"A Plundered Province: Steamboat Commerce and Vanishing Property within the Inland River West, 1835-1858"

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Abstract

Legal and economic theorists often assume that "secure" private property rights, held on an individual basis and guarded by judges against competing public claims, have been an essential ingredient to explaining the "mystery" of capital formation in the nineteenth-century United States. For most of the 1800s, however, holding title to physical property was an economic liability, exposing oneself to vexing lawsuits brought by private creditors both low and high. During this era, economic prowess was demonstrated as much by the power to divest property from other people as it was by the power to hold onto one's own possessions. This was especially true in the "Western Waters" of the Ohio-Mississippi River corridor, a steamboat economy both buoyed and restrained by the demands of bankers and financiers from eastern locales. There, in cities like Cincinnati, Louisville, and St. Louis, property was a currency of exchange as much as it was an indicator of civic responsibility or prestige. There, as well, liberal legal concepts about commercial activity that allowed goods to change hands on the waterfront spread beyond their initial bounds, upsetting balances of power between buyers and sellers, creditors and debtors, owners and claimants, masters and slaves.

Studying the papers of U.S. river city lawyers, their steamboat clients, and the case files of the courts they used, this paper tells how the sanctioned private expropriation of steamboat property - a species of property diffused throughout the U.S. west and central to the operation of its market economy - simultaneously kept this economy afloat and led to its eventual demise. In the riverine U.S. west, the transfer of steamboats and their freight, both forced and voluntary, democratized the experience of taking possessions out of private hands in a way that undermined "absolute" ownership claims elsewhere in the law. As late as the 1830s, however, Ohio River steamboat proprietors thought that they had arrived at the ideal way to maintain control of their investment revenue, choosing to sell their vessels in manufactured court-ordered auctions to friendly "mortgagors" in New Orleans, then registering them in someone else's name. But this turn away from the "vested rights" of upstream common law states like Kentucky and towards the New Orleans Parish Commercial Court, where a *Code de Commerce* based on continental civil law was said to aggregate the rights of owners and claimants more efficiently, came with a hidden cost. To facilitate the routine exchange of titles on the New Orleans levee, local magistrates and federal marshals were forced to develop new doctrines, methods, and capacities that would eventually travel upstream, providing private law templates for how to conduct legally unassailable public "takings" of property on the eve of the Civil War. Ironically, when Gilded Age theorists suggested that economic stabilization required a re-sanctification of private exchange free from active governmental interference, they were actually recommending a return to this volatile period in American history, where property rights were anything but "secure," and where federal intervention was all but assured.