LEGAL HISTORY

Andrew Duncan Duff;
Southern Illinois Judge, Prisoner of State,
and Frontier Legal Educator

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Introduction

The story of Andrew Duncan Duff (1820-1889) is known only to a few, and to them simply as the subject of an annotation or a foot-

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note in a handful of works analyzing Lincoln’s suspension of habeas corpus.\textsuperscript{1} Although the account of this nineteenth-century southern Illinois judge’s arrest and imprisonment is a fascinating one that was detailed after the Civil War in John Marshall’s popular Copperhead work, \textit{American Bastile},\textsuperscript{2} there is much more about the man that has never been told.

For instance, it is not commonly known that A. D. Duff was the leading legal educator in southern Illinois during the mid-1800s, opening law schools in Benton and Shawneetown, and serving as the driving force behind an 1874 attempt to establish a school of law at Southern Illinois Normal University (now Southern Illinois University) in Carbondale, Illinois. Duff later stamped his legacy in the southwest, playing a role in President Grover Cleveland’s attempt to clean up fraud there, and serving as Register of the Land Office in Tucson, Arizona, until his death in 1889. This essay hopes to remedy the dearth of recorded biographical details in the life of this obscure but important figure in the history of both southern Illinois and early legal education.

\textit{Early Legal Career}

Not much is known about Duff’s early life. The single modern account of his formative years derives almost entirely from a brief entry in an 1875 Illinois directory.\textsuperscript{3} Unfortunately, sketches in those early biographical works were often self-written or composed by someone close to the subject and, given the opinions expressed in Duff’s entry regarding politics and temperance, it appears that he oversaw or had a hand in its writing. The information provided is brief and the details are scant. Duff’s father was a native of Georgia, his mother from South Carolina; after marrying in that state they emigrated in 1809 to Bond County, Illinois, and it was here that A.D. Duff was born on January 24, 1820.\textsuperscript{4} Educated in frontier

\textsuperscript{1} See, e.g., Mark E. Neely, Jr., \textit{The Fate of Liberty; Abraham Lincoln and Civil Liberties} (New York: Oxford University Press, 1991), 203-204.


\textsuperscript{4} \textit{Supra}, \textit{The Biographical Encyclopedia of Illinois of the Nineteenth Century}, at 290-291.
schools, he worked as a schoolteacher from 1842 to 1843, and supplemented that vocation as a farmer for the next four years, during which he married Mary Eliza Powell.\textsuperscript{5}

It was in 1847 that Duff's life becomes more interesting to historians and warrants a detailed examination. In that year, at the suggestion of his friend, Judge William A. Denning, Duff left behind his livelihoods of farming and teaching, and moved ninety miles south to Benton to pursue a career in law under Denning's tutelage.\textsuperscript{6} But soon after arriving, Duff's studies were interrupted by his mentor's appointment as an associate justice of the Illinois Supreme Court in Springfield. Denning's move likely precipitated, or at least contributed to, Duff's decision to take a hiatus from legal training and enlist to fight with the U.S. armed forces in the Mexican War.\textsuperscript{7}

As a private in the army, Duff travelled throughout the southwest, serving under Captain J. M. Cunningham, the former sheriff of nearby Williamson County (located directly south of Benton),\textsuperscript{8} until his discharge at the end of the war in October 1848.\textsuperscript{9} While serving, Duff was part of Company H, which marched from Fort Leavenworth to the northernmost Mexican outpost at Santa Fe.\textsuperscript{10} Although fighting against boredom, heat, and measles were the only battles that Company H actually waged, friendships were undoubtedly forged through the hardships endured on the long march through the desolate southwest. It was quite fortuitous for Duff later in life that the second lieutenant of Company H was a man named John Logan, who would later find fame as both a Union general during the Civil War and as a United States senator.\textsuperscript{11} This would prove to be valuable many years later, during the Civil War, when Duff and other politicians from southern Illinois were imprisoned under accusations of treasonous activities and General Logan penned a letter to President Lincoln suggesting the arrests were of a spurious and political nature.\textsuperscript{12}

\textsuperscript{5} \textit{Id.}
\textsuperscript{6} \textit{Id.}
\textsuperscript{7} \textit{Id.}
\textsuperscript{10} Jones, at 6.
\textsuperscript{11} \textit{Id.}
\textsuperscript{12} Neely, \textit{The Fate of Liberty} at 55.
At the conclusion of the Mexican war in late 1848, Duff returned home to Benton and reunited with Judge Denning, who had recently been elected to the third judicial circuit. Although still early in his legal studies, chance offered Duff's professional career an accelerated path when the Illinois Constitutional Convention of 1847 the County Commissioners' Courts and Probate Courts. In their place, each county was mandated to have a County Court consisting of one judge and two associates. In 1849, only twenty-nine years old and not yet having tested for the bar, Duff ran for and was elected as the first County Court Judge of Franklin County, Illinois. At the conclusion of his four-year term, during which he became a member of the state bar, Duff remained in Franklin County and began a law practice that was active until 1861 when he returned to the bench.

In November of that year, voters elected Duff, running again as a Democrat, to a six-year term for the newly created twenty-sixth circuit, covering Franklin, Johnson, Saline, and Williamson Counties. It was a busy time for the judge. In addition to travelling on the judicial circuit, he was elected to represent Franklin and Jackson Counties as a delegate to the Illinois Constitutional Convention of 1862, for which he served as chair of the Committee on Judicial Circuits and as a member of the Committee on Public Accounts and Expenditures. But if the years leading up to 1862 served to establish a substantial legal career, the events of 1862 would stamp Duff's name in the footnotes of history.

**Arrest and Imprisonment**

Soon after the attack on Fort Sumter, President Lincoln, seeking to preserve the Union, granted broad authority for the military to arrest and imprison hundreds of civilians. By the end of September 1862, he would formalize those orders as a proclamation suspending the writ of habeas corpus. Many of those arrested were from border-states, areas often sympathetic to the Confederate cause. Due not only to its geographic location, but also its Democratic leanings and public sentiment against Lincoln's administration, it

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17 War Department, *General Orders No. 141*, September 25, 1862.
is not surprising that southern Illinois came under federal scrutiny. In July 1862, based on a spurious affidavit stating that a secret society, the Knights of the Golden Circle, was planning an attack on the Big Muddy Bridge, a number of prominent civilians, including Duff, were arrested under charges of treasonous intentions.18

A scathing anti-Republican pamphlet written by Duff in December 1862, details their ordeals from arrest to release.19 Duff, an outspoken Democrat, describes the speech he gave at a political rally in which he stressed the importance of defeating the incumbent party in the upcoming November elections. He believed it was this speech that earned him a spot on the list of those to be arrested.20 The tract provides to modern scholars with a window into the details of wartime arrests and the measures taken by the Lincoln administration to silence opposition in a time of war.

The sweep of arrests through southern Illinois included many prominent members of the community, all of whom were leaders of the Democratic Party, including William J. Allen, a sitting U. S. Congressman; Israel Blanchard, the brother-in-law of General John Logan; John H. Mulkey, a judge of common pleas from Cairo; and John M. Clementson, the state’s attorney from Williamson County.21 These arrests were public affairs, clearly intended to send a message that traitorous speech, or at least speech deemed so by federal marshals, was not to be tolerated. In Duff’s case, he was arrested while presiding over his court. He and the others were sent to Cairo where they learned their detentions were based on charges of disloyalty,22 apparently derived from an affidavit (later proven to be false) claiming that some of the arrested, including Duff, were part of the secret society, Knights of the Golden Circle, that was planning to destroy bridges and telegraph lines in southern Illinois.23 The accused were then sent, without trial or any

18 Washington National Republican Sept. 1, 1862, 1.
19 A. D. Duff, Arbitrary Arrests in Illinois, Letter of Judge A. D. Duff, of Franklin County, to the Public of South Illinois, Relative to his Arrest and Imprisonment by the Abolition Despotism (Springfield: State Register Steam Print, 1863).
20 Id. at 4.
21 Handwritten arrest record from U. S. Marshall David L. Phillips to Edwin M. Stanton, dated September 4, 1862, charging the arrested men with “treasonable languages and practices” and “clearly proven to be leading and influential members of the Knights of the Golden Circle.”
23 Id.
other fact-finding, to the Old Capital Prison in Washington, DC. Three months after his arrest, Duff was released, but only after taking a loyalty oath and swearing that he would not prosecute for his arrest.24

Although Duff’s fiery narrative was printed primarily for circulation in southern Illinois, his experience was made known on a national level when it was included in a widely distributed book detailing the account of the arrests, authored by one of Duff’s fellow prisoners, D. A. Mahony.25 In a chapter titled “The Kidnapping of Hon. Andrew D. Duff,” the judge provided a detailed, first-person narrative of his arrest.26 Duff’s story received even broader contemporary attention when it was included in John A. Marshall’s nationally popular Copperhead treatise, American Bastille.27

Release and Return

The citizens of southern Illinois during the Civil War, although pro-Union, were staunchly Democrat and, not surprisingly, many felt that the civilian arrests in their region were based on ideological differences rather than treasonous speech or actions. As a result, Duff returned from the Old Capitol Prison somewhat of a hero, and he records turning down numerous requests to speak on his “illegal arrest and open act of tyranny.”28 Despite this warm welcome, Duff had become disillusioned with politics, and he sought to distance himself from any party affiliation.

Unfortunately, party politics and maneuvering were alive and well in the region and Duff could not help but be caught up in them. In the judicial election of 1867, anticipating the re-election of the popular Judge Duff, his opponents tried to render him ineligible based on his residency in Franklin County. This was accomplished through a creative interpretation of a recently enacted state statute which fixed the times of the terms of the newly added counties to the twenty-sixth circuit.29

24 Id. at 402.
26 Id. at 359-365.
27 John A. Marshall, American Bastille; a history of the arbitrary arrests and imprisonment of American citizens in the northern and border states, on account of their political opinions, during the late Civil War (Philadelphia: T. W. Hartley, 1883), 293-302.
28 Duff, Arbitrary Arrests in Illinois, at 3.
29 State of Illinois, 25th General Assembly, Public Laws, 1st session, “An Act to Define the Twenty-Sixth Judicial Circuit of this state and to fix the times of holding courts therein.” In force May 10, 1867. 62.
Two years earlier, state legislation had added Gallatin and Hardin Counties to Duff’s circuit and established that the court term for Franklin County would be in March and August. Because the new act did not mention Franklin County (presumably because its meeting time had already been established and was not in conflict with the new counties’ calendars), James S. Barr, Clerk of the Circuit Court of Franklin County, chose to interpret the new law to read that because no time was set for that county’s term, the new statute had, in effect, abolished the court in Franklin County. Under this reading, Duff was therefore ineligible to run for office. With the election rapidly approaching, Duff sought a resolution from the state’s highest court, and indeed the Illinois Supreme Court sided with him, finding that Barr’s interpretation was likely politically motivated and that any reading of the statute which left Franklin County without a court would be “appalling to consider.” Duff was easily reelected to the Circuit Court in 1867 and served until losing a re-election bid in 1873.

Law Schools at Benton, Shawneetown and Southern Illinois Normal

Although Duff’s wartime arrest has been well documented, one of the lesser-known aspects of his career that had a lasting impact was his commitment to legal education in southern Illinois. While serving on the bench for the twenty-sixth circuit, Duff founded two law schools and was a primary participant in an early attempt to create a law school at the Southern Illinois Normal University in Carbondale. It is important to understand that legal education is much different today from the mid-19th century. That period represents a time of flux for legal education; the traditional method of having members of the bar training pupils in their offices was slowly giving way to the use of private local law schools which grew out of expanded law offices. At that time, legal education was not standardized and there were no professional requirements dictating the extent to which one had to be educated before practicing law.

31 The People ex rel. Harwell Freeman et al. v. James S. Barr, Clerk of Franklin County Circuit Court 44 Ill 198, 200 (1867).
32 Id.
34 Reed, Alfred Zantzinger, Training for the Public Profession of the Law (New York: Carnegie Foundation, 1921), 79-84.
Although a resident of southern Illinois could certainly obtain practice experience in the hope of passing the state bar by studying under a judge or attorney, Duff wanted to create an opportunity for a more formal education. At that time, the nearest degree-granting law schools for a southern Illinois resident were at the University of Louisville, in Kentucky, and McKendree College, located in Lebanon, Illinois. Distance and cost made them prohibitive to most in the region. Realizing there were underserved legal education needs in the region and many without the means to attend a university-affiliated law school, Duff sought to remedy this by opening a local private school offering a curriculum of formal legal education and modeled after those at larger schools.

Despite the fact that an 1865 census shows a resident population of only 589 in the four square miles surrounding the city, Duff's choice to establish his law school was in his hometown of Benton, Illinois. The private act incorporating the Benton Law Institute reveals Duff's lofty aspirations for the school, with its stated mission being "to establish a regular and systematic study of the law as a science, and facilitate the means of acquiring a more thorough and perfect knowledge of all the fundamental principles thereof by practitioners before entering the profession." The school was to have a president, secretary, and treasurer, for its administration, and there would even be a librarian to oversee practitioner's library. The projected depth of faculty was also impressive, proposing six permanent professors teaching in the following areas: law generally, American and constitutional law, common and ancient law, languages, ancient and modern history, and political economy. Advertisements for the law school began to appear in local papers in the fall of 1869, seeking to fill the inaugural class slated to begin at the end of November of that year. Although only two faculty were named in these promotions, Duff and local attorney W. W. Barr, they described a rigorous curriculum and the availability of a library and reading room. A supportive editorial piece appearing in a local newspaper described the school as a "legal education within the reach of young men of the most

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35 Id., at 424.
36 The Prospectus of Franklin County Illinois, (1912), 44.
38 Id. at 3-5.
39 Id. at 4.
40 Cairo Evening Bulletin, Oct. 25, 1869, and issues throughout December 1869.
41 Id.
limited means," and pronounced Duff as standing "at the very head of the legal profession in Illinois. He is everywhere recognized as one of the ablest jurists of the land; as a ripe scholar, and as a law lecturer of most eminent ability."\textsuperscript{42} A photograph of an early Benton Law Institute class published years later in a St. Louis newspaper shows Duff among several men who went on to become prominent lawyers, judges, and legislators throughout the country.\textsuperscript{43}

Despite its lofty aspirations, the small-town law school did not thrive, and less than two years after opening, it ceased to exist. An annual state directory of colleges in Illinois identifies the Benton Law Institute as being in Franklin County in 1871,\textsuperscript{44} but at some point during that year Duff moved the school fifty miles southeast to the booming port city of Shawneetown. A reasonable assumption is that the Benton market was exhausted and the school simply moved to where the students and the legal opportunities were. An 1872 Shawneetown directory and prospectus for potential émigrés and businesses, makes it apparent why Duff's choice was a logical one for his law school.\textsuperscript{45} Situated on the Ohio River in southeastern Illinois, Shawneetown had a population of two thousand and many opportunities for growth in manufacturing, shipping, real estate, and banking – all generators of legal needs. Additionally, its location on a central rail line allowed for direct access to Springfield, Chicago, St. Louis, and Cincinnati.

Even with these ingredients for success, the Shawneetown school did not flourish. Perhaps this was due to its proximity to a competing law school in Louisville, located a hundred and fifty miles away but easily accessible via the Ohio River. Another contributor to the school's failure may have been the lack of national standards for law schools and a continuing preference for the traditional method of legal apprenticeship, particularly in rural areas. A speech given by Duff to the inaugural class suggests that there were not many enrolled, describing them as a "little band of law students."\textsuperscript{46} Although at least fifteen lawyers are listed in the 1872

\textsuperscript{42} Cairo Evening Bulletin, Oct. 25, 1869.
\textsuperscript{43} St. Louis Globe-Democrat, July 21, 1907, 11.
\textsuperscript{45} Directory, Charter and Ordinances, of the City of Shawneetown. 1872. With a Brief Reference to the Resources of Gallatin County, (Shawneetown: D. W. Lusk, Mercury Office, for Glass and Co., 1872)
\textsuperscript{46} “Salutatory Address of Judge A. D. Duff, delivered before the Law School, Shawneetown, on Monday, Nov. 27, 1871,” Gallatin
city directory, and several prominent attorneys are recorded in various legal directories as graduates of Duff's Shawneetown Law School, no mention of this school offering classes is found after 1872.

The demise of his schools in Benton and Shawneetown did not mean Duff's foray into legal education was complete. In 1873, having recently lost re-election to the bench, Duff was now practicing law and living in Carbondale, the home of a newly established state teachers' school. Southern Illinois Normal University was chartered in 1869 with the mission "to qualify teachers for the common schools [of Illinois]."47 From the beginning, the school aspired to offer a broad and diverse curriculum. In an effort to live up to its "university" designation and include offerings beyond those of traditional normal schools, the university announced in its first catalog that the inaugural term would also include a Law Department.48

There was clearly concern that this bold reach by the school might extend beyond what was allowed by its legislative charter, and the board of trustees sought legal advice from Judge Duff, inquiring if he felt this departure from traditional Normal school offerings went beyond what was authorized.49 It is not surprising that Duff, who had already been tapped to lead the Law Department, and had a financial interest in the law school's establishment and success, advised the board that it was indeed allowed under the broad statutory phrase, "such other studies as the board of education may, from time to time, prescribe."50

The inaugural catalogue of Southern Illinois Normal University lists Duff as one of the eleven faculty members, identifying him as "Teacher of Law Department and Lecturer on Constitution of

_Daily Gazette_, Dec. 5, 1871. Available at Southern Illinois University Special Collections Research Center, _Andrew D. Duff Vertical File Manuscript, 1871-_.


48 _First Annual Catalogue of the Southern Illinois Normal University 1874-75_ (Carbondale: Southern Illinoisan Print., 1875), [7].

49 _Seventy Five Years in Retrospect; From Normal School to Teachers College to University, Southern Illinois University 1874-1949_ (Carbondale: University Editorial Board, Southern Illinois University, 1955), 28.

50 _Id._
United States and Illinois, and School Laws."51 A description of the proposed Law Department indicated that it was to operate independently of the rest of school, stating:

The Trustees have unanimously voted to establish a Law Department, in case the Hon. Judge Duff will undertake the charge of it, and give instruction and lectures. It will not interfere with the regular work of the Normal Departments, and will have no other connection with the faculty than through Judge Duff.52

Despite the pre-opening fanfare, the Law Department never held a single class. An encyclopedia published while Duff was living in Carbondale contains an apparently autobiographical entry, which states that he simply declined the honor of the offer of Law Department Chair,53 but it is more likely that a lack of students doomed the department. As an independent department within the university, Duff's salary was to be paid by the incoming law students, and because no students showed up, the proposed law school simply never materialized.54

Duff's Growing Disillusionment

In 1873, the twenty-sixth circuit was yet again legislatively reorganized and renamed the twenty-fifth circuit.55 Despite the new name, the circuit still included Union, Jackson, Williamson, Franklin, and Saline counties, but a politically significant aspect of this redistricting was the removal of Gallatin County, which included the prospering trade port city of Shawneetown.56 This loss of electoral base would prove to be disastrous for Duff who was much admired in the legal community of that county, many of whom were

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51 First Annual Catalogue of the Southern Illinois Normal University 1874-75, at [7].
52 Id. at 29.
54 Eli G. Lentz, Seventy Five Years in Retrospect; from normal school to teachers college to university, Southern Illinois University 1874-1949 (Carbondale: University Editorial Board Southern Illinois University, 1955), 28. This account was reiterated in the Carbondale history, Miss Lillian's Town; Carbondale, Illinois 1823-1973 (Carbondale: E. S. Morris, 1980), 164.
55 Laws of the State of Illinois: Passed by the 28th General Assembly, 1st session, 1873. 77, 80.
56 Id.
graduates of his short-lived Shawneetown Law School and la-
mented his “retirement” from the Gallatin County bench. 57 Duff, who had for so many years lived and worked in Benton and Frank-
lin County, moved to nearby Carbondale, in Jackson County, and
decided to seek re-election. However, aligned against him, in addi-
tion to the loss of popular support from Shawneetown, was Duff’s
disillusionment with party politics. Fueled by both his arrest and
his imprisonment, he was not only philosophically opposed to the
Republican platform, he now no longer supported any party, in-
cluding the Democratic Party. 58 In his bid for re-election he chose
not to run on the ticket of his former party, declaring that he was
“the candidate of no party.” 59

Despite these factors working against his re-election, Duff hoped
his popularity would bring victory, but opposing him in the election
was Monroe Crawford, a well-liked judge from Jonesboro (a town
south of Carbondale, best known as the site of one of the 1858
Lincoln-Douglas Debates). Although very popular with the general
public, Crawford was not backed by the local bar which denounced
him as “incompetent to properly fill the judicial office,” and “a dem-
agogue who talked over their heads from the bench at the people.” 60

Even with this professional disdain for Crawford, Duff’s return to
the bench, was not assured. Soon after announcing his independ-
ent candidacy, the local Democratic-leaning newspaper ran an ed-
itorial declaring that it was a time for change, describing Duff as “a
very estimable gentleman of kindly disposition” but, despite the lo-
cal bar’s praise and respect, “one of the fossil judges who in this
day of advancing ideas ought to be retired.” 61 The newspaper that
had so often supported Duff in the past may simply have been sup-
porting the Democratic candidate over Duff’s independent run, but
perhaps it was also echoing the public’s desire to shift away from
Duff’s pre-war views on slavery and white supremacy that he so
strongly defended in his post-arrest pamphlets. 62 The editor the
Cairo Daily Bulletin concluded that the time had come for “gentle-
men like Judge Duff [to] be pushed into private life by the ballots
of an intelligent people,” adding:

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57 Cairo Daily Bulletin, May 13, 1873. 2
58 The Biographical Encyclopedia of Illinois of the Nineteenth Cen-
59 Cairo Daily Bulletin, April 29, 1873. 4.
60 Id. June 7, 1873, 2.
61 Id. May 9, 1873, 2.
62 A. D. Duff, Foot-Prints of Despotism, or the Analogy Between
Lincoln and Other Tyrants (Benton: Standard Office Print., 1864),
18-19; and Duff, Arbitrary Arrests in Illinois. 16-17.
[the Duffites of today are covered an inch thick with the dust of precedent in which the finger of present events can write no words to give hope to the people that they will soon be enabled to break the fetters of caste which make them the slaves of the monopolies, those favored children of the played-out doctrine of vested powers.]

Although Duff won in his former home of Franklin County, he lost soundly to Crawford, receiving only thirty eight percent of the total votes cast.

_Duff’s Continuing Role in Legal Education_

Now residing in the university town of Carbondale, retired from the bench, and no longer involved with either party politics or law schools, Duff returned to the practice of law, partnering with William J. Allen, a man with whom he was held captive at the Old Capital Prison. Allen had moved to Carbondale after serving terms as a judge on the state circuit and the federal bench in Springfield, and the two men had an active practice, arguing many cases before Judge Crawford (the man to whom Duff lost re-election). Although Duff was no longer operating a law school in the region, he still held a belief in the need for educating the next generation of lawyers. Rather than formal “law school” classes, Duff now operated in the traditional method of apprenticeship. The social columns in contemporary local newspapers note that as late as 1878 young men were still studying law under Duff at his office.

_Duff Moves West_

By late 1884, at age 64, Duff’s health began to fail. In a personal letter written in November of that year, he describes his condition as “not being able to set up more than one hour at a time – have been sick four weeks today....” Adding to his misery was the death of his twenty-year-old daughter, May, on Nov. 11, 1884. Duff states that “my own mind is almost wrecked.” Despite his frail health and retirement from the bench, Governor R. J. Oglesby selected Duff to represent southern Illinois on a twelve-member commission to revise the revenue laws of Illinois which had “become

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63 _Id._
65 _See, e.g._ _Marion Monitor_, Sept. 30 and Oct. 7, 1880.
66 _Marion Monitor_, Dec. 26, 1878.
68 _Id._ at 107.
wholly inadequate to guarantee equal and just taxation.” Pursuant to the General Assembly’s joint resolution, Duff's group met in Springfield throughout September 1885 and issued its report, in the form of a proposed bill, on March 1, 1886.

With his health failing and perhaps a feeling that he had accomplished all that he could in southern Illinois, Duff and his wife, Mary Eliza, decided to leave the only place they had ever lived, and move to Arizona. Their choice seemed to be a logical one as Duff was familiar with the area, having served in the southwest in the Mexican-American War from early 1847 until its conclusion in 1848. Additionally, the Homestead Act of 1862 and the completion of the second transcontinental railroad in 1880 through the southern portion of the Arizona Territory created an influx of opportunities, and residents. The choice was also an economically feasible one for Duff, as by the mid-1880s, competition among the various railroad lines servicing California had lowered the price of a train ticket from the Mississippi River from more than one hundred dollars to only twenty-five dollars.

In a testament to his impact on the legal profession in southern Illinois, before leaving Carbondale, a banquet was held in Duff’s honor at the elegant Carbondale hotel, the Newell House, and reported as far away as St. Louis. The tribute was presided over by Judge Crawford, the man to whom Duff lost re-election in 1873, and speeches were given by his partner, W. J. Allen, as well as Robert Allyn, the president of Southern Illinois Normal University.

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70 Illinois Revenue Commission. *Report of the Revenue Commission, appointed under the joint resolution of the two houses of the 34th General Assembly to propose and frame a revenue code, etc., with accompanying address* (H. W. Rokker: Springfield, IL, 1886).


73 *Rails West.* http://www.railswest.com/history/secondtranscontinental.html

74 “Judge Duff's Send-Off,” *St. Louis Globe-Democrat.* March 10, 1886, 12.

75 *Id.*
The Arizona Land Office

Duff arrived in Phoenix in 1887, but his retirement did not last long. Although he had eschewed party politics as a result of his Civil War experiences, he was nevertheless thrust into a political fray involving attempted reforms of the Public Land Office of the United States. Prior to Duff's arrival, Dr. Benjamin M. Thomas, a former dentist with no prior political or government experience, served as the Register of the Land Office for Tucson. Thomas was appointed and served the U.S. Government in Indian relations from 1870 to 1877, and was Register from 1877 until 1886, when he was identified by the newly elected Democrat President Grover Cleveland as part of the culture of corruption and fraud in the Land Office and was removed from his position.76 Cleveland’s choice to lead the overhaul of the office was Col. Charles E. Dailey, who assumed his Land Office duties in November 1886.77 Unfortunately, Dailey was not only a Democrat and a reformer, but he also served under one – distinctions at that time and place which almost ensured a short tenure.

Directly above Dailey in the reporting line was General William A. J. Sparks, the newly appointed Commissioner of the General Land Office. Sparks, an attorney who had served as a Democrat in both chambers of the Illinois General Assembly, had also served under President Pierce as Receiver of Public Moneys for the U. S. Land Office at Edwardsville, Illinois. Having a reputation as a reformer, Cleveland appointed Sparks to the Arizona Territory to eliminate the rampant fraud in the agency and weed out speculators and land grabbing syndicates – most of whom were in the employ of the railroads and other large corporations attempting to convert lands in the public domain into land that was corporate controlled.78

Not surprisingly, it was these very groups who in turn were determined to bring about the removal of the two reformers. Although both Sparks’ and Dailey’s attempts to eliminate the organized fraud were supported by several local newspapers, the Tombstone Epitaph of April 13, 1887, reported their eventual professional demise, stating “the Washington ring are too strong for even the administration, and the head of a worthy official must fall at their bidding.”79 On March 3, 1887, the last day of the Congressional session, the U.S. Senate rejected Dailey’s presidential appointment.80

76 Arizona Weekly Citizen. September 11, 1886, 3.
77 Id.
78 John M. Palmer, The Bench and Bar of Illinois; Historical and Reminiscient (Lewis Publishing Co.: Chicago, 1899), 782.
79 Tombstone Epitaph, April 13, 1887, 4.
80 18 Cong. Rec. 2669 (March 3, 1887).
By the end of that year, Sparks had resigned his position in a dispute with the Secretary of the Interior whom Sparks felt was sympathetic to the railroads to the point of violating the law. President Cleveland now desperately needed a replacement for Dailey; he needed a man who could curtail the existing abuses but would be acceptable to Congress and their constituents.

Despite being retired and now fifteen hundred miles from where he made his name professionally, Duff somehow appeared on President Cleveland’s radar as a suitable replacement for Register of the Land Office. Perhaps Sparks planted the seed, as he would surely have been aware that his colleague from Illinois had arrived in the area, and that Duff was the type of man who would be sympathetic to the goals of the president. Additionally, the seeds sowed by Duff in his role as legal educator likely came back to benefit him professionally while in Arizona.

Daniel M. Browning, who was not only a fellow former circuit court judge from southern Illinois, but also a graduate of Duff’s first law school, the Benton Law Institute, had been in contact with Cleveland, seeking the office of Commissioner of General Land Office. Although that appointment had already been made, Cleveland thought enough of Browning to appoint him to the post of Commissioner of Indian Affairs. Furthermore, Duff’s former law partner William J. Allen might also have made President Cleveland aware of Duff’s suitability, as Cleveland had appointed Allen to the U. S. District Court for the Southern District of Illinois in April 1887. Likely it was one or more of these men who were instrumental in bringing Duff out of retirement, and on June 25, 1887, during the Congressional recess, President Cleveland appointed Duff, who began his duties as Register of the Tucson Land Office on July 5.

If Duff had any hesitations about accepting the position, the annual salary of more than $5000 undoubtedly would have made the offer an attractive one. Because the position had been vacant for four months, it was a salary that would be earned, and Duff’s first

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81 Palmer, at 783.
83 *Morning Monitor* (Springfield), April 19, 1887.
85 *Report of the Secretary of the Interior; being part of the message and documents communicated to the two houses of congress at the beginning of the second session of the fifty-first Congress* (Washington: GPO, 1890), 259.
weeks as Register were busy ones. During the first month, the office examined and passed upon 260 entry papers, wrote 390 official letters, fixed the time for hearing five contested cases, issued 11 notices for publication of application of patents to the mines and 48 notices for publication of proof on agricultural lands.86

Despite having the regional political stigma of being appointed by Cleveland and serving under Sparks, Duff did not seem to ruffle the feathers of the corporate syndicates. Even the Arizona Weekly Citizen, which had described the appointment of Dailey as being “very much to the disgust of everyone in this land district,” seemed accepting of Duff’s appointment.87 On April 6, 1888, the United States Senate finally approved his nomination, but by this time his frail health was failing.88

In early 1889, sensing the end was near, Duff began arranging to return to Illinois to spend his remaining days with his married daughter, Connie Barker.89 Arizona newspapers announced his resignation from the Land Office in early June, but Duff never lived to see southern Illinois again.90 On June 25, 1889, at the age of 69, Andrew Duncan Duff died after being “confined to his room by sickness for the past three or four months.”91 Soon thereafter, Mary Eliza returned with her husband’s embalmed remains to southern Illinois.92 Although Duff had stated in his post-arrest pamphlet that his tombstone should read: “Andrew D. Duff, one of the tyrants’ prisoners in the Old Capitol, during the great moral struggle between freedom and despotism, in 1862,”93 Duff and Mary Eliza are believed to be buried in unmarked graves next to their daughter, May, at Oakland Cemetery in Carbondale, Illinois.

The Legacy of Andrew Duncan Duff

As a prisoner of state, A. D. Duff’s published narratives of his arrest and captivity served to help open the eyes of American citizens regarding the dangers of party politics and abuses of executive power during wartime. Today they offer contemporary details for modern scholars examining Lincoln’s suspension of habeas corpus, as well as the myths and realities of copperhead activities in border areas during the Civil War. Similarly, Duff’s appointment and term as

86 Tombstone Epitaph, August 6, 1887.
87 Arizona Weekly Citizen, July 9, 1887, 3.
88 19 Cong. Rec. 2775 (April 6, 1888).
89 Carbondale Free Press, July 5, 1889.
90 Arizona Sentinel, June 1, 1869.
91 Carbondale Free Press, July 5, 1889.
92 Arizona Silver Belt, July 6, 1889.
93 Duff, Arbitrary Arrests in Illinois, at 18.
the Register of the Land Office in Arizona provides research fodder for modern scholars examining President Cleveland's attempts to clean up government corruption in the developing southwest.

As a man passionate about introducing formal legal education to the developing region of southern Illinois, Andrew Duff should be remembered and admired for his attempts to meet the legal needs of rural, frontier Illinois through the systematic study of law as a science. The region would have to wait almost one hundred years to meet the “non-existent” legal education resources of the state's southern thirty-seven counties when the state legislature established Southern Illinois University School of Law in 1972. Although Duff’s law schools never achieved the success for which he hoped, his vision and presence are alive today. The foundational motto of the Southern Illinois School of law, “Established in the Public Interest...Serving the Public Good,” channels his educational philosophy, and a number of books found on the shelves of that school's library bear the inscription, “Donation of Judge A. D. Duff, March 1886.”

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The Honorable Andrew Duncan Duff. Courtesy of the Special Collections Research Center, Morris Library, Southern Illinois University Carbondale.