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THE FIGHT OVER THE IRON CLAD OATH, 1865-1867

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Idaho was plagued with political wars during the early territorial period. One of the most noteworthy occurred during the "Satanic" fourth Idaho Territorial Legislature. The Democrats precipitated the row by refusing to take the 1862 federal "iron clad" oath, which required all federal officers to condemn the South as a domestic enemy. The issue went back to the Idaho legislative proceedings early in 1866, when the third session Democrats had enacted a bill establishing the Organic Act oath as the only affirmation required to hold legislative office.

The council had sent the bill to Governor Caleb Lyon, January 5, 1866, for his signature. But Lyon never signed it. Neither did he veto it. He simply suppressed it. By terms of the Organic Act, this measure repealing the first session's test oath requirement had become law, January 9, 1866. More than a month later, C. C. Dudley borrowed the officially enrolled law--the document which Lyon had neither signed nor vetoed from acting Secretary Howlett, to have a copy prepared for publication in the Idaho World. Lyon had instructed Howlett not to include the act in the printed session laws, however, and wished to be consulted before the newspaper printed the oath measure along with the other newly adopted laws. Councilman H. C. Street, who published the World, ignored Lyon and printed the act anyway. Yet by the time the fourth session assembled, the statute in question had disappeared. Perhaps Dudley never had returned it to Howlett. At any rate the fourth session Democrats, acting under the third session law, subscribed to the only oath they considered in force, the Organic Act oath. Even Chief Justice John R. McBride,

who administered the affirmation when the session began, noted at the time that no other oath need be taken. But when H. C. Street searched the file of original third session laws without finding the controversial bill, the Democrats decided to clarify the issue. To leave no doubts about what the third session had intended, the fourth session members simply repeated their predecessor's actions by repassing the bill. Governor Ballard, unlike Lyon did not let it become law by default. In his veto message he argued that the lawmakers could not make laws which conflicted with acts of Congress. The Democrats denied that the measure was in conflict with Federal law. They argued that the "Iron Clad Oath" of 1862 applied only to officers of the United States Government; it was not applicable to elected territorial officers who did not hold federal commissions. The Organic Act itself made the distinction in a section which forbade any legislative member from holding any federal office for which the Congressional test oath was required. Supported by these arguments, the Democratic majority in the legislature easily passed the bill over Ballard's veto.

References:

Third session Journal, Council p. 131; Fourth session Journal, Council p. 41; 49, 51, 65, pgs. 75-7, p. 87, House pgs. 297-9; S. R. Organic Act of Idaho Territory, Section 6. Howlett to H. C. Street, Feb. 15, 1866, Territorial Papers of Idaho, Lyon File, Idaho State Archives; J. S. Reynolds to S. R. Howlett, January 7, 1867, George Ainslie and A. W. Flourney to Hugh McCulloch, January 18, 1867. State Department, Territorial papers of Idaho, vol. 1; Idaho World, March 10, 1866, p. 4, c. 1, January 19, 1867, p. 2, cs. 4-5.

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