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## Wyoming Pre-Statehood Legal Materials: An Annotated Bibliography - Part II

Debora A. Person

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## WYOMING PRE-STATEHOOD LEGAL MATERIALS: AN ANNOTATED BIBLIOGRAPHY—PART II

*Debora A. Person\**

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## INTRODUCTION

The legal materials collected during the pre-statehood years can be narrowly described as those that established the governments that extended their law over the area. Those resources directly related to Wyoming's formation as a territory and state are the focus of Part I of this two-part work, "Wyoming Pre-Statehood Legal Materials: an Annotated Bibliography."<sup>1</sup> Part II broadens the scope of the work to explore the background and history of Wyoming's pre-statehood, with a deeper discussion of the foreign law and other United States territorial law that governed the current geographical area that is now the state of Wyoming. From the earliest days of European discovery to federal Indian policy to preemptive land laws and homesteading, the laws that impacted our geographical area dealt with ownership and land use, those elements that signify power to some, and to others, sustenance.

### I. FOREIGN SOVEREIGNTIES

To evaluate the influence of sovereignties and territories over Wyoming's geographical area, most resources begin with the explorations of European

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<sup>1</sup> Debora A. Person, *Wyoming Pre-Statehood Legal Materials: An Annotated Bibliography*, in 2 PRESTATEHOOD LEGAL MATERIALS: A FIFTY-STATE RESEARCH GUIDE, INCLUDING NEW YORK CITY AND THE DISTRICT OF COLUMBIA 1395 (Michael Chiorazzi and Marguerite Most, eds., 2005). This collection was originally intended as a series of articles on the territorial period of each state and so length of individual articles was strictly limited. The article was reprinted in 7 WYO. L. REV. 49 (2007).

countries and their claims to the New World. While the predominant European influences were Spanish, French, and English, portions of what is currently the state of Wyoming or territories of which Wyoming was once a part also fell within land contested or claimed by Russia, Mexico, and the Republic of Texas. As it is generally believed that the first white person to walk parts of Wyoming was John Colter, a member of the Lewis and Clark expedition who decided to explore south of the Missouri River on the return trip from the Pacific in 1806,<sup>2</sup> it could also be argued that these foreign laws do not apply in the instance where there is no person to govern. But rights to newly discovered land were not viewed that way historically by the powers that claimed the territory, nor by other powers that might wish to claim possession, and so these claims become part of the legal history of the state.

While the European propensity toward exploration and expansion can be dated to the time of the First Crusade, for the New World, it is generally believed that the initial legal document relative to land claims was the Papal Bull issued by Pope Alexander VI in 1493, giving Spain sovereignty over lands to be discovered in the New World not already under the dominion of any Christian powers. The Spanish monarchy granted Columbus a monopoly of exploration in the region. This grant was revoked in 1495, and freedom of navigation was opened to all “merchant adventurers.” The monopoly was reassigned in 1497, but by that time, Americus Vespucci had set sail, destined to rediscover the lands that would later be named after him.<sup>3</sup> Spain lay sweeping claims to the continent, without regard to boundaries, by virtue of its exploration and discovery. Interestingly, it was generally accepted that while European nations proclaimed the lands theirs, these claims were not considered binding on any indigenous rights to the property. It was, rather, to prevent similar claims from other European powers.<sup>4</sup>

Spain was not alone in claiming large portions of the new continent. France claimed portions Spain had already staked out, arguing that Spain had not colonized the region and France’s explorers had made deeper inroads, having come south from Canada and north from Louisiana. England, as well, lay claim to the northeastern states, Canada, and the Pacific Northwest. Russia moved down from Alaska and established settlements along the Pacific Coast, with forts nearly as far south as San Francisco, which it retained until 1842.<sup>5</sup> And the United States, through its expeditions, claimed rights to the land in the Northwest based on discovery of the Columbia River.

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<sup>2</sup> 5 WESTON ARTHUR GOODSPEED, *PROVINCE AND THE STATES: A HISTORY OF THE PROVINCE OF LOUISIANA UNDER FRANCE AND SPAIN, AND OF THE TERRITORIES AND STATES OF THE UNITED STATES FORMED THEREFROM* 334 (1904).

<sup>3</sup> *Id.* at 18.

<sup>4</sup> FELIX S. COHEN, *COHEN’S HANDBOOK OF FEDERAL INDIAN LAW* 15 (2005).

<sup>5</sup> HAYES, *HISTORICAL ATLAS OF THE PACIFIC NORTHWEST: MAPS OF EXPLORATION AND DISCOVERY* 109 (1999).

Both Spain and France, during the peak of their presence in the New World, held that portion of the country that would become the Louisiana Purchase. Running up high debts to Spain in its struggle against the English in the Seven Year's War, France ceded the territory to Spain in 1762 in a secret treaty. Following this, Spain and France became engaged in the Napoleonic Wars at home. Spain accumulated war debts and, by 1800, ceded the Louisiana region back to France.<sup>6</sup> Further impacting foreign claims in the New World, Mexico, an established Spanish colony, set up a provisional government in 1810. The revolt segmented into local fighting until Spain's revolution in 1820. This gave Mexico the opportunity to consolidate its forces and claim independence. In 1821, Mexico seceded from Spain, ending the holdings of Spain in the region and supplanting Spain's colonial laws in the region with those of the Republic of Mexico.

Russian and English claims did not extend as far inland as Wyoming, but they certainly included lands along the coast of Oregon Country, and Oregon Country extended as far east as the summit of the Rocky Mountains, a portion of which lay within modern-day Wyoming. In fact, before Wyoming became a territory of its own, it was claimed not only by these foreign powers, it was also incorporated all or in part into the District of Louisiana, Louisiana Territory, Missouri Territory, Unorganized Country, Indian Country, Nebraska Territory, Dakota Territory, Idaho Territory, Oregon Country, Oregon Territory, Washington Territory, the Republic of Texas, and the State of Texas.

- Pope Alexander VI, Papal Bull, *Inter Caetera* (Alexander VI), May 3, 1493. 1 EUROPEAN TREATIES BEARING ON THE HISTORY OF THE UNITED STATES AND ITS DEPENDENCIES IN 1648, 56 (Frances Gardiner Davenport, ed., 1917).<sup>7</sup>

Granting Spain sovereignty over lands both discovered and yet to be discovered in the New World by Columbus not previously possessed by any Christian owner. An additional Papal Bull on May 3 and another Bull *Inter Caetera* on May 4, 1493, reinforced and strengthened the grant to the Spanish.

- Treaty of Utrecht, Fr.-Gr. Brit., Apr. 11, 1713, 3 EUROPEAN TREATIES 193.

This treaty was part of the series of treaties ending the War of Spanish Succession and long-lasting disputes between France and Great Britain regarding

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<sup>6</sup> There is considerable discussion among scholars whether the European nations at this time found the area to be a prize or a burden. While there was the potential for riches, the cost of maintaining the region, especially in light of the British and Indian presence, was extensive. Some representations of the exchange reflect a reluctance to receive the land and no particular distress at returning it.

<sup>7</sup> Hereinafter EUROPEAN TREATIES.

the Hudson Bay Basin. France ceded this property as well as other land holdings in what is now Canada.

- Treaty of Fontainebleau, Fr.-Spain, Nov. 3, 1762, 4 EUROPEAN TREATIES 86.

As a result of losing the French and Indian War with Britain and being heavily indebted to Spain for its assistance during the war, France ceded title to all of its interests west of the Mississippi River to Spain in a secret treaty.

- Treaty of Paris, Feb. 10, 1763, 4 EUROPEAN TREATIES 92.

Treaty between France, Great Britain, Spain, and Portugal that ended the French and Indian War (the American conflict of the Seven Years' War). France ceded land east of the Mississippi River to Great Britain and both France and Spain ceded other New World holdings, extending England's rule broadly outside of Europe.

- Treaty of Escorial, Oct. 28, 1790. Gr. Brit.-Spain. William Ray Manning, THE NOOTKA SOUND CONTROVERSY 284-85, 1905.<sup>8</sup>

By the 1790s, Russia claimed portions of the Oregon Country based on settlements as far south as fifty-five degrees north latitude. The Spanish seized two British ships in Nootka Sound at Vancouver Island. War was averted through this treaty, known as the Nootka Convention. Both powers reserved the right to trade and Spain conceded the British right to establish settlements in any unpopulated area nominally claimed by Spain by right of prior discovery but never occupied. This began a shift away from the policy of basing claims to lands on initial exploration of a region and toward the idea of more permanent colonization as proof of possession.

- Treaty of San Ildefonso, Fr.-Spain, Oct. 1, 1800, 4 EUROPEAN TREATIES 181.

Under pressure from Napoleonic France, Spain ceded the Louisiana Territory back to France.

- Treaty of Cession, U.S.-Fr., Apr. 30, 1803, 8 Stat. 200.<sup>9</sup>

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<sup>8</sup> For English translation, see p. 454-56.

<sup>9</sup> Volume 8 of the *United States Statutes at Large* is entitled "Treaties between the United States of America and foreign nations from the Declaration of Independence of the United States to 1845; with notes" and is the preferred cite among treaty sources for U.S. statutory cites before 1845.

Treaty between U.S. and France to enable the President to take possession of the Louisiana Territory ceded by France; also available at the U.S. National Archives and Records Administration (NARA) Web site at [http://www.archives.gov/research\\_room/arc/index.html](http://www.archives.gov/research_room/arc/index.html). There were three agreements in total, one for the cession of the land and two to provide for the exchange of payment. *See also* 8 Stat. 206 and 3 Stat. 208.

- Convention signed at London, U.S.-Gr. Brit., Oct. 20, 1818, 8 Stat. 248.

Agreement for joint occupation for “any country that may be claimed by either party on the northwest coast of America, westward of the Stony Mountains . . . for a term of ten years.”

- Treaty of Amity, Settlement, and Limits, U.S.-Spain, Feb. 22, 1819. 8 Stat. 252.

Spain relinquished its claim to Oregon Country. This set definite boundaries of the Spanish holdings from the Pacific Ocean to the Gulf of Mexico.

- Treaty to grant Mexico Independence, Cordoba, Mex.-Spain, Aug. 24, 1821. 1 WYOMING BLUE BOOK 4 (Virginia Cole Trenholm, ed. 1974).

Mexico seceded from Spain and becomes the Republic of Mexico.

- Convention Regarding Navigation, Fishing, Trading and Establishments on the Northwest Coast of America, U.S.-Russ., Apr. 5, 1824, 8 Stat. 302 and Convention Concerning the Limits of Respective Possessions on the North-West Coast of America and the Navigation of the Pacific Ocean, Gr. Brit.-Russ., Feb. 16, 1825, 75 Consol. T.S. 95.

Both the U.S. and Russia extended settlements into the region after the Nootka Convention. Russia objected to the encroachments of the Lewis and Clark Expedition and the settlement of Astor’s Pacific Fur Company. Formal talks to set an American/Russian boundary were unsuccessful.<sup>10</sup> These two conventions with Russia set the northernmost boundary of Oregon Country for both the U.S. and Britain, leaving only the United States and Great Britain with claims to the region south of fifty-four degrees north latitude.

- Convention Continuing in Force, Article 3 of the Convention of October 20, 1818, U.S.-Gr. Brit., Aug. 6, 1827, 8 Stat. 360.

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<sup>10</sup> Joseph R. Wilson, *The Oregon Question*, 103 OR. HIST. Q. 29 (2002).

Extended the agreement for joint occupation and allowed for a more definite settlement of claims of each party to the territory.

- Treaty of Velasco, May 14, 1836, *available at* <http://www.yale.edu/lawweb/avalon/velasco.htm>.

Between Republic of Texas and Mexico (Santa Ana); ended the Texas War of Independence.

- Oregon Treaty, U.S.-Gr. Brit., June 15, 1846. 9 Stat. 869.

Also known as the Washington Treaty, this established the boundary in the territory on the Northwest Coast of America lying westward of the Rocky Mountains. It ended the joint occupancy claims that had existed since 1818.

- Treaty of Guadalupe Hidalgo, U.S.-Mex., Feb. 2, 1848, 9 Stat. 922.

Treaty of peace between Mexico and the United States of America. It established new boundaries and added lands to the United States.

### *General Reference Sources*

- EUROPEAN TREATIES BEARING ON THE HISTORY OF THE UNITED STATES AND ITS DEPENDENCIES IN 1648 (Frances Gardiner Davenport, ed., 1917).

This four-volume set published treaties chronologically. The treaties in volumes one and two and many in volume three are preceded by a short article and, when necessary, include a translation. Treaties in volume four, published after the death of Ms. Davenport, do not contain these valuable additions. Treaties in the collection cover 1455 to 1815.

- TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA (Hunter Miller, ed., 1931).

Collection of U.S. treaties since the founding of the country. This is a standard among early American resources.

## II. FOREIGN AND COLONIAL LAW

In most cases, the European countries established colonial rule over their claims in the Americas. In some cases, charters were given as a form of self-govern-

ment. These foreign laws governing holdings in American can often be found in early compilations of territorial or state laws along with their constitution and organic laws. Frequently, they are reprinted in other compilations of territorial laws as well.

### *England*

English laws have considerable relevance throughout the United States. Quite apart from the fact that for a long period England had claims to the area, several United States jurisdictions, including Texas (in 1840) and Wyoming (in 1869), adopted the English common law in the early days of their government.

#### **Relevant Acts**

- An act for regulating the fur trade, and establishing a criminal and civil jurisdiction, within certain parts of North America, 1821, 1 and 2 Geo. 4, ch. 66 (Eng.).<sup>11</sup>

Enacted by the British Parliament, this act imposed the Laws of Upper Canada on British subjects in the Oregon Territory, regulated the fur trade, established criminal and civil jurisdiction within certain parts of North America, and vested the Hudson's Bay Company with authority to apply the laws.<sup>12</sup>

#### **Codes**

- STATUTES OF THE REALM: PRINTED BY COMMAND OF HIS MAJESTY KING GEORGE THE THIRD . . . FROM ORIGINAL RECORDS AND AUTHENTIC MANUSCRIPTS.

Available online through subscription, in microfiche, and in print in various sources, this resource includes statutes from 1235 to 1713, as well as the Magna Carta and other early documents.

- STATUTES IN FORCE (1972-).

Contains all acts from 1325 to the 1990s. Available in microform and print.

- THE STATUTES: FROM THE TWENTIETH YEAR OF KING HENRY THE THIRD TO THE TENTH CHAPTER OF THE TWELFTH, THIRTEENTH,

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<sup>11</sup> See J. HENRY BROWN, BROWN'S POLITICAL HISTORY OF OREGON 24-29 (1892).

<sup>12</sup> Joe K. Stephens, *Oregon Law Before Statehood: History and Sources*, in 2 PRESTATEHOOD LEGAL MATERIALS: A FIFTY-STATE RESEARCH GUIDE, INCLUDING NEW YORK CITY AND THE DISTRICT OF COLUMBIA 959 (Michael Chiorazzi and Marguerite Most, eds., 2005).

AND FOURTEENTH YEARS OF KING GEORGE THE SIXTH A.D. 1235-1948 (Robert Harry Drayton, ed., 3rd rev. ed., 1950).

- CHRONOLOGICAL TABLE OF THE STATUTES (1947-).

Annual publication that indexes statutes for the years 1235 to 2000 and indicates repeals and amendments; to be used with statutory sets.

### Cases

- ENGLISH REPORTS (1900-1930).

“Complete verbatim re-issue of all the decisions of the English Courts prior to 1866,” this reprints the nominative reports published between 1378 and 1865, and is considered the main source for early English cases. Available in paper, microform, and online through subscription with the Law Library Microfilm Consortium (LLMC).

- YEAR BOOKS SERIES, Selden Society.

Year books contain reports of English cases from 1270-1535. The Selden Society series includes original (usually French) text and English translation. Year books are organized by date and reign.

- EARLY ENGLISH BOOKS ONLINE and EARLY ENGLISH BOOKS, 1475-1700 (1950-).

Includes many printed year books before 1700. Available in multiple formats, including print, microform, and online through subscription with ProQuest.

### *France*

Law in France was somewhat geographically divided. The southern region, called the “country of written law,” for the most part maintained the Roman law known as Breviary of Alaric II. In the northern regions, including Paris, the Roman law was intermingled with the customary laws of the invading Teutonic tribes and the feudal system. This was the region of “customary law.” It was prescribed by charter that the laws, edicts, and ordinances of the realm of a general character, and the Custom of Paris, should be extended to the new possessions.<sup>13</sup>

France appears to have had the only original slave code to be imposed in the American colonies.<sup>14</sup> In 1685, Louis XIV decreed the Black Code (Code Noir),

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<sup>13</sup> William Wirt Howe, *Law in the Louisiana Purchase*, 14 YALE L. J. 77 (1904).

<sup>14</sup> Spain, France, and England all used similar “black codes” to regulate slaves in their colonies. Spain’s “black codes” were taken from the *Recopilacion* (see *infra* n. 16-17 and accompanying text.)

first in effect in Louisiana in 1724. Under these laws, Jews were forbidden to settle in French colonies, the only religion was Catholic, and relations between masters and slaves were regulated.<sup>15</sup>

### *Spain*

The law of Spain is found in compilations of royal authority. With a basis in Roman and canon law, the royal orders were compiled into the first Spanish code, *Las Siete Partidas*, or *De Partidas*, in 1348 and enacted in the New World in 1530. The law was extended by the *Ordinance of Alcalá* regarding courts, contracts, wills, and criminal law; Laws of Toro, regulating forms for wills and intestate and probate procedures; Ferdinand and Isabella's *Royal Ordinances* in 1496; Philip II's *Recopilacion of Castille* in 1657 regarding the system of Spanish legislation; and the *Recopilacion of the Indies* specific to North and South America in 1661.<sup>16</sup> These laws are reprinted in English in a number of resources.

- LAWS OF LAS SIETE PARTIDAS, WHICH ARE STILL IN FORCE IN THE STATE OF LOUISIANA (L. Moreau Lisset and Henry Carleton, trans., 1820).
- NEW LAWS OF THE INDIES FOR THE GOOD TREATMENT AND PRESERVATION OF THE INDIANS (1893).

This is a facsimile reprint of the original Spanish edition promulgated by Charles V, 1542-43, with an English translation. With oversight in Madrid, these laws were generally considered the collection of Spanish colonial laws (*Recopilacion of the Indies* above). After the secret treaty that ceded French holdings in Louisiana to Spain, the French inhabitants revolted. To maintain control, Spain established a new government. The Cabildo assembled December 1, 1769 and adopted new laws based on the Roman Civil Code, which were the same laws as governing all Spanish Colonies, including Council of the Indies.<sup>17</sup> The Black Code (Code Noir) of France was re-enacted and remained in effect until 1803.

- HENRY S. GEYER, A DIGEST OF MISSOURI TERRITORY, TO WHICH HAVE BEEN ADDED A VARIETY OF FORMS USEFUL TO MAGISTRATES (1818).

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Louis XIV's "Edict concerning Negro Slaves in Louisiana" can be found in DONALD J. HEBERT, *SOUTHWEST LOUISIANA RECORDS: CHURCH AND CIVIL RECORDS OF SETTLERS* (1974-).

<sup>15</sup> For a more in-depth discussion of the Code Noir, see Thomas N. Ingersoll, *Slave Codes and Judicial Practice in New Orleans, 1718-1807*, 13 L. & HIST. REV. 23 (Spring 1995).

<sup>16</sup> JOHN SAYLES & HENRY SAYLES, 1 EARLY LAWS OF TEXAS 154 (1888).

<sup>17</sup> GOODSPEED, *supra* note 2, at 273-75.

Early guide to Missouri law arranged by broad subject, with index and table of contents. Reprints Treaty of Cession, organic laws, Spanish regulations for the allotment of lands (p. 438; when searching electronically, p. 450), and laws of the U.S. for adjusting title to lands (p. 451, or searching electronically, p. 463). Available in microfilm of Jenkins and Hamrick's *Early State Records* and Shaw and Shoemaker's *Early American Imprints, Series II, no. 44874*.

- LOUIS HOUCK, THE SPANISH REGIME IN MISSOURI: A COLLECTION OF PAPERS AND DOCUMENTS RELATING TO UPPER LOUISIANA PRINCIPALLY WITHIN THE PRESENT LIMITS OF MISSOURI DURING THE DOMINION OF SPAIN, FROM THE ARCHIVES OF THE INDIES AT SEVILLE (1909).
- JOHN SAYLES & HENRY SAYLES, EARLY LAWS OF TEXAS (1888).

#### Secondary Sources

- LEWIS HANKE, THE SPANISH STRUGGLE FOR JUSTICE IN THE CONQUEST OF AMERICA (1965).

Spanish colonial policy toward American Indians.

#### *Mexico*

When Mexico was claimed by Spanish explorers in the early 1500s, it was divided into kingdoms and provinces and placed under the jurisdiction of the Supreme Council of the Indies in Madrid. For centuries Mexico was governed by Spanish law until its independence in 1821, and the resulting laws of the new country reflected that connection.

- H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897 (1898).

Includes the Federal Constitution of the United Mexican States and Spanish and Mexican land and civil law in ten volumes, *available at* <http://texinfo.library.unt.edu/lawsoftexas>.

- FREDERIC HALL, THE LAWS OF MEXICO: A COMPILATION AND TREATISE RELATING TO REAL PROPERTY, MINES, WATER RIGHTS, PERSONAL RIGHTS, CONTRACTS, AND INHERITANCES (1885).

Available in print and online through The Making of Modern Law: Legal Treatises, 1800-1926 database.

- HAMILTON'S MEXICAN LAW: A COMPILATION OF MEXICO LEGISLATION AFFECTING FOREIGNERS, RIGHTS OF FOREIGNERS, COMMERCIAL LAW (Leonidas Le Cenci Hamilton, ed., 1882).

Mining and public land laws, water rights, treaties, and the Mexican constitution.

- JOHN SAYLES & HENRY SAYLES, *EARLY LAWS OF TEXAS* (1888).

Includes laws from 1836 to 1879; laws and decrees of Spain relating to land in Mexico, laws of Mexico relating to colonization; laws of Coahuila and Texas; laws of Tamaulipas; colonial contracts; Spanish civil law (in English translation); and orders and decrees of the provisional government of Texas.

### *General Reference Sources*

- JOSEPH M. WHITE. *A NEW COLLECTION OF LAWS, CHARTERS AND LOCAL ORDINANCES OF THE GOVERNMENTS OF GREAT BRITAIN, FRANCE AND SPAIN: RELATING TO THE CONCESSIONS OF LAND IN THEIR RESPECTIVE COLONIES, TOGETHER WITH THE LAWS OF MEXICO AND TEXAS ON THE SAME SUBJECT, TO WHICH IS PREFIXED JUDGE JOHNSON'S TRANSLATION OF AZO AND MANUEL'S INSTITUTES OF THE CIVIL LAW OF SPAIN* (1839).

Available on microfiche and online through The Making of the Modern World: Legal Treatises, 1800-1926 database.

### III. UNITED STATES' GOVERNANCE OF ITS TERRITORIES

- Ordinance of 1787: the Northwest Territorial Government [The Confederate Congress, Articles of Confederation, July 13, 1787] (superseded by Northwest Territory Ordinance of 1789).<sup>18</sup>

Established under the Articles of Confederation, this act “for the government of the territory of the United States northwest of the river Ohio” predates our current Constitution. It established what was needed for territorial government: manner of appointment or election of officials, qualifications, duties, powers, terms, and numbers of justices, and Council and House members.

- Northwest Territory Ordinance of 1789, ch. 8, 1 Stat. 50 (1789) (codified at 1 U.S.C. § 17).

This act provided for the government of the Territory Northwest of the Ohio River. The Constitution under the new government that succeeded the Articles

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<sup>18</sup> Published at the beginning of each set of United States Code, along with the Northwest Ordinance of 1879.

of Confederation gave Congress the power to dispose of, and make, all needful rules and regulations respecting territory or property of the United States.<sup>19</sup> This Act of 1789, known as the Northwest Ordinance of 1789, was meant to keep the Ordinance of 1787 in full force under the new Constitution and provided the procedure by which a unit of government or territory could be split.

- Act of Mar. 3, 1817, ch. 42, 3 Stat. 363.

This act permitted each territory to elect a delegate to Congress. Delegates had a seat in the House of Representatives and were permitted to share in the debates, but they had no vote. Wyoming's first delegate to Congress began his term with the Second Session of the Forty-First Congress, which convened December 6, 1869.<sup>20</sup> In 1871, the Second Wyoming Territorial Legislative Assembly memorialized Congress requesting that the Territorial Delegate be given a vote.<sup>21</sup> The request was not granted.

- FEDERAL AND STATE CONSTITUTIONS COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA (Francis Newton Thorpe, ed., 1909).

This is an excellent resource for the political history of the states. The table of contents lists all documents that establish a government relevant to a particular state. For Wyoming, it lists foreign treaties and territorial organic laws for each territory of which Wyoming was a part or that impacted the territory's borders. Available on microfiche, LAC 22756-62.

- MAX FARRAND, LEGISLATION OF CONGRESS FOR THE GOVERNMENT OF THE ORGANIZED TERRITORIES OF THE UNITED STATES, 1789-1895 (1896).

Originally published as Farrand's Ph.D. thesis at Princeton University, this work outlines the general framework of territorial government. Appendix B contains acts of Congress relating to the government of the organized territories of the United States. Available in microform; reprinted by Hein in 2000; also available electronically through The Making of Modern Law: Legal Treatises, 1800-1926 database and HeinOnline.

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<sup>19</sup> U.S. CONST. art. IV, § 3.

<sup>20</sup> 1 WYOMING BLUE BOOK 282 (Virginia Cole Trenholm, ed. 1974).

<sup>21</sup> Memorial from the Legislative Assembly of the Territory of Wyoming To the Honorable Senate and House of Representatives of the United States in Congress Assembled, "Memorial And Joint Resolutions Representing the Right of the People in the Territories to a Voice in the Matter of their Government and Taxation," 1871 Wyo. Laws 135.

*Legislative and Executive Documents*

Materials produced by the federal government in its administration of the territories, such as congressional bills, reports, journals, manuals, committee prints, and debates (published in *Annals of Congress*, 1789 to 1824; *Register of Debates*, 1824-1837; *Congressional Globe*, 1833-1873; and *Congressional Record* 1873 to the present) are available in print and, to a limited extent, through online sources.

Because territories were administered by the federal government under the Northwest Ordinance Act, resources specific to a territory's governance are also considered federal documents. Administrators in each territory submitted reports to the Department of the State, and later the Department of the Interior, and were answerable to the President and his administration. While federal legislative materials are becoming more accessible online, many are still available only in print or microform.

The legislative history materials specific to Wyoming's territorial and state formation are referenced, for the most part, in *Wyoming Pre-Statehood Legal Materials*, Part I. By way of quick review, four bills to create a territory for Wyoming were introduced into the U.S. House of Representatives between the years 1865 and 1868 before the Senate bill introduced in 1868 was successful. All earlier versions were never reported out of the Committee on Territories. The Organic Act for a Wyoming Territory that established the territorial government is little changed from the bill introduced in the Senate in 1868 and similar to those organic acts of the territories formed around the same time period.

- Law Library of Congress—A Century of Lawmaking for a New Nation: U.S. Congressional documents and debates, 1774-1873, <http://memory.loc.gov/ammem/amlaw/lawhome.html>.

Full text search of records of the Continental Congress, Constitutional Convention, and 1st through 42nd Congresses (1774-1873), including journals; *Elliot's Debates*; *Farrand's Records*; *Statutes at Large*; *House and Senate Journals*; *Maclay's Journal*; *Annals of Congress*; *Register of Debates*; *Congressional Globe*; U.S. Serial Set; selected bills and resolutions, executive documents, including *Secretaries of War*, *Interior*, *General Land Office*, and *Commissioner of Indian Affairs*.

- NARA (U.S. National Archives and Records Administration), <http://www.archives.gov>.

NARA is one of the best resources for federal territorial materials, but only a fraction of its collection is available online. Materials include *Records of the Senate and House Committees on Territories*, committee reports (1844-1847), papers

(1849-1920), petitions, memorials, executive proceedings and correspondence, resolutions of state and territorial legislatures, and access to documents of the federal policy-making executive agencies responsible for territories (Department of State and Department of the Interior). Materials that are not available online can be found in microform or viewed at the regional reading rooms. *Territorial Papers of the U.S.* is the major set for territorial materials. Organized by territory and years, the most relevant groups are 46, Senate; 59, State Department; 48, Department of the Interior; 75, Indian Affairs; 98, Records of the U.S. Army; 107, Office of the Secretary of War; 233, House of Representatives. Only selected volumes are available online.

- LETTERS, 1869-1872, Secretary of State's Office.

Letters from the Secretary of State's office are available from NARA Record Group 59. Many of the letters relate solely to domestic duties of the department such as the administration of the territories, the printing and distribution of laws, the registration of copyrights, the taking of the census, and the publication of the Biennial Register. A number of the letters are addressed to governors of states, district attorneys, and other state and territorial officials on topics with some international aspect. Arranged in chronological order, these records are partially indexed by the series "Index to Domestic Letters, May 1, 1802-August 15, 1906" (ARC Identifier 582199).

- ROBERT B. MATCHETTE & ANNE BRUNER EALES, GUIDE TO THE FEDERAL RECORDS IN THE NATIONAL ARCHIVES OF THE UNITED STATES (1995), [http://www.archives.gov/research\\_room/federal\\_records\\_guide](http://www.archives.gov/research_room/federal_records_guide).

Online guide to searching NARA documents. NARA's Web site and tools can be difficult to use without a tutorial.

- UNITED STATES CONGRESSIONAL SERIAL SET (1817-).

The U.S. Serial Set includes House and Senate reports, hearings, executive documents (materials received by Congress from the executive branch), miscellaneous documents, journals, manuals, internal publications, and annual federal executive agency reports, along with some non-governmental materials. The Serial Set, though available in print, is found in microform in most libraries and available online through Lexis.

- CIS U.S. SERIAL SET INDEX (1975-1998).

The Congressional Information Service's index is an alternate index to the U.S. Serial Set produced by the Government Printing Office. It covers congressional and non-congressional documents, administrative reports, congressional

journals, manuals, internal publications, congressional reports, and annual federal executive agency reports from 1789.

- CIS U.S. CONGRESSIONAL COMMITTEE PRINTS INDEX; FROM THE EARLIEST PUBLICATIONS THROUGH 1969 (1980).

Congressional committees prepare or commission documents to aid them in their work. This work indexes investigative reports, monographic studies, confidential reports, and hearings.

- BENJAMIN PERLEY POORE, DESCRIPTIVE CATALOGUE OF THE GOVERNMENT PUBLICATIONS OF THE UNITED STATES, SEPTEMBER 5, 1774-MARCH 4, 1881 (1885).

Indexes congressional records and documents. Entries are arranged chronologically with alphabetical index, by title.

- GUIDE TO THE RECORDS OF THE UNITED STATES HOUSE OF REPRESENTATIVES AT THE NATIONAL ARCHIVES, 1789-1989: BICENTENNIAL EDITION AND GUIDE TO THE RECORDS OF THE UNITED STATES SENATE AT THE NATIONAL ARCHIVES, 1789-1989: BICENTENNIAL EDITION (1989).

These two volumes are organized by committee. Each section briefly describes the types of records retained and supplies the access information to retrieve the material from the National Archives. Also includes a brief tutorial for researching congressional materials.

- NEW AMERICAN STATE PAPERS (1973-).

Documents in this collection are from three sources: American State Papers, 1832-1861; official documents from Serials Index after 1817; and Legislative Records Section of NARA. Catalogued by topic and reproduced full-text, there is no index to the set. Sets of special interest to Wyoming's pre-statehood period may be: Public Lands, Explorations, Indians, Social Policy, and Railroads/Transportation.

- EARLY AMERICAN IMPRINTS.

Based on Charles Evans' *American Bibliography*, these provide full-text access to American books and pamphlets from every aspect of life. Series I: 1639-1800; Series II: 1801-19. Available electronically from Newsbank.

- WILLIAM SUMNER JENKINS & LILLIAN A. HAMRICK, EARLY STATE RECORDS (1900-1983).

Microfilm collection of 2,400 reels of primary source material for the states. Includes legislative, statutory, constitutional, executive, and court records. The authors also compiled a finding aid, published in 1950, titled *A Guide to the Microfilm Collection of Early State Records*.

- CIS INDEX TO U.S. EXECUTIVE BRANCH DOCUMENTS, 1789-1909: GUIDE TO DOCUMENTS LISTED IN CHECKLIST OF U.S. PUBLIC DOCUMENTS, 1789-1909, NOT PRINTED IN THE U.S. SERIAL SET (1990-1997).
- PRESIDENTIAL EXECUTIVE ORDERS AND PROCLAMATIONS, [1789-1983] (1987).

Two volumes, available in print and microfiche. Volume One covers the time period of Wyoming's pre-statehood. Accompanied by a printed index: *CIS Index to Presidential Executive Orders and Proclamations*.

- AMERICAN PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/index>.

This site has full-text executive materials back to 1789, including addresses, State of the Union messages, signing messages, and proclamations and orders. Pre-1929 materials are more limited.

### *Judicial Documents*

Early collections of decisions were published privately and lack consistency in their coverage. The first volume of the *United States Reports* (a nominative volume compiled by Alexander Dallas) contains only Pennsylvania decisions. 2 Dallas is the first collection of U.S. Supreme Court decisions, but also includes Pennsylvania cases; volumes 3 and 4 include Delaware and New Hampshire cases as well. The Supreme Court of the United States had no official reporter until 1817.<sup>22</sup> By 1880, West Publishing Company was publishing decisions from both circuit and district courts and the Circuit Courts of Appeals in *Federal Reporter*.<sup>23</sup>

- FEDERAL CASES: COMPRISING CASES ARGUED AND DETERMINED IN THE CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES

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<sup>22</sup> Act of March 3, 1817, ch. 63, 3 Stat. 376 (providing for the reporting of decisions of the Supreme Court).

<sup>23</sup> MORRIS L. COHEN, ROBERT C. BERRING & KENT C. OLSON, *HOW TO FIND THE LAW* 17-18 (9th ed. 1989).

FROM THE EARLIEST TIMES TO THE BEGINNING OF THE FEDERAL REPORTER, ARRANGED ALPHABETICALLY BY THE TITLES OF THE CASES, AND NUMBERED CONSECUTIVELY (1894-1897).

West compiled historic decisions from lower federal courts that had been published in over sixty nominative reporters throughout the country. This set includes a digest that cross-indexes cites from the nominative reporters.

- NARA (National Archives and Records Administration), <http://www.archives.gov>.

In addition to legislative and executive documents, NARA also houses court materials. Records of the United States District Courts for the territorial appellate courts and other court administrative documents can be accessed through the NARA's General Records of the Department of Justice.

#### IV. WYOMING'S TERRITORIAL DAYS

The portion of the country that was to become Wyoming, like most of the future central plains states, fell within a number of other territories before the Wyoming Territory was established. The timeline below indicates territorial legal influences.<sup>24</sup> In instances where the dates overlap, modern-day Wyoming was divided among two or more territories. The materials listed here are those that are relevant only for the time period during which any portion of Wyoming was included in the territory, in many cases, only a couple of years.<sup>25</sup>

District of Louisiana/Indiana Territory, 1804  
 Indiana Territory, 1804  
 Louisiana Territory, 1805-1812  
 Territory of Missouri, 1812-1820  
 Unorganized Country, 1821-1834  
 Indian Country, 1834-1854  
 Nebraska Territory, 1854-1861; 1861-1863  
 Dakota Territory, 1861-1863; 1864-1868  
 Idaho Territory, 1863-1864  
 Oregon Country, 1846  
 Oregon Territory, 1848-1859  
 Washington Territory, 1859-1861; 1861-1863

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<sup>24</sup> See Trenholm, *supra* note 20, at 5-50 for modern-day Wyoming boundaries in their historical context relative to surrounding territories.

<sup>25</sup> For a more complete listing of resources of pre-statehood materials for any of these territories, see PRESTATEHOOD LEGAL MATERIALS: A FIFTY-STATE RESEARCH GUIDE, INCLUDING NEW YORK CITY AND THE DISTRICT OF COLUMBIA (Michael Chiorazzi & Marguerite Most, eds., 2005).

Republic of Texas, 1836-1845  
State of Texas, 1845-1850  
Utah Territory, 1850-1868  
Unorganized Territory (Mexico), 1848-1850

### *District of Louisiana/Indiana Territory, 1804*

Between the time of the Louisiana Purchase and the federal statute establishing a government for the territory, the upper Louisiana area was under the military and civil rule of a United States agent who accepted the land from Spain for France, and then again accepted the land from France on behalf of the United States.

#### **Relevant Federal Laws**

- Act of Oct. 31, 1803, ch. 1, 2 Stat. 245.

Enabled the President of the United States to take possession of the territories ceded by France to the United States.

- Act of Nov. 10, 1803, ch. 2, 2 Stat. 245.

Authorized the creation of a stock, in the amount of \$11,250,000, to purchase Louisiana, and it made provision for payment.

- Act of Mar. 26, 1804, ch. 38, 2 Stat. 283.

Split Louisiana into two territories and provided for the temporary government, establishing the Territory of Orleans and temporary government for the Louisiana Purchase south of the Mississippi Territory, as well as a government for “the residue of the province of Louisiana,” to be called the District of Louisiana. Placed under the governance of the Indiana Territory.

#### **Session Laws**

- LAWS FOR THE GOVERNMENT OF THE DISTRICT OF LOUISIANA PASSED BY THE GOVERNOR AND JUDGES OF THE INDIANA TERRITORY AT THEIR FIRST SESSION BEGUN ON OCT. 1, 1804 (1804).

Also available in the microfilm collection, *Early State Records* by Jenkins and Hamrick.

*Territory of Louisiana, 1805-1812***Relevant Federal Laws**

- Act of Mar. 2, 1805, ch. 26, 2 Stat. 324.

Ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the District of Louisiana.

- Act of Mar. 3, 1805, ch. 31, 2 Stat. 331.

Further providing for the government of the district of Louisiana.

**Session Laws**

- LAWS OF THE TERRITORY OF LOUISIANA: COMPRISING ALL THOSE WHICH ARE NOT ACTUALLY IN FORCE WITHIN THE SAME (1808-).

Title varies slightly between 1808 and 1810 publications. Session Laws of 1810 revise and supplement the 1808 laws. Available in the microfilm collection of Jenkins and Hamrick's *Early State Records* and Shaw and Shoemaker's *Early American Imprints, Series II*.

*Territory of Missouri, 1812-1820***Relevant Federal Laws**

- Act of June 4, 1812, ch. 95, 2 Stat. 743.

Act provided for the government of the Territory of Missouri from the Territory of Louisiana; structured a territorial government apart from the Indiana Territory.

- Act of April 26, 1816, ch. 155, 3 Stat. 328.

Altered certain parts of government of the Territory of Missouri relating to judges of the circuit courts and biennial assembly meetings to be held at St. Louis.

**Session Laws**

- ACTS PASSED BY THE GENERAL ASSEMBLY OF THE TERRITORY OF MISSOURI IN ST. LOUIS: JOSEPH CHARLESS (1813-).

Available in *Early American Imprints, Series II, no. 29180*. Relevant years for Wyoming are 1813 through 1820.

### Codes

- LAWS OF A PUBLIC AND GENERAL NATURE OF THE DISTRICT OF LOUISIANA OF THE TERRITORY OF LOUISIANA, THE TERRITORY OF MISSOURI, AND THE STATE OF MISSOURI, UP TO THE YEAR 1824 (1842).

Volume one contains laws of the Territory of Missouri from 1813 to 1823; volume two, state laws from 1824-1836.

### Reporters and Digests

- RECORDS OF THE SUPERIOR COURT OF THE TERRITORY OF MISSOURI FROM MAY, 1811 TO NOV., 1826.

Manuscript of handwritten court records available in microfilm in *Early State Records*.

### General References

- HENRY S. GEYER. A DIGEST OF MISSOURI TERRITORY, TO WHICH HAVE BEEN ADDED A VARIETY OF FORMS USEFUL TO MAGISTRATES (1818).

Early guide to Missouri law arranged by broad subject, with index and table of contents. Reprints Treaty of Cession (Louisiana Purchase), organic laws, Spanish regulations for the allotment of lands, and laws of the U.S. for adjusting title to lands. Available in microfilm in Jenkins and Hamrick's *Early State Records* and Shaw and Shoemaker's *Early American Imprints, Series II, no. 44874*. Also part of The Making of Modern Law database. Note: page numbers vary among electronic sources.

- LOUIS HOUCK, THE SPANISH REGIME IN MISSOURI: A COLLECTION OF PAPERS AND DOCUMENTS RELATING TO UPPER LOUISIANA PRINCIPALLY WITHIN THE PRESENT LIMITS OF MISSOURI DURING THE DOMINION OF SPAIN, FROM THE ARCHIVES OF THE INDIES AT SEVILLE, ETC., TRANSLATED FROM THE ORIGINAL SPANISH INTO ENGLISH, AND INCLUDING ALSO SOME PAPERS CONCERNING THE SUPPOSED GRANT TO COL. GEORGE MORGAN AT THE MOUTH OF THE OHIO, FOUND IN THE CONGRESSIONAL LIBRARY (1909).

### Secondary Sources

- STUART BANNER. LEGAL SYSTEMS IN CONFLICT: PROPERTY AND SOVEREIGNTY IN MISSOURI, 1750-1860 (2000).

Explores the civil law of France and Spain in the Upper Louisiana region and the transition to American common law.

- WILLIAM E. FOLEY, *A HISTORY OF MISSOURI: 1673 TO 1830* (2000).

A multi-volume set with various authors, the first volume is most pertinent to Wyoming.

### *Unorganized Country, 1821-1834*

There was no central government in this region during this time. The region was under the military supervision of the Western Department of the U.S. Army. Military forts and garrisons were established to protect trade and settlers from Indian attacks. The Indian Agency known as Upper Missouri Agency was established in 1818 at Council Bluffs to administer tribes on the Missouri River.<sup>26</sup>

### *Indian Country, 1834-1854*

#### **Relevant Federal Laws**

- Act of June 30, 1834, ch. 161, 4 Stat. 729.

An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers. Lands east and west of Missouri not part of any state or territory and also east of the Mississippi not within any state to which the Indian title had not been extinguished were deemed Indian Country and placed under the government of a Commissioner of Indian Affairs within the War Department.

- Act of Mar. 3, 1849, ch. 108, 9 Stat. 395.

Established the Department of the Interior with authority over territories and federal Indian policy.

- WAR DEPARTMENT. OFFICE OF THE SECRETARY. LETTERS.

Held by NARA, RG 107. After 1800, letters were addressed to a wide variety of correspondents dealing with Indian treaties and boundaries.

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<sup>26</sup> Trenholm, *supra* note 20, at 40.

*Nebraska Territory, 1854-1861; 1861-1863***Relevant Federal Laws**

- Act of May 30, 1854, ch. 59, 10 Stat. 277.

An act to organize the territories of Nebraska and Kansas, define boundaries, establish territorial government, outline procedures for relationship with Indians, and address slavery within the new territories. There was considerable contention over this act in the federal legislature as it impacted the Missouri Compromise. During this time the discussion of slavery was fundamental to the establishment of new territories and states. H.D. Johnson, delegate from the Territory of Nebraska, submitted a memorial to the Senate claiming the right to make the decision for the inhabitants of the territory.<sup>27</sup>

- Act of Mar. 2, 1861, ch. 86, 12 Stat 239.

An act to provide a temporary government for the territory of Dakota, which effectively split the area that is now Wyoming in half between Nebraska Territory and the newly created Dakota Territory.

**Session Laws and Journals**

- LAWS, RESOLUTIONS, AND MEMORIALS PASSED AT THE REGULAR SESSION OF THE GENERAL ASSEMBLY OF THE TERRITORY OF NEBRASKA.

Published annually. Sessions from 1855-1863 are relevant to Wyoming.

- LAWS, JOINT RESOLUTIONS, AND MEMORIALS PASSED AT THE SESSIONS OF THE TERRITORIAL AND STATE LEGISLATURES OF NEBRASKA, TOGETHER WITH THE ORGANIC LAWS, AND THE PROCLAMATIONS ISSUED IN THE ORGANIZATION OF THE TERRITORIAL GOVERNMENT; THE ENABLING ACT, ADMITTING NEBRASKA TO THE UNION; AND THE REVISED STATUTES OF 1866 (1886).

Organized into sections, each covering one legislative assembly. The First Session adopted part of the Iowa Code as the basis for Nebraska law, and the Fifth Session Laws include criminal code forms and governor's proclamations.<sup>28</sup> The first compilation of state codes was published in 1866, after Wyoming was no longer part of the Nebraska Territory.

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<sup>27</sup> S. Misc. Doc. No. 23 (1854) Feb. 20, 1854.

<sup>28</sup> Sandra B. Placzek, *Nebraska Pre-statehood Legal Materials*, in 2 PRESTATEHOOD LEGAL MATERIALS: A FIFTY-STATE RESEARCH GUIDE, INCLUDING NEW YORK CITY AND THE DISTRICT OF COLUMBIA 681 (Michael Chiorazzi and Marguerite Most, eds., 2005).

- HOUSE JOURNAL OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF NEBRASKA.

The relevant years are 1857-1861.

- JOURNAL OF THE COUNCIL AT THE REGULAR SESSION OF THE GENERAL ASSEMBLY OF THE TERRITORY OF NEBRASKA.

The relevant years are 1855, 1857-1861.

### Reporters and Digests

- REPORTS OF CASES IN THE SUPREME COURT OF NEBRASKA (1860-).

Volume 1, pages 411-73 contain cases decided by the Supreme Court in the Territory of Nebraska, not dated, but apparently decided between 1860 and 1870. Also available in microfiche and in LLMC digital online.

- ARTHUR K. DAME & RALPH S. MOSELEY, A DIGEST OF THE DECISIONS OF THE SUPREME COURT OF NEBRASKA FROM 1855 TO JULY 10, 1928 (1929).

### Executive

- MESSAGES AND PROCLAMATIONS OF THE GOVERNORS OF NEBRASKA, 1854-1941 (1941).

A product of the Works Projects Administration, volume one covers the territorial and early statehood period, organized chronologically.

### *Dakota Territory, 1861-1863; 1864-1868*

The main portion of what was to become Wyoming was joined with Idaho Territory briefly in 1863. With the discovery of gold in Montana, the Montana Territory was established to provide a separate jurisdiction for the mining towns, and most of Wyoming was moved back into Dakota Territory where it would stay until it became a territory of its own.<sup>29</sup> The Dakota Territorial Legislature set up the first four Wyoming (Lincoln) counties during their Fifth through Eighth Territorial Legislative Assemblies.<sup>30</sup> In 1868, in response to the Wyoming inhabit-

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<sup>29</sup> HERBERT SAMUEL SCHELL, HISTORY OF SOUTH DAKOTA 82 (2nd ed. rev., 1968).

<sup>30</sup> See *infra* Wyoming Counties for the specifics of the legislation.

ants' request for their own territory, a memorial was sent to the U.S. Congress by the Dakota Territorial Assembly.

### Relevant Federal Laws

- Act of Mar. 2, 1861, ch. 117, 12 Stat 239.

An act to provide a temporary government for the Territory of Dakota, which effectively split the area that is now Wyoming in half between Nebraska Territory and the newly created Dakota Territory. Established physical boundaries, declared that the rights of Indians would not be impaired, and vested power in the governor and legislative assembly.

- Act of May 26, 1864, ch. 155, 13 Stat 92.

Provided a temporary government for the Territory of Montana, re-established the Dakota Territory, and redefined Idaho Territory outside of Wyoming borders.

### Session Laws and Journals

- GENERAL LAWS, MEMORIALS AND RESOLUTIONS OF THE TERRITORY OF DAKOTA, PASSED AT THE . . . SESSION OF THE LEGISLATIVE ASSEMBLY, COMMENCED AT THE TOWN OF YANKTON, MARCH 17, AND CONCLUDED MAY 15, 1862. TO WHICH ARE PREFIXED A BRIEF DESCRIPTION OF THE TERRITORY AND ITS GOVERNMENT, THE CONSTITUTION OF THE UNITED STATES, THE DECLARATION OF INDEPENDENCE, AND THE ACT ORGANIZING THE TERRITORY (1862).

Title varies slightly. Session laws from 1862-1868 are relevant to Wyoming (1st through 8th Sessions). In the 1863 Session, a justice code was enacted and the code of civil procedures was adopted from Ohio. By 1865, new civil and criminal codes written by the New York Commission were adopted. The first Dakota code was compiled in 1877, after Dakota statehood.

- COUNCIL JOURNAL OF THE . . . SESSION OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY (1862-).
- HOUSE JOURNAL OF THE . . . SESSION OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF DAKOTA (1862-).

### Reporters and Digests

- REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF THE TERRITORY OF DAKOTA, FROM ITS ORGANIZATION TO AND INCLUDING THE DECEMBER TERM, 1877 (1879).

Includes Wyoming cases to 1868; also available online through LLMC Digital.

- JOSEPH HENRY HILL, DIGEST OF THE DECISIONS OF DAKOTA, NORTH DAKOTA, AND SOUTH DAKOTA AND OF ALL FEDERAL DECISIONS IN DAKOTA CASES FROM THE ORGANIZATION OF DAKOTA TERRITORY DOWN TO AND INCLUDING VOL. 93 NORTHWESTERN REPORTER, WITH ALL THEIR CITATIONS BY STATE, FEDERAL, OR TERRITORIAL COURTS (1903-1918).
- CALLAGHAN'S DAKOTA DIGEST: A COMPLETE DIGEST OF DECISIONS OF THE SUPREME COURTS OF NORTH AND SOUTH DAKOTA, AND DAKOTA TERRITORY, AND ALL FEDERAL DECISIONS PASSING ON QUESTIONS OF LOCAL LAW (William H. Mason, ed., 1930).

### Secondary Sources

- GEORGE W. KINGSBURY, HISTORY OF DAKOTA TERRITORY (1915).
- HERBERT SCHELL, HISTORY OF SOUTH DAKOTA (2nd ed. rev., 1968).

### *Idaho Territory, 1863-1864*

#### Relevant Federal Laws

- Act of Mar. 3, 1863, ch. 117, 12 Stat. 808.

An act to provide a temporary government for the Territory of Idaho, eliminating Dakota, Nebraska, and Washington (formerly Oregon Country) Territories and the Mexican cession from the area that is to become Wyoming Territory.

#### Session Laws and Journals

- LAWS OF THE TERRITORY OF IDAHO, FIRST SESSION (1864).
- JOURNAL OF THE FIRST SESSION OF THE HOUSE OF REPRESENTATIVES, IDAHO TERRITORY (1864).

- JOURNAL OF THE FIRST SESSION OF THE COUNCIL OF IDAHO TERRITORY (1864).

Governors' messages are also included in the *Journals of the Assembly*.

### Codes

- IDAHO CODE ANNOTATED (LexisNexis).

Table in volume one, "Acts of Congress Affecting the Territory and State of Idaho," (p. 517-522 in the 2004 edition) lists selected federal acts affecting Idaho from 1818-1978.

### Reporters and Digests

1 Idaho Reports begins with the January 1866 term after Wyoming had been rejoined with the Dakota Territory.

### *Oregon Country, 1846-1848*

The Oregon Country was hotly contested among European powers. Through successive joint occupancy treaties, the crest of the Rocky Mountains was eventually set as the eastern boundary. That part of Oregon Country that was situated within Wyoming was that which lay west of the Continental Divide and north of forty-two degrees north latitude, most of current-day Teton and Sublette counties.

The United States' presence in the Northwest began to grow after the Lewis and Clark Expedition. The Northwest was opening to commerce as John Jacob Aster's Pacific Fur Company established the first American settlement at Fort Astoria in 1811. With a growing presence of Americans in the region, the populace began petitioning Congress for recognition. For several years Congress was hesitant to address their petitions, in part due to the extensive diplomatic efforts that would be required with Russia and Britain.

Finally, Americans in Oregon Country set up their own provisional government in 1843, for the most part adopting the Iowa Territorial Statutes as their laws. Controversy followed. The new statutes claimed jurisdiction over the entire region of the Oregon Country covered under joint occupancy treaties with England, "until such time as the United States of America extend their jurisdiction over us."<sup>31</sup> The Organic Laws themselves proved to be a problem.

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<sup>31</sup> BROWN, *supra* note 11, at 81.

The Organic Laws of 1843 had, in some instances, adopted large portions of the Iowa Territorial Statutes en masse. In trying to amend these laws, it was debated whether they constituted a constitution or statutes, which, to some, meant that change without a proper amendment process was revolutionary.<sup>32</sup> Until 1848 and the U.S. Congress' organization of the Territory of Oregon, the Oregon Country had no officially recognized government.

### Provisional Government's Laws

- STATUTE LAWS OF THE TERRITORY OF IOWA, ENACTED AT THE FIRST SESSION OF THE LEGISLATIVE ASSEMBLY OF SAID TERRITORY, HELD AT BURLINGTON, A.D. 1838-39 (Du Buque, Russell and Reeves, Printers, 1839).

These statutes are what were to become known as the "Little Blue Book" that governed Oregon Country throughout the provisional government and were still in force in the early days of the territory as the 1848 Organic Act did not repeal them.<sup>33</sup>

- LA FAYETTE GROVER, THE OREGON ARCHIVES, INCLUDING THE JOURNALS, GOVERNOR'S MESSAGES AND PUBLIC PAPERS OF OREGON (1853).

First publication of papers of the provisional government, including minutes, reports, resolutions, journals, statutes, and Organic Laws of 1843.<sup>34</sup>

- David C. Duniway & Neil R. Riggs, *The Oregon Archives, 1841-1843*, 60 OR. HIST. Q. 211 (1959).

Updating Grover's collection, including the Organic Law of 1844, this article includes texts of documents for establishing and maintaining the provisional government from 1841-1843. The authors attempted to reproduce lost records by using other publications and personal recollections. The initial comments are followed by sixty-four pages of minutes, reports, and other documents with annotations.

- OREGON ACTS AND LAWS PASSED BY THE HOUSE OF REPRESENTATIVES AT A MEETING HELD IN OREGON CITY, AUGUST, 1845 (1921).

Unofficial publication of the 1845 provisional government's enacted laws.

<sup>32</sup> Stephens, *supra* note 12, at 961.

<sup>33</sup> *Id.* at 974.

<sup>34</sup> Compiled pursuant to An Act to Provide for the Collection and Publication of the Laws and Archives of Oregon, 1852-1853 *Laus of Oregon* 65-66 [1853]; Stephens, *supra* note 12, at 963.

- LAWS OF A GENERAL AND LOCAL NATURE PASSED BY THE LEGISLATIVE COMMITTEE AND LEGISLATIVE ASSEMBLY, AT THEIR VARIOUS SUCCESSIVE SESSIONS FROM THE YEAR 1843, DOWN TO AND INCLUSIVE OF THE SESSION OF THE TERRITORIAL LEGISLATURE, HELD IN THE YEAR 1849, EXCEPT SUCH LAWS OF SAID SESSION AS WERE PUBLISHED IN THE BOUND VOLUME OF OREGON STATUTES, DATED OREGON CITY, 1851 (1853).

Compilation of statutes of the provisional government still in effect under the 1848 Organic Act plus three acts from the territorial session: an act to provide for a special term of the Supreme Court; an act to establish a seminary in Washington County; and an act to enact and cause to be published a code of laws. Does not include Organic Laws of 1843 and 1845; includes laws from 1844-1846, 1849.

### *Oregon Territory, 1848-1859*

#### **Relevant Federal Laws**

- Act of Aug. 14, 1848, ch. 177, 9 Stat. 323.

Organic Act establishing Oregon Territory and recognizing the laws of the provisional government.

#### **Session Laws and Journals**

- ACTS OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF OREGON, PASSED AT THEIR SESSIONS, BEGUN AND HELD AT OREGON CITY, IN JULY 1849, AND MAY 1850 (1850).

First collection of Oregon laws known as “Twenty Acts” and viewed as a handbook of the most important statutes in force.

- STATUTES OF A GENERAL NATURE PASSED BY THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF OREGON: AT THE SECOND SESSION, BEGUN AND HELD AT OREGON CITY, DECEMBER 2, 1850 (1851).

First publication of the 1845 Organic Law and all the laws of the session from 1849 through December, 1850. Those not included were considered to be repealed through implication. Known as “Hamilton’s Code” after the territorial secretary.

- LAWS OF A GENERAL AND LOCAL NATURE OF THE TERRITORY OF OREGON; PASSED BY THE LEGISLATIVE ASSEMBLY (1852).

Title varies slightly. Laws published for 1851 until statehood.

- JOURNAL OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF OREGON, FIRST-TENTH REGULAR SESSIONS AND SPECIAL SESSIONS, 1849-1859 (1851-1859).

Title and content vary.

### Codes

- REVISED STATUTES OF THE TERRITORY OF IOWA, REVISED AND COMPILED BY A JOINT COMMITTEE OF THE LEGISLATURE—SESSION 1842-43 (1843).

Known as the “Big Blue Book,” this is a collection of 162 statutes, 72 of which were adopted with amendments by the First Legislative Assembly of the Territory of Oregon. This “Chapman Code” was never published as the act required. Controversy arose over the fact that these laws were adopted in groups, violating the “one object” rule of the 1848 Organic Law.<sup>35</sup>

- REPORT OF THE COMMISSIONERS ELECTED TO PREPARE A CODE OF LAWS FOR THE TERRITORY OF OREGON (1853).

Draft of the “Kelly Code,” enacted the following year.

### Reporters and Digests

- OREGON SUPREME COURT RECORD: AN ORIGINAL PRINTING OF CASES AND OTHER MATTER CONTAINED IN A MANUSCRIPT LABELED BOOK 1, 1844-1848 (1938).

Includes cases, petitions, court rules, and other documents.

- RECORDS OF THE SUPREME COURT, DECEMBER TERM 1851 AND 1852: SUPREME COURT RECORD BOOK NO. 2

Not decisions, but rather brief case information, available at the State of Oregon Law Library.

- REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF THE TERRITORY OF OREGON AND OF THE STATE OF OREGON (1862).

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<sup>35</sup> *Id.* at 974.

First volume of Oregon Reports, containing territorial supreme court cases from 1853-1858 and state supreme court and federal district court cases from 1859-1861.

- HOUSE JOURNAL AND COUNCIL JOURNAL, 5th-8th Sessions.

Territorial cases were published as appendices in these journals.

### *Washington Territory, 1859-1861; 1861-1863*

The people of the Territory of Oregon north of the Columbia River requested their own territory in accordance with the Northwest Ordinance, and in 1853 Congress established the Washington Territory. Upon creation, the borders of both Washington and Oregon Territories stretched to the summit of the Rocky Mountains, with Wyoming still located within Oregon Territory. When Oregon became a state in 1859 and its state boundaries were drawn, that portion of the territory that was no longer within Oregon's boundaries, which now included a small portion of Wyoming's western border, was added to Washington Territory. In 1861, Washington Territory within Wyoming was reduced by the expansion of the Nebraska Territory, and when the Idaho Territory was created in 1863, it included the portion of Wyoming that had been part of Washington, bringing to an end any territorial relationship with the Pacific Northwest.

### **Relevant Federal Laws**

- Act of Mar. 2, 1853, ch. 90, 10 Stat. 172.

An act to establish the Territorial Government of Washington.

- Act of Mar. 3, 1863, ch. 117, 12 Stat. 808.

An act to provide a temporary government for the Territory of Idaho, establishing Washington's eastern boundary, and moving the west-central portion of Wyoming into Idaho territory.

### **Session Laws and Journals**

- LAWS OF WASHINGTON: A PUBLICATION OF THE SESSION LAWS OF WASHINGTON TERRITORY, INCLUDING THE GENERAL LAWS AND RESOLUTIONS OF THE YEARS 1854 TO 1888 INCLUSIVE; THE FEDERAL AND COLONIAL ORDERS, TREATIES, ACTS AND ORDINANCES AFFECTING LAND TITLES IN WASHINGTON (1896).

Volume 1, 1854-1861-2; Volume 2, 1862-3 to 1867-8; Volume 3, 1869-1875; Volume 4, 1877-1887-8; Volume 5, Code of 1881.

- ACTS OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF WASHINGTON, PASSED AT THE . . . REGULAR SESSION, BEGUN AND HELD AT OLYMPIA, DECEMBER . . . , IN THE . . . YEAR OF AMERICAN INDEPENDENCE (1854-).

Publisher and title vary slightly.

- INDEX TO THE LAWS, MEMORIALS AND RESOLUTIONS PASSED BY THE WASHINGTON TERRITORIAL LEGISLATURE, 1853-1887 (1993).
- INDEX, LAWS OF WASHINGTON, INCLUDING ALL THE GENERAL, LOCAL AND PRIVATE LAWS, MEMORIALS AND RESOLUTIONS. ALSO MISCELLANEOUS LAWS AFFECTING LAND TITLES, 1854-1897 (1898).
- JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE TERRITORY OF WASHINGTON: TOGETHER WITH THE MEMORIALS AND JOINT RESOLUTIONS OF THE . . . SESSION OF THE LEGISLATIVE ASSEMBLY, BEGUN AND HELD AT OLYMPIA (1855-).

Title and publisher vary slightly.

- JOURNAL OF THE COUNCIL OF THE TERRITORY OF WASHINGTON: TOGETHER WITH THE MEMORIALS AND JOINT RESOLUTIONS OF THE . . . LEGISLATIVE ASSEMBLY, BEGUN AND HELD AT OLYMPIA (1855-).

Title and publisher vary slightly.

- DAVID W. HASTINGS, LEGISLATIVE RECORDS OF WASHINGTON, 1854-1983 (1984).

Describes contents of legislative committee archives; laws, memorials, resolutions, petitions, and fiscal records.

### Codes

- STATUTES OF THE TERRITORY OF WASHINGTON, BEING THE CODE PASSED BY THE LEGISLATIVE ASSEMBLY, AT THEIR FIRST SESSION BEGUN AND HELD AT OLYMPIA, FEBRUARY 28TH, 1854 (1885).

Referred to as "Code of 1854."

- T.O. ABBOTT, REAL PROPERTY STATUTES OF WASHINGTON TERRITORY, FROM 1843 TO 1889, COMPRISING THE LAWS AFFECTING REAL PROPERTY ENACTED BY THE LEGISLATIVE COMMITTEE AND LEGISLATIVE ASSEMBLY OF OREGON TERRITORY PREVIOUSLY TO 1853, INCLUDING THE STATUTES OF IOWA OF 1839 AND 1843, TOGETHER WITH THE ORGANIC ACTS, ENABLING ACT, STATE CONSTITUTION AND TREATIES, PROCLAMATIONS AND SPECIAL LAWS OF CONGRESS, SUCH AS THE DONATION ACTS, RAILROAD GRANT AND OTHER PRIVATE ACTS, INDIAN TREATIES, EXECUTIVE ORDERS, ETC. (1892).

### Reporters and Digests

- OPINIONS OF THE SUPREME COURT OF THE TERRITORY OF WASHINGTON, IN CASES ARGUED AND DETERMINED IN SAID COURT, FROM ITS ORGANIZATION TO THE TERM ENDING JANUARY 29, 1864 (1864).
- REPORTS OF CASES DETERMINED IN THE SUPREME COURT OF THE TERRITORY OF WASHINGTON, FROM 1854 TO 1879 (1879).
- INDEX-DIGEST OF THE WASHINGTON REPORTS EMBRACING ALL THE DECISIONS OF THE SUPREME COURT OF WASHINGTON FOUND IN THE TERRITORIAL REPORTS AND IN THE STATE REPORTS FROM VOLUME ONE TO VOLUME NINE INCLUSIVE (J.E. Horan, comp., 1895).
- DIGEST OF THE DECISIONS OF THE TERRITORIAL AND STATE SUPREME COURTS, CONSTRUING THE CONSTITUTION AND LAWS OF THE STATE OF WASHINGTON TO SEPTEMBER 8, 1903 (Frank Pierce, comp., 1903).
- DIGEST OF THE REPORTS OF THE SUPREME COURT OF WASHINGTON AS REPORTED IN VOLUMES ONE TO TWENTY-FOUR INCLUSIVE AND THREE TERRITORIAL REPORTS. (A.L. Miller, comp., 1903).
- DIGEST OF THE DECISIONS OF THE SUPREME COURT OF WASHINGTON, COVERING ALL CASES IN THE THREE WASHINGTON TERRITORIAL REPORTS AND VOLUMES ONE TO ONE HUNDRED AND THREE OF WASHINGTON REPORTS, WITH ANNOTATIONS TO THE CENTURY DIGEST, DECENNIAL DIGEST, CIRCUIT COURT OF APPEALS REPORTS, AMERICAN DECISIONS, AMERICAN REPORTS, AMERICAN STATE REPORTS, AMERICAN ANNOTATED CASES, LAWYERS REPORTS ANNOTATED, ETC. (Arthur Remington, comp., 1919-26).

### Other Court Documents

- Briefs: see the University of Washington Gallagher Law Library for materials submitted to the Supreme Court of Washington Territory.
- FRONTIER JUSTICE: GUIDE TO THE COURT RECORDS OF WASHINGTON TERRITORY, 1853-1889 (1987).

In print and microform.

- WASHINGTON TERRITORIAL SUPREME COURT, 1853-1889 (Pat Hopkins, comp., 1983).

Archival papers.

### Executive

- MESSAGES OF THE GOVERNORS OF THE TERRITORY OF WASHINGTON TO THE LEGISLATIVE ASSEMBLY, 1854-1889 (Charles M. Gates, ed., 1940).
- WASHINGTON TERRITORIAL DAYBOOK.

Two microfilm reels from the Washington State Archives that contain day-to-day records of governors' official acts from 1856-1864 and 1880-1884.

- GOVERNOR'S PAPERS.

Microfiche from the Washington State Archives of governor's papers for McMullen, 1857-1859, and Gholson, 1859-1861.

### General References

- REFERENCE LIST OF PUBLIC DOCUMENTS 1854-1918 FOUND IN THE FILES OF THE STATE LIBRARY (1920).

Covers publications of state departments and institutions; legislature, courts, and governors' correspondence to the U.S. Department of the Interior.

- FINDING AIDS AND MICROFILM AVAILABLE FROM THE WASHINGTON STATE ARCHIVES: GUIDES TO ARCHIVAL RECORDS, INDEXES, DOCUMENT FACSIMILES, MICROFILM (2000), <http://www.secstate.wa.gov/archives/pubs/publist.pdf>.

Identifies guides and indexes to materials in the archives.

- HISTORICAL RECORDS OF WASHINGTON STATE: GUIDE TO RECORDS IN STATE ARCHIVES AND ITS REGIONAL DEPOSITORIES (David Hastings & Timothy Eckert, eds., 1981).
- WASHINGTON TERRITORIAL GOVERNMENT PAPERS, 1853-1875, AT THE UNIVERSITY OF WASHINGTON LIBRARIES (1965).

A guide to archival collections of the library that contain records of the territorial government of Washington.

*Republic of Texas, 1835-1845; State of Texas, 1845-1850*

Until Mexico seceded from Spain in 1821, Texas was a Spanish province, ruled by governors appointed by the viceroy of Mexico and sanctioned by the king of Spain.<sup>36</sup> After Mexico won independence, Texas became one of the states of the Republic of Mexico, and in 1824, Texas was joined with Coahuila to form the state of Coahuila-Texas. Unhappy with the new constitution, Texas declared independence and established a provisional government in 1835. There followed the Texas War of Independence, ending in 1836 with Texas seceding from the Republic of Mexico and forming its own country, the Republic of Texas, under the Treaties of Velasco.

The Republic of Texas claimed as its boundaries the land to the source of the Rio Grande River, which followed along the Continental Divide up to forty-two degrees latitude, the northernmost tip of Texas thus taking a small chunk out of the south central border into what is now Wyoming's Carbon County. This piece of land remained part of Texas when it joined the Union in 1845. In 1850, the United States redrew the border of Texas and purchased this land from them at which time that portion in Wyoming east of the Continental Divide was added to Indian Country and west of the Divide became part of Utah Territory.<sup>37</sup>

Texas was an independent nation for nine years until applying for statehood to the United States. The civil law of Spain remained in force in Texas until the adoption of the English common law and some elements of English criminal law, with amendments, in 1840.<sup>38</sup>

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<sup>36</sup> D.W.C. BAKER, A BRIEF HISTORY OF TEXAS FROM ITS EARLIEST SETTLEMENT 26-27 (1873).

<sup>37</sup> Trenholm, *supra* note 20, at 47.

<sup>38</sup> A REFERENCE GUIDE TO TEXAS LAW AND LEGAL HISTORY: SOURCES AND DOCUMENTATION 1 (Karl T. Gruben & James E. Hambleton, 2nd ed., 1987).

### Relevant Republic of Texas Laws

- ORDINANCES AND DECREES OF THE CONSULTATION AT SAN FELIPE, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS, 1822-1897 (1900-).

Established the provisional government in 1835. This is considered the first Texas legal document.<sup>39</sup>

- A DIGEST OF THE GENERAL STATUTE LAWS OF THE STATE OF TEXAS: TO WHICH ARE SUBJOINED THE REPEALED LAWS OF THE REPUBLIC AND STATE OF TEXAS, BY THROUGH, OR UNDER WHICH RIGHTS HAVE ACCRUED; ALSO, THE COLONIZATION LAWS OF MEXICO, COAHUILA AND TEXAS, WHICH WERE IN FORCE BEFORE THE DECLARATION OF INDEPENDENCE BY TEXAS (1859).

This resource includes An Act to Define the Boundaries of the Republic of Texas, Dec. 19, 1836.

- Republic of Texas, Act of the Ninth Congress, Special Session, June 23, 1845, ch. 19, art. 1531.

Joint resolution giving the consent of the existing government to the annexation of Texas to the United States.<sup>40</sup>

### Relevant Federal Laws

- Act of Mar. 1, 1845, 5 Stat. 797.

Joint resolution no. 8 of the House and Senate for the annexation of Texas. The vote was closer than expected: 120-98 in the House and 27-25 in the Senate.<sup>41</sup>

- Act of Sept. 9, 1850, ch. 49, 9 Stat. 446.

An act to re-establish the northern and western boundaries of Texas by purchase of the panhandle (northern portion) of Texas.

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<sup>39</sup> *Id.* at 3.

<sup>40</sup> SAYLES, *supra* note 16, at 567.

<sup>41</sup> Trenholm, *supra* note 20, at 20.

### Constitutions

- JOURNALS OF THE CONVENTION, ASSEMBLED AT THE CITY OF AUSTIN ON THE FOURTH OF JULY, 1845, FOR THE PURPOSE OF FRAMING A CONSTITUTION FOR THE STATE OF TEXAS (1845).
- JOHN SAYLES, THE CONSTITUTIONS OF THE STATE OF TEXAS (4th ed., 1893).

Includes constitutions and background documents for the Constitution of the Republic of Texas and Constitution of the State of Texas.

- University of Texas School of Law, The Texas Constitutions Digitization Project, <http://tarlton.law.utexas.edu/constitutions/index2.html>.

### Session Laws and Codes

- H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897 (1898).

Volumes 1 through 10 are online at <http://texinfo.library.unt.edu/lawsoftexas/default.htm>. Original copies of session laws for the republic and the state are rare. This set serves as the standard source. An index, *Index to Gammel's Laws of Texas 1822-1905*, was published in 1906.

- LAWS OF THE REPUBLIC OF TEXAS (1838-1845).

Available in microform in *Texas Session Laws of American States and Territories*.

- GEORGE W. PASCHAL, A DIGEST OF THE LAWS OF TEXAS (4th ed., 1873-74).

First printing of annotated laws; includes laws promulgated between 1754 and 1873.

- JOHN SAYLES & HENRY SAYLES, EARLY LAWS OF TEXAS (1888).

General laws from 1836-1879; laws of 1731-1835 as found in the laws and decrees of Spain relating to Land in Mexico, and of Mexico relating to colonization; Laws of Coahuila and Texas; Laws of Tamaulipas; Colonial Contracts; Spanish Civil War; Orders and Decrees of the Provisional Government of Texas.

## Reporters and Digests

- JAMES WILLIAM DALLAM, OPINIONS OF THE SUPREME COURT OF TEXAS FROM 1840 TO 1844 INCLUSIVE (1883).

The first cases were heard in the Supreme Court of Texas in 1840. There was no official publication of decisions, but this is the unofficial reporter of cases from the Supreme Court of the Republic of Texas, with index to cases. Considered part two of Dallam's digest; part one, *Digest of the Laws of Texas*, was the original publication that compiled Supreme Court decisions. However, the language of the decisions was paraphrased and the collection was incomplete. The *Opinions* take up page numbering where the *Digest* left off.

- James Hambleton & David A. Greenblatt, *Better Late Than Never: Publication of the Decisions from the 1845 Term of the Republic of Texas Supreme Court*, 50 TEX. BAR J. 664 (1987).

There may have been an expectation that Texas would join the Union earlier than it did, and the compilation of decisions from the Supreme Court of the Republic of Texas was completed before the last term of the court actually ended. It was a century before the cases from the final session were compiled and first published in this article.<sup>42</sup>

- TEXAS REPORTS (1847-1962).

Though this title began in 1846, decisions from 1860 and 1861 were never published as part of this set and can be found in 25 *Texas Supplement*, published specifically to cover these cases.

- WILLIAM ALEXANDER, DIGEST OF THE DECISIONS OF THE SUPREME COURT OF TEXAS (1854).

Digest of cases of the Supreme Court of Texas and Supreme Court of the Republic of Texas.

- GEORGE W. PASCHAL, A DIGEST OF DECISIONS (1872).

Digests decisions of the supreme courts of Texas and Republic of Texas.

- WALTER MALINS ROSE, NOTES ON TEXAS REPORTS: A CHRONOLOGICAL SERIES OF ANNOTATIONS (1902).

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<sup>42</sup> Brandon D. Quarles & Matthew C. Cordon, *Texas Pre-statehood Legal Materials*, in 2 PRESTATEHOOD LEGAL MATERIALS: A FIFTY-STATE RESEARCH GUIDE, INCLUDING NEW YORK CITY AND THE DISTRICT OF COLUMBIA 1395 (Michael Chiorazzi & Marguerite Most, eds., 2005).

Annotations to Texas cases in chronological order, including Supreme Court of the Republic of Texas.

### Court Rules

- TEXAS REPORTS (1847-).

Reports of cases argued and decided in the supreme court of the state of Texas. Cases argued and decided in the supreme court of the state of Texas. Reprinted in *Texas Law Review*, December 1986.

### General References

- D.W.C. BAKER, A BRIEF HISTORY OF TEXAS FROM ITS EARLIEST SETTLEMENT (1873).
- A REFERENCE GUIDE TO TEXAS LAW AND LEGAL HISTORY: SOURCES AND DOCUMENTATION (Karl T. Gruben & James E. Hambleton, 2nd ed., 1987).

### *Unorganized (Mexico), 1848-1850*

That portion of what had been Mexico before the Treaty of Guadalupe Hidalgo in 1848 was left unorganized until 1850 when it was absorbed by the Territory of Utah. However, from 1821 when Mexico seceded from Spain until 1848, this area was under Mexican rule, and before that time, it was claimed by Spain. (See the discussion of laws of foreign countries above for relevant laws of the period).

### *Utah Territory, 1850-1868*

Utah became a territory on September 30, 1850, already with a fully-functioning provisional government established as the "State of Deseret." The portion of Wyoming that was part of Utah Territory is the southwest corner of the state from Carbon County to the western border, that which had been ceded from Mexico and Texas. The history of Utah cannot be separated from the history of the Mormon Church, a fact that lengthened the territorial and statehood application process. The federal legislature resisted Utah's requests to form a territory and refused to accept its constitution until it was clear that polygamy would not be tolerated.

### Relevant Federal Laws

- Act of Sept. 9, 1850, ch. 51, 9 Stat. 453.

This act established the territory of Utah.

- Act of July 1, 1862, ch. 126, 12 Stat. 501.

“An Act to Punish and Prevent the Practice of Polygamy in the Territories of the United States and Other Places, and Disapproving and Annuling Certain Acts of the Legislative Assembly of the Territory of Utah,” specifically those regarding polygamy and incorporation of The Church of Jesus Christ of Latter-Day Saints. It also restricts the church’s ownership of property.

### Constitutions

It took seven attempts at a constitution by the government of Deseret before the U.S. Congress accepted it and granted statehood. Long before Utah’s Constitution was accepted (1890), Wyoming had become a territory of its own. Only the first, second, and third attempts were relevant to the time period during which Wyoming was part of the territory. In fact, the constitutions of both Wyoming and Utah at the time of statehood had provisions for women’s suffrage, Wyoming being admitted to the Union just months before Utah.

- CONSTITUTION OF THE STATE OF DESERET: WITH THE JOURNAL OF THE CONVENTION WHICH FORMED IT, AND THE PROCEEDINGS OF THE LEGISLATURE CONSEQUENT THEREON (1849).

Based in part on the Iowa Constitution of 1846 and the Illinois Constitution of 1818.

- LETTER OF THE DELEGATE OF THE TERRITORY OF UTAH IN CONGRESS, ENCLOSING THE MEMORIAL OF DELEGATES OF THE CONVENTION WHICH ASSEMBLED IN GREAT SALT LAKE CITY, AND ADOPTED A CONSTITUTION WITH A VIEW TO THE ADMISSION OF UTAH INTO THE UNION AS A STATE, TOGETHER WITH A COPY OF THAT CONSTITUTION (1858).

The second constitution, it was never presented to Congress “due to the hostile atmosphere generated by the practice of polygamy and the unsettled political temper of the times caused by the slavery controversy.”<sup>43</sup>

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<sup>43</sup> John Flynn, *Federalism and Viable State Government—The History of Utah’s Constitution*, 10 UTAH L. REV. 311, 316 (1966).

- CONSTITUTION OF THE STATE OF DESERET: MEMORIALS OF THE LEGISLATURE AND CONSTITUTIONAL CONVENTION OF UTAH TERRITORY, PRAYING THE ADMISSION OF SAID TERRITORY INTO THE UNION AS THE STATE OF DESERET: JUNE 9, 1862: REFERRED TO THE COMMITTEE ON TERRITORIES, AND ORDERED TO BE PRINTED (1862).

Third constitution, differing from the first two only in organization and incidentals.

- PROPOSED STATE OF DESERET. MEMORIAL OF THE LEGISLATIVE ASSEMBLY OF THE PROPOSED STATE, FOR THE ADMISSION OF THE STATE OF DESERET INTO THE UNION AND ACCOMPANYING PAPERS (1867).

Not generally considered the fourth constitution as it was legislative and not the result of a constitutional convention. It took Utah four more attempts to get Congress to approve its constitution, long after Wyoming had become a territory of its own.

### Session Laws and Journals

- ACTS, RESOLUTIONS AND MEMORIALS, PASSED BY THE FIRST ANNUAL AND SPECIAL SESSIONS OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF UTAH, BEGUN AND HELD AT GREAT SALT LAKE CITY, ON THE 22ND DAY OF SEPTEMBER, A.D., 1851, ALSO THE CONSTITUTION OF THE UNITED STATES AND THE ACT ORGANIZING THE TERRITORY OF UTAH (1852).

Title and publisher vary.

- JOURNALS OF THE HOUSE OF REPRESENTATIVES, COUNCIL, AND JOINT SESSIONS OF THE . . . ANNUAL AND SPECIAL SESSIONS OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF UTAH, HELD AT GREAT SALT LAKE CITY.

Title and publisher vary slightly. Journals of House and Senate were published together until 1880. The fifth session, 1855-56, is not extant, and the seventh session, 1857-58, was published as an article in 1956 and bound separately.<sup>44</sup>

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<sup>44</sup> Robert Lee Warthen, *Legal Research in the State of Deseret and the Utah Territory, 1847-1896*, in 2 PRESTATEHOOD LEGAL MATERIALS: A FIFTY-STATE RESEARCH GUIDE, INCLUDING NEW YORK CITY AND THE DISTRICT OF COLUMBIA 1248. (Michael Chiorazzi & Marguerite Most, eds., 2005).

- TERRITORIAL LEGISLATIVE RECORDS, 1851-1894.

Available from the Utah State Archives, series 03150, these include acts, bills, resolutions, memorials, and petitions of the first through thirty-first sessions of the Assembly.

### Codes

- ORDINANCES PASSED BY THE GENERAL ASSEMBLY OF THE STATE OF DESERET (1851).

Full compilation of all the laws of the State of Deseret as of 1851, also available in microform.

- ACTS AND RESOLUTIONS PASSED AT THE . . . ANNUAL SESSION OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF UTAH (1852-).

Title and publisher vary slightly. Codes are published for the 1852, 1855, and 1866 congresses while Wyoming is part of the territory.

### Reporters and Digests

- REPORTS OF CASES DETERMINED IN THE SUPREME COURT OF THE TERRITORY OF UTAH, FROM THE ORGANIZATION OF THE TERRITORY, UP TO AND INCLUDING THE JUNE TERM, 1876 (Albert Hagan, ed., 1877).

Volume one of Utah Reports, this contains only a few decisions prior to 1873.

- JUDSON S. RUMSEY, A DIGEST OF DECISIONS OF THE SUPREME COURT OF UTAH: REPORTED IN VOLUMES 1 TO 36 INCLUSIVE: TOGETHER WITH CROSS-REFERENCES, AFFIRMANCES AND REVERSALS BY THE UNITED STATES SUPREME COURT, PARALLEL CITATIONS TO THE NATIONAL REPORTER SYSTEM AND MORRISON'S MINING REPORTS. LIST OF FORMS FOUND IN THE OPINIONS, TABLE OF CASES, AND COURT RULES (1912).

### Executive

- MESSAGES TO THE LEGISLATURE (1851-).

Utah State Archives. Governors' messages to the legislature.

- EXECUTIVE RECORD BOOKS (1850-1949).

Official acts of the governor, housed at the Utah State Archives.

- LETTERBOOK [OF GOVERNOR BRIGHAM YOUNG, 1850-1857] 1853-1857.

Outgoing correspondence of Governor Young, housed at the Utah State Archives.

### Secondary Sources

- HUBERT H. BANCROFT, *HISTORY OF UTAH, 1540-1886* (1889).

Some details about early legal and political institutions within the Territory and State of Utah.

- Leland H. Creer, *The Evolution of Government in Early Utah*, 26 UTAH HIST. Q. 23 (1958).

### *Wyoming Territory, 1868-1890*<sup>45</sup>

The Organic Act<sup>46</sup> to establish the government for the Territory of Wyoming was approved by President Johnson on July 25, 1868. Immediately, the new territory became a pawn to the feuding politicians in Washington and was not officially organized until May of 1869. The territorial government was formally inaugurated when the governor, the secretary of the territory, the chief justice, and two associate justices were appointed on April 7, 1869, by the President with the consent of the Senate, and organization of the territory was not completed until the last officer qualified by taking his oath of office on May 15, 1869.<sup>47</sup>

This situation left Wyoming without a legal government for ten months. According to the Organic Act, the laws of Dakota Territory (except the mining laws) were in effect until the Legislative Assembly of the Wyoming Territory should repeal them, which was not possible until the governor was able to arrange for a census, establish voting districts, and call for an election, which, of course, was not possible until a governor was appointed.

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<sup>45</sup> See Part I, 7 WYO. L. REV. 49 (2007) for basic primary materials on Wyoming's territorial and statehood process.

<sup>46</sup> Act of June 25, 1868, ch. 235, 15 Stat. 178.

<sup>47</sup> Trenholm, *supra* note 20, at 83-84.

### Relevant Federal Laws

- H.R. 633, 38th Cong. (1865).

Act for the temporary government of the Territory of Lincoln. The Act was read a first and second time, but not reported out of the Committee on Territories.

- H.R. 86 40th Cong. (1867).

Act for the temporary government for the Territory of Lincoln (Wyoming). Discharged from consideration by the Committee on Territories.

- H.R. 540, 40th Cong. (1868).

Act for the temporary government of the Territory of Wyoming. The Act was read first and second time, but not reported out of the Committee on Territories.

- S. 357 40th Cong. (1868).

Passed by Senate June 3; passed by the House on July 23, and signed by the President on July 25.

- INDEX OF THE HISTORICAL MATERIAL CONCERNING THE STATE OF WYOMING AS FOUND IN THE CONGRESSIONAL DOCUMENTS, 1803-1936, ALSO MAPS SHOWING BOUNDARY DEVELOPMENTS OF WYOMING 1609-1931 (Marie H. Erwin, comp., 1937).

Volume one is an alphabetical index; volume two is organized by series; volume three by congressional session, and volume four contains maps. Includes American State Papers, Indian affairs, military affairs, expeditions to the Rockies, defense of frontier, wagon roads, and treaties. The author includes some materials covering territories to which Wyoming belonged before it became its own territory.

### Executive

The salary of a territorial governor was set by the Organic Act of a territory and varied throughout the years as the federal legislature altered its appropriations. For instance, in 1876, the salaries of the governor and justices were \$3,000 per year;<sup>48</sup> in the next appropriation bill, the salaries were lowered to \$2,600 per year.<sup>49</sup> However, up until 1876 it was common for the governor of a territory to

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<sup>48</sup> Act of Aug. 15, 1876, ch. 287, 19 Stat. 159.

<sup>49</sup> Act of Mar. 3, 1877, ch. 102, 19 Stat. 309.

be appointed as the Superintendent of Indian Affairs of the Territory and, as such, to receive extra salary for the duties. The governor of a territory was frequently not a resident of the area, the position usually being awarded to political allies of the current president. In Wyoming, as in many of the western territories, this was a source of frustration for the Legislative Assembly. Still, the task of the early steps of establishing a government fell to the governor as outlined in the Organic Act.

### **Governor Proclamations and Other Agency Documents**

The Organic Act that established the territory listed certain powers and responsibilities of the governor, especially concerning the initial formation of the government. The governor was to direct the U.S. Marshal to take a census and apportion the state into legislative districts and judicial districts. After this, he was to call for an election to elect a delegate to the U.S. Congress and members to the Legislative Assembly, as well as designate election precincts, voter qualifications, and election rules. He was to specify when the First Legislative Assembly would convene, and the procedures to adopt a constitution. All of these functions were done through gubernatorial proclamations.

- GENERAL LAWS, MEMORIALS, AND RESOLUTIONS OF THE TERRITORY OF WYOMING, PASSED AT THE FIRST SESSION OF THE LEGISLATIVE ASSEMBLY (1870-).

The session laws of the First Legislative Assembly include gubernatorial proclamations from May 25, 1869, through November 11, 1869.

- COMPILED LAWS OF WYOMING INCLUDING ALL THE LAWS IN FORCE IN SAID TERRITORY AT THE CLOSE OF THE FOURTH SESSION OF THE LEGISLATIVE ASSEMBLY OF SAID TERRITORY, TOGETHER WITH SUCH LAWS OF THE UNITED STATES AS ARE APPLICABLE TO SAID TERRITORY; ALSO THE TREATIES MADE WITH THE SIOUX AND SHOSHONE TRIBES OF INDIANS IN THE YEAR 1868; WITH A SYNOPSIS OF THE PRE-EMPTION, HOMESTEAD AND MINING LAWS OF THE UNITED STATES (1876).

Includes proclamations by the governors from September 22, 1869 through November 12, 1875.

### **Executive Reports to the Federal Government**

- TRANSCRIPTS OF EXECUTIVE PROCEEDINGS AND RELATED CORRESPONDENCE, 1878-1890.

NARA Record Group 48: Records of the Office of the Secretary of the Interior, 1826-1981, includes records of official acts of the Governor of Wyoming Territory and includes copies of proclamations, extradition orders, certificates of

reapportionment, writs for special elections, and lists of appointments for notaries public, commissioners of deeds, livestock commissioners, commissioners of the insane asylum, and other officials.

- OCCASIONAL REPORTS TO SECRETARY OF STATE AND DEPARTMENT OF INTERIOR FROM SURVEYOR GENERAL OF THE TERRITORY, 1870-1878.
- MEMORIAL TO THE PRESIDENT AND CONGRESS FOR THE ADMISSION OF WYOMING TERRITORY TO THE UNION (1889).

#### Executive Reports to Territory

- STATE OF THE STATE ADDRESS (1869-).

Title varies. See also *Message to the Legislature*; *Message to the Legislative Assembly of the State of Wyoming*; *Governor's Message to the Legislature*. Delivered biennially during the territorial period, these remarks of the Governor are also printed in the house journal for each legislative session.

#### Legislature

The Organic Act of the territory stipulated the setup of the legislature, as it did for the executive branch, according to a template used for most territories across the country. It set the number of members of each house of congress, their salaries and terms of office, times to convene, length of sessions, including special sessions (none were held in Wyoming), and officers of the congress. Once elected, the First Territorial Legislature assembled on December 10, 1869, repealed the Dakota Territory laws, and established new laws effective January 1, 1870.

The governor's message to the First Legislative Assembly asked the legislature to appoint a commission of chief justices and others to write a criminal and civil code.<sup>50</sup> The council responded to the governor stating a preference for a joint committee of the two houses to write the code rather than accepting the work of outsiders. They expected the task would not be overly labor-intensive, asking for up to five weeks, as it would be primarily a matter of "adopting as a basis codes of other states and territories."<sup>51</sup> The new laws established the election laws, civil and criminal code, and a variety of property and corporation issues.

At this same legislative session, the Secretary of the Territory responded to Council Resolution number 5, a request for copies of Law of Nevada<sup>52</sup> and

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<sup>50</sup> 1869 COUNCIL J. 18.

<sup>51</sup> 1869 COUNCIL J. 39-40.

<sup>52</sup> 1869 COUNCIL J. 30.

copies of the Council Journals of the Territory of Colorado, Seventh Session, 1868 (Colorado's first compiled statutes were a result of this Seventh Legislative Session). A large number of the territorial criminal statutes were taken directly from the Indiana Statutes.<sup>53</sup> That legislative session also adopted the common laws of England, "as modified by judicial decisions prior to the fourth year of James I," with exceptions.<sup>54</sup> The laws were first compiled into a code in 1876, and again in 1887 when the statutes were adopted in their entirety and all laws not in the compilation were to be considered repealed.

The strain of governing under the eye of the federal government caused considerable frustration. Almost from the foundation of the territory, there were rumblings to push for statehood. Very shortly after being made a territory, the governors were requesting of the Secretary of the Interior in their annual reports that statehood be considered.<sup>55</sup>

Finally, without benefit of an enabling act from the federal government that would normally invite a territory to write a constitution and apply for statehood, a constitutional convention was called and a document written. After the drafting of the constitution, a committee was appointed to write an address to the people of Wyoming to urge adoption of the new constitution and to explain the decision to move the territory toward statehood. The introductory paragraph stated, "A Territory can not have a settled public policy. The fact that Congress may at any time annul its legislation on any matter of purely local concern prevents active co-operation by the people on those higher planes of public life . . . For twenty years and more Wyoming has been laboring under the disadvantages of a Territorial form of government . . . Territorial representation in Congress is a delusion—the Territories of these United States have no representation."<sup>56</sup>

- GENERAL LAWS, MEMORIALS, AND RESOLUTIONS OF THE TERRITORY OF WYOMING, PASSED AT THE FIRST SESSION OF THE LEGISLATIVE ASSEMBLY CONVENEED AT CHEYENNE, OCTOBER 12, 1869, AND ADJOURNED SINE DIE, DEC. 11TH, 1869, TO WHICH ARE PREFIXED THE DECLARATION OF INDEPENDENCE, CONSTITUTION OF THE UNITED STATES, AND THE ACT ORGANIZING THE TERRITORY, TOGETHER WITH EXECUTIVE PROCLAMATIONS (1870).

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<sup>53</sup> Theodore E. Lauer, *Goodbye 3-Card Monte: The Wyoming Criminal Code of 1982*, 19 LAND & WATER L. REV. 107, 110 (1984).

<sup>54</sup> Act of Dec. 2, 1869, ch. 15, 1869 Wyo. Laws 291.

<sup>55</sup> Trenholm, *supra* note 20, at 83-84.

<sup>56</sup> Constitutional Convention Committee, Address to the People of Wyoming (Oct. 1, 1889) (unpublished manuscript, available at the University of Wyoming Law Library), *quoted in* GOODSPEED, *supra* note 2, at 373-74.

In 1869 the Territorial Assembly passed a law that increased the salary of an assemblyman by six dollars a day and the salary of the speaker of the house and president of the council by twelve dollars a day over the federal compensation of four dollars a day during session, which, of course, was beyond its authority.<sup>57</sup> Though the law was vetoed by the governor, it was passed over his veto, and in the end the courts had to declare the Wyoming law unconstitutional.<sup>58</sup>

- Act of Dec. 10, 1869, ch. 54, 1869 Wyo. Laws.

Set time to convene the Legislative Assembly for 1871 at the first Tuesday in November and every other year after 1871.

- Act of Dec. 2, 1873, ch. 27, 1873 Wyo. Laws.

The Territorial Assembly increased its membership to thirteen in the House and twenty-seven in the Council bringing the total to forty for the next legislative session, as allowed by the Organic Act. The U.S. Congress eventually changed the number of territorial legislators not to exceed twelve in the House and twenty-four in the Council, which remained in force until Wyoming became a state.<sup>59</sup>

- Act of Dec. 8, 1879, ch. 52, 1879 Wyo. Laws.

Changed the date to convene the Assembly to the second Tuesday in January, 1882, and every second Tuesday in January every two years thereafter, altering the sessions from even numbered years to odd numbered years. There were no legislative sessions held from the Sixth Assembly in November 1879 until the Seventh Assembly in January 1882.

- H.R.J. Res. 8, 10th Legislative Assembly (1888).

Requesting the governor take steps to obtain from Congress such legislation as would enable the people of the territory to form a constitution and state government.

## Rules

Both Houses established a Committee on Rules during the First Territorial Legislative Session in October, 1869. The House of Representatives voted to adopt the standing rules of the State of Nebraska until the committee reported

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<sup>57</sup> Act of June 19, 1878, ch. 329, 20 Stat. 193. From 1873 to 1878, territorial assemblymen received six dollars a day, which was reduced again after 1878. Members of territorial legislatures were not allowed to receive any compensation other than from the U.S. Government.

<sup>58</sup> Trenholm, *supra* note 20, at 139.

<sup>59</sup> Act of June 19, 1878, ch. 329, 20 Stat. 193.

their standing rules on October 15, 1869. The council went without standing rules until October 15, declining to adopt the rules of the Legislative Assembly of Dakota. Cushing's *Manual of Parliamentary Practice* and Jefferson's *Manual of Parliamentary Practice* were adopted for rules of parliamentary practice, as well as occasional use of *Robert's Rules of Order*.<sup>60</sup>

## Judicial

Before the organization of the Wyoming Territory, justice dispensed through the Dakota courts was irregular. Even within the main portion of the Dakota Territory, judges tended to be untrained, unpredictable, untimely, and generally were not in demand. In the first ever meeting of the territory's Supreme Court, none of the three justices appeared.<sup>61</sup> Under those conditions, there was little hope that judges riding the circuit to Cheyenne would be of much assistance.

Apparently, jurisdictional authority was not clear to the people of Cheyenne either. A local attorney writing in 1867 noted, "[t]here was very much doubt about it, some maintaining that we were in Colorado and others in Dakota."<sup>62</sup> Taking the problem into their own hands, the business and social leaders of the community established a provisional government with a police court for civil and criminal matters up to \$2,000 and a superior court for matters over \$2,000.<sup>63</sup> As most of the people in the new town came from Colorado, they had some copies of the statutes of Colorado with them, and so they were adopted so far as they were applicable.<sup>64</sup>

Punishment was difficult as there was no place to keep the convicted, and, for serious crimes, the provisional government laws did not provide for capital punishment. Fines were not a deterrent as money was plentiful.<sup>65</sup> A vigilance committee was established by the same people who founded the provisional government, and, for the most part, unwanted characters were run out of town (usually to the next railroad town, Laramie). By spring of 1868, the county had been organized and there was a regularly established government.

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<sup>60</sup> Trenholm, *supra* note 20, at 174.

<sup>61</sup> SCHELL, *supra* note 29, at 100.

<sup>62</sup> W.W. CORLETT, FOUNDING OF CHEYENNE 5 (1884) (handwritten manuscript available on microfilm).

<sup>63</sup> Trenholm, *supra* note 20, at 111.

<sup>64</sup> CORLETT, *supra* note 62, at 5. Presumably THE REVISED STATUTES OF COLORADO: PASSED AT THE SEVENTH SESSION OF THE LEGISLATIVE ASSEMBLY, CONVENEED ON THE SECOND DAY OF DECEMBER, A.D. 1867 (1868) as this was the first compilation of Colorado laws.

<sup>65</sup> CORLETT, *supra* note 62, at 6. Mr. Corlett stated, "[E]verybody had money. I never saw so many people with money." *Id.*

The judicial powers were vested in a supreme court, district courts, probate courts, and justices of the peace. Three supreme court justices were seated for four years, at the pleasure of the President. The territory was divided into three judicial districts, one district court assigned to each of the supreme court justices.

### Territorial Legislation Specific to Courts

- COMPILED LAWS OF WYOMING, ch. 106 § 8 (1876).

This statute defines the duties of the supreme court, among them, to prescribe rules of practice for appellate and district courts at their first session. These rules were given binding authority as if they were enactments of the legislative assembly. The court was also directed that opinions be delivered in writing and an official reporter must be assigned to publish these decisions “when the number of cases decided in said court shall reach one hundred.”

- COMPILED LAWS OF WYOMING, ch. 71 (1876).

The Justices’ Code established and defined the jurisdictions of the courts of justices of the peace. The rules of procedure before these courts are spelled out within the statute.

### Rules

- WYOMING REPORTS: CASES DECIDED IN THE SUPREME COURT OF WYOMING (1870-).

The rules of the courts established by the supreme court are on page 447 of Volume One of the *Wyoming Reports*. For succeeding volumes, only those rules as amended are printed. Rules of Civil Procedure and Rules of Criminal Procedure were incorporated into the Civil and Criminal Codes passed at the first Territorial Legislative Assembly in 1869.

### Secondary Sources

- JOHN W. DAVIS, GOODBYE, JUDGE LYNCH: THE END OF A LAWLESS ERA IN WYOMING’S BIG HORN BASIN (2005).

### Wyoming Counties

In 1864, Wyoming found itself back in the Dakota Territory without representation in the legislature until 1866. By 1867, the Dakota Legislature acknowledged the increase in population in the southwestern portion of their territory due primarily to the building of the Union Pacific Railway. Communities were growing quickly as a result of the increased traffic, and in response, the legislature

partitioned the area into counties. As of 1867, the Dakota Territory had created four counties in Wyoming.

- Act of Jan. 9, 1867, ch. 14, 1866-1867 Dakota Laws.

Set boundaries for Laramie County, which included most of the current state. Fort Sanders was the county seat.

- Act of Dec. 27, 1867, ch. 7, 1867-1868 Dakota Laws.

Created Carter County by splitting Laramie County in half with South Pass as the county seat. Set new western boundary for Laramie County, changed Laramie County seat from Fort Sanders to Cheyenne.

- Act of Dec. 16, 1868, ch. 28, 1868-1869 Dakota Laws.

Two new counties were sectioned from Laramie County: Albany County with Laramie as the county seat, and Carbon County with the county seat at Rawlings Springs.

- Act of Dec. 1, 1869, ch. 34, 1869 Wyo. Laws.

Uinta County was the first county established by the Wyoming Territorial Legislative Assembly.

- Act of Dec. 2, 1869, ch. 35, 37, 38, 1869 Wyo. Laws.

Redefined boundaries of Albany, Carbon, and Sweetwater counties and appointed officers of the counties and changed the name of Carter County to Sweetwater County. (The boundaries of Laramie County were redefined by the organic act which set the boundaries for the state.) However, the organic act empowered the governor to appoint county officers and so he vetoed the act.<sup>66</sup>

- Act of Dec. 10, 1869, ch. 4, 1869 Wyo. Laws.

An act declaring each organized county within the territory to be “a body corporate and politic” and defined duties of the county official.

- Act of Dec. 8, 1875, ch. 27, 1875 Wyo. Laws.

First law passed regarding counties stipulating that upon petition by residents, the governor should appoint a Board of Commissioners to organize the county. Created and defined boundaries of Crook and Pease counties.

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<sup>66</sup> Trenholm, *supra* note 20, at 330.

- Act of Dec. 13, 1879. ch. 31, 1879 Wyo. Laws.

Changed the name of Pease County to Johnson County and reduced the number of residents needed to petition to organize a county from 500 to 300.

- Act of Mar. 5, 1884, ch. 46, 1884 Wyo. Laws.

Created Fremont County.

- Act of Feb. 5, 1886, ch. 5, 1886 Wyo. Laws.

Adjusted boundaries of Albany, Carbon, and Sweetwater counties.

- Act of Mar. 9, 1888. ch. 90, 1888 Wyo. Laws.

Created Converse, Natrona, and Sheridan counties.

- Act of Mar. 12, 1890, ch. 47, 1890 Wyo. Laws.

Created Weston County.

- Act of Mar. 12, 1890, ch. 48, 1890 Wyo. Laws.

Created Big Horn County.

- DUTIES OF COUNTY OFFICES, TERRITORY OF WYOMING, 1869 (handwritten manuscript) (available from the Laramie County Clerk's Office).

### Municipal Ordinances

- JOHN A. RINER, CHARTER AND ORDINANCES OF THE CITY OF CHEYENNE (1883).
- WILLIAM J. MCINTYRE, CHARTER AND ORDINANCES OF THE CITY OF LARAMIE (1885).
- C.E. CARPENTER, CHARTER AND ORDINANCES OF THE CITY OF LARAMIE (1887).

## V. WOMAN SUFFRAGE

Women in Wyoming were given the right to vote and hold office in the initial stages of the territory's development. The first bill was introduced in 1869, at the First Territorial Legislative Assembly. While it was not without debate and

further legislative action, the bill carried, and rights were extended to women from the birth of the territory. During the constitutional convention there again was discussion whether voting rights and recognition of equal rights under the law should be included as part of the constitution or as a separate proposition. The discussion was highlighted with Delegate Coffeen of Sheridan County stating, "I am unwilling to stand here and by vote or word or gesture disfranchise one half the people of our territory, and that the better half."<sup>67</sup> The gesture was well-taken, and Wyoming women, in fact, women throughout the country, may owe a great deal to the support of these representatives of the constitutional convention. Had the issue been put to a popular vote, it may have fared the same fate as it did in other states, where "[w]oman suffrage was defeated in every case in which a state constitutional convention gave voters the opportunity to vote separately on the suffrage amendment."<sup>68</sup>

The reception this issue received in the federal legislature was not unexpected. One effort tried to admit Wyoming into the Union with the constitution to be drafted and approved by a vote of the people at a later time. One suggested that the constitution of Wyoming be resubmitted for a vote of males only in the territory. A motion was made to call a new constitutional convention with delegates elected by male citizens of the territory only, and an additional motion was made to resubmit the constitution to a vote of the males in the territory separately from the proposition of women's suffrage and eligibility to hold office. And finally, it was moved that Wyoming should not be admitted into the Union until the offending passage was struck from the constitution.<sup>69</sup> Narrowly defeated each time, the bill ultimately won passage and was signed by the President. Though there is some debate, Mrs. Louisa Swain of Laramie is noted as the first woman in the United States to cast her vote on September 6, 1870.<sup>70</sup>

The recognition of equal rights under the law included the right to serve on juries, at least for a time. The first mixed grand jury was convened in Laramie City in March, 1870. At the end of the trial, the judge remarked, "To those ladies who are members of the grand jury, the court also deems it but justice to say that by your intelligent, faithful, and conscientious discharge of duty, as well as by your great propriety of conduct, you have realized the just expectations of those who saw fit to confer upon you the right to participate in the administration of justice."<sup>71</sup>

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<sup>67</sup> JOURNAL AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF WYOMING 350 (1889).

<sup>68</sup> RICHARD ELLIS, DEMOCRATIC DELUSIONS: THE INITIATIVE PROCESS IN AMERICA 230 (2002). States that had voted down woman suffrage amendments were Colorado, 1877; Washington, 1889 and 1898; South Dakota, 1889; New Hampshire, 1902; and Ohio, 1912.

<sup>69</sup> Trenholm, *supra* note 20, at 377.

<sup>70</sup> *Id.* at 659.

<sup>71</sup> GOODSPEED, *supra* note 2, at 353.

Chief Justice Howe further wrote that:

these women acquitted themselves with such dignity, decorum, propriety of conduct, and intelligence, as to win the admiration of every fair minded citizen of Wyoming. They were careful, painstaking, intelligent, and conscientious. They were firm and resolute for the right as established by the law and the testimony. Their verdicts were right, and, after three or four criminal trials, the lawyers engaged in defending persons accused of crime began to avail themselves of the right of peremptory challenge to get rid of the women jurors, who were too much in favor of enforcing the laws and punishing crime to suit the interests of their clients. After the grand jury had been in session two days, the dance-house keepers, gamblers, and demimonde, fled out of the city in dismay, to escape the indictment of the women grand jurors.<sup>72</sup>

When Justice Howe left the court after 1871, the balance of the court in favor of jury service as an adjunct to suffrage was lost, and women in Wyoming were not called for jury service again until 1950.<sup>73</sup>

### *Legislative History of Woman Suffrage in Wyoming*

- 1869 COUNCIL J. 115.

Council Bill 70, "An Act to grant to the women of Wyoming Territory the right of suffrage and to hold office." Taken up (Nov. 27, 1869).

- 1869 COUNCIL J. 122.

Voted on for final passage in Council. Passed 6-2-1 (Nov. 30, 1869).

- 1869 HOUSE J. 152.

Bill received by House of Representatives, read first and second time and referred to committee of the whole. Special committee for its consideration was formed (Nov. 30, 1869).

- 1869 COUNCIL J. 189.

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<sup>72</sup> *Id.*

<sup>73</sup> T. A. Larson, *Petticoats at the Polls: Woman Suffrage in the Territory of Wyoming*, 44 PAC. NORTHWEST Q. 77 (1953).

Special committee recommended “do pass.” Move to postpone indefinitely lost. Placed before committee of the whole, reported to House after discussion. Several motions lost and the House switched to other business (Dec. 4, 1869).

- 1869 Council J. 158.

Discussion of changes; some changes adopted; bill read third time and voted on for final passage, 7-4 (Dec. 6, 1869).

- Act of Dec. 10, 1869, ch. 31, 1869 Wyo. Laws.

Sent to governor, signed December 10, 1869.

- *Governor’s Biennial Message to the House and Council, in 1871*  
HOUSE J. 20.

The governor urged the legislature to continue this experiment of woman suffrage in the United States.

- 1871 HOUSE J. 47.

House Bill 4 is introduced to repeal right of women to vote. Read a first and second time. Engrossed (Nov. 16, 1871). Thus, attempt to repeal women’s right to vote defeated.

1871 HOUSE J. 49-50.

Bill read a third time, considered by committee of the whole, and voted for final passage. Bill passed 9-3-1 (Nov. 17, 1871).

- 1871 COUNCIL J. 50.

Council received bill H.R. no. 4 (Nov. 28, 1871).

- 1871 COUNCIL J. 53.

Bill read first and second and third time. Placed on vote for final passage, passed 8-0-1 (Nov. 20, 1871).

- 1871 HOUSE J. 112-118.

Includes governor’s veto statement. House overrides veto by 9-2-2 (Dec. 9, 1871).

- 1871 COUNCIL J. 84.

Council received governor’s veto and vote of House (Dec. 11, 1871).

- 1871 COUNCIL J. 93-94.

Council committee of the whole recommended “do pass” over governor’s veto (Dec. 13, 1871).

- 1871 COUNCIL J. 95.

Council vote. Bill passes 5-4. Does not receive the required 2/3 majority to pass over governor’s veto (Dec. 14, 1871).

- JOURNAL AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF WYOMING (1889).

Woman suffrage was introduced as Proposition File no. 25 on September 7, 1889. Debates addressed whether this should be a separate proposition or included as part of the constitution. As a separate amendment, it would have to be voted on individually, with the presumed outcome showing the strength of the sentiment in favor of it. It was decided instead to address these rights to vote and hold office “as a part of the fundamental law in the constitution of this State.”<sup>74</sup>

### *Secondary Sources*

- Miriam Gantz Chapman, *The Story of Woman Suffrage in Wyoming* (1952) (unpublished Master’s thesis, Univ. of Wyoming) (on file with William Robertson Coe Library, University of Wyoming).
- Grace Raymond Hebard, *The First Woman Jury*, 7 JOURN. AM. HIST. 1293 (1931).
- GRACE RAYMOND HEBARD, *HOW WOMAN SUFFRAGE CAME TO WYOMING* [1920].

Possibly perpetuated some of the questionable stories of various women’s involvement in the passage of the suffrage act. Many of the facts listed in this article have since been questioned by historians Larson and Massie.

- T. A. LARSON, *HISTORY OF WYOMING* (2nd ed., rev., 1978).

Larson’s work deals with many of the myths surrounding woman suffrage, including the impetus for the act in Wyoming, who was responsible for the 1869

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<sup>74</sup> GOODSPEED, *supra* note 2, at 372-73.

bill, and whether national lobbying groups targeted Cheyenne before and during the constitutional convention.

- T. A. Larson, *Petticoats at the Polls: Woman Suffrage in the Territory of Wyoming*, 44 PAC. NORTHWEST Q. 74 (1953).
- Michael A. Massie, *Reform Is Where You Find It: The Roots of Woman Suffrage in Wyoming*, <http://wyoarchives.state.wy.us/articles/massie/page1.htm>.

This article discusses the origins of the woman suffrage movement in South Pass City, Wyoming, and investigates some of the myths that Esther Morris, Wyoming's first justice of the peace, elicited a promise from Legislator Bright to introduce the bill into the Legislative Assembly. It is a brief but interesting description of South Pass City, its genesis as a mining town, and the surrounding suffrage controversy.

- WOMAN SUFFRAGE DOCUMENTS FROM HISTORICAL COLLECTIONS AND GOVERNMENT RECORDS (2004).

Available in CD-ROM format from the Wyoming State Archives and the American Heritage Center, this is a collection of digitized pages from the legislative materials for the sessions of 1869 and 1871, as well as articles and a bibliography of woman suffrage.

## VI. NATIVE AMERICANS

Initially the United States dealt with Indians through treaties, as with other foreign sovereignties. Over time the shift in federal Indian policy moved away from recognizing the continent's natives as self-governing groups toward assimilation with Anglo-American culture. After 1871, treaties were no longer used in federal Indian relations, and court decisions since that time have bluntly stated that Indian nations are individual sovereignties only to the degree that the United States allows it, and there is no legal obligation to extend them that dignity.<sup>75</sup> This

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<sup>75</sup> *United States v. Blackfeet Tribe of Blackfeet Indian Reservation*, 364 F. Supp. 192 (D. Mont. 1973).

The defendants urge that the Blackfeet Tribe is sovereign and that the jurisdiction of the tribal court flows directly from that sovereignty. No doubt the Indian tribes were at one time sovereign and even now the tribes are sometimes described as being sovereign. The blunt fact, however, is that an Indian tribe is sovereign to the extent that the United States permits it to be sovereign—neither more nor less. In the Blackfeet Treaty (11 Stat. 657, at 659, (1855)) the Blackfeet Tribe acknowledged its “dependence on the government of the

substantial shift in policy occurred over time as the government gained strength and the population looked to the vast open spaces to the West with an eye to cultivation and settlement.

Early European laws regarding colonization of new lands may have begun with the Crusades of the 13th century and Pope Innocent IV's papal bull authorizing the use of force against non-Christian peoples, when necessary, to punish violations of laws of nature as derived from Christian doctrines.<sup>76</sup> By the 1500s, scholars of the humanist movement were addressing political interactions with the indigenous peoples of the lands that European explorers were discovering. Francisco de Victoria, a Dominican theologian, concluded that consent of natives was required before Europeans could legally acquire their lands or dominion over them. Discovery of these lands alone did not confer title of the land.<sup>77</sup>

These works became the foundation for Spanish law in the Americas. Pope Paul III stated in his 1537 Papal Bull, *Sublimis Deus*,

Notwithstanding whatever may have been or may be said to the contrary, the said Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property.<sup>78</sup>

The Dutch, British, and Americans adopted similar policies that all peoples, including, as Hugo Grotius stated "strangers to the true religion," had the right to enter into treaties.<sup>79</sup> Formal acquisitions of the land required individual purchases from tribal governments.<sup>80</sup>

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United States." While for many years the United States recognized some elements of sovereignty in the Indian tribes and dealt with them by treaty, Congress, by Act of March 3, 1871 (16 Stat. 566, 25 U.S.C. § 71), prohibited the further recognition of Indian tribes as independent nations. Thereafter the Indians and the Indian tribes were regulated by acts of Congress.

*Id.* at 194.

<sup>76</sup> ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* 13-14 (1990).

<sup>77</sup> FRANCISCUS DE VICTORIA, *DE INDIX ET DE IURE BELLI RELECTIONES* 127-128 (Ernest Nys ed., J. Bate trans., Carnegie Institution 1917) (orig. ed. 1557).

<sup>78</sup> FRANCIS MACNUTT, *BARTHOLOMEW DE LAS CASAS* 429 (Arthur H. Clark Co. 1909).

<sup>79</sup> COHEN, *supra* note 4, at 13-15.

<sup>80</sup> *Id.*, at 15. Cohen cites other sources as incidents of early settlers' belief that compensation for land was necessary. See D'ARCY McNICKLE, *NATIVE AMERICAN TRIBALISM* 29-30 (1973).

For the new colonies, it was general wisdom to maintain good relations with the natives. In 1777, the Articles of Confederation Article IX, conferred on the Continental Congress, “the sole and exclusive right and power of . . . regulating the trade and managing all affairs with Indians not members of any of the states.” This was rearticulated in the new Constitution<sup>81</sup> and was the first official step in the development of a federal Indian policy, the enforcement of which would present many difficulties. The protections and rights offered to Indians under the Northwest Ordinance of 1787 were likewise re-enacted as one of four statutes passed in the First Continental Congress dealing with Indian policy. In fact, as the country grew, it was common to find these rights restated in the organic acts of the territories and states of the Union.<sup>82</sup>

### *Early American Policies*

- U.S. CONST. art. I, § 8.

Attempted to limit state interference with federal Indian policy by reserving to Congress the power to “regulate commerce with foreign nations, among the several states, and with the Indian tribes.”

- Act of Oct. 22, 1784, 7 Stat. 15.

Treaty with hostile tribes of Six Nations, received the Indian tribes “into their protection” and would shape further interactions with Indians.

- Act of Jan. 21, 1785, 7 Stat. 16.

Treaty with the Wiandots, Delawares, Chippawas, and Ottawas. Indians retained their lands for hunting and living; white settlers in Indian lands forfeited protections of the federal government.

- Act of Aug. 7, 1789, ch. 7, 1 Stat. 49.

Established the Department of War and provided responsibility for military affairs and such matters relative to Indian affairs. These functions were later transferred to the Department of the Interior upon its establishment in 1849.

- Act of Aug. 20, 1789, ch. 10, 1 Stat. 54.

Appropriation of funds to deal with Indian tribes and appointment of commissioners to manage negotiations and treaties.

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<sup>81</sup> U.S. CONST. art. I, § 8.

<sup>82</sup> Volume 7 of the *Statutes at Large* is a collection of Indian treaties, “Treaties between the United States and the Indian Tribes,” published in 1854.

- Act of Sept. 11, 1789, ch. 13, 1 Stat. 67.

Setting salary for Superintendent of Indian Affairs in the northern department. These duties generally fell within the duties of the territorial governor as listed in the organic acts of a new territory. Territorial governors acting as Superintendent of Indian Affairs received a salary increase, generally around \$1,000 per year.

- Act of July 22, 1790, ch. 33, 1 Stat. 137.

An act to regulate trade and intercourse with the Indian tribes, this prohibited purchases of Indian lands and punished non-Indians committing crimes and trespasses against Indians.

- Indian Trade and Intercourse Act of Mar. 1, 1793, ch. 19, 1 Stat. 329.

Authorized provision of goods and services to secure friendship of tribes, stop crimes against the Indians, and prevent unauthorized acquisition of their lands. This statute would be amended several times, once as an adjunct act,<sup>83</sup> which established government trading houses set up in Indian country, with goods to be sold to Indians at cost and run by government agents, and a second revision in 1796,<sup>84</sup> clarifying what lands were held by Indians, requiring a passport to travel into Indian lands, and allowing the federal government the right to prosecute Indians if the tribes did not pursue the crime. The statute was revised in 1799 with only minor changes.<sup>85</sup>

- Trade and Intercourse Act of Mar. 30, 1802, ch. 13, 2 Stat. 139.

This permanent act replaced the four temporary acts above.

### *Moving West*

Limited natural resources kept European explorers from being as interested in the plains as they were in the coastal areas of the country, causing the impact of new settlers in our region to be slow. During the Spanish period of the 17th and 18th centuries, there was little contact except trade involving Indian slaves and horses. As more aggressive tribes kidnapped Indians from other tribes to be sold

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<sup>83</sup> Act of Apr. 18, 1796, ch. 13, 1 Stat. 452.

<sup>84</sup> Act of May 19, 1796, ch. 30, 1 Stat. 469.

<sup>85</sup> Act of Mar. 3, 1799, ch. 46, 1 Stat. 743.

as slaves and integrated the horse into their culture, their dominance increased, resulting in an inequity of power among the Indian tribes.<sup>86</sup>

Within one year of the Louisiana Purchase, Lewis and Clark began their voyage of exploration, opening the region to commercial interests in the fur trade and the construction of federally operated trading posts. Some Indian tribes, frustrated by these intrusions and dissatisfied with continued requests for ceding of land to the United States, joined with the British in the War of 1812. After the Indians lost, the government accelerated a policy of removing Indians to lands in the West in exchange for their territory in the East. For the next few decades after the end of the war, treaties were concerned primarily with relocation.

Throughout the Mexican period from 1821 to 1846, there was increased contact, and gun trade became popular. Activity increased due to fur trade, exploration, and overland migration. Much of the traffic tended to pass through, but after 1847, sustained settlements began to alter the environment. Land holdings of the United States now extended from coast to coast. The California gold rush and open public lands brought miners, settlers, and soldiers through Indian lands and contact with the remote Indians increased.

Even this early, notions of assimilating natives into the Anglo-American culture were present. Proposals for an Indian state were not uncommon. A Western Territory Bill of 1834, which failed to pass due to concerns that it intruded on tribal sovereignty, stated, "Wherever their advance in civilization should warrant the measure, and they desire it . . . they may be admitted as a State to become a member of the Union."<sup>87</sup>

- Act of May 6, 1822, ch. 54, 3 Stat. 679.

Government-run trading posts were discontinued and turned over to private ownership. With no oversight, Indian abuses increased.

- Indian Removal Act of May 28, 1830, ch. 148 §§ 2, 7, 4 Stat 411.

An act providing for an exchange of land with the Indians residing in any of the states or territories, and for their removal west of the Mississippi River, this act authorized the President to provide lands west of the Mississippi in exchange for eastern lands. Although it did not authorize forcible removal, those tribes that

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<sup>86</sup> 11 HANDBOOK OF NORTH AMERICAN INDIANS 499-503 (Warren L. D'Azevedo, vol. ed., 1978).

<sup>87</sup> COHEN, *supra* note 4, at 58. For a history of various proposals of an Indian state, see Annie H. Abel, *Proposals for an Indian State, 1778-1878*, 1 ANN. REP. AM. HIST. ASSN. 89 (1907).

did not leave were no longer under the protection of the federal government. By the 1850s, the removal effort was complete.

- Act of June 30, 1834, ch. 162, 4 Stat. 735.

Comprehensive reform of the Indian Department, authorizing appointment of several superintendents of Indian affairs and agents and subagents answerable to the President with preference given to employees of Indian descent.

- Indian Intercourse Act of June 30, 1834, ch. 161, 4 Stat. 729.

Amended the 1802 act, changed boundaries, licensed trading, amplified provisions for dealing with Indian depredations, authorized President to use military force against undesirable whites in Indian Country.

- Act of March 3, 1849, ch. 108, 9 Stat. 395.

Established the Department of Interior, giving the secretary the authority previously exercised by secretary of the War Department in relation to Indian affairs.

- Treaty of Fort Laramie, 1851, 11 Stat. 749.

Also known as Horse Creek Treaty, as the site of the treaty signing was moved to Horse Creek, Nebraska, to accommodate grazing of horses for 10,000 Indians. The Sioux were given lands north of the North Platte River; Cheyenne and Arapaho received land between North Platte and Arkansas; the Crow received land from Powder River to Wind River. The Shoshone were guests at the council, but received no land as they belonged in Utah and not in the Upper Platte Agency.<sup>88</sup> The Sioux, Cheyenne, Arapaho, Crow, Assinboine, Gros Ventre, Mandan, and Arikara signed treaties at Fort Laramie ceding lands.

- Treaty with the See-see-toan and Wah-pay-toan Bands of Dakotas or Sioux, 1851, 10 Stat. 949.

Ceding territory.

- Treaty with the Arapaho and Cheyenne, 1861, 12 Stat. 1163.

In this Treaty of Fort Wise, the Northern Cheyenne and Arapaho tribes signed an agreement relinquishing lands between the Arkansas and North Platte rivers for the Sand Creek Reservation in Colorado.

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<sup>88</sup> Trenholm, *supra* note 20, at 653.

*Wyoming Indians and the Indian Wars*

The predominant Indian tribe living in Wyoming during the years after the 1650s was the Eastern Shoshone, though bands of Teton Sioux, Comanche, Crow, Cheyenne, Arapaho, and Blackfeet frequented the area as well. Federal relations with the Shoshone were generally good. It is possible that the Shoshone were more amenable to the federal government because they saw in it protection against the roving tribes, historic enemies of the Shoshone, who had been encroaching on their lands and raiding since the 1700s. The Shoshone were treated with more deference than other Basin tribes. Whether because of their cooperation with the government or the strength of their leadership, the Shoshone was one of the only tribes in the region neither conquered nor displaced during the initial phases of Indian relocation. It is a mark of respect for that leadership that, during the treaty-making years of 1863-1868, references to the Eastern Shoshone within Wyoming are often cited as the "Washakie" band, referring to their leader and eventual chief.<sup>89</sup> In 1867, the Shoshone requested a reservation in the Wind River Valley. The 1868 treaty set aside a reservation for them, but in 1872, they were forced to cede back the southern portion of the reservation to pay for a surveying error that coincided with the discovery of gold at South Pass.<sup>90</sup>

The Shoshone protested when, in 1878, the U.S. military brought nearly 1,000 Northern Arapaho to stay temporarily on the Shoshone Reservation. The Northern Arapahos had refused to settle with the Southern Arapahos in Oklahoma and instead requested a reservation in their home lands of Wyoming. Eventually one-half of the Shoshone Reservation would be ceded to the Arapaho and the name of the reservation changed to Wind River Reservation.

The year 1865 records some of the bloodiest battles between Indians and the government in Wyoming's history. Near present-day Casper, clashes with the Sioux occurred at the Battle of the Platte River Bridge and at Red Buttes. Along the Bozeman Trail at the Tongue River Crossing, a road-building expedition was attacked by Arapahos. Fort Phil Kearney was the site of attacks nearly from the completion of its construction in 1867. The day the territorial government was organized, Sioux Indians raided Wind River Valley, resulting in the first official act of the territorial governor, calling for troops to put down an uprising.<sup>91</sup>

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<sup>89</sup> FREDERICK E. HOXIE, *ENCYCLOPEDIA OF NORTH AMERICAN INDIANS*, 586 (1966).

<sup>90</sup> *Id.* at 588. In *Shoshone Tribe of Indians of the Wind River Reservation, Wyoming v. U.S.*, 82 Ct. Cl. 23 (1935), the tribe sued the government for the value of the gold removed from the mines at South Pass prior to the ratification of the Brunot Agreement by the Senate on Dec. 15, 1874. The Engineer determined the gross value of gold production was \$744,700 and the royalty value was \$111,195. ERNEST OBERBILLIG, *THE SHOSHONE TRIBE OF INDIANS OF THE WIND RIVER RESERVATION, WYOMING V. THE UNITED STATES OF AMERICA: VALUE OF GOLD PRODUCTION OF SWEETWATER MINES WITHIN SHOSHONE RESERVATION BETWEEN JULY 3, 1868, AND DECEMBER 15, 1874* (1963), available at American Heritage Center, University of Wyoming.

<sup>91</sup> GOODSPEED, *supra* note 2, at 351.

Since 1855, the U.S. Army had taken up residence at forts along the Missouri to protect settlers moving West. By 1858, federal policy had shifted fully from removal to concentration on fixed reservations. Reservations were intended to be an intermediate step toward assimilation and were not meant to be voluntary.<sup>92</sup> The government would provide sufficient lands for Indian occupancy along with stock, tools, and other agricultural supplies. By encouraging farming over migration throughout the region, the commitment of land to the Indians could be reduced. The remaining areas could be consolidated and sold to non-Indians for settlement. With the opening of the Oregon and California Trails to emigrants in 1863 after the signing of the Fort Bridger Treaty, white traffic increased. Many of the Plains Indian tribes at this time were those relocated from their eastern lands within the last century. In the wake of the Civil War, with changes in the federal Indian policy and the land rush across the country, frustrations reached a new high. Ogalala Lakota Chief Red Cloud led the Sioux, Cheyenne, Arapaho, and Comanche in battle against the government in the Powder River War of 1866 and 1867.

- Treaty with the Eastern Shoshone, 1863, 18 Stat. 685.

Treaty of Fort Bridger, Utah Territory, to re-establish friendly and amicable relations and redefine Shoshone boundaries with land concessions for railway and telegraph lines; government offered reservations, homesteads, and farming supplies.

- Treaty with the Sioux, 1868, 15 Stat. 635.

Sought peace with the Northern Sioux, Crow, Cheyenne, and Arapaho. Some tribes held out until forts on Bozeman trails were closed.<sup>93</sup>

- Treaty with Shoshone and Bannock, 1868, 15 Stat. 673.

The Treaty of Fort Bridger ratified the earlier treaty, allowed for criminal prosecutions of whites and Indians by the federal government, set boundaries of reservations and offered education, clothing, and farming supplies.

### *End of Treaty-making*

Though some in the federal government held opinions that “in a large majority of cases Indian Wars are to be traced to the aggressions of lawless white men,”<sup>94</sup> federal policy continued to work against the Indians. For nearly a century the

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<sup>92</sup> COHEN, *supra* note 4, at 65.

<sup>93</sup> *Id.* at 73.

<sup>94</sup> S. REP. NO. 39-156, at 5 (1867).

Executive Branch had made treaty arrangements with the Indians “by and with the Advice and Consent of the Senate.”<sup>95</sup> Although the House appropriated money to carry out these treaties, it had no voice in the development of substantive Indian policy reflected in them. House resentment first resulted in legislation in 1867 repealing “all laws allowing the President, the Secretary of the Interior, or the commissioner of Indian affairs to enter into treaties with any Indian tribes.”<sup>96</sup> The legislation was repealed a few months later.<sup>97</sup> After further unsuccessful House attempts to enter the field of federal Indian policy, the House refused to grant funds to carry out new treaties.<sup>98</sup> Finally, the Senate capitulated and joined the House in passage of the 1871 act as a rider to the Indian Appropriation Act of 1871.

### Relevant Federal Laws

- Act of Mar. 3, 1871, ch. 120 § 1, 16 Stat. 544 (codified at 25 U.S.C. § 71).

Indians Appropriation Act ended treaty-making effectively through the refusal of allocating funds to continue.

- Act of Mar. 3, 1873, ch. 241 § 2, 17 Stat. 579.

Congressional committee appointed to prepare a compilation of treaties in force.

- Act of Feb. 8, 1887, ch. 72, 24 Stat. 388.

An act to ratify an agreement with certain bands of Sioux Nation, Northern Arapaho, and Cheyenne Indians. Known as the General Allotment Act of 1887 or the Dawes Act, this granted 160 acres of reservation land for private use to the heads of Indian households in an effort to begin the assimilation of Indians into American culture and curtail their nomadic activities. The remaining land from the reservations was sold to non-Indian settlers.

- Act of Mar. 3, 1885, ch. 341 § 9, 23 Stat. 385.

Congress extended federal jurisdiction over Indians for seven major crimes: murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny.

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<sup>95</sup> U.S. CONST. art. II, § 2.

<sup>96</sup> Act of March 29, 1867, ch. 13, 15 Stat. 7, 9.

<sup>97</sup> Act of July 20, 1867, ch. 34, 15 Stat. 18.

<sup>98</sup> UNITED STATES DEPARTMENT OF THE INTERIOR, FEDERAL INDIAN LAW 211 (1958).

## Codes

Historic access to Indian codes and constitutions is generally not available, though Internet collections of current codes are. White settlers intermingling with Indians and living within their territories presented some problems for the U.S. government. Federal laws and protections did not extend into Indian territories, and those who had intermarried, leased Indian lands with permission, or were settled there, with or without permission of the Indian tribes, made administration of federal laws very difficult.<sup>99</sup>

## Reporters and Digests

- DECISIONS OF THE DEPARTMENT OF THE INTERIOR RELATING TO PUBLIC LANDS (1881-).

Decisions of the courts relative to Indian land issues are included in this set. Other decisions are published in the West's publications that cover federal courts. Available electronically in The Making of Modern Law: Legal Treatises from 1800-1926 database.

## General References

- COLONIAL AND AMERICAN INDIAN TREATIES: A COLLECTION [CD-ROM] (2004).

Full text, fully searchable collection of over 700 agreements dating back to the 17th Century.

- STEVEN L. JOHNSON, GUIDE TO AMERICAN INDIAN DOCUMENTS IN THE CONGRESSIONAL SERIALS SET, 1817-1899: A PROJECT OF THE INSTITUTE FOR THE DEVELOPMENT OF INDIAN LAW (1977).

Over 10,000 documents, listed chronologically, then by subject and Indian tribe, with a very brief abstract/title to identify the subject; followed by three appendices: 1) documents on Indian Affairs 1871-1881 not in the Serials Set; 2) Indian Affairs published in American State Papers and those published in Serial Set; 3) Guide to Records of the War of Rebellion. Claims documents are predominantly claims prosecuted against government for losses or Indian depredation.

- CHARLES JOSEPH KAPPLER, INDIAN AFFAIRS: LAWS AND TREATIES (1903-1904).

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<sup>99</sup> FRANCIS PAUL PRUCHA, THE GREAT FATHER: THE UNITED STATES GOVERNMENT AND THE AMERICAN INDIANS 740 (1984).

Content-wise, this resource is excellent. It compiles U.S. treaties, laws, and executive orders pertaining to Native American tribes, with some editorial comments included. Now digitized in *Kappler's Indian Affairs: Laws and Treaties*, University of Oklahoma, <http://digital.library.okstate.edu/kappler/index.htm>. Also available in The Making of Modern Law: Legal Treatises, 1800-1926 database. On the Internet site, materials are fully searchable from their own search engine, or one can browse by table of contents and index of each volume. The digitized works available on the Internet are difficult to read, but those in The Making of Modern Law are clear.

- INDIAN TREATIES, 1778-1883 (Charles J. Kappler, ed., 1972).

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- FREDERICK E. HOXIE, ENCYCLOPEDIA OF NORTH AMERICAN INDIANS (1996).
- FRANCIS PAUL PRUCHA, THE GREAT FATHER: THE UNITED STATES GOVERNMENT AND THE AMERICAN INDIANS (1995).

## VII. PUBLIC LANDS

The history of the American West has its basis in land law. European claims and treaties, sales of land under the Articles of Confederation to raise revenue for the new country, federal Indian policy, mineral rights and mining law, mining camp laws, railroads, grazing, and the settlement of the West through preemptive land laws and homesteading are policies and claims that drove the move from the coasts inward into the heart of the continent.<sup>100</sup> These are the laws that make up the legal history of the country during its formation.

### *General Public Land Codes*

- HENRY NORRIS COPP, PUBLIC LAND LAWS, PASSED BY CONGRESS FROM MARCH 4, 1875, TO APRIL 1, 1882, WITH THE IMPORTANT DECISIONS OF THE SECRETARY OF THE INTERIOR, AND COMMISSIONER

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<sup>100</sup> Because of the general application of laws relating to public lands, volume one of the *United States Statutes at Large* includes a table of "Acts of Congress from 1789 to 1845, inclusive, relating to public lands." 1 Stat. xcvi.

OF THE GENERAL LAND OFFICE, THE LAND OPINIONS OF THE ATTORNEY GENERAL, AND THE CIRCULAR INSTRUCTIONS ISSUED FROM THE GENERAL LAND OFFICE TO THE SURVEYORS GENERAL AND REGISTERS AND RECEIVERS DURING THE SAME PERIOD (1883).

- HENRY NORRIS COPP, PUBLIC LAND LAWS PASSED BY CONGRESS FROM APRIL 1, 1882, TO JANUARY 1, 1890 (1890).

### *General Public Land Cases*

- J. VANCE LEWIS, A COLLECTION OF LEADING CASES ON THE PUBLIC LAND LAWS OF THE UNITED STATES: WITH NOTES AND REFERENCES (1879).
- *Decisions of the United States Department of the Interior*. Washington, DC: Government Printing Office, (1881-).

Known as "Land Decisions," these are also available electronically in The Making of Modern Law: Legal Treatises from 1800-1926 database.

- DIGEST OF DECISIONS OF THE DEPARTMENT OF THE INTERIOR IN APPEALED PENSION AND BOUNTY LAND CLAIMS: ALSO A TABLE OF CASES REPORTED, CITED, OVERRULED, AND MODIFIED, AND OF STATUTES CITED AND CONSTRUED, CONTAINED IN VOLS. 9 TO 15 INCLUSIVE, OF THE PENSION DECISIONS, WITH ANNOTATIONS (1905).

### *Emigration and Homesteading*

Availability of vast regions of unsettled land in the new continent was attractive to independent farmers and settlers, especially those in Europe. Early methods of claiming this land were through settling, or squatting. Controlling use of the land from squatters was a difficulty for the federal government, and instead it became policy to legalize the preemption of public lands. Petitions to Congress for private land grants were not unusual, especially from those territories that bordered on the unsettled land. Offers to settle and cultivate the land, bringing manpower to the Indian borders were addressed to Congress regularly from the beginning of the 1800s.<sup>101</sup> From 1801-1854, Congress passed a series of legislation, each addressing squatting more leniently. By 1855, preemption laws required eventual

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<sup>101</sup> HOMESTEAD ACT OF 1862: AMERICAN LANDMARK LEGISLATION: PRIMARY MATERIALS 4 (1975).

payment of the minimum prevailing statutory price of the land and those settlers' rights were recognized over the surveyors' division of lands.<sup>102</sup>

Beginning in 1845, regular bills were introduced into Congress in favor of homesteading, providing public land for free to those willing to settle and improve it. The Southern states, formerly in favor of this type of land use, began voting against such legislation, perhaps fearing the addition of non-slave states to the Union. As the Civil War approached, Southern representatives removed themselves from Congress, and the Legislature passed the Homestead Act of 1862.<sup>103</sup> This new federal policy to promote private land ownership required more than 3,500 federal statutes to facilitate the process of territorial expansion. It was necessary to develop policies and procedures to determine the scope of the property, subdivide and sell it, and provide for the administration of the laws within the land and guarantee protections of the property.<sup>104</sup> One means to do this was the establishment of a Surveyor General for each new territory specifically to survey the land and oversee the administration of the homestead and preemptive public land acts.<sup>105</sup>

Open availability of public lands drew crowds of settlers across the country. Emigrants crossing through Wyoming on the way to California, Oregon, and Utah increased the need for a military presence to offer protection from Indian attacks. Fort William (later Fort Laramie) was the first permanent structure in the state, built in 1834, followed by Fort Bridger, which was constructed eight years later, and originally a trading post though later used by the military. In 1841, it was believed that only eighty travelers had followed the Oregon Trail through Wyoming. By 1843, 1,000 emigrants had passed along the trails, and as of 1850, 60,000 emigrants had crossed through Wyoming.<sup>106</sup> Eventually some of those travelers decided to settle in Wyoming, making it possible to request statehood just over twenty years after receiving its territorial status.<sup>107</sup>

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<sup>102</sup> *Id.* at 3.

<sup>103</sup> *Id.* at 15-21.

<sup>104</sup> See Roderick L. Squires, *A Context for the Public Land Survey*, 6 MINN. SURVEYOR 8 (1999), available at <http://www.geog.umn.edu/faculty/squires/research/RealProp/survey/MNSurveyor/surveycontext.html>, for a brief discussion of surveying and its impact on land use.

<sup>105</sup> See TERRITORIAL PAPERS OF THE UNITED STATES at NARA, available at <http://www.archives.gov> (last visited May 15, 2007).

<sup>106</sup> Trenholm, *supra* note 20, at 652-653.

<sup>107</sup> Land use of the Plains before 1851 can be found in NARA's record groups 48, 59, 75, 77, 93, and 94. See Sarah Lanier Hollingsworth, *A Bibliographic Survey of Pre-statehood Legal Resources for the State of South Dakota*, in 2 PRESTATEHOOD LEGAL MATERIALS: A FIFTY-STATE RESEARCH GUIDE, INCLUDING NEW YORK CITY AND THE DISTRICT OF COLUMBIA 1124 (Michael Chiorazzi & Marguerite Most, eds., 2005).

### Relevant Federal Laws

- Act of May 18, 1796, ch. 29, 1 Stat. 464.

An act providing for the sale of lands of the United States, in the territory northwest of the river Ohio, and above the mouth of the Kentucky River, it appoints a Surveyor General to survey and divide the region. Known as the Land Act of 1796, footnote (a) of the Act lists all statutes relevant to sales of public lands northwest of the river Ohio.

- Act of May 29, 1830, ch. 208, 4 Stat. 420.

An act to grant preemption rights to settlers on the public lands, this act applied to claims on public lands that had been settled before survey by the government. Rights were extended for one year only.

- Act of June 22, 1838, ch. 119, 5 Stat. 251.

An act to grant preemption rights to settlers on the public lands, this extended the Act of May 29 for two more years except for all lands to which Indians held title. The land was made available for personal use only.

- Act of Sept. 4, 1841, ch. 16, 5 Stat. 543.

An act to appropriate the proceeds for the sales of public lands and to grant preemption rights, the “Log Cabin Bill” allowed the head of the family to claim the land for the price of \$1.25 per acre up to 160 acres. A percentage of the proceeds went to the states for infrastructure.

### Homesteading Act Legislative History<sup>108</sup>

- S. 5, 19th Cong. (1826).

Bill introduced to decrease the price of land in proportion to the time it was on the market and to give lands that went unsold to settlers for a homestead.

- H.R. 2, 28th Cong. (1845).

Homestead bill was first introduced as an amendment to a price graduation bill for public land.

- H.R. 294, 29th Cong. (1846).

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<sup>108</sup> See Homestead Act of 1862, *supra* note 101, at 6-21.

The term “homestead” is first used in federal legislation to refer to free land, available to a head of household, up to 160 acres.

- H.R. 7, 32nd Cong. (1852).

To encourage agriculture, commerce, and industry, this act would grant a male head of household a homestead of 160 acres out of the public domain. Bill passed in the House of Representatives, but not the Senate.

- H.R. 37, 33rd Cong. (1854).

Passed by both houses. The conference committee was unable to reach consensus.

- H.R. 18, 34th Cong. (1856).

Bill was introduced in the House.

- H.R. 72, 35th Cong. (1857).

Bill was introduced in the House but never brought to vote. It was taken up again in 1859 and tabled.

- H.R. 280, 36th Cong. (1860).

The House and Senate both passed the House version of the bill though compromise was required. This bill still called for some cost to the settler. President Buchanan, however, declared the law unconstitutional and vetoed it. The Senate lacked one vote to pass the bill over his veto. This turned out to be fortuitous to those who backed a free-land bill as the bill that passed two years later did not require any payment for land.

- H.R. 125 37th Cong. (1861).

The House passed a new bill which died in the Senate.

- Homestead Act of 1862, ch. 75, 12 Stat. 392.

The bill was introduced and passed in the House in 1861. The Senate then passed it with amendments. A conference committee convened and worked out the differences. On May 20, 1862, President Lincoln signed the bill into law. It allowed for 160 acres free of all charges except filing claim for claimants who must live on the land for five years, build a home on the land, till and fence the land, and dig a well before title to the land was handed over.

### Debates

- 2 REG. DEB. 719-754 (1826).

Speech by Senator Thomas Hart Benton, introducer of original bills and long-time supporter of free land acts.

- CONG. GLOBE, 37th Cong., 2d Sess. 49 (1862).
- CONG. GLOBE, 37th Cong., 2d Sess. 132 (1862).
- CONG. GLOBE, 37th Cong., 2d Sess. 909 (1862).
- CONG. GLOBE, 37th Cong., 2d Sess. 1030 (1862).
- CONG. GLOBE, 37th Cong., 2d Sess. 1871 (1862).
- CONG. GLOBE, 37th Cong., 2d Sess. 1915 (1862).
- CONG. GLOBE, 37th Cong., 2d Sess. 1937 (1862).
- CONG. GLOBE, 37th Cong., 2d Sess. 1951 (1862).
- CONG. GLOBE, 37th Cong., 2d Sess. 1972 (1862).
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- CONG. GLOBE, 37th Cong., 2d Sess. 2147 (1862).
- CONG. GLOBE, 37th Cong., 2d Sess. 2157 (1862).
- CONG. GLOBE, 37th Cong., 2d Sess. 2364 (1862).

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- *Western Trails*, [http://www.cdpheritage.org/exhibit/westernTrails/wt\\_collections.cfm](http://www.cdpheritage.org/exhibit/westernTrails/wt_collections.cfm).

Joint Web site of the routes through Colorado, Kansas, Nebraska, and Wyoming. This digitized collection contains maps, museum articles, and journals, among a variety of other interesting resources.

- JAMES C. BARSİ, *THE BASIC RESEARCHER'S GUIDE TO HOMESTEADS AND OTHER FEDERAL LAND RECORDS* (1994).

Small paperback to be used as a handbook for researching homesteads for genealogical and legal purposes. Describes what to expect in the files for federal

land claims under different public land acts. Also discusses what information is necessary for a complete request to the National Archives and Records Department to obtain copies of records, and how to find that information specific to the public land act states, of which Wyoming is one.

### *Mining*

Wyoming was not as rich a resource for gold and silver as neighboring territories during the 19th century, but some mining communities were established around South Pass and a few other areas. Wyoming's First Legislative Assembly passed an act that authorized miners "to form mining districts not to exceed twenty square miles" with the power to adopt local rules and regulations.<sup>109</sup>

Mining law in the United States can be traced back to the original European powers that claimed the region. In 1783 Mexico, a code was devised and accepted by the king for the government and regulation of mine towns, mine owners, and mine laborers.<sup>110</sup> The entire right to minerals was granted to Spain, which passed then to Mexico after 1820. Legal title was complete in the crown, and miners were emissaries for the crown, expected to increase the treasury. For lands Mexico later ceded to the U.S., the mineral rights remained in contention relative to the Ordinance of 1783 and the Tribunal de Minería.<sup>111</sup> Mineral rights for regions as far north as Colorado and throughout the southwest and California fell under the jurisdiction of Mexican and Spanish land laws.

### Codes

- UNITED STATES MINERAL LANDS: LAWS GOVERNING THEIR OCCUPANCY AND DISPOSAL, DECISIONS OF FEDERAL AND STATE COURTS IN CASES ARISING THEREUNDER, AND REGULATIONS AND RULINGS OF THE LAND DEPARTMENT IN CONNECTION THEREWITH, WITH MISCELLANEOUS MATTER (Henry N. Copp, ed., 1882).
- MATTHEW G. REYNOLDS, SPANISH AND MEXICAN LAND LAWS (1895).
- JOHN A. ROCKWELL, COMPILATION OF SPANISH AND MEXICAN LAW RELATING TO MINES AND TITLES TO REAL ESTATE (1851).

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<sup>109</sup> Act of Dec. 2, 1869, ch. 22, 1869 Wyo. Laws 311.

<sup>110</sup> CHARLES HOWARD SHINN, MINING CAMPS: A STUDY IN AMERICAN FRONTIER 50 (1885).

<sup>111</sup> *Id.* at 53-54.

### Reporters and Digests

- HENRY NORRIS COPP, DECISIONS OF THE COMMISSIONER OF THE GENERAL LAND OFFICE AND THE SECRETARY OF THE INTERIOR : UNDER THE UNITED STATES MINING STATUTES OF JULY 26, 1866, JULY 9, 1870, AND MAY 10, 1872, WITH APPENDIX OF CIRCULARS AND FORMS (1874).
- R.S. MORRISON, DIGEST OF THE LAW OF MINES AND MINERALS AND OF ALL CONTROVERSIES INCIDENT TO THE SUBJECT-MATTER OF MINING, COMPRISING THE CASES IN THE ENGLISH AND AMERICAN REPORTS, FROM THE YEARBOOKS TO THE PRESENT TIME (1878).

### Secondary Sources

- HANDBOOK OF MINING LAW (Henry Norris Copp, ed., 6th ed., 1878).
- Concise handbook and conveniently small, this text includes U.S. mining laws and instructions for the miner, digest of decisions, forms, and list of mining patents issued by territory or state from 1877 to 1879.
- CHARLES HOWARD SHINN, MINING CAMPS: A STUDY IN AMERICAN FRONTIER GOVERNMENT (1885).

Miners determined their self-governance early in California and followed this tradition in other mining camps throughout the West. They retained records of claims, what was required to retain possession, forms of conveyance, rights and duties, water rights, criminal and civil infringements, and any number of related issues. This resource tracks mining from Germany's 12th century through Spanish and Mexican laws.

### *Railroads*

For Wyoming, the construction of the Union Pacific railroad across the length of the state may have played the largest role in the development of the state from territory to statehood. The relatively sparse population, concentration of arid regions, and lack of mineral resources in the state did not draw settlers as the neighboring states did. However, with the Union Pacific came towns, and Wyoming's population grew. The railroads played an important enough role in the state to warrant including federal land grant legislation to railroads in the state's early compilations of statutes.

### Relevant Federal Laws

- Act of July 1, 1862, ch. 120, 12 Stat. 489.

To aid construction of railroad and telegraph from Missouri River to Pacific.

- Act of July 15, 1862, ch. 179, 12 Stat. 577.

Extends above act for five years.

- Act of July 2, 1864, ch. 216, 13 Stat. 356.

Amends Act of July 1, 1862, includes taking of lands by railroad companies up to 100 feet on each side of the center line and apportioning as they see fit.

- AMIEL WEEKS WHIPPLE, REPORT OF EXPLORATIONS FOR A ROUTE FOR THE PACIFIC RAILROAD NEAR THE 38TH AND 39TH PARALLELS OF NORTH LATITUDE, FROM THE MOUTH OF THE KANSAS RIVER, MISSOURI, TO THE SEVIER LAKE, IN THE GREAT BASIN, H. Exec. Doc. No. 91 (1855).

Available in microform.

- REPORT OF THE SECRETARY OF WAR ON THE SEVERAL PACIFIC RAILROAD EXPLORATIONS (1855).

Available in microform.

### VII. GENERAL REFERENCE SOURCES

- LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW (3d ed., 2005).
- CHARLES PAULLIN, ATLAS OF THE HISTORICAL GEOGRAPHY OF THE UNITED STATES (1932).

Plates of territorial holdings throughout the territorial period. Also includes plates of Indian battles and reservations.

- WESTON ARTHUR GOODSPEED, PROVINCE AND THE STATES: A HISTORY OF THE PROVINCE OF LOUISIANA UNDER FRANCE AND SPAIN, AND OF THE TERRITORIES AND STATES OF THE UNITED STATES FORMED THEREFROM (1904).

Extensive treatment of European powers in America. Volume five is specific to Wyoming's history. The focus is social and political history, but it adds context to the legal aspects of Wyoming's development.

#### Archives

- Charles Griffin Coutant, Coutant Collection, [ca. 1867]-1940 (bulk 1882-1906), available at Wyoming State Archives.
- 5 WYOMING BLUE BOOK: A GUIDE TO THE ARCHIVES OF WYOMING (Jim Donahue, ed., 1991).

In two volumes; volume one collects county records and volume two contains state and municipal government cites.