

University of Nevada, Reno

Washoe Redux: Territory, Sovereignty, and Anthropologists

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for the degree of Master of Arts in History

By

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Abstract

Adding to the small body of historical and ethnohistorical scholarship on the Washoe Indians, including the works of James Downs, Jo Ann Nevers, and Mathew Makley, this thesis traces the route followed by the Washoe Indians of the eastern slope of the Sierra and Great Basin toward a reorganization of a tribal status and recognition of ancestral homelands, only achieved in the latter half of the twentieth century. The discovery of valuable minerals first in California and later in Utah territory (which would become Nevada) caused an influx of population from the outside world. The lives and cultures of indigenous peoples in the Far West were forever altered by these events. The Washoe, unlike many other groups of American Indians, never entered into treaties or agreements with the federal government. In the absence of treaty recognition, the Washoe were left without any land and subsequently no homes, subsisting on the fringe of the newly arrived white society for decades to come.

A major focal point of this thesis is the legal struggle of the Washoe Tribe of Nevada and California before the Indians Claims Commission created in 1946 to win compensation for land and resources lost to the expansion of the American nation. The legal process brought into focus the power of expert testimony, namely the anthropologists, Dr. Julian H. Steward and his lesser-known antagonist Dr. Omer Call Stewart in determining the outcome of the ICC decisions. The contrasting arguments of two anthropological viewpoints affected the status of not only the Washoe before the Indian Claims Commission, but also marked a milestone in the development of American anthropology in the twentieth century.

Acknowledgements

You know who you...

Table of Contents

Abstract	i
Acknowledgements	ii
Chapter	
I. Introduction	1
II. Background: Environment, Customs, and Encounters	8
III. From Allotment to Tribal Rejuvenation, 1887-1934	43
IV. The Indian Claims Commission: Disputed Territory	44
V. In Review	106
Maps	112
Bibliography	114

Chapter One

Introduction

Visitors to the Native American exhibit on Great Basin Indians in the Nevada State Museum in Carson City may read a brief text and observe adjacent images of indigenous artifacts and native peoples living in a high desert environment. The careful wording of the text panel reveals a complicated underlayment of the meanings and ambiguities in its attempt to describe the historical boundaries separating various native groups or people of the Great Basin. The overly-careful wording raises serious questions and assertions about distinct boundaries that are also related to concepts of sovereignty (who rules where and over what). All of these queries have a particular relevance to the history of the Washoe people in northern Nevada and the Sierra, especially their long road to federal recognition as a distinct tribal group and qualifications for compensation under the terms of the Indian Claims Commission Act of 1946.

The vagaries of the text panels suggest wide-ranging discussions, viewpoints, and opinions regarding Great Basin Indians, from the harsh descriptions of Mark Twain in *Roughing It* (1872) to the labored and conflicting analyses of modern twentieth-century anthropologists. The first sentence in the text panel notes that, “Indians in the Great Basin did not have clearly defined territorial boundaries,” the second sentence seeks to clarify the first by asserting that, “Instead they lived wherever they felt most comfortable.” The third sentence further explains that, “They would ask permission of other groups to work or visit areas where they felt less comfortable.” The text defends the theme that land occupancy by native groups was ordered, organized, and ongoing, not characterized by disorganization and anarchy. The concluding sentence on the topic of boundaries asserts, “This produced an understanding of

individual group territories that had clearly defined centers, but with edges of territories that graded into the next.”

The text panel concludes with reference to an accompanying map: “The map also shows the extent of Indian territories in the mid-1800s. Regardless of how much the Indians’ idea of territory differed from that of the United States government, it is clear that Indians were the sole sovereign in the shaded territories shown here.” The final paragraph admits to differing ideas of territorial boundaries by the government of the United States and native peoples but holds fast to the concept of “sole sovereignty” in the vaguely designated territories by particular Indian people.¹ Overall, the message emphasizes native people’s political and social organization and their historical possession of territories rooted in the concept of sovereignty—a concept consistent with American Indian policy that coupled land possession and/or use with native internal sovereignty or “Domestic Dependent Nations” within the United States.²

Early explorers, writers, and ethnographers often dismissed Great Basin Indians as existing in a static state, at the mercy of their environment, with no established relationships or tribal affiliation beyond family units. Into the early 1930s, government officials and anthropologists questioned the legitimacy of political and social organizations of Nevada’s indigenous people. By the 1940s, however, tribal status became a *fait accompli* for native

¹ In its entirety, the quote reads: “Indians in the Great Basin did not have clearly defined territorial boundaries. Instead, they lived wherever they felt most comfortable. They would ask permission of other groups to work or visit areas where they felt less comfortable. This produced an understanding of individual group territories that had clearly defined centers, but with edges of territories that graded into the next. The color shading on this map illustrates this concept.

“The map also shows the extent of Indian territories in the mid-1800s. Regardless of how much the Indians’ idea of territory differed from that of the United States government, it is clear that Indians were the sole sovereign in the shaded territories shown here. Nevada State Museum,” Carson City, Nevada, September 20, 2012.

² Kent McNeil, “Judicial Treatment of Indigenous Land Rights in the Common Law,” in *Indigenous Peoples and the Law: Comparative and Critical Perspective*, eds., Benjamin J. Richardson, Shin Imai, and Kent McNeil (Portland, Ore.: Hart Publishing, 2009), 258-259; Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia 1788- 1836* (Cambridge, Mass.: Harvard University Press, 2010), 191; Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, Mass.: Harvard University Press, 2005), 220-226.

peoples of the Great Basin thanks to the efforts of federal officials, including John Collier, Commissioner of the Office of Indian Affairs, and the mandates of the 1934 Indian Reorganization Act. By the late 1930s, the recognized Nevada tribes were the Northern and Southern Paiute, Western Shoshone, Washoe, and Goshute far to the east on the Nevada-Utah border.³

Still, territorial exclusivity became a divisive issue among newly recognized Indian tribes, the federal government, and expert witnesses. Contentions about boundaries and historical occupation of territories played a role in Indian land claims and compensation for loss of lands by the mid-twentieth century. The 1928 Meriam Commission's report entitled *The Problem of Indian Administration* revealed the dire need for reform of American Indian policy. According to twentieth-century American Indian historian Tom Holm, author of *The Great Confusion in Indian Affairs: Native Americans and Whites in the Progressive Era* (2005), the report condemned assimilation policies as "suppression of Native American cultures" serving only to demoralize and degrade Indians.⁴ The 1934 Indian Reorganization Act, which ended the allotment policy instituted by the assimilation efforts of the 1887 Dawes Severalty Act, offered American Indian tribes federal recognition under a tribal government.⁵ In Nevada, the Washoe Indians, a small indigenous group in northern Nevada and the eastern slope of the Sierra, formally received tribal status in 1937. With the conclusion of World War II, Congress showed interest in settling all outstanding Indian claims against the United States—this included contractual, non-contractual, legal, and non-legal claims. To this end, Congress passed the

³ The "Washo" will be referred to as the "Washoe," "Washoe Tribe," or "Washoe people" throughout the course of this thesis. Although the former spelling is the traditional anglicized translation of *Wa She Shu* traditionally used by the tribe, the legal spelling that appears on the tribe's corporate charter dating from 1937 is "Washoe."

⁴ Tom Holm, *The Great Confusion in Indian Affairs: Native Americans & Whites in the Progressive Era* (Austin: University of Texas Press, 2005), 186.

⁵ Vine Deloria, Jr., ed., *The Indian Reorganization Act: Congresses and Bills* (Norman: University of Oklahoma Press, 2002), 229-230; Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: University of Nebraska Press, 2001), 70.

Indian Claims Commission Act that established the Indian Claims Commission (ICC) in 1946. Determined to “right old wrongs,” the commission offered Indian tribes financial compensation in exchange for outstanding land claims and lost resources. The effectiveness of cases brought before the ICC depended heavily on the expertise of anthropologists, ethnologists, historians, land appraisers, and attorneys. The majority of the cases involved inadequate compensation for past ceded lands and resources as defined in treaties or, in the case of the Washoe people, no treaties, and no compensation. Prior to the establishment of the ICC, Indians bringing grievances to the federal government were first required to obtain a special act of Congress for their case to be considered. Legal “technicalities” caused the dismissal of many cases that made it to the litigation phase.⁶

Anthropologists often became critical for the cases before the ICC when called to serve as expert witnesses on behalf of the Indian tribes (plaintiff) and the federal government (defendant). The ICC process represented one of the first instances in which anthropologists dealt extensively with contemporary issues surrounding indigenous peoples. The role of anthropologists and the development of “applied anthropology” in ICC cases marked a pivotal change in the practice and methodology of American anthropology.⁷

While the ICC cases became a lucrative venture for some attorneys representing numerous Indian tribes in the United States, they also became a way for some anthropologists to become advocates for social justice on behalf of their subjects and informants. Anthropologists

⁶ Harvey Rosenthal, *Their Day in Court: A History of the Indian Claims Commission* (New York: Garland Publishing, Inc., 1990), vii-viii. Rosenthal’s work is the essential legal history regarding the little known Indian Claims Commission. To date, there are not any other academic studies devoted solely to the ICC. Rosenthal discusses how and why the ICC was created, how it functioned, and the insights provided into the operation of Congressional committees. Although thorough in highlighting the slow progress and complications inherent in the ICC, Rosenthal pays little attention to the complexities that arose with tribal identities, interstate boundaries, and multiple land use by different tribes.

⁷ “Kroeber and the Indian Claims Commission Cases,” Omer C. Stewart, reprinted from “Alfred L. Kroeber: A Memorial,” 1961, Omer Call Stewart Papers, Collection No. 86-03, Box No. 1, (University Archives, Special Collections, University of Nevada, Reno [hereafter cited as Stewart MSS]), 181-183.

received payments too from the attorneys or the tribes (through loans issued by the federal government), but the ICC proceedings also offered an opportunity to “apply” their research and theories whether on behalf of the Indians and their legal teams or of the federal government.

In Nevada and portions of eastern and northern California, various groups of Paiute, Shoshone, Goshute, and Washoe people all laid claim to lands and resources. Lawyers called on anthropologists to aid in sorting competing native claims. Their task required verifying the length of time and boundaries of occupancy by native groups or tribes.⁸ Government lawyers’ standard argument claimed that indigenous people only used portions of their territories at any given time. Anthropologists working on behalf of the Indians utilized linguistic patterns, archaeological evidence of occupancy, and the testimony of indigenous informants to cast a larger network of established indigenous territorial claims.

In the case of the Washoe, two prominent and well-respected anthropologists of their time—each employing different methodology to study the Indians of the Great Basin—challenged one another in front of the ICC. Julian Haynes Steward of the University of Illinois and his lesser-known antagonist Omer Call Stewart of the University of Colorado offered contrasting expert opinions regarding the Washoe Indians in ICC “docket 288.”⁹ Julian Steward’s approach to studying Indians of the Great Basin relied heavily on theories, laws, and typologies. Native American historian Ned Blackhawk, author of *Violence Over the Land: Indians and Empires in the Early American West* (2006), asserts that Steward’s scientific-theoretical approach to anthropology left him disconnected from the everyday struggles of his informants.

⁸ “Kroeber and the Indian Claims Commission Cases,” Stewart MSS, 185-186.

⁹ Docket refers to a list of cases set for trial.

Steward's former student, Omer Stewart, on the other hand, focused more on the humanistic and applied aspects of fieldwork to make his case. Stewart was a thoroughgoing cultural relativist. He believed Great Basin Indians were not static or strictly products of their environment, rather they were active and capable participants constantly working to manipulate their environment.¹⁰

Both Steward and Stewart shared similar academic backgrounds, but their expert testimony in ICC cases concerning the Great Basin Indians placed them in opposing camps. Their conflicting views about the nature of the Washoe Indians bear consideration in light of ICC decisions. Differing anthropological viewpoints presented to the ICC in the case of the Washoe reflect a chapter in the interplay between the often-conflicting conclusions of anthropologists and historical events that shaped the lives of native peoples, particularly when disputes were presented to courts and commissions of government agencies with the power to determine the welfare and destiny of indigenous people.

In its broadest sense, this thesis investigates the torturous route followed by the Washoe people of the Sierra and Great Basin toward reorganization into a tribal entity and recognition of traditional homelands, only achieved in the latter half of the twentieth century. More narrowly, this thesis studies the contrasting arguments of two anthropological viewpoints that affected the status of the Washoe before the Indian Claims Commission.

Often overlooked by historians, the experience of the Washoe people in regards to westward expansion represents a partial success story. Until the discovery of gold in California in 1848, the Washoe people conditioned their environment to their own needs, without the

¹⁰ Ned Blackhawk, *Violence Over the Land: Indians and Empires in the Early American West* (Cambridge, Mass.: Harvard University Press, 2006), 11-12; Carol Howell, ed., *Cannibalism in an Acquired Taste: and Other Notes* (Niwot: University Press of Colorado, 1998), 143-151.

interruption of Euro-Americans.¹¹ Considering the rapidity with which miners, ranchers, loggers, and settlers occupied and exploited their traditional homelands, the Washoe never formally entered into any treaties with the federal government. Events pushed the Washoe people to the peripheries of the expanding white society, leaving them virtually “landless” until the early decades of the twentieth century.

The process of submitting a claim, which eventually produced a monetary settlement for the Washoe Indians after more than twenty years of litigation and planning, provides a case study of the inner workings of the ICC. The accompanying story of anthropological theories and opinions linked with distinct academic personalities offered competing views regarding the lives and cultures of indigenous people in Great Basin and eastern slope of the Sierra. Highly visible in the years leading up to the Indian Claims Commission Act in the post World War II period are the efforts of the Washoe people to adapt and survive amidst the vicissitudes of United States Indian policy.

¹¹ Grace Dangberg, *Washo Tales* (Minden, Nev.: Grace Dangberg, 1968), 1-2.

Chapter Two

Background: Environment, Customs, and Encounters

Prior to the arrival of Euro-Americans into the Far West, the intermountain region between the Sierra and the Rockies was not devoid of human habitation. Although the Great Basin proved to be the last unexplored portion of North America, and what would become the United States after the Treaty of Guadalupe Hidalgo in 1848, it was “home” to various indigenous people whose ancestors lived and subsisted in the region for thousands of years. Many independent cultures, languages, and socio-political relationships existed in this remaining portion of North America’s uncharted and sparsely populated “wilderness.” What Americans referred to as the western “frontier,” Native Americans would refer to as their home, and the creation place of their people.¹²

Scholars have noted the differing frontier experiences of indigenous peoples and Euro-Americans. Native American historian Donald Fixico claims rather than push “forward” toward “progress” or “civilization,” indigenous populations sought instead to push back in order to protect their lands and resources.¹³ Up until the nineteenth century, Washoe homelands remained guarded by their remote geographic location, which left them mostly insulated from outside influences. In 1827, American explorer and fur trapper Jedediah Smith stumbled into Washoe lands in the foothills of the eastern Sierra. The Washoe Indians showed hostility toward

¹² Washoe folklore legends suggest that the Washoe people did not travel to their lands from another place, rather they were created there and had always been there.

¹³ Donald L. Fixico, “From the Other Side of the Frontier,” ed., Donald L. Fixico, *Native Views of Indian-White Historical Relations* (Chicago, Ill.: The Newberry Library, 1989), 8; Daniel K. Richter, *Facing East from Indian Country: Native History of Early America* (Cambridge, Mass.: Harvard University Press, 2001), 2-3.

Smith and his men by throwing rocks at the Anglos. This encounter may represent the first meeting between Washoe Indians and a group of non-Natives in their territory.¹⁴

The Washoe have never been as numerous as neighboring indigenous peoples of the Great Basin, primarily the Paiute and Shoshone. For thousands of years, their tiny bands of kinfolk and family groups occupied a small sliver on the western edge of the Great Basin—extending from the waters of Lake Tahoe (*Daowaga*) in the west, to the Pine Nut Hills along the eastern front of the Sierra.¹⁵ Linguistically, the Washoe language, a Hokan language is not in the same linguistic family as other Indian languages found in the Great Basin. The Washoe language relates more closely to languages found beyond the western slope of the Sierra toward the interior of California. It is probable that a small fragment of ancient Hokan people drifted over the Sierra at some point, settled, and adapted to the conditions of the eastern slope of the Sierra and the Great Basin.¹⁶ Culturally, the Washoe Indians exhibited characteristics found in both California Indian tribes and Basin Indian culture. Some of the shared features with California Indians are conical shaped bark dwellings, coiled basketry techniques decorated with geometric shapes, and language affiliation. The Washoe shared some traits with Shoshonean tribes to the east including the use of long nets as a technique in “rabbit drives.” The tasks included a special “boss” for rabbit and deer hunts, fishing techniques, and private ownership of

¹⁴ Jedediah Smith, *The Southwest Expedition of Jedediah S. Smith: His Personal Account of the Journey to California, 1826-1827, ed., George R. Brooks* (Glendale, Cal.: The Arthur H. Clark Company, 1977), 171-172; Matthew Makley, “These Will Be Strong: A History of the Washoe People” (PhD Dissertation, Arizona State University, Phoenix, 2007), 9, 25. The Washoe Indians may have encountered or met Spaniards while traveling to the California lowlands or the coast for trade. Some historians maintain that Spanish presence extended into Washoe territory where Washoe Indians were captured and enslaved. No record of Spanish travel in Washoe territory exists though. Washoe tradition stubbornly holds that the Spanish did cross the Sierra long before the encroachment of Anglos.

¹⁵ Makley, “These Will Be Strong,” 1-2.

¹⁶ Alfred L. Kroeber, *Handbook of the Indians of California* (New York: Dover Publications, 1976), 569-570.

clumps of piñon pine trees.¹⁷ The subsistence cycle and social organization of the Washoe Indians clearly reflects those of other Basin Indians. Unlike neighboring Paiute and Shoshone, Washoe mythology is much more detailed and elaborate. When whites arrived, the Washoe people experienced parallel disruptive events in both California and the Basin.¹⁸

Anthropologist James Downs, author of *The Two Worlds of the Washo: An Indian Tribe of California and Nevada* (1966), asserts that because the life ways of the Washoe differed little from neighboring peoples, early explorers who met bands of Washoe people in western Nevada “seem not to have differentiated them from the other pedestrian hunting and gathering peoples of the area.”¹⁹ Given the rugged and inconsistent environmental conditions of the Great Basin, up to and including the base of the Sierra, indigenous people relied on a variety of resources scattered throughout the region. Because resources were not available year-round, all Indian groups of the Great Basin moved from one place to another depending on the season.

The Great Basin, a name coined by explorer John C. Frémont by 1845, refers to the vast and seemingly empty region of interior drainage located within the boundaries of the Rocky Mountains on the east extending to the Sierra Nevada and Cascade ranges on the west. True warm deserts create a southern boundary, while the northern boundary encompasses a cold sagebrush desert with coniferous forests at high elevations.²⁰ This large expanse, once

¹⁷ Robert F. Heizer and Albert B. Elasser, “Some Archaeological Sites and Cultures of the Central Sierra Nevada,” *Reports of the University of California Archaeological Survey*, No. 21, (1953), 4.

¹⁸ James Downs, *Two Worlds of the Washo: An Indian Tribe of California and Nevada* (New York: Holt, Rinehart and Winston, 1966), 70-71. Unlike historians, anthropologists had been working with the Washoe since the early years of the twentieth century. James Downs, a student of Warren d’Azevedo, provided an ethnohistorical account of the Washoe ending in the early 1960s. Much of Downs’s work focuses on the life ways and culture of the Washoe people, but it does provide historical insights into the changing nature of Washoe culture. Perhaps where Downs differs from other participant ethnographic studies are that he does not record day-to-day activities, which is why this could be considered an ethnohistory. This book came as a part of a series designed to offer insights to students of social sciences into the richness and complexity of human life in various places.

¹⁹ Downs, *Two Worlds of the Washo*, 4.

²⁰ James Young and B. Abbot Sparks, *Cattle in the Cold Desert* (Reno: University of Nevada Press, 2002), 21; Richard Francaviglia, *Mapping and Imagination in the Great Basin: A Cartographic History* (Reno: University of

dominated by massive pluvial lakes, is now covered by a sea of sagebrush. Its dryness, high elevation, and cold desert temperatures are defining aspects of the Basin. The eastern slope of the Sierra Nevada range lies within a “rain shadow.” This makes it considerably drier than the western slope. Because of the rain shadow, the Great Basin receives very little annual rainfall, especially in the summer months. Unpredictable rainfall, from one year to the next, creates uneven vegetation dispersal and growth.²¹ Winter precipitation feeds the Basin’s few water resources, which simply evaporate or vanish into sinks and washes as they run their courses. Larger watercourses, including the Carson, Walker, and Truckee rivers flow the entire year. Other, smaller bodies of water, created by sudden cloudbursts, or downpours tend to pool up and evaporate quickly afterward.²²

Rising above the vast expanses of grey sagebrush are numerous mountain ranges. The Great Basin contains more than 160 autonomous ranges running north to south across the entire Basin. These ranges have been described as, “an army of caterpillars marching toward Mexico.”²³ The Sierra Nevada range rises more than 8,000 feet above sea level and can be just as uninviting as the arid valleys below depending on the time of year. At higher elevations, the temperature is much colder with regular snowfall beginning in the late fall. Snow arrives as early as October and can last on the peaks and in high-altitude valleys as late as May or June. Though the mountains provided indigenous peoples with an abundance of large and small mammals, fish, and various plants and berries, they were only accessible after the late spring. Animals either went into hibernation during winter or moved into the lowlands, while lakes and

Nevada Press, 2005), 1-6; Samuel G. Houghton, *A Trace of Desert Waters: the Great Basin Story* (Salt Lake City, Utah: Howe Bros., 1986), 105, 220.

²¹ Martha Knack and Omer Stewart, *As Long as the River Shall Run: An Ethnohistory of Pyramid Lake Indian Reservation* (Berkeley: University of California Press, 1984), 1-11.

²² Downs, *Two Worlds of the Washo*, 8.

²³ Eugene P. Moehring, *Urbanism and Empire in the Far West, 1840-1890* (Reno: University of Nevada Press, 2004), 121-122.

streams froze. It is doubtful that the Washoe, or any other Indians of the Great Basin, had the capabilities of surviving in such an environment during winter months. Well-known archaeologist Robert Heizer determined in 1952 after an extensive archaeological study of the high Sierra that ancient humans stayed in higher elevations only during the summer months based on artifacts found at various locales around the lake. Cooler mountain temperatures and abundant resources invited seasonal migration from the low lands of the Great Basin and foothills of the eastern Sierra.²⁴

Despite the formidable conditions of the Basin, the ecosystem is home to many species of plants, mammals, birds, reptiles, and fish that all comprised potential food sources for Indians of the region. Prior to white settlement in and around the region, indigenous people relied entirely on the environment. Indigenous people of the region had an intimate knowledge and understanding of the uses of various plant and animal resources surrounding them. Numerous plants provided indigenous people with a basic diet, but game and fish were also important sources of food. Grasses, seeds, and roots generally did not produce enough food to create a surplus for the winter, which required the Washoe to seek out supplemental food sources. The annual piñon pine nut harvest was perhaps the most important activity of the fall. The occasion brought all Washoe groups together. It was as much a social event as it was a necessity. Piñon pine trees grow from Virginia City, Nevada, south sixty miles to an area close to Coleville, California. The most important, and “sacred,” piñon forests were located northeast of Gardnerville, Nevada in the Pine Nut Mountains. Piñon pine trees provided seeds (*tah gum*), which could be collected in large quantities. The seeds yielded by the trees provided an important food source that usually amounted to tens of thousands of pounds. A successful piñon

²⁴ Makley, “These Will Be Strong,” 44; Heizer and Elasser, “Some Archaeological Sites,” 5-6.

harvest could spell the difference between security and starvation in the winter months.²⁵

Starting with early studies of the Washoe, anthropologists pointed out that families picked nuts only from their own plots marked off by stones. Trespassing on another's plot would result in breaking the trespassers gathering pole and seizing his harvest. The concept of "private property" or at least exclusive property is evident in these harvest practices.²⁶

When available, wild game animals provided red meat and leather to make clothing, blankets, and other necessities. Communal hunting usually involved appointing a special "boss," mostly notably the "rabbit boss," to supervise the activity. Without the sanction of the boss, a communal hunt or drive could not occur. Fish found in lakes and streams were reliable and plentiful, but strictly seasonal. In the spring, the Washoe Indians, usually on the verge of starvation converged on the shores of Lake Tahoe. Like the Pine Nut Mountains, Lake Tahoe too is a sacred place for the Washoe people. The temperatures were cooler at higher elevations, and the lake provided more than enough food and water. Washoe were proficient at fishing—they used several techniques including "fish blinds," shaded areas that attracted fish, weirs, and fish traps made of conical-shaped baskets. The responsibility of a hunting boss also included regulating fishing.²⁷ The boss would notify the people of which fish should be taken, and where. Similar to concepts of property rights during the piñon harvest, fishing platforms and traps became the property of the family or group who built them. This allowed them to reclaim the

²⁵ Jo Ann Nevers, *Wa She Shu: A Washo Tribal History* (Reno: Inter-Tribal Council of Nevada, 1976), 10-12; Downs, 20-21. Jo Ann Nevers is responsible for producing one of the only contemporary and academic studies of the Washoe people. Nevers, a member of the Washoe Tribe of Nevada and California, utilizes a strong variety of primary sources including governmental reports and publications, but the true strength of her work however is derived from her long list of Washoe interviewees. Her position as an "insider" perhaps allowed her greater access to the views, opinions, and stories of her informants without the same biases or omissions that might have been present if consulted by other anthropologists, ethnographers, or non-native interviewers. Though maybe overly optimistic in parts, this work is a valuable piece of scholarship in a very narrow field of historical study.

²⁶ Downs, *Two Worlds of the Washo*, 41; Robert H. Lowie, "Ethnographic Notes on the Washo," *University of California Publications in American Archaeology and Ethnology*, vol. 36, no. 5 (1939), 303.

²⁷ Makley, "These Will Be Strong," 40-41; Samuel A. Barrett, *The Washo Indians* (Milwaukee, Wis.: Public Museum of the City of Milwaukee Order of the Trustees, 1917), 12.

equipment from year-to-year.²⁸ Catching fish meant that the Washoe used drying techniques to preserve the fish for later use. Sometimes stores of dried fish could supplement winter diets, especially in times of famine. Dried fish ground into powder provided added nutrition when added to porridges or water.²⁹ Downs claims, “A list of all the plants used by the Washo[e] for food and all the species of animals hunted would be far too long to publish...”³⁰ The variety is attributed to the fact that no single resource could be counted on to provide food throughout the entire year.

In their quest for sustenance, the Washoe drew on the resources of the arid desert region of the Great Basin, the string of lowland valleys lying along the eastern edge of the Sierra Nevada, and the a series of high mountain valleys near and around Lake Tahoe. Popular historian Phillip Fradkin notes that although anthropologists labeled the Washoe “simple,” they possessed the “wherewithal to cover a huge amount of varied territory.” Downs claims, “The Washo[e] frequently had to undertake long journeys to obtain trade articles... Tribal tradition recalls long trips during the summer which took families to the shores of the Pacific to gather shell fish.”³¹ Most of what the Washoe Indians needed existed within the “life zones,” or ecosystems, they called home.

Each of these “life zones,” *Artemisian*, *Sierran*, *Alpine*, and *Arctic* support different variations of resources during different seasons. Despite the harsh conditions of the Basin and the accompanying mountain ranges, the land provided for those who knew how to use and exploit it. Estimates made by zoologists located an average of nearly 12,000 mammals of all species per every square mile in Nevada. Many of the mammals were small, including squirrels,

²⁸ Downs, *Two Worlds of the Washo*, 41.

²⁹ Nevers, *Wa She Shu*, 9.

³⁰ Downs, *Two Worlds of the Washo*, 8-11.

³¹ Phillip Fradkin, *The Seven States of California: A Natural and Human History* (Berkeley: University of California Press, 1997), 65-66; Downs, *Two Worlds of the Washo*, 37.

gophers, rabbits, and field mice. The abundance of small animals created great potential for those willing to seek out and find them. Washoe country also included large fur bearing animals including bears, foxes, beaver, and others.³² In the Washoe Valley, between Carson City and Reno, Nevada, the Washoe gathered a multitude of wild plants including, but not limited to, wild onions, rhubarb, chokecherries, and wild sweet potatoes. Gathering plants and seeds required a great deal of time and energy.³³ In many instances, special knowledge of wild plants and seeds was required to properly prepare or preserve them.

According to Jo Ann Nevers, Washoe Tribal Historian, the Washoe people traditionally categorized themselves into three different groups. Each group identified with the geographic region where they resided. The *Wel mel ti*, or northerners occupied the areas around Honey Lake and Sierra Valley, California, down through Washoe Valley to Eagle Valley. The *Pau wa Lu* lived in the eastern part of the territory, in Carson Valley, and the *Hung a lel ti*, or southerners lived near Markleville, south of Lake Tahoe. Even with their small numbers, the Washoe occupied nearly 13,000 square miles in Nevada and California. Some estimates place the population density at about four persons per square mile. University of California, Berkeley anthropologist Alfred L. Kroeber determined about one-third of the total population lived in California, the other two-thirds in Nevada.³⁴

The population lived in small bands, usually several families together in groups occupying temporary structures. University of Nevada anthropology professor Warren d'Azevedo coined the term "bunches" to refer to the Washoe's social structure. Cooperation allowed small groups, or "bunches," to accomplish tasks beyond the capabilities of a single family. The composition of a group's membership often fluctuated and remained heterogeneous,

³² Downs, *Two Worlds of the Washo*, 11.

³³ Nevers, *Wa She Shu*, 10-11.

³⁴ Nevers, *Wa She Shu*, 3; Downs, *Two Worlds of the Washo*, 11; Lowie, "Ethnographic Notes on the Washo," 301.

with informal leadership maintained by a dominant local kin group.³⁵ Nevers suggests that although the Washoe people had internal divisions based on their location, they saw themselves a distinct people, different from neighboring groups of Indians.³⁶ Samuel A. Barrett, author of one of the earliest published ethnographic study of the Washoe from 1917 observed social organization based on family units, and village communities. Barrett maintains that village communities constituted the largest divisions and each was distinct.³⁷

Writing in the 1920s and 1930s, Kroeber observed that separatism existing between scattered groups of Washoe was “extreme.” Small-scale political unification extended only to groups of six to seven families. Only festivals succeeded in unifying the groups. However, Kroeber asserts that none of the distinctive groups was ever known to have waged war on one another—historically, scuffles usually involved California “Digger” Indians including the Maidu and Miwok, and the Paiutes of the Basin. Surely, the Washoe’s distinctive dialect bound them together, while subsequently setting them apart from other groups of Numic-speaking Indians in the vicinity. As a matter of necessity though, the Washoe could not live together in large groups for long periods. If they did, the risk of depleting food resources in any one area was high. This explains the purpose of the small mobile social units, or “bunches” as described by d’Azevedo.³⁸

The Washoe, like other Basin Indians relied on “basic” techniques for survival. Prior to the coming of the whites, the Washoe were without agriculture, domesticated animals, metallurgy, or even basic knowledge of pottery making.³⁹ Although Downs implies that the Washoe exhibit the practices of primitive humans, Ethnohistorian and Washoe Indian expert

³⁵ Warren d’Azevedo, “Washoe,” in *The Handbook of North American Indians*, vol. 11, ed. et al. William C. Sturtevant, vol. ed. Warren d’Azevedo (Washington D.C.: Smithsonian Institution, 1986), 484-485.

³⁶ Nevers, *Wa She Shu*, 20.

³⁷ Barrett, *The Washo Indians*, 8-9.

³⁸ Lowie, “Ethnographic Notes on the Washo,” 301-302.

³⁹ Downs, *Two Worlds of the Washo*, 3.

Matthew disagrees, saying their “primitive” technologies necessitated a close connection and intimate knowledge of the land. The view Downs presents illustrated the theoretical view that all humans regardless of history, environment, and worldview fit into a concrete model of “cultural evolution.” Downs was not the first or last anthropologist to make such assumptions.⁴⁰ White settlement in Washoe territory beginning in the mid nineteenth century dramatically changed the Washoe people’s way of life. Anglo trappers and explorers trickled into the Great Basin starting in the 1820s. Their travels throughout the Basin preceded the arrival of permanent white settlements in the Far West that inundated the life of the Washoe.

Competing American and British fur trapping companies sent agents into Indian territories beyond the continental divide to scour the region for valuable fur resources. Trappers from the American-owned Rocky Mountain Fur Company and the British-owned Hudson Bay Company made their appearance in the region beginning in the mid-1820s. Peter Skene Ogden of the Hudson Bay Company likely penetrated the northern portion of Nevada earlier than any other Anglo trapper or explorer in 1825-1826. Prior to Rocky Mountain Fur Company trapper Jedediah Smith’s 1826 southwest expedition, no Anglo had crossed the Great Basin or the Sierra Nevada mountain range to reach the California coast. After arriving in southern California, Smith moved north to the Stanislaus River where he decided to return to Cache Valley in Utah for additional supplies. He left California in 1827 to traverse the Great Basin heading west to east. It was on this trek that he made early contact with the Washoe people while crossing the Sierra. The Washoe and their territory were unknown to Anglos prior to this encounter.⁴¹

Ogden made subsequent expeditions into the Great Basin between 1828 and 1830. These expeditions were part of a strategy launched by the Hudson Bay Company to eradicate all furs or

⁴⁰ Makley, “These Will Be Strong,” 50.

⁴¹ d’Azevedo, “Washoe,” 493.

create a “fur desert,” west of the Continental Divide in the Snake River and adjoining area with the intention of driving American fur traders from the region.⁴² Competition by agents from both countries to exploit the resources of the region damaged the already fragile ecosystem—though neither country sought conquest or settlement of the Great Basin, which was still part of the newly independent Republic of Mexico at that time. Their desires in the Basin were purely commercial, but overall the British Hudson Bay Company did seek to keep Americans out of the Oregon Country. Ogden described the Great Basin as generally “bleak and difficult to access.” Despite the relatively short time that early explorers combed the Great Basin for furs, their actions profoundly changed the lives of the Indians. Since all groups of indigenous people living in and on the perimeter of the Great Basin engaged in similar subsistence practices and lifestyles, all groups of Indians, including the Washoe, noticed the effects of trappers and explorers in their territories.⁴³

Following the Smith and Ogden expeditions, other expeditions came across the Great Basin in the direction of Oregon and California. These expeditions were important precursors in establishing trails that eventually became popular and widely used overland routes into the Far West. Walker’s 1833 expedition followed the Humboldt River through Nevada and the north fork of the Stanislaus River into California. It is widely speculated that the men in the Walker expedition were the first whites to lay eyes on the Yosemite Valley.⁴⁴ It is probable that the Walker party encountered Washoe Indians while passing through their territory, but as many

⁴² Russell Elliot and William Rowley, *History of Nevada* (Lincoln: University of Nebraska Press, 1987), 35-37; Gloria G. Cline, *Exploring the Great Basin* (Norman: University of Oklahoma Press, 1963), 123; John Phillip Reid, *Contested Empire: Peter Skene Ogden and the Snake River Expeditions* (Norman: University of Oklahoma Press, 2002), 6, 42; Blackhawk, *Violence Over the Land*, 166-167; John S. Galbraith, *The Hudson Bay Company as an Imperial Factor, 1821-1869* (Berkeley: University of California Press, 1957), 10.

⁴³ Knack and Stewart, *As Long as the River Shall Run*, 32-33.

⁴⁴ Thomas Frederick Howard, *Sierra Crossing: The First Roads to California* (Berkeley: University of California Press, 1998), 18-30.; Francis P. Farquhar, *History of the Sierra Nevada* (Berkeley: University of California Press, 1965), 35.

authors have maintained, the Washoe preferred to observe strangers in their territory while remaining out of sight. By remaining concealed, the Washoe gave strangers few opportunities to observe them.⁴⁵

Early trappers and traders saw few Indians while passing through the Great Basin. Encounters between trappers and Indians were characterized by cooperation when it suited the needs of the trappers as well as violent episodes. Legal historian John Phillip Reid explores the often tumultuous relationship that existed between Anglo fur trappers and North American Indians. Reid asserts that American and British fur companies practiced justice in the form of violence when Indians perpetrated transgressions against their employees. Transgressions might not be limited to homicide. They could also include theft, and resistance to white incursion on Indian lands.⁴⁶

Using violence allowed trappers to quickly exact vengeance against suspected wrongdoers, which Reid claims allowed the Anglos to save face and discourage repeated offense. In 1833, the first recorded fight between white trappers and Great Basin Indians occurred on the banks of the Humboldt sink. Joseph Walker's men encountered a sizeable group of Paiute Indians nearby—described as “dancing and singing with the greatest of glee.”⁴⁷ Feeling threatened by the number and proximity of the Indians, Walker's party, unprovoked, fired a volley with their guns. The expedition's recorder, Zenas Leonard, noted in his journal that the actions of the “bold and saucy” Indians greatly excited Captain Walker, “who was naturally of a cool temperament, and he gave orders for the charge, saying there was nothing equal to a good

⁴⁵ Nevers, *Wa She Shu*, 42-43.

⁴⁶ John Phillip Reid, *Patterns of Vengeance: Crosscultural Homicide in the North American Fur Trade* (Pasadena, Cal.: Ninth Judicial Circuit Historical Society, 1999), 170-187.

⁴⁷ Zenas Leonard, *Adventures of Zenas Leonard, Fur Trader*, ed. John C. Ewers (Norman: University of Oklahoma Press, 1959), 161-164; David Beasley, *Crow's Range: An Environmental History of the Sierra Nevada* (Reno: University of Nevada Press, 2004), 38.

start in such a case.”⁴⁸ In the aftermath of the shooting, thirty-nine Indians lay dead. The event set a sorry tone for Indian/white relations in the Great Basin. Some Indians of the Great Basin treated the appearance of white men with curiosity. Although 1834 probably precedes her remarks, Northern Paiute author and advocate Sarah Winnemucca, writing largely for a sympathetic white audience in the 1880s, described her grandfather’s cheerful reaction when the first white people entered their country:

Grandpa at once made signs of friendship by throwing down his robe and throwing up his arms to show them he had no weapons; but in vain—they kept him at a distance. He had expected so much pleasure in welcoming his white brothers to the best in the land...he came away quite unhappy.⁴⁹

In the case of the Walker expedition, Winnemucca contended that the Paiutes’ spirit of friendship was met with suspicion and eventual violence though the true intentions of the Paiute cannot be verified. Winnemucca does not indicate any such violence initially among her grandfather and whites entering their territory, but she does note the fear exhibited by some of the Paiute when the white interlopers arrived, as well as the wariness shown by whites toward approaching Indians. Walker’s actions suggest that he fully intended to give the Indians a show of overwhelming force to avoid further incident.

When Reid draws comparisons between British mountain men and American mountain men, he concludes that both employed violence in their dealings with Indian people. Still he claims that one of the best-known and least challenged themes of the fur trade is the comparison between the mild, humane policy of the British toward the Indian population and the harsh, brutal actions of the Americans. British fur-company employees married or lived with Indian women more often than American mountain men did. This allowed the British to be more

⁴⁸ Leonard, *Adventures of Zenas Leonard*, 164.

⁴⁹ Sarah Winnemucca Hopkins, *Life Among the Piute: Their Wrongs and Claims*, ed. Mrs. Horace Mann (Reno: University of Nevada Press, 1994 [c1882]), 1-7.

skilled in the ways of Indian diplomacy. Yet both the British and the American fur traders adopted policies of swift, certain, and brutal vengeance in a culture of violence and enterprise.⁵⁰

As Leonard recorded the sentiments, events, and scenes of the party's expedition across the Great Basin and into California, he noted that the men of the Walker expedition were keenly aware of the significance of their presence in California. They regarded the region as a place for the future of American expansion despite the already-established presence of the Republic of Mexico. As William Goetzmann argued in *Exploration and Empire: The Explorer and the Scientist in the Winning of the American West* (1966), in addition to fur trapping, the goals of early American expeditions entailed scouting a region for an expanding nation.⁵¹

If the participants of the Walker expedition grasped the importance of the Far West for the future wellbeing of the United States, then the later expedition of John C. Frémont in 1843-1844 fully embraced that notion as a motivation to journey into and map areas beyond the Continental Divide. Nevers maintains that Frémont, during his first surveying expedition, left the earliest written accounts specifically describing the Washoe people.⁵² Smith encountered the Washoe more than a decade earlier, but his journal did not reemerge as a significant record of western history until the twentieth century, and Smith, unlike Frémont, did not distinguish the Washoe from other Indian encounters. In early 1844, Frémont and his men traveled through Washoe territory on their way south from the Oregon country. Detailed journals kept by Frémont preserved the party's activities and meetings with native peoples along the eastern slope

⁵⁰ Reid, *Patterns of Vengeance*, 118-149.

⁵¹ Leonard, *Adventures of Zenas Leonard*, 89, 108; William Goetzmann, *Exploration and Empire: The Explorer and the Scientist in the Winning of the American West* (New York: Knopf, 1966), ix-xiii.

⁵² Nevers, *Wa She Shu*, 38-39; Though Jedediah Smith encountered the Washoe in 1827, it is doubtful he was able to distinguish them from other indigenous people he encountered on his expedition. Given clues in Smith's writing as to his location, editors of his journal determined that he must have been in Washoe territory, and therefore the Indians he encountered were the Washoe. It should also be noted that Smith's journal was largely forgotten until it was rediscovered in the second decade of the twentieth century. Frémont's account was made public almost immediately after he returned, therefore much more visible than Smith's written account.

of the Sierra. Upon meeting an individual Washoe man, Frémont recognized, “Here we ceased to hear Shoshone language—that of this man being perfectly unintelligible.”⁵³

During their trek, they witnessed fishing dams in the waterways, and visible periodic smoke signals coming from the hilltops. While observing a large waterway in the sagebrush lowlands, the party encountered a Washoe family situated just east of the Sierra. When the family saw the Americans, the man fled into the foothills. The party captured the woman, but her continued screaming prompted them to release her.⁵⁴ Fear shown by some Washoe more than likely resulted from the stories of mistreatment by the white men told by other Basin Indians, rightfully causing a general wariness of all white men.⁵⁵ Frémont’s party made contact with several other small groups of Washoe in the Sierra. His observations indicate the friendliness of the Washoe toward his party—offering them pine nuts, the highest form of hospitality the Washoe could offer a visitor. He noted the scantiness of their clothing in the cold temperatures.⁵⁶ The party of explorers traded some small items with the Washoe, “[this was] the first recorded instance of the Washo[e] receiving material goods from a new culture.”⁵⁷ While Frémont’s meeting with the Washoe was brief, it offered an important record of both Washoe hospitality and fearfulness. Other Euro-American travelers and emigrants passed through Washoe lands following the Frémont expedition as the Washoe kept their distance, observing wagon trains and exploring parties from a distance.

Washoe oral traditions tell of an encounter with the ill-fated Donner Party two years later in 1846. The Washoe people still were not familiar with whites having rarely come in contact

⁵³ John C. Frémont and Samuel M. Smucker, *The Life of Col. John Charles Fremont: and his Narrative of Explorations and Adventures in Kansas, Nebraska, Oregon, and California* (New York: Miller, Orton & Mulligan, 1856), 379.

⁵⁴ Frémont and Smucker, *The Life of Col. John Charles Fremont*, 375-376.

⁵⁵ Nevers, *Wa She Shu*, 42.

⁵⁶ Frémont and Smucker, *The Life of Col. John Charles Fremont*, 386-388; Nevers, *Wa She Shu*, 40.

⁵⁷ Downs, *Two Worlds of the Washo*, 73; Potential transactions with the Spanish in California were never recorded, this statement could be clarified by stating it was the first instance of the Washoe receiving trade goods from Anglos.

with them. In Thomas Sanchez's 1973 novel, *Rabbit Boss*, the story begins with a group of concealed Washoe Indians observing a macabre scene of cannibalism from behind the trees.⁵⁸ Sanchez paints an ominous picture in the first chapter of Washoe attitudes toward whites in their territory. He speaks of Basin folklore, which described the white men as powerful and evil—acts of cannibalism only seem to have reinforced this notion. Although a novel, scholars of Washoe culture note such tales. Matthew Makley indicates in his dissertation “These Will Be Strong: A History of the Washoe People,” a recent and thorough academic ethnohistory of the Washoe people, the existence of several oral histories that recount either seeing the Donner Party while hunting or hearing of family members witnessing the emigrants starving in the snow near present day Truckee, California. Stories of the event continue to remain intact for generations. Some describe grisly details, others express sympathy for the stranded whites. Regardless of differing accounts, stories of the Donner Party served as cautionary tales for the Washoe. By 1848, the Washoe attempted to avoid what Nevers refers to as “invaders.”⁵⁹

The discovery of gold in California in 1848 marked the beginning of a great migration into the American West. Aside from early contact with Euro-American explorers and fur trappers, the Washoe Indians of Nevada and California remained mostly isolated, until white emigration and settlement occurred in the mid-nineteenth century. In the process of American expansion and settlement, Indian relations usually involved treaty making and purchase as a means of compensating indigenous people for their lands. Prior to 1763, it was possible for individual colonists and colonies to make land deals with Indians. After the 1763 Proclamation Act, the British government brought Indian land deals under the sole province of the British colonial administration. Eventually the central government of the new United States replaced the

⁵⁸ Thomas Sanchez, *Rabbit Boss* (New York: Alfred A. Knopf, 1973), 3-6.

⁵⁹ Nevers, *Wa She Shu*, 48.

crown. After the American Revolution (1776-1783), the federal government under the newly created United States Constitution (1789) conducted treaty and policy making with American Indians. While the American government attempted to treat Indians as a conquered people after the Revolution, their continued power in the West still required negotiations, purchases, treaty making, and military campaigns.⁶⁰

Rapid expansion into the frontier following the American Revolution drastically changed the legal status of Indians residing within the United States' borders. In 1823, the U.S. Supreme Court's decision in *Johnson v. M'Intosh* concluded that Indians were not landowners in the same sense that the American government held claim to the land, nor had they ever been. The court decision contended that Indians had the right to occupy land and assume a type of possession, but they were not the proprietors based on fee simple ownership. In short, their usufructuary rights could be extinguished or were subject to extinguishment through various processes including purchase, treaty making, and conquest (but only by the federal government). According to the court case, the right to ownership rested with the United States based on the assumption of Crown Rights to the land from Great Britain at the successful conclusion of the American Revolution.⁶¹ Although the Americans had not discovered North America, their predecessors, the British, claimed sovereignty and ownership by rights of discovery. The Proclamation of 1763 confirmed these assumptions on the part of the British to which the Americans fell heir.⁶²

⁶⁰ Banner, *How the Indians Lost Their Land*, 189; Walter R. Echo-Hawk, *The Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided* (Golden, Col.: Fulcrum Publishing, 2010), 58-59; Colin G. Calloway, *With the Scratch of a Pen: 1763 and the Transformation of North America* (New York: Oxford University Press, 2006), 92-96.

⁶¹ Calloway, *With the Scratch of a Pen*, 96; Francis S. Philbrick, *The Rise of the West, 1754-1830* (New York: Harper & Row, 1965), 3-8.

⁶² Banner, *How the Indians Lost Their Land*, 11, 183.

Under the ruling of *Johnson v. M'Intosh*, the Indians were not the ultimate proprietors of the land although they possessed a right or claim of occupancy. In his important work *How the Indians Lost their Land: Law and Power on the Frontier* (2005), legal historian Stuart Banner claims, "*Johnson v. M'Intosh*...put the final nail in the coffin of the older view of Indian property rights." The "older view" saw Indians holding property and selling it to willing buyers, both private and government, during the colonial period prior to 1763.⁶³ The *M'Intosh* decision confirmed the sole power of the federal government to deal with Indians for the purchase of lands and treaty making, extinguishing Indian rights of occupancy or usufructuary rights. Discoveries of precious metals prompted mass population movement into previously unsettled or sparsely settled areas of the Far West from the United States and around the world. From 1849 to 1870, the population in California, and later Nevada rose so sharply, that "the pace of formal land acquisition" from Indian peoples by the federal government could not keep up with the influx of population. The rapid pace of events in California and the pressures of sectional struggle in Washington caused the federal government to give over Indian affairs to the state of California during the 1850s with disastrous results for California Indians. White emigrants, unfettered by federal Indian policy, used sheer force and overwhelming numbers as a means of obtaining and settling land.⁶⁴

Banner in another work, *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (2007), indicates that the federal government did negotiate land cession treaties with many California Indians in the years 1851 and 1852, but the Senate never ratified those treaties, and new ones were never secured. Because of this, Indians in California ended up

⁶³ Banner, *How the Indians Lost Their Land*, 41, 150-179; Echo-Hawk, *Courts of the Conquerors*, 76-77.

⁶⁴ Banner, *How the Indians Lost Their Land*, 230-233, 239; Michael Magliari, "Free Soil, Unfree Labor: Cave Johnson Courts and the Binding of Indian Workers in California, 1850-1867," *Pacific Historical Review*, vol. 73, no. 3 (August 2004), 349-350.

with no recognized rights to land and/or its use. In Nevada, the Washoe Indians shared much the same fate: they never entered into treaties with the federal government. Many newcomers to western Utah territory, much like Californians more than a decade earlier, did not attempt to purchase lands from the Indians. Scornful attitudes and notions of Indian inferiority further added to an unwillingness to obtain the Indians' consent when Americans and others took up land. Nevada Indians, like California Indians, and aboriginal Australians, possessed technological disadvantages and were fragmented into small groups that spoke mutually unintelligible languages. Many parallels can be drawn between the California experience and the plight of native peoples across the mountains.⁶⁵

From early encounters onward, Anglo and Euro-American writers, explorers, and observers generally treated Basin Indians with disdain. Like the Western Shoshone, the Washoe people were a nonequestrian group. Horses, introduced by the Spanish to Indians of the Great Plains, never reached the Washoe. Downs asserts that the Washoe obtained an occasional stray draft animal from a wagon party early on, but without having use for it, butchered it for food.⁶⁶ Blackhawk has suggested that nonequestrian Indians, especially those in the Great Basin, gained the reputation through authors and ethnographers as the most "primitive" peoples of the world.⁶⁷ A recurring story tied to early Nevada history books is that the Washoe's lack of horses relates to a conflict with the Paiute, which occurred prior to the coming of white emigrants.

The Paiute had access to equines through Ute trade networks that reached into the Great Basin. According to stories, the Paiute subjugated the Washoe and forbade them from using horses. In a 1984 oral history of Washoe elders Marvin Dressler and Ted Sallee conducted by

⁶⁵ Stuart Banner, *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (Cambridge, Mass.: Harvard University Press, 2007), 163-168.

⁶⁶ Downs, *Two Worlds of the Washo*, 73.

⁶⁷ Blackhawk, *Violence Over the Land*, 272.

the University of Nevada, Reno Oral History Program, , the interviewer asked the informants if either was aware of the story. Both Dressler and Sallee deny ever hearing any accounts of the story. The interviewer says, “I’ve heard maybe the Washoes and Paiute once had a war to decide who would ride horses...Some Paiute say that’s how [sic] they ride horses today and the Washoe do not.”⁶⁸ Whether fact or fiction, it is one explanation offered for the Washoe people’s degradation. According to early Nevada historian and newspaperman Sam P. Davis, this caused the Washoe to become “broken in spirit, they became mere hangers-on of the white settlements....”⁶⁹ Davis more than likely obtained this information noted in John Wesley Powell’s 1892-1893 “Fourteenth Annual Report of the Bureau of Ethnology.” Davis’s 1913 history of Nevada quotes directly from Powell’s report dating two decades earlier. Inter-Tribal Council of Nevada publications argue that the myth of the Paiutes dominating the Washoe developed from white settlers in the 1850s and 1860s as a way of explaining why the Washoe were without horses—“there is no basis in historical fact for this lore.”⁷⁰

Most early individual contact accounts describe the Shoshone, Paiute, or “digger Indians” of eastern California, but the Washoe are rarely mentioned outside of government reports. Given the similar lifestyle and subsistence practices compared to those of other Basin Indians, it can be assumed that not much distinction occurred in the general descriptions. Just a few examples of descriptions of all the indigenous people encountered in the Great Basin include early explorer Jedediah Smith, writing in 1827, who described the indigenous people of the Great Basin as “the

⁶⁸ Marvin Dressler and Ted Sallee, *An Interview with Marvin Dressler and Ted Sallee, conducted by R.T. King 13 June 1984* (Reno: University of Nevada Oral History Program, 1984), 32.

⁶⁹ Sam P. Davis, Ed., *The History of Nevada* (Reno, Nev.: The Elms Publishing Company Inc., 1913), 26; Smithsonian Institution, Bureau of Ethnography, *Fourteenth Annual Report of the Bureau of Ethnology to the Secretary of the Smithsonian Institution 1892-1893, by John Wesley Powell, Director, Part 2, 54th Congress, 2nd Sess., 1896*, H. Doc. No. 230 (Washington D.C., Government Printing Office, 1896), 1051.

⁷⁰ Inter-Tribal Council of Nevada, *Life Stories of Our Native People: Shoshone, Paiute, Washo* (Reno: The Inter-Tribal Council of Nevada, 1974), 20.

most miserable objects in creation.”⁷¹ In the mid 1840s, Lansford Hastings wrote similar descriptions in *The Emigrants Guide to Oregon and California* about the Indians he encountered traveling around California. Among other things, he described them as “mere children of nature...their enjoyments, nothing above those of beasts.” Quick to write about the Indians’ deficiencies, Hastings noted their lack of clothing, structures, and agriculture. He also pointed out the diet of the “Diggers” which consisted of grasshoppers, crickets, or roots scratched from the ground.⁷² These descriptions contrasted earlier colonial descriptions of the Native Americans encountered in New England. Colonists admired the physical powers of the “children of the forest” and did not think of them living in dire poverty.⁷³ The Indians of the Great Basin and even California fell below the horse Indians of the Great Plains and into the lowest possible strata of human development according to the descriptions of early travelers, explorers, and writers.

In *Roughing It*, Mark Twain describes his impressions of the Goshute Indians of the Great Basin as the “most inferior of all races of savages...often eating what a hog would decline.” He continues by describing their character as a people and their social structure. Part of Twain’s assessment of this group of Indians is based on their social structure. He claims, “[they] have no villages, and no gatherings together into strictly defined tribal communities....”⁷⁴ Discussions of Great Basin indigenous peoples’ ability to self govern often referred back to social structures. Scattered bands of families and extended families also made it difficult for anthropologists to pinpoint exact “tribal” boundaries on maps. Ambiguous and unclear tribal

⁷¹ Peter Farb, *Man’s Rise to Civilization as Shown by the Indians of North America From Primeval Times to the Coming of the Industrial State* (New York: E.P. Dutton & Co., Inc., 1968), 16.

⁷² Lansford Hastings, *The Emigrants Guide to Oregon and California* (Princeton, NJ: Princeton University Press, 1932), 117.

⁷³ Theda Perdue, *Mixed Blood Indians: Racial Construction in the Early South* (Athens: University of Georgia Press, 2003), 82.

⁷⁴ Mark Twain, *Roughing It* (Hartford, Conn.: American Publishing Company, 1873), 146-148

status and land boundaries of Great Basin Indians made the federal government unwilling in many cases to assist these people well into the twentieth century. As a result, many Washoe Indians were living in poverty, usually on borrowed or white-owned lands, into the early portions of the twentieth century. To sum up the condition of peoples of the Great Basin heading into the twentieth century, Blackhawk notes that, “Ignored by history, naturalized by anthropology, and mocked by travelers, Great Basin Indians maintain unnoticeable if not maligned roles in the pageant of America.” Basin Indians were longstanding victims of colonialism, according to Blackhawk, beginning with the Spanish presence in the West and continuing with American expansion across the continent.⁷⁵

In another less derogatory vein, Colorado River explorer turned ethnographer, John Wesley Powell, in his 1874 report “Indians West of the Rocky Mountains,” examined the complexity of Basin Indian social and political organization. In an early example of applied anthropology, where contemporary Indian issues were addressed, Powell created his report for the Office of Indian Affairs (OIA). While exploring and surveying the Colorado River (1869-1871), Powell became interested in the languages, mythology, customs, and habits of the Indians he encountered. Presented to the House Committee on Indian Affairs, Powell’s report described the condition of various Indian groups living in the Far West. Powell remarks on the diversity of the indigenous peoples, and accounts for a number of language divisions and subdivisions—he counted sixty-six distinct groups with 120 different governments. Perhaps most relevant to this study is his description of social and political structures, and points out explicitly, that “each band or tribe is attached...to land...boundary lines were designated by natural objects...” Powell goes on to suggest giving irrigable lands to Indians living in the region because American settlers, including Mormons in Utah, had disrupted their traditional livelihoods. His discussion

⁷⁵ Blackhawk, *Violence Over the Land*, 274.

then shifted to the subject of creating more reservations for a majority of Indians not living on reservations. The committee questioned Powell about the capacity of these Indians to make war and inquired into their armaments and horses. Powell indicated that Indians were fearful of the presence of federal troops and suggested they may be more willing to transfer to reservations if troops left. Powell, a proponent of assimilation, believed that by promoting agriculture on reservations, Indians could achieve higher levels of civilization and eventually integrate into American society.⁷⁶

For Powell's recommendation to be viable, Indians needed land. In negotiating land issues, Congress often designated lands for Indian reservations, but as noted earlier, no treaties existed between the Washoe and the United States government. Futilely Washoe leaders pushed for a treaty in 1861 because a treaty held out the possibility of the creation of reservation lands for the Washoe people. Without reservation lands, the Washoe remained largely a marginalized people in their own land, pushed to the peripheries of white society. Without offering any compensation, white settlers seized the land and its resources that the Washoe lived upon and relied upon for hunting, fishing, and gathering. In California and Nevada, white settlers and the Central Pacific Railroad Company acquired titles to Washoe lands from the United States government without the government first extinguishing the claims of the Washoe to those lands.⁷⁷ To some outside observers, it might have appeared that the Washoe people voluntarily abandoned the lands when white settlers arrived. In the twentieth century, federal government lawyers made that argument in the courts to explain and justify the absence of treaties with the Washoe.

⁷⁶ The House Committee on Indian Affairs, *Indians West of the Rocky Mountains: Statement of Major J.W. Powell*, 43rd Congress, 1st Sess., 1874, Misc. Doc. No. 86 (Washington D.C.: Government Printing Office, 1874), 1-11.

⁷⁷ "Petition of Plaintiff," August 9, 1951, George F. Wright Collection, No. 90-37, Series 1, Box No. 1, Correspondence (University Archives, Special Collections, University of Nevada, Reno [hereafter cited as Wright MSS]).

Downs maintains that in 1860, just two years after the discoveries of gold and silver on the Comstock Lode, white emigrants occupied large tracts of Washoe land. He states, “5,000 acres of land were under cultivation on the east fork of the Carson River. Ten thousand head of cattle, horses, and hogs were grazing the most productive gathering land in the Washo[e] country.”⁷⁸ With white emigrants came common law practices of fencing and establishing private property for cultivation and husbandry. In the 1859 annual “Report of the Commissioner of Indian Affairs,” Indian Agent Frederick Dodge, in Carson Valley reported the Washoe nation numbered around 900 souls. At its peak, prior to white migration, the Washoe population may have been as high as 3,000 people living in small units throughout Nevada and California territories.⁷⁹ Dodge commented on the willingness of the local Paiute to adopt farming and cultivation practices, but remarked,

I am sorry that I cannot speak in as favorable terms of the Wa-sho [sic] nation. They are not inclined toward agricultural pursuits, nor any other advancement towards civilization. They have no clothing except the merest apology for a breechcloth. Whatever policy may finally be adopted in relation to these unfortunate people, I can assure you that none can be worse, or productive of more evil to both them and whites, than the present joint, and promiscuous, occupation of the country.⁸⁰

Dodge concluded his report by recommending shared reservation land for the Washoe and Paiute, but lands that would not “necessarily expose them to contact with white settlers,” as the “only means of averting frequent difficulties...Indians and whites, as a general rule, cannot live together.”⁸¹ Dodge’s recommendation for reservation lands were consistent with similar recommendations for a Pyramid Lake reservation of the Paiutes where they could live separate

⁷⁸ Downs, *Two Worlds of the Washo*, 75.

⁷⁹ Kroeber, *Handbook of the Indians of California*, 570-571.

⁸⁰ U.S. Department of Interior, Office of Indian Affairs, *Report of the Commissioner of Indian Affairs: Accompanying the Annual Report of the Secretary of Interior, For the Year 1859* (Washington D.C.: George W. Bowman, Printer, 1860), 374-375.

⁸¹ U.S. Department of Interior, Office of Indian Affairs, *Report of the Commissioner of Indian Affairs: Accompanying the Annual Report of the Secretary of Interior, For the Year 1859* (Washington D.C.: George W. Bowman, Printer, 1860), 375.

from the incoming white population. The concept of a reservation reaches far back into colonial American history and would be aggressively pursued in the West before and certainly after the Civil War. As Indian agent, it was Dodge's job to look out for the welfare of Nevada's indigenous people.⁸² Later remarks in the report demonstrate his sympathy for the Indians. He acknowledges the negative effects that whites have had on the traditional hunting grounds of the Washoe and the Paiute. Intended to be home to both groups, the Pyramid Lake and Walker River reservations continue to be solely the home of the Northern Paiute. Dodge briefly mentions the prospect of placing both groups on the one reservation. James Nye, governor of Nevada Territory in 1861 strongly discouraged placing the Washoe on the Pyramid Lake Reservation. In his opinion, supported by Commissioner of Indian Affairs William P. Dole, the Paiute and Washoe should be separated, with the Paiute placed on a "road to higher civilization."⁸³ Although relations between the Paiutes and Washoe were generally not strained, periodic hostilities did break out in the late nineteenth century between the two groups. Nevers contends that the Washoe objected to leaving their ancestral lands. By any account, the recommendation to make the Pyramid Lake Reservation a home for Paiutes and Washoes "was never taken very seriously."⁸⁴

Sarah Winnemucca refers to the killing of three Washoe men by a group of angry whites in 1859. A wrongful accusation for the murder of two white men led to the death of three Washoe men by a group of angry whites. She states, "This was the first trouble the poor

⁸² Banner, *How the Indians Lost Their Land*, 228.

⁸³ U.S. Department of Interior, Office of Indian Affairs, *Report of the Commissioner of Indian Affairs: Accompanying the Annual Report of the Secretary of Interior, For the Year 1861* (Washington D.C.: Government Printing Office, 1861), 18.

⁸⁴ Nevers, *Wa She Shu*, 52; Richard Clemmer and Omer Stewart, "Treaties, Reservations, and Claims," *The Handbook of North American Indians*, Vol. 11, pp. 525-557, ed. et al. William C. Sturtevant, vol. ed. Warren d'Azevedo (Washington D.C.: Smithsonian Institution, 1986), 538.

Washoes had with white people, and the only one they ever had with them.”⁸⁵ This statement implies the general peacefulness, or desire of the Washoe people to stay out of trouble with the whites. Conflicts between the Paiutes and whites often had repercussions for the Washoe people caught in the middle. Nevers cites the Pyramid Lake War of 1860 as an example. White soldiers looking for revenge after an initial defeat killed any Indian they encountered—the aftermath of one such attack in Washoe Valley left a group of Washoe women dead.⁸⁶

San Francisco’s *Daily Evening Bulletin* reported regular hostilities between white settlers and Washoe Indians in the late 1850s and early 1860s. Unlike later Nevada newspapers, the San Francisco paper displayed a certain degree of sympathy toward the plight of the Washoe. One such article from 1857 mentions an “Indian War” in Carson Valley because the Washoe, driven by hunger, helped themselves to the “livestock and grains” of white proprietors. The paper reported a number of “massacred” whites, and more than twice as many dead Indians.⁸⁷ Another article from the same newspaper two years later detailed an incident involving starving Washoe Indians, living in the Truckee Meadows, eating poisoned beef set out by white ranchers to kill wolves.⁸⁸ Instances of violence, or revenge killing, aimed at any group of Indians in the region could have prompted the findings and remarks in Dodge’s 1859 report to place Indians on reservations to protect them from the white settlers.

By 1866, the annual report of the Commissioner of Indian Affairs lists the number of Washoe at five hundred. The author of the report, Superintendent of Nevada Indian affairs H.G. Parker, describes them as “harmless...with much less physical and mental development than the Pi-Utes [*sic*], and more degraded morally...they are indolent, improvident...they are sensual and

⁸⁵ Winnemucca Hopkins, *Life Among the Piutes*, 64-65.

⁸⁶ Nevers, *Wa She Shu*, 52.

⁸⁷ “Indian War in Carson Valley,” *Daily Evening Bulletin*, October 6, 1857.

⁸⁸ “Trouble With the Truckee Meadows Indians,” *Daily Evening Bulletin*, April 28, 1859.

filthy, and are annually diminishing in numbers....” The report concluded by dismissing a need for reservation lands and predicting the gradual extinction of the Washoe. “There is no suitable place for a reservation in the bounds of their territory, and, in view of their rapidly diminishing numbers and diseases to which they are subjected, none is required.”⁸⁹ Successive reports continued to reinforce the poor and miserable condition of the Washoe. Nevada Territorial Governor Nye cited as early as 1861 the damage done to the land that the Washoe relied on for their livelihood, pointing out the poor condition of waterways, once used for fishing, but fouled by mining waste, and diverted for irrigation.⁹⁰ Again, in 1867, Nevada Indian Superintendent T.T. Dwight acknowledged the dire condition of the Washoe. His report described the Washoe as subsisting on the margins of white communities. He said, “They gather around towns...begging, working a little, and drinking whiskey...the same general rules should be adopted as recommended for the Pah-Ute [*sic*], placing them on...some reservation...they are poor and miserable and in need of immediate care.”⁹¹ The report called for Congress to appropriate lands to avoid any further trouble with the Washoe—claiming a small appropriation would be adequate especially when compared to other appropriations spent on Indian groups elsewhere.

Despite appeals by tribal leaders, the federal government offered the Washoe people very little, if any, assistance after white encroachment on their ancestral homelands. The *Reno Evening Gazette* reported in 1880 that the Washoe were dependent on the federal government to stop the destruction of pine-nut trees, which proved to be one of their few remaining sustainable

⁸⁹ U.S. Department of Interior, Office of Indian Affairs, *Report of the Commissioner of Indian Affairs: Accompanying the Annual Report of the Secretary of Interior, For the Year 1866* (Washington D.C.: Government Printing Office, 1866), 115-116.

⁹⁰ U.S. Department of Interior, Office of Indian Affairs, *Report of the Commissioner of Indian Affairs: Accompanying the Annual Report of the Secretary of Interior, For the Year 1861* (Washington D.C.: Government Printing Office, 1861), 111-112.

⁹¹ U.S. Department of Interior, Office of Indian Affairs, *Report on Indian Affairs, by the Acting Commissioner for the year 1867* (Washington D.C.: Government Printing Office, 1868), 170-171.

food sources. The newspaper stated, “the supply of game and fish is to a great extent destroyed; that in addition the supply of fish usually got from Lake Tahoe is to a great extent destroyed by white men....”⁹² By the 1880s, the Washoe lived off the charity of sympathetic whites who provided them with food and clothing in exchange for domestic and farm/ranch work—clearly a sad situation. Six years later, the *Nevada State Journal* reported on the condition of the Washoe saying,

they are really poor and often suffer for food...they have consequently been obliged to endure all the unfortunate results of contact with a dominant race with none of the ameliorating circumstances which are usually thrown about Indian tribes by the General Government.⁹³

The editorial ended with a call for more humane treatment of the Washoe people by the federal government. In short, the federal government should solve the problem of local poverty, hunger, and homelessness.

As the degradation of American Indians continued in the latter portion of the nineteenth century, white reformers took notice. They began publicly commenting on the poor condition of America’s indigenous peoples because of shameful treatment by the federal government. Novelist and poet Helen Hunt Jackson and George W. Manypenny, former director of the Office of Indian Affairs, emerged as two of the most influential figures in the movement for Indian reform in the 1880s. While they publicized the tragic plight of the American Indians, they also believed native peoples possessed the potential for swift advancement into American society.⁹⁴

In their writing, both Jackson and Manypenny called for reform and fair treatment of American Indians. Though they might have believed they had the Indians’ best interests in mind, their resolutions included the abandonment of tribal practices and the assimilation of Indians into

⁹² “Pine Nuts,” *Reno Evening Gazette*, April 22, 1880.

⁹³ “The Washoe Indians,” *Daily Nevada State Journal*, May 11, 1886.

⁹⁴ Robert M. Utley, *The Indian Frontier of the American West 1846-1890* (Albuquerque: University of New Mexico Press, 1984), 210.

mainstream American society. As Frederick Hoxie states in *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (2001), assimilation combined concern for native suffering with faith in the promise of “America Exceptionalism,” implying that if given the opportunity, Indians could prosper in the freedom of American life.⁹⁵

Supported by contemporary anthropological thought, early notions of Indian assimilation taught that “races” moved through phases of civilization. Writing in 1887, American anthropologist Lewis Henry Morgan laid out three distinct phases of a “natural as well as necessary sequence” of human evolution beginning with savagery, moving to barbarism, and ending with civilization.⁹⁶ By promoting assimilation of the Indians into the white culture, the United States would not only free up vast tracts of land, it would offer Indians an opportunity to become citizens of the United States and partake in the economic opportunities. Indians, unlike other minority groups, were living outside the realm of legal and “civilized” society. There was a desire to correct this. Scientific social theorists described human history in terms of movement from simplistic to complex societies. Ethnographers and reformers believed that Indians would conquer their “savagery,” with the help of American institutions. This would allow them to move forward toward a higher degree of civilization. Morgan rejected racial explanations of human differences, which might condemn Indians to a permanent inferior state. Instead he relied on theories of environmental influences to explain human conditions. With the proper environmental influences, social evolution could be promoted.⁹⁷

Manypenny’s *Our Indian Wards* was published in 1880 and Jackson’s *A Century of Dishonor: A Sketch of the United States Government’s Dealings with some of the Indian Tribes*

⁹⁵ Hoxie, *A Final Promise*, 15.

⁹⁶ Lewis Henry Morgan, *Ancient Society: Or Researches in the Line of Human Progress From Savagery Through Barbarism to Civilization* (New York: Henry Holt and Company, 1887), 3-4.

⁹⁷ Hoxie, *A Final Promise*, 17-18.

came out a year later in 1881. These books serve as important sources revealing thinking behind late nineteenth century Indian reform thinking. Several years later in the mid 1880s, Sarah Winnemucca's *Life Among the Piutes* and Jackson's influential novel *Ramona* appeared. These two books had a similar plea as their predecessors for fair and just treatment of Indians, especially on reservations. In the novel *Ramona*, Jackson attacked the romanticized image of the California mission system protesting the ongoing mistreatment of California Indians. What *Ramona* did to bring sympathy to American Indians, according to some sources, may be compared to what Harriet Beecher Stowe's *Uncle Tom's Cabin* did for the anti-slavery movement. The Indian reform literature came prior to the Dawes Severalty Act of 1887, as did the "Friends of the Indians" conferences at Lake Mohonk, New York under the leadership of Albert Smiley. All influenced Congress to pass the Dawes Allotment Act in 1887—legislation to allot reservation land to Indian families in order to promote small farm-agriculture as a means of assimilation.⁹⁸

Manypenny was Commissioner of Indian Affairs from 1853-1857. In the 1880s, he was a member of the Sioux Commission established by Congress to negotiate a reduction of the Sioux reservations in order to make way for statehood of the Dakotas. During his time as Commissioner of Indian Affairs, Manypenny "defended the reservations of the West against encroachment and spoliation by white citizens...."⁹⁹ By the very title of his book, it is evident that Manypenny believed that the conditions of Indian wardship required policies to move Indians away from a state of wardship dependency toward citizenship. He was specifically in

⁹⁸ Helen Hunt Jackson, *Ramona: A Story* (Boston, Mass.: Roberts Brothers, 1891), 5-19; Helen Hunt Jackson, *Ramona*, edited by Siobhan Senier (Peterborough, Ont.: Broadview Press, 2008), 16-22; Holm, 7-8.

⁹⁹ George W. Manypenny, *Our Indian Wards* (New York: Da Capo Press, 1972), xi; Richard N. Ellis, "Our Indian Wards by George W. Manypenny: My Life Experience Among Our Hostile Indians by Oliver O. Howard," *Journal of Illinois State Historical Society*, vol. 67, no. 3 (June 1974), 343-344.

favor of an agency that would be solely devoted to the cause of Indian reform and uplift into the mainstream of American society.

Manypenny blamed whites for the Indian wars. Consequently, he criticized the military's dealings with the Indians and the corruption that perpetuated itself amongst Indian agents. Manypenny claimed, "Members of Congress understand the Negro question...but when the progress of settlement reaches the Indian's home, the only question considered is 'how best to get his land.' When they are obtained, [the land] the Indian is lost sight of." Fierce criticism of fraudulent claims by white businessmen for Indian annuities marked Manypenny's administration.

Manypenny's concerns over the maltreatment of Indian people stemmed primarily from moral convictions. He believed that the nation's honor would be soiled if it continued to let its employees and people treat the Indians as they had since the inception of the United States. Among other things, Mannypenny was particularly concerned with governmental employees and private persons pilfering annuities intended for the support of Indians on reservations and the continued removal from one location to another. He claimed that removal hindered the Indians' ability to become civilized and suggested, "Communities of our own race could not undergo like trials without loss in numbers as well as vitality."¹⁰⁰

Manypenny's ideas for Indian reform identified closely with contemporary Protestant reformers of the day. In their thinking, persuasion was better than military force to bring nomadic Indians onto reservations. Under President Grant's Peace Policy, which was formed on behalf of advice offered by a body representing the Protestant churches, religious organizations had authority over reservations, and the War Department had jurisdiction off the reservations. Bands of Indians found off a reservation might be regarded as an enemy or a renegade. Under

¹⁰⁰ Manypenny, *Our Indian Wards*, xxii.

this arrangement, the government offered the Indians very few options. They could assimilate, exist in a state of dependency on the reservations or be hunted down outside the reservation. With inattention and a lack of provisions provided by the federal government, some Indians were forced to exist outside the reservations eking out a living from surrounding white communities.¹⁰¹ Certainly this described the situation of Washoe in northern Nevada in the late nineteenth century. Without reservation lands or assistance from the federal government, the Washoe were adrift. As time passed, their situation continued to deteriorate, but reformers and politicians began to take notice of their plight beginning in the early twentieth century.¹⁰²

The Department of Interior, in Manypenny's opinion should possess all authority over Indian reservations. He strongly opposed military control in Indian affairs, and believed they had no business trying to "civilize" Indians. As the name "War Department" implied, the military was only equipped to deal violently with Indians. Indian wars took unnecessary lives and also cost the federal government millions of dollars. True reform would only be achieved outside of the authority of the War Department. Additionally, Manypenny argued, missionary societies collecting money to send to other continents for the purposes of civilization ignored the problems of domestic Indians. Manypenny suggested that Americans ignored the humanitarian crisis that existed on their own backyard.

Given the resources and the proper administration, Manypenny was confident that the Indians could be "pressed forward in the new life." He claimed, "With a fair and equal chance in the battle of life, there should be no doubt as to the willingness of the Indian to accept our civilization, or of his capability to become a useful member of society." By handing over Indian affairs to the Department of Interior, promoting assimilation, creating permanent Indian lands,

¹⁰¹ Manypenny, *Our Indian Wards*, xi-xv.

¹⁰² William Rowley, *Reclaiming the Arid West: The Career of Francis G. Newlands* (Bloomington: University of Indiana Press, 1996), 162.

and assigning homesteads, Manypenny believed the Indians could be civilized, and therefore saved from destruction. Advocates of Indian reform believed that their efforts were truly the humanitarian solution to “save the Indians.”¹⁰³

Like Manypenny, a year later, Helen Hunt Jackson argued that the United States had treated Indians shamefully since the earliest times. Her book, *A Century of Dishonor*, traces how the United States had broken all its treaties with Indian nations and then failed to provide them with adequate living conditions on reservations. Jackson decried the government’s interactions with Indians and claimed, “Repeated violations of faith with the Indians thus convicts us, as a nation, not only of having outraged the principles of justice...but of having made us liable to all punishments which follow upon such sins...” Indian history in the United States would continue to show up as a “dark stain” until improvements were made.¹⁰⁴

After a decade of broken promises and violence, Jackson suggested that it would be difficult to regain the confidence of “our Indian wards.” By revealing the destitute conditions of the reservations, Jackson hoped to raise awareness about the Indians’ plight. All attempts to help, including the Peace Policy, were largely failures. Jackson and her supporters claimed that long-term policy which focused on education, civilization, and possible citizenship should be instituted. Part of this involved promoting Christianity. In order to promote Christianity, the “government needs, first of all, to be Christian, and to treat the Indian question as Christian principles require.” Reformers of this era reasoned that if “wise and Christian treatment” became invested within the Indian, “his special tribal relations will become extinct.” Jackson

¹⁰³ Manypenny, *Our Indian Wards*, xiii-xxxvi.

¹⁰⁴ Helen Hunt Jackson, *A Century of Dishonor: A Sketch of the United States Government’s Dealings with Some of the Indian Tribes* (Minneapolis, Minn.: Ross & Haines, 1964), 29, 337.

believed that only through assimilation and absorption into the mainstream of American society could mistreatment of Indians stop.¹⁰⁵

Assimilation through Indian reform, including individual land ownership, represented the most humane and practical way to deal with the “Indian problem.” Reformers like Jackson, Manypenny, and Smiley firmly believed in their cause. For them, the inability of the Indians to become civilized was the result of their continued mistreatment. Adhering to concepts of stadial thinking that originated with the Enlightenment, reformers saw hope for the Indians. With proper paternal supervision, education, land ownership, and Christianity, the Indians would be able to remove their shackles and enter into society as functioning and contributing citizens. The efforts of Indian reform advocates were partially responsible for the introduction of the Dawes Act legislation in 1887.

Reformers triumphed on February 8, 1887, when President Grover Cleveland signed into law the Dawes Severalty Act, which was intended to extinguish tribal loyalties, breakup reservations, and “individualize” the Indian.¹⁰⁶ The creation of Indian boarding schools in the 1880s, such as the Stewart Indian School in Carson City, Nevada, was another federal strategy for Indian assimilation into the dominant society. “Kill the Indian, but save the man” was a commonly heard slogan of this reform effort.¹⁰⁷ Advocates of Indian reform hailed the Dawes Act as a triumph of nineteenth-century liberalism, which stressed individualism and the notion of private property as the truest sense of freedom and the pathway to Indian citizenship.¹⁰⁸ Ultimately considered a failure by the 1930s when the Indian New Deal began, the Dawes Act and Indian schools at the time seemed like the most practical and humane steps toward reforming

¹⁰⁵ Jackson, *A Century of Dishonor*, ix-3.

¹⁰⁶ Utley, *The Indian Frontier*, 212-213.

¹⁰⁷ Matthew Makley and Michael Makley, *Cave Rock: Climbers, Courts, and a Washoe Indian Sacred Place* (Reno: University of Nevada Press, 2010), 13.

¹⁰⁸ Holm, *The Great Confusion*, 11.

federal Indian policy. While the intent was humanitarian, the policies suppressed Indian culture and resulted in vast reductions of Indian reservation lands.¹⁰⁹

¹⁰⁹ Hoxie, *A Final Promise*, 70-76.

Chapter Three

From Allotment to Tribal Rejuvenation, 1887-1934

White migration onto Washoe land caused irreparable damage to the Washoe's fragile existence. The Washoe, like other indigenous peoples of the Great Basin, depended on the land and its seasonal resources for their livelihood. One of the most stable and plentiful food sources of the Washoe, the piñon pine, disappeared in large quantities as whites began using it for construction, fencing, firewood, and charcoal making. In 1866, the Central Pacific railroad reached Washoe territory from California. The railroad reduced time and space and allowed settlers, miners, and workers greater access to Washoe lands that in turn placed more pressure on environmental resources.¹¹⁰ The demands of the Comstock and surrounding communities quickly consumed timber resources. Wild game resources also suffered depletion with the influx of white settlers. Additionally, commercial fishing operations for trout began at Lake Tahoe as early as 1859, while in the valleys water diversions from streams served farms and ranches.¹¹¹ Washoe oral histories claimed the tribe traditionally hunted only what was needed and caught only male fish to ensure sustainability. Disruptions by white emigrants affected all facets of the Washoe people's traditional livelihood while resources rapidly disappeared to support white settlements. Nevers sums it up well when she states, "Within a fifty year period, a way of life that the Washo[e] had preserved for centuries disappeared."¹¹² From the time of white incursion onto Washoe lands, it took more than forty years for any land allocations to be established and almost seventy years for reservation lands to be established.

¹¹⁰ U.S. Department of Interior, Office of Indian Affairs, *Report on Indian Affairs, by the Acting Commissioner for the year 1867* (Washington D.C.: Government Printing Office, 1868), 169.

¹¹¹ Land Appraisal by Nobel T. Murray submitted to the Indian Claims Commission, March 1963, Wright MSS.

¹¹² Nevers, *Wa She Shu*, 57-61

Without resources provided by the land, water, and plants in the Great Basin, Tahoe, and the Sierra, the Washoe were reduced to poverty. Section four in the Dawes Act that allowed landless Indians to acquire some land gave the Washoe, by the 1890s, a legal means to regain some of their lost lands.¹¹³ Under this provision some individual Washoe received land. The Washoe, however, did not obtain all of the lands they wished. Much of the land they received was essentially worthless. Initial requests from the Washoe asked for not only the Pine Nut Hills, but areas around Lake Tahoe too. Privately owned real estate constituted most of the land around Lake Tahoe by the end of the nineteenth century. Their only options were lands in the Pine Nut Hills, to the east of Carson City, or no land at all.¹¹⁴

The dire condition of the Washoe population in the absence of reservation lands was evident to Indian Agents as well as members of the local white community. For many years, there were proposals from the Washoe and various field employees of the Office of Indian Affairs for a reservation. Protests and requests for land by the Washoe people occurred from the 1860s into the 1890s. By the 1880s, the Washoe people, with the initiative of Washoe elder “Captain Jim” (*Gumalanga*) prepared a petition to take to the “Great White Father” in Washington D.C. Captain Jim was one of several Washoe “Captains.” Other earlier examples dating to the 1850s and 1860s included Captain Joe from the Washoe Lake, and Captain Dick or “Deer-Dick” from Sierra and Long Valleys. The Washoe were not a unified entity under a single chief, as whites preferred to believe. These individuals did not necessarily hold any particular authority, but Captain Jim was in fact one of the few early leaders respected and honored by many Washoe from various sections of the Basin and eastern slope of the Sierra. According to

¹¹³ Makley, “These Will Be Strong,” 95-96; Makley and Makley, *Cave Rock*, 13.

¹¹⁴ Nevers, *Wa She Shu*, 62; Makley and Makley, *Cave Rock*, 13.

oral history, Captain Jim possessed modesty, generosity, and kindness—qualities most desired by the Washoe of their early leaders.¹¹⁵

Washoe leaders near and in the Carson Valley circulated a subscription asking the white community to help raise money to take the Washoe petition for land to the nation's capital.¹¹⁶ The purpose of the trip was to publicize the Washoe people's case for a reservation and ask for protection for the Pine Nut Hills from outsiders. Destruction of the Pine Nut Hills continued even after the Washoe's successful acquisition under the Dawes Act. Captain Jim, referred to in the *Daily Nevada State Journal* as "the monarch of all the Washoes," and "Captain Pete," his "Chief of Staff" began meeting in 1886 to discuss the conditions and wants of their "dusky nation."¹¹⁷ The newspaper captured Captain Jim's faith in the continuing friendly relations between the whites and the Washoe. Although he readily acknowledged the growing severity of the Washoe's poor condition, he remained confident the government in Washington might offer "liberal recognition." The editorial expressed sympathy and maintained a humanitarian stance regarding the federal government's obligation to care for the Washoe people.

With their petition prepared in 1891, Captain Jim, and his "interpreter," Dick Bender described by the local paper as "one of the most intelligent Indians in the country," left Carson Valley for Washington D.C. on April 16, 1892.¹¹⁸ The *Daily Territorial Enterprise* declared, "Cocked and primed, their representatives [of the Washoe Indians] start for Washington to secure a reservation." The two men received railroad passes to Washington as well as a stipend when they arrived. Prepared to petition President Benjamin Harrison and Congress for reservation lands, the men carried letters and instructions from Carson City district attorney Jim

¹¹⁵ Inter-Tribal Council of Nevada, *Life Stories of our Native People*, 14, 19-21.

¹¹⁶ d'Azevedo, "Washoe," 495.

¹¹⁷ "The Washoe Indians," *Daily Nevada State Journal*, May 11, 1886.

¹¹⁸ "Indian School Children," *Daily Nevada State Journal*, November, 29, 1893.

Torreyson and Nevada Governor Roswell Colcord. In addition, the Washoe leaders carried a petition signed by thirty-three students from the Stewart Indian School in Carson City begging President Harrison to consider their case for a reservation.¹¹⁹ Both Captain Jim and Bender embraced the purposes of the Stewart Indian School, encouraging Washoe children to attend. Staying for thirteen days, the men met with senators from Nevada and California and appeared in front of the Indian Commission. Senator William N. Stewart of Nevada, knowing the worthlessness of the pine nut lands, attempted to dissuade the men from requesting allotments on that land. Stewart instead suggested irrigable land in the Humboldt Valley. Not persuaded, Captain Jim explained that the Humboldt Valley belonged to the Paiutes and had no value to the Washoe people. The protection and preservation of the pine nut trees was his primary concern.¹²⁰

According to information passed down through Washoe oral history, Captain Jim spoke directly with the president, offering him a handful of pine nut flour as a symbolic gesture of what the Washoe people were losing with the destruction of the Pine Nut Hills. Returning home with high hopes, the men believed the government would help them. The only provision the government approved after the trip to Washington was \$1,000 for the “immediate relief” of the old and enfeebled. The promise of some money created a buzz among the Washoe community and plans for a party when the money arrived. d’Azevedo however notes that the Washoe never received those funds—the agent in Carson City claimed to have purchased flour and clothing for the Indians, but may have mismanaged the money before the Washoe received any relief.¹²¹

¹¹⁹ “Washoe Indians,” *Daily Territorial Enterprise*, April, 16, 1892.

¹²⁰ Susan Wise Ford, “Lorenzo D. Creel and the Purchase of Land for Washoe Colonies, 1917” (MA Thesis, University of Nevada, Reno, 1989), 91-92.

¹²¹ d’Azevedo, “Washoe,” 495; Nevers, *Wa She Shu*, 60-61; Inter-tribal Council, *Life Stories of our Native People*, 14.

Between 1893 and 1910, allotments, mostly in the Carson Valley, resulted in the Washoe people gaining control of approximately 67,500 acres of ancestral pine nut lands in 434 allotments. Most of the allotments comprised full quarter sections (160 acres), with none less than 120 acres. For ranching and stock watering purpose, whites controlled nearly all the dependable water sources in the area. If a Washoe allotment did not amount to 160 acres, it was often a result of a prior land claim of forty acres obtained by a rancher under the “school select lands” program authorized for Nevada by Congress in 1880. This law permitted the state and its citizens to select lands for purchase in acreage as small as forty acres—most selections would be made to monopolize water sources.¹²² The government appointed special allotting agents for “surveying, investigating, and overhauling allotment to Indians under the fourth section of the General Allotment Act....”¹²³ Appointed in 1891 by the president, special allotting agent Michael Piggot began making allotments to landless Indians in Nevada, California, and Oregon. Before his resignation in 1893, Piggot made 1140 allotments to non-reservation Indians. In Nevada, he established an office early in 1893.¹²⁴ When individual or groups of Washoe visited his office, he would divide the land then using maps of the Pine Nut Hills and allowing the Washoe to identify landmarks they recognized. After Piggot, work to create allotments for the Washoe continued in and around Carson City under special allotting agent William E. Casson, Piggot’s successor.

¹²²Ford, “Lorenzo Creel,” 93-94; John M. Townley, “Management of Nevada’s State Lands, 1864-1900,” *Journal of the West*, vol. 17 (January 1978), 63-73; Young and Sparks, *Cattle in the Cold Desert*, 95, 151-155.

¹²³ U.S. Department of Interior, Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs to the Secretary of Interior for the Fiscal Year Ended June 30, 1902* (Washington D.C.: Government Printing Office, 1902), 60.

¹²⁴ United States, President, *The Abridgement. Message From the President of the United States to the Two Houses of Congress at the Beginning of the Second Session of the Fifty-Third Congress, with the Reports of the Heads of the Departments and Selections from Accompanying Documents, ed., Francis M. Cox., 53rd Congress, 2nd Sess., 1894* (Washington D.C.: Government Printing Office, 1894), 701.; Nevers, *Wa She Shu*, 62.

The Commissioner of Indian Affairs recognized that most of the allotments given to the Washoe in the Pine Nut Hills covered “arid sagebrush and rough mountain lands, upon which it is out of the question for the Indians to reside and build homes.” Much of the land did not include any type of water source and remained mostly useless for any type of agriculture. The Commissioner of Indian Affairs recommended in a 1903 report that the goal for the Washoe was to get them onto plots of five to ten acres of irrigated land so they could “live unmolested by the white land seeker.” The report also suggested that it might be in the best interest of the Washoe to “surrender...present allotments, which embrace 160 acres, and making new allotment of 5 or 10 acres to each heads of families and adults...5 to 10 acres of irrigated land is deemed to be amply sufficient to meet the needs of these Indian families.”¹²⁵ Obtaining allotments in the Pine Nut Hills, Makley claims, was mostly symbolic because of the importance of the pine nuts. Agriculturally poor, but culturally rich, the land allotments in the Pine Nut Hills did not meet the criteria of agricultural lands that were intended to be allotted under section four of the Dawes Act. The report from the Commissioner of Indian Affairs from 1903 indicates that owning the pine nut lands would not turn the Washoe into small American farmers and that the pine nuts lands were not sufficient to support Washoe families despite the acreage.¹²⁶

Clearly, allotments did not solve the problems of the Washoe. Many of those with allotments still did not have homesites or agricultural lands, and whites continued to trespass on Washoe lands. Timber resources systematically disappeared, while white stockmen made little distinction between Washoe lands and the public domain. Those without allotments remained on the outskirts of towns, traveling into town where they could find work. Many Washoe lived near

¹²⁵ U.S. Department of Interior, Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs to the Secretary of Interior for the Fiscal Year Ended June 30, 1903* (Washington D.C.: Government Printing Office, 1903), 38-39.

¹²⁶ Makley and Makley, *Cave Rock*, 13.

Carson City, camping out under cottonwood trees near the Virginia and Truckee Railroad Depot. Aboard open boxcars, the Washoe traveled to Reno, Virginia City, and Minden.¹²⁷ The *Daily Territorial Enterprise*, reporting in 1894, made mention of the Washoe in Carson Valley becoming “more civilized” and asserted that benevolent acts could uplift the Washoe. In fact, “The Washoe Indians are becoming more civilized each year...A great many have houses built in white man’s style and raise chickens and gardens,” noted the article.¹²⁸ The paper’s comments came shortly after special agents began making allotments for the Washoe. The picture painted by the newspaper made the Washoe appear open to improvements in their situation. It is uncertain whether these “improvements” were due to the provisions included in the Dawes Act or not, but few bureaucratic or newspaper reports in the nineteenth century offered optimism about the future of the Washoe people. By the turn of the century, many of the Washoe depended on local ranches for employment making the white-owned farms and other businesses operationally dependent on the Washoe workforce in Carson Valley. One early Carson Valley storekeeper turned rancher remarked in 1861, “finding the Indians friendly and disposed to work I opened a farm...[with] Indians being my principal laborers...They are fine Indians and are very much inclined to labor. They will work at my kind of employment faithfully.”¹²⁹ The Dangberg family of Carson Valley utilized Washoe labor to develop a lucrative ranching and livestock enterprise.¹³⁰ The Washoe successfully used wage labor as a tool for their survival. Although

¹²⁷ Nevers, *Wa She Shu*, 65-71

¹²⁸ “Washoes Becoming Civilized,” *Daily Territorial Enterprise*, April 1, 1894.

¹²⁹ Martha C. Knack, “Nineteenth-Century Great Basin Indian Wage Labor” in *Native Americans and Wage Labor: Ethnohistorical Perspectives*, eds. Alice Littlefield and Martha C. Knack (Norman: University of Oklahoma Press, 1996), 163.

¹³⁰ Grace Dangberg, *Carson Valley: Historical Sketches of Nevada’s First Settlement* (Minden, Nev.: Carson Valley Historical Society, 1972), 3-8.

paternalistic, wage labor provided the Washoe a livelihood and presented a favorable impression of assimilation to the surrounding white community.¹³¹

In 1914, a group of twenty Washoes again reached out to Congress and the president. A handmade basket created after two years of work by Sarah Jim, intended for the president, accompanied the petition to Washington. The petition came twenty-one years after Captain Jim and Dick Bender's trip to Washington seeking aid for the Washoe people. The plea of the petition mimicked earlier pleas for homes, land to cultivate, and better living conditions. Additionally, the petition protested the inability of the Washoe to hunt and fish without first obtaining proper permits from the state, which many could not afford. In the year 1914, at the insistence of Superintendent Jesse Mortsof of the Carson Indian School, the Washoe pledged their allegiance to the federal government in a widely publicized parade in Gardnerville. The Stewart school's drill team and band performed, and a number of other students rode to the parade on the train. The event drew a large crowd of both whites and Indians and concluded with a barbeque and baseball game. Superintendent Mortsof stated the purpose of the parade promoted "better understanding between the Indians and their white neighbors..."¹³² Still the Washoe remained largely in poverty and disenfranchised.

The plight of the Washoe became a concern of women's clubs in Nevada in the early twentieth century. Nevada Senator Francis G. Newlands, receptive to the concerns of the suffrage movement and other causes of interest to women, responded to the concerns of some of the Reno women's service organization by introducing legislation in 1914. The bill asked for \$50,000 for the purpose of purchasing land and water rights and the construction of houses at

¹³¹ Downs, *Two Worlds of the Washo*, 97.

¹³² Nevers, *Wa She Shu*, 75.

and around Carson City and Gardnerville for the Washoe people.¹³³ Newlands's bill was similar to a resolution sent to Congress in 1913 by the Nevada Legislature, which called for "all honorable means to obtain all necessary and proper relief and aid to the Washoe tribe of Indians...." The resolution continues by explaining that in addition to securing land and water rights, the Washoe should be provided with farming implements, "and other necessities to enable them to cultivate the soil, and assist them to become self-supporting in accordance with the best judgment of congress."¹³⁴ The Newlands bill died in committee.

Political scientist and historian Elmer Rusco lists a women's organization called "The Nevada Indian Association" in an article "Purchasing Lands for Nevada Indian Colonies." The association was comprised of Reno women for the purpose of "raising money for a Young Men's and Young Women's Christian Association building at the Carson Indian School, and maintaining a secretary there." Leadership of the association came from a missionary, Lillie R. Corwin, appointed by the Baptist Women's Home Missionary Society based in New York. Since 1907, the organization had been at work in Nevada.

It is unclear if this was the same group of women mentioned in William Rowley's *Reclaiming an Arid West: The Career of Francis G. Newlands* (1996). There were several women's organizations or clubs in Reno during the Progressive Era including the Nevada Christian Women Temperance Union and the Twentieth Century Club, both of which promoted philanthropy and civic improvement including education projects and city beautification.¹³⁵ It would appear that The Nevada Indian Association was more narrowly concerned with the activities at the Stewart Indian School in Carson City, but if their goal was to serve Nevada

¹³³ Rowley *Reclaiming and Arid West*, 162; Elmer Rusco, "Purchasing Lands for Nevada Indian Colonies, 1916-1917," *Nevada Historical Society Quarterly*, vol. 32, no. 1 (Spring 1989), 8-9; Ford, "Lorenzo Creel," 103-104.

¹³⁴ Rusco, "Purchasing Lands," 7.

¹³⁵ Cyd R. McMullen, "'Work Worth Doing': Nevada Women's Clubs and the Creation of the Community, 1860-1920" (PhD Dissertation, University of Nevada, Reno, 2003), 74-84.

Indians, there is no reason why they would not have advocated land for the mostly landless Washoe Indians. The *Reno Evening Gazette* and *Nevada State Journal* offer some information on the aspirations and goals of the women of the Nevada Indian Association.

In September of 1915, *The Nevada State Journal* proclaimed that the Nevada Indian Association would call a meeting to discuss the possibility of seeking help from Congress to assist the Washoe Indians. The meeting included delegates from all over the state, with the sole purpose of aiding Nevada Indians. The article asserted that the group would petition for land to give to the Washoe Indians who, according to the paper, “lead a practically useless existence in and around Reno.”¹³⁶ A week later, the *Reno Evening Gazette* confirmed that the Nevada Indian Association’s appeal to “save the Washoes” went to Washington. The article ends with a lengthy resolution set forth by the women of the organization. The resolution declared,

No question should be more important to citizens of Nevada than that presented by the Indian population. None more nearly touches the home life of the white man. None more directly involves the health, safety, and moral tone of the community.

It continues by stating that the job of the association is to aid Indians where the government fails and to make Nevada Indians, especially the Washoe, self-supporting instead of forcing them to go back to live with their people.¹³⁷ Efforts by the Nevada Indian Association and their political allies continued through 1916, with political figures such as Nevada Senator Key Pittman and others speaking on behalf of Indian welfare.

Throughout 1915 and 1916, Senator Pittman, a member of the Senate Committee on Indian Affairs, became a valuable ally for the Washoe Indians when he called for appropriations to buy land for “homeless non-reservation” Nevada Indians. Rusco suggests that part of Pittman’s motivation for seeking appropriations for Nevada’s Indians came in a request from his

¹³⁶ “Will Ask Congress to Assist Washoes,” *Nevada State Journal*, September 17, 1915.

¹³⁷ “To Save Washoes Appeal Goes to Washington,” *Reno Evening Gazette*, September 21, 1915.

constituent John Beare O’Sullivan, owner of that tract of land that would eventually become the Reno-Sparks Indian Colony. O’Sullivan asked Pittman if funds could be secured to purchase the land from him; if not, the Indians residing there would have to move.¹³⁸ Contemporaneously, the Committee on Indian Affairs offered an appropriation of \$100,000 to buy residential reservations for California Indians, but no money for buying land for Nevada Indians. Senator Pittman questioned the Commissioner of Indian Affairs immediately about offering similar funds for homeless and landless Indians in Nevada—primarily the Washoe Indians. Committee members recognized the worthlessness of the allotments given to the Washoe under section four of the Dawes Act legislation. Pittman described the Washoe Indians as “the best Indians in our state. They are a splendid, high-class type of Indian.”¹³⁹ In the first Indian Appropriations bill of 1915, Pittman requested \$15,000 for land, water rights, and the necessary “agricultural implements” for the Washoe. In Congress, the House and the Senate disputed the proposed amount of money. The two houses reduced the amount to \$12,500 and the matter was delayed until the next Congress (the Sixty-Fourth Congress).¹⁴⁰

Hearings for the Sixty-Fourth Congress started in the fall of 1915 to consider the Indian Appropriation bill for the fiscal year of 1917. The Assistant Commissioner of Indian Affairs, E.B. Meritt, reintroduced the \$15,000 appropriation for the Washoe. Pittman again presented his case calling for appropriations for Nevada’s landless Indians. This time however, he indicated that he would introduce a bill requesting \$100,000 for all homeless Indians in Nevada. Between the congressional hearings, Pittman received a petition from the Nevada Legislature asking for an appropriation of \$100,000 to provide homes for all of Nevada’s non-reservation Indians scattered throughout the state. Pittman cited the report of Nevada Special Indian Agent C.H.

¹³⁸ Rusco, “Purchasing Lands,” 10, 16.

¹³⁹ Rusco, “Purchasing Lands,” 8-11.

¹⁴⁰ Rusco, “Purchasing Lands,” 12.

Ashbury who recommended that same amount. Ashbury's 1915 report noted the condition of all of Nevada's Indian population. In it, he described where and how the Indians lived, and pointed out the worthlessness of the various non-reservation allotments in the state. His report also included photographs of "typical" Indian dwellings in the state. He compared those with photographs of homes in Lovelock and Fallon where Indian agents purchased small tracts of land for the Indians to build on, "showing the contrast...when they have an assurance that they will not be disturbed."¹⁴¹

Secretary of the Interior Franklin K. Lane recommended to Pittman that although he supported the idea of land purchases for Nevada Indians, the amount in the bill should be reduced to \$15,000. Pittman agreed, acknowledging that he could not expect more than the department recommended. In 1916, after some deliberation on the two proposals for relief of Nevada's landless Indians, Congress approved the full \$15,000 for the Washoe. The House Committee also approved the proposed appropriations to purchase lands for other Nevada Indians as a provision of the Indian Appropriation Act, and again, both House and Senate agreed on that amount without dispute.

In 1917, after the successful approval of the Indians Appropriation Act, the Office of Indian Affairs hired Lorenzo D. Creel, who had been working with landless Indians in Utah, to purchase lands for Nevada Indians. Creel's tireless efforts resulted in the purchasing and creation of the Carson Indian Colony, Dresslerville near Gardnerville, and the Reno-Sparks Indian Colony.¹⁴² Although national Indian policy of this time emphasized reducing reservations,

¹⁴¹ U.S. Congress Senate, Committee on Indian Affairs, *Indian Appropriations Bill: Hearings Before the Committee on Indian Affairs United States Congress*, 64th Congress, 1st Sess., 1916, H.R. 10385 (Washington D.C.: Government Printing Office, 1916), 217-218, 220-221; Rusco, "Purchasing Lands," 14; Ford, "Lorenzo Creel," 103-106.

¹⁴² Nevers, *Wa She Shu*, 79; Rusco, "Purchasing Lands," 17-18. The Reno-Sparks Indian Colony, made up of both Washoe and Paiute, was the sight of several long-time Indian camps dating to the 1850s.

in Nevada, creation of reservations became the dominant issue in the second decade of the twentieth century. Political figures such as Key Pitman and Francis Newlands, influenced by the Nevada Indian Association and others, can be credited for taking action on behalf of Nevada's disenfranchised indigenous population. Creel also did his part for the Washoe even though the lands that he purchased only constituted a small fraction of the traditional homelands. The various colony lands provided a valuable platform from which the Washoe could begin to build.

As much of a victory as it was acquiring lands under government trust for the Washoe people, most unassimilated reservation Indians were still not legally considered citizens of the United States and did not have the right to vote. Even having lands held in trust by the federal government under the allotment system meant the Washoe were not yet fee simple owners of that land in a common law context.¹⁴³ For a time, the Washoe living in colonies, especially those in Dresslerville remained mostly isolated from the larger white community. Downs points out, "As the Indian became less important to the functioning white society, whites became increasingly hostile to the Indian way of life."¹⁴⁴ Segregation and discrimination from whites remained intact and formalized in the institution of curfews in Minden and Gardnerville. Much like de facto segregation in the South, the Washoe could not remain in town after dark and were barred from entering certain businesses. The newspapers often reported on destruction or disruptions caused by drunken Washoe Indians. Even after obtaining some scattered lands, the Washoe's situation remained precarious.¹⁴⁵

The word "tribe," often used by whites in the nineteenth century to distinguish between Indian groups, was only a superficial and haphazard designation. A tribe prior to 1934 was not necessarily a legal entity and not entitled to any rights or privileges particularly if outside the

¹⁴³ Ford, "Lorenzo Creel," 130.

¹⁴⁴ Downs, *Two Worlds of the Washo*, 98.

¹⁴⁵ Ford, "Lorenzo Creel," 137-138; Dressler and Sallee, *Marvin Dressler and Ted Sallee*, 17-21.

treaty framework.¹⁴⁶ The condition of American Indians, and especially the Washoe, was far from ideal. While not citizens, the government expected that American Indians should show allegiance to the United States by offering their service to the military even in foreign wars, but only assimilated “non-reservation” Indians who registered for citizenship were subject to the draft in World War I.¹⁴⁷

Reformers and believers in the assimilationist policies believed that the war was an opportunity to enlist recalcitrant Indians and push them toward civilization under the discipline of military life.¹⁴⁸ Others saw it as a way for American Indians to prove their patriotism and reap later benefits. When the United States entered the war in 1917, many Washoe men were reluctant to enlist. By the war’s end, five Washoe men volunteered. In all, over 8,000 American Indians volunteered to fight in World War I. Afterwards, Indian citizenship bills began appearing in 1918 initially as a way of rewarding any American Indians who fought in the war. In 1919, Indian veterans, desirous of citizenship, were able to fill out an application and forego a lengthy bureaucratic process for citizenship. It was not until 1924 that Congress passed legislation granting all American Indians citizenship, although the option was available under the process of the Dawes Act after a trusteeship period and final procurement of land in a fee simple title of ownership. The legal ramifications of the citizenship legislation in 1924 marked a dramatic increase in the number of Indian claims filed for transgressions committed by the United States government. Though very few claims were heard, this phenomenon indicated the

¹⁴⁶ Elmer Rusco, “Formation of the Reno-Sparks Tribal Council, 1934-1939,” *Nevada Historical Society Quarterly*, vol. 30, no. 4 (Winter 1987), 316-317.

¹⁴⁷ Thomas A. Britten, *American Indians at War and at Home in World War I* (Albuquerque: University of New Mexico Press, 1997), 50-51.

¹⁴⁸ Holm, *The Great Confusion*, 146-147.

possibilities of American Indians entering the American legal channels if given the legal means.¹⁴⁹

By the second decade of the twentieth century, federal Indian policy was again ripe for reform. Lewis Meriam's 1928 government sponsored report *The Problem of Indian Administration*, or the Meriam Report, called for revision or rethinking of the Dawes Act and a reconstitution of the curriculum and practices in Indian boarding schools. The Meriam report emerged as the first major report on the status of American Indians and the performance of federal Indian policy. The degree of human suffering that came to represent tribal life in the early twentieth century was starkly laid out in the report. The opening line of the report claimed, "An overwhelming majority of Indians are poor, even extremely poor, and they are not adjusted to the economic and social system of the dominant white civilization."¹⁵⁰

Some of the findings in the nearly 900-page report emphasized the high mortality rates among Native Americans, prevalence of diseases, especially tuberculosis, illiteracy rates as high as sixty-seven percent in some states, and the low annual income of two-thirds of all Indians.¹⁵¹ The general summary of findings and recommendations in the report noted that despite land allotments issued during the Dawes Act very few Indians were "real farmers." While the Dawes Act had many failings, it did successfully separate the Indians from their lands. After forty-five years, Indian reservation lands were reduced to one-third, or 90 million acres, less than what they were prior to 1887. Also there was very little assimilation resulting from the Dawes Act:

The main occupation of the men are some outdoor work...spasmodically, a little agriculture, a little fishing, hunting, trapping, wood cutting, or gathering of native

¹⁴⁹ Rosenthal, *Their Day in Court*, 17-18; Britten, *American Indians at War*, 178-179.

¹⁵⁰ Brooking Institute. Institute For Government Research, *The Problem of Indian Administration. With a New Introduction By Frank C. Miller* (New York: Johnson Reprint Corp., 1971 [c1928], v.

¹⁵¹ Brooking Institute, *The Problem*, 3-5; Hoxie, *A Final Promise*, 242.

products... Very seldom do the Indians work around their homes as the typical white man does.¹⁵²

Meriam and his associates diagnosed the essential problems of American Indians as poverty, resulting and perpetuating from the policies handed down by the federal government. Although the report did not recommend repealing the Dawes Act, it was a preliminary step toward a reorientation of American Indian policy that eventually produced the Indian Reorganization Act (IRA) of 1934.¹⁵³

By the time of the passage of the IRA the ideas of cultural relativism prevailed in some anthropological circles and provided a means of objectively assessing marginalized peoples and validating their culture. Theories of cultural evolution or stadial thinking, inherited from anthropologist Lewis Henry Morgan in the nineteenth century, also remained intact in other anthropological circles.¹⁵⁴ Anthropology was recognized as the discipline that could best address and explain the human condition. While Helen Hunt Jackson helped illuminate the failures of the reservation system, more than forty years later, the Meriam Report declared both the Dawes Act and Indian boarding schools failures. The Meriam Report officially acknowledged sentiments which began in the early twentieth century when critics of the Dawes Act surfaced. Some critics placed blame on federal Indian policy, while others blamed the Indians themselves. Skepticism grew about the capability of Indians to assimilate. Indians did not seem to be progressing toward a higher level of civilization as was expected by stadial theory that saw humans progressing naturally and upwardly into higher stages of civilization. In the face of Indian failure to progress, their potentials as human beings were often discounted. The mindset of American reformers and social scientists began to question whether the highest level of civilization was attainable by the

¹⁵² Brooking Institute, *The Problem*, 5.

¹⁵³ Brooking Institute, *The Problem*, v-xiii.

¹⁵⁴ Holm, *The Great Confusion*, 128-129.

American Indian. Racial explanations for Indian shortcomings began to dominate the thinking of many political officials and even reformers. Countering this skepticism and offering an entirely different assessment of the “problem of the American Indian” were the cultural relativists in American anthropology under the leadership of Franz Boas at Columbia University.¹⁵⁵

As the drive for assimilation failed, Indian art and music gained admirers. Indians and their life ways or culture assumed a strong identification with the natural world, which was seen as a source of renewal in an increasingly strained urbanized-industrial society. Cultural relativism stressed the notion that attributes of Indian culture were no longer signs of backwardness or inferiority as they had been seen for so many decades. Boas established the notion that many different groups of people were responsible for furthering civilization at their own pace in their own way, especially in North America.

The IRA of 1934, under the direction of the idealistic Commissioner of Indian Affairs John Collier, still exhibited a great deal of paternalism by the federal government, but it promoted self-determination and self-government with the intention of creating a stronger foundation for the persistence of Indian cultures. Although widespread support existed for federal Indian policy reform, opposition to the implementation of the IRA occurred. Protest against the abolition of allotments came primarily from those who benefitted from them including whites who received favorable long-term leases on allotment lands. Some Indians too opposed reorganization. Allotment had allowed some to emerge as fee simple owners of their land. Other opposition included some anthropologists who believed certain groups of Indians were incapable of or unsuited for self-governing. Finally, Protestant missionary groups criticized Collier’s call to limit Christian proselytizing activities on reservations. Protestant missionaries remained strong proponents of assimilation throughout the Dawes Act into the 1930s.

¹⁵⁵ Franz Boas, *The Mind of Primitive Man* (New York: The Macmillan Company, 1911), 1-29.

Missionaries assumed that preparing Indians for citizenship and economic independence required exposure to Christian teachings.¹⁵⁶

Starting in the 1920s, Collier became part of a group of reformists who sought to dismiss assimilation policies in favor of embracing and celebrating Indian culture.¹⁵⁷ The original proposal by Collier for Indian reorganization contained four sub-headings: Indian Self-Government, Special Education for Indians, Indian Lands, and the Court of Indian Affairs. These four topics marked radical changes in the administration of Indian affairs. The vision behind the IRA promoted a gradual decrease in the Office of Indian Affairs' functions as Indians developed and established their own institutions—taking over the traditional functions of governmental paternalism.¹⁵⁸ Title one called for a three-part tribal government including an executive branch (Tribal Chair), judicial branch (Tribal Courts), and a congress (Tribal Council). Title two established a small amount of money for scholarships to promote higher education for employment in the Indian Service. It also encouraged educational efforts to teach Indian arts and crafts. Title three forbade further land allotments anywhere in the United States. The Secretary of the Interior had the authority to return ceded areas not yet homesteaded to community tribal ownership. Finally, title four established a “Court of Indian Affairs,” designed to adjudicate disputes in tribal courts.¹⁵⁹

Collier assumed his Indian Commissioner appointment in 1933 and worked with Congress to pass the IRA bill in February 1934. Franklin D. Roosevelt signed the bill four months later on June 18, 1934. The act offered provisions to make the “Indian tribe” a legal

¹⁵⁶ Banner, *How the Indians Lost Their Land*, 287-290; Blackhawk, *Violence Over the Land*, 279; David W. Daily, *Battle for the BIA: G.E.E. Lindquist and the Missionary Crusade Against John Collier* (Tucson: University of Arizona Press, 2004), 80-81.

¹⁵⁷ Daily, *Battle for the BIA*, 3.

¹⁵⁸ Deloria, *The Indian Reorganization Act*, xi-xiii.

¹⁵⁹ Deloria, *The Indian Reorganization Act*, xii-xvi; Makley, “These Will Be Strong,” 179-180.

entity or corporation. Most tribes created corporate charters, even small groups like the Washoe, gained greater autonomy by giving them the same rights of other corporate entities.¹⁶⁰ Indians were encouraged to establish formal “tribes,” complete with Tribal Charters (or constitutions), and even intertribal governments. Formal tribal status recognized sovereignty and allowed tribes the rights and privileges of corporate entities. American Indian historian Akim Reinhardt, author of *Ruling Pine Ridge: Oglala Lakota Politics from the IRA to Wounded Knee* (2007), maintains that by lifting some of the colonial control off the Indians, it was hoped that they could move more freely in a political atmosphere and make more independent decisions that might benefit them. The result was strengthened inter-tribal leadership and less federal control within the tribes. Indirect colonialism was the approach of the New Deal for American Indians, as Reinhardt calls it, “a kind-hearted modification to traditional colonial rule.”¹⁶¹ Under the IRA, reservations would no longer be ruled by autocratic agents, but rather by tribal councils elected by the tribes. Finally, Indian tribes would draft their own constitutions.¹⁶²

Many of the constitutions written by tribes under the IRA were similar to the national and state constitutions and were written under the supervision and approval of delegates of the Office of Indian Affairs. Tribal organization and recognition allowed Indians a greater chance of receiving federal grants and state funding for various improvement and self-help projects. Greater organization in some cases created increased tribal unity and strength through increased organization. The goal was more autonomy for Indian tribes after centuries of domination.

Congress included an important provision in the IRA, which required each reservation or tribe to hold a referendum to decide whether to accept or reject the IRA within one year of its

¹⁶⁰ Holm, *The Great Confusion*, 193-194; Deloria, *The Indian Reorganization Act*, viii-ix; Alfred L. Kroeber, “Nature of the Land Holding Group,” *Ethnohistory*, vol. 2, no. 4 (Autumn 1955), 303-306.

¹⁶¹ Akim D. Reinhardt, *Ruling Pine Ridge: Oglala Lakota Politics from the IRA to Wounded Knee* (Lubbock: Texas Tech University Press, 2007), 23

¹⁶² Reinhardt, *Ruling Pine Ridge*, 23-26.

passage. Superintendent of the Carson Indian School Alida Bowler wrote Collier, a friend, to express her concerns about being able to conduct elections in all of the Nevada colonies since not all were reservations. Also groups of Washoe remained scattered over large areas. Some Washoe lived at Dresslerville, Carson Colony, and the Reno-Sparks Colony. Additionally, some lived in the Markleeville, Woodfords, Doyle, and Loyalton, all in eastern California. Small groups also remained on white-owned ranches in the Carson and Washoe valleys. Some still held possession of individual allotments in the Pine Nut Hills.¹⁶³

Collier's Assistant Commissioner, William Zimmerman Jr., informed Bowler that elections should be organized for each colony. In 1935, Indian communities across the state of Nevada met to discuss the prospects of self-government. Trouble erupted between the Washoe and Paiute living in the Reno-Sparks Indian colony. Many of those in Reno doubted it would be possible to create a council that might represent the interests of both people harmoniously. In June of 1935, many Washoe gathered at Dresslerville to hear Bowler announce that the Washoe people almost unanimously voted in referendum to approve the IRA.¹⁶⁴ At the Reno-Sparks colony, despite tribal differences, the majority of eligible voters, both Paiute and Washoe, voted in favor of the IRA.

The Washoe submitted a copy of their constitution and by-laws to the Secretary of the Interior in January of 1936. In the constitution, the Washoe called themselves "the Washoe Tribe of Nevada and California" based out of Dresslerville. Issued on February 27, 1937, the Washoe tribe received a corporate charter recognizing it as a formal and legal tribe.¹⁶⁵ The Washoe constitution stipulated that the Washoe Tribal Council consist of seven members elected

¹⁶³ Nevers, *Wa She Shu*, 83.

¹⁶⁴ "Nevada Indians Vote In Favor of Self-Government," *Nevada State Journal*, June 18, 1935; Makley, "These Will Be Strong," 180-182; Rusco, "Formation," 322-326.

¹⁶⁵ Nevers, *Wa She Shu*, 89; Washoe Tribe of Nevada and California, *Constitution and By-Laws of the Washoe Tribe, Nevada and California: approved January 24, 1936* (Washington D.C.: Government Printing Office, 1936), 1-2.

by secret ballot, three of the seven being from Dresslerville, and the other four to represent “the scattered Indians.” Among the early members of the tribal council were Hank Pete to represent non-colony Washoes, first Tribal Chairman Ray Fillmore, Vice Chairman Willie Smokey, and Secretary Treasurer, Roma James.¹⁶⁶ Downs suggests that the Washoe, unlike Indians in other parts of the country who had long since moved to reservations, were not prepared for self-government. This again fits older assumptions held by some anthropologists of cultural evolution. Perhaps, what Downs was implying was that this new mode of governance was greatly different from what the Washoe were accustomed to. His statements probably do not reflect a belief that the Washoe were incapable of such a task, just inexperienced. Downs would have observed many of these changes first-hand.¹⁶⁷

The main concerns of the newly formed Washoe Tribal Council included establishing tribal organization, developing community resources, tackling widespread alcoholism, and promoting the general welfare of the Washoe and their descendents. Members of the council argued over the usage of peyote by some Washoe for religious purposes. The policies of Collier’s administration, in reference to freedom of religion, served to embolden Native American leaders in their promotion of the peyote religion as a traditional form of native religion.¹⁶⁸ Where some believed it to be harmless, others decried its use as a narcotic and a killer. These were some of the early issues dealt with by the Washoe Tribal Council. Makley contends that despite confrontations and arguments regarding the peyote religion in the 1930s, the Washoe Tribal Council wrote to Collier expressing their appreciation for the IRA believing it allowed them the authority to rule over their own affairs.¹⁶⁹ Tribal organization did benefit the

¹⁶⁶ Washoe Tribe of Nevada and California, *Constitution*, 2-3; Makley, “These Will Be Strong,” 184-185.

¹⁶⁷ Downs, *Two Worlds of the Washo*, 102.

¹⁶⁸ Daily, *Battle for the BIA*, 63.

¹⁶⁹ Makley, “These Will Be Strong,” 190-192.

Washoe in the decades after the IRA. The Washoe, like many other American Indian tribes, received an unprecedented opportunity under their new corporate organization to file suit against the federal government for past transgressions.

Chapter Four

The Indian Claims Commission: Disputed Territory

In 1946, Congress approved the Indian Claims Commission Act. The ICC emerged as a fact-finding body, intended to hear and rule on grievances resulting from pending Indian claims—contractual, noncontractual, legal, and non-legal. After what was supposed to be a speedy litigation process, tribal entities could be awarded money for previously held lands and resources connected to those lands. While the ICC appeared to be a sincere effort to right old wrongs with monetary compensation, it also was an effort to put to rest federal obligations and outstanding Indian claims by laying the the foundation for terminating the federal government’s special relation with and even dissolution of the tribes. In some cases, however, the money awarded to various tribes became useful in promoting and creating stronger tribal infrastructure and increased unity; certainly not the dissolving of the tribe.

Termination, initiated at roughly the same time in the post World War II period, resembled previous assimilationist policies that saw the Indian as a vanishing race. Intended to terminate Indian tribes and abolish the reservation, the federal government hoped to eliminate or end its special relationship with native peoples—without tribes, tribal dependency on the federal government ended. This initiative created yet another round of reservation land losses for the tribes that chose to cede their status. Termination was riddled with issues. The tribes and their members were not prepared for termination. As the program failed, many fell into abject poverty with state governments faced with the prospects of growing indigent populations. Historian Paul Rosier argues that the ICC helped to facilitate a renewed sense of Indian nationalism in the 1940s. As a result, this newly discovered nationalism exacerbated pressures for termination as Indian tribes willfully began submitting claims for recovery which would inevitably be a boon to the

wellbeing of the various Indian nations and even promote their ability to exist without the paternalism of the federal government.¹⁷⁰

Aside from offering recovery funds, the ICC Act intended to remove the federal government from the Indian land business entirely. Exchange of a valid land claim for money further precluded a tribe from land returned. Critics of this policy claim that the government was the winner in the end by extinguishing Indian land claims and offering monetary compensation for illegal takings of tribal land without fully acknowledging the moral aspects, which suggests that the claims and their settlement did not revolve entirely around legal and financial considerations. The ICC coupled with the later “termination” policy were the federal government’s most dedicated attempts to distance and separate itself from its long relationship with American Indian tribes.¹⁷¹

Legal historian Harvey D. Rosenthal, author of *Their Day in Court: A History of the Indian Claims Commission* (1990), one of the few academic histories dedicated solely to the ICC, maintains that most money appropriated for Indian affairs prior to 1946 went to whites. More specifically this money went to educators on reservations, the allotment process, and the maintenance of 6,000 employees of the Indian Service.¹⁷² Prior to 1946, it was very difficult for individual Indian tribes to make claims against the government in the federal court system. Litigation could be drawn out indefinitely, or American Indians simply were not easily able to sue the government because they were not recognized as citizens under the Fourteenth Amendment.¹⁷³ Before the IRA, Indian tribes too held very little political or legal power. They

¹⁷⁰ Paul C. Rosier, *Serving Their Country: American Indian Politics and Patriotism in the Twentieth Century* (Cambridge, Mass.: Harvard University Press, 2009), 118-119; P.G. McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status and Self-Determination* (Oxford, UK: Oxford University Press, 2004), 131.

¹⁷¹ Petra Shattuck and Jill Norgren, *Partial Justice: Federal Indian Law in a Liberal Constitutional System* (New York: St. Martin’s Press, 1991), 142-143.

¹⁷² Rosenthal, *Their Day in Court*, 17.

¹⁷³ Rosenthal, *Their Day in Court*, 10-14.

were neither sovereign nations nor separate states as ruled in the Marshall Trilogy (1823-1832). The events and developments in federal Indian policy in the first half of the twentieth century dramatically changed that.

Rosenthal suggests that the ICC Act's roots lay in "the largest real estate transaction in history." The ICC Act, approved by Congress on August 13, 1946, materialized out of two basic factors: the Indians' tribal and cultural persistence and Anglo traditions of law and respect for private property.¹⁷⁴ President Harry S. Truman signed the ICC Act in 1946, also known as Public Law 726. The report from Congress, recommending the ICC, indicated that the bill was committed to "right a continuing wrong to our Indian citizens for which no possible justification can be asserted...." The report continued by explaining the difficulties that Indians historically encountered when attempting to present grievances to the federal government. It indicated that past discrimination of Indians was regrettable and shameful, especially at this time in light of the service and valor of nearly 400,000 Indian citizens during World War II, "far out of proportion to their numbers in the population," according to the ICC bill.¹⁷⁵ Similar to the legislation passed in the years following World War I, which rewarded American Indian patriotism with citizenship, the recommendation to Congress for the ICC states:

It is only fitting that at the end of World War II the devotion and patriotism of our Indian citizens be recognized by abolishing the last serious discrimination with which they are burdened in their dealing with the Federal Government and by giving them a full and untrammelled right to have their grievances heard under nondiscriminatory conditions by the appropriate courts of the United States.¹⁷⁶

¹⁷⁴ Rosenthal, *Their Day in Court*, xi-3.

¹⁷⁵ U.S. Congress, House Committee on Indian Affairs, *Creating and Indian Claims Commission*, 79th Congress, 1st Sess., 1945, House Rpt 1466 (Washington D.C.: Government Printing Office, 1945), 1-3.

¹⁷⁶ U.S. Congress, House of Representatives. House Committee on Indian Affairs, *Creating and Indian Claims Commission*, 79th Congress, 1st Sess., 1945, House Rpt 1466 (Washington D.C.: Government Printing Office, 1945), 2.

On August 1946, when President Truman signed the ICC Act, he noted his satisfaction to be signing his name to “a measure which removes lingering discrimination against our First Americans....” His statement continued by commending Indian citizens for their valiant service on every battlefield saying, “They have proved by their loyalty the wisdom of a national policy built upon fair dealing.” He concluded by saying that all outstanding claims would be settled so American Indians could share in the progress of the nation.¹⁷⁷

Litigation was slow, and the claims attorneys made liberal use of procedures, which caused delay. The ICC had to ask for extensions every five years until 1978 when the commission finally wrapped up its work. Attorneys for Indian tribes were not entirely at fault. Within the federal government and the press, claims attorneys on both sides gained a negative reputation. Congressional debates condemned the Indian legal business as “the biggest racket in the country...with the motive and effect of obscuring merit with myth.”¹⁷⁸ A 1952 article that appeared in *The Washington Post* and other national newspapers entitled, “The Downtrodden Red Man” accused Indian attorneys of making Indians appear abused and “unfairly treated by Uncle Sam.” The implication is that Indian attorneys were only out for their own benefit, and they were willing to curse the United States government just to prompt Indian tribes to file a claim.¹⁷⁹ On the other side, U.S. Justice Department lawyers were not necessarily concerned with “righting old wrongs.” They saw themselves as aggressive defenders of the government’s fiscal interests. Initially the ICC was seen as a success; more recently though, it has been treated with increasing skepticism. Arguments against the ICC maintain that debts incurred by the United States government at the expense of its indigenous people are far beyond the

¹⁷⁷ Rosenthal, *Their Day in Court*, 48; Harry S. Truman, *Public Papers of the Presidents of the United States: Harry S. Truman, 1946* (Washington D.C.: Government Publishing Office, 1946), 414.

¹⁷⁸ Rosenthal, *Their Day in Court*, 24; McHugh, *Aboriginal Societies*, 554.

¹⁷⁹ “The Downtrodden Red Man,” *The Washington Post*, August 14, 1952.

compensation of reparation. While the ICC might have been a step in the “right direction,” it offered only money for land and resources ceded by the Indians during westward expansion.¹⁸⁰ It largely ignored the far-reaching and prolonged harm caused to American Indian culture and livelihood.

The Washoe Tribe of the states of Nevada and California (plaintiff) v. the United States (defendant) grew out of decades of disenfranchisement of the Washoe people and confiscation of their lands in Nevada and California. While the claim was asserted in 1948, it was only settled in 1970 for almost one-ninth the amount of money that the Washoe’s attorneys initially requested. The claim was complicated because it involved one Indian tribe scattered across territory in two states. Further complications came in the form of overlapping land claims from the Paiutes in Nevada and “the Indians of California” near Sierra Valley, California, including valuable real estate around Lake Tahoe and the hills near Virginia City—most notably the lands which contained the Comstock Lode.

In 1951, the Washoe Indian Tribe of Nevada and California filed suit against the United States government under the recently formed ICC. Great Basin Anthropologist Martha Knack maintains that the key to a successful claim was proof that an Indian tribe occupied lands “from time immemorial...until a later specified date when it was lost to federal malfeasance.”¹⁸¹ The Washoe’s legal team aided by the expertise of anthropologists determined that the Washoe lost control of their lands by 1853 in California and 1863 in Nevada. Rapid white incursion on the Washoe people’s traditional land made their livelihood unsustainable. In 1974, after more than twenty years of litigation, the Washoe Tribe received a \$5 million settlement from the federal government.

¹⁸⁰ Shattuck and Norgren, *Partial Justice*, 147-148.

¹⁸¹ Martha C. Knack, *Boundaries Between: The Southern Paiute, 1775-1995* (Lincoln: University of Nebraska Press, 2001), 246.

In April 1948, the seven-member Washoe Tribal Council, accompanied by a number of Washoe from Nevada and California, and Carson City Indian Superintendent Ralph Gelvin, gathered at Dresslerville to meet with attorney George F. Wright of Elko, Nevada to discuss the possibility of filing a claim against the federal government. While waiting for Wright to arrive, Gelvin described to all those in attendance what the ICC Act was. He continued by reading some of the main parts of the act, and then explained how the Washoe Tribe might benefit from it, indicating that the Washoe could sue for lost land and depletion of their traditional hunting and fishing resources.¹⁸² During those preliminaries, council members discussed the possibility of including all Washoe people in a claim throughout California and Nevada. Tribal Council members recommended that they hire Wright as the tribe's attorney to represent their claim. Whether or not the California Washoe wanted to consolidate their claim with the Nevada Washoe was still questionable. Washoe representatives Richard Barrington and Lloyd Barrington of Sierraville, California expressed their concerns about the expense of hiring an attorney right away. Wright assured the group that he could carry the immediate costs if hired. He also indicated that a law firm in Washington D.C. would be willing to help with the case. After much deliberation, the Washoe decided that they would seek compensation for damages with Wright as their attorney. Before Wright could begin any work, his contract with the Washoe Tribe of Nevada and California needed approval from the Department of Interior.¹⁸³

Wright appeared to be a good choice for the Washoe. He was a rural Nevadan who grew up on a ranch in Ruby Valley and attended high school in Elko. After graduating from the University of Nevada, Reno, he attended law school at the University of Michigan. Upon

¹⁸² "Meeting," Dresslerville, April 21, 1948, Wright MSS; The seven Tribal Council members present were Presiding Officer Bondo Fillmore, Tom Sallee, John Nevers, Willie Smokey, Donald Wade, Carnegie Smokey, and Hank Pete.

¹⁸³ "Minutes," produced by Smokey Carnegie, Washoe Tribal Council Secretary, Gardnerville, April 21, 1948, Wright MSS.

passing the bar, Wright practiced law in San Francisco before returning to Elko. He had both rural and urban experience and showed an eagerness to handle the Washoe claim.¹⁸⁴ In addition to Wright, C.T. Busha Jr., and John Lewis Smith Jr. of Washington D.C., two attorneys with “excellent reputations,” acted as associate council to assist in building the case. While the case was still active, Busha passed away, and John Lewis Smith assumed a federal judgeship. Attorney Nicolas E. Allen also of Washington D.C. took over responsibilities for both attorneys by 1958. The federal government loaned the Washoe tribe the money to maintain its legal team and pay for land, minerals, and other natural resource appraisals. Money awarded at the conclusion of the case repaid loans issued by the government.

The Department of the Interior officially recognized and approved the contract for Wright and his Washington D.C. associates to be the Washoe Tribe’s lawyers in October of 1948.¹⁸⁵ The Washoe claim, or “docket 288” as it became known, was one of 617 dockets brought in front of the ICC.¹⁸⁶ Early in the process, Washoe Tribal Council members from both states concluded that it was best to file their claim as a group to encompass all Washoe people, if possible. The Washoe of California considered filing their own separate claim, which they thought might be stronger than the Nevada claim. Hank Pete, a council member, corresponded with Wright about the California Washoe’s hesitation to consolidate claims with the Washoe communities in Nevada. Pete asked Wright to look into whether the two groups could file a joint claim.¹⁸⁷ By federal standards, the Washoe living in California made up a small fraction of the larger group classified as “the Indians of California,” which did not constitute any particular tribe

¹⁸⁴ Makley, “These Will Be Strong,” 206-207.

¹⁸⁵ “Agreement Associating Attorneys in Connection with Certain Claims of the Washoe Tribes of the States of Nevada and California,” July 30, 1948, Wright MSS; George F. Wright to Mr. Hank Pete, Washoe Councilman, March 31, 1948.

¹⁸⁶ Shattuck and Norgren, *Partial Justice*, 141.

¹⁸⁷ “Minutes,” produced by Carnegie Smokey, Washoe Tribal Council Secretary, Dresslerville, June 12, 1948, Wright MSS; Makley, “These Will Be Strong,” 207.

or band. An act passed by Congress in 1928 defined “the Indians of California” as all Indians living in California as of June 1, 1852, and their descendents still living in the state. This definition partially defined the status of the Washoe Indians.¹⁸⁸ Regardless, Washoe people of both states were eager to obtain some recompense for lands and resources they had lost almost one hundred years earlier.¹⁸⁹

The ICC process meant lucrative litigation opportunities. Under contract, the attorneys for the Washoe Tribe held a ten percent retainer fee of the total amount awarded. Early correspondence between Busha and Wright reveals the eagerness of the attorneys to submit the claim on behalf of the Washoe Tribe. In one letter, Busha comments that the ICC is “good at the present, Congress feels if it can take care of people all over the world, it can take care of people at home.”¹⁹⁰ In another letter, there is an attached newspaper clipping proclaiming the recent settlement made with the Colorado Utes for \$31,700,000 based on six million acres of lost land. Busha claims, “The enclosed clipping will show that we are losing time, and certainly your tribe ought to be in as good a position as the Colorado Utes.”¹⁹¹ A newspaper article regarding this settlement, which appeared in the *Reno Evening Gazette*, claimed, “Attorneys were encouraged by the \$2,800,000 fee paid to lawyers for the Utes. Of the 852 claims filed, 540 demand payments exceeding three billion dollars.”¹⁹² News regarding successful Indians claims, especially those involving large sums of money, was encouraging for Wright and his associates, and other attorneys hoping to make their fortune. In some instances, lawyers took on multiple claims at once, spreading their services thinly to a variety of different tribes.

¹⁸⁸ Rita Singer, Attorney Advisor of Department of the Interior Sacramento Area Director James B. Ring to Carson City Superintendent Burton A. Ladd, April 5, 1951, Wright MSS.

¹⁸⁹ Nevers, *Wa She Shu*, 89.

¹⁹⁰ C.T. Busha to George F. Wright, April 10, 1949, Wright MSS.

¹⁹¹ C.T. Busha to George F. Wright, July 15, 1950, Wright MSS.

¹⁹² “Indian Claims Flood Bureau,” *Reno Evening Gazette*, April 14, 1952.

Intended to be quick and efficient, the ICC would not consider any claims not filed within five years of the approval of the Act. That period expired August 12, 1951. Wright's progress on the Washoe claim moved very slowly following the approval of his contract with the Washoe. Between 1949 and 1951, Wright's colleagues and the members of the Washoe Tribal Council wrote him regularly inquiring as to progress on the claim. Carnegie Smokey, tribal secretary, wrote to Wright repeatedly asking for updates on the claim. As secretary, he answered questions from members of the tribe. In Dresslerville, Wright's tardiness in providing updates produced rumors that the claim no longer existed. In a letter to Wright, Smokey claims that the issue was a persistent topic of conversation at Tribal Council meetings.¹⁹³ The Indian superintendent in Carson City also tried contacting Wright claiming, "The Tribe is totally in the dark, and as a consequence, is suffering the frustration of ignorance in connection with their claims."¹⁹⁴

After months of inactivity, Wright contacted Busha and Lewis, asking them to gather information about Washoe territorial boundaries and any prior treaties the Washoe may have had with the United States government. During its early stages of assembly, the legal team relied primarily on testimony from older members of the Washoe Tribe, maps from the Department of the Interior, and Nevada history books. The tribal history and traditional practices, which appeared in the text of the claim, came from two influential senior members of the Washoe Tribal Council. Council members Tom Sallee and Hank Pete's accounts were recorded to demonstrate land usage and subsistence practices prior to white incursion. Pete suggested he could provide the lawyers with other older Indian informants willing to testify on behalf of the tribe.¹⁹⁵ The attorneys based their preliminary boundary estimates on oral histories provided by tribal elders. In a letter prior to deposition of the Washoe claim, Wright wrote Smith to tell him,

¹⁹³ Carnegie Smokey to George F. Wright, January 7, 1950, Wright MSS.

¹⁹⁴ E. Reeseman Fryer to George F. Wright, February 7, 1950, Wright MSS.

¹⁹⁵ Hank Pete to George F. Wright, March 5, 1951, Wright MSS.

“the standard [education and professions] of this tribe [the Washoe] is much higher than other tribes in the western part of the U.S....Some of the Indians would make excellent witnesses.”¹⁹⁶

They also relied heavily on early accounts of Nevada history appearing in works such as Sam P. Davis’s *The History of Nevada* (1907) and Hubert Howe Bancroft’s *History of Nevada, Colorado, and Wyoming* (1890). The lawyers first needed to determine whether any treaties with the Washoe existed. Bancroft mentioned an 1857 “treaty of amity” existing between the Mormons and the Washoe, but there is no source cited for the information. The lawyers spent considerable time attempting to verify the validity of Bancroft’s information.¹⁹⁷ Second, the lawyers needed to determine whether the Washoe lost their property to other Indians or to the whites. As attorneys gathered details for their case, these sources provided them with initial information and an introduction to the life ways and history of the Washoe people.

As the months passed, Wright’s colleagues in D.C. expressed their apprehension with Wright’s attentiveness to the claim. They saw no reason why Wright should not be making more progress as they observed the settlements made with other tribes. Their concerns became more urgent in 1951 as they had not submitted anything to the ICC. Busha requested replies from Wright regularly, but rarely received any. In 1951, out of obvious frustration Busha stated, “Mr. Smith’s reputation and mine are at stake with the Indian Bureau....”¹⁹⁸ The BIA reminded Wright in a memorandum of the impending deadline (August 13, 1951). Wright’s slow progress became the subject of much frustration for the Washoe Tribe and his own legal team. Wright’s inattention and tardiness to the case nearly caused him to miss the claim’s filing deadline.

¹⁹⁶ George F. Wright to John Lewis Smith Jr., May 26, 1955, Wright MSS.

¹⁹⁷ Hubert Howe Bancroft, *History of Nevada, Colorado, and Wyoming, 1540-1888, Volume 25* (San Francisco: The History Company, Publishers, 1890), 206-207.

¹⁹⁸ C.T. Busha to George F. Wright, September 25, 1950, Wright MSS.

Busha and Smith begged Wright to provide them enough information or sources to structure a preliminary petition. Wright's own notes indicate that he gathered some information on Washoe lands originally compiled by the Stewart Indian Agency in Carson City. For their preliminary petition, Wright estimated that the Washoe lost 6,318,080 acres of land and figured that an acre was worth \$1.25. At this rate, Wright calculated the land lost to be worth \$7,897,600 plus six percent interest retroactively paid since the land was illegally taken in 1863. With interest on the land, and interference of fishing and hunting at a rate of \$10,000,000 with six percent per annum interest on damages, Wright concluded that the Washoe were entitled to approximately \$89,496,808.¹⁹⁹ These were the figures that Wright forwarded to Smith and Busha to be included in the preliminary petition. After receiving these figures, Busha confirmed to Wright that they put the values as high as possible, but maintained that the information available on the Washoe was "meager."²⁰⁰ Smith and Busha adjusted the amounts submitted in the actual claim on August 9, 1951.

The claim listed \$7,811,985.84 for lands lost, plus \$10,000,000 for interference of hunting and fishing, and \$25,000,000 for minerals and timbers wrongfully removed. The sum submitted in the claim totaled \$42,811,985.84. The much-disputed official boundaries of Washoe territory, which arose out of the preliminary claim and were later refined, extended north as far as Honey Lake, California, east into the Washoe and Carson valleys, and south to the headwaters of the west fork of the Carson River. The boundaries were lines of contestation often clashing with the eastern portion of Northern Paiute territory and Maidu territory in Sierra Valley, California.

¹⁹⁹ George F. Wright to C.T. Busha, July 8, 1951, Wright MSS.

²⁰⁰ C.T. Busha to George F. Wright, August 13, 1951, Wright MSS.

Washoe territory not only encompassed the resource-rich land and waters of the Sierra and Lake Tahoe, but also lands around Virginia City, the site of Nevada's most profitable mining discoveries beginning in the late 1850s.²⁰¹ Washoe land would become some of the most valuable and sought after territory in the American West. This was of particular importance to Wright and his associates when they were building their case for the claim. The claim lists a total of \$700,000,000 worth of valuable metals removed from the Comstock.²⁰² It is doubtful that Washoe people saw any of that wealth other than meager wages paid to those working around the mines or as domestics in Comstock towns. The wording in the official claim states, "from time immemorial...the plaintiff [the Washoe Tribe] occupied, held, possessed, and owned a large tract of land comprising approximately 9872 square miles or approximately 6,318,080 acres...in what are now the states of Nevada and California."²⁰³ At last, three years after the Tribal Council hired Wright the Washoe claim made its way to the ICC, but as Makley puts it, "The Washoe had no way of knowing that the process had just begun."²⁰⁴

After submitting the claim, Wright and his team scrambled to secure more research on the Washoe, to strengthen their claim. The legal team laid out a research agenda almost immediately. Wright began first by contacting Nevada historians, Effie Mona Mack and Jeanne Wier. Wright met with Mack a least once and considered hiring her as a research assistant. At various points in their careers, each woman wrote on the Washoe Indians. The lawyers sent out a slew of letters to anyone who might have any knowledge of the Washoe Indians. In Washington, Wright advised Smith to begin searching through the Library of Congress and the archives of the Department of the Interior. Specifically, Wright suggested Smith look into the

²⁰¹ Makley and Makley, *Cave Rock*, xiv.

²⁰² George F. Wright to Carnegie Smokey, July 26, 1951, Wright MSS.

²⁰³ "Petition of Plaintiff," August 9, 1951, Wright MSS, 3.

²⁰⁴ Makley, "These Will Be Strong," 215.

report of the expeditions of Captain James H. Simpson's "Navaho Expedition," Frémont's reports to Congress, and any other reports submitted to Congress by local Indian agents.²⁰⁵

Disputes over land in California and Nevada came up almost immediately after submitting the claim. Beginning in 1951, testimonies began in Reno on behalf of the Paiute Tribe in docket 87. In the Paiute's claim, the tribe declared the whole of Washoe Valley part of its territory.²⁰⁶ The Washoe's attorney discussed among themselves the possibility of striking a bargain for a territorial compromise with the Paiute. Wright and his colleagues attempted to reach a compromise with the attorneys of the Northern Paiute on disputed lands. The Paiute's attorney, Jay H. Hoag, a veteran of the ICC claims process, corresponded with Wright discussing the issues surrounding claims with overlapping land boundaries. Generally, the ICC threw out claims with disputed or overlapping land claims because it appeared that nobody owned the land. As Hoag and Wright discussed the overlapping boundary claims of the Washoe and the Paiute, the attorneys believed the best way to settle the matter would be to establish a principle of "joint control," which might allow for "joint recovery." Hoag also recommended to Wright that the legal team hire appraisers to determine land, timber, and mineral values, at the time of taking in the mid-nineteenth century, when they might have been more valuable.²⁰⁷

Dockets 31 and 37, which involved the Indians of California, claimed all of the land in the state of California except lands granted to others by Spain or Mexico (the Spanish-Mexican land grants). Both claims in California conflicted with the Washoe claim. Wright, his colleagues, and the Washoe Tribe were opposed to this decree because the Washoe claim did not

²⁰⁵ George F. Wright to John Lewis Smith Jr., March 12, 1952, Wright MSS.

²⁰⁶ George Wright to C.T. Busha, February 6, 1951, Wright MSS.

²⁰⁷ Makley, "These Will Be Strong," 221-222; George F. Wright to John Lewis Smith Jr., March 12, 1952, Wright MSS.

overlap with all of the other claims.²⁰⁸ They believed that the Washoe, as a whole, stood a much better chance of compensation if they presented their claim independently, as a distinct people. Wright also indicated that a trial involving multiple claims might take a tremendous amount of time to settle. On June 4, 1953, the government served the council a motion to consolidate docket 288 for trial with sixteen others.²⁰⁹ The Washoe's attorneys opposed the motion to include docket 288 in the consolidation of the other claims in California, but their case would not be heard until after hearings for dockets 31 and 37. Once the ICC heard evidence from all cases, respective rights of the various plaintiffs could be pleaded and established by the use evidence.²¹⁰ As a precaution, Smith set to work filing a motion requesting compensation for all Washoe living in Nevada and California if judgment was rendered favorable in dockets 31 and 37.²¹¹

Late in 1953, amidst an environment filled with uncertainty, anthropologist, Dr. Robert Heizer of the University of California, Berkeley contacted Wright. The lawyers continued to struggle to gather information from oral statements, maps, and written sources in an attempt to refine the Washoe's land boundaries. Heizer heard from one of his graduate students (Stanley Freed), who was working on an ethnographic study of the Washoe that Wright was representing the Washoe in front of the ICC. In his letter, Heizer claims,

The Washo[e] seem to feel that the professional anthropologists have let them down, and in order to disabuse them of this idea I am writing to offer to you my services as a consultant in the case and to offer any technical information which is available on the matter of Washo[e] boundaries.²¹²

Heizer became the first anthropologist consulted by the Washoe's lawyers. Heizer was probably referring to the ethnographic and archaeological studies on the Washoe people done by himself

²⁰⁸ "Resolution of the Washoe Indians," October 4, 1958, Wright MSS.

²⁰⁹ John Lewis Smith Jr. to George F. Wright, June 4, 1953, Wright MSS.

²¹⁰ John Lewis Smith Jr. to George F. Wright, February 25, 1954, Wright MSS; "Order of Consolidation," by Edgar E. Witt, Chief Commissioner, and Wm. M. Holt, Associate Commissioner, June 23, 1953, Wright MSS.

²¹¹ "Notice of Motion," Before the Indian Claims Commission by John Lewis Smith Jr., June, 1955, Wright MSS.

²¹² Robert F. Heizer to George F. Wright, December 9, 1953, Wright MSS.

and his colleagues prior to the ICC, but very little notice of these studies on the Washoe and their plight occurred. Heizer indicated anthropologists now had a tangible role in affecting the future course of events for a historically marginalized people. His letter reflects an attitude taken by many other anthropologists driven by an ideology, or humanitarian desire, to serve those that they studied, especially if the subjects were disadvantaged and marginalized people.

Anthropologists did receive payment for their research and testimony, but that did not seem to be the motivating factor for men like Heizer and his colleagues.

Wright and his colleagues recognized the necessity of seeking out the assistance of experts claiming more knowledge of the Washoe's history, traditions, and aboriginal life ways. Anthropology and much of the ethnographic studies of the nineteenth century offered insights beyond what the attorneys could bring to the case, or the historians for that matter. Bringing anthropologists into the courtroom for testimony was a new phenomenon in the 1950s, but the Anglo-Saxon legal process under common law sanctioned the employment of expert assistance.²¹³ Anthropologists brought with them first-hand knowledge gained from ethnographic and archaeological fieldwork that also appeared in their publications. Many of the anthropologists were undoubtedly competent to testify on the facts within their knowledge of specific Indian tribes.²¹⁴

The Department of Anthropology at the University of California, Berkeley was long the home of many distinguished experts on the Washoe Indians. The most notable was, Dr. Alfred L. Kroeber, a former student of Columbia University's Franz Boas. Kroeber, head of the Department of Anthropology at the University of California along with three other distinguished anthropologists from the same department, including Heizer, agreed to serve as expert witnesses

²¹³ Donald C. Gormley, "The Role of the Expert Witness," *Ethnohistory*, vol. 2, no. 4 (Autumn 1955), 326-327.

²¹⁴ Gormley, "The Role of the Expert Witness," 330-336.

in dockets 31 and 37. Anthropological studies of the Great Basin began in the early twentieth century with Kroeber and continued with renowned anthropologist Dr. Julian H. Steward of the University of Illinois.²¹⁵

In early 1955, U.S. Department of Justice lawyers offered their written defense in response to the initial Washoe claim. The first part of the defense began by dismissing the Washoe as a legitimate “tribe, band, or other identifiable group of American Indians,” and instead classified them as a group of nomadic family groups with no concept of property ownership. Government lawyers used similar arguments against an earlier claim submitted by the Southern Paiute, asserting that Great Basin Indian communities were so similar it was impossible to distinguish among them unique tribal entities.²¹⁶ The defense continued by first stating “that ‘original Indian title’ or occupancy and possession of the land...described...by the plaintiff does not constitute a property interest under the Constitution of the United States.” What the defense referred to was territory originally under the sovereignty of Spain and later the Republic of Mexico. The defense alleged that neither the government of Spain nor Mexico recognized possessory rights in any lands belonging to any Indian tribe. Therefore, upon acquisition of sovereignty and territorial rights by the United States (1848 Treaty of Guadalupe Hidalgo), Indians living within the boundaries, containing what would become Nevada and California, enjoyed no greater rights than they had previously under the rule of Spain or Mexico.

The defense contended that any legitimate claims should have been settled beginning in 1851 when the United States attempted to reconcile private land claims inherited from the Republic of Mexico in the state of California. Several pages later, the defense challenged yet another part of the original claims stating there was no evidence that white settlers had driven the

²¹⁵ Kathleen A. Van Vlack, “Traditional Ecological Knowledge and Resilience of the Southern Paiute High Chief System” (MA Thesis, The University of Arizona, Tucson, 2007), 14-15.

²¹⁶ Knack, *Boundaries in Between*, 246-247.

Washoe Indians off their land and that on the contrary the Washoe people voluntarily abandoned the lands when whites arrived. The Washoe's attorneys condemned the government's response claiming it to be "so absurd, and so grossly at variance with the known facts of history as to require no detailed refutation."²¹⁷ The defense challenged virtually every aspect of the original claim and ended by asking that the "Plaintiff be denied, and the petition be dismissed."²¹⁸ Despite recommendations from the defendant (the United States) to dismiss the Washoe's claim, it remained with the hearing set to begin in July of 1955 in San Francisco. Over the ICC's thirty-two years of life, it heard from and disposed of 550 of the 617 dockets derived from the original 852 claims.²¹⁹

As the attorneys worked to prepare documentary exhibits leading up to the hearing, they remained in contact with professional anthropologists including Kroeber and Heizer. Initially Smith suggested that the team solicit Kroeber to serve as the team's expert witness. Smith believed Kroeber could be integral in providing counsel, researching, and taking the stand as a witness during the hearing. In preliminary correspondence, Kroeber indicated to Smith that he was confident he could quickly substantiate between one-half and one-third of the area claimed in the Washoe petition with previously completed research.²²⁰ At that same time, Kroeber was working on dockets 31 and 37. He confided after several conversations and a meeting with Wright in Berkeley that it would not be prudent to take on the work for a third case. During a phone conversation Kroeber recommended his former student, and head of the Social Sciences Department at the University of Colorado, Boulder, Dr. Omer C. Stewart. Stewart had already testified in two ICC cases. Kroeber invited Stewart back to Berkeley to tell him about his

²¹⁷ "Plaintiff's Object to Defendant's Requested Findings of Fact and Plaintiff's Reply," March 1959, Wright MSS.

²¹⁸ "Response of Defense," filed by Perry W. Morton, Assistant Attorney General and Ralph A. Barney April 14, 1955, Wright MSS.

²¹⁹ Rosenthal, *Their Day in Court*, xi.

²²⁰ John Lewis Smith Jr. to George F. Wright, March 18, 1955, Wright MSS.

experiences preparing exhibits and testifying and his reactions to court room procedures. Wright arranged for meetings to begin with Stewart and the Washoe Tribal Council early in June 1955 in Carson City to discuss maps and data.²²¹

After speaking briefly with Stewart, the Washoe legal team agreed to hire him on a retainer for \$500 provided by the Washoe Tribe to act as an expert on behalf of the Washoe Indians. One of the first discussions between Stewart and Wright concerned where to draw a territorial line that separated the Paiute and Washoe's eastern boundary. Stewart's expertise and familiarity with the region allowed him to easily lay out a suitable boundary that would be "fair" to the Washoe.²²² The attorneys hoped that Kroeber and Stewart could confer to establish a western boundary for the Indians of California and the Washoe that would not overlap. Leading up to the hearings for the consolidated dockets involving lands in California, many of the anthropologists working as expert witnesses out of the University of California cooperated with one another offering advice, expertise, and review. The cooperative spirit seems to demonstrate the anthropological community's commitment to their former subjects, and now their employer's cause as they sought compensation.²²³

The move to hire Omer Stewart by the Washoe legal team was strategically wise. Prior to employment by the Washoe, he acted as an expert witness in the Northern Paiute case, docket 87, and as Wright excitedly pointed out in a letter to Smith, "he [Stewart] was the main one that was instrumental in the settlement of the Ute Claim for thirty million." His fieldwork conducted amongst the Washoe in northern Nevada and eastern California in 1936 gave him an intimate understanding of Washoe territorial boundaries and life ways. Stewart firmly believed that

²²¹ George F. Wright to Reginald E. Foster, lead attorney in docket 37, May 25, 1955, Wright MSS; "Kroeber and the Indian Claims Commission Cases," Stewart MSS, 185-186.

²²² George F. Wright to Robert F. Heizer, May 26, 1955, Wright MSS.

²²³ Omer C. Stewart to George F. Wright, June 11, 1955, Wright MSS.

Indians of the Great Basin did recognize property ownership among themselves and others, that ownership constituted more than just a “wandering ownership.”²²⁴

Beginning in late July 1955, the legal team, with the aid of expert witnesses and the testimony of a few select members of the Washoe Tribe, presented their case to the ICC in an attempt to question the authority of dockets 31 and 37. During the hearings, Wright and his colleagues worked to establish a resolution to separate docket 288 from the consolidated claims of dockets 31 and 37. Wright thought it wise, as the ICC defense determined that the Indians of California would not recover for “all of California.” Therefore, the compensation offered to the 37,000 California Indians would not be “too much.” The Washoe Tribal Council called a meeting to support the motion of submitting a resolution to the ICC.²²⁵ The final draft of the resolution called to attention the inequality and unfairness of requiring the Washoe Tribe to be “relegated...and...subjected to the action by the said California Indians...” Requiring the Washoe to join with all the Indians of California would mean they would have to share in recovery with Indians that occupied other less valuable lands in California—the resolution highlights Death Valley and the badlands of California as examples. The attorneys believed that since the Washoe occupy an interstate territory, recovery from dockets 31 and 37 would result in uneven disbursement to the Washoe living in Nevada and those not on the roll (enrolled with the Indian office in Sacramento) of California Indians.²²⁶ After submission of the resolution in late September 1955, Wright informed his colleagues (by this time, Nicholas Allen took the place of Busha) that the attorneys in dockets 31 and 37 did not object, nor did the government.²²⁷

²²⁴ George F. Wright to John Lewis Smith Jr., May 26, 1955, Wright MSS.

²²⁵ George F. Wright to Roy James, September 10, 1955, Wright MSS.

²²⁶ “Resolution of the Washoe Indians,” signed by President of the Council Carnegie Smokey and Vice Chairman Earl James, October 4, 1958, Wright MSS.

²²⁷ George F. Wright to John Lewis Smith Jr. and Nicholas Allen, September 27, 1955, Wright MSS.

The hearing lasted until late September 1955. In the last weeks the federal government brought in their expert witness, Julian Steward, also a student of Kroeber at Berkeley. Steward formerly a professor of anthropology at the University of Utah had inspired a young Omer Stewart, then working as camp cook for one of Steward's archaeological digs in Utah, to pursue a career in anthropology. Though both students of the same pedagogy, these men came to represent fundamentally different and competing ideas about the nature and organization of Indian societies in the Great Basin. Much of the difference between Omer Stewart and Julian Steward can be discussed in the context of a newly emerging term, "applied anthropology"—empirical evidence based on lived experiences of informants versus theoretical models, based on a dominance of environmental factors influencing "cultural ecology" to describe and determine human behavior and cultural evolution. More recently, scholars criticize Steward's "bloodless ethnography" by accusing him of ignoring human beings while focusing instead on the physical environment and second-hand archaeological evidence.²²⁸ During the latter portion of the hearing, the mentor (Steward) challenged the former student (Stewart). This was not the first or last time that Steward and Stewart met as legal opponents. Earlier in the hearing, the federal government hired Steward to testify against the Washoe land boundaries laid out by Stewart.

Omer Stewart explained to the court his experience working with the Washoe in 1936 as a graduate student at Berkeley. He spent three months among the Washoe collecting data based on information gleaned from informants. Stewart confidently asserted that Washoe had lived on the eastern slope of the Sierra for thousands of years as a separate and distinctive community.

²²⁸ Howell, *Cannibalism is an Acquired Taste*, 5; Alice B. Kehoe, "Where were Wovoka and Wuzzie George," in *Julian Steward and the Great Basin: The Making of an Anthropologist*, eds. Richard O. Clemmer, L. Daniel Myers, and Mary Elizabeth Ruddens (Salt Lake City: University of Utah Press, 1999), 164-166.

His testimony referenced the earlier archaeological survey of Heizer, which determined the length with no break in the archaeological record occurring for at least 2,000 years.²²⁹

Julian Steward's testimony in the case reiterated his theories and writings that applied to the Western Shoshone and Northern Paiute which appeared first in his 1938 publication *Basin-Plateau Aboriginal Sociopolitical Groups* based on field research conducted in the Great Basin. Regarded as the foundational piece of research on the Great Basin, this publication omits the Washoe. Steward acknowledged that he omitted the Washoe because their language differed, and they only occupied a small corner of the Basin.²³⁰ However, this did not stop him from defending a viewpoint that the Washoe lacked a sense of land ownership and a distinctive culture of their own. The ICC had already rejected Steward's theory of "family level of sociocultural integration" that undercut the concept of a larger connected tribal society in the Uintah Ute case, docket 44.²³¹ This theory refers to one of Steward's models used to describe human social and cultural development indicating a lack of unity outside the family unit.²³² Julian also utilized another of his theories, the "ecological theory of land use," or minimal land use theory—a standard argument given by government lawyers in the cases of northern California and Nevada. This theory stated that large masses of territory were seldom used or visited by Indians and could not be deemed part of their territory.

Steward's ecological theory of land use acknowledged Indian occupancy but asserted that extensive use over wide expanses did not occur. Omer Stewart described in his papers how the defense used this theory. "By calculating the area covered by a salmon stream or an oak forest in

²²⁹ Makley, "These Will Be Strong," 223-224.

²³⁰ Julian H. Steward, *Smithsonian Institution Bureau of American Ethnology Bulletin 120: Basin-Plateau Aboriginal Sociopolitical Groups* (Washington D.C.: Government Printing Office, 1938), ix; Van Vlack, "Traditional Ecological Knowledge," 125-126.

²³¹ "Plaintiff's Objection to Defendant's Requested Findings of Fact and Petitioner's Reply, January 1, 1959, 4-5, Wright MSS.

²³² Julian H. Steward, *Theory of Culture Change: The Methodology of Multilinear Evolution* (Urbana: University of Illinois, 1955), 101-103.

which deer were hunted and acorns gathered, it was demonstrated that...eight to ninety percent of subsistence [was gained] from twenty percent [of the] territory.”²³³ The theory further claimed that tribes of northern and eastern California, and Nevada, did not define their territory, but each made use of the land on an irregular basis. In all the instances of claims where the defense used this theory, Indian-hired anthropologists offered contrary arguments. Kroeber, the expert witness for the Northern Paiute, contended that hunter-gatherers depended on large expanses of land. Kroeber maintained that land ownership was not only a common trait of Basin Indians, but also a universal human trait, which traditionally instigated feuds among Indians of different cultural and linguistic groups over poaching offenses on one another’s land.²³⁴

During docket 347, the Pit River Tribe of California, another of the consolidated cases of California happening at roughly the same time as the Washoe case, Stewart argued against the ecological theory in detail. Stewart concluded that there were records in anthropological literature of 60 animals used by Pit River Indians, which were scattered throughout the length and breadth of an area. Marshes and streams provided waterfowl, crawfish, minnows, suckers and other aquatic animals as well as fifty-five plants used to make food, clothing, weapons, boats, medicine, and houses. Collectively, these resources covered the whole territory. Stewart concluded that complete aboriginal use of land in California rejected the government’s ecological land use theory.²³⁵ In dockets 31 and 37, commissioners also dismissed the ecological land use theory in favor of direct testimonies from Native Californian informants recorded in the years prior to the ICC, before there was any thought that it would be used as evidence in a

²³³ Howell, *Cannibalism is an Acquired Taste*, 163-164.

²³⁴ “Summary of Proceedings Before the Indians Claims Commission, Docket 31 and 37,” Stewart MSS.

²³⁵ “Kroeber and the Indian Claims Commission Cases,” Stewart MSS, 186; ²³⁵ Sheree Ronaasen, Richard O. Clemmer, and Mary Elizabeth Rudden, “Rethinking Cultural Ecology, Multilinear Evolution, and Expert Witnesses: Julian Steward and the Indian Claims Commission Proceedings,” *Julian Steward and the Great Basin: The Making of an Anthropologist*, eds. Richard O. Clemmer, L. Daniel Myers, and Mary Elizabeth Rudden (Salt Lake City: University of Utah Press, 1999), 170-172.

hearing.²³⁶ These examples illuminated the merit and reinforced the acceptance of “applied anthropology.” The Washoe’s legal team employed these same methods in docket 288.

Much to the dismay of the defense, Julian Steward acknowledged that he had not actually spent any time amongst the Washoe people. His earlier fieldwork was with the Western Shoshone. His inadequate review of Washoe material caused him to profess lack of knowledge compared to the Washoe’s expert witness and his former student, Omer Stewart, who was in contrast, well versed in Washoe history and culture based on first-hand experiences.²³⁷

Steward’s research of the Western Shoshone concluded that the indigenous peoples of the Great Basin remained largely fixed within a static definition of their culture—largely an abstraction.²³⁸ Steward’s testimony was derived from secondary material published by other authors and appeared weak compared to the testimony of Stewart, whose direct experience with the Washoe and “applied anthropology” carried greater authority. Steward represented what might be called an older breed of anthropologist.

Clearly, both men, former students of Alfred Kroeber, possessed extensive knowledge and opinions about the indigenous peoples of the Great Basin. Kroeber, like other influential anthropologists of the twentieth century, studied under Franz Boas. The cultural relativism that is associated with Boas and his disciples can be traced back to Prussian Scientist Alexander von Humboldt. Indeed, American anthropology had its roots in European thought, especially German academics.²³⁹ Like Humboldt, Boas appreciated pluralism. Environmental historian Aaron Sachs suggests that the Boasian school promoted periodic immersion in foreign cultures—

²³⁶ Robert F. Heizer and Alfred L. Kroeber, “For Sale: California at 47 Cents Per Acre,” *The Journal of California Anthropology*, vol. 3, no. 2 (1976), 38-39.

²³⁷ George F. Wright to John Lewis Smith Jr. and Nicholas Allen, September 27, 1955, Wright MSS.

²³⁸ Blackhawk, *Violence Over the Land*, 4.

²³⁹ Virginia Kerns, *Scenes From the High Desert: Julian Steward’s Life and Theory* (Urbana: University of Illinois Press, 2003), 245.

the appreciation, or cultural relativism that was revealed in this type of fieldwork embraced the Humboldtian notion of “unity in diversity.”²⁴⁰ Both Stewart and Kroeber took a more humanistic and less theory-driven approach to anthropology, whereas Steward was committed strictly to the science of the discipline. Steward and Stewart, from vastly different backgrounds, brought their diverse experiences to their fieldwork with indigenous people of the Great Basin. While their methodology in the field compiling “cultural element surveys” early in their careers was similar, their fundamental differences began to emerge and showed up most dramatically in their testimony before the ICC.²⁴¹

As noted, Julian Steward’s and Omer Stewart’s backgrounds differed sharply. No doubt, their distinct backgrounds explain some of the influences that would later affect their thinking as anthropologists. Steward, son of the then examiner-in-chief of the U.S. Patent Office, grew up in Washington D.C. His biographer Virginia Kerns explains,

He spent his childhood among the socially conservative, educated, and professional middle class of Washington D.C....His father’s secure position in the federal service, and his acquaintance with government scientists and top-ranking officials, also meant that Steward began life in a rather privileged class position and with valuable social connections.²⁴²

After leaving Washington in his teenage years, Steward moved to California where he attended high school. His college career took him to Cornell and the University of California, Berkeley where he received his doctorate under Professor Kroeber in 1929. Recently scholars have labeled Steward a positivist. He was more comfortable in identifying himself as a scientist viewing anthropology as a natural science, and not a social one.²⁴³ This separated him from some of his colleagues and seemed to make him a more credible expert witness for the federal

²⁴⁰ Aaron Sachs, *The Humboldt Current: Nineteenth-Century Exploration and the Roots of American Environmentalism* (New York: Penguin Group, 2006), 340-341

²⁴¹ Kerns, *Scenes from the High Desert*, 256.

²⁴² Kerns, *Scenes from the High Desert*, 10-11.

²⁴³ Kerns, *Scenes from the High Desert*, 2-3.

government in ICC cases. Rather than follow in the model of Boas, and subsequently Kroeber, Steward instead gravitated toward the methods of John Wesley Powell, and other government scientists who adhered to a theory of linear cultural evolution inherited from Lewis Henry Morgan.²⁴⁴ The European school of thought, to which American anthropology held close ties, emphasized the humanistic aspects of anthropology as a science, but also the scientific aspects of anthropology as one of the humanities. Clearly, this presented large sets of ambiguities.

Despite a decline in the popularity of Julian Steward's theories, he continued to dominate the "ethnographic universe of the Great Basin." In fact, for a time in the early decades of the twentieth century, Steward may have been one of the most noted and influential anthropologists in the United States. For a time, during his career, his theories of human development overshadowed any credence that might be attributed to the emerging ideas associated with "applied anthropology." The scene began to change in the 1940s, but Steward's theories were long-lived, probably because his comprehensive theories offered an attractive intellectual apparatus. Certainly much more scholarship in the Julian Steward tradition exists than scholarship devoted to Omer Stewart.

Between 1935 and 1946, Steward served as director of the Bureau of American Ethnology at the Smithsonian Institution.²⁴⁵ While ultimately their views differed about Great Basin native cultures, Omer Stewart owed his career in anthropology to the inspiration provided by Steward in the early 1930s when he was an undergraduate in Professor Steward's class at the University of Utah.²⁴⁶ Regarding Steward's career, Blackhawk maintains that after studying under the influential ethnographers as Kroeber and Robert Lowie at Berkeley, Steward abandoned many of the tenets of cultural relativism. Kerns explains, "Steward appreciated

²⁴⁴ Margaret M. Caffrey, *Ruth Benedict: Strangers in this Land* (Austin: University of Texas Press, 1989), 135.

²⁴⁵ Blackhawk, *Violence Over the Land*, 278.

²⁴⁶ Howell, *Cannibalism is an Acquired Taste*, 28-29.

neither the historicism nor the relativism of the Boasian tradition....” Steward believed that the creation of cultural models using more “science,” could be useful in comparing all of the world’s people.²⁴⁷ Contrary to Boas, Steward thought that scientific anthropology should focus on cause-and-effect relations and formulation of cultural laws.²⁴⁸

Great Basin Indians proved to be useful in this respect. To Julian Steward, and others before him, the Shoshone appeared to be the “most natural” of America’s Indians. Great Basin Indians, devoid of political organization, remained at the mercy of their environment, constantly seeking out sustenance as a dominant activity. By studying the process of cultural change in “simpler” societies like those of Great Basin Indians, Steward believed he could gain theoretical understandings that he could apply to the present and the future. Basing correlations on ecological and cultural elements was a way to create assessments of culture. Studying the indigenous inhabitants of the Great Basin, Julian developed his “multi-linear evolution theory.”²⁴⁹

This created a “quasi-ranking” system that allowed typologies (stages) to emerge all over the American landscape, and later the globe. The methodology rested on theories presented by earlier anthropologists that touted stadial thinking endorsed in the eighteenth century by Adam Smith when he wrote of society’s four stages of progression—hunting, pasturage, farming, and

²⁴⁷ Leslie A. White, *The Evolution of Culture: The Development of Civilization to the Fall of Rome* (Walnut Creek, Cal.: Left Coast Press, 2007), xv-xvii. Julian is often credited for redirecting interest in anthropology back to theories of cultural evolution. He inspired other anthropologists, such as Leslie White, who is credited with reinforcing interest in cultural evolution. White promoted the “universal evolution” theory, which ranked cultures based on their technological advancements. Julian Steward disagreed with White’s theory of “universal evolution” stating that it was not useful to describe “any” and “all” cultures. Since “universal evolution” did not follow a linear course, nor did it apply to all cultures, Julian denounced it as not necessarily universal.

²⁴⁸ Kerns, 239.

²⁴⁹ Marvin Harris, author of *The Rise of Anthropological Theory* published in 1968, offers a rebuttal to Steward’s cultural ecology theory on pages 374-377. Harris argues that it is a mistake to suppose that all geographic grouping in and of itself contributes to an understanding of cultural differences and similarities. Too much emphasis is given to the natural environment, and not to its inhabitants. Similar environments elsewhere are obviously inhabited by culturally different groups. Additionally, different culture groups often inhabit the same geographic areas at different times.

commerce.²⁵⁰ In this regard Steward's theories represented the older ethnocentric theories used to describe human evolution. Rather than relativism, hierarchies of cultures, supported by Steward's work, created an "ethnographic lingua franca for analyzing North America's indigenous populations." Steward admitted that his approach differed from "relativistic...conceptions of culture history." This included the work of men like Kroeber and Omer Stewart. Steward's approach paid much more attention to the local environment as "the extracultural factor" that explained specific cultural features. Steward leaned heavily upon environmental determinism, which averred that, the poorer the environment, the lower the rank or stage achieved by a people.²⁵¹

Julian Steward maintained that anthropology, as a science, should stand above the passion of political movements and even humane sympathies. Objective knowledge therefore was his concern. As one source explained his decision to testify in favor of government arguments against Indian claims puts it: "Steward's commitment to science, without regard to politics, help explain his decision to testify on behalf of the federal government in the Indian Claims Commission cases." Despite a certain degree of sympathy for indigenous people, Steward's belief in "the truth of science" led him to accept offers from the federal government as an expert witness, usually to the detriment of Indians. His colleagues and some students always

²⁵⁰ Banner, *How the Indians Lost Their Land*, 36; Ronald L. Meek, *Social Science and the Ignoble Savage* (Cambridge, Mass.: Cambridge University Press, 1976), 2-4.

²⁵¹ Blackhawk, *Violence Over the Land*, 277; Marvin Harris, *The Rise of Anthropological Theory* (Walnut Creek Cal.: Altamira Press, 2001), 376-377; Kerns 280-281. In his influential 1968, *Man's Rise to Civilization as Shown by the Indians of North America*, Peter Farb directly challenges Steward's theories on Basin Indians starting on pages 16-32. Farb examines and bestows merit on the Western Shoshone culture in the Great Basin. He is quick to point out the complexity, which separates man from animals—refuting earlier claims that Basin Indians were no better than apes or primates. Although Basin Indians inhabited one of the most bleak and inhospitable environments in North America, their "primitive" lifestyle suited their needs. There was rarely a need to establish permanent structure due to the precarious nature of food supply. White culture, unlike Basin Indian culture, ignored environmental limitations, and promoted an economic system based on the production of a surplus, complete with methods for storage and distribution. Trying to compare Basin Indian culture with white culture will obviously relegate the Indian culture to a much lower standard. This highlights the ethnocentric views visible in Steward's theories.

believed that Steward was on the “wrong side,” standing against the interests of the American Indians. It is possible that Julian turned down requests to serve on behalf of the Shoshone and Paiute believing that law firms had too strong an interest in financial gain. Perhaps, he believed the government’s intentions and motives less suspect. Testifying on behalf of the government allowed Steward to state his objective views as a scientist.²⁵² On the other hand, Omer Stewart maintained that Steward had a certain distaste for Indians. Stewart even accused Steward of using his models to demonstrate that “Indian people never used the land in the highest and best way, so they deserved to relinquish the land to Euro-Americans who represented a socially more advanced stage of evolution.” Later in his career, Stewart was always quick to condemn Julian’s ethnocentric attitude toward American Indians.²⁵³

In 1954, at a special symposium held in Detroit to discuss the role of anthropology in the ICC cases, Julian Steward and Kroeber both presented papers. In Steward’s paper “Theory and the Application in a Social Science,” he declared in the first page that a witness may be motivated to testify because they want their side to win, but when an anthropologist takes the stand “he swears that his testimony is the ‘the whole truth and nothing but the truth’ in a literal and scientific sense.” Steward concluded his paper by expressing concern that anthropologists involved in the ICC cases who held identical theoretical views, or lacked serious disagreement would ultimately be harmful to the scientific standing of the discipline of anthropology.²⁵⁴

Steward explained,

If anthropology is to maintain a scientific standing in these cases it must recognize that it would be truly embarrassing were persons holding identical theoretical views to interpret

²⁵² Kerns, *Cannibalism is an Acquired Taste*, 246-247, 258-259.

²⁵³ Omer C. Stewart, *Forgotten Fires: Native Americans and the Transient Wilderness*, Edited and with Introductions by Henry T. Lewis and M. Kate Anderson (Norman: University of Oklahoma Press, 2002), 20-21; Howell, *Scenes from the High Desert*, 5.

²⁵⁴ Julian H. Steward, “Theory and Application in a Social Science,” *Ethnohistory*, vol. 2, no. 4 (Autumn 1955), 292-293, 302.

the same body of evidence in opposite ways because they happened to be witnesses for opposing sides in a particular case.²⁵⁵

Julian Steward's decided professional and "scientific" views dominated a report to Commissioner of Indian Affairs John Collier in the mid-1930s.²⁵⁶ In 1936, Collier requested Steward's assistance in determining whether to grant federal recognition to small groups of "landless" Western Shoshone in Nevada. In an unpublished report back to Collier's office, Steward recommended that bestowing reservations and tribal governments to the Shoshone was "illogical." He argued that governments and constitutions were antithetical to the Shoshone sociopolitical structure—it was true they were Indians, but not tribes. Offering autonomy and self-government to "primitive family groups" would only serve to endanger and "baffle" them. Steward suggested that buying reservation lands and putting the Shoshone on them would segregate them and be detrimental because it would "lessen race and cultural contacts, and increase the difficulties of assimilation...."²⁵⁷

Based on his contemporary assessment of the Western Shoshone, Julian Steward offered his studied conclusions about the nature of Great Basin Indian society, that is to say they were small roving impoverished family groups and no more. The day-to-day concerns of the Western Shoshone revolved around securing sustenance. Their local ecology deprived them of any political structure. In short, Steward did not believe that the Shoshone were capable of the type of self-government offered under the IRA. Critical of Steward's abstract detachment from indigenous people and his general attitude toward Basin Indians, Blackhawk asserts, "to fashion an academic career based on their 'primitivity' is one thing, to curb their political options

²⁵⁵ Steward, "Theory," 302.

²⁵⁶ Kerns, *Scenes from the High Desert*, 259.

²⁵⁷ Ned Blackhawk, "Julian Steward and the Politics of Representation," in *Julian Steward and the Great Basin: The Making of an Anthropologist*, eds. Richard O. Clemmer, L. Daniel Myers, and Mary Elizabeth Ruddens (Salt Lake City: University of Utah Press, 1999), 215.

another.” He continues, “Debasing another’s ‘culture’ is not the same as worsening their material or political circumstances.”²⁵⁸

Omer Stewart, Julian Steward’s antagonist and rival in Great Basin Native American Studies, came from a vastly different background than Julian. Based on what has been written about both men, Steward is often seen as something of an unfriendly introvert, whereas Stewart is described in much the opposite manner. In fact, Stewart even remarked, “Julian liked the romance of Indian lore, but didn’t care much for the Indians. He believed it was wholly up to them to adjust to our society.”²⁵⁹ In the foreword of *Cannibalism Is an Acquired Taste* (1998), a collection of conversations with and about Omer Stewart, the editor Carol Howell, describes him as a “distinguished anthropologist...social activist, generous friend, helpful colleague...a formidable adversary and a wise and honest man.”²⁶⁰ In the mid 1930s, Stewart embarked upon a number of research trips that took him to the Great Basin. In 1936, he spent his honeymoon studying the various bands of Washoe. In later years, Stewart’s career focused primarily on the history and practices of peyotism among indigenous peoples of the Far West. His other research areas, including aboriginal use of controlled fires, painted a picture of Native Americans as active participants and modifiers of their environment for thousands of years. He believed culture influences and is influenced by the environment. Groups of hunter-gathers were not static, but active participants in manipulating their environment. His work, *Forgotten Fires: Native Americans and the Transient Wilderness* (2002), written in the 1950s, but not published until much later, proved to be far ahead of its time, as scholars ignored its merit for decades.²⁶¹

²⁵⁸ Blackhawk, *Violence Over the Land*, 280.

²⁵⁹ Howell, *Cannibalism is an Acquired Taste*, 164.

²⁶⁰ Howell, *Cannibalism is an Acquired Taste*, ix.

²⁶¹ Stewart, *Forgotten*, 4-5, 24; Julian Steward’s 1955 *Theory of Culture* discusses the theory of “cultural ecology” developed by Steward. Steward’s theory of cultural ecology dismisses human agency and instead argues that only the environment affects culture. This is another example of his dismissal of Indian culture as a primitive and unsophisticated.

Omer Stewart grew up in Provo, Utah in a family whose ancestors were early converts of Mormonism. Schoolwork often took a backseat to necessary chores, and Mormon dogma dominated his early family life. Although Stewart did not show much interest in school or the Mormon religion of his parents, he confessed that his mission trip to France provided him with the training to develop a respectable work ethic which would transfer over to later university studies. After returning from his mission, and studying at the University of Utah for two years, Stewart rejected the validity of *The Book of Mormon*, which led to his exclusion from the church in the early 1930s. Later in life, he embraced the Unitarian Church, Native American Church, including the peyote religion, and the American Atheist Association. He never lost a sense of respect for the Mormon faith, which some say reflected his appreciation for diversity. Much of his varied background helps to explain his appreciation of native culture and his advocacy for human rights including civil rights in Boulder, Colorado.²⁶²

Julian Steward taught Omer Stewart's introductory anthropology course at the University of Utah. During an excavation of a prehistoric Shoshone site at Promontory Point cave in 1932, Stewart accompanied Steward's expedition, working as a camp cook. Stewart remarked on the experience, "The interest I developed in the class was sustained in the field—I *knew* I wanted to be an anthropologist." From early encounters onward, the two men were contentious. It began by Julian openly rebuking Stewart's poor spelling in the classroom. Driven to prove Stewart wrong, Stewart worked hard to graduate with honors and later completed his dissertation under Alfred Kroeber and Richard Lowie at the University of California in 1939. His dissertation on

²⁶² Howell, *Cannibalism is an Acquired Taste*, 2-25, 38-39; Robert A. Hackenberg, "The Future for Ethnology: Applying the Anthropology of Omer Stewart," *High Plains Applied Anthropologist*, vol. 17, no. 1 (Spring, 1997), 3.

the Northern Paiute was based on “cultural element surveys” completed during fieldwork all over the state of Nevada beginning in 1936. It would also become his first publication.²⁶³

Throughout his career, Omer Stewart found himself at odds with Julian Steward. Stewart’s oldest son, Steve Stewart, who followed in his father’s footsteps into a career in anthropology, remarked in 1993 on Stewart and Steward’s relationship. He stated, “Julian, the certified genius, versus Dad, the bootstrap, blue-collar intellectual...Julian for who everything came easy, versus Dad, who had to sweat for every advance.” Steven Stewart continued by discussing his father’s disinterest in theory, which he believed “made him a true ‘son’ of Boas....” Stewart’s distaste for theory resulted from his observations of syncretism in his field of study. It was difficult for him not to see concrete contradictions to theoretical constructs.²⁶⁴

Omer Stewart’s first publication in 1939 entitled, *Northern Paiute Bands*, a result of his dissertation work, argued that Great Basin Indian culture was much more complex both politically and socially than previously noted by Julian. Much like John Wesley Powell’s report on Basin Indians dating to the 1870s, Stewart’s first publication pointed out the political complexity, complete with specialized roles of chiefs, bosses, or other leaders and recognized territorial boundaries of indigenous people. Stewart used informants to document a variety of districts among the Northern Paiutes, each with their own leadership structure. To support his research and verify areas of occupancy, Stewart used a plethora of other documentation including treaties, government and tribal archives, census and court records, as well as information from the maps and journals of early explorers, trappers, and missionaries. The results of the fieldwork contained in the publication were reinforced by research in the

²⁶³ Hackenbeg, “The Future of Ethnology,” 2.

²⁶⁴ Howel, *Cannibalism is an Acquired Taste*, 26-31; Ronaasen, Clemmer, and Rudden, “Rethinking,” 172.

accumulations of ninety years of government archives that documented long-term habitation in the given areas.²⁶⁵ Stewart claimed,

Each band of Northern Paiute could be traced through the succession of chiefs, signatures on treaties, census records, correspondence, and other documents...The U.S. Office of Indian Affairs...accumulated a wealth of information...ignored by most anthropologists....²⁶⁶

Stewart's work embraced the methodology and spirit of "applied anthropology" rather than adherence to theoretical systems. His concrete arguments and examples ultimately supported effective testimony in the courtroom. He suggested that the added research "effectively conveyed a very real sense of the lives of members of a tribe as well as reinforcing the assertion of precontact occupation of a definable area."²⁶⁷

Julian Steward's paper, given at the 1946 Detroit symposium on anthropology's role in the ICC, challenged Omer's 1939 publication. In the paper, Steward denied indigenous concepts of property and land use in the context of Anglo-Saxon practices of fee simple ownership with transferable titles. In other words, concepts of organization and property rights only emerged with arrival of whites into Indian occupied land, according to Julian, and these were not aboriginal features, but rather products of acculturation. Anthropologist Dr. Eramanie Wheeler-Voeglin in the Northern Paiute claim, docket 87, also supported this argument.²⁶⁸

Professional disagreements between Julian Steward and Omer Stewart emerged in print before the courtroom, like rivalries brought on by the ICC hearings. Much of the argument stemmed from research completed prior to World War II that laid the foundations for disagreements that continued well into the 1960s and early 1970s. The focus of debate centered

²⁶⁵ Van Vlack, "Traditional Ecological Knowledge," 129-130.

²⁶⁶ Howell, *Cannibalism is an Acquired Taste*, 41.

²⁶⁷ Howel, *Cannibalism is an Acquired Taste*, 163.

²⁶⁸ "Witness Contradicts Paiute Nation Claim," *Nevada State Journal*, May 18, 1954; Ronaasen, Clemmer, and Rudden, "Rethinking," 185-186.

on the Numic-speaking peoples of the Great Basin—primarily the Paiute and Shoshone. The Washoe do not seem to have been a point of contention between Steward and Stewart until the inception of docket 288, but Steward’s arguments and Stewart’s counter-arguments were virtually the same as those used in the other claims involving Basin Indians.

Julian Steward began arguing that aboriginal Shoshonean society contained no bands, no headmen, and no territories in 1938. Omer Stewart originally stated his “territorially based bands” position a year later. Steward continued to deny that the Shoshone, and consequently other Basin Indians, had territorial “boundedness.”²⁶⁹ Steward’s published work of the late 1930s inadvertently contained maps showing the distribution of various Basin Indians and while he later minimized these boundaries when confronted during ICC hearings, they still weakened his defense of no territorial boundaries. Stewart actually used Steward’s own research data to contradict his testimony during the Paiute case, docket 87. Stewart recalled, “It galled him to realize it was his evidence that won our case.”²⁷⁰

Many of the land boundaries mapped prior to the ICC were roughly the shape and size of the territories accepted by the ICC. Omer asserted that this represented a “vindication of the general process of mapping tribal areas whether they are primary linguistic groups, or whether they are ethnic groups or cultural entities of other types.” Omer Stewart and Julian Steward were legal opponents in several cases including the Utes, Paiutes, Shoshone, and the Washoe. In all of the ICC cases where Steward served on behalf of the defendant and Stewart the plaintiff, the commission ruled in favor of the Indians. In the end, Stewart’s side won all twelve cases in which he served as an expert.²⁷¹

²⁶⁹ Richard O. Clemmer, “Seed-Eaters and Chert-Carriers: The Economic Basis for Continuity in Historic Western Shoshone Identities,” *The Journal of California and Great Basin Anthropology*, vol. 13, no. 1, (1991), 6-7.

²⁷⁰ Howell, *Cannibalism is an Acquired Taste*, 165.

²⁷¹ Ronaasen, Clemmer, and Rudden, “Rethinking,” 170-171, 184-185; Stewart, *Forgotten Fires*, 18-19.

The very nature of the ICC placed anthropologists in a position to legitimize or deny indigenous rights to land. In cases involving Indians of Nevada and California, anthropologists were integral in providing testimony that could legitimize the denial of collectively held land in California and Nevada. Julian Steward's ethnocentric concepts and theories of minimal land use and "levels of sociocultural integration" were the standard arguments presented by the government's lawyers, however, they were not as effective as the methods based on cultural relativism and "applied anthropology" employed by Omer Stewart. Although animosity between Stewart and Steward existed below the surface prior to the ICC, it grew tremendously and surfaced after the courtroom testimonies. While Stewart's achievements in the courtroom reflected well upon him and his work, they created rancor against him in some anthropological circles. Regardless, he believed in the cause that he was a part of and was happy that his testimony increased the compensation awards to native peoples. In addition, he believed the work of anthropologists on the ICC cases (especially his working on behalf of Indians) benefited anthropology as a discipline. As he put it, "the science also gained significant stature through this demonstration of practical application"—hence the term "applied anthropology."²⁷²

With the assistance of Omer Stewart and testimony provided by Washoe elder Richard Barrington of Sierraville, California, who had lived in Washoe territory since 1880, the Washoe claim held its merit in the title phrase of a claim.²⁷³ On January 20, 1958, after more than two years of deliberation, the ICC ruled that the Washoe Tribe was a distinct unit, separate from the Indians of California. Therefore, the Washoe would not be required to share any recovery with the Indians of California. Some land boundary discrepancies still existed over land in Sierra

²⁷² Howell, *Cannibalism is an Acquired Taste*, 166; Stewart, *Forgotten Fires*, 18-22.

²⁷³ "Richard E. Barrington," an address by George Wright, October 31, 1964, Wright MSS.

Valley, California.²⁷⁴ In 1959, a compromise over a boundary line agreed upon by Stewart and Kroeber, was struck over disputed lands in Sierra Valley, California. Under the agreement, the Washoe's claim shrank to 1,555,000 acres of land lost. The claim still included valuable real estate at Lake Tahoe and on the Comstock. The agreed upon territorial boundaries and acreage proved to be the most accurate description of Washoe territory boundaries and helped solidify the boundaries still recognized today.²⁷⁵

Now having recognized the legitimate status of the Washoe claim and territorial demarcations, the ICC moved to the next phase of the case, scheduling a hearing for 1961 that involved determining the monetary value of Washoe lands. The time of takings were officially set at March 3, 1853 in California and December 31, 1862 in Nevada.²⁷⁶ The attorneys wrote the Washoe Tribal Council to discuss the next phase of the case. A response letter from council member Earl James captured the sentiment of the Washoe people when questioned about the monetary value of the lost lands. James explained, "These lands afore were our homes," he continued, "they furnished us with a plentitude amount of deer, quail, dove, fish, etc...None of us ever went hungry." While the ICC did not have the authority to return land, it could offer recovery funds for the determined value of the land at "the time of taking." Despite the Washoe never formally having their land titles extinguished through any agreements or treaties, they were still entitled only to monetary compensation.

James noted that the next phase would determine the monetary value of Washoe lands and resources around Lake Tahoe and Virginia City. He recognized the real estate values around the lake and the value of resources in minerals and forest products and also mentioned the

²⁷⁴ George F. Wright to Oren George, February 25, 1958, Wright MSS.

²⁷⁵ Earl Barrington to Perry Morton, June 19, 1959, Wright MSS; Nicholas E. Allen to Judge Francis M. Goodwin, February 25, 1958, Wright MSS; Makley, "These Will Be Strong," 224-225.

²⁷⁶ Nicholas E. Allen to George F. Wright, August 13, 1959, Wright MSS.

potential value of the water flowing from Lake Tahoe. While the “white man’s ingenuity” increased the value of the land over what it once was, the Washoe did not see it that way. For them, the land, its resources, and water lost their former value to Indians because they could no longer sustain life on it. James concludes his letter by asking for haste in settling the matter.²⁷⁷ By this time, the claim already was over ten years old. Smith and Busha no longer worked on the case with Wright. Smith received a federal judgeship while Busha had died. Nicholas E. Allen took over the Washington D.C. work. As Wright and Allen prepared to assess the fair market value of Washoe lands, it became clear that the process required specialized assessors to determine the value of land its the natural resources. The team looked to hire geologists, a timber appraiser, and a real estate appraiser for what would become a grueling task. All supplemental experts were required to enter into contracts with the Washoe Tribe. This phase of the claim was far beyond the expertise of the lawyers or anthropologists. Loans provided by the Department of the Interior allowed tribes to hire specialists to aid in resolving their claims. At the conclusion of the claim, the loans would not need to be repaid until recovery funds were dispersed at the conclusion of the claim.²⁷⁸

Hired to access mineral values taken from the territory was the geology firm of Shenan and Full from Salt Lake City, Utah. Myron Wall Jr. served as a timber management expert, and Nobel T. Murray assessed and appraised farming, grazing, and other agricultural lands. Wright and Allen were concerned with setting fair market values for the various types of the land designated as Washoe territory. There were many complicated factors involved in determining

²⁷⁷ Earl James to Nicholas E. Allen, September 8, 1959, Wright MSS.

²⁷⁸ “Contract for Appraisers,” October 18, 1960, Wright MSS.

the value of lands more than one hundred years in the past in Nevada and California including price fluctuations, mining and milling costs, and transportation costs.²⁷⁹

The Washoe Tribal Council expressed their concerns about whether or not Lake Tahoe would be included in the final financial assessment. Rumors swirled around Dresslerville that Wright intended to not only include “moving waters” around Lake Tahoe, but the actual lake. James reiterated that the lake traditionally constituted the epicenter of Washoe territory—a sacred site. James concludes his letter by telling Allen that if Wright did omit Lake Tahoe from the Washoe’s water claims, they no longer wanted him representing them.²⁸⁰ According to the rules set forth by the ICC for appraising Indian lands, water was not given a value, neither was land located under water. It did not matter if water was included in territorial boundaries or not. Makley questions whether the Washoe people were ever properly informed of this guideline in the rules and notes that many of the Washoe still question why “the center of their world’ would be excluded from the claim.²⁸¹

The ICC set a schedule for hearings, but delays pushed back the date for the Washoe claim. Originally scheduled for October 1961, the trial did not begin until April 1963. The extra time gave the legal team more time to complete assessments, which they desperately needed. In addition to presenting the assessments at the hearing, Richard Barrington and Leslie Jake, Chairman of the Tribal Council, would testify and in doing so brought a humanizing element to the claim.²⁸² With the appraisals completed, the Washoe’s legal team determined that they could press the government for a \$16 million suit in the hearing. Derived from two broad categories, the claim included \$11,150,000 for land lost, and \$4,950,000 for damages, which included taking

²⁷⁹ “Memorandum to Appraisers and Allen,” February 23, 1963, Wright MSS.

²⁸⁰ Earl James to Nicholas E. Allen, May 22, 1961, Wright MSS.

²⁸¹ Makley, “These Will Be Strong,” 228-229; “Memorandum to Appraisers and Allen,” February 23, 1963, Wright MSS.

²⁸² Richard E. Barrington,” an address by George Wright, October 31, 1964, Wright MSS.

minerals, timber, and fish and game from Washoe lands. Governmental appraisers disagreed with this amount and suggested that the Washoe Tribe was only entitled to \$2,476,000 with only \$466,000 for lands lost and no compensation for interruptions of hunting and fishing.²⁸³ The ICC was required to weigh both estimates before reaching a decision. After almost twenty years of deliberation, litigation, and deposition, the ICC offered the Washoe Tribe of Nevada and California a settlement offer of \$5,053,350 on October 31, 1969.²⁸⁴

The ICC offered \$2,666,000 for mineral land value, \$719,850 for farming and grazing lands, \$450,000 for timberlands, and \$82,000 for town sites. Additionally, the commission was willing to offer damages for \$1,135,000 due to the removal of minerals and timber. The commission determined that fishing resources were an enhancement of the land, but offered no specific compensation. The addition of commercial fishing values was a factor in making the land values around Lake Tahoe higher.²⁸⁵ After all the years of anticipation, the federal government's offer equaled roughly \$2.24 an acre for Washoe lands.²⁸⁶ The lawyers still needed to collect on their retainer fees, too. The commission's offer came as a shock and disappointment to both the Washoe Tribe and their attorneys. John Dressler, Chairman of the Washoe Tribal Council at the time of the settlement, wrote Allen with concerns about the settlement offer. He claimed the younger generation felt the amount was insufficient, but the older generation, which had aged considerably over the course of the claim, was willing to accept. Many were beyond the age of working and needed care.²⁸⁷

²⁸³ "Washoe Indian \$16 Million Land Claim Well Along," *Nevada State Journal*, September 16, 1966.

²⁸⁴ "Findings of Fact" October 31, 1969, George F. Wright Collection, No. 90-37, Series 2, Box No., 3, United States, Indian Claims Commission, Docket No. 288, The Washoe Tribe of the States of Nevada and California vs the United States (University Archives, Special Collections, University of Nevada, Reno [Hereafter cited as Wright MSS2]).

²⁸⁵ "Opinion of the Commission," Wright MSS2.

²⁸⁶ Scott Lankford, *Tahoe Beneath the Surface: The Hidden Stories of America's Largest Mountain Lake* (Rocklin: Sierra College Press, 2010), 109.

²⁸⁷ John Dressler to Nicholas E. Allen, February 19, 1970, Wright MSS.

Allen and Wright discussed the possibility of filing an appeal, but concluded that doing so might cause more lengthy litigation and even less money. They believed that an appeal would most certainly retract the damage award. Both Wright and Allen advised the Washoe Tribal Council that it might be in their best interest to accept the offer. The Washoe did accept and were required to submit a plan outlining distribution and usage of the funds. Congress had to approve those plans before any distribution of recovery funds. Congress approved the Washoe's plan in September of 1974.²⁸⁸

²⁸⁸ d'Azevedo, "Washoe," 496-497.

Chapter Five

In Review

For the visitor to the Native American exhibit in the Nevada State Museum at Carson City, the ambiguous language describing the territorial and sovereignty boundaries amongst native peoples of the Great Basin represents hard fought battles not only amongst native societies, but most importantly in the court system (the ICC) of the United States. Despite all odds, the ICC recognized the Washoe's claim to lost territory and internal sovereignty over said territory. Without the research and testimony of expert witnesses, especially the anthropologists who testified in the preliminary round of hearings, it is doubtful that the Washoe claim would have survived to receive recovery funds. Overall, the long and tedious process resulted in a partial victory for the Washoe people. Detracting from "the victory" was the lengthy duration of the hearings and most disappointingly, with no ancestral lands to be returned, the reward was lower than expected. The settlement did allow the Washoe Tribe to invest seventy percent into tribal operations and programs and provide the remainder as per capita payments to older members of the tribe. Other objectives outlined in the general plan for use of the claims funds were further consolidation of the tribe, improvement of tribal lands including housing and public services, raising the standard of living through education and creation of jobs.²⁸⁹

During the final year of hearings on docket 288 (1970), the Washoe Tribe acted on other projects to increase the welfare of the Washoe people and their communities. The first move addressed the poor condition of the Washoe residing in Alpine County, California. The same year that the Washoe claim concluded, special legislation introduced into the House of Representatives called for 80 acres of public domain to be set aside for the Washoe living in Alpine County for housing projects. The legislation stated, "These Indians have lived in Alpine

²⁸⁹ "Washoe Indians' Fund Distribution Plan Set," *Nevada State Journal*, December 10, 1974.

County for generations... Their living conditions are deplorable. They have inadequate housing, contaminated water, and inadequate waste disposal facilities.” For some Washoe people, little had changed in over a hundred years. The community in Alpine County still faced many of the same problems that their ancestors had because of white intrusion decades earlier. This legislation allowed the Washoe to create the Woodfords Colony, centrally located between the Pine Nut Hills and Lake Tahoe, while they waited for ICC funds to be distributed. The amount, however, expended to purchase the lands was deducted from the final Washoe settlement prior to distribution.²⁹⁰

In the mid 1960s, the Washoe organized a new tribal council that incorporated members from Carson City, Dresslerville, Woodfords Colonies, Reno-Sparks Colony, and two non-reservation members. This significantly strengthened tribal unity.²⁹¹ With the claim settlement, the Washoe took the initiative in gaining a more prominent role in Indian affairs in Nevada and California while retaining their traditional culture.²⁹² The Washoe spurred the creation of the Inter-Tribal Council of Nevada, which brought together members from all Nevada Indian tribes. The Council made Indian affairs more visible and increased the availability of federal and state funding for tribal projects. The Washoe marked their rejuvenation with a new headquarters near Gardnerville, containing smoke shops, an Indian crafts enterprise, and various other facilities.²⁹³ Around the same time as the Washoe claim settlement, the tribe took initiative and gained a more prominent role in Indian affairs in Nevada and California while retaining aspects of their traditional culture.

²⁹⁰ House Committee on Interior and Insular Affairs, *Declaring that the United States Holds in Trust for the Washoe Tribe of Indians Certain Lands in Alpine Country, California*, 91st Congress, 2nd Sess., 1970, House Rpt 1149 (Washington D.C.: Government Printing Office, 1970), 1-3.

²⁹¹ Nevers, *Wa She Shu*, 91.

²⁹² Makley and Makley, *Cave Rock*, 2.

²⁹³ d’Azevedo, “Washoe,” 496-497.

Although the claim may not have fulfilled all the objectives and goals of the Washoe people, prudent planning, investment, and the addition of state and federal funding around the same time allowed the Washoe a good deal of autonomy and funds with which to be more self-reliant. Moreover, filing suit against the United States made for stronger ties between Washoe people in California and Nevada that in turn raised the visibility of the tribe in the region. Contrary to Superintendent Parker's prediction in the 1860s, the Washoe did not disappear. Their experience with the ICC was a testament to their right to exist and remain a part of the evolving structure developed by the United States to govern native peoples. Part of the Washoe creation story insists that the Washoe numbers are small because the people are powerful.²⁹⁴

Docket 288 was a long fought battle. The tremendous amount of time and resources required made it evident that the government's lawyers and experts were not willing to cede to Indian claims without a thorough trial and extensive litigation. The initial purpose of "righting old wrongs" appears to have been lost or at least distorted over the ICC's lifetime. The government, eager to move out of the Indian business, may have been unaware of the complicated claim struggle to follow. The claims were complicated by disputed land boundaries, the application of Anglo traditions of land tenure, and cultural misunderstandings, and the inadequacy of monetary compensation to mend past injustices.

In the minds of many American Indians, a debate did not seem necessary over their claims, but in accordance with the American legal system, a fair trial with evidence and testimony was required to determine "fair" compensation. The commission was not set up to hear moral arguments but inevitably, it did. The purpose was to hear facts and base settlements on concrete evidence, valid exhibits, and expert testimony. In many respects, the government

²⁹⁴ Nevers, *Wa She Shu*, 3-5.

lawyers' defense against the Washoe claim appeared desperate, but it should be understood that it was their job in the advocacy system of law to discredit and trivialize aspects of the claims.

On the other side, the Washoe claim was difficult to defend because it encompassed valuable real estate across two states, which presented appraisal challenges. Furthermore, the United States government had never entered into any formal treaties with the Washoe Tribe, and this meant little information in terms of written records of relations with the Washoe. The Washoe's legal team had to start from scratch. Facts about the people, their customs, and especially their territorial boundaries were scant in primary and secondary sources. It was necessary for the legal team to enlist the help of anthropologists and other prominent experts to ensure the plaintiff received a favorable ruling and equitable settlement.

Longstanding anthropological debates regarding Basin Indians surfaced during the ICC with Omer Stewart and Julian Steward at the forefront—the advocate versus the scientist. Notions of sovereignty, social and political organization, and Great Basin Indian inferiority became the focal points of theoretical contention. Steward's theories highlighted longstanding ethnocentric attitudes held toward American Indians. To a degree Steward's view of Basin Indians mirrored the famous assertion from Thomas Hobbes, which related North America's indigenous people to "savages...living without arts, letters, society, or government in a 'brutish' state of nature."²⁹⁵ Steward placed Basin Indians in a static state that implied or even asserted that they were in a very early stage of cultural development with their challenging environment inhibiting progress. He was more concerned with theories of cultural evolution than he was with the human beings according to Blackhawk. If he had embraced an active investigative role as Stewart did, he would have realized the true complexity of the Washoe's life ways and socio-

²⁹⁵ Mark D. Walters, "Promise and Paradox: The Emergence of Indigenous Rights Law in Canada," *Indigenous Peoples and the Law: Comparative and Critical Perspective*, eds., Benjamin J. Richardson, Shin Imai, and Kent McNeil (Portland: Hart Publishing, 2009), 24.

political organizations, which were refined over thousands of years.²⁹⁶ He might have also recognized the ability of the Washoe to change as the world around them changed. Still it must be noted that whether Basin Indians had aboriginal political organization beyond the family unit is still debated today.²⁹⁷

Julian Steward conceded that Basin Indians formed “hunting bands” on occasion, but stuck to his theoretical conviction that anything above family organization resulted after contact with Euro-Americans. Regardless of semantics surrounding aboriginal organization, the 1934 IRA legitimized the Indian tribe, which included all Indians that either claimed membership or had some connection to others in their vicinity whether through cultural practices, linguistics, or family ties, all of which gave a tribal organization standing within the American legal system. Each of these tribes, or “bands” occupied distinct territory with which its identity was strongest—for the Washoe, Lake Tahoe occupied the center of that territory. In Anglo legal tradition, organization, and collective power afforded by the IRA allowed American Indians to exert claims of sovereignty over ancestral lands.²⁹⁸ Anthropologists of the Omer Stewart persuasion were key in legitimizing Indian land claims, especially the Washoe. It is doubtful that their claim could have proceeded beyond the preliminary hearing without the testimony and cooperation of Stewart and his colleagues in the anthropology department at the University of California.

Whether or not the final settlement offered to the Washoe represented justice or insult will be a continuing question, but it was a reality the tribe made the best of. The ICC was beneficial because a relatively small tribe such as the Washoe were afforded the opportunity to be recognized, state their case, and sue for compensation because of past injustices and receive

²⁹⁶ Makley, “These Will Be Strong,” 17.

²⁹⁷ Ronaasen, Clemmer, and Rudden, “Rethinking,” 185.

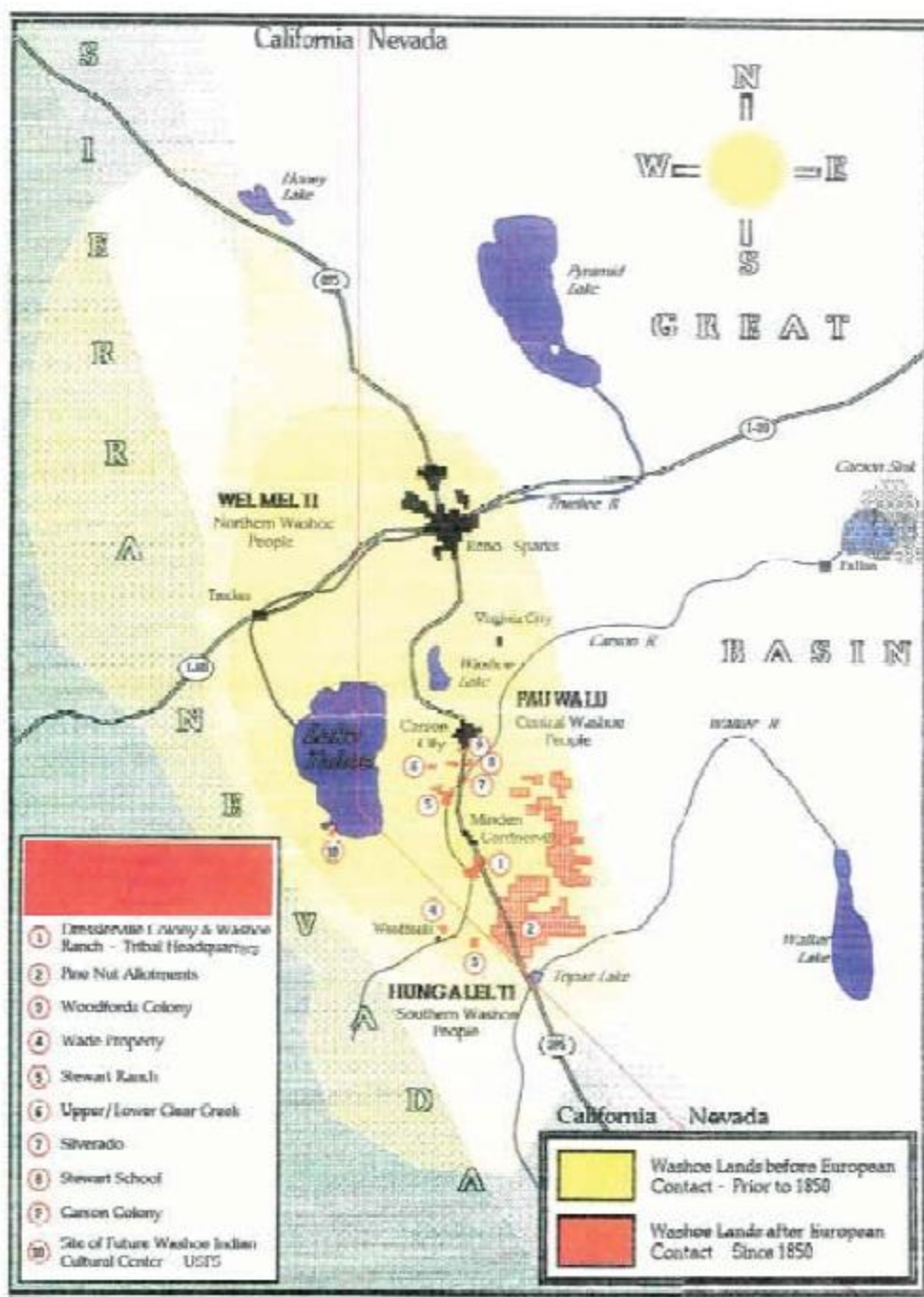
²⁹⁸ Ronaasen, Clemmer, and Rudden, “Rethinking,” 185-187, 199; McHugh, *Aboriginal Societies*, 553-557.

an award. The Washoe were not simply looking for a handout as some critics allege about the entire process.²⁹⁹ The land and resources that for centuries (since “time immemorial”) had been vital to their ancestors’ survival were no longer theirs and they sued for recognition of past injustices. The claim acknowledged their attachment to the land and their reliance upon ties to the land and its resources. Filing a claim did prompt the Washoe Tribe to collaborate and form stronger internal bonds with the settlement lending validity to the tribe and traditional territory claims.

The ICC claim award was a culmination of a Washoe redux that began in the late nineteenth and early twentieth centuries with appropriation of lands for Washoe use and dwellings, followed by tribal recognition in 1937 under provisions of the IRA, and finally with the modest award paid in 1974 from the deliberations and arguments before the ICC. The settlement promoted communal uplift and served to perpetuate cultural and economic stability. Was \$5 million adequate? Probably not, given the extraordinary circumstances that Indians of the region faced, but it was fair in an Anglo legal sense and it did demarcate specific land boundaries, which are still recognized. The ICC claim also marked a major step in decolonization for the Washoe people. The assessed and reassessed property values considered all possible variables to correspond with fair market values at the time of taking. This process corresponded with proper American legal framework, the system in which Indian tribes were required to work. For the Washoe though, it was difficult to put a price on ancestral homelands, some of which were considered sacred. Given the course of events and the outcome, it would

²⁹⁹ Nevers, *Wa She Shu*, 35; An allegorical Washoe oral tradition teaches children not to accept handouts. Folklore stories tell of a monster that lured victims into the mountains with the promise of a free meal of what turned out to be soup made of human blood. Unsuspecting guests arrived for the meal only to be clubbed and bled by the monster. The process would then repeat itself if an individual was tempted for a handout.

seem that the Washoe people had to make the best of the situation for individual, communal, and tribal improvement.

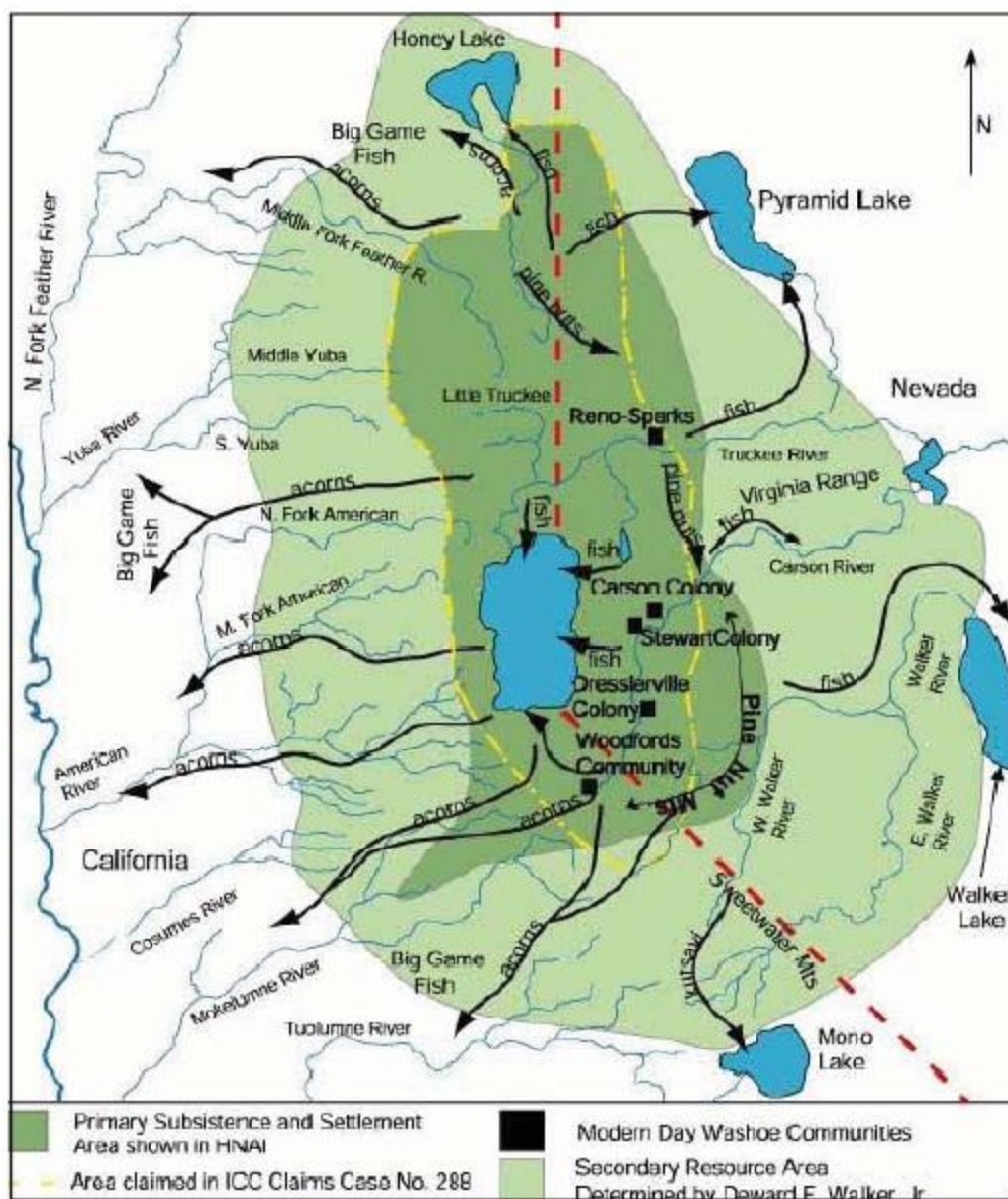


WASHOE LANDS

Present And Pre-European Contact Lands Of The Washoe Indian Tribe Of Nevada And California

Map depicting Washoe Land pre and post contact. Map Courtesy of *Wa She Shu*: "The Washoe People Past and Present," The Washoe Cultural Resources Office.

Map of Historic Washoe Trade Routes



Map of Washoe trade routes and boundaries. Map Courtesy of *Wa She Shu*: "The Washoe People Past and Present," The Washoe Cultural Resources Office.

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