6-1-2003

A Trial Lawyer Reviews Will Bagley’s *Blood of the Prophets*

Robert D. Crockett

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<td><strong>ISSN</strong></td>
<td>1550-3194 (print), 2156-8049 (online)</td>
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Introduction

Many historians have examined the tragic Mountain Meadows Massacre of 1857, and many yet will.¹ As of the writing of this review, Will Bagley’s work is one of the latest. Blood of the Prophets has received effusive praise from reviewers and award committees, a point prominently noted on the dust jacket.

Bagley’s particular claim to make this book worthwhile is that he has “troubling new evidence” to prove that President Brigham Young and Apostle George A. Smith of the Church of Jesus Christ of Latter-day Saints were accessories before the fact to commit the massacre.²

² For another book of recent vintage which concludes that Brigham Young directed the massacre, see William Wise, Massacre at Mountain Meadows: An American Legend and a Monumental Crime (New York: Crowell, 1976). Although Wise reaches the same conclusions as Bagley, for a number of reasons Wise’s work is different and of lesser

By contrast, in her watershed and erudite works, Juanita Brooks tells us that “no real evidence . . . has been found” to implicate these authorities before the massacre. As to matters after the massacre, Bagley follows the path well-worn by others to conclude that Brigham Young was an accessory after the fact to obstruct justice.

My review examines the way in which the author of Blood of the Prophets handles these new and old theories. In so doing, I challenge some of Juanita Brooks’s earlier conclusions. As a trial lawyer, I offer my perspective of the quality of Bagley’s and Brooks’s evidence and arguments in some key areas. Trial lawyers may not be trained historians, but we are called upon to evaluate the strengths and weaknesses of various classes of evidence and to interpret the meaning of official government action. The heinous massacre, its investigation, the trial of John D. Lee, and the actions of persons who control or are swept into the legal process (presidents, cabinet members, judges, prosecutors, defense lawyers, grand jurors, petit jurors, marshals, and witnesses) are all matters that lend themselves to a legal analysis. I am surprised that so little has been done in this area of the massacre’s legal aftermath.

Specifically, regarding Blood of the Prophets, it is my view that Bagley’s analysis of the evidence is uncritical and unbalanced, usually favoring explanations that would condemn authorities of the Church of Jesus Christ of Latter-day Saints. Bagley often ignores exculpatory evidence of a much higher quality than the evidence upon which he relies to inculpate Brigham Young. Bagley often favors rumor and speculation over hard evidence, or he relies solely upon rumor and

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speculation when there is no evidence. Although rich in quantity with primary sources, many of these sources are neither competent nor credible. Quantity does not equal quality. Bagley sometimes relies upon secondary sources where primary sources are more reliable.

Bagley also has difficulty with chronology. At times, he actually reverses the sequence of events to distort what really happened. This disregard for the sequence of events causes him to lose the perspective needed to assess the implications of geographic distances and the passage of time.

Bagley’s work demonstrates a depth (albeit unbalanced) of knowledge of Mormon history. But he lacks the breadth of understanding of the political and social issues outside the Mormon community that bear upon the nineteenth-century Mormon question. In particular, he has not adequately discussed the correspondence between government officials about the massacre, its investigation, and its prosecution.

Bagley is too confident of his evidence, if one can call much of what he relies on evidence. “Too well, too well thou tell’st a tale so ill”⁵ could be said of Bagley’s work. Dark, macabre, and depressing, Bagley’s work is not for the fainthearted who may have little knowledge of the actual events.

Bagley’s Version of the Mountain Meadows Massacre

Let us, then, briefly review Bagley’s dark version of the massacre. After Mexican territory was annexed to the United States, including the valley of the Great Salt Lake, Brigham Young sent representatives to Congress to petition for statehood in the early 1850s. The church openly announced its practice of plural marriage in 1852. Conflicts with federal judges and other federal appointees, exacerbated by the rhetoric of the Mormon reformation, led U.S. President James Buchanan and Congress to conclude that the territory was in a state of rebellion.

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⁵ Shakespeare, Richard II, 3.2.121.
To suppress the rebellion, Buchanan sent to Utah the largest domestic army in the history of the antebellum United States. Its advance and the assassination in Arkansas of Latter-day Saint Apostle Parley P. Pratt inflamed the Mormon residents of the territory against the United States. Bagley maintains that the church encouraged the Saints to commit acts of violence against apostates and non-Mormons.

A wagon train of approximately 140 emigrants led by Alexander Fancher and Captain Jack Baker entered the Salt Lake Valley in 1857 and then proceeded south on their way to California. Bagley’s account has Brigham Young ordering the destruction of the train, sending Apostle George A. Smith to communicate instructions to local leaders. Bagley informs us that instructions to Paiute Indians to attack the train are evident from Dimick Huntington's diary.

An advance party of soldiers led by Captain Stewart Van Vliet met with Young to provision the army. After speaking with Van Vliet, Young realized that he had overreacted in ordering the destruction. He sent James Haslam south to countermand those orders.

Indians attacked the party in predawn darkness on Monday, 6 September 1857, after assembling the night before. Armed Mormon militiamen in southern Utah joined the fray on Thursday, 10 September. The slaughter ended Friday, 11 September, when the emigrants were lured by a white flag of truce to surrender their weapons. Mormons and Indians killed them all, except for seventeen or eighteen children. Express rider Haslam arrived in Cedar City on Sunday, 13 September, with his message from Brigham Young. He was too late.

For the next twenty years church authorities obstructed justice to shield the perpetrators. Church authorities also conspired to shield other Mormons who had perpetrated other crimes against non-Mormons in the Utah Territory. The Utah Territory was a community dripping in gentile blood which, we are told, was a natural result of peculiar Mormon doctrines and rituals of violence.

The church struck a deal with U.S. District Attorney Sumner Howard to offer John D. Lee as a scapegoat. The deal required witnesses to fabricate testimony to convict Lee and required the U.S. Department of Justice to cease all further prosecutions. John D. Lee
was the only man brought to justice after trials in 1875 and 1876, whereupon he was executed in a sensational fashion.

Let us examine some of the more important of Bagley’s conclusions.

**Accessory Status versus Acts of War**

Even had Bagley correctly defined and understood the meaning of “accessory before the fact” and “accessory after the fact,” which he and Brooks and others did not, it is not proper to apply these civil standards of conduct in wartime conditions. Brigham Young’s tactics on the high plains against the advancing army were to engage in what would ordinarily be seen as malicious acts of vandalism—burning feedstock, running off supply trains, stealing mules, and running off cattle. These acts of malicious vandalism and treason, however, were expressly forgiven by President Buchanan’s war-time pardon for treason, which I discuss in greater detail below. The direct authorization of murder is one thing. Interference during war with feedstock, supply trains, and army cattle is another thing. These are much more benign acts—all immunized by Buchanan—than murder. It would be improper to use these immunized acts as a basis to establish accessory status.

**Brigham Young an Accessory before the Fact? The Dimick Huntington 1857–59 Diary**

If one were to accept the faulty proposition that Brigham Young’s conduct should be judged against civil standards of conduct, and if Brigham Young desired the destruction of the Fancher train and gave specific direction to George A. Smith and Indians to have the deed done, this would make Young and Smith accessories before the fact. In nineteenth-century legal parlance this meant “one who, not being

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7. James Buchanan, “A Proclamation,” 6 April 1858, 35th Cong., 2nd sess., S. Exec. Doc. 1, serial 974, pp. 69–72, “offering to the inhabitants of Utah, who shall submit to the laws, a free pardon for the seditions and treasons heretofore by them committed.”
present at the commission of the act, does yet procure, counsel, aid and abet the perpetrator in the commission of it.”

Bagley’s “troubling new evidence,” which separates his work from Brooks’s, is simply a diary entry, dated 1 September 1857, in which Indian interpreter Dimick Huntington describes a meeting purportedly held between himself, Brigham Young, and twelve Indian chiefs:

Kanosh the Pahvant Chief[,] Ammon & wife (Walkers Brother) & 11 Pahvants came into see B & D & find out about the soldiers. Tutseygubbit a Pide chief over 6 Pides Bands Youngwuols another Pide chief & I gave them all the cattle that had gone to Cal[,] the southa rout[,] it made them open their eyes[,] they sayed that you have told us not to steal[,] so I have but now they have come to fight us & you for when they kill us then they will kill you[,] they sayed the[y] was afraid to fight the Americans & so would raise grain & we might fight.⁹ (cf. p. 114)

For Bagley this cryptic entry proves that “the atrocity was not a tragedy but a premeditated criminal act initiated in Great Salt Lake City” (p. 378). Blood of the Prophets tells us that “if any court in the American West (excepting, of course, one of Utah’s probate courts) had seen the evidence [the Dimick Huntington diary] contained, the

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⁸ Lowenstein v. People, 54 Barb. 299 (N.Y. Sup. 1863). For example, a person who knowingly rents real property to another for use as a house of prostitution would be guilty of the offense. Ibid. The mere failure to disclose knowledge that a crime has been committed does not give rise to a felony. Edmonson v. State, 10 S.W. 21, 22 (Ark. 1888). Thus one who learns about a house of prostitution from another who confesses to have patronized it is not guilty of a felony. The felony of accessory before the fact has been subsumed in most states in the offenses committed by a principal, such as conspiracy or aiding and abetting. See, for example, State v. Bowman, 92 Utah 540, 70 P.2d 458, 460 (1937) (distinction between a principal crime and an accessory before the fact abolished in Utah in 1935).

⁹ Dimick B. Huntington, diary, MS 1419 2, Family and Church History Department Archives, The Church of Jesus Christ of Latter-day Saints (hereafter Church Archives), 13–14. Bagley interpolates “allies” where “grain” should be used. I think Bagley’s conclusion is wrong. See Lawrence Coates, review of Blood of the Prophets: Brigham Young and the Massacre at Mountain Meadows, by Will Bagley, BYU Studies 42/1 (2003): 153.
only debate among the jurors would have been when, where, and how high to hang Brigham Young” (p. 425 n. 42).

This scrap of evidence cannot support Bagley’s conclusions, particularly in light of contemporaneous evidence. Brigham Young, if it was truly he who spoke,¹⁰ did not refer to a specific emigrant train. Instead, on that day and on many others, as I will demonstrate, he asked Indian tribal leaders to help scatter the cattle of the army and of all emigrants on the trail in front of the army in order to completely close the trail. As historian Norman Furniss observed fifty years ago, “early in the war at least, the Church’s leaders had a deliberate policy of seeking military assistance from the Indians.”¹¹ When Brigham Young told the Indian tribes he wanted assistance in fighting the Americans, he meant only the army.¹²

Bagley tells us that the language in Huntington’s diary entry for 1 September 1857 implies an instruction for attack on the Fancher train. Why then did Dimick Huntington use the same language elsewhere with Indian tribal leaders who could have had no geographic

¹⁰. Most historians will probably believe that “B” refers to Brigham Young. I have my doubts, but it probably makes little difference to the analysis. Wilford Woodruff verifies that a meeting occurred that day with Brigham Young, so the “B” may be “Brigham.” However, nowhere else in the diary is Brigham referred to as “B” (but usually as “Brigham”) and, indeed, “B” appears as someone else earlier in the diary—possibly Ben Simonds, who has been alternatively described as a Delaware Indian, a half-breed, or a white Indian trader. Huntington, diary, 1. The diary is reproduced at www.mtn-meadows-assoc.com; search “Dimick”; select depoJournals/Dimick/Dimick.2.htm (accessed 14 January 2004).

¹¹. Furniss, Mormon Conflict, 163.

¹². John D. Lee purportedly recounts a conversation he translated for George A. Smith to the Indians, although Lee is not a good source for translated dialogue; one should doubt Lee’s ability to complete the translation: “The General told me to tell the Indians that the Mormons were their friends, and that the Americans were their enemies, and the enemies of the Mormons, too; that he wanted the Indians to remain the fast friends of the Mormons, for the Mormons were all friends to the Indians; that the Americans had a large army just east of the mountains, and intended to come over the mountains into Utah and kill all of the Mormons and Indians in Utah Territory.” William W. Bishop, ed., Mormonism Unveiled: or the Life and Confessions of the Late Mormon Bishop, John D. Lee (St. Louis: Bryan, Brand, 1877; reprint, Salt Lake City: Utah Lighthouse Ministry, n.d.), 223. Although I have doubts about this encounter, it shows that Mormon leaders, when they referred to the Americans, referred to the advancing armies and not emigrants.
proximity to the Fancher train? For instance, two days earlier in Huntington’s diary, 30 August 1857, Huntington wrote:

I [Huntington] told them that the Lord had come out of his Hiding place & they had to commence their work[.] I gave them all the Beef cattle & horses that was on the Road to CalAfornia[,] the North Rout[,] that they must put them into the mountains & not kill any thing as Long as they can help it but when they do Kill[,] take the old ones & not kill the cows or young ones.¹³

When Huntington talks about not killing anything “as Long as they can help it” he is talking about “cows.” He asked the northern Indians for help to run cattle off the northern California route upon which the Fancher train would never tread. Following the massacre, Indian agent Garland Hurt, certainly no friend of the Mormons, noted the same requests were made to the northern Snake Indians.¹⁴ T. B. H. Stenhouse also confirms that running the cattle off was a general strategy used successfully against the army.¹⁵ Thus, Brigham Young’s 1 September 1857 comment: “I gave them all the cattle” can only mean one thing. He offered the Indians all the cattle they could scatter that were owned by the army.

¹³ Huntington, diary, 11–12.
¹⁴ Indian Superintendent Garland Hurt determined for himself after the massacre that Brigham Young sought Indian help to run cattle off. Northern Indian tribes told him that “Dimie B. Huntington (interpreter for Brigham Young) and Bishop West, of Ogden, came to the Snake village, and told the Indians that Brigham wanted them to run off the emigrants’ cattle, and if they would do so they might have them as their own.” Hurt continues: “I have frequently been told by the chiefs of the Utahs that Brigham Young was trying to bribe them to join in rebellion against the United States . . . on conditions that they would assist him in opposing the advance of the United States troops.” Garland Hurt to Jacob Forney, 4 December 1857, 35th Cong., 1st sess., H. Exec. Doc. 71, serial 956, p. 204. Huntington’s diary account of the event and Hurt’s thirdhand account conflict. Huntington’s diary does not include a specific request to run off the cattle of emigrants, but appears to be limited to a request to run off the army’s cattle. Hurt’s thirdhand account of Huntington’s statement, which Hurt reported after the massacre became public knowledge, includes a request to run off the army’s cattle. Given Hurt’s well-acknowledged hostility to Brigham Young, I would view Hurt’s statement about emigrants’ cattle as a probable exaggeration. But, it is not unreasonable to think that Huntington’s vocalized strategy to the Indians was to obstruct overland traffic by running everyone’s cattle off.
Let us look at who was present at that 1 September 1857 meeting because this bears on Bagley’s theory about instructions to destroy the Fancher train. Most of the Indians present led tribes that had no geographic proximity to the Fancher train, as massacre historian and attorney Robert Briggs has pointed out.¹⁶ Only two or three of the twelve chieftains present might have had some connection to the tribes that participated in the massacre. Tutsegabit and Youngwuds were the two Southern Paiute chiefs present in Brigham Young’s office whose tribes resided in Iron County (p. 113).

Not only were the wrong people in the 1 September 1857 meeting, the participants were probably talking about a geographic area far from the location of the Fancher train. I have substantial doubt that Brigham Young’s reference to the “south rout[e]” on 1 September meant anything more than the entire route south of present-day Wyoming upon which the army was advancing. With contemporaneous descriptions of the south route referring to the entire road south of Lander Pass in Wyoming, it is unreasonable to conclude that Brigham Young had some other meaning for “south rout[e].”¹⁷


¹⁷. For a discussion of the Fancher train’s progress, see Donald R. Moorman with Gene A. Sessions, Camp Floyd and the Mormons: The Utah War (Salt Lake City: University of Utah Press, 1992), 128: “Traveling in two sections, the train weathered the journey across the plains and gave every indication that it intended to pursue the snow-free southern route to California.” Federal surveyor Lander described the “southern route” in F. W. Lander to W. M. F. Magraw, 1859, 35th Cong., 2nd sess., H. Exec. Doc. 108, serial 1008, pp. 63–65. A federal surveyor described the southern route as the route from “St. Louis to Salt Lake City, as above; thence by way of Vegas de Santa Clara and Los Angeles.” J. H. Simpson to Office of Topographical Engineers, Department of Utah, 22 February 1859, 35th Cong., 2nd sess., S. Exec. Doc. 40, serial 984, p. 37. Describing Simpson’s report, one historian writes about the “northern route along the Oregon Trail” and all other roads to the south. W. Turrentine Jackson, Wagon Roads West: A Study of Federal Road Surveys and Construction in the Trans-Mississippi West 1846–1869 (1952; reprint, with foreword by William H. Goetzmann, New Haven, Conn.: Yale University Press, 1965), 29.
Further, Bagley’s chronology is problematic to the point of impossibility. Tutsegabit and Youngwuds did not have time to get from Salt Lake City to Mountain Meadows and return to Salt Lake City by 16 September 1857 or, as Huntington says, by 10 September 1857. Blood of the Prophets tells us these Indian chiefs were surprised when they were purportedly told to massacre the Fancher train on 1 September but that they recovered from this surprise, and within five days (without horses, no less) traveled three hundred miles to organize and lead the first wave of assaults, assembling for the assault on the evening of 5 September for a predawn attack the next morning. In contrast, John D. Lee claims he rushed on horseback to Salt Lake City to make a report to Brigham Young of the massacre, saying that “I was on the way about ten days,” and Lee did not get started for ten days. With excellent and replenished horseflesh, it took James Haslam three days to travel the same distance with Isaac Haight’s request for instructions. Wilford Woodruff records Tutsegabit’s presence to be ordained an elder in Salt Lake City, certainly not an emergency, five days after the massacre concluded or, as the Huntington diary says, in the middle of the massacre. It is implausible to think that Tutsegabit and Youngwuds made this round-trip in such a short period of time. Moreover, neither Tutsegabit nor Youngwuds were reported to be at the massacre.

Thus, I disagree with Bagley’s effort to render what is simple and relatively benign (general cattle running) to what is complex and malicious (killing emigrants). The developed law of evidence cautions

18. Huntington, diary, 14. See also discussion of this date in Coates, review of Blood of the Prophets.

19. As explained at the end of this review, the Paiutes were the poorest of the poor among Indians. Regarding the Paiutes and horses, as one article in the Salt Lake Tribune notes: “The Utes, who exchanged the Indian slaves they captured for horses, were known for their business acumen. But not the Paiutes. ‘The Paiutes just ate them.’” Mark Havnes, “Spanish Trail Given National Designation,” Salt Lake Tribune, 24 March 2003, sec. D.

20. Bishop, Mormonism Unveiled, 252.

against reaching conclusions about wrongful conduct from a set of facts that could explain more benign actions.⁴² As Robert Briggs asks in his Sunstone essay, with twenty-five hundred troops approaching, why would Brigham Young concern himself with forty armed men in the Arkansas train?²³

**Brigham Young an Accessory before the Fact? Captain Van Vliet’s Meeting with Brigham Young**

Isaac Haight, a stake president in Cedar City, dispatched James Haslam to Brigham Young for instructions about the Fancher train. It is not contested that Brigham Young received Haight’s message and sent Haslam back to tell Haight not to meddle with the Fancher train and to “spare no horseflesh” about it. As Haslam describes it, when he arrived in Salt Lake City, he found President Young in council with several others. Young read the message from Haight and told Haslam to rest and return to Brigham Young’s office at 1:00 p.m. “He asked if I could stand the trip back; he said the Indians must be kept from the emigrants at all cost, if it took all of Iron County to protect them.” When Haslam returned to Young’s office at the appointed time, President Young “told me to start and not to spare horseflesh, but to go down there just as quick as possible.” When Haight received the message, Haight said: “Too late, too late.” Haight “cried like a child.”²⁴ Haslam was never impeached as to his story, and it remained consistent throughout his lifetime.²⁵

Bagley must determine how to handle this exculpatory evidence. As Brooks concludes, the Haslam ride demonstrated Brigham Young’s

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²⁵ John A. Widtsoe recounted his boyhood encounter with Haslam in his diary, as republished in Alan K. Parrish, John A. Widtsoe: A Biography (Salt Lake City: Deseret Book, 2003), 46–47.
lack of complicity in plotting the massacre.²⁶ Bagley turns exculpatory evidence into inculpatory evidence. He tells us that Young, in a change of heart, used Haslam to attempt to countermand previous orders of destruction. Blood of the Prophets says that “after learning from [advance Army Captain] Stewart Van Vliet that the government’s intentions were not as demonic as he had feared, Young sent orders south with James Haslam to stop the events he had set in motion” (p. 379).

No evidence supports Bagley’s complex theory about countermanded instructions. When Bagley talks about Young’s encounter with Van Vliet, he avoids saying much about dates, a strange thing given the crucial importance he attaches to this story. The sequence of events tells us that it is unlikely Young accumulated enough information to countermand his purported orders of destruction. On Tuesday, 8 September 1857, in the evening, Van Vliet arrived in Salt Lake Valley to secure provisions for the army (pp. 134–35). The next day, on Wednesday, Young met with church leaders and one hundred citizens met with Van Vliet to discuss the army’s needs for provisions.²⁷ The next morning, Thursday, 10 September, Haslam arrived and departed in the afternoon with Brigham Young’s message to Haight.²⁸ There is no evidence, as of this time, that any communication of substance passed between Brigham Young and Van Vliet on the first night.²⁹ As to the Wednesday meeting involving the hundred citizens, the evidence shows only belligerence on the part of Young, who told Van Vliet that the Saints would not provide supplies to the army, and that the army should expect a flogging.³⁰

²⁶. Brooks, Mountain Meadows Massacre, 142.
³⁰. Cooley, Diary of Brigham Young, 78–79.
ment before Haslam left. It is pure supposition to say that Young and Van Vliet said anything in the short time period above to cause Young to change his mind about the army. Bagley has pointed to no journal entry to prove his supposition.

After Haslam left, it is quite apparent that Young continued his policy of obstruction. On Sunday, 13 September, Young, with Van Vliet sharing the stand in the Bowery, threatened the army: “If [the Lord] will turn our enemies away, praised be his name. But if it should become a duty to take the sword, let us do it manfully and in the strength of Israel’s God. Then one will chase a thousand, and two, will put ten thousand to flight.”³¹

Van Vliet left Salt Lake City at three in the morning on Monday, 14 September,³² disheartened over Young’s obduracy, as he later reported to his superiors.³³ One day after Van Vliet’s departure on 15 September 1857, Brigham Young issued a declaration of martial law:³⁴

³⁴. Many, including Richard Poll, believe the declaration of martial law was first issued 5 August 1857. Fielding, *Tribune Reports*, 296; Richard D. Poll, “The Utah Expedition,” in *Encyclopedia of Mormonism*, 4:1501 (photocopy of declaration). If that is true, the 15 September 1857 republication would not fit at all in Bagley’s theory that the declaration was created to facilitate the massacre (p. 192) because the declaration was published weeks before. Bagley does not appear to mention the 5 August order; the two are identical. For now, I lack evidence that the 5 August order was ever published except for the copy of it in Poll’s article in the *Encyclopedia of Mormonism*. Bagley may be right that the first publication was in September, but he does not address the consensus alternate view, which offers a dramatically different and more benign explanation. The timing of the issuance of that order has led to substantial confusion, partially because of errors in the original indictment—an error upon which Lee’s attorneys attempted to capitalize at trial. See Whitney’s observation of the rather common timing error in Whitney, *History of Utah*, 2:816–17. Bancroft erred over the timing of the martial law order and the commencement of the attack, but he concluded nonetheless that Brigham Young had nothing to do with the attack. Hubert Howe Bancroft, *History of Utah 1540–1886* (San Francisco: History, 1889), 560. Another work that stumbles over the date of the event is the very entertaining Ann Eliza Young, *Wife No. 19, or the Story of a Life in Bondage, Being a Complete Exposé of Mormonism, and Revealing the Sorrows, Sacrifices and Sufferings of Women in Polygamy* (Hartford, Conn.: Dustin, Gilman, 1875), 237–49.
We are condemned unheard, and forced to an issue with an armed mercenary mob, which has been sent against us at the instigation of anonymous letter writers, ashamed to father the base, slanderous falsehoods which they have given to the public; of corrupt officials, who have brought false accusations against us to screen themselves in their own infamy; and of hireling priests and howling editors, who prostitute the truth for filthy lucre's sake.³⁵

Brigham Young indeed had a change of heart about the advancing army. It came after months of analysis, as Norman Furniss concludes.³⁶ Haslam’s ride cannot be explained as an attempt to countermand prior orders, and Bagley’s theory is fictional.

Apostle George A. Smith an Accessory before the Fact?

*Blood of the Prophets* says that “even before the Fancher party left Salt Lake, George A. Smith was on his way to southern Utah to arrange their destruction at a remote and lonely spot” (p. 381). This argument assumes Brigham Young had formulated the plan for destruction when the Fancher train was still in Salt Lake City on 5 August 1857. There is no evidence of material provocation by the Fancher train at this early stage except from persons with no reliable basis upon which to provide testimony. Bagley relies on Argus’s thirdhand account that Eleanor Pratt spotted a conspirator to the death of Parley P. Pratt among the train members in Salt Lake City (p. 98) without giving attribution.³⁷ The anonymous author who used the pseudonym of Argus and published a series of letters in the *Corinne (Utah) Reporter* lacks indicia of reliability for most of his observations. Bagley believes that Argus was later

³⁷ “Mrs. McLean Pratt is said to have recognized one or more of the emigrants as being present at the murder of the apostle.” “Extracts from ‘Open Letters from “Argus” to Brigham Young,’” in Stenhouse, *Rocky Mountain Saints*, 431.
determined to be one Charles Wandell. Wandell, who lived in California at the time of the massacre, had nothing to do with it (p. 434 n. 50).³⁸ When Blood of the Prophets relies upon Argus, it relies upon a purveyor of thirdhand uncorroborated speculation.

Bagley claims that instructions “from headquarters” to kill those in the train went from George A. Smith to Isaac Haight (p. 298). Again this source is Argus. Bagley claims that unnamed “federal investigators suspected that in August 1857 Smith carried Young's orders to massacre the Fancher train to southern Utah” (p. 297, emphasis added). This is not, however, evidence. If federal investigators had any evidence to support their suspicions, they would have aired it in the first Lee trial when, as we will see in the discussion below, they had every incentive to do so.

Nobody has ever offered any believable evidence that George A. Smith gave instructions to Haight and Lee to massacre the train. John D. Lee is the only person who purported to offer evidence of these instructions. I do not see how Bagley can place any faith in Lee’s confessions, particularly those written as Mormonism Unveiled. Lee wrote this confession with the assistance of William Bishop, his attorney. Bishop relied on these confessions to obtain his fee. As Bishop urged Lee to finish his work before his execution, he told Lee that he would be “adding such facts . . . as will make the Book interesting and useful to the public.” The matters of greatest interest to Bishop were those things that would implicate Brigham Young and church authorities, things which Bishop thought would make the book sell.³⁹ In any event, Lee’s claim that George A. Smith met Lee in southern Utah on 1 September

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³⁸. Charles Wandell was appointed a captain of fifty-two by church officials in the evacuation of the San Bernardino church members. He came through Mountain Meadows a few months after the massacre. He settled in Beaver. According to Bagley, in 1871, shortly after his excommunication from the church, Wandell began publishing his pseudonymic “Argus” letters about the massacre in the Corinne (Utah) Reporter. He joined the Reorganized Church of Jesus Christ of Latter Day Saints in 1873. His extensive files on the massacre were destroyed by a fire at the Herald Publishing House in 1907. Marjorie Newton, Hero or Traitor: A Biographical Study of Charles Wesley Wandell (Independence, Mo.: Herald, 1992).

1857 (an approximate date deduced from Lee’s text) with orders of de-
struction⁴⁰ was impossible because Smith was hundreds of miles away
in Salt Lake City on that very day, as well as the day before.⁴¹

Accessory after the Fact: The Claim That Brigham Young
Conspired to Dispose of the Fancher Train’s Property

Blood of the Prophets and other works⁴² theorize that church offi-
cials conspired as “accessories after the fact” to obstruct justice. To be
an accessory after the fact, a person must have an active and imme-
diate role in concealing a crime, such as providing the means for an
escape or shutting the door against law enforcement officers. Dealing
in stolen goods also conveys accessory-after-the-fact status. Passivity,
however, does not.⁴³

Bagley does not state clearly what facts confer accessory-after-the-
fact status upon Young. Certainly, we should reject both Brooks’s and
Bagley’s attempts to redefine the crime as passivity in that they both
tell us that Brigham Young was an accessory after the fact merely be-
cause “he knew what had happened, and how and why it happened”
(p. 377). This may be a historian’s standard of complicity, but it is not
a legal standard. By Brooks’s and Bagley’s standard, newspaper re-
porters would qualify for accessory status.

he had never heard of the Arkansas emigrants before he met them at Corn Creek, where
he camped near them one night on his way back to Salt Lake City, and that he immedi-
ately started east and heard no more of them until he reached Bridger, appears to have
escaped the notice of those who subsequently sought to associate him with the tragedy at
⁴². Bishop, Mormonism Unveiled, 381; John H. Beadle, Western Wilds, and the Men Who
Redeem Them (Cincinnati: Jones Brothers, 1879), 527–28; Furniss, Mormon Conflict, 88.
⁴³. Wren v. Com., 26 Gratt. 952, 67 Va. 952 (Va. 1875). Moreover, a cleric who re-
ceives information about a crime from a penitent cannot become an accessory because
the information is privileged. Francis Wharton, A Treatise on Criminal Law, 9th ed.
(Philadelphia: Kay and Brother, 1884), 443–45. Although there is no direct evidence that
Lee gave Brigham Young a penitential confession, any confession would have been privi-
egled and completely protected from any disclosure. Church attorneys may have justifi-
ably told Brigham Young that anything Lee told him about the massacre was a privileged
confession and could not be relied on for any purpose except church discipline.
In my attempt to separate the wheat from the chaff of Blood of the Prophets’s evidence, I agree with Bagley that a conspiracy to receive the emigrants’ property would be evidence sufficient to brand somebody an accessory after the fact. Is there competent evidence to show that Brigham Young conspired to receive the emigrant’s property?

Bagley appears to rely upon two events in which Young purportedly gave instructions for the disposition of Fancher train property. For one event, the evidence turns on the statement of one man, Philip Klingensmith. Blood of the Prophets tells us that at the church’s general conference on 6 October 1857, Klingensmith said that Lee made a full report of the massacre to Young and then was told to “dispose of that property” and “say nothing about it” (p. 178).

Brigham Young denied this meeting and specifically denied any statement about the property.⁴⁴ Although Bagley spends some time discounting Young’s affidavit of denial, his argument is less than convincing. Let’s assume, however, that Brigham Young’s affidavit does not exist. How good is Klingensmith’s testimony? Klingensmith’s statement was not corroborated when it should have been. The version of Lee’s confession, published by William Bishop, discussed the meeting with Brigham Young but mentions neither Klingensmith nor Young’s directions about disposition of the property.⁴⁵ Lee was in a position to corroborate Klingensmith but did not.

Additionally, upon cross-examination during the first Lee trial, Klingensmith admitted that whatever passed between Lee and Young about the massacre was outside his hearing.⁴⁶ His testimony was so worthless that U.S. District Attorney Sumner Howard declined to recall Klingensmith for the second trial.

Klingensmith also admitted to participating in the massacre. He turned state’s evidence before Lee’s first trial in exchange for a grant of

⁴⁴. Brigham Young, affidavit, 30 July 1875, in Brooks, Mountain Meadows Massacre, 286.
⁴⁵. Bishop, Mormonism Unveiled, 251–53.
⁴⁶. Trial Transcript, People of the Territory of Utah v. John D. Lee (1875), Utah State Historical Society, MS B 915 (Charles Peterson copy), 27, 93. Klingensmith did purport to hear Brigham Young give directions about keeping something a secret.
immunity. He gave his testimony as a disillusioned apostate.⁴⁷ Thus his 6 October 1857 account is very suspect, even without Young's denial.

The second event Bagley marshals as evidence of Young's participation in the property disposition is, again, in the Huntington diary. Bagley argues that after Chief Arapeen told him about the massacre, Young advised Arapeen to help himself to the booty (p. 170). Bagley, however, changes the actual sequence of events to make things appear as they are not. The Huntington diary shows that Young first asked Arapeen—just as Brigham Young had asked all other Indian chieftains—to help himself to the army's cattle. Then Arapeen tells him about “a” massacre.⁴⁸ Nobody thereafter suggested to Arapeen that he help himself to the Fancher train booty. Brigham Young would never have done this because Arapeen's tribe was too far north in Utah. Bagley's explanation is akin to asking the mayor of Ogden to help himself to the coffers of Cedar City.

I see no evidence to support the level of complicity necessary to establish that Brigham Young was an accessory after the fact through his giving instructions to dispose of the Fancher train booty.

**Accessory after the Fact: Obstruction of Justice and the Failure to Analyze the Effect of the Presidential Amnesty**

*Blood of the Prophets* has charged high-ranking church officials with two decades of obstructing the federal investigation. Bagley’s

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⁴⁷. Klingensmith was excommunicated from the church in 1871 but said he left the church on his own accord in 1868 or 1869. Trial Transcript (1875), 96.

⁴⁸. Huntington, diary, 18–19. Brigham Young tells Arapeen “to help himself to what he wanted,” but Arapeen demurs, saying that he had no fight with “the Americans.” Then, as the conversation progresses, “he told me that the Piedes [Southern Paiutes] had killd the whole of a Emigrant company & took all of their stock & it was right[.] that was before the news had reached the City.” I don't think Huntington made this diary entry contemporaneously with events, otherwise why would he say that Arapeen knew of the massacre “before the news had reached the City”? This entry causes me to suspect that the Huntington diary entry was written after the fact (and thus mixing up events with a rumored story, later shown to be false, of another, earlier massacre), but the entry refutes *Blood of the Prophets*’s claim that Arapeen first told Brigham Young about the massacre and then received instructions to take the plunder. Ibid.
emphasis is in Mormon history, so he sometimes shows his lack of breadth in political and social matters that originate outside the Great Basin. One of the areas in which he displays this weakness is his failure to discuss the effect of President Buchanan’s general amnesty upon the massacre prosecutions (p. 205).

Buchanan issued an amnesty for all crimes of the Mormons related to the claimed acts of sedition and treason. Governor Alfred Cumming announced a broad interpretation of that amnesty to the Saints on 14 June 1858.⁴⁹ Certainly, by the date of the amnesty, federal officials believed that Mormons had directed the massacre, and they believed that John D. Lee was one of the leaders.⁵⁰ One might reasonably conclude that the amnesty was intended to cover the massacre participants.

Some in the federal government and the press believed that Buchanan intended to pardon the massacre perpetrators. Indian superintendent Jacob Forney was so upset with U.S. District Court Judge John Cradlebaugh’s massacre investigation that he cursed Cradlebaugh’s name, citing the amnesty as the basis for his objections, or so we are told from a source hostile to Forney.⁵¹ Non-Mormon U.S. District Attorney Alexander Wilson and non-Mormon U.S. District Court Judge Charles C. Sinclair disagreed over the application of the amnesty, with Wilson


⁵⁰. Hurt to Forney, serial 956, p. 203.

⁵¹. Forney told others that Mormons “were all included in the President’s proclamation and pardon, and would not be tried or punished for any offense whatever committed prior to the issuing of the pardon; that Judge Cradlebaugh was not a fit man for office,” apparently accompanying his comments about the judge with “unmeasured terms, no language being too low or filthy.” James Lynch, affidavit before D. R. Eckles [Chief Justice of Utah Supreme Court], 27 July 1859, 36th Cong., 1st sess., S. Doc. 42, serial 1033, p. 84.
refusing to present to the jury bills of indictment.⁵² Harper’s Weekly noted the conflict over the amnesty in the prosecution of the massacre.⁵³ The New York Post opined that the amnesty excused the massacre crimes because it was an aspect of the Utah war intended to come within the amnesty’s scope.⁵⁴ It is no wonder that prosecution was uncertain. But,

⁵² Stenhouse, Rocky Mountain Saints, 402–3.
⁵⁴ New York Post, cited in Beadle, Western Wilds, 514. Beadle was a journalist for the Union Vedette and the Salt Lake Daily Tribune, as well as a lawyer and a judicial clerk.
given the controversy the amnesty sparked in the Eastern press with regard to the massacre investigation, it seems that Blood of the Prophets would have discussed it. This is a significant omission.

Accessory after the Fact: Obstruction of Justice and the Dispute between the Two Branches of Federal Government

The presidential amnesty contributed to the lengthy delay in federal prosecution. In addition, the federal judiciary and federal prosecutor fought over control of the massacre investigation. This interminable dispute stymied federal investigation of the massacre for several years. Bagley does not discuss this feud as a source for delay.

At the national level in the early nineteenth century, the federal judiciary and the prosecutors repeatedly jockeyed for power in ways that would appear unseemly today. Thomas Jefferson said that the “great object of my fear is the federal judiciary. That body, like gravity, ever acting with noiseless foot & unalarming advance, [is] gaining ground step by step. . . . Let the eye of vigilance never be closed.” He condemned the judiciary’s usurpation of the legislative prerogatives with its pious interpretation of its own brand of Christianity. The U.S. Constitution gives little direction to the judiciary compared to what it gives to the legislative and executive branches. The Hamiltonian Federalists saw the federal judiciary as a way to expand federal power and to crush state self-determinism (read: slavery). The Jeffersonian republicans believed states’ rights were paramount except as to powers specifically delegated to the federal government. The Federalist judiciary gained the upper hand with the enforcement of the Sedition Act of 4 July 1798, which

Beadle’s best-known work was Brigham’s Destroying Angel: Being the Life, Confession, and Startling Disclosures of the Notorious Bill Hickman, the Danite Chief of Utah: Written by Himself, with Explanatory Notes by J. H. Beadle (Salt Lake City: Shepard Book, 1904).


Supreme Court Justice Salmon Chase’s prosecutions under the Sedition Act, while a sitting Supreme Court justice, were notorious, eventually leading to an attempt to remove him by impeachment.

Utah’s federal judges replayed this high national drama on a frontier stage. As with the amnesty, Blood of the Prophets fails to see the broad political and social issues of the struggle for federal power. Brigham Young’s demand for local self-determinism replaced Thomas Jefferson’s urbane urge for state self-determinism. Polygamy, rather than slavery, was an affront to federal power and needed to be crushed. In the early days of Utah, federal judges of questionable character—a point Van Vliet conceded—directed the investigation of crime, requested army troops to march against the local citizenry, harangued citizens in their places of worship about the lack of virtue in their plural wives, and testified in Congress about Mormon debauchery. These judicial efforts to crush the Mormon theocracy would be unthinkable today in any social context.

Blood of the Prophets accepts Cradlebaugh’s account of the dispute uncritically, condemning the U.S. district attorney as “pliant” (p. 235) and “closely allied to the Mormons by some mysterious tie” (p. 217) for failing to do anything about the massacre. Citing Cradlebaugh and Sinclair, we are told that Wilson’s “whole course of conduct has been marked with culpable timidity and neglect.” Bagley would have us believe that the U.S. district attorney was too cozy with the Mormons and that the Mormons lobbied him to ignore the massacre.

57. Ibid., 112–16.
58. Pennsylvania law professor Sarah Barringer Gordon also sees the assault upon polygamy as an extension of the assault upon southern states’ rights. Gordon, The Mormon Question, 57.
The official correspondence, however, shows that the executive and judicial branches of government distrusted each other and that neither was effective in the prosecution of the massacre. The purported investigation began, at least in Cradlebaugh’s view, with grand jury proceedings from 8 to 21 March 1859 in Provo. Mormon accounts say Cradlebaugh called out the army to terrorize the local Provo population with the might of federal power. Cradlebaugh and Bagley assert that the troops were necessary to protect the court and witnesses from Mormon Danite assassins. Governor Cumming sided with the Mormons, who were outraged with Cradlebaugh’s use of the troops. Cumming believed that he, as the federal executive, had the sole civilian authority to call out the troops in the Territory.

Attorney General Black in Washington, D.C., said that it was not Cradlebaugh’s job to determine whom to prosecute or when to call out the troops. He instructed U.S. District Attorney Wilson to “oppose every effort which any judge may make to usurp your functions. . . . If the judges will confine themselves to the simple and plain duty imposed upon them by law of hearing and deciding the cases that are brought before them, I am sure that the business of the Territory will get along very well.”

President Buchanan approved of Wilson’s efforts to resist the judiciary’s incursion into his prerogatives and the use of federal troops. General Albert Sidney Johnston, commanding Camp Floyd, implied that he was unhappy being called into the fray to support the judiciary.

Black attempted to rein in the Utah judges, explaining to them the judiciary’s function to “hear patiently the causes brought before them.” The executive branch has a “public accuser, and a marshal.” As the U.S. Supreme Court said in an 1868 landmark case, public prosecutions are within the exclusive jurisdiction of the U.S. district

62. Ibid., 10.
attorney until indicted offenses are in trial before a petit jury. Judges have no role in prosecutions until then.⁶⁵

Addressing a defensive letter to President Buchanan, Cradlebaugh and fellow judge Charles Sinclair admitted that “the difficulty [which has] arisen between the judiciary and executive is deeply to be deplored.”⁶⁶ Nonetheless, the judges attacked Governor Cumming and U.S. District Attorney Wilson for failing to faithfully execute their duties, especially in connection with the 1859 Provo grand jury.⁶⁷

Cradlebaugh’s grasping for prosecutorial power made prosecution nigh impossible. Prosecutors must work with judges to obtain warrants and convene grand juries, but Cradlebaugh would not cooperate. He complained to Buchanan that Wilson refused to execute (i.e., serve) bench warrants for witnesses, but Wilson countered that Cradlebaugh would not give him the warrants for execution.⁶⁸ Wilson wanted the massacre grand jury to be empanelled in southern Utah, close to the scene. He also urged the Justice Department to provide funds “to enable the officers of the court to make a patient and thorough search for evidence.”⁶⁹ Cradlebaugh (remember, he is the judge, not the prosecutor) responded to Wilson’s request by traveling to Santa Clara and issuing arrest warrants in 1859. None of them were executed. Why not? Cradlebaugh failed to include in his entourage the person with prosecutorial discretion, the U.S. district attorney. He further refused to respond to Wilson’s request for information about the warrants so that they could be served. Cradlebaugh also refused to tell Wilson about his activities in Santa Clara.⁷⁰ Blood of the Prophets does not explain how the prosecutor could be expected to prosecute when the judge shuts him out of the process.

The significance of this episode is unmistakable. The prosecution delayed as it resisted the judiciary’s grasping for control of the massacre investigation. This material escapes Bagley.

⁶⁶. Cradlebaugh and Sinclair to Buchanan, 16 July 1859, serial 1031, p. 8, emphasis in original.
⁶⁷. Ibid.
⁶⁹. Ibid., 29.
⁷⁰. Ibid., 40.
Accessory after the Fact: The Claim That Mormons Wouldn’t Indict Their Own in the 1859 Provo Grand Jury

According to Bagley, the 8–21 March 1859 grand jury proceedings in Provo provide a lurid but relevant detour in the story of the massacre prosecutions. He uses the story of the grand jury to show that Mormons obstructed prosecutions by refusing to indict their own for the massacre and for other crimes. The book claims that the grand jury “utterly refused to do anything” about the massacre and other crimes against non-Mormons. Thus the federal grand jury “ground to a halt” (p. 218). The implication of Bagley’s claim is that church authorities instructed grand jurors to obstruct voting when bills for indictment against Mormons were presented to them. Bagley, however, has missed primary source material which contradicts his conclusions.

This tale of the grand jury is central to one of Bagley’s more salacious themes. Blood of the Prophets paints a picture of a community of priests dripping in gentile blood, with Mormon laity thumbing their noses as federal authorities sought to staunch the flow. Bagley and Cradlebaugh make much of the all-Mormon Provo grand jury’s failure to return any criminal indictments, including in the notorious Parrish and Potter case⁷¹ and the Henry Jones case. Blood of the Prophets does not have the facts right in the Henry Jones case, confusing it with a different and unrelated crime.⁷² Bagley tells us that church authorities obstructed not only the massacre investigation,

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⁷¹. The Parrish-Potter murders resulted from a shootout between several people in Springville in March 1857 (pp. 75–76).

⁷². Although the error makes no difference to the massacre analysis, Blood of the Prophets confuses the notorious April 1858 Henry Jones murders in Payson with another crime in the fall of 1857 in Springville (p. 199). In the Henry Jones case, a sensational crime widely reported in the press, three people, including an infant, were murdered. The circumstances of the crime were so lurid that nineteenth-century sources had Victorian difficulty describing it. See Stenhouse, Rocky Mountain Saints, 469. Twice there were multiple indictments and once a conviction of a local law enforcement officer. See D. Michael Quinn, The Mormon Hierarchy: Extensions of Power (Salt Lake City: Signature Books, 1997), 253, 537 n. 186 (I disagree with Quinn’s conclusions about the meaning of these events).
but also the investigation of other notorious crimes for which, he says, there were never any indictments (pp. 75–76).

The official correspondence refutes these claims. Bagley has the facts wrong because he does not rely upon the official files. U.S. District Attorney Wilson’s diary (again, it was his duty to bring indictments, not Cradlebaugh’s) and his report to the U.S. attorney general indicate that no indictment was obtained from the Provo grand jury for the Mountain Meadows Massacre because none was requested by the U.S. district attorney. Yes, Judge Cradlebaugh may have asked for indictments in his initial charge, but this was an empty request because it was not his lawful request to make. It was U.S. District Attorney Wilson’s job alone to control the grand jury’s reception of evidence and the timing of decision. Wilson never asked the grand jury to indict for massacre offenses. The grand jury’s term was occupied with other crimes, and then Cradlebaugh discharged the grand jury before Wilson could ask the grand jury to act.⁷³ An army officer, familiar with the proceedings, opined that the reason Cradlebaugh dismissed the grand jury precipitously was not that Cradlebaugh was upset with its performance, but that General Johnston withdrew Cradlebaugh’s army escort.⁷⁴ In addition, when a second grand jury was empanelled in 1859, no indictments were sought for the massacre. Yet, Bagley would have us believe on the sole basis of Cradlebaugh’s claims that the grand juries refused to indict for the massacre.

Just as Bagley has the facts wrong about the 1859 grand jury’s treatment of the Mountain Meadows Massacre, so does he miss important

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⁷³ Wilson to Black, 15 November 1859, serial 1031, pp. 21–32. Instead of taking up the massacre, the days were filled with an investigation of offenses committed at Camp Floyd, Indian rape cases, the murder of Henry Jones, and the Parrish and Potter murders.

⁷⁴ In a 4 April 1859 journal entry, Captain Albert Tracy wrote: “Whatever the just merits of the case, from either legal or moral points of view, it has been conceded by Colonel Johnson [sic] at Camp Floyd that he will withdraw his troops from Provo. This, leaving the court of Judge Cradlebaugh with no element of protection, necessitates the speedy closing up of the cases in which he was making so noble a progress, together with the retirement of himself, and his marshals and assistants to safer quarters.” Albert Tracy, “Journal of Captain Albert Tracy,” Utah Historical Quarterly 13 (1945): 64–65.
facts about the grand jury’s treatment of other crimes. The second 1859 grand jury handed down indictments for the Parrish and Potter and the Henry Jones cases, yet Bagley tells us that no indictments were ever obtained for these crimes.⁷⁵

Accessory after the Fact: The Claim That the Church Would Not Cooperate in the Apprehension of the Fugitives

Bagley claims that high Mormon officials refused to cooperate in apprehending the massacre fugitives. For example, Cradlebaugh reports that he told Buchanan that church officials offered to produce fugitives upon condition that the church dictate the composition of the petit juries. Bagley does not tell us that U.S. District Attorney Wilson declared this “an unqualified falsehood.” Mormons did no such thing.⁷⁶

The federal judiciary denied Mormon law enforcement officers the power to assist federal officers in the pursuit of criminal convictions. Governor Cumming complained that the federal judges refused to admit to the bar federal territorial prosecutors. Indeed, Cradlebaugh and fellow judges refused to permit the Mormon territorial attorney (even though he was technically an officer of the United States) to enter their courtrooms and present bills for indictments.⁷⁷

U.S. District Attorney Wilson attempted to persuade non-Mormon Deputy U.S. Marshal William Rodgers to effect service of process upon

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⁷⁵. As Wilson’s letter stated: “[The grand jury found a] true bill against William Bird, for murder in the Parrish and Potter case (same case which was before the court at Provo;) and a true bill against George W. Hancock as principal, and seven others as accessories, in the murder of Henry Jones, at Payson, in April, 1858, (same case before the court at Provo).” Wilson to Black, 15 November 1859, serial 1031, pp. 29–32 at 32.

⁷⁶. Ibid., 42.

⁷⁷. A[lfred] Cumming to [Secretary of State] Lewis Cass, 1 February 1860, 36th Cong., 1st sess., H. Exec. Doc. 78, serial 1056, pp. 43–44, emphasis removed. Governor Cumming also noted that “perhaps one of the strongest reasons which prevents the administration of law in Utah is a conviction generally held by the people of this Territory that the minds of the United States judges are so blinded by prejudice against them that Mormons can hardly expect a fair and impartial decision in any case where they are concerned. Many even believe that there is a strong desire on the part of the United States judges to convict a prisoner of crime if that prisoner be a Mormon.” Ibid.
massacre participants. Rodgers rebuffed the request, claiming a lack of resources.⁷⁸ Then, on 6 August 1858, Wilson told the federal marshal that the Mormon territorial marshal, John Kay, would accomplish the investigations and the arrests. According to Wilson, “Kay was a Mormon, had a knowledge of the country and of the people, and expressed a determination, if legally deputized, to make arrests if possible.” But, Rodgers refused to deputize Kay on the ground that Kay “was a Mormon.”⁷⁹ For the federal government, a crook on the lam was better than a crook collared by a Mormon.

The federal marshal was also less than diligent, frequently complaining about a lack of pay. However, federal surveyors had no difficulty locating and using the services of the fugitives.⁸⁰ The surveyors’ accounts mock the progress of the investigation, recounting jokes with and pranks upon the fugitives.⁸¹ Additionally, in 1872, the U.S. attorney general denied a request by the U.S. district attorney to reopen the investigation of the massacre.⁸²

As another example of silly officiousness, immediately prior to Lee’s first trial in 1875, lawyers Jabez Sutherland and George C. Bates offered to surrender indictees William Stewart, Isaac Haight, George Adair, and John Higbee in return for accommodating their request for bail. U.S. District Judge Jacob Boreman was incensed with this proposal, refused it, and instead commenced disbarment proceedings against these lawyers. *Blood of the Prophets* touches on this briefly but not fairly (p. 290). Although a defense lawyer may not shield a fugitive, it is common for fugitives to negotiate the terms of their surrender

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⁷⁹. Wilson to Black, 15 November 1859, serial 1031, p. 41.
⁸². George H. Williams to George C. Bates, 2 November 1872, Microfilm NND 170 (3015), consisting of documents obtained from Record Group (hereafter RG) 60, 123, 205, and 267, order NND 69–170 A, National Archives.
indirectly through lawyers. Judge Boreman’s 13 February 1875 letter to Sutherland and Bates shows that the judiciary petulantly refused to deal with Mormons or even attorneys for Mormons. The judge condemned Sutherland for taking on a Mormon as a client because Mormons have “the very soul of corruption.”⁸³ Boreman’s refusal to discuss bail is ironic in light of the bail he later granted Lee.

Federal judges denied Mormons permission to assist federal officials with criminal prosecutions. These judges considered Mormons as

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disloyal “foreigners,”\textsuperscript{84} as un-American, “perverted, oppressed, [and] alien.”\textsuperscript{85} Mormons could not be trusted to do anything, including fight crime. Avoiding collaboration with the Mormons was of greater social value than justice.

Bagley fails to report accurately early efforts at apprehension. Skipping over legitimate offers of help, Bagley accuses the church of obstructing justice by frustrating the investigation. That is not appropriate, given the evidence.

**Accessory after the Fact: The Claim That Brigham Young Took No Official Action**

*Blood of the Prophets* criticizes Brigham Young for doing nothing in his official capacity to prosecute the massacre (p. 379). Young, however, explained that he took no official governmental action against the perpetrators because President Buchanan stripped him of these powers and Governor Cumming possessed all the powers of the executive.\textsuperscript{86} Once he was stripped of civil power, the church may have well taken the position that the Mormon prophet’s control over wrongdoers was limited to the remedies specified in section 134 of the church’s Doctrine and Covenants. Nothing required Brigham Young to hunt down the participants and turn them over to the very powers seeking to jail him for bigamy (see D&C 134:4).

\begin{itemize}
\item Jacob Boreman wrote: “The people generally were foreigners.” Leonard Arrington, ed., “Crusade against Theocracy: The Reminiscences of Judge Jacob Smith Boreman of Utah, 1872–1877,” *Huntington Library Quarterly* 24 (November 1960): 7 n. 6. Arrington notes from Boreman’s papers that Boreman believed that Brigham Young’s real name was “Jong” and that his father was a British mercenary who fought the Americans in the War of 1812.
\item James B. McKean to George H. Williams, 12 November 1873, April 1873, RG 60, box 1014, National Archives. “Converts from among the humble peasants of Europe are coming here in large numbers, and are coming to stay.” Ibid.
\item Brigham Young, affidavit, 30 July 1875, in Brooks, *Mountain Meadows Massacre*, 287. There were brief times after the massacre in which Brigham Young held federal executive power in Utah. Given the advance of the army, other matters consumed Governor Young’s attention.
\end{itemize}
There is no competent evidence of a Mormon cabal to influence the executive branch to delay prosecution. There is much speculation, but nothing more. The Eastern press occasionally blamed the delay upon the Buchanan and subsequent administrations.⁸⁷ The will to prosecute was not there. Both Cradlebaugh and Wilson gave up and left town before the Civil War.

**Accessory after the Fact: Did the Church Interfere with the Lee Trials by Hiding or Coercing Witnesses and Influencing Jurors?**

Moving forward almost two decades, *Blood of the Prophets* argues that the church was guilty of obstructing the prosecution of the 1875 and 1876 trials of John D. Lee. Yet Bagley errs in his analysis of the events of the trials. He fails, with a few exceptions for the first trial only, to rely upon the actual transcripts. Instead, he relies upon exposés.⁸⁸ These secondhand accounts are not accurate and have serious errors of omission and editorial addition. In particular, I object to Bagley’s reliance upon William Bishop’s *Mormonism Unveiled* for the second trial. Bishop’s stenographer dropped and changed testimony in places. Abraham Lincoln’s biographers have recognized the difficulty of using press accounts as they reconstructed the accessory-after-the-fact trial of Dr. Samuel Mudd, the physician who set John Wilkes Booth’s leg.⁸⁹

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⁸⁷. “The reason of this long delay, this stubborn deafness to the demands of justice, this contemptuous . . . investigation of the Mountain Meadows Massacre was not had at once, and subsequent administrations cannot escape from a share in the same responsibility.” Undated *St. Louis Republican* editorial quoted in Fielding, *Tribune Reports*, 189.

⁸⁸. For the first trial in 1875, *Blood of the Prophets* cites nothing more than sensational paraphrases of the testimony by the *Salt Lake Daily Tribune* eleven times, Beadle’s exposé four times, and the actual transcript four times (pp. 433–44). Bagley cites “[Lockley, Frederic]. *The Lee Trial*. Salt Lake City: Tribune Printing Co., 1875,” which is actually *The Lee Trial!: An exposé of the Mountain Meadows massacre: being a condensed report of the prisoner’s statement, testimony of witnesses, charge of the judge, arguments of counsel, and opinions of the press upon the trial by the Salt Lake Daily Tribune reporter* (Salt Lake City: Tribune Printing, 1875).

⁸⁹. Edward Steers Jr., *His Name Is Still Mudd: The Case against Dr. Samuel Alexander Mudd* (Gettysburg: Thomas, 1997), 156 nn. 31 and 32.
In contrast to Bagley, neither Brooks nor Leonard Arrington relied on press accounts for their analyses of the Lee trial.⁹⁰

*Blood of the Prophets* also relies on the memoirs of Judge Jacob Boreman for his impressions of the trial. Except for perhaps the demeanor of witnesses, a judge's observations of witnesses could not add anything to the official transcript. Boreman’s reminiscences demonstrate some real problems. With not a shred of evidence other than the speculation circulated by others, Boreman said he believed that high Mormon officials communicated death threats to witnesses of the massacre and that ordinary members of the church believed they were authorized to commit perjury by reason of the vows they took in the church’s Endowment House. None of that is reflected in the trial transcript. Arrington opined that Boreman was prepared to believe the worst about the Mormons and that his naïveté made him clay in the hands of other federal anti-Mormon fanatics.⁹¹

Turning to the events of the first trial in 1875, there is no evidence that the church obstructed justice. This trial mistried with a hung jury, to the universal denunciation of the church in the non-Mormon press. All Mormon jurors and one “backslider” voted to acquit. Three non-Mormons voted to convict (p. 296). Not a single witness tied Lee to any criminal activity, including former Mormon Bishop Philip Klingensmith, who turned state’s evidence.⁹² The prosecutors, William C. Carey and Robert Baskin, used the trial to grandstand against Brigham Young.⁹³ Even the *Salt Lake Daily Tribune* admitted that the trial failure resulted from the prosecutors’ “utter neglect of the business” and “disgraceful lethargy.”⁹⁴

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⁹¹ Arrington, “Crusade against Theocracy,” 36 n. 55.

⁹² Trial Transcript (1875). I have read this transcript with a critical eye. The absence of evidence made his testimony seem silly.

⁹³ Ibid.

Accessory after the Fact: Did the Church and the Prosecutor Obstruct Justice with a Deal in the 1876 Trial to Forgo Any Other Prosecutions?

*Blood of the Prophets* tells us that the U.S. district attorney’s office struck a deal with the church: they would offer John D. Lee as a scapegoat to avoid all further prosecutions, and in return the church would help convict Lee in a second trial. For critics of the church (and I would put *Blood of the Prophets* in this category), the deal and scapegoat story helps sell the idea that the church was not above thwarting justice. For advocates of John D. Lee (and I would put Brooks in this category), the deal and the scapegoat theory helps sell the idea that an innocent Lee was willing to suffer as a martyr for his friends and church.

The deal is important to Bagley’s conclusions. He says: “In a case that threatened to shake the LDS church to its foundations, the prosecutor found he could only secure a guilty verdict with the co-operation of Mormon authorities. As attorneys do, Howard made a deal” (p. 300). As part of this deal, the church assisted Howard with manufactured evidence and manipulated justice (p. 299). Bagley also tells us that U.S. District Attorney Howard was “‘on the make,’” or in other words, had been bribed or threatened with blackmail by church leaders (p. 299).

Bagley’s failures in this area are the same as Brooks’s and the *Salt Lake Daily Tribune*’s. The latter first floated this theory on 27 September 1876, citing only supposition.⁹⁵ So Bagley is in good company.

In this section, we will examine the law, which demonstrates that any deal would have been a worthless nullity. We will then look at the evidence Bagley offers to support his theory of a deal, to show that his evidence lacks proper foundation and is thus not reliable. Lastly,

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⁹⁵. The paper reports that a deal had to be inferred from the facts that Howard had dismissed the charges against William Dame, that Howard had selected an all-Mormon jury, and that in his opening statement he stated that he had no evidence to indict higher church authorities. The *Salt Lake Daily Tribune* also pointed to Howard’s disparagement of the Liberal party, which was so closely affiliated with the Tribune. “A Word in Defense,” *Salt Lake Daily Tribune*, 27 September 1876, p. 2, col. 1.
we will see from an overwhelming amount of official correspondence that Howard’s later actions were inconsistent with any “deal.”

The Law Pertaining to Agreements to Thwart Justice. A “deal” to thwart justice would have been a legal impossibility, a nullity, void at the outset, and obligating nobody. Under English and American common law, certain agreements such as agreements to collect gambling debts incurred in nongambling jurisdictions, to pay for a prostitute, or not to report a crime are unenforceable. Another example of an unenforceable agreement is an agreement to forbear prosecution of a crime. In U.S. v. Ford, an 1878 U.S. Supreme Court decision, the court summarized the law of forbearance of prosecution. A grant of immunity must be approved by a judge and is granted only to accomplices willing to come forward and testify in good faith against an accused. On the other hand, the court said that an executive pardon does not require approval by a judge or does not constitute an agreement to come forward to testify, but it does require a presidential act. A pardon usually comes only after conviction of the to-be-pardoned felon. Thus, the two kinds of deals approved by the Supreme Court require an official stamp of approval by persons other than the prosecutor; secret deals would not work.

Before the Supreme Court’s 1878 decision, grants of immunity were questionable. Prevailing law before U.S. v. Ford suggested that a grant of immunity might not have been enforceable if the person granted immunity “appear[ed] to have been the principal offender” and that the best one could hope for was an “equitable” claim to a presidential pardon. Howard would also have known that an unlawful grant of immunity may have been a crime itself; he could have been subject to prosecution. He

96. Nickelson v. Wilson, 60 N.Y. 362 (N.Y. 1875); Cameron v. McFarland, 4 N.C. 299.
98. U.S. v. Lee, 4 McLean 103, 26 F. Cas. 910–11 (C.C.D.Ill. 1846). In U.S. v. Lee, the federal prosecutor was of the view that the most a grant of immunity could give was an equitable claim to a pardon and a delay in prosecution. U.S. v. Lee advanced the judicial notion that a court, upon application, could grant immunity to a witness less culpable than the accused.
99. U.S. v. Daniel, 19 U.S. 542–49 (1821) held that a person who has admissible knowledge of a crime but withholds it may be subject to misdemeanor prosecution for misprision of felony.
was obviously knowledgeable in the area because he appears to have offered John D. Lee a presidential pardon after Lee’s conviction.¹⁰⁰

Any subsequent U.S. district attorney, or even Howard himself, could have simply ignored a deal to thwart justice and could have prosecuted any person worthy of prosecution. Therefore, if a deal to thwart justice was a nullity at the outset, it seems unlikely that a competent lawyer would have spent any effort reaching such a deal.

Bagley’s Evidence of a Deal. Turning to Bagley’s evidence of a deal to make John D. Lee a scapegoat (which really is unnecessary to discuss, given the legal impossibility of such a deal in the first place), we find it wanting. For example, there is no evidence whatsoever, other than reported rumor, that U.S. District Attorney Sumner Howard was bribed. Nor is there evidence that witnesses were told what to say. Bagley, as does Brooks, says that “according to . . . family traditions,” Nephi Johnson and Jacob Hamblin received letters ordering them to testify and “telling them what to say” (p. 304). “Family traditions” are not evidence. I would like to see the letters. What would they have shown? That witnesses were told to lie about Lee’s guilt when Lee was not really guilty? It is unlikely that Lee was not guilty.¹⁰¹ Although there may indeed have been letters telling witnesses to cooperate, it is doubtful that the letters instructed them what to say.

As further evidence of a deal, Bagley examines Hamblin’s role in the second trial.¹⁰² Bagley and the *Salt Lake Daily Tribune* attack,

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¹⁰¹. Lee said in his confession published posthumously: “It was my duty, with the two drivers, to kill the sick and wounded who were in the wagons, and to do so when we heard the guns of the troops fire. . . . As we heard the guns, I ordered a halt and we proceeded to do our part.” John D. Lee, in Bishop, *Mormonism Unveiled*, 241.
¹⁰². Trial Transcript, *People of the Territory of Utah v. John D. Lee* (1876), Utah State Historical Society, MS B915, Charles Peterson copy, 86–101. Jacob Hamblin was not present at the massacre. Hamblin was the head of the Indian mission to the southern territory, and he was away at the time of the massacre. He did not, however, exactly escape the massacre with his reputation intact. A seven-year-old survivor, Rebecca Dunlap, identified Hamblin as a participant. Hartt Wixom, *Hamblin: A Modern Look at the Frontier Life and Legend of Jacob Hamblin* (Springville, Utah: Cedar Fort, 1996), 84. None of the other perpetrators ever identified Hamblin as being present. Ibid., 85. Bagley refers briefly to Dunlap’s sighting of Hamblin but rightly dismisses it (p. 148).
in particular, Hamblin’s testimony that Lee confessed to him and the fact that Hamblin never mentioned the confession to investigating law enforcement officers.¹⁰³ They claim that Lee’s confession to Hamblin never occurred, and they have suggested that church officials orchestrated Hamblin’s testimony to secure Lee’s conviction. Brooks agreed with Bagley’s later assessment that Hamblin’s testimony was selectively truthful and that he “could not remember what he did not want to tell.”¹⁰⁴

The transcript shows that no lawyer in the second trial pushed Hamblin to say very much although Hamblin said he had more to tell. Each side was undoubtedly fearful to ask questions that would elicit previously unknown answers.¹⁰⁵ Either side could have asked the court to order Hamblin, upon pain of contempt, to tell it all. Neither side did. Had I been the prosecutor, I would not want Hamblin to say anything that might possibly implicate Brigham Young because, in that event, I would have followed the same unsuccessful strategy of grandstanding against Brigham Young as did U.S. District Attorneys William Carey and Robert Baskin in the 1875 trial. Similarly, because Hamblin was under the control of the prosecution, as Lee’s defense lawyer I would not know what Hamblin would say. In this particular case, less was more. There is no evidence that Hamblin lied; in fact, Hamblin’s recent biographer, Hartt Wixom, takes exception to the charge of perjury.¹⁰⁶ Lee’s attorney, Bishop, admitted that Hamblin was an honest man.¹⁰⁷

104. Brooks, Mountain Meadows Massacre, 198.
105. Hamblin testified: “Q. Are you certain you have told all you know about it? A. Yes, sir, I am certain I know all I tell. Q. Answer the other part? A. I think I have. Everything of importance. Q. Have you told it all? A. No sir. Q. Tell the balance? A. I would not kile [sic] to undertake it.” Trial Transcript (1876), 114.
106. Wixom, Hamblin, 144.
107. As Lee’s attorney Bishop argued in closing: “Jake comes on the stand and testifies as carefully and considered as it is possible for a man to testify.” “His memory was good.” Bishop needed Hamblin to be a truthful witness because he used Hamblin’s testimony to contrast against allegedly inconsistent conduct on the part of Brigham Young. Trial Transcript, People of the Territory of Utah v. John D. Lee (1876), Papers of Jacob Smith Boreman, 1857–1912, “1876 Huntington Trial Transcript,” Huntington Library, box 2, book 4, p. 20; see also Wixom, Hamblin, 155.
even though Lee contended that Hamblin’s testimony was false.¹⁰⁸ The press may have wished that Hamblin had said more, but Hamblin was not talking to the press.

A juror’s dream has not the slightest chance of constituting evidence, but Bagley offers it to us as such (p. 306). *Blood of the Prophets* uses juror Andrew Corry’s recollection of a conversation he had with another juror about that juror’s dream that Lee would be offered as a scapegoat. When Corry executed his affidavit in 1932 he was eighty-four years old. He had probably been pursued for fifty-six years by persons interested in having him support a particular view. The affidavit looks to be too fine a production.¹⁰⁹

Corry’s affidavit, nonetheless, is compelling to me in a way *Blood of the Prophets* would not appreciate. Corry does not claim any external

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¹⁰⁹. A partial text of Corry’s statement: “I came to Utah when I was two years old and have lived here for eighty-three years, and I have been through the mill. I knew John D. Lee very well and many a time I have stayed at his home. I was on the jury that convicted him, and I was the last man to give in to have him executed. President Young furnished the evidence and the witnesses that convicted John D. Lee. Do you believe it? It is true nevertheless. I know for I was there at the court at the time of the trial. It was the same as Nephi killing Laban. Better for one man to die than for a whole nation to dwindle in unbelief. John D. Lee was the sacrifice. He paid the penalty, but just the same he was a good man. They never published that thing correctly. I know John D. Lee was not altogether to blame. He was caught in the snare. I couldn’t give in with the jury. Granger took me to one side and talked and reasoned with me, but I felt miserable, just as though the devil had some power over me. Finally S. S. Barton, a juror, told me a dream he had. ‘We, the jury, were all in a field harvesting, and had our rifles with us. A flock of blackbirds rose up from everywhere and scattered away.’ These blackbirds represented the apostates and the mob. They wanted Brigham Young, and John D. Lee knew it. It meant that some one must be the white goose. As in the dream, a flock of white geese flew by and we shot at them, killing one. Then the great flock of blackbirds rose. Lee was the white goose. I still disliked very much to give in to the jury for I know that Lee was not the only one responsible for the dead, and some one had to be sacrificed, so at last I gave in, and immediately I felt so relieved and happy that I gave in and the evil influence left me. Lee was as much a sacrifice for the Church as any man had ever been. The Lord did the best He could at all times with the people He had to work with. The Lord has been merciful to me and has shown me the Gospel and I am grateful to him for doing so.” Andrew Corry, affidavit, 11 March 1932, in Edna Lee Brimhall, “Gleanings concerning John D. Lee” (unpublished, 1958), MS 6313, Church Archives, and at Northern Arizona University Library, pp. 52–54. Though riveting, this is not evidence.
pressure to vote for Lee’s conviction. He does not mention any pressure by any church authority to vote a particular way. He does not mention a deal. Corry dwells on the scapegoat theory, but that theory was the only defense theory offered by Lee’s attorneys and the only possible theory for the jurors to debate. It seems that fifty-six years would have uncovered a claim of church pressure, given Corry’s willingness to spill all in his affidavit.

_Blood of the Prophets_ tells us that William Bishop, Lee’s attorney, claims that he had an agreement with local church authorities to select particular persons as jurors (p. 302). According to Bishop:

The attorneys for the defendant had been furnished with a list of the jurymen, and the list was examined by a committee of Mormons, who marked those who would convict with a dash (—), those who would rather not convict with a star (*), and those were certain to acquit John D. Lee, under all circumstances, with two stars (**).¹¹⁰

If Bishop asserts, which he really does not, that local church leaders agreed with him to dictate to jurors the outcome of the case, Bishop would be admitting to a crime at the most and grounds for disbarment at the least.

_Blood of the Prophets_ recounts a story by Frank Lee that each juror favorable to Lee’s cause would have a “star pinned under his arm” so that Bishop would know “whom to choose” (p. 302). I don’t trust this evidence. According to genealogical records, and Bagley does not mention this, Frank Lee would have been barely thirteen years old by the time of the second trial¹¹¹ when he claims that this information was conveyed “in the Council meeting.”¹¹² Frank Lee does not say he was at the meeting. A thirteen-year-old boy, one who had lived in isolation his entire life with his mother Rachel, would not likely

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understand the intricacies of conspiracies to suborn perjury. How many of the dozens or hundreds of potential jurors would have been trained to display their underarms only to Bishop? What would the stars have looked like? Frank Lee undoubtedly misheard secondhand family accounts of Bishop’s list of potential jurors.¹¹³

It certainly is not unusual for an experienced trial lawyer in a small town to compile a list of dozens of known veniremen (someone who is summoned to serve on a jury) and rank them according to their proclivities. A trial lawyer will use many sources to learn facts about these potential jurors. Even an experienced lawyer might get too close to potential jurors in the pretrial phase, as Clarence Darrow learned when he was indicted in 1911 in Los Angeles for allegedly offering money to a potential juror before jurors were called.¹¹⁴ Bishop probably analyzed the pretrial jury pool. His friendly sources were sympathetic Mormons in the community who probably identified to him and Lee those veniremen who might vote Lee’s way.

Bagley and the press also cite as evidence of a deal the fact that an all-Mormon jury was selected for the first trial. Obviously, the argument goes, an all-Mormon jury could be controlled by the church more easily than a part-Mormon jury. Lee’s attorney advanced this theory during closing argument. Howard replied by explaining that it was Lee’s attorney, not the prosecution, who had struck non-Mormons from the panel. Bishop, said Howard, “was very anxious to get every Gentile off the jury; and I kept striking off Mormons.”¹¹⁵ Because Mormons outnumbered non-Mormons by a huge margin, and because

¹¹³. Another one of Rachel and John’s children, Amorah, was nineteen years old on the date of the second trial. She said in a family statement that she crawled on hands and knees with a friend to eavesdrop on a “council” meeting wherein “the jury was composed of Mormon men and the jurymen chosen were those who wore a star.” Amorah Lee Smithson, statement, 18 February 1930, in Brimhall, “Gleanings concerning John D. Lee,” 27. I think Amorah got the story wrong and repeated it to her family. It is more likely that Bishop had a list of potential jurors, with the ones he wanted marked with a star, and that is the story Amorah heard, and which she later repeated to Frank.


challenges to jurors are typically limited to a certain number per side, it would have been relatively easy for one side to unilaterally control the religious makeup of the jury. According to the uncontested trial transcript, it was Lee’s attorney who did this and not, as Bagley argues, Howard. Bishop’s unilateral selection of an all-Mormon jury (obviously, a smart thing to do since Mormons had previously voted to acquit) is an important fact in this story that Bagley misses.

Other than the unilateral ability to strike a limited number of jurors, neither party had control over the selection of the jury. According to press reports, the selection process was trilateral, with each side and the court having its say. It would be difficult to corrupt an entire jury pool for the twelve who would be empanelled. In any event, there was no limit to public and press contact with the jurors after the trial. After years of controversy over this case, as far as I know, no juror claimed to have been part of a conspiracy or to have received instructions from church authorities.

Bagley also cites Judge Boreman himself for evidence of a deal:

The deal [Sumner Howard] struck with Brigham Young troubled even Howard. On the first day of the trial, the prosecutor stopped Judge Boreman as he was going to court. “Judge, I have eaten dirt & I have gone down out of sight in dirt & expect to eat more dirt.” (p. 301)

Boreman never believed Howard had made a deal, as I will show from correspondence discussed below. Nonetheless, the conversation quoted above says nothing of consequence. Boreman does not claim


117. In a secondhand account, which Bagley does not mention, Edna Lee Brimhall claims juror Walter Granger told her in 1931 that the jury was “pledged to find a verdict of ‘guilty.’” Brimhall, “Gleanings concerning John D. Lee,” 4. The year 1931 was the year she collected affidavits and statements to support her unpublished work; there is no affidavit from Granger. Even so, in this secondhand account, Granger does not mention specific external pressure from church authorities.
this to be evidence of any deal and even admits that another witness to the conversation denied it.¹¹⁸ Bagley tells us that Howard’s disclosure troubled Boreman, but there is no evidence of this.

Finally, Bagley tells us that “prevailing wisdom had it that the LDS church would dictate the outcome” and that one of Brigham Young’s sons, John W. Young, took bets on the Chicago Board of Trade as to the outcome. Bagley’s source for these two statements is the muckraking reporter John Beadle (p. 296).¹¹⁹ No serious scholar would accept as “prevailing wisdom” the conclusions of reporters for modern newspapers. Why should we accept John Beadle for “prevailing wisdom?” Admittedly, John W. Young may have been a colorful character,¹²⁰ but I wouldn’t rely on Beadle for the account of bets taken on the Chicago Board of Trade.

_Evidence Refuting the Deal, Which Bagley Ignores._ In the analysis above, we have seen that the U.S. district attorney would never have entered into a deal to thwart justice because he would have known it would have been unenforceable. We have also seen that Bagley’s evidence of a deal is without foundation.

Looking at the evidence _refuting_ the notion of a deal, we find it is substantial. For years after the start of the Lee trial, until at least as late as 1884, federal prosecutors and investigators actively sought to bring other massacre participants to justice. Had the church and federal prosecutors struck a deal that only Lee would be prosecuted, we should expect that _all parties to the deal would act thereafter in a manner consistent with a deal._ None of the parties acted in such a manner.

The _Salt Lake Daily Tribune_ reports the church’s call for continued prosecutions on 23 September 1876.¹²¹ A few days later and after

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¹¹⁹. Beadle, _Western Wilds_, 512.
¹²⁰. On 6 October 1876, John W. Young (1844–1924) replaced George A. Smith in the First Presidency upon the latter’s death. The _Salt Lake Daily Tribune_ claimed that John W. Young was a rake. Brigham Young relied upon his son for his business acumen in railroading and mining. Dean C. Jessee, ed., _Letters of Brigham Young to His Sons_ (Salt Lake City: Deseret Book, 1974), 91–93.
Lee’s conviction, the *Tribune* on 27 September 1876 published a summary of its grounds for believing that Howard had cut a deal with the church.¹²² One day after the *Tribune*’s accusation, and most likely in response to the *Tribune*’s charges, Howard described to the U.S. attorney general meetings with the church in which he lobbied for assistance in locating witnesses. “That aid was given.” Howard also told the church authorities that he had no present evidence against them. Howard also complained of political intrigue from former prosecutors to malign his successful efforts.¹²³

¹²³. “Hon Alphonso Taft, Attorney General[,] Washington City D.C.[;] Sir[:] The trial of John D. Lee indicted for murder committed at the Mountain Meadows in September 1857, has just been held at this place and the result is a verdict of ‘guilty of murder in the first degree.’ The result seems to be displeasing to certain factionists here who have heretofore conducted this case and those connected with the ‘Mountain Meadow Massacre’ with reference more to outside matters than to the cause at bar. It has been [their] public boast that the former trial of John D. Lee in July 1875 was not for the purpose of convicting the prisoner, but to fix the [crime] of the Mountain Meadow butchery upon the Mormon Church. The result was the call for a large amount of public money, and no result except the advancement of certain schemes and aspirations of local politicians whose attitude is that of uniform condemnation of the administration and its appointees. In the trial just concluded, the case of John D. Lee, and that alone was tried. It became apparent early in the investigation, that there is no evidence whatsoever to connect the chief authorities of the Mormon Church with the Massacre, on the contrary those authorities produced documents and other evidence showing clearly that not only was that great crime solely an individual offense on the part of those who committed it, but that the orders, letters[,] proclamations etc. which issued from the central Mormon authority which was also at that time the Territorial authority were directly and positively contrary to all shedding of blood, not only of emigrants passing through the Territory, but also forbade the killing of the Soldiers of Johnsons [sic] Army which was marching on Utah. Being satisfied of this the prosecution laid the case before the Mormon leaders and ask[ed] their aid in unraveling the mystery of this foul crime. That aid was given and the horrid testimony is public from the mouths of eye witnesses, convicting the prisoner without the shadow of a doubt. Those whose thunder is stolen by this conviction and the fixing of the crime where the evidence places it, and who failure in the same prosecution before, are exceeding angry, and are making to the public such misrepresentations as their Malice suggests and are said to be also forwarding certain of their statements to Washington. It seems marvelous that any set of men should reject the conviction of the chief butcher of Mountain Meadows, but disappointment and envy, together with the loss of political capital, will drive men into strange positions. The outline of the case is reported to you herein with the assurance that nothing has been done in the management of the prosecution of which any officer of the government high or low, need be ashamed. William Nelson, U.S. Marshal[,] Sumner Howard, U.S. District Attorney. William
The forwarding of this letter of Wm Howard to Atty Genl Taft has been by me unavoidably detained. It should have gone forward some days since. The parties referred to therein have been fleeing from justice over two years. Several unsuccessful efforts have been made for their arrest. I am gratified that Wm Howard intends to leave no effort untried to secure their capture and I hope that he will be seconded in his efforts by the Department of Justice; and I think that these men can with proper diligence, through the aid of a detective, be arrested and brought to justice.

Jacob S. Boreman
Associate Justice Supreme Court of Utah

Judge Jacob S. Boreman to U.S. Attorney General Taft, 24 October 1876.
On 4 and 5 October 1876, U.S. District Attorney Howard wrote to U.S. Attorney General Alphonso Taft and explained his plans to arrest Haight, Higbee, and Stewart.¹²⁴ Judge Boreman endorsed the 5 October letter with a note of his own (reproduced on p. 241) to Taft.¹²⁵

The letter from Boreman to the U.S. attorney general shows several things that are fundamentally inconsistent with Bagley’s theories about the deal. On the one hand, Bagley tells us that Boreman and Howard were troubled with the deal Howard had to make to thwart justice for other perpetrators (p. 301). On the other hand, the official correspondence shows that Boreman endorsed Howard’s plan for further pursuit and arrest. Boreman agreed with Howard’s progress. Under Bagley’s view of the facts, Boreman should have called for Howard’s ouster. It seems Bagley has this completely wrong.

The evidence from official sources mounts against Bagley’s and Brooks’s theory of a deal. Taft authorized additional personnel to support Howard’s and Boreman’s request.¹²⁶ U.S. Marshal William Nelson told Alphonso Taft on 19 December 1876 of the discovery of physical evidence in California, asking the Justice Department help to retrieve it.¹²⁷ On 12 February 1877, Howard told Taft that Howard

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¹²⁴ Sumner Howard to Alphonso Taft, 5 October 1876, General Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters,” RG 60, box 1015, National Archives.
¹²⁵ Jacob S. Boreman to U.S. Attorney General Taft, 24 October 1876, General Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters,” in Source Chronological Files 1871–74, RG 60, box 1015, National Archives; Sumner Howard to Alphonso Taft, 4 October 1876, General Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters,” in Source Chronological Files 1871–74, RG 60, box 1015, National Archives.
¹²⁶ Alphonso Taft to Sumner Howard, 8 November 1876, Records of the Department of Justice, RG 60, M 701, reel 7, Instruction Book G, National Archives. “Complying with your request, which is seconded by the recommendations of Judge Boreman I have this day commissioned John S. Sargent as Special Agent of this Department to perform the services as set forth in your letter.” Ibid.
¹²⁷ William Nelson to Alphonso Taft, 19 December 1876, Microfilm NND 170 (3015), consisting of documents obtained from RG 60, 123, 205 and 267, order NND 69–170 A, National Archives.
had located a possible eyewitness to the massacre, a Fancher child, now an adult languishing in the penitentiary for robbery. Howard asked Taft for help from the Justice Department to corroborate the witness’s identity. The secretary of war responded with the information requested.¹²⁸

On 23 February 1877, Boreman communicated to Howard a desire to spend more money on the marshal’s efforts to intercept the other perpetrators before they fled to New Mexico.¹²⁹ Howard and Nelson wrote to Taft on 3 March to urge that “the importance of availing ourselves of every reasonable means to bring others equally guilty to trial—is apparent. The trial of Lee has resulted in developments that give us a reasonable hope that the others—if arrested can be convicted.”¹³⁰

Taft’s successor, Attorney General Charles Devens, responded to the correspondence of the third and questioned whether a five-hundred-dollar reward requested for the arrest of Haight, Higbee, and Stewart would be wasted.¹³¹ Lee was executed four days later on 23 March 1877.

Three days after the execution, Howard recommended to Devens that undercover officers be used to effect the remaining arrests.¹³² On 2 May 1877, after learning that George C. Bates, Lee’s

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¹²⁹. Jacob Boreman to Sumner Howard, 23 February 1877, Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters,” RG 60, box 1019, National Archives.
¹³⁰. Sumner Howard and William Nelson to Alphonso Taft, 3 March 1877, Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters,” RG 60, box 1019, National Archives.
¹³¹. Charles Devens to Sumner Howard, 16 March 1877, Records of the Department of Justice, RG 60, M 701, reel 7, Instruction Book G, National Archives.
¹³². Sumner Howard to Charles Devens, 16 April 1877, Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters 1877,” RG 60, box 1019, National Archives.
former attorney, wished a special appointment to attempt the apprehension of Haight, Higbee, and Stewart, Howard complained to Devens that Bates’s proposal was “another of Brigham Young’s . . . games to thwart the officers” in their arrests.¹³³ Why would Howard have condemned the “games” of Brigham Young to thwart further arrests if Howard had agreed, as Bagley and Brooks say, to forgo all arrests?

On 20 October 1877, over one year after the deal Bagley claims the government made to thwart justice, Howard’s assistant and Boreman petitioned the president of the United States for additional appropriations for a special agent.¹³⁴ Howard wrote Devens, disagreeing with his assistant, asking that the money instead be spent on undercover agents who could approach the fugitives by stealth.¹³⁵

After Howard resigned in February 1878 to pursue a respected career in law and politics in Michigan, federal efforts to arrest Haight, Higbee, and Stewart continued. Boreman wrote to Devens on 1 January

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¹³³. Sumner Howard to Charles Devens, 2 May 1877, Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters 1877,” RG 60, box 1019, National Archives. Bates’s proposal was not a game, but a highly unethical proposal to turn on his former clients Haight, Higbee, and Stewart. He apparently sought to retaliate against the men and the church for an unspecified offense, but it appears to relate to a falling out with his partner, Jabez Sutherland. Bates told Judge Boreman: “All those other men now under indictment are as guilty as old John D. Lee himself, and they can be, and ought to be captured, brought into Court, tried, convicted and sentenced to death, and I possess the power to aid in the accomplishment of that event. They have sold me out, turned their back upon me, and put thier [sic] case into the hands of Sutherland, who intrigues with others to let them escape.” George C. Bates to Jacob S. Boreman, 9 March 1877, Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters 1877,” RG 60, box 1019, National Archives. Judge Boreman saw Bates for what he was. “He cannot be trusted with the arrest of any one. He is totally unreliable.” Jacob S. Boreman to Charles Devens, 25 April 1877, Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters 1877,” RG 60, box 1019, National Archives.

¹³⁴. Presley Denny, C. M. Hawley, and Charles M. Howard (with endorsement by Jacob S. Boreman) to the President of the United States, 20 October 1877 (date received by Department of Justice), Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters 1877,” RG 60, box 1019, National Archives.

¹³⁵. Sumner Howard to Charles Devens, 8 November 1877, Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters 1877,” RG 60, box 1019, National Archives.
1879 with a request for additional appropriations. “The arrest of these men has been delayed so long that the people are not anticipating any effort in that way. This then would be a suitable time to make the arrests.” Eleven months later, Devens approved the request.¹³⁶ In 1884, or almost seven years after Bagley claims a deal was made to frustrate further prosecutions, an acting attorney general confirmed Utah inquiries from the U.S. marshal that reward money was still offered for the arrests of Haight, Higbee, and Stewart.¹³⁷

Thus all of this post–Lee-conviction activity by the prosecutor’s office and the judiciary would have made no sense whatsoever if all agreed and understood there was a deal to thwart justice. What is the answer from Young critics and Lee advocates on this point? Was it all a subterfuge involving two federal prosecutors, a federal judge, several U.S. marshals, a secretary of war, and at least three U.S. attorneys general?

When Bagley gets to this postconviction official action, his analysis is stunted, missing nearly all the correspondence mentioned above. He relies solely on a doctoral dissertation by Rev. Robert Joseph Dwyer later published as The Gentile Comes to Utah: A Study in Religious and Social Conflict (1862–1890).¹³⁸ This is a weak work, at least when it discusses post-Lee official action, because Dwyer lacked many of the official sources I have cited above. Nonetheless, with the limited sources Dwyer possessed, he does not conclude that a deal had been struck between prosecutors and the church.


What annoyed me most about Bagley’s use of Dwyer’s work is that Bagley chose to cut and paste Dwyer’s own words into Blood of the Prophets although Dwyer does not reach the same conclusions Bagley does. The dissonance in some of Dwyer’s fuzzy logic becomes incomprehensible when Bagley repeats almost verbatim the Dwyer logic as original thought.¹³⁹

The Jailers and the Gilman Affidavit

When Bagley does get specific with Dwyer’s work, he focuses on a dispute between a claimed jailer, assistant U.S. Marshal Edwin Gilman, and U.S. District Attorney Sumner Howard (p. 308). Relying solely on Dwyer’s secondary work, Bagley tells us that Gilman’s affidavit reported that Howard at the trial intentionally suppressed Lee testimony that would have implicated Brigham Young. Bagley, however, does not refer to Gilman’s affidavit because Dwyer lacks one and, hence, Bagley does not have it. After telling us about Gilman, Bagley reiterates the suggestion that “the Mormons had corrupted Howard” (p. 309).

It is curious that when Bagley discusses the Gilman affidavit he relies on a secondary source that never had the affidavit. The affidavit in full, and Sumner Howard’s response to the affidavit, were published in the New York Herald (James G. Bennett’s paper) on 12 April 1877. The day before, the Salt Lake Daily Tribune had published Howard’s response on 11 April.¹⁴⁰

¹³⁹. Dwyer wrote that “he [Howard] indicated that these involved the risk of incurring the enmity of the Gentile faction in order to lull the suspicions of the Mormons.” Dwyer, The Gentile Comes to Utah, 104, emphasis added. Bagley wrote that “he [Howard] claimed he had provoked Utah’s non-Mormons to lull the suspicions of the Mormons” (p. 308, emphasis added). Neither Dwyer nor Bagley made a lot of sense.

In his affidavit, Gilman declared that he was a jailer in Beaver. At Howard’s request, Lee prepared a confession, and “as read to and by me, charged Brigham Young with direct complicity in the Mountain Meadows Massacre, as an accessory before the fact, that Brigham Young had written letters to Dame and Haight, at Parowan directing them to see that the emigrants were all put to death.”¹⁴¹

Bagley, however, does not tell us about Howard’s rebuttal to Gilman’s charge. Howard’s rebuttal seems irrefutable, and indeed, I am unaware that Gilman ever attempted a refutation of the rebuttal. Howard says that no Gilman affidavit was ever found at the Justice Department (the New York Herald reported it had been filed) and that Gilman disappeared so nobody could interview him. Howard said that Gilman was never a jailer at Beaver. Howard said that Gilman never had an opportunity to speak to Lee and thus Gilman would never have been in a position to hear any purported confession. Howard reported that “Gilman is a notorious liar; has been impeached here in Court, and there are not ten men in the Territory acquainted with him who would take his oath or word.” Further, the “confession of Lee has not been sold, altered, suppressed or in any other manner put to an improper use.”¹⁴² Because the Gilman affair is Bagley’s chief source for a “deal,” I find it remarkable that he does not even possess a copy of the Gilman affidavit.

A more accurate account of the relationship between Howard and the jailers can be seen from an earlier 21 March 1877 article in the New York Herald that reported that the jailers were upset that Lee refused to implicate his accomplices. Howard had given up trying to get information “as was expected and as he indirectly promised.”¹⁴³ Nowhere is there any shred of evidence that Lee told Howard something that was

¹⁴³ John D. Lee: Preparations for His Execution at Beaver City, Utah; Arrival of the Regular Troops; The Condemned Man Secluded by His Jailors; He Denounces Brigham Young; Lee’s Wife and Sons Looking for Indian Aid; A Change in the Church; Brigham Young, Jr. Thinks Lee Will Not Be Executed; Review of the Crime and the Trials,” New York Herald, 21 March 1877, p. 7.
not published in these newspapers. Nowhere is Gilman mentioned in the earlier article. Nowhere do we read any corroboration of the statements contained in the supposed Gilman affidavit. Justice of the peace and jailer Benjamin Spear had claimed one month earlier that Judge Boreman and other fellow officers were either timid or bribed by “Brigham Young’s blood stained coin.” Spear claimed obliquely that John D. Lee had more to say and had so told Spear at one time, but Spear wouldn’t get specific about his charges. Spear also complained that John D. Lee was permitted to cohabit with his wives.¹⁴⁴

U.S. Attorney General Devens asked Howard to come to Washington to explain the jailers’ charges, specifically focusing only on a charge that the jailers were selling a confession for profit. Nowhere in Devens’s letter does Devens give any credence to Gilman’s or Spears’s vague claims that Howard suppressed evidence that implicated Brigham Young. Devens would have mentioned such an incendiary charge had there been any credibility to it.¹⁴⁵ On 16 April 1877, Howard told Devens that “I will state here that the allegations of Gilman are cruel wicked and infamous—without the least grain of truth.”¹⁴⁶ Bagley tells us that Howard went to Washington to respond to the charges against him, but the official correspondence shows that Devens accepted Howard’s explanation and reversed his request to see Howard.¹⁴⁷

To summarize, the official correspondence shows years of prosecutorial effort to apprehend massacre perpetrators. This effort overwhelms the meager and faulty story Bagley puts together from the

¹⁴⁵. Charles Devens to Sumner Howard, 11 April 1877, Records of the Department of Justice, RG 60, M 701, reel 7, Instruction Book G, National Archives.
¹⁴⁶. Sumner Howard to Charles Devens, 16 April 1877, Records of the Department of Justice, Letters Received, “Mountain Meadows Massacre Letters 1877,” RG 60, box 1019, National Archives.
¹⁴⁷. “Your letter of the 16th received. Upon reading it I think your presence here not necessary and revoke previous telegram of that day. If upon receiving your report I should think otherwise, will telegraph to you.” Charles Devens to Sumner Howard, 23 April 1877, Microfilm NND 170 (3015), consisting of documents obtained from RG 60, 123, 205 and 267, order NND 69–170 A, National Archives.
Gilman affair. To rely upon secondary material for the “deal” theory, particularly where primary material was published in the national press, is not good scholarship. Bagley’s lack of knowledge of the official correspondence discussing prosecutorial effort is a significant impediment to his credibility.

What really happened between Howard and the Church? Let me suggest a plausible explanation for the facts that have led laypersons in the past to think there was a deal to make Lee a scapegoat. After the first trial failed and Sumner Howard replaced the prior prosecutors, the Salt Lake Daily Tribune peppered its editorial column with charges of prosecutorial bungling. The paper charged the prosecutors with grandstanding against church authorities and failing to adduce specific evidence against Lee. U.S. District Attorney Howard, not willing to repeat the mistakes of his predecessors, decided he needed a different strategy and slate of witnesses. However, many of the desired witnesses could not be found. Howard met with church officials to lobby their support to encourage witnesses to come forward. Howard assured church authorities that he sought only justice and that he had no evidence against Brigham Young or George A. Smith. Nor did Howard give up on Brigham Young; both Orson F. Whitney and the New York Herald reported that Howard offered Lee a full pardon in exchange for evidence against Brigham Young.¹⁴⁸ Church authorities probably got the word out to witnesses to encourage them to cooperate.

Few of the witnesses in the first trial testified in the second. Howard did not call Klingensmith, who had turned state’s evidence in the previous trial. This indicates to me that Howard did not want to repeat the errors of his predecessors. Howard probably asked the church to have a nominal presence at the trial. Daniel Wells agreed to testify, and he did so. Ostensibly, Wells’s testimony was necessary to show that Lee was not a high church authority. The night before his testimony, Wells preached a fiery sermon in Parowan demanding justice, but not necessarily against Lee. (I have not seen the text of that sermon.) The Deseret News also published editorials demanding justice. The jurors

deliberated. According to the Corry affidavit, the decision was not an easy one to make. No external force influenced the jurors, other than the social difficulty of convicting one’s own. But, in the end, Lee was convicted. Investigations continued against other perpetrators, but they secreted themselves effectively in the wilds of the desert. No doubt the other perpetrators had plenty of Mormon friends and family willing to assist with their evasion.

The continued theory of a deal to offer Lee as a scapegoat lacks competent, much less compelling, evidence. Speculation is a game played by Bagley and Brooks, but there ought to be more than that.

**General Concerns about the Quality of the Evidence**

I conclude with some general concerns of *Blood of the Prophets’s* use of the evidence.

*Rumors should not be trusted.* Some of the rumors *Blood of the Prophets* repeats are despicable. One good example of the book’s misuse of rumor is its analysis of Jacob Hamblin’s testimony from the second trial. *Blood of the Prophets* theorizes that Jacob Hamblin’s sixteen-year-old adopted Indian son, Albert, participated in massacre atrocities by raping two young women and that Jacob later suggested that Lee committed the rapes (pp. 304–5). The explanation we are offered is complicated and illogical. *Blood of the Prophets* says that Hamblin, who was not at the massacre, transferred responsibility for the atrocity from Albert, who claimed to be an observer of the massacre while herding Jacob’s sheep,¹⁴⁹ to Lee himself to “settl[e] old scores” with Lee (p. 305). In other words, *Blood of the Prophets* suggests that Hamblin raped two young victims, and to make things right somehow, or to make somebody pay for the crime, Jacob Hamblin pinned the crime on Lee.

This rape story is fantasy. The massacre is a sad story, but to heap upon it this salacious story is tabloid sensationalism. Beadle’s book and the *Salt Lake Daily Tribune* are responsible for this rumor.¹⁵⁰

¹⁵⁰. “The manner in which Hamlin [sic] recited Lee’s account convinced some who heard it that another crime was committed before the girls were killed.” Beadle, *Western
Blood of the Prophets should have relied on the transcript of the trial because there is nothing in the transcript to suggest this story.¹⁵¹ Brooks, who relies upon the transcript, criticized these stories of rape as “impossible tales” that are “passed on as fact.”¹⁵² Blood of the Prophets, with no evidence at all, says these tales “cannot be discounted entirely” (p. 151).

Anonymous sources are usually worthless. I have mentioned my objections to Argus. Blood of the Prophets also spends several pages with the “Discursive Remarks,” an anonymous manuscript held by the Utah State Historical Society (p. 220). Bagley attributes the work to John D. Lee, as if another Lee account can be trusted.

Vignettes should be presented with balance, regardless of which point of view they support. Bagley reports the account of William Hawley’s objections to the massacre and how he was chained to a wagon wheel when he voiced his objections to the massacre plan (pp. 119–20, 143). It might have helped our understanding of this story had Bagley not relegated to a footnote (p. 407) the explanation that Hawley was one of the massacre perpetrators and that his story

Wilds, 516. “The reluctance with which this evidence was drawn out showed there was something more shocking yet untold.” “Harrowing Details of the Bloody Massacre,” Salt Lake Daily Tribune, 17 September 1876, in Fielding, Tribune Reports, 220.

¹⁵¹ “A. There was two young ladies brought out. Q. By whom? A. By an Indian chief at Cedar City, and we asked him what he should do with them, and the Indian killed one and he killed the other. Q. Tell the story as [Lee] told you? A. That is about it. Q. Where were those young women brought from, did he say? A. From a thicket of oak brosh [sic], where they were concealed. It was an Indian chief of Cedar City brought them out. Q. Tell just what he said about that? A. The Indian shot one and he cut the others throat, is what he said. Q. Who cut the others throat? A. Mr. Lee. . . . Q. Go over it again; tell us all the details of the killing. A. Well, he said they were killed—all he supposed. That the Chief of Cedar City brought out two young ladies. Q. What did he say the chief said to him? Asked what he should do with them. Q. What else did the chief say? A. The chief said they didn’t ought to be killed. Q. Why did the chief say to Lee that they should not be killed? A. Well, he said they was pretty had he wanted to save them. Q. What did Lee tell you that he replied to the chief? A. According to the orders that he had they was too big and too old to let live. . . . A. I told you that he said it was a Cedar City Chief that killed one. Q. Who killed the other. A. He done it, he said. Q. How? A. He threw her down and cut her throat.” Trial Transcript (1876), 94–96.

¹⁵² Brooks, Mountain Meadows Massacre, 105–6.
was written from the headquarters of a schismatic organization opposed to polygamy and Brigham Young.¹⁵³

Bagley tells us how Brigham Young needled General Johnston on the high plains with a gift of salt leading Johnston to reject it with outrage when Johnston believed that Brigham Young had implied the salt was poisoned (by saying that it was not) (p. 196). It would have been nice had Bagley told us Johnston’s troops covertly accepted the gift nonetheless.¹⁵⁴

Bagley’s analysis of the provocation evidence displays the kind of healthy cynicism he should have applied to the rest of his book, but Bagley is cynical where the evidence abounds. He discounts stories of provocation by the Fancher train as having been fabricated long after the fact. We are told that “no two witnesses told the same story” and that the stories were “usually based on hearsay, multiplied over the years.” There is “no evidence to determine whether they had a basis in fact or were popular myths created to justify murder.” They appeared “years after the events supposedly occurred.” Some of the stories “originated with murderers such as Lee and Higbee” (p. 117). Bagley should have applied this same analysis to the frightfully slim and speculative evidence (dreams, anonymous sources, family traditions, folklore) upon which he relies to indict Brigham Young and George A. Smith.

On the issue of provocation, Bagley tends to agree with Argus’s claim that the Fancher train was “one of the . . . most respectable and peaceful that ever crossed the continent.” Press accounts in California days after the massacre, however, reported fairly detailed Mormon claims of provocation by the Fancher party,¹⁵⁵ so it is impossible to say that these accounts were made up long after the fact. In contrast, Brooks gives the provocation accounts some credit, noting that they “come to us from many sources.”¹⁵⁶

¹⁵³. Bishop, Mormonism Unveiled, 379.
¹⁵⁴. Furniss, Mormon Conflict, 151.
¹⁵⁶. Brooks, Mountain Meadows Massacre, 46.
Breadth of knowledge in the political and social sciences is important for this subject matter. I have mentioned a lack of breadth in the political and social sciences in that Bagley does not handle well the external forces brought to bear on the “Mormon question.” In another example of weakness of breadth, or at least in a deep bow to political correctness, *Blood of the Prophets* publishes, on an unnumbered page (photos following p. 224), a photograph of three richly adorned Southern Paiutes, with a caption that says: “This image from the William R. Palmer Collection identifies these Southern Paiutes as Y-buts, Williams Brother, and Joe. Such photographs reveal that the Paiutes were not the degraded subhumans often described in overland trail accounts.” The caption implies that early accounts of the primitive Southern Paiutes were bigoted. The photograph was probably staged. Although I have not been able to identify the photographer (and neither has Bagley), it appears to be an 1870s photograph by Jack Hillers, one of the West’s famous photographers who made a name for himself on the second John Wesley Powell expedition. Photographers of the day, and especially Hillers, would dress destitute desert Indians with Plains Indian clothing.¹⁵⁷ Contrary to the cotton, leather, and deerskin or buffalo skin in the photograph, many accounts indicated that the Southern Paiutes were desperately poor, wearing only breechcloths in the summer and adding some rabbit skins for the winter.¹⁵⁸ Powell reported that the Southern Paiutes were the most primitive Indians he had ever seen.¹⁵⁹

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¹⁵⁸. “The bands of Pah-Utes, in the southern portion of the Territory are extremely destitute. . . . This is especially the case with those bands south of Cedar city.” Jacob Forney to A. B. Greenwood, 29 September 1859, 36th Cong., 1st sess., S. Exec. Doc. 2, serial 1023, p. 734. Other than the Snakes, “many of the men, women, and children are entirely naked.” Ibid., 733. There is, however, a photograph of Ute Chief Kanosh and some of his elders dressed in the white man’s garb in the Church Archives and republished in Cooley, *Diary of Brigham Young*, 70.

Conclusion

The story of the Mountain Meadows Massacre in Blood of the Prophets fascinates us in a somewhat prurient sense. We read of sensational marital practices of the Mormons, repulsive violence in the name of religion, and futile resistance to the armed might of a nascent antebellum nation. Bagley describes the tyranny of a domineering leader in an oppressive ecclesiastical society. A group of innocent men, women, and children is caught in the convergence of forces between the good of American Christian principles and the evil of Mormonism.

The story of the massacre cannot be told as Bagley wishes to tell it. If Bagley wants to implicate Brigham Young, George A. Smith, and the nineteenth-century Church of Jesus Christ of Latter-day Saints itself, we should expect him to weigh and sift what will probably be voluminous evidence of dubious quality offered against an unpopular religion. Bagley accepts this dubious evidence as well as raw speculation. He rejects or misses competent evidence. I challenge the right of any historian to toss competent evidence on the ash heap in favor of salacious rumor.

But salacious rumor is what we are often served up by Blood of the Prophets in an agenda-driven account of history. We should approach the work with a healthy dose of cynicism. I, for one, am convinced even more after reading Blood of the Prophets that there is no competent evidence to show that Brigham Young and George A. Smith were accessories before or after the fact.