgarity were tolerated in debate, and where politeness had no abode."(1)

On the last day of the session two members of the House locked themselves in an anteroom in order to break a quorum and force adjournment before additional action could be taken. They succeeded in their scheme despite the efforts of the Sergeant-at-arms to bring them back.(2)

The equal division of parties in Washington Territory during the Civil War caused considerable conflict in the legislature. The first notable disputes came in 1862-1863 when it took the House a week to organize while the deadlock in the Council was even more serious where two weeks were required to elect a president.(3) The temper of some of the members was further revealed when B. F. Kendall of the Overland Press wounded Horace Howe in a personal quarrel.(4) As a result of an argument on a just punishment for Kendall, two members gave each other black eyes and bloody noses before they could be separated.

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1. Pioneer and Democrat, February 24, 1860.
 2. Idem.
 3. Bancroft Scraps, Vol. CX, p. 145, Bancroft Library, University of California. A total of 180 ballots were finally cast for Sergeant-at-arms.
 4. Ibid., pp. 145-146; Snowden, Op. cit., Vol. IV, pp. 189-190. When B. F. Kendall in the Overland Press attempted to implicate Horace Howe in the burning of a barn owned by the Puget Sound Agricultural Company, the latter took after Kendall with a switch on December 20, 1862. Kendall retaliated after running a short distance by firing four shots at Howe, one of them wounding him severely. M.S.Griswold, a member of the legislature, desired summary punishment of Kendall; J.D. Bagley, another member who was reputedly banished from San Francisco by a vigilance committee, opposed. Young Howe shortly after shot Kendall and disappeared when admitted to bail.

The political situation was even more critical in the legislature of 1863-1864. It took the House nearly a week to organize. The quality of the officers of this legislature, which granted special charters indiscriminately, is indicated in the alleged fact that "Paddy McDonald, a ruff who has been peddling whiskey on the Sound to the Indians for the last three or four years--a miserable scribe and a worse reader" was elected Chief Clerk. (1) Their enemies characterized two members as "forty- and fifty-year-old babies that have never been weaned." (2) Since there were four Democrats in the Council, who all wanted to be president, and three Republicans, the deadlock over the election of officers was even more acute than it had been in 1862-1863. After nearly three weeks of wrangling, the Council succeeded in organizing only by making its temporary organization permanent. (3) With this type of political strife and pettiness manifest in the legislature, it is not surprising that during this decade the Federal Government restricted its power by granting the Governor the veto and by eliminating its authority to grant special charters.

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1. G. A. Barnes to W. H. Wallace, January 4, 1864, Wallace Letters, Pacific Northwest Collection, University of Washington.
 2. A. A. Denny to Daniel Bagley, December 8, 1863, A.A. Denny Letters, Pacific Northwest Collection, University of Washington.
 3. Idem., Governor Wm. Pickering to Frank A. Wilson, December 19, 1863, Pickering Letters, Pacific Northwest Collection, University of Washington.

The lack of decorum was also evident in the legislature of 1867-1868. As there were four Democrats and four Republicans in the Council,(1) the control of that body rested on the decision in the disputed election between McLane and Longmire. C. M. Bradshaw reputedly gained the presidency of the Council by promising the members of both parties that he would back their candidates.(2) Since his subsequent course satisfied no one, he was removed from office by an unanimous vote of the Council.(3) Sufficient fraud was unearthed in connection with the disputed election that the Council finally decided to submit the question to the voters of that Council district at the next general election.(4) The final decision favored the Republican McLane as he was president of the Council during its next term.(5)

This political conflict with Bradshaw as one of the leading figures carried over into the legislature of 1869. When Councilman Tripp left for Alaska on business without resigning(6)

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1. Washington Standard, July 6, 1867.
 2. Ibid., January 11, 1868.
 3. Ibid., January 11 and 18, 1867. Bradshaw was elected by an unanimous vote in the first place. For his defense on the charges against him, cf. The Port Townsend Weekly Message, January 23, 1868. The grounds for removal were definitely political.
 4. Washington Council Journal, 1st Biennial Sess., pp. 145, 256, 267, 1867-1868.
 5. Washington Standard, November 13, 1869.
 6. Ibid., October 23, 1869.

Clark County elected Joselyn to fill his place with no Executive Proclamation authorizing an election. Since only three Republicans and three Democrats had qualified, Joselyn would give the Republicans a majority in the Council. He, therefore, ignored the hostile committee on credentials and made his request for admission to the Council itself. When President McLane decided that because his credentials were regular he should be sworn in unless a majority voted to keep him out, the Democrats objected that a majority was necessary to place a member in his seat. Since this view would deny Joselyn admission to the evenly-divided Council, it was vitally important how the motion was stated. After Bradshaw insisted that a member need not be elected to the Council twice, once by his constituency and again by the Council itself, the president ordered Joselyn sworn in. (1)

As soon as the fourth Democratic member, W. H. Newell of Walla Walla, took his seat, he attempted to protest against the admission of Joselyn, but McLane ruled him out of order. When unanimous exception was taken to this ruling, McLane refused to entertain an appeal or any motion relating to the matter before the Council. One of the Democratic members then moved to vacate the chair temporarily to enable the Council, by the selection of a president pro tem, to proceed with its business. At this McLane deliberately put on his hat and left the hall, thus breaking a quorum. (2)

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1. Port Townsend Weekly Message, October 27, 1869; Washington Standard, October 23, 1869.
 2. Ibid., November 13, 1869.

Another crisis occurred when Smith of Whatcom and Snohomish Counties presented his credentials to the Council before the returns from Island County came in. Smith had been elected to fill a vacancy caused by the resignation of one of the Councilmen. When McLane refused to allow the Democrats to refer his credentials to the Committee on Elections, the three Democratic members left the Council in order to break a quorum; but Smith was sworn in with no quorum being present.(1)

As an appropriate climax to this session of party strife and pettiness, the Council witnessed its one fight. The legislature passed an act defining libel, whereupon Bradshaw informed Newell that it might "increase the criminal business at Walla Walla".

"The citizens of Port Townsend", Newell retaliated, "complain of the existence of hog and cattle thieves in that section of the Territory, but I did not know there were any of them at Olympia now."

"Do you mean me?" Bradshaw shouted. "You are a liar and a scoundrel!" While the Sergeant-at-arms caught and held Bradshaw, Newell threw a glass tumbler at him and knocked him out. Both men were required to apologize to the Council; Newell because his conduct merited his expulsion from that body, Bradshaw because he used "ungentlemanly and unparliamentary" language.(2)

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1. Port Townsend Weekly Message, November 13, 1869.
 2. Washington Council Journal, 2d Biennial Sess., pp. 254, 257, 1869.

After 1870 party feuds generally disappeared and decorum improved; but the damage had been done, for the National Government had already deprived the legislature, often scarcely worthy of the name, of most of its significance.(1)

SESSIONS

The legislature met in annual 60-day sessions until 1867 when they became biennial. By 1873 these sessions, in turn, were shortened to 40 days,(2) resulting in an undue rush on the last day of the session. In his message to the legislature in 1879, Governor Ferry complained that 96 bills, two-thirds of the number passed during the entire session of 1877, were handed him within 12 hours before adjournment. Since many of these were imperfect and defective, the Governor suggested that it would be "better for the legislature to pass only a few well-written important measures than to enact a crude jumble of conflicting and inconsistent laws, which are incapable of being intelligently construed... ." (3) The quality of legislation in 1877 was still not above criticism.

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1. Its former power was checked by the Governor's veto and the law forbidding special charters and privileges.
 2. Washington Standard, November 15, 1873; Laws of Washington, 1st Biennial Sess., p. 47, 1867-1868. The Standard was extremely critical of the biennial 40-day sessions, forgetting that it had once advocated a biennial 30-day session. Ibid., February 6, 1864.
 3. Ferry to the Legislature, October 6, 1879, Gates, op. cit., pp. 206-207.

Congress again increased the term to 60 days in 1881;(1) but this failed to improve the situation. Five days before the close of the session of 1887-1888, the legislature had passed only 12 of 350 bills. It would have required 70 Acts a day to pass them all.(2) If half of the introduced bills passed as in the legislature of 1885-1886,(3) the legislature could not possibly do justice to 35 Acts each day.

Candidates promised the minor offices in the legislature freely only to disappoint most of these aspirants because the number of promises far exceeded the number of offices available.(4) As a result, according to the Washington Standard,(5) "The Sunday preceding organization, instead of being a day of rest and holy meditation, is literally a season of bargain and intrigue rivaling the excesses of Vanity Fair." The party caucuses were extremely active in all this jockeying for position.
(6)

THE "RUMP" LEGISLATURE OF 1889

The legislature of 1887-1888, in order to lessen the time between the election in November, 1888, and the regular

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1. Newell to the Legislature, October 5, 1881, Gates, op.cit., p.229.
 2. Washington Standard, January 27, 1888.
 3. Ibid., February 19, 1886; 404 bills were introduced while 194 were passed and approved in the 1885-1886 session.
 4. Ibid., September 29, 1877. The candidates for Speaker of the House and President of the Council often sacrificed the interests of their friends in order to gain these coveted positions.
 5. September 29, 1877.
 6. Ibid., October 9, 1877. ♡

meeting in December, 1889, passed an Act for the next session to meet in January, 1889, and biennially thereafter.(1) Complications appeared when Territory Attorney General J. B. Metcalfe rendered the opinion that the tenure of the legislature of 1887-1888 did not expire until March, 1889, after the proposed legislature was to meet.(2) This legislature could meet, furthermore, only if Congress appropriated the necessary funds. Those favoring the change insisted that under the old system 13 months elapsed between the election and the time of meeting of the legislature while under the proposed change only two months would intervene.(3) These arguments had sufficient effect in the House of Representatives for that body to sanction the necessary appropriation, but the move got no further.(4)

In spite of the absence of an appropriation for the legislature, one member of the Council and two members of the House "like the historic 'Knights of the Goose' of London" met at the capital at the appointed time in January, 1889, and adopted a Memorial asking Congress to make the necessary appropriation immediately for this session.(5) But with Statehood near, Congress refused to authorize an unnecessary session of the legislature.(6) This last "Rump" legislature of 1889 in Washington

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1. Laws of Washington, 11th Biennial Sess., p. 141. The reaction of the Central Government to this measure is discussed in the chapter on the Revised Statutes.
 2. Washington Standard, May 11, 1888.
 3. Idem.; Report of the Secretary of the Interior, 50th Cong., 2d Sess., Serial 2638, p. 900, 1887-1888.
 4. Washington Standard, June 22, 1888.
 5. Ibid., January 18, 1889.
 6. Idem.

Territory is symbolic of the impotency of a body which during the earlier Territorial period had been the chief governing branch in the Territory.

LEGISLATIVE DIVORCE

After dealing with the character of the legislature, the quality of its laws, its early importance and its subsequent impotence, it will be worthwhile to consider a few of the problems it faced. One of the most important of these was the problem of legislative divorce.

The first instance of a prominent legislative divorce for a person north of the Columbia River occurred before the formation of Washington Territory. Dr. David S. Maynard left the Monticello Convention in November, 1852, for Salem primarily to secure a legislative divorce. His excuse is significant: it would be unnecessary for him to make a charge against his wife or justify his action if the legislature rather than the courts granted the divorce.(1) The potent opposition to granting legislative divorces in the Oregon legislature of 1852-1853 maintained that marriage was a civil contract, and the courts and not the legislature possessed authority over the validity of contracts. In fact, Congress in 1826 had nullified the divorces granted by

1. David S. Maynard and Catherine T. Maynard: Biographies of Two of the Oregon Immigrants of 1850, p. 32. - Prosch, Thomas W. Many pioneers are reported to have left the east to rid themselves of unhappy home life by securing a legislative divorce.

the Florida legislature.(1) Dr. Maynard used his entire influence in securing the passage of his divorce bill; for the House first rejected it(2) but later passed it when more of the opposing members were absent.(3) Thus early were drawn the major arguments in a long conflict over legislative divorces in Washington Territory; lobbying and influence on the part of those wishing the divorce was pitted against the conception that divorce was properly only a function of the courts.

The problem of legislative divorce presented itself to the second session of Washington Territorial legislature in 1854 when the House passed a divorce bill early in the session.(4) The minority report of the committee in the Council insisting that divorces were legitimate only if granted by the courts, that the Territorial divorce laws were sufficiently liberal, and that a legislature was more often deceived into rendering hasty and unwise decisions than a court of law,(5) failed to convince the Council which passed the bill by a close vote.(6) While the next legislature of 1855-1856 granted three divorces,

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1. Oregon House Journal, 4th Sess., pp. 5-7, 1852-1853. Isaac N. Ebeby handed in the minority report of the committee incorporating these ideas.
 2. Ibid., pp. 56-57. The first vote was 9 to 11 on the bill with 4 absent.
 3. Ibid., pp. 59-60. The vote was 8 to 7 on the reconsideration of the measure with 8 absent.
 4. Washington House Journal, 2d Sess., pp. 18, 20, 24, 1854-1855.
 5. Washington Council Journal, 2d Sess., pp. 24, 157, 1854-1855. The minority report was signed by A. M. Poe and D. A. Bigelow.
 6. Ibid., pp. 23, 24, 25, 29; Laws of Washington, 2nd Sess., p. 67, 1854-1855. This was on December 19, 1854, with a majority of one after A. M. Poe's amendment that this Act be "in force from and after the first day of January," had been defeated by a close vote.

the Council in 1856-1857 temporarily checked the trend by refusing to grant any because they interfered with the proper functions of the courts.(1)

One of the most notorious legislative divorces in Territorial history was voted during the session of 1857-1858. Governor Fayette McMullin is reported to have come to the Territory primarily to secure a legislative divorce,(2) which was granted early in the session.(3) Two other legislative divorces were granted during this session and only one during the 1858-1859 session.(4)

1. Laws of Washington, 3rd Sess., pp. 20-21, 1855-1856; Olympia, Pioneer and Democrat, January 9, 1857. Two divorce bills had been defeated in the Council by a vote of 5 to 4 for this reason. - Washington Council Journal, 4th Sess., p. 70, 1856-1857.
2. Meany, Edmond S. History of Washington, p. 326; Governors of Washington, p. 11.
3. Idem.; Knapp, Ralph R., "Divorce in Washington", Washington Historical Quarterly, Vol. 2, p. 121, April, 1914. The records scarcely bear both Meany and Knapp out in their assertions that "Mr. Denny was plied to vote for the measure, but refused. He never would vote for a divorce bill, and always told the applicants to go to the courts for their divorces." Arthur A. Denny seems not to have seriously opposed legislative divorces before the session of 1857-1858. In fact, in the session of 1856-1857 Denny introduced a Memorial for the granting of a legislative divorce and supported it by his vote even in the face of a Council hostile to granting divorces. - Washington Council Journal, 4 Sess., pp. 28-29, 1856-1857. He voted later in the same session, however, against a legislative divorce. - Ibid., p. 70. The vote on the McMullin divorce bill stood at 22 to 5 in the House and 6 to 2 in the Council. Denny's attitude on the bill is uncertain as he was absent and did not vote. - Ibid., 5th Sess., p. 48, 1857-1858. Cf. Washington House Journal, 5th Sess., p. 49, 1857-1858, for the House vote.
4. Cf. the Index to the Laws of Washington for the period from 1859-1863 on the number of divorces granted each session. The figures for these years are: 1859-1860, 15 divorces; 1860-1861, 17 divorces; 1861-1862, 15 divorces; and, 1862-1863, 16 divorces.

The practice of voting legislative divorces reached alarming proportions between the years 1859 and 1863 when the legislature granted an average of 16 divorces a year. The Divorce Act of 1859-1860 restricting divorce in the district courts to one of the following causes - consent for marriage obtained by force or fraud, unforgiven adultery, impotency, abandonment for a year, cruel treatment, habitual drunkenness, lack of support, or imprisonment - may have contributed to this alarming increase.(1) By 1860 the Territorial press began to criticize the legislature for this practice. The editor of the Washington Standard asked:

"Is it not time for the people of Washington Territory to raise their voices by petition, remonstrance, or otherwise, against the growing evil of the Legislative Assembly granting Divorces? Legislatures are not the place to hear such applications, and how often does it happen that great wrongs are inflicted in consequence of these acts. But slender testimony is required to support the assertion of a member, who is interested in securing a divorce for a constituent, probably to whom the member is under a weight of political obligation."(2)

This remonstrance proved ineffective in 1860-1861, however, for the House organized a committee of five to expedite the business of legislative divorce.(3) Several members of the legislature jokingly suggested that the Washington Standard give notice that the session would soon close and all who desired a divorce "had better hurry along".(4) This same journal listed the method

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1. Laws of Washington, 7th Sess., pp. 318-319, 1859-1860.
 2. December 22, 1860.
 3. Idem.
 4. January 12, 1861, ibid.

used the legislature which referred the bill to a committee of one composed of the member who introduced it, had him report it in a few minutes, suspended the rules, and dissolved an individual's marriage contract and all his "duties to society and offspring in one and a half minutes, or in less time than the marriage ceremony can be performed."(1) Even the rival Pioneer and Democrat(2) insisted that legislative divorce was a great evil, that divorces should be granted only for adequate cause in the courts, and that this plan of marrying for a dollar, and divorcing for nothing was not "calculated very much to advance the welfare of society".(3)

Even the legislature of 1860-1861 recognized this sentiment by requiring individuals securing legislative divorces to print a notice of their intentions in some newspaper in the Territory for at least three months prior to the meeting of the legislature.(4) The Council also took the step necessary to correct the evil by requesting Congress to prohibit legislative divorces.(5) In a legislature, however, which passed more divorce acts than any other in the history of Washington Territory, the appeal for reform got no further.

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1. Washington Standard, loc. cit. The individual's name and that of his wife was all that was necessary to secure the divorce.
 2. January 4, 1861.
 3. Ibid., January 4, 1861.
 4. Laws of Washington, 8th Sess., pp. 20-21, 1860-1861.
 5. Washington Standard, January 26, 1861.

Beginning with acting-Governor L. Jay S. Turney, the Governors instituted a definite campaign to check the evil of legislative divorce in Washington Territory. In his message to the legislature December 19, 1861, Turney insisted that the courts alone were competent to sever marriage ties. "I sincerely hope," he concluded, "you will scrupulously abstain from granting a single divorce during the present session." (1) But the members of the legislature had little sympathy with Turney or his suggestion either, (2) and proceeded to grant divorces indiscriminately. The Act requiring three months notice before a legislative divorce was ignored and the old practice was re-introduced. (3)

The legislature of 1861-1862 granted divorces with "scandalous facility" making Washington "a bye-word and reproach throughout the world". (4) Both men and women now petition the legislature for divorces. (5) Said the Puget Sound Herald: (6)

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1. Turney to the Legislature, December 19, 1861, in Gates, Op. cit., p. 95. Turney argued that only the Scriptural grounds, adultery, should be reason for divorce even before the courts. Cf. also Knapp, op. cit., pp. 121-122.
 2. For Turney's relation with the legislature see the chapter on the Federal Government and the Territory.
 3. Puget Sound Herald, January 23, 1862. The quoted phrases are from this newspaper.
 4. Idem.
 5. See Washington House Journal, 9th Sess., pp. 29, 75, 99ff, 1861-1862.
 6. January 23, 1862.

"We have heard of many worthless women who have sued for divorces from good, honest, and industrious men, and in all the divorces granted by the legislature in times past, we have known but three or four cases calling for any interference between man and wife. This wholesale divorcing of everything and everybody, from anywhere, is highly injurious to the morals and best interests of our Territory. Marriage will soon become a farce, an amusement to last for a few months, or until the Legislature meets, when a few cocktails to some thirsty Solon will set both free and permit them to go over the same course again with others."

When the House but not the Council repealed the three months notice requirement, a Thurston County lady whose husband had warned her that he would contest her divorce suit in the March term of the district court, surprised him when he came to town one day by revealing that the legislature had actually divorced them several days before. The Puget Sound Herald stormed:

"It looks to us like robbery to deprive a man of any right or possession without a hearing of some kind, however unworthy that man may be of such consideration. Such legislation is only worthy of the darkest days of the Spanish Inquisition. So long as an intelligent community will tolerate such a nuisance - so long as they continue to elect such men to represent their interests - so long and no longer will they have corrupt and venal legislation at the hands of ignorant and designing representatives and councilmen."(1)

In his address to the legislature December 17, 1862, Governor Pickering severely attacked the abuse of legislative di-

1. January 23, 1862.

The Overland Press, December 1, 1862, commented that: "The facility with which divorces have been granted in the legislature of this Territory has made us almost as notorious as was Indiana in that line."

voice:

"I should be recreant to the duties I owe society, if I failed to call your serious attention to the sad and immoral effects growing out of the readiness with which our Legislative assemblies have heretofore annulled that most solemn contract of marriage. Let me earnestly invoke you to stay the evils which result from the Legislature granting divorces, thereby destroying the sacred responsibilities and duties of husband and wife, merely upon the request or petition of one of the parties."(1)

The Governor's hope that the legislature would turn all such cases over to the courts was not realized; for this legislature passed 16 divorce bills, the second highest total during the Territorial period.(2)

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1. Pickering to the Legislature, December 17, 1862, in Gates, Op. cit., pp. 103-104; Knapp, op. cit., p. 122. The Governor continued his argument by pointing out that the present laws declared marriage to be a civil contract; therefore, the courts and not the legislature possessed the sole authority over disputes arising under the marriage laws. The courts could hear witnesses on both sides in a divorce case; the legislature seldom heard them on either, and when it did, only on the side of the complaining party. The legislature could not enter judgments for alimony division of property, or custody of the children; these matters were functions of the courts. Many state legislatures had recently refused to grant divorces. "Eminent lawyers are agreed in the opinion, that all divorces granted by Legislatures are null and void, for the reason that no act of Legislature can destroy, annul, violate, or set aside the said civil contract, nor the sacred and religious bonds and mutual obligations entered into by man and wife at the solemnization of their marriage."
 2. Laws of Washington, 10th Sess., Index, 1862-1863; Pickering to the Legislature, December 17, 1862, in Gates, Op. cit., p. 104.

Several factors contributed to the abandonment of the practice after the session of 1862-1863. Some authorities(1) attribute this decline to an Act in January, 1866, declaring marriage to be a civil contract(2) which would throw the consideration of divorce into the courts. This explanation is superficial, however, for, according to Governor Pickering, marriage was considered a civil contract under the laws as they existed in 1863.(3) There is a better explanation. The first legislature to take a decided stand against legislative divorce was the first reported to have a distinct Republican majority in both houses.(4) Although Wigs and Republicans had voted for legislative divorces before, the Governor as party leader now directed the campaign against them. As a result, the legislature of 1863-1864 followed Pickering's request to refuse application for divorces and refer the parties to the courts.(5)

When the first divorce petition reached the Council on December 24, 1863, its indefinite postponement was reinforced

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1. Meany. History of Washington, p. 326; Bancroft, Washington, Idaho, Montana (Works), Vol. XXVI, p. 274-275; Knapp, op. cit., p. 123.
 2. Laws of Washington, 13th Sess., p. 81, 1865-1866.
 3. Pickering to the Legislature, December 17, 1862, in Gates, Op. cit., p. 103.
 4. Washington Standard, August 15, 1863. Both Democrats and Republicans along with the press of both parties opposed legislative divorce. It took a Republican Governor to win general support against them.
 5. Pickering to the Legislature, December 23, 1863, in Gates, Op. cit., p. 113. Pickering called their attention to the fact that the law passed by the legislature of 1860-1861 requiring three months notice in the newspaper before a legislative divorce could be granted, had not been repealed. He trusted that this law would not be "disregarded and violated during the present session". This time, with a majority of the legislature belonging to the same party as the Governor, the latter's request was not disregarded.

by a resolution against all legislative divorces.(1) The legislature also asked Congress to prohibit future legislative divorces in the Territory.(2) But reform was made conditional upon the passage of a lax divorce law by which a non-resident could not receive notice in time to make a defense before the decree was rendered.(3) This law also explains in part the reason for the decline of legislative divorce after 1863.(4)

Commented the Puget Sound Herald:(5)

"If the Legislature effected no other good during the session, than arresting the demoralizing effects of legislative divorce, it would in our estimation, have merited the thanks of the community."

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1. Washington Council Journal, 11th Sess., p. 35, 1863-1864; Puget Sound Herald, January 9, 1864. The Resolution introduced by Frank Clark, a Democrat, read: "That the Courts are the proper and legitimate tribunals to be appealed to by persons desiring a dissolution of the bonds of matrimony, and that this body will not entertain any further applications for divorce." It was passed by a vote of 6 to 1.
 2. Laws of Washington, 11th Sess., p. 181, 1863-1864; Puget Sound Herald, January 9, 1864. This was also introduced by Clark. The Council was commended in the press for so rapidly disposing at least for this session of a subject that had "brought more odium" to the legislature than any other. - Idem.
 3. Washington Standard, February 6, 1864. The Standard complained that this Act made it as "easy to procure a divorce from the Courts, as it has hitherto been to obtain" one from the legislature.
 4. Ibid., January 9, 1864. This anti-divorce attitude was illustrated humorously in the House when a divorce petition was introduced there later in the session of 1863-1864. After attempting to refer the bill to the Committee on Education and the Committee on Mines and Mining Interests, it was finally referred to the Committee on Indian Affairs.
 5. February 20, 1864.

The problem was not entirely solved yet, however. After Governor Pickering in his message to the legislature of 1864-1865 paid tribute to the previous legislature for refusing to grant divorces, (1) the Council again passed a resolution against entertaining divorce applications. (2) This attitude prevailed until the session of 1867-1868 when at least two attempts were made to reopen the issue. On the first of these, the committee deemed it a "poor policy for the Legislature to again open the door to obtaining divorces before the Legislature, as they feel satisfied that were we to do it in one case, there is no telling where it would end." (3) This attitude did not prevail throughout the session, however, as the legislature passed a divorce bill and presented it to Governor Marshal F. Moore. (4)

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1. Pickering to the Legislature, December 12, 1864, in Gates, *Op. cit.*, p. 118.
 2. Washington Council Journal, 12th Sess., pp. 174-175, 1864-1865. The vote this time was 4 to 3 for the anti-divorce resolution.
 3. Ibid., 1st Biennial Sess., p. 120, 1867-1868.
 4. Leander Holmes to Marshal F. Moore, January 21, 1868, in Letters of Governors and Secretaries. The reasons given for making this case an exception to the general rule of not granting legislative divorces are curious:

The husband was a free lover in sentiment and practice who favored the abolition of marriage laws and free intercourse between the sexes. He attempted to get his wife to carry out his ideas and finally imparted a disease to her that caused their separation. As the wife was sensitive and revolted against publicity, the legislature had made her case an exception and passed it.

The influence of the veto in checking the revival of the practice of legislative divorces is illustrated in this case; in spite of the reasons presented with the bill, the Governor vetoed it on the grounds that he could not approve this or any other bill dissolving the contract of marriage as divorce was a function of the courts and not the legislature.(1)

Two subsequent efforts were made to revive the practice of granting legislative divorces. Governor Edward Salomon approved the last of these bills to become a law in 1871.(2) Two years later, however, Governor Elisha P. Ferry vetoed a like bill, thereby ending the practice.(3) The possibility of reviving legislative divorces was ended in 1886 when Congress forbade them in any of the Territories.(4) Fifteen years had already elapsed since the legislature granted its last divorce in Washington Territory.

The legality of legislative divorce was tested before the Supreme Court in the Case of *Maynard v. Valentine* in 1880. In this case it was decided that the legislature had power to

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1. Washington House Journal, 1st Biennial Sess., p. 399, 1867-1868. The veto was sustained by a vote of 24 to 3.
 2. Laws of Washington, 3d Biennial Sess., p. 132, 1871.
 3. Washington Council Journal, 4th Sess., 1873. The Council promptly passed the bill over the Governor's veto, but the House failed to sustain the Council in this action. Ferry doubted the power of the legislature to grant divorces. The Supreme Court of Missouri had decided that the Territorial legislature had no power to grant divorces. No notice was required in legislative divorce; no evidence need be given. Legislatures could not provide for alimony or the custody of children. The Governor urged that the courts alone were competent to grant divorces.
 4. U.S. Statutes at Large, XXIV, 170.

grant a divorce without subjecting its action to review by the courts.(1) This decision was reaffirmed in the decision of *Maynard v. Hill* in 1884 with the declaration that the marriage relation is a status and not a contract and could be annulled by the legislature without impairing the obligation of contracts.(2)

THE CAPITAL CONTROVERSY

The capital question also vexed the legislature for a long time.(3) Governor Isaac I. Stevens favored Olympia in 1854 by calling the first legislature to meet there.(4) The Territorial legislature, however, had the right to locate the capital but not permanently.(5) The second legislature in 1854-1855 located the capital at Olympia, the penitentiary at Vancouver, and the university at Seattle with a branch at Boisfort Plains in Lewis County.(6) The major outlines of the struggle were already being drawn; the location of the capital was to be made a source of political bargaining along with the

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1. Washington Territorial Reports, II, 3-19.
 2. Ibid., 321. Mrs. Maynard or her descendants could not claim half of Dr. Maynard's claim under the Donation Act because she had never resided on or cultivated the land to prove up on it according to law.
 3. For a more complete account, cf. Beardsley, Arthur S., "Controversies Over the Location of the Seat of Government in Washington", Pacific Northwest Quarterly, Vol. XXXII, pp. 3-4, July and October, 1941; pp. 239-287, 401-447.
 4. Ibid., p. 241.
 5. Ibid.; Organic Act, Sec. 13; Seat of Government Case, December, 1861, Washington Territorial Reports, I, 115-133.
 6. Laws of Washington, 2d Sess., pp. 5-6, 8-9, 1854-1855; Pioneer and Democrat, January 13, 1855. Vancouver also had strong backing in the House.

location of the other public buildings; the anti-Stevens and later the anti-Federal clique party was to use its influence to remove the capital from Olympia in order to break the hold of the Federal appointees on the Territory; and finally considerations of geography along with personal and political spite were to play an important part in the issue.(1)

The antagonism over the capital question remained dormant until Governor Fayette McMullen recommended the use of the \$30,000 Congress appropriated for the erection of a permanent structure in 1857.(2) The legislature of 1857-1858 provided for a board of three capitol commissioners to agree upon the plan for the capitol at Olympia, issue proposals, and contract for its erection.(3) The uncertainty of the title to the tract donated for the capitol,(4)the

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1. See Beardsley. Op. cit., pp. 242-251. A. A. Denny's speech that Olympia, as the most centrally located place in the Territory was the best location for the capital had considerable influence in the debate during the session of 1854-1855. Ibid., pp. 248-249; Pioneer and Democrat, January 13, 1855; Beardsley, Op. cit., pp. 249-250; Mason to the Legislature, December 7, 1855, in Gates, Op. cit., p. 22. The Organic Act, Section 13.- Governor Stevens' suggested that the \$5,000 provided by the Organic Act for the erection of a capitol in Washington Territory was being used to clear the land and erect a temporary structure when the Indian War interrupted this construction.
 2. McMullen to the Legislature, December 12, 1857, in Gates, Op. cit., p. 52.
 3. Laws of Washington, 5th Sess., pp. 3-5, 1857-1858.
 4. Beardsley. "Controversies over the Location of the Seat of Government in Washington", Pacific Northwest Quarterly, Vol. XXXII, No. 3, pp. 252-255, July, 1941.

dilatory tactics of the second acting capitol commissioner, and the efforts to change the location of the capital all proved obstacles to its erection.

Unfortunately for the Olympia backers the approval of the United States Attorney-General as to the validity of the title to the ten-acre tract for the capitol was not obtained until January, 1860. (1)

The main capital controversy had its inception in the legislature of 1859-1860 when a relocation bill passed the House only to be defeated by one vote in the Council. (2) The attempted removal to Vancouver was based on a sectional alignment between the north and the south in the Territory to destroy the grip of the Federal clique at Olympia under Delegate Isaac I. Stevens. (3) This Olympia clique in the legislature of 1859-1860

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1. Laws of Washington, 5th Sess., pp. 5-6, 1857-1858. Mason to the Legislature, December 8, 1858, in Gates, Op. cit., p. 60; William Medill, Comptroller of the Treasury to Governor Richard D. Gholson, January 2, 1860, Washington House Journal, 5th Sess., p. 113, 1860-1861; Beardsley, Op. cit., p. 254.
 2. Washington House Journal, 7th Sess., pp. 33, 38, 1859-1860; Washington Council Journal, ibid., pp. 92-94; Pioneer and Democrat, December 16, 1859, January 13, 1860.
 3. Ex-Governor Stevens had again been elected Delegate by a substantial majority over Wm. H. Wallace in 1859. - Pioneer and Democrat, August 19, 1859. "Orion" in the Puget Sound Herald, December 16, 1859, expected the bill to pass since the north and south were united behind it. "The untrammelled Democracy of both branches are fully determined to use all honorable measures to destroy and rend into fragments an obnoxious monocratic clique that live and have their being in and around the present seat of Government, a set of spoil-seeking and political intriguers, that have held, since the election [1857] of their God and Master [Stevens] to a seat in Congress, absolute control over the political affairs of our Territory. Honorable members of the Democratic party, men standing firmly upon the Cincinnati platform, because they choose not to worship at the shrine of Isaac I. Stevens, have

apparently sacrificed the selection of capitol commissioners favorable to Olympia for the appointment of their own Public Printer who was generally disliked in the rest of the Territory.(1)

The situation came to a head early in 1860 when the Comptroller of the Treasury informed Governor Gholson that the Attorney-General had approved the title to the capitol site in Olympia and had made \$10,000 available for him as dispersing agent for the appropriation upon execution of his bond.(2) When

been cut off from all political preferment [F. A. Chenowith, a member of the legislature of 1859-1860, had failed in his effort at reappointment as judge in the district court presumably because of Stevens' influence.] their claims utterly ignored, and we hear on every hand that they are classed as 'bolters' and 'soreheads' and are only fitted for...the 'Black Republican Camp'." The correspondent insisted that the North or Puget Sound had gained nothing by locating the capital at Olympia. "To secure the location of the Capitol at Olympia, they gave the South the Penitentiary, an institution which will damn any city and to the North they politely proffered the Territorial University... No sooner was it discovered that King County gave a majority of votes against the venerable Isaac, than away went this titular institution with one fell swoop..." a reference to the relocation of the university at Cowlitz Farm Prairie in 1858. - Beardsley, Op. cit., p. 255, note. Councilmen from King and Pierce Counties favored relocation of the capitol along with those from the South - Pioneer and Democrat, January 13, 1860.

1. Gallagher, George. "The Capitol", Puget Sound Herald, August 3, 1860. These members of the Thurston County delegation were accused of thus "sacrificing the substantial interests of their county to the inordinate desires of modern Shylocks, for the sake of perpetuating a political dynasty which stinks in the nostrils of all honest men, and for the last two years has rapidly engineered the Democratic party of this Territory into a hopeless minority." Olympia's opponents were willing to "suffer the erection of the capitol at Olympia for the sake of ridding the Territory of an evil, and the Democratic party of a nuisance", in the form of Edward Furste, editor, Pioneer and Democrat, who was "odious to a majority of the people of the Territory." - Beardsley, Op. cit., p. 258. "Whether it acted perforce or by design the "Olympia clique" probably believed that these men would carry out the terms of the law" and proceed to build the capitol at Olympia when the funds became available despite their bias. - Ibid., p. 259.
2. Washington House Journal, 8th Sess., p. 113, 1860-1861.

the money became available,(1) the Governor hoped to avoid a political controversy by declining to execute the bond until he had further instructions from the Treasury Department.(2)

After Governor Gholson left the Territory in May, 1860, Secretary Henry M. McGill, a member of the "Olympia clique", as acting-Governor filed the necessary bond to obtain the money.(3) This prompt action was partially dictated by a desire to keep the money in the Territory since Chief Justice O. B. McFadden had already indicated his intention to send the drafts back to the Treasury Department because the Governor had failed to furnish the necessary bond for them.(4) McGill then notified the capitol commissioners that since the money was now available they should proceed with the work.(5)

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1. McFadden to Gholson, February 20, 1860, Washington House Journal, 8th Sess., p. 114, 1860-1861. It was sent to Chief Justice O.B. McFadden pending the receipt of the Governor's bond.
 2. Gholson to McFadden, February 20, 1860, Ibid., pp. 114-115; Letters of Governors and Secretaries. Governor Gholson then wrote to the Comptroller of the Treasury for instructions as to whether he should give bond or not since the Act of January 5, 1858, made him merely the treasurer and the capitol commissioners the dispersing agents of the funds. Gholson to Medill, February 23, 1860, Ibid., pp. 115-116. Gholson reminded Medill that a bill for removal of the capitol had passed the House during the last session of the legislature by a 2 to 1 vote and had been defeated in the Council by one vote. Capitol commissioners "ardently opposed" to locating the capitol at Olympia had also been chosen, the new acting commissioner stating that he would take no steps "to build here". - Pioneer and Democrat, April 13, 1860, criticized the Governor's dilatory policy.
 3. Beardsley. Op. cit., pp. 260-261.
 4. Pioneer and Democrat, May 11, 1860. The drafts for the penitentiary were to be sent back for the same reason.
 5. McGill to George Gallagher, Acting Capitol Commissioner, July 3 and 16, 1860, Washington House Journal, 8th Sess., pp. 80-81, 117, 119, 1860-1861. McGill forwarded his bond to the Comptroller and informed him of his instructions to the capitol commissioners. McGill to Medill, July 7 and 17, 1860, Ibid., pp. 118-119.

The people of Olympia favored McGill's prompt action. (1) The "clique" hoped to get the building started before the next session of the legislature in December, 1860. McGill's energy in fostering the construction of the penitentiary in Vancouver indicates his hope that he could relax Vancouver's drive to have the capital located there since no one city would be entitled to two important Territorial institutions. (2)

This effort commenced a conflict between McGill and acting-Capitol Commissioner Gallagher which ended in Gallagher's removal. Since he was elected to delay action until after the next meeting of the legislature, Gallagher refused to do anything. (3) McGill replied that he would not permit any unnecessary delay and accused Gallagher of promising to begin immediately. (4) Gallagher asserted that he would go ahead with the work only if he were forced to do so rather than resign. (5) When on July 30 Gallagher advertised for bids for clearing the capitol grounds and for building plans to be opened September 29, acting-Governor McGill considered this two-month period for entertaining proposals as unnecessary delay, (6) declared Gallagher's office vacant, and ap-

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1. Pioneer and Democrat, July 6, 1860, commended him for comprehending his duty and performing it. Two Executives had used "subterfuges and quibbles" to delay action for over two years; but at least the Executive would do something.
 2. Beardsley. Op. cit., p. 261.
 3. Gallagher to McGill, July 23, 1860, Washington House Journal, 8th Sess., p. 82, 1860-1861; Letters of Governors and Secretaries.
 4. McGill to Gallagher, July 23, 1860, Ibid., pp. 82, 120.
 5. Ibid., July 26, 1860, pp. 83, 121; Letters of Governors and Secretaries. He was glad to have McGill assume written responsibility for compelling action and would "proceed with the work as rapidly as a due regard to the public interest, and an economical expenditure of the capitol fund appropriated by Congress will warrant."
 6. Pioneer and Democrat, August 3, 1860; Beardsley, Op.cit., p.262.

pointed R. W. Walker acting-Capitol Commissioner in his place. (1) After Chief Justice McFadden refused Gallagher's application for an injunction to restrain Walker, he was free to proceed with the work. (2)

The reaction of the press to these events merits some attention. The Pioneer and Democrat, (3) praised McGill's removal of Gallagher and the appointment of Walker as "very good" and "just right". The Puget Sound Herald accused Olympia of wanting both the capitol and all the "fat jobs" connected with its erection, which fact explained the two-week limitation on bidding, thereby providing insufficient time to receive bids from elsewhere in the Territory. (4) "Marvel" in the same news-

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1. McGill to Gallagher, August 4, 1860, Washington House Journal, 8th Sess., pp. 83-84, 121-122, 1860-1861; Gallagher to McGill, August 8, 1860, Ibid., pp. 84, 122; McGill to Gallagher, August 11, 1860, Ibid., pp. 84-85, 122-123; McGill to Walker, August 13, 1860, Ibid., p. 123; Pioneer and Democrat, August 10, 1860. A revealing letter in this connection was written by Charles Prosch to "Friend Kendall", March 13, 1862, B.F. Kendall Letters. Prosch wanted to know if Kendall had been removed as Superintendent of Indian Affairs and C. H. Hale appointed in his place. Hale was considered dishonest as he had counseled Gallagher to proceed with the erection of the capitol since he as Capitol Commissioner would have opportunity to pocket \$10,000. Prosch feared Hale was "not above stealing himself".
 2. Gallagher's Report to the Legislature, Washington House Journal, 8th Sess., pp. 74-75, 1860-1861; McFadden's Report to the Legislature, Ibid., pp. 77-79; Beardsley, Op. cit., pp. 264-266.
 3. August 17 and 24, 1860. Gallagher's course in applying for an injunction against Walker was severely condemned and bidders were encouraged to submit their bids in spite of this action.
 4. Gallagher, "The Capitol Controversy", Puget Sound Herald, August 24, 1860. McGill was called either a tyrant or a man of straw, "a mere automaton in the hands of a set of reckless wireworkers and political intriguers who move him to suit their own selfish purpose."

paper(1) condemned McGill severely for his unauthorized assumptions of power which were received with particular ill grace from "a stranger recently exported from the political rubbish floating about Washington [D.C.]." He accused the "Olympia clique" of attempting to fix the capitol at Olympia before the next legislature met, of desiring to defeat a fair apportionment bill, and of securing the public printing for another year "to the political jockey club who now conducts the Pioneer and Democrat."(2)

1. "Marvel" to the Editor, August 18, Puget Sound Herald, August 31, 1860. He thought Walker would fail to accomplish anything.
2. Gallagher's application for an injunction was responsible for a more serious personal quarrel in the press. Edward Furste, editor of the Pioneer and Democrat, attacked Gallagher's counsel, Selicius Garfield, Elwood Evans, and Frank Clark, accusing Evans of offering to bet that Gallagher would be found drunk within half an hour after his removal from office, thereby inferring that this was his usual condition. - Pioneer and Democrat, August 24, 1860; Beardsley, Op. cit., pp. 264-265. Evans promptly denied he had made this statement. - Evans to Gallagher, Puget Sound Herald, August 31, 1860. Gallagher's retort to Furste in Idem., is a masterpiece of personal invective: "I have not ruined my constitution, and brought upon myself premature decrepit old age, impotent, toothless, and vindictive, by a series of beastly practices with the most degraded forms of Indian humanity. I have not, by any evil or wrong course, brought myself to the necessity of selling my birthright of freedom for a mess of pottage, and then been compelled to do the dirty work of a set of taskmasters; I have not acted the vampire, and sought to fatten myself upon the life-blood and reputation of the best men in the Territory. I have not exhausted the skill of physicians here, and gone to California seeking relief from the most loathsome of diseases, in order to protract a miserable existence to be devoted to the same disgusting vices. I have not slandered, vilified, traduced, and abused honest and patriotic men for the purpose of upholding a corrupt political dynasty by fraud, deceit, and falsehood. In short, I have neither written, edited (by proxy) nor have been connected with the meanest, most unreliable, dirtiest, and most contemptible sheet ever published in the United States, and miscalled a newspaper. ...If his 'accidency', J.E.No. 2, and the Pioneer's pusillanimous puppy, are the only champions of the Capitol at Olympia, that town must care but little for the location... Query--How can Christian men vote for a man to be public printer and conservator of public morals who is from Year's end to Year's end, and by day and by night, found in the saloons of Olympia playing cards for whiskey? I give it up." Furste's denial of these charges ended with the lines:

The work of clearing the sites for both the capitol and the penitentiary continued rapidly. On August 22, 1860, the Comptroller wrote McGill that his bond was acceptable but that he was not to expend further funds until the Treasury Department approved the sites, the plans, and the quality of building materials for the capitol and penitentiary.(1) This delay prevented sufficient construction on either building to avoid political trading when the legislature of 1860-1861 met.(2)

Port Townsend then attempted to gain the capital in case of a deadlock between Vancouver and Olympia by offering ten acres of upland prairie to be cleared without cost to the government and by guaranteeing adequate space for the legislature while the capitol was being built along with sufficient hotel and boarding accommodations for its members.(3) This offer received little support in the legislature,(4) however, since Paul K. Hubbs of Port Townsend and Arthur A. Denny of Seattle apparently agreed with the representatives from the Columbia River before the legislature organized that they would support Vancouver's claim for the capitol if the university were returned to Seattle

"Slander meets no regard from noble minds;
Only the base believe what the base utter."

Pioneer and Democrat, September 7, 1860.

1. Medill to McGill, August 22, 1860, Washington House Journal, 8th Sess., pp. 123-124, 1860-1861; Pioneer and Democrat, October 12, 1860, intimates that McGill's course was definitely approved by this letter.
2. Beardsley. Op. cit., pp. 266-267.
3. Washington Council Journal, Op. cit., pp. 45-47.
4. Ibid., pp. 45-53. Even Paul K. Hubbs of Port Townsend, president of the Council, did not push the suggestion. See Beardsley, Op. cit., pp. 267-272.

and the penitentiary located at Port Townsend.(1)

In his message to the legislature on December 6, 1860, acting-Governor McGill explained that his desire to enforce the Act of January 5, 1858, which made it the duty of the commissioners to contract for the erection of the building without delay, prompted his removal of Gallagher. He promised that since the penitentiary and the capitol sites were already cleared and the stone for the foundation of the penitentiary delivered and paid for, both buildings would be commenced as soon as he received the approval of the Bureau of Constructions of the Treasury Department.(2)

On December 11 and 12, 1860, the legislature passed the bills relocating the capital at Vancouver, the penitentiary at Port Townsend, and the university at Seattle.(3) The fact that the capital relocation bill passed both houses without de-

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1. Beardsley. Op. cit., pp. 271-272. It is difficult to explain Hubbs' deciding vote for the three removal bills on other grounds than that of a bargain in view of his reported promise to oppose removal from Olympia; but in case of removal he would back only Port Townsend's claim. - Ibid., p. 270, from Port Townsend, North-West, December 27, 1860.
 2. McGill to the Legislature, December 6, 1860, Gates, Op. cit., p. 83. There is some significance to the fact that the plans and work on the penitentiary were farther advanced than on the capitol. Even the Washington Standard, December 29, 1860, was dissatisfied with McGill's statement as to the reasons he removed Gallagher and hoped the legislature would rebuke him for this assumption of authority.
 3. Washington House Journal, 8th Sess., pp. 58, 60, 65-66, 1860-1861; Washington Council Journal, Ibid., pp. 55, 57, 62, 1860-1861; Laws of Washington, 8th Sess., pp. 3,4,5, 1860-1861. The Capitol Act comes first, the University Act second, and the Penitentiary Act follows these two measures.

bate and that the members from northern Puget Sound all voted for the removal is explained only on the basis of a "trade" agreed to before the legislature met.(1)

Even the Port Townsend and Steilacoom press, though opposed to Olympia as the capital, did not wish to see it removed to Vancouver. The Port Townsend Register(2) argued that it could not consent to Vancouver being the capital for more than one winter since the motive prompting the removal act was one of spite and malice and not of policy.(3) The Herald opposed moving the capital from the Sound.(4) One reason given for the unpopularity of removal in Washington Territory was that Portland backed it as a means to increase business there by having Washington's capital nearby.(5)

The Olympia press opposed the hasty method in which removal was accomplished. The Washington Standard(6) accused the legislature of too much haste in passing a bill of so great importance. The Pioneer and Democrat(7) insisted that it took an agreement involving all the public buildings to move the capital to Vancouver since the bill could not have passed on its own merits.

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1. Beardsley. Op. cit., pp. 273, 275. The bill passed the House 16 to 13 and the Council by 5 to 4. President Hubbs of Port Townsend cast the deciding vote.
 2. December 19, 1860, quoted from Ibid., p. 275.
 3. May 2, 1861.
 4. February 28, 1861.
 5. Snowden. Op. cit., Vol. IV, pp. 160-161.
 6. December 15, 1860.
 7. December 21, 1860. "This is the reason we see the Capitol, the Penitentiary, and the University all shifting positions to one note of music, like the dancers in a quadrille."

Near the end of the session of 1860-1861, the Clark County delegation introduced a bill providing for a popular referendum on the capital question at the July election in 1861.(1) The Vancouver group apparently felt certain that popular backing for removal would clinch the matter for Vancouver.(2) Another point of view is that a majority of the legislature "realized that they had exceeded their authority, and they hoped to get the approval of the people to confirm and strengthen their action if not to excuse it."(3) After the Council rejected referendum bills earlier in the session and after the capital was located permanently at Vancouver, the legislature voted to submit the question to the people.(4)

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1. Washington Council Journal, 8th Sess., p. 283, 1860-1861; Washington House Journal, Ibid., p. 429. The Council defeated like bills earlier in the Session. Washington Standard, January 5 and 12, February 9, 1861.
 2. Beardsley. Op. cit., pp. 277-278.
 3. Snowden. Op. cit., p. 163.
 4. Laws of Washington, p. 66, 1860-1861. It was claimed that Council President Hubbs by parliamentary technicalities defeated the second House referendum bill. - Washington Standard, February 9, 1861. Near the end of the session, Representative J. T. Bowles of Clark County introduced three bills directed against acting-Governor McGill. The first, censuring McGill for removing Gallagher, was defeated in the Council. The second, condemning McGill for not keeping the United States drafts at par, was so absurd that it was expunged from the Journal. The third, complimenting Gallagher for his efficient service as acting Capital Commissioner, caused an uproar ending the session. - Ibid., February 16, 1861. The Washington Standard considered the last of these motions queer as Gallagher had been elected "to do nothing". But had he been efficient in his duties, the Representatives from Clark County would not have had the opportunity of getting a bill passed locating "a capitol on paper" at Vancouver. "Here ended the proscriptions of Thurston County and the people in General, and Olympia in particular, at least till next December."

In the haste with which the bill was enacted relocating the capital at Vancouver, the enacting clause and date were omitted. Who was responsible for the omission on this bill and not the others, since the same persons likely drafted all three bills, is difficult to ascertain. Charges were made that the Public Printer who edited the Pioneer and Democrat, that some other Olympia citizens opposing relocation, that the "Olympia clique" who were accused of deliberately attempting to emasculate the law, and that the engrossing clerk and others tampered with the bill.(1)

The validity of the capital removal Act without an enacting clause had to be tested in the courts.(2) In the meantime the situation was further complicated when the people voted overwhelmingly in favor of Olympia on July 8, 1861.(3) Although

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1. Puget Sound Herald, February 28, 1861, claimed it was not a law and of no effect. The editor expected the next legislature to meet at Olympia. - Pioneer and Democrat, March 15, and 18, 1861. Associate Justice William Strong is reputed to have expressed the opinion that the removal bill was valid because there was another unchallenged bill on the statute books without an enacting clause. The Puget Sound press promptly reminded him that one might as well argue that two wrongs make a right. - Puget Sound Herald, May 2, 1861; Pioneer and Democrat, May 10, 1861. Strong was succeeded by Justice E. P. Oliphant before the capital removal Act was tested before the court in December, 1861.
 2. Beardsley. Op. cit., p. 282. The vote so officially proclaimed by acting-Governor McGill, August 2, 1861, is listed as: Olympia 1,239; Vancouver 639; Steilacoom, 253; Port Townsend, 72; Walla Walla 67; Seattle 22 with several scattered votes for a total of 2,315 votes cast. The voters had been called upon to rebuke the "bargain, sale, and corruption of the last legislature", and they did. - Washington Standard, July 6, 1861.
 3. Laws of Washington, 8th Sess., p. 49, 1860-1861.

an Act of December 11, 1861, required the Territorial Librarian to remove his office and the library from Olympia to Vancouver between June 2 and August 1, both McGill(1) and his successor, L. Jay S. Turney, refused to allow it on the grounds that the referendum of January 30, 1861, suspended the removal of the library until after the vote which proved favorable to Olympia.(2)

Where was the next legislature to meet? While Vancouver contended that the referendum had no real significance, acting-Governor Turney insisted that the will of the people was decisive.(3) A majority of the House favored Olympia while the Council was evenly divided.(4) When several members from Puget Sound, particularly from Pierce County, announced their intention to go to Vancouver and to act with the Columbia River members, the editor of the Steilacoom Puget Sound Herald(5) soundly rebuked them since a quorum there would merely insure the control of the legislature by the Columbia River delegation.

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1. Washington Standard, August 24, 1861, said of McGill that no Federal official in the Territory had received more unmerited abuse and malignant calumny than he because of his conscientious action on the capital question.
 2. Ibid., June 15, October 5, 1861. They claimed that logrolling was evident in the passage of the removal bill, and referred the problem of the removal of the library to Washington, D.C. Turney considered the time too short to make the removal before the legislature met. Cf. also, Beardsley, Op. cit., p. 281.
 3. Ibid., October 5, 1861.
 4. Beardsley. Op. cit., p. 282. Colonel Hubbs' vote governed the Council otherwise divided 4 to 4.
 5. November 14, 1861. The Herald insisted that the removal Act was a farce and that cooperating with Vancouver was merely adding "folly to folly".

The Herald thought that the referendum should prove to the Pierce County delegates that "nineteen out of every twenty" of their constituents disapproved the removal of the capital to Vancouver. Since the interests of the Sound were antagonistic to those of the Columbia, removing the capital south to spite Olympia was like "biting your nose off to spite your face, practically illustrated... .If the capital must be removed, remove it to some other town on Puget Sound; if you cannot do that, let it remain where it is."(1)

When the legislature convened on December 2, 1861, neither house had a quorum at Vancouver, but both elected officers. A majority apparently came to Olympia where several members refused to participate until the Supreme Court decided on the "capital case".(2)

Although required to sit at the "seat of government", the Supreme Court ignored the relocation Act and opened at Olympia. When the first case was called, a challenge to the jurisdiction of the court was immediately interposed. Since this challenge questioned the validity of the court's jurisdiction in all other cases then pending, the Supreme Court agreed to

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1. Puget Sound Herald, November 14, 1861. The same paper on February 28, 1861, had congratulated the people of Olympia and the Sound that the next legislature would meet at Olympia.
 2. Ibid., December 12, 1861; Washington Standard, December 7, 1861. Some of the members of both houses of the legislature met and adjourned daily.

hear the "capital case" first.(1) The opinion of the court(2) on December 9, 1861, held that the legislature had exceeded its powers under the Organic Act in declaring that the capital should be and remain at Vancouver; that the relocation Act had been made contingent upon the decision of the people expressed in their vote at the next general election; and that an Act without an enacting clause and without date is void.(3) The absent members of the legislature now journeyed to Olympia where the House organized December 17 and the Council the next day.(4)

The decision of the Supreme Court, however, did not in itself fix the capital at Olympia. In his message to the legislature December 19, 1861, acting-Governor Turney insisted that both the capital and penitentiary Acts of the former session were "very unfortunate" and suggested another referendum on the location of the capital and the construction of the penitentiary

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1. Beardsley. Op. cit., pp. 293-294. The argument on the validity of the removal Act consumed three full days with the best lawyers of the Territory participating. Selicius Garfield, Andrew J. Lawrence, former Justice F. A. Chenoweth, and Colonel Paul K. Hubbs, Sr., argued for the validity of the law, while Elwood Evans and former Chief Justice Edward Lander contended for its repudiation. The case was heard before Chief Justice Christopher C. Hewitt and Associate Justices Ethelbert P. Oliphant and James E. Wyche. - Ibid., pp. 284-285.
 2. Justice Oliphant rendered the opinion with Chief Justice Hewitt concurring.
 3. Washington Territorial Reports, Vol. I, pp. 116-124; Puget Sound Herald, December 12, 1861. Judge Wyche in an able dissenting opinion held that an enacting clause was not essential where not required by the rules of the legislature or by the Organic Act of the Territory. He contended that the court had no right to sit in Olympia and should adjourn immediately to Vancouver. - Ibid., pp. 124-133; Washington Standard, December 14, 1861, and March 22, 1862.
 3. Beardsley. Op. cit., pp. 285-286; Overland Press, December 19, 1861.

at Vancouver where preparations had already been made for it.(1) The representatives from a disappointed Vancouver continued their futile efforts to secure the capital until 1871.(2) The Council actually passed one of these bills in 1868 when the Committee on Corporations recommended it pass because the members were "liable at any time to be assailed by mob violence" at Olympia.(3) Such controversies as that over the location of the capital indicate why the powers of the Territorial legislature were curtailed after 1860.

When competition for the capital was revived near the end of the Territorial period, North Yakima, Ellensburg, Walla Walla, and Waitsburg, and not Vancouver, contended with Olympia for the honor. The issue, however, never again became a vital one in the legislature during the Territorial period.(4)

THE TERRITORIAL UNIVERSITY

The Territorial university was also a problem for the legislature during the 1860's. In 1854 Congress granted Washington Territory two townships of land for an university.(5)

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1. Turney to the Legislature, December 19, 1861, Gates, Op. cit., p. 94.
 2. Beardsley. Op. cit., p. 286. Bills were introduced in 1863, 1864, 1865, 1868, and 1871.
 3. Washington Council Journal, 1st Biennial Sess., pp. 109, 121, 161-162, 1867-1868.
 4. Beardsley. Op. cit., p. 286; Ibid., Vol. XXXII, No. 4, pp. 401-407, October, 1941. A bill to relocate the capital at North Yakima was defeated in the House by 1 vote in 1867-1868. - Washington House Journal, 11th Biennial Sess., pp. 181-182, 1867-1868.
 5. U.S.Statutes at Large, X, 305.

The legislature of 1854-1855 located the university in Seattle with a branch at Boisfort only to have the legislature of 1857-1858 move it to Cowlitz Farms. Although A. A. Denny desired the capital for Seattle, the Reverend Daniel Bagley persuaded him to secure the university instead and have Bagley appointed a Commissioner with power to seel the university lands and to begin building before the legislature could change its location again. Denny secured the university as planned in the bargain over the public buildings during the session of 1860-1861 and had Bagley appointed Chairman of the Board of University Commissioners with full power to act. (1)

Almost immediately a conflict arose over the sale of university lands. In his address to the legislature December 19, 1861, acting-Governor L. J. S. Turney questioned the legality of their sale. (2) Superintendent of Public Instruction, B. C. Lippincott, in his report to the legislature of 1861-1862, also criticized the university commissioners severely for selling valuable lands with a questioned title at \$1.50 an acre to build

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1. Laws of Washington, 8th Sess., pp. 16-18, 1860-1861; Snowden, Op. cit., Vol. IV, p. 369; Beardsley, Op. cit., p. 274. The other Commissioners were John Webster and Edmund Carr.
 2. Turney to the Legislature, December 19, 1861, Gates, Op. cit., pp. 93-94. At the end of the first year, Commissioner Bagley had sold over 20,000 acres of land at the minimum price of \$1.50 an acre allowed for university lands, a large portion of this land being timbered and "worthless except for the timber". The mill companies were willing to buy despite questionable title. - Report of the University Commissioners, Washington House Journal, 9th Sess., pp. 40-45, 1861-1863.

an institution that was not needed in the Territory.(1) The legislature supported Bagley, however, by electing him one of the University Regents for the next year.(2)

When the Federal Land Department notified the Territorial officials that they had no authority to sell the university lands, Daniel Bagley made two trips to the national capital in an effort to have these land sales legalized. The mill companies who had purchased large tracts of university land paid his expenses on these trips.(3) The influence of Bagley and his friends proved effective; for, in March, 1864, Congress confirmed all bona fide sales of university lands.(4)

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1. Report of the Superintendent of Public Instruction, December 10, 1861, in Ibid., pp. 67-70. Lippincott insisted that since there was not a young man in the Territory "who could pass an examination to enter the university course", he could see no immediate reason to found the university at all as yet. The ordinary process had been to establish the common school first, then the academies, colleges, and finally the universities; but Washington Territory was reversing the process by establishing the university first and other schools afterward.
 2. Washington Standard, January 25, 1862.
 3. Bagley, C. B. "Sale of University Lands by Daniel Bagley", in C. B. Bagley's Miscellaneous Articles, Pacific Northwest Collection, University of Washington. The significant fact that Governor William Pickering said nothing about university lands in his messages to the legislature during the period from 1862-1867 may be explained by the fact that Pickering himself was rather a heavy investor in university lands. - Pickering to Daniel Bagley, February 2, 1867, in Pickering Letters. Pickering wished to purchase more university lands even though he had already bought over 355 acres. On February 16, 1867, Pickering wished an additional 160 acres for his son.
 4. U.S. Statutes at Large, XIII, 28.

The university land question was concluded when Daniel Bagley's political enemies attacked him in the legislature. Their efforts to abolish the university commission(1) were successful during the legislature of 1866-1867.(2) Since the regents and Governor Marshall F. Moore attacked Bagley,(3) the legislature of 1867-1868 investigated the charges against him. The House committee, however, absolved Bagley of all these including a reputed debt of \$14,000 he owed the university and recommended that the university pay him over \$800 still due him.(4)

Governor Avan Flanders attempted to revive the issue in 1869 when he informed the legislature that the history of the university, its management, and the management of the university lands were a "calamity and a disgrace". He stated that nearly 44,000 of the 46,000 acres donated by Congress had been sold;

"...and there is nothing at present to show for this munificent donation but a building possibly worth fifteen thousand dollars, which appears better fitted for a monument to the folly and extravagance of the

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1. Washington Council Journal, 11th Sess., p. 97, 1863-1864; Washington House Journal, 12th Sess., p. 154, 1864-1865; Ibid., 13th Sess., pp. 105, 152, 1865-1866.
 2. Laws of Washington, 14th Sess., p. 114, 1866-1867.
 3. Pickering to Bagley, January 29, 1868, and February 25, 1868, Pickering Letters.
 4. Washington House Journal, 1st Biennial Sess., pp. 79-98, 187-201, 1867-1868; Ibid., pp. 313-314; Washington Council Journal, 1st Biennial Sess., p. 218, 1867-1868. Ex-Governor Pickering's relation to the whole question is illustrated by a letter to Daniel Bagley in which the former congratulates the latter on his success in convincing the legislative committee of the falsity of the charges of the regents and the Governor against him. - Pickering to Bagley, February 25, 1868, in Pickering Letters.

persons under whose direction it was built, than the purposes for which it was intended."(1)

He hoped that it was not too late to remedy the errors of the past, to gather up "what is left of the wreck", and carry on the university in a worthwhile fashion.(2)

An estimate of this political controversy is difficult to obtain. Bagley was apparently sincere in his efforts to secure the university of Seattle, to found it as soon as possible, and to run it on the high interest rates secured from the funds obtained from the land sales.(3) The need of an university may be questioned, especially since Governor Elisha P. Ferry in 1873 could declare that Washington Territory still had one only in name.(4) With the lands gone and still no univer-

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1. Washington Council Journal, 1st Biennial Sess., p. 218, 1867-1868. A Council committee in 1867-1868 reported that the grossest mismanagement of the lands had resulted in the dissipation of the Congressional donation, "and all that remains is the University building, worth possibly \$15,000 and a lot of notes and book accounts, some of them good and others worthless." Bagley's bond had mysteriously disappeared from the Secretary's office, hence it was doubtful that anything could be recovered if judgment were obtained against him. The committee report censured both Bagley and his associates on the commission.
 2. Flanders to the Legislature, October 7, 1869, Gates, Op. cit., pp. 149-150. Both Flanders and his successor, Governor Edward S. Salomon, recommended a Memorial to Congress for an additional grant of university lands. - Salomon to the Legislature, October 2, 1871, Gates, Op. cit., p. 166.
 3. Washington House Journal, 1st Biennial Sess., pp. 187-201, 1867-1868. The yearly interest rates ran as high as 18 per cent on the funds.
 4. Ferry to the Legislature, October 9, 1873, Gates, Op. cit., p. 181.

sity, Washington might blame this premature sacrifice of a valuable asset on Bagley(1) who did his duty as he recognized it, but one may conclude that the legislature which created the commission and empowered it to act was even more subject to censure.

THE PROBLEM OF APPORTIONMENT

The problem of legislative apportionment was often a difficult one, particularly since it was based on the number of qualified voters rather than population.(2) Inequalities of representation appeared after the session of 1859-1860 when the apportionment bill was reported "palpably erroneous and unjust" (3) to Thurston County in a possible effort to weaken the "Olympia clique" and insure the removal of the capital at the next session of the legislature.(4) This reduction of Thurston County's

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1. Bagley. Miscellaneous Articles, loc. cit. Bagley's primitive methods of keeping accounts and the depreciation of paper money during the Civil War only made him more vulnerable to the attacks of his enemies.
 2. Organic Act, Sect. 4.
 3. Pioneer and Democrat, December 23, 1859.
 4. Washington House Journal, 7th Sess., pp. 292-293, 1859-1860. The Council had amended the House bill so as to remove one of Thurston County's representatives. A Thurston County member then moved to call the bill an "unproportionment" rather than an "apportionment" bill. - Ibid., pp. 150, 155, 197-198. A committee to investigate the apportionment bill reported on the last day of the session that Thurston County was entitled to 5, rather than 4, members in the House and that Thurston and Sawamish Counties, rather than Pierce and Sawamish Counties, should have been united in a joint Council district. The majority of the committee insisted, however, that the bill as it then stood was the only bill that could pass that session. The minority report calling for an amendment to the bill to rectify this obvious injustice was defeated by a lack of a quorum.

representation in the House from 6 in the session of 1857-1858 to 3 members in that of 1861-1862 was due as much to population changes as to political conniving.(1) The Olympia papers, however, complained again during the session of 1860-1861 that the "capital-movers" were discriminating against Thurston County in the apportionment of that year.(2)

The apportionment injustice to Thurston County was soon dwarfed by that done eastern Washington to keep the western section in control of the legislature. The western representatives defeated a just apportionment bill in the legislature of 1862-1863 on the grounds that the imminent division of the Territory made such a bill unnecessary.(3) Walla Walla now opposed division because the eastern section could control the Territory by reapportionment.(4) The western officials were accused, therefore, of defeating apportionment to keep the control of the legislature in the Sound area and the capital at Olympia and not east of the Cascades.(5)

The legislature of 1871 used the election returns of 1870 to reapportion the House thereby increasing the number of

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1. For population figures in 1860 see Pioneer and Democrat, September 14, 1860. On apportionment see Snowden, Op. cit., Vol. IV, pp. 155-156.
 2. Washington Standard, January 12, 1861.
 3. Ibid., January 16 and 24, 1863.
 4. Walla Walla Statesman, January 17, 1863.
 5. Ibid., February 14, 1863. One year later Dugan of Walla Walla insisted that the upper Sound had been sold out on this occasion by the "Olympia Clique" in the defeat of this apportionment bill. - Washington Standard, January 16, 1864.

Representatives for Thurston, King, and Snohomish Counties and decreasing Clarke County's representation slightly. In 1870 the Sound Counties cast a total of 3,600 votes; the rest of the Territory only 2,800, yet each section had 15 Representatives in the House. Since representation was still according to qualified voters, the injustice of this apportionment was apparent; however, Governor Salomon vetoed the bill.(1)

A major task of reapportionment came in 1878 when Congress reduced the number of members in the House from 30 to 24 and increased the Council from 9 to 12. Furthermore, apportionment was henceforth not by qualified voters as formerly but by population.(2) Contrary to the expectation of the eastern part of the Territory the western area still controlled the legislature.(3)

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1. Washington Standard, December 2, 1871. Said the Washington Standard: "Clarke County has had for many years more than a fair share of representation and Thurston less than she is entitled to. His Excellency over-rides the will of the Assembly, however, upon the ground that the apportionment is unequal."
 2. U.S.Statutes at Large, XX, 193; Walla Walla Union, August 16, 1879.
 3. Walla Walla Union, October 19, 1878. The newspaper expected that the population of eastern Washington would by this time exceed Puget Sound and allow the eastern part of the Territory to control the legislature in 1881, "if the Council and Legislative districts are not Gerrymandered". These hopes do not seem to have been well-founded as the Census of 1880 gave the western part of the Territory over 39,000 population to nearly 35,700 for the eastern section. - Figures compiled from Walla Walla Watchman, August 13, 1880.

THE VOTE

Another important question before the legislature was that of the elective franchise. The Organic Act allowed the legislature to prescribe the rules for voting in the Territory subject to the restrictions that only citizens above the age of 21 could vote and no members of the Army and Navy could vote unless their permanent residence had been in the Territory for at least six months.(1)

The first franchise act in 1854 was loosely drawn.(2) An amendment allowing civilized half-breeds to vote was incorporated into the law after Arthur A. Denny's provision granting the suffrage to women above 18 years of age had been defeated by one vote.(3) Unfortunately the law ignored the provision in the Organic Act restricting transient soldiers and sailors from voting in Washington Territory. When the second legislature corrected this omission,(4) the soldiers at Vancouver rioted when they were not permitted to vote in 1855.(5)

Since the franchise acts of 1866 and 1867 granted the vote to "all white American citizens" above the age of 21,(6) the

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1. Organic Act, Sect. 5.
 2. Washington House Journal, 1st Sess., pp. 58-61, 1854; Pearce, Stella E., "Suffrage in the Pacific Northwest; Old Oregon and Washington", Washington Historical Quarterly, Vol. III, No. 2, p. 108, April, 1912.
 3. Washington House Journal, Ibid., p. 94; Washington Council Journal, Ibid., p. 110; Pioneer and Democrat, April 22, 1854.
 4. Pearce. Op. cit., p. 109; Laws of Washington, 2d Sess., p. 7, 1854.
 5. Pioneer and Democrat, October 5, 1855. Several persons were wounded in the riot. The Democratic Council defeated an effort to allow the Territorial volunteers to vote during the Civil War. Washington Standard, January 23, 1864.
 6. Laws of Washington, 13th Sess., p. 24; 14th Sess., p. 7, 1865-1867.

question arose if women were American citizens and entitled to vote along with men. Many also insisted that the provision in the Fourteenth Amendment that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens... ." applied not only to men but also to women. In 1869 and again in 1870 Mrs. Mary L. Brown was refused the vote at Olympia on the basis that she was not an American citizen. When she quoted the Fourteenth Amendment in protest, she was informed that the laws of Congress did not extend over Washington Territory. (1) So many women voted, however, in the election of 1870 that the legislature of 1871 recognized the problem. After defeating a woman suffrage bill, (2) the legislature passed an Act that

"Hereafter no female shall have the right to ballot or vote...in this Territory, until the Congress of the United States of America shall, by direct legislation upon the same, declare the same to be the supreme law of the land." (3)

The women suffragists, however, continued their agitation. (4)

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1. Pearce. Op. cit., p. 110. In 1871 Miss Susan B. Anthony and Mrs. Abigail Scott Duniway toured Washington Territory, the former speaking to the legislature on October 20, 1871. Later in October they organized the first Territorial Woman Suffrage Organization at Olympia. - Ibid., pp. 110-111.
 2. Washington House Journal, 3d Biennial Sess., pp. 60-61, 1871.
 3. Laws of Washington, 3d Biennial Sess., p. 175, 1871.
 4. The Vancouver Independent, November 13, 1875, reported that the Woman Suffrage Bill that failed in 1875 had secured three more votes than the one for 1873 giving its exponents some encouragement.

The legislature again considered woman suffrage seriously in the decade after 1880.(1) Two bills in 1881, one to allow women equal suffrage with men, and the other to allow women who paid taxes on property valued at \$500 or more to vote, passed the House but were defeated in the Council.(2) By 1883, however, the women received the right to vote.(3) The Washington Standard received "greater satisfaction" from the fact that the effort of many years had now been rewarded. "All honors say we to the members of the Ninth Biennial Session of the Legislative Assembly for this righteous act."(4)

The victory, however, was only temporary. Woman suffrage was challenged primarily on the alleged right of women to act as jurors.(5) In the case in which Mollie Rosenkranz was indicted at Tacoma for keeping a house of ill-fame, a motion to set aside because women served on the jury was denied by Judge Roger S. Greene.(6) The Supreme Court upheld this opinion in Rosenkranz v. Territory.(7)

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1. The problem of woman suffrage in the constitutional conventions of 1878 and 1889 is discussed in the chapters by those headings.
 2. Washington Standard, November 18, 1881; Pearce, Op.cit., p.111.
 3. Laws of Washington, 9th Biennial Sess., pp. 39-40, 1883; Report of the Secretary of the Interior, 48th Cong., 2d Sess., Ser. 2287, p. 616, 1883-1884.
 4. Washington Standard, November 16, 1883.
 5. Ibid., April 18, 1884. This challenge was made at the April term of court in Seattle.
 6. Ibid., May 30, 1884.
 7. Washington Territorial Reports, Vol. II, pp. 267-283. Justice John P. Hoyt wrote the opinion declaring that married women residing with their husbands were competent grand jurors. Justice George Turner wrote a dissenting opinion. See also Schilling v. Territory, Ibid., pp. 283-286.

However, in 1887 the Territorial Supreme Court reversed this decision and invalidated the Woman Suffrage Act. The right of women to sit on the jury was again challenged in a case involving an alleged felony for swindling a gambler out of \$610. Justice Hoyt refused to recognize this challenge, and the case was appealed to the Supreme Court. Apparently Chief Justice Greene and Justice Hoyt considered the woman suffrage act valid; but Hoyt was barred from sitting on the case because he acted on it in the lower court.(1) In the case of Harland v. Territory, Justices George Turner and William G. Langford, Cleveland appointees, overruled the decision of the lower court and invalidated the Woman Suffrage Act.(2)

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1. "How Washington Women Lost the Ballot", Folder, Pacific Northwest Collection; Snowden, Op. cit., Vol. IV, p. 276.
 2. Washington Territorial Reports, Vol. III, pp. 131-163; Washington Standard, February 4, 1887. In Harland v. Territory, Justice Turner insisted that the designation, "An Act to amend Section 3050, Chapter 238, of the Code of Washington Territory" did not conform to the provision of Section 6 of the Organic Act requiring that the object of an Act be expressed in its title, and therefore, the Woman Suffrage Act was unconstitutional and void. The opinion of Rosencrantz v. Territory was reversed; as women were no longer qualified electors, they could not serve as jurors. The decision of Rumsey v. Territory, in January, 1888, specifically denied the right of married women to sit as grand jurors on the basis of the unconstitutionality of the woman suffrage provision. - Washington Territorial Reports, Op. cit., pp. 332-333. See also White v. Territory, Ibid., pp. 397-406. The Acts providing for the meeting of the district courts and the Supreme Court itself were found defective. Even the Code of 1881 was questioned on the same basis as that found in Turner's decision. - Washington Standard, February 11, 1887.

Since the former Act was declared unconstitutional because of a fault in its title, the legislature of 1887-1888 corrected this defect and restored woman suffrage.(1) When in the next election the vote of Mrs. Nevada S. Bloomer, a bartender's wife, was rejected by the election officials at Spokane, she sued them for \$5,000 damages.(2) Justice L. B. Nash decided the new law was unconstitutional;(3) and on appeal, the Supreme Court upheld his decision in the case of Bloomer v. Todd.(4)

Two statements from the Washington Standard, a paper that had previously favored woman suffrage, will indicate a change of attitude in the Territory toward women voting. The comments of this paper on the decision of Bloomer v. Todd are significant: "The greatest objection urged against the passage of the law was that women were too emotional to wield political power with the prudence of moderation. This, we regret to say, proved true."(5) And again from the same paper:(6)

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1. Laws of Washington, 11th Biennial Sess., p. 93, 1887-1888; Washington Standard, January 13, 20, 1888. Another Act submitting the question of female suffrage to the voters was rejected in the House. See Pearce, Op. cit., p. 112; Washington Standard, January 20, 1888.
 2. "How Washington Women Lost the Ballot", Loc. cit.
 3. Washington Standard, May 25, 1888.
 4. Washington Territorial Reports, Vol. III, pp. 599-623. The contention in this case was that the word "male" was intended before the word "citizen" in the statement of basic voting requirements in Section 5 of the Organic Act; therefore, the recent action of the legislature in granting the vote to women was contrary to the Organic Act, and as such, unconstitutional and void.
 5. Washington Standard, May 25, 1888.
 6. Ibid., May 10, 1889.

"Its advocates will have to present many convincing arguments before there will be a decided sentiment in favor of extending the elective franchise to a class, who in the use of the right several years by no means showed that it would be for the public welfare for it to become part of the organic law of the new State. Many of the original suffragists admit that they have had their confidence shaken in the benefits to be derived... by the use made of the ballot while it was in the hands of the women."

PROHIBITION

The Territorial legislature also considered prohibition. (1) A proposed referendum was tabled in the House during the first session in 1854. (2) A like bill passed the second session in 1854-1855, testing prohibition at the next election. (3) The people rejected it, however, by a vote of 563 to 650. (4)

The legislature of 1885-1886 revived the prohibition issue by passing a local option law with the basic unit as the voting precinct. (5) The lower courts rendered conflicting de-

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1. On this topic see Walker, Anna Sloan. "History of the Liquor Laws of the State of Washington", Washington Historical Quarterly, Vol. V, No. 2, pp. 116-118, April, 1914.
 2. Pioneer and Democrat, April 15, 1854.
 3. Washington House Journal, 2d Sess., pp. 95, 110-111, 1854; Washington Council Journal, Idem.; Laws of Washington, Ibid., p. 29.
 4. Pioneer and Democrat, August 31, 1855. The Puget Sound Courier, July 5, 1855, claimed that fraudulent measures were used to defeat the bill by counting the blanks as votes against it.
 5. Laws of Washington, 10th Biennial Sess., p. 31, 1885-1886; Washington Standard, January 8, 15, 1886. There was no opposition reported in the House and only three votes in the Council.

isions as to the validity of this Act.(1) When appealed to the Supreme Court in 1888, however, in the cases of *Lessman v. Territory* and *Thornton v. Territory*, the court declared the Act unconstitutional as an unwarranted grant of legislative authority to voting precincts which were not municipal corporations and therefore could not exercise the power granted.(2)

After surveying the legislative history in Washington Territory with its constructive accomplishments(3) offset by

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1. Washington Standard, September 10, 1886. Judge Langford declared the Act unconstitutional in *Schuman v. Territory*. Judge Turner upheld its constitutionality, however, in *Churchill v. Yakima Board of County Commissioners*. - Washington Standard, November 26, 1886.
 2. Washington Territorial Reports, Vol. III, pp. 452, 482-498. The legislature was accused of granting its authority to an absolute democracy which might become "unchecked in its impulses" if the process continued. - *Thornton v. Territory*, Ibid., p. 494.
 3. The legislature charged several public officials with incompetency and graft during the Territorial period. Register William B. Rankin was censured for incompetency by the legislature of 1859-1860; and Receiver Selucius Garfield also of the land office was spared this fate when his name was removed from the report by the House. - Washington House Journal, 7th Sess., p. 199, 1859-1860. The legislature of 1871 charged that the accounts of the Territorial Auditor and the Territorial Secretary were in a lax condition, and that the so-called balance of over \$9,000 in the Territorial funds was a "fictitious one". - Ibid., 3d Biennial Sess., pp. 233-234, 1871. Some of the financial corruption of the Grant era found its way to the Pacific Coast. The House committee on examining the cost bills found in the Auditor's office were "struck speechless with admiration at the eminent financeering ability of several of the sheriffs, but particularly that of Sheriff Carson" of Pierce County. He had charged \$1,031 to transport a prisoner to Vancouver and return with two. Among other items, he listed \$20 to go from Portland to Vancouver by steamer though the regular fare was only \$3. The committee concluded that he had chartered the whole steamer "to the admiration of the natives of Portland and particularly the Oregon Steam Navigation Company." A reputed charge on the return trip of \$35 was investigated to find that Carson had paid only \$6

political conflicts and petty quarrels, reckless disregard for Washington's natural resources and assets, and the exaltation of personal interests over the general welfare, it is not difficult to understand why Congress restricted the authority of a legislature whose original powers were relatively broad.

and pocketed the rest. When one of the Territorial convicts kept in the Pierce County jail escaped and was not apprehended for three months, Carson not only charged \$2 a day for his board but brought in a clothing bill for him during the same period. "In our opinion," continued the ironical committee report, "the gravel wastes and fir solitudes of Pierce [County] can never afford scope for the brilliant financial ability and fertile resources of this officer. Let him seek the nation's great metropolis, New York, and we are sanguine that Boss Tweed will at once hand over the belt to the 'clamdigger sheriff'." - Ibid., pp. 234-235.

CHAPTER VI. THE TERRITORIAL JUDICIARY

According to the Organic Act, the judicial power of the Territory was vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court which met annually at the Territorial capital consisted of a chief justice and two associate justices who were also the judges for the three district courts. The relative jurisdiction of each of the courts and the times and places for the meeting of the district courts were prescribed by law with the restriction that justices of the peace could not act on cases affecting the title of land or exceeding \$100 in value. The supreme and district courts possessed both chancery and common law jurisdiction. Appeals were allowed in all cases from the district courts to the supreme court and from the territorial supreme court to the United States Supreme Court if the value of the property exceeded \$2,000, or if the Constitution of the United States, Acts of Congress, or treaties with foreign powers were involved. (1) Said Delegate Maginnis of Montana in a speech in the House of Representatives in 1884: "While all parts of the Territorial system are objectionable, there is no

1. Organic Act, Sect. 9.

part of it that has been so hateful as the judicial part of it."

(1) An evaluation of this system in Washington Territory will be of value.

EARLY LIMITATIONS

The first significant change in the Territorial court system came in 1856, when Congress stipulated that the judges of the supreme court were to appoint the times and places for holding the courts in each district, which courts were not to be held at more than three places in any one Territory. (2) Since the Territorial courts heard both Federal and Territorial cases, they were previously considered United States district courts; but in this Act they were designated simple as "district courts of the Territories", (3) which meant a loss of prestige for them.

In a Territory the size of Washington, the restriction to only three places to hold court created real hardships. The legislature of 1856-1857 attempted to relieve the settlers by creating a novel court composed of the probate judge, and two justices of the peace and of his selection, which had criminal jurisdiction over all misdemeanors and concurrent jurisdiction

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1. Congressional Record, 48th Cong., 1st Sess., p. 2778, 1884. The reason given was that the central government considered Territorial cases unimportant and appointed incompetent lawyers to the Territorial judiciary.
 2. U.S. Statutes at Large, XI, 49, 50. The judges also were to select only one clerk for each district and to discharge grand juries when they saw fit.
 3. Idem.; Evans, Elwood, History of the Pacific Northwest: Oregon and Washington, Vol. I, p. 507.

with the district court in all civil cases up to \$500.(1) Since the legality of this court, however, was questioned from the first, it was abandoned by 1860.(2). In January, 1863, the legislature revived the court again and broadened it to include concurrent criminal jurisdiction with the district court over all crimes and misdemeanors.(3) When the legality of this court was again questioned, it was abandoned the following year.(4)

In order to relieve the congested district courts. Congress in 1858 authorized the district judges to hold special courts within their districts which heard only Territorial cases and whose expenses were paid by the Territory or the county in which the court was held.(5) Even this failed to compensate for the restric-

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1. Laws of Washington, 4th Sess., pp. 15-16, 1856-1857; Beardsley, Arthur S., and, McDonald, Donald A., "The Courts and Early Bar of Washington Territory", Washington Law Review and State Bar Journal, Vol. XVII, No. 2, p. 77, April, 1942.
 2. Evans. Op. cit., pp. 507-508. The grant of criminal jurisdiction to the probate court was repealed in January, 1859, and the grant of civil jurisdiction a year later.
 3. Beardsley and McDonald. Loc. cit.; Laws of Washington, 10th Sess., pp. 199-200, 1862-1863. Appeals from the probate court were allowed to the district court.
 4. Laws of Washington, 11th Sess., p. 22, 1863-1864.
 5. Beardsley and McDonald. Loc. cit. On January 5, 1859, the Washington Supreme Court met at Olympia and provided for a court at Steilacoom for Territorial business only. While the legislature of 1858-1859 confirmed this action of the supreme court, the legislature of 1860-1861 repealed it, apparently on the insistence of the Pierce County auditor that the expense of this court was too great. The argument, however, that the added expense of taking cases 25 to 30 miles to court at Olympia was greater than paying to have the court come to Pierce County, had its effect as the Steilacoom court was re-established by 1862. - Puget Sound Herald, February 21 and March 14, 1861; Beardsley and McDonald, Op. cit., pp. 77-78.

tions placed on the Territorial courts by the Act of 1856. The long distances between the three district courts and the difficulty and expense of transportation due to the undeveloped nature of the country amounted to a practical denial of justice except for the few residents in the three counties in which the courts were held.(1) If the courts could not come to the people, the people could not come to the courts.

The legislature repeatedly Memorialized Congress protesting that the Act of 1856 subjected the people of the Territory to great inconvenience and expense, requesting that the district courts be allowed to meet in each county in the Territory, asking that the Territories be allowed to elect their own judges, requesting the appointment of two additional district judges for the Territory, and asking that the legislature be allowed to designate the places at which the courts were to be held.(2) As a result of these Memorials, Congress passed an Act in 1863 providing that the district courts in Washington Territory could meet at three places in each district and that the legislature could not appoint the times and places for the meetings of the district courts in each district.(3)

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1. Evans. Op. cit., p. 508.
 2. Laws of Washington, 5th Sess., p. 88, 1857-1858; 6th Sess., p. 90, 1858-1859; 7th Sess., p. 511, 1859-1860; 9th Sess., p. 143, 1861-1862. A Memorial in 1862 requested Congress to allow the holding of two terms of the district court in the third judicial district as the population influx due to the gold rush in the eastern part of the Territory had necessitated the making of two judicial districts there where one had existed before and the combining of two former districts in the western half of the Territory into the third district now. - Ibid., p. 146.
 3. U.S. Statutes at Large, XII, 648.

The legislature of 1862-1863 created several new Territorial courts for the various counties. As the legislature organized new counties thereafter, it provided them with these Territorial courts.(1) The restrictions on the district courts and the new Territorial county courts illustrate the dual nature of the Territorial judicial system; it was both a Territorial and a Federal system, but largely Territorial.(2)

JUDICIAL ABSENCES

The legislature of 1865-1866 petitioned Congress for the popular election of Territorial judges because two of the three judges had been absent from the Territory for so long a time during the last year that the supreme court and a good many of the district courts could not meet, thereby causing inconvenience and embarrassment to the people of the Territory.(3) Although a bill was introduced in Congress in 1867 to remedy this abuse, no action was taken until the Revised Statutes were issued in the following decade at which time the President had to sanction the absence or the offending official might lose his salary for the year in which the absence occurred.(4)

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1. Beardsley and McDonald. Op. cit., p. 78.
 2. The Federal Government was reluctant to pay additional money to accommodate purely Territorial cases.
 3. Laws of Washington, 13th Sess., p. 219, 1865-1866. Justice J. E. Wyche defended his absence in 1865, on the basis that he had held all courts for four years, two years for Chief Justice C.C.Hewitt who was in the east. Hewitt, Justice E.P.Oliphant, Governor William Pickering, and Surveyor-General Anson G. Henry had all been absent longer than he. Pacific Tribune, Olympia, February 11, 1866.
 4. Congressional Globe, 39th Cong., 1st Sess., p. 1628, 1866; Revised Statutes, Sect. 1884.

LATER CHANGES

While the changes in the judiciary after 1870 were not as great as those in the legislature and the Executive, still the National Government increasingly defined the jurisdiction of the courts during this period. The policy in bankruptcy cases was co-ordinated with that in the United States district courts.

(1) An even more important question of jurisdiction was settled in 1874. Because the Territorial Organic Acts allowed the district courts to exercise common law and chancery jurisdiction, (2) the question arose whether these jurisdictions were to be exercised separately or whether they might be exercised together in the same proceeding. Since the legality of the Territorial codes or rules of practice which authorized a mingling of these jurisdictions in the same proceeding was in question, (3) Congress in 1874 authorized this mingling, and confirmed those codes and rules of procedure providing for it. (4)

The Revised Statutes (5) made minor changes in the Territorial judiciary. Cases involving the sale of liquor to Indians, which had been Federal offenses before, were now Ter-

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1. U.S. Statutes at Large, XVI, p. 541.
 2. Revised Statutes, Sec. 1868.
 3. Congressional Record, 43rd Cong., 1st Sess., pp. 1232, 2473, 1874.
 4. U.S. Statutes at Large, XVIII, pp. 27-28.
 5. For a more complete discussion of the judiciary under the Revised Statutes see the chapter on the Revised Statutes. This includes a comparison of the various court systems of the Territories.

ritorial crimes unless the sales were made on an Indian Reservation or on Indian land. The change tended to shift the main burden of prosecution and trial from the Federal to the Territorial Government.(1) This had direct bearing on the relation of the Federal Government to the Territories because the United States paid for the prosecution of violators of Federal law while the Territory had to pay for the prosecution of Territorial violators.(2)

Justices of the peace were now elected rather than appointed.(3) The problem of whether another justice of the peace could be appointed in case of a vacancy or a special election had to be called to fill the office arose in 1880. Most Territories filled these vacancies by appointment, but the courts questioned the legality of this procedure. Realizing the inconsistency of requiring a special election merely to fill a minor vacancy, Congress in 1880 authorized the appointment of

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1. Puget Sound Courier, April 3, 1875.
 2. Revised Statutes, Sect. 1824.
 3. Ibid., Sects. 1856, 1867. They were still not to have jurisdiction over any case in which the title of land came in question or where the claim exceeded \$100. - Ibid., Sect. 1926. This was the figure for all the Territories except Colorado and Arizona where the sum was fixed at \$200. - Ibid., Sect. 1927. The novel civil and criminal jurisdiction of the probate courts of Colorado and Montana is mentioned in the chapter on the Revised Statutes. Two later efforts were made to have this jurisdiction raised to cases involving up to \$300, as it was in Colorado and Arizona.-In 1879-1880, House Committee Reports, 46th Cong., 2d Sess., Ser. 1935, No. 472; Congressional Record, 47th Cong., 1st Sess., p. 6740, 1882.

justices of the peace between elections.(1)

Since the legislatures had used their right to form the judicial districts and assign the judges as a political weapon against judges of an opposing political party, an effort was made in Congress in 1875 to grant these prerogatives to the supreme court.(2) This change was denied, however, because even the United States Supreme Court did not fix the boundaries of the Federal district courts, and because the judges would avoid undesirable mining communities that needed their services badly and live only in desirable localities.(3)

With the rapid increase in population it became evident that three district courts were insufficient for all the judicial business of the Territory. As early as 1876 the legislature petitioned Congress to allow four, rather than three, meetings of the district court in the Third District.(4) In

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1. Congressional Record, 46th Cong., 2nd Sess., pp. 2244-2245, 1880. "To require that a vacancy in such an office," reported the House Committee of Territories, "of an inferior grade, must be filled only by election while more important offices are filled by appointment seems an anomaly, and must evidently have been an oversight or mistake made in codifying the Statutes at Large." - U.S. Statutes at Large, XXI, 74.
 2. Washington Standard, April 25, 1874; Congressional Record, 43d Cong., 2d. Sess., p. 733, 1875.
 3. Congressional Record, Loc. cit. The system of selection remained the same as it had been before in the Territories. These methods are discussed in the chapter on the Revised Statutes. The legislature formed the districts and assigned the judges in Washington Territory.
 4. Passed in 1875. House Miscellaneous Documents, 44th. Cong., 1st Sess., Ser. 1701, No. 97.

1881 and again in 1883 the legislature requested a fourth judicial district in the Territory.(1) This change was urged not only because it was necessary but because it would provide sufficient judges so that the judge who acted on the case in the lower court would no longer be needed on the supreme court.(2) In debating this change Delegate Maginnis of Montana claimed that the Territorial judiciary was the most hateful part of Territorial Government, largely because Congress thought that the cases in Territorial courts were unimportant, making any lawyer competent to try them. As a result, broken-down judges and men without capacity or integrity were often sent to the Territories.(3) Congress responded to these arguments by granting an

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1. Laws of Washington, 8th Biennial Sess., pp. 252-253, 1881; Ibid., 9th Sess., p. 423, 1883.
 2. Ibid., p.423; Congressional Record, 48th Cong., 1st Sess., p. 2778, 1884. The House Committee claimed that the bar and citizens of the territories opposed the judge who tried the case in the lower court sitting on it in the supreme court. The rush of Territorial judicial business also required an additional judge. The Memorial from the legislature of Washington Territory passed in 1883 was incorporated in the Committee's Report. Washington's area was 70,000 square miles and her population 150,000 in 33 counties. Three judicial districts had been formed of these counties with some 20 terms of court each year being held in each of these districts at the various county seats. As a result, the terms of court were short; important business was rushed; and the judges greatly overworked. The Memorial held "this truth to be self-evident, no judge should be subjected to the delicate duty of trying whether his own decision should be reversed." To remedy this difficulty the legislature requested four judges with a prohibition that the judge who tried the case in the district court should not sit on the supreme court when it judged the appeal from his court.
 3. Congressional Record, loc. cit.

additional judge for each of the territories and by eliminating any judge who had tried a case in the lower court from acting on it when it was appealed to the supreme court.(1)

In 1885 Congress attempted to make the basis for appeals to the United States Supreme Court uniform in all the Territories. Up to this time the amount involved had to exceed \$2,000 in Washington Territory and only \$1,000 in the rest of the Territories. Appeals were allowed from the supreme court of Washington Territory when the "Constitution, or a statute, or treaty of the United States was brought in question"; but this provision did not apply to the courts of the other Territories or to the court of the District of Columbia. The House Committee requested that the basic figure of \$5,000 in value for appeals from the circuit courts of the United States be adopted for all cases appealed to the United States Supreme Court.(2) Congress followed this suggestion and also allowed appeals to the Supreme Court in cases involving patents or copyrights, or the validity of "a treaty or statute of or an authority exercised under the United States" without regard to the sum or value in dispute.(3)

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1. U.S.Statutes at Large, XXIII, 102. There was some difficulty in making an adjustment to four rather than three districts before the legislature of 1885 met, but this seems to have been adjusted fairly well. - Report of the Secretary of the Interior, 48th Cong., 2d Sess., Ser. 2287, pp. 616-617, 1884; Washington Standard, November 28, 1884.
 2. House Committee Reports, 48th Cong., 1st Sess., Ser. 2257, No. 1260, 1883-1884.
 3. U.S.Statutes at Large, XXIII, 443; Washington Standard, January 23, 1885.

With Statehood, Washington constituted one district in the United States district courts divided into four subdivisions roughly comparable to the four Territorial district courts.(1)

This in brief was the court system created by Congress for the Territorial judiciary from 1853 to 1889. How well this system functioned merits consideration.(2)

IMPORTANT DECISIONS

Washington's court system had its inception even before Washington became a Territory. The Oregon legislature authorized the first trial which was held at Fort Steilacoom October 1 to 3, 1849, to try six Indians for murdering Leander C. Wallace. With Chief Justice William P. Bryant of Oregon presiding, the court sentenced two of the six to death and executed them the following day in the presence of the whole tribe.(3)

In 1850 Judge William Strong began to hold regular terms of court north of the Columbia River, although he was not assigned to this northern district until 1853. He took little significant action at either the 1850 or the 1851 terms of court at Jackson Prairie with the possible exception of his quarrel with John B. Chapman over the proper place for the court to meet with occupied much of its attention in 1851.(4)

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1. Supplement, Revised Statutes, 51st Cong., 1st Sess., pp.711-712, 1890.
 2. For the part played by the courts during martial law see the chapter on that subject.
 3. Beardsley and McDonald. Op. cit., pp. 59-61.
 4. For a discussion of this quarrel see the first chapter. Ibid., pp. 61-63.

The January, 1852, term of court decided on the important Mary Dare case. The new Collector of Customs(1) placed two Hudson's Bay Company boats under bond for violation of the revenue law. One of these boats was soon released, but the Mary Dare was declared forfeited. Dr. William F. Tolmie, Chief Factor of the Hudson's Bay Company, petitioned the court, addressed to the Secretary of the Treasury, asking that the forfeiture of the Mary Dare be remitted. The Treasury Department later granted this request after the Hudson's Bay Company paid the duties, and all other charges were dismissed at the April term of court in 1853.(2) Judge Strong later learned that he was acting in Washington Territory outside of his Oregon jurisdiction at this April term of court; but since his jurisdiction was never challenged, he became the first de facto judge of Washington Territory.(3)

The first regular judges appointed by President Pierce for the new Territory were Edward Lander, Victor Monroe, and O. B. McFadden.(4) Judge Monroe held the first regular term of court in Washington Territory on January 2, 1854, at Cowlitz Landing.(5) He was removed in August, however, on the false representations that he left the Territory; and Francis A. Cheno-

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1. Simpson P. Moses was Collector and Elwood Evans, assistant.
 2. Beardsley and McDonald. Op. cit., pp. 63-65; Washington Standard, January 13, 1873.
 3. Beardsley and McDonald. Op. cit., p. 65.
 4. The circumstances leading up to McFadden's appointment are related in the first chapter.
 5. Beardsley and McDonald, pp. 66-68, op. cit.

weth, whom Monroe had admitted to the bar at the first term of court, was appointed in his stead.(1)

The early courts had some practices which seem strange today. Oregon attorneys had to be readmitted to the bar in Washington Territory; attorneys admitted in one district had to be readmitted in the other two; and, attorneys admitted in all three still had to be admitted to practice before the Territorial supreme court.(2)

THE FIRST CODE

In compliance with the suggestion of Governor Isaac I. Stevens, the first legislature made the appointment of a Code Commission its first business on February 28, 1854.(3) Edward Lander, Victor Monroe, and William Strong were appointed Code Commissioners.(4) They submitted their work to the legislature

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1. Bancroft, Hubert Howe. "Washington, Idaho, Montana", History of the Pacific States, Vol. XXVI, p. 80; Beardsley and McDonald, Op. cit., pp. 67-69.
 2. Beardsley and McDonald. Op. cit., p. 69.
 3. Beardsley, Arthur S. "Compiling the Territorial Codes of Washington", Pacific Northwest Quarterly, Vol. XXVIII, No. 1, p. 4, January, 1937; Stevens to the Legislature, February 28, 1854, Gates, Charles M., Messages of the Governors of Washington Territory, p. 7. Stevens said: "In the matter of legislation, I would suggest that, as there seems to be some ambiguity as to the state of statute law at present in force in this Territory, some course be adopted which, while it frees us from the present uncertainty, shall not render the community entirely destitute of the law. Such a result might be effected, by enacting such of the laws of Oregon as still remain applicable to this Territory, and by having at the same time suitable persons occupied in preparing such Acts as the present exigencies may need." The Act passed March 3, 1854.
 4. Laws of Washington, 1st Sess., p. 451, 1854. The choice was called a fortunate one. Snowden, Clinton A. History of Washington, Vol. III, p. 237.

by individual laws in order not to violate the Organic Act which required that each Act embrace only one object which was to be expressed in its title.(1) They did their best work in drafting the various practice and procedural codes.(2) The Civil Practice Act was based upon the laws of New York, Indiana, and Ohio, the States in which the commissioners resided before coming to Oregon. The other Acts were influenced by the laws of Oregon which in turn had been borrowed from the laws of Iowa.(3)

The final report of the Code Commission was submitted shortly before the legislature adjourned on May 1, 1854. In a letter to the legislature the three judges expressed the feeling that they had been honored in being able to assist in framing a body of laws and the regret that time had been so short and available statutes so limited that their work contained faults that would have to be corrected at a later date. Their work, however, has been praised highly.(4)

EARLY OPINIONS

The Territorial supreme court rendered only seven opinions from 1853-1857. The first of these in December, 1854, was

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1. Organic Act, Sect. 6.
 2. These include the Civil Practice Act, Criminal Code, the Criminal Practice Act, the Probate Code, and the Justice Practice Code. - Ibid., Sects. 5, 6.
 3. Evans. Op. cit., p. 466; Beardaley, Op. cit., pp. 6, 7.
For further discussion of the work of the first Code Commission see Chapter I.
 4. Organic Act, Sect. 6; Snowden, Op. cit., pp. 237-238.

the case of Nisqually Mill Co. v. Taylor(1) in which Judge O. B. McFadden reaffirmed his decision in the lower court that the company could recover compensation for labor and merchandise due it. This and most of the cases before the court for the first 25 years of its history were based on matters of procedure and lacked questions of substantive law.(2) In the second case, Fowler v. United States, dealing with the sale of liquor to the Indians, Judge Lander admitted that his instructions in the lower court were erroneous and reversed himself.(3) The third case before the court in 1854 was that of Palmer v. United States involving the same offense which carried an automatic fine of \$500 with no adequate provision for its collection. The court held that the trial judge, Justice Chenoweth, committed an error in not entering a plea of not guilty for the defendant when he remained mute and refused to plead, reversed his decision, and discharged the prisoner.(4) The fourth and last case before the court in 1854 reflects the inexperience of the early judges. In this case of Wassissimi v. Territory(5) Judge Chenoweth and his clerk were careless in incorrectly entering the proceedings in the journal of the court, and the murder case was remanded to

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1. Washington Territorial Reports, Vol. I, p. 1.
 2. Beardsley and McDonald. Op. cit., pp. 79-80.
 3. Ibid., p. 80; Washington Territorial Reports, Vol. I, p. 3.
 4. Washington Territorial Reports, Vol. I, p. 5; Beardsley and McDonald, Op. cit., p. 80; Reinhart, C. S., History of the Supreme Court of the Territory and State of Washington, pp. 87-88.
 5. Washington Territorial Reports, Vol. I, p. 8.

the district court for further action.(1)

The Indian War and a resulting lack of judicial business interrupted the activity of the supreme court in 1855 and 1856. One case was decided in 1855; none at all in 1856; and, only two in 1857.(2)

The most important case before the early Territorial supreme court was that of Leschi v. Territory in 1857.(3) The Governor called a special term of court on November 17, 1856, presided over by Judge Chenoweth to try Leschi for killing or being accessory to the murder of A. Benton Moses a little over a year earlier. The defense attorney, Frank Clark, failed to refute the fact that the killing of Moses and Joseph Miles had occurred near Leschi's camp but contended that since a state of war existed at that time the prisoner could not be held for lives sacrificed in time of war. The jury was discharged when it could not agree. The rearrangement of the districts in accordance with the Act of Congress of 1856 limiting the meetings of the district courts to one place in each district transferred the trial from Steilacoom to Olympia.(4)

Judge Lander presided over the court when the trial was resumed at Olympia on March 18, 1857. The officers of the

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1. Beardsley and McDonald. Op. cit., p. 81.
 2. Idem. It is possible that the court failed to meet in 1856 due to a lack of business prompted by the Indian War.
 3. Washington Territorial Reports, Vol. I, pp. 13-30; Beardsley and McDonald, Op. cit., pp. 81-82.
 4. Washington Territorial Reports, Vol. I, pp. 13-30; Snowden, Op. cit., pp. 4-7; Bancroft, Op. cit., p. 172.

regular Army and the officials of the Hudson's Bay Company took a lively interest in the defendant. When the jury found Leschi guilty as charged and worthy of death, he was sentenced to be hanged on June 10, 1857.(1)

The execution was temporarily stayed, however, when the case was carried to the supreme court on writ of error. With Chief Justice Lander away from the Territory when the December, 1857, term of the supreme court convened, Justices McFadden and Chenoweth heard the case and overruled the errors.(2) In his opinion McFadden insisted that the Act of the Territorial legislature assigning Pierce County to the Second Judicial District did not divest the prisoner of any constitutional right, nor did the fact that the jury was selected from the body of the district instead of from Pierce County affect the case since the enlargement of venue for the court was but an enlargement of Pierce County's jurisdiction. The contention of the defense that the prisoner was entitled to trial in the district in which the first trial was held, the Third District, rather than in the Second in which Leschi was condemned was overruled, and he was sentenced to be executed on January 22, 1858.(3)

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1. Bancroft. Loc. cit.; Snowden, Op. cit., p. 7; Pioneer and Democrat, January 29, 1858.
 2. Snowden. Op. cit., pp. 7-8; Pioneer and Democrat, loc.cit.
 3. Washington Territorial Reports, Vol. I, pp. 13-30. The opinion embraces more than 6,000 words and was delivered on the same day as the hearing on the appeal. One may wonder if it had not been written in advance of the hearing on the appeal as it would be impossible to write it so quickly, and it shows evidence of thoughtful study and reasoning. - Beardsley and McDonald, Op. cit., pp. 81-82.

While Leschi awaited execution at Fort Steilacoom, his attorney, the Army officers, and members of the Hudson's Bay Company attempted to secure a pardon from the new Governor, Fayette McMullen. When this failed, they used a trick to prevent the execution. Just before it was to take place on January 22, Sheriff George Williams of Pierce County, who held the death warrant, was arrested by Lieutenant McKibben, a Special Deputy United States Marshal for the occasion, on a warrant issued by United States Commissioner J. M. Batchelder, a sutler stationed at the fort, that the sheriff had sold whiskey to the Indians. All efforts to secure the death warrant from Williams failed because he and his deputy were held in custody until the time for the execution had elapsed.(1)

This plot caused considerable popular reaction against Leschi's friends. Two indignation meetings at Steilacoom condemned Sheriff Williams, Frank Clark, Dr. Tolmie and his associates in the Hudson's Bay Company, and the Army officers at Fort Steilacoom for preventing the execution.(2) When the accused individuals complained that they did not have the opportunity to vindicate their course at the first meeting on January 22, they were given a chance on January 26; but when none of them presented themselves they were again censured severely.(3)

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1. Pioneer and Democrat, January 29, 1858; Snowden, Op. cit., pp. 8-9.
 2. Idem.; "Documents", Washington Historical Quarterly, Vol. V, No. 1, pp. 55-56, January, 1914.
 3. Ibid., February 12, 1858.

A public meeting in Olympia also condemned the action of those responsible for preventing the execution. (1)

On January 23, 1856, the legislature passed an Act calling for a special session of the supreme court on the first Thursday in February to decide the fate of Leschi. The supreme court again promptly sentenced him to be hanged on February 19, 1858. (2) This time the execution was carried out by the deputy sheriff of Thurston County; (3) and the "unhappy savage, ill and emaciated from long confinement, and weary of a life which for nearly three years had been one of strife and misery, was strangled according to law." (4) Most of the cases following the Leschi trial were relatively unimportant. Although 21 opinions were handed down from 1857-1861, compared to 7 for the previous four years, few

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1. Pioneer and Democrat, January 29, 1858; Snowden, Loc. cit.
 2. Pioneer and Democrat, February 12, 1858; Snowden, Op. cit., pp. 10-11; Bancroft, Op. cit., p. 173.
 3. Pioneer and Democrat, February 26, 1858.
 4. Bancroft. Op. cit., p. 173. One other important case was decided at the December, 1857, term of the supreme court. The opinion in the case of Began v. Territory was based upon error committed in the trial court of the Third Judicial District by Judge Chenoweth in failing to have a judgment properly entered in a murder case which had been tried before him. The court held that the entry upon the journal of a verdict of guilty, and also a copy of the warrant of execution, do not constitute a judgment from which an appeal can be taken. - Washington Territorial Reports, Vol. I, p. 31. Judge Chenoweth wrote the opinion.

of them except the Capital Case were outstanding. (1)

It is possible that Governor Isaac I. Stevens ran for Delegate in 1857 not only to vindicate his course in proclaiming martial law in Washington Territory but also to take revenge on the individuals who opposed his proclamation - Chief Justice Lander and Justice Chenoweth. These two men failed to be reappointed when their terms expired in 1858 while Justice McFadden, who took no part in the controversy, was elevated to the position of Chief Justice in that year. (2)

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1. The Capital Case is discussed in the chapter on the Territorial legislature. - Beardsley and McDonald, Op. cit., p. 79. Extended litigation in an effort to force the Puget Sound Agricultural Company to pay taxes to the Territory during this period came to no conclusive end before the claims were dropped with the removal of the company from the Territory in 1869. - Snowden, Op. cit., pp. 185-193. In the case of E. J. Madison v. Lucy Madison at the December, 1859, term, the court decided that a decree of divorce in a lower court was no more subject to review by the supreme court on facts than a verdict of a jury would be. - Washington Territorial Reports, Vol. I, p. 60. The decision of Boyer v. Fowler at the December, 1860, term of court stated that the order of the judges on November 10, 1856, in accordance with the Act of Congress of August 16, 1856, abolished the judicial district of King County; as a result, the subsequent official acts of the clerk of that court were nullities. - Ibid., p. 101. With the advent of the Republicans in 1861, an entirely new court was appointed to Washington Territory. Christopher C. Hewitt became Chief Justice with Ethelbert P. Oliphant and James E. Wyche Associate Justices. - Reinhardt, Op. cit., pp. 13-14. In 1867 the learned but notorious Charles B. Darwin succeeded Judge Oliphant and in 1868 B. F. Dennison succeeded Darwin. In 1869 Dennison succeeded Hewitt as Chief Justice only to be succeeded by William L. Hill in 1870. Orange Jacobs took Dennison's place in 1869 and James K. Kennedy replaced Wyche in 1870.
 2. Reinhardt. Op. cit., p. 13. Martial law is discussed in a chapter under that heading. Edmund C. Fitzhugh and William Strong succeeded Lander and Chenoweth as Associate Justices.

THE ANDERSON CODE

The legislature of 1857-1858 provided for a Code Commission to revise the Code of 1854 and to report to the next session of the legislature.(1) Apparently B. P. Anderson did most of the work on this Code,(2) covering about one-third of the laws before the next session convened. During the session of 1858-1859 Anderson completed the work on the general laws while purposely omitting the private, local, repealed, and obsolete laws. This Code secured a favorable Committee Report but was tabled until the session of 1859-1860.(3)

This delay in accepting the Code of 1859 was largely due to the work of Councilman H. J. Maxon of Clark County who attacked it(4) on the grounds that it was unauthorized since the Act of January 6, 1858, stipulated that the Commissioners and not a Commissioner should report the Code and that if any of them refused to act the Governor should appoint a successor.(5) Maxon insisted that Anderson looked to the National Government for compensation because the Territory was not to pay for the Code and because he and not a commission had compiled it.(6)

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1. Laws of Washington, 5th Sess., p. 69, 1857-1858. The Commission was composed of William Strong, Selucius Garfield, and B.P. Anderson.
 2. Beardsley. Op. cit., pp. 8-9.
 3. Ibid., pp. 9-10; Evans, Op. cit., p. 523.
 4. Washington Council Journal, 6th Sess., p. 176, 1858-1859. On January 24, 1859, Maxon introduced a resolution in the Council asking Anderson to promise not to ask compensation of the Territory for his compilation.
 5. Laws of Washington, 5th Sess., p. 69, 1857-1858.
 6. Beardsley, Op. cit., pp. 10-11; Evans, Loc. cit.

When the House attempted to publish the Code, Maxon tried in vain to get both Anderson and the Public Printer to promise not to ask the Territory for compensation;(1) and he revealed the personal nature of his opposition by introducing a bill asking for another Commission to "prepare, revise, and compile acode of laws for Washington Territory".(2) Under Maxon's influence, the Council then rejected House bills to pay Anderson(3) and to publish his Code.(4) Even though the Code of 1859 was enacted into law in January, 1860, the necessity for it is questionable since it added little to the Code of 1854.(5)

The next important effort to codify the Territorial laws came during the legislature of 1862-1863.(6) On December 17, 1862, Governor William Pickering recommended that the laws of the Territory be revised and reprinted to supply a definite deficiency of printed copies in existence due to the rapid growth of the Territory.(7) The outgrowth of this suggestion was the Code of 1863 which was regarded as an improvement on the Anderson Code.(8)

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1. Washington Council Journal, 6th Sess., p. 192, 1858-1859.
 2. Beardsley, Op. cit., pp. 11-12.
 3. Evans, Op. cit., p. 523.
 4. Washington Council Journal, ibid., p. 221. On February 2, 1859, the Council refused to concur in the House amendments to the Council bill providing for a new Code Commission, and this too failed to pass. - Ibid., p. 226.
 5. Beardsley, Op. cit., pp. 12-13.
 6. In his message to the previous legislature on December 19, 1861, acting-Governor U. J. S. Turney suggested that the laws be revised at Territorial expense. Like most of Turney's suggestions this one was not followed. - Turney to the Legislature, December 19, 1861, Gates, Op. cit., p. 95.
 7. Pickering to the Legislature, December 17, 1862, Ibid., p. 102.
 8. Beardsley, Op. cit., pp. 13-15. A legislative committee headed by Judge O. B. McFadden compiled this Code.

POPULAR DISSATISFACTION

The fortunes of the Territorial judiciary reached their lowest ebb during the political controversies from 1865 to 1870. Besides unrest over excessive absences, other evidences of popular disaffection are to be noted. In 1865 the people of Walla Walla complained that Judge Wyche never resided there when he was appointed to that district. That spring he did not arrive until one week of the term of court had passed and left so soon that he failed to finish important judicial business. That fall both he and Judge Oliphant were in the east, but he failed to notify the clerk at Walla Walla in time to obtain the services of Chief Justice Hewett for the October term of court which had about 90 cases on the docket.(1) As a result, the people of Walla Walla were deprived of a court for an additional six months. Little wonder that they looked to Oregon as a place where justice was much more easily obtained.(2) While Wyche claimed to remain in the east to visit friends he was in Washington, D.C.,

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1. Bancroft Scraps, Vol. CX, "District Court, October 6, 1865". Chief Justice Hewett was the only remaining judge in the Territory, and he was at Olympia, 500 miles journey. Wyche's request for Hewett to hold court for him was also so tardy that it would not reach the Chief Justice until after the term of court was to convene.
 2. Idem. "In Oregon, not a stone's throw from us, the people elect Congressmen, who have a vote and voice in the national legislature; here we elect a Delegate who is a beggar... to the lower house; there they have in each county two terms of the Circuit Court per year, also, each month a term of the County Court with jurisdiction to \$500 in civil cases, and Justice Courts always in session, having jurisdiction to \$250 in civil cases; while here, when we can get a Judge, we have two terms of the District Court, and a Justice Court with jurisdiction of but \$100."

in November attempting to secure the removal of Pickering and his own appointment as Governor.(1) It is, therefore, not surprising that the legislature of 1865-1866 petitioned Congress for a check on the abuse of undue absences.(2)

This popular dissatisfaction with the judges came to a head when the legislature of 1867-1868 attacked Chief Justice Christopher C. Hewitt. Hewitt's opposition had become so general by January, 1868, that the legislature assigned him to Stevens County to reside there and gave the bulk of the Territory to Judge Wyche.(3)

A prominent judicial quarrel resulted from this act redistricting the Territory and assigning Judge Hewitt to Stevens County. Early in February, 1868, Judge Wyche rushed to Olympia to take over the office and records held by Chief Justice Hewitt, thereby indicating his personal interest in the affair, particularly since Hewitt insisted that this Act was null and void.(4) When Wyche promptly removed C. C. Hewitt's chief clerk, R. W. Hewitt, and appointed a Democrat in his stead, the

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1. A. A. Denny to D. Bagley, November 23, 1865, A. A. Denny Letters, Pacific Northwest Collection, University of Washington. Denny concludes the letter: "I think he now has more than he deserves unless he would remain at his post, but all this is not for the public as coming from me." On his return Wyche attempted to justify his absence on the grounds that others were greater offenders than he. - Pacific Tribune, February 11, 1866. This justification is discussed earlier in this chapter.
 2. Laws of Washington, 13th Sess., p. 219, 1865-1866. This Memorial is discussed earlier in the chapter.
 3. Ibid., 1st Biennial Sess., p. 23, 1867-1868. This Act and its subsequent disavowal by Congress is discussed in some detail in the chapter on the relations of the Federal Government to the Territory. See Snowden, Op. cit., pp. 181-182.
 4. Washington Standard, March 7, 1868.

Chief Justice thwarted Wyche by ordering the sheriff not to recognize his mandate. (1)

In the resulting battle of the judges, Wyche insisted that the recent Act granted him full judicial authority at Olympia, while Chief Justice Hewitt denied the validity of that law.

(2) Although Clerk Hewitt hid with the seal until Judge Wyche left Olympia, (3) Wyche's special agent arrested him for contempt in failing to answer the former writ of mandate on his return. The Chief Justice countered with a writ of habeas corpus for R. H. Hewitt on the grounds that his clerk had been wrongfully arrested and that he and not Wyche was District Judge at Olympia since the law assigning him to Stevens County was of no effect until it had been approved by Congress. (4) When the special agent ignored this writ, (5) he was in turn arrested by

1. Washington Standard, February 8, 1868.
2. Idem. Wyche regretted that the Chief Justice questioned the law as the right of the legislature to redistrict the Territory and assign the judges had never before been questioned. Wyche's opinion might have been different had he been in C. C. Hewitt's place.
3. Ibid., February 8, and March 7, 1868; Vancouver Register, February 29, 1868.
4. Washington Standard, February 15, 1868. He also contended that if Congress set aside one section of the law, the whole law was invalidated. This interpretation would aid his cause.
5. Ibid., March 7, 1868: "The whole affair was regarded as an amusing pantomime, expressly devised to burlesque the idea that contempts of court are serious matters, or that the penalties imposed in behalf of their dignity are anything more than mere formalities." This left the people, according to the Standard, without a judge on the eve of a regular term of court, "if what he pretended was true, for the purpose of serving his own personal or partisan ends." - Idem.

order of the Chief Justice for contempt of his court.

With the situation thus complicated, Chief Justice Hewitt left the Territory to get Congress to set aside the Act redistricting the Territory.

When Judge Wyche opened court at Olympia early in March, he ordered R. H. Hewitt to turn over the seal and records and to pay a fine of \$200 and costs.(1) With the Chief Justice out of the Territory, there was no other course for him but to comply.

Chief Justice Hewitt's efforts in Washington, D.C., were successful for Congress disapproved the objectionable law. The spleen of his opponents was now directed against the Congress that had nullified their political scheme. Said the hostile Washington Standard:(2)

"We are not surprised at anything the fanatical Congress may have done to outrage a people who can do them no harm. We of the Territories and the people of the Southern States are today a nation of serfs, subject to as tyrannical a rule as ever despot devised. That the incubus, Judge Hewitt should again be fastened on our people, is a grievance hard to be borne... When those [men] grossly incompetent are intrusted with duties so far above their comprehension, the forms of law are but a mockery, and the ends of justice are defeated."

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1. Vancouver Register, March 14, 1868; Washington Standard, March 7, 1868; Ibid., August 15, 1868, it was claimed the House that passed the redistricting bill was composed of 18 Republicans and 12 Democrats, indicating the bipartisan nature of Hewitt's opposition. He was called incompetent. - Ibid., February 15, 1868.
 2. August 29, 1868.

LATER CODES

The period of 1869-1881 witnessed the completion of code making in Washington Territory. In his message to the legislature on December 9, 1867, Governor Marshall F. Moore used the familiar argument that but few copies of the laws were available for lawyers and public officials in recommending the selection of Commissioners to revise and codify the laws of the Territory.(1) In compliance with this suggestion the legislature passed an Act January 29, 1868, providing that the Governor should appoint a Code Commission of three to report to the next legislature.(2) The Commissioners failed to "thoroughly revise the laws" as they were instructed and spent most of their time "classifying and arranging the various subjects under appropriate titles". One critic believed that their work

"...was a decided success in the way of making the most out of the least material, being merely a labyrinth of reciprocating indexes, with headings so honey-combed into each other, that the explorer invariably comes out the same hole he went in at. As a statute it is generally conceded to be a lamentable failure."(3)

This criticism may be unduly severe since all three of the Commissioners were able lawyers.(4) Elwood Evens did most of

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1. Moore to the Legislature, December 9, 1867, Gates, Op.cit., p. 133.
 2. Laws of Washington Territory, 1st Biennial Sess., p.64, 1867-1868.
 3. Washington Standard, September 13, 1873.
 4. They were James H. Lasater, Elwood Evens, and E.F. Dennison. Beardsley, "Compiling the Territorial Codes of Washington", Op. cit., pp. 15-17.

the work of preparing this Code of 1869, which engrafted at least one innovation into the law of the Territory - the Community Property Law - for which this Code has been highly praised.(1) Although the legislature hoped to re-enact all existing statutes in order to incorporate them into the Code of 1869, the new Governor, Alvin Flanders, saw no need for this and vetoed them in batches on the grounds that the changes in the laws were only verbal and that the results of passing them would not compensate for the expense of having them printed at a good profit for the Public Printer.(2)

Common to each of the Territorial Codes of Washington Territory from 1854 to 1869 was a provision abolishing all distinctions between "actions at law" and "suits in chancery" and providing one form of action known as a "civil action".(3) Several Territories possessed these Acts which were a liberal interpretation of the provision in their Organic Acts that "The supreme court and the district courts, respectively, of every Territory, shall possess chancery as well as common law jurisdiction."(4) These Acts joining common law and chancery jurisdiction in the same action were nullified by the United States Supreme Court in 1871 in an opinion that the Territorial legislature had no power to pass an Act depriving the Territorial

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1. Beardsley. Op. cit., pp. 16-17.
 2. Snowden. Op. cit., pp. 183-184; Beardsley, Op. cit., pp.17-19. For a detailed discussion of this use of the veto power see the chapter on the Territorial Executive.
 3. Cf. for instance, Laws of Washington, 7th Sess., p. 5, 1859-1860; 2d Biennial Sess., p. 3, 1869; Beardsley, Op.cit.,p.19.
 4. Revised Statutes, Sect. 1868.

courts "of chancery as well as common law jurisdiction".(1)

As a result of this decision, the Washington legislature of 1871 amended the Code of Civil Procedure to read that "all common law forms of action are hereby abolished, but the distinction between actions at law and suits in chancery shall be preserved;..."(2). Since the majority of the bar was opposed to the resulting Amendments to the Code of 1869, the legislature of 1873 appointed a select Code Committee to revise them and prepare a general compilation of the laws. The practice codes embodied in this Code of 1873 were almost verbatim re-enactments of those in the Code of 1869(3) including the provision in the Code of Civil Procedure abolishing the distinction between actions at law and suits in chancery and substituting a civil action in place of these two forms.(4) In view of the decision of the United States Supreme Court invalidating a "single form of action" this change is surprising. The case of Hornbuckle v. Toombs again testing the "single form of action" was not appealed to the United States Supreme Court until December 9, 1873, nearly a month after the Washington legislature had re-enacted a Code of Civil Procedure embodying this principle.(5) Before the decision of the court was handed down

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1. Dumphy v. Kleinschmidt. Cf. Beardsley, Op. cit., p. 20. The Territorial supreme court in the case of Stevens v. Baker et al., December, 1871, declared that the distinction between law and equity and prescribing a single form of action was in violation of the Organic Act and void. - Washington Territorial Reports, Vol. I, p. 315.
 2. Laws of Washington, 3d Biennial Sess., p. 3, 1871.
 3. Beardsley, Op. cit., pp. 20-22.
 4. Laws of Washington, 3d Biennial Sess., p. 4, 1873.
 5. Beardsley, Op. cit., pp. 21-22.

five months later, Congress on April 7, 1874, legalized the "single form of action".(1) Shortly after the Supreme Court in Hornbuckle v. Toombs reversed its former opinion and now sanctioned the "single form of action".(2)

The climax of a quarter of a century of experimental code making was achieved in the Code of 1881 or Code of Washington Territory. The legislature of 1877 authorized a complete classified and systematic code of laws of the modern type when it requested the Governor to appoint a Code Commissioner whose instructions were outlined fully in the Act.(3) Since the Governor failed to make the appointment during the five remaining days of the session, the proposed codification did not materialize.(4)

The legislature of 1879 again passed this Act with the provision that Governor Elisha P. Ferry act as Code Commissioner with power to make such additions "as may be thought necessary for a complete and perfect code for the Territory of Washington", and to submit these suggestions in printed form,(5) making Ferry potentially "a modern Solon or Lyeurgus".(6) Since Ferry appar-

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1. Beardsley. Op. cit., pp. 21-22.
 2. Ibid., pp. 22-23. This bill has been discussed in some detail earlier in this chapter.
 3. Ibid., pp. 23-24.
 4. Laws of Washington, 6th Biennial Sess., p. 234, 1877. He was to receive \$75 per month instead of the uncertain salary provided in the Act of 1877.
 5. Beardsley. Op. cit., pp. 24-25.
 6. Laws of Washington, 7th Biennial Sess., pp. 90-92, 1879; Beardsley, Op. cit., p. 27.

ently received no compensation for his work while his clerks received \$360 each, there is reason to believe that he made no use of this important power but left the work to his clerks.(1)

The legislature of 1881 placed the work of code revision in the hands of a special committee of seventeen(2) of whom only five were attorneys.(3) When it became evident that the Code would not be finished before the end of the session Governor W. A. Newell called an extra session of the legislature to complete the work.(4)

The legislature appointed John P. Judson to index the Code and prepare it for publication by stripping the Acts of their titles, enacting clauses, and clauses indicating time of

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1. Beardsley. Op. cit., pp. 27-29.
 2. The committee was composed of the House and Council Committees on the Judiciary, Counties, and Printing.
 3. Beardsley. Op. cit., p. 29.
 4. Ibid., pp. 29-31. This calling of the extra session is discussed in the chapter on the Revised Statutes. Among the first bills introduced in the extra session was one providing for the publication of the Code in the Territory. Bancroft and Company of San Francisco wanted the \$3,000 appropriated by Congress for the printing of this Code and sent an agent to lobby against the bill. - Walla Walla Union, December 3, 1881. The bill passed, however; but Bancroft was able to set its effectiveness aside by securing an order from Washington, D.C., directing the work to be let to the successful bidder for the contract. C. B. Bagley, the Public Printer, who expected and wanted the contract, was not to be outdone by the California competitor. He sent to San Francisco and learned the prices for composition, presswork, paper, and the like and satisfied himself that Bancroft could not afford to bid more than 4,000 copies for the \$3,000. Bagley bid 4,135 copies as against 4,000 for Bancroft and was awarded the contract to print the Code. - C. B. Bagley, "Personal Notes", Miscellaneous Articles. Bancroft charged privately that there was collusion between the Territorial Secretary and Bagley. The latter comments, however, that "there was never fairer or more honest bidding in the world".

taking effect, by giving the sections consecutive code section numbers, by arranging the subject matter into chapters with appropriate head notes and catchwords for each section, and by correcting errors and omissions without altering or changing the law in any way. Since, for some unknown reason, he failed to strip the first Act, the Civil Practice Act, of its title, he left the appearance that its title is the title for the whole Code, thereby creating some confusion.(1)

This legislative Code of 1881 contained the Constitution of the United States, the Organic Act and other Acts of Congress applicable to Washington Territory, the Naturalization Laws, and all Acts of a general nature as passed by the legislature of 1881. The Territorial Laws include the sections on Civil and on Criminal Procedure, the Probate and the Justice Practice Acts, and a large section of Miscellaneous Laws. The Code of 1881 went into effect February 7, 1882, sixty days after the close of the session; but when the printed Code did not appear for three and one-half months longer, the people of the Territory had no means of knowing what laws were in force during that time.(2)

Prior to the decision of Harland v. Territory in Feb-

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1. Beardsley. Op. cit., pp. 34-35. Were it the title to the whole Code, the Code would violate Sect. 6 of the Organic Act.
 2. Ibid., pp. 35-40. Seventy-seven general laws had been overlooked by the legislature in compiling the Code of 1881. These were later printed by C. B. Bagley and became known as Bagley's Supplement to the Code of 1881. - Ibid., pp. 49-51.

ruary, 1887, the designation of "An Act to Amend Section 3050, Chapter 238 of the Code of Washington Territory", or the like, was considered sufficient title of an Act to amend the Code of 1881.(1) In a lengthy opinion written by Justice George Turner, the court held in the Harland case that the designation of an Act in its title as an Act to amend a special section of the Code, without any other or further expression of the object of the Act, was not a sufficient compliance with the requirement of the Organic Act which prescribed that "every law shall embrace but one subject, and that shall be expressed in the title". (2) The principles enunciated were that the Code of 1881 could not be amended by a mere reference in the title of the amendatory Act to a section of the Code of 1881, but that some words pertaining to the subject of the section of the act to be amended must also be included.(3)

The decision was broad enough to affect the validity of all the Acts of the legislature which attempted to amend the Code of 1881 in this manner. On the convening of the District Court in Seattle shortly after, the United States District Attorney questioned the legality of that term of court because the Act providing for it was merely a like amendment to the Code. He even questioned the legality of the session of the supreme court which decided on the Harland case since the law providing for it

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1. Beardsley. Op. cit., pp. 40-41. This decision as it relates to woman's suffrage is discussed in the chapter on the Territorial Legislature.
 2. Washington Territorial Reports, Vol. III, pp. 131-163.
 3. Idem.; Beardsley, Op. cit., p. 42.

was likewise defective in its title.(1)

The great antithesis to Harland v. Territory was Marston v. Humes decided in December, 1891, after Statehood in which opinion Judge John P. Hoyt apparently intended to overrule the earlier decision but actually may have only complemented it.

(2) The purpose of the Act was certainly more clearly stated in the law under question in Marston v. Humes than in the Harland case.(3)

In commenting on these two decisions one competent observer has indicated that "It seems to me that Judge Turner's decision is much the more logical of the two, and, fortified as it is with subsequent decisions of this court, is without doubt the law at present."(4)

In January, 1888, the supreme court rendered an important corollary decision to Harland v. Territory in Baker v. Prewett, declaring that the title of an Act of November 23, 1883, entitled, "An act in relation to the removal of causes of the Supreme Court" while technically not accurate still expressed the object of the Act sufficiently to render the Act valid.(5) This

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1. Washington Standard, February 11, 1877.
 2. Beardsley. Op. cit., pp. 42-47. The later case belongs to the period of Statehood and is mentioned here merely to indicate a source of confusion over the decisions of the supreme court in regard to amendments to the Code.
 3. Ibid., pp. 46-47. Later decisions of the court favor both early opinions.
 4. Reinhart. Op. cit., p. 22.
 5. Washington Territorial Reports, Vol. III, p. 474; Laws of Washington, 9th Biennial Sess., p. 59.

decision combined with Turner's argument in the Harland case that the title need express only a general or meagre statement of its object to make the Act valid and Hoyt's opinion in Marston v. Humes, that the title, "An act relating to pleadings in civil actions, and amending Sections 76, 77, and 109 of the Code of Washington of 1881" was sufficient statement of the object of the Act in its title to make it valid tends to illustrate the complementary nature of the three opinions even if their dicta do not agree.(1)

The final chapter in the story of Territorial Codes was written in 1887 when, at the suggestion of Governor Eugene Semple, the legislature provided for a Code Commission to compile a more adequate Code of laws for the Territory.(2) The Commission was appointed and began its work, but the near approach of Statehood interrupted its action.

OTHER IMPORTANT SUPREME COURT DECISIONS

The supreme court rendered several important decisions(3)

1. Beardsley. Op. cit., pp. 44-47.
2. Ibid., pp. 51-55; Semple to the Legislature, December, 1887, Gates, Op. cit., p. 271.
3. In 1870 the court consisted of William L. Hill, Chief Justice; James K. Kennedy and Orange Jacobs, Associate Justices. Jacobs became Chief Justice in 1871 and Roger S. Greene took his place as Associate Justice. J. R. Lewis took Kennedy's place in 1873 and succeeded Jacobs as Chief Justice in 1875. S.G. Wingard took his place as Associate Justice in 1875. Roger S. Greene became Chief Justice in 1879 and John P. Hoyt took his place as Associate Justice. Both continued in office until 1887. George Turner was added in 1884 when the court was increased to four members. Judge William G. Langford succeeded Judge Wingard. Richard A. Jones, C. E. Boyle, Thomas Burke, and Cornelius H. Hanford were all Chief Justices, respectively, from 1887-1889. - Reinhard, Op. cit., pp. 13-15.

during the period the Territorial Code was taking its final shape. A few of these will illustrate the problems faced by the court.

Several opinions clarified the problem of the jurisdiction of the court. While in December, 1869, in Smith v. United States the court decided that the Territorial courts had the same jurisdiction in the Territories as the circuit and district courts of the United States, (1) it insisted in 1872 in Nickels v. Griffin that the Territorial courts were not strictly United States district courts. (2) The dual nature of the jurisdiction of the Territorial courts was further defined in Mary Phelps et al. v. Steamship City of Panama in 1877 to include all admiralty or maritime cases and all cases heard by the United States circuit and district courts in the States. (3)

Several opinions relating to appeals were handed down by the court in the period after 1857. In the case of Ex Parte Richard Williams in 1867, the court decided that the trial of a cause by a court of competent jurisdiction was not reviewable on a writ of habeas corpus. Since the jurisdictional limits of the

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1. Washington Territorial Reports, Vol. I, pp. 262, 267. The Territorial courts were declared to have concurrent jurisdiction with the United States courts in the Territory.
 2. Ibid., pp. 374-376. Opinion written by Chief Justice Jacobs and concurred in by Justice Lewis. The criminal jurisdiction of the Territorial courts was declared to extend to the San Juan Islands even while they were disputed area between the United States and Great Britain in the opinion rendered by the supreme court in the case of Charles Watts v. United States at the December, 1870, term of the court. - Ibid., p. 239. This decision was affirmed in Charles Watts v. Territory, December, 1872, - Ibid., pp. 409-412.
 3. Ibid., pp. 518-529.

Territorial district courts embraced both Federal and Territorial laws, the district court was competent to decide under which law a case was to be tried.(1) According to McKilver v. Manchester in 1869, a new trial was not to be granted in a case where new evidence was presented unless the court was satisfied that the new evidence would change the decision in the case.(2)

The court in 1874 upheld the provision in the Code of 1873 which provided that "...every final judgment, order, or decision of a District Court in a civil action, may be re-examined upon a writ of error in the Supreme Court for error in law."(3) In July, 1876, the supreme court decided that only the final decision of the district courts could be reviewed before the supreme court because the Revised Statutes were paramount to the statutes of the Territory which granted the right of appeal from an order of the district court granting or refusing a new trial. (4) At the same time the supreme court indicated in the case of McGowan v. Petit et al. that unless it appeared that the transcript contained all the evidence introduced in the trial court below, the supreme court was without jurisdiction and must dismiss the appeal.(5)

In the case of Thomas Tierney v. Catherine Tierney(6) July, 1878, the supreme court reversed a previous decision(7)

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1. Washington Territorial Reports, Vol. I, p. 240.
 2. Ibid., p. 255.
 3. Ibid., pp. 454-455, Mann v. Young.
 4. Ibid., pp. 512-513, McCormick v. Walla Walla & Columbia Railroad Co.
 5. Ibid., p. 514.
 6. Ibid., p. 569.
 7. Ibid., p. 60, B.J. Madison v. Lucy Madison, December, 1859.

forbidding appeals from the district court by declaring that that part of the Divorce Act of 1863 which forbade the reversal of any final order of the district court divorcing parties violated Section 9 of the Organic Act that "writs of error and appeals should be allowed in all cases from the final judgments of the District Courts to the Supreme Court." (1)

The January, 1887, session of the supreme court rendered two important opinions on appeals. In Smith v. Wingard, the court further defined the provision of the Act of Congress of 1884 which prevented the judge in the district court who had acted on a case from sitting on that case on the supreme court by insisting that the decision which disqualified a judge from acting on a case appealed from the district court must be the final one from which the appeal, bill of exceptions, or writ of error was taken. A Justice was not disqualified by having made interlocutory orders or decisions in the action below. (2) In the other case, a criminal's attempt to appeal a decision of the district court on the basis of an oral notice given in the lower court was not recognized (3) because the legislative Act of 1883 regulating appeals to the supreme court stipulated that both the notice in open court and a transcript of the case were necessary. (4)

An important case arose near the end of the Territorial

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1. Washington Territorial Reports, Vol. I, p. 569, Thomas Tierney v. Catherine Tierney; Laws of Washington, 10th Sess., p. 416, 1862-1863.
 2. Washington Territorial Reports, Vol. III, p. 260.
 3. Ibid., pp. 99-100, Cole v. Territory, January 25, 1887.
 4. Laws of Washington, 9th Biennial Sess., p. 59, 1883.

period when the Northern Pacific Railroad attempted to remove the town of Yakima to the location of North Yakima four miles distant in order to accommodate the land speculators, presumably in Northern Pacific lands. The railroad had stopped its trains at Yakima until it attempted to boom North Yakima, whereupon it refused to stop at Yakima. The supreme court ruled that a court of competent jurisdiction could compel a railroad to extend to the public proper depot and other facilities for the transaction of business. (1) The town of Yakima won the court decision; but railroad discrimination had its effect, for Yakima City practically disappeared, and the Northern Pacific location became the business center for that locality. (2)

PERSONALITIES AND ANECDOTES

It would be a mistake to dismiss the topic of the Territorial judiciary without bringing in a few personal glimpses of some of the judges and anecdotes relating to the courts during the Territorial period.

When King County was still a part of Thurston County, Oregon Territory, Dr. David S. Maynard as justice of the peace for the Seattle area held a term of court in Yeeler's Cook House in July, 1852, to try the mate of the brig Franklin Adams for misappropriating money and goods belonging to the ship. While

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1. Washington Territorial Reports, Vol. III, pp. 303-315, Northern Pacific Railroad Company v. Territory.
 2. Snowden. Op. cit., pp. 94-95.

Dr. Maynard probably possessed no jurisdiction in such matters, he heard the case and convicted the mate. Since there was no jail in the county the mate was released and admonished to keep his books in better order.(1)

Frank Clark, prosecuting attorney at the second term of the King County district court in October, 1854, was then a young lawyer who had worked hard for conviction in order to make his reputation. The Felker House where the court met was operated by Mrs. Mary Ann Boyer Conklin, more generally known as "Mother Damnable". Following the term of court, Frank Clark, as prosecuting attorney, settled with "Mother Damnable" for the use of the rooms for court purposes. She charged him \$25 for her best room as a courtroom, \$100 for rooms for the jurors, \$4 for the use of furniture and \$66 for the jurors' meals at the rate of 50¢ a meal. Thinking these charges excessive, Clark demanded a receipt. The illiterate "Mother Damnable" did not know the meaning of "receipt", but she had a particular distaste for the young Clark. Telling him she would give him a receipt, she stepped back into the kitchen, returned with her arms full of wood, and pelted him from the room with it, screaming as he fled, "You want a receipt, do you? Well, here's your receipt. I'll learn you to ask me for a receipt!" No one ever asked her for a receipt after that.(2)

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1. Beardsley and McDonald. Op. cit., p. 71.
 2. Ibid., pp. 71-72.

In the early days H. L. Yesler ran his mill principally with Indian labor. Since money in smaller denominations than \$20 gold pieces was scarce, Yesler cut brass into pieces of different shapes to pass for dollars, half-dollars, and quarters and stamped his initials on these. These pieces passed for currency in the town and were redeemable at Yesler's store. When a smart Indian secured a die and flooded the town with counterfeit brass money, he was soon apprehended, arrested, convicted, and imprisoned for counterfeiting "Yesler's money".(1)

A curious incident is related in connection with the October term of court at Coveland in 1855 presided over by Judge Chenoweth. Winfield S. Ebey, brother to Colonel Isaac N. Ebey and an employee at the Port Townsend Customs House was admitted to the bar at this time. He relates in his diary that his examining committee consisted of Elwood Evans, Victor Monroe, and Frank Clark, all heavy drinkers. The only examination Ebey had to face was a single question by Frank Clark who asked if he had any good brandy in the customs house. The answer being in the affirmative, Clark moved his admission.(2)

Judge Edmund C. Fitzhugh, who with William Strong, became Associate Justices of the supreme court when Judge McFadden was elevated to the position of Chief Justice and Judges Lander and Chenoweth failed to be reappointed in 1858, was a colorful

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1. "Incidents in the Life of Hon. H. L. Yesler", Yesler, H. L., Settlement of Washington Territory, Bancroft MS., p. 21.
 2. Beardsley and McDonald. Op. cit., p. 70.

He was identified with the coal and other interests around Bellingham Bay. As Special Indian Agent, he aided Governor Isaac I. Stevens during the Indian War. After his appointment as Associate Justice, he was accused of killing a man several years earlier in a quarrel, indicted, tried, and acquitted on this murder charge. A hot-headed southerner, he joined the Confederate Army during the Civil War.(1)

James G. Swan records two experiences of the first courts in Pacific County which indicate the nature of the early

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1. Reinhart. Op. cit., p. 13. Reinhart says that Judge McFadden was one of the "best men that ever lived in the Territory or out of it". Both Judges Lander and McFadden later ran for Delegate; Lander in 1861 as an Independent Democrat to defeat Selucius Garfield and allow the election of the Republican W. H. Wallace; McFadden was elected Delegate in 1874. - Ibid., p. 41. James G. Swan tells of some fun in the first session of the court held by Judge Fitzhugh after Swan's arrival in Washington Territory. The bailiff had a Chinese combination padlock used to lock the tin box in which Swan, as clerk to the Grand Jury, kept his papers. The Prosecuting Attorney, who was very much interested in the padlock, inadvertently placed it in his pocket one day. The evening the Prosecuting Attorney was located in his hotel busily employed in taking the lock apart and putting it back together again. Swan then drew up a humorous indictment against him, charging him with the "rape of the lock". The Territorial Attorney, Chenoweth, unwittingly picked it up the next morning, put it with several true indictments and carried it into court before he discovered his error. Before court opened, Paul K. Hubbs read it to those present unmindful that Judge Fitzhugh quietly watched this clowning. The Judge informed Hubbs that he would hear the case in chambers at the close of the session of court. The case was heard in one of the local saloons at the appointed hour, and the Prosecuting Attorney was fined a basket of champagne for the benefit of the assembled Lawyers there. - Swan, James G., Washington Territory, Bancroft MS., University of California, pp. 9-10.

judiciary of the Territory. Contrary to the advice of his friends, Captain Johnson pleaded guilty to a charge of selling whiskey to an Indian and asked the court for leniency. When the clerk read the indictment, the judge remarked:

"Before you plead to this indictment, Mr. Johnson, I wish to observe that this court has no desire to take advantage of your ignorance, but the law is one of Congress and is imperative. I wish that it was otherwise, and that the amount of the fine was in proportion to the offense; but I have no discretion in the case, and think, before you make your plea, that you had better take the advice of counsel."

Since the fine in the case was an automatic \$500, the captain listened to the advice of his friends and pleaded "not guilty". When the principal witness against him could not swear whether Johnson had sold molasses or whiskey to the Indian, he was cleared. (1)

Old forms were not rigidly adhered to in a new country; therefore, any proposition agreed to between the two conflicting parties was considered fair. On one occasion in Pacific County when the challenges for a jury in a murder trial were exhausted, there were not enough persons left to complete the jury. The two counsels agreed on a compromise; nine jurors were to be selected from among the grand jury who had just solemnly rendered a true bill against the prisoner. The lawyer for the prosecution referred to the American Revolution and George Washington while the defense relied on the ancient authors and proved his position

1. Swan, James G. Northwest Coast, pp. 297-298.

with extracts from the "Arabian Knights". The ancient authors apparently had the most force, for the prosecution folded up and the defense won easily.(1)

The informality of some of the first Territorial courts is illustrated by an experience from the Port Angeles justice courts. Justice H. was noted for the promptness with which he administered justice. When one evening an individual for whose arrest he had issued a warrant was brought before him after all places of business had closed, he, the sheriff, the prisoner, and the witness went to one of the settler's cabins. Although the settler was in bed the judge and his company walked in and informed the startled man that they were going to hold court. When the owner of the cabin continued to protest against this disturbance of his slumber for some time, Judge H. fined him \$5 for contempt of court. "Court," responded the frightened man, "I did not know you had a court there!" "Joe," replied the judge, "I want you to understand that whenever I take off my hat the court is in session."(2)

Even the early district courts were often held in rather strange surroundings. The first sessions at Walla Walla beginning in 1860 were held in the loft of a log saloon which attic was approached only by outside stairs. The seats were slabs, barkside down with pegs for legs; the judge's desk was an old-fashioned washstand. Since there was no jail in the county, the prisoners were chained to large staples driven into

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1. Swen. Northwest Coast., p. 300.
 2. Sketches of Washington Territory, Bancroft MS., pp. 74-76.

the legs of the wall of the room.(1)

Judge William Strong, who served as Associate Justice of the Washington Territorial supreme court from 1858-1861, had a good sense of humor. While he and N. T. Caton were traveling together on one occasion, they stopped for a meal. The waiter approached Judge Strong, stooped over and in a whisper inquired his wants. When the waiter retired, the judge turned to Caton with a twinkle in his eye and remarked, "He is a confidential cuss, isn't he?"(2)

Judge J. E. Wyche, a member of the court from 1861-1870, was extremely caustic when he considered himself in the right. His remarks to a jury who returned a verdict which displeased him in a suit over 160 acres of land illustrate his temperament. After threatening to set aside their verdict, he added: "While I am judge it takes thirteen men to steal a ranch." At another time, while discharging a grand jury, Judge Wyche remarked, "I will give you people just one year to consider this matter; and if the present state of society continues, I will see if I cannot find a grand jury that will indict for such flagrant offenses against decency and good order."(3)

Another experience in Judge Wyche's court will illustrate the character of another prominent member of the Washington bar, W. G. Langford, who was later Associate Justice of the

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1. Beardsley and McDonald. Op. cit., p. 75.
 2. Reinhart. Op. cit., p. 54. This and the following story are taken from a paper read before the Washington Bar Association by N. T. Caton in 1903.
 3. Ibid., p. 56.

Territorial supreme court from 1887-1889. Although well-read and painstaking in his preparation of a case, he addressed the court with a philosophical, metaphysical, and prosy style. One hot day in Walla Walla in 1868 with Judge Wyche presiding, Mr. Langford had addressed the jury for more than an hour when one of the jurors went to sleep. Discovering this, Langford, turned to the court as follows: "Your Honor, I guess I had better quit. I see I have talked one man to sleep." "I think myself you had," snapped Wyche. "Mr. Cheriff, wake up that juror."(1)

Elwood Evans secured the title of "Judge" under unusual circumstances. Evens beck Selucius Garfielde for Delegate in 1869 in order to secure an appointment as judge in the district court. News of his nomination was telegraphed to Olympia where Evans was congratulated and saluted as "Judge". That evening, however, one of Evans' enemies informed President Grant that Evans had represented Washington Territory at a political demonstration in Philadelphia in 1868 in honor of President Andrew Johnson. Since Grant now opposed not only Johnson but also all of his supporters, he telegraphed the next morning that he had recalled the nomination of the previous day. Elwood Evans was "Judge" for a day.(2)

Judge J. R. Lewis, who served as Associate Justice from 1873 to 1875 and as Chief Justice from 1875 to 1879, was reputedly removed from office in Idaho Territory before he came

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1. Reinhart. Loc. cit.
 2. Prosch, Charles. Reminiscences of Washington Territory, p. 118.

to Washington because the dominant political ring there sent the National Government a forged resignation to rid themselves of an able, upright judge. Before the trick was discovered, his successor had been appointed, and he was transferred to Washington Territory. Apparently the same means was used by the Seattle whiskey dealers to get him off the bench in Washington Territory. (1)

Several anecdotes and comments have survived in regard to Roger S. Green who served as judge in the Territorial district courts longer than any other judge, being Associate Justice from 1871-1879 and Chief Justice from 1879-1887, and John P. Hoyt, Associate Justice from 1879-1887. At one time B. F. Dennison was arguing a case before Judge Green in which one of the attorneys read extracts from Browne. When Dennison kept referring to the author as "Browny", Judge Green finally stopped him and said: "Why do you insist upon calling him Browny? My name is Green; you wouldn't call me Greeny, would you?" "Well," retorted Dennison, "that will probably depend on the way you decide this case." (2)

Judge Hoyt presented several revealing experiences gleaned from his service on the court from 1879-1887 in his address to the Washington State Bar Association in 1897. (3) Hoyt reached Washington Territory in February, 1879, and held his first term of court at Vancouver. Used to a common law state,

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1. Reinhart. Op. cit., p. 13.
 2. Ibid., p. 32.
 3. Ibid., pp. 58-64.

he found the Territorial forms of action rather confusing. Motions to "strike out and strike in...founded upon reasons conceivable and inconceivable, and demurers on all grounds known and unknown to the law" were presented to him in a bewildering fashion. The term was an important one with a good many prominent attorneys present; and Hoyt had some difficulty in deciding which of them really knew what he was talking about. (1)

It was easier for Judge Green to discipline his own body and mind than to discipline the bar and the people in one of the counties in which he was accustomed to hold court once or twice a year. In these smaller counties, sessions of court were noted events followed by a social dance at the end of the term. In view of Judge Green's religious views, it was generally supposed that no such custom prevailed in the district over which he presided. As a result, when Hoyt held a term of court in Snohomish County where Judge Green had been holding court, he was surprised to find preparations for the dance being made. In fact, the court had to finish its business in the clerk's office as the courtroom was to be used for the dance. (2)

Hoyt found some of the Territorial lawyers to be persistent individuals. D. P. Ballard desired Hoyt's aid in securing an injunction in a dispute relating to the protection of the oyster beds in Shoalwater Bay. Hoyt was on vacation, but Ballard followed him to his camp and then up the river to where he was

1. Reinhart. Op. cit., pp. 58-59.
2. Ibid., pp. 59-60.

fishing. After a long discussion, Hoyt seated himself on a rock near the steep banks of the river and listened to the papers read. The papers were then attached to Hoyt's fly, lowered, signed, and returned to the persistent Ballard by a skillful twist of the Judge's wrist.(1)

Hotel accommodations were often very meager in places where court was held. On one occasion two men charged with grand larceny were placed in the next room to Judge Hoyt with only a flimsy partition between them. That evening, despite Hoyt's reps to quiet them, the two men entered into a lengthy discussion of how they had committed the crime and the means they must use to overcome the strong case against them. It was difficult for the judge not to be prejudiced on the case the next day when the two appeared before him.(2)

At one time, the supreme court, consisting of Judges Hoyt, Green, and S. C. Wingard, a big-hearted man and able jurist, had decided in consultation to reverse a decision appealed from Judge Green's district based entirely on technicalities. Wingard had little sympathy for such cases, and Hoyt was asked to write up the opinion. Finding himself unable to prepare a satisfactory opinion in accordance with the instructions of his

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1. Reinhart. Op. cit., pp. 60-61. On one trip to Yakima, Hoyt and his party stopped at a stage house over night. They were shown to a loft containing five or six beds in which to sleep. Each bedpost was set in a large five-gallon oil can. After Hoyt learned that these were in place to keep the bedbugs from ascending the posts, he found sleep very difficult to obtain that night.
 2. Idem.

associates, he then easily prepared one affirming, rather than reversing, the opinion of the court below. Judge Green also arrived at the same conclusion, and the altered opinion was signed by Judges Green and Hoyt and sent to Judge Wingard without explanation. He signed and returned it without comment, apparently not realizing that the conclusion reached was different from that determined upon in consultation.(1)

In 1886 the Seattle lawyers attempted to do away with the term of the supreme court for that year by having an Act passed changing the time of meeting of the court from July, 1886 to July, 1887. Some of these lawyers frankly admitted that they wanted a change in the personnel of the court before their cases came before it. The legislature of 1885-1886 modified this request, however, when it was learned that such an Act would be contrary to the Revised Statutes which provided for an annual meeting of the supreme court. Consequently the legislature provided for a July, 1886, term of the supreme court but pacified the Seattle lawyers by a proviso that only cases arising east of the Cascade Mountains should be heard in that term of court. The western litigants were thus deprived of a session of the supreme court for 1886.(2)

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1. Reinhart. Op. cit., pp. 61-62.
 2. Washington Standard, July 2, 1886. The court to which the Seattle lawyers took exception consisted of Roger S. Green, Chief Justice, and John P. Hoyt, George Turner, and W. G. Langford, Associate Justice.

It would be difficult to maintain that the judicial system of Washington Territory was outstanding. Some good or even great judges there were, as Judge O. B. McFadden; but the general run of Territorial judges was definitely mediocre. Little else could be expected, however, with the primitive court conditions indicated in the stories in this chapter and the low salary scale ranging from \$2,500 to \$3,000 a year.⁽¹⁾ In view of these facts, which discouraged first rate jurists from coming to the Territories, it is less surprising that the Territorial judiciary was distinctly mediocre in its personnel and organization than that it was as good and functioned as efficiently as it did.

1. Judicial salaries were raised to \$2,500 a year in 1854. - U.S. Statutes at Large, X, 311, 312. They were again raised to \$3,000 in 1870. - Appendix, Congressional Globe, 41st Cong., 2d Sess., p. 665, 1870.

CHAPTER VII. MARTIAL LAW IN WASHINGTON TERRITORY

The relations of the Executive and the judiciary in Washington Territory provided one of the most difficult controversies in her history. Much has been written about Governor Stevens' proclamation of martial law during the Indian War, but not in the perspective of the entire Territorial period. Although martial law was proclaimed at least three times, the constitutional element presented a real problem only twice.

MARTIAL LAW DURING THE INDIAN WAR

Some of the former Hudson's Bay Company employees gave the Indians around Puget Sound aid during the Indian War. While other whites sought stockades and blockhouses for safety, these men, many with Indian wives, lived unmolested on their farms; hence they were suspected of giving the Indians supplies and possibly ammunition. (1) Since Governor Stevens insisted

1. Snowden, Clinton A., History of Washington, Vol. III, p. 484; Evans, Elwood, History of the Pacific Northwest: Oregon and Washington, Vol. I, p. 580, Cohn, Capt. Samuel F., "Martial Law in Washington Territory", Pacific Northwest Quarterly, Vol. XXVII, No. 3, p. 199, July, 1936. The Indians often visited their homes.

that "There is no such thing in my judgment as neutrality in an Indian war, and whoever can remain on his claim unmolested, is an ally of the enemy, and must be dealt with as such", (1) he determined by March 2, 1856, to order all questionable settlers to Fort Nisqually, requesting Dr. Tolmie, chief factor of the Hudson's Bay Company post there, to detain them at the fort, to keep an account of their expenses, and to observe their conduct while in confinement. (2) Several of the settlers around Muck Creek had to wait until their teams were returned by the volunteers before they could move; but practically all of them complied with the Governor's order to go to Fort Nisqually and to turn over to the Quartermaster and Commissary General such stock, provisions, and grain as they did not need for private use indicating that Stevens impressed teams, grain, provisions and stock in the war effort. (3) Most of them, however, only stopped at the fort for a few days before they returned to their farms on the assumption that their houses and stock needed their attention. (4)

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1. Stevens, Isaac I., "Message to the Fourth Session of the Legislature, December 3, 1856", in Gates, Charles M., Messages of the Governors of Washington Territory, p. 32.
 2. James Tilton to Dr. W. F. Tolmie, March 2, 1856. This and many of the following letters are from Washington House Journal, 4th Sess., 1856-1857, Appendix B; Evans, Op. cit., p. 580, Stevens to Tolmie, March 8, 1856. Acting Secretary of the Territory Smith was ordered to take twenty men and remove all the foreigners in that locality to Fort Nisqually, using persuasion first and force if necessary.- Adjutant-General Tilton to Isaac W. Smith, March 8, 1856.
 3. Smith to Tilton, March 11, 1856; Meeker, Ezra, Pioneer Reminiscences of Puget Sound, pp. 376-377.
 4. Snowden. Op. cit., p. 484.

When late in March these settlers acknowledged to Captain Maxon that they were violating the orders of Governor Stevens, he charged them with treason and sent them to the Governor. "I think it is useless," Maxon concluded, "to try to get the Indians while these men are allowed to remain here." (1) On March 31, Charles Wren, John McLeod, L. A. Smith, Henry Smith, and John McField were arrested for aiding the enemy and taken to Steilacoom. (2) Colonel Casey reluctantly accepted the responsibility of keeping them there until the Governor could collect evidence and order a commission to try them for treason. (3)

The Steilacoom lawyers, however, determined to challenge Stevens' course. William H. Wallace and Frank Clark left Steilacoom late in the evening of April 1 to see Judge Chenoweth on Whidby Island to procure a writ of habeas corpus for the release of these men. In the meantime, Stevens was warned that some of the citizens at Steilacoom hoped for the release of the prisoners so that they could either lynch them or drive them from the Territory. (4) This threat apparently influenced Stevens' later course, for his commission would at least give them a

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1. Maxon to Tilton, March 30, 1856. An Indian spy claimed that he knew of 17 warriors on the Nisqually who sent him to "Sandy" L. A. Smith and Charles Wren to get ammunition to kill beef; and Maxon's scouts found where the Indians had killed beef within the last three days. - Ibid., March 31.
 2. Morse, E. "Notes of the History and Resources of Washington Territory", Bancroft MS., University of California, Vol. X, p. 22; Snowden, Op. cit., p. 484; Stevens to Lieutenant Bennington, March 31, 1856.
 3. Stevens to Casey, March 31, 1856; Snowden, loc. cit.
 4. John M. Chapman to Stevens, April 2, 1856; quoted Morse, Op. cit., p. 23, sent to Stevens by special messenger.

trial. Other evidence soon reached the Governor that these men had incited the Indians to make war on the whites, had harbored them in their houses, and had given them food, ammunition, and information about troop movements.(1) Stevens probably concluded that he had a case against them if given time to collect the evidence.

MARTIAL LAW IN PIERCE COUNTY

In order to insure the success of his plan, the Governor on April 2 wrote out his proclamation of martial law and sent a copy to Adjutant General Tilton to forward to Colonel Casey at Steilacoom with instructions to use it only if an effort was made to free the prisoners by habeas corpus but to suppress it otherwise. The stated object of the proclamation was to prevent civil processes being served to free the prisoners.(2) The next day, however, the Governor decided to issue the proclamation at once to anticipate any action which might be taken to thwart his plans.(3) Since Colonel Casey had consented to hold the prisoners only until legal charges were brought against them, he now refused to flaunt any civil action in their behalf,(4)

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1. W. B. Gosnell to Stevens, April 2, 1856.
 2. Tilton to Colonel Casey, April 2, 1856. "This is designed to prevent the taking by civil process, habeas corpus or otherwise, the prisoners, Smith, Wren, and the rest, lately sent to Fort Steilacoom for custody."
 3. Stevens to Casey, April 3, 1856, U.S. Senate Executive Documents, 34th Cong., 3d Sess., Ser. 881, No. 47, p. 4, 1856.
 4. Casey to Stevens, April 3, 1856, Idem.: "I [Casey] doubt whether your proclamation can relieve me from the obligation to obey the requisitions of the civil authority. I request, therefore, that you relieve me from their charge."

and they were soon removed to Olympia and held in a stockade there. In the meantime Governor Stevens ordered the proclamation of martial law in Pierce County to be published on April 3, thereby depriving the civil courts of jurisdiction over the suspected persons. (1)

This was a bold move; even President Lincoln doubted his authority to suspend the writ of habeas corpus five years later. General Jackson proclaimed martial law on his own responsibility in New Orleans shortly before the battle and arrested a judge who had issued a writ to take a prisoner out of his charge. When the battle was over, however, he surrendered himself to the judge and was fined \$1,000 for contempt, which fine he paid. Twenty-six years later Congress reimbursed him, thereby tacitly approving his action. But a Governor of a Territory, merely a possession of the United States, could hardly claim the right under the Constitution to suspend the writ of habeas corpus even in cases of "rebellion or invasion". Since Congress had not granted him his power, Stevens probably knew that he was exceeding his authority. To prosecute the war, Stevens could not afford to jeopardize the authority by which he impressed teams

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1. "Proclamation", Washington House Journal, 4th Sess., Appendix B, Vol. XXXIX, 1856-1857; Cohn, Op. cit., p. 202. The proclamation stated that certain "evil disposed persons" of Pierce County had caused suspicion that they were giving aid and comfort to the enemy and had been arrested and "ordered to be tried by a military commission". As efforts were now under way to use civil process to prevent trial by the commission which if successful would interfere with the whole plan of the war, the Governor proclaimed martial law over the County of Pierce and suspended the functions of these civil officers until further notice was given.

and secured supplies as needed. Although his stand might not be approved later on, he hoped to win the war before anyone could do anything about it.(1) His actions may have been based on his own sense of necessity. One author contends that Stevens wished to try the accused settlers by a military tribunal rather than a civil court because a military commission would be more likely to convict them on the basis of available evidence than a civil court.(2) This interpretation, however, is questionable, since the order from the Governor, a man noted for his prompt and decisive action, under which a military court was finally detailed, was not issued until May 16, 1856, more than six weeks after the proclamation of martial law.(3) Could it be that Stevens merely wished to stall for time, to keep these prisoners in confinement until there was no more danger from their intercourse with the Indians, then, in order to save face for himself, to have them tried by a commission, whose authority he doubted, and who had no real idea of nor need for condemning the accused when it finally met? In view of subsequent events, this interpretation seems logical.

When the day for the opening of court approached, Judge Chenoweth, being ill, requested Chief Justice Lander, acting as a commanding officer for Company A near Seattle, to preside for him.(4)

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1. Snowden. Op. cit., pp. 485-486.
 2. Ibid., pp. 486-487; Cohn, Op. cit., p. 203.
 3. Evans. Op. cit., p. 581.
 4. F. A. Chenoweth to Fayette McMullen, March 8, 1858, in Meeker, Op. cit., p. 392; Snowden, Op. cit., p. 487.

Since he had received his commission from Secretary Mason, Lander now insisted that his commission was no longer operative with the return of Stevens to the command. Stevens, however, ordered Colonel Shaw to enforce martial law and requested Lieutenant Colonel Lander as an inferior officer to cooperate with Colonel Shaw in carrying out these orders.(1) Judge Lander, nevertheless, defied Stevens' command and martial law by convening court at Steilacoom on May 5, the date set by law. Adjourning court until May 7, he promptly appealed to Stevens to revoke martial law, resigned his Army commission accepted as a personal favor to Secretary Mason, and insisted that since there was no law allowing an adjournment of the court it had to be held that week or not at all.(2) On his part, Stevens refused to accept Lander's resignation as an Army officer and failed to see any reason why Lander could not aid the prosecution of the war by adjourning court for a month by "which time I am quite sure the necessity of martial law will have passed away", just as well as he could adjourn it from May 5 to May 7.(3) This would avoid any

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1. Stevens to Shaw, April 29, 1856; Stevens to Lander, May 4, 1856, and May 6, 1856.
 2. Lander to Stevens, May 5, 1856. Lander insisted that "There was imminent danger of collision between the civil and military authorities. Nothing could be more disastrous than this." He considered it his duty to hold court and asked Stevens to abrogate martial law to avoid a conflict.
 3. Stevens to Lander, May 6, 1856. Stevens had examined the law and found no difficulty in making this adjournment to any time before the next session of court. The law stated that the district court for Pierce County should meet on "the first Monday in May and November." Taken literally the law would indicate that the court could meet only on those two days. "The power to adjourn over to Tuesday or Wednesday, involves the power to adjourn over to any other time."

conflict between the Executive and the judiciary. Since one month had already passed during which time a military commission could easily have tried the accused, Stevens apparently desired only a delay until the Indian danger was completely removed. When Lander indicated his determination to force the Governor's hand, Stevens informed Colonel Shaw that "Martial law must be enforced".(1) The lack of compromise on either side made conflict inevitable.

When Judge Lander again opened court at Steilacoom on May 7, 1856, deputy marshals had summoned 25 or 30 armed citizens to protect the court.(2) Colonel Shaw and 20 volunteers entered the court room and arrested the judge and clerk, who avoided serious bloodshed by going peacefully.(3) Lander was confined for only two days; his clerk for three.(4)

As soon as the soldiers and their prisoners left the court room, the lawyers present held a meeting of the bar and

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1. Stevens to Shaw, May 6, 1856. Stevens promised an immediate order convening the military commission, indicating his plans had been disrupted.
 2. Snowden. Op. cit., pp. 487-488.
 3. Meeker. Op. cit., p. 375. Meeker describes this court as follows: "I witnessed what but few American citizens have ever seen when, on the 7th of May, 1856, at Steilacoom, I saw twenty armed men, acting under 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 standing in the court room with my 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."
 4. Evans. Op. cit., p. 582. The volunteers had long rifles ill-adapted to shooting at close range while the posse possessed shorter arms, giving them a distinct advantage in case of a clash in court.

denounced the Governor for his action. They contended that the United States troops had already scattered the Indians and removed the threat to the settlements before martial law was proclaimed; that even Colonel Shaw had advised Stevens about three days before court opened to withdraw martial law as it was no longer necessary; and that in arresting Judge Lander, the Governor had violated the principles of constitutional privilege by an "outrage which if tamely submitted to would be entirely subversive to our liberties."(1) These same lawyers also organized a citizens' meeting which condemned Stevens' action severely. They also sent a long memorial address and the resolutions of both meetings to the President of the United States and various members of Congress to embarrass Stevens as much as possible in his relations with the National Government.(2)

This was only the beginning of the anti-Stevens campaign. On May 11, George Gibbs and H. A. Goldsborough sent Secretary of State Marcy a long letter condemning Stevens' action and refuting his published vindication of the same day.(3)

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1. U.S.Senate Executive Documents, 34th Cong., 1st Sess., Ser. 823, No. 98, pp. 3-6, 1856. Colonel Shaw wrote a letter but never sent it to Stevens. The protest was signed by W. H. Wallace, Chairman; Elwood Evans, C. C. Hewitt, Frank Clark, B.F.Kendall, H.A.Goldsborough, George Gibbs, William C. Pease, and E. C. Murden.
 2. George Gibbs, Secretary of the Territory, to the President of the United States, May 6, 1856, Ibid., pp. 2-7; Snowden, Op. cit., p. 488. Gibbs may have been acting-Secretary in Mason's absence.
 3. U.S.Senate Executive Documents, Op. cit., pp. 15-19; also in Olympia Pioneer and Democrat, April 10, 1857.

In this letter, they belittled Stevens' charges that the arrested men were guilty of treason, insisted that martial law was unnecessary since many farmers were already returning to their farms, maintained that Stevens wished only to assert his despotic will over those who had disobeyed his orders, and discredited the opinion of Shaw because he was an officer of Stevens' creation. They insisted that Stevens had misunderstood the question; "It is simply whether a public servant shall be allowed to override all law, even the highest; to usurp at his sole and egotistical discretion, absolute power over life and liberty, or whether the Law of the Land is to control him." Claiming he had no defenders either in the community or among the volunteers, they concluded that his immediate removal was absolutely necessary for the welfare of the community, particularly because his domineering character was accentuated by his fits of intoxication at which times his language and actions knew no bounds. The very bitterness of their charges that Stevens wished to be a Napoleon for the new Territory defeated their object and resulted only in delaying the ratification of the Indian treaties and prolonging the bitterness of the Indian War.(1)

Stevens' vindication of May 11, criticized so severely by Gibbs and Goldsborough, presented the opinion of Colonel Shaw that many people desired the arrest of the prisoners and that the confidence of the troops in the field depended upon their

1. Snowden. Op. cit., pp. 488-489.

detention even at the inconvenience of enforcing martial law.(1) Stevens' vindication further reveals his suspicions that the prisoners were the main original cause of the war, that they were attempting to see that it continued to increase their own gain, and that martial law was necessary only because their sympathizers wished to use a writ of habeas corpus to free them from the military authorities. He insisted that the immediate holding of court was unnecessary since both of the important cases before the court had been brought before the courts of Thurston County but had been transferred to Judge Chenoweth's district on sworn affidavits "that Chief Justice Lander was prejudiced and would not try the cases fairly". Still Lander now insisted that public necessity demanded that he try these cases immediately despite the fact that they had been previously removed from his jurisdiction to insure a fair trial. Stevens concludes that

"It is simply a question as to whether the Executive has the power in carrying on the war, to take a summary course with a dangerous band of emissaries, who have been the confederates of the Indians throughout, and by their exertions and sympathy can render to a great extent, the military operations abortive. It is a question as to whether the military power, or public committees of the citizens without law, as in California, shall see that justice is done in the case."(2) (3)

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1. Shaw to Stevens, May 10, 1856, U.S. Senate Executive Documents, Op. cit., p. 13. Shaw mentions that this conviction prevented him from sending "the note first written", the one referred to by the Steilacoom bar who said Shaw had recommended the abrogation of martial law. Stevens sent this letter and his vindication to the President on May 11.
 2. Ibid., pp. 8-13.
 3. Evans. Op. cit., p. 582.

Stevens made no effort to prove the legality of his position; for it was a case of definite necessity to him in the prosecution of a war.

MARTIAL LAW IN THURSTON COUNTY

Before Judge Lander was scheduled to hold court in his own district some of the prisoners applied to him on May 12 for a writ of habeas corpus.(1) The day after the marshal served this writ on May 12 Governor Stevens proclaimed martial law in Thurston County to prevent civil action from removing the prisoners from the purview of the military commission scheduled to meet on May 20.(2) That morning a company of volunteers rode into town and placed a cannon in front of the court house while some of the soldiers remained on duty in the Governor's office. In defiance of the writ of habeas corpus the persons for whom it was issued were taken by a guard to Camp Montgomery out of the limits of Thurston County.(3)

When court convened on May 14, the Governor had made no return on the writ. Lander promptly ordered United States Marshal George W. Corliss to notify Stevens that the Chief Justice was in chambers waiting for the return. When the Governor failed to answer, the attorneys for the accused moved that the court grant a rule upon Governor Stevens to show cause why a

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1. Evans. Loc. cit.
 2. Idem.; Washington House Journal, Loc. cit.
 3. Evans, Loc. cit.; Stevens to Capt. B. Miller, May 14, 1856.

writ of attachment should not issue against him for contempt in failing to return the writ. When this, too, was ignored, the rule was made absolute and a writ of attachment was issued against the Governor. When United States Marshal Corliss found Stevens in the Executive office, the Governor greeted the posse with dignity but did not offer to accompany them. Adjutant-General Tilton, Captain Cain of the volunteers, and the clerks relieved the situation by hustling the posse into the street.(1)

Stevens immediately ordered Captain Bluford Miller to arrest Chief Justice Lander and release him on parole if he would promise in writing to suspend his judicial functions until martial law was revoked; otherwise he should be taken to Camp Montgomery and held there pending further orders.(2) As soon as Lander heard that the volunteers were in town, he adjourned court and went to the office of Elwood Evans, the clerk. Miller and his soldiers soon applied for admittance, broke down the locked door, and arrested both the judge and the clerk. Although Evans was soon released, Lander was held in custody at Camp Montgomery until May 26.(3) Kendall and Evans held an unsuccessful public meeting in the streets of Olympia immediately

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1. Gibbs and Goldsborough to Secretary of State Marcy, May 19, 1856; U.S. Executive Documents, 34th Cong., 3d Sess., Ser. 881, No. 41, pp. 35-36, 1856; Cohn, Op. cit., pp. 206-207; Snowden, Op. cit., pp. 489-490.
 2. Stevens to Miller, May 15, 1856.
 3. Snowden. Op. cit., p. 490.

following the departure of the soldiers. Stevens' backers quickly called the largest public meeting yet convened in Olympia and passed resolutions which were a "clear, emphatic, and unmistakable vindication" of his course. It is doubtful that any of these resolutions reached the President, however, for they were apparently stolen since no copy was available for publication a month later. (1)

It did not take long for the Governor's critics, Gibbs and Goldsborough, to inform the authorities in Washington of his most recent outrages and to request his removal. They added more to their previous claim that the condition in the Territory could not have been critical when martial law was proclaimed because two companies had been kept lying in wait, not for Indians but for courts of justice(2) by asserting that Miller's volunteers were all from Oregon and that the troops were threatened with a dishonorable discharge and loss of pay unless they sustained Governor Stevens. "We seriously fear that bloodshed must result from the Governor's course, and assure you that you cannot too much hasten to supersede him."(3) Judge Lander and Elwood Evans added their influence to that of Stevens' critics in Washington, D.C., by informing Secretary of State Marcy of the Governor's latest outrage in again proclaiming martial law to

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1. Pioneer and Democrat, June 20, 1856; I.I.Stevens Miscellany, MS., Pacific Northwest Collection; Snowden, Op.cit., pp.491-492.
 2. Gibbs and Goldsborough to Marcy, May 11, 1856. Discussed above.
 3. Ibid., May 19, 1856, U.S.Senate Executive Documents, 34th Cong., 1st Sess., Ser. 823, No. 98, pp. 21-23, 1857; Pioneer and Democrat, April 10, 1857.

compel a trial of the prisoners by a military rather than a civil tribunal.(1)

The order for the court martial to convene at Camp Montgomery May 20 was not issued until May 16.(2) By this time preparations were made to carry the war east of the mountains and all threats to Puget Sound settlements had disappeared. On May 23, the Commission decided in the case of Lyon A. Smith that the offense of "aiding and comforting the enemy" constituted treason, and that, as a military court, they had no jurisdiction in that case. Smith was turned over to the civil authorities, and Judge Advocate Victor Monroe presented amended charges against Charles Wren and John McLeod on May 26. When the defense counsel again questioned the jurisdiction of the court, the plea was rejected and Wren and McLeod were ordered to answer. McLeod and Wren pleaded not guilty to the amended charges two days later; and Judge Advocate Monroe, a close friend and defender of Stevens, presented an unusual paper for a man who was carrying out the orders of a Governor set on having a military rather than a civil trial. It read:

"Believing that the further prosecution of the charges against John McLeod and Charles Wren involves the absence of many valuable officers from the command of the troops, and is thereby seriously

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1. Lander to Marcy, May 22, 1856; U.S.Senate Executive Documents, Op. cit., pp. 24-27; Evans to Marcy, May 25, 1856, Ibid., pp. 29-30.
 2. By Adj. General Tilton, Washington House Journal, 4th Sess., Appendix B, Vol. LVII, Appendix, 1856-1857.

interfering with military operations, and as martial law has been abrogated in the county, I desire that no further proceeding be had before the court against the said accused and that they be turned over to the civil authorities."

The Governor who had ordered the trial now approved the proceedings.(1) This was a convenient way out for Stevens who apparently wished to hold the prisoners without trial until their return home would not interfere with his war effort. Since that time had come he no longer needed martial law nor wished to prosecute the prisoners further.

ARTICLE XX

In the meantime Stevens' quarrel with the judiciary had reached one of its most acute stages. As early as May 22, 1856, Judge Monroe warned Colonel Shaw that another effort to issue writs of habeas corpus might be attempted; but Monroe doubted that Justice Chenoweth had the authority to hold court or issue civil processes under martial law.(2) Chenoweth, however, disagreed. Stevens promptly ordered Shaw to prevent a court being held in Pierce County if he had to arrest the judge to do it.(3)

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1. Washington House Journal, Op. cit., pp.lv-lxv; Evans, Op. cit., pp. 382-383. Evans was a little surprised at the outcome and Stevens' approval of it; Gibbs and Goldsborough to Marcy, June 6, 1856, U.S.Senate Executive Documents, op.cit., p. 3.
 2. Monroe to Shaw, May 22, 1856.
 3. Stevens to Shaw, May, 1856.

The cause for alarm was the return of Judge Chenoweth who insisted on holding court whether it was in the week set by Lander as the only lawful week for court or not.(1) On May 23, Chenoweth granted two writs of habeas corpus directed to Colonel Shaw; one for Judge Lander, and the other for three of the prisoners returnable May 24. Anticipating an attack by the Executive, the court summoned about 50 bailiffs for his protection,(2) and appealed to Colonel Casey of the Regular Army for sufficient troops to prevent bloodshed. Colonel Casey, however, insisted that in this clash between the coordinate branches of the Territorial government he should remain neutral but offered to talk to the commander of the volunteers to see if a clash could not be avoided.(3) Meanwhile Lieutenant Silas A. Curtis had arrived with about 30 volunteers. Realizing the critical nature of the situation, he wrote Stevens and Captain Maxon for instructions as to whether he should attempt to arrest Judge Chenoweth or not. (4) Casey also used his influence with Curtis to prevent violence. As a result, Chenoweth was not molested but held court without interruption.(5)

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1. Lander to Stevens, May 5, 1856.
 2. Evans, Op. cit., pp. 582-583; Snowden, Op. cit., p. 482.
 3. Chenoweth to Casey; Casey to Chenoweth - Cohn, Op.cit., pp.210-211.
 4. Curtis to Stevens, May 24, 1856, Meeker, Op. cit., p. 388.
 5. Chenoweth to Marcy, June 8, 1856, U.S.Senate Executive Documents, Op. cit., p. 46; Gibbs and Goldsborough to Marcy, June 7, 1856, Ibid., p. 3. Colonel Casey still feared bloodshed if the Governor persisted in what Casey considered to be his illegal acts for the commander of the regular troops continued to insist that no necessity existed for the suspension of the writ of habeas corpus. - Casey to General Wool and Casey to the Adjutant General, Cohn, Op. cit., pp. 211-212.

Stevens had accomplished his purpose and was willing to relent.

Earlier that morning Colonel Shew made return on the writs sent him the day before that the prisoners were kept by orders of the Governor and commander-in-chief of the volunteers. As soon as he had received this return, Judge Chenoweth penned a hasty opinion on the case and circulated it throughout the town before court opened that afternoon.(1) In this opinion, Chenoweth claimed that he was shocked by martial law as a "monstrous assumption of arbitrary power, without the shadow of legal authority", which he had hoped the Governor would vindicate on the basis of some weakness in the courts or laziness among civil officials. Since Stevens knew that the Pierce County courts would not free a person on a writ of habeas corpus unless he was guilty, Chenoweth could conceive of no reason for the use of martial law except a doubtful necessity which made it "utterly destitute of authority".(2)

Chenoweth also pronounced Colonel Shew's returns insufficient because an order of a civil court was superior to an order of a Governor. Chenoweth was now ready to grant a motion of attachment in the cases of Chief Justice Lander and the prisoners. The only excuse offered for martial law was to suspend the writ of habeas corpus. In closing the opinion, Chenoweth

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1. Chenoweth to Marcy, June 8, 1856, U.S. Senate Executive Documents, Op. cit., p. 45.
 2. F. A. Chenoweth to Wallace, Gibbs, and Clark, May 15, 1856, in "Opinion of F.A. Chenoweth, May 24, 1856", Public Documents of Washington Territory, Vol. I, pp. 3-5.

gave the volunteers a lecture as to their studies that some of them failed to appreciate. As volunteers, they were to obey only legal orders to subdue the Indians and not those directing them against citizens, temples of justice or judges, which orders "ought not to be obeyed". By so doing, the soldiers would subject themselves to court penalties and would jeopardize their hope of compensation from Congress. (1) Chenoweth had real feeling in his remarks since the volunteers threatened his own security that morning. The attachment was granted and Shaw was ordered placed under arrest.

On May 24 Governor Stevens informed Shaw that he was abrogating martial law and requested him to release Chief Justice Lander. (2). Stevens dated his proclamation ending martial law May 24 but did not issue it until May 26 in Olympia and Steilacoom. (3)

When Colonel Shaw was arrested and brought to Steilacoom on May 26, he expected a respite from the Governor but none came. Stevens changed his plans after Quartermaster General William W. Miller refused to deliver the respite because he was sure that the Governor's pardoning power failed to cover cases of this type and now requested Chenoweth if possible to admit Shaw to bail and dispose of the contempt by a fine, as the

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1. Public Documents of Washington Territory, pp. 7-14.
 2. Stevens to Shaw, May 24, 1856, U.S. Senate Executive Documents, Op. cit., p. 38.
 3. Washington House Journal, 4th Sess., Appendix B, p. liii, 1856-1857; Gibbs and Goldsborough to Marcy, May 7, 1856, U.S. Senate Executive Documents, Op. cit., p. 3.

Colonel was needed immediately on the campaign east of the mountains. Stevens also promised to turn the prisoners over to the court and do all he could to purge the contempt. Shaw was discharged on a pledge that he would appear at the November term of court to answer for contempt.(1) The anticlimax to a serious conflict had begun. The action against the prisoners ended in like manner. Two of them were dismissed as soon as martial law was revoked; the other three were given the shadow of a trial in the civil courts and released without penalty.(2)

The United States marshal still held an alias writ of attachment against Stevens which he had been unable to serve due to the action of the clerks in expelling the posse from the Governor's office. Stevens was requested to answer the writ before Chief Justice Lander June 2 but asked for an extension of time

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1. Chenoweth to Marcy, June 8, 1856, U.S.Senate Executive Documents, Op. cit., pp. 45-47; Stevens to Chenoweth, May 28, 1856, and, Chenoweth to Stevens, May 29, 1856, Idem. Miller told Stevens that the same type of thing had been tried unsuccessfully in Iowa.
 2. U.S.Senate Executive Documents, Op. cit., pp. 22-28; Gibbs and Goldsborough to March, June 7, 1856, Ibid., pp. 3-4; Evans, Op. cit., p. 583. On May 29, the first affidavit against these men was filed by Captain DeLacey, a member of the Military Commission, before United States Commissioner Batchelder after two months' imprisonment [which seems to have been the sole purpose of the Governor in holding them]. Judge Chenoweth found it convenient to leave town, possibly to insure a fair trial and to relieve himself from any charge of personal bias in the case if he were to conduct the hearing. Hearings were held until June 4 when Charles Wren was dismissed; the next morning the Commissioner discharged Lyon A. Smith and John McLeod for want of sufficient evidence to warrant further proceedings against them.

due to the press of business upon him. This was granted to the first Monday in July; and writs were now served against the individuals who had expelled United States Marshal Corliss from the Governor's office. Lander feared that popular opinion favoring Stevens might interfere with these writs.(1) But to his surprise all parties appeared according to the writs of attachment, Stevens by counsel, Judges Strong and Monroe. The other writs were immediately discharged. Stevens' counsel asked for a change of venue and to have the writ quashed; but both requests were denied. Stevens was then fined \$50, and his counsel produced a document that has troubled many historians, a respite for one Isaac I. Stevens, signed by Governor Isaac I. Stevens, pending investigation of the case by the President of the United States. As Stevens considered this a Federal case, he had a right according to the Organic Act to grant a respite. Lander disagreed, however, and overruled the motion to suspend further proceedings on the basis of this respite. The fine was paid, apparently by Stevens' friends and the defendant was discharged from further custody under the detachment, July 10, 1856.(2) The payment of the fine is quite easily explained by a public meeting immediately following the court at which a

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1. Lander to Marcy, June 7, 1856, U.S. Senate Executive Documents, Op. cit., pp. 31-33.
 2. Ibid., July 20, 1856, Ibid., pp. 50-51; Cohn, Op. cit., pp. 213-215; Meeker, Op. cit., p. 408; see Organic Act, Sect. 2; "Documents", Washington Historical Quarterly, Vol. XXV, No. 3, p. 230, July, 1934. The respite is given in full in the last named cited authority.

resolution was passed to pay the fine and costs, and Lander's course was pronounced "unnecessary and uncalled for".(1)

ESTIMATES OF MARTIAL LAW

Two interpretations have been advanced in regard to this fine. Hazard Stevens thinks:

"The Judge's action in imposing a merely nominal fine was taken to be an acknowledgment, in accordance with the opinion of nine-tenths of the community, that the Governor's course, if technically illegal, was necessary and right."(2)

Evans, however, belittles Stevens on the basis of the fine. Since Stevens' backers compared him with Jackson at New Orleans in his treatment of Judge Hall, Evans concluded that the relative fines imposed indicated the comparative standing of each - on Jackson, \$1,000; on Stevens, \$50.(3)

Fortunately for Stevens, his publicity at Washington was not all of the Gibbs and Goldsborough variety. Representations in his favor signed by hundreds of citizens of Thurston County and members of the volunteer forces were sent to Delegates Anderson of Washington and Lane of Oregon Territories.(4)

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1. Pioneer and Democrat, July 11, 1856. Victor Monroe led out in this meeting.
 2. Stevens, Hazard. Life of Isaac Ingalls Stevens.
 3. Evans. Op. cit., pp. 583-584. Evans' experience in the affair colored his estimate.
 4. Pioneer and Democrat, June 20, and, July 11, 1856.

Among the volunteers, apparently every group, except Company A in Seattle, which followed Captain A. A. Denny in refusing to sign them, received them favorably. (1) The volunteers soundly condemned Judge Chenoweth for his opinion of May 24 as to their duty. It was their opinion that

"...he could have rendered his country more service by shouldering his rifle and assisting us to repel our common enemy, than he did by giving us his opinion that our officers had no right to order us, and we were not bound to obey." (2)

One more of these volunteer representations merits careful consideration in evaluating Stevens' position:

"If Chief Justice Lander was right, then Judge McFadden of the southern district was wrong, for the latter called a term of the district court in that district, and then, for the same reasons stated above, adjourned without attempting to do any business. But we are inclined to believe that Judge McFadden was right." (3)

Judge Lander refused to delay his term of court even one month to facilitate the prosecution of the war and in so doing manifested an obstinacy equal to that of the Governor; Judge McFadden not only delayed his spring term of court but called it off entirely due to the Indian War. The average volunteer cared little for the legality of the question; but he could appreci-

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1. This made another choice bit of news for propagandists Gibbs and Goldsborough who immediately sent the word on to the State Department. - Gibbs and Goldsborough to Marcy, June 20, 1856, U.S. Senate Executive Documents, Op. cit., p. 48.
 2. Pioneer and Democrat, June 20, 1856.
 3. Idem.

ate the cooperative spirit of Judge McFadden for the war effort better than the entire lack of cooperation exhibited by the Chief Justice. To them the necessity existed and a positive course was necessary to preserve the lives of the citizens.(1)

A few statements of attitude will suffice to show the relative position of both sides. The editor of the Pioneer and Democrat(2) claims that the people demanded the arrest of the prisoners to so great an extent that only martial law could quiet this popular unrest. He failed to see that anyone was damaged by or suffered from martial law, and it undoubtedly had served a valuable purpose. The comment in the Oregon Weekly Times(3) was even more hostile to the judiciary. The writer thought Stevens was correct and hoped he would "be able to teach some of the self-conceited hair-brained dictators their duty to their country, if they have forgotten what is due themselves". He condemned the bar with the exception of Judge Monroe for trying "to crush Governor Stevens, (8) glast his good name and high reputation". While the leaders claimed to be sticklers for law, it was rumored that they were interested in the several thousand dollars in fees they hoped to get from the prisoners who had made a good profit from their transactions with the Indians.(4)

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1. "Representation", Pioneer and Democrat, June 20, 1856.
 2. Idem.
 3. May 24, 1856. "The Troubles in Washington Territory", [Signed] "XXXI", MS. copy in Governor's Documents re Martial Law, Pacific Northwest Collection.
 4. Idem.

The judiciary also had defenders. W. H. Wallace wrote the editor of the Times that the branches of the Territorial Government set up by the Organic Act were coordinate and neither could exceed the powers thus conferred without being guilty of an illegal usurpation.(1) General Wool used this as another opportunity to discredit Stevens' conduct of the Indian War.(2) Judge Chenoweth claimed that no one believed martial law necessary at the time it was declared for the Indians had already been defeated at White River and Connell's Prairie, and many farmers were returning to their farms. The Judge had a happy after-thought that if martial law were necessary why could the prisoners not have been imprisoned at Camp Montgomery and martial law declared there only?(3)

Public meetings and representations had their effect. The citizens of Sawamish County followed the lead of Thurston County with a public meeting June 27, 1856, in which they passed a resolution directed to the President and the Delegates of Oregon and Washington Territories requesting that they resist any and all attempts for the "removal of Gov. Stevens from office by his calumniators".(4) By October 17, 1856, the Pioneer and Democrat could bring the assurance to its readers that public meetings and demonstrations in his favor in

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1. Wallace to Waterman, June 7, 1856, Governor's Documents re Martial Law.
 2. Wool to Assistant Adjutant-General of the Army Thomas, June 3, 1856, U.S. House Executive Documents, 34th Cong., 3d Sess., Ser. 906, No. 76, p. 164, 1856.
 3. Chenoweth to Fayette McMullen, March 6, 1858, Meeker, Op. cit., pp. 392-394.
 4. Pioneer and Democrat, July 11, 1856.

and out of Congress had

"...shown conclusively the necessity which compelled the Governor to resort to such extreme measures. These facts come in a very opportune moment, for with them, and the influence of your Delegate, the President has decided not to remove your worthy Governor."

His opponents had failed in their object; but the Governor was also to fail in an effort to obtain the full endorsement of the Federal Government for his actions.

Congressional committees thoroughly investigated Stevens' course, but apparently no action was taken in Congress on the basis of these investigations.⁽¹⁾ Presumably Stevens hoped that President Pierce would sustain his actions; but in this hope he was disappointed. Secretary of State Marcy wrote Stevens that he had laid all documents in the case before the President who had not been able to find a justification for martial law. Only direful necessity threatening the very existence of civil government could be used as an excuse for substituting arbitrary military rule for civil government. The President did not question the Governor's motives, but he was induced by "an imperative sense of duty, to express his distinct disapproval of your conduct, so far as respects the proclamation of martial law". No excuse could be recognized for martial

1. U.S. Senate Executive Documents, 34th Cong., 1st Sess., Ser. 823, No. 96; Ibid., 3d Sess., Ser. 881, Nos. 41, 47; House Executive Documents, 34th Cong., 3d Sess., Ser. 906, No. 76.

law when its object was to act against the existing government or to supersede its functionaries in the discharge of their proper duties.(1) Since the Secretary of State was not sure the President's opinion was accurate he asked the Attorney-General for his opinion on January 9, 1857.

Attorney-General Cushing handed down his opinion on martial law February 3, 1857. He considered the Territorial courts competent to handle the Governor's invasion of the rights of individuals. The writ of habeas corpus, according to the Constitution, can be suspended only in case of rebellion or invasion when the public safety demands it. The right to suspend the writ and to judge when such suspension was necessary belonged to Congress alone or to the legislatures of the several States. The object of martial law in Washington Territory as presented both by the Governor and the Chief Justice was to prevent the writ of habeas corpus in behalf of certain prisoners held in confinement by the military authority. But martial law went further; it suspended all the laws of the land and substituted for them the mere will of the military commander.

"As to the present case, therefore, it suffices to say, that the power to suspend the laws and to substitute the military in the place of the civil authority, is not a power within the legal attributes of a Governor of one of the Territories of the United States."(2)

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1. Marcy to Stevens, September 12, 1856, U.S. Senate Executive Documents, 34th Cong., 3d Sess., Ser. 881, Nos. 41, 56.
 2. Opinions of the Attorney-General, Vol. VIII, pp. 365-374.

But this was pre-Civil War opinion when the position of the Executive was often considered as inferior to that of the legislature. Time was to tell a different story.

THE AFTERMATH

The aftermath of the struggle within the Territory indicates that party lines were split in the next election between the "Stevens" group and the "anti-Stevens" opposition. Martial law aligned a good many Democrats in open opposition to the Governor; many former Whigs, like Judge Strong, however, backed him and his war policies. The "anti-Stevens" combination was strong enough to obtain a majority in both branches of the legislature in the July election. When the legislature convened December 1, 1856, the Council elected W. H. Wallace, President, and Elwood Evans, Chief Clerk, both of whom were Whigs. The House elected two anti-Stevens Democrats, Joseph S. Smith, Speaker, and Ruben L. Doyle, Chief Clerk.(1)

In his message to the legislature December 3, 1856, Governor Stevens asked for an investigation of martial law on the basis that there were no neutrals in the war, that the military officers had found their efforts to locate the enemy fruitless until decisive steps had been taken to hold these prisoners, and that after their imprisonment the Indians had been repeatedly struck and prevented from rallying again for

1. Evans. Op. cit., pp. 504-505.

effective action. Stevens took the responsibility for martial law as a necessary step in the prosecution of the war; and criticized Chief Justice Lander for fostering division within the Territory when united action was most needed. The legislature accepted his challenge to scrutinize martial law still justified only on the basis of necessity.(1)

The judicial committees in both houses of the legislature issued both majority reports condemning the Governor's action and minority reports justifying Stevens and condemning Judge Lander as an officer in the volunteer forces who merited arrest for disobedience to the orders of his Commander-in-Chief.

(2) The legislature, however, quickly passed the resolution censuring Stevens.(3) This resolution condemned Stevens for exercising power conferred by the Constitution on Congress alone in his attempt to suspend the writ of habeas corpus and of violating the Constitution and the laws of the United States in interfering with courts of justice and trying citizens before military

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1. Stevens to the Legislature, December 3, 1856, Gates, Op. cit., p. 32; Snowden, Op. cit., pp. 495-497.
 2. Washington House Journal, 4th Sess., pp. 69-70, 87-88, 1856-1857; Washington Council Journal, 4th Sess., pp. 74-79, 115, 182-187, 1856-1857.
 3. Washington House Journal, 4th Sess., p. 88, 1856-1857; Evans, Op. cit., p. 505. The vote in the House was 17 to 10 and in the Council 5 to 4. Judge Strong, a former Whig, defended Stevens in the House and Joseph S. Smith, an ardent Democrat, led the attack. Wallace, Denny, Abernethy, Poe, Whigs, and Cook of Olympia, a Democrat, presented the opposition to the Governor in the Council. James W. Wiley, editor of the Pioneer and Democrat, led the Stevens supporters backed by Pagett of Lewis and Huff and VanVleet of Clarke Counties.

rather than civil tribunals. (1)

Another resolution directed against Stevens requesting a separation of the office of Governor and Superintendent of Indian Affairs, had an unexpected result, which pleased no one, when Congress combined the Superintendents of Oregon and Washington under one head. (2)

This combination against Stevens was only a temporary one built up in the heat of conflict. In the contest of 1857, Stevens' friends persuaded him to run for Delegate to vindicate his policy. The canvass was conducted in a gentlemanly fashion, but the press of the Territory used every opportunity to attack the new Republican party and its candidate. Governor Stevens was easily elected, his policy sustained, and instructions given to repeal the anti-Stevens measures of the preceding legislature. (3)

This legislature promptly vindicated the Governor's action. A resolution passed January 19, 1858, proclaimed that the State of the country demanded stringent measures, that there was absolute necessity for martial law indicated by the fact that the Indians had been hard to find before and easily struck

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1. Laws of Washington, 4th Sess., p. 85, 1856-1857. Passed January 16, 1857.
 2. Washington Council Journal, 4th Sess., p. 122, 1856-1857.
 3. Evans. Op. cit., p. 511. It may be assumed from subsequent events that one of Stevens' objects in seeking election as Delegate was to gain revenge on Lander and Chenoweth as they both failed to be reappointed. Stevens received 953 votes to 518 for Abernethy; the legislature consisted of: in the Council, 6 Democrats to 2 Republicans; in the House, 22 Democrats and 7 Republicans.

after its proclamation, and that the resolution passed January 16, 1857, did not at that time express the opinion of a majority of the citizens of Washington Territory, a fact demonstrated by the later election of Stevens as delegate by over a two-thirds majority. (1) Copies of this resolution were sent to the President and both Houses of Congress. (2)

After Stevens' endorsement by the people in 1837, many of his former rivals sought to conceal their former positions. In fact, by 1860 even Judge Lander wished to make it appear that he was one of Stevens' closest personal friends and that his previous opposition to him was directed solely by a regard for the public interest. Thus ended one of the bitterest personal conflicts in Washington history. (3)

Had martial law been proclaimed only once in Washington Territory, it might be easy to condemn the action of Governor Stevens as an illegal usurpation of power as a good many historians have done. (4) Since the constitutional questions involved are closely related in both instances the one should not be studied independent of the other in evaluating martial law in Washington Territory.

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1. Washington Council Journal, 5th Sess., p. 65, 1857-1858; Laws of Washington, 5th Sess., p. 65, 1857-1858.
 2. Senate Miscellaneous Documents, 35th Cong., 1st Sess., Ser. 936, No. 174, pp. 1-2; House Miscellaneous Documents, 35th Cong., 1st Sess., Ser. 963, No. 71, pp. 1-2.
 3. Morse. Op. cit., pp. 56-58.
 4. Cohn, Meeker, and Evans particularly condemn Stevens for martial law.

CAUSES FOR MARTIAL LAW IN THE CHINESE RIOTS

Near the end of the Territorial period the writ of habeas corpus was suspended again in Washington Territory. By some strange coincidence martial law was proclaimed the first time in 1856, three years after the Territory was formed, and again in 1886, three years before the Territorial period came to an end. In both cases its proclamation was occasioned by a conflict between two races; this time, however, it was not the Indians who stood in the way of the interests of the white race, but the Chinese.

Opposition to the Chinese was not new in the Territory. The legislature in 1864 imposed a per capita tax of \$24 a year on each Chinaman but reduced it to \$16 a year in 1866. The sheriffs who collected this tax were authorized to seize and sell the goods of delinquents when necessary. In spite of these restrictions Chinese laborers flocked into the Territory until there were 3,276 of them within its borders by 1885.(1)

By that year several factors aggravated the situation and led to trouble of a serious nature. The completion of the Canadian Pacific Railroad threw many Chinese out of work in British Columbia, a good many of whom drifted across the border to Seattle, Tacoma, and other communities in Washington Territory.(2) Glaring abuses of the Chinese Restrict Act became evi-

1. Snowden. Op. cit., p. 319.

2. Idem.

dent. A small force of customs officials received little encouragement in enforcing the Act, particularly since the Chinaman who attempted to enter the United States did not even have to bear his own expense in returning to the port from which he came. Some persons, therefore, were detected at the border so often that they were readily recognized by the customs inspectors. As a result, Governor Squire suggested to the Secretary of Interior in 1885 that a larger customs force be instituted, that the Restriction Act be revised to make it effective, or that Congress repeal the Burlingame Treaty as protective legislation for American workers.(1) Congress, however, failed to act, the Chinese continued to come, and the limited customs force was unable to do anything about it.(2)

The economic depression of the 1880's hit the Pacific Northwest particularly hard. Villard's failure in 1883, the rise of unemployment after a period of rapid expansion, and a sharp decline in wages proved disastrous for the economic life of Washington in particular.(3)

The Knights of Labor led in the anti-Chinese agitation along the coast. The expulsion of 500 Chinese from the coal mines at Rock Springs, Wyoming on September 4, 1885, with

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1. Report of the Secretary of the Interior, 49th Cong., 1st Sess., II, Ser. 2379, No. 1, Part 5, p.1119; Reports of Governor Squire, 1884-1885.
 2. Report of Governor Squire, October 1, 1886, in, Report of the Secretary of the Interior, 49th Cong., 2d Sess., II, Ser. 2468.
 3. Watson C. Squire, Bancroft MS., p. 19; Bagley, Clarence B., History of Seattle, Vol. II, p. 457.

a loss of 11 lives proved to be a spark which set off a general conflagration against the Chinese.(1)

EARLY OUTBREAKS

The first outbreak in Washington Territory appeared in Squak Valley almost immediately after the Rock Springs expulsion. With low hop prices making the standard wage scale prohibitive, the largest growers in Squak Valley, the Wold Brothers, contracted with a Chinese firm in Seattle to furnish sufficient Chinese to harvest their crop. Since the regular Indian and white pickers expected their jobs as usual, Wold Brothers were warned that the Chinese would be driven from the valley if they came. Nevertheless, 35 of them arrived for work September 5 while the unemployed Indians and whites refused to allow another group to come the following day. Justice of the Peace George W. Tibbetts refused to protect these Chinese if they returned, indicating only that he would help those leave who were already in the valley. When it was rumored that the Wold Brothers were drilling the Chinese for armed resistance in case an effort was made to expel them, an unorganized party of whites and Indians decided to run the Chinese out that evening. As they approached the camp, a frightened Chinese sentinel discharged his gun. Five whites and two Indians responded by firing into the tents of the Chinese, killing three and wounding two. The rest of the Chin-

1. Bagley. Op. cit., pp. 457-458.

ese escaped to the woods. Two of the seven were later indicted for murder, but public opinion was so hostile to the Chinese that they were acquitted.(1)

Four days later on September 11, ten or fifteen masked men raided the quarters occupied by the Chinese coal miners at Coal Creek, set fire to their shanties, discharged some guns, and frightened the Orientals away. Although none were killed, the Chinese were ordered to leave the country.(2)

Many Chinese now left for British Columbia and California as soon as they received their pay. Coal miners and mill owners discharged them as rapidly as they could fill their places. Only Chinese merchants, contractors, and laundry owners showed no disposition to leave.(3)

EXPULSION FROM TACOMA

Despite this fact the anti-Chinese agitation continued. Mayor Weisbach of Tacoma and Daniel Cronin, an itinerant Socialist organizers, promoted an anti-Chinese Congress in Seattle September 28, 1885, composed of delegations from nearly all the communities on the Sound and representing the chief labor organizations. The convention recommended that the local committees

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1. George W. Tibbets, Bancroft MS.; J. H. McGraw, Sheriff of King County, to Governor Squire, October 1, 1886. Unless otherwise indicated, all letters are taken from Report of the Secretary of Interior, 49th Cong., 2d Sess., II, Ser. 2468, No. 1, pp. 875-914. Snowden. Op. cit., pp. 320-321.
 2. Ibid., p. 321; McGraw to Squire, October 1, 1886.
 3. Ibid., p. 322.

should be appointed in each community to inform the Chinese to leave the Territory by November 1 or face expulsion by November 15. On October 3, a Tacoma mass meeting endorsed the action of the Seattle Congress and appointed a committee of 15 to notify the Chinese residents there that they must leave within 30 days.(1) A Seattle mass meeting selected a like committee the same day along with a committee of 5 women to influence the ladies of the town.(2)

In the meantime the apprehensive Sheriff of King County, on the advice of Mayor Henry L. Yesler of Seattle and other leading citizens called a special meeting at Frye's Opera House also on October 3. Judge Orange Jacobs and Assistant Prosecuting Attorney Cornelius H. Hanford appealed to all law-abiding citizens to sustain the law and to help the Sheriff maintain order. A large majority of the 400 present were then sworn in as deputy sheriffs. The law and order group were now called the "Opera House Party" from this place of meeting and were aligned against the "anti-Chinese Party"(3)

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1. McGraw to Squire, October 1, 1886; Snowden, Op. cit., p.322; Bagley, Op. cit., p. 458; Kinnear, George, Anti-Chinese Riots at Seattle, p. 3.
 2. Seattle Daily Call, October 5, 1885. This meeting was apparently preceded by a parade of over 3,000 opponents of the Chinese.
 3. McGraw to Squire, October 1, 1886; Seattle Daily Call, October 5, 1885; Bagley, Op. cit., pp. 459-461; Snowden, Op. cit., pp. 329-330. Kinnear, op. cit., p. 4, lists two Opera House meetings: the first addressed by Governor Watson C. Squire, James McNaught, C.H.Hanford and Prosecuting Attorney I.F.Roland; Roland expressed his determination to prosecute the Squak Valley rioters. Then Defense Attorney J.C.Haines entered and swung the sentiment of the meeting to the anti-Chinese side. A few days later at the same place, Governor Elisha P. Ferry addressed the group and the deputies were enrolled.

The alarmed Chinese consul in San Francisco wrote Governor Squire to inquire if the local authorities were able to protect his countrymen under the law and the treaty with China, should the agitators attempt to carry out their plans. Squire found most of the sheriffs confident of their ability to keep the situation well in hand and passed these assurances on to the Chinese consul.(1)

The National Government was apprehensive. Although the Chinese minister in Washington asked for guarantees, Cleveland refused to intervene as long as the Territorial and county officers were confident that they could control the situation. Regular troops were kept in readiness, however, to prevent another Rock Springs outbreak on the Sound.(2) The Secretary of the Interior informed Governor Squire of the anxiety felt in Washington, D.C., and San Francisco and requested more definite information from him. Consequently, the Governor again requested and received definite assurances from the sheriffs, particularly from Pierce County.(3) On

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1. Snowden. Op. cit., p. 323. Sheriff John McGraw of King County was certain that he could protect the lives and property of all persons in the county without military aid. Sheriff Lewis Byrd of Pierce County was not certain that trouble could be avoided if the Chinese refused to leave Tacoma by November 1. The Sheriff of Whatcom County promised that the few Chinese there would go in peace.
 2. Ibid., p. 324.
 3. Ibid., pp. 324--325. The Sheriff of Pierce County replied that the Knights of Labor in Tacoma had offered their services and he was swearing them in as deputies as rapidly as they could be called to his office. He had already sworn in 50 deputies for the Puyallup Valley and was assured of the services of 200 good substantial citizens of Tacoma to be sworn in at once. He was certain the civil authorities of the county could preserve the peace. Gen. John W. Sprague, chairman of the Tacoma Chamber of Commerce, added his assurances to those of the Sheriff, promising a force of 300 deputies by November 1. This letter was accompanied by another signed by many of the prominent businessmen of the city promising that there would be no occasion for the presence of troops, as the Sheriff would be able to enforce the laws and pledging their personal responsibility to see it was done.

October 27, Governor Squire visited Tacoma and addressed a mass meeting there, receiving additional assurances of support to his policy. He was even invited to attend an anti-Chinese meeting held on October 29 but was unable to do so. The Governor stated that he sympathized with the American workmen in their efforts to have the Chinese leave peacefully, "but the condition distinctly is peace".(1) Many of the agitators, however, were not peacefully inclined; and it soon became apparent that the Sheriff and his deputies were closely allied with them.

On November 3, 1885, therefore, a well-organized group of several hundred anti-Chinese sympathizers marched to the Chinese quarter near the Northern Pacific freight yards, loaded the goods of the Chinamen on wagons, and escorted the unhappy Orientals out of town. The day was cold and rainy; but the Chinese offered no resistance. They were left with their goods on the bleak prairie at Lake View where one or two of their sick died that night of exposure. When the deed had been done, the Sheriff informed the Governor of the accomplished fact.(2) Shortly thereafter the Chinese

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1. Snowden. Op. cit., p. 326; Squire to M. Kaufman, October 29, 1885.
 2. Ibid., pp. 326-327; Byrd to Squire, November 3, 1885: "A large body of men assembled to-day and moved all the Chinamen outside of the city". The next day one of the active promoters of the trouble wrote Squire that "The Chinamen are no more in Tacoma, and the trouble over them is virtually to an end. Yesterday they were peaceably escorted out of town, and put upon the freight and passenger trains this morning, the price asked for a special train being too exorbitant. The 25 or 30 Chinamen who were permitted to remain a day for the purposes of packing and shipping store goods, will leave tomorrow morning... It affords me genuine delight to recall my assurances to you at Olympia and here, that the Chinese would be got out of Tacoma without any trouble, and point to the denouement in confirmation. Those who predicted differently were partly swayed by their wishes, and greatly underrated the intelligence, character and resolution of the men who worked up the movement, and who were flippantly called 'rabble' by their moral and intellectual inferiors." - John Arthur to Squire, November 4, 1885.

quarter was burned; and two days later their stores and residences, on ground leased from the Northern Pacific, were also burned with considerable loss of valuable goods.(1)

INTERVENTION BY THE GOVERNOR

Without a request from the Sheriff who sympathised with the expulsion, it was impossible for Governor Squire to do anything about it; but he determined to prevent similar proceedings elsewhere if possible. To accomplish this end the Governor issued a Proclamation November 4, 1885, in which he asserted that acts of violence and intimidation against the Chinese were plainly against the laws of Washington Territory and the laws and treaty of the United States. Since the action in Tacoma anticipated expulsion in Seattle and the Secretary of State had requested him to prevent further assault on the Chinese, the Governor warned all persons against "participating in any riot or breach of the peace", and stated that any person inciting others to such acts would be held responsible before the law as if he had committed the acts himself. He further called upon the sheriffs to protect the Chinese from assault and requested all good citizens to assist them in so doing. He further warned that if the citizens failed to preserve the peace, United States

1. Snowden. Op. cit., p. 328.

troops would do so.(1)

The anti-Chinese element seemed to be pacified in Seattle. Their leaders cooperated with the law and order group in a public mass meeting on November 5.(2) The most impassioned speech of the evening was delivered by Judge Thomas Burke. By championing the cause of the laborers, he had become their favorite; but this speech lost him most of his former popularity. He denounced the proceedings at Tacoma and expressed his preference for the autocratic rule of Russia to that of a dozen or twenty lawless men. Claiming that foreigners here must respect and honor our laws or return to their native lands, he insisted that no American would be responsible for the atrocities at Tacoma but only a German (referring to Mayor Weisbach). Hisses and jeers greeted this statement; whereupon George Venable Smith, anti-Chinese leader, asked for the respectful attention of the crowd. Burke retorted that he needed no one to intercede for him with a Seattle audience. He concluded by appealing for justice, the preservation of law, and the prevention of bloodshed.(3)

1. Report of the Secretary of Interior, 49th Cong., 2d Sess., II, Ser. 2468, No. 1, p. 579; Snowden, Op. cit., p. 329. The Proclamation concludes: "This is the time in the history of the Territory for an intelligent, law-abiding, and prosperous community, who love their country and their homes, who are blessed with the boundless resources of forest, field, and mine, and who aspire to become a great and self-governing State, to assert their power of self-control and self-preservation as against a spirit of lawlessness which is destructive alike to immigration, to labor, and to capital. If you do not protect yourselves, you have only to look for steps beyond; which is, simply, the fate of Wyoming and the speedy interference of the United States troops."
2. George Venable Smith, Mayor Henry L. Yesler, J.C.Haines, and Judge J.R.Lewis led out in the meeting.
3. Judge Thomas Burke, MS., Pacific Northwest Collection; Snowden, Op. cit., pp. 331-332; Bagley, Op. cit., p. 463; Seattle P.-I., November 6, 1899. John Leary, another prominent attorney, reported for the committee that the Chinese were willing and anxious to go; but many had valuable property to sell or collections to make and wished a little time to close these transactions.

The evidence given by the meeting that no one was opposed to the removal of the Chinese by lawful means was expected to pacify the restless elements of the city and restore order; but Judge Burke's speech, growing with each retelling, only increased the excitement. A Home Guard to meet the emergency was quickly organized under Captain George Kinnear. (1)

Meanwhile, Secretary of the Interior ^{Lucius Commodus Quintus} L. I. C. Lamar requested Governor Squire to use local measures to prevent trouble rather than to call on Federal interference. (2) When by November 6, however, Sheriff McGraw no longer felt confident that he could control the critical situation, he urgently requested the Governor to order troops to Seattle at once. Judge Roger S. Greene and ex-Governor Elisha P. Ferry also appealed for immediate action. (3)

On November 7, 1885, therefore, Governor Squire wired Secretary of the Interior Lamar that the civil authorities, hitherto confident, now admitted that they were powerless to cope with the present uprisings in Seattle and Tacoma. Troops were immediately ordered from Vancouver to Seattle, (4) and President

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1. Snowden. Op. cit., p. 333.
 2. Lamar to Squire, November 6, 1885.
 3. McGraw to Squire, November 6, 1885; Squire to Lamar, November 7, 1885, quotes Ferry's telegram. - Snowden, loc. cit. McGraw's message read: "Delay is criminal...Civil authorities not strong enough."
 4. Assistant Adjutant-General Woods to Squire, November 7, 1885.

Cleveland issued a Proclamation warning all insurgents and all persons assembled in the Territory for unlawful purposes to desist therefrom and retire peaceably to their homes.(1)

When the anti-Chinese agitators held a public mass meeting on the evening of November 7, Sheriff McGraw, fearful of trouble before the troops could arrive, held his deputies and two companies of militia at the court house all night; but no disturbance occurred. The arrival of Lieutenant Colonel DeRussy and 350 troops of the 14th United States Infantry the next morning ended all fear of trouble.(2) These troops remained until November 17 when peace was apparently secure. Since Chinese were no longer employed in the mills, mines, factories, or by the railroad, all occasion for difficulty had presumably vanished without the violation of law.(3)

During November, 15 of the leading agitators were indicted under the Klu-Klux Act for conspiracy to deprive the Chinese of the equal protection of the laws and of their equal rights under the laws of the Federal Government and the Territory. All the accused testified that they had not contemplated, committed, or countenanced any act of violence, breach of the peace or unlawful act. Since the contrary could not be proved, they were

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1. U.S.Statutes at Large, XIV, 1027. This Proclamation was re-issued three months later when the situation again became critical.
 2. McGraw to Squire, October 1, 1886; Bagley, Op. cit., p. 486; Bagley and Snowden [loc. cit.] give General Gibbon as commander.
 3. Bagley, Loc cit.; Snowden, Ibid., pp. 333-334.

acquitted on January 16, 1886. The Committee of Fifteen was now working more secretly and biding its time.(1)

Governor Squire in addressing the legislature on December 9, 1885, referred to the stirring events connected with the anti-Chinese agitation and to the vigorous measures taken by the National Government to preserve order and respect treaty obligations, requested the legislature to investigate his actions if they wished, and suggested that Congress be asked to amend the Chinese Restrict Act and that the National Government modify the treaty with China "to protect American working men from extended competition with Chinese cheap labor."(2) When, shortly after, the Governor received word from the Secretary of the Interior that the appropriation for the enforcement of the Chinese Restriction Act was exhausted, he urged the legislature to memorialize Congress for an appropriation to insure sufficient funds for its enforcement in Washington Territory.(3) After reviewing the Governor's action, the legislature passed a resolution on January 20, 1886, that in spite of newspaper and personal criticism, his course was wise, judicious, and for the best interests of the Territory and fully justified by the facts as they were represented to him at that time.(4)

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1. McGraw to Squire, October 1, 1886; Snowden, Op. cit., p. 334.
 2. "Squire to the Legislature, December 9, 1885", Gates, Op. cit., pp. 261-262.
 3. "Squire to the Legislature, December 17, 1885", Reports of the Secretary of the Interior, 49th Cong., 2d Sess., II, Ser. 2488, No. 1, p. 885.
 4. Ibid., p. 884.

EXPULSION EFFORTS IN SEATTLE

The agitators considered that their opportunity had arrived on February 6, 1886, when the steamer Queen of the Pacific lay at the waterfront ready to sail the next day. That evening they had an anti-Chinese meeting in the Bijou Theatre in the "Lava Beds", the less reputable section of Seattle near the waterfront. At this meeting the expulsion at Tacoma was endorsed and a Committee of Fifteen chosen to compel the Chinese to clean up their part of the city and live up to its sanitary regulations, especially the one requiring a fixed amount of air space in sleeping rooms in proportion to the number of occupants. The Committee was also to take a census of the Chinese left in the city, their employment, and their employers. The possibility of a boycott of these employers was to be decided at another mass meeting on February 8.(1)

The Committee of Fifteen, headed by acting Chief of Police William Murphy, commenced its work about 7 o'clock in the morning of February 7. The Committee of Fifteen separated into smaller groups of five or six, each of which proceeded from house-to-house asking questions about the observance of the cubic air and nuisance ordinances of the city. While this was going on, other small committees entered the houses, packed up their contents, loaded them on express wagons, and hauled them

1. Seattle Post-Intelligencer, February 7, 1886; Bagley, Op. cit., p. 466; Snowden, Op. cit., p. 334.

to the wharf. Resistance was useless. Squads of Chinamen were herded together and escorted to the wharf by three or four white men. The police were willing to check any abuse to the Chinese but not to prevent their removal.(1)

When Sheriff McGraw was informed of this activity about 9 o'clock that morning, he rushed to the scene of action and ordered the mob to disperse, but it only laughed and jeered at him and went ahead with its work. He then summoned a few bystanders, whom he knew he could rely on, and attempted to stop the eviction; but when they succeeded in one locality, the crowd quietly withdrew and continued operations in another.(2) About 9:30 United States Attorney W. H. White and Sheriff McGraw went to the fire station, overpowered the custodian, and rang the fire bells as a signal for the militia and Home Guards to assemble;(3) but already 350 Chinamen and their effects were transported to the ocean dock.

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1. Seattle Post-Intelligencer, February 9, 1886; Portland Oregonian dispatch dated February 7, 1886, from Seattle, quoted from "Speech of Eugene Semple at Vancouver on Martial Law, March 8, 1886", Pacific Northwest Collection MS. The following citations from the Portland Oregonian are taken from this source: McGraw to Squire, October 1, 1886; Snowden, Op. cit., pp. 334-335.
 2. Portland Oregonian, dispatch of February 7, 1886; McGraw to Squire, October 1, 1886; Snowden, Op. cit., p. 335.
 3. Washington Standard, February 12, 1886; Kinnear, Op. cit., p. 5, says that the "old University and M. E. Church bells sounded the signals."
 4. Watson Squire, MS., p. 20; Portland Oregonian, Dispatch of February 7, 1886.

When Governor Squire, who had arrived in Seattle on February 6, heard of the trouble about 10 o'clock, he issued a Proclamation(1) warning "all persons to desist from breaches of the peace" and requesting all peaceably-disposed persons, except those assisting the Sheriff or other authorities, to retire to their homes.(2) He also ordered the militia to follow Sheriff McGraw's orders. One company protected the United States Attorney and the Deputy United States Marshal when they read the Governor's Proclamation to the jeering crowd.(3) Now, however, that the militia and Home Guard were ready for action, "there seemed nothing for them to do".(4)

When the anti-Chinese leaders reached the docks, an unexpected difficulty confronted them; Captain John Alexander of the Queen of the Pacific refused to allow any Chinamen on board the ship unless their fares were paid. However, after eight Chinese paid their own passage, a subscription paper was circulated and about \$600 was raised from the crowd, a sufficient amount to pay the fares for 89 more of the hapless Chinese.(5)

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1. Squire MS., Loc. cit.; Portland Oregonian, Loc. cit.
 2. Reports of the Secretary of the Interior, Loc. cit. This was done when the Mayor appealed to the Governor for aid.
 3. McGraw to Squire, October 1, 1886; this report is published in Ibid., pp. 911-915.
 4. Portland Oregonian, Loc. cit.
 5. Washington Standard, February 12, 1886; Seattle Post-Intelligencer, February 9, 1886.

That afternoon, February 7, Judge Greene of the district court, issued a writ of habeas corpus returnable that evening charging Captain Alexander with illegally restraining the Chinamen on board the Queen of the Pacific. At 7 o'clock Captain Alexander made return that by reason of the mob in the streets he was unable to produce the Chinese passengers before the court. Thereupon the hearing in the case was postponed until the next morning. (1)

In the meantime, part of the militia had been ordered to Chinatown to prevent theft or further trouble. Since only a few merchants had been allowed to remain temporarily, their task was not difficult. The Governor now appealed to the Commanders at Port Townsend and Vancouver, to Secretary of the Interior Lamar, and to Secretary of War W. C. Endicott for United States troops. (2) The National Government, however, had sent troops once before with no apparent use for them after they had arrived and was reluctant to act again. The Commander at Vancouver replied that "There is no one in America who can order the interference of troops except the President of the United

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1. McGraw to Squire, October 1, 1886; Portland Oregonian, Loc. cit.; Seattle Post-Intelligencer, Loc. cit.
 2. Squire to Butler, February 7, 1886; Seattle Post-Intelligencer, February 9, 1886; Reports of the Secretary of the Interior, Op. cit., p. 888. The dispatches are almost identical. "Immense mob forcing Chinese to leave Seattle. Civil authorities arming posse comitatus to protect them. Serious conflict probable. I respectfully request that United States troops be immediately sent to Seattle. Troops at Port Townsend can arrive soonest and probably will be sufficient. Have issued Proclamation."

States."(1) And the President was slow to act.

By evening the excitement had died down materially. The Chinese were sheltered in a waterfront warehouse and fed there. When William VanWaters, general steamship agent on the ocean dock, ordered the docks cleared that evening, he granted the request of the Knights of Labor that 12 of their number be allowed to remain on guard.(2) The anti-Chinese leaders now raised \$250 to send the Chinese to Tacoma on the night train. When this plot was discovered by Sheriff McGraw about 10 o'clock, he had the train leave two hours early at 1:30 in the morning and sent some of the Home Guards, the Seattle Rifles, and Company D of the militia to the dock to guard the Chinese in the warehouse, to patrol the dock, and to imprison and supersede the committee stationed there. The first day of the anti-Chinese riots had passed with no sign of violence on the part of the workmen and a minimum of disorder.(3)

At 7 o'clock Monday morning, February 8, 1886, Justice of the Peace George G. Lyon issued warrants for the arrest of M. McMillan, Master Workman for the Knights of Labor and prominent member of the Citizens' Committee, and seven of his close associates on riot charges in an effort to weaken the anti-Chinese forces. They were soon admitted to bail at \$500 each and released.(4)

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1. Gibbon to Squire, February 7, 1886.
 2. Seattle Daily Call, February 8, 1886; San Francisco Evening Bulletin, February 25, 1886.
 3. Seattle Daily Call, Loc. cit.; Seattle P.-I., February 9, 1886; Portland Oregonian, February 7, 1886; Kinnear, Op. cit., p. 7.
 4. Seattle P.-I., Loc. cit.; San Francisco Evening Bulletin, Loc. cit.; Kinnear, Loc. cit. Those arrested were M. McMillan, C. H. Metcalfe, John Winscott, P. Wickstrom, John Keane, Julius Rochester, L. H. Kidd, and H. M. Hall.

Judge Green had postponed a hearing on the return of the writ of habeas corpus for the Chinese on board the Queen of the Pacific so as to make it returnable at 7:15 Monday morning, February 8. Sheriff McGraw now used the guard at the wharf to bring the Chinese to the court house. Since the writ applied only to those on board the ship who had not paid their own fares, they were the only ones admitted to the court house. When Judge Greene asked them what they wished to do, only 16 indicated that they wanted to stay in Seattle while 71 were willing to leave, even when they were promised a doubtful protection if they remained. The 16 remaining in Seattle were taken to places of safety, and the others were escorted back to the wharf and put on board ship again. When the Chinamen who had been confined in the warehouse were asked the same question with the stipulation that their fares would be paid if they wished to go or that efforts would be made to protect them if they wished to stay, about 175 chose to go and 75 to stay. Those going were marched back to the dock, and the others taken to Chinatown unopposed. (1)

The previous evening an effort to secure a purchaser for a \$1,500 note signed by several of the anti-Chinese leaders to get sufficient funds to pay the fares for all the Chinese had failed; but with most of them expressing their desire to go, enthusiasm for this project renewed on Monday morning. Governor Squire paid the passage for 8 Chinamen himself; (2) Sheriff McGraw,

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1. Portland Oregonian, February 8, 1886; Seattle P.-I., Loc. cit.; McGraw to Squire, October 1, 1886. Twenty-two first wanted to stay but 6 changed their minds when Judge Greene warned them that like outbreaks might occur at any time.
 2. Watson C. Squire, MS., p. 20, op. cit.

happy over what he considered the bloodless solution to the Chinese problem, contributed five \$20 bills; another individual gave his note for \$100, and 13 of the leaders signed a joint note for \$1,300 to complete the amount needed for all the tickets. When Attorney James McNaught cashed the note, passage was secured for all the Chinese who wished to leave. The Chinese were hastily loaded on the Queen of the Pacific until 196 were on board when Captain Alexander announced that the law prevented him from taking any more steerage passengers. The ship sailed at noon leaving behind more than 100 Chinese who wished to leave for San Francisco.(1)

THE RIOT

Sheriff McGraw and the anti-Chinese leaders decided that the remaining Chinese should stay in Seattle until the Elder sailed a few days later when they would be assured passage to San Francisco. A problem arose over what to do with them in the meantime. Sheriff McGraw decided to escort them back to Chinatown; some of the workmen wished to keep them on the wharf. Already many of the people were congratulating themselves on the happy ending of the Chinese troubles.(2)

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1. Seattle P.-I., Loc. cit.; Portland Oregonian, Loc. cit.;
Seattle Daily Call, Loc. cit.
 2. Seattle P.-I., Loc. cit.; Seattle Daily Call, Loc. cit.;
Washington Standard, February 12, 1886.

All went well until the Chinese and Home Guards met a large crowd of workers at the corner of Main and Commercial Streets. Exactly what happened is hard to make out from the excited accounts. The stories most favorable to the later position of the Governor present the mob as rushing the Home Guards and attempting to wrest their guns from them.(1) Other accounts are not so favorable to the Home Guards. The crowd apparently thought that the Chinese were being returned to Chinatown permanently and had no knowledge of the actual agreement on the wharf to send them later on the Elder. When the crowd closed in and attempted to stop the Chinese and the Home Guards, the guards as officers of the law endeavored to arrest "the most loud-mouthed and violent of their assailants who, instead of submitting, rebelled, and attempted to take the guns from the officers."(2)

One of the leaders of the mob, a logger named Charles G. Stewart,(3) testified that they wished to stop the Chinese and see what the officers were going to do with them. When one of the guards attempted to arrest him, Stewart resisted, claiming he had done nothing out of the way.(4) Thinking the Home

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1. Portland Oregonian, Loc. cit.; McGraw to Squire, October 1, 1886. McGraw claims the mob attempted to turn the Chinese toward the railroad depot.
 2. Seattle P.-I., Loc. cit.
 3. This was in an ante-mortem statement.
 4. Idem.; San Francisco Evening Bulletin, February 25, 1886. "I have done nothing to go with you for; no we don't intend to, not a man of us, but we want to move the Chinese out of Seattle, and do it decently and quietly if we can," said Stewart.

Guards would not shoot, the mob pressed in close. The Guards attempted to club them away with their guns; but this only made them more aggressive. Only two definite instances of actual efforts to wrench guns from the members of the Guard are recorded.

(1) Apparently Captain George Kinnear of the Home Guards issued no order, but shots were fired and five men fell. The crowd drew back in angry horror. (2) On hearing the shots, the Seattle Rifles rushed up from the wharf, and Company D down from the court house.

The scene at the corner of Main and Commercial Streets was a curious one. The troops formed a hollow square facing up and down the two streets. The Chinamen had thrown their blankets on the ground and lay crouching behind them. The crowd swayed to and fro, uttering cries of rage and defiance, no longer at the Chinese, but at the Home Guards. (3) Sheriff McGraw then

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1. One fellow grabbed David H. Webster's gun and another, presumably Stewart, E. M. Carr's gun, and attempted to wrest the guns from them.
 2. Seattle P.-I., Loc. cit. Carr was a prominent attorney and a sergeant in the Home Guards at this time. Kinnear, Op. cit., p. 8, says no order to fire was given. Four of the wounded--Bernard Mulrane, a fireman; George Smith, C. Schreibe, unemployed; and, Stewart, unemployed logger who had been in Seattle for over two months but who apparently had no connections with the anti-Chinese leaders,--were rushed to the hospital. Special Police Officer James Murphy received only a light wound in the arm while attempting to arrest one of the assailants. Sheriff McGraw was shot through the coat in two places but escaped injury. Stewart, wounded the most severely, died the following day. General Gibbon later vetoed plans for an elaborate funeral for him after the city had been placed under martial law. - Idem. Cf. also Bagley, A. C., A Scrap Book, Pacific Northwest Collection, p. 157.
 3. Portland Oregonian, Loc. cit.

commanded the crowd to disperse. Captain Haines of Company D, who had previously been the attorney for the agitators, explained to the mob that the Queen of the Pacific could not take all the Chinese, forcing the rest of them to remain until a later date. He pledged his services free of charge to prosecute the persons who had done the shooting, if it had been done unlawfully, and requested the crowd to disperse and go home. When many in the mob continued to cry, "Burke, Burke, give us Burke!", John Keane, one of the anti-Chinese leaders, advised them to go home as enough damage had already been done, and he wished to avoid further bloodshed. Although most of the crowd dispersed, some of them still demanded justice for the shooters. The military companies and the sheriff's posse marched to the court house while the Chinamen, who had no further opposition, took shelter in their former quarters.(1)

APPEAL TO THE COURTS

This move marks the beginning of the second phase of the Chinese riots. The Seattle Daily Call(2) stated that "During the afternoon affairs have cooled down, and the outlook for peace and quiet is now very promising, although feeling against the men who shot down four of the workmen is now warm." Since the leaders of the Knights of Labor were doing everything in their power to preserve peace, they now turned to the courts in

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1. Seattle P.-I., Loc. cit.; Seattle Daily Call, Loc. Cit., Kinneer, Op. cit., p. 9.
 2. February 8, 1886.

an effort to gain the conviction of those who had done the shooting.

Warrants were sworn out in the court of George A. Hill, Justice of the Peace, for the arrest of Judge Thomas Burke, the Rev. L. A. Banks, E. M. Carr, Frank Hanford, and David H. Webster on charges of shooting with the intent to kill. These warrants were placed in the hands of Constable H. G. Thornton and served after the Guards had reached the court house. With the feeling against Judge Burke particularly keen, it was feared that this one constable could not protect the lives of these five men. The Guards were willing to go, however, and the constable was confident. "I have been preaching submission to the law," said Judge Burke. "The time has come to submit, and I shall do so."(1) But this was not to be necessary.

SEATTLE UNDER MARTIAL LAW

Earlier the same day, February 8, 1886, Chief Justice Roger S. Greene and United States District Attorney W. H. White had sent a telegram to the President, concurred in by Governor Squire, in which they expressed the opinion "that the surest and most effective way of dealing with these local anti-Chinese uprisings is to declare martial law over the disaffected area at the earliest possible moment." They doubted that the Governor had power to suspend the writ of habeas corpus and to declare

1. Seattle P.-I., Loc. cit.; Snowden, Op. cit., pp. 342-343; Bagley, History of Seattle, Vol. II, p. 470.

and enforce martial law; but if he could, the situation might be controlled by the local authorities without the aid of the regular army. Without this extreme measure, they were certain Federal troops would be needed.(1)

The trouble had quieted down, however, and most of the mob dispersed when Constable Thornton attempted to serve his warrants for the arrest of the five members of the Home Guards. Chief Justice Greene tried to prevent their arrest by making them his bailiffs but was informed that court officers could still be arrested. He, therefore, asked Constable Thornton to wait 30 minutes before serving the warrants. As a last resort, the Chief Justice appealed to Governor Squire to declare martial law and then conveniently wrote the proclamation for him. This extreme action was taken to prevent, not a riot and bloodshed, but the regular operation of the civil courts. Thornton returned in half an hour to find the writ of habeas corpus and all civil actions suspended and the city under martial law which prevented the serving of his warrants.(2)

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1. Greene and White to Cleveland, February 8, 1886, in Thomas A. Mercer Documents, Pacific Northwest Collection.
 2. Watson C. Squire, MS.; Seattle P.-I., Loc. cit.; San Francisco Evening Bulletin, Loc. cit. In this proclamation of February 8, Governor Squire referred to his declaration of the 7th warning all individuals to desist from breaches of the peace and to return to their homes; but this had not been done. Breaches of the peace had been committed, and others were threatened. An insurrection was said to exist in Seattle which threatened the lives, liberty and property of persons there and which the civil authorities had been powerless to suppress. In view of these facts, martial law was considered necessary; therefore, Governor Squire suspended the writ of habeas corpus and declared martial law in Seattle. The proclamation is found in the Portland Oregonian, February 8, 1886, and Thomas Mercer Documents.

The Governor immediately attempted to establish the new regime in Seattle(1) by outlining his staff under Major A. E. Alden as Provost Marshal, closing all business houses from 7 p.m. to 6 a.m., closing saloons indefinitely, warning that all persons found in the streets after 7 p.m. without passes would be subject to arrest. A special call was made for individuals to enlist in the militia for duty in Seattle; and all persons "disposed to violate any law or treaty or the Constitution of the United States are hereby warned and commanded to leave the city forthwith."(2) A subsequent order allowed drug stores, hotels, restaurants, and newspaper offices to keep open day and night on permit from the Provost Marshal. On February 9 the saloon restricts were relaxed to allow the Provost Marshal to grant permits for certain saloons to remain open from 8 a.m. to 6 p.m. By the 11th, all vagrants were ordered to leave the city at once under penalty of arrest and summary punishment if they remained; all disturbers of the peace also faced immediate arrest.(3)

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1. There is some indication that the expulsion plans were laid in Tacoma. On the evening of the 8th, Sheriff McGraw received a letter, dated February 5, 1886, from that city informing him on reliable authority that plans were being laid for "a cleaning out of Chinatown in your city the coming week, so you may be prepared for trouble". The mob might burn or blow up with powder to accomplish their ends. The Tacoma Committee of Fifteen had been very busy "laying plans for several days". - Seattle P.-I., Loc. cit. For some reason delivery of the message had been delayed until its contents were harmless.
 2. Portland Oregonian, Loc. cit.; Report of the Secretary of the Interior, 49th Cong., 2nd Sess., II, Ser. 2468, No. 1, p. 894.
 3. Ibid., pp. 894, 896; Portland Oregonian, Loc. cit.

In the meantime, Governor Squire continued his efforts to secure Federal troops. Shortly after noon following the shooting and before martial law was declared, he wired the Secretary of the Interior that he feared the miners would reinforce the mob during the night and violence and lynching might result if military assistance were not sent.(1) After General Gibbon at Vancouver informed the Governor that the troops were ready to move as soon as the order arrived for them to be sent,(2) he increased the pressure on President Cleveland to authorize the move.(3) A good many prominent citizens also rushed telegrams to the President or to United States Senators and Delegate Charles Voorhees requesting them to "urge upon the President the necessity for speedy action in this matter".(4) But the President took his time about sending troops.

On February 9, 1886, President Cleveland reissued his proclamation of November 7, 1885, stating that Governor Squire had informed him that domestic violence existed in Seattle interrupting the enforcement of the laws of the United States there. The President then threatened the use of military force if this proclamation was disobeyed and disregarded. On the basis of

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1. Squire to Lamar, February 8, 1886.
 2. Gibbon to Squire, February 8, 1886.
 3. Squire to Cleveland, February 9, 1886. On February 9 the Governor requested 200 regular troops immediately as the danger to the public peace was increasing "in some respects" since there were not enough militia to enforce martial law throughout the city.
 4. Seattle P.-I., February 10, 1886; Burke to Voorhees, February 9, 1886, in Thomas Mercer Documents.

these facts he commanded and warned

"...all insurgents and all persons who have assembled at any point within the said Territory of Washington for the unlawful purpose aforesaid, to desist therefrom, and to disperse and retire peaceably to their respective abodes on or before 6 o'clock in the afternoon of the 10th day of February instant. And I do admonish all good citizens of the United States and all persons within the limits and jurisdiction thereof against aiding, abetting, countenancing, or taking any part in such unlawful acts or assemblages."(1)

Although many volunteers responded to the call, requests continued for regular troops to relieve the Home Guards and militia who had been on constant duty since Sunday and were worn out.(2) On February 8, Secretary of War Endicott wired Governor Squire that troops could not be sent except on the last emergency and that it seemed to the authorities in Washington that order could and should be maintained with their available forces.(3) Although the Governor failed to receive this dispatch,(4) it reveals the reason the National Government did not send troops sooner. The flood of telegrams on the 9th had its effect because about 300 Federal troops arrived the next day from Vancouver to relieve the local militia.(5) General Gibbon found everything perfectly quiet and peaceful within the city under martial law.(6)

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1. U.S.Statutes at Large, XXIV, 1028.
 2. Portland Oregonian, February 9, 1886.
 3. Endicott to Squire, February 8, 1886.
 4. Squire to Endicott, February 13, 1886.
 5. Seattle Post-Intelligencer, February 10, 1886.
 6. Gibbon to Squire, February 12, 1886.

Martial law was not popular; the Seattle Post-Intelligencer(1) presented Governor Squire as the "legislator, judge, and executioner" for the city and was thankful that he was humane, prudent, and considerate. The editor hoped that arbitrary power would convince the people that the rule of law was best. All individuals caught on the streets after night, without passes, were sent to their homes or lodgings the first night, but thereafter were subject to arrest. Theaters and places of amusement were closed. As early as February 9 John Keane and John Keenan, anti-Chinese leaders, presented a request in behalf of a majority of the citizens of Seattle for a return to civil law pledging definite support and respect for civil authority.(2) But arbitrary rule was not to be ended so easily.

Seattle's market places were reported deserted; her courts, silent. Her county commissioners and her city council had to petition a military commander for permission to hold their sessions; her streets were full of armed soldiers; and a court martial sat in judgment upon her citizens, imprisoning them and issuing against them edicts of banishment from their homes.(3) As a result, by February 18 a strong effort was made to rid the city of martial law.(4) This effort had its effect.

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1. February 10, 1886.
 2. Idem. The Bishop Comedy Company went on to Victoria until the trouble was over.
 3. Speech by Eugene Semple of Vancouver on Martial Law, March 8, 1886, Pacific Northwest Collection.
 4. Seattle Daily Call, February 18, 1886. Since the press was curbed, the Call was not allowed to print its reaction to martial law until later. The City Council had been granted permission to meet that evening, and it was understood that it would promise a large enough police force to preserve order.

On February 22, 1886, Mayor Yesler of Seattle informed Governor Squire that the civil authorities were competent to handle the situation again. Most of the trouble-makers had been expelled from the city during the past two weeks, the police force had been augmented, a new company of militia had been organized, and the older companies strengthened by recruits.(1) The same day Governor Squire revoked martial law in Seattle. The President was informed and martial law was at an end.(2)

Efforts were made to expell the Chinese from Olympia, Sumner, and Puyallup beginning on February 9, 1886, and in Carbonado and Snohomish the next day. Prompt action in Olympia prevented the removal there; but the other efforts were successful in spite of the President's proclamation of the ninth.(3)

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1. Yesler to Squire, February 22, 1886. Since the Mayor was confident that the civil authorities could maintain order, the Governor revoked the proclamation to the extent "that from this time forth, it shall have no further force, no effect in suppressing, or in any manner interfering with any process of law." He also called upon his fellow citizens on this, the birthday of Washington, to accept and maintain with all vigilance the present condition of order. - Report of the Secretary of the Interior, 49th Cong., 2d Sess., II, Ser. 2468, No. 1, pp. 897-898.
 2. Squire to Cleveland, February 22, 1886.
 3. Squire to Endicott, February 13, 1886; Owings to Squire, February 9, 1886.

AN EVALUATION OF MARTIAL LAW

The President later endorsed Governor Squire's action; but local opinion was not all favorable. The friends of Admission in Washington, D.C., were discouraged by it and almost contemplated withdrawing their support to Statehood due to the Chinese troubles.(1) On February 13, the Portland anti-Chinese Congress passed a resolution condemning Governor Squire for his utter defiance of law in his proclamation of martial law and his suspension of the "rights of habeas corpus, free speech, and liberty of assemblage", and requesting his impeachment in Congress. (2) Little came of this Knights of Labor opinion.

The Democratic party made an issue of martial law. The Washington Standard(3) asserted that

"The declaration of martial law was an usurpation of authority by Governor Squire, and unwarranted by circumstances had he the right to exercise the prerogative. Even those who, at a time when reason seems to have been dethroned, sanctioned the course, now realize the folly of having inaugurated military rule, which has placed the lives of a free people under a despotism as absolute as that of the most autocratic country on the globe."

Had Cleveland removed Squire when he should have, the editor insisted, and appointed a "wise, cool-headed Governor, instead of

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1. Seattle Post-Intelligencer, February 11, 1886.
 2. San Francisco Evening Bulletin, February 25, 1886. Fifty thousand of these resolutions were to be sent to ever "labor organization, anti-Chinese League, and Grangers' organization in the United States" with the request that each one put like pressure on Congress for Squire's impeachment.
 3. February 19 and March 26, 1886.

the Bombastic Furioso who now acts as dictator in his chosen realm", this disgrace would not have happened. Later on the Standard gave a fairer estimate of the affair:

"Now, that Governor Squire has been defeated in his political aspirations and there is no further object in holding him personally responsible for the unpardonable mistake he made as an officer, in declaring martial law in Seattle, without any of the conditions existing which might in some degree justify such a use of extreme power, we have no hesitancy in disclosing a fact which came to our knowledge from indisputable authority several months ago. Governor Squire's judgment did not favor the means used, but he was egged on and persuaded into that course by two or three hot-headed lawyers of Seattle, to save some of their associates from the results of their ill-advised zeal."(1)

Judge Greene wished to save the five members of the Home Guards from prosecution by the Knights of Labor on criminal charges in the court of Justice of the Peace George A. Hill.

Another critic, using a pseudonym, presented some rather difficult questions to answer. No Chinese was injured, thus the troops were not needed to protect them. The civil courts were still active and were used to arrest the anti-Chinese leaders without interference and bail was allowed. Then what excuse was there for martial law? It was claimed that Sheriff McGraw could have protected the Chinese himself without martial law, troops, or outside aid. Were the courts provided merely to grant civil processes and writs for Chinese only to be

1. September 25, 1886, clipping in Simple Documents. The lawyers referred to apparently were Chief Justice Greene and United States Attorney W. A. White.

closed to the white population when they desired to use them?(1)

Not all reactions were unfavorable to Governor Squire. A meeting of the King County Bar on February 27, 1886, passed a resolution defending his action. Since the anti-Chinese leaders had violated the constitution, laws, and treaties of the United States and the laws of the Territory, since outside agitators were gaining strength in the city, since the Governor's proclamation of February 7 had been violated and a clash occurred, and since the mob had outraged the city, the Bar contended that in their opinion the "exigencies of the occasion fully justify the declaration of martial law".(2)

No effort will be made to condemn or to justify Governor Squire for proclaiming martial law in Seattle but merely to evaluate this action. There was some doubt in the minds of the leading actors in this drama as to the legality of their course. On February 9 Governor Squire referred to Governor Stevens' proclamation of martial law and his subsequent censure for it by President Pierce and Attorney-General Cushing in his message to the President asking that the Chief Executive supplement and reinforce his proclamation of martial law in King County, which Cleveland did by his Presidential Proclamation of February 9, 1886.(3) Governor Squire said later that the only

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1. Seattle Daily Call, February 23, 1886, an article from Olympia under the title of "Capital Chat" by Slepser Slickens Snorkey.
 2. "Resolutions of the King County Bar", Sample Documents; Kinneer, Op. cit., p. 14, criticizes Governor Squire for his halting policy; J.C. Haines of Co. D, who was proud his men were cheered by the mob and had no bullets in their guns, and Justice Hill who issued the warrants for the arrest of five members of the Home Guards.
 3. Squire to Cleveland, February 9, 1886.

precedent Chief Justice Greene and United States Attorney White could give him for proclaiming martial law was that of Stevens'.

(1) Since Chief Justice Greene advised the Governor's proclamation of martial law, he indicated that he would probably resign if the President did not fully endorse it. (2) The Secretary of State and the President, however, sustained Squire and Greene. (3) The responsibility for martial law possibly rested more with the Chief Justice than the Governor. (4)

On March 8, Eugene Semple, a prominent Democrat and later Governor of the Territory, delivered an address at Vancouver condemning Governor Squire for his action in declaring martial law on the grounds that it was not necessary, that there was sufficient law abiding people in Seattle to enforce the processes of the civil courts, and that this fact was fully demonstrated before the proclamation was issued. He claims, after reading the Portland Oregonian account of the action in detail, that the demonstration in Seattle was not intended to be a violent one and that its projectors anticipated police interference.

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1. Watson C. Squire, MS., p. 21.
 2. Greene to W. M. Everts, Secretary of State, February 11, 1886, Thomas Mercer Documents. Greene also desired to give Cleveland an opportunity to remove a Republican opponent if he wished to.
 3. Everts to Greene, February 12, 1886, Idem; Watson C. Squire, MS., p. 22.
 4. Greene to Everts, February 12, 1886, Thomas Mercer Documents. Even by February 12, 1886, Chief Justice Greene considered that while martial law had given the President the mastery of the situation and restored apparent quiet in the city there was still danger of deadly plottings and civil war on an expanding scale, if the troops were withdrawn.

He questioned the necessity of martial law in Seattle because the evidence indicated that the rioters were dispersed and their leaders in custody or in jail before its proclamation; that the Chinese had access to the courts and had been protected from attack whether they wished to go or remain in Seattle, and that there were sufficient local troops on hand to control the situation without martial law.(1)

Semple then indicated that Governor Stevens had more justification for his action than Governor Squire:

"The white settlers were few and widely scattered. A numerous, well-armed and savage foe infested the woods, and hung upon the borders of the villages. The Indians always seemed to have notice of the movements of the troops; and consequently, the brave volunteers found themselves fighting at a disadvantage. Everything apparently pointed to the necessity for martial law, but the courts would not have it, and the volunteers, valuing their liberties more than their lives and property, decided that it would not do."

Only the remoteness of the locality and the difficulties of obtaining proofs along with the exertions of powerful friends saved Stevens from impeachment.(2) Despite Semple's political bias against Governor Squire, there is a valid parallel between the action of Stevens and Squire that cannot be overlooked.

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1. The Sheriff had three companies of Home Guards, Semple insisted; two of militia, and a large posse along with 80 men furnished by the Oregon Improvement Company, and volunteers were increasing the number all the time. "Much more formidable mobs were assembled in London and Pennsylvania on the same day with the one at Seattle, but in neither of these places did 'a volley ring out' or was martial law declared."
 2. Speech by Eugene Semple, Loc. cit.

Both men excused their action on the basis of necessity. The nature of that necessity is strikingly similar; both wished to forestall court action. Stevens wished to prevent the issuing of a writ of habeas corpus by the court and used the necessity of the Indian War to accomplish this end. Governor Squire and Chief Justice Greene hoped to override warrants for the arrest of the five members of the Home Guards by their proclamation. Let the Governor tell his own story:

"I went to the courthouse and saw the Chief Justice there who said he would make some of these men his bailiffs, to prevent their being arrested; but found that that would not work, and he finally appealed to me to declare martial law... I had to decide pretty soon, or the Chief Justice said, pointing to some of these men, 'if you don't, it means these men's lives.'"(1)

The expressed object of martial law was not to prevent further riot, not to save Chinatown from being burned, but to see that certain individuals were not arrested. A little more doubtful evidence but equally conclusive, if true, is the claim that on Wednesday morning, February 10, Governor Squire promised McMillan, a leading agitator and member of the Knights of Labor, to end martial law if he would pledge not to molest the men who did the shooting. "We have no pledges to make," replied McMillan. "You look after your ruffians and we will look out for ourselves."(2)

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1. Watson C. Squire, MS., p. 21.
 2. San Francisco Evening Bulletin, February 26, 1886, clipping Simple Documents. McMillan was arrested that day, and 29 of his associates on the following day.

Stevens declared martial law to keep certain prisoners from the jurisdiction of the courts; Squire to remove the courts from the access of the people. Both used the excuse that necessity dictated their actions. Both were condemned severely for their action by their opponents, and in both cases the immediate political contests were unfavorable to their course, but the succeeding elections vindicated their action. Governor Squire thought that his political career might be at an end; for the Democratic party took the lead and carried both Houses at the next election, only to be defeated at the following election. Some of Squire's bitterest critics at that time later assured him that his course had been the right one to pursue. (1) Both were later honored by positions of responsibility; Stevens being elected Delegate and Squire chosen one of the first Senators when Washington became a State. Governor Squire considered that "a year or two before that, I never could have been elected because of this strong feeling against me on account of my action in maintaining order." (2) Here the parallel ends.

Stevens had to arrest the Chief Justice twice to accomplish his ends; Squire worked in close association with and actually followed the advice of the Chief Justice in his proclamation. Stevens was reprimanded by President Pierce, a Democrat of his own party, for his action; Squire, a Republican, as a token of regard for his ability as an administrator, was retained

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1. Watson C. Squire, MS., p. 23.
 2. Idem.

in office until April 23, 1887, over two years after a Democratic President was inaugurated. In fact, when Governor Squire visited the White House, he was praised "very much" for his action in proclaiming martial law and complimented on his work.(1) But Stevens' martial law never affected the lives of so many people or to the extent as that of Governor Squire's; the courts in two small counties were interrupted in the first case, while the entire life and economy of a growing metropolis was hindered in the latter. Stevens' action was negligible in its scope and effect in comparison with that of Squire's.

Either Pierce or Cleveland appears to have been mistaken. If, as Attorney-General Cushing claimed, martial law "is not a power within the legal attributes of a Governor of one of the Territories of the United States", (2) both Governors were in error. On the other hand, their cases either rise or fall together; for both of them attempted to thwart the ordinary processes of civil courts by the extraordinary and extra-legal method of proclaiming martial law.

Once again martial law was proclaimed in Washington Territory when pillage followed the withdrawal of the regular troops at the time of the Seattle fire in 1889. Colonel J.C.Haines made a good military governor for the city. But the case was one of widespread disaster, and no constitutional issue was involved.(3)

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1. Watson C. Squire, MS., Loc. cit.
 2. Opinions of the Attorney-General, VIII, p. 374.
 3. Washington Standard, June 14, 1889.

PART III. CONVENTIONS AND CONSTITUTIONS

CHAPTER VIII. THE CONVENTION AND CONSTITUTION OF 1878

The Convention and Constitution of 1878 were the result of considerable agitation for Statehood in Washington Territory. In 1860, the Olympia Overland Press(1) presented a widely accepted point of view in opposition to future Statehood that "it is far better to live under a Territorial Government than to have a State organization" because it was a simple form with fewer offices and the National Government paid practically all expenses, while State Government entailed oppressive taxes with many offices to fill.(2)

EARLY AGITATION FOR STATEHOOD

Just before the formation of Idaho Territory out of Washington Territory in 1863, the Territorial Council passed a bill to submit for the ratification of the people of Washington Territory a Constitution for the State of Idaho. With the boundary along the Cascade Mountains, the eastern section was to call

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1. November 21, 1861.
 2. Idem.

a Constitutional Convention and apply for Statehood.(1) The House, however, substituted the name of "Washington" for that of "Idaho" in this premature bill and then tabled it when the session ended.(2)

The issue was revived in the session of 1867-1868. In order to combat agitation for a new Territory composed of eastern Washington and northern Idaho, the representatives from eastern Washington secured a Memorial requesting the annexation of the northern Idaho to Washington Territory,(3) and an Act submitting to the voters of Washington Territory at the next general election a proposition to call a Constitutional Convention and to apply to Congress for admission into the Union as a State.(4) Since this was widely considered to be an effort by the Walla Walla Democrats to move the capital to Walla Walla and gain control of the Territory for this party, the Olympia office holders and Republican Delegate Alvin Flanders refused to back either measure, thereby defeating the Constitutional Convention Referendum in the election of 1869.(5)

The same two measures were introduced in the legislature of 1869. Vancouver, however, withheld its support from the

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1. Washington Council Journal, 10th Sess., pp. 139, 157-158, 1862-1863.
 2. Washington House Journal, 10th Sess., p. 220, 1862-1863.
 3. Laws of Washington, 1st Biennial Sess., pp. 176-177, 1867-1868; Murray, Keath A., "The Movement for Statehood in Washington", Pacific Northwest Quarterly, Vol. XXII, No. 4, pp. 359-361, October, 1941.
 4. Laws of Washington, Ibid., pp. 54-55.
 5. Murray, Op. cit., pp. 361-362.

Annexation Memorial, and it was defeated.(1) A second referendum for a proposed Constitutional Convention was voted, nonetheless; but the response in the election of 1870 was little better than it had been in 1869.(2) The legislature of 1871 and 1873 authorized referendums for constitutional conventions, but fewer people favored conventions in the elections of 1872 and 1874 than previously.(3)

With the election of Selucius Garfielde as Delegate in 1869, the Republican party formed an efficient political machine under his direction which was strong enough by 1872 to secure the removal of Governor Edward S. Salomon and the appointment of Surveyor-General Elisha P. Ferry in his place. In 1870 Garfielde had fostered a bill in Congress allowing Washington to take preliminary steps toward Statehood.(4) Since the population of Washington Territory was only 23,955 in 1870,(5) Garfielde apparently used this bill as a political maneuver to win the exponents of Statehood to his support in Washington Territory. Garfielde's defeat in 1872 by the Democrat Obadiah B. McFadden left the control of the Republican "Federal clique" machine in the competent hands of Governor Elisha P. Ferry.(6)

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1. Washington House Journal, 2d Biennial Sess., pp. 67, 229, 1869.
 2. Laws of Washington, 2d Biennial Sess., pp. 67, 355, 1869; Murray, Op. cit., pp. 363-364.
 3. Laws of Washington, 3d Biennial Sess., pp. 98-99, 1871; 4th Biennial Sess., pp. 470-471, 1873. The opposition in a light vote in 1872 was over 2 to 1; in 1874 the vote was too light to be generally reported.
 4. Murray. Op. cit., pp. 362-365.
 5. Report on the Population of the United States, 1890, Census Office, pp. 2-3. The Territory of New Mexico had nearly 92,000 population in 1870.
 6. Murray. Op. cit., p. 365.

With Ferry favoring annexation, the Republican legislature of 1873 passed another Memorial to Congress asking that northern Idaho be added to Washington Territory.(1) Walla Walla's hostility to the Ferry "ring", the Governor's veto of the King County bill in apparent retaliation for the rejection of his nominations,(2) and the subsequent creation of Columbia County with Dayton as county seat from a part of Walla Walla County in the legislature of 1875 caused a popular reaction against the Governor in Walla Walla County and revived the agitation there for annexation with Oregon.(3) Senator James K. Kelly of Oregon introduced a bill in Congress in December, 1875, calling for plebiscites to determine the wishes of Walla Walla and Columbia Counties on annexation to Oregon.(4) These events explain the reversal of the geographical support for Statehood in Washington. While Walla Walla had formerly hoped by annexing northern Idaho to win a permanent Democratic majority in the Territory and to move the capitol to Walla Walla, the Republicans were now alarmed at the prospect of losing the Walla Walla area

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1. Laws of Washington, 4th Biennial Sess., pp. 608-610, 1873. This Memorial and a like one from Northern Idaho were presented to Congress by Representative James W. Nesmith of Oregon. - Murray, Op. cit., pp. 366-367.
 2. The fate of the King County bill and the resulting charges against the Governor are discussed in the chapters on the Territorial Executive and legislature.
 3. Murray. Op. cit., p. 368. Oregon had incorporated the Walla Walla area in her Constitution in 1857 which made the Columbia and Snake Rivers her northern boundary.
 4. Ibid., pp. 351, 369. Congress failed to agree.

to Oregon and gave the Annexation and Constitutional Convention measures passed by the legislature of 1875 their full support.(1) Now it was the coast which favored Statehood and Walla Walla which opposed it. "On the Sound the population is on the wane", commented the Walla Walla Statesman,(2) "and east of themountains the increase is so slow as scarcely to be appreciable. At our present rate of growth the child is not born that will live to witness the admission of the State of Washington". Delegate Orange Jacobs held out the hope of Statehood as relief for Walla Walla's grievances, but this palliative had little effect. Fortunately for Washington Territory, Congress adjourned before it took final action on the bill annexing Walla Walla to Oregon.(3)

This real danger of losing Walla Walla caused both Democratic and Republican party leaders to support Statehood and the annexation of northern Idaho to secure sufficient population to make the effort successful. The election of 1876, therefore, showed an astonishing reversal of sentiment. Only five of the river counties whose interests were tied with Portland and the Oregon Steam Navigation Company failed to give the proposed constitutional convention a majority. The final vote stood at 5,698

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1. Laws of Washington, 5th Biennial Sess., pp. 102-103, 301-302, 1875; Murray, Op. cit., p. 370; Evans, Elwood, History of the Pacific Northwest: Oregon and Washington, Vol. II, p. 49.
 2. February 26, 1876; also quoted in Vancouver Independent, March 18, 1876.
 3. Murray. Op. cit., p. 370. Delegate Jacobs worked hard in Washington, D.C., to defeat the bill and secured the aid of Senator John H. Mitchell of Oregon who may have been responsible for delaying action on it.

favoring the convention to 1,530 opposing it.(1)

The legislature of 1877, therefore, provided for a convention to meet at Walla Walla in an effort to win the support of eastern Washington for Statehood and to defeat the Oregon annexation movement. there. Fifteen Delegates were to be chosen early in April, three to be selected from the Territory at large, one each from the three judicial districts, and one Delegate from each of the nine Council districts. Northern Idaho was invited to send a Delegate who should have the privileges of the floor but no vote.(2) On January 24, 1878, Governor Ferry called for the special election of Delegates for April 9, 1878.

In the meantime, on December 10, 1877, Delegate Jacobs introduced a complementary measure in Congress to enable the people of Washington Territory and a portion of Idaho to form a State Government and be admitted into the Union as the State of Washington. This bill got no farther than the committee on Territories in the House.(3)

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1. Seattle Post-Intelligencer, March 1, 1889; Murray, Op. cit., p. 371. The King County vote was 1,399 to 22; Jefferson County, 357 to 7; and, Kitsap County 272 to 4. A mild sensation was created in the summer of 1877 when the Walla Walla partisans circulated a rumor that Governor Ferry was planning to turn the legislature into a convention to adopt a Constitution already drafted by himself so that he could be immediately elected Senator. - Murray, Idem.
 2. Laws of Washington, 6th Biennial Sess., pp. 237-238, 1877; Washington Standard, November 3, 1877; \$200 was appropriated for his expenses.
 3. Congressional Record, 45th Cong., 2d Sess., p. 99, 1877-1878.

THE ELECTION OF DELEGATES

Little enthusiasm appeared in the election of Delegates. The legislature limited the number to 15 as an economy measure and possibly as a reflection of a feeling that little would come of the effort anyhow. The attitude of the people of Mount Coffin, Washington Territory, will illustrate a wide popular sentiment. They were opposed to a convention composed of only 15 members since the experience of the Territorial Council indicated that a small body was more susceptible to corrupt combinations and manipulation than a larger one.(1)

The hope of a non-partisan election of Delegates to pick the best men in the Territory to form the proposed constitution proved vain. The Democratic press accused the "official clique" of attempting to control the membership of the convention, thus forcing the Democrats to select a partisan group of Delegates.(2) The Republicans, however, accused a group of Seattle Democrats of issuing a circular favoring partisan delegates while preserving the front of being non-partisan advocates in order to win a Democratic majority. When the Republicans discovered this plot, they immediately called for party conventions and made a partisan race of the election despite the predictions of the press of both parties that the Democrats would

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1. Jas. B. Lea Du to Frank Henry, February 5, 1878, C.B. Bagley, Miscellaneous Pioneer Letters, Pacific Northwest Collection.
 2. Washington Standard, February 9, 1878. "Not until it became apparent that the Republican leaders meditated nothing but the vilest treachery was it decided" to use the party organization.

gain only 5 of the 15 seats in the convention if this occurred.

(1) The Colfax Palouse Gazette, February 16, 1878, objected to the drawing of party lines in the selection of the Delegates and suggested that the representative men of both parties meet and agree upon "the persons best fitted by their sound common sense and practical capacity to frame a constitution that will bear all legal tests and be worthy of the State of Washington". (2) This criticism against the entrance of politics into the contest over Delegates and the complaint that a convention of 15 was too small may explain the general apathy of the people of the Territory toward the election in April. (3)

In spite of predictions of a light vote on April 9, 1878, the results were "much less than the lowest estimate". (4) The Walla Walla Union (5) suggested that since the vote indicated a lack of popular interest in Statehood the Delegates would please their constituents by merely meeting long enough to adopt a Memorial asking Congress to allow the Territories to elect their own officers and then adjourning. The Washington Standard

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1. Walla Walla Statesman, March 2, 1878, quoting from the Port Townsend Puget Sound Argus; Walla Walla Union, February 9, 1878, quoting from Olympia Courier.
 2. February 16, 1878. A good many of the quotations from this newspaper are found in Oliphant, J. Orin, "Additional Notes to the Constitution of 1878," Washington Historical Quarterly, Vol. XVII, No. 1, pp. 27-33, January, 1926.
 3. Walla Walla Union, March 16, 1878; Washington Standard, April 6, 1878; Palouse Gazette, April 6, 1878. The editor of the Palouse Gazette feared that no vote at all might be cast in Whitman County.
 4. Walla Walla Union, April 13, 1878.
 5. Idem.

complained that the vote was "probably the smallest cast in the Territory since its organization".(1) The Walla Walla Union(2) later excused this showing of which it did not believe there had ever been "an election held in this or any other country where there was so little interest manifested, particularly by the Democrats" on the grounds that many were opposed to the extra financial burdens of State Government, and that they did not think Washington had sufficient population or would have for ten years to become a State.

The Democratic Walla Walla Statesman(3) gloated over the fact that less than one-fifth of the voters had taken part in the election which indicated that the people from the first had been opposed to the scheme and "that it was being pushed forward by a few ambitious men who had no considerable following". The editor insisted that the idea of a constitutional convention ought to be abandoned in order to save the Territory several thousand dollars expense. "A convention," concluded the Statesman, "that represents less than one-fifth of the voters of the Territory will have no moral force, and any constitution it may frame will be scouted by the people." Anyhow, the Democrats in

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1. Washington Standard, April 20, 1878. Walla Walla cast only 105 votes. The Palouse Gazette, April 20, 1878, said a "very light vote was cast".
 2. April 20, 1878. The San Francisco Bulletin, June 29, 1878, in Baneroff Scraps, vol. CX, p. 172, indicated that the farmers did not turn out, causing a light vote. The same thing had happened in the election for a constitutional convention in California on June 19. The Washington vote was given as little over half the usual vote.
 3. April 20, 1878.

Congress ridiculed the idea of admitting another Republican State and the Republicans were powerless to do anything about it.(1)

Even the most favorable papers toward a constitutional convention were not optimistic over the outcome of the election. The Seattle Daily Pacific Tribune(2) considered the fears of those who thought this poor showing would defeat Washington's chance for admission to be groundless:

"It will, as Judge Jacobs has intimated in letters written since the election, prevent the passage of the enabling act that he had introduced, but it will not affect the movement at home an iota."

The Tribune insisted that the people did not vote because they were satisfied with all the candidates and did not care which ones were elected. A large vote on the constitution in November would still win the prize of admission.(3)

Word from Washington, D.C., gave no encouragement to the advocates of Statehood. Men of both parties there considered the Territorial constitutional convention a labor in vain, particularly in view of the wide support given in Congress to the principle that a Territory must reach a population of at least

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1. Walla Walla Statesman, April 20, 1878. The national political scene will be discussed later in this chapter.
 2. May 16, 1878.
 3. Daily Pacific Tribune, May 16, 1878: "If we could have sent Delegate Jacobs an official list of twelve or fifteen thousand votes cast at a special election, the Enabling Act would have gone through in flying style; but failing in that it becomes necessary for us to prepare our constitution, ratify it at the polls to the extent of the full strength of both parties in November next, and knock at the doors of the coming forty-sixth Congress." Cf. also, Weekly Pacific Tribune, May 22, 1878.

160,000, the number necessary to elect one Representative, before being admitted as a State.(1)

In the meantime Senator Mitchell of Oregon finally approved the annexation of Walla Walla to Oregon and introduced a bill to that effect in Congress. Many in Washington Territory were alarmed that if it passed Statehood would be delayed until 1890 or 1900. The Walla Walla press, however, insisted that the Puget Sound area wanted immediate Statehood merely to locate the capitol at some town west of the mountains.(2) Many Puget Sound residents feared that the Federal Government might grant the best tide, swamp, and overflow lands to speculators if Statehood were delayed too long.(3) Prospects for success in 1878 were not bright.

THE FIFTEEN DELEGATES

The press reactions to the Delegates was various when the convention met at Walla Walla, June 11, 1878. Eight Republicans and seven Democrats were elected to the convention which, according to the Democratic Washington Standard(4) was "another electoral commission". The Palouse Gazette, however, characterized the Delegates as the best men of the Territory.(5) The

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1. Weekly Pacific Tribune, May 1, 1878.
 2. Walla Walla Union, March 2, 1878.
 3. Murray. Op. cit., p. 373, from Port Townsend Democratic Press, March 8, 1878.
 4. June 1, 1878. Also quoted in Palouse Gazette, June 8, 1878. The memory of the Hayes-Tilden election of 1876 was still fresh in the minds of the Democrats.
 5. Palouse Gazette, June 8, 1878.

Walla Walla Union(1) thought the Delegates the "flower of Washington Territory", while the Olympia Transcript(2) was confident that such competent members would frame a constitution acceptable to the people.

The Vancouver Independent, July 11, 1878, presented major criticism of the Walla Walla convention. On the excuse of economy, the legislature authorized one of the smallest conventions of its kind ever held in the United States. Since many people still believed that the Statehood movement originated with and in the interests of the politicians "who hoped to ride into power on the upheaval expected to follow in Territorial politics", a larger convention might have dissipated these fears.

(3)

The regular Delegates consisted of 8 lawyers, 2 farmers, a lumberman, a woollen mill owner, a businessman, a fisherman, and a "man of the representative class", giving the lawyers a dominant position in the convention. The Delegate from northern Idaho, who possessed no vote, was a lawyer-editor. The average age of the members was about 53, the oldest being 65,

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1. June 15, 1878. "They are, with hardly an exception, fine looking, sedate, thoughtful men. Many of them have had large legislative and judicial experience."
 2. June 22, 1878.
 3. Vancouver Independent, July 11, 1878; Andrews, L. B., "The Constitution of 1878", Washington Historian, Vol. II, No. 1, pp. 17-19, October, 1900.

the youngest, 35.(1)

THE CONSTITUTION

Since the Constitution of 1878 never went into effect, its importance arises from the contrast between it and the Constitution of 1889. Corporation lobbying was much more extensive and better organized in 1889 than in 1878. As a result, some authorities have regarded the former constitution as radical and revolutionary; the latter one, as safe and stable.(2) This estimate is scarcely a fair evaluation of the earlier document.

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1. Andrews, Loc. cit., Vancouver Independent, Loc. cit. The Delegates were: Alexander S. Abernathy, president of the convention, lumberman from Cowlitz County, age 65, Republican; Sylvester M. Wait, Dayton wooley mill owner, age 56, Republican; G. H. Stewart, 46, Vancouver lawyer, Republican; James V. O'Dell, 45, Colfax lawyer, Democrat; O. P. Lacy, 45, well-to-do Walla Walla businessman, Democrat; Charles H. Larrabee, 57, Island County lawyer, Democrat, former member of Congress, Judge of the Circuit Court of Wisconsin for 10 years, member of the Wisconsin Constitutional Convention, and recognized leader of the Walla Walla convention; Dolph B. Hannah, 55, Pierce County lawyer, Democrat; Francis Henry, 51, Thurston County lawyer, Democrat; W. A. George, 59, Walla Walla lawyer, Republican; Henry B. Emery, Kitsap County fisherman, at 35 the youngest member of the convention, a Democrat; Samuel M. Gilmore, 63, Klickitat County farmer, Republican; Edward Eldridge, 51, Whatcom County farmer, Republican, a progressive, advocate of woman's rights and of the preferential system of voting; B. F. Dennison, 57, from the second judicial district, a lawyer of marked ability, Independent Republican; Charles M. Bradshaw, 47, Jefferson County lawyer, Republican; Lyman B. Anderson, 50, "a man of the representative class" from Seattle, Republican; and, Alonzo Leland, 59, Delegate without a vote from northern Idaho, was a lawyer and editor of the Lewiston Teller, a shrewd, keen Republican.
 2. These estimates will be referred to later in this and the following chapter.

SEPARATE ARTICLES

The chief lobbies in the Convention of 1878 were for woman suffrage and local option. Petitions for woman suffrage were freely presented. The convention had scarcely completed its organization on the sixth day of its 40-day session when Mrs. A. J. Duniway received permission to present a Memorial to the Convention and delivered a lengthy address in doing so.(1) The lobbying was successful enough to secure two separate articles granting woman suffrage if the people voted for it at the time of the ratification of the Constitution but not successful enough to secure a provision in the Constitution itself.(2) A third separate article sanctioning local option was also to be submitted to the voters after an effort to incorporate it in the Constitution had failed.(3)

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1. Vancouver Independent, June 27, 1878; "Convention Notes: Washington's First Constitution", Washington Historical Quarterly, Vol. IX, No. 2, pp. 137-140, April, 1918. Delegates Larrabee, Hannah, and O'Dell opposed her request with Hannah moving ironically to provide a seat for Mrs. Duniway and declare her a member of the convention. "After the adjournment, your reporter was so fortunate as to overhear a conversation in which one of the 'constituents' remarked: 'I've spotted two of them. That sage from Island [Larrabee] clad in robes of spotless purity, with the white eyebrow on his upper lip, and that good looking man with the white vest [Stewart], are opposed to our cause, and I am going to tell Mrs. Duniway so she can give them fits.'" - Palouse Gazette, June 17, 1878. She spoke the following Wednesday evening at the Unitarian Church.
 2. "Convention Notes:", Ibid., pp. 152, 221; Walla Walla Union, June 22, 1878; Washington Standard, June 29, 1878. The Vancouver Independent, June 27, 1879, was very much opposed to the lobbying of the Oregon woman, Mrs. Duniway, at the convention. The suffragists were said to be after the members "body, boots, and breeches".
 3. "Convention Notes:", Ibid., pp. 220, 226. Passed July 16.

NORTHERN IDAHO

Two questions affecting the aims of northern Idaho and her Delegate to the Convention caused considerable debate. In the first northern Idaho's representative, Alonzo Leland, attempted to secure a vote in the Convention on the grounds that since the intention of the Convention was to incorporate northern Idaho in the new State his position was more than advisory, thus entitling him to a vote.(1) In the debate Charles M. Bradshaw gave the real reason for denying Leland's request in the bald assertion that because the people of Washington Territory wanted to get into the Union, they did not wish to bind themselves "indissolubly to North Idaho, for if it is not possible to get in with northern Idaho, we want to get in without her". The effort proved abortive, and Delegate Leland was denied the vote.(2) In spite of this decision the Convention decided to incorporate northern Idaho within the boundaries of Washington in the proposed Constitution.(3) The people of eastern Washington desired northern Idaho in Washington and would not be satisfied with a Constitution that did not incorporate this area. Politically, since northern Idaho was predominately Democratic, her votes

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1. Dolph B. Hannah, Pierce County Democrat, supported Leland's claim; Judge B. F. Dennison and Charles M. Bradshaw, Republicans, and Charles H. Larabee and Francis Henry, Democrats, opposed his request.
 2. "Convention Notes:", Op. cit., pp. 143, 146-149. The vote was 2 for the resolution to 12 against it.
 3. Ibid., pp. 143-144; Palouse Gazette, June 26, and July 10, 1878. Larabee's suggestion to leave the problem of boundaries to Congress received little backing.

added to the Democratic vote in Washington Territory might convince a Democratic Congress that it would be safe for the Democrats to admit Washington into the Union as a State.(1)

As a concession to the interests of the Lewiston district and the Oregon Steam Navigation Company in particular, the Convention passed a Memorial to Congress requesting the improvement of the Snake River. This Memorial was the result of one of the few instances of successful lobbying by a corporation during the Convention.(2)

CORPORATION AND RAILROAD ARTICLES

On other issues the Convention of 1878 proved less favorable to the corporations and railroads, but not as much so as some Delegates hoped. A section proposed for the Declaration of Rights limiting the amount of land owned in Washington by any person, company, corporation, or association to 640 acres, except railroads or canals, which could own more land for purposes of operation only, caused considerable stir. The press complained that this provision would prevent a man from exercising the right to get rich.(3) A majority of the Convention wished to preserve this right and voted down the provision on July 23.(4)

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1. Walla Walla Union, June 29, 1878.
 2. "Convention Notes:", Op. cit., pp. 149-150; Congressional Record, 45th Cong., 3d Sess., p. 217, 1878-1879. The Memorial was referred to the Committee on Commerce and ordered to be printed in the Congressional Record.
 3. Walla Walla Union, July 6, 1878; Palouse Gazette, July 13, 1878.
 4. "Convention Notes:", Op. cit., p. 303. The vote was 5 for, 8 against.

Some of the provisions adopted by the Walla Walla Convention reflected a distrust of corporations and railroads. All charters and special privileges that had not been fulfilled in good faith were to be invalidated at the time of the adoption of this Constitution.(1) This provision was apparently directed against the Northern Pacific Railroad whose land policy was unpopular in Washington Territory because it made no real effort to build a line in accordance with its Washington charter until after 1880.(2) The other provision in the Constitution affecting railroads declared them to be public highways and "free to all persons for the transportation of their persons and property" under regulations prescribed by law. Maximum freight and passenger rates were also to be fixed by law in order to prevent unjust discrimination on the part of the railroads.(3)

One important corporation section forbade watering of stock which was to be issued only "for labor done, services performed, or money or property actually received" and to be increased only in pursuance of general law. Another more radical provision stipulated that "The stockholders of all corporations and joint stock companies shall be individually liable for all labor performed for such corporation or company."(4) The strange

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1. Art. XIII, Sect. 1, "Washington's First Constitution", Washington Historical Quarterly, Vol. X, No. 1, p. 126, January, 1919.
 2. On the construction of the Northern Pacific line, cf. Snowden, Clinton A., History of Washington, Vol. IV, pp.287-316.
 3. Art. XIII, Sect. 3, Op. cit., pp. 126-127. These provisions compare favorably with those in the Constitution of 1889.
 4. Art. XIII, Sect. 6, Ibid., p. 127.

provision apparently taken from the Organic Act prohibiting banks in the proposed State of Washington was added to the Corporations Article on July 11. As finally adopted the Section read:

"The legislature shall not have power to establish or incorporate any bank or banking company, or moneyed institution whatever in this State, with privilege of making, issuing or putting in circulation any bill, check, certificate, promissory note, or other paper intended to circulate as money."(1)

These corporation and banking restrictions and the limitations on the railroads were the focal points of the later criticism of the Constitution of 1878.

SALARIES

The constitutional provisions in regard to salaries reflect the small population of the proposed State and the general fear of high taxes resulting from State Government.(2) The salaries of members of the legislature were limited to \$4 per day and 10¢ a mile for traveling expenses while the sessions of the legislature were limited to 40 days, all in the interests of economy.(3) This provision is striking when one considers that

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1. Art. XIII, Sect. 8, "Convention Notes:", Op. cit., p. 219. The provision of the Organic Act against banks is discussed in the chapter on the Revised Statutes.
 2. The Walla Walla Statesman, July 13, 1878, insisted that the Convention erred greatly in undertaking to regulate the salaries of officials by constitutional limitation. "In this matter, as in many others, they might well pattern after the framers of the Constitution of the United States."
 3. Art. VI, Sect. 8, "Washington's First Constitution", Op. cit., p. 66.

popular agitation was definitely opposed to both the 40-day session and the low pay for the legislature when the National Government imposed them; but with a large majority of the people voting for this Constitution, it provided both a 40-day session and a salary scale even lower than that of the Territory.(1) The salaries for the other state officials were almost niggardly; the Governor, the Secretary of State, the Superintendent of Public Instruction, and the State Treasurer each were to receive \$1,500 a year while the judges of the supreme and circuit courts were to be given \$2,000.(2)

COURTS

Even the proposed court system reflected the efforts at rigid economy in the government. Although the convention favored a separate supreme court, it used economy as an excuse for having the circuit court judges compose the state supreme court for four years, after which the legislature could authorize a separate supreme court if it chose.(3) Judges were restricted from running for other than judicial offices during their term of office as a direct reflection against the tendency of the Territorial judges to run for Governor or Delegate.(4) Justice of the peace courts

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1. The per diem was the same while the traveling expenses were a third lower in the proposed Constitution. Cf. Chapters on Revised Statutes and on the legislature on the salaries for members of the legislature at this time.
 2. Art. VIII, Sect. 11.
 3. "Convention Notes:", Op. cit., p. 212; Article VIII, Sect. 4, "Washington's First Constitution", Op. cit., p. 114.
 4. Article VIII, Sect. 14, "Washington's First Constitution", Op. cit., p. 116.

were restricted in their jurisdiction to the rather low figure of \$100 in value or less found in the Territorial Organic Act, (1) Considerable argument developed in the convention over the formation of the county probate courts. After much discussion and "unparliamentary wrangle", according to the reporter for the convention, the section providing for a separate probate court "was amended, cut up, blotted out, substituted, and after spending two half days, left just as it was originally reported". (2)

DECLARATION OF RIGHTS

The Declaration of Rights also provoked some controversy in the convention. An effort to change the name of this article to a Bill of Rights was defeated because some members thought the original name was more American while the suggested change savored too much of "Johnnie Bull". The convention rejected the section section of the Declaration of Rights, which asserted that the people of the proposed State had exclusive right to govern themselves as a

"...free, sovereign, and independent state, of altering or abolishing their form of government; and they may, do, and forever hereafter shall, exercise and enjoy every power, jurisdiction and right which is not now, or may not hereafter, be by them expressly delegated to the United States of America in Congress assembled,..."

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1. "Convention Notes - Washington's First Constitution", Op. cit., Art. VIII, Sect. 16, p. 117; Cf. Organic Act, Sect. 9.
 2. Ibid., p. 215. The Reports were all published in the Walla Walla Union.

because it embodied in it the essence of secession and was too radical.(1)

A few unusual provisions were incorporated in the Declaration of Rights. Woman's rights except for voting equality received recognition in the provision that "no person, on account of sex, shall be disqualified to enter upon and pursue any of the lawful business avocations or professions of life".(2) Juries in criminal cases were to consist of twelve persons; but the number of jurors in civil cases was to be prescribed by law. The concurrence of three-fourths of the whole number of the jury was to be sufficient for a verdict. Grand juries were to consist of seven persons with the concurrence of five necessary to find an indictment. The legislature was given power to "change, regulate, abolish, or re-establish the grand jury system".(3) These provisions made the Declaration of Rights distinctive.

REPRESENTATION AND THE LEGISLATURE

The Section covering representation presented two innovations: minority representation and the possible institution of the preferential system of voting. Each qualified voter could

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1. "Washington's First Constitution", Op. cit., p. 145. This provision may have reflected a pro-southern attitude which attempted to establish separate schools for colored children. - Ibid., p. 225.
 2. Art. V, Sect. 6, Ibid., p. 62; Washington Standard, August 3, 1878.
 3. Art. V, Sect. 8, Ibid., pp. 62-63; Washington Standard, Loc. cit.

cast as many votes for one candidate as there were representatives to be elected in the district, or he could distribute his votes among the candidates as he saw fit with the candidates receiving the highest number of votes gaining the office. After 1890 the legislature could adopt the preferential system of voting if it chose.(1)

Other provisions in the Constitution of 1878 affecting the legislature included the following: all ordinary bills were to be read at length at least one in each House. No law could be revised or amended by reference to its title only; but the revised section had to be re-enacted and published at length as amended. The objects of all acts had to be expressed in their titles; and all except general appropriation bills were to embrace only one subject. Special acts and the granting of special privileges and charters were prohibited where general acts or incorporation laws could be made applicable.(2) Legislative divorces and the sanctioning of lotteries were expressly prohibited.(3) These provisions illustrate the restrictions on the proposed legislature.

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1. Art. VI, Sect. 7, "Washington's First Constitution", Op. cit., p. 66. In the preferential system of voting the person lists his first, second, and third choice for an office. If a person wins a majority of first choices, he is elected; if no one has a majority, the second choices are considered in the selection, and so on.
 2. Art. VI, Sects. 15-17, Ibid., pp. 67-68. Many of these were found in the Territorial Government.
 3. Art. VI, Sect. 22, Ibid., pp. 109, 112.

THE EXECUTIVE

The Governor was to be elected for four years and was not to be eligible for the next succeeding term of office.(1) There was to be no Lieutenant Governor; but the Governor was to be succeeded by the President of the State Senate or Speaker of the House of Representatives in case he was incapacitated for office.(2) The Governor was granted the veto, but denied the use of the pocket veto by a novel provision. After the adjournment of the legislature, the bill had to be filed in the office of the Secretary of State with the Governor's objections within 10 days or it automatically became a law.(3)

DEBT LIMITATION

The restrictions on State and local debts were rigid. The debt for the proposed State was limited to \$50,000 for the first 15 years and \$100,000 thereafter while every debt had to be paid within 10 years after it was incurred. Although the legislature was to limit county indebtedness, municipal debts were not to exceed 12 mills on each dollar valuation of the taxable

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1. Art. VII, Sect. 1, "Washington's First Constitution", Op. cit., p. 111. This may have been a reflection of the political hostility to Governor Elisha P. Ferry who was at that time completing his second term as Governor.
 2. Art. VII, Sect. 6, Ibid., p. 113.
 3. Art. VII, Sect. 7, Ibid., pp. 112-113.

property in the city or town.(1) Additional State debts could be contracted only to repel invasion, suppress insurrection, or defend the State in time of War. The State could not contract any debt for work or internal improvements, nor could the State aid any church or religious institution.(2)

ESTIMATES OF THE WALLA WALLA CONVENTION AND CONSTITUTION

Estimates of the Constitution of 1878 vary. One individual considers it "unequaled by that of any State".(3) Since the Constitution itself provided for the calling of another constitutional convention and the formation of a new and more adequate document when the legislature and a majority of the people thought it advisable, one is apt to place a high estimate on the Convention and the Constitution of 1878.(4)

The reaction of the press, however, was not all favorable. The Walla Walla Statesman attacked the Statehood effort as a scheme of Governor Elisha P. Ferry to place himself in the Senate.(5) The Statesman argued that the vote on the selection of Delegates to the convention then in session indicated that the people had no confidence in the scheme and dreaded the aftermath of Statehood, fearing that those obnoxious Federal appointees,

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1. Art. XII, Sects. 10-13, "Washington's First Constitution", Op. cit., pp. 124-125.
 2. Art. XII, Sects. 20-22, Ibid., p. 126. Any individual who fought or was second to a duel either in or outside the State could not hold office in the State. - Art. X, Sect. 7, Ibid., p. 120. All fines and penalties were to go to the school fund. - Art. XI, Sect. 5, Ibid., p. 121.
 3. Beardsley, Arthur S. Constitution of the State of Washington, Appendix, p. iii.
 4. Art. XVI, Sects. 1-3, Op. cit., p. 130.
 5. July 13, 20, August 3, 1878.

who through fraudulent practices had become a "stench in the nostrils" of the oldest sections of the country, were the master spirits behind the Statehood movement. (1)

When the Statesman on June 22, 1878, (2) claimed that Clark County opposed the movement for a State Constitution as a project "having originated in the interest of a few 'small beer' politicians of the Ferry type", the Vancouver Independent (3) promptly denied the charge on the basis of inquiries which indicated that not one man in four in the county was opposed to a State government. The people of Vancouver were not trying to please Governor Ferry or any other man or set of men, but wished merely to protect themselves against the rapacity of California and Portland, and "on this point the desire for State government is very rapidly growing in this community". (4)

When M. I. Caton, Democratic candidate for Delegate in 1878, stated that the Statehood movement was gaining favor east of the mountains, the Statesman attacked him severely for this assertion claiming that he made the remark to win favor with Governor Ferry in his effort to become Senator. The editor insisted that instead of gaining strength, the movement was becoming weaker and weaker until the members would be "laughed out of the country" (5) if the convention did not end its work soon.

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1. Walla Walla Statesman, June 15, 1878.
 2. Quoted in the Vancouver Independent, July 4, 1878.
 3. July 4, 1878.
 4. Idem. Clark County gave the Constitution a majority of 56 out of over 700 votes cast.
 5. Walla Walla Statesman, July 20, 1878. "A few political tricksters and demagogues desire a State government, but the mass of the people will have none of it."

The Portland Oregonian first commented that the Walla Walla Convention was proceeding with intelligence and prudence and was carefully laying the foundation of a good constitution.(1) Later the same paper quoted the Walla Walla Statesman to the effect that the proposed low salaries for state officials were merely an effort to sugarcoat the pill which, as in Oregon, created a State government merely to benefit the politicians.(2)

After the end of the convention, the Oregonian quoted the Walla Walla Union's favorable comments on the Constitution of 1878 to the effect that the addition of the three northern Idaho counties would materially increase the chances of admission into the Union and that two Washington Senators and one Representative would materially assist Oregon in

"....demanding the opening of the Columbia, the improvement of Snake River, the building of a railroad from the Columbia through Idaho to the Central Pacific, and the general promotion of the interest, the prosperity, the progress of the Pacific Northwest."(3)

As soon as the provisions of the Constitution of 1878 became generally known, however, the Oregonian campaigned actively against it. This fact was possibly due to the fact that some of its provisions were not satisfactory to the Oregon Steam Navigation Company. On August 12, the Portland paper criticized some of the provisions of the new Constitution as "conceived in a spirit of hostility to the successful employment of capital

1. July 3, 1878.

2. Ibid., July 19, 1878, Quoting from the Walla Walla Statesman.

3. Ibid., July 31, 1878.

for the development of the new State" which "could ill afford to take alarm at the encroachments of capital", or to try to restrain it from seeking the best investments and enterprises it can find. "No railroad could ever be built in Washington under the restrictions proposed in several parts of the Constitution which is offered the people."(1) Portland's leading companies and financiers were vitally concerned that the path to the easy exploitation of Washington's resources be kept open.

Since the Northern Pacific Railroad was strong in Pierce County, the Tacoma Times directed a masterly bit of contumely against the Constitution of 1878 by condemning the

"...communistic embodiments contained in the railroad and church sections of the document. ...When this Constitution may become the supreme law of the land, property values will shrink more than one-half from the basis now calculated upon the future internal improvements proposed in this part of the northwest, and the good old mudroad days of the past will be restored, with low prices and high rates of interest. With no railroads and pawnshops and shylocks to govern the finances, the state of Washington will be a good country to emigrate from."(2)

The Times objected particularly to the sections preventing the proposed State from going in debt for internal improvements and prohibiting the legislature from chartering banks.

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1. Portland Oregonian, August 12, 1878. "Should Washington come in as a State under a Constitution which would thus stifle all the efforts of capital to obtain profitable investment, Oregon would have little to fear from the rivalry of her northern neighbor."
 2. Tacoma Times quoted in the Portland Oregonian, August 19, 1878.

The Oregonian, August 31, 1878, also listed the provisions in the proposed Constitution against which it directed its criticism; namely, the indifference of the people indicated that they were not anxious for the responsibilities of Statehood. Although the Constitution had some real merit in its judicious distribution of powers and responsibilities, it was even narrower than the Oregon Constitution in limiting debts to \$50,000 for the first 15 years and \$100,000 thereafter, in prohibiting the State from contracting any debt at all for internal improvements or being a "party in carrying on the same" and in making railroads public highways free to all persons for transportation of themselves and property under those regulations prescribed by law. Commented the Oregonian: "It is quite unnecessary to say that under this provision not many railroads would be built to trouble the people of Washington." Other objectionable provisions to the Oregonian were that only citizens of the United States or persons who had declared their intentions to become citizens could be employed "in or about any public office in the State, or in any State institution, or on any public works presecuted by the State" and that shareholders in joint stock companies were individually liable for the labor performed for the company. Although the cost of State Government under this Constitution would not be great, the Oregonian considered the move a premature effort by the politicians to work out their "little schemes" through State organization. (1)

1. Portland Oregonian, August 31, 1878.

There were other sources of complaint at the indifference of the people and press of Washington Territory toward the proposed Constitution. Alenzo Leland, editor of the Lewiston Teller, thought the press of eastern Washington indifferent to Statehood and therefore indifferent to the annexation of northern Idaho.

(1) The Palouse Gazette immediately advocated annexation and Statehood, but not immediate Statehood, the unfavorable side of which was indicated in Oregon's recent budget aggregating more than \$276,700 a year to be drawn from a population of 104,920. Washington was not yet ready to carry such a load.(2)

Even some Oregon papers came to the defense of the proposed Constitution. The Tacoma Times had cited the Oregon debt as a warning to Washington if it became a State. The Daily Astorian(3) replied that since Oregon's debt was unnecessary, a vigilant Washington need not follow this example. Even so Oregon had wealth, population, and general prosperity from being a State she would

1. Quoted in the Palouse Gazette, August 30, 1878.

2. Idem.

3. Daily Astorian, September 13, 1878. "Hon. James V. O'Dell, of Colfax, advances reasons why the Constitution should be adopted, and the Territory admitted as a State: First, it is a good Constitution fully up to, and perhaps above average. Second, by adopting it, it will save the expense of another convention which is no inconsiderable item. Third, it will show Congress that we are in earnest in the matter of the State movement, and this alone will strengthen our chances of an early admission. Besides all of these reasons, there is still another, more potent perhaps, to the people east of the mountains than any other, and that is, should the present movement fail, the people of north Idaho will be inevitably lost to us as a constituent part of our proposed State." - Idem.

not otherwise have gained. The Astorian concluded that the fact that no Oregon citizen wanted to return to the condition of Territorial vassalage was "a potent argument in favor of Washington's becoming a State".

THE ISSUES

As the election approached, the issues involved in the struggle over the Constitution became more clearly drawn. The Tacoma Times published a conversation with a resident of Clark County in which this traveler claimed that the farming class was almost universally opposed to the Territory becoming a State in lieu of the resulting increase of taxation. (1) The Walla Walla Statesman fully agreed that the farmers were opposed to the Constitution, claiming that it was already dead and that it remained for the people to "bury the stinking carcass" at the November election. (2)

The Palouse Gazette promptly denied this claim since the laboring classes should vote for the Constitution "as they may be certain they will never get a chance to vote for one which will protect their interests equal to this". When the Tacoma Times exercised so much concern for the "hardy sons of the plow" and was at the same time an organ of a great corporation which

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1. North Pacific Times, quoted in Walla Walla Statesman, September 21, 1876: "It is to the hearty sons of the plow we must turn to save us from this office-seeker's infliction in the November election."
 2. September 21, 1876.

would have no chance under the Constitution to fill its coffers from the laboring classes, it was time for the Gazette to speak out in favor of the Constitution condemned by the Times.(1)

The Olympia Transcript, September 14, 1878, published an editorial which the Palouse Gazette now used to prove its contention that this was a workingman's Constitution in contrast to one dictated by the corporations because,

"Its opponents are mostly corporation sympathizers, office-holders, or official aspirants, whom it guards against in any scheme which they may hereafter have to control the State government. It protects the masses of the people--the laboring classes--against an unjust, discrimination in taxes; makes corporations liable for the debts of their company, as far as labor is concerned. These and other like provisions commend it to the masses of the people."(2)

On October 11, 1878, the Palouse Gazette summarized the reasons why the Constitution should be adopted: First, it was as nearly perfect as any one of the 38 State Constitutions. Second, its adoption would not mean admission for another two or three years by which time Washington would be ready for Statehood. Third, to reject the Constitution would be to reject northern Idaho's desire to join Washington. And finally,

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1. September 27, 1878.
 2. Quoted in full, Palouse Gazette, October 4, 1878.

"...we notice those papers which are known to be in the interest of railroad or other corporations, are opposing it and villifying its framers with a hope of getting another more to their interest. This Constitution says that railroads shall be taxed--which is right. It holds members of corporations individually responsible for labor performed--which is right. It protects the interests of the masses, the mechanic, the farmer, and laboring man, and these are the only objections yet offered against it. It will be between the laboring man and the capitalist to determine whether this Constitution shall be the law of the future State, or shall there be one especially for the corporations of which the people have so long been complaining?"(1)

The reason the Oregonian opposed the proposed Constitution came to light just before the election. The Walla Walla Union(2) reported that Ladd and Tilton, bankers of Portland, would stop the construction of a proposed railroad in southeastern Washington if the proposed Constitution were adopted. The Palouse Gazette had only one reply:

"This little proclamation of Oregon capitalists is alone enough to make the people of Washington arouse and show their independence by voting to a man for the adoption of the Constitution. ... Let them take their steel rails and make them into vaults in which to treasure their silver and gold; they cannot forge them into chains with which to bend down the intelligence and independence of the people of Washington."(3)

Nearly all of the Territorial press favored the Constitution of 1878. The Tacoma Times was reported to be the only paper in the Sound area opposed to the Constitution.(4) The ed-

1. These reasons were copied and urged by the Olympia Transcript, November 2, 1878.
2. Quoted in the Palouse Gazette, November 1, 1878.
3. Idem.
4. Seattle Weekly Pacific Tribune, October 10, 1878.

itor of the Palouse Gazette found the people of Whitman and Stevens Counties "almost" unanimous in favor of adopting the Constitution because its features which made it "so offensive to corpulent speculators make it popular with the masses".(1) The Daily Astorian gave a practical illustration of the discrimination faced by a Territory; in considering the practicality of moving the Umatilla Indian Reservation to a larger area in Washington Territory, only representatives of the Federal Government, the State of Oregon, and the community of Walla Walla, which favored the move, were present while the larger interests of Washington Territory, which was vitally concerned in the whole matter, were completely ignored. This type of discrimination would continue until Washington became a State.(2)

THE ELECTION OF 1878

Since both branches of Congress were to be Democratic, the Democratic press insisted that the only hope Washington had for admission was as a Democratic State with a Democrat Delegate. "There will be a presidential election in 1880," pointed out the Weekly Pacific Tribune,(3) "and think you, would a Democratic

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1. October 25, 1878. "Eastern Washington will adopt it by a large majority."
 2. October 29, 1878. The three separate articles seem to have aroused little enthusiasm although that favoring local option received some support in eastern Washington. - Palouse Gazette, November 14, 1878.
 3. October 31, 1878.

Congress entertain for a moment, the idea of admitting a new State into the Union to defeat its own ends in that election." This advice was not heeded, however, and Thomas H. Brentz, Republican, was elected by a strong majority in the election of November 5, 1878, over N. T. Caton, Democratic candidate. The same paper considered the results final; though unquestionably adopted, the Constitution was now almost certain to remain a dead letter.(1)

The official vote in the election of November 5, 1878, on the Constitution stood at 6,537 favoring it to 3,236 opposed while all the separate articles were defeated by substantial votes.(2) The vote in northern Idaho stood at 737 in favor of the Constitution to 26 opposed.(3) The vote on the Constitution had economic rather than political significance; for only two Democratic counties, Pierce and Skamania, and three Republican counties, Cowlitz, Columbia, and Walla Walla,(4) opposed it. The influence of the Northern Pacific Railroad dominated Cowlitz and Pierce Counties, the two in the western part of the Territory that had opposed ratification. Skamania County had long been under the control of the Oregon Steam Navigation Company(5)

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1. Weekly Pacific Tribune, November 14, 1878.
 2. The first woman suffrage article lost 1,827 to 5,117; the second woman suffrage article lost 1,745 to 5,061, and local option lost 2,874 to 4,151, pelling over 1,000 votes more than woman suffrage.
 3. The vote on the separate articles stood at 123 to 282 and 122 to 282 in rejecting woman suffrage while local option carried 221 to 188.- "Governor Ferry's Proclamation" in Palouse Gazette, February 7, 1878.
 4. Walla Walla County voted for a Republican candidate for Delegate for the first time in 1878.
 5. Cf. Chapter, Revised Statutes, on the control of the Oregon Steam Navigation Company over Skamania County.

while Walla Walla and Columbia Counties stood to lose the backing of Ladd and Tilton, Portland bankers, for a proposed railroad in southeastern Washington if the Constitution were adopted. (1)

The vote in Walla Walla County overwhelmingly opposed ratification with only 89 favoring the Constitution to 847 opposing it. The Walla Walla Union rejoiced that Congress would certainly not consider admission for Washington with Walla Walla County so decidedly opposed and freely admitted the reason for Walla Walla's hostility:

"In the meantime, capital seeking for chances for profitable investment will find many awaiting them in this region. Capital need no longer fear the absurd restrictions attempted to be placed upon it by the Constitution. Come while the field is open; strike while the iron is hot." (2)

Walla Walla was willing to receive unrestricted financial aid from Portland. Ladd and Tilton were welcome investors there.

The vote favoring the Constitution also indicates the hostility of the sections that failed to gain from the Northern Pacific Railroad's policy in establishing its terminus at Tacoma and in failing to build a road over the Cascade Mountains. Seattle's disappointment in not being selected as the terminus for the line was indicated by a vote of 1,284 to 30 favoring the Constitution. (3) The votes of other Sound counties indicate

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1. Palouse Gazette, November 1, 1878; see above.
 2. November 9, 1878.
 3. Pierce County, which got the terminus, voted 339 to 230 against ratification. Steilacoom's disappointment in not being selected in place of Tacoma seems to be reflected in the 230 votes for Statehood.

their reaction to the Northern Pacific's policies, particularly the policy of not extending branch lines. Thurston County voted 459 to 118 for the Constitution while the majority in Clallam County was 105 to 8; in Island County, 164 to 1; in Jefferson County, 332 to 30; in Kitsap County, 198 to 35; in Snohomish County, 308 to 20. Yakima County cast a vote of 210 to 90 favoring the Constitution. The Columbia counties of Klickitat and Clark indicated their hostility to the Oregon Steam Navigation Company, voting 229 to 1 and 386 to 330, respectively, favoring the Constitution. (1)

THE NATIONAL SCENE

The national political scene, however, did not favor Washington's ambitions for Statehood. Since the admission of Colorado in 1876 insured the eventual election of Hayes over Tilden, the Democrats now opposed the admission of any Republican State; and with a majority in Congress, this opposition was important. (2)

Two factors now worked against admission for Washington Territory: the smallness of the vote on the Constitution of only 9,773 of the 12,647 votes cast in the election, and, still

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1. Walla Walla Union, November 30, 1878; Murray, Op. cit., p. 374. Lewis and Mason Counties listed no opposition to the Constitution of 1878.
 2. Murray, Op. cit., pp. 373-374; Seattle Post-Intelligencer, March 1, 1889; "Washington's First Constitution", Op. cit., p. 131; Proceedings Constitutional Convention 1889, MS., Introduction, p. 11, in University of Washington Library, Courtesy Charles G. Smith, Librarian, and Frank McCaffery, printer.

more important, the Territory went heavily Republican while Congress was Democratic and wanted no more Republican States.(1)

This important fact was also emphasized outside the Territory. The San Francisco Bulletin, November 14, 1878, aptly summarized Washington's prospects for admission. Although her course in framing a constitution without an enabling act was proper, her election of a Republican Delegate to a Democratic Congress completely nullified what hopes of success she had. The Democrats were extremely jealous of their slender control of Congress and were assured that this control would continue, at least in the Senate, until after the presidential election in 1880.(2) The San Francisco Chronicle, December 2, 1879, admitted that there was only one all-sufficient reason why Washington should not be admitted at once; she "was found on the wrong side of the political fence" when considered in the light of political majorities in Congress, because the Democrats did not want one more Republican in the House and two more in the Senate in 1881.(3) As a result, Washington's aspirations for Statehood were delayed for over a decade until the Republicans gained a majority in both houses of Congress.(4)

Washington's estimated population of 51,833 in 1878 was small to hope for Statehood. With a population of 23,955 in 1870

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1. Portland Oregonian, November 13, 1878.
 2. In Bancroft Scraps, Vol. CX, p. 172.
 3. Ibid., p. 173.
 4. Hicks, John D. The Constitutions of the Northwest States, pp. 16-17.

and 75,116 in 1880, (1) the estimated 51,833 was conservative. There was nothing left for Washington to do but to wait for admission. (2)

RENEWED AGITATION FOR STATEHOOD

The next eleven years following 1878 witnessed increasingly intensified efforts to secure Statehood for Washington Territory. Both Delegates Orange Jacobs and Thomas H. Brents who succeeded him in 1879 failed to gain Congressional consideration for admission under the Walla Walla Constitution. (3) Both Delegate Jacobs and Col. C. H. Larreebee who went to Washington, D.C., to assist him in 1878, found difficulty in explaining away the unprecedented Republican majority for Delegate in the election of 1878. (4)

Beginning with 1881, popular agitation for Statehood increased. Judge Roger S. Greene of Washington Territory requested Judge M. P. Deady of Portland "to do his utmost" at Washington, D.C., to secure the admission of Washington because the people of the Territory were overwhelmingly in favor of it. (5)

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1. "Washington's First Constitution", Op. cit., p. 57, quoting from Seattle Daily Intelligencer; Report on the Population of the United States, 1890, Census Office, pp. 2-3. Washington's population was probably close to 65,000 in 1878.
 2. The Walla Walla Watchman, August 2, 1878, and, December 17, 1880, was satisfied with the Constitution as it was but counselled waiting for Statehood.
 3. Congressional Record, 45th Cong., 3d Sess., pp. 105-108, 1878-1879; 46th Cong., 1st Sess., p. 644, 1879.
 4. "Washington's First Constitution", Op. cit., p. 58; Walla Walla Union, January 25, 1879.
 5. Greene to Deady, September 27, 1881, in Deady Papers, Oregon Historical Society. Greene thought the Constitution of 1878 adequate.

In 1882 the Democratic Washington Standard accused Governor W. A. Newell of fostering a bill for admission in Washington, D.C., to insure his own election to the United States Senate.(1) The idea of sending a Commission to Washington, D.C., to work for admission continued to gain favor.(2) The Standard, however, ridiculed the idea that a small commission from Washington would accomplish anything when a commission of 51 from Dakota with a much larger population than Washington had failed in 1881.(3)

The legislature, also, attempted to impress Congress with the urgency of admitting Washington into the Union. Beginning with 1881 each of its four sessions to 1888 petitioned Congress for the admission of Washington into the Union as a State either in connection with or without northern Idaho. In fact, the legislature of 1887-1888 sent two Memorials for admission, one with and one without northern

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1. Washington Standard, June 23, 1882. The same charge had been directed against Governor Ferry in 1878. The Standard of December 16, 1881, advocated the Cascade Mountains as a boundary between Oregon and Washington.
 2. Palouse Gazette, December 8, 1882. "The Puget Sound press are discussing the advisability of sending a commission to Washington for the purpose of aiding our early admission in a manner which plainly shows their earnestness in the cause." The Gazette favored the move to aid Delegate Brents in showing Congress Washington's desire for statehood.
 3. Washington Standard, December 15, 1882.

Idaho. (1)

STATEHOOD BILLS

In the meantime, progress at Washington, D.C., was slow. In December, 1881, Delegate Brents introduced an admission bill in the House of Representatives, supported it a little later with a Memorial from the legislature, secured a favorable committee report, but got no further. (2) A like bill in the Senate in March, 1882, received even less consideration. (3)

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1. Laws of Washington, 8th Biennial Sess., pp. 220-221, 1881; 9th Biennial Sess., p. 432, 1883; 10th Biennial Sess., pp. 547-548, 1885-1886; 11th Biennial Sess., pp. 264-265, 268-270, 1887-1888. Washington's population was listed as 125,000 to 150,000 in 1883 and 175,000 in 1885. The Memorial by the legislature of 1883 was more of a protest than a petition. Congress alone could grant Statehood; but Washington, with all the necessary qualifications for admission, was still denied its rights. In fact, every relation of the Territorial Government to Congress exhibited a dependence "as humiliating as that so terribly denounced in that grandest of indictments drafted by the immortal Jefferson arraiguing the Crown of Great Britain for withholding popular rights from our ancestors." Washington was now a State in all but name and able to demand that Congress guarantee her a Republican form of government. Washington had nearly 150,000 population, had ample wealth to support a State, and possessed sufficient natural resources to secure a much larger population. Representation in Congress would secure the development of these resources. - Congressional Record, 48th Cong., 1st Sess., pp. 752-753, 1883-1884.

There was some real basis for the dissatisfaction of the Territories at the assistance given them for internal improvements compared with that granted the States. The Secretary of War's Report for January 14, 1884, indicated that of the \$2,156,733 spent on the Pacific Coast by the National Government for river and harbor improvements from 1789 to 1882, the States of California and Oregon had received \$1,482,428 and \$648,305 respectively, while the Territories of Idaho and Washington were granted the pittance of \$10,000 and \$5,500. - Meany, Op. cit., pp. 267-268. The Governor's report for 1884 also requested Statehood. Report of the Secretary of the Interior, 48th Cong., 2d Sess., Ser. 2287, pp. 635-636, 1883-1884.

2. Congressional Record, pp. 207, 429, 1755, 1881-1882; House Committee Reports, Ser. 2087, No. 690, pp. 1-5, 1881-1882.
3. Congressional Record, Ibid., p. 2190.

Little hope was expected for the success of admission bills for Washington and Dakota again in 1883, for the Democrats were determined to prevent any increase of Republican power in Congress or in the electoral college.(1)

The exponents of Statehood were intensely active during the first session of the Forty-eighth Congress. The Washington Standard said:

"This bill like all others of kindred character, will not pass Congress before the Presidential election; each party will prevent the admission of any new States now that might affect the coming election for the Presidency."(2)

In spite of this fact, four bills were introduced in this 1883-1884 session for the admission of Washington; two as the State of Washington and two as the State of Tacoma.(3) All these efforts were futile since the Democrats had no more regard for a Republican State of Tacoma than for a Republican State of Washington.

The major debate in Congress in 1884 affecting the admission of Territories into the Union occurred on a measure sponsored by the Democrats prohibiting a Territory from even

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1. Washington Standard, December 29, 1882. Delegate McGinnis of Montana expressed the idea that neither party would admit States that would assist its opponents. Congressional Record, 45th Cong., 1st Sess., p. 2780, 1883-1884.
 2. January 4, 1884.
 3. For the admission of Washington by Senator Joseph N. Dolph of Oregon and Delegate Brents of Washington, Congressional Record, 48th Cong., 1st Sess., pp. 138, 296, 1884. For the admission of Tacoma by Senator Orville H. Platt of Connecticut and Delegate Brents. - Ibid., pp. 2136, 2224, 3330.

applying for admission until its population equalled that required to elect a Representative to Congress.(1) The Republicans argued that this will would be a denial of the right of petition; the Democrats supported it in the interest of greater equality of representation in the Senate.(2)

THE ELECTION OF 1884

The election of a Democratic Delegate in 1884 reflected two popular reactions in Washington Territory: dissatisfaction with the land policy of the Northern Pacific Railroad and Delegate Brents' support of that policy,(3) and the hope that while the Republican Delegate had failed to secure admission from a Democratic Congress, a Democratic Delegate might be successful.(4) Despite the election of C. S. Vorhees, many of the Democratic papers in the Territory opposed Statehood. The Olympia Transcript(5) opposed admission on the basis that sectional rivalries between the eastern and western halves of the Territory and the high taxes resulting from Statehood made such a move ill-advised in 1885. The Washington Standard(6) also insisted that the vote for Delegate did not reflect the political

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1. Congressional Record, 48th Cong., 1st Sess., p. 4127, 1883-1884.
 2. Ibid., pp. 2127-2133. Delegate Brents of Washington opposed the bill in an able speech by pointing out that most of the recent States had been admitted before they had the population required by the proposed bill.
 3. Snowden, Op. cit., pp. 306-307. Vorhees defeated his Republican rival by only 150 votes.
 4. Murray, Op. cit., p. 379.
 5. Quoted in Washington Standard, January 9, 1885.
 6. Ibid. It thought that Washington might be admitted only if a purely Democratic State were admitted at the same time to balance her vote.

attitude of Washington since the vote for other officers indicated that the Territory was still basically Republican.

DEMOCRATIC OPPOSITION TO STATEHOOD

The political maneuver of electing a Democratic Delegate to secure admission for Washington Territory might have succeeded had it not been for the hostility of the local Democratic party in 1886. The Democratic Washington Standard argued that Statehood was not desirable until the Federal appointees were all Democrats and the Territory had become Democratic.(1) By April, 1886, the same paper indicated that the local Democratic organization in the Territory had employed pressure on Congress to prevent the admission of Washington into the Union by warning the leading exponents of Statehood that their admission of Washington would merely add to the Republican strength in Congress.(2) Senator D. W. Voorhees of Indiana was personally warned of the meaning of his support of the admission of Washington:

"It means Republican State officers from head to foot; it means a Republican member of Congress; it means three electoral votes for the next Republican candidate for President."(3)

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1. January 1, 1886.
 2. Ibid., April 23, 1886.
 3. Alex. Montgomery to Hon. D. W. Voorhees, Ibid., April 30, 1886.

ADDITIONAL ADMISSION BILLS

In the meantime, a bill introduced by Delegate Voorhees of Washington for the annexation of northern Idaho passed the House.(1) After a plebiscite in northern Idaho in 1886 proved favorable to annexation, the Senate also passed it on March 1, 1887.(2) President Cleveland, however, possibly on the advice of Governor Edward A. Stevenson of Idaho, nullified the bill by his pocket vote. Such was the fate of the only successful attempt to secure annexation by Congressional action.(3)

Washington's hopes for early Statehood also seemed bright in 1886. On December 8, 1885, Delegate Voorhees introduced an admission bill in the House, while Senators Voorhees of Indiana and Joseph N. Dolph of Oregon fostered admission in the Senate.(4) The efforts in the Senate were more successful than those in the House. On January 25, 1886, the Senate Committee on Territories reported favorably on the bill to admit Washington into the Union.(5) Senator Dolph on March 31, 1886, in a forceful speech warned that Washington might rightfully request to be made into two States rather than one if her population continued to increase and admission were delayed too long.

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1. Congressional Record, 49th Cong., 1st. Sess., pp. 123, 1104, 1706-1710, 1747, 1885-1886.
 2. Ibid., 2d Sess., pp. 2232, 2460-2470, 2553-2554, 1887-1888.
 3. Murray. Op. cit., p. 381.
 4. Congressional Record, Ibid., 2d Sess., pp. 123, 527, 529, 2910, 2953-2956, 2990-2999, 3250-3263, 3354.
 5. Senate Committee Reports, 49th Cong., 1st Sess., Ser. 2355, No. 61, 1885-1886. Washington's population was given as 175,000.

Washington's population was now ample for admission as indicated by the recent election returns and the auditor's estimate of 175,000. None of the States, except Maine and West Virginia, which were formed from other States, had had as large a population when admitted to the Union. Senator Dolph did not believe the mass of the people in Washington responsible for the anti-Chinese riots, otherwise he would not argue for Statehood. He also favored the annexation of northern Idaho to the proposed State.(1) These efforts were successful, and the admission bill passed the Senate on April 10, 1886.(2)

In the House, however, the bill was referred to the Democratic Committee on Territories, where it remained for the rest of the session.(3) The Democratic majority in the House was reported to consider the admission of new States purely from a political standpoint, and they would not yield any advantage they possessed unless driven to it by public opinion.(4)

The House Committee on Territories reported favorably on the admission of Washington on January 20, 1887; but the House refused to consider either this or any other admission bill in 1887, indicating that the elections of 1886 had favored the Democrats in that body.(5)

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1. Senator Dolph's speech to the Senate, March 31, 1886, quoted in Senate Committee Reports, 50th Cong., 1st Sess., Ser. 2520, No. 585, pp. 9-34, 1887-1888.
 2. Congressional Record, 49th Cong., 1st Sess., p. 3354, 1885-1886.
 3. Ibid., p. 3441.
 4. Vancouver Independent, April 15, 1886.
 5. House Committee Reports, 49th Cong., 2d Sess., Ser. 2500, No. 3689; Congressional Record, 49th Cong., 2d Sess., pp. 121, 833, 1887.

In the first session of the 50th Congress, 1887-1888, Delegate Voorhees again introduced two measures in the House: one for the annexation of northern Idaho, and the other for Statehood. The attitude of Congress toward annexation had changed materially; and the House Committee on Territories reported adversely on the bill, claiming that a majority of the people of northern Idaho no longer favored the change and that to dismember Idaho now would seriously retard her bright Statehood aspirations.(1) The Statehood measure was reported favorably by the House Committee on Territories on March 13, 1888, as part of an effort to admit Dakota, Montana, Washington, and New Mexico.(2) A companion measure was reported favorably by the Senate Committee on Territories; but the election of 1888 was too close for either house to consider Statehood aspirations seriously.(3)

THE ELECTION OF 1888

Statehood agitation played an important role in the election of 1888 in Washington Territory. The Chicago Inter-Ocean(4) claimed that Delegate Voorhees wanted to get back to Congress and attempted to show his constituents that he was awake by making a furious speech in the House demanding the

1. House Committee Reports, 50th Cong., 1st Sess., Ser. 2601, No. 1182, 1887-1888; Congressional Record, ibid., pp. 362, 2156, 1887-1888.
2. Ibid., No. 1025, pp. 11-12; Ibid., pp. 362, 2021; Washington Standard, March 2, 1888.
3. Senate Committee Reports, Ibid., Ser. 2520, No. 585; Murray, Op. cit., p. 382.
4. Quoted by the Vancouver Independent, October 3, 1888.

admission of Washington; but since there was no admission bill before the House at the time, the whole effort was obviously for effect. In this speech Delegate Voorhees cast all the blame for the delay in the admission of Washington on the Republicans. The Inter-Ocean insisted that Voorhees misconstrued the facts because the Republican Senate had "twice passed bills for the admission of Washington Territory" which had been deliberately ignored by the Democratic House. (1)

Even the Democratic press in Washington Territory was not surprised by the outcome of the election of 1888. The Washington Standard was not surprised at the Republican majorities in the Territory because these "wards of the Government" had little to thank the Cleveland administration for. Their rights had been ignored; the frauds of "rapacious corporations" had not been checked; the Territorial postal service was a "by-word of reproach"; and smuggling rings had "held high carnival". (2)

This Republican victory in the national election was expected to result in the admission of Washington, Montana, the two Dakotas, and possibly Idaho. (3) There is some significance to the fact that New Mexico was omitted from the list although her population was greater than that of Montana; (4) the Republicans were also adept in keeping potentially Democratic States

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1. Vancouver Independent, Loc. cit.
 2. November 9, 1888. Characteristically the Standard blamed the Republicans for the smuggling.
 3. Vancouver Independent, November 14, 1888.
 4. Report on the Population of the United States, 1890, Census Office, pp. 2-3.

out of the Union.

The Tacoma Morning Globe(1) charged that the populous Territories had been debarred from the right of self-government by the system of obstruction pursued by the Democratic House and that the Democratic party had a two-fold selfish interest in the matter: first, they hoped to retain control of the central government; and secondly, they hoped to retain the Territorial patronage in Democratic hands by continuing this control.(2)

THE ELLENBURG CONVENTION

On November 22, 1888, the Spokane Falls Review suggested that the people of Washington Territory follow the example of the people of Dakota by setting apart February 22, 1889, to assemble at their respective county seats to petition President-elect Benjamin Harrison to call a special session of Congress to admit Washington and the other eligible Territories into the Union.

This suggestion met its partial fulfilment in the Ellensburg Convention which met on January 3, 1889. Ex-Governor Watson C. Squire was the chief promoter of this meeting which petitioned Congress for the immediate admission of Washington with northern Idaho included. The Convention also adopted an

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1. November 22, 1888, and January 24, 1889.
 2. Ibid., November 22, 1888, and January 24, 1889. Despite their promise to select Territorial officials from the Territories themselves the Democrats were accused of selecting most of the Territorial officials from loyal Democrats in the States.

address to the people, set up a local committee for the promotion of Statehood, and instigated an organized campaign of petitioning Congress for Statehood.(1)

The North Yakima businessmen also attempted to sponsor a Statehood meeting late in January in order to counterbalance the publicity given Ellensburg by the Convention of January 3. Both cities were competing for the capital, and one could ill-afford to give the other any advantage. The North Yakima meeting merely advertised the town and sent a resolution to Congress urging admission and the holding of the constitutional convention at North Yakima.(2)

ADMISSION

Meanwhile, an effort to admit the Dakotas, Montana, Washington, and New Mexico made little progress in Congress. Finally, however, after New Mexico was dropped from the list, the bill to permit North and South Dakota, Montana, and Washington to prepare for admission passed Congress and was signed by President Cleveland on February 22, 1889 - an appropriate day for Washington.(3)

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1. Watson C. Squire, MS, p. 25; Murray, Op. cit., p. 383. By January 11, 1889, the Washington Standard was still advocating delay in order to secure admission as two States rather than one.
 2. Washington Standard, February 1, 1889.
 3. Congressional Record, 50th Cong., 2d Sess., pp. 795-829, 862-878, 899-915, 934-952, 1904-1916, 2095-2104, 2113-2116, 1889.

Only a few provisions of this Enabling Act as it affected Washington Territory need be cited. On April 15, 1889, the Governors of the Territories were to proclaim elections of Delegates for Constitutional Conventions to be held "the Tuesday after the second Monday in May, 1889". The Conventions were to convene on July 4, 1889. The Constitutions thus formed were to be submitted to the people on the first Tuesday of October, 1889; and if accepted by them and approved by Congress, Washington and the other Territories were to become States with two Senators and one Representative in Congress until after the Census of 1890, when more would be apportioned if the population merited it. (1)

Washington probably had at least 300,000 population when Statehood was finally obtained. The Census of 1890 not only indicated that Washington's population was greater than that of any other of the States recently admitted but also greater than that of Oregon which had been a State for more than thirty years. (2) The practical injustice of party politics leading to this situation is apparent.

Although the Democrats attempted to get the credit by admitting the new States before the next Congress met, it was

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1. U.S. Statutes at Large XXV, 676-684; Washington Standard, March 1, 1889.
 2. Census 1890, Loc. cit. Comparative populations are as follows: Washington, 349, 390; South Dakota, 328, 808; North Dakota, 182, 719; Montana, 132, 159; Oregon, 313, 767; Nevada, 45, 761.

generally felt that they did not deserve it since it was extremely doubtful that admission would have been granted if the Republicans had not gained a decided victory in the election of 1888.

(1) The Spokane Falls Review(2) commented that

"...the claim of the Democrats that they are entitled to the credit for admitting the Northwest Territories reminds the Walla Walla Union of the story of the mountaineer who climbed a ladder in his cabin upon the approach of a bear and remained in security until his wife had slain the brute, but afterward proudly affirmed that 'Me and Betsy killed that bear with an ax'. The Democrats are entitled to about as much credit for the admission of the Territories as the old man was for his wife's heroism, but so long as it pleases them and does not harm the real hero, it is hardly worth while to dispute their boastful claims."(3)

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1. Port Townsend, Puget Sound Argus, February 28, 1889.
 2. March 7, 1889.
 3. Idem.

CHAPTER IX. THE CONVENTION AND CONSTITUTION OF 1889

By January, 1879, the Walla Walla Union began agitating for another constitutional convention as being "one of the absolute necessities of the near future".(1) In 1883 the same paper formulated a definite plan to prevent further consideration of the Constitution of 1878 and to secure admission into the Union. The next legislature was to choose Delegates to meet in Seattle on the first Monday in December, 1884, to form a constitution for the proposed State to be submitted to the people at a special election. A State Legislature elected at the same time would then select Senators who would leave at once for Washington to secure admission into the Union before Congress adjourned on March 3, 1885.(2) These suggestions gained little popular support.

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1. January 25, 1879. There is some significance to the fact that this paper which was under corporation influence proved the leader in the agitation for a new Constitution for Washington.
 2. Quoted in Olympia, Washington Standard, September 14, 1889.

THE CONVENTION MEETS

The fate of the Constitution of 1878 was sealed by Congress. On January 28, 1889, a copy of this document was referred to the Senate Committee on Territories. (1) If Congress had recognized the Constitution of 1878 as the Constitution of the new State, Washington could have been admitted into the Union immediately. The Enabling Act, by providing for a new constitutional convention for Washington, eliminated the earlier Constitution for consideration in 1889.

The question in 1889 was not so much if the corporations were going to control the new State government as how many concessions they could gain from the constitutional convention. A letter from George Turner of Spokane to former Governor Elisha P. Ferry, February 25, 1889, reflects a definite change of attitude in Washington Territory. Turner considered Ferry's chances to become Washington's first State Governor better than those of Ex-governor Watson C. Squire. This or any other office in the new State would have little significance if the courts ^{cranks} captured the constitutional convention and reproduced the "Constitution made some years ago or perhaps worse". Turner desired only liberal, broadminded men in the convention. He favored long terms and high salaries for the Executive and judicial officers since the State would be "great enough and rich enough to pay salaries

1. Senate Miscellaneous Documents, 50th Cong., Ser. 2615, No. 55, pp. 1-30, 1889. The fact that this document was submitted to Congress indicates that the Constitution of 1878 had influential backing in 1889.

which will secure the best talent obtainable... .Narrowminded bigotry and tolerance" dominating the Convention would result in real harm to the new State.(1) Turner later expressed his hope that the "long-haired" element had been eliminated in Puget Sound and that the delegates there would not need to make any commitments on woman suffrage to secure their election.(2)

On April 15, 1889, Governor Miles C. Moore issued the proclamation calling for the election of Delegates to the Constitutional Convention. The Enabling Act called for the selection on May 14, 1889, of 75 Delegates equally apportioned among 25 districts. Minority representation was encouraged by the provision that each elector could vote for only two of the three Delegates in each district.(3) The State Constitutional Convention met at Olympia on July 4, 1889.

THE DELEGATES

Forty-three Republicans, 28 Democrats, 2 Independents, and 2 Labor Delegates represented the political interests of the Territory at the Olympia Convention. The proportion of professional men and lawyers was much less in 1889 than it had been in the Convention of 1878 when over half the members were attorneys.(4)

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1. Turner to Ferry, February 25, 1889, Elisha F. Ferry Documents, Pacific Northwest Collection, University of Washington. Turner thought that Ferry ought to run from King County.
 2. Idem.
 3. Governor's Proclamation, Proceedings of the Constitutional Convention of 1889, MS, p. 1. (Used through courtesy Frank McCaffery, printer, and Charles W. Smith, Librarian University of Washington; Enabling Act, Sect. 3, Constitution of the State of Washington, pp. 26-27.
 4. Vancouver Independent, July 11, 1878; Cf. Constitution of 1878.

An economic picture of the convention of 1889 reveals that there were 22 lawyers, 15 farmers, 6 physicians, 5 merchants, 5 bankers, 4 stockmen, 3 teachers, 3 miners, 2 real estate dealers, 2 editors, 2 millmen, 2 loggers and lumbermen, and 1 preacher, 1 surveyor, 1 fisherman, and 1 mining engineer at attendance at Olympia. Their respective nativities also reflect a cosmopolitan group in the Convention. There were 24 of these as follows: Missouri, 10; Ohio, 8; New York, 7; Illinois, 7; Maine, 6, Scotland, 5; Pennsylvania, 4; Kentucky, 4; Indiana, Michigan, and Germany, 3 each; Tennessee, 2; Ireland, 2; and, Washington, California, Connecticut, Iowa, Massachusetts, Nebraska, New Brunswick, North Carolina, Ontario, Wales and Wisconsin, 1 each. The oldest member of the Convention was 69 years, while the youngest was only 30. The average age was 45. Twenty-four members were between the ages of 30 and 40; twenty-six, between 40 and 50; ten, between 50 and 60; and twelve, between 60 and 69. (1) Only two of the

1. Barton, C. M. "Legislative Manual of Washington, 1889-1890", Proceedings of the Constitutional Convention of 1889, MS. The members were, with their politics, age, place of birth, occupation, and residence listed after each:
(Travis took his place after six days.)

<u>Member</u>	<u>Politics</u>	<u>Age</u>	<u>Place Birth</u>	<u>Occupation</u>	<u>Residence</u>
H. E. Allen	Republican	31	Indiana	Lawyer	Spok. Falls
S. H. Berry	Democrat	40	Missouri	Realter	Chehalis
N. G. Blalock	Democrat	53	N. Carolina	Physician	Walla Walla
O. A. Bowen	Republican	45	Michigan	Millman	Skamokawa
J. J. Browne	Democrat	45	Ohio	Banker	Spokane
Daniel Buchanan	Republican	69	Scotland	Farmer	Ritzville
J. A. Burk	Republican	56	New York	Farmer	Kalama
Harrison Clothier	Democrat	48	New York	Merchant	Mt. Vernon
C. P. Coey	Republican	33	New York	Merchant	Rockford
George Comegys	Republican	50	Missouri	Stockman	Oakesdale
S. G. Cosgrove	Independent	42	Ohio	Lawyer	Pomeroy
D. J. Crowley	Republican	35	Maine	Lawyer	Walla Walla
F. M. Dallam	Republican	40	Missouri	Editor	Davenport
S. A. Dickey	Republican	31	Pennsylvania	Teacher	Sackman
R. O. Dunbar	Republican	44	Illinois	Lawyer	Goldendale

members, Edward Eldridge and Francis Henry, had been members of

<u>Member</u>	<u>Politics</u>	<u>Age</u>	<u>Place Birth</u>	<u>Occupation</u>	<u>Residence</u>
D. E. Durie	Democrat	42	Scotland	Merchant	Seattle
T. P. Dyer	Republican	33	Missouri	Lawyer	Seattle
Edward Eldridge	Republican	61	Scotland	Farmer	Whatecom
J. T. Eshelman	Democrat	35	Missouri	Preacher	N. Yakima
H. W. Fairweather	Republican	37	New Brunswick	Banker	Sprague
C. T. Fay	Republican	61	Massachusetts	Farmer	Steilacoom
B. B. Glascock	Democrat	46	Missouri	Realtor	Sprague
M. M. Godman	Democrat	33	Missouri	Lawyer	Dayton
J. F. Gowey	Republican	46	Ohio	Banker	Olympia
W. B. Gray	Democrat	41	Maine	Stockman	Pasco
T. C. Griffitts	Democrat	31	Illinois	Lawyer	Spokane
Thomas Hayton	Republican	57	Kentucky	Farmer	Fir
Francis Henry	Democrat	62	Illinois	Lawyer	Olympia
Gwin Hicks	Democrat	31	Wash. Terr.	Lawyer	Tacoma
J. P. Hoyt	Republican	47	Ohio	Banker	Seattle
James Hungate	Democrat	45	Illinois	Stockman	Pullman
Robert Jamieson	Republican	35	Scotland	Mining Eng.	Wilkeson
Richard Jeffs	Democrat	62	New York	Hopgrower	Pialachie
George H. Jones	Republican	32	Ohio	Lawyer	Pt. Townsend
O. H. Joy	Republican	59	Maine	Farmer	Boisford
J. C. Kellogg	Republican	68	New York	Physician	Seattle
J. N. Kinnear	Republican	45	Indiana	Lawyer	Seattle
H. M. Lillis	Republican	33	Michigan	Teacher	Tacoma
A. A. Lindsley	Republican	41	Wisconsin	Stockman	Union Ridge
S. H. Manly	Republican	42	Ohio	Physician	Colville
J. P. T. McCroskey	Democrat	61	Tennessee	Farmer	Colfax
J. T. McDonald	Democrat	41	Ontario	Miner	Ellensburg
M. J. McKelroy	Labor	31	Maine	Logger	Seattle
John McReavy	Democrat	49	Maine	Merchant	Skokomish
T. T. Minor	Republican	45	Connecticut	Physician	Seattle
Austin Mires	Republican	37	Iowa	Lawyer	Ellensburg
J. Z. Moore	Republican	44	Kentucky	Lawyer	Spokane
R. S. More	Democrat	61	Scotland	Farmer	Puyallup
Morgan Morgans	Republican	59	Wales	Miner	Blk. Diamond
Lewis Neace	Democrat	55	Germany	Farmer	Waitsburg
W. L. Newton	Labor	35	Kentucky	Miner	Olney
James Power	Republican	40	Ireland	Hopgrower	La Conner
Wm. F. Prosser	Republican	55	Pennsylvania	Surveyor	N. Yakima
T. M. Reed	Republican	64	Kentucky	Lawyer	Olympia
J. M. Reed	Democrat	47	Missouri	Farmer	Oakdale
Albert Schooley	Republican	40	Pennsylvania	Teacher	Florence
B. L. Sharpstein	Democrat	61	New York	Lawyer	Walla Walla
J. A. Shoudy	Republican	46	Illinois	Merchant	Ellensburg
Louis Sohns	Republican	62	Germany	Banker	Vancouver
G. H. Stevenson	Democrat	31	Missouri	Fisherman	Cascades
T. L. Stiles	Republican	41	Ohio	Lawyer	Tacoma
R. F. Sturdevant	Republican	47	Pennsylvania	Lawyer	Dayton
H. F. Suksdorf	Democrat	46	Germany	Farmer	Spangle
E. H. Sullivan	Republican	39	Michigan	Lawyer	Colfax
P. C. Sullivan	Republican	30	Nebraska	Lawyer	Tacoma
G. W. Tibbetts	Republican	43	Maine	Farmer	Gilman
J. J. Travis	Democrat	30	Tennessee	Physician	Chewelah
George Turner	Republican	39	Missouri	Lawyer	Spok. Falls
Jesse Van Name	Democrat	32	Illinois	Lawyer	Keiso
C. H. Warner	Democrat	53	New York	Miller	Colfax
Allen Weir	Republican	35	California	Editor	Pt. Townsend
J. T. Weisenburger	Independent	33	Illinois	Lawyer	Whatecom
A. J. West	Democrat	50	Ireland	Lumberman	Aberdeen
H. C. Willison	Democrat	44	Indiana	Physician	Pt. Townsend
Henry Winsor	Republican	64	Ohio	Farmer	Shelton
			Pennsylvania	Lumberman	Colville

the Walla Walla Convention in 1878.(1)

POPULAR REACTION TO THE DELEGATES

Some popular reaction to the membership of the Olympia Convention was less favorable than that to the Walla Walla Convention.(2) The group of fifteen in 1878 was more select but less representative than the membership of the 1889 Convention of 75. Some estimates of the Convention of 1889 were favorable. One author stated that the members "truly represented the strength and wisdom of the growing commonwealth"; were locally distinguished for their high sense of honor, their integrity, ability, "and purpose to serve the state well, and to give it a broad, comprehensive, and liberal fundamental law"; and were endowed with the "full measure of human common sense" and actuated by only one motive, "to give the proposed new State the benefits of their energy, wisdom, and experience in the fundamental law which they should frame".(3) This laudatory estimate lacks the elements of a critical appraisal.

Walter B. Stevens, traveling correspondent for the *Globe-Democrat*, visited the Convention and recorded his comparative reaction to the various conventions meeting in 1889. The

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1. Barton, Loc. cit.; Vancouver Independent, July 11, 1878.
 2. For the popular reaction to the membership of the Constitutional Convention of 1878 see the chapter on that topic.
 3. Knapp, Lebbeus J. "The Origin of the Constitution of the State of Washington", Washington Historical Quarterly, Vol. IV, No. 4, p. 227, October, 1913. See also, Kinnear, John R., "Notes on the Constitutional Convention", Ibid., p. 276.

Delegates in Washington had the best place to meet since those in South Dakota met over a beer hall and those in Montana in an old courthouse. The Washington Delegates compared very favorably in appearance and mentality with any of the others; in fact, their personal appearance was rivaled only by Montana's delegation whose average age was about 40, a little less than Washington's average of 45. Significantly Stevens considered that more wealth was represented in the Washington convention than any other.(1) This fact is important to consider in comparing the attitude of the Convention of 1889 with that of 1878 toward corporations.

Several other estimates were unfavorable. The Oregon State Journal commented that a body of this type rarely met with a majority "not professional men" but that the papers reported the lawyers, doctors and the like in the minority in the Washington Convention.(2) If one excludes the small number of merchants and bankers, the professional men were actually outnumbered in the convention by the agrarian and laboring Delegates. The same paper considered this situation to be a source of danger to the Convention.:(3)

"As to the folly and wickedness of taxing money bonds, notes or any form of wealth in the shape of 'credits', or anything but land or personal property, and the absurdity of exempting 'debts' the members of the Convention have already been sufficiently

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1. Portland Telegram, August 11, 1889.
 2. July 6, 1889.
 3. Idem.

cautioned by able financial writers at Portland, and will not be likely to follow Oregon's awful example, unless they are like Oregon grangers--incapable of having sense hammered into their heads."

The correspondent for the Puget Sound Argus was extremely hostile to the membership of the Convention, considering a majority of them to be men of "small calibre and as fit to frame a Constitution for the great State of Washington as a lot of crows". He further remarked that in all his experience he had never witnessed as much demagoguery as was displayed in the Convention, and that while Chief Justice Cornelius H. Hanford "had the distinguished honor of swearing in the solons of the Convention, the entire people may have the pleasure of swearing them out before the Convention adjourns". He recognized, however, some leaders in the convention, I. C. Griffitts of Spokane and C. H. Warner of Colfax for the Democrats and George Turner for the Republicans.(1)

Several debaters soon distinguished themselves in the Convention either for their ability or for their idiosyncrasies, among these Griffitts, Turner, and J. Z. Moore of Spokane, Daniel Buchanan of Ritzville, Dr. T. T. Minor and J. R. Kinnear of Seattle, D. J. Crowley of Walla Walla, and R. O. Dunbar of Goldendale were outstanding.(2)

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1. July 11, 1889. Of Turner the correspondent commented that "No abler man could have been selected" The Walla Walla Union, July 20, 1889, called Turner one of the coolest, clearest-headed leaders in the Convention.
 2. Proceedings of the Constitutional Convention of 1889, MS., pp.205-206; Seattle Post-Intelligencer, July 19, 1889. Unfortunately all the official notes for the Convention were destroyed. C.B. Eaton burned his share of these shorthand notes in his own furnace when he failed to receive fair treatment in regard to them after 20 years. A.C. Bowman's share was destroyed when he moved from one office to another. Cf. Official Minute Book, Ibid., pp.2-3.

THE ELECTION OF OFFICERS

Political and sectional rivalry played an important role in the selection of a Convention President. Judge John P. Hoyt, now a Seattle banker, (1) led the Republican candidates from Western Washington while the opposition united behind Judge Turner of Spokane in an effort to defeat Hoyt. (2) In the Republican caucus before the election, Turner withdrew and nominated Judge Hoyt for the position. Most of the Eastern Washington Republicans, although favoring Turner's candidacy, refused to split the party and backed Hoyt. The Democratic caucus decided not to present nominations but to back Turner if the Eastern Washington Republicans continued to support him, thus defeating Hoyt. (3) Hoyt was elected President of the Convention but narrowly escaped defeat when several disaffected Republicans opposed him. The scheme of the Democratic leaders to unite with these Republicans thereby defeating Hoyt was thwarted when several Democrats voted for Hoyt in preference to their own candidate, C. H. Warner of Colfax or the Independent candidate, S. G. Cosgrove of Pomeroy. (4)

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1. Washington Standard, July 19, 1889.
 2. Seattle P.-I., July 4, 1889.
 3. Proceedings of the Constitutional Convention of 1889, Op. cit., pp. 6-8.
 4. Ibid., p. 34; Seattle P.-I., July 7, 1889; Walla Walla Union, July 13, 1889. Hoyt won by a vote of 40 to 15 for each of his opponents.

This election indicated that there were both sectional and economic interests strong in the Convention. Hoyt's candidacy was said to be over the bitter opposition of former Territorial Secretary N. H. Owings and the Northern Pacific interests. (1) In order to elect Hoyt, the Republicans were reputed to have made concessions both to the Northern Pacific and to Eastern Washington in the election of Chief Clerk by sacrificing Thomas H. Cavanaugh of Olympia that Eastern Washington might be comforted for Turner's withdrawal for John I. Booge of Spokane who was reported to be a Northern Pacific employee. This deal in the Republican caucus which secured the election of Booge was the excuse given by the disgruntled Republicans for their disaffection. They threatened to hold the majority responsible for any advantage secured by the Northern Pacific through Booge's influence. (2)

Thomas H. Cavanaugh's reaction to this caucus arrangement which robbed him of the office of Chief Clerk may be anticipated. Writing to Elisha P. Ferry, Cavanaugh, then Territorial Public Printer, blamed former Territorial Secretary N. H. Owings for stimulating rebellion in the party ranks. He claimed that Turner expected Hoyt's defeat and that six rather than ten Republicans backed Congrove. (3) He further indicated that Owings'

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1. Thos. H. Cavanaugh to E. P. Ferry, June (July) 7, 1889, Ferry Documents. Cavanaugh was elected Public Printer for the Convention with a \$3,750 contract.
 2. Proceedings, Op. cit., pp. 6, 35; Seattle P.-I., July 5, 7, 1889. This "scarecrow" seems not to have alarmed Booge's supporters.
 3. Cavanaugh lists only 4 Democrats voting for Hoyt. Seattle P.-I., July 7, 1889, gave the figures of 11 disaffected Republicans with 9 Democrats voting for Hoyt.

pretense to a break with the Northern Pacific was generally ridiculed by those acquainted with him who expected him to disregard the interests of the Republican party in order to protect the interests of the Northern Pacific in the Convention. Cavanaugh claimed that the Republican bolters attempted to persuade him, though defeated in the party caucus, to run against Booge because he was a weak choice, and that the people of Spokane were angry at him over Turner's defeat and angry at Turner over Cavanaugh's defeat and Booge's election.(1) The election was a compromise satisfactory to few persons. Dr. S. H. Manly of Colville pointedly expressed the bitterness of the Eastern Washington Republicans on the outcome of the election:

"We are not kicking. When we came down from east of the mountains, we found the western Republicans had arranged all nominations, which was very kind of them. Nevertheless, we put forward a candidate [Turner] and worked hard for him, though it was a hopeless task from the first."

However, rather than split the party, they supported the caucus nominations.(2) Two distinguishing characteristics of the Convention were now apparent: a sectional struggle for control often dominated by the Western Washington Delegates and a general regard for the interests of corporations to the extent of electing a representative of the hated Northern Pacific as Chief Clerk to safeguard the interests of the company in the Convention. Where

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1. Cavanaugh to Ferry, June (July) 7, 1889, Ferry Documents.
 2. Proceedings, Op. cit., p. 7; Seattle P.-I., July 5, 1889.

the Convention of 1878 was relative free from political conniving, sectional struggles, and corporation influence, that of 1889 was constantly troubled by politics, sectionalism, and lobbying. (1)

SOURCES FOR THE CONVENTION

A study of the possible sources of the complete Constitution indicates significant facts. (2) A good many of the provisions in the various Constitutions used as sources were the same or similar to the section incorporated in the Washington Constitution; the language in the Oregon, Wisconsin, and Indiana Constitutions, for example, was often identical on some of these provisions. Despite this limitation a comparative study of the possible sources of the Washington Constitution is of value. More identical and similar sections were incorporated in the Washington Constitution from the suggested Constitution prepared by William Lair Hill for the Portland Oregonian, July 4, 1889, than from any other source. The Constitutions of California, Oregon, Wisconsin, and the proposed Washington Constitution of 1878 also exerted considerable influence on the finished document. Some direct or indirect influence was exerted by the

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1. For the absence of politics, sectionalism, and lobbying in the Convention of 1878 see the chapter on this topic.
 2. The Portland Oregonian requested William Lair Hill to prepare a suggestive Constitution for the State of Washington which was printed in the Oregonian on July 4, 1889. This will be known as the Hill Constitution in the rest of this chapter.

Constitutions of the United States, Colorado, Missouri, Indiana, Illinois, Pennsylvania, Texas, and Ohio, indicating the contributions made by more established localities to the government of the new State. (1)

CONSTITUTIONAL TRENDS

The Washington Constitutions of 1878 and 1889 indicate a trend in State Constitution-making during the nineteenth century. While the earlier document was much longer than the Constitution of the United States, it was still considerably shorter than the Constitution of 1889. The Washington Standard, April 19, 1889, hoped for a short, simple Constitution with an ample declaration of rights. This hope was vain, since the recent trend has been to incorporate as much of the law of the State as possible in its Constitution. (2) The length of Washington's Constitution was frequently criticized at the time of its adoption. (3) This tendency of constructing long Constitutions re-

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1. Beardsley, Arthur S. "Sources of the Washington Constitution", Constitution of the State of Washington, p. iv. The identical and similar sections are listed in each case, first identical and then similar as follows: Hill Constitution, 51 and 46 sections; California, 45 and 46 sects.; Oregon, 23 and 37; Wisconsin, 27 and 17; Proposed Constitution of 1878, 19 and 30; Colorado, 8 and 15; United States, 7 and 17; Illinois, 6 and 14; Missouri, 3 and 18; Indiana, 7 and 10; Pennsylvania, 7 and 6; Texas, 2 and 7; Ohio, 1 and 7. Perley Poore's Constitutions and Charters seems to have been used freely. Cf. Proceedings, Loc. cit.
 2. Jones, Leo. "Proposed Amendments to the State Constitution of Washington", Washington Historical Quarterly, Vol. IV, No. 1, p. 12, January, 1913.
 3. Stiles, Theodore L. "The Constitution of the State and Its Effect Upon Public Interests", Washington Historical Quarterly, Vol. IV, No. 4, p. 281, October, 1913.

flects a basic distrust of State legislatures.(1) Although the fear of incorporating too much legislation in the Constitution was constantly referred to in the convention, this distrust of the legislature proved stronger until it was intimated that if a stranger dropped into the convention he would conclude that the members were fighting a great enemy--the State legislature. In fact, Delegate Allen Weir of Port Townsend feared that a discontented people might reject the document as savoring more of a law code than a Constitution. (2) When completed, the major criticism with the Constitution was that it contained too much legislation.(3)

A FINANCIAL PROBLEM

Two financial questions presented themselves to the

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1. Stiles. Op. cit., p. 287. The legislature had failed to use the little leeway offered it in Washington's Constitution to the definite detriment of the State.
 2. Proceedings of the Constitutional Convention of 1889, MS., pp. 406-407; Seattle Post-Intelligencer, August 1, 1889; Knapp, Op. cit., p. 265.
 3. Seattle Post-Intelligencer, August 12, 1889. The same criticism was given against the California Constitution of 1879 - Washington Standard, May 16, 1879.

the convention shortly after it met.(1) When word reached Olympia of the Ellensburg fire in which three members of the convention - J. T. McDonald, Austin Mires, and J. A. Shoudy - lost heavily, the rest of the Delegates raised \$300 for the relief of the stricken community.(2) The second financial problem affect the entire convention directly. The mileage of the Delegates was calculated at \$16,000 and the printing expense at \$3,750, leaving only \$250 to pay the Delegates of the \$20,000 appropriated by Congress, which was only about half the amount needed to pay all expenses.(3)

COMMITTEE APPOINTMENTS

President Hoyt's first problem in the convention was the appointment of the standing committees. The committee aid-

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1. The action of the convention in seating W. W. Waltman of Colville who presented an unauthorized certificate of election by the Stevens County auditor on incomplete returns has been attributed to inexperience. The correspondent for the Puget Sound Argus, July 11, 1889, characterized this "unwise and unprecedented" move as the "most unheard of flagrant disregard of the people's wishes that ever came to our notice." The complete returns gave J. J. Travis of Chewelah a majority of 10 over Waltman; therefore, Territorial Secretary O. C. White issued Travis a bona fide certificate of election. The convention was saved from embarrassment, however, as Waltman voluntarily withdrew when Travis reached Olympia. No political significance was attached to the affair as both men were Democrats. - Proceedings, 1889, Op. cit., pp. 24, 57. Waltman was later denied mileage as he had not actually contested Travis' seat. - Ibid., pp. 114-115; Tacoma Ledger, July 6, 1889.
 2. Spokane Falls Review, July 7, 1889.
 3. Idem. The State legislature would be required to make up the deficit.

ing him in this selection used the Constitutional Convention of California as its guide.(1) A few of the most important standing committees will illustrate the nature of the 26 chosen by the convention. The relative size of the committees ranging from 5 to 15 provides some index of their importance. The Committees on Apportionment and Representation and on State, School, and Granted Lands, with 15 members each, were considered the most important committees in the convention. The Committees on Rules of Order and on the Judiciary with 13 members each and the Committees on the Legislature; on State, County and Municipal Indebtedness; on County, City, and Township Organization; on Revenue and Taxation; on Corporations other than Municipal; on Miscellaneous Subjects, Schedule, and Future Amendments; and on Harbors, Tide Water, and Navigable Streams with 9 members each were the outstanding committees in the convention.(2)

Some opposition developed to President Hoyt's selection of the standing committees. A few of the eastern Washington Delegates were opposed to his favorable attitude toward woman suffrage and threatened to challenge his nominations for the

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1. Tacoma Ledger, July 6, 1889. The Rules of Order were copied from the Rules of Order for the constitutional conventions of Ohio, California, and Oregon.
 2. Proceedings, *Op. cit.*, pp. 39-40. The committees of 7 members were: on Preamble and Bill of Rights; on Elections and Elective Rights; on Education and Educational Institutions; on State Institutions, Seat of Government, and Public Buildings; on Agriculture, Manufacturing, Fisheries, and Commerce; on Mining and Mining Interests; on Printing, Mileages, and Contingent Expenses. Those of 5 members were: on Executive Department and Pardoning Power; on Military Affairs; on Revision, Adjustment, and Enrollment; on Enrollment; on Water and Water Rights; on Homestead and Property Exemptions; on Federal Relations, Boundaries, and Immigration; and, on State Medicine and Public Hygiene.

Committee on Elections and Elective Franchise. Hoyt's selections, however, were received with general satisfaction since he considered the convention non-partisan and gave the Democrats proportional representation on all committees and a majority on several. In fact, six of the committee chairmen were Democrats. Hoyt attempted to conciliate the various economic interests and sectional differences represented in the convention in his choice of committees even to placing seven members from eastern Washington on the important Committee on State School and Granted Lands which dealt with the tide land issue. (1)

THE PREAMBLE AND BILL OF RIGHTS

Considerable debate occurred in the convention as to whether the name of God should be included in the preamble of the new Constitution. After reference to the Deity had been removed from the preamble, a compromise was finally adopted providing that, "We the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this Constitution." (2) An inconsistency appears in this wording; Washington was not yet a state, but the preamble of the Constitu-

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1. Proceedings, Op. cit., pp. 8, 25, 32, 54; Seattle P.-I., July 5, 6, 7, and 10, 1889. E. H. Sullivan of Colfax tried to prevent Hoyt from appointing the committee chairmen; T.C. Griffiths of Spokane attempted to place appointments in the hands of the convention. Both failed in their efforts.
 2. Proceedings, Op. cit., pp. 361-364, 399; Seattle P.-I., July 30 and August 1, 1889; Kinnear, Op. cit., p. 279.

tion stated, "We the people of the State of Washington". On entering the Union other Territories had solved this problem by the wording, "We the people of the Territory".(1)

The Bill of Rights in Washington's Constitution was based largely on the Oregon and the proposed Hill Constitutions which in turn incorporated much from the Indiana Constitution. Several provisions were taken from the Constitution of the United States.(2)

The Bill of Rights declares political power inherent in the people from whom governments derive their power. The Constitution of the United States is declared to be the supreme law of the land. No person can be deprived of life, liberty, or property without due process of law.(3) Freedom of speech, freedom of religion, the rights of petition and assembly and corresponding rights are all guaranteed.(4) The State legislature cannot pass irrevocable privileges or immunities.(5) Accused persons cannot be compelled to give evidence against themselves nor be put twice in jeopardy for the same offense.(6) Speedy justice, the right of habeas corpus, and the right of trial by jury are insured.(7) Excessive gail, fines, punish-

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1. Tacoma Ledger, August 2, 1889.
 2. Beardsley. Op. cit., Vol. V, p. x.
 3. Washington Constitution, Article I, Sects. 1-3.
 4. Article I, Sects. 4, 5, 11.
 5. Article I, Sect. 7.
 6. Article I, Sect. 9.
 7. Article I, Sects. 10, 13, 21, 22. The legislature can provide for a smaller jury in courts not of record and for a verdict by nine or more jurors in civil cases in any court of record.

ments, and imprisonment for debt, except for absconding debtors, are forbidden. (1) Special privileges and immunities for persons and corporations are prohibited. (2) These few citations will illustrate the fact that Washington's Bill of Rights was neither unusual nor original.

Later difficulty arose over Article I, Section 16, on eminent domain. A member of the convention insisted that municipal corporations be allowed to take possession of land condemned for streets when the damage was ascertained and before actual payment was received. Consequently, municipal corporations were made an exception to the general rule that compensation must precede condemnation. The rest of the Section was so explicit, however, that the courts refused to recognize the exception, and its effectiveness was destroyed. (3)

A significant reaction by the convention to the labor unrest in Washington in 1888 and 1889 is found in the section of the Bill of Rights prohibiting individuals or corporations from organizing, maintaining, or employing an armed body of men. (4) The use of armed detectives at Roslyn and particularly at Newcastle in the Knights of Labor strike there caused a reaction against this practice and a prohibition against the further use of detectives in strikes in the State. (5)

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1. Article I, Sects. 14, 17.
 2. Article I, Sect. 12.
 3. Stiles. Op. cit., pp. 282-283.
 4. Article I, Sect. 24.
 5. For a discussion of these labor difficulties in Washington, see the chapter on the Territorial Executive.

THE LEGISLATURE

Little significant debate occurred at Olympia either on the Bill of Rights or the legislative article which follows it, which article was influenced primarily by the Constitutions of California and Wisconsin.(1) The committee report contains little that was original and developed minor opposition in the convention.(2) Only slight support was given to the suggestion for an unicameral legislature.(3)

The legislative power was vested in a House of Representatives of not less than 63 or more than 99 and a Senate of one-third to one-half that number. The first legislature was to have 35 members in the Senate and 70 members in the House.(4) The legislature was to meet in biennial 60-day sessions with the Senators holding office 4 years and the Representative 2 years.(5) Members of the legislature must be citizens of the United States and qualified voters in the districts from which they were chosen.(6) No other measures except bills could be enacted into law, and no bill was to embrace more than one subject and that was to be expressed in its title.(7) Important restrictions

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1. Beardsley. Op. cit., pp. v, x, xvi; Proceedings, Op. cit., p. 140; Seattle P.-I., July 14, 1889.
 2. Proceedings, Ibid., pp. 115, 140; Seattle P.-I., July 12, 14.
 3. Tacoma Ledger, July 17, 1889.
 4. Article II, Sects. 1, 2. The Senate was nearly four times the size of that provided in 1878 while the House was over twice as large in 1889 as that provided in 1878.-Walla Walla Union, July 20, 1889.
 5. Article II, Sects. 4-6, 12.
 6. Ibid., Sect. 7.
 7. Ibid., Sects. 18, 19. This provision was taken from the Organic Act.

were placed on the power of the legislature: it could not authorize lotteries or grant divorces; it could not increase or diminish the compensation of any officer during his term of office; and it could not pass private or special laws in a long list of cases including special acts for changing names or designating heirs, for ferry and highway privileges, for granting corporate powers or privileges, or incorporating towns or villages, for authorizing the adoption of children, and the like.(1)

A few other sections in the article on the legislature are of note. The provision that no bill should become a law unless the final vote was taken by yeas and nays remained inoperative because the Constitution provided no way of testing the passage of a bill in the courts, the supreme court having decided that the history of a bill before it was enrolled was not subject to judicial inquiry.(2) No laws except appropriation bills and emergency measures were to go into effect until 90 days after the close of the session at which they were passed.(3) The ordinary ownership of land by aliens, or alien corporations, except for mining purposes, was prohibited in the State of Washington.(4) The legislature was to pass laws for the protection of workers in mines, factories, and like concerns.(5) The legis-

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1. Article II, Sects. 24, 25, 28. There was considerable opposition to legislative divorces. - Puget Sound Argue, July 11.
 2. Article II, Sect. 22; Stiles, Op. cit., p. 283.
 3. Article II, Sect. 31.
 4. Ibid., Sect. 33. This was taken in part from the Oregon Constitution.
 5. Ibid., Sect. 35.

lature was also to direct by law in what manner and in what courts suits were to be brought against the State. Only a few of the States seem to have permitted this type of suit in 1889 on the theory that the sovereign should be protected from his subjects. (1)

THE EXECUTIVE

No part of the constitution shows the contrast between the proposed document of 1878 and that of 1889 better than the Executive Article, despite the fact that the present organization was suggested largely by the proposed Hill Constitution and that of 1878. (2) The simple Executive Department proposed in 1878 was replaced by one consisting of a Governor, a Lieutenant-Governor, a Secretary of State, a Treasurer, an Auditor, an Attorney General, a Superintendent of Public Instruction, and a Commissioner of Public Lands - all elected by the people for terms of 4 years each. (3) The Governor was to supervise the administration of the State and see that the laws were faithfully executed. He was to deliver messages to the legislature, call extra sessions of the legislature when needed, command the State military forces, and pardon criminals and remit fines and forfeitures as provided by law. (4)

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1. Article II, Sect. 26; Seattle P. I., July 16, 1889. The reporter thought no other State had this provision but Wisconsin did.
 2. Beardsley. Op. cit., pp. xvi-xix.
 3. Article III, Sects. 1-3.
 4. Ibid., Sects. 5-9, 11.

The Governor's veto aroused the principal debate in the convention on the Executive article.(1) James Power of La Conner early secured considerable support to a resolution abolishing the veto entirely.(2) When the Committee on the Executive Department later reported in favor of the veto, Power attempted to reduce the vote required to pass a bill over the Governor's veto from two-thirds to three-fifths of the members present. E. H. Sullivan of Colfax, J. F. Gowey of Olypia, and T. J. Crowley of Walla Walla supported Power's attack on the veto which they considered a relic of a monarchical age and inconsistent with American democracy. George Turner of Spokane, and Allen Weir of Port Townsend, defended the veto as a warranted check on unwise legislation. The two-thirds provision was retained despite repeated efforts to reduce the majorities required to override the veto to three-fifths, or a mere majority.

(3)

Although this effort to establish a "thoroughly democratic government" by abolishing the veto failed in the convention, the provision adopted was criticized as too liberal. The Tacoma Ledger thought the veto power broader in Washington's Constitution than in the Constitution of the United States or

1. Article III, Sect. 12.

2. Tacoma Ledger, July 28, 1889; Proceedings, Op. cit., pp.120-121; Seattle P.-I., July 13, 1889; Puget Sound Argus, July 25, 1889.

3. Proceedings, Ibid., pp. 326-328, 351; Seattle P.-I., July 27, 28, 1889; Washington Standard, August 2, 1889. Power and J. P. Dyer of Seattle favored a three-fifths vote; J. J. Browne of Spokane, a mere majority. Their motions were defeated by a vote of 30 to 41.

that of any of the States since Washington's Governor could veto any section or clause of a bill without killing the whole bill.(1) "P.B.J." in the Walla Walla Union calculated that the veto as adopted was not in reality much of a veto at all. Two-thirds of the members of each house present when the vetoed measure was considered could pass a bill over the Governor's veto. In a House of 90 members where a mere quorum of 46 could do business, 29 representatives could pass the original bill and 31 or two-thirds of a quorum could pass a bill over the Governor's veto. Said "P.B.J.": "If this is not destruction of the veto power, then are my wits dulled."(2) The final section of the article also abolished the Governor's pocket veto by requiring him to file the vetoed bill with his objections in the office of the Secretary of State if the legislature had adjourned; the bill was to be considered by the next session of the legislature as if just returned by the Governor.(3)

STATE SALARIES

Some agitation opposed fixing any salary scale in the Constitution;(4) but the convention entirely disregarded this

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1. Tacoma Ledger, July 18, 1889. The Ledger also indicated that the pardoning power was taken from a board of pardons and vested entirely in the Governor - Ibid., July 21, 1889.
 2. August 3, 1889.
 3. Article III, Sect. 12, a similar provision is found in the proposed Constitution of 1878. Ordinarily the Governor was given 5 days to sign or return the bills.
 4. Washington Standard, July 19, 1889.

sentiment. Salaries for members of the legislature were placed at \$5 per day with 10 cents a mile for traveling expenses.(1) The Governor was to receive \$4,000 per year, which salary might be increased by law up to \$6,000 annually. Most of the other executive officers were to receive annual salaries beginning from \$1,000 to \$2,500 with a possible raise to from \$3,000 to \$4,000 annually, depending on the job.(2) The supreme court judges received \$4,000 a year; the superior court judges, \$3,000. No limit was placed on the possible increase of judicial salaries.(3) Considerable contrast appears between these salaries and the much lower figures given in the proposed Constitution of 1878 in which the legislature was to receive \$4 per day for a 40-day, rather than a 60-day, session and the Executive and Judicial officers were to receive from \$1,500 to \$2,000 each year.(4)

THE JUDICIARY

No part of the Constitution of 1889 has been more highly praised than the article on the judiciary. Theodore L. Stiles, a member of the convention, pronounced the judicial

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1. Article II, Sect. 23.
 2. Article III, Sects. 14, 16, 17, 19-22. The Lieutenant-Governor was to receive from \$1,000 up to \$3,000 a year; the Secretary of State, from \$2,500 to \$3,000 a year; the Treasurer, from \$2,000 to \$4,000; the Auditor from \$2,000 to \$3,000; the Attorney-General, from \$2,000 to \$3,500 annually; the School Superintendent from \$2,500 to \$4,000 a year.
 3. Article IV, Sect. 14.
 4. Proposed Constitution of 1878, Article VIII, Sect. 11.

article first among the meritorious provisions of the Constitution. He pointed out that there was less complaint in Washington than in any other State over crowded court calendars and delays in the administration of justice.(1) This article on the judiciary was based largely on the proposed Hill Constitution which was adapted from the California Constitution.(2)

The judicial authority of the State was vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature might provide.(3) Considerable debate occurred in the convention over the number of judges necessary for the supreme court. The Delegates favoring a large court insisted that the economy of having a small court would be offset by the fact that it would be more easily influenced by corporations than a larger one.(4) Daniel Buchanan of Ritzville favored a supreme court of three appointed by the Governor and confirmed by the Senate since he was convinced that only a few men either in or out of the convention could be bought. C. H. Warner of Colfax called Buchanan to order for casting reflections upon members of the convention. Whereupon Buchanan retorted, midst loud laughter, "I cheerfully withdraw my remarks. I did not think there was any Delegate in the convention who

1. Stiles. Op. cit., p. 283.

2. Beardsley. Op. cit., pp. xx-xxii.

3. Article IV, Sect. 1.

4. R. O. Dunbar of Goldendale and T. L. Stiles of Tacoma advocated this point of view.

would think I referred to him."(1) Mere wit failed to secure a small appointed supreme court, however, and Buchanan's suggestion was rejected in favor of one of five judges elected by the people.(2)

Two further problems affecting the supreme court arose in the convention. The original section was amended to permit the legislature to increase the number of judges on the supreme court.(3) The Seattle Post-Intelligencer questioned the advisability of allowing the legislature to pack the supreme court:

"It is a dangerous thing to place it within the power of any party to override the Constitution, and that the Constitution can be overridden when the legislature has power to increase the number of the judges of the supreme court at will is too plain to be disputed. The supreme court should be absolutely independent and should be as free from party politics as it is possible for any judicial body to be. The number of judges should be fixed by the Constitution, and the legislature should have no power either to increase or to diminish it."(4)

The Republican convention, however, had no fear of supreme court packing in 1889, and the provision carried.

Considerable debate also occurred over the attempt of the Democratic members to secure minority representation in the election of the supreme court judges.(5) On July 18, the Demo-

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1. Proceedings, Op.cit., pp. 192-199, 202; P.-I., July 18, 1889.
 2. Article IV, Sects. 2 and 3. Stiles thought the people of Washington had had enough of economy for 20 years. Dunbar argued that a smaller court could be more easily controlled by the corporations than a larger one. The court, like Caesar's wife, "should be above suspicion". Turner thought three judges of quality better than more less qualified judges. Most States had three. Economy favored three; 44 members favored five, however.
 3. Article IV, Sect. 3.
 4. July 20, 1889.
 5. Tacoma Ledger, July 19, 1889. On the evening of July 17, the Democratic caucus attempted to gain an united party front in the convention behind minority representation.

cratic leaders introduced a measure for this purpose resembling the minority representation of the Enabling Act which permitted each person to vote for only two of the three Delegates from each district. The Seattle Post-Intelligencer insisted that,

"It was this partisan device that gave the Democrats such a large representation in the convention, and it was also this that encouraged them to attempt the introduction of a plan into the organic law by which they could always be able to slip a Democrat into the supreme bench, whether he received a majority of the popular vote or not."(1)

J. I. Eshelman of North Yakima indicated the political nature of the effort when he stated that he would support minority representation because he was a Democrat, and that he expected the Republicans to oppose the measure because they were Republicans. Republican leaders could not see why the Democrats should insist on minority representation in Washington and not in Texas and defeated this measure to keep at least one Democrat on the supreme court by a strict party vote.(2)

The Constitution also provided for a system of 12 superior courts to be increased to at least one for each county eventually. Despite the contention of Turner that the terms were 6 years or more in 29 States, superior judges in Washington were limited to a 4-year tenure.(3)

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1. July 19, 1889. The measure was introduced by C. H. Warner of Colfax.
 2. Idem.; Proceedings, Op. cit., pp. 199-202, 204-205; Walla Walla Union, July 27, 1889. The Democrats claimed the Republicans wanted to be "whole hog or none".
 3. Proceedings, Ibid., pp. 217, 219; P.-I., July 20, 1889. Article IV, Sects. 3, 5, supreme court judges hold office for 6 years.

The jurisdictions of the courts were fixed by the Constitution over President J. P. Hoyt's protest that this question be left to the legislature. Both Turner and J. Z. Moore of Spokane insisted that as most of the State Constitutions had established the jurisdictions of their courts, Washington could profitably follow their example.(1) The supreme court was given original jurisdiction in cases affecting state officials and appellate jurisdiction in all actions and proceedings except in civil actions where the amount involved did not exceed \$200.(2) The superior courts were always to be open and to have original jurisdiction in practically all types of criminal, civil, and probate cases if the amount in civil actions exceeded \$100. These courts were to handle all cases for which there was no other court specifically provided and to have appellate jurisdiction from all justice and inferior courts.(3) The jurisdiction of the justice and other inferior courts was to be fixed by the legislature.(4)

Despite eloquent pleas by Turner, Moore, and Griffiths for high judicial salaries to attract the best legal talent to the courts, the desire for economy defeated their efforts.(5) The salaries of supreme court justice were to begin at \$4,000

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1. Proceedings, Op. cit., pp. 215-216; P.-I., July 20, 1889.
 2. Article IV, Sect. 4.
 3. Ibid., Sect. 6.
 4. Ibid., Sect. 10.
 5. Proceedings, Ibid., pp.225-228.

and the superior judges at \$3,000.(1) The partisan Washington Standard charged that Judge Turner and his associates were aspiring for judgeships and were personally interested in securing high salaries for themselves.(2)

Washington's development is reflected in the contrast of the judicial systems provided in the proposed Constitution of 1878 and that of 1889. In 1878 three circuit judges who also composed the supreme court were considered sufficient; in 1889 a separate supreme court with 5 members and 12 superior court judges were not considered excessive.(3)

The new system was a marked contrast to Washington's Territorial judiciary. The supreme and district courts were to be separate with the new superior court absorbing the functions of the old probate and district courts. The circuit court system was abolished and provision made for one superior court and judge in each county eventually. A system of court commissioners for each county to relieve the superior judge of his routine duties(4) and the abolition of the fee system for all except unsalaried justices of the peace were important innovations. A United States district court for the State would also relieve the State courts of a large number of cases handled by the Territorial courts. Justices of the peace in towns of over 5,000

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1. Article IV, Sect. 14.
 2. July 26, 1889. It claimed that a large number of high-salaried officers in the Constitution would cause its defeat.
 3. Walla Walla Union, July 20, 1889; Washington Standard, July 26, 1889.
 4. Article IV, Sect. 23.

people were to receive regular salaries(1) to remove "one of the worse abuses now existing in the inferior courts". Another provision required the superior court judges to take note of defects or omissions in the laws and report them to the supreme court which was to recommend to the legislature suggestive changes in these statutes.(2)

Another innovation in the judicial article provided that both the supreme court and the superior courts should always be open for the transaction of business except on non-judicial days.(3) This tended to expedite trials and to prevent delay which had often existed under the old system.(4)

IMPEACHMENT ARTICLE

The Article on impeachment is reported inadequate since all attempts to follow it proved a "farce".(5) A majority of the House of Representatives could impeach all State officials except judges and justices of courts not of record. The trial was held before the Senate with a two-thirds vote required for conviction.(6) This Article, taken largely from the Constitution of Colorado,(7) was thought impractical in that regular

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1. Article IV, Sect. 10.
 2. Ibid., Sect. 25; P.-I., July 22, 1889.
 3. Ibid., Sects. 3, 5.
 4. Tacoma Ledger, August 24, 1889.
 5. Stiles. Op. cit., p. 265.
 6. Article V, Sects. 1, 2.
 7. Beardsley. Op. cit., p. xxiii.

legislative business occupied all the time needed in a 60-day session.(1) Any State official could be impeached for "high crimes or misdemeanors or malfeasance in office"; but judges of the State courts, the attorney-general, and other judicial officers could also be removed by a three-fourths vote of the members of both houses of the legislature for "incompetency, corruption, malfeasance or delinquency in office".(2)

WOMAN SUFFRAGE AND PROHIBITION

Although the franchise position taken by the convention was reported an advanced one, an exponent of woman suffrage would not agree with this contention.(3) Woman suffrage became an issue before the convention was organized. Part of the Republican disaffection over the selection of Hoyt as president of the convention was attributed to the fact that he was a woman suffragist.(4)

Petitions for both woman suffrage and prohibition flooded the convention from the first; but the Delegates consistently opposed any provision for either in the Constitution itself. By July 9 the best that the proponents of both measures hoped to secure were separate Articles to be voted on at the

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1. Stiles. Op. cit., p. 285. Partisan struggles in the legislature also prevented a fair trial there.
 2. Article V, Sect. 2; Article IV, Sect. 9.
 3. Stiles. Op. cit., p. 283.
 4. Tacoma Ledger, July 5, 1889.

same time as the Constitution.(1) The woman suffragists considered this expedient a betrayal of their cause.(2) On July 15 the judiciary committee authorized separate Articles if desired.(3)

Even the hope for a popular referendum on woman suffrage and prohibition when the Constitution was adopted,(4) appeared to be vain when early in August the committee report that woman suffrage should be voted upon as a Constitutional Amendment at the November election of county officers in 1890 was passed by a close vote.(5) While a good many Republicans were absent, however, the Democrats and 6 Republican suffragists defeated the entire Article on elections and election rights. As a concession to this group, the election on woman suffrage was placed at the same time as that for the Constitution adoption.(6)

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1. Proceedings, Op. cit., pp. 54-56, 73, 116; P.-I., July 10, 1889; Washington Standard, July 12, 1889. There seems to have been more opposition to prohibition than to woman suffrage.
 2. Proceedings, Ibid., p. 138; P.-I., July 14, 1889; Tacoma Ledger, July 16, 1889.
 3. Ibid., p. 157; P.-I., July 16, 1889. Even Judge B. F. Dennison refused to address the committee of elections on woman's suffrage since they opposed it. - Tacoma Ledger, July 18, 1889.
 4. Ibid., p. 206; P.-I., July 19, 1889. Woman suffrage received more backing in the convention than prohibition.
 5. Ibid., pp. 565-652; P.-I., August 8 and 12, 1889. Edward Eldridge of Whatcom was the chief exponent of woman suffrage in the convention. - Ibid., p. 663.
 6. Tacoma Ledger, August 14, 1889; Proceedings, Ibid., p. 717; Seattle Post-Intelligencer, August 15, 1889. An amendment to require voters after 1895 to read and write English was defeated in the convention - Proceedings, Ibid., p. 719.

As finally adopted by the convention the election article provided that qualified electors, unless the woman suffrage article was adopted, were to be 21-year-old males who were citizens of the United States, residents of the State for one year, of the county for 90 days, and of the precinct, town, or city for 30 days. They were to be able to read and speak the English language. Idiots, insane persons, and criminals were disqualified from voting. (1)

The fate of prohibition was similar to that of woman suffrage. Although the convention early adopted the report of the Committee on Miscellaneous Subjects opposing a separate article for prohibition, the issue was revived in August, and the minority report of the committee providing for a separate article passed the convention. (2)

TAXATION, EDUCATION, MILITIA, AND LOCAL GOVERNMENT

There was little debate on the article on revenue and taxation. (Since the Committee on Revenue and Taxation borrowed freely from the Constitutions of several States, it is difficult to understand why it did not provide a plan for the classification

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1. Article VI, Sects. 1, 3. These Sections are similar to like Sections in the Oregon and Wisconsin Constitutions.
 2. Proceedings, Op. cit., pp. 180-181, 190-191, 268, 291, 456, 477-478; Seattle Post-Intelligencer, July 17, 18, 24, and August 3, 1889. Petitions for a prohibition article continued to flood the convention.

of property, or for the taxation of intangibles when so many existing State Constitutions and those being prepared in 1889 incorporated these provisions. (1) Taxes were assessed on the money value of property in the State as equitably as possible for both persons and corporations. (2)

The article on education established a regular public school system free to all children residing in the State "without distinction or preference on account of race, color, caste, or sex". (3)

The militia article faired rather badly in the convention. The Committee on Military Affairs outlined an elaborate military organization for the State. This report was strongly criticized on the basis that it was essentially legislative and should not be incorporated in the Constitution. (4) Section 2 of the proposed militia article providing an active National Guard and an auxiliary organization of those subject to military duty but not included in the active enlisted militia was the most severely attacked.

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1. Beardsley. Op. cit., pp. xxiv-xxv.
 2. Article VII, Sects. 1-3; Tacoma Ledger, July 23, 1889. A lobby of ministers seems not to have been successful in securing a definite constitutional provision for the exemption of church property from taxation. The tax exemptions were on property of the United States, "and of State, counties, school districts, and other municipal corporations and such other property as the legislature may by general laws provide".
 3. Article IX, Sect. 1; Beardsley, Op. cit., p. xxvii. The rest of the Article borrowed largely from the Oregon, Hill, and California Constitutions.
 4. Proceedings, Op. cit., pp. 370-372; Seattle P.-I., July 30, 1889. T.F.Griffitts and George Turner of Spokane, P.C.Sullivan of Tacoma, and D.E.Darrie of Seattle led out in the debate.

Although J. R. Kinnear of Seattle defended the right of the "constitutional legislature" to establish a militia, the sentiment of the convention opposed further legislation in the Constitution, and most of the proposed article was defeated as a step toward military despotism.(1) The organization and conduct of the militia was left to the legislature.(2)

The one original provision retained in the militia article providing for a soldier's home provoked caustic debate.(3) Daniel Buchanan of Ritzville considered this was the only purely legislative section of the article because the old soldiers would soon die, making the need for their home transitory, while the Constitution was permanent. He accused the very men who had just torn the rest of the article to pieces of advocating a soldier's home for the questionable purpose of catching a few soldiers' votes.(4) The Tacoma Ledger criticized the original militia article as the most objectionable in its form of any that had been reported in the convention, being merely a legislative re-enactment of the present Territorial militia which would fasten a strong military organization on the people whether they wished it or not.(5)

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1. Proceedings, Op. cit., pp. 380-382; P.-I., July 31, 1889.
 2. Ibid., pp. 378-379, 385-387; Ibid., July 31, 1889; Article X, Sect. 2. In the debate, M. M. Godman of Dayton characterized recent trends in the making of longer State Constitutions as efforts to curtail the power of the legislatures.
 3. Article X, Sect. 3; Beardsley, Op. cit., p. xxvii.
 4. Proceedings, Op. cit., p. 388; P.-I., July 31, 1889. Buchanan's optimism has not been well-founded.
 5. July 31, 1889. It concluded: "The hands of the people should not thus be tied. It is their government and it is altogether best that it should be so organized that they will feel that they govern."

The debate on the article on county, city, and township organization centered on the provision that, "There shall be no Territory stricken from any county unless a majority of the voters living in such Territory shall petition therefor." Pierce County wished to incorporate several townships in King County which favored the change. A caustic debate ensued when J. R. Kinnear of Seattle moved to delete the objectionable sentence because its loose wording would allow endless petitions to the legislature from disgruntled minorities which desired to join adjacent counties. Dr. T. T. Minor, also of Seattle, charged that, while the Section appeared to be copied from the Illinois Constitution, the objectionable sentence, not found in the Constitution of any State in the Union, had been designedly injected into the middle of the Section for the purpose of helping Pierce County at the expense of King.(1) He was grateful for the aid Tacoma sent Seattle after the fire, but realized from this provision that "when they sent flour and provisions, some of them...fed us as a physician feeds a patient with chloroform, to dismember us."(2) In the end, however, the Pierce County advocates won the debate and the clause remained in the Constitution.(3)

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1. Proceedings, Op. cit., pp. 303-304; P.-I., July 26, 1889; Tacoma Ledger, July 26, 1889.
 2. Tacoma Ledger. Loc. cit.: "It was not to be presumed that a general proposition for the Constitution of the State, a proposition that finds a counterpart in most of the State Constitutions, would be paraded before the convention as a fierce contention between King and Pierce Counties. But this was done and done in a manner that shocked the sensibilities of nearly every man within hearing of the speaker and raised either indignation or pity in most."
 3. Article XI, Sect. 3. Dr. Minor admitted that it was in the Maryland Constitution. E.H. Sullivan of Colfax, T.L. Stiles of Tacoma and Griffiths and Buchanan favored the provision.

This entire section on county, city, and township organization indicates the influence of the California, Missouri, and Illinois Constitutions.(1) The Section permitting the creation of municipal corporations by general laws and not special acts created a serious problem.(2). The urban demand to let cities of over 1,500 population form their own charters was recognized by a provision allowing cities of over 20,000 to do this, a provision which has prompted expensive suits to prove that these charters conformed to the general incorporation acts.(3)

THE CAPITAL CONTROVERSY

The capital question was revived in the constitutional convention with Olympia, North Yakima, and Ellensburg actively campaigning for this prize.(4) With Thomas M. Reed of Olympia chairman, the Committee on State Institutions and Public Buildings first favored retaining Olympia as the capital for six years after which the question would be submitted to the people at the first general election. If no location had a majority, the three highest cities would compete at the next general election, with the two highest staging a run-off if there

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1. Beardsley. Op. cit., pp. xxviii-xxix.
 2. Article XI, Sect. 10; Stiles, Op. cit., p. 284. Stiles calls this concession a "melancholy mistake".
 3. Ibid., pp. 284-285.
 4. Beardsley. "Controversies over the Location of the Seat of Government in Washington", Pacific Northwest Quarterly, Vol. XXXII, No. 4, pp. 407-408, October, 1941; Portland West Shore, p. 365, July, 1889.

was still no majority. (1)

The rumor circulated on July 26 that the committee now favored locating the capital permanently at Olympia. (2) The protests resulting from the publication of this report caused the committee to change its plan again, thus thwarting the scheme of the strong Olympia lobby to secure the capital for that city. (3) The Delegates from eastern Washington denounced "Seattle and the Seattle idea" as responsible for foisting the capital question on the convention and threatened to "keep the convention sitting until Doom's Day before any place shall be established permanently". (4)

The committee now recommended the submission of the capital question to the voters along with the Constitution. (5) M. J. McElroy of Seattle indicated that the committee intended

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1. The run-off was to come at the next general election. - Beardsley, Op. cit., pp. 408-409. Every member of the convention received a pamphlet on July 12 entitled, "The Capital of Washington--Reasons for Its Location at Yakima".
 2. Proceedings, Op. cit., p. 313; Seattle Post-Intelligencer, July 26, 1889.
 3. Beardsley. Idem. The group was also called an "Olympia ring".
 4. Portland Telegram, July 29, 1889. One of the Spokane Falls Delegates reported that an Olympia minister had become so interested in the real estate boom in that city that he had opened the Bible in an absentminded way and announced in a sermon that his text was found in "Owing's Addition, Lot 2, Block 4". Yakima and Ellensburg had like booms, and kept active lobbies in the convention. President Hoyt was criticized for his choice of the committee.
 5. Motions to submit the question to the voters in the years 1890, 1892, 1895, and 1896 received little support by the Delegates.

to report in favor of Olympia but the reporters had frustrated this scheme.(1) Several efforts were made to secure other dates for the capital vote but with no success.(2) If no locality had a majority in this election, the three highest competitors were entitled to another vote which elimination was to be continued to a third election if no city gained a majority in the second.(3)

The contest between Olympia, North Yakima, and Ellensburg was heated. The Portland Telegram favored Olympia as the best site for the capital but recognized that many residents of Seattle and Tacoma favored Ellensburg and North Yakima due to close commercial ties with these cities and land speculation there.(4)

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1. Beardsley. Op. cit., pp. 410-411; Tacoma Ledger, August 1, 9, 1889. In the debate on the issue, James Z. Moore of Spokane Falls said that he was like Iago, "a plain, blunt man, speaking what he knew"; he wanted the capital question settled that autumn with no trading involved. R.O. Dunbar of Goldendale declared that he was not like Iago who claimed to be "a plain, blunt man" but actually was one of the greatest marplots who have ever lived in fiction or elsewhere; but he wanted the matter settled at once as trading was to be done whenever the location was decided upon. After considerable debate, Committee Chairman Thomas M. Reed of Olympia, concluded the debate by stating that while he had been criticized on account of the capital location, he would rather see the capital removed from Olympia than be guilty of unfairness.
 2. Ibid., p. 411. J.F. Govey of Olympia fostered this change.
 3. Article XIV, Sect. 1. The legislature was no longer to have control over the location of the capital. This article was influenced largely by the proposed Hill Constitution.
 4. August 11, 1889. There was some disposition in the convention to retaliate against Oregon for her efforts to incorporate part of Washington Territory in her boundaries by attempting to incorporate part of Oregon in the new State of Washington. The effort was not a serious one, however, as it was dropped when several of the Delegates explained that it was impracticable with Washington's limited militia to attempt to wrest from the dominion of Oregon any part of her territory. - Tacoma Ledger, August 20, 1889. Washington's Territorial boundaries remained. - Article XXIV, Sect. 1. No effort was made, however, in the Olympia convention to annex northern Idaho to Washington as had been done at Walla Walla in 1878.

MUNICIPAL AND STATE INDEBTEDNESS

The major debates in the convention occurred over the economic articles in the Constitution. Lobbying here was notorious as the article on public indebtedness will illustrate. The convention had scarcely begun its work before President Hoyt received a letter from N. W. Harris of the Harris banking house in Chicago, pointing out that their bank held the entire issue of bonds for King County and for Spokane Falls and expected to purchase more. Harris recommended that in order to secure the support of eastern capitalists no "county, city, township, school district, or municipal corporation shall be allowed to become indebted...in the aggregate exceeding 5 per cent of the valuation of the taxable property thereof". He pointed out that Illinois, Wisconsin, Iowa, and Missouri had 5 per cent limits; Indiana a 2 per cent limit. Iowa with a restriction had much better credit than Minnesota without one.(1)

The Committee on State, County, and Municipal Indebtedness adopted low limits on indebtedness. Their major opposition came from the cities, particularly Seattle, which had been destroyed by fire on June 6, 1889. When it became known that the committee favored a 5 per cent limit on municipal indebtedness, Delegate D. E. Durie of Seattle presented the needs of his

1. N. W. Harris to Chairman of the Convention, July 3, 1889, Proceedings, Op. cit., pp. 66-68.

city to them. When the committee still insisted on a constitutional limit as a wise measure, the Seattle lobby requested a provision which would allow a municipality to increase its indebtedness for a specific purpose if a two-thirds vote sanctioned this increase.(1)

In the meantime, the Seattle City Council petitioned the convention to place no limitation on municipal indebtedness if two-thirds of the people voted to remove it. Seattle must replace wharves, public buildings, and streets destroyed by the fire and needed an adequate sewage system, fire department, and water system. One million dollars was required for the water system alone, while the City Charter limited all indebtedness to the inadequate figure of \$60,000.(2)

W. R. Frost of the Seattle Board of Trade, Thomas W. Prosch of the Chamber of Commerce, and U. R. Niesz of the City Council informed the convention that the niggardly Territorial limitations on municipal indebtedness had prevented an adequate system of public improvements in Seattle.(3) The Seattle Delegation now modified its original plan to ask for no limit on municipal indebtedness by requesting a 10 per cent, rather than a 5 per cent limit. This conciliatory attitude impressed the

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1. Proceedings, Op. cit., p. 93; P.-I., July 9, 1889. The Seattle Post-Intelligencer hoped for the success of this exception if it were urged "strongly and judiciously".
 2. Proceedings, Ibid., p. 176; P.-I., July 17, 1889.
 3. Ibid., p. 156; Ibid., July 16, 1889. Seattle could shoulder any reasonable responsibility here.

committee to the extent that it not only added the requested 5 per cent increase for special purposes, but also decreased the vote necessary for such an increase from a two-thirds to a three-fifths vote.(1)

Agitation for this increase was not confined to Seattle. The Vancouver Independent wished Seattle well as the needs of Washington's rapidly growing cities demanded a more liberal limitation than 5 per cent on debts if their public health and welfare were to be insured. Vancouver needed sewers, electric light facilities, street improvements, a new city hall, and jail, and better fire fighting equipment.(2) On August 6 the residents of Spokane Falls telegraphed President Hoyt that the city had burned August 4 with severe losses and requested the convention to be liberal in allowing the city to incur indebtedness for necessary public improvements.(3)

The section on municipal indebtedness was said to be "precisely what the people of Seattle asked for".(4) Counties, cities, towns, school districts, and other municipal corporations could contract debts to the value of 1.5 per cent of their taxable property without restrictions. This limit could be increased

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1. Proceedings, Op. cit., pp. 174-176; P.-I., July 17, 1889.
 2. July 17, 1889. The editor concluded that the convention would do nothing until it got rid of the "effort now being made to turn it into a legislative body. Everyone seems to have an idea that the convention must make laws instead of making a document of declarations on which the laws are to be founded."
 3. Proceedings, Ibid., p. 510.
 4. Ibid., p. 399; Seattle Post-Intelligencer, August 1, 1889.

to 5 per cent by a three-fifths vote at an election held for that purpose. Cities and towns could increase this limit by an additional 5 per cent for supplying the city or town with water, artificial light, or sewers if these were operated by the city or town.(1) The debt limitation for the State was placed at \$400,000 except indebtedness incurred for war, repelling invasion, or some specific purpose whose object and method of payment was expressed in the bill.(2)

THE WALLA WALLA SUBSIDY

The Walla Walla subsidy provoked one of the major debates in the convention and stimulated more lobbying than almost any other proposal. The issue achieved prominence by July 11 when the Committee on State, County and Municipal Indebtedness reputedly considered the Walla Walla proposal to allow counties and municipalities to subsidize private corporations and found considerable objection to it within the convention.(3) Representatives from Walla Walla(4) soon appeared before the committee urging this provision to permit counties to subsidize railroads and other corporations which would allow them to rati-

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1. Proceedings, Loc. cit.; Article VIII, Sect. 6.
 2. Ibid., p. 158; P.-I., July 16, 1889; Article VIII, Sects.1-3.
 3. Ibid., p. 98; Ibid., July 12, 1889.
 4. P. B. Johnson and D. W. Smith.

fy an agreement with Hunt's Northern Pacific auxiliary Oregon and Washington Railroad Company. The people of Walla Walla had raised \$80,000 of a \$100,000 subscription to get Hunt to build a road from Wallula to Walla Walla to compete with the Union Pacific line when Hunt completed this line. Hunt now agreed to return the first subscription and extend his lines into the Grand Ronde valley and north to Dayton if the county would give him bonds payable in 30 years for \$250,000 with interest at 5 per cent. This proposal received wide popular support in both Walla Walla and Columbia Counties.(1)

The reaction of the Seattle Post-Intelligencer to the Walla Walla subsidy is typical of the press reactions against it. The Northern Pacific Railroad Company [and Hunt's roads are nothing more or less than Northern Pacific Branches]

"...will certainly not stop the extension of its system of feeders because local subsidies are not provided, and this the people of Walla Walla County ought to know. If as a business enterprise the managers of the Northern Pacific think it worth while to extend their lines, they will be extended, and the people may depend upon it, and the bestowal of a subsidy will make no sort of difference. If this scheme is made to work at Walla Walla, the Northern Pacific will organize twenty similar schemes for other Counties in Eastern Washington, and in addition to its ownership of valuable lands through its original subsidy it will soon have its vaults full

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1. Proceedings, Op. cit., p. 137; P.-I., July 14, 25, and August 2, 1889; Walla Walla Union, May 25, June 8, 15, 22, and July 20, 1889. Columbia County even began issuing script for its share of the subsidy. Said the P.-I., July 25, 1889, that "the original subscribers were willing for the County to be burdened if they could be released from smaller financial responsibilities".

of County bonds. There are those, and the P.-I. is very free to confess that it is among them, who think that the Northern Pacific Railroad Company already owns quite enough of the Territory, and who protest against further development of this gigantic corporate power."⁽¹⁾

The subsidy issue, therefore, embodied the hostility of the people of Washington toward the Northern Pacific, and, as will be indicated later in this chapter, the hostility of one railroad toward another.

Even the people of Walla Walla were surprised when the majority report of the Committee on State, County, and Municipal Indebtedness favored the granting of subsidies of not over 4 per cent of the property value of the city or county.⁽²⁾ While lauding the subsidy as a symbol of progress, the Walla Walla Union insisted that 15 of the 38 States either allowed them by direct constitutional provision or authorized the legislature to fix the terms on which they could be granted. The Constitutions of 10 more States were silent on the subject, while those of 13 States - Alabama, Arkansas, Colorado, Florida, Illinois, Missouri, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, and Texas - prohibited counties, cities, or other municipalities from granting subsidies. The Union argued:

"In other words, twenty-five States, among them being many of the most foremost and progressive in the Nation, allow counties or cities to grant subsidies, [while] thirteen States among the number being the most backward and illiberal communities in

1. August 2, 1889.
2. Ibid., July 23, 1889; Walla Walla Union, August 3, 1889. "It is a great victory to secure a majority report from the committee in favor of...the Walla Walla subsidy proposition."

the Union prohibit them."(1)

The convention, however, considered the minority report of the committee opposing subsidies.(2) The debate soon revealed that Klickitat and Walla Walla Counties wanted competition for the Oregon Railway and Navigation Company, a Union Pacific branch line,(3) which competitor was the Northern Pacific or one of its branches.(4) As a result more personal and local interests were involved in the subsidy question than in any other before the convention up to the first of August.(5)

R. O. Dunbar of Goldendale, A. F. Sturdevant of Dayton, and Dr. N. G. Blalock of Walla Walla insisted that the subsidy would provide a means to eliminate unfair discrimination by the Oregon Railway and Navigation Company in Walla Walla and

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1. July 27, 1889.
 2. Proceedings, Op. cit., p. 351; P.-I., July 28, 1889. J. J. Browne of Spokane, chairman of the committee, and H. W. Fairweather, Sprague banker, led the opposition to the subsidy in the committee.
 3. Snowden, Clinton A. History of Washington: The Rise and Progress of an American State, Vol. IV, p. 315.
 4. Proceedings, Op. cit., pp. 306, 399, 407; P.-I., August 1, 1889.
 5. Idem.; Idem. R. O. Dunbar of Goldendale, as referred to before in this chapter, contended while favoring the subsidy that "if a stranger from a foreign country were to drop into this convention and hear its deliberations, he would conclude that it had an enemy and that this enemy was the legislature". He was willing to trust the people and their elected representatives, the legislature. Allen Weir of Port Townsend feared that the people might reject the document as more of a code of laws than a Constitution.

Klickitat Counties,(1) and all other sections of Washington held in chains by this company.(2) Dunbar charged that persons whose pockets he believed were filled with Oregon Railway and Navigation Company stock had requested him to vote against the subsidy.(3)

Allen Weir of Port Townsend and the Spokane delegation maintained that the principle of granting subsidies had proved harmful and vicious in Missouri, Kansas, Wisconsin, and other States where they had been used. They recognized that the Oregon Railway and Navigation Company had oppressed and wronged the people of Walla Walla for years; but this fact was no excuse for adopting a vicious system. The Spokane delegation could see no reason why Walla Walla could not raise the required financial support for her railroads independent of the subsidy since the people of Spokane Falls had contributed \$157,000 and \$100,000 to secure competing lines for that city. It

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1. Proceedings, Op. cit., pp. 406-407; P.-I., Loc. cit.
 2. Ibid., pp. 409-411; Idem. Dunbar argued that a competitive road would save the people of Klickitat County \$55,000 a year, which saving would soon repay them for the \$80,000 asked as a subsidy. T. C. Griffiths then read a news item which indicated that Dunbar was president of a proposed railroad from Pasco to Goldendale. Dunbar admitted that he was president of an organization which had a right-of-way and depot grounds. They were trying to get the Northern Pacific or a like road to finish the job and needed further power to invite capital to the County. - Ibid., pp. 431-436; Seattle Post-Intelligencer, August 2, 1889.
 3. Ibid., pp. 431-436. He did not blame the company for its interest in the question.

seemed unreasonable to them that an active business should be forced to pay its share of a subsidy to establish its rival in business. Subsidies would soon be required to build all new railroads in the State, and county bankruptcy would often result. (1)

The convention rejected the majority report of the Committee of State, County and Municipal Indebtedness favoring the subsidy and adopted the minority report forbidding its use by county, city, or municipal corporations by a vote of 42 to 27. (2) A final effort by D. J. Crowley of Walla Walla to revive the issue about the middle of August by permitting the Counties of Columbia, Klickitat, Kittitas, Walla Walla, and Yakima to grant subsidies prior to January 1, 1889, of less than 4 per cent of the property valuation of the County, met with no greater success. (3) This effort merely revealed the geographical support to the subsidy program.

Of greater significance, the debate indicated that the subsidy struggle was one between the interests of the Northern

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1. Proceedings, Op. cit., pp. 409-411, 426-436; P.-I., August 1 and 2, 1889. Daniel Buchanan of Ritzville hoped the Railway Commission would correct the evils complained of by Walla Walla in place of the subsidy which he considered wrong, unjust and unconstitutional. The Spokane Delegates active in the debate were J. J. Browne, J. C. Moore, T. C. Griffiths, and George Turner.
 2. Idem.; Article VIII, Sect. 7.
 3. Ibid., pp. 765-766. The Democrats claimed to have defeated the subsidy; but two of its champions, Blelock and Sharpstein, were Democrats. Republicans and Democrats were found on both sides, indicating no political significance to the controversy. - P.-I., August 24, 1889.

Pacific and the Union Pacific Railroads. The correspondent for the Walla Walla Union insisted that the prominent lobbyists for the Oregon Railway and Navigation Company, a Union Pacific Branch, had played an important part in defeating the Walla Walla subsidy.(1) At the end of this struggle, the Union Pacific had won.

THE CORPORATION ARTICLE

There was also considerable lobbying on the corporation article which borrowed heavily from the Constitution of California.(2) On the one hand, labor's influence attempted to prohibit child labor in mining, manufacturing, or any other business endangering health or life;(3) and the Tacoma typographical union petitioned for the secret ballot, election of all officials, a referendum if requested by one-third of the legislature, municipal ownership of industry if desired; the permanent reservation by the State of tide, school, and other(4)

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1. August 24, 1889. W. P. Keady for the Oregon Railroad and Navigation Company and J. B. Montgomery, Portland capitalist, who usually backed the O. R. & N., were prominent lobbyists against the subsidy. "Then the Oregonian began to thunder and the Seattle P.-I. to howl at the subsidy scheme." Paul Schulze, E. H. Morrison, and Governor Moore also opposed it. A solid delegation from the Counties of Spokane (7), Stevens (2), Whitman (6), Lincoln (3), Jefferson (3), King (7 or 9), and divided delegations from Columbia and Kittitas Counties were active in their opposition to the subsidy.
 2. Beardsley. "Sources of Washington Constitution", pp.xxx-xxxii.
 3. Proceedings, Op. cit., p. 120. D. E. Durie of Seattle introduced the provision.
 4. Ibid., pp. 61-62.

lands ceded to it, annual sessions of the legislature, and like reforms. On the other hand, a definite effort was made to control trusts.(1) While the influence of labor was only nominal in the convention as indicated by the failure of the child labor proposition, the influence of capital proved more potent.

Early in the convention J. R. Kinnear of Seattle attempted to secure a unique provision for the control of trusts in the State Constitution(2) which as finally adopted outlawed trusts, monopolies, or any other type of combination for the purpose of fixing prices, limiting production or regulating the transportation of any product or commodity within the State. The weakest part of this Section was the provision that, "The legislature shall pass laws for the enforcement of this Section by adequate penalties", (3) because it failed to pass adequate laws. Washington, with an abundance of raw materials, was later reported to manufacture almost nothing that could be shipped "from the great trust neighborhoods, since the trusts still had sufficient power in the new State to crush out local competition to their interests".(4)

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1. Proceedings, Loc. cit.
 2. Ibid., pp. 53-54; Knapp, Op. cit., pp. 251-252. The Whitman County Farmers Alliance petitioned for an anti-trust provision - Seattle Post-Intelligencer, July 18, 1889.
 3. Article XII, Sect. 22. This Section is thought to be original. - Beardsley, "Sources of Washington Constitution", p. xxiii.
 4. Stiles. Op. cit., p. 286.

The criticism that the proposed Constitution contained too much legislation was used to eliminate parts of the corporation article providing that no corporation should engage in any business other than that authorized in its charter, that every corporation doing business in the state must have an office or place of business in the State, and that corporations were to be sued on a County rather than a State basis.(1) In connection with the debate on this article, B. L. Sharpstein of Walla Walla maintained that every Section except the first was legislative, and that legislation had no place in a fundamental document.(2)

A few Sections will illustrate the nature of the corporation article. All corporations in the State were to be formed only under general laws and could be regulated, limited, or restrained by law.(3) Each stockholder was to be liable for all debts of the corporation to the amount of his unpaid stock and no more.(4) Corporations could sue and be sued in the State. They were not to issue watered stock. Foreign corporations were not to have a favored position in the State over local corporations, but both were to be treated on equal terms. The State was not to subscribe to or be interested in the stock of any corporation nor loan its credit to any such concern.(5)

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1. Proceedings, Op. cit., pp. 446-449; P.-I., August 3, 1889. Turner, Crowley, Dunbar, and Sharpstein opposed legislation in the Constitution here.
 2. Idem.
 3. Article XII, Sect. 1.
 4. Ibid., Sect. 4.
 5. Ibid., Sects. 5-9.

The most intense lobbying and debate on the corporation article arose over the provisions affecting railroads, particularly the section providing for a railroad commission. The Seattle Post-Intelligencer thought the plan for a railroad commission outlined by the Committee on Corporations a good one, taken as it was from the laws of Iowa and other States where the relation of the State to the railroads had been studied scientifically. The editor feared, however, that the Northern Pacific Railroad would attempt to control the commission from the first.(1)

The Northern Pacific Railroad, however, had no intention of allowing the commission to be formed. This point of view was reflected in the minority report of the Committee on Corporations which insisted that the supervision of the railroads, canals and the like by the railroad commission was an unwarranted and dangerous delegation of legislative, judicial, and executive powers to one body.(2) The Washington Standard was also critical of the railroad commission, although favorable to most of the corporation article. The editor feared that it would act as a tail which like the tail of the harrassed scorpion seemed likely to sting the body of the article to death, since an inexperienced elective commission would have power to regulate fares and freight charges on all railroads in the State.(3)

1. July 28, 1889.

2. Idem.; Proceedings, Op. cit., p. 353.

3. August 2, 1889.

Before the debate opened on August 2, the defeat of the railroad commission seemed assured. Its advocates insisted that the railroad commission had worked well in other States; even the poorest Kansas farmer was assured of a hearing on his grievances with the railroads. They desired to use the commission to correct the evils complained of by the exponents of the Walla Walla subsidy.(1) The opponents of the railroad commission argued that to fix the commission in the Constitution would place it above the control of the legislature. Furthermore, only 1 of the 21 States with railroad commissions had them incorporated in the Constitution; the others had been formed by the legislatures. The advocates of the commission replied that California, by placing a railroad commission in its Constitution had indicated a progressive trend as California's Constitution was one of the few adopted in recent years. These arguments were sufficient to secure a majority for the commission in a convention originally hostile to it.(2)

The vote in favor of the railroad commission on August 3 was a signal for the railroad lobby to double its efforts at Olympia. The activities of the lobby on this issue were blatant enough to disgrace anybody. When the debate was renewed on August 6, Judge Turner publicly condemned the influence of the lobby on the members of the convention, claiming that it had

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1. Proceedings, Op. cit., pp. 454, 464-467, P.-I., August 3, 4, 1889. J.R.Kinnear of Seattle, T.C.Griffitts, J.T.Weisenburger of Whatcom, Daniel Buchanan, and Turner spoke in favor of the commission.
 2. Idem.; Ibid., August 4, 1889; Tacoma Ledger, August 4, 1889. There were 39 votes favoring the commission.

surrounded the capital and had influenced many of the 39 voting for the commission to change their votes. He insisted that these persons could ill-afford to vote against the commission as this would create the impression "that railroads are controlling the action of the convention".(1) The shameless nature of the lobby was soon revealed by the debate. James Power of La Conner, formerly a warm supporter of the commission, announced that he must withdraw his support because railroad construction in Skagit and Whatcom Counties would be discontinued if the commission succeeded. In deference to the interests of his constituents, he must now oppose the measure. So strong had been the pressure from the lobby that the railroad commission was now defeated by a vote of 47 to 23.(2)

Subsequent efforts to revive the issue were defeated by the convention. On August 9, Turner attempted to reinstate the railroad commission in the final report of the corporation committee.(3) All compromise efforts providing for either an elective or an appointive commission proved of no avail. "Every effort of diplomacy" was no more effective; and the best the advocates of the commission could do was to secure a provision

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1. Proceedings, Op. cit., p. 532; Tacoma Ledger, August 7, 1889; P.-I., August 7, 1889. Turner was forced to admit that he meant nothing personal by his remarks.
 2. Ibid., pp. 512-513; P.-I., Loc. cit. The implications of one of the suggested modifications in order to secure the passage of the railroad commission merit notice. Griffiths suggested that the legislature be allowed to abolish the railroad commission by a two-thirds vote; had this amendment been adopted, it would have created the singular spectacle of giving a substantial majority of the legislative power to abolish a part of the State Constitution. The first legislature could abolish it and none could restore it.
 3. Ibid., pp. 624-625; Ibid., August 10, 1889.

that the legislature might establish a commission if it saw fit.(1)

At the end of this struggle, the Seattle Post-Intelligencer again commented significantly:

"He is a mighty lucky delegate who has not heard from his constituents since the acts of the convention have been published to the world. A murmur of protest against certain actions has come up from almost every part of the State. The principal source of objection is that there is so much attempt at legislation. Of course, nothing is supposed to be placed in the Constitution that is not fundamental, and there is a wonderful diversity of opinion as to what is fundamental."(2)

A few railroad provisions in the corporation article are worthy of notice. All railroad, canal, and other transportation companies are declared to be common carriers and subject to legislative control.(3) This statement was reported to be merely an endorsement of the famous Granger cases.(4) Railroads of the same gauge were required to connect their lines in case they intersected; furthermore, no discrimination against other lines could be made.(5) The formation of combinations with other common carriers was forbidden along with discrimination of rates as between persons and places or the consolidation of

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1. P.-I., August 12, 1889. The fight over the railroad commission was called the hardest so far in the convention. Griffitts, Turner, and T. T. Minor of Seattle introduced compromise measures.
 2. Idem.
 3. Article XII, Sect. 13.
 4. Washington Standard, August 2, 1889.
 5. Article XII, Loc. cit.

competing lines.(1) The legislature was to fix maximum rates for transportation,(2) a provision which meant little in the new State, however, since the legislature practically ignored it.(3)

Another section affecting common carriers prevented railroads from making any discrimination against express companies desiring to carry on business over their lines.(4) This permitted the Wells Fargo Express Company "to enter this field again in competition with the Northern Pacific".(5)

The Seattle Post-Intelligencer and the Vancouver Independent considered the railroad provisions in the Constitution a failure that would be a fruitful source of business damage and political corruption later on.(6)

SCHOOL LANDS

Another source of political jobbery in the convention arose over the school lands. The Committee on State, School, and Granted Lands faced a difficult problem. The Enabling Act

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1. Article XII, Sects. 14-16.
 2. Ibid., Sect. 18. The legislature could also establish a railroad commission if it chose to do so.
 3. Stiles. Op. cit., p. 286.
 4. Article XII, Sect. 21.
 5. Proceedings, Op. cit., p. 532; P.-I., August 7, 1889. This provision reflects the hostility of the convention to the Northern Pacific.
 6. Vancouver Independent, August 28, 1889, quoting from the Seattle Post-Intelligencer.

granted the State, in addition to the common school lands, 100,000 acres of land for a scientific school; 100,000 acres for normal schools; 200,000 acres for charitable, penal, and educational institutions, while no land for the university in addition to that squandered in starting the institution in Seattle. Since the mismanagement of these lands left the university with little more than the 10 acres it held in Seattle, an effort was made in the convention to combine the university and the scientific school in order to secure this new grant for both. (1)

The influence of the ubiquitous land speculator was demonstrated in connection with the article on the sale of the common school lands. Urging permanent State ownership of these lands, Prosser of North Yakima quoted from the reports of Illinois, Wisconsin, and Michigan, which indicated in each case that the school lands had been sold to benefit the purchasers rather than the State. Instead of \$50,000,000 or more in their school funds as the value of their grants warranted, Michigan had \$3,381,963, and Wisconsin only \$1,165,041. Prosser insisted furth-

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1. Proceedings, Op. cit., p. 160; P.-I., July 16, 1889. An effort to have the sale of the school and the university lands ratified by the convention since the purchasers were not responsible for squandering the funds secured from this sale was defeated on the grounds that some of these sales had been rejected by the Secretary of the Interior and the convention should not confirm these questionable sales. The solution of this problem was left up to the legislature. - Ibid., pp. 737-739; Ibid., August 16, 1889; Article XVI, Sect. 2. D. J. Crowley and B. L. Sharpstein, both of Walla Walla, supported general confirmation; J. J. Browne of Spokane opposed it and favored leaving the problem to the legislature.

er that startling cases of mismanagement and robbery in California had resulted in a loss to the school fund of probably \$100,000,000, "one of the most stupendous robberies in the annals of history". The lease system was in vogue in Nebraska and had proved wise and remunerative there.(1) Prosser's plea, however, that the lease system be adopted in Washington was sacrificed to the interests of the land speculators; and the article provided for restricted sale and the investment of the funds in national, state, county, or municipal bonds.(2)

A protest(3) against this article providing for the sale of Washington's school lands was presented to the convention on August 21. The reasons given were: that such sale was unnecessary since the rental money and sale of timber, stone, and other materials from these lands would provide an ample school fund for the present; that such sale would place the lands on the market in competition with cheap government and Northern Pacific Railroad lands, thereby sacrificing them at much less than their actual worth and causing a tremendous loss to the school fund; that the experience of other States had indicated that the legislatures there had not been able to resist the influence of selfish speculators who wished to purchase these lands for their own profit. The protest indicated that it was the positive duty of the convention to prohibit the sale

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1. Proceedings, Op. cit., pp. 739-740; P.-I., August 16, 1889.
 2. Article XVI, Sects. 1-5.
 3. Signed by Prosser, George H. Jones of Port Townsend, T. C. Griffiths of Spokane, and N. G. Blalock of Walla Walla.

of these lands by a constitutional provision in order to preserve them permanently for the common schools of the State.(1)

WATER AND WATER RIGHTS

The Article on water and water rights providing that the use of the water for the purposes of irrigation, mining, and manufacturing in the State shall be deemed a public use was the shortest in the Constitution.(2) Repeated attempts were made in the convention to amend this Article but with no success. Commented the Portland Telegram: "It appears that if the articles are too long, they are full of legislation, and if too short not legislation enough. It is hard to please everybody."(3)

HARBORS AND TIDE LANDS

The most vexing problem confronting the convention was that of harbors and tide lands. As in the case of the railroad commission, shameless lobbying and strong personal feeling characterized this long struggle. The disposal of the tide lands was the paramount economic issue before the Constitutional Convention of 1889 and dwarfed all other questions in the debates.

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1. Proceedings, Op. cit., pp. 848-849.
 2. Article XXI, Sect. 1. Austin Mires of Ellensburg was chairman of the Committee on Water and Water Rights.
 3. August 11, 1889.

The tide lands had become an important factor in the development of Washington Territory long before 1889. As early as 1854, the Territorial legislature petitioned Congress to confirm Edward Giddings' claim to a half-section of the tide flats in front of Olympia on which to construct a wharf for the town.(1) The legislatures of 1859-1860 and 1871 memorialized Congress to donate the Olympia tide flats to the city.(2) A like request for the cession of the tide flats in front of Seattle was made in 1867 or 1868 and again in 1871.(3) In 1869 the legislature asked Congress to grant the tide and swamp lands of Washington to the Territory; the proceeds from their sale, under the direction of a proposed "Swamp and Tide Land Commission", were to be used for internal improvements.(4)

The Washington Standard in 1872 advised Olympians to attempt to gain possession of its tide flats by trespassing or squatting on them with the hope that the Government would eventually turn them over to the city and allow it to confirm title to them.(5) By 1873, however, the city was still hoping for a wharf which was made conditional upon Congress granting these(6)

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1. Washington Council Journal, 1st Sess., p. 209, 1854; Olympia, Pioneer and Democrat, July 22, 1854.
 2. Laws of Washington, 7th Sess., p. 500; 1859-1860; Ibid., 3d Biennial Sess., pp. 154, 220-221, 1871.
 3. Congressional Globe, 40th Cong., 2d Sess., p. 1900, 1867-1868; Laws of Washington, 3d Biennial Sess., pp. 213-214.
 4. Laws of Washington, 2d Biennial Sess., pp. 527-528, 1869.
 5. Ibid., March 23, 1872.
 6. Ibid., March 29, 1873. These lots would be worth millions of dollars as soon as title could be acquired. Congress would not easily grant title to these lands particularly unless they were occupied. Even the great railroad corporations acquired title after the work was done. - Ibid., April 5, 1873.

mudflats to the town. The Territorial legislature in 1873 made a very extravagant conditional grant to the Seattle and Walla Walla Railroad and Transportation Company in order to secure railroad connections from Seattle by the Snoqualmie Pass to the Columbia River and the Northern Pacific line. Besides authorizing the counties through which the road would pass to issue bonds in its support, (1) the legislature granted the railroad all the tide flats around Elliot Bay south of King Street in Seattle, when Washington became a State providing the railroad build 15 miles of road within three years and manifest definite interest in eventually connecting Walla Walla with Seattle. (2) This grant played an important part in the tide lands controversy in the Olympia convention.

Some of the tide flats were purchased before the convention met in 1889. A Tacoma firm secured a considerable amount of this land in 1889 and was ready to establish a warehouse on it. (3) The tide lands were potentially of great economic importance. The Washington Standard, May 24, 1889, suggested that as these lands would soon be the most valuable lands in the State the revenue from their sale should be used to construct a lasting and efficient educational system for the State. The same paper later indicated that unimproved tide lands that would soon be worth \$500

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1. Snowden. Op. cit., pp. 232-233. A three-fifths vote was required for these bonds.
 2. Laws of Washington, 4th Biennial Sess., p. 577, 1873. Some effort seems to have been made to get this and other like tide flat bills sanctioned by Congress. - Washington Standard, March 28, 1878.
 3. Tacoma Morning Globe, April 27, 1889.

per acre could then be purchased for from \$25 to \$50 an acre.(1)
 The conflict of interests over the tide lands in Washington was probably greater than that found in any other State at the time of its admission into the Union.(2)

As soon as the convention met on July 4, 1889, the tide lands question became an important issue. Thomas H. Cavanaugh wrote to former Governor Elisha P. Ferry shortly after Hoyt's election as president of the convention that,

"I have not seen Hoyt, but some friend should put him upon his guard against several parties here in the Convention; Turner, Manly, Mires, Stiles, Griffiths, J. Z. Moore, Prosser, and several more I can name, who should not be upon the committee to frame any section on Tide or other lands, and upon taxation."(3)

The Seattle Post-Intelligencer, July 4, 1889, predicted that a large part of the session would be taken up "in the discussion and determination of the tide flat question". An effort would be made to leave its solution to the legislature. The same paper(4) concluded that the eastern Washington Delegates were opposed to grant-

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1. Washington Standard, May 24, June 7, 1889.
 2. Knapp. Op. cit., pp. 243-244. In fact, two Californians were reported to have received tide lands on the water front of Seattle and Tacoma as part of a grant of unoccupied public lands made them by the Central Government for an obligation it owed them. These claims were not challenged until these cities began to grow rapidly in the 1880's. Squatters then moved onto these valuable tide flats and denied the right of the National Government to sell land belonging to a future State or a city granting title to state lands. - Murray, Keath A. Washington's Statehood Movement, Thesis, University of Washington, p. 151, 1940.
 3. Cavanaugh to Ferry, June (July) 7, 1889, Ferry Documents.
 4. P.-I., July 4, 1889.

ing the tide flats to the western counties bordering on the waterfront as these counties and not the interior would profit by this move. (1) After indicating that wire-pulling and lobbying were prominent there, the New York Tribune aptly summarized the two major issues of the Olympia Convention as the disposition of the tide flats and the old fight against the Northern Pacific. (2)

After asserting that the tide land issue was greater in Washington than in any other State, W. Lair Hill in his Constitution published in the Portland Oregonian, July 4, 1889, stated the magnitude of the question in the words of a member of the Tacoma Bar Association,

"...almost every mill, every warehouse, every manufacturing industry, every railroad is directly, and through them almost every other avocation and occupation on Puget Sound, is indirectly affected by the settlement of this question."

Hill concluded that the issue involved a "deadly conflict of interest" equaled in no State except the original thirteen which explained why no constitutional provisions on tide lands had appeared in other Constitutions. (3)(4) His proposed Constitution provided that the new State should own the tide lands and could dispose of them as it saw fit; that the Federal grants conferred no

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1. P.-I., Loc. cit.
 2. July 5, 1889.
 3. Hill Constitution, pp. 93-94.
 4. Ibid., pp. 95-97.

legitimate title on the grantee; and that the riparian and littoral proprietors had no valid right to the tide lands of the State. Hill concluded that the States generally had lost heavily by squandering their public lands which evil would be aggravated in Washington unless the Constitution adequately restricted their sale.(1)

Shortly after the beginning of the convention, William F. Prosser of North Yakima introduced a proposition providing for perpetual State ownership of the tide lands and setting up a 21-year lease system for them.(2) He insisted that State ownership of these and the school lands would be a priceless heritage for the State.(3)

Other suggestions quickly followed. One would have prevented the sale of all tide lands within two miles of any incorporated city or town in the State to any persons, partnerships, or corporations.(4) Another allowed the sale of the tide lands but reserved for the State the title and control of the landings and wharfage privileges "upon the shore or tide lands fronting upon the navigable waters of the State".(5)

The western Washington Delegates demanded important concessions before they would accept any solution. Their chief

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1. Hill Constitution, Loc. cit.
 2. Proceedings, Op. cit., pp. 64, 66; P.-I., July 11, 1889; Puget Sound Argus, July 18, 1889.
 3. Proceedings, Ibid., p. 72.
 4. Ibid., p. 90; P.-I., July 11, 1889. Introduced by J. I. Eshelman of North Yakima.
 5. Ibid., pp. 91-92; Idem. Introduced by S. G. Cosgrove of Pomeroy.

effort was to place these lands immediately fronting all cities under the control of the respective municipalities.(1) Allen Weir of Port Townsend on July 11 presented the aims of a good many western Washington Delegates in his proposal recognizing State ownership of the tide lands in case a State Land Commission might control, sell, or lease them.(2) Agitation also gained strength in the convention to allow the occupants of the tide lands prior to January 1, 1889, the first right to purchase these lands and adjacent holders the right of purchase if the tide lands were unoccupied.(3)

President J. P. Hoyt's selection of the Committee on Harbors, Tide Water and Navigable Streams revealed the basic conflict in the tide lands question. As this problem was thought to come before this committee, President Hoyt's appointment of D. E. Durie of Seattle, a Democrat, and holder of tide lands in Elliot Bay, as Chairman created quite a sensation. Protests were silenced, however, when Hoyt explained that the tide land problem would be considered by the Committee on State, School, and Granted Lands and not by Durie's committee.(4)

This made the Committee on State, School, and Granted Lands with nearly equal representation from eastern and western Washington, the most important committee in the Convention. When

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1. Proceedings, Op. cit., p. 94; P.-I., Loc. cit. Delegate D. E. Durie of Seattle insisted that Seattle should control its own harbor front.
 2. Ibid., p. 96; Ibid., July 12, 1889.
 3. Ibid., pp. 108-109.
 4. Tacoma Ledger, July 10, 1889.

Tacoma and Pierce County protested that they had no representative on this committee, whose work vitally affected their interests, (1) the membership of the committee was increased from 15 to 17 to give them representation on it. (2) This made the committee the largest in the convention. The Puget Sound Argus criticized it as a weak committee, which should have been composed of the best men in the Convention. (3)

On July 13, D. E. Durie of Seattle introduced a proposition invalidating the legislative grant in 1873 of the tide lands on Elliott Bay south of King Street in Seattle to the Seattle and Walla Walla Railroad Company, which line had manifest no intention to build a road to Walla Walla as stipulated in the Act. (4) The former company sold out to the Columbia and Puget Sound Company which built no more line than its predecessor. (5)

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1. Tacoma Ledger, Loc. cit. D.O. Dunbar of Goldendale was chairman.
 2. Ibid., July 11, 1889. J.T. Stiles of Tacoma was selected to represent Pierce County's interests. Hoyt explained that he did not know any locality was specially interested in such appointments; but that he was willing to concede the justice of Pierce County's request. - Spokane Falls Review, July 11, 1889.
 3. July 11, 1889. Hoyt seems to have been properly warned of the persons not to include on it as Cavanaugh suggested. Port Townsend's attitude is further explained in that the committee seemed to favor Seattle and contained no representatives from Port Townsend on it.
 4. The railroad had built a 19-mile line to Newcastle but no farther.
 5. Proceedings, Op. cit., pp. 118-119, 136-137; P.-I., July 13, 14, 1889. Durie's proposition would remove any shadow of legality to the fabulous grant of the legislature of 1873. The Columbia Puget Sound Company was owned by the Oregon Improvement Company and the matter involved in this grant was worth millions to them - Tacoma Ledger, July 14, 1889.

The Seattle Post-Intelligencer considered the generosity of the gift equal only to the inability of the givers to deliver it since the Territorial legislature had no title to the land and the City of Seattle which first granted it had "not even a pretense to a shadow of a title". The Columbia and Puget Sound Railroad Company as successor to the Seattle and Walla Walla Railway Company now hoped to secure a clause in the Constitution validating all the acts of the Territorial legislature which had never been repealed--which would sanction their claims to the tide lands on Elliott Bay and would give the Columbia and Puget Sound Railroad a good title to several million dollars' worth of property. (1) Durie's forfeiture proposition was successful, however, since the section continuing the Territorial laws in force incorporated the proviso "that this section shall not be so construed as to validate any act of the legislature of Washington Territory granting shore or tide lands to any person, company, or any municipal or private corporation". (2)

Two other tide land propositions were presented to the convention on July 12. The first of these, (3) permitted the sale of tide lands to municipal corporations alone and authorized them to lease these lands in 140-acre lots for 50 years. The second (4) requested the Committee of State, School and Granted

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1. July 16, 1889.
 2. Article XXVII, Sect. 2. This article on the schedule was taken largely from the proposed Constitution of 1878. Cf. Beardsley, Loc. cit.
 3. Presented by Gwin Hicks, Tacoma Democrat.
 4. Presented by J. Z. Moore of Spokane.

Lands to investigate the whole tide land question in order to ascertain their present disposal and the systems used in other States.

The eastern Washington Delegates wished to "enquire carefully into the question, to consider it seriously, and then to determine it honestly", (1) Some of the western Delegates did not wish too thorough an investigation of the question; therefore, this suggestion was defeated.

After Judge Lair Hill and J. P. Gale, both of Seattle, had appeared before the Committee of State, School, and Granted

1. Proceedings, Op. cit., pp. 130, 132-133, 135-136, 152-153. It was defeated July 15 by a vote of 31 to 37. See also Seattle Post-Intelligencer, July 13 and 14, 1889. Unable to work out a solution to the tide land problem, the Committee on State, School, and Granted Lands invited Judge Lair Hill and J. P. Gale, both of Seattle, to appear before them. On July 13, Hill argued that the tide lands belonged to the State and could not be deeded from it and that the State was not bound to respect the titles to tide lands granted by United States patent, making all occupants of tide lands unlawful trespassers. He insisted that these occupants be given a two-year pre-emption right to purchase their lands from the State. Factory and mill owners should have the first right to purchase the lands they had made valuable. Any system of leasing the land would result in temporary buildings on the tide lands that would invite disaster. He pointed out that the marsh lands on Shoalwater Bay, Gray's Harbor, and lower Puget Sound were not strictly tide lands and could be lawfully disposed of by Government patents.

J. P. Gale of Seattle also appeared before the Committee a few days later in behalf of the riparian owners along Puget Sound. He claimed that all owners of land abutting on the high water mark were entitled to free access from that line to deep water. D. W. Smith and George H. Jones of Port Townsend urged before the Committee the right of the builders of wharves on Puget Sound to purchase the tide lands at a nominal price. - Tacoma Ledger, July 14, 1889; Proceedings, Ibid., pp. 116, 138-139, 189; Seattle Post-Intelligencer, Loc. cit.

Lands, the Seattle Post-Intelligencer on July 18 claimed that the tide land grabbers had employed several of the ablest lawyers of the Territory to champion their cause before the Committee, giving purchased legal opinion the appearance of abstract and disinterested estimates of the law. The editor was surprised to see prominent lawyers lending themselves to this scheme and hoped the honest point of view of the public would also be heard.(1)

As the prospect for the shore owners did not seem too bright by the middle of July, a concerted effort was made to organize a lobby on Puget Sound to influence the Convention. The shore owners at Seattle held a meeting July 19 to appoint a committee to foster their interests at the Convention, and to send out notices requesting other communities on Puget Sound to do the same. All of these specially appointed lobbies of their "most influential citizens" were to proceed to Olympia, to confer with the Seattle committee there, and take such

"...measures as may seem necessary and expedient to place before the Constitutional Convention our views and claims of the rights of said shore owners and of the parties who have placed valuable improvements on the water front."

The Seattle committee was composed of Judge J. R. Lewis, Chairman; former Governor Watson C. Squire, former Governor Elisha P. Ferry, former Delegate Arthur A. Denny, George Stetson, lumberman, and, Attorney J. P. Gale. The notice concluded:

1. July 18, 1889.

"It appears to us that millions of dollars worth of shore property is now in jeopardy -- in danger of being confiscated by the State to the irreparable injury of the private and industrial interests of Western Washington -- hence we urge upon you the necessity of prompt and aggressive action."

The notice was signed by John Leary, prominent in the Seattle real estate exchange, George Stetson, and real estate man, J. F. McNaught. (1) The result was a well-organized lobby converging on Olympia.

In the meantime, (2) the people of Port Townsend authorized D. W. Smith as their special tide land lobbyist at the convention and protested against the possible leading of tide lands. (3)

The pressure of the lobby was intensified when the Committee on State, School, and Granted Lands failed to include in its report any clause, giving occupants of tide lands prior right to purchase them. (4) The editor of the Tacoma Ledger

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1. "To Shore Owners", Seattle, July 20, 1889, Ferry Documents. The position held by each of these men is indicated in J. F. McNaught to Ferry, January 30 and April 13, 1889, Idem; Gazetteer and Business Directory, Oregon, Washington, Idaho, 1889-1890, pp. 758, 768; Beaton, Wilford, The City That Made Itself, p. 55; Miscellaneous Papers and Letters, Pacific Northwest Collection, University of Washington.
 2. July 15, 1889.
 3. They insisted that if the tide lands could be leased, all other public lands could also be leased. - Puget Sound Argus, July 25, 1889. The Argus considered that a constitutional provision on the subject was absolutely essential; to leave its settlement to the legislature would foster jobbery and corruption, "defile and scandalize the politics of the State", debauch the public conscience by making the legislature a mercenary body, and "poison the fountains of law and justice".
 4. Proceedings, Op. cit., p. 313; P.-I., July 26, 1889.

criticized this majority report severely since the section guaranteeing the free passage over the tide lands encouraged the State to go into the wharfage business to the exclusion of private individuals.

"Practically this article would confiscate all the improvements in the shape of wharves, warehouses, elevators, coal bunkers, etc., etc., which have been erected by private enterprise in Port Townsend, Whatcom, Seattle, Tacoma, Olympia, and elsewhere on the Sound."

The editor further insisted that the section providing for strict legislative control of wharfage facilities would encourage only flimsy improvements and accused Dunbar, the author of this suggestion, of playing to the galleries.(1)

Near the end of July the minority of the committee reported in favor of allowing the occupants of improved shore lands the prior right to purchase these lands. A board of appraisers was to fix their valuation irrespective of the improvements on them.(2)

The Tacoma Ledger insisted that the Convention protect the rights of the riparian owner in its disposition of the tide land question since the Committee refused to accord him any rights at all:

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1. Tacoma Ledger, July 27, 1889. The editor argued that private enterprise should have unlimited power to occupy and improve these lands, that a committee be appointed to appraise them, and that riparian owners be given the first right of purchase providing they improved their holdings.
 2. Proceedings, Op. cit., pp. 416, 504. By August 6, Albert Schooley of Florence also presented a minority report insuring the control and title of landings and wharfage privileges by the State but allowing persons having permanent improvements the right to buy the land covered by these improvements within a reasonable time.

"Long continued possession, substantial improvements and a hard struggle to build up a business, all count for nothing, and the speculator who can step in and bid highest deprives the small wharf or mill owner of the fruits of all his labor and puts him completely at the mercy of the man who outbids him. Under the article presented by the committee the ownership of the tide lands is only a question of the longest purse, and this is the very thing which is supposed to be prevented."(1)

While the tide land petitions continued to flood the Convention(2) an effort to renew the debate on this issue by August 8 was thwarted by the eastern Washington delegation who feared the adoption of the majority report if it came up then. The Post-Intelligencer concluded that this report merely restricted the method of disposing of the tide lands and insured nothing since the legislature could either sell or lease these lands, recognize the possessors and their improvements or not, as it saw fit, provided only they were sold for full value.(3) The newspaper further insisted that the majority report, leaving as

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1. August 3, 1889. On August 6 it charged that the sale of the tide lands to the highest bidder would give the railroads and monopolies an unfair advantage. The Ledger of August 4 told of a burlesque article ascribed to Delegate Francis. Henry of Olympia granting the tide lands to the old settlers by virtue of discovery and allowing the militia to enforce their claims. This article was signed by A.A.Denny, Hillory Butler, H.L.Yesler, Dexter Horton, J.J.H.Van Bohkellen, James G. Swan, Albert Biggs, Edward Eldridge, Henry Rhodes, E. C. Ferguson, Wm. Renton, D.R.Bigelow. Roger S.Greene thought this a just solution but wished the distribution extended. Thomas Burke, Orange Jacobs, J.R.Lewis, C.H.Hanford, B.F. Dennison, and C.C.Hewitt concurred in this. "J.B.Metcalf thought these sections would hold water in any court."
 2. Proceedings, Op. cit., p. 554.
 3. Ibid., pp. 569-570; Post-Intelligencer, August 9, 1889. Only the United States patents and right-of-way for public use were insured in the article.

it did the disposal of the tide land question to the legislature, was what the corporations wanted, particularly the combination of the Northern Pacific Railroad, the Oregon Improvement Company, and an army of independent grabbers. If this effort succeeded, the Seattle newspaper concluded, "it will be the victory of an illegitimate over a legitimate interest, the triumph of wrong and dishonesty over right and honesty".(1)

These special interests considered the delay fostered by the Delegates from eastern Washington a real threat to their aims. The Portland Telegram published a significant interview between its correspondent at Olympia and a prominent member of the Convention in which the latter told the former that up to this time most of the lobbying had been done by telegraph, but a large lobby desiring to insure easy sale of tide lands was expected from Seattle and Tacoma the next day. The correspondent was informed:

"They will be here in the interest of Henry Yesler, and others of Seattle, the Northern Pacific Railroad Company, the Oregon Improvement Company, the St. Paul and Tacoma Company, and every other corporation or individual that has been enjoying the fruits of tide lands. These men and corporations want them sold outright, so that they can buy them in. Some parties have had mills and manufactories on these tide lands for many years and never paid a cent of tax to anybody. In fact, Yesler once enjoined the authorities from collecting a tax on such property, on the plea that he did not own it."

1. Seattle Post-Intelligencer, Loc. cit.

The same correspondent indicated that the moneyed-interest opposed allowing the State to hold the tide lands and lease them through a commission. (1)

The Post-Intelligencer reported that the "interests of selfishness, greed, and dishonesty have come to a thorough understanding and will act in harmony", using their strong lobby, including some of the best lawyers of the Territory, to prevent any action on the tide lands in the Convention, which would leave their disposal up to the legislature. The paper continued:

"It is a straight fight between the private and the public interest, and it will be watched with closer attention than any contest yet waged in the Convention." (2)

The day before the tide land debate was resumed on August 14, the Committee on Harbors, Tide Waters, and Navigable Streams reported in favor of a harbor line commission to fix the line beyond which the State should not give, lease, or sell

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1. Portland Telegram, August 11, 1889. "This interest has made thousands of dollars out of such property, and now claims that it will work a hardship unless it is allowed to purchase it."
 2. August 12, 1889. The Post-Intelligencer, August 14, 1889, indicated that the lobby had offered the Democratic Central Committee \$10,000 if the Democratic Delegates in the Convention would back a proposition to insure the interests of the riparian owners. C. H. Warner of Colfax, Chairman of the Democratic Central Committee, denied that such an offer had been made.

rights to the water in front of incorporated cities. The section forbidding the sale of any of the area between the harbor line and the line of ordinary high tides which area was to be reserved for landings, wharves, streets, and other conveniences of navigation and commerce provoked the chief debate on this report. (1) The major source of difference arose on whether the State the cities, or private individuals and corporations should control the water front. (2)

A substitute measure leaving the control of the water front up to the legislature, which Dunbar tabbed a "mere mystical nebulous nothing", failed to gain general support, (3) which opened the way for a successful substitute providing for a harbor line commission to locate the harbor lines in front of and to a mile on either side of all incorporated cities lying on navigable waters. The State was to control all the area between the harbor line and high tide reserving it for landings, wharves, streets, and the like. The legislature could build wharves and docks or authorize private companies to do so as it

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1. Proceedings, Op. cit., p. 679; P.-I., August 14, 1889. Allen Weir failed to gain support for an amendment placing the harbor line only to the line of low tide. - Ibid., p. 684. The harbor line was not to be less than 200 or more than 600 feet wide.
 2. D. J. Crowley of Walla Walla and Turner favored State ownership and control of the water front; the Tacoma delegation favored private control; D. E. Durie of Seattle backed municipal control. - Ibid., pp. 680-686; P.-I., Idem.
 3. Ibid., pp. 686-688; Idem. Griffitts' substitute passed by only one vote; an insufficient number to insure final passage.

saw fit.(1)

D. E. Durie of Seattle, Chairman of the Committee on Harbors, Tide Waters and Navigable Streams, provoked a heated debate when he introduced an amendment vesting the control of the water front, wharves, and docks in the municipal corporations, rather than the State, on his assumption that the cities were not corrupt but honest. J. Z. Moore of Spokane insisted that this proposition would make the city councils instruments to promote the interests of the land grabbers who had already made millions on their tide lands without paying either rent or taxation on them. He charged further that these men had come to Olympia as a powerful lobby "with a sack full" insisting that "the bars be let down" to allow them to possess the State's property. Their success would provide "row upon row of graves of statesmen on these tide lands". Moore concluded that no such "atrocious proposition without parallel in audacity" had ever been made to a respectable body of men.(2)

Moore now directed a resolution against Durie that the members of the Convention claiming or holding tide lands in the Territory declare this fact and refrain from voting on all questions relating to this property.(3) In defending his proposition

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1. Proceedings, Op. cit., pp. 688-689, Article XV, Sects. 1-3. Sect. 3 allowed cities to extend their streets over the tide lands. The legislature was to pass general laws for the leasing of the right to build and maintain wharves and docks for not over 30 years.
 2. Ibid., pp. 703-705; P.-I., Tacoma Ledger, August 15, 1889.
 3. Ibid., p. 704; P.-I., August 15, 1889.

Moore alleged that since he had information in his pocket that 75 per cent of the members of one of the city councils on the Sound were tide land grabbers, he wanted to know how many in the Convention were either grabbers or otherwise interested in tide lands. When S. G. Cosgrove of Pomeroy protested that he could not understand why this resolution had been introduced since it impugned the motives of every member of the Convention, and would block action entirely if over half the members were found interested in public lands, Moore retaliated, that he did not expect Cosgrove to be able to understand anything until he had surgery performed on his brain. The Chairman soon intervened to stop this personal attack which illustrates the ill-will engendered by the tide land controversy. (1)

Moore's resolution revealed the fact that the chairman of the Committee, Durie, a member of the Seattle City Council, owned shares in the Seattle Dry Dock and Ship Building Company. (2) Durie explained that neither cowardly insinuations nor blatant demagoguery prompted this revelation since there was no secret to his connections. (3) Inasmuch as municipal control of the water front would relieve his company of its holdings, he claimed to

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1. Proceedings, Op. cit., pp. 704-705; P.-I., Spokane Falls Review, August 15, 1889. The Seattle lobby was now said to number an even dozen with more coming shortly.
 2. Ibid., p. 708; P.-I., Loc. cit.
 3. Portland Oregonian, Tacoma Ledger, August 15, 1889. Moore desired to defend his manhood from Durie's insinuations but was pacified when he was told his remarks were general and not personal.

have subordinated his private to the public interest;(1) the Convention thought otherwise, however, and defeated his amendment.(2)

On August 14 the Convention resumed debate on the report of the Committee of State, School, and Granted Lands. After the suggestion that the tide lands be leased and not sold gained little support,(3) the Seattle Post-Intelligencer feared the land grabbers would gain their desire to have the whole tide land question left over for action by the State legislature, making it possible for them to secure these valuable lands for a fraction of their real worth.(4)

Sectional lines were drawn sharply in the Convention over confirmation of the United States patents already granted for tide lands. The Spokane delegation of Turner, Griffiths, and Moore led the eastern Washington opposition to confirmation while Seattle Delegates Kinnear and Hoyt rallied the western Delegates behind it. Those favoring confirmation insisted that the State was morally obligated to recognize these patents and threatened to defeat the Constitution if this were not done. In fact, one of the western Delegates(5) insisted that all the

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1. Tacoma Ledger, August 15, 1889.
 2. Proceedings, Op. cit., p. 706.
 3. Ibid., pp. 710-711; P.-I., August 15, 1889. Griffiths could see no reason why every effort to secure information on the tide and school land issues had been defeated by the Convention. - Ibid., p. 706. Griffiths favored leasing; Turner and Weir opposed.
 4. August 15, 1889.
 5. J. T. Weisenburger of Whatcom.

eastern Delegates knew about navigation was how to pilot "prairie schooners over arid deserts". The debate ended with a dramatic flourish when James Power of La Conner shook a musty Government patent before the Convention and asked the members if they could deliberately vote away the homes of the old settlers. Confirmation passed by a sectional vote.(1)

With the resumption of the debate over tide lands on August 17, propositions were made to require land laws to pass two legislatures and to give shore owners prior right to purchase adjacent tide lands on which they had constructed improvements. When this latter measure passed the Convention, the Post-Intelligencer doubted the honesty of the support given it and predicted its ultimate defeat along with the tide land article, leaving the whole question to the legislature for solution.(2) The same paper reported on August 19, 1889, that the proposition before the Convention was the scheme the tide land grabbers wanted if they had to accept any action by the Convention rather than the legislature in that it proposed, "with the appearance rather than the reality of honesty, to reserve the city front line as the

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1. Proceedings, Op. cit., pp. 712-713, 732; P.-I., August 16, 1889. Moore delivered an angry speech against confirmation charging that there was a "nigger in the woodpile". S. G. Cosgrove of Pomeroy thought it bad taste for the western members to threaten indirectly to defeat the Constitution if these patents were not confirmed and for the eastern members to make incendiary speeches.
 2. Ibid., p. 769; Ibid., August 18, 1889. The disaffected western Delegates and the eastern Delegates would defeat the measure.

property of the State but leaves the establishment of this line under certain loose rules to the legislature". The correspondent accused the shore owners who had already enriched themselves by occupying public property of attempting to get the prior right to purchase these valuable lands for little or nothing through a farcical appraisal of their real value. He feared that the land grabbers' lobby would succeed in their effort to prevent any action by the Convention, leaving the disposition of the tide lands to the legislature.(1)

On August 19, the combination against the article on state, school, and granted lands defeated it by three votes.(2) The Committee on State, School, and Granted Lands now adopted Turner's suggestion for a separate tide land article and one on other granted lands in order to secure the passage of at least one of these articles.

This maneuver secured the passage of the granted land article and centered the attention of the Convention on the tide land issue.(3) On August 19, the provision invalidating the title held by the Oregon Improvement Company to the tide lands on Elliott Bay originally granted the Seattle and Walla Walla Railroad and Transportation Company in 1873 was adopted without debate.(4)

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1. P.-I., August 19, 1889.
 2. Ibid., August 20, 1889; Proceedings, Op. cit., p. 785. The affirmative led the negative by one vote but failed by three to get the required 38 votes to pass the article.
 3. Idem.; Ibid., pp. 781, 786.
 4. Tacoma Ledger, August 20, 1889. Article XXVII, Sect. 2. Introduced by D. E. Durie of Seattle.

On August 20, 1889, the Committee on State, School and Granted Lands presented an article substantially the same as the one already defeated by the Convention providing for the recognition of the United States patents, and the right of shore owners to prior purchase of adjoining tide lands.(1) With the opposition of the eastern Washington Delegates thus assured, this article was not taken seriously. Several members left the Convention in disgust, and those remaining indicated their intention to filibuster on the tide land issue. When the Convention became an uproar, President Hoyt secured a recess by a whispered vote and declared the Convention adjourned amidst howls of laughter before anyone could protest the inaudible vote already taken.(2)

The tide land issue bid fair to break up the Convention. The article and all suggested substitutes were defeated on August 20 and 21 with increasing opposition. On August 21, however, the Convention passed a separate proposition recognizing the validity of the United States patents to tide lands.(3)

After ten days of heated debate the tide land question was finally settled on August 22, 1889, the final day of the Convention. Austin Mires of Ellensburg introduced the suc-

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1. Proceedings, Op. cit., p. 790. Dunbar, Chairman of the Committee on State, School, and Granted Lands, presented this article.
 2. Ibid., p. 810; P.-I., August 21, 1889. Two or three favored the recess; none opposed.
 3. Ibid., pp. 836-837; Ibid., August 22, 1889; Tacoma Ledger, August 22, 1889. The Ledger of August 19, 1889, denied the effectiveness of the lobby during the Convention. Cf. Article XVII, Sect. 2.

cessful proposition which granted state ownership to the beds and shores of all navigable waters up to the line of ordinary high water.(1) Like propositions introduced by Turner had been defeated repeatedly in the Convention; but this article was rushed through under the suspension of rules and passed before it could be amended by the Convention.(2)

The tide land issue was settled but not to the satisfaction of all. The Seattle Post-Intelligencer, August 23, 1889, claimed that the Convention had failed on three issues: by not defining the policy of the State in the matter of its vast tide land property; by practically confiscating the landed property of aliens; and, by failing to establish a practical plan for the control of the railroads. The editor insisted that the tide land failure would result in real loss to the State.(3)

Two unusual motions were presented to the Constitutional Convention of 1889. The first of these which disqualified the Delegates from holding any office in the State passed the Committee of the Whole but was defeated in the Convention.(4)

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1. Proceedings, Op. cit., p. 847; Article XVII, Sect. 1. The courts were to be open to claims for vested rights on tide lands.
 2. Ibid., pp. 857-858; P.-I., August 23, 1889. The proposition was passed by a vote of 56 to 16. The substitutes were introduced by Turner and E. H. Sullivan of Colfax.
 3. Quoted in Vancouver Independent, August 28, 1889. The prior right of shore owners to purchase adjacent tide lands was secured by an Act passed by the first legislature after Statehood. - Washington Standard, March 14, 1890.
 4. Proceedings, Op. cit., p. 612; P.-I., August 10, 1889.

The other provided for a Constitutional Convention to revise or amend the Constitution every twenty years in case the people voted it. (1)

Just before adjournment, the Convention adopted several humorous propositions. The Walla Walla members were given permission to take the subsidy question home with them. It was resolved that "if anything fundamental was omitted, it is because it was legislative". Colonel Prosser was allowed to use the Convention Hall the next day to deliver an address on the subject of retaining the title of the school lands in the State. (2) The Convention then adjourned on August 22, 1889, after a 50-day session. (3)

Four of the Delegates, James A. Hungate, J. C. Kellogg,

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1. Proceedings, Op. cit., pp. 535-536.
 2. Ibid., pp. 859-861; P.-I., August 23, 1889. A few humorous incidents enlivened the Convention. On August 10, John F. Govey, Mayor of Olympia, issued a proclamation warning all vagabonds to leave town subject to arrest if they did not. When this message was read to the Convention, Dunbar suggested that Moore be excused to allow him time to get out of town. - Ibid., p. 648; Ibid., August 11, 1889.
On July 16, J. Z. Moore of Spokane rose to a question of privilege in reference to an article in the Seattle Times of July 13, in which he was called a lobbyist for the Northern Pacific Railroad and was charged with having received a shipment of whiskey to be used in behalf of this company. Moore claimed that the Northern Pacific Railroad had attempted to defeat both he and Turner. He read a bill for \$150 from the Sour Mash Distilling Company of Owensboro, Kentucky, to show that he was engaged in solely a private transaction. - Ibid., p. 178; Ibid., July 17, 1889; Spokane Falls Review, July, 1889; Port Townsend, Puget Sound Argus, July 25, 1889.
 3. Ibid., p. 13.

Lewis Neace, and W. L. Newton, failed to sign the Constitution. Kellogg and Hungate, both ill on August 22, later signed the document; the latter with considerable ceremony in 1931. Newton and Neace, however, never signed.(1)

Judge Hoyt's comment that the Constitution "is not so awfully good nor so awfully bad" was reputed to voice the opinion of a majority of the members of the Constitutional Convention.(2)

The election on the Constitution was held October 1, 1889. The Constitution was adopted by a vote of 40,152, to 11,879. Woman suffrage and prohibition were both defeated by a substantial vote. On the capital question, Olympia failed to receive a majority, making another election necessary for her to gain this prize of the long capital controversy. State officers were also elected at the same time, and Washington became a State officially on November 11, 1889.(3)

Washington's Constitution was a far cry from the Organic Act. Its State Government was more complex than its Territorial Government had been. How effectively the new Constitution functioned is a story that cannot be related in the pages of the present volume.

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1. Proceedings, Op. cit., pp. 13-14.
 2. Portland Oregonian, August 23, 1889.
 3. Bancroft, Hubert Howe. History of the Pacific States, Vol. XXVI, pp. 314-316; Washington Standard, October 25, 1889; Beardsley, "Controversies over the Location of the Seat of Government in Washington", Pacific Northwest Quarterly, Vol. XXXII, No. 4, pp. 412-424, October, 1941. Woman suffrage was reported defeated by marked ballots printed by the Republicans. - How Washington Women Lost the Ballot.

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