

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

---

Great Plains Quarterly

Great Plains Studies, Center for

---

1992

## Law on The Great Plains: An Introduction

John R. Wunder

University of Nebraska-Lincoln, [jwunder1@unl.edu](mailto:jwunder1@unl.edu)

Follow this and additional works at: <https://digitalcommons.unl.edu/greatplainsquarterly>



Part of the [Other International and Area Studies Commons](#)

---

Wunder, John R., "Law on The Great Plains: An Introduction" (1992). *Great Plains Quarterly*. 661.  
<https://digitalcommons.unl.edu/greatplainsquarterly/661>

This Article is brought to you for free and open access by the Great Plains Studies, Center for at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Great Plains Quarterly by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

# LAW ON THE GREAT PLAINS

## AN INTRODUCTION

*Brown v. Board of Education of Topeka* is one of the most important cases in American jurisprudence. Almost everyone recognizes the name of the case and its importance for ending legal segregation in the United States, but almost no one pays any attention to its setting, Kansas and the Great Plains. Does this case represent part of a distinctive legal culture of the Great Plains? Until recently, we have had no way to answer this question because no one has ever attempted a systematic study of law on the Great Plains. This issue of the *Great Plains Quarterly* is the very first such study. The fifteenth annual symposium of the Center for Great Plains Studies, held in March 1991 and devoted to "Law, the Bill of Rights, and the Great Plains," was the first conference of scholars solely devoted to discussing plains law. In this issue are four essays originally presented at that symposium.

The first essay, "The Legal Culture of the Great Plains" by Kermit L. Hall, begins the definition and suggests future research. Hall credits Walter Prescott Webb with the first attempt to consider law and the Plains. Webb, Hall argues, defined the region and its law in terms of environmental determinism, but Hall sees property law development on the Plains more closely associated with economic com-

petition than environmentally induced innovation.

Hall next considers lawlessness as a theme of plains legal culture. Vigilantism did occur on the Plains, but as an exception to the rule, and violence fell into distinctive southern and northern rather than plains-wide patterns. Southerners were more violent toward others but northern European immigrants on the northern Plains were more violent to self, more prone to suicide. Political violence occurred, especially in the late nineteenth and early twentieth centuries, and Populism encouraged societal disruption.

In terms of women's rights, Great Plains jurisdictions did pioneer reforms in divorce law and married women's property rights, and to some degree in suffrage, but in other areas they seemed slow to produce legal change. For understanding the place of federalism in plains legal culture, Hall suggests the theme of colonialism and its response, which other regions did not have to confront. Although Hall concludes that a Great Plains legal culture may be more borrowed than created, he begins the definition.

The other three essays are case studies of specific incidents that help define a Great Plains

legal culture. First is the Case of the Poison Porridge. Hall does not address Canada, but Ken Leyton-Brown studies anti-Chinese violence in Saskatchewan to describe a close legal and social interplay. By 1907 significant numbers of Chinese immigrants had settled in Saskatchewan, concentrating in Moose Jaw, Saskatoon, and Regina. In Regina the successful restaurateur Charlie Mack employed several other Chinese including Mack Sing, a cook, when a new restaurant next door drew business away from him. One day Charlie Mack borrowed some oatmeal from his neighbor, and the next morning many customers who had eaten oatmeal prepared from the tin returned by Charlie Mack sickened from arsenic poisoning. Three died, Charlie Mack disappeared, and anti-Chinese hysteria took over in Regina. In the middle of the night the police rounded up and detained almost all the Chinese residents of the city. Mack Sing was charged with murder. A similar anti-Chinese disturbance occurred in Saskatoon.

The Chinese, however, reacted to this humiliation by suing the Regina mayor, chief of police, and two mounties for a total of \$28,000. Mack Sing was acquitted, and in February 1908 the Chinese won their civil suit. Although they were awarded only \$350 plus interest, this was a significant amount, and the court enforced the judgment by holding property of the defendants as collateral. Charlie Mack was never found, but there were no more anti-Chinese raids in Saskatchewan. Although the police failed the Chinese of Regina, the courts offered them restitution. No other anti-Chinese riot in either Canada or the United States ended with such a vindication.

Another kind of violence, vigilantism, occurred in the Niobrara country of Nebraska at the end of the nineteenth century in the Case of the Lynched County Treasurer. James W. Hewitt defines vigilantism and traces its history in northeast Nebraska before explaining how it combined with politics in an explosive situation. Barrett Scott, Republican Holt County treasurer, was accused of embezzlement and removed from office by the Populist Holt County

Board of Supervisors. Scott refused to leave and successfully defended himself in court—then left for Mexico. A New Mexico Territory sheriff found Scott and brought him back to O'Neill, Nebraska, to face an indictment.

Scott was found guilty, but the Nebraska Supreme Court suspended the sentence and set him free on bond. This did not sit well. Scott was kidnapped and hanged, but the seven men charged with the crime were never convicted. Hewitt concludes that this vigilante extra-legal action did not occur because of the lack of a legal system or the failure of the legal system to convict Scott. Instead, it represented the extremist political rivalry of the Great Plains at its most heated, an agenda beyond the normal scope of vigilantism.

Agrarian protest is also the subject of the third case study, by James W. Ely, Jr., the Case of the Greedy Railroad. Ely explains the overpowering sense of colonialism residents of the Great Plains felt during the last quarter of the nineteenth century. Many farmers and ranchers were offended by exorbitant railroad freight and passenger rates and succeeded in electing state legislatures that would pass regulatory laws. Minnesota was among the states that passed such "Granger" laws, establishing the Minnesota State Railroad and Warehouse Commission to set railroad rates. The Chicago, Milwaukee & St. Paul Railway Company challenged these rates and took the state to court. In a "milestone in the evolution of economic due process," the United States Supreme Court ruled in *Chicago, Milwaukee & St. Paul Railway Company v. Minnesota* (1890) that the Minnesota statute deprived the railroad of property without due process of law. Furthermore, the court found that it was entitled to determine the fairness of state rates.

Shock waves rippled across the Plains. Were farmers to be totally at the mercy of the railroad robber barons? Had federalism been fundamentally altered? The Minnesota legislature accepted the court's challenge and amended its regulatory statute. The revised Minnesota law allowed the commission to regulate rates the courts found unreasonable. Railroads were to be

given notice of rate changes, the right to appear at an administrative hearing, and the right to appeal commission orders to state district courts. According to Ely this watershed case led to innovation by state governments, who met the Darwinian economic jurisprudence of the Supreme Court with limited accommodation and continued legal resistance.

Thus, this issue of *Great Plains Quarterly* provides a framework for defining the legal culture of the Great Plains, presents case studies that illustrate the general principles, and challenges its readers to pursue additional studies of law and the Great Plains.

JOHN R. WUNDER  
Director, Center for Great Plains Studies  
University of Nebraska-Lincoln



In conjunction with the Law symposium, the Center for Great Plains Studies mounted an exhibition of paintings by Norman Saunders, one of the best and most prolific of illustrators of the pulp westerns of the 1940s, 1950s, and 1960s. The vivid diagonals, dynamic content, and unerring draftsmanship of *Road Agent Beware* demonstrate why Saunders was successful and popular at the same time that the painting portrays the destructive extralegal violence that continues to characterize people's views of law on the Great Plains. *Road Agent Beware*, casein on illustration board by Norman Saunders. Painting reproduced courtesy of Ellene Saunders.