

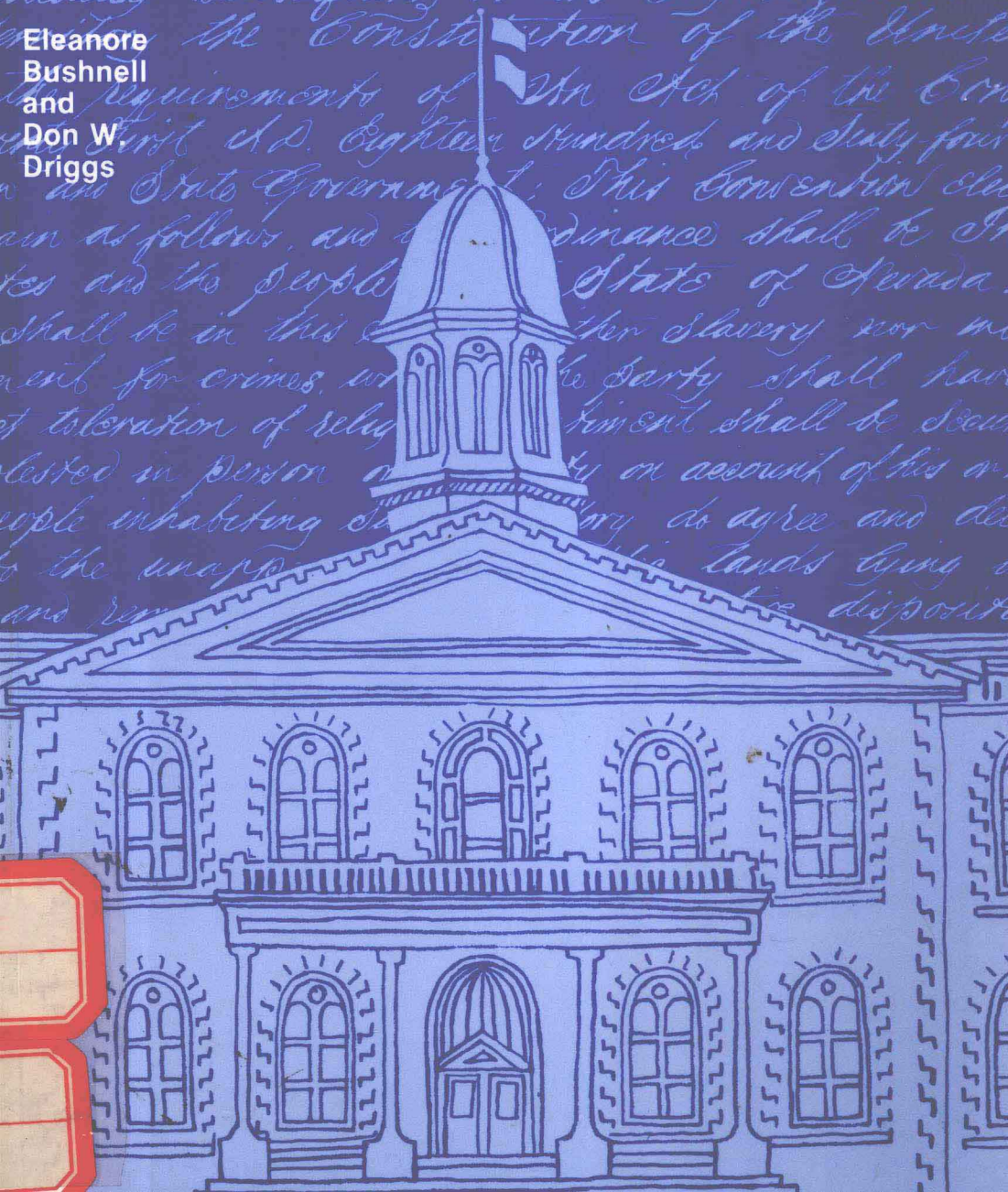
THE NEVADA CONSTITUTION:

Origin and
Growth

Sixth edition

Eleanore
Bushnell
and
Don W.
Driggs

Nevada Studies
in History and
Political Science
Number 8



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Four former governors of Nevada at the inauguration of Governor Robert List in January 1979. From left to right: Grant Sawyer (1959–66); Paul Laxalt (1967–70); Mike O'Callaghan (1971–78); Robert List (1979–82). The construction equipment in the background was being used during restoration of the state capitol. (Courtesy of Governor List)

PREFACE TO THE SIXTH EDITION

NEVADA'S ECONOMY in the mid-1980s, contingent as it is and has been upon the nation's, and more particularly California's, economic vigor, appeared to be rebounding nicely from the recession of the early part of the decade. Not "recession-proof," as gaming had sometimes been thought to be, the state's major revenue producer struggled through a lean period in the early 1980s. Restoration of Nevada's financial health can be attributed to the nationwide economic improvement that always stimulates the tourist business and consequently the gaming industry; also, increased promotional activities undertaken by the state government and by various convention authorities have contributed to the restoration.

Maintaining the vitality and respectability of gaming is the overriding concern of the state's political and economic leaders. Other major concerns include taxation policies, energy, inflation, water, pollution, transportation, and education. Most of these problems arise from Nevada's increase in population, an increase expected to continue for many years to come. Although most states confront these same problems in varying degrees, in Nevada they are compounded by the upward surge in residents—11.3 percent in 1983 over the 1980 federal census—and a surge that is projected to continue throughout the century. The population increase has occurred almost entirely in the regions of Las Vegas and Reno, putting, thereby, a particularly heavy burden on the political leaders in these two areas.

Enlargement of the resident population magnifies the difficulties common to most states. Nevada is hard pressed to fund its schools, provide an adequate and pure supply of water, increase its sewage capacity, and provide the entire complex of services strained by unremitting growth. Those of Nevada's leaders who attempt to focus atten-

tion on the consequences of such growth often face public indifference until people are confronted with smog, an inadequate supply of water, rising crime rates, and streets glutted with cars doing their share to increase pollution. Then cries for action are heard from certain groups, while other groups accept things as they are and prefer them to continue unimpeded. Politicians have difficulty in meeting or balancing the demands of these forces. The desire to serve the best interests of the public (and to be reelected) exerts great pressure on officeholders. Even so, the mid-1980s require thorough, rational, and cautious policy formation and execution. Fragmented, piecemeal reactions to each new crisis offer a poor substitute for developing long-range policies.

One agreeable consequence of population increase caused Nevada to become entitled to a second seat in the United States House of Representatives. In 1982, Barbara Vucanovich (Republican) won election to the House and thereby became not only the first person to be part of a two-member House delegation but also became the first woman representative ever to serve in the national legislature; so Congresswoman Vucanovich attained, thereby, a firm place in the political annals of this state.

Although Democrats outnumber Republicans in voter registration, this advantage does not assure electoral success for members of that party. For example, in 1982 when Congresswoman Vucanovich made history, Nevadans also elected a Republican to the United States Senate and a Republican to the state attorney general's office while electing Democrats to the other state posts. In addition to not showing striking party loyalty, Nevada voters do not go to the polls in impressive numbers; only 42.5 percent of Nevadans eligible to vote in the 1980 presidential election did so, making this state forty-eighth of the fifty states in voter turnout. Voter indifference worries campaigners for office; it also worries believers in the importance of extensive public involvement in civic concerns.

Two other major and threatening difficulties facing Nevada in the mid-1980s deserve mention. Both are characteristic of troubled inter-government relations in a federal union. The first concerns the MX missile and whether Nevada should or must allow this system to be installed here. The second centers on disposal of the lethal by-products of nuclear energy, with the health and safety imponderables contingent upon its storage; Nevada, and other states used as dumping grounds, experience political and social uneasiness in the absence of adequate control over a national, inadequately resolved refuse problem. The ability of the state's government to analyze and deal with these and other

problems will be the measure of its effectiveness and the source of citizen satisfaction or displeasure.

Chapters 1, 2, and 3 remain essentially as they appeared in the earlier editions of this work. Don W. Driggs, my colleague in the political science department, made certain changes in the first three chapters, and expanded, reshaped, and brought up to date the other chapters.

During the nineteen years that span the period between publication of the first and sixth editions of this book many debts to public officials, reviewers, colleagues, friends, and students have been incurred. Among state officers who provided valuable assistance are Shannon L. Bybee, formerly with the Gaming Control Board; Andrew Grose, assistant to Governor Richard Bryan and before that research director, Legislative Counsel Bureau; Noel Manoukian and E. M. Gunderson, justices, Nevada Supreme Court; Russell W. McDonald, formerly Washoe County manager; Robert M. Sader, assemblyman; William D. Swackhamer, secretary of state; and Gordon Thompson, formerly justice, Nevada Supreme Court.

Nevada's congressional delegation responded to requests for information swiftly and generously. Former Senator Howard W. Cannon, Senators Chic Hecht and Paul Laxalt, Congressman Harry Reid, former Congressman James Santini, and Congresswoman Barbara Vucanovich made significant contributions.

Among many colleagues and friends who helped, special thanks are extended to Jerome E. Edwards, Russell R. Elliott, Paul S. Hanna, Helma Elizabeth Kuehn, Linda Nagy, William Neeley, Richard Siegel, and Pamela Wilcox.

The cooperative allies named above, and others too, are warmly thanked. Professor Driggs and I absolve them completely of any errors of fact or interpretation that may have made their way into this book.

E.B.

Reno
March 1984

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CHAPTER 1

BEFORE STATEHOOD

IN AN AMAZINGLY BRIEF PERIOD of time, the area that became the State of Nevada went through an astonishing metamorphosis: it progressed from a virtually unknown wilderness to full-fledged statehood in slightly less than forty years. Part of a sprawling land mass under the nominal control of Mexico in the 1820s and 1830s, the area was known only to a few trappers and explorers. In 1848 the region that is now Nevada became joined to the United States, since it was a portion of the vast tract ceded by Mexico at the termination of the Mexican War. In 1850 the national government established in part of this great expanse of land the Territory of Utah; as an integral part of that territory, present-day Nevada came for the first time under control of a formally organized government. Nevada became a separate territory in 1861 and a state in 1864. So swift a leap to full partnership in the United States federal system is unusual.

Of the thirteen western states, only California achieved statehood more rapidly than Nevada; and since California was never a territory at all, it is not truly comparable. The other western states progressed from territory to state in the following spans of time: Oregon in eleven years, Colorado in fifteen, Washington in twenty-one, Wyoming in twenty-two, Montana in twenty-five, Idaho in twenty-seven, Utah in forty-six, Alaska in forty-seven, Arizona in forty-nine, Hawaii in fifty-nine, and New Mexico in sixty-two years. Thus, Nevada, with only a three-year gap between her designation as a territory and her accession to the Union as a state, moved from territorial status to statehood far more rapidly than any other western state.

The remarkable acceleration of Nevada's transformation from an almost unknown region with no governmental structure to full statehood in forty years is attributable to many forces. Among them are these: the

California gold rush, abrasive relations between the national government and Utah Territory, the Comstock discovery, and Lincoln's determination to strengthen the Union position by securing more antislavery congressmen. These forces also influenced the governmental pattern that emerged.

In addition to the speed with which Nevada attained statehood, two other aspects of its history are unusual: both its organized government and its known history are relatively recent. The Indian tribes who lived for thousands of years within present-day Nevada kept no records. The Spaniards, who had legal title to the region until 1821, and the Mexicans, who succeeded to the title and retained it until 1848, made no known explorations of significance nor any lasting settlements. Except for the Indian tribes, there were no permanent residents in Nevada until 1851, and, until Carson County was organized in 1854, no legally authorized local government functioned in the area. Thus, Nevada is a young state both in the span of its recorded history and in the length of its experience with government.

Nevada Before 1849

Before the gold rush to California brought thousands of people streaming across Nevada, the only information about the area was supplied by trappers, explorers, and a few emigrants who traversed it in defiance of orders of the Republic of Mexico, which had forbidden trespass of any kind without a Mexican passport. These early visitors generally described the region as formidable and hostile to settlement.

The first white man to cross what is now Nevada, according to extant records, was Jedediah Smith. In 1826, accompanied by about fourteen trappers, he passed through southern Utah to the Virgin River and entered California by way of southern Nevada; on his return trip, in 1827, he crossed central Nevada, following in a general way the present route of Highway 6. In 1828 a Hudson's Bay Company group, led by Peter Skene Ogden, entered Nevada near the present town of Denio, on the Oregon border. Ogden was the first white man to view the Humboldt River and the first to travel its entire length. In 1833 a group fitted out by Benjamin L. E. Bonneville and led by Joseph Walker came into the territory in search of beaver; the Bonneville expedition, particularly memorable because it was the subject of Washington Irving's *The Adventures of Captain Bonneville, U.S.A.*, is believed to have been the first group of white men to ascend the Sierra Nevada from the east.

Another expedition of importance was the Bidwell-Bartleson party of 1841. As the first band of emigrants to cross Nevada on the way to

California, this party inaugurated overland migration through Nevada. Others who had crossed the Great Basin were explorers or trappers who had no intention of making permanent settlements. A second emigrant party, the Walker-Chiles group, traveled to California in 1843. Part of the group, under the leadership of Walker, followed the Humboldt River

and then turned southward to Walker Lake. They traveled southward, negotiating the Sierra Nevada Mountains by Walker's Pass, discovered by Walker in 1834. This party was the first to bring wagons overland to California through the Great Basin, proving that the land of interior drainage was an adequate corridor to California, one in which vehicles could be used.¹

The first official exploration of the Great Basin was made by John C. Frémont. In 1843–44 he conducted an expedition to ascertain the accuracy of the existing maps of the country by comparing them with the reports of the trappers and with his own observations. He also explored territory not previously visited by the fur trappers and made botanical, geographic, and other scientific observations of the area. In 1844 Frémont came upon Pyramid Lake, which he described as follows:

... we encamped on the shore, opposite a very remarkable rock in the lake, which had attracted our attention for many miles. It rose, according to our estimate, six hundred feet above the water; and, from the point we viewed it, presented a pretty exact outline of the great pyramid of Cheops. Like other rocks along the shore, it seemed to be encrusted with calcareous cement. This striking feature suggested a name for the lake, and I called it Pyramid Lake. . . .²

Before Frémont's expedition, knowledge of the geography of the Great Basin was inaccurate, even mythical. "... it was not until 1844 . . . that John Charles Frémont . . . made his important pronouncement—the area lying between the Wasatch and the Sierra Nevada Mountains is an interior-drainage basin."³ His visit and his reports not only furnished scientific data but also stimulated popular interest in the region.

Other parties of both emigrants and explorers came through Nevada during this early period. Probably the best known of the emigrant parties was the Donner group in 1846–47. This unfortunate company, after camping briefly near the present site of Reno, continued its trek toward California and was trapped near Donner Lake in the unusually early and heavy snowfall of October 1846. Of the original company of eighty-seven only forty-seven survived the ordeal.

Thus, until the fourth decade of the nineteenth century, when present-day Nevada became part of the United States, no permanent settlements were made in the region; it was a hunting ground for trappers and a thoroughfare for emigrants on their way to the West Coast.⁴ Of permanent occupation, of government institutions, we find nothing.

The 1840s and Settlement of Nevada

Three important events in this decade led to the occupation of Nevada and to the establishment of organized government: (1) the cession by Mexico of vast territories to the United States in the Treaty of Guadalupe Hidalgo in 1848; (2) the migration of the Mormons into the Salt Lake area and later into much of the region that now comprises Nevada; and (3) the discovery of gold in California.

At the same time that the Donner party was trapped at Donner Lake, the Bear Flag War between Mexican authorities and the Americans for possession of the land was going on in California. The Mexican War (1846–48), of which the Bear Flag War was a segment, ended with the defeat of Mexico and the signing of the Treaty of Guadalupe Hidalgo, in which Mexico ceded a large amount of territory to the United States government; this territory included what is now Nevada, Utah, California, parts of Wyoming and Colorado, and the desert Southwest. More than a hundred years after the United States signed this treaty, the Indian Claims Commission ruled that neither Spain nor Mexico had owned the land; that it belonged to the Indians who occupied it; and that they were entitled to compensation for being illegally dispossessed. Monetary restitution for the theft of Indian land began in 1975.

The second important development in the 1840s was the trek of the Mormons to the Great Salt Lake Valley. In March 1849, two years after their arrival, Brigham Young and his group held a convention in Salt Lake City and organized a provisional government for what they called the “State of Deseret.” This government was designed to control an enormous portion of the land acquired in the Mexican cession; its boundaries, as defined by Brigham Young, encompassed what is now Utah, Nevada, Arizona, a little of Oregon, part of Wyoming, and part of California. Congress did not recognize this grandiose arrangement. Not until the Compromise of 1850 established Utah Territory and confined its boundaries to a far smaller land mass than the extensive “State of Deseret” did present-day Nevada become part of an organized government.

The third important factor in Nevada’s development was the California gold rush, which brought thousands of people through the area and

occasioned a need for stations to provide equipment and supplies for the gold seekers.

Organized Government

As part of the Compromise of 1850, Congress admitted California to the Union as a state and established territorial governments in Utah and New Mexico. Formal United States control over Nevada began with the Compromise of 1850, since most of the area that is now Nevada lay within the boundaries of the newly created Utah Territory. The first seat of government of Utah Territory was Fillmore City; in 1856 the capital was changed to what was then called Great Salt Lake City. Brigham Young, leader of the Mormon church, was appointed governor of the new territory and served in that capacity from 1850 to 1857.

In 1851 John Reese and a party of Mormons came into the Carson Valley. They found the land suitable for farming and advantageous because it lay along the route to California. Hence, they decided to remain in the valley. Reese and his company promptly built a stockade to shelter the livestock and for protection against the Indians. This stockade, which has been restored, was the first permanent settlement in what was then western Utah. The community was called Mormon Station until 1856, when the name was changed to Genoa. In addition to being Nevada's first permanent community, Genoa was also the nucleus around which the first indigenous government in the region was formed.

The residents of Mormon Station were too far from the seat of government in Salt Lake City to place much confidence in or feel much identification with the Utah territorial government. Moreover, not all of the settlers were communicants of the Mormon church; some of the non-Mormons were actively antagonistic to the church and did not want to be controlled by a church-connected government.

In November of 1851 the citizens of Mormon Station decided to acquire local control of their own affairs and met to organize a squatters' government. They adopted rules for the peace and good order of the community, regularized procedures for rights in land, set up a permanent committee to govern the area, and drafted a petition to Congress requesting establishment of a territory separate from Utah.

This "government" was not authorized by either the Utah territorial government or the government of the United States, nor did it function to any appreciable degree. One difficulty facing the squatters' government was the new settlers moving into the Carson Valley. These newcomers, indifferent to, possibly unaware of, the problems that had brought the unauthorized government into existence, did not actively support it.

In 1853, despairing of effective local government under Utah control, some of the residents petitioned the California legislature for annexation. No action was taken on the settlers' attempt to be annexed to California, and their petition of 1851 for separate territorial status had been ignored by Congress. Thus, neither of their efforts to secure a change in government severed them from Utah's control. Instead, the settlers' efforts stirred the Utah government into activity and a determination to establish effective control over the dissident residents of western Utah.

Carson County

On January 17, 1854, the Utah territorial legislature created Carson County⁵ and provided for appointment of a probate judge who was authorized to organize the new county and to conduct an election to fill the various county offices. Two years before, Utah had created seven counties extending westward from Utah into what is now Nevada; the newly created Carson County was carved from four of the previously established counties.

Brigham Young appointed an influential Mormon, Orson Hyde, as probate judge for Carson County. Hyde arrived at Mormon Station on June 15, 1855, with a party of about forty men, including a federal judge and a United States marshal. Judge Hyde called for a county election, which was held September 20; most of the officers elected at this time were Mormons. The government that Hyde established was essentially theocratic and engendered intense dissatisfaction among the non-Mormons, who, in 1856, made another effort to have the region annexed to California. The California legislature acted upon this second appeal for annexation by sending a resolution to Congress in support of the residents' petition. But this request, like the earlier one, was ignored by Congress.

Efforts to have the Carson County area annexed by California reappeared in reverse in 1968. In that year several communities in eastern California, long offended by that state's policy with respect to water allocation, sought to have themselves annexed by Nevada, claiming that reapportionment had reduced them to political nonentities in California, that California taxes were more burdensome than Nevada's, that Nevada officials showed more concern for the people than officials in California, and that eastern Sierra counties would have greater legislative representation in Nevada than they had in California. Constitutionally, the most interesting argument made by the eastern California residents in support of their plea for annexation was that the act creating Nevada

Territory in 1861 described the boundary as the crest of the Sierra Nevada. But Attorney General Harvey Dickerson's opinion was disheartening. He explained that the Enabling Act of 1864, which allowed Nevada to seek statehood, established Nevada's western boundary as the eastern boundary of California. He pointed out that the Enabling Act was the controlling statute, and that years of acquiescence to the border line drawn in the act precluded reopening the question. Despite this discouraging opinion, citizens of Mono County and adjacent regions continued to look for ways to bring their part of California into the State of Nevada.

The separatist influences of 1856 were met by counteraction on the part of Brigham Young, who sent more Mormons into the Genoa (Mormon Station) area to maintain the hegemony of the Utah government and of the church. Dozens of families were instructed to move to Carson County. In the county election of August 1856, these new settlers combined forces with the earlier Mormon inhabitants to elect, once again, a predominantly Mormon slate of officers, much to the irritation of the non-Mormons.

In 1862, several years after Judge Hyde had been recalled from his post in Carson County and had returned to Utah, he wrote a letter indicating that he had not always been happy in his former position as judge and administrator of the county and had, in fact, suffered indignities. Because of the abruptness of his departure for Salt Lake City in 1856, he could not arrange for the orderly disposal of his lands and his mill, and these properties were subsequently appropriated. His letter was a malediction upon the people of Carson and Washoe valleys:

You shall be visited of the Lord of Hosts with thunder and with earthquakes and with floods, with pestilence and with famine until your names are not known amongst men, for you have rejected the authority of God, trampled upon his laws and his ordinances, and given yourselves up to serve the god of this world; to rioting in debauchery, in abominations, drunkenness and corruption. You have chuckled and gloried in taking the property of the Mormons, and withholding from them the benefits thereof. . . . If perchance, however, there should be an honest man amongst you, I would advise him to leave; but let him not go to California for safety, for he will not find it there.⁶

Hyde went on to say that unless the money he claimed to be due him was paid, he would see that the inhabitants of the area were destroyed.

In January 1857, the Utah Legislature, as part of its preparation for expected conflict with the federal government, attached Carson County to Great Salt Lake County for revenue, election, and judicial purposes;