

OKLAHOMA'S IDENTITY: THREE CHARACTERISTICS OF
THE AMERICAN WEST

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2010

Submitted to the Faculty of the
Graduate College of the
Oklahoma State University
in partial fulfillment of
the requirements for
the Degree of
MASTER OF ARTS
May, 2012

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OF THE AMERICAN WEST

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CHAPTER I: Introduction

The ball fell through the net with the same grace that it sailed through the air. Pandemonium ensued. The youngest team in the National Basketball Association, the Oklahoma City Thunder, battled the Los Angeles Lakers in the first Western Conference Quarterfinals home playoff game in Oklahoma City history; however, they were down by seven points late in the third quarter. This three-point basket made by Kevin Durant marked the first time that the Thunder took a lead in any game in the six game series against the Lakers. While the Thunder won that game, they lost the series. The loss was tough, but the future remained, and still remains, very bright.

The story of the Thunder is similar to the city and state that it represents. Oklahoma City is only one hundred and twenty-two years old, young when compared to other cities and states in the surrounding regions. For example, New Mexico is a new state, but its cities, like Santa Fe, are some of the oldest in the United States. Arkansas and Missouri, which form the eastern border of Oklahoma, became states in the 1820s. Like the Thunder, the future of both Oklahoma City and the State of Oklahoma is positive.

Because Oklahoma is such a young state, its identity is not well defined. Geographic region is an important component in shaping a state's identity, the problem with Oklahoma is that it is close to multiple regions because of its

location in the middle of the country. It is perhaps fitting and proper that Oklahoma does not have a fixed identity because its *peoples* do not have a fixed identity; after all, the peoples of Oklahoma are a unique combination of immigrants from the Midwest or South, as well as Native Americans, Hispanics, African Americans, Middle Easterners, and Caucasians.

While the focus of this work is not to definitively argue whether or not Oklahoma is a Southern state, a Midwestern state, or some hybrid of those regions, compelling historical arguments can be made to clearly show Oklahoma does not belong to either of those two regions. Oklahoma's abysmal record on Civil Rights is an example of an argument that could link Oklahoma to the South.¹

Any argument must take into consideration the wide variations in geography, culture, and history that are found throughout the state. In Oklahoma, symbols of the American West are plentiful. The Chisholm Trail, arguably the most famous of the cattle trails that linked Texas with the rail lines in Kansas, is synonymous with western Oklahoma. Wild West showmen, including Pawnee Bill and the Miller Brothers at their 101 Ranch, lived and held their shows in Oklahoma. Contemporarily, two of the largest collections of art and artifacts from the American West are held at the Gilcrease Museum in Tulsa and the Cowboy Hall of Fame and Western Heritage Center in Oklahoma

¹ Oklahoma, as a rule, has typically been reluctant to accept Civil Rights advances over the past one hundred years. For example, Senate Bill 1 of the first session of the Oklahoma State Senate, which was later enacted into law, was Oklahoma's version of Jim Crow. In 1921, arguably the largest and most violent race riot in the history of the United States occurred in Tulsa. It took two Oklahoma State Supreme Court decisions in 1948 and 1950 to compel the Oklahoma State Regents for Higher Education to admit African American students to the state universities. In the 1960s, court action was required on the school busing issue.

City. But there are also symbols in Oklahoma that are from the South. The southeastern region of Oklahoma is known as “Little Dixie.” One of the most popular vegetables in the state is okra, a distinctly Southern vegetable. The Ku Klux Klan and the Sons of the Confederacy, two Southern social institutions, have a presence in southeastern Oklahoma.

The same problems with the dichotomy of symbols and characteristics in Oklahoma also apply to the defining of regions of the country. It is even harder to identify the physical and historical borders of a region. There are just more things to look at. There are some exceptions to this, of course.²

However, there is an inherent need for all people to have an identity. An identity gives people, both collectively and individually, an experiential compass that guides them and their actions. In the United States, a nation that is not even two hundred fifty years old, the issue of identity is an important one because the nation is so young; more importantly, because the nation descends from non-Native North Americans, identity is not connected to race and ethnicity, but to place.

The national vocabulary and the national identity are vastly different without the notion of a West. The words and ideas of *pioneer* and *frontier*, two terms most associated with the West, are fundamental to the national

² One such example is the area that we know to be the South. It has a historical border of the Civil War, in which the states that seceded from the United States became the Confederate States of America. Its other border, the famous Mason-Dixon line, also delineated what was and was not Southern.

vocabulary because they conjure images of the people and a place that defined what the United States was and what it can become in the future.

Historian Frederick Jackson Turner presented his essay “The Significance of the Frontier in American History” at the 1893 meeting of the American Historical Association, and in doing so, he created a new field of historical study. Turner defines the frontier as “the existence of an area of free land, its continuous recession, and the advancement of American settlement westward, explain American development.”³ The basic premise behind his argument is that the frontier conquered Europeans and turned them into primal human beings because there was “a return to primitive conditions on a continually advancing frontier line.”⁴

This premise is also central to the ideas of Walter Prescott Webb, another early influential historian of the American West. In his seminal work *The Great Plains*, Webb expands on Turner’s frontier thesis. He explains that the ninety-eighth meridian divides the North American continent between areas where annual rainfall totals are more than twenty inches and where it is less than twenty inches; this amount is significant because it is the absolute minimum amount of rainfall needed for a climate to not be “deficient.”⁵ For Webb, the frontier, anywhere west of the ninety-eighth meridian, is not only a place where it turns settlers into a more primitive people, but it is also a place

³ Frederick Jackson Turner, *The Frontier in American History* (New York: Henry Holt and Company, 1921), 1. GoogleBooks.

⁴ Turner, *The Frontier in American History*, 2.

⁵ Walter Prescott Webb, *The Great Plains* (Lincoln, NE: Bison Books, 1981), 17-19.

of innovations that allow those settlers to adapt and survive in the physical space along the frontier. These innovations are the revolver, barbed wire, and the windmill.

In the 1950s and 1960s, the counterargument to Turner developed in historian Howard Lamar's seminar at Yale University. This counterargument's later main contributors became known in the 1980s as the New West Historians. Instead of approaching Western history from the frontier paradigm, these historians emphasize of the West as a place of conquest, and immense diversity.

Patricia Nelson Limerick is one of the more prolific New West historians because of the clarity with which she states the New West position. She demonstrates the central tenets of this position in her 1987 work, *The Legacy of Conquest: The Unbroken Past of the American West*. As the title suggests, Limerick discusses the fluidity of the history of the American West. This is different from the Turnerian view of the West, in which 1890 is a historical line of demarcation between the frontier era and the post-frontier era. For Limerick, "Frontier, then, is an unsubtle concept in a subtle world."⁶ She replaces the Turnerian emphasis on process in the West, and instead emphasizes the West as a place. This allows the peoples of the West to become central figures in the narrative, not just peripheral actors.⁷ In her essay "The Adventure of the Frontier in the Twentieth Century," she systematically builds

⁶ Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: W.W. Norton and Company, 1987), 25.

⁷ Limerick, *The Legacy of Conquest*, 26.

her case against the use of the so-called “f-word” by claiming that: is too inflexible, limited to only an East-West orientation, has no set beginning and end, contains an implicit notion of innocence and exceptionalism, and it also almost killed the field of Western History.⁸

Other New West historians, such as Richard White and Donald Worster, echo Limerick’s emphasis on subtlety and conquest. For Richard White, “[t]he boundaries of the American West are a series of doors pretending to be walls . . . The American West is a product of conquest and of the mixing diverse groups of peoples.”⁹ In Donald Worster’s *Rivers of Empire: Water, Aridity, and the Growth of the American West*, management of water resources in the West is based on “authority and restraint, of class and exploitation, and ultimately of imperial power.”¹⁰ For Worster, then, the relationship between humans and these resources is that of conqueror and the conquered.

The historiography of Oklahoma’s regional identity is less pronounced. It is nuanced. Geographical and even anthropological ideas and factors take precedence in these interpretations, as well as the historical events themselves. The general interpretation is that while Oklahoma is synonymous with some key Western symbols and events, its history, particularly its political history, contains strong Southern influences.

⁸ James R. Grossman, ed., *The Frontier in American Culture* (Berkeley: University of California Press, 1994), 72-75.

⁹ Richard White, *It’s Your Misfortune and None of My Own: A New History of the American West* (Norman: University of Oklahoma Press, 1991), 4.

¹⁰ Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York: Oxford University Press, 1985), 4.

Walter Prescott Webb connects Western geography and history to the area that would later become Oklahoma. He emphasizes two other geographical features in addition to the aridity line. First is the “cross timbers” region separates the woods of eastern Oklahoma from the plains of western Oklahoma, which represents “an institutional fault . . . [a]t this *fault* the ways of life and of living changed.”¹¹ Secondly, Webb notes the various types of grasses that are plentiful in Oklahoma, in the area west of the cross timbers; these are unique to the area West of the ninety-eighth meridian.¹²

Webb’s historical discussion includes the early expeditions undertaken by the United States government in the nineteenth century as well as the development of the cattle boom in the region that would become Oklahoma. These reinforce the western characteristics of Oklahoma for two reasons. One is the notion of the Great American Desert, which became a commonplace notion in the mid-nineteenth century after Major Long’s expedition down the Canadian River. The second reinforcement is the importance of cattle trails, especially the Chisholm Trail, in the development of the cowboy culture for which Oklahoma is well known.

In 1819-1820, Major Stephen H. Long led an expedition from Denver to explore the Arkansas and Red rivers. There were two groups in this expedition, and the group led by Major Long, which was supposed to travel down the Red River to Arkansas, got lost and accidentally found the Canadian River, which

¹¹ Webb, *The Great Plains*, 5, 8.

¹² *Ibid.*, 30-31.

they did not know about until they reached the Arkansas River.¹³ As Map 1 shows, the Canadian River goes through the middle of Oklahoma from west to east. It is a very shallow, dry river. Webb writes that Major Long's report of his travels down the Canadian River helped to "reinforce the reports of others and mapped out somewhat definitely the idea of the [Great] American Desert that had become general."¹⁴ The notion of the Great American Desert was pervasive in maps, textbooks, and the American mindset from the 1820s through the late 1850s.¹⁵ For Webb, the notion of the Great American Desert was aided by Long's travels through what would become Oklahoma. This is one way that Webb connects Oklahoma to the West.

The second historical connection between the West and Oklahoma that Webb makes is through the development of the cattle trails. For Webb, "[t]he physical basis of the cattle kingdom was grass, and it extended itself over all the grassland not occupied by farms. Within a period of ten years it had spread over western Texas, [and] Oklahoma"¹⁶ Getting the plentiful cattle herds from Texas to the East required cattlemen to drive herds north to the rail lines. The first route chosen was to take cattle through the Ozarks to rail lines in central Missouri. But the trip was perilous. Webb writes that, "disaster awaited the Texans and that herds in southeastern Kansas, southern Missouri, and northern Arkansas, where armed mobs met the herds with all possible

¹³ *Ibid.*, 146-147.

¹⁴ *Ibid.*, 147.

¹⁵ *Ibid.*, 153.

¹⁶ *Ibid.*, 207.

violence.”¹⁷ This prompted cattle drivers to choose alternate routes further west, through the central and western parts of Indian Territory. One such route was the Chisholm Trail. This also led to the development of the cowboy and cowboy culture.¹⁸

While Webb emphasizes the Western aspects of Oklahoma as a physical place, other historians balance both the Western and Southern characteristics of Oklahoma in their works. This occurs in the prolific Oklahoma historian Arrell Morgan Gibson’s *Oklahoma: A History of Five Centuries, 2nd edition* and *The History of Oklahoma*. The message in both of Gibson’s works is the same: while Oklahoma is hard to define geographically, its people mostly came from the South, so there are many historical and cultural ties to that region.

He begins *Oklahoma: A History of Five Centuries, 2nd edition* by defining the physical space that Oklahoma occupies.¹⁹ Gibson states that,

Geographers have labeled Oklahoma variously: as the most northerly of the southern states; as the most southerly of the northern states; as a part of the Southwest; as a middle-western state; and as a border state. In terms of natural as well as human factors, all designations apply to some degree - some more accurately than others. Oklahoma is a border land, a zone of transition climatically and politically, as well as in every other respect.²⁰

¹⁷ Ibid., 217.

¹⁸ For a good discussion on the development of the cowboys and their importance to the West, see Webb, 244-268.

¹⁹ The discussion of Oklahoma geography is a standard opening chapter in many works on Oklahoma history.

²⁰ Arrell Morgan Gibson, *Oklahoma: A History of Five Centuries, 2nd ed.* (Norman: University of Oklahoma Press, 1981), 7.

His coverage throughout the book follows that analysis. In his discussion of the Civil War, he notes the Southern influence on Indian Territory. He writes, “The mixed bloods in Indian Territory had emulated southern culture and their lifestyle was a replica of antebellum elegance based on slave labor . . . Most of the tribal annuity funds from the proceeds of land sales were invested in enterprises in southern states.”²¹ Gibson also shows how Southern ties extended to the politics of the late Indian Territory and Oklahoma, including the passage of Jim Crow laws and the presence of the Ku Klux Klan.²² He concludes this work with a chapter called “The Image of Oklahoma.” In it, he discusses the juxtaposition of the western ties of Oklahoma as the main image of the state as the land of Cowboys and Indians; Gibson recounts:

[This] image is a controversial issue locally, and many state leaders would like to suppress it. They claim it has a negative effect on promoting growth and development and that the frontier fixtures discourage industries from locating here. Champions of [this] image . . . maintain that state business and political leaders have been too apologetic for the state’s western characteristics and that the attempt to erase this vital feature of the Oklahoma heritage could prove harmful to . . . tourism.²³

This debate shows the powerful legacy of Western imagery in Oklahoma.

He also affirms the presence of a Southern legacy that survives in the

²¹ Gibson, *Oklahoma: A History of Five Centuries*, 2nd ed., 117.

²² For this discussion, see generally *ibid.*, 203-265.

²³ *Ibid.*, 280. He goes on to explain that affected tourist locations would include the Cowboy Hall of Fame, the Gilcrease Museum, and the Southern Plains Indian Museum, among other sites.

area known as “Little Dixie” in southeastern Oklahoma, which endured Reconstruction, just as the other Southern states did.²⁴

Most of these themes appear in Gibson’s *The History of Oklahoma* as well. But in this volume, Gibson more clearly defines the gap between the Western and Southern legacies of Oklahoma. He writes,

[t]he greatest influence, though, comes from the South and the West. Most of the state’s early settlers, for example, including the Five Civilized Tribes, were from the South. Its Indians, cavalry, frontier military posts, outlaws, lawmen, traders and trappers, ranching and trail drives, and homesteaders are definitely part of the American West. Thus, because Oklahoma has been influenced most by the South and the West, it belongs to the geographic region called the Southwest.²⁵

While this explanation is very similar to the one presented in *Oklahoma: A History of Five Centuries*, he combines the geographic regions of both the South and the West into one unique region.

The work *Oklahoma: A History*, written by W. David Baird and Danney Goble, follows the same basic structure that Gibson’s works do. They discuss the geography of Oklahoma in the Prologue, and then discuss the development of Oklahoma history throughout the rest of the work.²⁶ The only significant difference between this work and Gibson is the coverage, albeit brief, of

²⁴ Ibid.

²⁵ Arrell Morgan Gibson, *The History of Oklahoma* (Norman: University of Oklahoma Press, 1984), 3.

²⁶ W. David Baird and Danney Goble, *Oklahoma: A History* (Norman: University of Oklahoma Press, 2008), 3-14.

events that occurred after 1980. Such events include the Penn Square Bank failure and the 1995 Murrah Building Bombing.²⁷

Another important volume in which Oklahoma's identity is discussed is *The Culture of Oklahoma*, which is a collection of essays edited by Howard F. Stein and Robert F. Hill. While mainly a work of anthropology, it is revelatory for historians as well. There are two significant essays in this work. The first is "The Cultural History of an Oklahoma Identity," written by Charles W. Nuckolls. He emphasizes the "conflicting elements" that helped to form Oklahoma's " 'compromise' identity."²⁸

The second essay is Howard F. Stein and Robert F. Hill's "The Culture of Oklahoma: A Group Identity and Its Images." In this essay, Stein and Hill, both anthropologists, discuss results of a series of surveys that they administered in the late 1980s about popular and negative images of Oklahoma. The results of these surveys reflect the importance of some images, particularly that of the Cowboy. Stein and Hill note the disparate differences inherent within these images. With the Cowboy, "the Oklahoma cowboy image has also assimilated the rebellious aspect of that same South and has made it into a local mark of pride (an example of which is the ubiquitous Confederate flag as bumper sticker.)"²⁹ They also discuss the importance of how the respondents to the

²⁷ This discussion of the Penn Square Bank failure is very generalized and only appears in three paragraphs. See Baird and Goble, *Oklahoma: A History*, 256, 257.

²⁸ Charles W. Nuckolls, "The Cultural History of an Oklahoma Identity," in *The Culture of Oklahoma*, ed. Howard F. Stein and Robert F. Hill, (Norman: University of Oklahoma Press, 1993), 105.

²⁹ Howard F. Stein and Robert F. Hill, "The Culture of Oklahoma: A Group Identity and Its Images," in *The Culture of Oklahoma*, 209.

survey perceived their identities as Oklahomans, which they call psychogeography. In Oklahoma, this is “[t]he dialectic of wetness and dryness, of luxuriant boom and Spartan bust, whether in the form of water or petroleum (or natural gas)”³⁰

Returning to the original question surrounding Oklahoma’s identity, one needs to ponder several key points. First, many of the states west of the Mississippi River and east of the Rocky Mountains are in a similar position to Oklahoma in that their respective identity is not clearly defined with respect to geography or history.³¹ Second, Oklahoma’s history, as a state, is very short. The field of history generally does not completely know how to deal with recent history; the same is true with Oklahoma history. But the existing literature is limited. Most histories of twentieth century Oklahoma focus on the political conditions leading up to World War II or on various social groups.³² There is no recent economic history of the state, or of Oklahoma City.

The purpose of this work, in addition to updating the historical discussion with recent events, is not to claim *definitively* that Oklahoma is a Western state. This work is far too limited to make such an assertion. But it is important to consider some newer historical developments that bring light to just a few of Oklahoma’s western characteristics.

³⁰ Ibid., 222.

³¹ Because this is a work of history, the focus of this work will remain on the historical developments in Oklahoma that have helped create the state’s identity.

³² These notable works include those written by the historian Davis Joyce including *An Oklahoma I Had Never Seen Before: Alternative Views of Oklahoma* (Norman: University of Oklahoma Press, 1994) and *Alternative Oklahoma: Contrarion Views of the Sooner State* (Norman: University of Oklahoma Press, 2007).

Chapter One will focus on the boom-bust aspects of Oklahoma City's economic history. The energy boom of the late 1970s and 1980s and its subsequent collapse as a result of speculation and poor banking practices undertaken by the Penn Square Bank are key examples that reflect the boom-bust economic tendency that is part of the legacy of the West. Furthermore, the actions and practices of Penn Square Bank officials demonstrate Turnerian characteristics on an individual level as well. The abatement of General Motors' ad valorem tax incentive in the early 1980s also enhanced the economic bust. The development of the MAPS program in the early 1990s provided an impetus for the economic growth of Oklahoma City in the 2000s.

Chapter Two will analyze the problem of water access and rights, demonstrated in the case *Choctaw and Chickasaw Nations of Oklahoma v. Fallin, et al.* Because the West is one of the major reasons for the development of a corpus of water law in the United States, this case is yet another example of one of the major problems in the west: getting water from geographically isolated and rural regions to urban, less well watered areas. This case also deals with the position of the sovereignty of Native Americans within the state of Oklahoma.

Chapter Three will examine the development of gaming, and the related rise of Chickasaw and Choctaw nationalism; the position of native tribes in state-tribal interactions is another Western characteristic that Oklahoma possesses. This is exemplified by the nationalistic undertones of the public relations campaigns undertaken by the Chickasaw and Choctaw.

CHAPTER II: THE WILDCAT ECONOMY OF OKLAHOMA CITY

Far in the distance, above the fields and neighborhoods of west Edmond, the newly constructed Devon Tower reaches high into the sky. It is the newest addition to the Oklahoma City skyline and has completely changed it. The Chase Bank building was the pinnacle of the downtown skyline at a gargantuan height of thirty-three stories, but the Devon Tower almost doubles it. Due to the relatively flat topography of the Oklahoma City metro area, it is visible from almost twenty to thirty miles away from downtown. It is also a symbol of the dramatic growth and resilience of the Oklahoma City economy.

The so-called Great Recession of 2008 was typical of most economic downturns.³³ In the free enterprise, capitalist system of American economics, most recessions and depressions owe their cause to the bursting of one so-called “bubble” or another type of economic crisis. The main cause of the Great Recession was the housing bubble, but the insidious corporate greed of financial institutions that lent billions of dollars to people who could not afford the homes they were buying enhanced it. In 2000 and 2001, the economy

³³ I do not intend to mean that the Great Recession is over. While the economy has shown positive growth in GDP in the past year or so, its effects will still be with the United States for years, if not decades.

entered into a recession caused by a downturn with fledgling Internet start-up companies, as well as aberrant corporate shenanigans undertaken by Enron and its accounting firm Arthur Andersen. Both recessions revolve around one word: speculation.

Speculation is a fundamental concept in the study of the American West. In the nineteenth century, with expansion in the old Southwest and West, speculation on land values led to several financial crises. In the twentieth century, speculation in energy as well as technology industries propelled economic growth in many western cities. With the onset of the Great Recession, most cities in the West were negatively impacted with massive amounts of foreclosures and bank failures. One exception is Oklahoma City. Why?

The answer to that question requires an analysis of three distinct periods in recent Oklahoma City history. From 1973 through 4 July 1982, Oklahoma City entered into a boom era because of the construction of the General Motors plant and the energy boom; the Penn Square Bank was a major lender to people wanting to explore for oil and natural gas.³⁴ The bust began on 5 July 1982, when the FDIC declared the Penn Square Bank insolvent, and it continued

³⁴ 1973 is used for the starting date because it was when General Motors announced that it would be building its newest plant in Oklahoma City. While one could conceivably use the date when President Carter signed the Natural Gas Policy Act in 1978 as the date for the start of the economic boom because of its positive impact on the natural gas industry in Oklahoma, the 1973 date is important because it ties in the energy crisis of the 1970s.

until the end of 1992.³⁵ While the resurgence of the Oklahoma City economy did not really begin to occur until the early 2000s, this chapter will focus on the first of the three MAPS projects. The events of the 1970s and 1980s exhibit the “wildcat” aspect of the Oklahoma City economy, which makes it belong to the West because its economic history is similar to other Western cities.

Turnerian Economic Ideals

Tucked neatly away at the end of Frederick Jackson Turner’s “The Significance of the Frontier in American History” essay is a brief discussion of economics and the American West. After all, the lure of economic success was one of the reasons why the “existence of an area of free land . . . [continually receded].”³⁶ This led to political and economic consequences. As Turner states, “But the democracy born off free land, strong in selfishness and individualism, intolerant of *administrative experience and education*, and pressing individual liberty beyond its proper bounds, has its dangers as well as its benefits.”³⁷

Chief among these dangers is the spoils system, a political idea derived from the Andrew Jackson administration; the problem that the spoils system created was a general laxity in governmental oversight, which could lead to

³⁵ A specific date that marks the end of the downturn is not very clear, unlike its beginning. While voters passed the MAPS sales tax in a 15 December 1992 vote, the projects would take several years to be completed.

³⁶ Frederick Jackson Turner, *The Frontier in American History* (New York: Henry Holt and Company, 1921), 1. Accessed through GoogleBooks.

³⁷ Turner, 32. Emphasis added.

administrative, monetary, and banking problems.³⁸ Turner also focuses on the impact of free land on individual characteristics as well. Most important of these is “[t]hat coarseness and strength combined with acuteness and inquisitiveness; that practical, inventive turn of mind, *quick to find expedients* . . . and withal that buoyancy and exuberance which comes with freedom - these are the traits of the frontier.”³⁹ Put another way, the frontier and the adaptations that the frontier forced people to undergo engendered these new traits that were not as abundant in the East as they were in the West.

These ideals did not go away as the West - and the East - entered the twentieth century. Mineral resources - notably oil, natural gas, uranium, and others - replaced land in the West as the things that explained economic growth now. The characteristics mentioned above were ideals that most Westerners still tried to uphold.

“Like a Reverse *Grapes of Wrath*”: 1973-4 July 1982

Oklahoma City is a boomtown.⁴⁰ From its genesis as a town born out of the 1889 land run, to the heady days of the oil boom in the late 1970s, Oklahoma City’s identity will always be associated with untrammelled growth. While hard times have found their way to Oklahoma City, from time to time,

³⁸ Ibid.

³⁹ Turner, 37.

⁴⁰ For a detailed history of Oklahoma City, Roy Stewart’s *Born Grown* is the major historical work written on Oklahoma City from its land run beginnings through the early 1970s. Roy P. Stewart, and research associate Pendleton Woods, *Born Grown: An Oklahoma City History* (Oklahoma City: Fidelity Bank, 1974). Pendleton Woods has also written on the history of Oklahoma City in different formats, most notably in coffee table-type books. See Pendleton Woods, *Historic Oklahoma County* (Oklahoma City: Oklahoma Historical Society, 2007).

good fortune as a result of its location has also done the same. Tinker Air Force Base, built as a refueling stop for cross-country military flights, was built in the 1940s, and singlehandedly led to the creation of Midwest City. As a result of the 1958 Interstate Highway Act, Oklahoma City was the location where two of the main interstates, I-40 and I-35, would intersect each other. This economic development in the 1940s and 1950s led to a boom in development in the 1960s in Oklahoma City, most notably in the downtown area, when new buildings replaced pre-Great Depression era buildings.⁴¹

In the 1970s into the early 1980s, Oklahoma City experienced more economic growth than ever before as a result of the construction of the General Motors plant and the energy boom. The General Motors plant created thousands of jobs, including a few hundred high-paying management jobs, and also attracted other industries that are essential for the automotive industry, such as manufacturers for seat belts, stereo equipment, and other automobile related industries. The energy boom in the late 1970s and into the early 1980s allowed some wealthy Oklahomans to become even wealthier, and average Oklahomans to become wealthy. Stated simply, it was a good time to be in Oklahoma City.

1973 was an interesting year for Oklahoma City. On 10 August, the General Motors Corporation announced that it was going to build its largest plant to date in the fields of southeastern Oklahoma City, just south of Tinker Air Force Base. With an estimated initial investment of one hundred million

⁴¹ See *Born Grown*, 284-305.

dollars into the project, which in 1973 would create approximately 2,300 jobs per shift, with workers earning the GM average of eight dollars an hour.⁴² The plant would also feature solar panels, which would help to conserve energy.

But events in the Middle East changed the course of this project, as well as the entire economic trajectory of the 1970s for the United States. As a result of aid from the United States in support of Israel in the October 1973 Yom Kippur War, the OPEC nations imposed an oil embargo on the United States.⁴³ This represented the first major check on the rapid economic growth the United States enjoyed since the end of World War II.

Because oil is essential for the automobile industry, this event completely altered what manufacturers were doing. Future cars needed to be smaller. On 8 March 1974, when GM officials announced the delaying of the beginning of construction, this was a consideration because “[m]illions of Americans who had no prior experience with undersized, underpowered automobiles are learning that they do not like the comedown [to smaller cars] at all.”⁴⁴ While the announcement did not come until 1974, it was apparent that the oil embargo was the primary cause for GM to hold off on construction

⁴² This was far above the standard national minimum wage at the time. Workers at the GM plant were to earn \$241.60 per week on average, which was good pay in the early 1970s. As a note regarding sourcing, there is a slight complication with the main newspaper in Oklahoma. *The Daily Oklahoman* changed its name around the year 2000 to *The Oklahoman*. When using *The Oklahoman* archives to obtain the material used in this chapter, it does not matter which name was used at the time for the newspaper. For purposes of clarity, citations will reflect the name of the paper when the articles in question were written. “City Plant Called One of GM’s Largest,” *The Daily Oklahoman*, 10 August 1973.

⁴³ For a brief analysis of the impact of the OPEC embargo on Oklahoma, see Baird and Goble, *Oklahoma: A History*, 255.

⁴⁴ “Prudent, But Disappointing,” *The Daily Oklahoman*, 8 March 1974.

of the plant until conditions improved. Many of the other GM plants were not operating at full capacity and over sixty thousand workers were laid off, so there was little need for a new plant.⁴⁵

The project did not start again until 1 April 1977, when ground was re-broken on the same site.⁴⁶ Once opened, the GM plant would produce the GM “A” Car, which was to be the smallest car that GM made.⁴⁷ Charles Katco, Vice President of the General Motors Assembly Division, traveled to Oklahoma City to announce that the plant project would finally begin. In his speech given on 1 April, he proclaimed, “We in GMAD (General Motors Assembly Division), have come to believe in the reputation of Oklahomans as serious, conscientious people who take pride in their work and who give a good day’s effort for a good day’s pay.”⁴⁸ He especially thanked the efforts of the Greater Oklahoma City Chamber of Commerce, who “quietly and effectively arranged the many meetings needed with various governmental and environmental agencies to help clear the way for construction.”⁴⁹ Katco also announced the specific

⁴⁵ Ibid.

⁴⁶ My mother, who claims that she was the first Oklahoman hired at the plant, recounts that from 1974 to 1977, thousands upon thousands of sunflowers were planted on the site to keep the ground prepared for when the project would start up again. She also tells a story about the last person to sell his land on the project site, a senile old man who was in a nursing facility in Midwest City who had “improved” the lot by constructing a shack on the property in order to keep the land long enough to negotiate a better sale price for the land. Once the sale was negotiated, Jess Matheny, the liaison from the Oklahoma Industrial Authority, had bulldozers standing by to demolish it.

⁴⁷ The “A” Car is better known as vehicles like the Chevrolet Citation and Buick Century. Due to the poor quality of the water based paint used on the Citation, it is still widely considered by car aficionados as one of the worst car models ever constructed.

⁴⁸ “GM Official Announces Plant Plans,” *The Daily Oklahoman*, 1 April 1977.

⁴⁹ One of the most important aspects to any city and state government is a very good Chamber of Commerce and similar organizing body within the state government who can work together to attract industry and commerce. During this time in Oklahoma City, the Greater Oklahoma

details of plant in this speech; production was to begin in 1979, under three million square feet of facility space - 70.5 acres - were to be put under one roof, and the estimated payroll would be around sixty-five million dollars.⁵⁰ Also, only a small amount of people from the central office in Detroit, as well as other plants would need to move into the area, leaving the majority of jobs for local Oklahomans. A 3 April article explored how long the process of getting GM to start building in Oklahoma City took; it began on 1 June 1972, when officials with the Atchison Topeka and Santa Fe railroad, operators of the main railroad that operates in Oklahoma, contacted Paul Strasbaugh (chair of the OIA) about extending a rail spur from the line into southeastern Oklahoma City.⁵¹ The article reveals that once Strasbaugh found out the rail officials were acting as agents for GM, he promptly ordered three separate proposals for three different sites within the Oklahoma City metropolitan area be drawn up.⁵²

This announcement had an immediate effect of creating demand for land in south Oklahoma City, primarily along I-240, near the site of the plant.⁵³ It also prompted construction in the suburbs of Oklahoma City; an article in *The Daily Oklahoman* from 17 April stated that

City Chamber of Commerce and the Oklahoma Industrial Authority worked together to land the GM plant and countless other industries in the city and the state. Ibid.

⁵⁰ Ibid.

⁵¹ "GM's Return to City the Culmination of Years of Effort," *The Daily Oklahoman*, 3 April 1977.

⁵² Ibid.

⁵³ As part of the GM project, I-240 was created. I-240 is a branch interstate highway that begins east of Midwest City on I-40, and runs immediately south of Tinker Air Force Base, the site of the GM plant, and traverses through south Oklahoma City until it reaches I-44 (which is the main interstate that connects southwestern Oklahoma with Oklahoma City and Tulsa; it runs southwest to northeast), near Will Rogers World Airport. See Map 2.

With interest rates back down and people looking for homes, builders are selling homes faster than they can finish them . . . The ‘ripple effect’ of the GM Plant is prompting developments and stories of likely developments from Purcell to Edmond and Shawnee to El Reno, it is reported.⁵⁴

This land boom in this part of Oklahoma City allowed Oklahoma City to expand further south and east. The plant eventually opened in 1979, and it produced so many cars that a second shift began shortly after the plant opened.

The winter of 1976-1977 was one of the coldest in forty years and it also exacerbated the energy problems of the 1970s. Northern states desperately needed adequate supplies of natural gas and heating oil to keep homes and businesses warm. President Carter tried to intervene. He implored on Americans to turn down their thermostats to conserve energy. After a much politicized process, his administration devised a new comprehensive energy plan. However, some were skeptical of these measures. As they saw it, “the problem was not one of physical supply but of price regulation and distribution.”⁵⁵ Eventually, these skeptics successfully lobbied for the

⁵⁴ Only a couple of these areas experienced any real growth because of the GM Plant. Once construction finished and the management level employees relocated to the area, most went to either Edmond or Norman. El Reno and Purcell, located at the western and southern fringes of the Oklahoma City Statistical Metropolitan Area (OKCSMA), never really benefitted from the GM Plant. See “Edmond Top Beneficiary of GM Plant’s Transfers,” *The Daily Oklahoman*, 9 January 1979 and “Boom in Area Land Sales Reported Triggered by GM Plant,” *The Daily Oklahoman*, 17 April 1979.

⁵⁵ For a detailed analysis of the lobbying efforts undertaken by Oklahomans in the natural gas industry who lobbied for what was later to be known as the Natural Gas Policy Act of 1978, see generally Zweig. There are only two major works written on the Penn Square bank failure, Phillip L. Zweig’s *Belly Up: The Collapse of the Penn Square Bank* and Mark Singer’s *Funny Money*. Phillip Zweig was a reporter for the *American Banker* magazine during the Penn Square episode. Mark Singer was a reporter for the *New Yorker* magazine, and portions of his work initially appeared in that magazine in the 1980s. Zweig’s focus is on the financial minutiae involved with the events that precipitated the energy boom, as well as the bank failure. Singer’s focus is primarily on creating a narrative of the events, mainly writing about the key individuals involved. Phillip L. Zweig, *Belly Up: The Collapse of the Penn Square Bank* (New York: Crown Publishers, 1985), 47.

deregulation of natural gas below fifteen thousand feet, which consequently provided the catalyst for the natural gas energy boom in the Southwest, including Oklahoma.

Banking is and always will be a business of personal relationships. It is always advisable to be on good terms with a banker. During the natural gas boom in the late 1970s in Oklahoma City, the best bank to do business with for people with the desire to drill was Penn Square Bank. Before the boom, it was a small institution tucked away in the Penn Square shopping center, mere feet from Route 66. By the end of the boom, it would become the symbol of “the good-ole-boy system” of banking, where backroom deals completed with a bare minimum of official paperwork was standard. Knowing where the natural gas was in the ground was one matter, acquiring the financial resources to obtain the materials to reach it was another issue.

The President and Vice President of the Penn Square Bank, B.P. Jennings and Bill Patterson, probably never heard of Frederick Jackson Turner. But their personalities and operating practices mimicked the frontier economic ideals that Turner set forth in “The Significance of the Frontier in America.” Their sloppy banking practices led to shortcuts around longstanding banking practices, and their willingness to gamble on energy loans created a late twentieth century version of Turner’s wildcat banking. The personalities of these two men contributed to these poor practices at the bank, especially Bill Patterson’s. Of the few books written specifically on this era and Penn Square,

Bill Patterson is the main protagonist, and is portrayed as a quasi-tragic hero.⁵⁶ His flamboyant style and antics are legendary, and played well to his constituents who wanted loans from Penn Square. But he was woefully under-qualified for the position he held as a Vice President, and he was put into a position for which he was not capable of sustaining in the long term.

Patterson's antics date back to his days as a fraternity member at the University of Oklahoma, where he was famous for practical jokes as a fraternity member, earning the nickname of "Monkeybrains."⁵⁷ But at his first job at the First National Bank in Oklahoma City, it was clear to his superiors that he was not capable of achieving much more than a middling position in banking, especially not a Vice Presidency. Singer recalls a conversation with the President of the First National Bank after Patterson left for Penn Square, "[t]here was no way we were going to let Bill Patterson lend a dime of the bank's money."⁵⁸ But because of Patterson's close, personal relationship with B.P. Jennings, who led a partnership that bought the Penn Square Bank, Patterson transferred from First National to Penn Square, and after only eighteen months, became in charge of the oil and natural gas department.⁵⁹

⁵⁶ For a detailed analysis of the development of the Penn Square Bank, as well as B. P. Jennings and Bill Patterson, see generally Mark Singer, *Funny Money* (New York: Mariner Books, 2004).

⁵⁷ Zweig goes into greater detail than Singer about the entire breadth and scope of the Penn Square Bank, including delving into deeper, more personal details of the key players at the bank, including Patterson. He notes that Patterson owed much of his getting into the banking business to his father-in-law, Gene Edwards, who was a very wealthy businessman from Amarillo, who helped Patterson get his first job at the First National Bank in downtown Oklahoma City. See Zweig, *Belly Up*, 58-61; also see Mark Singer, *Funny Money*, 60.

⁵⁸ Singer, *Funny Money*, 61.

⁵⁹ Not everybody at Penn Square approved of how this occurred. Frank Murphy, the president of the bank, "was clearly more comfortable extending loans for the purchase of automobiles than for the production of the fuel that powers them." Zweig, *Belly Up*, 60. The man who was

He capitalized on the personal aspect of working with clients by using his antics to his advantage. At work,

[h]e knew how to make [it] fun . . . There was the time he came to work wearing a Nazi Storm Trooper's helmet, there were occasions when he greeted customers wearing a Batman hat with ears that wiggled. Critics agreed that his Nazi helmet was less funny than either his lederhosen or his cap with the duck on top.⁶⁰

While Patterson certainly made work fun, his banking practices were very slipshod. Because of his position, he needed to sign off on loan documentation and other paperwork, but he rarely did so. Paperwork was anathema. What was important was completing the deal and getting the money to the people who needed it.

In short, Patterson followed in the spirit of the Turnerian economic ideals of the frontier. Not doing paperwork was an effective shortcut to prosperity. How he arrived at his position of head of the oil and gas loans department was not by “administrative experience and education,” but through his personal relationship with B.P. Jennings. Also, the new frontier of

to train Patterson, Bill Lakey, soon resigned after he arrived because he did not like the direction the bank was going with its oil and gas loans. Singer notes that in mid-1979, Patterson and Murphy got into a heated exchange over a loan, which Patterson excoriated Murphy by saying, “Your old-style way of banking is a thing of the past;” this exchange, according to Singer, split the bank into two factions, those who supported president Murphy, and those who supported Jennings, Patterson, and the expansion of oil and gas loans. Singer, *Funny Money*, 63.

⁶⁰ Singer laments the exploitation of Patterson's hijinks that emerged once the bank failed, other stories emerged about how Patterson once drank amaretto out of his Gucci loafers, which were inaccurately reported that he had drunk beer out of his cowboy boots. Singer does describe wild business dinners at Junior's, a high-end restaurant in the Oil Building a few blocks away from the bank, where more often than not, where food fights often broke out. Singer, *Funny Money*, 120.

the late 1970s energy boom influenced “lax business honor . . . and wildcat banking.”⁶¹

The energy boom lasted from 1978 through the early 1980s, and many people became very wealthy. Overnight, an entire new social class was born. Some called them “oilies.” Many adjectives can describe the attitude that this class of people exuded. Mark Singer calls it “Okiesmo,” which compelled people to flaunt their wealth in any way possible. Bigger was better, and biggest was best. For transportation, “[a] jet got you there faster than a turboprop, two jets were better than one, every jet deserved a helicopter as a hangar mate, jet-propelled helicopters beat everything.”⁶² Rolls-Royces replaced Lincolns as the preferred mode of transportation.⁶³

The entire state of Oklahoma benefitted from the energy boom. Phillip Zweig recounts that “thousands of unemployed factory workers . . . streamed into Oklahoma City, Elk City, Woodward, and other small Oklahoma towns. It was, as one observer put it later, ‘a reverse *Grapes of Wrath*.’”⁶⁴ For Bill Lakey, “It was kind of fun, there was a sense of pride. We were being talked

⁶¹ Frederick Jackson Turner, *The Frontier in American History*, 32 and 37.

⁶² Singer, *Funny Money*, 27.

⁶³ Penn Square had a program in 1979 that if any depositor put more than one million dollars into the bank, he or she would receive a brand new Rolls-Royce automobile. In 1979, two men reportedly took advantage of the offer. The FDIC guaranteed limit for deposits at the time was one hundred thousand dollars. “Two Oilmen to get Rolls for \$1 million,” *The Globe and Mail (Canada)*, 7 June 1979.

⁶⁴ Phillip L. Zweig, *Belly Up*, 211.

about. People were moving to Oklahoma from all over. It gave us a good, valid, up-front moral reason to go out and have a good time.”⁶⁵

“You’re Doin’ Fine Oklahoma! (In Spite of Penn Square Bank . . . [and Jan Eric Cartwright and United Airlines]”: 5 July 1982-24 October 1991

1979 is one of the most important years of the post-World War II era. Domestically, the economy entered into a deep recession that would last until late 1982 and would claim the Carter administration as its biggest victim. Internationally, Iranian revolutionaries overthrew the Shah and shut down oil refineries. As a result, long lines for gas returned in the United States. Because Penn Square heavily invested itself into oil and natural gas exploration, as long as oil prices kept going up, there was money to be made. With oil near forty dollars a barrel in 1980, there were predictions that oil would be at one hundred dollars a barrel in 1990, and near \$333 per barrel in 2000.⁶⁶ But by the middle part of 1981, it was clear to many experts that oil would not reach \$100 per barrel in the near future. In fact, it never approached \$50 a barrel. In a January 1980 article in *The Wall Street Journal*, economics professor S. Fred Singer wrote, “The more obvious price decline to be expected over a period of several years would simply reflect an adjustment from short-run to long-run conditions of demand and supply.”⁶⁷ This would have disastrous consequences for Penn Square and the economy in Oklahoma.

⁶⁵ Ibid.

⁶⁶ Even at the height of the massive economic growth prior to the Great Recession in 2008, oil never reached \$150 per barrel.

⁶⁷ S. Fred Singer, quoted in Zweig, *Belly Up*, 211.

It is important to provide a cursory explanation for why the bank failed because it would have important consequences then and thirty years later when Oklahoma banks did not suffer nearly as bad as other banks across the country.⁶⁸ One main contributor to the failure was the rampant speculation on energy loans. On most of these loans, the collateral for the loans was *the oil in the ground*. Even if the oil or gas was found, the price of oil did not match its predicted value, forcing to accept losses on that loan. The second reason was a practice called “upstreaming,” which was the brainchild of B.P. Jennings. The concept behind this practice was that

[Penn Square] did not have to lend its own deposits, because it could lend other banks’ deposits. Penn Square could earn interest lending its own funds but could generate far greater earnings, with very little risk, by arranging loans and collecting fees as a middleman.⁶⁹

But what if the middleman sold toxic assets and contaminated the “monetary stream,” what would happen then?⁷⁰

The news of the downfall of Penn Square came very quickly. On the Friday before the Fourth of July holiday weekend, an ominous *Wall Street Journal* article hinted that Penn Square was in trouble with some of its bad

⁶⁸ For another account of the Penn Square failure from the perspective of a government official, see Irvine H. Sprague, *Bailout: An Insider’s Account of Bank Failures and Rescues*. (New York: Basic Books, 1986), 109-148.

⁶⁹ Singer’s complete explanation of the internal mechanics of the upstreaming process is located on pages 19 through 21 in his book. This was not a new or illegal practice in the mid 1970s, but it was considered unorthodox in banking circles because it required a special set of circumstances and banking institutions. Singer, *Funny Money*, 19.

⁷⁰ The term “toxic assets,” made famous in the early months in the Great Recession with respect to the first major governmental bailout of financial institutions that made bad loans. Essentially, all bad loans are toxic assets, yet not all toxic assets are bad loans. None of the sources explicitly use the term toxic assets, but it is a good way of thinking about those energy loans because they in effect poisoned the “monetary stream” as those loans were predicated on over-specified energy prices.

assets.⁷¹ On 3 July, a Saturday, an article in *The Washington Post* reported that with eighty percent of Penn Square's loans tied up in the energy sector, "[t]he reported problems at Penn Square could cause ripples in banking circles far from Oklahoma, because the bank has sold more than \$2 billion in loan participation to leading banks in New York, Chicago, and Seattle."⁷² Forty eight hours later, the FDIC declared the bank to be insolvent and named itself as the receiver for the bank. In a morbidly ironic speech that Vice President George H.W. Bush gave later that evening on 5 July in Oklahoma City, he proudly proclaimed that the crippling recession that began in 1979 was over and the economy was recovering.⁷³

The fallout from the Penn Square bank failure would be far worse than the physical closing of the bank. In all, it would take a decade before things returned to normal in Oklahoma. While painful, the lessons learned then about aggressive lending practices would allow them to largely escape those of the early and mid 2000s that led to the Great Recession in 2008.

More details emerged in the following weeks. In a 8 July *New York Times* article, it was stated that "Government officials and other bankers said Penn Square was a victim of growing too fast with too little staff and

⁷¹ It is an understated fact, but because 4 July fell on a Monday in 1982, all banks were closed. This gave the FDIC an extra day to make sure that there would not be a run on the bank. This extra day gave the FDIC the chance to be sure that the bank was insolvent and a chance to prepare statements which would calm not only bank customers down, but the entire financial and banking system as well. See *The Wall Street Journal*, 2 July 1982.

⁷² This article also detailed that Penn Square had \$484.5 million in reported assets and \$4.2 in loan losses. "Oklahoma Bank Reorganization Sought," *The Washington Post*, 3 July 1982.

⁷³ This speech is very similar to the scene in the movie *Animal House* where Kevin Bacon's character of Chip Diller, an ROTC student at Faber College, is yelling "All is Well!" to the mob running amok during the parade scene at the end of the movie.

supervision.”⁷⁴ The next day, the *New York Times* also reported that government investigations and banking examinations into Penn Square started taking place in 1980 on a regular basis; the March 1982 examination of the bank showed that “the bank had become heavily dependent on money borrowed from other financial institutions and therefore was highly vulnerable to any loss of confidence within the banking industry.”⁷⁵

In Oklahoma, the emphasis taken by *The Daily Oklahoman* was on the local impacts of the failure. In a 12 July article, the situation with Penn Square was nothing like the problems that led to the Great Depression; yet, there were very serious issues such as “large, structural problems (e.g. government borrowing) that threaten the fledgling recovery.”⁷⁶ While those comparisons to the Great Depression did fade over time, the question was then of how severe the economic fallout was going to be. In a 9 July interview with *The Daily Oklahoman*, the City Manager of Oklahoma City, Scott Johnson, lamented that, “[a] great deal of our economy is based on oil and gas development, which is financed out of places like Penn Square Bank . . . Sales taxes determine our revenues, and I’m real frightened about it.”⁷⁷ In October, those fears came true when the 1982-1983 fiscal year sales tax revenue

⁷⁴ “Aftermath at Penn Square,” *The New York Times*, 8 July 1982.

⁷⁵ “U.S. Reportedly Knew of Bank’s Troubles,” *The New York Times*, 9 July 1982.

⁷⁶ “Pushing Comparisons Too Far,” *The Daily Oklahoman*, 12 July 1982.

⁷⁷ “10 State Credit Unions Have Frozen Funds in Penn Bank,” *The Daily Oklahoman*, 9 July 1982.

projections were \$321,000 short, primarily because of the lack of spending in July because Penn Square customers just did not have access to their money.⁷⁸

A 14 November 1982 advertisement entitled “You’re Doin’ Fine, Oklahoma! (In Spite of Penn Square Bank)” tried to put a positive spin on the events of the year by trying to promote events for the “Diamond Jubilee” year of 1982, which was the seventy-fifth anniversary of statehood. Among the highlights of the article were, “With unemployment a national topic of conversation, it’s great to see Oklahoma City and the surrounding area at about 5%. Among the lowest in the nation.”⁷⁹ Just one year later, unemployment figures were at 8.1%, compared to 3.6% at the height of the energy boom in 1981.⁸⁰

On the other side of Oklahoma City at the GM Plant, things were going well. Despite losing its newly earned second shift due to the oil situation in 1981, it would regain it once the economy began to recover in 1983. But in February 1981, the state was hit with an equally crippling situation as the Penn Square bank failure a year later, and would forever alter the relationship with the General Motors corporation and Oklahoma City.

One of the primary methods that state and local governments use to attract industries and businesses to an area is through tax incentives. They can come in the form of deferred payments or through complete total exemption

⁷⁸ “Tax Receipts Below Projection,” *The Daily Oklahoman*, 12 October 1982.

⁷⁹ “You’re Doin’ Fine, Oklahoma! (In Spite of Penn Square Bank),” *The Daily Oklahoman*, 14 November 1982.

⁸⁰ “State Shows 1 of Highest Jobless Hikes,” *The Daily Oklahoman*, 14 December 1983.

for the duration of a lease. Sometimes a government entity will buy a tract of land and own it under a false name until the desired corporation arrives, and will then leases it to the company, which will then own the facility they construct, but pay rent for the land it is on.

This was the case with the GM Plant. The OIA bought the land, and then entered into a trust agreement with GM for the land. Additionally, the state offered an exemption on the ad valorem taxes for the property. Two separate Attorney Generals, G.T. Blankenship and Larry Derryberry, ruled that the ad valorem tax break was consistent with the Oklahoma constitution.⁸¹ But in February 1981, Attorney General Eric Jan Cartwright overruled his predecessors and declared that GM owed the state for ad valorem taxes. According to Walt Mayer, the Comptroller of the GM Plant, “The Oklahoma City plant was built with Oklahoma Industries Authority bond issue funds. Industrial trust properties have always been considered tax exempt.”⁸² Mayer’s message was simple: “[Without those exemptions], we would not be in Oklahoma now.”⁸³

This ruling triggered a nasty public battle in *The Daily Oklahoman* between Cartwright and a number of public officials, including OIA president Paul Strasbaugh. The very next day, Cartwright fired back at the OIA by saying

he is under attack by Strasbaugh and other chamber officials because they ‘are afraid of the truth coming out about their shadowy dealings.’ It is his duty to question the authority ‘of a little special interest group to give special treatment to a select

⁸¹ “GM Executive Reminds State of Promises,” *The Daily Oklahoman*, 10 February 1981.

⁸² Ibid.

⁸³ Ibid.

few giant industries . . . They don't give that special treatment to the average person, homeowner or small businessman . . . [Cartwright] said Strasbaugh represents a chamber group which amounts to 'a phantom government not elected by the people, and that's why they want their dealings to remain secret.'⁸⁴

More venom flowed in the following weeks and months, which exposed the political divisions in Oklahoma between. Some supported him, notably populists, but "others are equally convinced that he is a shallow opportunist whose political ambition transcends other considerations and who views the attorney general's office as a stepping stone to bigger things."⁸⁵ While the legal battle began, the message coming from GM was consistent: "We won't move. We would take it in stride, but we would think twice before we would put in another plant next door."⁸⁶ Two years later, on 17 May 1983, the Oklahoma State Supreme Court ruled against General Motors and ordered them to pay the delinquent ad valorem taxes.⁸⁷

GM paid the taxes, but the relationship between GM and the state was never the same again. In late 1983, rumors surfaced that the plant would close and move to Tyler, Texas.⁸⁸ The situation deteriorated further into 1984 when it was reported that "GM top brass . . . have made it abundantly clear that the Oklahoma City plant will become a prime candidate for closing if the domestic

⁸⁴ "Cartwright Says He's Just Doing His Duty," *The Daily Oklahoman*, 11 February 1981.

⁸⁵ *Ibid.*

⁸⁶ "Chairman Says GM Staying But Not Promoting State," *The Daily Oklahoman*, 31 March 1981.

⁸⁷ The name of this case is *General Motors Corporation v. Oklahoma County Board of Equalization* (678 P.2d 233).

⁸⁸ "City's GM Plant Faces Race to Survive by Late 1980s," *The Daily Oklahoman*, 18 December 1983.

auto industry suffers another prolonged slump.”⁸⁹ This news did not keep state officials from trying to land the Saturn plant, which was to be GM’s new compact car. But to the dismay of state officials, GM selected a site in Tennessee for the Saturn plant.

These two economic disasters crippled the Oklahoma City economy in several different ways. The oil and natural gas industry is an important component to the state economy because the state imposes taxes on it. A dramatic decrease in revenue from these taxes affected the state budget. Many of the oilies who flaunted their money found themselves in bankruptcy court, and their possessions being sold at auctions. This also hurt state sales tax revenues. Because the primary method of attracting new industries to the state, ad valorem tax exemptions, was gone, the national perception of Oklahoma was that it was unfriendly to business. So, while the rest of the country largely enjoyed a robust economy under President Reagan, Oklahoma languished. Office and motel vacancies approached fifty percent.⁹⁰ That number eventually dropped down to relatively normal levels, but even as late as the summer of 1988, retail vacancies in Oklahoma City were at 15.2%.⁹¹ In all, the economic situation in the mid to late 1980s was dismal.

⁸⁹ “GM’s Warning to OKC,” *The Daily Oklahoman*, 1 April 1984.

⁹⁰ “Problems Clouds State’s Business Outlook Board Says,” *The Daily Oklahoman*, 5 August 1984; and “When the Oil Boom Busted, Motels Weren’t Far Behind,” *The Daily Oklahoman*, 5 August 1984.

⁹¹ “Shopping Center Vacancy Rate Gains Slightly,” *The Daily Oklahoman*, 7 June 1988.

Becoming a “Big League” City- 25 October 1991-1998

The turning point came in the late 1980s and into the early 1990s. United Airlines sought a location for a new aircraft maintenance facility, which attracted many different bids by cities across the country, including Oklahoma City. As the national economy entered into a slight recession in 1989, the threat of defense budget cuts put many jobs at Tinker in jeopardy, which would be a bonus for United because they would not have to retrain new employees.⁹² In February 1991, Oklahoma City voters passed a one-cent sales tax, with a potential for \$120 million in projected earnings to help with the financing of any incentives deal with United, which would help lure United to Oklahoma City.⁹³

But on 24 October 1991, United Airlines announced their decision that they would locate the maintenance facility in Indianapolis. Oklahoma City officials identified several factors that hurt their case: that Oklahoma City was not a hub for major airlines, and “also detrimental . . . was the state’s treatment of General Motors in the mid-1980s . . . ‘We were asked about that . . . That’s a decision that hurt us greatly after 15 years.’”⁹⁴ In an interview the next day with *The Daily Oklahoman*, mayor Ron Norick stated, “The state did basically everything they could do. We just don’t seem to have the tools

⁹² “Tinker Layoffs Could Draw Airline to City, Bellmon Says,” *The Daily Oklahoman*, 22 November 1990.

⁹³ “City’s Bid for United Boosted in Tough Field,” *The Daily Oklahoman*, 28 February 1991.

⁹⁴ “Indianapolis Wins Aircraft Center; Norick ‘Very Proud’ of Proposal,” *The Daily Oklahoman*, 24 October 1991.

compared to some other states that are being very aggressive in economic development”⁹⁵

A few months later, in January 1992, Mayor Norick announced a new plan, which would help Oklahoma City become aggressive in economic development. Mayor Norick declared

If Oklahoma City officials learned anything from the unsuccessful bid to lure United Airlines, it’s that a concentrated effort should be made to become a ‘big league’ city [and the MAPS task force would be formed] . . . to help oversee several ‘brick and mortar’ projects in the Oklahoma City area.⁹⁶

The goal of this new plan was to reinvest in the crumbling civic infrastructure of Oklahoma City, which would create the economic momentum needed to attract new industries and businesses to Oklahoma City.⁹⁷ The major projects included: the construction of a downtown Triple A baseball stadium, renovations of the Myriad Convention Center; the construction of a 20,000 seat, NBA/NHL ready downtown arena, construction and development along the North Canadian River, renovation of the Civic Center Music Hall, and the construction of a new library in Downtown.⁹⁸

⁹⁵ “‘Strikeout’ by United Called Part of Game,” *The Daily Oklahoman*, 25 October 1991.

⁹⁶ “Task Force Sets Goal of Making City ‘Big League,’” *The Daily Oklahoman*, 18 January 1992.

⁹⁷ This highlighted just how fragile the energy boom was. In any sustained, long-term economic growth, eventually, civic projects typically get done because there is a concerted effort to help the infrastructure of an area. But because the energy boom did not last long, there was not enough emphasis by the oilies in civic development.

⁹⁸ Today, some of the names are different. The Myriad Convention Center is now called the Cox Convention Center, and the North Canadian River area just south of downtown is now called the Oklahoma River. In the latest version of MAPS, MAPS 3 (which is outside the scope of this chapter), a major portion of that money earned from the MAPS 3 taxes is scheduled to go to the construction of an new convention center near downtown Oklahoma City. Today, the two major energy companies in Oklahoma City, Chesapeake Energy and Devon Energy, have

Many supported the MAPS project, but some objected. The biggest support for the MAPS project came from the countless sports fans that reside in Oklahoma City. The possibility of one day attracting a professional NBA or NHL franchise, as well as preserving the stability of the beloved Oklahoma City '89ers, the then Triple A affiliate of the Texas Rangers professional baseball team, was very attractive for these people. Full page advertisements paid for by the "Believe in Our Future Committee" in the Sports section of *The Daily Oklahoman* exclaimed, "The election on Tuesday, December 14th, is far more important than just sports. It's about the whole future of Oklahoma City."⁹⁹ The majority of critics were minority residents in the northeastern and northwestern parts of Oklahoma City, as well as residents of the Paseo area, where most of the homosexuals in Oklahoma City reside.¹⁰⁰ These groups opposed MAPS primarily because the City Council rejected a human rights ordinance prohibiting discrimination and because the projects ignored transportation and economic opportunity issues on the northeast side of the city.¹⁰¹

heavily invested in the Oklahoma River. With their investment, it was recently named as the official Olympic rowing training facility for the U.S. Olympic team.

⁹⁹ "Paid Political Ad by 'Believe in Our Future Committee,'" *The Daily Oklahoman*, 12 December 1993.

¹⁰⁰ There is some recent historical work on homosexuals in Oklahoma City. See Aaron Lee Bachhofer, II, "The Emergence and Evolution of the Gay and Bisexual Male Subculture in Oklahoma City, Oklahoma, 1889-2005," Ph.D. diss., Oklahoma State University, 2006. The Paseo area is just north and west of the downtown area. The area in Oklahoma City south and east of I-44, west of the Broadway Extension, and north of downtown is some of the most diverse areas in the entire state; large numbers of other minorities, particularly Asians, live here.

¹⁰¹ "Voters OK Tax, Downtown Projects," *The Daily Oklahoman*, 15 December 1993.

On 14 December 1993, the MAPS vote passed.¹⁰² Some opposition still continued. Some called city officials “a bunch of high-dollar, cotton-picking criminals;” according to one resident, “the northeast side needs to replace a plague of pawn shops with decent grocery and discount stores. [The resident asked] ‘Why can’t we vote a sales tax . . . to build a Wal Mart?’”¹⁰³

Since the passage of the original MAPS tax, it has been a resounding success for Oklahoma City, as well as the state.¹⁰⁴ While the proposed new downtown arena did not become the home of an NHL franchise in 1997, it was finally opened on 8 June 2002. Three years later, the New Orleans Hornets relocated to the new arena, called the Ford Center, in the wake of Hurricane Katrina that devastated New Orleans and the Gulf Coast in August 2005.¹⁰⁵ Other projects, such as the Bricktown Ballpark, Bricktown Canal, as well as the renovation projects have all increased the national visibility of Oklahoma City since their completion. In 2008, a group of Oklahoma City businessmen who purchased the Seattle Sonics franchise in 2005, successfully negotiated a settlement with the City of Seattle to move the team to Oklahoma City. Since their arrival, the Thunder have one of the highest attendance averages in the NBA.

As Patricia Nelson Limerick explains in *The Legacy of Conquest*,

¹⁰² 32,367 voted yes and 27,762 voted no.

¹⁰³ “Opponents Distrustful,” *The Daily Oklahoman*, 15 December 1993.

¹⁰⁴ In the early phases of the first MAPS project, there were funding problems and the costs of the projects kept rising. There was a second vote extending the sales tax in 1998, which passed; that vote kept the projects going. Later MAPS votes, such as the so-called “MAPS for Kids” and MAPS 3 projects, passed.

¹⁰⁵ “NBA’s Hornets Land in City,” *The Oklahoman*, 22 September 2005.

Cycles of prosperity and recession have long characterized the American economy, and in that long-running game of crack-the-whip, the West has been at the far end of the whip, providing the prime example of the boom/bust instability of capitalism.¹⁰⁶

The events in the economic history of Oklahoma City in the late twentieth century exhibit these characteristics. Beginning in 1979 and ending in 1982, with the onset of the energy boom and the commencement of operations at the GM plant, the Oklahoma City economy experienced a short period of uncontrolled growth. From the collapse of the Penn Square bank in 1982 and ending with the passage of the first MAPS sales tax, Oklahoma City, as well as the state in general, experienced a long period of negative or no growth whatsoever.

As a result of the MAPS projects and the robust development of energy companies like Chesapeake and Devon, the Oklahoma City metropolitan area experienced solid, stable growth in the early twenty-first century. From 2000 to 2010, the population within Oklahoma City alone jumped 14.6% to 579,999.¹⁰⁷ This is major growth when compared to Dallas, which experienced only 0.8% growth over the same amount of time.¹⁰⁸ Because of this massive growth, the question becomes one of infrastructure. One important component of this is access to adequate water supplies.

¹⁰⁶ Patricia Nelson Limerick, *The Legacy of Conquest*, 29.

¹⁰⁷ U.S. Bureau of the Census, *2010 Demographic Profile-Oklahoma*, <http://www.census.gov/popfinder/?s=40>, (accessed 5 March 2012).

¹⁰⁸ *Ibid.*

CHAPTER III: 'BUT OKLAHOMA IS A STATE, NOT A RESERVATION:' CHICKASAW NATION AND CHOCTAW NATION OF OKLAHOMA V. FALLIN, ET AL.

It usually begins with a lawsuit. After a lengthy process that can take years, if not decades, an issue that initially seemed very small became very large, involving hundreds of people and costing many thousands of dollars. In the highly litigious society of the United States, that statement applies to almost any type of legal action, from a lawsuit over a car accident to a lawsuit challenging federal law.

In the western region of the United States, few disputes are more likely end up in court more than those over water rights issues. This happens because water is the most valuable resource in the West; not oil, coal, or gold. Water is a scarce resource in the West, and because of that, people will go to whatever lengths necessary to protect their right to access and consume it. In the late twentieth century, large cities in the West like Phoenix, Denver, and Los Angeles grew primarily because of their access to water.¹⁰⁹ While cities further east in areas not traditionally considered part of the West

¹⁰⁹ See generally Peter Wiley and Robert Gottlieb, *Empires in the Sun: The Rise of the New American West* (New York: G.P. Putnam's Sons, 1982); Carl Abbott, *The Metropolitan Frontier: Cities in the Modern American West* (Tuscon: University of Arizona Press, 1993).

like Oklahoma City and Dallas, water issues are becoming and will be problems that must be dealt with in order to sustain booming populations. Tribes still possess some semblance, while it might appear infinitesimal compared to what it once was, of sovereignty over the lands where they live.¹¹⁰ That sovereignty includes the right to the waters within that area. How the United States federal government conferred sovereignty for water rights differs from situation to situation. The most common way is through a treaty. Per the United States Constitution, once ratified by the House of Representatives and Senate, any treaty becomes federal law. Once at this stage, it supersedes state law.

On 18 August 2011, the Chickasaw and Choctaw nations filed a federal lawsuit against Oklahoma governor Mary Fallin and members of the Oklahoma Water Resources Board (hereinafter OWRB) in order to protect their sovereign claims to the waters on tribal lands in southeastern Oklahoma. It provides an excellent case study for scholars of Native Americans, tribal government, water law, and students of the American West because it addresses so many different issues. There are two parts to the lawsuit that require analysis.

The first, and most crucial part, is the claim made by the Chickasaw and Choctaw to the water in southeastern Oklahoma. The second part is the issue surrounding the transfer and potential sale of that water out of the region to

¹¹⁰ For a general discussion of Native American sovereignty, including water rights, see generally David H. Getches, Charles F. Wilkinson, Robert A. Williams, Jr. and Matthew L.M. Fletcher, *Cases and Materials on Federal Indian Law*, 6th ed. (St. Paul, MN: Thomson Reuters, 2011). For a general history of the development of Indian laws, see John R. Wunder, *“Retained by the People:” A History of American Indians and the Bill of Rights* (New York: Oxford University Press, 1994).

Oklahoma City and potentially the Dallas-Fort Worth Metroplex in North Texas. Understanding the reasoning used by the tribes requires delving into the treaties from the Removal era, as well as the basic principles and landmark cases of federal water law.¹¹¹ Addressing the specific claims against the OWRB requires parsing the failed Draft Tribal/State Water Compact from 2001, the Storage Contract Transfer Agreement Between Oklahoma City Water Utilities Trust (hereinafter OCWUT) and OWRB from June 2010, and other related documents. This lawsuit is an example of how Oklahoma possesses Western characteristics because of the balancing of water needs and rights between an expanding metropolitan area with Oklahoma City and those of the well-watered, poor, rural Southeastern Oklahoma.

Water Law 101

The American legal system derives primarily from the European legal tradition, especially English common law. England, being on an island known for its lush green landscapes and persistent rainfall, water is not a problem when compared with the lands west of the ninety-eighth meridian in the United States.¹¹² The English water rights system is based on the doctrine of riparian rights. A landowner who is entitled to riparian rights is

¹¹¹ Fortunately for the historian, this does not require the completion of a three-year legal education to do. I will stick to the highlights of federal and Oklahoma water law in general and as it pertains to Native Americans.

¹¹² The ninety-eighth meridian is a line of precipitation demarcation between the arid West and the rest of the United States, where at any point west of this line, any given location only receives eighteen inches or less in annual rainfall. This line is central to Walter Prescott Webb's excellent study on the American West entitled *The Great Plains*. Walter Prescott Webb, *The Great Plains* (Lincoln, NE: Bison Books, 1981).

one who owns the bank or banks of a stream and, strictly speaking, a non-navigable (or private) stream as distinguished from a public (or navigable) one. A riparian right is a right which accrues to one who owns the bank of a stream and who access to it by virtue of position.¹¹³

According to Webb, “when the English common law of waters was brought to America there was little occasion to modify it as long as it was applied in the eastern United States.”¹¹⁴ But as United States citizens moved into the West, water law did not initially change as they encountered areas that did not have much water.

However, by the 1880s and 1890s, changes began to occur. The resulting development of state and local water law in the West led to the development of three distinct zones of differing water law in the United States. In the East, riparian law remained. But there are limitations for riparian owners. Riparian owners do not completely own the water, just the right to it. In the Rocky Mountains, Great Basin, and desert areas of the West, the doctrine of prior appropriation developed. In the arid West, where some modification of that basic riparian law is necessary due to the prevalence of irrigation, the legal principle of “use it or lose it” applies to water.¹¹⁵ Yet a third area developed in areas where some regions within a state contained an abundance of water and others lacked water. This area included California, Nebraska, and

¹¹³ This is one of the simplest definitions from the non-legal literature. Another good definition is found in Joseph F. Rarick’s *The Right to Use Water in Oklahoma*, where he defines riparian rights as “The rights of the owners of lands on the banks of watercourses, relating to the water, its use, ownership of soil under the stream, accretions, etc.” Joseph F. Rarick, *The Right to Use Water in Oklahoma* (Norman, OK: No publisher given, 1976); *Ibid.*, 433.

¹¹⁴ *Ibid.*, 432.

¹¹⁵ The issue of irrigation is central to Webb’s thesis in *The Great Plains* as one of the key developments that allowed new settlers to survive in the land west of the 98th meridian.

Oklahoma. In 1897, the Supreme Court decision in *Lux v. Haggin* developed “the modified riparian rights doctrine.”¹¹⁶ This doctrine varies from state to state, and is a hybrid of both the riparian rights system and the prior appropriation system.

The first section of the lawsuit makes this assertion within the specific claim that the actions undertaken by the State of Oklahoma and the OWRB violate their rights to access water. Specifically,

The Plaintiff Nations [the Chickasaw and Choctaw] depend on the Treaty Territory’s [tribal lands in southeastern Oklahoma] water resources to fulfill the homeland purposes of their Treaties, which purposes include providing an environment with clean and healthy rivers and streams, abundant upland and aquatic resources, pursuing economic development and self-sufficiency, and meeting the present and future needs of communities throughout their homeland.¹¹⁷

Thus the entire lawsuit rests on the basic premise that the treaties signed by the Chickasaw and Choctaw are the source of the Chickasaw and Choctaw right to waters in southeastern Oklahoma.

Nineteenth Century Treaties

Therefore, the treaties are of utmost importance to understanding the tribes’ argument in the lawsuit.¹¹⁸ The tribes assert that, “the peoples of the

¹¹⁶ Webb, *The Great Plains*, 438.

¹¹⁷ The next sentence in the suit includes the specific water resources that the tribes purport to have rights to access. Introducing them at this point would result in undue confusion. *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, (case no: CIV-11-927-C) (2011), 2.

¹¹⁸ In the text of the lawsuit, the treaties are both presented as they appear in as federal statutes once Congress ratified them and in the name of the document signed by the principal

Chickasaw and Choctaw Nations occupied the are now within the southeastern United States from time immemorial . . . Treaty relations between the United States and Plaintiff Nations began very early in the history of the American Republic.”¹¹⁹ The first Removal era treaty was the Treaty of Doak’s Stand, signed on 18 October 1820. The goal of the federal government was clear in this treaty; the preamble states that it is the goal of the President of the United States to promote Choctaw civilization by giving them “a country beyond the Mississippi River.”¹²⁰ However, there was one important stipulation; Article 4 reads

The boundaries hereby established between the Choctaw Indians and the United States, on this side of the Mississippi River, shall remain without alteration until the period at which said nation shall become so civilized and enlightened as to be made citizens of the United States, and Congress shall lay of a limited parcel of land for the benefit of each family or individual in the nation.¹²¹

Yet, because of several factors, in 1830, there was need for another removal treaty.¹²² This treaty, known as the Treaty of Dancing Rabbit Creek, initiated the arduous process of Choctaw Removal to the Indian Territory. Article 2 delineates the boundaries of the new Choctaw nation:

The United States under a grant specifically to be made by the President of the U.S. shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee

dignitaries of the tribes and the federal government. I will refer to these treaties by their common name, rather than the statute, for continuity and simplicity.

¹¹⁹ The phrase “time immemorial” is not uncommon to this lawsuit. *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, 9.

¹²⁰ “Treaty With the Choctaw, 1820,” 18 October 1820, 7 Stat. 210.

¹²¹ *Ibid.*

¹²² See page 10 in the lawsuit, as well as *Choctaw Nation v. Oklahoma* 397 U.S. 620.

simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the Treaty made and concluded at Washington City in the year 1825.¹²³

Article 4 bestows sovereignty over these lands to the Choctaw, stating:

The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or state shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State; but the F.S. [?] shall forever secure said Choctaw Nation from, and against, all laws except such as from time to time may be enacted in their own National Councils, not inconsistent with the Constitution, Treaties, and Laws of the United States; and except such as may, and which have been enacted by Congress, to the extent that Congress under the Constitution are required to exercise a legislation over Indian affairs. But the Choctaws, should this treaty be ratified, express a wish that Congress may grant to the Choctaws the right of punishing by their own laws any white man who shall come into their nation and infringe any of their national regulations.¹²⁴

In 1832, the Chickasaw signed the Treaty of Pontitock Creek, which was nearly identical in effects and wording to the Treaty of Dancing Rabbit Creek. In the preamble, the Chickasaw acknowledged that they “[found] themselves oppressed in their present situation; by being made subject to the laws of the States in which they reside . . . Rather than submit to this great evil, they

¹²³ “Treaty With the Choctaw, 1830,” 27 September 1830, 7 Stat. 333.

¹²⁴ Articles 2 and 4 appear in the lawsuit in paragraphs 22 and 23. Ibid.

prefer to seek a home in the west.”¹²⁵ In 1837, the Treaty of Doaksville established a formal boundary between the Chickasaw and Choctaw, thereby creating the “Chickasaw District.”¹²⁶

After the Civil War, which deeply divided the Cherokee, Chickasaw, Choctaw, Creek and Seminole, the 1866 Treaty of Washington Reconstruction Treaties, re-established the relationship between the federal government and the Choctaw and Chickasaw. The primary purpose of this document was to grant amnesty to the tribes for their part in joining the Confederacy. But there are other important details to note. Aside from banning slavery in both Choctaw and Chickasaw Nations, two important points got settled in this treaty. First, in Article 3, the Chickasaw and Choctaw were to cede their territory west of the ninety-eighth meridian to freedmen for the sum of three thousand dollars.¹²⁷ However, the most important part of this treaty is Article 10, which states

The United States re-affirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation.¹²⁸

¹²⁵ “Treaty With the Chickasaw, 1832,” 20 October 1832, 7 Stat. 381.

¹²⁶ *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, paragraph 25.

¹²⁷ “Treaty With the Choctaw and Chickasaw, 1866,” 28 April 1866, 14 Stats., 769.

¹²⁸ *Ibid.*

With this stipulation, the United States agreed to honor all previous treaties entered into with the Chickasaw and Choctaw.¹²⁹ That also included tribal sovereignty over their lands. Yet, as the settlement of lands in Indian Territory increased in the latter half of the nineteenth century, however, “While the Plaintiff Nations lost much of their sovereign estate as a result, Congress made no provision for allotment to diminish the Nation’s water rights held by virtue of their treaties and the Removal-era homeland-for-homeland transaction among the federal and tribal sovereigns.”¹³⁰

The natural question to ask at this point is what do water rights have to do with this treaty analysis. After all, the word “water” does not appear in any of these treaties, nor does it appear in the *Constitution, Laws, and Treaties of the Choctaw Nation*, and the *Constitution, Laws, and Treaties of the Chickasaw Nation*. When the issue of water appears in these two volumes, it is always in reference to rivers and the building of toll bridges over them.¹³¹ One could make a compelling argument that water was a secondary concern to that of the protection of trees on tribal lands. There are two specific examples of severe fines for those who were to cut down trees near the tribal salt works or

¹²⁹ For those not wholly educated on the subject, they could easily claim that because the Chickasaw and Choctaw decided to join the Confederate States of America in the Civil War, they lost their rights once the South surrendered. This treaty destroys that argument.

¹³⁰ *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, paragraph 32.

¹³¹ See generally *Constitution and Laws of the Choctaw Nation: Together With the Treaties of 1855, 1865, and 1866* (New York: William P. Lyon and Son, 1869) and *Constitution and Laws of the Chickasaw Nation: Together With the Treaties of 1832, 1833, 1834, 1837, 1852, 1855, and 1866* (Parsons, KS: The Foley Railway Printing Company, 1899).

for the sole purpose of cutting down hickory and pecan trees just for the tree nuts.¹³²

Development of Western Water Law

In the 1890s and in the first decade of the twentieth century, the Supreme Court handed down crucial decisions that set up a new system of water law in the West, as well as Indian water rights. The most important case is *Winters v. United States*, which the United States Supreme Court decided in 1908. The *Winters* decision created the notion of Indian water rights, and the doctrine of prior appropriation. As legal scholar Eric F. Spade declares, “[t]he open-ended reserved water right created by *Winters* undermined the prior appropriation doctrine by destroying the certainty that the doctrine brought to water rights in the West.”¹³³

Isolated from the rest of the Oklahoma, Chickasaw and Choctaw tribal lands are an anomaly. The majority of the water in the state of Oklahoma is on tribal land in the southeast, yet it is very rural and isolated from the urban centers of the state. None of the three major interstate highways in Oklahoma, I-35, I-40, or I-44 cut through the populated areas of Chickasaw and Choctaw lands.¹³⁴ Conversely, these interstates bisect both of the Oklahoma City and Tulsa metropolitan areas.

¹³² *Constitution and Laws of the Choctaw Nation*, 74, 83.

¹³³ Eric F. Spade, “Indian Reserved Water Rights Doctrine and the Groundwater Question,” *American Indian Law Review* 19 (No. 2, 1994), 418.

¹³⁴ Interstate 35 does traverse the western edge of the Chickasaw Nation, with the Riverwind Casino just south of the Canadian River and the WinStar Casino just north of the Red River as

These populations are not immune to the natural disasters that make Oklahoma notorious throughout the United States. From devastating tornado outbreaks every spring, blizzards and crippling ice storms in the winter, Oklahoma is known for its extreme weather. In the year 2011 alone, Oklahoma experienced a blizzard, EF5 tornadoes, the hottest summer in state history, and recently, the largest earthquake in state history.¹³⁵ Of these, the most damaging with respect to environment is the historic drought that started in the fall of 2010.

The water system is the biggest victim of the drought, creating both ecological and economic problems. In a situation like this, the most pertinent question for state officials is how to provide adequate water to the citizens of the State of Oklahoma. With current growth and climate projections for twenty and thirty years depicting a bleak future, water is an issue that will continue to plague the state of Oklahoma for the near future. As early as the 1970s, officials saw an opportunity to capitalize on in the unrealized potential in southeastern Oklahoma waters. In 1974, construction began under direction of the United States Army Corps of Engineers on what would later become known as Sardis Lake.¹³⁶ So in the summer of 2010, when the governing body over Oklahoma City's water, the OCWUT, went to the OWRB to apply for a

major landmarks on I-35. Also, it is over an hour and a half by car to the nearest major cities in the Chickasaw Nation, Ada and Sulphur, from Oklahoma City. It is an even further distance to the Choctaw Nation from Oklahoma City.

¹³⁵ See "Quakes Leave Many in Oklahoma Rattled," *The Oklahoman*, 6 November 2011.

¹³⁶ The U.S. Army Corps of Engineers has constructed many different lakes and reservoirs throughout the past century, including Canton Lake, Sardis Lake, and Lake Arcadia.

permit to use that water and transport it from Sardis Lake to Oklahoma City, no problems appeared to most Oklahomans.

The Lawsuit

This action triggered the lawsuit by the Chickasaw and Choctaw against newly elected governor Mary Fallin and the board members of the OWRB. The lawsuit states:

Defendants' representations have made plain that a fundamental element of the June 2010 agreement's consideration is the promise, to be implemented by the Board, to issue a water-use permit that grants the Water Trust the right to annually withdraw water from the Sardis Reservoir and/or Kiamichi Basin in an amount equal to roughly ninety percent (90%) of Sardis's estimated sustainable yield . . . [Furthermore], Defendants' actions manifest their collective arrogation of unilateral authority to control the withdraw and export of water from the Treaty Territory . . . and even, with State legislative approval, out-of-state. Defendants' actions demonstrate their flawed conclusion that they have complete license to execute each element of this plan unconstrained by the Plaintiff Nations' Treaty-protected rights to and regulatory authority over Treaty Territory water resources.¹³⁷

The ultimate objective by the Plaintiffs, as perceived by the Chickasaw and the Choctaw, is to subvert their rights to the water in a piecemeal manner. The tribes argue that such action is not only a violation of their rights, but also a violation of the Oklahoma Enabling Act and the McCarran Amendment.¹³⁸

¹³⁷ *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, paragraphs 3-5.

¹³⁸ As for the violation of the McCarran Amendment, the lawsuit declares, "[it] provides the only means authorized by Congress for any state to adjudicate tribal federal law water rights. State administrative proceedings on permit applications for single users, such as that initiated by the Water Trust for Kiamichi Basin waters, are contrary to the purposes and objectives of

The sale of water is a separate, but equally important side note in the discussion of this lawsuit. The Dallas/Fort-Worth Metroplex is a regional giant, and is one of the most important centers in the American West. But like other major cities of the West, it has to deal with water problems.

The genesis of water sales between the State of Oklahoma and the North Texas Municipal Water District, a conglomeration of North Texas water agencies, began in the early 1990s. In 1993, the Oklahoma Legislature halted a one hundred year deal that would have sent roughly one hundred and thirty million gallons of water from Sardis Lake and other southeastern Oklahoman waters in exchange for two million dollars a year.¹³⁹ This deal collapsed “because then-state Attorney General Susan Loving ruled local residents weren’t properly notified.”¹⁴⁰ Payment for Sardis Lake by the State of Oklahoma fell behind from 1990 to 1997, when the Army Corps of Engineers threatened to sue the state; this prompted Oklahoma officials to try to sell the water from Sardis Lake in order to pay the debt off. The situation devolved further when in 1999, the Army Corps of Engineers sued the State of Oklahoma.

Joint state and tribal interactions over Southeastern Oklahoma water began with the House Concurrent Resolution (HCR) 1066, signed on 28 May 1999. This resolution by the Oklahoma State Legislature acknowledged not only the importance of southeastern Oklahoma water, but also the importance

the McCarran Amendment.” *Choctaw and Chickasaw Nations of Oklahoma v. Fallin, et al.*, paragraph 6.

¹³⁹ Eleska Aubespín, “Water Supplies Gauged; Oklahoma Move Called No Threat,” *The Dallas Morning News*, 20 August 1993.

¹⁴⁰ Mark A. Hutchinson, “Sardis Lake Water For Sale to Texas,” *The Oklahoman*, 6 November 1997.

of collaboration with both Chickasaw and Choctaw in the development of a feasible water plan would benefit all involved parties. A similar resolution, HCR 1109, signed on 26 May 2000, contained similar language to that of HCR 1066, but with an important change that as a result of introduced federal legislation a “Southeastern Oklahoma Water Resources Management Plan shall identify necessary sustainable long-term water supplies within the basin for flood control, environmental, and water supply purposes, *excess water available for export and sale.*”¹⁴¹

So yet again in the early 2000s, North Texas began to inquire about potential water sales. In 2002, Oklahoma Governor Frank Keating invited the North Texas Water Agency (NTWA) to make a proposal to buy surplus water from southeastern Oklahoma. In their letter to Governor Keating on 1 February 2002, the NTWA exclaimed

Records indicate that an average of two trillion gallons [of water] flow out of Oklahoma each year. The volume alone from only six river basins in Southeast Oklahoma, not counting all of the water supply still held in existing reservoirs, is almost four times the amount of water used each year by New York City with a population of over eight million.¹⁴²

Reading between the lines a little, the real message is that Oklahoma has far more water than it currently needs and the surplus should be sold to North Texas, where there is a need for it.

¹⁴¹ Oklahoma State Legislature, *Enrolled House Concurrent Resolution no. 1066* (Oklahoma City, 28 May 1999), 1-2.

¹⁴² North Texas Water Agency to Governor Keating, “RE: Water Marketing Partnership,” 1 February 2002.

At the same time, ongoing discussions between state and tribal officials led to the creation of a draft “State-Tribal Water Compact.” The important feature of this document is the payment structure that was to come from out of state water sales. Section 5.3 Part B states that “Net proceeds . . . shall be divided one-half (50%) to the State, thirty-seven and one-half percent (37 ½%) to the Choctaw Nation, twelve and one-half percent (12 ½%) to the Chickasaw Nation, and distributed accordingly by the Compact Commission.”¹⁴³

The compact received some praise. One legal scholar believed that the compact was good, considering the negatives of the alternative legal options open to the Chickasaw and Choctaw: litigation. Compacting was better than litigation “because the parties are not pressured to agree on each issue, they may more freely discuss their differences.”¹⁴⁴ She cites a similar compact between the Seminole Tribe and the State of Florida in the Seminole Water Rights Compact of 1987 as a successful example of state/tribal interactions over tribal water rights in a riparian system. Valerie Lambert also agrees that this was a boon for the Choctaw. She writes, “[b]y pursuing a settlement, a settlement that at the time they expected to serve as the basis for a tribal-state compact, they [the Choctaw] attempted to secure . . . capital for the immediate future.”¹⁴⁵ But as paragraph 44 of the lawsuit states,

¹⁴³ State of Oklahoma and Chickasaw and Choctaw Nations, *Draft State/Tribal Water Compact, Public Discussion Draft* (Oklahoma City, 2001), 8.

¹⁴⁴ Jennifer E. Pelphey, “Oklahoma’s State/Tribal Water Compact: Three Cheers for Compromise,” *American Indian Law Review* 29 (2004/2005), 133.

¹⁴⁵ Valerie Lambert, *Choctaw Nation: A Story of American Indian Resurgence* (Lincoln: University of Nebraska Press, 2007), 245.

At an earlier time, State officials acknowledged the Plaintiff Nations' interests in the Treaty Territory waters by seeking their participation in a proposed interstate transaction involving Kiamichi Basin waters. Substantive negotiations over the State's proposal were conducted in apparent good faith, but no agreement was finalized.¹⁴⁶

This occurred because the State had not begun to study the fifty-year water plan. That was in 2001. Only in November 2011 did the OWRB approve it after a five-year process, and it has yet to be implemented by the Oklahoma Legislature into any specific State water policies.¹⁴⁷

The storage contract agreement between OCWUT and the OWRB is extremely puzzling in light of these earlier attempts at state/tribal interaction on the subject. It is not like there were any prior discussions between the State and tribes over shared water rights. No reference, either specific or implied, to the Chickasaw or Choctaw exists in the OWRB/OCWUT agreement of June 2010. Section 2.4 is most perplexing. It states, "The plenary jurisdiction and authority of the State over water in the State pursuant to State and Federal law . . . shall not be affected by the transfer of storage rights and obligations under this Agreement."¹⁴⁸ As Choctaw scholar Valerie Lambert laments,

[t]he first [striking thing] is the extent of Oklahoma's resistance to recognizing Choctaw water rights and the related arrogance of many Oklahoma state leaders, which is most apparent in the

¹⁴⁶ *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, paragraph 44.

¹⁴⁷ Michael McNutt, "State Water Plan Draws Criticism," *The Oklahoman*, 3 November 2011.

¹⁴⁸ "Storage Contract Transfer Agreement between Oklahoma City Water Utilities Trust and State of Oklahoma Water Resources Board," 2 March 2010, 6.

event of the building of Sardis Lake but is also an unmistakable feature of the conflict over ownership of Oklahoma water.¹⁴⁹

Because of this OWRB/OCWUT agreement, the Chickasaw and Choctaw believed that they needed to protect their legal interests by way of their lawsuit against Governor Fallin and the individual members of the OWRB. As is made plain by the lawsuit, “the State has refused to engage in any meaningful intergovernmental negotiation . . . and the Plaintiff Nations [cannot] stand silent while their federal rights are violated in hopes that future opportunities to assert those rights will arise.”¹⁵⁰ While some specific charges against these parties have been alluded to earlier, the most important general charge is that the State cannot use southeastern Oklahoma as a “water farm.” Paragraph 56 reads, “Since the Defendants do not, in fact, possess such unilateral authority, they may not use the Plaintiff Nations’ Treaty Territory as a ‘water farm’ and convert tribal resources into a commodity controlled by them, as is their manifest plan.”¹⁵¹ Essentially, the Choctaw and Chickasaw cannot let the status quo keep on occurring; if they did, they would lose a vital natural resource.

The tribes are pursuing several legal remedies in this lawsuit. First, the tribes want a declaratory judgment from the Court stating that transferring water outside of the tribal lands is in violation of the law.¹⁵² Secondly, the

¹⁴⁹ Lambert, *Choctaw Nation*, 213.

¹⁵⁰ *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, paragraph 62.

¹⁵¹ *Ibid.*, paragraph 56.

¹⁵² *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, paragraphs 66-68.

tribes also want a permanent injunction blocking the water permit filed by the OCWUT from going forward.¹⁵³

So what does this lawsuit mean on a large scale, and what impacts will it have? As a historian, fortunately, the onus is not on the author to make any predictions because that would require counterfactual analysis. This type of analysis aids other social scientists, but is of little practical use to the historian because it is *not* factual. Observations are a different matter. Regarding the large-scale implications of this lawsuit, there are several to be made. First, the water situation in the region is only just beginning. With most of Texas and western Oklahoma experiencing an exceptional drought over the past three years, there is a current need for water.

The implications of the lawsuit are massive. While past water deals stalled and eventually failed because tribes made the claim that they possessed water rights, those did not happen in court. For the first time ever, if this lawsuit does not get settled out of court, the legal system will decide whether or not the Chickasaw and Choctaw possess water rights in a system based on some form of riparian rights. This lawsuit also changes the dialogue between the State of Oklahoma and the tribes. For nineteen years the tribes took the passive approach. They protected their interests with mere words. This lawsuit reflects tribal willingness to actively safeguard their resources. Will this force a change in attitude among State officials from “yes - the tribes are an

¹⁵³ Ibid., 70-71.

interested party. But Oklahoma is a state, not a reservation”¹⁵⁴ towards cooperation and collaboration between the State and the tribes?

While it usually begins with a lawsuit, water rights cases rarely end up being settled in court. The courts simply take too long. Parties eventually realize that a negotiated settlement is the better option for a host of reasons. If state and local officials in Oklahoma and north Texas decide to concede to the tribes on this issue, it will occur because they weighed the pressing needs of the cities as the priority.

Water is a critical resource, especially in the American West. Sharing it is of the utmost important. The system water law in the United States governs the possession of water, as well as its usage. In Oklahoma, ownership of water rights is complicated as a result of treaties signed in the nineteenth century between Native American tribes and the federal government. The juxtaposition of the tribes in the well-watered region of Southeastern Oklahoma and the local governments in the less well-watered Central Oklahoma is another example of how Oklahoma possesses western characteristics. Balancing the water needs of both the tribes and the cities is a problem common in the West, but not in the East. The lawsuit between the Chickasaw and Choctaw and Oklahoma state officials shows the willingness of tribal officials to protect and assert their rights to the water; from the perspective of the tribes, this lawsuit is the first step to equitably sharing the water in Southeastern Oklahoma. The legal process will ultimately determine

¹⁵⁴ Patrick B. McGuigan, “Water: It’s Time to Start Over,” *The Oklahoman*, 16 January 2002.

how the water will be shared. Whatever the outcome, the position of the tribes in Oklahoma has made it clear that they are an important part of the future of the state.

CHAPTER IV: TRIBAL GAMING AND THE DEFENSE OF NATIVE AMERICAN SOVEREIGNTY IN THE *CHICKASAW NATION AND CHOCTAW NATION OF OKLAHOMA V. FALLIN, ET AL* LAWSUIT

Every fall, the crimson clad caravan from Oklahoma makes its annual pilgrimage south to Texas. Most of the members of the caravan want one thing, a victory by the University of Oklahoma over the University of Texas in the annual “Red River Shootout” football game at the Cotton Bowl in Dallas. The caravan passes two discernible landmarks that separate the two states on immediate opposite sides of the Red River. On the Texas side of the river, the first thing that these travelers see is an adult video store. On the Oklahoma side is the newly constructed WinStar World Casino, operated by the Chickasaw Nation.

The placement of the casino near the river is an important juxtaposition. The Red River and the casinos are both vital resources for the Chickasaw and Choctaw. It also reveals the stakes and the players involved in the *Chickasaw and Choctaw Nations of Oklahoma v. Fallin* lawsuit. The immediate impact of tribal gaming on state and tribal economies is a very important dynamic in relationship to the lawsuit. Gaming is an economic boon for the Chickasaw and Choctaw. It has allowed them to wage an effective legal and public relations attack against the state of Oklahoma. The role of gaming in Oklahoma is

another Western characteristic that Oklahoma possesses in that it allows tribes to develop economic sovereignty and to promote tribal identity.

But what is meant by sovereignty? Sovereignty has different meanings when used in different contexts. One could even argue that sovereignty is a political fiction used by the strong to justify their dominion over the weak.¹⁵⁵ However, that is an extreme view. As the corpus of Federal Indian law expanded over the past several centuries, sovereignty has morphed into something resembling Dr. Frankenstein's monster. The introduction into the sovereignty chapter in the latest volume of Native American legal scholar David Getches's *Cases and Materials on Federal Indian Law* states,

After centuries of upheaval and repression in which most tribal governments often had no way to survive except by going underground, tribal nations are now embracing and asserting their sovereignty . . . A key element of federal Indian law is the recognition that Indian tribes retain aspects of inherent sovereignty that has not been extinguished by Congress, negotiated away by tribes in treaties and other agreements, or divested by judicial fiat.¹⁵⁶

By the phrase "divested by judicial fiat," Getches means federal case law that refers to Native Americans.¹⁵⁷

¹⁵⁵ This argument can work especially well when trying to justify the colonial period in North American history. In New Mexico, the Spanish government used the *requerimiento* to help subjugate native populations; in the area known today as the continental United States, the United States government used the Constitution in a similar manner to develop was of subjugating Native sovereignty.

¹⁵⁶ David H. Getches, Charles F. Wilkinson, Robert A. Williams, Jr. & Matthew L.M. Fletcher, *Cases and Materials on Federal Indian Law*, 6th edition (St. Paul, MN: Thomson Reuters, 2011), 367.

¹⁵⁷ Getches, *Cases and Materials on Federal Indian Law*, 367.

Recent legal scholarship connects the issue of sovereignty with the economics in Indian Country. The biggest contributor to the economics of most Native American tribes is gaming. While not all tribes rely on gaming as much as others, for those tribes who have large casinos, gaming is big business.

This has created some newer negative stereotypes about Native Americans. One example from popular culture is an episode from the animated television series *South Park*, which is entitled “Red Man’s Greed.”¹⁵⁸ In this episode, the father of one of the main characters has a compulsive gambling problem and tries to play roulette to save the town of South Park, Colorado from being turned into a superhighway connecting the Three Feathers Casino with Denver - and he loses. As a result, the Native Americans buy all of the land in South Park, harkening back to the Removal period of the 1820s.

Another similar example is the episode “The Son Also Draws” from the *Family Guy* television series. The storyline is similar in that the protagonist loses all of her money gambling, and in order to earn back the money, the protagonist’s husband goes on a “vision quest,” which was a bet between him and the casino owners. The fundamental stereotype in both episodes is that

¹⁵⁸ As is standard with most *South Park* episodes, there is more than one way to view the hidden message of the show. In the case of “Red Man’s Greed,” most viewers are overwhelmed by the traditional negative stereotypes of Native Americans; for example, the names of the casino workers (with such names as Chief Runs-With-Premise and Johnny Many Moons), the laughter of the Native Americans whose laughter mimics a war drum beat, among others. But the inner message, revealed at the end of the episode, is that Native Americans and whites can learn much from each other. *South Park*, “Red Man’s Greed,” *South Park Studios* website, <http://southparkstudios.com/full-episodes/s07e07-red-mans-greed> (accessed 16 March 2012); *Family Guy*, “The Son Also Draws,” episode 6, (originally aired 9 May 1999).

the greedy Native Americans take advantage of small-minded visitors who gamble exorbitant sums of money away.

Historical and Legal Background of Tribal Gaming

Almost every article or book written about federal Indian case law delves into some form of a history of the major Supreme Court decisions on the subject. Some emphasize the political aspects of sovereignty. Others emphasize the impact of sovereignty on tribal jurisdiction. For the purposes of this chapter, such a discussion of the major cases would only serve to confuse an already convoluted topic.¹⁵⁹

An equally convoluted subject is the history of the relationship between the federal government and the tribes, much less with the so-called Five Tribes, which include the Chickasaw and Choctaw. Once re-integrated into the federal system after the signing of the Treaty of Washington, the Chickasaw and Choctaw developed their own respective laws and constitutions; they also enjoyed less government intervention into their affairs, as the northern Plains tribes received the majority of federal attention in the postwar years.¹⁶⁰

The early 1890s mark a transition in the history of both Native Americans and the West. As previously discussed, Frederick Jackson Turner based his

¹⁵⁹ For a detailed discussion on the development of Indian law as a result of court decisions, see Getches, 74-243.

¹⁶⁰ Some key events include the Sand Creek massacre, the various attempts to place northern Plains tribes on reservations that usually led to armed conflicts. See generally Robert M. Utley, *The Indian Frontier: 1846-1890* (Albuquerque: University of New Mexico Press, 2003) and Francis Paul Prucha, *The Great Father: The United States Government and the American Indians*, 2 vols. (Lincoln: University of Nebraska Press, 1984), 480-780.

frontier thesis from data collected in the 1890 census, which he presented in 1893 at the annual American Historical Association meeting in Chicago. In 1890, the Ghost Dance movement attracted many followers; however, on 29 December 1890, the massacre at Wounded Knee creek on the Pine Ridge reservation signaled its end.¹⁶¹ After 1890 and continuing through the early 1960s, the policies of assimilation and termination were the dominant method of dealing with Native Americans. The goal was simple: get as many tribes as possible should assimilate into American society so they can no longer be wards of the federal government.

In the 1960s, as the civil rights movement became a national issue, the plight of Native Americans became a national issue as well. The abysmal conditions and aberrant unemployment on reservations helped to show the public the failures of assimilationist policies.¹⁶² While the situation of many tribes did not improve dramatically in the 1960s and 1970s, the Nixon administration attempted to reverse some of the deleterious effects of termination.¹⁶³ By the end of the 1970s, while the situation was slightly better than it was during the termination era, it was apparent to many that if the

¹⁶¹ The Ghost Dance and the massacre at Wounded Knee Creek is the focus of the controversial work written by Dee Brown, called *Bury My Heart at Wounded Knee*. See Dee Brown, *Bury My Heart at Wounded Knee* (New York: Henry Holt and Company, 1971); see also Uteley, *The Indian Frontier: 1846-1890*, 243-252.

¹⁶² The more radical elements of this movement, known as the Red Power movement, took on multiple forms; some of these were non-violent. An entire generation of Native American academics, politicians, and lawyers came out of this movement; this includes people like Walter Echo-Hawk and Vine Deloria, Jr. One of the most famous works from this era is Vine Deloria, Jr's, *Custer Died For Your Sins: An Indian Manifesto* (Norman: University of Oklahoma Press, 1969).

¹⁶³ For an in depth look at Nixon's policies towards Native Americans, see Prucha, *The Great Father*, 1111-1138.

economic situation of the tribes improved, it would have positive ramifications for tribes.

Before the courts interceded in gaming cases, as Getches explains,

[p]rior to developing gaming enterprises, many tribes had only a minimal governmental base with budgets composed almost entirely by federal appropriations and grants . . . The tribes that turned to gaming were generally able to use of the new revenues to expand their governmental services and other exercises of sovereignty.¹⁶⁴

The first of these cases was *Seminole Tribe of Florida v. Butterworth*, in which the United States Fifth appellate circuit court held that because of Seminole tribal sovereignty, the state could not regulate Seminole gaming.¹⁶⁵ The second, and the more famous, decision is *California v. Cabazon Band of Mission Indians* (480 U.S. 202). The essential facts of this case relating to the Cabazon Band are that they

also opened a card club at which draw poker and card games are played. The games are open to the public and are played predominantly by non-Indians coming onto the reservations. The games are a major source of employment for tribal members, and the profits are the Tribes' sole source of income.¹⁶⁶

The reasoning behind why the State of California sued the tribe was because they believed that the Cabazon Band's gaming violated the Organized Crime Control Act (OCCA). But the Supreme Court ruled that

¹⁶⁴ Getches, *Cases and Materials on Federal Indian Law*, 708.

¹⁶⁵ Jessica Cattelino, *High Stakes: Florida Seminole Gaming and Sovereignty* (Durham, NC: Duke University Press, 2008).

¹⁶⁶ Getches, *Cases and Materials on Federal Indian Law*, 710.

There is nothing in OCCA indicating that the States are to have any part in enforcing federal criminal laws or are authorized to make arrests on Indian reservations that in the absence of OCCA they could not effect . . . although there are more than 100 such enterprises currently in operation, many of which have been in existence for several years, for the most part with the encouragement of the Federal Government.¹⁶⁷

In short, the Supreme Court upheld the right of the Cabazon Band to continue with their gaming operations.

IGRA and the State-Tribal Gaming Model Compact

In order to quell the fears of states, Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988, in response to the *Cabazon* decision. It is a fairly complex piece of legislation, but its primary function is to classify the different types of gaming, delineate the sovereignty aspects between individual states and tribes, and to create an independent regulatory authority to oversee gaming, the National Indian Gaming Commission (NIGC). As stated in the findings section of the Act, the motivation for IGRA was that

a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.¹⁶⁸

Class I games are put solely under the control of the tribes themselves, and these types of games are traditional tribal games and other types of

¹⁶⁷ Ibid., 712.

¹⁶⁸ *Indian Gaming Regulatory Act (IGRA)*, Public Law 100-497 [S. 555], 100th Cong., 2d sess, codified at *U.S. Code* 25 (2006), Section 2701.

“social games.”¹⁶⁹ Class II games, however, are harder to determine.

IGRA defines a Class II game as

the game of chance commonly known as bingo (whether or not electronic, computer, or technologic aids are used in connection therewith), which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of the card covers such numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and card games that - are explicitly authorized by the laws of the State, or are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if played in conformity with . . . limitations on wagers or pot sizes in such card games.¹⁷⁰

Class III games are any other type of gaming not included in Classes I and II; the simplest way to define Class III games are as Las Vegas style casino games. An important distinction between Class II and III games is manner of regulation. If a type of game meets Class II criteria in a given state, it is allowed. But for Class III gaming, it is “subject to an allocation of regulatory authority between the state and the tribe set forth in a tribal-state compact.”¹⁷¹

The compact requirement for Class III gaming is a critical problem with IGRA as it was written and many lawsuits have come about as a result. Cohen writes that IGRA has largely held up in the Supreme Court, except the section where states had to waive “sovereign immunity for actions brought by tribes in

¹⁶⁹ Getches, et al, *Cases and Materials on Federal Indian Law*, 6th ed., 715.

¹⁷⁰ *Indian Gaming Regulatory Act*, Section 2703, 7A

¹⁷¹ Getches, et al., 716.

federal court to enforce the requirement that states bargain in good faith.”¹⁷² The *Seminole Tribe v. Florida* case did this, in which the Supreme Court ruled the “good faith” bargaining requirement by the state in IGRA to be unconstitutional. In the words of legal scholar Matthew L.M. Fletcher, as a result of this decision “Indian tribes no longer had a legal recourse that would allow them to operate casino-style games where states refused to negotiate in good faith for a gaming compact.”¹⁷³ Payment between the tribes and the states is a contentious issue in most state-tribal compacts, according to Cohen.¹⁷⁴

After a lengthy process that took almost a decade, the State of Oklahoma developed a “State-Tribal Gaming Act” in 2005, and is still in effect today.¹⁷⁵ An important component of this document is the calculations used to develop the fee schedules for the payments. This is Part 11 in the compact. The compact states that,

four percent (4%) of the first Ten Million Dollars (\$10,000,000.00) of adjusted gross revenues received by a tribe in a calendar year from the play of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games, b. five percent (5%) of the next Ten Million Dollars . . . c. six percent (6%) of all subsequent adjusted gross revenues received by a tribe in a calendar-year . . . d. ten percent (10%) of the monthly net

¹⁷² Felix S. Cohen, *Cohen’s Handbook of Federal Indian Law* (Newark, NJ: LexisNexis Publishing, 2005), 861.

¹⁷³ Matthew L.M. Fletcher, “Bringing Balance to Indian Gaming,” *Harvard Journal on Legislation* 44 (2007): 39, quoted in Getches, et al., *Cases and Materials on Federal Indian Law*, 6th ed., 718.

¹⁷⁴ Cohen, 873.

¹⁷⁵ For a detailed analysis of the decade long struggle to arrive at a State-Tribal Gaming Compact from 1995 through the early 2000s, see W. Dale Mason, *Indian Gaming: Tribal Sovereignty and American Politics* (Norman: University of Oklahoma Press, 2000), 176-230.

win of the common pool(s) or pot(s) from which prizes are paid for nonhouse-banked card games. The tribe is entitled to keep an amount equal to state payments from the common pool(s) or pot(s) as part of its cost of operating the games.¹⁷⁶

The Compact will expire on

January 1, 2020, and at that time, if organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any governmental action of the state or court order following the effective date of this Compact, the Compact shall automatically renew for successive additional fifteen-year terms.¹⁷⁷

As a native Oklahoman, this author can remember the transition from small to large-scale gaming. In the late 1990s, the casinos resembled nothing more than simple bingo halls. But just ten years later, opulent casinos that are also resorts became standard. The most notable of these new casinos are: the Hard Rock Casino and Hotel in Tulsa, the WinStar World Casino, the RiverWind Casino, which is immediately south of Norman on I-35, and the Choctaw Nation Casino. Other casinos were built on tribal lands in other parts of the state as well.

The economic impact of the casinos has grown rapidly over the past ten years as well. In 2007 alone, the Chickasaw Nation earned approximately two hundred million dollars from its various casinos.¹⁷⁸ In 2010, as the Choctaws finished renovating and expanding the Choctaw Casino Resort, as well as with the Chickasaw, the tribal business model emphasized investment diversity

¹⁷⁶ *Oklahoma Statutes Annotated*, Title 3A, Section 281 (NexisLexis 2012).

¹⁷⁷ *Ibid.*

¹⁷⁸ "Chickasaw Nation Plays it Smart with Tribe's Financial Future," 28 June 2007, *The Journal Record (Oklahoma City, OK)*.

outside of gaming; as the executive director of gaming for the Choctaw Nation stated in an article on 8 February 2010, “ ‘We may eventually hit a breaking point someday . . . We have to be smart about what we do [but] . . . We want people to be able to come to a family-oriented destination.’ ”¹⁷⁹ Alcohol is not served at this casino, which is an attraction to some people. Despite a small population of less than four million in Oklahoma, the larger casinos work around it by

targeting customers in other states, particularly the Dallas-Fort Worth area. Analysts said this move to more expensive resorts, offering entertainment and convention options in addition to gaming, provided the robust growth behind Thackerville’s WinStar World Casino, but the flashy destination facilities built for River Wind Casino south of Norman and River Spirit Casino in south Tulsa¹⁸⁰

While the Great Recession of 2008 did cut into the overall amount paid to the state in monthly gaming fees, the annual fees collected by the state jumped from \$14.23 million dollars in the 2006 fiscal year to \$122.2 million in the 2011 fiscal year.¹⁸¹

WaterFuture.tv

One can no longer watch television in Oklahoma without seeing a commercial sponsored by the Chickasaw and Choctaw. It is no coincidence that this campaign started in the late 2000s, around 2008, when gaming became a

¹⁷⁹ “Isolation of Casino South of Durant Seen as Benefit,” 8 February 2010, *The Journal Record (Oklahoma City, OK)*.

¹⁸⁰ “Hot Streak Ends: Casino Expansions in Oklahoma Hit Recession Realities,” 30 December 2009, *The Journal Record (Oklahoma City, OK)*.

¹⁸¹ Oklahoma Office of State Finance-Gaming Compliance Unit, “Tribal Gaming Exclusivity Fees,” under “Gaming Exclusivity Fees,” http://www.ok.gov/OGC/Gaming_Exclusivity_Fees/index.html (accessed 29 February 2012).

major enterprise for tribes. However, recently, the Chickasaw and Choctaw have started to launch a multimedia public relations campaign, including Internet and television, with the goal of promoting their claims to their sovereignty and water rights in southeastern Oklahoma. In late 2011 and into 2012, as the legal battle between the tribes and the State of Oklahoma became more entrenched in the media, the Chickasaw and Choctaw launched their Waterfuture.tv website.

Around 2008, television commercials promoting the Chickasaw, with some other commercials about the Choctaw, began to run on a constant basis on local television. The title of this series of commercials was “United We Thrive,” which is the slogan of the Chickasaw Nation.¹⁸² The Chickasaw commercials typically were of famous Chickasaw figures, including the prolific composer Jerod Impichchaachaaha’ Tate and the first Native American astronaut, Col. John Herrington. The emphasis in these commercials was on how being a Chickasaw impacted their work and their lives. These were very positive in tone. The similar campaign undertaken by the Choctaw, while it did not have the “star power” of the Chickasaw commercials, the message was likewise positive. From time to time, commercials from the Chickasaw featuring former Deputy Secretary of Indian Affairs Neal McCaleb appeared; the tone of his commercials was firm, but not cold, in his defense of water rights for the native tribes.

¹⁸² The Chickasaw Nation, “Family,” The Chickasaw Nation, http://www.chickasaw.net/services/index_270.htm

But soon after the Chickasaw and Choctaw filed suit against the state, the tone changed in these commercials. The emphasis shifted completely from putting a positive emphasis on the benefits of the nations to Oklahoma almost overnight. The message became one that attempted to show that with the lawsuit, the tribes and not the State of Oklahoma, were the ones looking out for the best interests of *all* Oklahomans.

This message is the central purpose of the Chickasaw and Choctaw run waterfuture.tv website. On this website, one can view copies of official documents from not only the respective tribes to state and government officials and their legal teams, but documents sent between those officials as well. In all, ten years worth of documentation is available. There are various videos featuring Judith Royster, co-director of the Native American law program at the University of Tulsa.¹⁸³ The website also features a documentary called “The United State of Oklah₂oma,” which aired on television throughout the state of Oklahoma in March 2012.¹⁸⁴

The combined public relations campaign adds an interesting dynamic to the lawsuit. Other than just simply trying to justify what the tribes are doing, it is not clear what the ultimate purpose is. Do they want the people of Oklahoma to get involved and help apply pressure to state officials so they can get a favorable result in mediation? Or do they just want to show to everybody

¹⁸³ Judith Royster, “Litigation Last Resort,” The Chickasaw Nation, www.waterfuture.tv; and “OWRB’s ‘Frequently Asked Questions,’” The Chickasaw Nation, www.waterfuture.tv.

¹⁸⁴ The Chickasaw Nation, “The United State of Oklah₂oma: A News Documentary,” The Chickasaw Nation, <http://www.waterfuture.tv/#/home/gallery/74,0>.

that they will do whatever is necessary to protect their sovereignty? Or is it both?

It is no accident that the public relations campaigns coincided with the explosion of tribal gaming in Oklahoma, especially among the Chickasaw and Choctaw. With a growing stature in the state and within the region, the tribes took advantage of the situation. Overall, at least in the opinion of this author, the tribal nationalist commercials were very successful in trying to show that tribes are united and a willing, working partner that operates in the State of Oklahoma. The water lawsuit public relations campaign, is a different matter altogether.

While the development of casinos on tribal land is not unique to Oklahoma or the American West, the strong presence of Native gaming in Oklahoma is a characteristic of the West that Oklahoma possesses. There are two reasons for this.

First, in the American West, Native American tribes are integral parts of state and local communities and economies. The business aspect of the casino industry in Oklahoma is a boon for both the tribes and the state. Tribes reap casino profits. The state of Oklahoma benefits from the rise in tourism generated from interest in these casinos.

Second, and most importantly, the casinos are symbolic of the presence and impact that Native Americans have in the state of Oklahoma. As a result of the Treaty of Doak's Stand and the Treaty of Dancing Rabbit Creek, the

federal government gave the Chickasaw and Choctaw their own nations with distinct, physical borders. When Oklahoma became the forty-seventh state of the United States of America in 1907, the borders that separated tribes from each other, and the tribes in the Indian Territory from the settlers who lived in Oklahoma Territory, went away. Today, the casinos serve as symbolic borders. While the casinos are not political borders between tribal and non-tribal land, they represent not only tribal growth and progress, they represent the recent growth of native economic sovereignty.

CHAPTER V: CONCLUSION

There are fewer better places to drive in the nation than Highway 51, west of Stillwater, Oklahoma on a warm spring evening near sunset. The vivid shades of yellow, orange, and red mix with the fading blue skies in a way that is unique to Oklahoma. There is a place, just a mile or two east of the interchange with I-35, which is especially beautiful. After encountering the rolling hills and woods of eastern Oklahoma, this spot is where the hills end and the open skies begin. This is much like the history of Oklahoma. Its past is filled with hills, trees, and a point of embarkation in the East. But the current direction of Oklahoma is towards is the beautiful and open skies that the West represents.

In 2010, an article in *The Atlantic* magazine posed a simple, yet intriguing question: Is Oklahoma City a symbol of the future?¹⁸⁵ Author Derek Thompson attributes the lessons learned from the economic bust of the 1980s as one of primary reasons for why Oklahoma City could represent the potential future of the United States. Simply stated, banks in Oklahoma City that

¹⁸⁵ Derek Thompson, "Why Oklahoma City Could Represent the Future of America" *The Atlantic Monthly*, 13 September 2010. <http://www.theatlantic.com/business/archive/2010/09/why-oklahoma-city-could-represent-the-future-of-america/62897/>

engaged in conservative banking practices as a result of the 1980s energy bust did not get involved in the practices that caused many banks to fail as a result of the collapse of the housing bubble in 2007.¹⁸⁶ Thompson also attributes the diversity in the local economy that was not present in the 1980s as another reason for Oklahoma City's stability. Furthermore, the "okiesmo" mentality did not return in the 2000s, as it did during the energy boom. While some people did very well during the economic highs prior to the Great Recession of 2008, there was not reckless opulence among the ultra-wealthy in Oklahoma City.

From an economic perspective, Oklahoma City possesses the western characteristic of a boom and bust economy, even though Oklahoma City escaped the worst of the 2008 recession. The energy industry is still a large part of the Oklahoma City economy. But there are other industries to counterbalance the energy industry.

The second western characteristic that Oklahoma possesses is the need to balance water needs between tribes and non-Native Americans, and between well-watered, rural regions and not well-watered, urban regions. In the West, water is an issue for its inhabitants because it is not abundant. Sharing it equitably is of paramount importance in the West. In the late nineteenth century, as settlers went to the West, the legal system of riparian rights was changed to accommodate their needs according to the availability of water in the West.

¹⁸⁶ Ibid.

The lawsuit between the Chickasaw and Choctaw Nations and the State of Oklahoma is an important component to this characteristic because of the assertion fundamental to the lawsuit. The Chickasaw and Choctaw claim that the nineteenth century treaties with the federal government give them the rights to the water in their tribal lands in Southeastern Oklahoma. The state of Oklahoma's claims dispute that. While this case is currently pending, a true compromise settlement between both parties will respect the need to balance the needs and rights of the tribes, cities, and regions in the state of Oklahoma.

This lawsuit also reflects on another key aspect of the West, the state-tribal relationship. Lost in the entire discussion over water rights is the question of where do the other tribes in Oklahoma, who are not a party to this lawsuit, stand on the issue. Do the other tribes share in the sentiments of the Choctaw and Chickasaw towards the state of Oklahoma? If so, then this lawsuit could provide the state the opportunity to reach out to all the tribes in Oklahoma in order to strengthen state-tribal relationships.

However, the most compelling question regarding the lawsuit is if the tribes were to win the suit in court, what would the long-term ramifications be. In short, any legal victory for the Choctaw and Chickasaw could be a pyrrhic one if there are negative long-term consequences. Would it negatively or positively affect the Choctaw and Chickasaw in the future? Will it hurt future state-tribal interactions? These are things that all parties in the lawsuit must consider before settling on any specific course of action.

The third western characteristic that Oklahoma possesses is the impact that tribal gaming has had for the state of Oklahoma. The cause for the recent rise in tribal gaming is IGRA. As a result, both the Chickasaw and Choctaw nations built large casinos, such as the Choctaw Casino Resort, the WinStar Casino, and the Riverwind Casino, among others. While the tribes have invested large amounts of money into these casinos, they generate large amounts of profit. While some of the profit goes to the State of Oklahoma, per the State/Tribal Model Gaming Compact, the tribes receive the bulk of the casino profits. These profits have allowed the tribes to cultivate their image through several public relations campaigns. The goal of the latest public relations campaign was to assert their position in the water rights lawsuit on different types of media, including television and the Internet.

This is a western characteristic because gaming has given the tribes some semblance of economic sovereignty, and the casinos serve as symbolic borders; in the West, two important aspects for the tribes are economic sovereignty and a distinct physical space for their tribes. In Oklahoma, gaming profits have allowed tribes, especially the Chickasaw and Choctaw, to thrive because gaming provides employment opportunities and services to members of the tribe. Casinos in Oklahoma also serve as symbolic borders because they distinguish where tribal land is and is not.

These three characteristics of the West are only a small part of Oklahoma's identity. But it is important for Oklahoma to have an identity. While these three characteristics are not an exhaustive list for determining

Oklahoma's identity as a western state, they are an important part of the recent past and the present. Understanding the implications of these three things will allow the powers that be help Oklahoma continue its recent successes into the twenty-first century.

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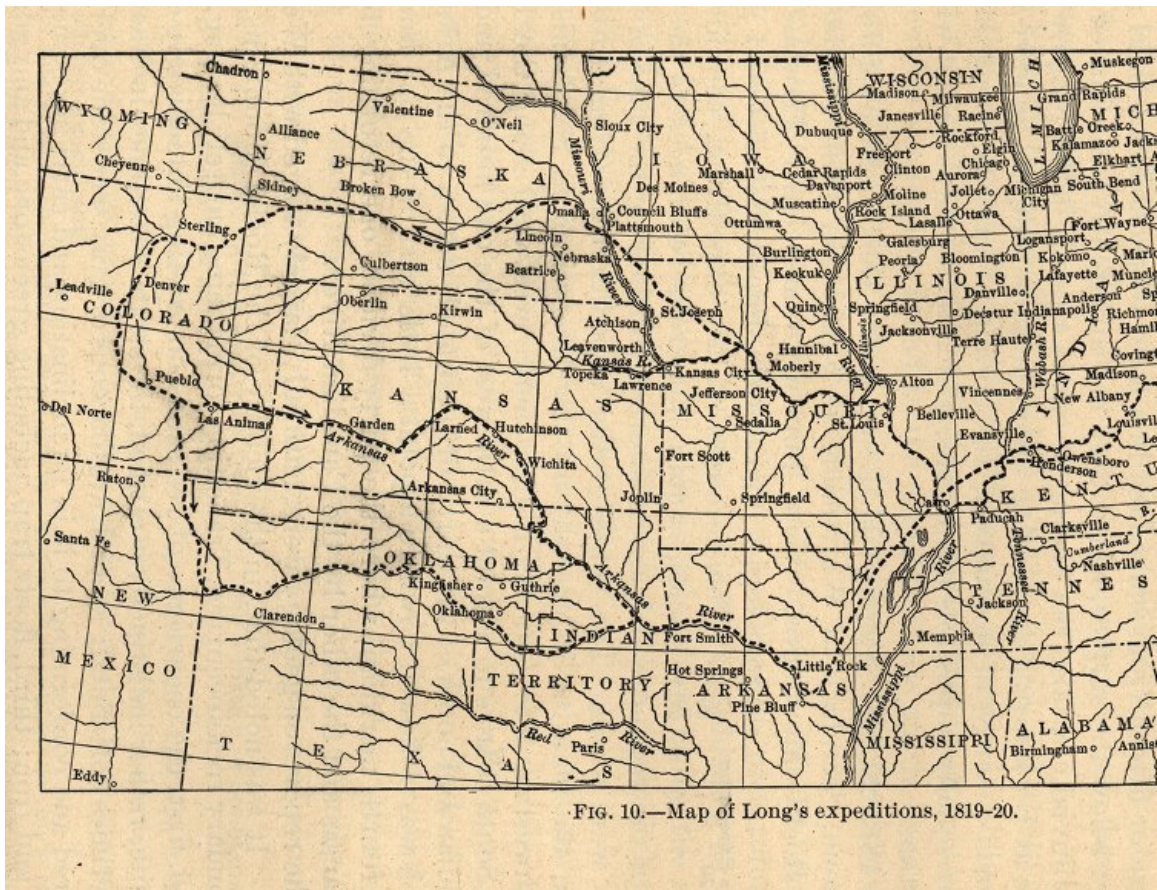
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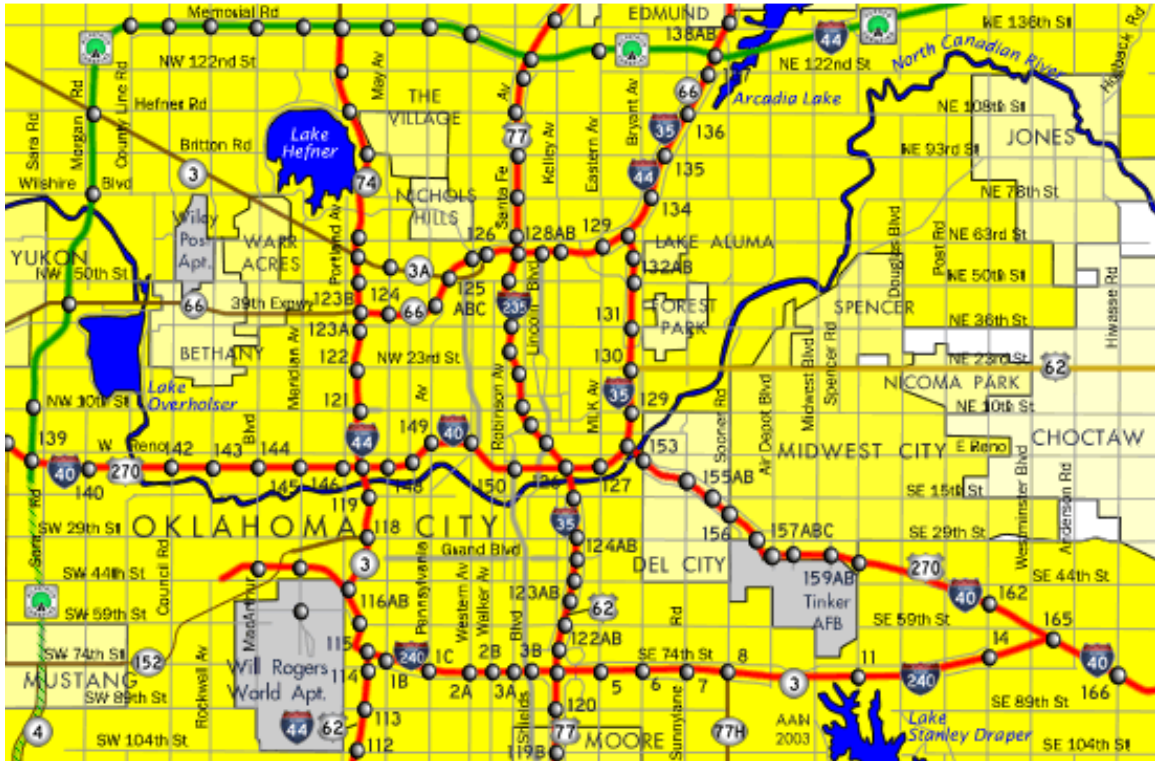
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MAPS

Map 1: Map of Major Stephen Long's Expedition, 1819-20



Map 2: Map of Oklahoma City



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Scope and Method of Study: This study examines three characteristics of the American West that Oklahoma also possesses. Primary materials include newspapers, court decisions, a pending lawsuit, and federal treaties with the Chickasaw and Choctaw nations. Secondary sources incorporated a variety of historical monographs on the American West, several legal journal articles on state/tribal water issues, as well as some miscellaneous works written about the energy boom of the late 1970s and early 1980s.

Findings and Conclusions: This study examines three characteristics of the American West that Oklahoma possesses; this contributes to Oklahoma's identity as a Western state. First, the boom and bust nature of the economy in Oklahoma City from the early 1970s through the mid 1990s exhibit similarities as can be found in other Western cities in the twentieth century. One such example within this timeframe is the meteoric rise and precipitous decline of the Penn Square Bank, one of the main lenders of loans for oil and natural gas exploration in Oklahoma in the late 1970s. The second characteristic is found in the lawsuit between the Chickasaw and Choctaw Nations against the State of Oklahoma over the water rights to Sardis Lake, among other water sources, in southeastern Oklahoma. This lawsuit shows the increasing value and importance of water in Oklahoma, where water scarcity is an issue, just as it is in other Western states like Colorado and California. The last characteristic is the recent, rapid development of large Native American casinos. As a result of the rise in these casinos, the tribes launched several public relations-like media campaigns to promote themselves. With the filing of the lawsuit by the Chickasaw and Choctaw in 2011, the campaigns have begun to focus on promoting their position of strength as the plaintiffs in the case. This rise of casinos in Oklahoma is not just attached to the American West, but throughout the entire country. Where it becomes a western characteristic is through how the Chickasaw and Choctaw have used the boom in casinos to promote and defend their sovereignty. The implication with these three characteristics is that they help define Oklahoma's identity.

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