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Chief Lawyer of the Nez Perce: Reassessing the career of a cultural broker

Daniel R. Gibbs
University of Texas-Pan American

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CHIEF LAWYER OF THE NEZ PERCE:
REASSESSING THE CAREER OF A CULTURAL BROKER

A Thesis

by

DANIEL R. GIBBS

Submitted to the Graduate School of the
University of Texas-Pan American
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COMMITTEE MEMBERS

Dr. Christopher L. Miller
Chair of Committee

Dr. Linda English
Committee Member

Dr. Russell Skowronek
Committee Member

August 2010

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ABSTRACT

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Chief Lawyer of the Nez Perce has been misunderstood for over 150 years. The purpose of this thesis is to dispel the myth of the *good/bad* dichotomy about a two-dimensional Chief Lawyer. A man lacking any deeper motives than to gain favor with the Whites and get what he could for himself before the offer at hand was removed from the negotiating table. By reexamining the literature with new eyes one might apply a different paradigm exposing another dimension to Lawyer's character, one that has long been overlooked. This study will use the concept of the "working misunderstanding" as its lens for this examination, hoping to shed new light on this century and a half of controversy.

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CHAPTER I

THE CHIEF LAWYER DICHOTOMY

In mainstream society we like our Indians as sidekicks (or foils) who always agree with the real hero of the story—*good Indians*; or in war paint, falling backward and being dragged behind a galloping horse while the stagecoach bounces away with only a few stray arrows as reminders of the narrow escape—*bad Indians*. We are usually not prepared to think of a three-dimensional human who thinks and acts independently as an equal to his or her White counterpart. We expect a subaltern—a yes man, or an adversary who needs to be exterminated in order that *civilized* White society is free to come and go safely.

By never looking too closely at the one of many Indians shot from his horse we do not need to grant him an identity, so we can justify eliminating him like one more ant that disturbed our picnic—this is the typical mindset of the colonizer, whether the intentions are good or bad. We identify with the people in the stagecoach making inroads into the wild to expand civilization. They are more like us than the Indians who pursue them. Therefore, we immediately see them as the protagonists and grant them the benefit of the doubt.

The Indians may have seen the stagecoach and the weapons onboard as desirable technology, as material goods they would trade for in good faith. They may have envisioned a reciprocal trade relationship with these people, but may also see the degradation of their homelands and the plundering of their economic resources. They surely want to have more control over the terms of meeting this strange intruder. Unfortunately, we as spectators do not

see two groups of people with differing worldviews and differing values—the basis of a “working misunderstanding.”¹ Instead, we see a group of people who we can identify with being attacked by another group who we see as *different*. We have already projected our biases on them.

Chief Lawyer has been misunderstood in much the same way for over a century and a half. The purpose of this thesis is to dispel the dichotomous myth about a two-dimensional Chief Lawyer. Who has been accused of acting only in a manner which would gain favor with the Whites and get what he could for himself before the offer at hand was removed from the negotiating table. By reexamining the literature with new eyes one might apply a different paradigm to be able to see another dimension to Lawyer’s character emerge, one that has long been overlooked. This study will use a concept of the “working misunderstanding” as a lens for this examination, hoping to shed new light on this century and a half of controversy. R. W. Wyllie points out that colonizers “see the local situation in terms of categories and problems—indeed, in terms of the very words—that they learned ‘at home’ in quite a different polity and economy.”² This group who has authority over the local population forms their opinion, according to Wyllie, from every aspect of their life in the mother country, including their family, friends, schools, books, art, and political affiliations.³

The colonized people see the local situation through eyes and understandings formulated in a similar fashion, but the stimuli are different. Both groups have “words, morals, and ethical values, and expected responses” which are learned.⁴ Both groups view such things as life, power, and the world in general based on the unconscious input of cultural information.

¹ R. W. Wyllie, “Some Contradictions in Missionizing,” *Africa: Journal of the International African Institute* 46, no. 2 (1976): 196-204.

² *Ibid.* 196-204.

³ *Ibid.* 196-204.

⁴ *Ibid.* 196-204.

Unfortunately, the way that the two groups see a particular situation are very different—the working misunderstanding.

It is difficult for the colonizers to attempt to change the situation, even in beneficial ways, because their understanding of the circumstances are not aligned with those of the colonized, so the outcome is usually unsatisfactory. To compound the problem, “neither the culture of the colonizer nor that of the colonized can be regarded as a homogenous entity carried by an undifferentiated group, since cleavages clearly exist *within*, as well as between, the two broad cultures.”⁵ Wyllie asserts that “all colonies” have “features normally described as “‘pluralistic’ with traditional and modern structures and institutions co-existing in a very loosely integrated fashion.”⁶

This is a fitting description of the Plateau culture in general, the Nez Perce in particular. Such internal cleavages also existed among the treaty commissioners to some extent: although Isaac Stevens, Washington’s territorial governor and Joel Palmer, Oregon’s Indian superintendent, presented a united front to the Indians, they were of two different viewpoints and represented a pluralistic nation. This also applies to the missionaries, settlers, and others within the broader White culture.

It is necessary to look at the issues and policies that created the situation that brought Lawyer’s world into the realm of Euro-American interest. The trajectories that put these two worlds on a collision course were set in motion long before any of the players in question ever came on the scene. It is important to follow the history as the worldviews change over time. These changing worldviews are what makes up the basis of the American character, the ethos

⁵ *Ibid.* 196-204.

⁶ *Ibid.* 196-204.

which motivated the historical actors in question to do as they did. The events in this history shape these actors and propel them onto the stage which we are focused upon.

In chapter two, one will see a particular mindset formed by such influences as President Washington's Secretary of War, Henry Knox, Thomas Jefferson, Andrew Jackson, Justice John Marshall, among other. This collective, cumulative viewpoint formed the set of circumstances within which Isaac I. Stevens participated that not only made him seem qualified, but also put him in the right place to have these qualifications noticed. Above all, he was zealous in his actions and put his mental and physical energies behind the national aspirations of Manifest Destiny. Stevens and the missionaries who had preceded him had personified the aforementioned condition of the colonizer trying to improve the colonized. While the missionaries had initially been invited, they had imposed cultural changes on the Plateau peoples which they could never had contemplated and the missionaries could not recognize as being of their making.⁷ By the time Stevens entered the picture he had a new set of answers to questions the Indians had not asked. At this point most of the Indians wanted nothing to do with the Whites, or at least to keep them at arm's length.⁸

It is equally important to trace the history of Lawyer's people on the Columbia Plateau. In doing so, not surprisingly, we will see a culture in a state of flux. Lawyer was a product of this transition. It is not clear at what rate the sociopolitical transitions took place during the prehistoric period on the plateau, but in the protohistoric phase it is clear that the changes were taking place within a couple of generations—during the span of Lawyer's lifetime he saw the bulk of these changes occur. The velocity of change was increasing during Lawyer's lifetime,

⁷ The schism which began at Lapwai in 1838 with Spalding and the tewats, Big Thunder and Looking Glass is a prime example of the changes brought about by the missionaries yet it is unlikely that Spalding understood his role in causing the problem (see chapter 3).

⁸ The council in the Grand Ronde Valley in 1854 attests to most of the Indians' desire to be left alone (see chapter 3).

but while his contemporaries also experienced this change not everyone on the Plateau experienced this change at the same rates or in the same ways—some were less receptive than others.

It is important, too, to trace the historiography concerning Lawyer in order to trace the evolution of a “working misunderstanding” among those who have set their sights on narrating the events in which Lawyer participated. A lot of the literature is the result of biases, *good* and *bad*. As mentioned, the purpose of this research is to dispel this *good/bad* dichotomy. Even though it seems so evident that many scholars are approaching Lawyer’s story with a jaundiced eye, it is still difficult for one to put a finger on a specific passage and cite it as showing this bias and explain its source. One might suspect that much of it comes from a nostalgic construction of the authentic Indian, such as Chiefs Kamiakin or Young Joseph, rather than Lawyer. In fact, Lawyer’s cooperation with the Whites threatened the existence of that idealized Indian, if there is such a being. The truth is that no Indian living during the protohistoric or historic period of the Plateau could fit the bill if one sought an Indian who was unchanged by Euro-American contact.⁹

A central aspect of this study is the “working misunderstanding” that has plagued the historiographical discourse about Lawyer and his times. In an effort to avoid such misunderstandings, it seems perfectly in order to preface the current discussion by agreeing on some mutually acceptable terminology so that all participants share an understanding of the nuances within the discourse at hand. Because many of the resources in this discussion span roughly two centuries, some terms will arise which would today be considered politically incorrect, but when discussing someone else’s ideas or presenting a quote, it is not practical to

⁹ The aboriginal period turned protohistoric about 1700, when the horse was first introduced to the Plateau. Christopher L. Miller. *Prophetic Worlds: Indians and Whites on the Columbia Plateau*. 1st ed. Seattle: University of Washington Press, 2003, 26.

continually shift from one term to another when they are basically synonymous, just to avoid using an outdated expression.

I prefer to use the common tribal names whenever possible; such names as Nez Perce, rather than Nee Me Poo or Nimiipuu because most readers will lack familiarity. As one can easily see here, due to a lack of standardized spelling, there would be far too much confusion to use an array of synonyms. The commonly used tribal names are generally the name given the tribe by others, often their enemies, whereas most Indian groups refer to themselves as Historian Colin Calloway explains, as “‘the people’ or ‘the real people’; there was no need for a collective term embracing all the peoples of North America until Europeans arrived and invented one.”¹⁰ I will also avoid the pluralization of group names—Nez Percés, Cayuses, etc.—which can become extremely awkward, especially when used in the possessive case.

Of course, these tribal names will arise in direct quotes, also. Therefore, I will, when necessary, provide footnotes to aid in keeping track of individual and tribal names. I use such terms as *Indians* and *Native Americans* synonymously. Calloway presents a perfect example of the stylistic quagmire that can occur when trying to remain politically correct in an academic discourse. He illustrates the confusing redundancy of using “‘American Native American policy’ or ‘American—Native American relations . . .’”¹¹ I agree with Calloway’s approach to the use of such terms as “European, American, colonist . . . non-Indian”¹² but in addition to these terms I occasionally use Euro-American or White (with a capital *W* because of the intent to distinguish ethnicity/race, rather than color, as in Black to refer to peoples of African origins irrespective of individual skin tone). Of course, I will not use terms which are intended as racial

¹⁰ *The World Turned Upside down: Indian Voices from Early America*, The Bedford series in history and culture (Boston: St. Martin's Press, 1994), vii.

¹¹ *Ibid.* vii.

¹² *Ibid.* vii.

slurs or purposely derogatory in nature, except in direct quotes. When such terms occur in direct quotes I will contextualize them in a footnote.

Many of the people and places referred to herein have more than one name with no standardized spelling. Many authors hyphenate the syllables in Indian names. I will continue this practice within direct quotes, but conjoin the syllables when I write them otherwise, simply because it forms a single word which is recognizable by modern word-processing software, thus making such operations as spell-checking easier. Native Americans often have more than one name during their lifetime and even more than one name at a time among their kinsmen, not to mention the English name which most receive. Here I intend to approach these concerns by selecting one name for each individual, group, and geographic place described whenever I am discussing them, and present my usage in a footnote when the quotation of a source forces the use of another term or spelling which deviates to the point of not being obvious as to the meaning. As for tribal names, I will present them in the same way that I do the names of individuals. This should simplify things somewhat.

To reiterate, the purpose of this thesis is to explore the character of Chief Lawyer in historical context in order to highlight the broader tendency of falsely dichotomizing historical figures, especially those involved in Indian/White relations. To put an end to sidekicks “playing Indian” in juxtaposition to a White protagonist or the noble/ignoble savage making futile war against the pioneer/invader.¹³ Again, it is important to recognize that the *good/bad* binaries sell these historical actors short and create false impressions of the past. In the foreword to Christopher L. Miller’s *Prophetic Worlds*, Chris Friday points out “that American Indians’ understandings of and reactions to contact are best understood in an ideological, rather than a

¹³ The term “playing Indian” is taken from Philip Deloria (*Playing Indian* (New Haven, Conn.: Yale University Press, 1999)), but also refers to Gerald Vizenor’s playful critique of false dichotomies (see the Preface to *Manifest Manners: Narratives on Postindian Survivance*, 2nd ed. (Lincoln: University of Nebraska Press, 1999)).

purely material context.”¹⁴ Therefore, ascribing purely materialistic motives to them is doing them and the reader a disservice. One must recognize that these people, Red and White, were interacting in the arena of ideas—theologies and secular worldviews as well. When the dialectic interaction broke down it was not so much a matter of one party’s unwillingness to compromise in terms of material concessions, but rather due to an ideological impasse. As Elliot West put it so precisely, “The two sides were speaking past each other.”¹⁵

¹⁴ Miller. *Prophetic Worlds*, viii.

¹⁵ Elliott West, *The Last Indian War: The Nez Perce Story*, 1st ed. (New York: Oxford University Press, USA, 2009), 65.

CHAPTER II

THE ROAD TO WALLA WALLA

The United States has not had a consistent Indian policy built upon solid, long-term principles and ethics; there has not been one standard method used by the U.S. government in dealing with Indians. Instead, as one might expect in a democratic republic, changing administrations, changing social trends, changing political parties, changing moral and ethical norms have made treatment of the Native peoples under the government's authority an eminently political process. As a nation, the United States has dealt with American Indians with political expediency, shaped most often by self-serving politicians seeking to pay off favors, meet party demands, satisfy local constituents, or simply as objects for political log rolling and deal making. In this environment misunderstandings have been created and perpetuated, myths have been passed on as part of our national psyche, and an atmosphere of distrust has engulfed formal relations between the federal government and the various Indian nations.

The aspect of Lawyer's career that figures most prominently in the controversy surrounding him was his role in the relations between Plateau peoples and the federal government. In order to understand those relations, it is first necessary to sketch out the course of U.S. Indian interactions that established the expectations and precedents under which the key players in this drama were operating. Such precedents and expectations were at the core of the misunderstandings that shaped this drama and continue to affect history's perception of its players.

From the outset of its national existence, the United States was forced to deal with the reality of Indian nations residing within and on its immediate borders. Its first constitution, the Articles of Confederation, had declared [Article IX] that “United States in Congress” had “the sole and exclusive right and power of . . . regulating the trade and managing all affairs with the Indians.” This exclusive authority was maintained when the Articles of Confederation was superseded by the Constitution. In a similar passage [Article 1, Section 8], the Constitution granted the new federal government the power to “regulate commerce with foreign nations, and among the several States, and with the Indian tribes”. In its construction, this provision established a legal link between Indian “nations”, foreign nations, and domestic states that would require significant judicial attention in the years to come.

In line with the authority granted in the Constitution and the legal links that suggested, Henry Knox, Secretary of War during the Washington administration, proposed treating all Indian tribes as foreign nations and that treaties should be conducted under the authority of the federal government. Also that all lands ceded by the Indians would be paid for. This was the basis of the act passed in 1790 and was to be the official national policy for interactions with Indians in the United States.¹

Despite Washington’s and Knox’s good intentions, the means for dealing with Indians in the real world of the western frontier departed significantly from peaceful negotiations. As historian Gordon S. Wood put it, “. . . purchasing the Indians’ rights to the land and assimilating or protecting them in a civilized manner as Knox recommended depended on an orderly and steady pace of settlement.” But as Wood also points out, hungry for land, the average settlers believed they were “the chosen people of God . . . [and] paid no attention to the plans and

¹ Anthony F. C. Wallace. *The Long, Bitter Trail: Andrew Jackson and the Indians*. Hill and Wang, 1993, 32-33.

policies concocted in eastern capitals.”² Washington’s policy toward the Indians was to be short lived, not only due to the general disregard by the American settlers, but by the political expedience of following administrations. Moreover, money meant little to Indians in exchange for their lands, their life ways, and the inheritances passed from generation to generation. For whatever reason, Euro-Americans failed to understand the Indian mindset toward their lands, and the Indians were most likely unaware of the meaning of land to Europeans.

The Americans had learned an important lesson in dealing with Indians from the British: decisive violence directed at them spoke louder than eloquent diplomacy or cash, particularly when applied as a “scorched earth” approach, wiping out crops and food stores, a tactic that devastates agrarian and hunter/gathers, because it takes so long to recover from such a loss. Hunger, especially when directed against the noncombatants, was the deciding motivator that forced the Confederacy to capitulate. This only served to widen the gulf of understanding between the two cultures as it was applied on successive Indian frontiers.

As Indian lands filled up with American homesteads they cleared the forests and drove away the game. The Indians were left with too little land for a subsistence lifestyle, therefore they were being forced to assimilate, relocate, or fight. Thomas Jefferson and others of his generation generally agreed. As Jefferson saw it, the Indians had only two choices; “they will in time either incorporate with us as citizens of the United States, or remove beyond the Mississippi.” He outlined his thoughts on how this would play out in the same letter to Harrison saying “[s]hould any tribe be fool-hardy enough to take up the hatchet at any time, the seizing the whole country of that tribe, and driving them across the Mississippi, as the only condition of

² Gordon S. Wood. *Revolutionary Characters: What Made the Founders Different*. Penguin (Non-Classics), 2007, 27.

peace, would be an example to others, . . .” and for those non-aggressive tribes, “purchase their whole country for what would place every individual at ease, and be a small price to us . . .”³

While not coming right out and saying that the policy should be that of forced removal, Jefferson surely implied that this was what should be the method of dealing with the Indians blocking expansion of the United States.

Whether force or negotiation, assimilation or alienation was to be the settled course for the nation in dealing with its “Indian problem,” the legal issues of Indian land title and the legal mechanism for transferring it had to be settled. Whatever else the United States was to be, in the minds of its leaders it was, first and foremost, a “nation of laws” and, for better or worse, dealings with the Indians had to be conducted legally (if not always ethically).

The key legal case that would establish the ruling precedent for Indian law in the United States was *Johnson v. M’Intosh* (1823).⁴ Chief Justice John Marshall penned the court’s unanimous opinion. In it he cited aspects of international practice and the specific background and precedents established through British dealings with the various Indian nations. This historical foundation led the court to conclude that, in the words of analyst Rennard J. Strickland, “Indian nations, together with the states and the federal government, constitute the three components of American federalism, of coexisting legal and political sovereignties, that define the United States.” However, the status of the federal government is supreme in relation to the

³ Thomas Jefferson. *Thomas Jefferson: Writing: Autobiography / Notes on the State of Virginia / Public and Private Papers / Addresses / Letters*. First Edition. Library of America, 1984, 1118-1119.

superordinate states and Indian nations, thus, Strickland continues, “Indian nations are ‘domestic dependent nations’ with Indian law based on this political status rather than on race.”⁵

Further, the court concluded that while Indians had legally occupied the land in the Americas prior to European entry, they did not own these lands in fee simple; their rights were limited to a right of use and occupation. This decision made Indian land claims subordinate to those of European nations. Thus, Indians could be coerced into treaties which ceded their lands to the United States, in what was negotiated nation to nation, even though not on equal footing.⁶

The question of federal supremacy in Indian affairs and the legal link between Indian nations, states, and foreign nations complicated the simple logic in *Johnson v. M’Intosh*. In that decision, the Supreme Court had ruled that only a sovereign state, ostensibly the federal United States, could acquire title to lands held by another sovereign state. Thus Indian lands could not be sold to private individuals and any titles transferred in this way were null and void. But this did not address the actual legal status of Indian nations vis-à-vis that of foreign or domestic states. This all came to a head several years later when Marshall again took up his pen to resolve remaining dilemmas in the twin cases of *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832).

Crediting Justice Marshall as a “brilliant politician,” David Wilkins describes the jurist’s handling of *Cherokee Nation v. Georgia* as being “procedural sleight of hand,” raising the question whether the Cherokee Nation was a foreign nation in the context presented in the Constitution. Turning back to the reasoning in *Johnson v. M’Intosh*, he asserted that it was not, but that it was a “domestic-dependant nation” with a relationship equivalent to a “guardian to his

⁵ Rennard J. Strickland, “Native Americans.” Kermit L. Hall, *The Oxford Companion to the Supreme Court of the United States*, 2nd ed. (Oxford University Press, USA, 2005), 669.

⁶ *Ibid.* 670.

ward,” to the federal government, thus, avoiding an immediate political quagmire in exchange for judicial expedience.⁷ Then in the *Worcester* decision he honed this definition by concluding, in the words of analyst David Wilkins, “Indian tribes had a significant degree of sovereignty; that sovereign rights were inherent [“though diminished”]; that tribes were independent and exempt from state law; and that Indian treaties had the same validity as treaties with foreign nations

Clearly, consistency has never been the ruling principle in Indian affairs. Despite Marshall’s intentions with regard to protecting Indian “wards”, political expediency continued to trump legal principle. In his *First Message to Congress* (December 8, 1829), President Andrew Jackson embraced the guardian’s role with respect to his Indian wards, pointing out that federal policy consistently had been to “introduce among them [the Indians] the arts of civilization, in the hope of gradually reclaiming them from the wandering life.”⁸ The problem, as he explained it, was that while trying to acculturate the Indians they had generally succeeded in pushing many farther away into the wilderness, thus, deeper into their accustomed ways. The exceptions having been the Five Civilized Tribes in the South who had so completely taken up the White man’s ways that they wanted to form their own government, causing friction with the state governments, within whose boundaries they resided. In both cases, the appropriate solution was to move the Indians west of the Mississippi River, beyond the powers of any states’ jurisdiction and establish their own territory there. Jackson also stated in that same message that “[t]his emigration should be voluntary: for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers, and seek a home in a distant land.”⁹ Unfortunately for the Indians, Jackson ignored his own stated opinion of what would be *cruel* and *unjust*: over the

⁷ David Wilkins, *Uneven Ground: American Indian Sovereignty and Federal Law*, (Norman [Okla.] university of Oklahoma Press, 2001), 83-84.

⁸ Andrew Jackson, *The statesmanship of Andrew Jackson as told in his writings and speeches* (The Tandy-Thomas Company, 1909), 56.

⁹ Jackson, *The statesmanship of Andrew Jackson*, 56.

balance of the nineteenth century, Indian group after Indian group was, in fact, forced to “abandon the graves of their fathers, and seek a home in a distant land.”

Historian Walter E. Borneman, in his biography of James Polk calls the Indian Removal Act of 1830 and resulting Trail of Tears to be “[p]erhaps the darkest chapter of Jackson’s presidency . . . [which] postponed any resolution of Anglo-Native American relations.”¹⁰ Borneman adds that, with Polk’s acceptance of slavery as a deeply-rooted economic tradition along with his views on Manifest Destiny give insight to his character where Indians are concerned. “A man with no qualms about buying and selling other humans probably did not dwell on how expansionist policies might affect indigenous Native Americans . . .”¹¹ It is quite possible that this was the prevalent thought in the period between the Revolutionary War and the Civil War, two great struggles for freedom for all men, separated by a time of trampling the freedoms of any who stood in the way of the current political policy.

“Manifest Destiny” was a term coined by journalist John L. O’Sullivan in the *Democratic Review*, (1845). After the American victory in the War for Independence and War of 1812 the nation was caught up in the fervor of the religious revival of the antebellum period. The combination of American victory in war, economic transformation during the Industrial Revolution, and her new-found religious rebirth created a sense of “exceptionalism” which could only be explained as “Devine Providence.” Indeed, O’Sullivan’s term, “Manifest Destiny” became a slogan of nationalism God which demanded the spread of Christian-American moral ideals and to save the entire continent from its state of savage depravity. O’Sullivan saw

¹⁰. Walter R. Borneman *Polk: The Man Who Transformed the Presidency and America*. First Printing (stated). Random House Trade Paperbacks, 2009, 32.

¹¹ *Ibid.* 31 .

democracy as no more than the temporal manifestation of what it was to be Christian without the impediments of “artificial life.”¹²

This national urge to expand was seen by many as a Christian duty. Samuel F. B. Morse exhibited this view of manifest destiny as being divinely ordained upon the American people when he demonstrated his telegraph by sending a biblical verse, (Numbers 23:23) “It shall be said of Jacob and of Israel, What hath God wrought!” metaphorically tying the creation of the Puritan/American on this continent to that of God, through Jacob, the nation of Israel, the homeland of God’s chosen people. Of his message, Morse said that it “baptized the American Telegraph with the name of its author’: God”¹³

“Manifest Destiny” became the Democratic political slogan that embodied the national conscience encompassing not only the religious ideals of the young nation, but also scientific, and a sense of an “empire of equality” (for Anglo-Saxons) who could not resist the call to duty to expand from sea to sea and beyond, (many expansionist coveted Cuba and even South America) in order to “civilize” the “savages.”¹⁴

This spirit of American entitlement as expansionists was not unanimous, however. Many Whigs, such as David Wilmot, Abe Lincoln, and perhaps the most outspoken of all, John Quincy Adams were highly critical of the methods and ethics of the expansion by filibustering in the Mexico, Texas, and Oregon. These opponents of manifest destiny as a more benign synonym for imperialism evoked their Christianity as their moral measuring stick as they attempted to abolish

¹² Anders Stephanson, *Manifest Destiny: American Expansion and the Empire of Right* (Hill and Wang, 1996), 38-40.

¹³ Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848*, Hardcover Edition, (Oxford University Press, USA, 1007) 2-3.

¹⁴ *Ibid.* 3.

slavery. They saw expansionism as the expansion of slavery. Adams suspected that President Polk was “using the northwest claim [of ending joint occupation with Britain] to muddy the waters around Texas slavery,” . . . “but he still believed that God had ordained America to occupy the region and make it “blossom as the rose . . .”¹⁵ As Howe points out, “the Christian religion remained an enduring element of imponderable magnitude in American life and thought, simultaneously progressive and conservative, a source of both social reform and divisive controversy.”¹⁶

As Borneman notes, beyond legal precedent and political expediency, the phenomenon of Manifest Destiny was a shaping agent in U.S. Indian policy. With the young nation becoming crowded east of the Mississippi River, adventurous Americans began looking farther west. A new movement was taking shape in the United States, or at least it seemed like a movement, after all, its proponents were on the move. “Daring and audacious conduct, a willingness to depart from well-worn customs, a forward-looking desire to embrace the new,” according to historian Yonatan Eyal, “these were all attributes of the ideology named Young America.”¹⁷ “Young America’s imprint,” Eyal says, “moved the Democratic organization closer toward the Whig line of thinking, accepting economic growth and American nationalism.” Describing this new ideology which surged through the Democratic Party in the 1840s and 1850s as many “outmoded ideology of agrarian solidarity and republican virtue,” were replaced by “market growth, technological invention, entrepreneurial opportunity, and other aspects of what contemporaries considered the modern world.”¹⁸

¹⁵ Stephanson, *Manifest Destiny*, 60.

¹⁶ Howe, *What Hath God Wrought*, 836.

¹⁷ Yonatan Eyal, *The Young America Movement and the Transformation of the Democratic Party, 1828-1861*, 1st ed. (Cambridge University Press, 2007), 2.

¹⁸ *Ibid.* 2.

This movement began as a literary “slogan” but turned into a “cohesive” and “self-conscious” group of politicians, with Senator Stephen Douglas as one of their most prominent members, and James Polk their first Candidate to be elected president of the United States. “Despite a recurring generational consciousness, the ‘fuzzy boundaries’ of Young America present a tricky and elusive issue.”¹⁹ Because of the arbitrary way in which members defined themselves, Young America served as an umbrella for many alliances including “bisectional” coalitions. These young Democrats were, according to Eyal, “[r]esponsible for the mindset of Manifest Destiny,” and he adds that “they completed an unprecedented expansion of American territorial boundaries,”²⁰

From the mid 1840s to mid 1850s, Young America pushed “for a more active government, assertive overseas involvement, investment in local infrastructure, and reform of basic American practices (including slavery).”²¹ Young America’s candidate for the presidency in 1852, Franklin Pierce, won and his supporters were hopeful that he would move their agenda forward²²

Expansionism found an ally in a religious movement known as the Second Great Awakening which grew steadily from 1801 to the Civil War era.²³ A renewed American Christianity fed the momentum of Manifest Destiny because “the aims and methods of evangelical Protestantism and democratic liberalism became inseparably linked.”²⁴

Ethnohistorian Christopher Miller likens the Protestant movement’s efforts to transform American culture for their brand of expansion to “syncretism” combining the popular view of

¹⁹ *Ibid.* 10.

²⁰ *Ibid.*, 11.

²¹ *Ibid.*, 12.

²² *Ibid.*, 12.

²³ Miller. *Prophetic Worlds*, 66.

²⁴ *Ibid.*, 67.

American exceptionalism with the moral superiority of Christianity. They championed an obligation “to expand, not for its own aggrandizement, but to fulfill its preordained role in God’s eternal plan . . . nothing less than moral reform of the world . . . in America’s image.”²⁵

The proponents of this movement “found full expression in the movement to annex . . . “Oregon Country” [a]s early as 1820, but never gained momentum in Congress until 1825, when national expansion became synonymous with “national security.”²⁶ One Protestant organization in particular took an interest in Oregon in 1827. The American Board of Commissioners for Foreign Missions (ABCFM) began actions to send a “little colony” along with its mission to the area. In 1829 the American Board sent their agent J.S. Green from the Sandwich Islands to the coast of Oregon to investigate the viability of installing a mission there. Green reported that “white traders had polluted the coastal Indians to the point that saving them would require a much more massive effort than the missionary societies had supposed,” then adding “that the areas around the Columbia and Umpqua rivers might prove suitable.”²⁷

The first missionary to arrive in the Oregon Country was Reverend Jason Lee, sent by the Methodists in 1834, in response to “The evangelical religious revival of the 1820s and 1830s in the eastern United States, together with a plea by some Nez Perce for a knowledge of the Bible . . .”²⁸ In 1836, the American Board of Commissioners for Foreign Missions (headquartered in Boston, MA.) answered the Indians’ plea by sending the Whitman-Spalding party to Oregon as missionaries to the Indians. They traveled overland to the American Fur Company’s Rendezvous at Green River, where they were met by a group of Indians who would escort them

²⁵ *Ibid*, 71.

²⁶ *Ibid*, 71.

²⁷ *Ibid*, 73.

²⁸ Terence O'Donnell, *An Arrow in the Earth: General Joel Palmer and the Indians of Oregon* (Portland, Or: Oregon Historical Society Press, 1991, 44.

to their new home on the Columbia Plateau.²⁹ This group of missionaries was to bring lasting change to the Plateau culture in a myriad of ways that no one could predict at the time of their arrival.

Dr. Elijah White, arrived in Oregon as a Methodist missionary, but went back east after a falling out with Rev. Lee. He returned in September of 1842 leading a wagon train of 112 settlers he had enlisted, and in his new capacity as Federal Indian Commissioner. “Ever since the great Methodist invasion of 1838,” Miller says that “settlers had been drifting into the Oregon country, but from 1841 on, the numbers increased dramatically.”³⁰ In 1843 Dr. Marcus Whitman had traveled east and returned to Oregon with approximately 1000 emigrants in a wagon train which he guided from Missouri—the largest group of settlers up to that point to reach Oregon.³¹

In fact, in 1843 a group of emigrants numbering around nine hundred “had been encouraged to go west by Senator Linn’s call for free land . . .” and in 1844 a “group of fourteen hundred, [led by] Col. Cornelius Gilliam,” arrived in Oregon. Most of these emigrants settled in the Willamette Valley. They were of diverse backgrounds and often opposing political views. Many were “Yankee” Whigs, while others were Southern Democrats, and others, like Gilliam, were hoping to start an independent state in the area.³²

Political idealists like Pierce, and the economic speculators both rallied around the practical expediency of a national system of transportation and communication from shore to shore. Mid-nineteenth century American presidents generally maintained a stance of pro-westward

²⁹ Drury. *Chief Lawyer of the Nez Perce Indians*, 20.

³⁰ Miller. *Prophetic Worlds*, 96.

³¹ Drury. *Chief Lawyer of the Nez Perce Indians*, 67.

³² O'Donnell, *An Arrow in the Earth*, 45.

movement for non-Indian settlers and pro-transcontinental railroad, both requiring that Indian land be utilized and subsistence patterns were disrupted. In the 1850s Congress appropriated thousands of dollars for launching railroad surveys and sending government representatives to extinguish Indian title to large tracts through treaty negotiations. An “Indian Ring” formed, composed of land speculators, politicians, and railroad interests, “—a union of dishonor that bought off congressmen, bilked the public purses, and expropriated Indian homelands.”³³ Using the treaty system as a tool, crooked Indian agents and unscrupulous business interests were able to steal thousands of acres of Indian lands.

Between 1852 and 1856, spanning the Fillmore and Pierce presidential administrations, the United States parleyed more than fifty treaties, shifting ownership of over 170 million acres of land from Indian tribes. A large portion of land was procured from tribes in the Pacific Northwest by the efforts of governor of the newly-formed Washington Territory, Isaac Ingalls Stevens and Oregon Territory’s Superintendent of Indian Affairs, Joel Palmer,

Isaac I. Stevens began his rise to moderate fame after the Mexican-American War. “Stevens was very much a part of the ‘Young America’ element within the Democratic party, which pressed for the rapid expansion of the nation’s boundaries and insisted the Manifest Destiny of American institutions to cover the Western Hemisphere.”³⁴ Stevens had the character, drive, determination, affability, the skill sets, and the support of his superiors, to spring board him into a unique historical position.

³³ Clifford E. Trafzer and The National Museum Of The American Indian, *American Indians/American Presidents: A History*. 1st ed. Smithsonian, 2009, 87-88.

³⁴ Kent D. Richards. *Isaac I. Stevens: Young Man in a Hurry*. Pullman, Wash: Washington State University Press, 1993, 95.

Stevens was impressed by Henry Clay, Daniel Webster, and especially Stephen A. Douglas. While he was against slavery, Stevens “sympathized with southern men who sincerely believed that the Constitution and the Union were being sacrificed to the abolitionists.”³⁵ He knew where he stood if it came down to a choice between defeating slavery or preserving the Union. In discussions with Stephen Douglas and others with whom he mingled at social functions around Washington, he voiced his concerns that the Union was threaten with becoming divided over slavery, “and he argued for continuation of the Union as the best way of ending that ‘terrible blight.’”³⁶ He could not see the Union sacrificed for the institution of slavery, no matter how repugnant.

Stevens’ attention was not so focused on the political and social happenings within the capital that he did not see things on a broader scale. Stevens recognized that the joint occupation of the Pacific Northwest with the British in Canada needed to be settled and that the British would not be eager to withdraw. He was also skeptical about Mexico abiding by the Treaty of Guadalupe Hidalgo. The Far West had grabbed his attention and his interest. He saw the West as *the* place for a young man to secure his future, but cautioned that a stronger military presence was needed to protect emigrants. He stated that “[t]here are numerous Indian tribes in the West and Northwest whose good behavior thus far has been occasioned by the presence of a strong military force.” No doubt Stevens wanted to be a part of the development of that region.³⁷

In September 1849, Stevens was assigned to the Coast Survey in Washington D.C., under the supervision of Professor Alexander Dalles Bache. Due to the rapid growth of the United States after the addition of Texas and California with their extensive coastlines, the Washington

³⁵ *Ibid.* 73.

³⁶ *Ibid.* 73.

³⁷ *Ibid.* 75.

D.C. office found itself far outpaced by the survey parties working in the field. President Polk began to restructuring the federal government by creating departments such as the Department of the Interior, the Patent Office, the General Land Office, Office of Indian Affairs. This was in line with the Young America philosophy of streamlining and organizing government.³⁸ Stevens took this same attitude with his work at the Coast Survey and rebuilt the organization from the ground up. He even tried to get the office a new building, but Congress refused to finance it. Still, many of Stevens' improvements in the day-to-day operation of the Survey were apparent long after he had moved on.³⁹

The responsibilities of the Survey grew dramatically while Stevens was there, with twenty-seven survey parties in the field “working between Delaware and the Rio Grande River, and a major effort on the Pacific coast was just beginning.” The new Department of the Interior and other government, as well as private entities, sought the help of the Coast Survey in creating reproductions of maps and charts. In response to this added workload, Stevens tried to reorganize and recruit more staff members while improving the technology and procedures. These improvements often saved money and time.⁴⁰ It would seem that Stevens' statement to his brother, that The Coast Survey needs me to overhaul it⁴¹ was his heart-felt belief.

Stevens also found opportunities to employ and hone his political skills at the Coast Survey. He parleyed the responsibility for the location of lighthouses to the Survey by pointing out that the parties working there could accomplish the dual tasks of the survey of the coastline and the recommendation for the lights. The ethos of the New Democratic party was not only

³⁸ Yonatan Eyal, *The Young America Movement and the Transformation of the Democratic Party, 1828-1861*, 1st ed. (Cambridge University Press, 2007), 152.

³⁹ Richards. *Isaac I. Stevens*, 76-78.

⁴⁰ *Ibid* 80-81.

⁴¹ *Ibid*. 78-79.

expansion, but also to build an elaborate infrastructure throughout the continent.⁴² California Senator William Gwin added this recommendation into his bill and it passed. With the help of Stephen Douglas and John Fremont he convinced Senator Jefferson Davis on the Senate Finance Committee that funding the project would not jeopardize the work being done on the Mississippi Delta. It would seem that Stevens had presented a win-win proposal to all parties involved, thus winning him some strong allies in Congress at the same time.⁴³ His powers of persuasion seemed to be getting better with time. He found Congressional allies within the New Democratic Party for his ideas because his views coincided with Young America's plans for internal improvements to bolster the economic growth of the nation. These improvements were especially popular with politicians in the West.⁴⁴ Young Americans, especially Douglas, were very supportive of any improvements to infrastructure as long as the work was performed by private interests, "not mixed public-private corporations."⁴⁵ It was obvious to them that no expansion would occur without the logistical support of transportation lines to supply the settlers on the new frontiers. While Stevens was overhauling the ports and rivers, not to mention the Coastal Survey, he was getting an education on the ins and outs of national politics from his new associates in the Capital.

Still, Professor Bache proved to be the greatest influence on Stevens while in Washington D.C., because he was not only a booster for many of his young protégé's interests, but also taught him "the necessity of tact in dealing with others, the art of gentle persuasion, and the

⁴² Eyal, *The Young America*, 55.

⁴³ Richards. *Isaac I. Stevens*, 83.

⁴⁴ Eyal, *The Young America*, 63.

⁴⁵ Howe, *What Hath God Wrought*, 829.

wisdom of respecting both sides in a controversy.”⁴⁶ These skills were invaluable as Stevens transitioned from a career in the military to one in politics.

Stevens understood that it was not the military, but the political leadership of the nation held the real power and as much as the military had allowed him to serve his country and had been the vehicle to rise socially, he wanted to go higher. He had created many strong relationships while serving in the war and the Coastal Survey. Now, he was feeling the need for a change. In 1852, Stevens found himself getting more involved in politics. For three years Steven had been in Washington D.C.; all the while he had been making contacts and being an active supporter of the causes of the Coast Survey and military. Now, he was ready to place his full support behind his colleague at Harvard, Franklin Pierce as the Democratic presidential candidate.

Pierce’s camp was elated to have someone of Stevens’ military stature on their side and Pierce as well as others in the Democratic Party conveyed their appreciation for his backing. In fact, after Pierce’s victory, Stevens’ name was mentioned by some in the capital to fill the position of Secretary of War. Stevens himself knew that he had built political capital, but not that much capital. Still, it was clear that he was now ready for bigger things and he was confident that his time had come.⁴⁷

Since his time in the Mexican-American War, Stevens had yearned for the Far West and he thought his time was now at hand. From his campaign to change the system of pay and promotion for himself and other officers, he had seen that the opportunities for young men to advance in the East were difficult. He recognized that he would have to wait in line for his

⁴⁶ Richards. *Isaac I. Stevens*, 90.

⁴⁷ *Ibid.* 95.

chance in the East, but saw the frontier as a region of vacant political positions and he wanted one. Stevens was not interested in joining the mass-migration to California in search of gold or land. Instead, as a young Democrat, Stevens wanted to be a part of the push for expansion of not only American territory, but ideals, and a stronger stance on the borders.⁴⁸

One of the issues which Stevens followed closely while in Washington D.C. was the transcontinental railroad. This was a pet project of his friend Stephen Douglas, and being an engineer, they surely had discussed it at length. “Static improvements such as buoys and lighthouses danced vividly in the New Democratic imagination,” writes Eyal, [b]ut what truly fueled the faction’s frenzy was rail power . . . [having] grown up with locomotives and viewed railroads as central to their God-ordained takeover of North America.”⁴⁹ He had long foreseen the need for a detailed survey of potential routes and close calculation of the cost. He believed that the actual building of the railroad would come later, that settlement of the perspective routes would indicate which would be best.

In March 1853, two events catapulted Stevens on a new course. On March 2nd, President Pierce signed a bill which established Washington Territory. This territory stretched from the Rocky Mountains to the Pacific coast, and between the Columbia River and the 49th parallel. Then, on March 3rd, Congress passed a measure on March 3rd demanding a survey of a variety of railroad routes should be conducted under the War Department. Stevens recognized an opportunity forming.

Applying the same acute skills of observation that had enabled him to evaluate situations of military significance during the war, Stevens assessed the political significance of these

⁴⁸ *Ibid.* 95.

⁴⁹ Eyal, *The Young America*, 69.

occurrences and devised a plan. First was the survey of a northern route for the transcontinental railroad spurring settlement around Puget Sound; trade with Asia being his focus for the area's future. He hoped to secure both the office of territorial governor and command of the survey of the railroad route. If he could cash in his political capital to gain these two positions, he knew that he could drive the growth of the region and amass boundless political and economic power. He played his cards close to the vest by first applying for the governorship. This move confounded his friends, who thought that his influence with the current administration could win him a much higher role in government than governor of some far-flung territory. No one else of any distinction applied for the governor.⁵⁰

Along with his work for President Pierce, Stevens had formed a number of other personal relationships with men who wielded a great deal of influence around Washington D.C. Among them were such notable names as “Stephen A. Douglas, Robert J. Walker (a former Secretary of Treasury and a leader in the Democratic Party), and Congressman James Shields, Solon Borland of Arkansas, Jeremiah Clemens of Alabama, and Hannibal Hamlin of Maine.”⁵¹ These men recognized Stevens' qualifications for the job. His years in the military qualified him to command the men necessary to perform the survey and to handle confrontations from the Indian tribes and the British presence in the Northwest. His skills as an engineer as well as the familiarity with a survey and the budget associated with a project of this scale would be hard to match. It would seem that he was just the man for the job.

Once Stevens had secured the governorship, he began his pursuit of the railroad survey. As Richards points out, “[t]he transcontinental railroad project was only one of a number of

⁵⁰ Kent D. Richards. *Isaac I. Stevens*, 96-97.

⁵¹ *Ibid.* 97.

economic issues with sectional overtones . . . It was hoped that nature and science would determine the final route, thereby removing the railroad issue from the political arena.”⁵² For this reason, Congress had proposed four separate surveys, each with its terminus in a different region. The northern route was to fall north of the 47th and south of 49th parallel.⁵³

Stevens approached his friend from when he had lobbied for the Coast Survey’s placement of the lighthouses, the new Secretary of War, Jefferson Davis, about heading the northern survey. He reminded Davis of his extensive training and experience, his new appointment as territorial governor and Superintendent of Indian Affairs (which came with the governorship), and his friendship with the secretary himself and several other powerful Southerners. Next, he assured Secretary of State William Marcy, who was in charge of the governance of the territories, that his absence from Washington Territory for the duration of the survey would pose no particular problem because the new territory’s first order of business was to “conduct a census and elect a territorial legislature.”⁵⁴ And finally, he pledged to provide extensive data on Indian tribes along the survey route for Secretary of Interior Robert McClelland, whose department oversaw the Bureau of Indian Affairs. Stevens had covered all his bases. Congress had favored the topographical branch to conduct the railroad surveys, but Secretary Davis had the final word and Stevens had won him over. Stevens got the northern survey.⁵⁵

In his new role as superintendent of Indian affair, Stevens was instrumental in negotiating treaties under the new federal policy of a reservation system. Although he was mindful of frontier wars with Indians, his only contact prior to 1853 had been limited having seen a few

⁵² *Ibid.* 97.

⁵³ *Ibid.* 97.

⁵⁴ Richards. *Isaac I. Stevens*, 98.

⁵⁵ *Ibid.* 98-99.

existing members of tribes in Maine from his youth. He believed in Euro-American superiority to the Indians and saw removal as a necessity in order for America to progress. He hoped that this could be accomplished by peaceful means and once completed that the Indians would become “educated to cultivate the soil and become productive, valued members of white society.”⁵⁶ The successful removal of the Indian lands of the South, coupled with the nearly-complete elimination of Indian lands in the Old Northwest had created a mindset of domination.⁵⁷ Young Americans saw this as justification for imposing the lifestyle changes upon the Indians of the West for the greater good of all. One of the obstacles to this philosophy was that, in general, living in the White man’s image went against the ethos of many Native American cultures as much as living in the Indian’s image went against the nature of most Whites. This was to become a source of great conflict and Stevens was to be inextricably involved in it.

⁵⁶ *Ibid.* 190-191.

⁵⁷ Howe, *What Hath God Wrought*, 136.

CHAPTER III

BECOMING TRIBES

In order to understand the Nez Perce “Tribe,” of the mid nineteenth century and how Lawyer came to be their head chief, one must understand their genesis. We must examine where they came from and what the foundation of their social structure was. It must also be recognized that during the prehistory of the Plateau culture, theirs was *not* a political structure that was compatible with Euro-American political experience

The area that is generally referred to as the Columbia Plateau of the Pacific Northwest is the “large inland region from the Rockies to the Cascade Mountains and from the great bend of the Fraser River in British Columbia in the north to the edge of the Great Basin in southern Oregon and Idaho.”¹ Nevertheless, this region is generally the home range of the Plateau Culture, a Native American cultural group dominated by Sahaptian and Interior Salish-speaking peoples and the smaller Cayuses and Molalas.²

The largest of the groups making up the Plateau Culture is the Nez Perce or Nimí-pu, a Sahaptian-speaking group along the southern and southeastern edge of the Plateau region where the present-day borders of Oregon, Washington, and Idaho meet.³ Much of this discussion that follows is based on a generic view of Plateau culture because at times there is no real distinction

¹ Alvin M Josephy, *Nez Perce Country* (Lincoln: University of Nebraska Press, 2007), 2-3.

² *Ibid.* 2.

³ *Ibid.* 2-3.

between the practices of one group from another. At other times there are nuances that are specific to one group or another and will be attributed to them or it may be that the discussion is directed at an individual person or place which is specific to a particular group. These distinctions are sometimes dictated by the source material as well.

According to author Alvin Josephy, Nez Perce culture developed sometime about forty-five hundred to two thousand years ago. “. . . evidence of this period shows the establishment of Nez Perce winter villages of circular, oval, and rectangular semi-subterranean pit houses, particularly along the Clearwater River.”⁴

Citing archaeological evidence, Eugene Hunn, an anthropologist, has the Plateau Culture living on the Columbia Plateau “at The Dalles and on the lower Snake River for at least ten thousand years (Cressman 1977; Borden 1979).”⁵

According to Josephy:

Little is known about the development of the Nez Perce culture prior to about 500 BC., but from that time until about 1700 AD, their numbers grew to about 4,500, probably due to advances in “technologies and equipment” (improved fishing gear and methods of food preparation and storage) which allow for more efficient exploitation of abundant seasonal foods of the region. As the population grew, so did the number of villages. Approximately 125 villages with populations of around 35 individuals, but up to as many as 200, were strung out along the Clearwater, Salmon, and Snake drainage systems. In this environment fish, mainly salmon, made up the bulk of the Nez Perce diet.⁶ Hunn explains that “They [Plateau Indians] . . . moved camp with the seasons, though in more richly endowed habitats they might maintain more or less permanent home bases strategically located within their range.”⁷

Josephy relates that the Nez Perce say that before the *leti-telw'it*, or human beings came into the world, only animals exhibiting human qualities dwelt upon the earth. The foremost

⁴ *Ibid.* 5.

⁵ Eugene S. Hunn, *Nch'I-Wana, the Big River: Mid-Columbia Indians and Their Land*. (University of Washington Press, 1995), 6.

⁶ Josephy, *Nez Perce Country*, 6.

⁷ Hunn, *Nch'I-Wana, the Big River*, 6.

among them was Coyote, the trickster. Coyote was able to change his appearance and, while often getting into ridiculous situations, was also able to accomplish heroic feats like Hercules, even changing and subduing natural forces.⁸

According to the legend, Coyote heard that a huge monster was consuming all the other animals over on the Clearwater River near Kamiah. Coyote went and tricked the monster into eating him, too. Then, once inside the monster's belly Coyote built a fire and severed his heart, freeing all the other animals. Coyote chopped the monster into many pieces and scattered them into all directions where they became the seeds of all the Indian peoples that now inhabit the earth. But then, Fox pointed out to Coyote that he had overlooked the area where he had slain the monster. Realizing Fox was right, Coyote scattered the monster's blood over that land and from it emerged the Nimí-pu—the People. There is a pair of buttes in the area near Kamiah, Idaho known as the heart and liver of the monster slaughtered by Coyote. This legend indicates not only the spiritual ties between the Nez Perce and the animal world, but also implies that they sprung from the earth⁹ This is very important to the Nez Perce concept of self. And that they came from the earth in this particular place is significant in their spiritual connection to returning to the same earth that bore them. For this reason it is also imperative that one protects the homelands that hold the bones of forefathers and provide a resting place for posterity.

Hunn observes that the land of the Columbia Plateau is “more than a stage; the land is protagonist.”¹⁰ He goes on to point out the contrasting views of the land by the Indians of the Plateau who see the land as “their Mother upon whose nurturing breast they rest . . . [Whereas] Euro-Americans view ‘Mother Nature’ in a different light, as an enemy to be contested: either

⁸ Josephy, *Nez Perce Country*, 1.

⁹ Josephy, *Nez Perce Country*, 1.

¹⁰ Hunn, *Neh'I-Wana, the Big River*, 3.

we rule the land or we are defeated in the attempt . . . [t]he land is a commodity to be sold, an instrument for the production of wealth.”¹¹

The ethos of these legends, and which by extension, the endearment felt toward the world around them, were passed on to the Nez Perce children in their winter camps as both a form of entertainment and as moral teachings. The themes taught the value system by underscoring such important traits as “bravery, justice, generosity, repression of emotions, self-discipline and self-reliance, individual freedom, opposition to centralized authority, and dependence on supernatural forces to determine one’s destiny . . .”¹² These were all values sought in all adults, but especially in a good leader.

In terms of cultural orientation, Plateau culture generally and Nez Perce culture in particular were manifestations of what anthropologist Roy Wagner characterizes as “differentiating” societies; i.e., the main emphasis in the culture is the creation of unique individualities rather than collective identities.¹³ As described by ethnohistorian Christopher Miller:

Among aboriginal Plateau dwellers, identity in the sense of the isolated ego did not exist. Instead, the people derived their identities from the complex network of relationships that characterized the social structure. This is not to say that there was no sense of individual uniqueness among Plateau people, but individual identity was not isolated and intrinsic for them. Instead, uniqueness was acquired by interweaving threads of individual experience with the warp created by the many strands of relationships that formed the social world.¹⁴

The main entity of the traditional religion was the *wéyekin*, or guardian spirit. This was a spiritual helper to the individual whose assistance was necessary to the success of any adult endeavor or pursuit. “In practice the term *wéyekin*”, as explained by anthropologist Deward

¹¹ *Ibid.* 3.

¹² Josephy, *Nez Perce Country*, 16-17.

¹³ Roy Wagner, *The Invention of Culture* (Chicago: University of Chicago Press, 1980), 116-117.

¹⁴ Miller. *Prophetic Worlds*, 18-19.

Walker, “was used to refer to both the power as well as the anthropomorphic spirit granting it.”¹⁵

This spiritual guide or guardian was sought through the *wáyatin*; a solitary quest involving fasting and self-sacrifice and rituals performed by Nez Perce as young as five or ten years old under the guidance of an elder. The youth was prepared for the quest both physically and spiritually, the learning of the legends being an integral part of this training. Another aspect of preparation for the quest or any other sacred ritual was physical and spiritual purification.¹⁶

The power associated with the *wéyekin* was bestowed on its recipient when that individual behaved correctly so as not to offend the spirit. The manifestation of the guardian spirit was through a merging with the individual’s identity providing that person special skill sets which aided in his or her success; a strict form of conduct; a corresponding name, associated with the character of the spirit such as an animal or a phenomenon of weather, a unique song, and bundle of sacred items; and the spirit was bestowed upon each person in varying degrees and in slightly different forms “. . . no Plateau person was ever *as spiritual as* another, for each was spiritual in his own right.”¹⁷

An important point to remember about this relationship between the human and spiritual realms converging, as Miller explains it is:

As idiosyncratic and individualistic as these characteristics were, they were not intrinsic, nor did they exist in isolation. Even the most private aspects of the individual’s identity were conceived as being the product of a social relationship. In addition, the identity that these spiritual relations conferred was not seen as being permanent. Relations between person and spirit evolved over time, making the core identity changeable. Furthermore, while the person-spirit relationship formed the most basic element in the complex social structure, webs of identity- forming relationships radiated outward in both the human and nonhuman realms.¹⁸

¹⁵ Deward E. Walker, *Conflict & Schism in Nez Percé Acculturation: A Study of Religion and Politics*. (Moscow, Idaho: University of Idaho Press, 1991), 18.

¹⁶ *Ibid.* 18-19.

¹⁷ Miller. *Prophetic Worlds*, 19.

¹⁸ *Ibid.* 19.

These “webs of identity” would create what might be seen as a social network made up of composites of different human and spirit identities that established an ever-shifting balance of “spiritual power” which helped to meet ever-changing circumstances such as climatic change or shortages of a specific resource that the people were dependent upon. This would provide the people a broader range of skill sets from which to draw in times of turmoil. For example, rather than relying upon the skills of one individual in procuring meat they could exploit the skills of a group of individuals who each had a varying level of the different skills necessary to bring home meat in tough times. The status of these individuals would change according to their level of individual contribution and success in the particular endeavor.¹⁹

As Miller puts it, the Plateau People built a loose confederation at best, defined by a constellation of factors such as cultural and language groups, kinships, alliances, and probably most significantly, what many ethnohistorians refers to as “*task groups*.” This meant that whoever wished to participate in such activities as buffalo hunting, salmon fishing, root and berry gathering, or religious ceremonies, could do so, regardless of his or her bloodline. *Intertribal*²⁰ marriages were quite common among the Plateau People, providing a mechanism for securing strong ties grounded in familial moral obligations.²¹

Once a group of individuals received their *wéyekin* and understood the characters of them, they could form a dominant force in a specific economic pursuit such as fishing. They would be the guides who located the fish, organized the camp, and every aspect of taking and preparing fish. This group might be in charge of an intergroup task to take fish.²²

¹⁹ *Ibid.* 19.

²⁰ “Tribe” is not an accurate word at this point in Plateau history. The social structure of this period transcends our conventional understanding of “tribes,” but for lack of a better term at times words such as “intertribal” may be necessary. *intergroup* is probably a more accurate word.

²¹ Miller. *Prophetic Worlds*, 18-20.

²² *Ibid* 20.

In his assessment of these intergroup relationships, anthropologist Bill Brunton cites them, along with both Anastasio and Walker, as having a ceremonial aspect due to the ritualistic overtones and they go so far as to include trading in this ceremony.²³ Roots and fish made up most of the Plateau culture's diet and could be obtained in large amounts in specific areas so these intergroup congregations occurred seasonally and involved large numbers of people, placing a great deal of responsibility on those who sponsored or controlled the activity.²⁴

Gift-giving was an important economic indicator also. Miller points out that by hosting such an event as a "large-scale gift giving" the group signifies their ability to obtain an abundance of a given commodity. Thus, they are displaying their physical and spiritual prowess in a certain economic activity, which placed them in high status temporarily—since the spiritual balance of power was constantly shifting. While pragmatic, the Plateau people saw their daily activities and the acting out of their spiritual beliefs as being inextricable. ". . . a religion, and the Plateau community was a church in which every aspect of life was a sacrament." Both the individual and the group were so devout in this belief system that it provided them their sense of *self*.²⁵

Brunton says that this spiritual aspect to all facets of life placed limitations on warfare and other hostilities, replacing them with peaceful alternatives such as trade, gift giving, gambling, exploitation of resources, and protection of guests. These alternate activities in turn, became competitive rituals that had a ceremonial significance.²⁶

When the system faltered, rather than attribute it to a natural cycle it was seen as a transgression against the wéyekin, since every facet of life was inextricably woven together.

²³ Bill Brunton, "Ceremonial Integration in the Plateau of Northwestern North America." *Northwest Anthropological Research Notes* 2 (1968): 1-28.

²⁴ *Ibid.* 1-28.

²⁵ Miller. *Prophetic Worlds*, 20.

²⁶ Brunton, "Ceremonial Integration," 1-28.

When everything was going well it was because of the harmony shared by the human and spiritual communities. Miller sums it up like this:

By demanding a careful balance of assertiveness, ethics, and extreme adaptability, this system accommodated the individual to his or her place in the concentric rings of relationships that held the social cosmos together. That, in turn, permitted the unusual degree of intergroup cooperation that made the exploitation of a changeable habitat efficient and highly rewarding. Furthermore, by tying status and identity to the shifting economic and spiritual needs of the intersecting groups, this system made the emergence of permanent social classes and resulting conflicts of interest virtually impossible.²⁷

The smallest unit of socio-economic organization on the Plateau was the family within the next smallest unit the village. “The Nez Perce villages were democratic and egalitarian and possessed a relatively simple social and governing structure that recognized the freedom and equality of the people.”²⁸ Every village was led by a headman, a subchief, and a council of advisors. These positions were often, yet not necessarily hereditary. Decisions were made by these leaders and all the adults of the village. Anyone who disagreed with the decisions was free to move to another village, which would generally receive them warmly. Therefore, all important issues were settled by consensus.²⁹

There is no evidence of any permanently incorporated political organization above the village level in aboriginal³⁰ Plateau culture. If the term “*tribe*”³¹ could be applied to the various divisions within Plateau peoples, there was wide-spread, temporary intertribal cooperation. In other words, individuals and villages might join together to form task groups for specific activities, regardless of linguistic and ethnic divisions, beyond the personal preferences of the

²⁷ Miller. *Prophetic Worlds*, 21.

²⁸ Josephy, *Nez Perce Country*, 6-7.

²⁹ Miller. *Prophetic Worlds*, 11.

³⁰ In this sense aboriginal refers to traditional, precontact culture, before outside influences transformed it.

³¹ While the term *tribe* was not accurately applicable to the pre-contact Plateau peoples, it is sometimes the closest term we have to illustrate the concept of a large, cooperative group in the region. Tribe is generally a term that has been applied to linguistic or ethnic groups by Euro-Americans which over time has been accepted by the members of those groups themselves.

individual. Then, the task group would disband once the task was completed. Still, while some individuals might come and go freely, the basic composition of the village would generally remain constant, maintaining the integrity of its own headman, subchiefs, and council.³²

Hunn describes the Plateau culture as “people who cherished their individual autonomy, the right of each family to choose where to hunt, fish, or gather foods and with whom to associate.”³³ They decided which winter village they would reside in as their primary abode. According to Brunton, “[v]illages were relatively small, politically autonomous, residential groups.”³⁴ Most of these villages were winter base camps strung out along streams which “recognized the authority of a headman”³⁵ then, they would make their seasonal rounds to spring and summer fishing sites, camas-digging areas of early summer, and on to fall berry-picking locations, during which times the makeup of the village would be in almost constant flux. The original village may come together with one or more other villages throughout this recurring migration period, and as winter approached, it would break away and return to its own tributary site for its traditional winter activities, including dances, story-telling, making and repairing tools and weapons, etc.³⁶

Some individuals would drift off to another village task group, often where they had relatives from frequent intermarriage, for one or more of these activities. These intervillage or interband marriages formed kinship networks that worked to create tighter bonds that transcended linguistic and ethnic bounds. In fact, these intermarriages may have been the most

³² Miller. *Prophetic Worlds*, 11.

³³ Hunn, *Nch'I-Wana, the Big River*, 4.

³⁴ Brunton, “Ceremonial Integration,” 1-28.

³⁵ Hunn, *Nch'I-Wana, the Big River*, 4, 6.

³⁶ *Ibid.* 4, 6.

important bond holding Plateau culture together along with the choice of task group leadership, alliances for war, ceremonies, and preference of winter campsites.³⁷

From Josephy we learn that the Nez Perce intermarried often with the Palouse and Cayuse, who were their neighbors to the north and west, but were not limited to only those Plateau tribes. They also traveled extensively, sharing economic resources with the peoples of “the Snake and Columbia rivers to the rapids at Celilo Falls and the Dalles, . . . the home territory of Wishrams, Wascos, and other peoples, . . .” Here they would encounter other groups “from elsewhere in the Northwest, including Wallawallas, Yakamas, Umatillas, Klickatats, Wanapums, Palouses, and Cayuses, all of whom, like the Nez Perce, spoke Sahaptian tongues.”³⁸ While the practice of marrying outside one’s own village and even linguistic or ethnic group was common, great pains were taken to insure that no one married a blood relative, no matter how distant. This was considered incestuous and absolutely taboo.³⁹

Asa Bowen Smith, one of the first missionaries who probably performed the first in-depth ethnographic work among the Nez Perce, took a census along the upper Clearwater River drainage in 1840, which showed a range of ten to 235 people per site. Walker attributes the higher figure to a “multivillage band group . . . [i]n some instances such villages might gather temporarily into single settlements.”⁴⁰ One of the villages that Smith counted and spent a great deal of time at is referred to in a quotation cited here by Walker. The greater number at the [Kamiah] station at any time was during the winter and this did not exceed 175, and this number

³⁷ Brunton, “Ceremonial Integration,” 1-28.

³⁸ Josephy, *Nez Perce Country*, 15.

³⁹ Walker, *Conflict & Schism*, 10.

⁴⁰ *Ibid.* 10-11.

remained only a few weeks at the station. Hunger soon compelled them to disperse into the surrounding regions for game.⁴¹

Walker suspected that the most common size was probably between “ten and seventy-five” people, based largely on Smith’s census. He goes on to cite Lewis and Clark’s description of “one semisubterranean longhouse containing such a group to be 156 feet long and fifteen feet wide . . .”⁴² Walker has published a more recent study, also based on Smith’s census but using different methodology to arrive at his new conclusions. In this new article he has estimated the mean size of the protohistoric Nez Perce village at around 35 people and the total size of the Nez Perce population at 4,700.⁴³

The people of each village selected a council of advisors, who in turn chose a headman. While this position was somewhat hereditary, if the council decided that the next in succession was not the best choice they might name someone else. The qualities they were looking for in headman were “wisdom, reputation for generosity, abilities at diplomacy and oratory, bravery, experience, and age.”⁴⁴ The sharing of resources was obligatory, to include those outside the group with whom the group intended to continue friendly relations. This was a common characteristic of virtually everyone in Plateau culture.⁴⁵

Another important consideration would be a man who was also a spiritual leader or one who had demonstrated a particularly strong *wéyekin*. He might be the eldest man in the village. He would be expected to resolve disagreements, be a diplomat, oversee the distribution of resources, and offer wise council in all matters. He would provide for those in need. He was sometimes assisted by younger men of high standing in the village as subchiefs. Josephy says

⁴¹ *Ibid.* 9.

⁴² *Ibid.* 11.

⁴³ *Ibid.* 33-44.

⁴⁴ Josephy, *Nez Perce Country*, 7.

⁴⁵ *Ibid.* 15.

that in some cases, the headman might even be the leader of two villages through marital bonds. As prominent as a headman might be, he still did not have absolute authority over anyone. “[H]e could not overrule the council”⁴⁶ and any individual who did not agree with his judgment was free to leave and join another village.

The council was made up of a group of men who usually came from important families. They would discuss all issues affecting the people and make decisions based on the general “peace, welfare, and harmony” of the village.⁴⁷ The council had no absolute authority either. Like the headman, they controlled the people through respect and wisdom. They dealt with major crimes and could overrule the headman, keeping him in check or even replacing him in extreme cases.⁴⁸

Larger than the village, the next political entity was the band, which was a loose confederation of villages along a common large stream or several nearby tributaries of the larger streams.⁴⁹ Like villages, bands were also autonomous, similarly governed by a council and a chief, rather than a headman, but who performed almost identical functions. One major distinction between the two entities was that “the bands unified the villages [somewhat] for group undertakings, including the building and maintenance of facilities at fishing stations, food-collecting trips, and seasonal ceremonies, as well as for mutual defense and attacks against enemies.”⁵⁰ A headman of a more powerful village may have greater influence than other headmen, but not necessarily. Walker states that “war prowess seems to be more important in determining a leader’s authority . . . [and] collective aggression and defense were more important

⁴⁶ *Ibid.* 7.

⁴⁷ *Ibid.* 7.

⁴⁸ *Ibid.* 7-8.

⁴⁹ Walker, *Conflict & Schism*, 13.

⁵⁰ Josephy, *Nez Perce Country*, 8.

at the band than at the village level of organization.⁵¹ Another point made by Walker that is essential to the understanding of Indian culture in general and Plateau culture in particular is that “great power was given leaders only under crisis situation and lasted for limited periods . . . This was nowhere more evident than in the limited amount of authority Nez Perce leaders could exert.”⁵²

Walker cites Verne Ray in stating that “in certain instances the band was an embryonic tribe and that its distinguishing marks were common actions in war and recognition of a common war chief.”⁵³ Yet Walker states, “Aboriginally the Nez Perce language and ethnic grouping was composed of a number of such bands, but there seems to have been no overall integration of them into a political unit that we could call a tribe.”⁵⁴ On the other hand Brunton also cites Ray’s use of the term *tribe*, who “states that overarching, tribal-like names, linguistic names, or names given resulting from some custom observed by Euroamericans . . . Ray does admit, however, that ethnic, linguistic, and social groupings larger than the village and band did exist,” but adds that these were never political groupings.⁵⁵

What would later evolve into a Nez Perce “tribe” is explained by Josephy here:

The people as a whole comprised an ethnic entity because of cultural and linguistic similarities, a common background, and blood and marital interrelationships. But there was no head chief, permanent council, or political organization that could speak for all of them, and even the leaders of the bands and composite groups could not force individual members to go along with the majority. Through unity on important matters was often achieved, the autonomy of each village and of each band was paramount.⁵⁶

⁵¹ Walker, *Conflict & Schism*, 13.

⁵² *Ibid.* 15.

⁵³ *Ibid.* 13.

⁵⁴ *Ibid.* 13.

⁵⁵ Brunton, “Ceremonial Integration,” 1-28.

⁵⁶ Josephy, *Nez Perce Country*, 8-9.

The political make up of the Plateau may seem quite unsophisticated, but in reality it functioned much like the committees of the modern corporate world or multi-national military task forces. Because the abilities of the individuals and small groups functioned so well, a large, elaborate, authoritarian political structure was unnecessary. Another reason that a larger political entity with a central authority figure was not needed was that individuals did not require anyone to keep them in line. The customs and courtesies, stemming from the religious values of the Plateau culture were so integrated into every aspect of the social life that it was almost like living in a theocracy, where a lack of cooperation was breaking a taboo. It was much easier and non-confrontational for one to go his separate way.

Due to the flexibility of the task group system and a political structure which evolved and adapted to whatever the present circumstances might dictate, for millennia, aboriginal Plateau culture was highly resilient under pressure. Miller also attributes this resilience, in part; to “the powers and warnings provided by the guardian spirits and the knowledge stored in their encyclopedic repository of folklore . . .”⁵⁷ While certain elements of this previous system were retained or modified on differing trajectories of time, the crisis that hit the Plateau in the eighteenth-century ended the aboriginal period. This crisis was the convergence of the horse, gun, and disease frontiers.

In the eighteenth century, before anyone on the Plateau had direct contact with Euro-Americans, European goods started to appear, beginning with the horse.⁵⁸ Miller points out that “the arrival of a temporarily improved climate increased the yield of existing economic

⁵⁷ Miller. *Prophetic Worlds*, 21.

⁵⁸ Virtually all researchers of Plateau culture seem to agree that the acquisition of the horse was the catalyst which centralized village and band autonomy leading to what is now seen as tribes or nations: Haines-1938; Anastasio-1955; Ray-1939; Walker-1991; Miller-2003; *et al.* Two exceptions to this line of thought are Elizabeth Vibert (*Trader's Tails*) and Larry Cebula (*Plateau Indians and the Quest for Spiritual Power, 1700-1850*), who cite the Fur Trade as the greatest source of change in Plateau culture.

resources.”⁵⁹ Around this same time the independence of the villages started to wear thin due to the distance between resources and villages. The horse brought distant resources within range, “. . . the perceived distance between groups was reduced . . . while the speed and reliability of communication were increased.”⁶⁰

While the horse made hunting on the buffalo plains and returning with abundant supplies of meat those same excursions angered the hostile peoples who jealously guarded their favored hunting grounds. Clashes between the Plateau peoples and the southern Shoshonis and their Bannocks allies, or “Blackfeet, Sarcee, Atsinas, Assiniboin, and Plains Cree,” who Miller refers to as the Eastern Alliance were frequent with none able to dominate.⁶¹

As allies of the Nez Perce, along with the Flatheads, the Lemhi Shoshonis ventured onto the plains in larger parties with these Sahaptian and Salish speaking peoples of the Plateau. Lewis and Clark found that they were poorer for not hunting the buffalo to the extent that their northern Shoshoni cousins, but they acted as middlemen between the Plateau, the Plains, and their relatives, the Uto-Aztecan peoples—the Utes and Bannocks of the Great Basin.⁶²

Broken Arm’s band of Nez Perce joined the Crow in 1805 on a trip to visit the Hidatsas on the Knife River to trade for guns. They obtained their first six firearms to counter the Blackfeet and Atsinas who had acquired guns and ammunition from the traders in Canada earlier. The Nez Perce saw the arrival of Lewis and Clark as a means of securing more guns to fill the power vacuum between the Plateau and northern Plains peoples.⁶³

⁵⁹ Miller. *Prophetic Worlds*, 37.

⁶⁰ *Ibid.* 37.

⁶¹ *Ibid.* 28-29.

⁶² James P. Ronda, *Lewis and Clark among the Indians (bicentennial Edition)*, 2nd. Ed. (Bison Books, 2002), 149, 156.

⁶³ *Ibid.* 149, 159-160.

While these groups lived on the eastern and southern fringes of the Plateau, farther down the Columbia at The Dalles and Celilo Falls, to the west were the “Wishram and Wasco Indian middlemen.”⁶⁴ Also jealous of their territory, these middle Columbia peoples moved trade goods inland from European traders along the coast. Thus, the Plateau became a cultural crossroads where the fish-eating people there assumed a blending of Plains dress and horsemanship with the canoes and shell ornaments of Coast Salish and a mixture of dwellings from longhouses resembling the structures along the coast, semi-subterranean lodges, the conical, pole and rush mat wickiups of the Great Basin groups, and tipis of the buffalo hunters first traded from the Plains people on the buffalo grounds because of their mobility and convenience.⁶⁵

Never before had the Plateau peoples been able to exploit the buffalo on the plains as they now could. The horse made it possible not only to carry larger quantities of meat and hides over the mountains from the plains, but even more significantly, larger groups of Plateau people could now move in unison over long distances to procure economic resources and to present a military force to protect themselves and those resources. Miller illustrates how the need for this mobility and the advantages of defense became more important in this environment of new diseases as well. He says that the deaths due to disease created a “demographic disaster . . . [i]n a nonagricultural economy in which cooperative effort was demanded, the decline of suppliers also created a decline in supplies.” He goes on to point out that to small, defenseless bands “the sacrifice of local autonomy must have seemed a small price to pay for the security of group support.”⁶⁶

⁶⁴ *Ibid* .149, 159.

⁶⁵ Colin F. Taylor, *The American Indian: The Indigenous People Of North America*, illustrated edition. (Salamander Books, 2003), 103-104.

⁶⁶ Miller. *Prophetic Worlds*, 37-38.

The vulnerability of these small groups trying to compete with enemies on the fringes of their territory to obtain guns and horses, while being decimated by disease turned the region into a perpetual battlefield. This made centralized leadership more tolerable to people who had traditionally been egalitarian. The system they opted for was one in which there were two parallel governing bodies; one, the war chief, met the military and diplomatic needs, while the other dealt with the civil duties. These two governments operated independently of each other harmoniously due to the nature of their functions. Each had a completely distinguishable purpose with no overlap.⁶⁷

These localized civil and war chiefs formed an aristocratic class, but they only acted as the leadership of these relatively small, scattered groups for the most part. Still, what began to develop throughout the Plateau culture is what Miller describes as “a tribal consciousness” which paralleled what he calls the “already powerful local and task group consciousness.”⁶⁸ The leadership class had been going through a transition period since many Plateau Indians had grown wealthy through the ownership of vast herds of horses. The owners of these large herds often married into the traditional leading class to form a super-aristocracy. This was a great stride toward a centralized “tribes,” but the ability for individuals to move freely from village to village was not curtailed.⁶⁹

With this shift toward a centralized government stronger alliances were being forged in order to provide for the common defense of the Plateau culture as a whole. This political congealing of previously autonomous small groups continued to evolve in order to cope with the raiding by Plains and Great Basin peoples and a fluctuating climatic cycle. Still, the new

⁶⁷ *Ibid.* 38-40.

⁶⁸ *Ibid.* 40.

⁶⁹ *Ibid.* 39-40.

leadership roles were not permanent or all-powerful; still no one chief represented an entire “nation.”⁷⁰

The general lack of a central authority figure wielding ultimate power is an aspect of aboriginal Indian cultures that government officials, and for that matter, many scholars have often ignored, grossly misunderstood, or a combination of both, throughout the history of Indian/White encounters. As Sharon O’Brian explains “[I]ndividualism and the autonomy of the individual, family, and band were highly valued but overall there was a clear sense of responsibility both for one’s own actions and for the welfare of others.” She goes on to say that “then individualism and . . . autonomy [extended from] the individual, family, and band.”⁷¹ When a particular task was completed, the group or individual was free to spend additional time with that task group or go their separate way. However, the group’s leader was morally bound to exercise his authority with respect to his people’s consent. There was no central authority to hold these villages together unless the villages themselves wished to band together and follow a particular individual.⁷²

Andrew H. Fisher concurs with Miller in stating that “tribes” are a result of government bureaucrats in the Office of Indian Affairs not the Indians themselves. In an “attempt to create a system it could comprehend and control . . . the treaty commissioners purported to divide kinship networks, reassign political loyalties, and restructure group rights.”⁷³ This lack of a central authority figure among the Plateau culture confounded government officials and made negotiations nearly impossible for the American government. Lacking a signatory, the Indian

⁷⁰ *Ibid.* 40-41.

⁷¹ Sharon O’Brian. *American Indian Tribal Governments*. Norman/London: University of Oklahoma Press, 1989, 349.

⁷² Miller. *Prophetic Worlds*, 32.

⁷³ Andrew H. Fisher, *Shadow Tribe: The Making of Columbia River Indian Identity*, 1st. ed. (University of Washington Press, 2010), 38.

Office had no one with whom to conduct treaty relations. Therefore, in 1842, Indian Agent Dr. Elijah White “imposes a code of eleven laws on the Indians of the Plateau. He also selected Ellis, with the approval of many Nez Perce, to be the first Head Chief. Ellis was educated at the Red River Mission in Canada and was familiar with the English language, the White man’s dealings, and was a Christian. He also had an appreciation for the way Whites controlled their society through the use of laws; therefore, he was one of the most enthusiastic supporters of White’s code.⁷⁴

White’s laws were not to succeed as planned, because, first, they called for the Head Chief to punish anyone who broke them, which went against the Indians’ concept of individual autonomy; second, they offered no punishment for crimes committed by Whites against Indians, only punishing Indians for offenses against Whites; and third, according to the agreement of joint occupation with Great Britain, neither side could enact any form of legal system in the territory.⁷⁵ White may not have known about this last shortcoming or knew and chose to ignore it. Either way, it served as a preemptive strike against British occupation in the area and underscored the campaign slogans of Young America’s support for James K. Polk for president—“All of Oregon” and “54°40’ or Fight!”⁷⁶ As for the other limitations, Terence O’Donnell cites several historians as well as White’s acquaintances as claiming he was ignorant of Indian culture and character. These critics include no less than Dr. John McLoughlin, at one time the Chief Factor for the Hudson’s Bay Company in this region and eventually a leading political figure, and Narcissa Prentiss Whitman, a prominent member of the Presbygational mission system on the Plateau.⁷⁷

⁷⁴ Drury. *Chief Lawyer of the Nez Perce Indians*, 69-70.

⁷⁵ Drury. *Chief Lawyer of the Nez Perce Indians*, 71.

⁷⁶ Borneman *Polk*, 159-160.

⁷⁷ O’Donnell, *An Arrow in the Earth*, 124-125.

Fisher points out that White's behavior was quite common for government officials concerning dealings with Indians. "Acting with little knowledge of Plateau social organization and less regard for Indian interests, they partitioned the region into ceded areas and assigned each [newly constructed] tribe to a particular agency."⁷⁸ Due to White misconceptions and political expediency, these highly dynamic social networks became tribes of the white man's making.⁷⁹

Indians did not see treaties in the same way as Whites and as Fisher tells us, "they did not instantly behave as unified groups." While the modern perception of Native American tribes is a creation of the treaties, the forced cohabitation of various tribes on reservations did not produce the confederacies that were to eventually be formed. In the early days of the reservations the confederacy failed to recreate the networks which had evolved over time naturally.⁸⁰ The Indian Office was adamant about confederation among tribes on common reservations was two-fold; to consolidate for ease of administration and because many small, scattered reservations would disrupt patterns of settlement by Whites and put the races in contact more frequently.⁸¹

From the end of the prehistoric period to the beginning of the missionary period (mid-1830s) the Plateau culture had transformed into what had begun to look like true *tribes*. They had acquired many trade articles from the Euro-American newcomers and had adopted much of the Plains and Great Basin cultures. The horse, the gun, along with diseases had altered their way of life most profoundly.

The Plateau peoples had congealed into political bodies with centralized leadership, though not quite by their own choosing. Although the position of Head Chief had been

⁷⁸ Andrew H. Fisher, *Shadow Tribe*, 38.

⁷⁹ *Ibid.* 38-39.

⁸⁰ *Ibid.* 38.

⁸¹ O'Donnell, *An Arrow in the Earth*, 182.

established by Euro-Americans it had, at least to some extent, been accepted by the tribes themselves. Even though the Head Chief was not of their own making, the Plateau peoples had long-standing traditions of what leadership should look like. As it turns out, this restructuring of Plateau political leadership was mainly done so that the Whites could more easily control them and hold them accountable.

The Whites had apparently intended the Head Chief to be their subaltern from the beginning. A yes-man, who would facilitate the manipulation of the tribes by an oppressive American government. While many of the Head Chiefs resisted this manipulation, a few went along with the Americans' plans. This is not to say that their motives were aligned with those of the Americans, but possibly that they saw cooperation as beneficial to them and their followers. For example, as mentioned earlier, Ellis' saw collaboration with the Whites as advantageous to his people. That the laws given them may produce a positive effect on Nez Perce society, so he went along. His successor, Lawyer, was of the same persuasion and was an enthusiastic booster of the Whites. From our earliest encounters with him in the literature of the Northwest until his death, Lawyer was a friend to the Whites.

CHAPTER IV

CHIEF LAWYER'S STORY

Lawyer was born Hol lol sote tote, around 1796. He was the son of Walammotinin, the Nez Perce chief who had greeted the Lewis and Clark Expedition, and a Flathead mother. He grew up in the Nez Perce village of Kamiah (Idaho) on a tributary of the Clearwater River. In this environment he became an inquisitive, a multilingual man with an interest in the White world.¹

We know very little about Lawyer's father, Twisted Hair apart from what Lewis and Clark say in their journals and nothing of his mother, except that she was a Flathead (Salish).² Twisted Hair is referred to by a chief as "a more important chief"³ living near the confluence of the Snake and Clearwater rivers. When Clark queried about the route ahead, Twisted Hair volunteered to help the Whites prepare and go along to as a guide. Twisted Hair was very helpful to the Corps of Discovery by providing food and provisions, helping them build dugout canoes to travel down the Columbia River, and caring for their horses while the explorers journeyed to the Pacific coast and back. Although not mentioned by name, the explorers mention Twisted Hair's son, presumably Lawyer, helping also. It is impossible to know for sure what Twisted Hair's motives were for helping Lewis and Clark; we know that they, like their Flathead and Shoshoni neighbors were desperate to obtain guns and ammunition to protect

¹ Miller. *Prophetic Worlds*, 59.

² Drury. *Chief Lawyer of the Nez Perce Indians*, 26.

³ Ronda, *Lewis and Clark among the Indians*, 159.

themselves from the Blackfeet and Atsina raiding parties who preyed upon them.⁴ Such motives may well have been shared by Lawyer also.

Lawyer had a strong desire to interact with the Whites even as a young man. He spent time in the mountains with the fur-traders of the American Fur Company, who dubbed him “the Lawyer” because of what was referred to as his “astuteness and eloquence.”⁵ This is not hard to understand when one considers that Lawyer’s father modeled this behavior to him when he was just a boy.

In the form of an ideal Nez Perce chief, Lawyer was brave as well. At Pierre’s Hole (Idaho) Lawyer fought the Blackfeet alongside these fur-traders and became crippled from a wound in his left hip which never healed, causing him to use a cane thereafter. He was also wounded by Shoshone Indians near Thousand Springs (Idaho), and again by a grizzly bear, that tore up his arm while traveling to Montana.⁶ Lawyer was neither a coward nor a pacifist. His tendency for negotiation rather than conflict with the Whites and others made him a dependable friend to most, rather than an enemy.

Lawyer’s generosity was displayed on many occasions in his dealing with Whites, from helping the missionaries learn the native languages and providing them with protection, to guiding parties of Whites, both civilian and military, during peace and war, even supplying scouts and warriors to police the renegades of his own people. Lawyer learned this kindness firsthand from his father hosting the Corps of Discovery. His upbringing would have instilled the worldview not only of a typical Nez Perce man, but undoubtedly an attitude that was even more cosmopolitan than many on the Plateau, due to his bicultural ethnicity (Nez Perce and Flathead), his early exposure to White people, and their Christian teachings.

⁴ *Ibid.* 159.

⁵ Drury. *Chief Lawyer of the Nez Perce Indians*, 19.

⁶ *Ibid.* 35.

About 1830, Lawyer had heard about a Spokane Indian, Spokan Garry, who had studied Christianity at a Mission on the Red River in Canada. Lawyer went to hear this young man preach and got his first taste of the Bible and he liked what he heard. After hearing Spokan Garry speak Lawyer encouraged four Nez Perce delegates to travel to St. Louis in search of Christian teachers and missionaries to bring their Bible to the Indians of the Plateau. While in St. Louis, the Nez Perce met William Walker, “an educated half-Wyandot Indian from Sandusky, Ohio.” Walker wrote a letter to a friend, Gabriel P. Disosway, who forwarded Walker’s letter to the editor of a Christian journal, explaining the Plateau Indians desire for Christian teachings, who then published a plea for volunteers to go to the Nez Perce country as missionaries.⁷

In 1836, Lawyer met the first group of missionaries at the Fur Rendezvous at South Pass (in present-day Wyoming) and welcomed them warmly. Lawyer’s close friend Tack-en-sua-tis (Rotten Belly) accompanied him to the rendezvous and together they guided the missionaries back to their country. Rotten Belly assisted Whitman and Spalding in locating Spalding’s mission in the Lapwai Valley. Presbyterian chronicler Clifford Merrill Drury posits that Lawyer did not assist in locating the site because his home at Kamiah was a distant sixty miles farther up the Clearwater River.⁸

After Lawyer met the missionaries when they first arrived he became involved in a reciprocal teaching/learning relationship with two of the men, Asa Smith (who was stationed at Kamiah, at Lawyer’s recommendation) and Henry H. Spalding (stationed at Lapwai). He taught them the Sahaptin and Salishan languages. They in turn, taught him to read and write not only English, but his own language from the dictionaries and primers they produced. Up to this time

⁷ *Ibid.* 30-31.

⁸ *Ibid.* 44.

these Indian dialects had no written form. Drury claims that Lawyer was the first Indian to learn to read and write his languages. This also added to his résumé, making him an even more important asset to the Whites.⁹ Coming from a culture where he grew up bilingual and spending so much time with the missionaries, learning their language and their methods made him quite useful to them.

A source of friction within the Lapwai Valley, which must have permeated throughout the greater Nez Perce tribe, was the idea of the people seeking spiritual guidance and cures from Christian missionaries. Chief James and Looking Glass were against this cultural shift. Looking Glass had traveled over ten miles from Asotin to Lapwai to get involved. Chief James and Looking Glass were both tewats [shamen or medicine men] and they were dead set against Spalding's Christian teachings.¹⁰

Combined with Chief James' jealousy of the intrusion into his valley by other bands, and Spalding having placed his mission at Lapwai, the resulting animosity was directed toward both the Christian faction of the tribe and those who had converted them. Therefore, there was a schism forming within the Nez Perce community long before the 1855 treaty council. Lawyer lived in the Lapwai Valley around this time in order to be near Spalding. As a follower of Christianity and a prominent man, at least in the eyes of his White friends, Lawyer may have also been seen as an intruder by a jealous James. In 1840-1841, Looking Glass and Big Thunder had escalated the pressure on the missionaries to the point that Smith left Kamiah (1840) and Spalding suffered vandalism to his mission. Drury speculates that Lawyer was one of the friendly Indians to come to Smith's aid after Looking Glass' threats.¹¹ This may have been the beginning of the manifestation of Lawyer's understanding of interracial interaction; where his

⁹ *Ibid.* 20.

¹⁰ *Ibid.* 56-57.

¹¹ *Ibid.* 57-58.

identity, his “uniqueness” which Miller had explained as an “interweaving threads of individual experience with the warp created by the many strands of relationships that formed the social world.”¹² This may be the point where Lawyer’s viewpoint began to openly diverge from that of mainstream Plateau peoples where the Whites were concerned.

Other than Drury’s explanation that Lawyer was involved in teaching the Indian languages to Smith and Spalding, learning English and Christian teaching from them, and presumably assisting them in general, there is not much specific information about Lawyer’s activities from 1836-1838, but based upon Smith’s writings, Lawyer was a great asset to the Whites during this time. “During the winter of 1841-42, Spalding was at work with Lawyer’s help in translating the Gospel of Mathew into Nez Perce [which was printed in 1845].”¹³

On a hunt in the buffalo country in 1847, dying of measles, Ellis wrote a message to his people in a book and passed it, and presumably his mantle of leadership on to his friend Lawyer. In the book, Ellis advised the people to accept the laws of the “Great Chief of the Americans” whenever they bring them into the country of the Nez Perce. Lawyer, Drury tells us, holds on to this advice as his “dominant political guide.”¹⁴

In November of that year, the question of who would replace Ellis became particularly acute. Due to fear caused by a lack of understanding of a raging measles epidemic, Cayuse Indians around the Waiilatpu Mission rose up and massacred the Whitmans and a dozen others. The news of the brutal murders enflamed the Oregon Territory and sent out a call for panic and revenge throughout the Pacific Northwest. Learning of Ellis’ death, Major Lee of the Fort Waters Volunteers called a meeting of the Nez Perce chiefs in May 1848. Lawyer was still in the buffalo country and did not attend. Looking Glass coveted the position of Head Chief, but

¹² Miller. *Prophetic Worlds*, 18-19.

¹³ Drury. *Chief Lawyer of the Nez Perce Indians*, 63.

¹⁴ *Ibid.* 79.

Major Lee selected Richard, who spoke English, as his recommendation for Head Chief and Looking Glass as War Chief to pacify him. But, although he was a good man, Richard was not acceptable to his people as head Chief.¹⁵

The Oregon Volunteers were still trying to capture the Cayuse murderers of the Whitmans with the cooperation of the Nez Perce and pressed them to select a head Chief with whom they could work and who the people would respect and follow. As Drury puts it, “into this vacuum stepped Lawyer who, by virtue of his knowledge of English and by his evident leadership abilities, was assigned the duties of a Head Chief even though the Nez Perces may not have held a council to appoint him to this office.” Assuming that Lawyer was officially the Head Chief, he was presented an American flag by Peace Commissioner, Robert Newell, for his assistance to the Volunteers in the Cayuse War.¹⁶

Ellis, Richard, and Lawyer were all endorsed by the Whites in part due to their aptitude for speaking English, a skill they no doubt honed through affable relations with Whites. Lawyer, however, was more peculiarly suited to this position, being of mixed lineage and quite possibly being somewhat evangelical as well, it is likely that Lawyer drifted among the various bands of Nez Perce creating a network of support. In any case, Lawyer had pledged to continue the legacy of Ellis by enforcing the laws given them by the Whites. According to Drury, when the Cayuse began enlisting the support of the other tribes in the territory Lawyer refused, holding the bulk of his people in constant support of the Whites. He met with General Joseph Lane, governor of Oregon Territory, regarding the massacre of the missionaries and promised to help

¹⁵ *Ibid.* 79-80.

¹⁶ *Ibid.* 80-81.

capture the murderers. Lawyer told his people that “[t]he murderers of Dr. Whitman must be delivered up to the Whites, that they must be put to death. This is the law.”¹⁷

Drury expresses Lawyer’s popularity with his White counterparts:

Having been schooled in the amenities of the white man’s social life through his missionary teachers, A. B. Smith and H. H. Spalding, Lawyer became a welcomed guest in the social circles which included distinguished white residents of the Willamette Valley. Contemporary accounts would of these visits show that he was received with all the dignity which would have been accorded his position as Head Chief of his nation.¹⁸

Then in 1848 the Indians of the Plateau saw the influx of about 1000 wagons carrying some 5000 immigrants entering Oregon Territory intending to stay. In recent years they had seen disease ravage their populations and now each year their land was becoming more and more overrun. Even the friendly peoples of the Plateau were becoming fearful of being displaced by these White intruders.¹⁹ By 1853 Lt. George McClellan²⁰ had begun his exploration of the Cascade Range heading east from Ft. Vancouver to meet up with Governor Isaac Stevens as he came from the east to complete his survey for the Northern Pacific Railroad. Upon questioning McClellan, Yakima chief Kamiakin discovered Stevens’ plan to meet the Indians and arrange the purchase of their lands for this railroad and for White settlement, leaving the Indians only a small portion of land in reserve upon which to live. Having seen with his own eyes what White settlement had done to decimate the Indians of the Willamette Valley and those in California; Kamiakin was determined to stop this incursion of settlers before they overran all the land west of the Rocky Mountains.²¹

¹⁷ *Ibid.* 85.

¹⁸ *Ibid.* 83.

¹⁹ *Ibid.* 87.

²⁰ George McClellan later became the commander of the Union forces early in the Civil War. After being replaced by President Lincoln, McClellan ran against Lincoln in his second bid for the presidency.

²¹ Splawn, A. J., and Washington State Library. *Classics in Washington History. Ka-mi-akin, last hero of the Yakimas.* Portland, Or.: Binfords & Mort, for the Oregon Historical Society, 1944, 19-20.

The alarm of White encroachment spread like a brushfire through the villages of the Pacific Northwest. Kamiakin's plan was a confederation of all the Indian peoples west of the Rockies from the Oregon-California border to British Columbia posing a united front to stop any further intrusion by Whites into Indian country. According to contemporary observer Andrew Jackson Splawn, even the Shoshones east of the Rocky Mountains were contacted and stood ready to fight.²² Splawn also became a sympathetic friend of the non-treaty factions and those who regretted having signed the treaties, like many of the Yakimas, grudgingly confined to their sedentary life on the reservation. In 1854 the largest gathering of Indians up that point assembled in the Grande Ronde Valley. For five days these discussed their options. Lawyer, Spokane Gerry, and the Cayuse chief, Sticcas wanted to avert any hostilities and at least hear what Stevens had to say, but they were in the minority.²³

Governor Stevens walked into this situation unprepared and with a general lack of understanding of the people he was to encounter. He was negotiating on behalf of the United States from the perspective of a man who had seen great victories by the army of his nation first hand and confidently came west with the attitude of a conqueror ready to dictate terms to an inferior race. Terence O'Donnell illustrates this in the condescending way that Stevens continually addressed the Indians at the treaty councils as "my children," while General Palmer always referred to them as "my friends" or "my brothers."²⁴ O'Donnell tells us that Palmer had interacted with Indians for much of his life, whereas Stevens' first dealings had been months before. When the Indians had gathered at the council grounds they totaled in the thousands.²⁵ O'Donnell speculates that "this may not have pleased Stevens, who preferred dealing with tribal

²² *Ibid.* 21-22.

²³ *Ibid.* 22.

²⁴ O'Donnell, *An Arrow in the Earth*, 200.

²⁵ Estimates vary between one thousand and five thousand.

notables . . .” He posits that the governor was either “ignorant of or disregarded” the common ownership of land in Indian tradition, therefore, no chief or council of chiefs were able to sell the land without the consent of all.²⁶

Lieutenant Lawrence Kip, who attended the council at WallaWalla, equated their (the Whites’) situation there to that of “Lieutenant Grattan [massacred] at Fort Laramie, last season, to have delivered one fire [volley] and then the contest would have been over.”²⁷ O’Donnell notes that Father Ricard at the Yakima Mission had warned of a plan to kill the Whites before they reached the council grounds at WallaWalla. Stevens and Palmer both had their reservations as to the safety as did Major Rains. Stevens was determined to push ahead with the treaty negotiations, even though he admitted that he had been advised that it was “premature and ill advised.”²⁸

During the treaty council, Lawyer claimed that there was a plot by Young Chief of the Cayuse and others to massacre Governor Stevens and the other delegates, then move on to attack the garrison at The Dalles, starting a general uprising. So Lawyer moved his lodge closer to them as a means of protecting them.²⁹ Later, this was the heart of much controversy. Many authors including Splawn³⁰ and Josephy³¹ claimed that Lawyer did this as a ploy to win favor, even saying that he had so derailed the plans of the other chiefs that it was he who was in danger and had moved his family closer to Stevens for his protection from his fellow Indians. This does not seem like a plausible argument, because when Lawyer entertains the treaty commissioners at the council grounds and some of the other tribes began to show their aggression, whether feigned

²⁶ O’Donnell, *An Arrow in the Earth*, 199.

²⁷ Lawrence Kip, *The Indian Council In The Valley Of The Walla-Walla, 1855* (Kessinger Publishing, LLC, 2007), 39.

²⁸ O’Donnell, *An Arrow in the Earth*, 194-195.

²⁹ Splawn, *Ka-mi-akin*, 44.

³⁰ *Ibid.* 28.

³¹ Josephy, *Nez Perce Country*, 70.

or real, Lawyer's followers, the largest Indian contingent in the entire region, remained loyal to him. Had he had anything to fear from his own followers, several hundred in number, he would have needed much more protection than some one-hundred Whites could provide.

Still, Lawyer's authority did not go uncontested. One of Lawyer's greatest rivals during the negotiations was Looking Glass. Looking Glass, Kamiakin, chief of the Yakamas, Peo peo mox mox, of the Walla Walla, and several other chiefs were adamantly against giving up any of their land. They had met the previous year in the Grand Ronde Valley to debate their course of action in regards to the upcoming council with Stevens and had determined not to sell their lands to the Whites. Lawyer along with his fellow Christian and friend, Timothy had convinced the others to at least attend and hear what the Whites had to say.

On Thursday, May 24th, 1855, Lieutenant Lawrence Kip records the arrival of "about twenty-five hundred of the Nez Percé tribe" at the Walla Walla council in his diary. He describes "[t]hey were almost entirely naked, gaudily painted and decorated with their wild trappings. Their plumes fluttered above them, while below, skins and trinkets and all kinds of fantastic embellishments flaunted in the sunshine." He likened them to "centaurs" due to their "fine animals" and superior horsemanship.³² Lawyer was at the head of the procession displaying an American flag, as depicted in a drawing by German soldier, Gustavus Sohon, the column of warriors riding two by two.

On Friday, May 25th the encampment was still awaiting the arrival of other Indians and getting settled in. Kips diary tells us that it was raining in the morning, but cleared by mid-day. He and Lt. Gracie "rode over to the Indian camp to pay another visit to our friend Lawyer. We found the old chief surrounded by his family and reading a portion of the New Testament, . . ." then adds that "[i]n the evening he [Lawyer] came to our tent to return our visit. We feasted him

³² Lawrence Kip, *Council Of The Walla-Walla, 1855*, 195.

to the best of our ability, not omitting the indispensable [smoking of the] pipe, and he seemed exceedingly gratified with his entertainment.”³³ Thus, Lawyer and his hosts passed the time while awaiting the commencement of the treaty council.

Kamiakin and Peo Peo mox mox arrived at the Walla Walla council grounds on May 28th with a combined force of about one thousand Yakimas and Walla Wallas. Along with Skloom and Owhi they went to visit Stevens. They did not accept any offerings from Stevens and, according to Splawn; they felt crestfallen by the far superior number of Nez Perce accompanying Lawyer. Splawn implies that they had hoped to intimidate the peace commissioners by their imposing numbers when they stood against the offer made by the Whites to buy their land. Knowing that Lawyer would probably be pro-White and that he had far more warriors than all other tribes present; their ability to bully Stevens was diminished.³⁴

During the opening days of the treaty council Lawyer claimed that there was a plot by Young Chief of the Cayuse and others to massacre Governor Stevens and the other delegates, then move on to attack the garrison at The Dalles, starting a general uprising. So Lawyer moved his lodge closer to them as a means of protecting them.³⁵ Later, this was the heart of much controversy. Going back to the necessity to provide protection and hospitality to visitors as a custom of the Plateau peoples, Lawyer would have been obliged to shield Stevens and the other Whites from harm.³⁶

Many authors and Indians alike claimed that Lawyer did this as a ploy to win favor, while some even said that he had so derailed the plans of the other chiefs that it was he who was in danger and had moved his family closer to Stevens for his protection from his fellow Indians.

³³ *Ibid.* 198.

³⁴ Splawn, *Ka-mi-akin*, 27.

³⁵ *Ibid.* 28.

³⁶ Angelo Anastasio, “The Southern Plateau: An Ecological Analysis of Intergroup Relations,” *Northwest Anthropological Research Notes* 6 (1972): 109-229.

This does not seem like a plausible argument, because when Lawyer entertains the treaty commissioners at the council grounds and some of the other tribes began to show their aggression, whether feigned or real, Lawyer's followers, the largest Indian contingent in the entire region, remained loyal to him. If he had anything to fear from his own followers, several hundred in number, he would have needed much more protection than some one-hundred Whites could provide.

Lawyer's good friend Chief Timothy took on the role of crier for the Nez Perce as the council began³⁷ He also took notes of the proceedings in his native language (these records were burned by the family when Timothy died in 1890, as per tradition).³⁸, while James Doty was the official secretary and transcriber for the commissioners' journal.³⁹ Lawyer spoke for the Nez Perce after all had listened to Stevens' and Palmer's initial proposal. He was generally in agreement with them, as were his followers. He said, "[I]t is not for ourselves here that we are talking, it is for those that come that we are speaking," referring to Nez Perce posterity.⁴⁰

Kamiakin was asked to speak, but he had little to say. He said that "perhaps you [Stevens] have spoken straight," adding "that your children will do what is right. Let them do as they have promised."⁴¹ Lawyer and Kamiakin were both implying that the decisions made at this council would affect future generations and would depend on them adhering to the same terms agreed upon. Soon after, Peo Peo mox mox was asked to speak for the Walla Wallas. After some hesitation he told Stevens and Palmer to be more specific when speaking about the land.

³⁷ Isaac Ingalls Stevens, *A True Copy of the Record of the Official Proceedings at the Council in the Walla Walla Valley, 1855* (Ye Galleon Pr, 1996), 37.

³⁸ Drury. *Chief Lawyer of the Nez Perce Indians*, 102-103.

³⁹ Timothy's transcript of the proceedings of the council at Walla Walla were burned after his death, according to Drury, as per Nez Perce tradition. Drury, *Chief Lawyer of the Nez Perce Indians*, 102.

⁴⁰ Stevens, *Council in the Walla Walla Valley, 1855*, 59.

⁴¹ *Ibid.* 59.

They had spoken too generally about which land they wanted and which land they intended the Indians to retain.

When Eagle from the Light spoke he talked about the Indians' relationship to nature saying "you see where the Sun is. He hears me . . ." continuing by recounting how the red people and white people had come together at the council to talk, then told of past Indian-White contact and the friction he had encountered in these exchanges.⁴²

Later, after hearing about the specific reservation boundaries and payments for their lands, Stachus spoke to the commissioners:

My friends I wish to show you my mind. Interpret right for me. How is it I have been troubled in mind? If your mothers were here in this country who gave you birth and suckled you, and while you were sucking some person came and took away your mother and left you alone and sold your mother, how would you feel then? This is our mother, this country, as if we drew our living from her. My friends, all of this you have taken. Had I two rivers I would be content to leave the one and live on the other.⁴³

Stachus went on to name three places where he would prefer to live.

Lawyer gave a long speech describing Indian-White relations as far back as Columbus' first encounter with native peoples. When he had finished Young Chief, another Cayuse chief spoke, saying that "The Lawyer sees clear."⁴⁴ Then he spoke of the Earth's animated qualities and the relationship between God, the Earth, and the Indians. Young Chief concluded his speech by saying that "Lawyer understood your offer and he took it. I do not understand it and I do not yet take it."⁴⁵

Five Crows agreed with Young Chief, but Peo Peo mox mox chastised the gathering of Indians, saying that they had been taken in by offerings of food and gifts. Then he said, "Now I will speak about Lawyer. I think my friend has given his lands that is what I think from his

⁴² *Ibid.* 61-62.

⁴³ *Ibid.* 72.

⁴⁴ *Ibid.* 79.

⁴⁵ *Ibid.* 79.

words.”⁴⁶ He ended by asking for another council in the future so as to have time to think and discuss the terms among themselves.

Lawyer and his followers had made up their minds and were ready to sign the treaty, but the other tribes had formed an anti-treaty coalition with their relationship to nature as a major theme in their line of discourse. This may have suggested that the division was along the lines of pro-treaty Christians versus anti-treaty, anti-Christianity or tewats, since the Christian made no such objections to selling their lands based on a spiritual relationship to the animated Earth as their mother.

As far as the Nez Perce were concerned the treaty had been settled Thursday, June 7th, as were, by all indications, the Walla Wallas and Umatillas, but the Cayuse were still holding out. Originally, the Walla Wallas, Umatillas, and Cayuses were to share a reservation with the dominant Nez Perce, but then on the 8th, Stevens and Palmer made a concession to gain their approval. They would get their own reservation in their own country in Oregon.⁴⁷ The Yakimas would have their own reservation in their country as well. Kamiakin and a few others were still holding out when word came that their war chief, Looking Glass was near.⁴⁸ He had been in the buffalo country for some time and had somehow received word of the council. This prompted him undertake a forced ride across rugged terrain to reach the council grounds before the treaty was signed. Kips diary tells us that “he [Looking Glass], with another chief and about twenty warriors . . . had brought back with them, as a trophy, one scalp, which was dangling from a pole.”⁴⁹ After introductions had been exchanged with the commissioners, “Looking Glass, then, without dismounting from his horse, made a short and very violent speech,” Kip writes, “which I

⁴⁶ *Ibid.* 79.

⁴⁷ Drury. *Chief Lawyer of the Nez Perce Indians*, 121.

⁴⁸ James Doty, *Journal of Operations of Governor Isaac Ingalls Stevens of Washington Territory in 1855* (Fairfield, Wash: Ye Galleon Press, 1978), 28.

⁴⁹ Kip, *The Indian Council Of The Walla-Walla, 1855*, 214-215.

afterwards learned was, as I suspected, and expression of his indignation at their selling the country.”⁵⁰ This ended the council session for the day. That evening there was speculation whether Lawyer could retain his mantle of authority or if Looking Glass would challenge that authority.⁵¹ Three Feathers of the Nez Perce supported Looking Glass, but Chief Billy rebutted him, saying “I thought we had appointed Lawyer Head Chief and he was to do our talking.”⁵²

On Saturday, June 9th Kip’s diary records, “The Council did not meet till three o’clock”⁵³ and matters seem now to have reached a crisis. The treaty must either be soon accepted or the tribes will separate in hopeless bad feeling.⁵⁴ Looking Glass’ arrival had strengthened the anti-treaty faction. Stevens threw a bonus on the table of “\$150, 000.00 to the three tribes which were to occupy the Umatilla Reservation and \$200,000.00 to the Nez Perces.”⁵⁵ The balance of support seemed to tip precariously point by point as the negotiations drug on.

During one of Looking Glass’ tirades Lawyer left the council, leaving the issues at hand undecided, so the council adjourned until Monday.⁵⁶ Later he rubbed a little salve on Lawyer’s bruised ego after the chief had felt abandoned during the debate over his authority. “The Looking Glass will not be allowed to speak as head chief. You and you alone, will be recognized,” Stevens told Lawyer in private.”⁵⁷

Doty noted in his official journal that on Saturday, June 10th “Considerable anxiety is felt as to the course that will be taken by the Nez Perces, Cayuses, and Umatillas.”⁵⁸ This anxiety

⁵⁰ *Ibid.* 215.

⁵¹ Doty, *Journal of Operations of Governor Isaac Ingalls Stevens 1855*, 28.

⁵² Drury, *Chief Lawyer of the Nez Perce Indians*, 125.

⁵³ The Stevens account has “the council open[ing] at 2 o’clock p.m.” Stevens, *Council in the Walla Walla Valley, 1855*, 97.

⁵⁴ Kip, *The Indian Council Of The Walla-Walla, 1855*, 215.

⁵⁵ Drury, *Chief Lawyer of the Nez Perce Indian*, 124.

⁵⁶ Doty, *Journal of Operations of Governor Isaac Ingalls Stevens 1855*, 30.

⁵⁷ Drury, *Chief Lawyer of the Nez Perce Indians*, 125.

⁵⁸ Doty, *Journal of Operations of Governor Isaac Ingalls Stevens 1855*, 30.

seems to have overshadowed the positive fact that on the same afternoon Kamiakin, Owhi, Skloom, and Peo Peo mox mox had all signed their respective treaties.⁵⁹

What he [Stevens] has been doing with Looking Glass since last Saturday,” speculates Kip in his diary on June 11th, “we cannot imagine, but we suppose savage nature in the wilderness is the same as civilized nature in England in Walpole’s day, and ‘every man has his price.’”⁶⁰ At any rate, as soon as Stevens opened the council he called “the Nez Perces to act like men to come forward and sign the Treaty . . .”⁶¹ Lawyer stepped up and signed without hesitation, followed by Looking Glass, Old Joseph, and approximately fifty other chiefs who had agreed to the treaty and openly acknowledged Lawyer as their Head Chief.⁶² Finally, seeing that they were alone in opposition to the treaty, the Cayuse signed their treaty as well.⁶³ Thus ended the Walla Walla Treaty Council of 1855, with Governor Stevens traveling east over the Rocky Mountains to council with the tribes there, Lieutenants Kip and Gracie, with the military escort headed back to The Dalles, and the Indians back to their summer subsistence pursuits.

When the treaty council had ended, Lawyer, and probably Looking Glass to some extent, had negotiated a very large reservation for their people and softened up the U. S. delegation so that the other tribes ended up not being crowded onto one or two small reservations. Many were still not satisfied, but in the end they signed the treaty. Lawyer however never wavered in his support of the Whites during the council. This did not help his reputation with many of the Natives on the Plateau. Rather, it widened the schism within his own nation that had begun with James and Looking Glass in the Lapwai Valley, back in 1838. As soon as Stevens possessed the

⁵⁹ *Ibid.* 30.

⁶⁰ Kip, *The Indian Council Of The Walla-Walla, 1855*, 216-217.

⁶¹ Doty, *Journal of Operations of Governor Isaac Ingalls Stevens of 1855*, 30.

⁶² Stevens, *Council in the Walla Walla Valley, 1855*, 105.

⁶³ Doty, *Journal of Operations of Governor Isaac Ingalls Stevens of 1855*, 30.

treaties from the Walla Walla council he and Palmer announced to the newspapers of western Oregon and Washington that there was land open to White settlement on the Plateau. They had promised the Indians that they could occupy the ceded lands for a year after the treaties were ratified before they had to relocate to their reservations. Now, gold had been discovered in the Colville Valley.⁶⁴ Palmer later told Commissioner of Indian Affairs George Manypenny, in a letter, that he regretted uniting with Stevens in the announcement. He realized that this premature act might spark trouble . . . and before long it did.⁶⁵

As Stevens departed from Walla Walla for the council with the Blackfeet he asked Lawyer to come along “to solemnize a peace pact between them . . .”⁶⁶ Lawyer declined the governor’s offer because he was in too much pain from the old wound in his side, but the chief provided Stevens with an escort of Nez Perce warriors. Looking Glass, Eagle From the Light, Three feathers, White bird, and Jason also accompanied the peace commission over the Rockies.⁶⁷

Stevens’ party was returning from Montana when a message came up the trail with an express rider, W.H. Pearson, saying that the Yakimas and some of their allies had begun killing Whites, including the Yakima Agent, Andrew Bolon. Pearson himself had been chased to the edge of Nez Perce country by Umatilla warriors. Now federal troops under Major Haller had been defeated by the Yakimas.⁶⁸

Along with the dispatch about the Yakimas was a letter from C.H. Mason, who was acting as territorial governor of Washington in Stevens’ absence. Mason urged Stevens, under the advice of the senior ranking military officers in the Territory, to travel down the Missouri and

⁶⁴ Josephy, *Nez Perce Country*, 75.

⁶⁵ O'Donnell, *An Arrow in the Earth*, 208.

⁶⁶ Josephy, *Nez Perce Country*, 75.

⁶⁷ *Ibid.* 75.

⁶⁸ Josephy, *The Nez Perce Indians and the Opening of the Northwest* (Boston, Mass: Houghton Mifflin, 1997), 343.

Mississippi Rivers, to the Gulf of Mexico, cross the Isthmus of Panama and return up the coast by ship, in order to avoid crossing the lands of the Yakima, Umatilla, Cayuse, and Walla Walla. Instead of heeding the warnings, Stevens continued on to the Coeur d'Alene Mission to calm them. There he discovered that some Yakimas had been waiting for him, apparently to kill him. They had grown impatient and assumed that no one could traverse the Bitterroots with the snows that had been piling up in the passes, so they left just prior to his arrival.⁶⁹

Rumors among the Coeur d'Alenes were that Kamiakin had been speaking convincingly against the Whites and drumming up support for hostilities. Peo Peo mox mox had also been bragging that he was going to scalp Stevens. Stevens sent his interpreter, William Craig and one of the most loyal Nez Perce subchiefs to have Lawyer assemble the leadership of that tribe so that he could speak to them to extinguish any hostile feelings before they took up arms with the other warring tribes. First Stevens spoke with the Coeur d'Alene, Colville, and Spokane for the same reason. He gained their promises that they would not go to war against the Whites. He also learned more troubling news, "Stevens received convincing evidence that Looking Glass had sought the aid of Spokane Garry in a plot to entrap him." Luckily for him, "[a]lthough Garry had reason for complaint against the Whites, he, like Lawyer, remained a friend of the white men."⁷⁰ It was Stevens' confidence in Lawyer's loyalty that prompted him to contact the chief again and asked him to help derail Looking Glass' plans without arising suspicion that Stevens was aware of the plot.⁷¹

In response to Stevens' plea for help "Lawyer had assembled two hundred and eight lodges, containing over two thousand Indians, and able to muster eight hundred warriors."⁷²

⁶⁹ Drury. *Chief Lawyer of the Nez Perce Indians*, 136-137.

⁷⁰ Drury. *Chief Lawyer of the Nez Perce Indians*, 138.

⁷¹ *Ibid.* 138.

⁷² *Ibid.* 138.

Lawyer held council and the consensus reached was to remain friendly to the Whites, uphold the treaty and the law, and provide the governor with an escort of two hundred and fifty warriors. At this news, Looking Glass became a wholehearted supporter of the governor and Whites in general. As it turned out, Stevens also had an escort provided by the Oregon Volunteers who had engaged the hostile Indians and Peo Peo mox mox had been killed. The Oregon Volunteers, out of fear for the governor's safety, came to his rescue.⁷³ This unity, as historian Alvin Josephy points out, was "at that juncture of the tribe's history was deceptive and concealed from the Americans the deep division that actually existed among the Nez Perces."⁷⁴ With the support of Lawyer's Nez Perce, Stevens drove the hostiles back to the Palouse country across the Snake River.⁷⁵ The Nez Perce returned to their villages due to extremely cold weather, but Lawyer's offer to field them again when needed contributed to the Whites' success in putting down the uprising.⁷⁶

Even though there was a schism that divided the Nez Perce, it is to Lawyer's credit that he was able to influence most of the leadership, regardless of their actual feelings, that it was necessary to support the Whites, that they "had done well for themselves at the Walla Walla meeting; the bands had no business looking for trouble; entering the war would only bring misery and death to the people."⁷⁷ Even Joseph, who was under extreme pressure from the Cayuses and Walla Wallas to join them in war, supported Lawyer. In spite of his familial ties to those tribes, he placed the security of his own band ahead of any other obligations that he might feel.⁷⁸ It took the entire persuasive prowess that Lawyer, Timothy, Spotted Eagle, and Jason

⁷³ *Ibid.* 138-139.

⁷⁴ Josephy, *The Nez Perce Indians and the Opening of the Northwest*, 355.

⁷⁵ Clifford Merrill Drury. *Chief Lawyer of the Nez Perce Indians*, 140.

⁷⁶ *Ibid.* 142-143.

⁷⁷ Josephy, *The Nez Perce Indians and the Opening of the Northwest*, 355.

⁷⁸ *Ibid.* 355-356.

could muster to maintain control of the various bands of Nez Perce while visitors from the hostile tribes continued to come and go in an attempt to recruit warriors to drive out the Whites. Still, they held fast to their promise to Stevens to remain friendly to the Whites.⁷⁹

Finally, the hostile Indians under Owhi, and some of the lesser chiefs had had enough war and began to negotiate peace for themselves and their bands. Kamiakin wanted to continue to fight, but lacked the manpower he needed to sustain a protracted war. The Yakima War was running out of steam. Owhi and Teias rode into Colonel George Wright's camp on the Naches River and discussed their surrender. They also explained that the treaty that Stevens had forced upon them was the cause for their taking up arms against the Whites.⁸⁰ Several Nez Perce had been swayed by the warring bands and an anti-Lawyer faction did arise for a time which joined in the fighting. It was led by Looking Glass, Three Feathers, and Old Joseph, who by then had turned away from befriending the Whites. According to Stevens and Colonel Shaw, the battle of Grand Ronde on July 17, 1856, where the Washington Volunteers had defeated the Cayuses and Walla Wallas who lost most of their food stores, herds, and other possessions, had broken the Indians' will to fight. The other tribes who had recently joined in had their spirits crushed, too. Control shifted back into the hands of Lawyer, who had foreseen misery and death if to those who fought the Whites.⁸¹

The two opposing forces among the Nez Perce were Lawyer and Looking Glass, but within the Plateau culture as a whole, it was Kamiakin who was Lawyer's nemesis. Although Looking Glass often vied for control of the tribe, Kamiakin was the bolder, more bellicose of the two, thus, he was more influential with many of the warriors. "Kam i ah kan," as Drury points out, "ignoring the overwhelming advantage held by the Whites because of their superior

⁷⁹ *Ibid.* 364.

⁸⁰ *Ibid.* 365.

⁸¹ *Ibid.* 370-371.

numbers, their military equipment and technical skills, advocated armed resistance.”⁸² He was opposed to any White intrusion into his territory, to accepting gifts or annuities, or to ceding any of his land and relocating to a reservation.⁸³ Governor Stevens’ son, Hazard, is quoted by O’Donnell as saying “Young Chief, Five Crows, Pu-pu-mox-mox, [Yellow Serpent], Kam-i-ah-kan, and their sub-chiefs—all signed the treaties as a deliberate act of treachery, in order to lull the whites into fancied security.”⁸⁴ Whether accurate or not, the perception by the Whites is that Kamiakin was not their friend. Apparently, in weighing the common Indian ethos of warfare, even when resulting in death was a high honor and that of a chief looking out for the welfare of his people above all else, he chose war.

Lawyer, on the other hand, was always friendly toward the Whites—always a diplomat, but beyond that, Drury says “Lawyer was more realistic. He knew that the Indians were too few in numbers and too poor in material resources to long resist the white man.”⁸⁵ Realistic or more open to change? Kamiakin cultivated crops on irrigated lands, raised cattle and horses, and took on other habits of the Whites, yet refused to even accept so much as food provisions and tobacco at the Walla Walla Council, or to take the government blankets as payment once he had signed the treaty which ceded his tribal lands. He did not want to comingle with the Whites. He did not want White intruders living near him. Lawyer sought interaction with Whites, although he did seem to reject the idea of having too many Whites living on the reservation alongside his people. This may well have been due to the character of the Whites that began to overrun the Nez Perce Reservation. Whites, who cheated, robbed, murdered, and sold alcohol to the Indians. Drury bases his analysis solely on the idea that “[t]he hostilities which occurred during 1856-58

⁸² Drury. *Chief Lawyer of the Nez Perce Indians*, 144.

⁸³ *Ibid.* 144.

⁸⁴ O’Donnell, *An Arrow in the Earth*, 208.

⁸⁵ Drury. *Chief Lawyer of the Nez Perce Indians*, 144.

between the American troops and the Indian warriors from several tribes [in] demonstrated the fact that Kam I ah kan was wrong and that Lawyer was right.”⁸⁶ In terms of lives squandered during this time Drury is correct, more Yakimas, Walla Wallas, Cayuses, Umatillas, Palouses, and their allies died, including the noncombatants, than did Nez Perces. But misery would be visited upon the Nez Perce Reservation as well.

In October of 1860, Elias Pierce arrived at Walla Walla with news of his gold strike on Orofino Creek on the Nez Perce Reservation. Historian Elliot West point out that it “brought almost instant confrontations, and then developments that ground steadily away at the Nez Perces’ independence and traditional life.”⁸⁷ Pierce had entered the reservation illegally and had prospected quietly until he was successful then boasted to the world, so to speak. The Treaty of Walla Walla (1855) specifically prohibited any Whites from entering the reservation without authorization from the tribe, the superintendant, and agent of the Department of Indian Affairs.⁸⁸ The superintendant of Indian affairs for Washington Territory saw the crisis on the horizon and told the Nez Perce agent, Andrew Cain, to stop anyone who tried to enter the reservation with the intent to prospect for gold. Cain proclaimed the Indian lands off limits and requested federal troops to back him up.⁸⁹

Like all other issues concerning the Nez Perce, the reaction was split along existing lines of the decades-old schism. Many of the Christian faction who supported assimilation—Lawyer’s followers—the initial response was not that much concern. Many, like Reuben (Eagle that Speaks All), saw economic opportunity. He operated a ferry and became financially well off. Some cut firewood to power the steamboats on the Snake River. Many looked favorably upon

⁸⁶ Drury, *Chief Lawyer of the Nez Perce Indians*, 144.

⁸⁷ West, *The Last Indian War*, 79.

⁸⁸ Doty, *Journal of Operations of Governor Isaac Ingalls Stevens 1855*, 102.

⁸⁹ West, *The Last Indian War*, 79.

the new businesses in Lewiston. The non-treaty, traditionalists, however, were infuriated. Lawyer, as usual, tried to be of service to the miners, while attempting to pacify the anti-White crowd.⁹⁰

When Whites began to enter the reservation illegally, the Nez Perce began to complain that their rights and their lands were not being protected as stipulated in the treaties. This prompted the superintendent of Indian affairs to recommend to his superiors that they “negotiate free access to the goldfields and reduce reservation boundaries to exclude the gold districts”⁹¹ The influx of Whites to Nez Perce land upset the economic balance of treaty and non-treaty bands alike as well as other negative effects such as ballooning in crimes against Indians, and a lack of support by the government, to the point that the “Nez Perce treaty of 1855 was called untenable.”⁹² So as a prescribed remedy, “a new treaty was signed . . . [d]rawn between Superintendent Edward Geary, Indian Agent John Cain, Head Chief Lawyer, and forty-seven chief headmen and delegates, the treaty of April 10, 1861 . . .”⁹³ However, Congress did not ratify this treaty and soon new strikes were discovered all over the Indian land, including among the non-treaty bands to the south. This left the Nez Perce disgruntled, so soldiers were sent in to keep the peace. It was fairly obvious that the army could not protect the Indians’ interests from the miners, which the Washington Territorial Indian superintendant forecasted that by spring there would be a wave of twenty thousand miners flooding the reservation. Again, the rights of the Indians would be trampled.⁹⁴

⁹⁰ West, *The Last Indian War*, 80.

⁹¹ J. Diane Pearson. *The Nez Percés in the Indian Territory: Nimiipuu Survival*. Norman: University of Oklahoma Press, 2008, 15.

⁹² West, *The Last Indian War*, 87.

⁹³ Pearson. *The Nez Percés in the Indian Territory*, 15.

⁹⁴ West, *The Last Indian War*, 80-81.

The Civil War era was even worse for the non-treaty bands. While they had not been forced by the stipulations of the treaties to move onto the reservation, yet, they were finding living near their White neighbors and under the care and control of the government exceedingly difficult. The federal government had not been living up to the provisions of the treaties, either through apathy or corruption. Rather than providing protection, the military at Ft. Lapwai was engaged in peddling whiskey to the Indians. Whites allowed their livestock to roam freely over Nez Perce farms and pastures, tearing down fences as they went.⁹⁵

When Congress did not ratify the 1861 treaty and the government was not responding to the problem of Whites entering the reservation unlawfully, Lawyer and the other chiefs of the Nez Perce requested another treaty to exclude the gold fields from the existing reservation boundaries. The outcome of this request was the Treaty of Lapwai (1863), which is often called the *Thief Treaty*. This new treaty added to the criticism of Lawyer, because he has been accused of selling the non-treaty bands' lands, including Joseph's Wallowa Valley. This made the non-treaty bands criticize the Head Chief system and "the majority-rule decision marked by the 1855 treaty."⁹⁶

The superintendant of Indian affairs for Washington Territory in 1863 was Calvin H. Hale, who arrived at Lapwai for the treaty council on May 10th. He postponed the opening of the treaty, though, because the bands living off the reservation were not there to meet with him. Hale spent a little time looking around the area so that he could better determine the boundaries of the new reservation, which he finally placed on what he claimed to be the best farmland around. This was mainly along the Clearwater River watershed, where most of the bands of the Nez Perce currently lived. He concluded this was the most agreeable solution for all concerned,

⁹⁵ Pearson. *The Nez Percés in the Indian Territory*, 19-20.

⁹⁶ West, *The Last Indian War*, 80.

just as the commissioners of the Walla Walla Treaty had. He also continued the notion that the Nez Perces were one distinct, unified tribe with one head chief who spoke for them and just as at the council in 1855, that one man was Lawyer. In other words, this was to be an agreement decided between Lawyer and the United States government, which he, Hale, would act as sole representative.⁹⁷

Hale's efforts to hold council with the entire tribe were being frustrated by the fact that even many of the non-treaty bands living in the vicinity had not yet arrived by May 22nd, so, with approximately sixteen hundred of Lawyer's followers in attendance, he began on May 25th. Although the more aggressive non-treaty bands were absent it is unlikely that Hale was prepared for what took place after he had outlined the contents of the new treaty. After making his presentation Hale allowed Lawyer to speak, who along with the other "friendly" chiefs went on harangued Hale for the next three days about the shortcomings of the government in providing for the tribe as stipulated in the Walla Walla treaty. Lawyer also pointed out that Stevens had explained that the previous treaty was to be permanent. If this was so, then why was Hale here trying to promise new benefits when old ones went unmet?⁹⁸

Hale tried to explain that in the old treaty there were provisions for the agent to assign individual lots and that when all had received their lots there would be much unneeded land that could then be sold off. That it may seem that they were being punished by giving up more land, but in reality this was a compensation for their on-going cooperation. He then adjourned for five days, resuming on June 3rd.⁹⁹

There is some question whether the five non-treaty band from the south were even aware of the treaty council since none signed it. They claimed that is why they refused to receive any

⁹⁷ *Ibid.* 88-89.

⁹⁸ *Ibid.* 89-90.

⁹⁹ *Ibid.* 90.

of the benefits from the negotiations. Apparently, afraid this would insinuate acceptance of its terms. These five non-treaty bands include “Chief Joseph’s or Wallowa band, Looking Glass’s band, the White Bird or Lahmtahma band, the Palus from Lower Snake River led by Húsus Kute and Hahtalekin, and Toohoolhoolzote’s group from the high country between the Salmon and Snake rivers.”¹⁰⁰ The Paluses refused to remove to the Yakama reservation; instead, they stayed along the Snake River.¹⁰¹ According to West the lower bands did arrive during the five-day recess, although the record, he points out, indicates that only the *upper*¹⁰² Nez Perce factions spoke. “Statements from the non-treaties,” West tells us, “were terse to the extreme, and everything said was from the chiefs among the upper Nez Perce.”¹⁰³

West attributes the silence of the lower band to three decades of tensions within the Nez Perce tribe. He also emphasizes that “[a]ll Christians were among the upper Nez Percés, along the Clearwater River, while the lower bands were all antitreaty traditionalists.”¹⁰⁴ This is not to imply that *all* upper bands were Christians, but they did account for most of the upper, reservation bands. Lawyer and other reservation band leaders were resented because along with the distinction of treaty/non-treaty bands being drawn the lines between Christian/non-Christian traced more or less these same fissures. When the land forfeited in the treaty of 1863 was sold for \$2,500, the money was earmarked to build two churches for the Christians living on the reservation. This provision was attributed to the “majority-rule” procedures imposed on the entire Nez Perce nation, while only beneficial to the Christians on the reservation, even though the non-Christians were now being pushed to live there as well. Being a leading Christian as

¹⁰⁰ Pearson. *The Nez Percés in the Indian Territory*, 17.

¹⁰¹ *Ibid.* 17.

¹⁰² The distinctions of *upper* for the reservation Nez Perce, and *lower* for the southern, off-reservation bands of the tribe began to be used when the terms Christian/non-Christian, or treaty/nontreaty did not fit.

¹⁰³ West, *The Last Indian War*, 90.

¹⁰⁴ *Ibid.* 90.

well as the Head Chief, who led the treaty bands to sign *all* the treaties, Lawyer was seen as the source of the non-treaty bands' discontent.¹⁰⁵

Hale asked these lower, traditionalist bands to give up their lifestyle and live within the boundaries of the crowded reservation forgetting all past quarrels with their northern relatives.¹⁰⁶ In spite of the active participation in the White man's economy by many Nez Perce, ". . . not all of the Nimiipuu [Nez Perce] wanted to become farmers or sedentary residents of the reservation."¹⁰⁷ They did not want to let go of their nomadic life of subsistence "hunting, fishing, and berry and root gathering that was reserved in Article 3 of the treaty of 1855. The new treaty did not abrogate the previous treaty, although it rewarded those who opted for a sedentary lifestyle."¹⁰⁸ Although they were still technically allowed to continue this life, they found it more difficult to continue with the White encroachment, while the treaty bands on and around the reservation benefited from that lifestyle.¹⁰⁹

The Treaty was not favorable to the Nez Perce in general, but least of all for the non-treaty bands. Lawyer was viewed as a traitor for allowing the government to take tribal resources, build and manage infrastructure, and regulate lifestyles on the reservation. "Article 8 retained all reservation timber as the exclusive property of the Nez Perce nation, although the government reserved the right to use the timber free of charge to develop military installations. This article was amended in 1867 (ratified as Treaty of 1868—an amendment to the 1863 treaty), ending the military's access to the Nez Perce timber."¹¹⁰

¹⁰⁵ Pearson. *The Nez Percés in the Indian Territory*, 19.

¹⁰⁶ West, *The Last Indian War*, 90.

¹⁰⁷ Pearson. *The Nez Percés in the Indian Territory*, 19.

¹⁰⁸ *Ibid.* 19.

¹⁰⁹ *Ibid.* 19.

¹¹⁰ *Ibid.* 19.

With an ever-growing White population encroaching upon them relations between Nez Perce and Whites off the reservation, particularly in the Wallowa Valley, were strained to say the least. White settlers railed against the idea of Nez Perce pasturing their herds on open rangeland off reservation. Some filed claims against the Indian lands, even though they were not valid. Others paid substantially less than the land was worth because the land had been ceded under the provisions of the treaty. These settlers found support in Lafayette F. Grover, the anti-reservation governor of Oregon. Again, the case for majority-rule was thrown in the faces of the non-treaty bands, The governor claimed “the executive order” [President Grant, June 10, 1873 as the supreme law] but Joseph claimed primordial rights that had never been given up “. . . Chief Joseph made it clear that he would accept no justification for non-Native settlement of the Wallowa Valley.”¹¹¹

Chief Joseph’s band of the Nez Perce trace their running battle with the U.S. Army, their capture and removal to Indian Territory (modern-day Oklahoma), their struggle to be free, all to the Thief Treaty. All this adversity was basically the result of Joseph’s band of the Wallowa Valley Nez Perce not signing the Lapwai Treaty of 1863 and the assertion by the U.S. government that the participating Nez Perce— Lawyer in particular, spoke for *all* Nez Perce, Joseph’s band included. Thus, Joseph and his sympathizers tend to see Lawyer as a traitor, whereas there is no proof that Lawyer ever claimed to speak for the absentee bands. He and fifty-one other headmen signed the *Treaty at Lapwia* (1863).

Lawyer had shown himself to be a trusted friend to many prestigious Whites throughout the Northwest, whether socially or in his official capacity. He attended events as far away as

¹¹¹ *Ibid.* 21.

Oregon City, Vancouver Barracks, and Washington D. C. to meet the president of the United States in 1868 to amend the treaty of 1863.¹¹²

In 1864, Boise became the capital of Idaho and Governor Lyons was seeing his power slip away. This gave Nez Perce agent James O'Neill the opportunity he had been waiting for. Without the governor to protect his position Reverend Spalding was vulnerable and O'Neill seized the chance to dismiss the pastor and teacher of the Lapwai mission. Immediately upon his dismissal, the Catholic priests began trying to make inroads on the reservation. When one of the priests approached Lawyer about opening a mission among the Nez Perce at Lapwai, Lawyer's reply was, ". . . I am the chief and it is for me to say, and I do say . . . You cannot come. I do not like your religion. We will not have it."¹¹³ Lawyer maintained his anti-Catholic stance throughout his time in power.

In 1870 a young Methodist minister from the Yakima tribe named George Waters began an enthusiastic Christian revival among the Nez Perce at Lapwai until agent Monteith ran him off the reservation. Drury notes that over one thousand Indians from the Nez Perces, Spokanes, and Cayuses had been converted at the Presbyterian churches at Lapwai and Kamiah and he adds, "Lawyer played a prominent role in this revival" although he does not elaborate on what that role was.¹¹⁴

The religious passion continued and opened the door for the new Presbyterian preacher, Henry T. Cowley and Catholic priest, Father Joseph M. Cataldo to profit from the new awakening on the reservation.¹¹⁵

¹¹² Drury. *Chief Lawyer of the Nez Perce Indians*, 85, 248.

¹¹³ *Ibid.* 234-235.

¹¹⁴ *Ibid.* 264.

¹¹⁵ Miller. *Prophetic Worlds*, 96.

The Jesuits finally built the Catholic, *Slickpoo Mission* after receiving permission to build a church on the reservation in 1873 through petitioning the Department of Indian Affairs. It is interesting to note that one of Lawyer's staunchest critics in modern times has been Allen Slickpoo Sr., a descendent of a Nez Perce headman who provided the land for the mission near Lapwai named for him after having "converted his entire Presbyterian following to Catholicism."¹¹⁶

As the religious fervor was escalating in early 1871, a council of Nez Perce chiefs convened and voted to remove Lawyer as head Chief citing his age as the reason. Lawyer was dejected by the move and because the council had considered Jacob, who was a non-Christian as his replacement.¹¹⁷ Then, Cowley and Monteith had a falling out resulting in Spalding returning to Lapwai to replace Cowley.¹¹⁸

Drury suggests that Lawyer may have assisted Spalding in reaching out for converts, because he saw a greater Christian faction as being more advantageous to his regaining political power as well as to the tribe as a whole. Yet, Drury also cites Cowley as having said that "Lawyer made a profession of religion in 1871, and ever after maintained a consistent Christian character . . . and manifested a deep interest in the progress of religion among his people."¹¹⁹

Spalding's choice of Timothy and Jude, two of his most faithful followers over the years as the first elders of the church, according to Drury, was quite arbitrary. He then set about baptizing his followers. In 1871 Lawyer became the first elder of the Presbyterian Church of Kamiah, Idaho. He was baptized by his old friend, Reverend Henry H. Spalding. Drury cites Spalding's church records as saying, "[o]n Sunday, November 12, 1871, the ingathering began

¹¹⁶ *Ibid.* 96.

¹¹⁷ Drury. *Chief Lawyer of the Nez Perce Indians*, 267.

¹¹⁸ Miller. *Prophetic Worlds* 96.

¹¹⁹ Drury. *Chief Lawyer of the Nez Perce Indians*, 270.

when Spalding baptized twenty-one men and twenty-three women. Heading the list . . . was Lawyer . . . “Head Chief.”¹²⁰ Also baptized on that day were two sons of Lawyer, James and Archie, the latter being ordained as a Presbyterian minister in 1891.¹²¹ As other churches gained a foothold at Lapwai there ensued a religious civil war of sorts—Protestant versus Catholic, which fractured the tribe even more.¹²²

Lawyer never regained his authority as Head Chief or any other political post, but remained a strong Christian and staunch supporter of cooperating, even assimilating with the Whites to the end. After nearly a quarter century, Lawyer is replaced as Head Chief of the Nez Perce, in 1875. He died on January 3, 1876, at 80 years of age. He has been described by Thomas Donaldson in this excerpt from *Idaho of Yesterday*, as the “leader of the Nez Perce tribe and well-known to the Whites. Old Lawyer, tall and dignified, clad in broadcloth and an eternal silk hat, always attended the opening of each term of the territorial court in Lewiston.” Donaldson goes on to portray Lawyer as he “walk[ed] gravely in after the court was opened, bow to the bar, and extend his right hand to the judge. Then the judge would politely wave Lawyer to a seat of prominence.”¹²³

From the obituary written by Indian Agent John B. Monteith at Lapwai, Idaho and published in the *Oregonian* (a newspaper in Portland, Oregon) on February 4, 1876¹²⁴ we find that “After his defeat [for reelection as Head Chief], Lawyer moved back to Kamiah, where he spent most of his time in visiting among the Indians, exhorting them to abandon their heathenish practices, and embrace Christian religion.”¹²⁵

¹²⁰ *Ibid.* 268.

¹²¹ *Ibid.* 268.

¹²² Miller. *Prophetic Worlds*, 97.

¹²³ Drury. *Chief Lawyer of the Nez Perce Indians*, 235.

¹²⁴ John B. Monteith, “Lawyer, The Nez Perce Head Chief,” *The Oregonian*, 4 February 1876, p. 3.

¹²⁵ Drury. *Chief Lawyer of the Nez Perce Indians*, 294.

While we cannot know for sure why Lawyer acted as he did, we can refrain from seeing them as purely good or evil and analyze his behavior. Remembering that he is a historical actor whose motivations and emotions are often controlled by outside influences. He was guided by a different set of motives than the Whites and probably understood the changing world in which they lived differently than other Indians on the Plateau due to his unique experiences. We need to see historical figures in light of their overall behavior and not how they react to isolated circumstances.

CHAPTER V

MISUNDERSTANDINGS IN DISCUSSING CHIEF LAWYER

As previously stated, much of the literature concerning Lawyer has not been kind to him. The *good—bad* dichotomy falls short of providing us with an accurate sketch of Lawyer's character, much less his motives. It is plain that the sketch is only two-dimensional and lacks any real insight into the man through the prism of *his* worldview or his particular place along the continuum of Plateau culture—an odd but not surprising omission considering many of his sharpest critics have been contemporaries from his own culture or later critics who have studied Plateau culture and profess a deep understanding of it. Some claim that Lawyer befriended the Whites because he was just a good-natured, affable man, some would say that his motivation was to gain power and prestige. Some may assume, from the ethnocentric point of view of the Whites he encountered that it was their irresistible *good* which would naturally attract *good Indians* and that those who resisted them were therefore *bad Indians*.

The Nez Perce were expecting their material world to improve as a result of their newly-found religion and association with those who brought it to them. They failed to reap the benefits that they anticipated and found the Whites to be very rigid in their expectations. The Plateau belief system discussed in chapter 3 describes the way that the Nez Perce religion was integrated into every aspect of life and that a person's abilities were attributed in large to their guardian spirit and the devotion to it. When their belief system failed to protect them from European disease or provide them with the superior technology they must have drawn some

conclusions about the source of this *power*. Considering the material power and wealth of Whites, it surely must have been accredited to the guardian spirits they possessed, which the Nez Perce perceived as their source of any special abilities or successes.

Many of these Whites were Christians, so they themselves would naturally have ascribed their superiority to the *Holy Spirit* of their Christian faith. Upon hearing that this guardian spirit of the Whites was available to anyone who believed, one would surely expect the Indians to replace their religion with this new theology or at least co-opt this new power into their own cosmology to solve practical problems. This must have accounted, at least in part, for the desire of the Plateau peoples to invite missionaries to bring them the Book. The Spokane Prophet had foretold of “a different kind of man from any you have yet seen, who will bring with them a book and will tell you everything . . .” They will come from the east, said the Prophet, as had Lewis and Clark and the missionaries.¹ Lawyer was present at the arrival of both groups of Whites and instrumental in inviting the missionaries.

Anthropologist Deward Walker explains that the two main shortcomings of the early Christianization of the Nez Perce were the fact that few were converted, because “[i]n Nez Perce culture religion was at the basis of secular success . . . creat[ing] extremely high expectations of new and wondrous items of material culture. For the missionaries the functions of religion were moralistic and otherworldly orientation, and they failed entirely to satisfy the complex mixture of religious and economic needs apparently responsible for early Nez Perce interest in Christianity.”²

The second point Walker makes about early Christianity among the Nez Perce is that of “the quick acceptance of Christianity by the chiefs and headmen during the first phase of

¹ Miller. *Prophetic Worlds*, 45.

² Deward E. Walker, *Conflict & Schism*, 44.

missionary activities. They were men desirous of further power and were the same opportunists who came to dominate the government-supported head chief-subchief system introduced at the request of the missionaries in 1842.”³ “In fact,” he says, “the later government chiefs used the economic advantages accruing to them because of their cooperation with the government to help eradicate the fact that their statuses were illegitimate, resulting from appointments by non-Nez Perce authority.” Walker claims that Lawyer removed much of the dishonor of serving as “White man’s chief” by spreading his government salary among his Christian constituency.⁴

This material wealth from a government pay check, combined with power derived from a position of leadership in the church would certainly be coveted by anyone of ambition. It is difficult to say whether or not this was Lawyer’s motivation is purely speculation. It is one thing to project one’s own ideals or those which they suspect on others within the same culture, but as mentioned previously, wisdom, generosity, diplomacy, oratory, and experience are all traditional traits sought in Nez Perce leadership.⁵ This accusation of the opportunist has generally been leveled at Lawyer by later critics, adding to his reputation as a *bad Indian*. Yet, we have few, if any instances where Lawyer might have defended himself. Therefore, we cannot know if he was self-centered and power hungry, an altruistic leader in the traditional Nez Perce model, or some mixture of both.

The most complete picture that we have of Lawyer is his biography by Clifford M. Drury,⁶ but it is still full of gaps and Drury is neither a professional historian nor an anthropologist. He provides us with a fairly decent narrative of Lawyer’s life, but little analysis of his motives is given. As a theologian, Drury is more interested in *what* Lawyer did as a

³ *Ibid.* 44.

⁴ *Ibid.* 16-17.

⁵ Josephy, *Nez Perce Country*, 15.

⁶ Drury. *Chief Lawyer of the Nez Perce Indians*, 1979.

follower of Christ and a student of the missionaries, rather than *why* he acted as he did.

Although Drury's organization of the book is a bit problematic, his research is quite thorough, accessing many primary sources such as personal letters, journals and diaries, newspapers, government reports, and church records.

Drury's treatment of Lawyer is generous as he credits the Christian chief as the driving force in sending the St. Louis delegation to request missionaries to bring Christianity to the Plateau. Thus, Drury credits Lawyer with the "westward thrust of Protestant missionaries in 1834-40" and if not for him "the history of the Pacific Northwest would have been much different from what it proved to be."⁷

By 1838, animosity within the tribe began, as Drury points out, in the Lapwai Valley, apparently because missionary Henry H. Spalding established his mission there. At this time, Chief Big Thunder, (christened James by Spalding), was upset over other Nez Perce leaders, such as Timothy and Old Joseph who encroached upon his territory within the Lapwai Valley. James and the others began quarrelling over infringements on territory which went against tribal customs. Drury explains that "Hundreds of natives were encamped about the Mission and attended these services."⁸ Traditionally, according to Drury, a headman or chief was in charge of a particular valley and his band of followers. Other individuals were welcome to come and go, but entire bands could not intrude except in times of emergency. Timothy and Joseph had broken protocol in order to farm near the mission. James blamed Spalding as well as the interlopers.⁹

Still, Drury seems to subtly suggest that James and Looking Glass "two prominent tewats," preemptively caused trouble for the missionaries and "became critics and at times open

⁷ *Ibid.* 32.

⁸ *Ibid.* 47.

⁹ *Ibid.* 56-57.

opponents of Lawyer.” Further, Drury lends a two-and a half page section to cite how “Looking Glass Causes Trouble,” for the missionaries and their supporters.¹⁰ Drury also explained that Looking Glass saw “the irreconcilable differences between Christian teachings and the medicine men’s practices.” This recognition of incompatibility between the two belief systems threatened the tewats’ ability to practice their trade as well as their faith.¹¹ The schism between Christians and anti-Christians among the Nez Perce had already become deeply rooted. This line separating the different factions in the drama that was unfolding on the Plateau represents a myriad of misunderstandings. It also helps us identify the various schools of thought concerning this fragmentation. Drury is obviously sympathetic toward Lawyer and his followers. Some may point to the fact that Drury is a theologian and Lawyer a Christian, but Drury is even more critical of the missionaries than he is of Lawyer, Timothy, Joseph and Jason.

Drury claims that any successes Spalding had with the Indians at the Lapwai mission is found in the fact that he and his wife won the cooperation of most of the leading chiefs of the [Nez Perce] tribe.” In a letter by Eliza Spalding (wife of Rev. Henry H. Spalding) to her sister, describing the school at Lapwai, she names “[Old] Joseph, Timothy, Luke, Lawyer, Stephen, Jason, Five Crows . . .” as having “made it their business to attend school through the winter thus far,”¹² Drury often mentions the affability and loyalty of these Nez Perce, as well as Spokane Gerry, Kootenay Pelly, and other individuals from the various Plateau groups, but he emphasizes Lawyer’s role in assisting the Whites. Lawyer, Drury points out, helped Reverend Asa B. Smith, Cushing Eells, and Reverend Elkanah Walker in learning the Sahaptian and Salishan languages, and interpreting as needed, both at Waiilatpu, and Kamiah, as well as helping the Spaldings at

¹⁰ *Ibid.* 57-59.

¹¹ *Ibid.* 49.

¹² *Ibid.* 62.

Lapwai.¹³ Lawyer also helped Spalding translate the Gospel of Matthew into the Nez Perce language and Spokane Gerry assisted him with a Spokane primer.¹⁴

Drury chronicles Dr. Elijah White's appointment to the post of Indian Agent of Oregon in 1842 and his attempt to put down the unrest at the missions.¹⁵ Spalding had summoned twenty-two Nez Perce chiefs to Lapwai to hear what White had to say. Here, White presented the code of laws intended to control the unruly behavior of the non-Christian Indians in the vicinity. Among these gathered, according to Drury, were "Ellis, Lawyer, Looking Glass, and possibly Joseph and Timothy."¹⁶ Ellis was very supportive of the laws, having seen how White society was restrained by laws. Along with the laws, White imposed the concept of centralized government on the Nez Perce under a central authority—a Head Chief, to which White appointed Ellis. Drury tells us that Looking Glass, priding himself as a great warrior sought the appointment, but the Whites recognized Ellis' suitability as an educated Christian, who was friendlier toward the missionaries than the belligerent Looking Glass had been.¹⁷

Drury identifies the new form of government and leadership as "a new era in the history of the Nez Perce nation."¹⁸ Lucullus McWhorter claimed that this transition began the undoing of the tribe, "but the second, and more decisive, bolt was driven on June 11, 1855, when Governor Stevens steered and secured the appointment or election of the famous orator and Christian, Lawyer, to succeed the spirit-broken and diseased head chief, Ellis, of mission fame."¹⁹ Drury identifies McWhorter as having an obvious opposition to the United States Indian policy and that of the missionaries as well. His disdain for the medaling of both the

¹³ *Ibid.* 47.

¹⁴ *Ibid.* 63.

¹⁵ This appointment was not recognized by the British, therefore, as Drury notes, the Hudson's Bay Co. refused to assist White on his trip up the Columbia River (*Chief Lawyer* . . . pg. 69).

¹⁶ *Ibid.* 70.

¹⁷ *Ibid.* 72.

¹⁸ *Ibid.* 71-73.

¹⁹ Lucullus Virgil McWhorter, *Hear me, my chiefs!: Nez Perce history and legend* (Caxton Press, 1983), 106-107.

church and the Indian agents in Nez Perce affairs, show McWhorter was overtly biased in some of his opinions.²⁰ McWhorter became a close friend and confidant of Yellow Wolf, a Nez Perce warrior who followed Chief Joseph in the war of 1877. McWhorter narrated the Yellow Wolf's account of that war and was also very close to the Yakima Indians near his ranch in Yakima, Washington. He became very sympathetic to the non-treaty Nez Perce through his association with them as he wrote Yellow Wolf's story. Thus, he became very critical of not only the missionaries' and the U.S. government's interference in traditional Indian lifestyle and ability to remain free, but also to Lawyer and his descendants.²¹

McWhorter says that "Chief Timothy turned apostate to his own race and people, evidently impelled by his Christian concepts." Claiming that "Timothy never realized to any degree the baleful rending of the tribe," McWhorter attributes the attitude of Timothy, to membership in the "Christian nation" of the Whites.²² McWhorter goes on to say that more to blame than Timothy, Lawyer is praised for excluding Chief Joseph and his band as being connected the Nez Perce tribe and that Lawyer's descendants kept this claim alive to gain favoritism. "Lawyer has been apotheosized alike by government, state, and church . . ."²³ This is true, but one can only speculate whether this was due to Lawyer's willingness to comply with those entities or because he was a genuine friend to those involved.

This idea that the centralization of authority divided the *tribe* or created it is somewhat a matter of semantics, because, as mentioned in the previous chapter, prior to this centralization the Nez Perce did not constitute a tribe in the minds of most scholars. In laymen's terms they may have been dubbed a tribe at the point of first contact with Whites so it would seem that

²⁰ Drury, *Chief Lawyer of the Nez Perce Indians*, 73.

²¹ Lucullus Virgil McWhorter, *Yellow Wolf: His Own Story* (The Caxton Printers, Ltd., 1983), 21-22.

²² McWhorter, *Hear me, my chiefs!*, 104.

²³ *Ibid.* 105.

McWhorter is in agreement with most scholars on the affect of centralized authority and the head chief system.

Some might contend that the Walla Walla council and the signing of the resulting treaty was the first time they were officially recognized as a unified tribe. Drury expresses this view by saying that rather than “the beginning of the disintegration” of the tribe, as McWhorter claimed, “it was in reality another step in the integration of that nation into the white man’s society . . . in order for the tribe to negotiate treaties with the white men and to protect their economic interests.”²⁴ This viewpoint maybe another aspect of the political transition which in theory most scholars would agree, but the results were far from positive in the short-term in “protect[ing] their economic interests” due to the loss of land, gold, and timber to Whites.

Another matter of considerable question surrounding the council at Walla Walla is the arrival and agitation of Looking Glass. Coming late from the buffalo-hunting grounds in Montana, he arrived at a time when the commissioners believed they had the Indians brow-beaten into submission. Entering the council grounds as if ready to attack, Looking Glass and a small group of his warriors did not even dismount before he began lashing out at his kinsmen. Chastising them like children who had misbehaved when their father’s back was turned.

He held up negotiations and stirred things up until the commissioners concede to the demands of the Indians for more space to be left to them. Dupris, et, al. have posited that Lawyer and Looking Glass were running a very convincing scam on all who attended the council in order to win a larger slice of the pie for their people.²⁵ Most scholars give this little credit as a plausible account of what happened. Whether it was planned or not, we will likely never know, but it is not a stretch to say that the affect was the same either way. Some, like Lieutenant Kip

²⁴Drury, *Chief Lawyer of the Nez Perce Indians*, 73.

²⁵Dupris, Joseph. *The Si'lailo way: Indians, salmon, and law on the Columbia River*. Durham N.C.: Carolina Academic Press, 2006, 29.

would claim that Stevens worked on Looking Glass from Saturday until Monday and then comments that “every man has his price.”²⁶ Did Stevens *pay* Looking Glass for his signature? In a sense, yes, with a better deal for the Nez Perce than had been on the table before—better than any other group on the Plateau. It could not have had a better outcome, under the circumstances, for the Nez Perce if Lawyer and Looking Glass were working in concert.

Kamiakin’s biographer, A. J. Splawn believed that Lawyer was only trying to gain as much as he could for himself and credits Looking Glass as having “accused him [Lawyer] of having a forked tongue.”²⁷ Josephy has this to say about the historiography in regards to a collaboration of these rivals at the Walla Walla council in 1855:

Some writers have deduced . . . the possibility that Looking Glass and Lawyer were working in league, and that Looking Glass timed his arrival and stirred up the commotion deliberately so that Lawyer would have a bargaining point to keep the Nez Perce reservation its original size . . . These writers, however, knew little about the history and background of Looking Glass, which this book presents for the first time. Such a performance, in league with Lawyer, of all people, would have been out of character for Looking Glass.²⁸

The Treaty of Walla Walla is where the first real accusations of Lawyer being a traitor to his people began to show up. Anthropologist Eugene S. Hunn, in his *Nch’i-Wána “Big River,”* relates Lawyer’s position as follows:

Had Lawyer withheld his support of the proposed treaties at the Walla Walla council, would the course of American history have been deflected from its path of explosive Euro-American expansion? One could more convincingly argue that had the Indians refused to sign in 1855, they would have suffered greater losses in the next decades in confrontations with territorial militias, lawless gold seekers, and the U.S. Army, and would find themselves today with no land base and no legally defensible fishing rights. Ironically, Lawyer’s self-serving defection may ultimately have assured the survival of the Plateau Indians . . . Lawyer was motivated by no such far-seeing altruism. His acceptance of the treaties and later conversion to Protestantism gave him a leg up in competition with his Nez Perce rivals for the favor of the powerful white “chiefs.” He was using Governor Stevens for his own ends, a shortsighted strategy (when considered

²⁶ Kip, *The Indian Council Of The Walla-Walla, 1855*, 217.

²⁷ Splawn. *Ka-mi-akin*, 30.

²⁸ Josephy. *The Nez Perce Indians and the Opening of the Northwest*, 329.

from certain twentieth-century vantage points), but a familiar and cultural realities of his day.²⁹

Hunn seems to have overlooked some fifteen years of Nez Perce tribal history. The omitted facts are necessary to understand the multiple reasons for various Nez Perce actors to be either pro or anti-Whites—some in general, others only on the point of religion, others on the intrusion into Indian country.

Splawn is no more charitable with Lawyer's character, "Politician that he was, he [Lawyer] played into the hands of the enemies of his race. White historians will applaud him but from the standpoint of the Indian he was as much a traitor as were the Tories in the war for American independence. It turned out as expected. By his perfidy he gained a larger reservation for his tribe and advancement for himself."³⁰

At Walla Walla, Lawyer was ready to accept the treaty as offered, but most headmen were still not interested. As Elliot West explains, "To leaders who said the selling land was literally inconceivable, they [Stevens and Palmer] answered that they were offering a good price."³¹ Some chiefs "spoke of identities inextricably bound to places, Palmer gave them a pioneer's testimony of productive restlessness."³² Having improved himself by having left his home to travel far away, he implied that they should give up their attachment to their homelands. "The two sides were speaking past each other." The deadlock was broken when Palmer put forth the proposal of a reservation for the Cayuse, Walla Wallas, and Umatillas of their own, rather than being moved to the Nez Perce reservation.³³

²⁹ Hunn. *Nch'I-Wana, the Big River*, 50.

³⁰ Splawn, *Ka-mi-akin*, 27.

³¹ West, *The Last Indian War*, 65.

³² *Ibid.* 65.

³³ *Ibid.* 65.

So, in the end the Indian leadership of the Plateau all signed. How Stevens secured the signatures “tells something about what power Indians and whites had at this crucial point in the story,” says West. It shows also how the perceptions that Indians and agents had of each other could be badly, dangerously distorted.”³⁴ West explains very astutely, that the Indians knew that Stevens had to have their signatures on his treaties to secure the land he sought for his superiors and they leveraged that need to get the best deal they could. The chiefs drove a hard bargain. Stevens leverages the threat of unrestrained emigration into Indian Country. Peo peo Mox mox had indicated the Indians’ understanding of the realities of White expansion, saying “in one day the Americans [can] become as numerous as grass.”³⁵

Lawyer was the leader of the largest group on the Plateau and Stevens hoped that his agreement would sway the other “loose collections of villages and bands, groups the whites called tribes, [who] had some common interests within themselves that differed from their neighbors, and wherever those interests diverged, Stevens had an opening.” West is accurate in saying that “the commissioners and the resistant chiefs had stared at each other across their differences, and neither had blinked.”³⁶ They each made concessions and forged an agreement.

“On another level,” West continues, the negotiators were setting the stage for future friction by “reading each other in wildly different terms.”³⁷ The Indians understood quite well that Stevens represented the central leader, far removed from them; a leader of the people now crowding in on them. They also knew that this distant chief could mobilize many soldiers, but they could not conceive of the vast expanse of territory and soldiers under this government.³⁸ As

³⁴ *Ibid.* 67.

³⁵ *Ibid.* 67.

³⁶ *Ibid.* 68.

³⁷ *Ibid.* 68.

³⁸ *Ibid.* 68.

familiar as he was with White society, even Lawyer could not have conceived of the might of the Americans at this time.

On the other hand, Stevens had ascribed the political attributes of “authority and identity cohered around discrete political units called tribes . . . “each representing a nation congruent to his own, where a central leader spoke for their people and could hold them all to any agreements made—“the same set structure and leadership that Elijah White had presumed onto the Nez Perce he met in 1842.”³⁹ Another important misconception by Stevens is pointed out by West in regards to kinship. Stevens lacked a basic understanding of the inter-tribal kinship ties of many individuals in the broader Plateau society. West uses Old Joseph as his example, describing how he was of a Nez Perce mother and a Cayuse father, and that the Umatillas, lower Nez Perce, Cayuse, and Palouse regularly intermarried, as did the upper Nez Perce and Flatheads, Yakimas, and others. In other words, the reaction of any given group to a dispute with the government was highly “unpredictable,” at best.⁴⁰

J. Diane Pearson explains the “The treaty [of 1855] legitimized [Dr. Elijah] White’s efforts to implement a centralized system of governance by stipulating that the person selected as head chief would become, in effect, a federal employee after ratification of the treaty.”⁴¹ The government outlined the chief’s duties and regulated his salary and provided other compensations as per the treaty. As mentioned before, there have been accusations that this monetary compensation could be used by a Head Chief to further his political influence among his constituency, but no proof of these claims were presented by those making them.

Pearson accredits Lawyer as having been the first Head Chief of the Nez Perce, selected by Stevens for his ability to speak English and his Christian beliefs. Stevens was “convinced

³⁹ *Ibid.* 68.

⁴⁰ *Ibid.* 69.

⁴¹ J. Diane Pearson. *The Nez Percés in the Indian Territory*, 12.

that Christian Indians would be easier to manipulate . . . [and] would honor nonviolent Christian ideals.”⁴² Technically, Lawyer was the third Head Chief, but he was the first to actually perform duties of any consequence in that position. The government, according to Pearson, “agreed to support Lawyer’s decisions” as to how he carried out his responsibilities for the enforcement of the law. “The superintendant of Indian affairs, however, reserved the right to terminate Lawyer’s services if he did not perform to the superintendent’s satisfaction.”⁴³

Pearson’s treatment of Lawyer begins fairly straightforward, almost neutral in her opinion of him. Then, as his role in the treaties which affected the bands of non-treaty Indians—Chief Joseph, his followers and allies, the subject of her study, she begins to level blame at Lawyer for selling the Wallowa Valley. She tells us that Lawyer and forty-seven other Nez Perce chiefs, headmen, and delegates signed the treaty in April of 1861, but it was not ratified until 1863. Pearson accepts the story that Lawyer was to blame for the sale of lands that did not belong to him and for speaking for people who did not recognize his authority (even though they were signatories of the treaty of 1855 where Lawyer was accepted as Head Chief).⁴⁴ She does mention this aspect of the treaty negotiations, but does not recognize the majority-rule as legal and binding. Yet, she considers the possibility that “the non-Christian chiefs or lower band leaders may not have been notified about the treaty council and did not receive a copy of the treaty for their deliberation.”⁴⁵

Lawyer may have been, according to ethno-historian Christopher Miller, an equal to Stevens in the sense that they were both “historical actors” who came together to represent their respective cultures to forge a relationship which was the best possible arrangement for each of

⁴² *Ibid.* 12.

⁴³ *Ibid.* 12.

⁴⁴ *Ibid.* 15.

⁴⁵ *Ibid.* 17.

their own people.⁴⁶ It is true that Stevens had many advantages over Lawyer in terms of military, economic, and political support, and the outcomes of their negotiations were not equal in value. However, in direct relationship to what was possible, that which was received may have been equivalent; Lawyer secured what may have been the best deal possible for his people, and Stevens did the same. From this perspective both Lawyer and Stevens were “collaborators,” each involved in “reciprocal” negotiations which were mutually beneficial to the two larger entities involved (the Nez Perce and the U.S. government).⁴⁷ Whether in a political or an economic context, the two entities would accommodate each other as long as the interests of both were being met satisfactorily. Both sides would determine what their acceptable gains and losses would be and as long as each remained within an acceptable margin, negotiations went smoothly. Miller explains that: Only when collaborative systems began to break down were [Euro-Americans] or Indians forced to increase their cost and risk by trying to impose direct controls or by seeking violent redress from their trading partners. This was only as a last resort when all informal mechanisms for keeping the balance failed.⁴⁸

This description of the Indian as a willing or “active agent” in the negotiation process renders the subaltern theory incongruent in this context. It implies, according to Miller, that while negotiations were going smoothly:

[B]oth negotiators were behaving patriotically and were the most significant actors in cultural relationships. When collaborative systems began to fail . . . negotiation became increasingly inappropriate and negotiators were eclipsed in significance by warriors, whose actions were rendered more patriotic by changing conditions.⁴⁹

⁴⁶Christopher Miller. “Indian Patriotism: Warrior vs. Negotiator,” *American Indian Quarterly*, Vol. 17, No. 3 (Summer, 1993), 347.

⁴⁷ *Ibid.* 347.

⁴⁸ *Ibid.* 347.

⁴⁹ *Ibid.* 347.

Notwithstanding this point, it is important to examine the process which put Lawyer in a position to act as negotiator for his faction of the Nez Perce. This process further demonstrates that Native American culture was not a static relic of some past era, but a vibrant civilization in a continual state of transformation. Of equal importance is the idea that we, either as scholars or consumers of pop culture, cannot create Indians to our liking then complain that they do not meet our expectations as *authentic Indians*. While this study did not uncover any concrete evidence to prove this claim, but there is plenty of bias to cause one to suspect that many authors discussed herein were enamored with what they considered authentic Indians—the non-Christian, non-treaty, free-roaming, warrior-patriots. The sheer volume of literature about Chief Joseph, not to mention the valiant titles ascribed to those works should lead one to question the objectivity.

Many of Lawyer's critics, Splawn, McWhorter, and others were greatly influenced by non-Christian and/or non-treaty informants and subjects. They and many other authors have been sympathetic to Chief Joseph. Therefore, it is hard to imagine Lawyer receiving an unbiased treatment in the bulk of the historiography of the Plateau peoples. While it is beyond the scope of this study and it may be difficult to frame such a study, this paradigm of bias would make for an interesting topic for further research. It would certainly shed more light on the working misunderstandings surrounding Lawyer's story and other questions would surely arise along the way.

CHAPTER VI

BRINGING UNDERSTANDING TO LAWYER

The objective of this study has been to address a “working misunderstanding” in the historiographical treatment of Chief Lawyer of the Nez Perce and in this way provide food for thought where other indigenous people are concerned. Especially in our modern world of overwhelming amounts of information it is easy to not recognize the humanity of historical actors who have been cast as two-dimensional, inferior, subalterns from what are often perceived as static, primitive cultures standing in the way of superior, more sophisticated societies.¹

As pointed out in Chapter Two, Euro-American policies and procedures for dealing with Indians have aimed at political expedience rather than justice. Government officials often resorted to doublespeak like someone who had been caught in a lie and could not keep his story straight, ever changing, looking for the version that will get him out of his current predicament, but never quite finding the right story to dispel suspicion. The United States is a nation with high ideals, proud, and justly so, but we also have cause for shame. This is not to say that all Americans who met with the Indians of the Plateau were bad or had malice in mind, but the record shows that was often the case.

The peoples of the Columbia Plateau had a dynamic culture of great antiquity as seen in Chapter Three. Often their culture has become more vibrant by incorporating

¹ This is the primary thrust of Edward W Said's, *Orientalism* (1st ed. (New York: Vintage Books, 1979)) and the enormous flood of works that has followed its lead; a lead not as fully followed by those who study Native American history as perhaps is warranted.

traditions and customs of other cultures, to include that of the Great Plains, Great Basin, Rocky Mountains, and also from Whites. This inclusion has often been beneficial but has sometimes caused problems for them, both from within and without. Lawyer is a product of this cultural transition. He was shaped by many stimuli, from many sources. Still, he did not become pure good or pure bad; he was never totally of one sort or another. No one is.

Lawyer's father's interactions with Lewis and Clark surely had some influence on him.² Lawyer's own experiences with trappers and traders,³ missionaries and settlers, treaty commissioners, Indian agents, and the military certainly had a profound impact on his character. He spent a great deal of time with Whites in mutually advantageous situations. These encounters must have stirred his curiosity to learn more about these people. He learned their language, their religion, their methods of agriculture and probably much about their food, humor, fears, and many other features of their culture. He incorporated much of their culture into his own life. He lived in a cabin, wore White man's clothing, cut his hair shorter than his non-treaty kinsmen.

In 1848, Lawyer became Head Chief of the Nez Perce;⁴ a relatively new political leadership position of a relatively new political structure—the tribe, constructed by outsiders in order that the two cultures might come together in negotiations as equals.⁵ As illustrated in Chapter Five, Lawyer and Stevens shared an equal status in their dealings. It is obvious that the Nez Perce nation was nowhere near the equivalent of the American nation in terms of population, wealth, economic or military might, or in technical advancement, but as sovereignties they were equals and beginning in 1855 their representatives, Lawyer and Stevens,

² Ronda, *Lewis and Clark among the Indians* 159.

³ Acquainted with mountain men as early as 1834: Drury. *Chief Lawyer of the Nez Perce Indians*, 19.

⁴ Drury. *Chief Lawyer of the Nez Perce Indians*, 16.

⁵ Some scholars dispute the exact date and in what manner Lawyer became Head Chief, but all seem to agree that by the time of the Walla Walla council the purpose of the Head Chief, from the Americans standpoint was mainly to conduct negotiations on behalf of his people. When this position originated with Dr. Elijah White it was intended to enforce the laws drawn up by White and Henry Spalding to control the Indians—see Drury. *Chief Lawyer of the Nez Perce Indians*, 70-73.

came together as to forge an agreement that would afford the best deal possible for their respective nations. This initial agreement (the 1855 Treaty of Walla Walla) was not to be the last that Lawyer would be engaged in, but it opened the door for further negotiations in the 1860s. When those negotiations caused a faction of the Nez Perce nation to go war with the United States, (Chief Joseph's Nez Perce War of 1877) Lawyer's reputation suffered the most. Even though Joseph's war occurred after Lawyer's death, the Christian faction of the Nez Perce stood by their agreements, remaining peaceful toward the Whites as Lawyer had always stressed, rather than joining their non-Christian relatives in the hostilities.

Beyond acknowledging the resulting war and its affect on Lawyer's personality, everything beyond the treaty of 1868 is outside the scope of this study. Therefore, Chief Joseph is only mentioned as he relates to the record of Lawyer's character in the historiography. The war itself has been thoroughly researched and occurred two years after Lawyer was replaced as Head Chief and a year after his death so it is not relevant to this study.

It must be acknowledged that the Indian voice is all but absent from this study, a woeful but understandable omission. Even the families of the Christian Indians, such as Lawyer and Timothy, continued to practice the tradition of burning many belongings that were not claimed after a relative's death. Timothy had kept a written account of the treaty council of 1855 and possibly other occasions as well, but was probably burned in 1890.⁶ Other Native text is either outside the scope of this study or not readily accessible. Unfortunately, creating written records had not yet become the habit of even those Nez Perce who, like Lawyer himself, were literate during the era in question.

Also this study did not explore any aspects of gender in Nez Perce culture, not because gender was irrelevant in Plateau society, but because it was never an issue in the development of

⁶ Drury. *Chief Lawyer of the Nez Perce Indians*, 102.

the Head Chief/tribal system, the treaty councils, or any other facet directly related to Lawyer's character in the historiography. In fact, one is hard pressed to even glean the name of Lawyer's wife from the literature. She is mentioned by name only once within the entire historiography associated with this study. The influence of gender in Nez Perce society, especially as it relates to religious, political and economic power would be fertile ground for further research.

Another possible area for further research would be to examine other indigenous individuals who have been cast in a similar dichotomy of *good* or *bad*. Surely one could identify many other characters to hold up to such scrutiny. Hopefully, this study could be utilized as a template for such future examinations. One might apply a similar template to other colonized peoples whose cultures have been altered by having a political structure imposed upon them by the colonizers. It is conceivable that wherever colonizers have asserted their power on their subjects there have been negotiations where the discourse came to a point of working misunderstandings, where "[t]he two sides were speaking past each other."⁷

⁷ West, *The Last Indian War*, 65.

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BIOGRAPHICAL SKETCH

Daniel R. Gibbs is originally from the Pacific Northwest. He graduated from Waldport High School, Waldport, Oregon in 1977. He received a Bachelor of Arts in History with English minor: Cum Laude, Honors Program—Highest Distinction, University of Texas Pan American, 2002. His concentration has been on Native American issues. His Honors Thesis (*Deganawidah-Quetzalcoatl University/Northwest Indian College: A Comparison of Tribally Controlled Community Colleges*) is on Native American higher education.

His other academic interests include early American history, specifically Pacific Northwest history, U.S. Borderlands, westward expansion, and various aspects of regional development. He also has a somewhat eclectic interest in world history, inspired by his travels abroad.

Daniel is a certified secondary social studies teacher having taught in the Rio Grande Valley of Texas from 2002 to 2010. He has published historical encyclopedia articles and a few short stories and poems. He is a ten-year veteran of the U.S. Army and Army Reserve. He has a daughter and two grandsons, and currently lives in Edinburg, Texas with his wife and their three dogs.

His Master's Thesis is titled *Chief Lawyer of the Nez Perce: Reassessing the Career of a Cultural Broker*, which he hopes will become a relevant piece in the puzzle of the indigenous culture of the Columbia Plateau. He also strives to contribute in some way to the vibrant discussion going on within academia and Indian Country.