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The Federal Court in Idaho, 1889-1907: The Appointment and Tenure of James H. Beatty, Idaho's First District Court Judge

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In 1882, James H. Beatty, a man from the Ohio Valley with a law degree, a meticulous writing style, a dedication to the political and legislative process, and an elegantly trimmed goatee, walked into Hailey, Idaho, a boom town exploding with miners, drinkers, gamblers, and prostitutes. He came seeking personal glory and high political office, reaching for such titles as "Governor" and "Senator." He became a federal judge. A review of Beatty's life's work reveals that he, along with others, did earn the title of "Civilizer." Beatty applied East Coast traditions of jurisprudence, legislation, and parliamentary rules of order to tame the Wild West, and moved the business and legal order of the Gem State into the twentieth century. As a federal judge, Beatty was among the first to lay down rules defining water rights and mining claims. He wrestled with the problems of pollution, and refereed culture clashes among whites, Indians, Chinese, Mormons, labor agitators, capitalists, farmers, and industrialists. His life and work embody the transitions between East and West, territory and state, the nineteenth and twentieth centuries, and primeval nature and man-imposed rules of land use.

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James Beatty was the federal judicial presence in Idaho from 1889 to 1907. His judicial career paralleled the transition of Idaho from territory to state. He sat on the federal bench as a justice of the territorial supreme court from 1889 to 1890, the last year of that court's existence. When the new state of Idaho was created in 1890, Beatty became the first federal district court judge for the District of Idaho. Beatty's life embodied that of the educated man who moved west, and his decisions guided the court into the mainstream of the Western legal tradition.

IDAHO'S TERRITORIAL DAYS

Elias D. Pierce's discovery of gold in 1860 in the center of the region now known as Idaho touched off a population influx into the area such that by 1863 nearly 35,000 immigrants had arrived.[1] The region was then part of the Washington Territory, but the population rush had by 1863 created such intolerable sectional divisions that Washington's territorial politicians prevailed upon Congress to consider the creation of a new territory. Congress patched together pieces of various existing territories, including a large portion of Washington Territory and parcels left over from the Dakota Territory (now the states of Montana and Wyoming), and in 1863 passed the Organic Act creating a territory called Idaho. By 1864 Idaho Territory had very nearly assumed the boundaries now associated with the state.[2]

By 1863 federal lawmakers were well used to creating new territories, and since the creation of Wisconsin in 1836 had been using the same formula for territorial organization.[3] The standard Organic Act created a system of government whereby people were governed on federal, territorial, and local levels, with federal control being the strongest. The relationship of the territorial citizen to Washington, D.C., analogous to that between a colonist and an imperial power, was remarkably undemocratic and underrepresentative. "There seemed to be no logic in a contradictory federal

[1] "Census of 1863," *Reference Series No. 129* (Boise: Idaho Historical Society, 1964), cited in Ronald H. Limbaugh, *Rocky Mountain Carpetbaggers: Idaho's Territorial Governors 1863-1890* (Moscow, ID, 1982) 15 [hereinafter cited as Limbaugh, *Rocky Mountain Carpetbaggers*].

[2] In 1868 a small parcel to the southeast was annexed.

[3] The Wisconsin Organic Act was the model for the Organic Acts of Iowa, Oregon, Minnesota, New Mexico, Utah, Washington, Nebraska, Colorado, Nevada, Dakota, Arizona, Idaho, Montana, Wyoming, Alaska, Oklahoma, and Hawaii. William Wirt Blume and Elizabeth Gaspar Brown, "Territorial Courts and Law: Unifying Factors in the Development of American Legal Institutions," 61 *Michigan Law Review* 39, 477 et seq. (1962).

policy which on one hand encouraged western settlement and on the other punished settlers by denying them the full rights of citizenship."[4]

The president of the United States appointed territorial governors and other territorial executives. The people of the territory elected the territorial legislature, but that body was not nearly as autonomous as its counterpart in a sovereign state. Congress had the power to determine the length of the legislative sessions, the number of legislative members, and, most importantly, had absolute veto power over territorial legislation.[5] Only one man in Washington, D.C. spoke as the representative voice of the citizens of a territory. That individual was the delegate to Congress, who was elected by popular vote within each territory. Since this delegate had no vote in Congress, he could at most express the point of view of the citizens.[6]

Territorial residents had no control over the selection of the federal officials who had extensive power over them. They could not even vote in the national election for president, a disenfranchisement many felt keenly because most of them had recently come from established states. Earl Pomeroy, the first territorial scholar of substance, has stated, "Citizens resented the territorial status not only because they were Westerners, but also because recently they had been Easterners."[7]

Idaho's Organic Act provided that the president appoint three justices, one designated chief justice, for four-year terms.[8] The territory was divided into three judicial districts. Each justice sat as trial court judge for a given district.[9] The three justices, sitting en banc as the territorial supreme court, heard appeals from the trial courts. This meant that the very judge who rendered a trial

[4] Limbaugh, *Rocky Mountain Carpetbaggers*, supra note 1 at 82.

[5] Ibid. at 9.

[6] Limbaugh's detailed work, *Rocky Mountain Carpetbaggers*, supra note 1, gives the full flavor of the politics of the era, and the conflicts among the appointed officials and the citizens of the state.

[7] Earl S. Pomeroy, *The Territories and the United States 1861-1890: Studies in Colonial Administration* (Seattle, 1969) 106 (hereinafter cited as Pomeroy, *Territories*).

[8] The short tenure of the territorial judges, contrasted with the life tenure of other federal judges, might have been useful when the president had appointed an incompetent judge, but certainly ensured that every man on the bench had functioned actively in partisan politics within the last four years. Presidents often removed judges for reasons of political expediency or in order to punish or reward, which led to charges that the territorial judges were "puppets of the executive." Note, "Removal of Territorial Judges," 24 *American Law Review* 308, 310 (1890).

[9] The territorial trial courts were referred to as "district courts." This nomenclature has remained with the state trial courts in the former territories.

court decision would sit on the appeal of that decision. This was a sore spot with the citizens of the territory,[10] and a flaw in the fundamental fairness of the system. The United States Supreme Court heard appeals from the territorial supreme court if they involved more than $1000 or a federal question.[11]

The territorial legislature had little control over the territorial court. At first the legislature paid over one-half of the justices' salaries. Thomas Donaldson, an early Idaho lawyer, notes that the judges were at the mercy of the legislature, and not much love was lost between the Democratic legislature and the Republican judges. In 1871, however, the legislature lost all leverage it may have had when, through dislike of a certain chief justice, it reduced its portion of the judges' salary to zero.[12] The judges were then poorer, but also freed from economic pressure to decide as the territorial legislature wished.

The territorial legislature did have control over lesser courts, including the justice courts and the probate courts. To relieve congestion in the territorial courts and to strengthen local control of the judicial process, the legislature attempted, with varying degrees of success, to expand the jurisdiction of the justice and probate courts.[13]

The territorial court on which Beatty was destined to sit exercised chancery as well as common law jurisdiction.[14] The court's jurisdiction covered what would now be within the province of a state court, as well as all federal matters which arose in the territories. The written opinions issued by the territorial supreme court are reported in the first volumes of the *Idaho Reports* and form part of the body of Idaho state law.[15]

EARLY IDAHO JURISPRUDENCE

Idaho jurisprudence got off to a unique and rocky start. Over the years, Congress had carved new territories out of previously existing territories. In order to bridge the gap over the time before the

[10] Arizona had a system identical to Idaho's, and at one point the Supreme Court of Arizona was popularly referred to as the "Supreme Court of Affirmance." Pomeroy, *Territories*, supra note 7 at 52-53.

[11] Blume and Brown, "Territorial Courts and Law," supra note 3 at 77.

[12] Thomas Corwin Donaldson, *Idaho of Yesterday* (Caldwell, ID, 1941) 185-87.

[13] For a detailed discussion of this effort, see John Albert Goettsche, "The Idaho Territorial Supreme Court on Conflicts in Law Before 1874" (Unpublished M.A. thesis, Washington State University, 1961).

[14] Erwin C. Surrency, *History of the Federal Courts* (New York, 1987) 352-53; Organic Act of March 3, sec. 9, 12 Stat. 808 (1863).

[15] See supra note 9.

citizens of a new territory could elect a legislature to enact laws, Congress provided for the continuation of the earlier territory's laws. This procedure could not be used for Idaho, however, because Idaho's boundaries encompassed land from various existing territories, each with its own laws. Congress neglected to make specific provision for which earlier territory's laws should be in effect before the Idaho territorial legislature could convene. Early in Idaho's legal history the first territorial supreme court determined that no law was in force during those first few months of the territory's existence.[16] As a result, an accused murderer went free and several convicts were released. Historian Ronald Limbaugh notes that the national government could have and should have stepped in to settle the issue in a less embarrassing way.[17] The Idaho territorial legislature did meet promptly after the territory was created, and drafted some statutory law based on the code of California. This was recodified in 1887 — with the help of James H. Beatty — and formed the basis for Idaho's state law.

John Guice has studied the territorial courts in the neighboring states of Wyoming, Colorado, and Montana, whose territorial histories parallel Idaho's both chronologically and geographically.[18] He has found that almost all of the territorial justices, especially in the early years, were accused of some impropriety, a conclusion which is supported by Limbaugh's tales of complaints and squabbles. These accusations, both accurate and inaccurate, may have been more of an indictment of the system of territorial administration than of the character and ability of the judges.

The territorial justices were young[19] and underpaid.[20] The Reconstruction era appointment system was rife with political intrigues and personal spats; the Grant administration in particular is best remembered for its rank spoils system. Also, as Limbaugh highlights, the citizens of the Rocky Mountain territories were bitterly opposed to the appointment of out-of-state officials. "Home Rule" was the cry of the day, but in the first twelve years of Idaho's territorial history only two territorial residents were appointed to the territorial bench.[21] This is perhaps not too

[16] *People v. Williams*, 1 Idaho 85 (1866).

[17] Limbaugh, *Rocky Mountain Carpetbaggers*, supra note 1 at 32-33.

[18] John D.W. Guice, *The Rocky Mountain Bench: The Territorial Supreme Courts of Colorado, Montana and Wyoming, 1861-1890* (New Haven, 1972) 78-80 [hereinafter cited as Guice, *Rocky Mountain Bench*].

[19] Ibid. at 79.

[20] Ibid. at 38, et seq.

[21] James H. Hawley, ed., *History of Idaho, The Gem of the Mountains*, 4 vols. (Chicago, 1920) i: 587-88.

surprising since no white man had been "at home" in the brand new territories for very long, except for an occasional fur trapper or missionary.

Injured pride and party rivalries were not the only sources of the settlers' objection to out-of-state appointments. The most frequent complaints against territorial judges arose from their absence from the district[22] when the budding new territory needed prompt resolution of business, water, and mining cases. These absences would have been shortened or avoided had appointments been made from within. Some of the judges appointed from the East considered the territorial service "as an exile, a political and physical Siberia."[23] Others viewed the service as a valuable stepping stone to other federal positions, to which they were quick to jump. Still others had misjudged the Rocky Mountain West and soon tired of the harshness of the rugged country. All of this led to a high turnover in judges, which caused further delays and increased the residents' irritation.

The settlers were also in the ironic position of resenting the amount of control exercised over them from Washington, D.C., while at the same time feeling neglected by the nation's capital 2,300 miles away. With the exception of the Department of the Treasury, whose obligation to keep the books balanced mandated reasonably close fiscal supervision, the departments of state, interior, and justice engaged in what Limbaugh has called "benign neglect" of the Rocky Mountain territories.[24] The territories had problems which seemed foreign in the District of Columbia, and territorial political brouhahas seemed far removed from Washington politics. The tangled and overlapping jurisdictions of the executive departments which were charged with overseeing the territories, and the severe travel and communication problems of nineteenth-century America,[25] hampered the efficacy of the meager advice and guidance offered by the federal government.

[22] Surrency, *History of the Federal Courts*, supra note 14 at 351.

[23] Pomeroy, *Territories*, supra note 7 at 64.

[24] Limbaugh, *Rocky Mountain Carpetbaggers*, supra note 1 at 9-10; Pomeroy sums up the situation by saying, "Control was ineffective rather than either tyrannical or generously moderate." Pomeroy, *Territories*, supra note 7 at 106.

[25] Dubois recollects that in 1886 mail facilities still were in "wretched condition," but the national administration gave no recognition to the problem. Fred T. Dubois, *The Making of a State* (Louis J. Clements, ed., Rexburg, 1971) 136.

EARLY JUDICIAL DECISIONS IN THE IDAHO TERRITORY

When statehood for Idaho was imminent, ten members of the state constitutional committee drafted an address to the people to persuade them to support statehood. Listed as the "most intolerable evil" of their territorial status was the judicial system, including the "changing and shifting nature" of judicial decisions, the lack of precedent, the turnover in judges, the insufficient number of judges, and the unavailability of true appellate review because the trial judge reviewed his own decisions.[26]

Despite Pomeroy's blanket disparagement of the territorial judicial system as "one of the weakest parts of the territorial institution,"[27] the territorial judges were not all bad and corrupt. Some anecdotal stories tell of lamentable judging,[28] but a review of the early reported decisions of the Idaho territorial court show

[26] William I. McConnell, *Early History of Idaho* (Caldwell, ID, 1913) 378.

[27] Pomeroy, *Territories*, supra note 7 at 54, 61.

[28] James H. Hawley, an early Idaho lawyer, tells of one of the first court sessions held in Idaho after long delays: "[The] learned judge . . . , so the legend goes, without explanation, comment or reasons given, proceeded to decide the legal questions involved in the various cases by overruling the demurrer in the first case argued and sustaining it in the second; . . . and, with absolute impartiality, alternately so continued until all were disposed of. The members of the bar were in consternation, as no enlightenment had been vouchsafed them as to the mooted legal questions involved by the decision rendered. E. D. Holbrook, who afterwards represented the territory in congress for two terms and who was then one of the most prominent members of the bar, rose to his feet and stated to the court that, at the request of all of the lawyers present, he would respectfully ask the court to give the reason prompting him to make his rulings upon the several demurrers in order that the attorneys could have the benefit of such reasons in preparing their amended pleadings and in the future conduct of the cases. The learned judge immediately responded, 'Mr. Holbrook, if you think a man can be appointed from one of the eastern states, come out here and serve as a judge in Idaho on a salary of $3,000 a year, payable in greenbacks worth forty cents on the dollar, and give *reasons* for everything he does, you are mightily [sic] mistaken.'" James H. Hawley, "The Judiciary and Bar," in Hiram T. French, *History of Idaho, A Narrative Account of Its Historical Progress, Its People and Its Principal Interest*, 3 vols. (Chicago, 1914) i: 510-11.

Donaldson tells how a miner came in to Boise in 1870 announcing a gold strike in Loon Creek (about 80 miles northeast of Boise). A judge of the supreme bench immediately asked Donaldson, then district court clerk, to get him continuances of the case on the trial docket. "Thanks! Can't wait! Lord knows I'm losing time." And with that the judge scrambled off toward Loon Creek on a "forlorn, spavined white horse the size of an elephant, and disappeared in a cloud of dust, belaboring the animal, coattails flying, harness flapping and jigging like mad." Donaldson finishes the anecdote with the dry observation that the only person to make money on that particular strike was a woman who broke an arm due to the tortious behavior of a stagecoach driver. Donaldson, *Idaho of Yesterday*, supra note 12 at 29-30.

that most of the judges wrote reasonable, conscientious decisions.

Teaching lawyers the proper practice of law took much of the first territorial judges' time and effort. Again and again they explained that an appeal must be perfected before it could be heard, that an indictment must be complete. Procedural rules were strictly enforced, although where the appeal of a man sentenced to death for murder was regrettably ill-presented, with no bill of exceptions or certified or authenticated presentation of the record, the justices noted, "Upon this state of facts we should be fully warranted in dismissing the appeal, but considering the importance of the case, we have thought it proper to examine the record."[29] The court found no error and the judgment was affirmed.

The federal territorial judges have accurately been called "civilizers,"[30] not only bringing the common law west of the Mississippi and teaching the procedural skills necessary to a court system, but also overseeing elections[31] and setting bar standards. The arrival of the courts also gradually quelled the vigilante movements which had arisen to deal with crime. William T. Stoll, a lawyer in northern Idaho in the 1880s and 1890s, lamented the passing of the vigilantes' strict control over common criminals. With the passing of what he termed the "old order," he once felt so threatened by the friends of a criminal defendant that he was obliged to make his closing arguments for the prosecution with "two heavy Colts" sitting on the table.[32] Even if the courts were occasionally less effective than the vigilantes, certainly their procedures were more in keeping with the American constitutional system.

The enforcement of contracts, and the enunciation of new rules tailored for the American West regarding water rights and mining, established a jurisprudence which set in motion and then oiled the gears of the Western economy.[33] The decisions of the territorial justices reshaped the common law, as developed in the East, to fit the climate, terrain, politics, and social realities of the West. Settlers

[29] *People v. O'Conner*, 1 Idaho 759 (1880).

[30] Guice, *Rocky Mountain Bench*, supra note 18 at 137 et seq.

[31] Several cases in the first volume of the *Idaho Reports* were actions in *quo warranto* to oust officials because they were improperly elected. See, e.g., *People v. Lindsay*, 1 Idaho 394 (1871), where two men claimed the office of Ada County sheriff. Donaldson, *Idaho of Yesterday*, supra note 12 at 211-13 provides some background to this controversy which involved the first three black votes ever cast in Idaho.

[32] William T. Stoll, *Silver Strike: The True Story of Silver Mining in the Coeur d'Alenes* (Boston, 1932) 164-68.

[33] Guice, *Rocky Mountain Bench*, supra note 18, concludes at 113: "In this light, the judiciary might be the real heroes of the period." Guice's words ring equally true in Idaho as in the neighboring states he studies.

Agriculturalists demanded the prompt resolution of water rights claims. Threshing near Moscow, Idaho, ca. 1900. (Idaho Historical Society)

could not reap fruitful harvests from the arid land without prompt determination of water rights; miners could not dig bullion out of laden veins without prompt resolution of mining claims; sawyers could not fell the mighty trees in the coniferous mountains without prompt definition of public land uses. While this natural resource economy boomed and busted, Protestant Easterners confronted the seemingly incompatible cultures of Mormons, Indians, and Chinese. Society demanded prompt legal resolution of the inevitable conflicts among the people of the Idaho Territory.

The quality and complexity of Idaho's territorial court's decisions improved with time. By the 1880s the territorial bar had learned its lessons in court practice and a new influx of college-educated men had come to practice as lawyers in the state.[34] The federal executive had begun to exercise more care in the selection of judges. After the spoils system of appointments reached its peak under Ulysses S. Grant, the Hayes, Cleveland, and Harrison administrations took some pride in appointing qualified men of good moral character.

By the late 1880s Idaho was no longer a dusty outpost of sagebrush camps and gold booms. Sophisticated capitalist organization, permanent population bases, completed rail and telegraph connections, settled laws, and the pervasive ethic of "progress" had synergized to ripen the young green territory. Residents began to champ for the badge of maturity: statehood.

[34] John F. MacLane, *A Sagebrush Lawyer* (New York, 1953) 21.

BEATTY'S APPOINTMENT AS CHIEF JUSTICE OF THE TERRITORIAL SUPREME COURT

By April of 1889, amid the swirl of statehood activity, it had become apparent that Chief Justice Hugh W. Wier was going to be removed from the territorial bench. Wier had fallen into political disfavor in Alturas County, a hub of territory-wide political power in central-southern Idaho. In order to dissipate this power, the territorial legislature had divided Alturas County, flush with money from a silver and lead strike a decade earlier, into Logan and Elmore Counties. The resulting political, governmental, and fiscal fracas was to plague Idaho politics, state and federal courts,[35] and to some extent the federal appointment process, for years to come.

Citizens of Hailey, Idaho, the population center and political stronghold of Alturas County, were opposed to the division of the county, fearing the diminution of their property values and their political power at Boise. When they challenged in court the act of the territorial legislature dividing the counties, Chief Justice Wier opined that the legislative act was valid, and that the county could properly be divided.[36]

Shortly after this decision, members of the Hailey bar, which included many of the most powerful politicians in Idaho, began agitating for Wier's removal. They charged that he had been absent from court, causing cases to pile up for over two years, and that he had appointed his son as deputy clerk, in violation of a federal anti-nepotism statute. Justice Weir replied that his unpopular decision was the catalyst for his removal.[37] Although Weir's opponents asserted that the newly-elected Republican president, Benjamin Harrison, was removing all the Democratic appointments of his predecessor, Grover Cleveland, Justice Charles H. Barry, a Democrat who had dissented from Justice Wier's opinion on the county division, was not removed. President Harrison ultimately removed Wier, over bitter protests. It was to Chief Justice Wier's seat that James H. Beatty was appointed in 1889.

[35] The issue of which county was responsible for the former Alturas County's bonds was still being litigated in federal court in 1898. *Robertson v. Blaine County*, 85 F. 735 (C.C.D. Id. 1898).

[36] *Burkhart v. Reed*, 2 Idaho 503, 22 P. 1 (1889).

[37] Wier wrote Attorney General Miller on April 11, 1889: "If I had decided the cases in their favor, they would have applauded me with as much enthusiasm as Shylock did Portia in the Merchant of Venice, when he exclaimed, 'O noble judge! O wise and upright judge!'" This letter appears in the Records Relating to the Appointment of Federal Judges, Attorneys, and Marshals for the Territory and State of Idaho, 1861-1893. National Archives, Seattle Branch, Record Group 60, Microfilm M681, Rolls 1-9 [hereinafter cited as *Records*].

Born in 1836 in Fairfield County, Ohio, of "old Revolutionary stock,"[38] Beatty graduated in law from Ohio Wesleyan University in 1856, then fought in the Fourth Iowa Battery during the Civil War. His military experience took him to Missouri, where he settled when the war was over. After seven years in Missouri as the registrar in bankruptcy, he moved to Utah to be Assistant U.S. Attorney, quickly becoming a strong anti-Mormon. In 1882, ten years after he had moved to Utah, he went to Idaho, and settled in the newly prosperous town of Hailey in Alturas County.

Beatty had been a political man throughout his life. In Missouri he had served as a member of the Republican State Central Committee and had used his political savvy to gain appointment as Assistant U.S. Attorney in Utah. After his arrival in Idaho in 1882, Beatty entered the Idaho political scene, where he served in the fourteenth territorial legislature in 1886-87. In the spring of 1889 he was strongly in the running for the appointment to the territorial governorship of Idaho. Influential politicians and newspapers, including the powerful secretary of the interior endorsed him.[39] Ultimately, President Harrison appointed George Shoup to the position, and Beatty wrote of suffering the "depression of the defeat of [his] first political aspiration."[40] Someone — it is not clear who — then suggested Beatty for appointment to the territorial supreme court.

The appointment process began with the submission of a candidate's name. The candidate himself then wrote to the U.S. attorney general, William A. Miller, indicating his interest and including letters of recommendation. Other letters, both favorable and unfavorable, were then sent in to the attorney general's office. Some of these resulted from coordinated political efforts either for or against the candidate. Others were earnest pleas from individuals acting alone urging appointment or rejection. The attorney general then passed the compiled correspondence and his accompanying recommendations on to the president, who made the final appointment.

In his correspondence with the attorney general, Beatty did not seem immediately enthusiastic about campaigning hard for the appointment. He agreed to have his name placed in the running, but declined to travel in August heat to Washington, D.C. to fight for the appointment.[41] As the contest grew more heated, Beatty did write and cable to clear his name from criticism, although even

[38] *Los Angeles Times*, October 22, 1927, I, 7.

[39] Dubois, *The Making of a State*, supra note 25 at 167.

[40] *Records*, supra note 37. Beatty to Attorney General, April 1, 1889.

[41] Ibid. Beatty to Attorney General, August 14, 1889.

then he pointed out that he was not making exertions for the appointment.[42]

Perhaps Beatty's excitement over the prospect of the appointment was limited not only because he was demoralized over losing the governorship, but also because his attention was diverted elsewhere. During that summer of 1889 he spent much of his time actively participating in the Idaho constitutional convention, which had been convened in July 4, 1889 in anticipation of statehood. Beatty served as chair of the committee on election and rights of suffrage, and as a member of the committees on the judiciary, municipal corporations, revision and enrollment, and rules. One member of the convention recollected fifty years later that Beatty "was a stickler for plain, understandable language and [was] dubbed the school master of the convention."[43] Beatty's gift for plain, understandable prose was to stay with him throughout his tenure on the federal courts of Idaho.

The appointment letters[44] reveal that the leaders of the powerful political "ring" from Hailey[45] actively opposed Beatty although the ring, like Beatty, was Republican. Ring members worked hand in hand with Fred T. Dubois, a leading Republican and Idaho Delegate to Congress, thereby the "chief dispenser of territorial spoils."[46]

It is not clear what Beatty had done to so anger Dubois and his friends. One newspaper reported that in the prior year "no man did more toward piling up the majorities" for Dubois' election as delegate.[47] Yet many of the contemporary writings make reference to Beatty's vitriolic attacks on Dubois. In Dubois' autobiography Dubois claims to have been "a devoted friend" to Beatty "at all times,"[48] and to have met Beatty's appointment as chief justice with "great delight and with most cordial approval and endorsement,"[49] but the attorney general's letter file makes clear that Dubois did all he could to work against Beatty's appointment.

[42] Ibid. Beatty to Attorney General, March 24, 1889.

[43] The *Idaho Statesman*, July 2, 1939, 8.

[44] These appointment records, primarily handwritten, are currently available only on microfilm. See supra note 37.

[45] Milton Kelly, a former territorial supreme court justice, and powerful Republican political journalist and editor of the *Idaho Statesman*, described the so-called Hailey Ring as "as corrupt a gang as the Tweed ring in New York." *Records*, supra note 37. Telegram from John S. Gray, future Idaho state senator, to Attorney General, April 20, 1889, describing the editorial in the *Idaho Statesman*.

[46] Limbaugh, *Rocky Mountain Carpetbaggers*, supra note 1 at 7.

[47] Wood River *Times*, January 14, 1889.

[48] Dubois, *The Making of a State*, supra note 25 at 167.

[49] Ibid. at 168.

Idaho politician and author Fred T. Dubois, 1890. (Idaho Historical Society)

On Beatty's side were other influential people, including prominent Republicans from Alturas County and the Republican Central Committee. In addition, Beatty ably marshalled letters on his own behalf from pastors in Utah, Missouri, and Idaho, lawyers from other states, members of county bars across the Idaho Territory,[50] a former chief justice of Idaho, and various U.S. congressmen and senators who had supported him for governor.

[50] Certain county bars also presented resolutions against Beatty. The candidacy of another Alturas County Republican lawyer, John R. Harris, complicated the scene. He had been the mainline Republican choice before Beatty was considered for the job. Some lawyers already committed to him did not wish to switch to Beatty, although they might have endorsed Beatty at the beginning. *Records*, supra note 37. Arthur Brown, lawyer, to Attorney General, May 23, 1889; See also, J.S. Waters, District Attorney of Alturas County, to Attorney General, May 17, 1889. Some lawyers and other citizens endorsed Beatty after Harris had been eliminated from the race.

To the eyes of a late-twentieth century, litigation-conscious lawyer, the letters opposing Beatty and other contenders are shockingly, brutally straightforward in their criticisms. Ironically, the law of defamation has been softened in the latter part of this century, as First Amendment concerns and the desire to protect speech and discussion about public figures and matters of public interest have overridden worry over the damage to a person's character ensuing from the utterance of unflattering falsehoods. Although truth has always been a defense, today the omnipresent specter of a lawsuit has a chilling effect on all but the most provable charges. The nineteenth-century law of libel and slander evidently gave these men no pause as they pursued their political vendettas. For instance, an opponent of John H. Harris, Beatty's chief competitor, wrote of Harris:

> [He is] the laziest man I ever saw and spends much of his time frequenting saloons. He drinks, plays cards, is noisy, turbulent, swears, is an Infidel, and one of the most thoroughly unpopular men who ever lived in this city. He has the reputation of a gambler and a man who seldom pays his bills. I regard him as an unreliable man. I think that out of the entire bar of Idaho Territory the selection of John H. Harris for this office the worst that could be made.[51]

Another example of the vitriolic tone of the era came from one of Beatty's supporters denouncing Dubois:

> I know that our famous Delegate in Congress is a man who enjoys himself better in a brothel than in a Sunday School and the Saloon and Gambling room is more congenial to his enjoyment than the House of God.[52]

Attorney General Miller may have been particularly receptive to these references to temperance and religion. The Wood River *Times*, while praising him as an able lawyer of the highest integrity, thought him "rather too religious a man to be in the Cabinet, as he seems to think that to be a good Presbyterian is ample qualification for any office to which an applicant aspires."[53]

The political combatants of the era pulled no punches, but could not be called honest fighters either, for they engaged in hyperbole, selective truth, and, certainly on some occasions, outright falsehoods. Opponents declared that "no lawyer in the state supports

[51] Ibid. Declaration of L. Young, Mayor of Bellevue, May 3, 1889.

[52] Ibid. Waters to Attorney General, November 10, 1890.

[53] Wood River *Times*, May 18, 1889.

Beatty," yet petitions, resolutions, and letters from numerous county bars and law firms appear in Beatty's support. At one point Beatty's opponents sent an anti-Beatty telegram to Washington, and took the liberty of signing the telegram with the names of the men who were in fact supporters of Beatty's; indignant protests were hastily lodged.[54]

Unfortunately, most of the letters critical of Beatty and others were not sufficiently specific to satisfy either the historian of 1989 or the candidates of 1889. Several letters from Beatty and other candidates beg the attorney general to let them know what specific charges had been levied against them so that they could respond with equal specificity.[55] A historian can only agree with them, while hungering for the details of the political or personal fuss. Apart from a few general allegations of "lack of legal ability," the criticisms of the candidates did not address what one would hope would be the primary concern of those appointing a supreme court judge: legal reasoning or lawyering skill.[56]

What swung President Harrison to Beatty's side? Currently available records allow for only conjecture. Beatty's chief contender, Harris, was apparently knocked out of the race because of the stories about his debauched drinking and atheism.[57] Beatty was a good Presbyterian, and even his enemies cast no aspersions on his personal morality. It may well also be that the judgeship was awarded to Beatty as consolation for having lost the governorship.

On November 21, 1889, Beatty was commissioned as chief justice of the Idaho territorial supreme court. He thus began his eighteen year judicial career by presiding over the last year of that court's existence.

[54] *Records*, supra note 37. See, e.g., Waters to Attorney General, May 17, 1889; V. Bierbower, Deputy District Attorney, to Attorney General, November 11, 1889.

[55] Ibid. Beatty deplored the "cowardly, mean, secret assault against me — an insinuation, without being a charge of evil." Beatty to Attorney General, November 5, 1889.

[56] Surrency says that it was not until the administration of Theodore Roosevelt that consideration was given to a candidate's jurisprudential qualifications. Until then, the primary consideration was loyalty to the party in power. Erwin C. Surrency, "Federal District Court Judges and the History of Their Courts," 40 F.R.D. 139, 150 (1967).

[57] Harris, not surprisingly, denied the charges, saying that he took a drink only "now and then" and that the purveyors of such stories were actually those who favored Wier's retention because of Wier's view on the county division. "Not daring to assail my integrity and knowing the earnest and laudable desire of this Administration to place only sober and upright persons in positions of trust, they selected the charge of drunkenness as the most likely to effect their end, not that they believed it true but as some of them indiscreetly expressed it 'any thing is fair in War.'" *Records*, supra note 37. Harris to Attorney General, June 11, 1889.

BEATTY'S TERRITORIAL COURT DECISIONS

Justice Beatty's reported decisions during his brief tenure on the territorial court addressed water rights,[58] Mormonism,[59] mining claims,[60] attachments,[61] commercial paper,[62] unlawful fishing,[63] and, true to the pulp novelist's image of the Wild West, a criminal prosecution against the madam of a brothel.[64]

Beatty's deepest imprint on the jurisprudence of Idaho and the West may be *Drake v. Earhart*, a water law decision.[65] There Justice Beatty was faced with conflicting claims to the water in Quigley Gulch. Plaintiff Drake and others had arrived in 1879 and taken possession of land at the mouth of the stream running through the gulch, and had posted notice indicating that they had appropriated all of the water in the stream. Several years later Earhart and others purchased lands up the gulch from Drake's property, and began to use the water which flowed through their land. Drake and his friends sued to stop Earhart from using the water. The one earlier Idaho water rights case[66] had established that "the first appropriation of water for a useful or beneficial purpose gives the better right thereto; and when the right is once vested, unless abandoned, it must be protected and upheld."[67] This was in keeping with the Western tradition concerning both mining and water claims: the rights of the first person to find the ore or use the water are honored against all second-comers.

Remaining open was the very question Beatty now faced: Would the rights of this prior appropriator be upheld even if the subsequent appropriator had riparian status? Under the laws of many states, a riparian owner's rights would have been superior; thus Earhart and his associates would have been entitled to use the water from the stream flowing through their property.

[58] *Drake v. Earhart*, 2 Idaho 750, 23 P. 541 (1890).

[59] *Chamberlain v. Woodin*, 2 Idaho 642, 23 P. 177 (1890); *Territory v. Evans*, 2 Idaho 651, 23 P. 116 (1890).

[60] *Burke v. McDonald*, 2 Idaho 679, 33 P. 49 (1890); *Gilpin v. Sierra Nevada Consolidated Mining Co.*, 2 Idaho 696, 23 P. 547, 1014 (1890).

[61] *Martin v. Atchison*, 2 Idaho 624, 33 P. 47 (1890); *Fury v. White*, 2 Idaho 662, 23 P. 535 (1890); *Barnett v. Kinney*, 2 Idaho 740, 23 P. 922, 24 P. 624 (1890).

[62] *Murphy v. Bartsch*, 2 Idaho 636, 23 P. 82 (1890).

[63] *Territory v. Neilson*, 2 Idaho 614, 23 P. 537 (1890); *Territory v. Evans*, 2 Idaho 658, 23 P. 115 (1890).

[64] *Territory v. Bowen*, 2 Idaho 640, 23 P. 82 (1890).

[65] *Drake v. Earhart*, 2 Idaho 750, 23 P. 541 (1890).

[66] *Malad Valley Irrigation Co. v. Campbell*, 2 Idaho 411, 18 P. 52 (1888).

[67] Ibid. at 414.

Beatty, purporting to follow settled Western law or, as he put it, the decisions of courts "between Mexico and the British possessions, and from the shores of the Pacific to the eastern slope of the Rocky Mountains,"[68] decided, "the maxim, 'First in time, first in right,' should be considered the settled law here."[69] He noted that the doctrine was necessary to, and had become the custom in, the arid areas of the West. "This did not mean that the first appropriator could take all he pleased, but what he actually needed, and could properly use without waste."[70]

Beatty understood the importance of the appropriation doctrine to the economic development and public peace of the West. In view of the large distances between rivers and streams, if only riparian owners had the right to water, vast areas would go undeveloped. Beatty wrote, "Instead of attempting to divide [the little water there was available] among all, thus making it unprofitable to any, or instead of applying the common-law riparian doctrine, to which they had been accustomed, [the new inhabitants of the West] disregarded the traditions of the past, and established as the only rule suitable to their situation that of prior appropriation."[71] A modern analyst has noted that the system promoted investment and action. "Prior appropriation said in effect: Come West, take up land and water, and they shall be yours. Thus the national [as well as regional] goals of settlement and development of the West were served [and continue to be served] by the appropriation system."[72]

In this 1890 opinion Beatty was able to affirm the importance of priority of appropriation, which he feared had been unduly weakened at the Idaho constitutional convention a year before. At the convention the delegates had wished to adopt the appropriation doctrine but also to install a "beneficial use" hierarchy of allocation whereby domestic use of water would take priority over agricultural uses, which in turn had priority over manufacturing uses. Beatty had argued that the two doctrines were incompatible and would lead to economic instability. "I put the question to any of you, who of you would invest your money in establishing any large manu-

[68] 2 Idaho at 753. Actually, water law in California depends on a complex dual system, involving both riparian and appropriation doctrines. Oregon and Washington did not adopt the appropriation system until the early part of the twentieth century.

[69] Ibid.

[70] Ibid at 754.

[71] Ibid.

[72] Charles J. Meyers, *A Historical and Functional Analysis of the Appropriation System* [U.S. Dept. of Commerce, National Water Commission, National Technical Information Service, 1976].

facturing establishment when you know that the water that you desire to use in running that establishment may at any time be taken away from you by either of these two other interests, that is, the agriculturalists, or for domestic use?"[73]

Beatty's decision in *Drake* did not conflict with the Idaho constitution, for the issue of the hierarchy of use had not arisen in the case, nor, for that matter, did the constitution have any legal effect in the territory. *Drake*'s emphasis on the rights of the first appropriator has continued as good law in the state of Idaho.

Two of Beatty's territorial cases were particularly Idahoan, for they dealt with the tensions created by the sizable Mormon minority in the territory. In *Chamberlain v. Woodin*,[74] the loser contested an election for sheriff in the precinct of Rexburg, a Mormon stronghold in southern Idaho. The crux of the case was that in order to vote in the territories, electors, besides having certain qualifications, could not be members of any "organization which teaches its adherents to commit the crime of bigamy or polygamy." Not accidentally, the Mormon Church at that time was just such an organization. The effect was that Mormons were not permitted to vote in the territory. A large group of Mormons in Rexburg attempted to solve this problem by withdrawing from the Church two weeks before the election. Justice Beatty, with the support of his two brethren on the territorial bench, did not believe that the Mormons' withdrawal was in good faith and hence found that they were not entitled to vote. Beatty's stated basis for this finding was that the men had all acted together on the same day, "most likely in counsel with their leader" and,

> [w]hile claiming they had acted in good faith, most of them admitted they still wore their "endowment garments." The general explanation of this was, they would wear them until they wore out, but one explained, "they will wear never out."[75]

Beatty concluded:

> Should it prove true that they acted in good faith, we will much regret our present doubt. Gladly would we see them in the enjoyment of all the rights accorded to American citizenship, but only through voluntary allegiance to the government, and full obedience to all its laws.[76]

[73] I. W. Hart, ed., *Proceedings and Debates of the Constitutional Convention of Idaho 1889*, 2 vols. (Caldwell, ID, 1912) i: 1118.

[74] *Chamberlain v. Woodin*, 2 Idaho 642, 23 P. 177 (1890).

[75] Ibid. at 650.

[76] Ibid.

This decision reflected the strong anti-Mormon bias of the men in political power in Idaho during this period. The Idaho constitutional delegates worked hard to disenfranchise the Mormons. During the debates Beatty said to his fellow delegates, "Now I believe you all agree with us and want every Mormon disenfranchised," but urged that Mormon disenfranchisement be left in the hands of the legislature, because statutes would be more flexible than the constitution:

> We know they change their brand from time to time. It makes no difference what law we enact, they will change their brand; they will make some change in their organization so as to meet the laws we may enact and hence I was anxious, for one, to leave this power absolutely in the control of the legislature.[77]

The Mormon problem surfaces in the very next case in the *Idaho Reports*, where Justice Beatty discusses the difficulty of jury selection from the election rolls when those belonging to the Mormon Church were not "electors."[78] In concluding that a Mormon juror should have been excluded, Beatty wrote:

> It is, unfortunately, true that in some counties such a large proportion of the people belong to said "organization" that juries cannot be selected from the mass of the people, and courts may at times find it even inconvenient to procure them. [Nevertheless] we think the legislature meant to exclude from jury service those belonging to the so-called "Mormon church." By section 501 they are distinctly enjoined from "holding any position or office of honor, trust or profit." [...] We are justified in supposing the lawmaker took notice of the generally admitted fact that the members of that church are more obedient to its teachings, which are antagonistic to the laws of the land, than to the latter.[79]
>
> * * *
>
> That this conclusion will lead to inconvenience in some localities may be true, but we cannot change what seems to be a positive and clear statute. If there is any need of change, we respectfully refer it to the legislative department.[80]

[77] *Debates*, supra note 73, at 967. The constitutional delegates did not agree with Beatty's suggested method of depriving Mormons of the vote. Instead they wrote the disenfranchisement into the constitution itself.

[78] *Territory v. Evans*, 2 Idaho 651, 23 P. 116 (1890).

[79] Ibid. at 654. This decision did not result in the reversal of the conviction of the defendant/appellant because the statute did not allow an exception to an order overruling a challenge to a juror for general cause. Ibid. at 655-56.

[80] Ibid. at 655.

THE CREATION OF THE U.S. DISTRICT COURT FOR IDAHO

The goal of all of the territories was to achieve statehood, and between 1889 and 1912 ten were successful. Although some territories were obliged to struggle for years, Idaho achieved statehood in July of 1890 with astonishingly little difficulty, probably because Republicans in Congress and in the Harrison administration desired the admission of a Republican state.

With the creation of the new state, Congress dissolved the territorial court. While Idaho established a state court system, Washington lawmakers undertook the task of placing the new jurisdiction within the federal system.

The United States Constitution allows Congress to establish "inferior" federal courts, which include all courts other than the Supreme Court. The first Congress attended to the matter at once, drafting and passing the first Judiciary Act in 1789. That act established the basic federal court system as we know it today, despite subsequent adjustments in jurisdiction, structure, and nomenclature.

The biggest difference between the earlier structure and the modern system is that in 1789 Congress created two trial courts — the district court and the circuit court. The latter circuit court — which has not been in existence since 1911 — should not be confused with the circuit court of appeals which was created in 1891 and still exists today. A single trial judge presided over the district court, whereas the circuit court was designed to be held by a panel of three judges, including two Supreme Court justices and a district court judge. Very soon the circuit court was allowed to be held by a single judge, and as early as 1808 Justice Marshall approved the practice of having a district court judge preside over the circuit court.[81] In 1869 the separate office of circuit judge was created to relieve the congestion in the courts. Then the circuit court could be held by one of three people: a Supreme Court justice, a district court judge, or a circuit court judge. As might be expected, it was the exception for a Supreme Court justice to preside, although each was obliged to do so every two years. In reality, the district court judge performed most of the work of the circuit courts.[82]

From the beginning, the geographical boundary of the state in which the district court sat defined the geographical boundary of the district court. The geographical area of the circuit court, on the other hand, originally covered several states, as does that of the circuit court of appeals today.

[81] *Pollard and Pickett v. Dwight*, 8 U.S. (4 Cranch) 421 (1808).

[82] Surrency, *History of the Federal Courts*, supra note 14 at 32, 45-47.

By 1890 a district court judge presided over both the district court and the circuit court for the portion of the circuit within his state.[83] The records and minutes of the two courts, however, were kept scrupulously separate, and an action brought in the wrong court was summarily dismissed,[84] even though the properly brought case would have been heard before the same judge in the same courtroom.

The subject matter jurisdiction of the circuit court and the district court varied over the years, but by 1890 the district court had jurisdiction over crimes if the punishment was not more than a $100 fine or six months in jail; civil cases involving admiralty, seizures or trade; and land seizures under federal statutes. The district court and the circuit court had concurrent jurisdiction over tort actions brought by an alien, and matters involving U.S. treaties and suits where the federal government was a party. The circuit court was the primary federal trial court, having jurisdiction over appeals from the district court, civil suits brought by citizens from diverse states where the matter in controversy was over $500, and civil and criminal matters involving federal statutes, except federal crimes on the high seas.[85]

As this federal system was already well established by 1890 when Idaho became a state, there was no discussion over whether a district should be created for Idaho or what its geographical boundaries should be. Rather, Congress routinely created the District of Idaho and placed it within the Ninth Circuit.

The result was that even as Congress abolished the three federal offices of territorial justice, it created a new federal position, that of United States District Judge for the District of Idaho. The person who filled that job would have life tenure to preside over the district and the circuit courts for the new state. By the fall of 1890, applications from politically hungry Idahoans had begun to pour into Washington. On October 1, 1890, James Beatty telegraphed the secretary of the interior, "Please ask my appointment as U.S. Judge for Idaho."

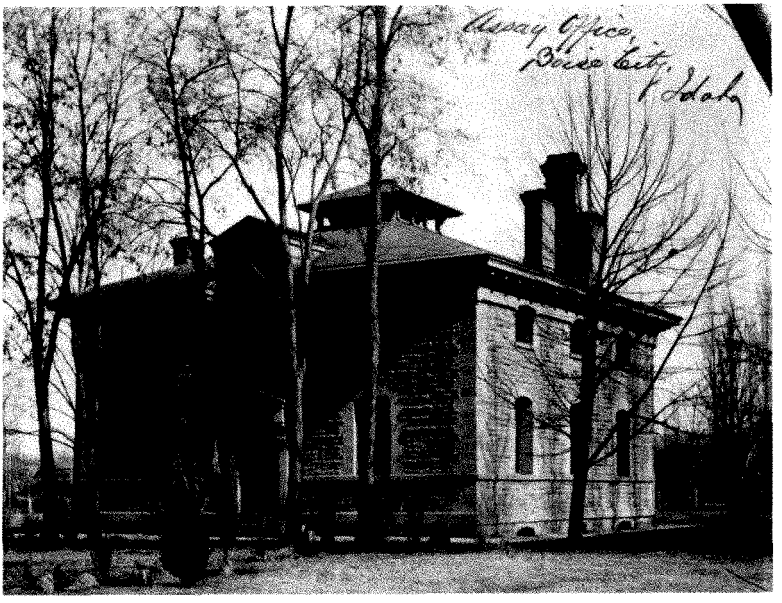
Appointment to the federal district court followed the same procedure as appointment to the territorial supreme court. In 1890-91, when Beatty was being considered for appointment to the

[83] The larger circuit, however, continued to exist, and occasionally a circuit judge would sit with the district court judge. For instance, in the first session of the Circuit Court for the District of Idaho, Judge Sawyer sat with Judge Beatty, and authored two opinions.

[84] See, e.g., *Jones v. Vane*, unpublished opinion, District Court, November 15, 1906 (Opinion Book 1881-1911).

[85] Surrency, *History of the Federal Courts*, supra note 14 at 15.

federal district court bench, William A. Miller was still attorney general and Benjamin Harrison was still the president. It must have been with a sense of *deja vu* that they reviewed several of the same candidates and saw similar conflicts between the same Republican factions as they had only one year before when Beatty had been up for the territorial court seat.



Assay Office, Boise City, Idaho, ca. 1890. (Idaho Historical Society)

BEATTY'S APPOINTMENT

Beatty's appointment to the district court bench was even more hotly and vehemently contested than his appointment to the territorial bench. Over the intervening year he had added fire to the opposition of his old enemies, and incurred the wrath of more mainstream Republicans.

In 1890-91, four U.S. senators were elected from Idaho. The first Idaho state legislature met on December 18, 1890 in joint session and elected George Shoup to the U.S. Senate for the term ending March 4, 1895. William McConnell, of northern Idaho, was elected for the term ending March 4, 1891 — only three months hence. Fred Dubois was elected to a full six-year term as McConnell's successor. All three were Republicans, as would be expected from a Republican-controlled legislature.

William Claggett, also a Republican, argued that Dubois' election had been procedurally incorrect. Claggett had Dubois' election declared invalid, and himself elected — with correct procedure — in February of 1891. His success was short-lived, however, as the U.S. Senate itself was obliged to vote to determine which man was entitled to sit, and declared that Dubois was legally elected and had the valid claim to the seat. Beatty publicly supported Claggett during this fight, obviously alienating Dubois and a large part of the core of the Republican party which was angered because the Claggett forces combined with the Democrats to attempt to unseat Dubois.[86]

Beatty's conduct at and after the 1890 Idaho State Republican Convention further fanned his opposition. This was the first convention in the brand new state, and the Republicans were anticipating starting off the state with a Republican majority. Dubois was particularly impressed with the importance of the convention. He later asserted, "[I] hope I may be pardoned for saying that I absolutely controlled it."[87] Imagine his anger if the story, gleaned from a statement hostile to Beatty,[88] were true, that Beatty disagreed with the choice of Lyttleton Price as a candidate for representative in the state legislature, walked out of the convention in disgust, then actively campaigned against Price, his fellow Republican, during the election. Although Price won the election, he was also Beatty's primary opposition for the federal judgeship.

Due to these and perhaps other transgressions, Beatty was opposed by all members of the Idaho delegation to Washington, and by many influential Idaho Republicans, including all three members of the Idaho supreme court, who did not hesitate to write their protests on official supreme court stationery.[89]

Again the thrust of the criticism by Beatty's opponents went more toward his politics than his legal abilities. Again and again,

[86] Hawley, *History of Idaho, The Gem of the Mountains*, supra note 21 at i: 224; See also, *The Sun*, February 13, 1891, relating that McConnell opposed Beatty because "he had been a traitor to his party by bringing about the election of Mr. Claggett as a Senator by illegal methods and with the aid of Democratic votes." See also Washington *Post*, February 1, 1890. *Records*, supra note 37. Beatty to Harrison, February 3, 1890; William H[—]lelagite (illegible) to Attorney General, January 9, 1891, saying that the reason all three senators were backing Price was that Price engineered a trading of votes by which they got elected. The writer goes on to say that this vote trading was a felony. This story is contradicted by the Wood River *News-Miner* of February 27, 1891, which states that Beatty had no connection with the Claggett/Dubois contest.

[87] Dubois, *The Making of a State*, supra note 25 at 181.

[88] *Records*, supra note 37. Sworn affidavit of W.S. Mack, a Hailey merchant, October 27, 1890, sent to Attorney General.

[89] Ibid. Sullivan, Huston, Morgan to Shoup, October 27, 1891.

his opponents cited his disloyalty to the Republican party as a reason the president could not and should not appoint him. "His appointment as a U.S. Judge would seem like placing a royalty on party disloyalty."[90] There were also references to his "venomous" personal style and use of character assassination — the pots calling the kettle black?

Dubois was so incensed at the possibility of Beatty's appointment that in one telegram he made the seemingly impolitic remark to the very men who had chosen Beatty for chief justice that Beatty's appointment to the territorial bench was "against protest of best men in Idaho and without endorsement of any respectable attorney."[91]

The one reference to Beatty's conduct during his brief tenure on the territorial court questioned his deciding a case on which he might have had a conflict of interest. Beatty, who was much feistier in his campaign and self-defense than he had been when running for chief justice, defended himself by explaining that he had been an attorney in a non-related but similar action, so he had suggested withdrawing from the case. The other judge and counsel found this unnecessary. After the other judges had debated and had been unable to agree, Beatty took a position and cast the deciding vote. He had not considered himself disqualified, but would have preferred not to have decided the matter. In retrospect, he regretted having made a decision in the case.[92]

One specific personal charge was lodged against Beatty. A New York lawyer named Hyndman charged that on the night before the inauguration of President Harrison,

> Mr. Jas. H. Beatty and another gentleman "picked up" a couple of strumpets in front of the Ebbitt House, and tramped around in the rain hunting a place. He never had seen either of them before. Mr. Beatty spent an hour or two in Solari's drinking with the girls, in a private room up stairs, next door to Willard's, and the end of the escapade was most ridiculous on Beatty. He was a candidate for Governor of Idaho then.[93]

[90] Ibid. Unsigned telegram to Attorney General, January 17, 1891.

[91] Ibid. Telegram from Dubois to Harrison, September 29, 1890.

[92] Beatty's version of what happened is corroborated by his words in the reported opinion. His one paragraph concurrence states: "Having been of counsel between the same above-named parties in a cause, in the same lower court, but with a different attaching creditor, I desired to take no part herein further than to sit at the hearing. I have not participated with my associates in the discussion, but, they having reached opposite conclusions, the disagreeable duty rests upon me of breaking the deadlock, which, in following my convictions and what seems to me the weight of authority, I do, by concurring in the able opinion of Mr. Justice Sweet." *Barnett v. Kinney*, 2 Idaho 740, 747, supra note 61.

[93] *Records*, supra note 37. Hyndman to Harrison, January 31, 1891.

Beatty's reply to the charges was in Washington within two weeks. Beatty said that it was Hyndman who was the "other gentleman," that Hyndman introduced him to two ladies who seemed entirely respectable, and that he himself had *one* drink, "what I do not remember, but nothing I would hesitate to drink at any time with any lady." After the one drink, Beatty left, feeling rather uncomfortable.[94] The drink lasted one-quarter hour, and the entire episode took no more than one-half to three-quarters of an hour. He never saw the two women again.[95]

The attorney general, in forwarding Beatty's reply to the U.S. Senate committee, included the comment, "from what I know of all the circumstances surrounding this case, I believe it speaks the truth."[96]

The historical records available today do not make it easy to determine why President Harrison chose Beatty for appointment.[97] Even Beatty recognized that the president had had to fly in the face of some strong opposition, writing, "As I was so bitterly opposed by both Senators I almost wonder you did not conclude there was enough wrong in me to be left to my fate."[98] Various possible explanations for the president's choice emerge.

Beatty's chief competitor, Lyttleton Price, had one sordid episode in his past, to which even Senator Dubois admitted in his endorsement of Price: at one point Price, abandoned by his wife, openly took up with "Cara," an unmarried woman of ill repute. Although Dubois said the episode lasted only a few weeks, Price's opponents seized on the affair and linked it to other stories of debauchery.[99] Also, one lengthy and earnest letter from the owner of the Red Elephant Mines tells of double dealing by Price as a lawyer, making him appear at best negligent and at worst fraudulent.[100] No responses

[94] Dubois reports that Beatty was one of the few teetotalers among the Idaho politician-lawyers at the time. Dubois, *The Making of a State*, supra note 25 at 99. This abstinence from drink — and perhaps an accompanying holier-than-thou prissiness — may be the origin of the uncomplimentary nickname given Beatty of "Aunt Nancy." See Wood River *News-Miner*, June 28, 1889.

[95] *Records*, supra note 37. Beatty to Attorney General, February 12, 1891.

[96] Ibid. Attorney General to Hon. George Edmonds, U.S. Senate, February 20, 1891.

[97] The difficulty of making such an appointment was summed up by Idaho governor Norman Willey in a letter to Senator Shoup on January 23, 1892. Writing of filling a vacancy on the state supreme bench, he said, "Our Idaho lawyers are generally either too large or too small for the position."

[98] *Records*, supra note 37. Beatty to Harrison and Attorney General, February 9, 1891.

[99] One of Price's primary opponents reported: "He is such a notorious male prostitute that he is frequently called by his fellow townsmen 'The Town Bull.'" Ibid. Waters to Attorney General, November 25, 1890.

[100] Ibid. G.V. Bryan to Attorney General, January 3, 1891.

from Price appear in the attorney general's records. Several contemporary newspaper accounts report that the president would not nominate Price "on account of certain charges filed against him which seem to be of a purely domestic nature,"[101] evidently a reference to the Cara episode.

Another explanation for Beatty's appointment appears in Dubois' recollections. Dubois, who admits that he opposed Beatty for the district court position, says that he had no objection to Beatty's moral character or his ability as a lawyer, that Beatty was an "honorable, conscientious gentleman," but that he was a politician "and not of very high order. He will be in politics while he is on the bench. He cannot help himself."[102] Dubois' surprise and displeasure at this seems misplaced in view of the insouciance with which many men of the day moved blithely back and forth between the legislative chambers and the judicial bench. Lyttleton Price, Dubois' candidate, had been elected to the state legislature; Willis Sweet, the first U.S. congressman from Idaho and a member of the Idaho delegation headed by Dubois, had one year earlier sat with Beatty on the territorial court.

Nevertheless, according to Dubois, he and Shoup defeated Beatty's nomination, so that finally Attorney General Miller decided to send in the name of someone else. Dubois does not tell us who this was, but the man was so objectionable that Dubois, Price, and others decided that they could not submit to the other appointment, so, fully aware of Beatty's weaknesses, they allowed him to be confirmed.[103]

The New York *Herald* of the day presents yet another version of what happened: Harrison appointed Beatty to punish Senators Shoup and McConnell for voting against the Force Bill "which Mr. Harrison loved with all his soul."[104] The Force Bill provided for soldiers to monitor elections in the South to ensure the counting of the black vote. Dubois opposed the bill because "[his] sympathies were all with the southern people."[105] The *Herald* conjectured:

> So apparently [President Harrison] regards with undying malevolence every republican who voted against it, and as

[101] Lewiston *Teller*, January 29, 1891; Moscow *Mirror*, January 23, 1891.

[102] Correspondence in 1906 between Beatty and Idaho State Supreme Court Justice James F. Ailshie indicates that Beatty did remain politically active and coveted the party's nomination for U.S. senator. He was never on the ballot in a statewide primary or general election. Ailshie Materials, Northwest/Day Collection, University of Idaho Library, Moscow.

[103] Dubois, *The Making of a State*, supra note 25 at 190-91.

[104] New York *Herald*, February 2, 1891.

[105] Dubois, *The Making of a State*, supra note 25 at 189.

these two Idaho men were particularly conspicuous that way they were the first to get their punishment, good and strong.

According to the *Herald*, a few days after the Force Bill vote, the entire Idaho delegation, including the senators and Congressman Sweet, recommended Price for the judgeship. While usually if the delegation agreed on someone he was appointed, this time the president received the delegation "with more than his usual frigidity," and refused to appoint Price. According to the *Herald* article, the delegation then tried Sweet himself for the nomination,[106] then Idaho State Supreme Court Justice Sullivan, and finally another Idaho lawyer, Texas Angel.[107] Finally, the *Herald* concluded, the president announced that he would give the place to none of the men recommended for it. Certainly, by February 7, 1891, the Idaho state attorney general, a Republican, was cabling Dubois, "For Heavens sake have some appointment made now. Either Sullivan[,] Angel or any good man will do. It is the apparent want of influence of Senators that is killing."[108]

The most straightforward explanation for Beatty's appointment to the federal bench is that the president and the attorney general reviewed the correspondence in favor of Beatty and deemed him a respectable choice. Judging from the records which remain, Beatty received many more recommendations than any of his competitors. Letters and petitions came in from citizen groups, clergy, lawyers from Idaho and other states, delegates to the Republican conventions in Idaho and other states, thirty-one out of the fifty-four members of the Idaho legislature, members of the Idaho Republican committee, a former member of the Idaho territorial supreme court, and many local officials all over Idaho. Judge Beatty had sat on the United States District Court in San Francisco when the docket there became overcrowded, and over ten San Francisco law firms endorsed him. Even some prominent Democrats wrote to recommend his integrity.[109]

For whatever reasons, President Harrison sent James H. Beatty's

[106] This is contradicted by other contemporary accounts that Sweet declined being placed in the running because he did not want to decrease the Republican majority in the House. *Weekly News-Miner* of January 23, 1891 quoting Salt Lake *Herald* of January 20, 1891.

[107] Ibid. Texas Angel's name often appears in the attorney general's files; he was clearly a crony of Dubois. The *Herald* wrote that "despite his somewhat unpropitious name [he] is a reputable lawyer and excellent gentleman, and not a member of Buffalo Bill's troupe, as you might think."

[108] *Records*, supra note 37. Telegram from Roberts to Dubois, February 7, 1891.

[109] Ibid. James W. Reid, a Lewiston attorney and important Idaho politician, to Attorney General, November 5, 1890; John Hailey, Territorial Delegate to 51st Congress, to Attorney General, November 3, 1890.

Downtown in Idaho's capital city of Boise, looking south on 8th Street, ca. 1895. (Idaho Historical Society)

name to the United States Senate in March of 1891. Beatty was commissioned as federal judge for the District of Idaho on March 7, 1891, and immediately began holding court, although his appointment had not yet been confirmed by the Senate. Dubois did all he could to prevent confirmation, including securing the aid of Senator Farwell of Illinois to object to the confirmation without giving a reason. This objection threw over the confirmation to the next legislative session, and Beatty worked as federal judge throughout the summer and fall of 1891 under constant and understandable stress. In November, 1891, he wrote the attorney general, "To perform onerous duties with an indefinite, but constant feeling of unrest is burdensome, and I have now been holding court here and in California, almost constantly since the 6th of April."[110]

By December of 1891, former Senator McConnell had endorsed Beatty, saying he thought there was no opposition to his appointment,[111] which perhaps indicates that his former opposition to Beatty had been primarily to keep peace with Dubois, or for unknown reasons of political expediency. The Senate finally confirmed Beatty in February of 1892.

[110] Ibid. Beatty to Attorney General, November 18, 1891.

[111] Ibid. McConnell to Attorney General, December 1, 1891.

BEATTY'S TENURE AS DISTRICT COURT JUDGE

Dubois has sugar-coated much of history in his published recollections, yet an analysis of Beatty's decisions while on the federal bench bears out Dubois' assessment that Beatty served with honor and credit, and deservedly had the respect of the people.[112] Beatty's conscientious decisions on various fundamental subjects provide insight into the economic and social development of Idaho and the American West.[113]

On April 6, 1891 in Boise, Judge Beatty opened both the District Court and Circuit Court of the United States for the District of Idaho.[114] Both court sessions began with proclamations from President Harrison which were read into the record, declaring his "special trust and confidence in the Wisdom, Uprightness and Learning of James H. Beatty of Idaho." The record reflects that Beatty was appointed only until the end of the next session of the U.S. Senate, presumably because he had not yet been confirmed.

The first lawyer to be admitted to practice before each of the new courts was John R. McBride, a prominent lawyer who himself, twenty-five years before, had sat on the territorial supreme court.[115] The first business of each new court was to allow the withdrawal of demurrers and to give three days for an answer to be filed in the new jurisdiction.

THE TRANSITION FROM THE TERRITORIAL ERA

In the first session of the circuit court, Beatty sat with Circuit Judge Lorenzo Sawyer. Immediately arose the problem of the actual physical transfer of the original files and records from the territorial courts to the federal courts.[116] Particularly troublesome were entries in journals, minute books, judgment books, and

[112] Dubois, *The Making of a State*, supra note 25 at 191.

[113] The jurisdiction and the records of the district court and the circuit court were kept strictly separate, but in the following discussion the decisions have been together insofar as they provide insight into legal problems of the era.

[114] For the first year the terms of the circuit and district courts were held in Boise. By 1892, the District of Idaho had been divided into three districts. Court sessions were then held in Moscow, Boise, and Pocatello to reduce the inconvenience of travel across the vast state. Occasionally, special sessions were held elsewhere, as when northern Idaho's labor troubles necessitated a special session in Coeur d'Alene.

[115] See supra note 16.

[116] *Burke v. Bunker Hill & Sullivan Mining & Concentrating Co.*, 46 F. 644 (C.C.D.Id. 1891).

such[117] which "would, doubtless, contain entries, indiscriminately, in both classes of cases —those that go to the state, and those that go to the national courts." These would "involve a practical difficulty, if not impossibility," as "[o]bviously, both courts could not have the custody of these parts of the records." Judges Beatty and Sawyer concluded that since the majority of the territorial cases would go to the state courts, the state courts ought to keep the books and records, and that duly authenticated copies of the original territorial files and record could be used in the federal court. The court further noted that it had no power to compel the state court to transmit the records.[118]

IMMIGRATION

Many immigration cases came before the district court. Appearing in the minute books are seemingly perfunctory naturalizations of Englishmen, Canadians, Scots, Irishmen, Germans, and other Europeans. The law made it less easy for the Chinese, although Judge Beatty himself seemed eager to enforce the laws so as to permit the Chinese to remain in this country. One judgment book names only Chinese defendants, and contains judgments declaring the Chinese to be lawful residents despite their failure to register as provided in the Chinese Exclusion Act of May 5, 1892. The judgments divide into three groups: cases decided in 1895-96, in 1898, and in 1903-04. Within each time group the judgments are nearly identically worded. In 1895-96 the formula ran:

> It clearly appearing [from the evidence which has been heard] to the satisfaction of the Court that by reason of unavoidable cause to wit: impassable roads and inaccessibility, the defendant was unable to procure a Certificate of Registration as provided in the Chinese Exclusion Act of May 5th, 1892, as amended November 3rd, 1893.
> It is hereby ordered, That a Certificate of Residence be granted _____ _____, a Chinese laborer, lawfully in the United States, described as follows [...]
>
> The description of the individual included name, age, residence,

[117] The records of the territorial courts, and of the early federal courts well into the twentieth century, were handwritten in cursive script in hefty, leatherbound, two-foot-by-one-foot volumes, which can now be found in the National Archives, and which, if nothing else, are evidence of the formidable finger and arm muscles of the court clerks of years past.

[118] *Burke v. Bunker Hill*, 46 F. at 649-50. This decision was affirmed by Beatty a few days later in *Back v. Sierra Nevada Consolidated Mining Co.*, 46 F. 673 (C.C.D.Id. 1891).

height, eye color, complexion, and identifying marks. The eye color and complexion were usually described merely as "dark." The residence was nearly always within Idaho County, near where gold was originally discovered in Idaho, reflecting the large number of Chinese miners.

By 1898 the formula excuse had been shortened to "unavoidable cause." By 1903 the rule had changed so that if the Chinese was here by the time of the passage of the Chinese Exclusion Act "he was at that time lawfully entitled to remain."

In 1904 a few cases appear reciting more individualized findings of fact. Judge Beatty wrote out an opinion on April 6, 1905[119] reversing a decision of a commissioner who had ordered Wey Ling deported. Mr. Ling had come into the country at San Francisco as a merchant and had failed, and had since been working in Boise. If it could have been shown that Mr. Ling had become a laborer he could have been deported, for only Chinese working as merchants were allowed to stay. Judge Beatty placed the burden of proof on the United States and decided in favor of the Chinese, stating that a condition, once established, is presumed to continue until it is shown to have changed.

Judge Beatty further pointed out that the purpose of the Chinese Exclusion Act was to deport laborers. "A chinaman here doing nothing cannot endanger the interests the law is designed to protect." Judge Beatty thus demonstrated that he had progressed beyond the anti-Chinese sentiment which marred Idaho history well into the 1880s. One of Idaho's last territorial governors had advocated the total exclusion of the Chinese from Idaho because of their alleged "filthy habits," and Idaho had recently seen anti-Chinese violence.[120] Judge Beatty's fairness enabled him to contribute in his own way to the cultural diversity of the state of Idaho.

CRIMES

Many crimes came before Judge Beatty as he sat on the federal district court bench. A survey of the Criminal Register of the Southern Division for 1892-1906, the years covering most of Judge Beatty's tenure on the court, reveals a wide spectrum of criminal actions: post office offenses such as posting unmailable matter, robbing mail pouches, and embezzling money orders and stamps; larceny; murder; smuggling; possessing and manufacturing opium; receiving cigars from the factory without a stamp; counterfeiting; having carnal knowledge with a female under sixteen years of age;

[119] *United States v. Wey Ling*, unpublished opinion, District Court, April 6, 1905 (Opinion Book 1891-1911).

[120] Limbaugh, *Rocky Mountain Carpetbaggers*, supra note 1 at 177-78.

selling liquor without a license; inciting Indians to break laws and/or to create disturbance; purchasing Indian cattle; and returning to an Indian reservation after being removed by a federal agent.

By far the most widespread crime, judging from the district court records, was selling liquor to Indians. Several opinions reflect Beatty's decidedly low opinion of liquor traffickers, "a vampire class, totally reckless of the Indians' Welfare, of law and of society."[121]

INDIANS

Beatty's attitude toward the Indians was sympathetic while somewhat paternalistic. He held the Nez Perces in high esteem, describing them as a "subjected and dependent people" but "far above the average Indian in intelligence, and many of whom have had long Christian training and who know the evils of the liquor traffic upon their race." In contradiction to this, he also referred to them as "untutored savage[s]."[122]

In *Robinson v. Caldwell*,[123] Judge Beatty felt constrained to allow a white settler to remain on a parcel in the middle of the Nez Perce reservation because the settler's predecessor in interest, William Craig,[124] had validly settled the land. In the course of the decision Beatty revealed his attitudes about Indians and their treatment at the hands of whites:

> It is unnecessary to now indulge in any reflections upon the systems of ethics which governed the Christian world in the acquisition of this country. Our aggressions upon the rights of the native race may continue to be, as they have been, a subject for pathetic song and for the casuist's pen, but not one for the present consideration. It has long been settled that the Indians had no title to this continent which we felt bound to consider during the process of its acquisition. When the Christian princes of Europe commissioned their subjects upon voyages of discovery, it was not doubted that all lands found by them in the possession only of the heathen could lawfully be taken by the discoverer, and from then until now the Indian heritage has been transferred from one government to another, and to

[121] *United States v. Schissler*, unpublished opinion, District Court, May 26, 1905 (Opinion Book, n.d.).

[122] Ibid.

[123] *Robinson v. Caldwell*, 59 F. 653 (C.C.D. Id. 1894).

[124] Hawley dubbed Craig "the first real settler in Idaho." Craig married a woman who was one-half Nez Perce, and settled in Lapwai in 1840. Hawley, *History of Idaho, Gem of the Mountains*, supra note 21 at i: 99.

> their subjects, in total disregard of any claim or title thereto by the natives...The only right ever conceded to the Indian was that of occupancy, which has generally proven to be the merest shadow of a right when it became inconvenient to the dominant race.[125]

Judge Beatty ended the decision allowing white settlement:

> The court appreciates the baneful results that may follow this conclusion. It leaves a tract of land within the reservation subject to the occupation of white men, which is contrary to the wise policy of the government of excluding them as far as possible. Gladly would the court aid the Indian department in such exclusions, for there is nothing in the management of the Indians which results in so much annoyance as the residence among them of the whites, and especially of the lawless and abandoned: but, being convinced that the government, by its laws, authorized this settlement, and afterwards ratified it, my convictions are followed, regardless of consequences. The matter being important, I presume and hope it will be reviewed by a higher court.[126]

The matter was in fact reviewed and affirmed on appeal.[127]

Beatty's sympathy for the Indians and dislike of both official and unofficial treatment of them by whites showed a few years later as well, when a railroad sought to restrain settlers from cutting timber on land which it claimed as its own.[128] The opinion traced the ownership of the land, which was granted to the railroad by the government, then set apart by the government as part of the Coeur d'Alene Indian reservation, then ceded back to the government by the Indians for restoration to the public domain. In the course of the decision, Beatty stated,

> Examination of the facts in this case recalls how a most pacific and intelligent tribe of Indians, who had long manifested their friendship for the white race, were greatly neglected, and their appeals to congress for an adjustment of their claims and the security of their homes from intrusion were overlooked, while the interests of more warlike and savage tribes were promptly settled.[129]

[125] *Robinson v. Caldwell*, 59 F. at 654.

[126] Ibid. at 660.

[127] *Robinson v. Caldwell*, 67 F. 391 (9th Cir. 1895).

[128] *Northern Pacific Railway Co. v. Dudley*, 85 F. 82 (C.C.D. Id. 1897).

[129] Ibid. at 84.

He asserted that Indian title of occupancy "has always been unceremoniously brushed aside when in conflict with the government's interest," and demonstrated his commitment to respecting their desire for a homeland. "[D]ue regard for [the Indians'] welfare, as well as the dictates of humanity, would suggest that some place within the country they had long claimed and occupied should be selected as their permanent home."[130]

In 1907 Judge Beatty found in favor of Pocatello Tom and other Indians living in the Fort Hall Indian Reservation, who were joined by the United States government in seeking to prevent subsequent upstream settlers from taking water the Indians needed for irrigation.[131] The judge remarked, "I feel it especially a duty to encourage and induce the Indians into the walks of civilization by fully protecting them in all their rights."

Judge Beatty's writings reveal a moral and probably Christian basis for his concern and sympathy for Indians, and a disgust at what other white Christians had done to the Indians. He reflects the better educated thought of the time, which respected the position of the Indians on their native lands and rejected the "only good Injun's a dead Injun" mentality often associated with the white settler. Thus again Beatty showed himself as a contributor to the civilized thought of his time, ahead of many of his contemporaries, and a constructive influence on the transition from old prejudices to new tolerance.

MORMONS

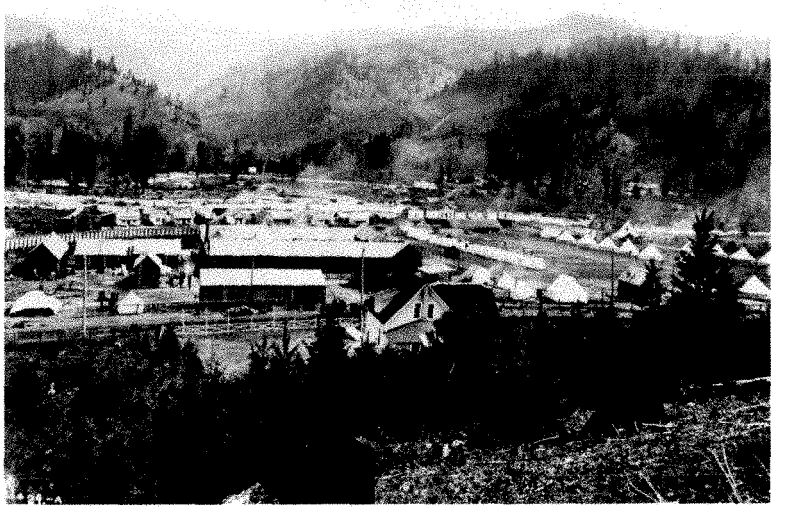
In view of Beatty's acceptance of the diversity of the Indians and the Chinese, his intolerance of Mormons seems out of character, although lamentably in keeping with the attitudes of his time. As a Presbyterian and a jurist he was appalled by the lawlessness and, to him, moral atrocity of polygamy; perhaps as a politician he was worried by the potential political strength of a Mormon voting block.

LABOR RELATIONS

Judge Beatty's courtroom was also the stage for a few of the many dramatic scenes in the Coeur d'Alene labor disputes. In 1892 he was required to call a special term of court in Coeur d'Alene to deal with criminal and civil litigation arising out of the violent

[130] Ibid. at 85.

[131] *United States and Pocatello Tom, et al. v. Daniels*, unpublished opinion, Circuit Court, April 1907 [day missing] [Opinion Book 1903-1908]. Again Beatty was able to implement the prior appropriation doctrine of water use.



Bird's-eye view of a "bull pen" for incarcerated miners, 1892. (Barnard-Stockbridge Collection, University of Idaho Library)

labor turbulence.[132] The situation in the Coeur d'Alenes was so volatile that martial law was imposed and hundreds of men were confined in "bull pens." Judge Beatty was called upon to enjoin the miners' union from entering or interfering with the mines or using force, threat, or intimidation to prevent employees from working in the Coeur d'Alene Consolidated and Mining Company.[133] The matter was in federal court under its diversity jurisdiction. After much argument and evidence, Beatty decided the case for the mine owner, and exercised his equitable power to enjoin the workers.[134]

While he expressed sympathy for both sides, he had clearly accepted the company's viewpoint. He duly recited its doomsday predictions:

> The unrestrained execution of the designs [of the union], which it would seem from the record in this case the defendants entertain, would result unfortunately. Carried to their logical conclusion, the owner of property would lose its control and management. It would be worked by such laborers,

[132] Hawley, *History of Idaho, Gem of the Mountains*, supra note 21 at i: 246.

[133] *Coeur d'Alene Consolidated & Mining Co. v. Miners' Union of Wardner*, 51 F. 260 (C.C.D.Id. 1892).

[134] The underlying action was common law criminal conspiracy. Ibid. at 264-65.

> during such hours, at such wages, and under such regulations, as the laborers themselves might direct. Under such rule, its possession would become onerous. Enterprises employing labor would cease, and, instead of activity and plenty, idleness and want would follow.[135]

Judge Beatty continued in what might seem to be language in favor of labor unions:

> The association of laboring men into organizations for social enjoyment, mental improvement, for the protection of their interests, and the amelioration of their conditions, is not condemned, either by the people or the law. On the contrary, it is their right so to do, and they have the sympathy of all classes in their efforts to advance their interest by lawful means. No one will view with envy their lawfully acquired success, their comfortable homes and congenial surroundings, all attainable through industry, sobriety, and reasonable economy.[136]

Beatty's stated desire that the worker improve his lot reflects no perception of the inherent weakness of the workers' bargaining position, and the importance of concerted activity to achieving their goals. Underlying Beatty's words is the message: "Better yourselves if you can, but do not challenge the capitalist economy."

Judge Beatty was not blind to the accelerating violence and adamancy on both sides,[137] and was ahead of many contemporaries in recognizing the compatibility of interests between labor and management:

> Unfortunately, combinations of labor are met by associations of employers, each trying to baffle what it deems the aggressions of the other. It is to be regretted these opposing forces have in late years gone so far in their efforts for supremacy that they now operate upon the principle that their interests are antagonistic.[138]

He carefully did not take a position on the wage dispute which precipitated the labor trouble, but dealt only with the issue before

[135] Ibid. at 263.

[136] Ibid.

[137] On the very day Beatty was issuing the injunction in Boise, July 11, 1892, mine workers and the mine owner's agents were waging "pitched battle" in Wallace at the Frisco Mill. Six men died and the mill was blown up. MacLane, *A Sagebrush Lawyer*, supra note 34 at 131.

[138] *Coeur d'Alene Consolidated & Mining Co. v. Miners' Union of Wardner*, 51 F. at 264-65.

Helena-Frisco Mill after an explosion, 1892. (Barnard-Stockbridge Collection, University of Idaho Library)

him which he defined as "whether the defendants, in attempting to maintain their position, are likely to employ unlawful means..."[139]

Before he could grant the injunction requested by the company, Judge Beatty needed to rule on the union's argument that the company itself had acted in such bad faith that it was not entitled to an equitable decision in its favor: "he who asks equity must not by his pleadings or acts attempt to mislead either the court or his opponent."[140] According to the union, when the company had closed its mines in January, thereby putting laborers out of work in the middle of a freezing northern winter, the company had alleged

[139] Ibid. at 264.

[140] Ibid.

that the reason was to secure an adjustment of the railroad freight rates. By the time the company appeared before Beatty it had changed its story and was alleging that it had been compelled to shut down the mine "because the defendants interfered with the working thereof." The union alleged that the real object was to reduce wages and to bust the union, which the union argued amounted to bad faith. Judge Beatty refused to so find, and issued the injunction.

Also on July 11, 1892, Judge Beatty sentenced nine men to six months in the Ada County jail for criminal contempt in violating a restraining order issued two months earlier ordering the members of the miners' union to desist from interfering with the mining company's laborers.[141] Judge Beatty scolded the defendants, telling them they had done their cause more harm than good, opining,

> the people are always in sympathy with those who labor for their bread so long as you are right and will aid you...I know there are many human parasites who will cling to you and absorb your substance and rob you of your earnings of honest wit[,] who will encourage you to lawless acts, and others from selfish motives will wink at and condone the wrongs you may commit, but among such you will not find your true friends.

In September of 1892, he held criminal conspiracy trials against labor agitators, including George Pettibone, who would later be included as a defendant with Big Bill Haywood and Harry Orchard in the famous trial for the murder of Frank Steunenberg.[142] The trial resulted in convictions which were later overturned for insufficient allegations in indictment,[143] but which fueled the anti-government rhetoric of the labor movement.

It has been charged that Beatty was tied to management at the mines because a wealthy mining investor worked hard for Beatty's appointment to the circuit court as well as for Claggett's election to the U.S. Senate.[144] The sources available leave it unclear whether

[141] *United States v. Pat Day, Thomas O'Brien, et al.*, unpublished opinion, Circuit Court, July 11, 1892 (Opinion Book 1891-1904). The opinion, as recorded, is a transcript of an oral opinion issued from the bench. According to MacLane, the Supreme Court's decision in *Pettibone v. United States* cast such doubt upon this finding of contempt that upon motion Judge Beatty threw out these convictions as well. MacLane, *A Sagebrush Lawyer*, supra note 34 at 132. See infra note 143.

[142] *United States v. Peter Breen, et al.*, no written opinion, District Court (See, Minute Book 1892-1900).

[143] *Pettibone v. United States*, 148 U.S. 197 (1893).

[144] Richard H. Peterson, "Simeon Gannett Reed and the Bunker Hill and Sullivan: The Frustrations of a Mining Investor," *Idaho Yesterdays* 23 (Fall 1979) 7. See also, Stanley Steward Phipps, "The Coeur d'Alenes Miners' Unions in the Post Bullpen Era, 1900 to 1915: the Socialist Party and I.W.W. Connections" (Unpublished M.A. thesis, University of Idaho, 1980) 3.

the investor wanted these men in office because they were biased in his favor, or because they were aware of problems concerning northern Idaho, which included the need for a judiciary competent in mining matters.

Even if they had no improper ties to particular businesses, federal judges of late-nineteenth and early-twentieth century America were legendary for their support of management against labor.[145] This was natural since the judges were appointed by and from the ranks of those in power, who at the time were the capitalist industrialists. The very real violence and the potential economic power of workers, many of whom were foreign-born (Irish, in Idaho), threatened the judges and their world as well as the owners and their pocketbooks. Judge Beatty appears to have been no exception, although he may have had more sympathy for the workers' situation than others of his class and position.

COMMERCIAL AND GENERAL BUSINESS

The mundane commercial cases which accompany a thriving, if erratic, economy filled the circuit court docket. Judge Beatty heard many mortgage and lien foreclosure cases, as well as cases involving sureties on official bonds, insurance, partition actions, and enforcement of contracts. He wrote opinions on a few public law cases, including one upholding a county's right to tax timber separately from land despite a challenge from the mighty Potlatch Lumber Company;[146] one upholding the constitutionality of a statute requiring land owners to pay for sewers;[147] another upholding the right of Idaho state officials to prevent the entry of sheep into Idaho from Utah and Nevada in order to prevent an infectious sheep disease from becoming epidemic within Idaho;[148] and a few tax challenges. Then, as now, the usefulness of the court in resolving certain commercial disputes was questionable. Observed Beatty, "It often happens as it does in this case, that the questions found by Counsel for discussion far exceed in number the pecuniary value of the interest involved."[149]

[145] In order to combat the effects of this bias, reflected even in the opinions of the reasonably-enlightened Judge Beatty, Congress passed the Norris-La Guardia Act in 1932 which forbade federal judges from issuing injunctions against labor except in certain limited circumstances.

[146] *Potlatch Lumber Co. v. James Langdon*, unpublished opinion, Circuit Court, June 19, 1905 (Opinion Book 1903-1908). Langdon was the Latah County assessor.

[147] *Wilson v. Boise City*, unpublished opinion, Circuit Court, March 21, 1901 (Opinion Book 1891-1904).

[148] *Smith v. Lowe City*, unpublished opinion, Circuit Court, October 24, 1901 (Opinion Book, 1891-1904).

[149] *Miller v. Fox*, unpublished opinion, Circuit Court, undated [circa 1905] (Opinion Book 1903-1908).

A Northern-Pacific train at the Idaho-Montana Divide, 1890. (Barnard-Stockbridge Collection, University of Idaho Library)

Judge Beatty's decisions expose the conflicts caused by "progress" as economic and technological development swept through the virgin West. In one case, two railroads claimed the same right of way through public land in Wallace, Idaho.[150] In another, two people sought incompatible uses for the Spokane River.[151] In still another, a telegraph company clashed with a railroad over whether the telegraph company could obtain through eminent domain the right to erect its telegraph line along the railroad right-of-way.[152] Judge Beatty set the tone for the analysis by first addressing the public benefit which would result from the erection of the telegraph line:

> The result contemplated would give two telegraph lines, instead of one, with such possible competition as would give

[150] *Washington & Idaho Railway Co. v. Coeur d'Alene Railway & Navigating Co.*, 52 F. 765 (C.C.D.Id. 1892).

[151] *Spokane Mill Co. v. Post*, 50 F. 429 (C.C.D.Id. 1892). Judge Beatty stressed the importance of compromise in carrying out industrial uses so that others could use the waterway as well. He further noted that first pioneers could not lock up and control the natural resources or thoroughfares simply because they were first to arrive.

[152] *Postal Telegraph Cable Co. v. Oregon Short Line Railway Co.*, 104 F. 623 (C.C.D. Id. 1900). The matter was in federal court apparently under diversity jurisdiction.

> to all the choice of service, and possibly a better service at lower rates.[153]

Beatty allowed the condemnation of the small strip of land required for the telegraph lines. He cited the Idaho statute extending to telegraph companies the right of eminent domain "provided the use to which it proposes to devote what it acquires is more necessary or would better subserve the public interest than the use to which the property is now devoted."[154]

Judge Beatty then articulated the standard test that active use of land is better than passive or inactive use, reiterating the American point of view that the highest use of land is the most economically productive use of the land:

> It cannot for a moment be doubted that the use to which plaintiff proposes to put that portion of defendant's right of way would be of greater public utility than that for which it is now used. Practically, it is not now used for any purpose. It is simply so much idle property and the new use promises to be one of public utility.[155]

During the last decades of the nineteenth century, public domain law was particularly liberal in the West, and a broad statement of what constituted public use was written into the Idaho constitution. Beatty's decision was within the tradition of his era, which has been called the "heyday of expropriation as an instrument of public policy designed to subsidize private enterprise."[156]

NATURAL RESOURCES

The nineteenth-century attitude favoring business interests over "aesthetic niceties" or what we would now term environmental concerns is today lamented by ecologists and longed for by industrialists. In 1906 Judge Beatty was forced to deal with just this problem as he confronted the effects of the mining industry on downriver agrarian enterprises. Plaintiffs in *McCarthy v. Bunker*

[153] Ibid. at 624.

[154] Ibid. at 625.

[155] Ibid.

[156] Harry N. Scheiber, "Property Law, Expropriation, and Resource Allocation by Government, 1789-1910," in Lawrence M. Friedman and Harry N. Scheiber, eds., *American Law and the Constitutional Order: Historical Perspectives* (Cambridge, MA, 1978) 137-38.

Hill & Sullivan Mining & Coal Co.[157] owned low flat lands along the Coeur d'Alene River, and charged that lead and other poisons from the Bunker Hill mining operations had "rendered impure the water" which, when it overflowed, poisoned and destroyed vegetation, grass, hay, and domestic and wild animal life. Also, charged the plaintiffs, mining deposits had filled the river channel so that "its banks rise but little above the stream at low water" and any slight rise caused it to overflow "so that places once navigable for large boats cannot now be navigated by even small boats..." Beatty reasoned that,

> ...Admitting the allegations of the complaint as true, the conclusion would follow that these defendants, by their mining operations, are making the valleys below them a besom of waste; that the Coeur d'Alene river, beautiful in name and by nature, is being obliterated, and that soon its polluted waters must flow unvexed by prow or rudder.[158]

Beatty made a personal examination of the premises. His conclusion was that the allegations were exaggerated. Experts were paraded before him, and a predictable battle ensued. A steamboat captain said the river was as deep as it had been in 1884. Some chemists and medical experts said stock were dying from the water; others said they were not, and that dogs in Wallace and Wardner drank the very same water with impunity, "and both stock and dogs, instead of dying by its use, thrive upon it."[159]

Judge Beatty decided not to issue the restraining order or, 1,400 pages of testimony later, a permanent injunction. He was angered by the unjustified, "wild assertions" of the complaint, remarking on the duty of counsel to avoid either intentional or negligent deception of the court. He also found another "potent reason" not to issue a restraining order. The cost of an injunction to the Coeur d'Alene region would be greater than the cost of damage to the plaintiffs' interests:

> [S]uch an order would mean the closing of every mill and mine, of every shop, store, or place of business, in the Coeur d'Alenes. There are there about 12,000 people, the majority of whom are laboring people, dependent upon the mines for their livelihood. Not only would their present occupation cease, but all these people must remove to other places, for the mines constitute the sole means of occupation, and when they finally close, Wallace and Wardner, Gem and Burke, and their

[157] *McCarthy v. Bunker Hill & Sullivan Mining & Coal Co.*, 147 F. 981 (C.C.D. Id. 1906).

[158] Ibid. at 982.

[159] Ibid. at 983.

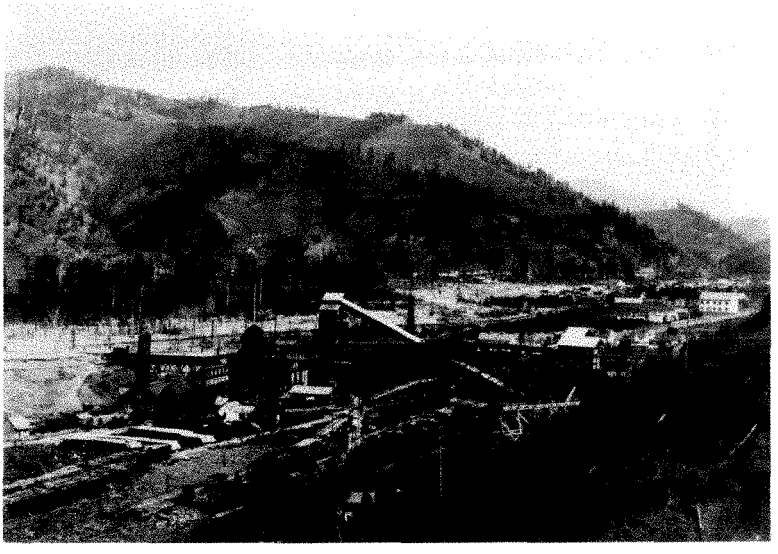
surrounding mountains will again become the abode only of silence and the wild fauna. Any court must hesitate to so act as to bring such results.[160]

On the other hand, Beatty specifically declined to agree with the contention that a first comer has the right to monopolize use of the waterway:[161]

> [Defendants'] mining operations must be so conducted as to protect as far as possible the rights and properties of others. They have not, however, ruthlessly destroyed complainants' property, but have attempted to protect it by building the dams and reservoirs to impound the tailings.[162]

Judge Beatty's choice of remedy followed a middle course. Although he refused to grant an injunction, he stated that if the parties could establish harm he would award damages. Thus Judge Beatty displayed a willingness to exercise his equitable jurisdiction in a flexible manner to allow the economy to keep running while not allowing the downstream residents to go uncompensated.

Perhaps the ultimate "civilizing" process occurs when humans trained to believe in exclusive property rights seek to impose the surveyor's straight line onto nature's curves and swells. It became



Bunker Hill and Sullivan North Mill, Kellogg, Idaho, ca. 1890. (Barnard-Stockbridge Collection, University of Idaho Library)

[160] Ibid. at 983-84.

[161] This was in accord with Beatty's position in *Spokane Mill Co. v. Post*, see supra note 151.

[162] *McCarthy v. Bunker Hill & Sullivan*, 147 F. at 984.

Judge Beatty's task to determine who owned rights to the rivers that splashed downhill, or to the veins of ore that lay contorted under the mountains.

Water disputes, mining claims, and timber cutting cases continued to cross Judge Beatty's desk throughout his years in the federal court. His obituaries stated that he was remembered best for his mining decisions. He published in the *Federal Reporter* three of these detailed, factually-oriented opinions regarding the boundaries of the Emma, the Tyler, the Stemwinder, the Skookum, and the Last Chance claims. No less than nine opinions in the books, including both Beatty's circuit court decisions and Ninth Circuit appeals, seek to resolve the contest between the Bunker Hill & Sullivan Mining & Concentrating Co. and the Empire State-Idaho Mining & Developing Co. for ownership of the multimillion-dollar claims in the Coeur d'Alenes.

Judge Beatty's natural resource decisions were rendered with an eye to establishing order and assuring maximum economic development.

BEATTY'S LIFE AFTER RETIREMENT

In March of 1907, at the age of seventy-one, after seventeen years on the federal bench, James Beatty resigned from the federal judiciary. He and his wife toured the world, sending back letters to the Boise *Evening Capitol News* which were ultimately published in book form.[163] They lived briefly in Coeur d'Alene, Idaho, then eventually continued the westward movement of their lives, settling in Hollywood, California in the 1920s. It is hard to imagine an elderly, teetotaling jurist from Idaho living amid the raucous glamour of Hollywood in its heyday, but it was there Beatty spent the last years of his life. He died at the age of ninety-one of pericarditis and was buried in the Hollywood Cemetery not far from Rudolph Valentino.

In endorsing him for federal office, the Burlington, Iowa *Hawk-Eye* described Beatty, who had lived in Burlington as a law student, as a "typical ambitious young American: He went west and evidently has been 'growing up with the country,'..."[164] A review of his career indicates that while he grew up with the country, the country also grew up with him. As a legal and political leader in a state which entered the union in 1890, toward the end of the frontier, he helped shape the young West. His decisions helped guide Westerners as they matured and faced the responsibilities, regulations and encroachments of "civilization."

[163] James H. Beatty, *Letters of James H. Beatty While Traveling Around the World During 1907-08* (Coeur d'Alene, 1911).

[164] Burlington, Iowa *Hawk-Eye*, February 10, 1889.