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JUDGE MATTHEW DEADY AND THE POLITICAL CULTURE OF OREGON

by David A. Johnson

Among nineteenth-century men of the law and politics in Oregon, none remains as fascinating, or as puzzling, as Matthew Deady. A pioneer of 1849, early legislator, territorial supreme court justice, and long-time judge of the federal district court, Deady left a personal mark on the law, and more broadly the political culture of Oregon, that resonates to this day.

Many intriguing puzzles surround his view of law and society; central to these puzzles is his political conversion at the time of the Civil War.

A MAN COMMITTED TO EIGHTEENTH-CENTURY IDEALS

Crucial to understanding Deady's mid-century ideological conversion — and, through it, his most basic political convictions — is his commitment to anachronistic political ideas drawn from the eighteenth century. That he took his ideological cues from the eighteenth, not nineteenth, century is of great importance, for the last twenty years of scholarship on the founding period in American history have shown that a vast gulf separated the political thought of the 1780s from beliefs that were central during Deady's own time.

In general, this shift is captured in the contrast between eighteenth-century "classical republicanism" and the more familiar (to us) "liberal individualism" of the nineteenth century. According to historians such as Gordon Wood and J.G.A. Pocock, the political ideas of eighteenth-century American revolutionaries originated in sources long ignored by scholars. As they put it, the American founders did not reason from principles taken from John Locke and Adam Smith;

rather, they drew upon the classical politics of Aristotle, the renaissance texts of Machiavelli, the eighteenth-century republican treatises of Montesquieu, and pamphlets of seventeenth- and eighteenth-century English critics of market commerce and finance.

Neither liberal nor individualist, this "classical," eighteenth-century republicanism defined citizenship in terms of "independence" and "civic virtue." It held that the foundation of a republic depended upon citizens who were independent of the will of others (by virtue of possessing land or skills that guaranteed familial self-sufficiency) and imbued with civic virtue — a disinterested commitment to the common good. Where liberal thought conflated politics and economics, holding that the pursuit of self-interest in the marketplace produced the common good, classical republicanism studiously separated the two, stressing the primacy of the political (as a binding activity addressed to the "common wealth") over the economic (understood as a socially divisive activity stemming from self-interest). Classical republican thinkers — and their eighteenth-century American counterparts — located the downfall of republics, in theory and in history, in precisely the qualities that the liberal individualist ethos idealized: the pursuit of self-interest. According to the classical view, self-seeking corrupts civic virtue as individuals, obsessed with luxury, accumulation, and display, seek power over others. In the process, citizen is divided from citizen, leading inexorably to dependence, desperation, and anarchy.

In different guises, the ideas of classical republicanism always remained Matthew Deady's inspiration. Before the Civil War he was nominally a Democrat and defined

himself in terms of the eighteenth-century thought of Jefferson. Nowhere is this more evident than in the 1857 Oregon constitutional convention. Deady, who served as president of the convention, stood out from his fellow delegates as the only frank and full defender of slavery. Central to his brief for the peculiar institution was his argument that it would protect the republican virtues of an agrarian society from the corrupting force of commerce, manufacturing, and urban growth. Slavery, Deady wrote a friend before the convention,



MATTHEW DEADY continued

will render independent and attractive agricultural pursuits and thus induce the bulk of our population to continue tillers of the soil, instead of swarming into over grown cities to strive to live by their wits — becoming in some instances purse proud millionaires, but more frequently sharpers, thieves, rowdys, bullies, and vagabonds.

Even more pointedly, Deady evinced his eighteenth-century republican views in the constitutional convention debate over corporations. Here he displayed republican fears of the degrading effects of modern commerce and manufacturing even more pointedly. To safeguard republican virtue in Oregon, he proposed a constitutional provision that (via unlimited stockholder liability) aimed at outlawing corporations from the state. "If this provision is adopted," he admitted,

it would have the effect of preventing the creation of any joint stock company in this country . . . , and the reason is that I do not want to encourage a fungous growth of speculators in this country.

In support of his proposal Deady drew upon classical republican ideas to recount the evils that attended the rise of commerce. "A great deal," he remarked, "has been said about bringing capital into the country and encouraging enterprise," but "how much better off will we be then than now?" Deady had in mind the fate of those countries where manufacturing corporations prevailed. Although outwardly prosperous and wealthy, they were — more importantly — rife with the corruption of "millions of poor human beings degraded into the condition of mere servants of machinery." In your mind's eye, he urged the convention, consider the factory scene — "that hive of human beings . . . and the mournful sense of servitude legible on every limb." Furthermore, Deady asked the convention to contrast the plight of these dependent beings with the present advantages Oregonians enjoyed — "individual independence" in an "agricultural community" possessed of "domestic virtues." Echoing phrases from *Jefferson's Notes* on Virginia, he reminded the delegates that "in manufacturing



If Matthew Deady's views had prevailed in 1857, Sybil Harber (left) and "Aunt Louisa" Wright would have been slaves under Oregon law. Wright was the first Black in Halfway and Harber became a midwife in Lakeview.

countries power, political and otherwise, is in the hands of capitalists; there are many people dependent on them, and dependence begets servility."

A SHIFT IN POLITICAL ALLEGIANCES

The conviction with which Deady held these views — which comport well with what scholars refer to as the "country" views of eighteenth-century Southern slaveholders — is without doubt. It is therefore striking to notice how quickly he repudiated this version of eighteenth-century republicanism after the Civil War. With the South's secession in 1861 Deady slowly but surely shifted his political allegiances, but his shift was only nominally to the new banner of the Republican party. Deady himself described his conversion in eighteenth-century terms, defining himself thereafter as a "Federalist" and shifting the sources of his political inspiration from Jefferson to the Virginian's great eighteenth-century antagonist, Alexander Hamilton.

In the spring of 1861 Deady exited the Democratic party. Behind his departure was an idiosyncratic attempt to make sense of the South's secession. This he did by seeing secession through the eyes of Federalists who in 1798 had been fearful of Jeffersonian sedition. From 1861 to the end of his life Deady interpreted both instances as symptomatic of the same Jeffersonian malady — idealization of the popular will and majority rule, and a conflation of self-interest with the common good. In this regard he came to appreciate and defend John Adams for his republican vigilance and to denounce Jefferson for his "seduc-

tive . . . humbugs about every man being his own government"

After 1861, Deady's re-conceiving of Jefferson and his party never wavered. The Democracy remained for him the party of demagogues who manipulated the "Polloi" with the "Sans Culottes" doctrine of "might makes right." His prior identification with this party he explained as an "accident of birth" and error of youth. When charged with disloyalty and threatened with removal from the federal bench, he explained to Republican friends (who intervened in his behalf with Attorney General Edward Bates) that "time and experience have dimmed [my] youthful fancies, so that . . . now, I might and may be considered more of a Federalist of the Washington and Hamilton school, than a disciple of the Sans Culottes philosophy of Jefferson."

Accompanying Deady's renunciation of the "Sans Culottes" Democratic party was his affirmation of "Federalism," through which he positioned himself above the political main currents of the industrial age: the social Darwinism of gilded age capitalists and the insurgent doctrines of the working-class masses (which he often correlated, respectively, with the Republican and Democratic parties). Against both Deady affirmed republican principles he attributed to Hamilton.

Deady reasoned that both capitalist and working-class politics were based on instincts of self-interest and, thus, threatened the republic's survival. But his

antipathy was not apportioned equally between these two political alternatives: Deady's greatest enmity was directed toward working-class movements. Although in rural Oregon the labor movement was small and insurgence infrequent, there was one instance in which it came to the fore, and Deady's opposition to it was immediate and outspoken. This was the anti-Chinese movement.

In the 1870s and 1880s Deady opposed anti-Chinese agitators of every stripe, surprising all who remembered his pro-slavery views in the 1850s (not the least his advocacy in 1857 of a constitution dedicated to the "pure white race"). The anti-Negro and Chinese prescriptions in the constitution — which he had helped write — he came to dismiss as mere sops to the mobocracy, "a dead letter. . . intended to quiet the fears and placate the prejudices of a certain class of voters who were supposed to stand in dread of being overslaughed by an influx of these black and yellow people."

The "certain class" to which Deady here referred was the Jeffersonian "rabble," and when they came before his court to ask enforcement of the constitution's anti-Chinese provisions, he condemned them. Outside his court he similarly denounced the popular crowds that organized in the 1880s to drive the Chinese from Oregon and called upon the governor to bring the full force of the law down upon them.

Deady's shift in racial views, as Ralph James Mooney has pointed out, derived in part from his lifelong aristocratic pretensions. And while this interpretation is illuminating in important ways, it needs to be complemented by an understanding of the way in which Deady's aristocratic views stemmed from the interplay between the two sides of his post-secession ideological perspective: his renunciation of Jeffersonianism and his affirmation of Federalism. Symbiotically, these shaped the aristocratic tenor of his thought and, in turn, his perspective toward the anti-Chinese movement.

Against the crowds and their precept of "might makes right," Deady did indeed align himself with the financial, merchant, and manufacturing elite of Portland. That he shared much with these men — on matters over and above the Chinese issue — goes without saying. But while Judge Deady traveled in and around the higher circles of Oregon



Later, Deady opposed anti-Chinese demonstrators who would have denied men like this laundryman the right to work.

society, his ties to them were always at the margin. His income as a judge imposed upon him a comparative — and nettling — poverty. To keep up even modest appearances, he found himself from time to time forced to accept financial favors, which he recognized, with ill-concealed chagrin, as a form of middle-class charity. In the final analysis, Deady's attitude towards his superiors in wealth was ambivalent. He appreciated their industry and praised their contributions to religious, cultural, and educational institutions (while never thinking them generous enough). But to the extent that they took pride in their riches and equated their personal interests with right, he denounced them as certainly as those he saw as the modern representatives of the Jeffersonian rabble. The grounds on which he denigrated the higher orders was eminently Hamiltonian: they failed his test of public virtue. They lacked the manners and morals of a republican gentry, mistaking the accumulation of personal wealth for adherence to the common wealth.

On the acquisitiveness of the late nineteenth-century elites, Deady always cast a jaundiced eye. As a judge, his stance toward the emerging corporate-industrial order was cautious and understated. It was also shaped (and hedged) by his reverence for legal precedent and the traditions of the common law, our great inheritance from England, he pointed out at every opportunity (and in Hamiltonian terms). But in this regard Deady the judge must be placed beside Deady the civic exhorter, whose speeches to Fourth of July celebrators and graduating classes (composed of the rising

gentry) most clearly affirmed, in classical republican terms, his "Federalism."

In these addresses Deady offered jeremiads against the social Darwinian doctrines of gilded-age capitalists. The "gilded juggernaut," as he put it, held out only "vulgar extravagance, fast living, and garish display." The outcome of luxury, extravagance, and display, Deady insisted, was well known historically. Notably, the history to which he turned was that of the ancient republics. "The Censors of Rome," he advised audiences on numerous occasions, "referring to the decline of Roman morals and manners consequent upon the contact with the corrupt and lascivious people of Antioch, were wont to exclaim: 'The waters of the Orontes have muddied the Tiber!'" "So," he went on, drawing out the contemporary moral of his republican tale,

in view of the events which have transpired within the last few years in the city bearing the honored name of the father of his country, may not we with equal reason exclaim: 'The waters of the Hudson have muddied the Potomac!'

Against the "gilded juggernaut," on the one hand, and "Sans Culottes" politics of the working class on the other, Deady called for a return to the first principles of the Federalist founders. In a speech he repeated numerous times in the 1870s and 1880s, Deady called upon his listeners to "preserve and improve this heritage . . . by promoting and encouraging that individual integrity and intelligence, without which civic virtue is impossible."

The alternative, as Deady enunciated it, was decay and collapse. "The decay and downfall of popular governments," he averred, "has always arisen from and always will be the result of a lack of public virtue. . . that love of country which puts the common-weal before self, the people before the individual."

As he grew older Deady's republicanism grew stronger, reinforced to no small degree by his social and professional position in Portland. Struggling financially while his pioneer friends prospered, he was constantly reminded of the relative poverty his republican calling as a judge had brought him.

And yet, Deady was not a man without honor in his state; his eighteenth-century conception of his political self resonated in the political culture of Or-

egon. His declamations on republican responsibility, in which he offered an alternative to the doctrines of "modern political economy," struck a chord. In this respect, Deady's political views contained a final element — ironically, in his terms, less Hamiltonian or Federalist than Jeffersonian — that bears notice.

In 1887 he recorded in his journal that "I Have been reading at odd hours Montesquieu and am getting quite interested. I have often said that it requires more virtue to run a republic or a democratic form of government, but did not know that he had anticipated me in the opinion." Discounting his philosophical impertinence, there was an important truth to his recognition of the similarities between his views and those of the French thinker.

THE IMPORTANCE OF HOME GOVERNMENT

Since the 1870s — unaware of Montesquieu — Deady had held that "the seed plot of the civic virtues is the home government — the government of the neighborhood — the State." The nurturing of civic virtue could occur, he insisted, only within "a limited and well defined locality — one having a marked natural boundary and identity or long established separate existence." As ever, he underscored his point with classical references. "When the city of Rome made itself mistress of the civilized world and extended the boasted privilege of Roman citizenship to all the nations of the earth," he averred,

the identity and individuality of the city was proportionally destroyed. The sentiment of patriotism diffused over so large and ill-defined a surface as the empire, became too attenuated and indistinct, to be of any avail as a motive power or incentive to noble and disinterested action.

"So," Deady concluded, "however powerful and extended this American Union may yet become . . . its beneficent duration must primarily rest on and depend on the character of local communities and governments out of which it is constituted."

The local community and government which Deady had in mind, of course, was Oregon, a state that in 1893, the year of his death, was almost as isolated and ingrown as it had been in 1849, the

year of his arrival. Deady alternately celebrated and feared for Oregonians' resistance to the political economy of modernity, but judging by his popularity as a speaker he always found in Oregon an environment receptive to his atavistic views. Honored upon his death as the state's "first citizen," remembered thereafter as "Oregon's Justinian" (a reference he doubtless would have appreciated), commemorated for his encouragement of public education and culture, his life displayed

the extent to which Oregonians at the end of the nineteenth century retained older, eighteenth-century republican suspicions of the modern world. These suspicions are with us yet.

David Alan Johnson is a professor of history at Portland State University and author of the forthcoming *Founding the Far West: California, Oregon, Nevada, 1840-1890* (University of California Press), from which this article is taken.

Help Us Write a Little History

The U.S. District Court of Oregon Historical Society is publishing a history of the court, conducting oral interviews, and undertaking several other projects that will have lasting value in the area of legal history.

You can help by joining the Society—or inviting a colleague to join.

Please return the application form to:
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YES, I would also like to volunteer to help with the following Historical Society projects:

- Oral History Project Publication of the Court's History

An Occasion That Is Not To Be Missed

THIS YEAR'S ANNUAL MEETING FEATURES A VERY SPECIAL GUEST



WILLIAM O. DOUGLAS, in the person of actor Glenn Mazen, will make a special appearance at the 1991 annual meeting of the

U.S. District Court Historical Society, Thursday, November 21, at the Sculpture Court of the Oregon Art Institute. Mazen, who has presented Douglas to over 20,000 people throughout the country, will offer excerpts from the one-man play by Robert Litz after the 5:30 p.m. annual business meeting and 6:00 p.m. cocktail hour.

A gala dinner, catered by the Benson Hotel, will follow the program. The evening has been planned by Annual Meeting Dinner Chairperson Arlene Schnitzer.

From his beginnings as a prairie-bred preacher's son from Yakima, Washington, William O. Douglas rose to become the longest sitting justice in the history of the Supreme Court. During his years on the Court, he served under five chief justices and seven presidents, writing over 1,200 opinions and 33 books.



"You can't believe how many times I've been threatened, cajoled, begged, almost bribed to quit. Lately I've been subjected to arguments about my health—notably my lack of it—and my age—specifically my excess of it. I've been told I'm incompetent! Incontinent at times, perhaps, but incompetent—never!"

William O. Douglas

"My one big disappointment was that when Nixon's enemy list turned up during the Watergate hearings, my name wasn't on it."

William O. Douglas

"Bill Douglas was an extraordinary man; Glenn Mazen is an extraordinary actor."

Wayne Johnson, Seattle Times

The setting for *Douglas* is his chambers in the Supreme Court building on the morning of November 12, 1975, a few hours before his retirement is announced. As the play opens, the old man sits crumpled in his wheelchair, holding a limp left hand, his head shaking in palsy. Against his will, he is moving out.

This is the story of a 77-year-old man taking the measure of his accomplishments and failures, coming to terms with his own mortality, with those who influenced him, and with those against whom he struggled for so many years.



The annual meeting is open to members and their guests. For those who have not yet joined the organization, memberships will be available at the door—or use the membership coupon in this newsletter. Cost for the event is \$40 per person.

FOR RESERVATIONS, please call 228-8476 by November 14.

Thursday, November 21

Calling All Interested Members

**NOVEMBER 9 WORKSHOP
WILL TRAIN YOU
TO HELP RECORD
DISTRICT COURT HISTORY**

Capturing and recording the history of the U.S. District Court for Oregon is a many-faceted job. Now, as some of our members complete a book about the court's overall history, we are seeking others to record the oral histories of individuals who have first-hand knowledge of the court's work in recent years. Considering the fascinating cases and personalities involved, the job of those who volunteer should be an enviable one!

Of course, "doing" oral history involves more than simply sitting down with an informant and a tape recorder. To make sure volunteers do the job right (and thereby collect histories that are truly useful), the Histories Committee has arranged a half-day workshop led by experts from the Oregon Historical Society. The workshop will be held from 9:30 a.m. to 12:30 p.m. Saturday, November 9, at the Historical Society. In addition to serving our own members, the session is open to non-members from other organizations, such as Oregon Women Lawyers and Queen's Bench, who also wish to collect oral histories of individuals connected with the district court.

Joyce Hyne, Histories Committee chair, sees this as an excellent opportunity for aspiring oral historians to receive thorough training. Following the November 9 workshop, participants will have several opportunities to meet indi-

vidually with Oregon Historical Society professionals and receive personalized help with their projects.

Because of the individualized nature of the instruction, workshop enrollment is limited. To reserve a place, please call Joyce Hyne at 796-2949 by October 31.



Thanks to life member William O. White for sending this photo of U.S. District Judge James Burns (left) and Erskine B. Wood. The photo was taken at a May 30 reception held in connection with an exhibit honoring Mr. Wood's grandfather, C.E.S. Wood.

***A Special Welcome
to our New Members***

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Maurice O. Georges
Kevin Nicholas Keane
Calvin L. Keith
H. Clifford Looney
William Purdy
Steven O. Rosen
Senator Dick Springer
Henry C. Willener

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