

TRYING A CASE IN WASECA COUNTY WHILE
(ALLEGEDLY) UNDER THE INFLUENCE OF LIQUOR *
(1905)

BY

JAMES E. CHILD

FOREWORD

BY

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[History] is always a product of the interaction between two personalities, the judged and the judger.... There is no historical truth—at least not... in any sense useful to us—independent of the eye and the position of the viewer. Every historical treatise represents not the reconstitution of some detached, abstract historical truth, but rather a way of looking at something behind us in time; and there are as many ways of looking at that “something” as there are historians, just as in the world of visual arts there are so many ways of seeing and apprehending an object as there are artists.¹

* Title by MLHP.

¹ Letter from George F. Kennan, diplomat, historian and elegant stylist, to historian John Lucas in 1966, quoted in William Pfaff, “Wise Men Against the Grain,” *New York Review of Books* 59, 60 (June 9, 2011), reviewing two books of their correspondence edited by Lucas: *Through the History of the Cold War: The Correspondence of George F. Kennan and John Lucas* (Univ. of Pa. Press, 2011), and *George F. Kennan and the Origin of Containment, 1944-1946: The Kennan-Lucas Correspondence* (Univ. of Mo. Press, 2011).

The “Fixation” Illusion in History-Writing.

James E. Child, author of a history of Waseca County, Minnesota, published in 1905, begins an account of a chaotic trial in justice court on a jarring note: “As far back as 1878 it was not unheard of for attorneys, while under the influence of liquor, to try cases.” But the story of this trial, which appeared first in a local newspaper, does not describe either lawyer as being inebriated. The disruption in the courtroom was caused by insults exchanged by Lawyer Jones and Plaintiff Taylor, who had hair-trigger tempers. In mid-nineteenth century Minnesota, drunken lawyers did not try cases. A few may have indulged before or during a break in a trial but they would not have reached the point of being intoxicated. Judges, even Justices of the Peace, would not have tolerated them. Excessive liquor-consumption, which led to the temperance movement, was common in those days, but not in court. Child’s gloss on this trial is an example of the myths and tall tales that speckle Minnesota’s early legal history. But there is more here that is useful.

Child’s report of this long-forgotten trial permits us to discuss a basic understanding of history-writing that is too often ignored (most notably by a small sect of constitutional theorists)—that our interpretation of the past is influenced by our personal experiences, ambitions, prejudices and those of the times in which we live. No one asserted this better than Carl L. Becker, one of this nation’s most esteemed historians:

The only external world [the historian] has to deal with is the records. He can indeed look at the records as often as he likes, and he can get dozens of others to look at them: and some things, some “facts,” can in this way be established and agreed upon, as, for example, the fact that the document known as the

Declaration of Independence was voted on July 4, 1776. But the meaning and significance of this fact cannot be thus agreed upon, because the series of events in which it has a place cannot be enacted again and again, under varying conditions, in order to see what effect the variations would have. The historian has to judge the significance of the series of events from the one single performance, never to be repeated, and never, since the records are incomplete and imperfect, capable of being fully known or fully affirmed. Thus into the imagined facts and their meaning there enters the personal equation. The history of any event is never precisely the same thing to two different persons; and it is well known that every generation writes the same history in a new way, and puts upon it a new construction.

The reason why this is so—why the same series of vanished events is differently imagined in each succeeding generation—is that our imagined picture of the actual event is always determined by two things: (1) by the actual event itself insofar as we can know something about it; and (2) by our own present purposes, desires, prepossessions, and prejudices, all of which enter into the process of knowing it. The actual event contributes some thing to the imagined picture; but the mind that holds the imagined picture always contributes something too. . . . It is impossible to understand the history of certain great events without knowing what the actors in those events themselves thought about history. For example, it helps immensely to understand why the leaders of the American and French Revolutions acted and thought as they did if we know what their idea of classical history was. They desired, to put it simply, to be virtuous republicans, and to act the part. Well, they

were able to act the part of virtuous republicans much more effectively because they carried around in their heads an idea, or ideal if you prefer, of Greek republicanism and Roman virtue. But of course their own desire to be virtuous republicans had a great influence in making them think the Greek and Romans, whom they had been taught to admire by reading the classics in school, were virtuous republicans too. Their image of the present and future and their image of the classical past were inseparable, bound together—were really one and the same thing.

In this way the present influences our idea of the past, and our idea of the past influences the present. We are accustomed to say that "the present is the product of all the past"; and this is what is ordinarily meant by the historian's doctrine of "historical continuity." But it is only a half truth. It is equally true, and no mere paradox, to say that the past (our imagined picture of it) is the product of all the present. We build our conceptions of history partly out of our present needs and purposes. The past is a kind of screen upon which we project our vision of the future; and it is indeed a moving picture, borrowing much of its form and color from our fears and aspirations.²

Carl L. Becker and George F. Kennan remind us that there is no single, permanent or fixed-forever interpretation or meaning of an event, series of happenings, a speech, artistic work, official document or other writing that can be "discovered" by well-

² Phil L. Snyder, ed., *Detachment and the Writing of History: Essays and Letters of Carl L. Becker* 57-58 (Cornell University Press, 1958). This passage is from Becker's essay "What Are Historical Facts?," 8 *The Western Political Quarterly* 327-340 (September 1955).

intentioned history detectives. With their instructions in mind, we return to James Child and his county history.

James Child: The Temperance Advocate as Historian.

In 1905, Child was seventy-two years old, a newspaper owner, lawyer and author of a county history. This is his biographical sketch from *The History of the Bench and Bar of Minnesota*, published in 1904:

James E. Child, of Waseca, was born in De Kalb, St. Lawrence county, New York, December 19, 1833. His father, Zabina Child, was a carpenter and joiner by trade and also operated a farm. In 1834 the family moved to Medina county, Ohio, but soon afterwards returned to the old home and remained there until 1844, when they again moved west; this time to Dodge county, Wisconsin, where they were among the early settlers of that region.



James E. Child

When Mr. Child was twenty-two years old he was offered the management of a large farm in Waseca county, and went there to take charge. Soon after, however, he took advantage of the homestead law and secured a farm of his own. In the meantime he had so advanced his education that prior to 1863 he was able to seek and obtain admission to the bar, and in 1863 he moved to Wilton and began practice. Shortly afterwards he was appointed a deputy United States marshal. In 1863 Mr. Child also began journalistic work in the capacity of editor and publisher of the Waseca News. Later he held the same positions with the Waseca Radical, and in 1885 he purchased the Waseca Herald and has since conducted that journal as well as engaged in the practice of law.

Mr. Child has served Minnesota long and well in legislative capacity. As early as 1860 he was sent to the lower house of the state legislature; in 1872 was advanced to the state senate; in 1874 was again a member of the assembly; and in 1883 he represented Martin and Jackson counties in the same capacity. In 1886 the prohibition party named him for its candidate for governor.

April 19, 1856, Mr. Child was married to Justina Krassin, to whom have been born: Walter, Annie, Orilla, Dora M., George E., and Marcia. Mr. Child is recognized as a citizen who has been largely instrumental in the development and prosperity of Minnesota.³

³ Hiram F. Stevens, ed., *2 History of the Bench and Bar of Minnesota* 193-194 (1904). He was defeated in the 1886 gubernatorial election, the results of which were:

Andrew R. McGill (Republican).....	107,064	(48.54%).
Albert A. Ames (Democrat).....	104,464	(47.36%).
James E. Child (Prohibition).....	9,036	(4.09%).

Besides helping to make the state prosperous, he was also active in the temperance movement, and sections of his *History* reveal its influence.

In the 1870s civil cases far outnumbered criminal prosecutions on the dockets of district courts in the state, but Child's summary of a session of the district court in early 1878 lists only convictions of bootleggers and suggests they resulted from the vigilance of the local temperance group:

WHOLESALE INDICTING.

The temperance people of the county were very active in 1878. At the March term of court, thirteen indictments were found by the grand jury against as many different persons in New Richland for selling liquor unlawfully. Nearly all of them plead guilty and were fined \$50 and costs of prosecution.⁴

His belief in the evils of drink compelled him to print a detailed description of the last hours of Mrs. S. J. Stevenson, a widow who died in early January 1878 as a result of alcoholism. That her surviving family would be hurt by the publication of the sad story of her addiction and death seems not to have occurred to him or, if it did, he concluded their humiliation was negligible when compared to the benefits to those who might be frightened away from liquor by reading about her ordeal:

TERRIBLE DEATH OF MRS. STEVENSON.⁵

⁴ James E. Child, *Child's History of Waseca County, Minnesota* 330 (1905).

⁵ *Id.* at 328-329. Interestingly, he identifies Mrs. Stevenson by name while using pseudonyms in his story of the trial in Justice Court, suggesting that he did not want to offend trial participants who were still living. Survivors may have been thankful for his discretion but surprised at how he misinterpreted this old case

"It is with a sad heart that we record the fearful death of Mrs. S. J. Stevenson, wife of the late deputy sheriff of this county, who was found within thirty feet of the Catholic church of this village and only a few rods from her own home, last Sunday morning, frozen to death, with an empty bottle in which there had been whisky. There is no reason to doubt that she came to her death while in a drunken condition, as for years she had been more or less addicted to the use of liquor—was, in fact, a slave to its power.

"She was found by Mr. Breen's son and James B. Hayden, clerk of the court. When first discovered the body was in a kneeling posture, the face, knees, and toes resting upon the ground and the body bent as though she had fallen while on her knees; thus her spirit passed beyond the vale.

She leaves four children—two daughters, who have reached womanhood, and two little boys.

"When sober, she was one of the kindest and best of women, especially in sickness, and with the exception of this fault was a respectable, kind-hearted woman. She was about fifty years of age."

The death of Mrs. Stevenson brought forth the following lines from Miss Mary E. Dayton, then a young school teacher, afterwards Mrs. Shepard, now deceased. The lines were so sincere and true that the author offers no apology for reproducing the following extracts from the poem:

LINES ON THE DEATH OF MRS. STEVENSON.

"Gone to the earth, returned to dust!
Gone to her maker, too, we trust.

Her life is done, her work is o'er;
Now she will rest forever more.
She knew no happiness in life,
But much she knew of toil and strife,
She once was young and very fair—
Alas! she knew not then the snare
That would enfold her in its grasp.
Till human power and help were past.
She fell into the tempter's power;
He met her in an evil hour:
She sinned and fell, 'tis plain to all,
She lost her pride, her hope, her all.
She yielded to the demon rum,
Not thinking of the harm to come,
Until too late, his grasp she felt.
Ah, where's the heart that would not melt
Before a scene so sad, yet true?
Picture the agony she knew!
Not ours the right to judge, but learn
From sin and evil now to turn,
Oh! man. Oh! youth, beware, beware,
We're all beset by many a snare;

* * *

When tempted oft to turn astray,
Remember God, the living way.
Think well before one glass you take.
Before His holy law you break,
Think of that creature once so pure,
Think of the woe that came to her!
Think of her lying stiff and cold,
Think of her poor immortal soul!
'Tis true she sinned, but who is he
Who sinneth not? If such there be,

His is the right to judge of one
Who sitteth now before God's throne."

Child wrote, edited and selected stories for his *History* with the prejudices of a fervent member of the temperance movement. Writing a quarter century after the trial in Justice Smyth's courtroom in 1878 he could not shake off those personal biases. His first sentence signals that the trial features a lawyer who was intoxicated but there are no signs of inebriation in the report of the "laughable and disgraceful" behavior of lawyers and witnesses that day. His experiences in the temperance movement influenced his interpretation of a minor, long-forgotten event and decision to include it in his county history in the first place. Had he written thirty years later, after the experiment in Prohibition, his *History* would have been much different. Here is Child in 1905:⁶

"LAUGHABLE AND DISGRACEFUL"

As far back as 1878 it was not unheard of for attorneys, while under the influence of liquor, to try cases.

The following actually occurred in Waseca—names alone being fictitious. The affair is given as reported at the time:

"A laughable and at the same time a disgraceful scene occurred in Hon. B. Smyth's court, last Wednesday. The plaintiff was a man named Taylor, a lithe, supple, plucky chap; and the defendant, a Mr. Goye. Lawyer Cole appeared for plaintiff and Lawyer Jones for defendant. The plaintiff was put upon the stand and all went as usual until the cross-examination, when some sharp words ensued.

⁶ *Id.* at 330-331.

Jones called the witness a d — n gambler, whereupon the witness told Jones he was a d — n liar.

“That was too much for Jones; he seized a chair and raised it, threatening to knock the witness’ brains out. Taylor, not to be outdone in politeness, as quick as a flash also presented a chair. Cole rushed to a corner and called for a revolver, the jurors ducked their heads, one behind another expecting every moment the crash of arms, the justice commenced gathering up his papers, men from the street rushed wildly to the scene of conflict, everything was in suspense until two seconds rushed in and prevented the flow of gore by parting the combatants. Lawyer Jones, being disarmed, paced up and down like a caged lion, asserting that he was a respectable citizen of Waseca, and that he would not take such an insult from a tramp. Whereupon Taylor informed him that he (Taylor) was not a tramp, and moreover that Lawyer Jones was not even a respectable citizen. And then the valorous Jones again approached Taylor with clenched fists and flashing eyes threatening a terrible lesson in pugilism. Taylor again assumed a fighting posture, and no one can tell how much blood might have flowed had not Constables Roddle and Stevenson rushed between them. Disgusted at his failure to cross-examine the witness over the head with a chair, Jones left the court in contempt. After his departure the court held the scales of justice in equal poise and finished the trial—peace and harmony prevailing.”

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