

# A Peculiar Paradise

a History of Blacks in Oregon, 1788-1940

## Chapter Two - To Keep Clear of This Most Troublesome Class

**On August 20, 1851**, a black man named Jacob Vanderpool, who owned a saloon, restaurant and boarding house across the street from the offices of the Oregon Statesman in Salem, was arrested and jailed. His crime was living illegally in Oregon because he was black. Theophilus Magruder had filed a complaint against him, saying that his residence in Oregon was illegal because of an exclusion law passed by the Territorial government in 1849. Five days later, Vanderpool was brought to trial. His defense lawyer argued that the law was unconstitutional since it had not been legally approved by the legislature. The prosecution produced three witnesses who verified the date of Vanderpool's arrival in Oregon. All three were vague. A verdict was rendered the following day, and Judge Thomas Nelson ordered Jacob Vanderpool to leave Oregon.

I being satisfied that the same Jacob Vanderpool is a mulatto and that he is remaining in the territory of Oregon contrary to the Statutes and laws of the territory, do therefore order that the said Jacob Vanderpool remove from said territory within thirty days from and upon the service of this order--the said order to be served by showing to the said Jacob Vanderpool this original and at the same time delivering to him a true copy of the same.

The decision was delivered to him the same day by the sheriff of Clackamas County. The Oregon Spectator commented:

There is a statute prohibiting the introduction of negroes into Oregon. A misdemeanor committed by one Vanderpool was the cause of bringing this individual before his Honor Judge Nelson, and a decision was called for respecting the enforcement of that law; who decided that the statute should be immediately enforced and that the negro shall be banished forth with from the Territory.

Jacob Vanderpool was the first and only black person of record to be expelled from Oregon because of his race.

From the beginning of governmental organization in Oregon the question of slavery and the rights of free black people were discussed and debated. Slavery existed, although consistently prohibited by law? Exclusion laws designed to prevent black people from coming to Oregon were passed twice during the 1840's, considered several times and finally passed as part of the state constitution in 1857. The takeover of Indian lands prompted hostility between Indians and whites; the "Cockstock Affair" raised fears that without an exclusion law settlers might have two hostile minority groups to deal with.

The people who settled in Oregon tended to come from the frontier areas of the Middle West, particularly the Ohio and Mississippi River valleys. The move West for many included the expectation that they could settle in an area untroubled by racial concerns. R.W. Morrison, who

crossed the plains in 1844, gave his reasons for coming to Oregon in a conversation recorded by John Minto.

Well, I allow the United States has the best right to that country, and I am going to help make that right good... Then, I am not satisfied here. There is little we raise that pays shipment to market; a little hemp and a little tobacco. Unless a man keeps niggers (and I won't) he has no even chance; he cannot compete with the man that does... I'm going to Oregon, where there'll be no slaves, and we'll all start even.

Laws restricting the rights of black people were not an original idea in Oregon, nor were they unknown outside the South. In the first fifty years of the nineteenth century Ohio, Illinois, Indiana and Missouri had passed laws restricting the rights of black people. These laws denied them the vote, restricted free access into the territory, restricted testimony in court, required the posting of bonds for good behavior, demanded that black people carry proof of freedom, or excluded them altogether from living in these territories. Exclusion laws similar to those enacted in Oregon were passed in Indiana and Illinois and considered, though never passed, in Ohio. Familiar with laws passed in other frontier areas and desirous of keeping Oregon free from troublesome racial questions, settlers who brought racist attitudes with them across the plains saw legal restrictions as the best solution to the problem.

The Organic Code of the provisional government adopted in 1843 prohibited slavery and restricted voting rights to free male descendants of white men twenty-one years of age or older, effectively excluding all black and most Indian men. Between the meetings of the provisional government of 1843 and 1844 an event took place that raised the fear of black and Indian hostility and prompted the passage of more severe restrictions on the freedom of black people. This incident, called the "Cockstock Affair," took place in Oregon City in March, 1844.

A black man named George Winslow, also known as Winslow Anderson, had hired an Indian named Cockstock to clear a tract of land on his farm near Oregon City. Cockstock was to receive a horse when the job was completed. Winslow meanwhile sold the horse and the farm to James D. Saules, and when Cockstock finished the job and asked for payment, Saules refused to give him the horse. Vowing vengeance against both black men, Cockstock stole the horse. When Elijah White, the local Indian agent, compelled Cockstock to return the horse, he renewed his threats against the two men. White finally offered a \$100 reward, hoping that Cockstock could be taken peaceably, but this only enraged him to an armed confrontation. He and two bystanders were killed, and several other men were wounded.

Elijah White feared the outbreak of an Indian war, and reported the incident to the Secretary of War, saying, I believe it morally impossible for us to remain at peace in Oregon, for any considerable time, without the protection of vigorous civil or military law?

The Legislative Committee met five days later, mourning the loss of their clerk, George LeBreton, who was killed during the incident. The immediate result was the formation of the Oregon Rangers, the first military organization in Oregon. A few months later, the first exclusion law was proposed.

The exclusion law, passed on June 26, 1844, repeated the anti-slavery law passed in 1843 and required all blacks to leave the territory within three years. Slaveowners were required to free their slaves, who were included in the expulsion order. Anyone in violation of the law would suffer a whip lashing, to be repeated after six months if they still refused to leave.

When the Committee met in December, 1844, two members urged that the exclusion law be modified so that black people might remain if they posted a bond for good behavior. The act was amended, substituting a term of hard labor for the whip lashing, but black people were still required to leave. This law was designed to take effect in 1846, was repealed in 1845, and thus never directly enforced.

Four years later, another attempt to pass an exclusion law was successful, this time in effect long enough to force Jacob Vanderpool out of Oregon. By 1849, when Oregon was organized as a territory, the population had grown dramatically, and increasing settlement on Indian lands led to conflict. Two years earlier, in November of 1847, Dr. and Mrs. Marcus Whitman and twelve other white people were murdered by Cayuse braves at their mission at Waiilatapu on the Walla Walla River. For more than two years the Indians involved were pursued until they surrendered and were hanged at Oregon City. Although no black people were involved in this incident, racist legislation was again seen as a cure for white anxieties. The preamble to the exclusion bill introduced in September 1849 stated:

. . . situated as the people of Oregon are, in the midst of an Indian population, it would be highly dangerous to allow free negroes and mulattoes to reside in the territory or to intermix with the Indians, instilling in their minds feelings of hostility against the white race . . . be it enacted . . . that it shall not be lawful for any negro or mulatto to come in or reside within the limits of this Territory?

This bill permitted black settlers and their children who were already living in Oregon to stay, but prohibited other black people from moving in. It included provisions to prevent blacks from coming to Oregon by ship. Ship owners were responsible for seeing that all black crew members left the territory with their ship. A \$500 fine was the penalty for any negligent ship owner. Any black person in violation of the law was to be arrested and ordered to leave. The bill was passed September 21, 1849.

During the five years the law was in force, petitions were presented to the legislature on behalf of several black citizens, requesting that the law be repealed. The first was presented in 1851, on behalf of A.H. and O.B. Francis, residents of Portland.

We the undersigned citizens of the Territory of Oregon, in view of an existing law passed . . . in September of 1849 prohibiting Negroes or Mulattoes from settling in the Territory, beg leave to call your attention to the severity of this law, and the injustice often resulting from the enforcement of it. There are frequently coming into the Territory a class of men to whom this law will apply. They have proved themselves to be moral, industrious, and civil. Having no knowledge of this law some of them have spent their all by purchasing property, or entering into business to gain an honest living. We see and feel this injustice done them, by more unworthy and designing men lodging complaint against them under this law, and they thus ordered at great

sacrifice to leave the Territory. We humbly ask your Honourable body, to repeal or so modify this law that all classes of honest and industrious men may have an equal chance. The petitioners argued that the danger of combined Indian and black hostilities against white people no longer existed, and they requested that a special law be passed allowing A.H. and O.B. Francis to remain in Oregon.

The same year a petition was presented on behalf of George Washington. One of the founders of Centralia, Washington, he had settled in the area, still a part of Oregon Territory, in 1850. A third petition was presented in 1854 on behalf of Morris Thomas, another black resident of Portland. All three petitions took the form of general bills to repeal the exclusion law, and all were defeated. Washington was organized as a separate territory in 1853, and the area north of the Columbia River passed out of the jurisdiction of Oregon's territorial legislature. No record of court proceedings to expel anyone other than Jacob Vanderpool has been located.

During extensive revisions of territorial laws accomplished in 1854, a general repealing act was passed voiding all previous legislation except certain specified laws. The 1849 exclusion law was not on this list, and thus was repealed. Later attempts to revive the law suggest that its omission was accidental.

In the winter of 1856-57, debates on slavery and the rights of black people were widespread in the local press, and another attempt was made to pass an exclusion law. One legislator, arguing in favor of the law, said black settlers had no right to stay in Oregon because they had taken no part in settling the area and defeating the Indians. Opponents of the bill spoke of its injustice, and pointed out that clauses penalizing ship owners for blacks who jumped ship in Oregon could hurt the shipping trade, and said further that the proposed law was merely a tactic intended to stir up public opinion. Another opponent was quoted as saying.

What negroes we have in the country it is conceded are lawabiding, peaceable, and they are not sufficiently numerous to supply the barber's shops and kitchens of the towns... If a man wants his boots blacked he must do it himself?

This exclusion bill passed in the Senate, but was defeated in the House. The territorial legislature did not again attempt to pass an exclusion law, but the idea was not abandoned. In 1857, the men who wrote Oregon's constitution proposed that the voters of Oregon should decide if they wanted an exclusion clause in the state constitution. An exclusion clause was approved by popular vote in 1857, and remained as a part of Oregon's constitution long after nullification by the Civil War amendments to the federal Constitution. The clause was not repealed until 1926.

The idea of the exclusion of black people was odious to some Oregonians, particularly in the 1840's and early 1850's, when most believed themselves remote from pressing racial issues in the East. This minority, who signed petitions and favored repeal of the law, included a well known settler, Jesse Applegate. He came to Oregon in 1843, was elected to the Legislative Committee, and supported the repeal of the 1844 exclusion law in 1845. Applegate was born in Kentucky and later moved to Missouri, where he farmed in the Osage Valley. He refused to own slaves, although he could afford them, and at times was forced to hire slaves from neighboring farms when free labor was scarce. His opposition to the exclusion law was uncharacteristic of the

economic class with which he identified.

Being one of the "Poor Whites" from a slave state I can speak with some authority for that class-- Many of those people hated slavery, but a much larger number of them hated free negroes worse even than slaves...' Another influential settler, Peter Burnett, had the exclusion of blacks in mind when he came to Oregon. His letters were published in Missouri newspapers, and his descriptions of Oregon encouraged many others to move West. In one letter he wrote:

The object is to keep clear of this most troublesome class of population. We are in a new world, under most favorable circumstances, and we wish to avoid most of these great evils that have so much afflicted the United States and other countries? His past experience was typical of a common pattern of westward migration. The eldest of eight children, he was born in Tennessee and moved to Missouri with his family, where he recalled, We spent the first winter in a large camp with a dirt floor, boarded up on the sides with clapboards and covered with the same, having a hole in the center of the roof for the escape of smoke. All the family lived together in the same room, the whites on one side and the blacks on the other. Never attending school, he was self-educated and studied law. He operated a general store in Missouri, and in 1830 was responsible for the death of a black man who he claimed had stolen liquor from his store. He was acquainted with Moses Harris, and used to repeat the famous yarn that Harris told about the petrified forests in the Black Hills.

Burnett came to Oregon with his family in 1843, and settled on a farm near Hillsboro, where he represented the district of Tualatin on the Legislative Committee of 1844 and introduced the exclusion law passed in that session. He later attempted to justify this exclusion law, arguing that emigration was a privilege, not an inherent right, and that this privilege could be denied to a particular class or race of people without denying them constitutional rights. Since blacks were not permitted to vote, he argued, it was better to deny them residence as well, since they would have no motive for self-improvement. Burnett declared that if he could have predicted the Civil War he would not have supported such a law, and as it was later modified no one should be blamed for supporting it. He did not seek election to the Committee of 1845, and moved to California in 1848. After mining gold for a time, he moved to San Francisco and again became involved in politics, where he continued to support racist legislation. He was elected the first state governor in 1850, and in his inaugural message proposed an exclusion law. He had been preceded to California by another ex-Oregonian, M.M. McCarver, who voted for the exclusion law in Oregon and proposed that a similar law be included in California's constitution. Burnett's proposal was defeated, as was McCarver's, but in 1858, as Chief Justice of the state Supreme Court, Burnett ruled that an ex-slave, Archy Lee, was legally the property of his former master. Although a lower court had given Lee his freedom, Burnett reversed this decision, saying the anti-slavery law was: . . . merely directional... This is the first case that has occurred under the existing law., under these circumstances we are not disposed to rigidly enforce the rules for the first time. But in reference to all future cases, it is our purpose to enforce the rules laid down strictly, according to their true intent and spirit. This decision and other racist legislation pending in the California legislature so enraged some members of the black community of San Francisco that several hundred decided to leave the state. By-passing Oregon and Washington territories, they settled in Vancouver, British Columbia, at the invitation of James C. Douglas. The immediate justification of the exclusion laws passed in 1844 and 1849 was the fear of combined

black/Indian hostilities, a paranoia that found frequent expression in the documents of the day. Samuel Thurston, delegate to Congress in 1850, repeated the same fear in his efforts to secure the restriction of land grants to white people only. The first legislative assembly that met last July, passed another law against the introduction of free negroes. This is a question of life and death to us in Oregon, and of money to this Government. The negroes associate with the Indians and intermarry, and, if their free ingress is encouraged or allowed, there would a relationship spring up between them and the different tribes, and a mixed race would ensue inimical to the whites; and the Indians being led on by the negro who is better acquainted with the customs, language, and manners of the whites, than the Indian, these savages would become much more formidable than they otherwise would, and long and bloody wars would be the fruits of the comingling of the races. It is the principle of self preservation that justifies the action of the Oregon legislature.~4 The exclusion laws lasted long after Indian and black hostilities were even a remote possibility. Anti-black sentiment in Oregon was apparent from the beginning, and an exclusion clause remained on the books, despite repeated efforts to have it removed, until 1926.

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